

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LEXOS MEDIA IP, LLC,

Plaintiff,

v.

OVERSTOCK.COM, INC.,

Defendant.

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Civil Action No. _____

**PLAINTIFF LEXOS MEDIA IP, LLC’S
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Lexos Media IP, LLC (“Lexos Media IP”) files this Complaint for patent infringement against Defendant Overstock.com, Inc. (“Overstock”), and alleges as follows:

PARTIES

1. Plaintiff Lexos Media IP is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 555 Republic Drive, 2nd Floor, Plano, Texas 75074-5481. Lexos Media IP is the intellectual property holding company of Lexos Media, Inc. (“Lexos Media”) and owns intellectual property associated with the business of that company. Lexos Media IP has had its principal place of business located in Plano, Texas since 2015.

2. Lexos Media was founded in 2009. Lexos Media is a digital advertising technology company that pioneered the use of dynamic cursor modification to promote the online purchase and use of products and services likely of interest to users of e-commerce websites. Lexos Media has provided a technology framework for delivering online advertising in which images and content are deployed in connection with a cursor. Lexos Media has provided this technology framework through two divisions -- AdBull and Cursor Marketing -- both of which provided

technology that could be used to modify an Internet user's cursor to display content such as an image or other message to promote the online purchase and use of products and services. Lexos Media IP has been engaged in licensing this technology both in the online marketing space as well as other fields.

3. Defendant Overstock is a Delaware corporation with its principal executive offices located at 799 West Coliseum Way, Midvale, Utah 84047. Overstock may be served with process through its registered agent The Corporation Company, Inc. with its registered office at 112 SW 7th Street, Suite 3C, Topeka, KS 66603.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

5. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Overstock is subject to the general and specific personal jurisdiction of this Court because Overstock has a 517,000 square foot warehouse located at 5300 Kansas Avenue in Kansas City, Kansas, and because Lexos Media IP's claims for patent infringement against Overstock arise from Overstock's acts of infringement in the State of Kansas. These acts of infringement include operating an interactive website using the patented inventions and making those websites available to persons in the State of Kansas, and facilitating the sale of products and services through that website to those persons.

7. In particular, Overstock operates and has operated an online retail e-commerce business through which it has offered for sale a broad range of price-competitive products, including furniture, area rugs, bedding and bath, home improvement, outdoor, and kitchen and

dining items. Overstock has sold its products and services through its Internet websites located at www.overstock.com, www.overstock.co, www.overstock.ca, and www.overstockgovernment.com (referred to collectively as "the Overstock Websites") and through its mobile app. Although Overstock's four websites are located at different domain addresses with different interfaces, the technology, equipment and processes supporting the Websites and the process of order fulfillment described herein have been the same for all four websites.

8. Overstock also has committed the acts of infringement alleged herein and has regular and established places of business in this District.

9. Since at least 2016, Overstock has made available and offered its Overstock Websites to persons located throughout the United States and in this District.

10. Overstock, pursuant to its Terms and Conditions for using the Overstock Websites, entered into a license agreement with these users of Overstock Websites providing those individuals with access and the right to use the websites and shop for products and services at the websites. Pursuant to those terms and conditions, individuals using the Overstock Websites may not modify the site without Overstock's express, prior written consent.

THE ASSERTED PATENTS

11. On November 30, 1999, the United States Patent and Trademark Office issued United States Patent No. 5,995,102 ("the '102 Patent") entitled "Server system and method for modifying a cursor image," a true copy of which is attached as Exhibit 1.

12. On September 12, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,118,449 ("the '449 Patent") entitled "Server system and method for modifying a cursor image," a true copy of which is attached as Exhibit 2.

13. Lexos Media IP is the owner by assignment of these Asserted Patents and owns all right, title, and interest in the Asserted Patents, including the right to sue for and recover all past, present, and future damages for infringement of the Asserted Patents.

THE INNOVATION OF THE ASSERTED PATENTS

14. The Asserted Patents are directed to improvements in the field of online advertising and provide technical solutions to problems being encountered in that burgeoning field. In order to put the innovation of the Asserted Patents into perspective, it bears emphasis that the application for the asserted '102 Patent was filed in June 1997, a mere few years after online advertisements emerged in the ecommerce marketplace. *See* https://en.wikipedia.org/wiki/Online_advertising.

