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9 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

10 AMERANTH, INC.,

11 Plaintiff,

12 v.

13 TICKETBISCUIT, LLC,

14 Defendant.

) Case No. 3:13-cv-0352-JLS-NLS
)
) **TICKETBISCUIT'S REPLY IN**
) **SUPPORT OF ITS MOTION TO**
) **DISMISS COMPLAINT FOR**
) **PATENT INFRINGEMENT**
)
) Date: July 11, 2013
) Time: 1:30 p.m.
) Courtroom: 6
) Judge: Hon. Janis L. Sammartino
)
) Complaint Filed: Feb. 13, 2013
)
) **TRIAL BY JURY DEMANDED**
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1 **I. INTRODUCTION**

2 At the conclusion of its Opposition to TicketBiscuit’s Motion to Dismiss,
3 Ameranth argues that four simple questions should determine the outcome of
4 TicketBiscuit’s Motion. Opp. at 8-9. TicketBiscuit agrees (for the most part). The
5 questions before the Court are whether Ameranth has pleaded sufficient facts to
6 create a plausible inference that:

- 7 1. TicketBiscuit specifically intended third parties to infringe the Patents-in-
8 Suit.
- 9 2. TicketBiscuit knew that the acts of others constituted direct infringement.
- 10 3. An identifiable TicketBiscuit product or service has no substantial non-
11 infringing use.
- 12 4. TicketBiscuit had pre-filing knowledge of the Patents-in-Suit.

13 With one partial exception, these are the same questions identified by Ameranth in
14 its Conclusion. *Compare* Opp. at 8-9. In short, the parties see (more or less) eye-
15 to-eye on the law governing this motion. But this doesn’t help Ameranth’s
16 Opposition—or its Complaint.

17 The fundamental deficiencies in Ameranth’s inducement, contribution, and
18 willfulness allegations spring not from incorrect recitations of the law, but from a
19 wholesale failure to identify *facts*. Ameranth’s Complaint follows a simple, but
20 legally deficient, recipe:

- 21 • take one (heaping) serving of legal boilerplate;
 - 22 • add several self-aggrandizing paragraphs about Ameranth with no plausible
23 connection (apparent or otherwise) to TicketBiscuit, its products, or its
24 services;
 - 25 • mix in generic, conclusory allegations copied nearly word-for-word from
26 Ameranth complaints filed against other defendants; and
 - 27 • seek extraordinary relief for indirect and willful infringement.
- 28

1 *Twombly*, *Iqbal*, and their progeny require more with respect to induced,
2 contributory, and willful infringement. TicketBiscuit's Motion should be granted,
3 and the Complaint's claims for induced infringement, contributory infringement,
4 and willful infringement dismissed.

5 **II. ARGUMENT**

6 **A. AMERANTH'S COMPLAINT FAILS TO ALLEGE FACTS** 7 **THAT CREATE A PLAUSIBLE INFERENCE THAT** 8 **TICKETBISCUIT SPECIFICALLY INTENDED THIRD** 9 **PARTIES TO INFRINGE**

9 In its Opposition, Ameranth argues that it pleaded sufficient facts to
10 plausibly infer that TicketBiscuit intended others to directly infringe the Patents-in-
11 Suit. Opp. at 2. It then goes on to cite cases that, at least according to the vague
12 parentheticals provided, would seem to support Ameranth's position. However,
13 even the very cases that Ameranth cites confirm that the Complaint is deficient; as
14 with the Complaint itself, Ameranth's Opposition cannot withstand factual
15 scrutiny.

16 For example, in *In re Bill of Lading Transmission*, the patent at issue
17 claimed to increase efficiency in the trucking industry by automating the process of
18 receiving transportation documentation and optimizing deliveries. *In re Bill of*
19 *Lading Transmission and Processing Sys. Patent Litig.*, 681 F.3d 1323, 1329 (Fed.
20 Cir. 2012). In that case, the complaint alleged that the patent owner sent a cease
21 and desist letter to the defendant, making it aware of the patent, the claimed
22 functionality, and that its products could infringe the patent. *Id.* at 1341. The
23 complaint further alleged that after receiving this letter, the defendant began
24 advertising its products, focusing on those features which, if used, would infringe
25 the patent at issue. *Id.* Based on these detailed allegations, the court held that the
26 complaint had sufficiently alleged indirect infringement to survive a motion to
27 dismiss.

28

1 In *Fujifilm Medical Systems*, the complaint at issue also contained detailed
2 factual allegations to support its claim that the defendant intended third parties to
3 infringe. *See AntiCancer, Inc. v. Fujifilm Medical Systems U.S.A., Inc.*, 745
4 F.Supp.2d 1165, 1170-71 (S.D. Cal. 2010). In that case, AntiCancer’s complaint
5 alleged that Fujifilm employees had multiple meetings with AntiCancer to discuss
6 AntiCancer’s patents, that those employees had indicated that Fujifilm was
7 interested in licensing the patents, and that those employees had attended a
8 demonstration where AntiCancer showed how Fujifilm’s products could practice
9 the patented method. *Id.* at 1167-68. According to the complaint, those licensing
10 discussions eventually ceased and soon thereafter, Fujifilm published a paper and
11 related marketing materials touting its product’s ability to perform what it knew
12 were AntiCancer’s patented methods. *Id.* at 1168. Based on these very detailed,
13 fact-based allegations, the court held that induced infringement had been
14 adequately plead.

15 In *Pacing Technologies*, the plaintiff and defendant were direct competitors
16 in the fitness industry. *See Pacing Technologies. v. Garmin Int’l, Inc.*, 2013 WL
17 444642 at *1 (S.D. Cal. Feb. 5, 2013). The complaint alleged that the defendant
18 had pre-suit knowledge of the patent, for purposes of determining induced and
19 willful infringement, because the defendant participated in the same market, would
20 likely have seen the plaintiff’s media publicity, and would have become aware of
21 the patent through unrelated litigation with the defendant’s competitors. *See id.* at
22 *2. However, the court expressly rejected that argument, holding that the plaintiff’s
23 allegations were “too speculative to support a reasonable inference that [defendant]
24 knew of the patent prior to commencement of this suit.” *Id.*

25 Here, Ameranth’s Complaint lacks even a scintilla of the detailed factual
26 allegations to support its induced infringement claims that were endorsed by the
27 courts deciding *In re Bill of Lading* and *Fujifilm Medical Systems*. Each Count of
28 Ameranth’s Complaint contains four paragraphs dedicated to active inducement –

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