

FILED 12/8/11  
U.S. DISTRICT COURT  
2011 DEC -8 AM 11:31  
EAST DALLAS DIVISION

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

<p><b>LODSYS LLC,</b></p> <p><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>COMBAY, INC.; ATARI INTERACTIVE, INC.; ELECTRONIC ARTS, INC.; ICONFACTORY, INC.; ILLUSION LABS AB; MICHAEL G. KARR D/B/A SHOVELMATE; QUICKOFFICE, INC.; ROVIO MOBILE LTD.; RICHARD SHINDERMAN; SQUARE ENIX LTD.; TAKE-TWO INTERACTIVE SOFTWARE INC.,</b></p> <p><b>Defendants.</b></p>	<p><b>CIVIL ACTION NO. 2:11-cv-00272-DF</b></p> <p><b>JURY TRIAL DEMANDED</b></p>
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**DEFENDANT COMBAY, INC.'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO THE COMPLAINT**

Defendant Combay, Inc., ("Combay"), by and through its undersigned counsel, hereby responds to the Complaint of Lodsys, LLC ("Plaintiff" or "Lodsys") as follows:

1. Combay lacks knowledge and information of the facts alleged in paragraph 1 of the Complaint.
2. Combay lacks knowledge and information of the facts alleged in paragraph 2 of the Complaint.
3. Combay admits the allegations of paragraph 3 of the Complaint.
4. Combay lacks knowledge and information of the facts alleged in paragraph 4 of the Complaint.
5. Combay lacks knowledge and information of the facts alleged in paragraph 5 of the Complaint.
6. Combay lacks knowledge and information of the facts alleged in paragraph 6 of the

- Complaint.
7. Combay lacks knowledge and information of the facts alleged in paragraph 7 of the Complaint.
  8. Combay lacks knowledge and information of the facts alleged in paragraph 8 of the Complaint.
  9. Combay lacks knowledge and information of the facts alleged in paragraph 9 of the Complaint.
  10. Combay lacks knowledge and information of the facts alleged in paragraph 10 of the Complaint.
  11. Combay lacks knowledge and information of the facts alleged in paragraph 11 of the Complaint.
  12. Combay lacks knowledge and information of the facts alleged in paragraph 12 of the Complaint.

### **JURISDICTION AND VENUE**

13. Combay, with respect to itself, denies the allegations in paragraph 13. Combay lacks knowledge and information of the facts alleged in paragraph 13 as to the other named Defendants.
14. Combay admits that it is subject to personal jurisdiction in this district, but otherwise denies the allegations in paragraph 14 as to the other named Defendants.

### **INFRINGEMENT OF U.S. PATENT NO. 7,620,565 B2**

15. Combay admits that Exhibit A to the Complaint purports to be a copy of U.S. Patent No. 7,620,565 (“the ‘565 patent”). Combay further admits that the ‘565 patent, on its face, states that it issued on November 17, 2009 and is entitled “Customer-Based Product Design Module.” Combay lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 and, therefore, denies them.
16. Combay lacks knowledge and information of the facts alleged in paragraph 16 of the Complaint.
17. Combay denies each and every allegation of paragraph 17. Combay lacks knowledge and information of the facts alleged in paragraph 17.
18. Combay lacks knowledge and information of the facts alleged in paragraph 18 of the Complaint.
19. Combay lacks knowledge and information of the facts alleged in paragraph 19 of the Complaint.
20. Combay lacks knowledge and information of the facts alleged in paragraph 20 of the Complaint.
21. Combay lacks knowledge and information of the facts alleged in paragraph 21 of the Complaint.
22. Combay lacks knowledge and information of the facts alleged in paragraph 22 of the Complaint.
23. Combay lacks knowledge and information of the facts alleged in paragraph 23 of the Complaint.

24. Combay lacks knowledge and information of the facts alleged in paragraph 24 of the Complaint.
25. Combay lacks knowledge and information of the facts alleged in paragraph 25 of the Complaint.
26. Combay lacks knowledge and information of the facts alleged in paragraph 26 of the Complaint.
27. Combay lacks knowledge and information of the facts alleged in paragraph 27 of the Complaint.

