

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

HBAC MATCHMAKER MEDIA, INC.

Plaintiff,

v.

GOOGLE INC.; and YOUTUBE, LLC,

Defendant.

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff HBAC MatchMaker Media, Inc. (“HBAC”) files this complaint for patent infringement against Google Inc. (“Google”) and YouTube, LLC (“YouTube”) (collectively, “Defendants”), and alleges as follows:

**THE PARTIES**

1. HBAC is a Delaware corporation with a principal place of business at 3 Center Knolls, Bronxville, New York 10708.

2. On information and belief, Google is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google may be served in Delaware through its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. On information and belief, YouTube is a subsidiary of defendant Google. YouTube is a limited liability company organized and existing under the laws of the state of Delaware, with its principal place of business located at 901 Cherry Avenue, San Bruno, California 94066. YouTube may be served in Delaware through its registered agent for service of process, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington,

Delaware, 19808.

### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendants for at least the following reasons: (1) Defendants are incorporated under the laws of the State of Delaware; (2) Defendants have committed acts of patent infringement and induced acts of patent infringement by others in this District and in Delaware; (3) Defendants engage in other persistent courses of conduct and derive substantial revenue from products and/or services provided to individuals in this District and in Delaware; and (4) Defendants have purposefully established systematic and continuous contacts with this District and should reasonably expect to be haled into Court here.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because Defendants are incorporated under the laws of the State of Delaware, Defendants do business in Delaware, and Defendants have committed acts of infringement in Delaware and in this District.

### **THE ASSERTED PATENTS**

7. On June 30, 1998, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 5,774,170 (the “’170 Patent”), entitled “System and Method for Delivering Targeted Advertisements to Consumers,” to Kenneth C. Hite, Walter S. Ciciora, Tom Alison, and Robert G. Beauregard. A true and correct copy of the ’170 Patent is attached as Exhibit A. HBAC is the owner by assignment of the ’170 Patent, and holds all rights and interest in the ’170 Patent.

8. On December 14, 1999, the USPTO duly and legally issued U.S. Patent No.

6,002,393 (the “’393 Patent”), entitled “System and Method for Delivering Targeted Advertisements to Consumers Using Direct Commands,” to Messrs. Hite, Ciciora, Alison, and Beauregard. A true and correct copy of the ’393 Patent is attached as Exhibit B. HBAC is the owner by assignment of the ’393 Patent, and holds all rights and interest in the ’393 Patent.

9. Collectively, the ’170 Patent and the ’393 Patent are referred to as the “Asserted Patents.”

### **FACTUAL BACKGROUND**

10. In the early 1990s, four inventors – Messrs. Hite, Ciciora, Alison, and Beauregard – recognized the potential for advanced advertising with the proliferation of digital devices, and developed the core technology and techniques for addressable advertising. Each inventor brought significant relevant experience to the endeavor. Ken Hite, HBAC’s Chief Executive Officer, is a twenty-five year advertising veteran. Tom Alison, a Harvard MBA and HBAC’s President and Chief Operating Officer, has over three decades of experience in marketing and new media, with extensive experience in direct marketing. Robert Beauregard, HBAC’s Executive Vice President, Treasurer and Secretary, has over forty years of experience in advertising, marketing, and publishing. Walt Ciciora, Ph.D., HBAC’s Executive Vice President and Chief Technology Officer, literally co-wrote the book on cable television. The first edition of *Modern Cable Television Technology: Video, Voice, and Data Communications* received a book award from The Cable Center in 2000. With decades of experience in the cable technology field, Dr. Ciciora has been elected to the Cable Technology Hall of Fame, has twice been named “Man of the Year” by CED magazine, and has been inducted into the Academy of Digital Television Pioneers. He has been issued sixteen U.S. patents, and his work has been widely published.

11. These four individuals developed the fundamental inventions behind addressable

advertising in digital media – the capability to target, deliver, and display specific ads to specific households. For their work, they received two pioneering patents – the '170 and '393 Patents. The significance of their work is evidenced in part by the overwhelming recognition these patents have received in the field. The '170 Patent has been cited nearly 400 times in other patents, and the '393 Patent has been cited nearly 200 times. Patents issued to entities such as Google, Microsoft, IBM, Sony, Intel, Hughes, The Nielson Company, Sprint, and General Motors, among many more, cite the groundbreaking HBAC patents.