15. At the time of the invention underlying the Asserted Patents, there were several drawbacks to prevalent forms of online advertising, such as banner advertisements, web page “frames,” and “self-appearing” advertising screens. Thus, as the Asserted Patents emphasized, at the time of the invention of the Asserted Patents, “[t]here is a need for a simple means to deliver advertising elements without the annoyance of totally interrupting and intrusive content delivery, and without the passiveness of ordinary banner and frame advertisements which can be easily ignored.”

16. The Asserted Patents provided a specific technical solution to improve online advertising technology and overcome these problems. The specification of the Asserted Patents pointed out that, while it was not new at the time for pointers and cursors to change shape, “[i]n conventional systems, the appearance of the cursor or pointer does not change to correspond with on-line content being displayed on the screen.”

17. The claims of the Asserted Patents explain how the invention improves on conventional methods of online advertising. In particular, the Asserted Patents disclosed “a server system for modifying a cursor image to a specific image displayed on a video monitor of a remote user’s terminal for the purposes of providing on-screen advertising.”

18. The claims of the Asserted Patents specifically teach how the invention works to provide the improved online advertising technology. A web browser retrieves a web page stored on a server that is then transmitted to and viewed by a user. The retrieved web page contains a set of predetermined instructions referred to as “cursor display instructions.” The browser interprets the information contained in cursor display instructions and instructs the operating system of the user’s terminal to bring about the change in appearance of the cursor within the web page. As the Asserted Patents explain, “the server system provides certain information that causes the cursor image on the video monitor of the user terminal to display an image as specified by the server system. As a result, the server system remotely defines and manages the shape and appearance of the cursor image in accordance with a pre-specified condition.”

19. The claims of the Asserted Patents contain steps or elements that embody this specific process for implementing the cursor modification invention and improving online advertising. The claims focus on a specific means or method that improves online advertising technology, and are not directed to a desired result or effect that itself merely employs generic processes and machinery. They claim a technological solution to the technological problems and drawbacks encountered in the prior art methods for creating effective online advertising – a specific process and system for modifying the appearance of a cursor implemented on the display of a user’s computer. The asserted claims are directed to a new and useful technique for performing

online advertising. They are not directed to a law of nature, natural phenomena, or a business method or algorithm.

THE ESTABLISHED VALIDITY OF THE ASSERTED PATENTS

20. In 2018, Ralph Lauren (“RL”) petitioned the U.S. Patent Trial and Appeal Board (the “PTAB”) for *inter partes* review of the `102 and `449 Patents. In particular, RL petitioned for *inter partes* review of claims 70-73 of the `102 Patent and claims 1-3, 5-7, 12-15, 27-29, 31-33, 38-41, 53-56, 58-63, 72-75, and 77-82 of the `449 patent. Although the PTAB cancelled some of the claims, in two final written decisions it found that RL had not shown that the claims 70 and 72 of the `102 Patent and claims 1-3, 5-7, 12-15, 28, 29, 31, 32, 38, 39, 53-56, 58-63, 73-75, and 77-80 of the `449 Patent are unpatentable. RL appealed the PTAB’s final written decisions, and the Federal Circuit affirmed those decisions.

THE CURSOR MODIFICATION ACCUSED INSTRUMENTALITY

21. One of the innovations Overstock has used to build the popularity and profitability of Overstock Websites is the cursor modification technology covered by the Asserted Patents (the “Accused Instrumentality”).

FIRST CLAIM FOR RELIEF (Infringement of the `102 Patent)

22. Overstock has directly infringed Claim 72 of the `102 Patent by using the method claimed therein with respect to the Overstock Websites. In particular, Overstock has infringed Claim 72 by using the claimed method when providing the web pages to individuals for use with the Overstock Websites that operate to modify the appearance of those pages relating to the display of cursors.

23. Since at least 2016, Overstock has used a method via the Accused Instrumentality for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server owned, operated and/or controlled by Overstock.

24. The method performed by Overstock via the Accused Instrumentality has included the step of Overstock receiving a request to provide a web page from each of Overstock Websites to a user terminal.

25. The method performed by Overstock via the Accused Instrumentality has included the step of Overstock transmitting and providing a web page from an Overstock Website to a user terminal in response to the request for a web page.

26. The web page provided by Overstock from an Overstock Website via the Accused Instrumentality has included one or more instructions to modify an initial cursor image and contains data corresponding to a specific image displayed, or to be displayed, on a user's terminal that is a modification of an initial cursor image.

27. The method performed by Overstock via the Accused Instrumentality for the Overstock Websites has included the step of Overstock providing instructions and code that has controlled and transformed the initial cursor image displayed on the display of the user's terminal into a specific image with a particular shape and appearance in response to Overstock's instructions.

