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KAYAK SOFTWARE CORPORATION

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 EVOX PRODUCTIONS LLC,
14 a Delaware limited liability company,
15 Plaintiff,
16 v.
17 KAYAK SOFTWARE CORPORATION,
a Delaware corporation; and DOES 1-10,
18 Defendants.

19 KAYAK SOFTWARE CORPORATION,
20 a Delaware corporation,
21 Counterclaimant,
22 v.
23 EVOX PRODUCTIONS LLC,
a Delaware limited liability company,
24 Counterdefendant.

Case No: CV15-05053-PSG-AGR

**RESPONSES TO PLAINTIFF AND
COUNTERDEFENDANT EVOX
PRODUCTIONS LLC'S FIRST SET
OF REQUESTS FOR ADMISSION
TO DEFENDANT AND
COUNTERCLAIMANT KAYAK
SOFTWARE CORPORATION**

The Honorable Philip Gutierrez

Trial Date: January 31, 2017

1 KAYAK Software Corporation (“KAYAK”) hereby responds as set forth below to
2 EVOX Productions LLC’s First Set of Requests for Admission, Numbers 1 through 11.
3 KAYAK expressly reserves its right to supplement these responses as more information
4 becomes available to it.

5 **RESPONSES TO REQUESTS FOR ADMISSION**

6 **REQUEST FOR ADMISSION NO. 1:**

7 *Admit that KAYAK does not own any of the COPYRIGHTED PHOTOGRAPHS.*

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

9 KAYAK admits that it makes no claim to ownership of the stock photographs at
10 issue in this case.

11 **REQUEST FOR ADMISSION NO. 2:**

12 *Admit that EVOX owns the COPYRIGHTED PHOTOGRAPHS.*

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

14 After reasonable inquiry, KAYAK is unable to admit or deny this request pending
15 receipt of discovery from Evox and pending determination whether the stock photographs
16 are copyrightable. KAYAK therefore denies the same.

17 **REQUEST FOR ADMISSION NO. 3:**

18 *Admit that the COPYRIGHTED PHOTOGRAPHS are entitled to protection under*
19 *United States copyright law.*

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

21 KAYAK denies this request.

22 **REQUEST FOR ADMISSION NO. 4:**

23 *Admit that KAYAK may use the COPYRIGHT PHOTOGRAPHS only as provided*
24 *for by the LICENSE AGREEMENT.*

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

26 KAYAK admits that its understanding of the license agreement is that it is
27 permitted to use the stock photographs on its mobile app as well as its internet site. After
28 reasonable inquiry, KAYAK is unable to admit or deny this request pending receipt of

1 discovery from Evox and pending determination whether the stock photographs are
2 copyrightable. KAYAK therefore denies the same.

3
4 **REQUEST FOR ADMISSION NO. 5:**

5 *Admit that the LICENSE AGREEMENT granted KAYAK a license to use the*
6 *COPYRIGHTED PHOTOGRAPHS only within the SCOPE OF USE of the LICENSE*
7 *AGREEMENT.*

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

9 KAYAK objects that this request calls for a legal conclusion as to the scope of use
10 contemplated by the License Agreement.

11 KAYAK admits that its understanding of the scope of use in the license agreement
12 is that it is permitted to use the stock photographs on its mobile app as well as its internet
13 site. KAYAK otherwise denies this request.

14
15 **REQUEST FOR ADMISSION NO. 6:**

16 *Admit that the SCOPE OF USE of the LICENSE AGREEMENT is limited to “(a)*
17 *Use in a research application on a single Portal Website; (b) Use as Accent Graphics on*
18 *a single Portal Website.”*

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

20 KAYAK objects that this request calls for a legal conclusion as to the scope of use
21 contemplated by the License Agreement. The request is also vague and ambiguous given
22 that the License Agreement provides no definition of “portal.”

23 KAYAK admits that its understanding of the scope of use in the license agreement
24 is that it is permitted to use the stock photographs on its mobile app as well as its internet
25 site. KAYAK otherwise denies this request.

26
27 **REQUEST FOR ADMISSION NO. 7:**

28 *Admit that KAYAK used the COPYRIGHTED PHOTOGRAPHS on KAYAK’s*

1 *MOBILE APPLICATION.*

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

3 KAYAK admits that it used at least some of the subject stock photos on its mobile
4 app pursuant to the License Agreement and the parties' express understanding in entering
5 the License Agreement, which permitted all uses at issue in this action.

7 **REQUEST FOR ADMISSION NO. 8:**

8 *Admit that KAYAK's MOBILE APPLICATION is a separate PLATFORM from*
9 *KAYAK's WEBSITE.*

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

11 Denied.

12 **REQUEST FOR ADMISSION NO. 9:**

13 *Admit that KAYAK infringed EVOX's rights in the COPYRIGHTED*
14 *PHOTOGRAPHS.*

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

16 Denied.

17 **REQUEST FOR ADMISSION NO. 10:**

18 *Admit that KAYAK removed COPYRIGHT MANAGEMENT INFORMATION from*
19 *EVOX's COPYRIGHTED PHOTOGRAPHS.*

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

21 Admit that Evox consented to KAYAK's use of the subject stock photos under a
22 page-attribution method without the original copyright management information
23 accompanying each image separately and otherwise denies this request.

25 **REQUEST FOR ADMISSION NO. 11:**

26 *Admit that, other than removing the COPYRIGHT MANAGEMENT*
27 *INFORMATION, KAYAK did not alter the COPYRIGHTED PHOTOGRAPHS for use on*
28 *its MOBILE APPLICATION.*

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

2 Admit that Evox consented to KAYAK's use of the subject stock photos under a
3 page-attribution method without the original copyright management information
4 accompanying each image separately; admit that KAYAK made no changes to the photos
5 other than with Evox's consent, and otherwise deny this request.
6
7

8 DATED: March 23, 2016

FOLEY & LARDNER LLP

9
10 By: /s/ Jean-Paul Ciardullo
11 Jean-Paul Ciardullo

12 Attorneys for Defendant-Counterclaimant,
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