**COUNT I**  
**(Infringement of U.S. Patent No. 5,774,170)**

12. HBAC repeats and re-alleges the allegations of paragraphs 1-11 as if fully set forth herein.

13. Upon information and belief, Google has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent in violation of 35 U.S.C. § 271. Google performs a claimed method by targeting advertisements to consumers who visit websites belonging to the Google Display Network. Google itself states on its website: “We use the information we collect from all of our services to provide, maintain, protect and improve them, to develop new ones, and to protect Google and our users. We also use this information to offer you tailored content – like giving you more relevant search results and ads.” See <http://www.google.com/intl/en/policies/privacy>. For example, upon information and belief, Google maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user’s computer, tablet, or other web-enabled device. Google also has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting Google

Display Network websites, in a manner claimed in the '170 Patent.

14. Google has infringed indirectly and continues to infringe indirectly the '170 Patent by active inducement under 35 U.S.C. § 271(b). Google has induced and continues to induce users of websites belonging to the Google Display Network to directly infringe one or more claims of the '170 Patent. Google has had knowledge of the '170 Patent since at least as early as November 2005, when Messrs. Hite, Ciciora, and Alison met with representatives of Google at Google's headquarters. HBAC and representatives from Google discussed, among other things, the Asserted Patents. Since the time Defendant obtained knowledge of the '170 Patent, it has specifically intended to induce infringement of the '170 Patent by advertising, promoting, and providing instructions and assistance to customers to use Google websites in a manner claimed in the '170 Patent. By continuing the representative aforementioned activities with knowledge of the '170 Patent, Google knew, or should have known, that it was inducing infringement of the '170 Patent.

15. Upon information and belief, YouTube has infringed directly and continues to infringe directly, within the United States, one or more claims of the '170 Patent in violation of 35 U.S.C. § 271. YouTube performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by YouTube. YouTube itself states on its website: "For some pages, we choose ads that we think will reflect your interests, based on the types of videos you prefer to watch, as well as your site activity . . . . Additionally, YouTube uses information based on the types of pages you visit on websites that are members of the Google content network." *See* [http://www.youtube.com/t/ads\\_preferences](http://www.youtube.com/t/ads_preferences). For example, upon information and belief, YouTube maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. YouTube also has infringed directly and continues to infringe

directly, within the United States, one or more claims of the '170 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting YouTube websites, in a manner claimed in the '170 Patent.

16. YouTube has infringed indirectly and continues to infringe indirectly the '170 Patent by active inducement under 35 U.S.C. § 271(b). YouTube has induced and continues to induce users of websites owned or controlled YouTube to directly infringe one or more claims of the '170 Patent. Upon information and belief, YouTube has had knowledge of the '170 Patent since at least as early as November 2006, when Google closed its acquisition of YouTube. As described above, Google has had knowledge of the '170 Patent since at least as early as November 2005. Furthermore, Dean Gilbert, who, upon information and belief, served as Vice President, Global Head of Content and Operations at YouTube from June 2010 through June 2012, and as Vice President of Product Management at Google from September 2006 through June 2010, met with HBAC representatives prior to his tenure at YouTube and discussed, among other things, the Asserted Patents. Since the time Defendant obtained knowledge of the '170 Patent, it has specifically intended to induce infringement of the '170 Patent by advertising, promoting, and providing instructions and assistance to customers to use YouTube websites in a manner claimed in the '170 Patent. By continuing the representative aforementioned activities with knowledge of the '170 Patent, YouTube knew, or should have known, that it was inducing infringement of the '170 Patent.

17. Despite having notice of the '170 Patent, Defendants have continued to willfully, wantonly, and deliberately infringe the '170 Patent. Accordingly, HBAC seeks enhanced damages pursuant to 35 U.S.C. § 284 and a finding that this is an exceptional case within the meaning of 35 U.S.C. § 285, entitling HBAC to its attorneys' fees and expenses.

18. Defendants' acts of infringement have caused damage to HBAC, and HBAC is

entitled to recover from Defendants the damages sustained by HBAC as a result of Defendants' wrongful acts in an amount subject to proof at trial.

**COUNT II**  
**(Infringement of U.S. Patent No. 6,002,393)**

19. HBAC incorporates and re-alleges the allegations of paragraphs 1-18 as if fully set forth above.

20. Upon information and belief, Google has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent in violation of 35 U.S.C. § 271. Google performs a claimed method by targeting advertisements to consumers who visit websites belonging to the Google Display Network. Google itself states on its website: "We use the information we collect from all of our services to provide, maintain, protect and improve them, to develop new ones, and to protect Google and our users. We also use this information to offer you tailored content – like giving you more relevant search results and ads." See <http://www.google.com/intl/en/policies/privacy>. For example, upon information and belief, Google maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. Upon information and belief, Google also supplies program materials, such as video content, into which advertisements are inserted. Google also has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting Google Display Network websites, in a manner claimed in the '393 Patent.