28. The transformed specific image resulting from Overstock's infringing process has included content from an Overstock Website corresponding to at least a portion of the information that is to be displayed on the display of the user's terminal.

29. An example of the display of a web page provided by an Overstock Website to a user's terminal after the initial cursor is transformed or modified using the patented invention appears in Figure 1 below.

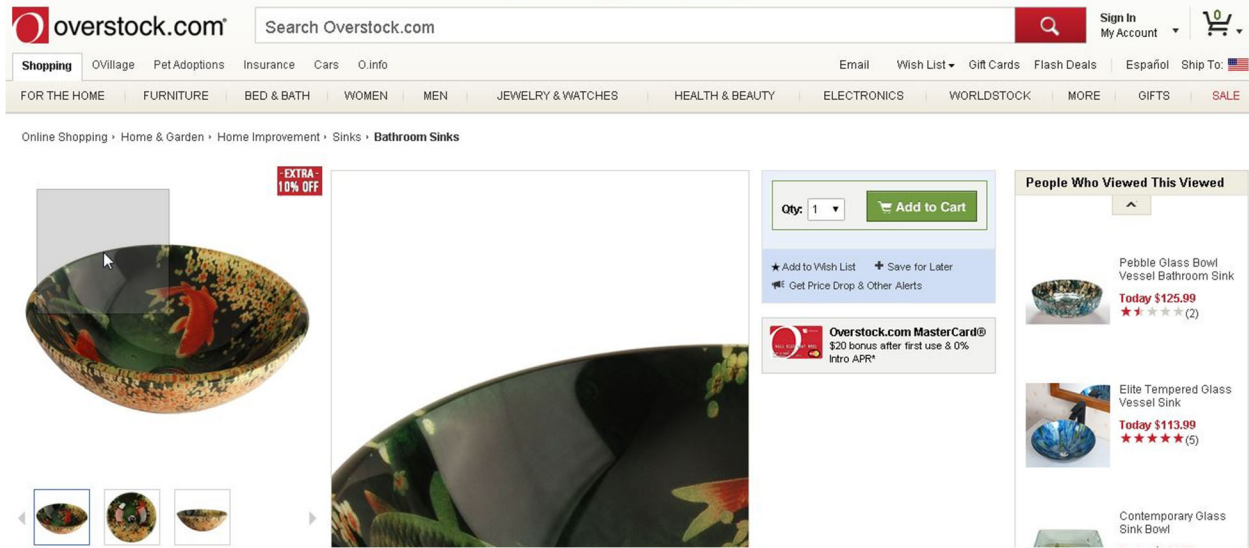


Figure 1

30. Figure 1 is a screenshot of a web page displayed by the overstock.com website reflecting the claimed specific image (the shaded, semi-transparent box surrounding the image of the arrow appearing on the left of the screenshot) and the claimed corresponding portion of the web page displayed on the display of the website user's terminal (on the right of the screenshot).

31. Figure 2 below is another example of the display of a web page provided by the overstock.com website to a user's terminal after the initial cursor has been transformed or modified using the patented invention:

