

JUDGE FURMAN

14 CV 4119

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THRILLIST MEDIA GROUP, INC.,

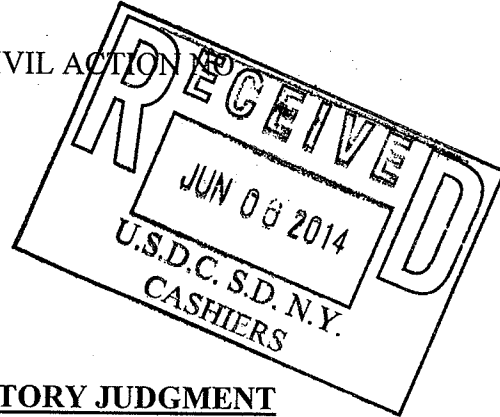
Plaintiff,

v.

ECLIPSE IP LLC,

Defendant.

CIVIL ACTION NO.



COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Thrillist Media Group, Inc. (“Thrillist”), for its complaint against Eclipse IP LLC (“Eclipse”), alleges as follows:

NATURE OF THE CASE

1. Thrillist seeks a declaratory judgment (a) that U.S. Patent No. 8,564,459 (the ‘459 patent) is invalid, (b) that Thrillist’s jackthreads.com website and online ordering platform do not infringe on the ‘459 patent, and (c) Thrillist has not infringed, induced others to infringe, or contributed to the infringement by others of the ‘459 patent.

2. Thrillist seeks this necessary relief because Eclipse, the purported owner of the ‘459 patent, has sent Thrillist a demand letter dated April 11, 2014 (“Demand Letter”), in which Eclipse threatens to file suit if Thrillist does not pay a substantial fee.

3. The threat of suit by Eclipse is real and not idle because Eclipse has filed patent infringement actions in over a hundred cases in various jurisdictions asserting the ‘459 patent or other patents it owns in the same family as the ‘459 patent.

4. Eclipse's allegations have thus placed a cloud over Thrillist and its website's online ordering platform, have injured or are injuring Thrillist's business, and have created a concrete and immediate justiciable controversy between Thrillist and Eclipse.

PARTIES

5. Plaintiff Thrillist is a Delaware Corporation with its principal place of business located at 568 Broadway, Suite 506, New York, NY 10012.

6. On information and belief, Defendant Eclipse is a Florida Corporation with its principal place of business located at 711 SW 24th, Boynton Beach, FL 33435.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 2201, because this action arises under the patent laws, and seeks relief under the Federal Declaratory Judgment Act.

8. On information and belief, Eclipse is subject to personal jurisdiction in the Southern District of New York because Eclipse has regularly conducted business in and directed at New York. On information and belief, Eclipse, which appears to be in the business of licensing and enforcing its patent portfolio, has conducted business with companies based in New York relating to the licensing of its patents, including at least Avon Products Inc. (New York, NY), Estee Lauder Companies Inc. (New York, NY), Steven Madden, Ltd. (Long Island City, NY), Aeropostale Inc. (New York, NY), Saks Incorporated (New York, NY), and Ralph Lauren Corporation (New York, NY). Moreover, on information and belief, Eclipse has licensed patents to numerous other New York-based companies.

9. On information and belief, venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) because, among other reasons, Eclipse is subject to personal jurisdiction in this

judicial district, Eclipse conducts or has regularly conducted business in this judicial district, and/or because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTUAL BACKGROUND

10. Thrillist is a digital media and commerce company that owns online properties including the style, grooming and commerce destination JackThreads.

11. On information and belief, Eclipse is in the business of developing, owning, litigating, and licensing patents. On information and belief, licensing and enforcing patents are Eclipse's principle business. Eclipse purports to have licensed patents to over 80 companies, and that it has an obligation to its licensees to enforce its patents against unlicensed competitors.

12. Eclipse purports to own the '459 patent, which is entitled "Systems and Methods for a Notification System That Enable User Changes to Purchase Order Information for Delivery and/or Pickup of Goods and/or Services." The '459 patent was issued on October 22, 2013. A copy of the '459 patent is attached as Exhibit A.