21. Google has infringed indirectly and continues to infringe indirectly the '393 Patent by active inducement under 35 U.S.C. § 271(b). Google has induced and continues to

induce users of websites belonging to the Google Display Network to directly infringe one or more claims of the '393 Patent. Google has had knowledge of the '393 Patent since at least as early as November 2005, when Messrs. Hite, Ciciora, and Alison met with representatives of Google at Google's headquarters. HBAC and representatives from Google discussed, among other things, the Asserted Patents. Since the time Defendant obtained knowledge of the '393 Patent, it has specifically intended to induce infringement of the '393 Patent by advertising, promoting, and providing instructions and assistance to customers to use Google Display Network websites in a manner claimed in the '393 Patent. By continuing the representative aforementioned activities with knowledge of '393 Patent, Google knew, or should have known, that it was inducing infringement of the '393 Patent.

22. Upon information and belief, YouTube has infringed directly and continues to infringe directly, within the United States, one or more claims of the '393 Patent in violation of 35 U.S.C. § 271. YouTube performs a claimed method by targeting advertisements to consumers who visit websites owned or controlled by YouTube. YouTube itself states on its website: "For some pages, we choose ads that we think will reflect your interests, based on the types of videos you prefer to watch, as well as your site activity . . . . Additionally, YouTube uses information based on the types of pages you visit on websites that are members of the Google content network." *See* [http://www.youtube.com/t/ads\\_preferences](http://www.youtube.com/t/ads_preferences). For example, upon information and belief, YouTube maintains a central storage system storing video advertisements, and delivers targeted advertisements for display to a user's computer, tablet, or other web-enabled device. YouTube also supplies program materials, such as video content, into which advertisements are inserted. *See, e.g.,* <http://www.youtube.com/yt/advertise/in-stream.html> (describing video advertising formats available to those who wish to advertise on YouTube). YouTube also has infringed directly and continues to infringe directly, within the



United States, one or more claims of the '393 Patent by, among other things, making, using, importing, offering for sale, and/or selling systems that provide targeted advertisements to consumers visiting YouTube websites, in a manner claimed in the '393 Patent.

23. YouTube has infringed indirectly and continues to infringe indirectly the '393 Patent by active inducement under 35 U.S.C. § 271(b). YouTube has induced and continues to induce users of websites owned or controlled YouTube to directly infringe one or more claims of the '393 Patent. Upon information and belief, YouTube has had knowledge of the '393 Patent since at least as early as November 2006, when Google closed its acquisition of YouTube. As described above, Google has had knowledge of the '393 Patent since at least as early as November 2005. Furthermore, Dean Gilbert, who, upon information and belief, served as Vice President, Global Head of Content and Operations at YouTube from June 2010 through June 2012, and as Vice President of Product Management at Google from September 2006 through June 2010, met with HBAC representatives prior to his tenure at YouTube and discussed, among other things, the Asserted Patents. Since the time Defendant obtained knowledge of the '393 Patent, it has specifically intended to induce infringement of the '393 Patent by advertising, promoting, and providing instructions and assistance to customers to use YouTube websites in a manner claimed in the '393 Patent. By continuing the representative aforementioned activities with knowledge of the '393 Patent, YouTube knew, or should have known, that it was inducing infringement of the '393 Patent.

24. Despite having notice of the '393 Patent, Defendants have continued to willfully, wantonly, and deliberately infringe the '393 Patent. Accordingly, HBAC seeks enhanced damages pursuant to 35 U.S.C. § 284 and a finding that this is an exceptional case within the meaning of 35 U.S.C. § 285, entitling HBAC to its attorneys' fees and expenses.

25. Defendants' acts of infringement have caused damage to HBAC, and HBAC is

entitled to recover from Defendants the damages sustained by HBAC as a result of Defendants' wrongful acts in an amount subject to proof at trial.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, HBAC respectfully requests a trial by jury of all issues properly triable by jury.

### **PRAYER FOR RELIEF**

For the above reasons, HBAC respectfully requests that this Court grant the following relief in favor of HBAC:

(a) A judgment in favor of HBAC that Defendants have infringed, directly and indirectly, one or more claims of each of the Asserted Patents;

(b) A judgment and order requiring Defendants to pay HBAC its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of each of the Asserted Patents;

(c) A judgment declaring that Defendants' infringement of the Asserted Patents was willful;

(d) A judgment against Defendants declaring that HBAC is entitled to enhanced damages as a result of the knowing, deliberate, and willful nature of Defendant's infringement;

(e) A judgment against Defendants declaring that this is an exceptional case within the meaning of 35 U.S.C. § 285 as against Defendants and awarding HBAC its reasonable attorneys' fees against Defendants; and

(f) Any and all such other relief as the Court deems just and proper.

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