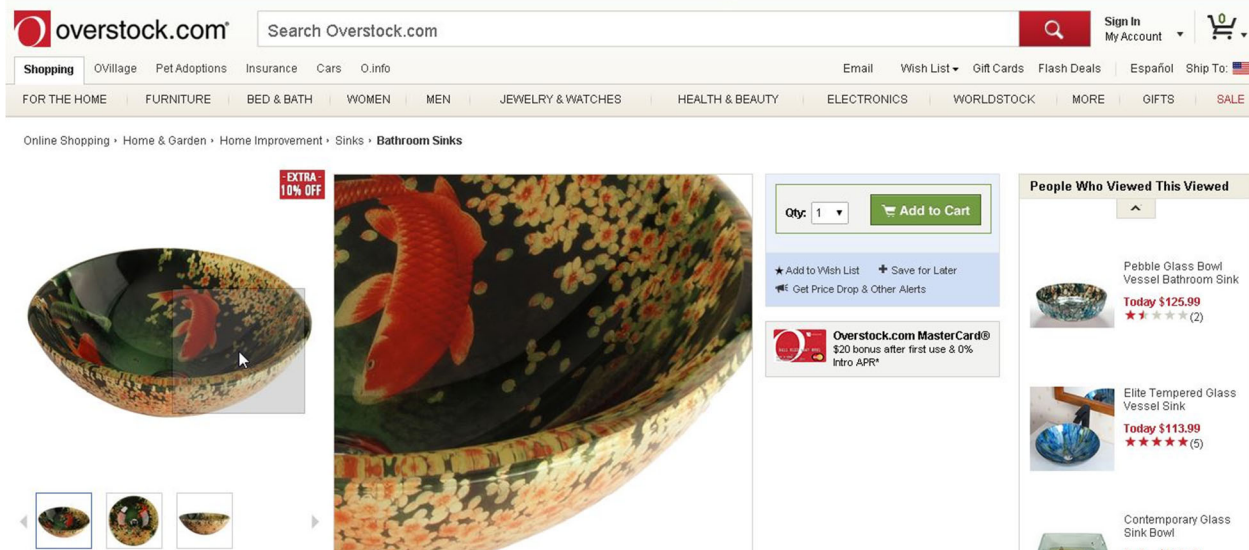


Figure 2

32. The web page images in Figures 1 and 2 reflects the modification of the initial cursor to a “specific image,” which comprises the shaded, semi-transparent box surrounding the image of the arrow depicted in the figures. This modification is a consequence of the user moving the cursor image over the display of the Pebble Glass Bowl on the user’s terminal.

33. Overstock’s instructions discussed above have indicated code provided and controlled by Overstock that is operable to process the instructions to modify the initial cursor image to the image in the shape and appearance of the specific image responsive to movement of the cursor image over a display of at least a portion of the information to be displayed on the display of the user’s terminal.

34. The shaded, semi-transparent box surrounding the image of the arrow in Figures 1 and 2 above is not a generic cursor image. Instead, it is an image that represents some or all of the subject matter being displayed on the website. In particular, the shaded, semi-transparent box is not merely the image of an arrow, hand or other form of functional cursor, but is an image that highlights and draws attention to the portion of the product or subject matter displayed on the web page that appears within the shaded box. That highlighting of, and attention drawn to, a portion of the product or subject matter displayed on the web page is enhanced by the enlarged display of that portion of the product or subject matter appearing within the shaded, semi-transparent box to the right of the specific image. The specific image generated by the Accused Instrumentality relates the content displayed within the shaded, semi-transparent box to the content being displayed on the screen.

35. To the extent that any required steps of the claim occurred on a device in the possession, custody or control of and used by a third party, Overstock performed those steps because it initiated and controlled the performance of those steps.

36. Since 2016, Overstock has continued to use the method described and depicted above with respect to each of Overstock Websites for years. For example, Figure 3 below reflects that Overstock has used the cursor modification technology described and depicted above since 2016.

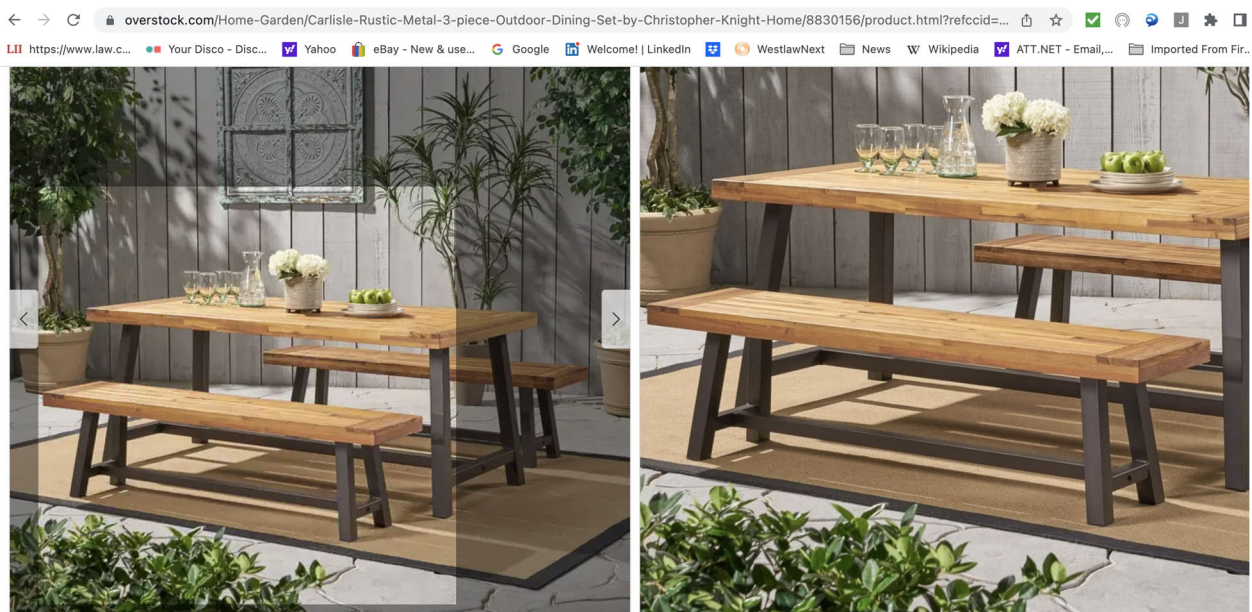


Figure 3

37. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted method claims of the '102 Patent. There is no applicable marking requirement that has not been complied with.