### **INFRINGEMENT OF U.S. PATENT NO. 7,222,078 B2**

28. Combay admits that Exhibit B to the Complaint purports to be a copy of U.S. Patent No. 7,222,078 (“the ‘078 patent”). Combay further admits that the ‘078 patent, on its face, states that it issued on May 22, 2007 and is entitled “Methods and Systems for Gathering Information from Units of a Commodity Across a Network.” Combay lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 and, therefore, denies them.
29. Combay lacks knowledge and information of the facts alleged in paragraph 29 of the Complaint.
30. Combay denies each and every allegation of paragraph 30. Combay lacks knowledge and information of the facts alleged in paragraph 30.
31. Combay lacks knowledge and information of the facts alleged in paragraph 31 of the Complaint.
32. Combay lacks knowledge and information of the facts alleged in paragraph 32 of the Complaint.
33. Combay lacks knowledge and information of the facts alleged in paragraph 33 of the Complaint.
34. Combay lacks knowledge and information of the facts alleged in paragraph 34 of the Complaint.
35. Combay lacks knowledge and information of the facts alleged in paragraph 35 of the Complaint.
36. Combay lacks knowledge and information of the facts alleged in paragraph 36 of the Complaint.
37. Combay lacks knowledge and information of the facts alleged in paragraph 37 of the Complaint.
38. Combay lacks knowledge and information of the facts alleged in paragraph 38 of the Complaint.
39. Combay lacks knowledge and information of the facts alleged in paragraph 39 of the Complaint.
40. Combay denies each and every allegation of paragraph 40. Combay denies any express or implied allegation within paragraph 40 that it has infringed, or is now infringing, directly or indirectly, any patent, and denies that Plaintiff is entitled to damages, an injunction, and/or any other relief.

### **PRAYER FOR RELIEF**

41. Combay denies Lodsys is entitled to any of the relief requested in the Complaint.

### **AFFIRMATIVE DEFENSES**

42. Combay incorporates the above admissions and denials in paragraphs 1-40.

#### **FIRST AFFIRMATIVE DEFENSE**

43. Apple, Inc. ("Apple") holds a license to the '565 patent and the '078 patent. Such license permits Apple to offer and otherwise make available to Combay and others products and services that embody the inventions contained in the '565 and '078 patents. Plaintiff's infringement claims against Combay are based on Combay's use of products and services that Apple is authorized to provide under such license and which Plaintiff claims embody the '565 and '078 patents. Under the patent law doctrines of exhaustion and first sale, Combay can use the products and services Apple provides to it free of claims of infringing the '078 and '565 patents. Therefore, Plaintiff's claims against Combay are barred by the license to Apple and the doctrines of patent exhaustion and first sale.

#### **SECOND AFFIRMATIVE DEFENSE**

44. Combay has and does not directly or indirectly infringe the '078 patent, either literally or under the doctrine of equivalents.

#### **THIRD AFFIRMATIVE DEFENSE**

45. Combay has and does not directly or indirectly infringe the '565 patent, either literally or under the doctrine of equivalents.

#### **FOURTH AFFIRMATIVE DEFENSE**

46. The '078 patent is invalid for failure to comply with one or more requirements of the patent laws of the United States, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

#### **FIFTH AFFIRMATIVE DEFENSE**

47. The '565 patent is invalid for failure to comply with one or more requirements of the patent laws of the United States, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

#### **SIXTH AFFIRMATIVE DEFENSE**

48. Lodsys' claim for damages, if any, is limited by 35 U.S.C. §§ 286, 287, 288 and 28 U.S.C. § 1498.

**DEMAND FOR JURY TRIAL**

49. Combay requests a trial by jury on all claims and defenses properly decided by a jury.

December 5, 2011  
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Duan Nguyen', with a long horizontal flourish extending to the right.

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Answer for:  
Amended Complaint (Docket #26)  
Case # 2:11-cv-272