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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 MAX INTERACTIVE, INC.,

12 Plaintiff,

13 v.

14 INFOCASE, INC.,

15 Defendant.

Case No.: '15CV1962 AJB MDD

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT**

16
17 **THE PARTIES**

18 1. Plaintiff MAX INTERACTIVE, INC. is a California corporation with
19 its principal place of business at 1605 Monrovia Avenue, Costa Mesa, California
20 92627 ("MAX").

21 2. Upon information and belief, Defendant INFOCASE, INC. is an
22 Ohio corporation headquartered at 4566 Cornell Road, Cincinnati, Ohio 45241
23 ("INFOCASE").

24 **NATURE OF THE ACTION**

25 3. This is a declaratory judgment action seeking a determination that
26 MAX does not infringe any valid or enforceable claim of U.S. Patent No. 6,109,434
27 under 35 U.S.C. § 271 (the "Patent").

28 4. This is a declaratory judgment action seeking a declaratory judgment

1 of non-infringement.

2 5. On information and belief, INFOCASE is the owner of United
3 States Patent No. 6,109,434 (“’434 patent”), which is entitled “Protective Case for
4 Portable Computer” and issued on August 29, 2000. A true copy of the ‘434 patent
5 is attached as **Exhibit “A.”**

6 **JURISDICTION AND VENUE**

7 6. This is a complaint for declaratory relief under the patent laws of the
8 United States, 35 U.S.C. §§ 1, *et seq.*

9 7. MAX seeks declaratory relief under 28 U.S.C. §§ 2201 and 2202.

10 8. This Court has subject matter jurisdiction over this action under 35
11 U.S.C. §§ 1331, 1338, 2201, and 2202.

12 9. This Court has personal jurisdiction over INFOCASE. INFOCASE
13 has conducted business in and directed at California pertaining to the Patent.
14 INFOCASE maintains an interactive website directed at and accessible by
15 California residents which allows for California residents’ purchase of its products
16 via third-party reseller. Further, INFOCASE is a self-described “worldwide
17 distributor of mobility, ergonomics and protective technology solutions.”

18 10. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)
19 and 1391(c) because, among other reasons, INFOCASE is subject to personal
20 jurisdiction in this judicial district, INFOCASE has conducted or conducts business
21 in this judicial district, or because a substantial part of the events or omissions
22 giving rise to the claim occurred in this judicial district.

23 **THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES**

24 11. INFOCASE is the claimed holder of the Patent.

25 12. On August 4, 2015, the law firm Keating Muething & Klekamp sent
26 MAX a letter (**Exhibit “B”**) claiming “similarities between Infocase’s design”
27 and a MAX product under the ‘434 patent. Given the similarities, INFOCASE
28 demanded “discussions regarding licensing options,” but reserved the right to

1 “seek court intervention.” INFOCASE’s letter implied that MAX must take a
2 license or be subjected to a patent enforcement action.

3 13. On August 14, 2015, counsel for MAX sent a letter (**Exhibit “C”**)
4 to Keating Muething & Klekamp in response, stating that “We have reviewed the
5 ‘434 patent and do not see how the Max Case Explorer Bag infringes any claim of
6 the ‘434 patent. If you disagree, please provide us with a detailed explanation.”

7 14. On August 18, 2015, counsel for INFOCASE responded via email
8 (**Exhibit “D”**) stating, “Please confirm that your client views a formal patent
9 infringement analysis and ensuing patent litigation as a necessary step to any
10 discussion between the two businesses....”

11 15. MAX has not infringed and does not infringe, either directly or
12 indirectly, any valid and enforceable claim of the Patent, either literally or under
13 the doctrine of equivalents.

14 16. By virtue of the foregoing, a substantial controversy exists between
15 the parties that is of sufficient immediacy and reality to warrant declaratory relief.

16 **FIRST CAUSE OF ACTION**

17 **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT**
18 **(‘434 PATENT))**

19 17. MAX realleges and incorporates herein the allegations of the preceding
20 paragraphs of this Complaint as if fully set forth herein.

21 18. As a result of the acts described in the foregoing paragraphs, there
22 exists a substantial controversy of sufficient immediacy and reality to warrant the
23 issuance of a declaratory judgment.

24 19. A judicial declaration is necessary and appropriate so that INFOCASE
25 may ascertain its rights regarding the ‘434 patent.

26 20. MAX is entitled to a declaratory judgment that it has not infringed
27 and does not infringe, directly or indirectly, any valid and enforceable claim of the
28 ‘434 patent.

PRAYER

WHEREFORE, MAX prays for the following relief:

1. A declaration that MAX has not infringed, either directly or indirectly, any valid and enforceable claim of the '434 patent;
2. An order declaring that MAX is a prevailing party and that this is an exceptional case, awarding MAX its costs, expenses, disbursements, and reasonably incurred attorney's fees under 35 U.S.C. § 285, and all other statutes, rules, and common law;
3. That INFOCASE be ordered to pay all costs associated with this action; and
4. That MAX be granted such other and additional relief as the Court deems just and proper.

Dated: September 2, 2015

GRECO TRAFICANTE SCHULZ & BRICK

By: s/ Peter J. Schulz

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