38. Lexos Media IP has been damaged by Overstock's activities that infringed Claim 72 of the '102 Patent.

**SECOND CLAIM FOR RELIEF
(Infringement of the `449 Patent)**

39. Overstock has directly infringed Claims 1, 38, and 53 of the `449 Patent by making and using those patented inventions in connection with providing individuals with access to the Overstock Websites and to shop for products and services on the websites. By doing so, Overstock has infringed Claims 1 and 38 of the `449 Patent by making and using the claimed system and making the Overstock Websites available to others for use. In addition, Overstock has infringed Claim 53 of the `449 Patent by using the claimed method when providing the Overstock Websites for use by others.

40. Since at least 2016, Overstock has made and used the accused server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

41. Since at least 2016, the Overstock Websites have transmitted a web page to a user's terminal in response to a request from the user terminal for the web page.

42. Since at least 2016, the Overstock Websites have provided to the user terminal a web page that has included data corresponding to the specific image to be displayed on the user's terminal.

43. Since at least 2016, the Overstock Websites have provided to the user terminal a web page that has included code which is operable to modify a cursor image on the display of the user's terminal.

44. Since at least 2016, the server for the accused Overstock Websites have included a server computer for transmitting a web page to a remote user terminal which has included one or more instructions and an indication of the location of cursor image data.

45. Since at least 2016, web pages transmitted by the Overstock Websites have contained instructions and code that has been operable to cause the user terminal to display a modified cursor image on the user's display in the shape and appearance of the specific image, reflected in Figures 1-2 above.

46. Since at least 2016, the specific image displayed by the Overstock Websites on the user's terminal has comprised information which has included content corresponding to at least a portion of the information to be displayed on the display of the user's terminal.

47. Since at least 2016, the code of the Overstock Websites has been operable to process the instructions to modify the cursor image to an image in the shape and appearance of the specific image in response to movement of the cursor image over a display of at least a portion of the information to be displayed on the display of the user's terminal.

48. Since at least 2016, the resulting specific image displayed by the Overstock Websites has been related to at least a portion of the information to be displayed on said display of the remote user's terminal.

49. Figure 2 set forth in Paragraph 31 above depicts an example of the claimed specific image and the claimed corresponding portion of the specified content information displayed by the Overstock Website on the display of the website user's terminal since at least 2016.

50. Overstock, through the Overstock Websites, has used the claimed system for purposes of infringement and has put the claimed system into service. In particular, Overstock has controlled each element of the Overstock Website systems and the system as a whole and has obtained a benefit from doing so in the form of improved marketing of products and services sold through the Overstock Websites. Overstock has provided and controlled any functionality required by the claimed system that has taken place on the user/customer's computer.

51. Lexos Media IP incorporates by reference herein the allegations above in Paragraphs 23-36.

52. Since at least 2016, Overstock has continued to put the claimed system into service through the Overstock Websites.

53. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted method claim of the '449 Patent, and there are no unmarked "patented articles" that were sold or offered for sale by Lexos Media IP or its licensees of the '449 Patent that were subject to § 287. In addition, Lexos Media marked its website, *lexosmedia.com*, with the patent numbers of the Asserted Patents. Consequently, Lexos Media IP has complied with the marking requirement under § 287, to the extent it is applicable.

54. Lexos Media IP has been damaged by Overstock's infringing activities.

DEMAND FOR JURY TRIAL

55. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Lexos Media IP hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Lexos Media IP requests the following relief:

(a) A judgment in favor of Lexos Media IP that Overstock has directly infringed one or more claims of the Asserted Patents;

(b) A judgment and order requiring Overstock to pay Lexos Media IP damages adequate to compensate for infringement under 35 U.S.C. § 284, which, in no event shall be less than a reasonable royalty for its usage made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs;

(c) A judgment awarding Lexos Media IP post-judgment royalties to the extent applicable; and

(d) Any and all such further necessary or proper relief as this Court may deem just and equitable.

Dated: August 16, 2022

Respectfully submitted,

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