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Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.,

Plaintiff,

v.

KAYAK SOFTWARE
CORPORATION,

Defendant.

Case No. 12-cv-1640 JLS (NLS)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc. (“Ameranth”), for its First Amended Complaint
3 against defendant Kayak Software Corporation (“KAYAK”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth is a Delaware corporation having a principal place of
6 business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121.
7 Ameranth develops, manufactures and sells, *inter alia*, hospitality industry,
8 entertainment, restaurant and food service information technology solutions
9 under the trademarks 21st Century Communications™, and 21st Century
10 Restaurant™, among others, comprising the synchronization and integration of
11 hospitality information and hospitality software applications between fixed,
12 wireless and/or internet applications, including but not limited to computer
13 servers, web servers, databases, affinity/social networking systems, desktop
14 computers, laptops, “smart” phones and other wireless handheld computing
15 devices.

16 2. Defendant KAYAK is, on information and belief, a Delaware
17 corporation having a principal place of business and headquarters in Norwalk,
18 Connecticut. On information and belief, KAYAK makes, uses, offers for sale or
19 license and/or sells or licenses hotel and lodging, property management system
20 (PMS) and other hospitality information-technology products, software,
21 components and/or systems within this Judicial District, including the KAYAK
22 Reservation System as defined herein.

23 **JURISDICTION AND VENUE**

24 3. This is an action for patent infringement arising under the Patent Laws of
25 the United States, 35 U.S.C. §§ 271, 281-285.

26 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
27 and 1338(a).

1 5. On information and belief, Defendant engages in (a) the offer for sale or
2 license and sale or license of hospitality, reservations, restaurant, food service,
3 ordering, products and/or components in the United States, including this Judicial
4 District, including services, products, software, and components, comprising
5 wireless and internet POS and/or hospitality aspects; (b) the installation and
6 maintenance of said services, products, software, components and/or systems in
7 hospitality industry, hotel and lodging, restaurant, food service, and/or
8 entertainment information technology systems in the United States, including this
9 Judicial District; and/or (c) the use of hospitality industry, hotel and lodging,
10 restaurant, food service, and/or entertainment information technology systems
11 comprising said services, products, software, components and/or systems in the
12 United States, including this Judicial District.

13 6. This Court has personal jurisdiction over Defendant because Defendant
14 commits acts of patent infringement in this Judicial District including, *inter alia*,
15 making, using, offering for sale or license, and/or selling or licensing infringing
16 services, products, software, components and/or systems in this Judicial District.
17 Additionally, Defendant has already appeared in this action and submitted to the
18 jurisdiction of the Court. KAYAK has continued to engage in and perform such
19 acts of infringement since the filing and service of the original complaint in this
20 matter accusing KAYAK of infringement of the Ameranth patents at issue herein.

21 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b)
22 and (c) and 1400(b).

23 BACKGROUND

24 8. Ameranth was established in 1996 to develop and provide its 21st
25 Century Communications™ innovative information technology solutions for the
26 hospitality industry (inclusive of, *e.g.*, restaurants, hotels, casinos, nightclubs,
27 cruise ships and other entertainment and sports venues). Ameranth has been

1 widely recognized as a technology leader in the provision of wireless and
2 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,
3 cruise ships and entertainment and sports venues. Ameranth's award winning
4 inventions enable, in relevant part, generation and synchronization of menus,
5 including but not limited to restaurant menus, event tickets, reservations and
6 other products across fixed, wireless and/or internet platforms as well as
7 synchronization of hospitality information and hospitality software applications
8 across fixed, wireless and internet platforms, including but not limited to,
9 computer servers, web servers, databases, affinity/social networking systems,
10 desktop computers, laptops, "smart" phones and other wireless handheld
11 computing devices.

12 9. Ameranth began development of the inventions leading to the patents in
13 this patent family in the late Summer of 1998, at a time when the then-available
14 wireless and internet hospitality offerings were extremely limited in functionality,
15 were not synchronized and did not provide an integrated system-wide solution to
16 the pervasive ordering, reservations, affinity program and information
17 management needs of the hospitality industry. Ameranth uniquely recognized the
18 actual problems that needed to be resolved in order to meet those needs, and
19 thereafter conceived and developed its breakthrough inventions and products to
20 provide systemic and comprehensive solutions directed to optimally meeting
21 these industry needs. Ameranth has expended considerable effort and resources
22 in inventing, developing and marketing its inventions and protecting its rights
23 therein.

24 10. Ameranth's pioneering inventions have been widely adopted and are
25 thus now essential to the modern wireless hospitality enterprise of the 21st
26 Century. Ameranth's solutions have been adopted, licensed and/or deployed by
27 numerous entities across the hospitality industry.

1 11. The adoption of Ameranth's technology by industry leaders and the wide
2 acclaim received by Ameranth for its technological innovations are just some of
3 the many confirmations of the breakthrough aspects of Ameranth's inventions.
4 Ameranth has received twelve different technology awards (three with "end
5 customer" partners) and has been widely recognized as a hospitality
6 wireless/internet technology leader by almost all major national and hospitality
7 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today
8 and many others. Ameranth was personally nominated by Bill Gates, the
9 Founder of Microsoft, for the prestigious Computerworld Honors Award that
10 Ameranth received in 2001 for its breakthrough synchronized
11 reservations/ticketing system with the Improv Comedy Theatres. In his
12 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
13 information technology for the betterment of mankind." This prestigious award
14 was based on Ameranth's innovative synchronization of wireless/web/fixed
15 hospitality software technology. Subsequently, the United States Patent and
16 Trademark Office granted Ameranth a number of currently-issued patents, some
17 of which are the basis for this lawsuit. Ameranth has issued press releases
18 announcing these patent grants on business wires, on its web sites and at
19 numerous trade shows since the first of the presently-asserted patents issued in
20 2002. A number of companies have licensed patents and technology from
21 Ameranth, recognizing and confirming the value of Ameranth's innovations. At
22 all relevant times, Ameranth marked its own products with the numbers of the
23 Ameranth patents then issued, thereby providing companies, competitors and
24 participants in the hospitality industry with notice of Ameranth's patents.
25 Furthermore, companies that license Ameranth's products have marked their
26 products with Ameranth's patent numbers, thereby also providing notice of
27 Ameranth's patents.

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