13. On April 11, 2014 Harman Law LLC sent the Demand Letter alleging that the www.jackthreads.com online ordering platform infringes the '459 patent and threatening to file litigation if Thrillist did not take a license for a fee. A copy of the Demand Letter is attached as Exhibit B.

14. The '459 patent is invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112. By way of example only, the '459 patent fails to meet the patentability threshold of 35 U.S.C. §101 because the claims are directed to abstract ideas. For example, the '459 patent is directed to the abstract idea of ordering a product, perhaps changing an aspect of the order, and having the product delivered at a specified time. The claimed method is no different from the

way catalog sales have been conducted for decades over the phone or through the mail by human beings. In short, the '459 patent is directed to nothing more than the abstract idea of mere logistics and thus is not patentable subject matter.

15. Furthermore, and also for example only, the '459 patent is invalid under at least 35 U.S.C. §§ 102 and/or 103. For example, Thrillist has found and sent to Eclipse prior art (including illustrative invalidity claims charts) that anticipates and renders obvious the '459 patent and that was not cited or considered by the USPTO during examination of the '459 patent. For at least these reasons, the '459 patent is invalid under 35 U.S.C. §§ 102 and 103.

16. Other grounds for invalidity exist, including indefiniteness in light of the Supreme Court's recent decision in *Nautilus Inc. v. BioSig Instruments, Inc.*

17. In any event, Thrillist does not infringe for several reasons. As just one example, Thrillist does not infringe representative Claim 1 because, inter alia, that claim "code designed to enable the notification system to engage in a second communication session with the first party via the first or second PCDs **based** upon the timing information" (emphasis added). The accused www.jackthreads.com system, however, does not engage in a second communication session "based" on the timing information and therefore does not infringe the '459 patent. The accused systems do not infringe for various other reasons as well.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment of Non-infringement of the '459 Patent)

18. Thrillist realleges and incorporates paragraphs 1 to 18 as if fully set forth herein.

19. A concrete and immediate controversy has arisen between the parties regarding infringement of the '459 patent and Thrillist's obligation, if any, to pay Eclipse for rights in the patent, and Eclipse has not indicated any definitive date on which it intends to initiate suit.

20. Neither Thrillist nor its websites nor online ordering platform have infringed, induced others to infringe, or contributed to the infringement by others of the '459 patent.

21. Thrillist seeks and is entitled to a declaratory judgment that neither it nor its websites nor online ordering platform infringe or have infringed under 35 U.S.C. § 271 (or any sub-section thereof) any valid and enforceable claim of the '459 patent.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment of Patent Invalidity of the '459 Patent)

22. Thrillist realleges and incorporates paragraphs 1 to 22 as if fully set forth herein.

23. A concrete and immediate controversy has arisen between the parties regarding the validity of the '459 patent and Thrillist's obligation, if any, to pay Eclipse for rights in the patent, and Eclipse has not indicated any definitive date on which it intends to initiate suit.

24. The '459 patent is invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, one or more of §§ 101, 102, 103, and 112.

25. The '459 patent is invalid, because, among other things, there is prior art, not considered by the USPTO in issuing the patent, which anticipates the patent claims or renders them obvious. Further, the claims are directed to unpatentable subject matter and thus do not meet the threshold of § 101. Further, the claims also fail to meet the requirements of § 112.

26. Thrillist seeks and is entitled to a declaratory judgment that all claims in the '459 patent are invalid.

REQUEST FOR RELIEF

WHEREFORE, Thrillist respectfully requests the Court to enter judgment in its favor and against Eclipse as follows:

1. that neither Thrillist nor its websites nor online ordering systems infringe or have infringed under 35 U.S.C. § 271 (or any subsection thereof) any claim of the '459 patent;
2. that the '459 patent and each of the claims therein are invalid;
3. awarding Thrillist costs and reasonable attorneys' fees incurred in connection with this action; and
4. for such other and further relief as the Court deems just and proper.

DATED: June 6, 2014

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