

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

LEXOS MEDIA IP, LLC,

*Plaintiff,*

v.

MSC INDUSTRIAL DIRECT  
CO., INC.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 3:22-cv-01736

**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 MSC Industrial Direct Co., Inc. (“MSC”), and alleges as follows:

**PARTIES**

1. Plaintiff Lexos Media IP, LLC 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 MSC is a New York corporation with its principal executive offices located at 515 Broadhollow Road, Melville, New York. Defendant MSC may be served with process through its registered agent Corporation Service Company, 80 State Street, Albany, NY 12207.

### **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. MSC is subject to the specific personal jurisdiction of this Court because Lexos Media IP's claims for patent infringement against MSC arise from MSC's acts of infringement in the State of Texas. These acts of infringement include operating an interactive website using the patented inventions, making that website available to persons in the State of Texas, and facilitating the sale of products and services through that website to those persons. MSC operates, and has operated, the e-commerce interactive website [www.mscdirect.com](http://www.mscdirect.com) (the "MSC Website").

7. MSC is a North American distributor of a broad range of metalworking and maintenance, repair and operations products and services. MSC offers approximately 1.9 million saleable stock-keeping units ("SKUs") through its catalogs, brochures, and eCommerce channels, including the MSC Website. MSC acknowledges in its annual report that its "primary method of presenting products and solutions is the MSC website and our digital marketing programs." MSC,

also in its annual report, emphasizes that “its extensive eCommerce capabilities provide sophisticated search and transaction capabilities, access to real-time inventory, workflow management tools, customized reporting and other features, inventory, customer-specific pricing.” MSC claims to “embrace technological innovations to support its growth and improve [its] customer service and reduce [its] operating costs,” including the MSC Website. MSC also emphasizes that “[t]he MSC website is a key component of our strategy to reduce our customers’ transaction costs and delivery time.” MSC has also asserted that “[t]he MSC website is a key component of our strategy to reduce customers’ transaction costs and internal requisition time,” and that MSC has continued to make improvements to its website “to ensure that it remains a premier website in our marketplace.” MSC also asserts in its annual report that it “believe[s] that our ability to transact business with our customers through various electronic portals and directly through the MSC website gives us a competitive advantage over smaller suppliers.”

8. MSC operates a Regional Inventory Center in Dallas, and has offices in El Paso, Harlingen, Houston and San Antonio, Texas. MSC has hundreds, if not thousands, of employees located in Texas. The activities conducted by MSC and its employees at these facilities located in Texas are substantially related to MSC’s infringing activities conducted in this state. For example, MSC services online orders for products through its regional inventory centers, including the regional inventory center located in Dallas, Texas.

9. In view of these facts, this Court has personal jurisdiction over MSC under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE § 17.042.

10. MSC also has committed the acts of infringement alleged herein and has regular and established places of business in the Northern District of Texas.

11. MSC, during the time frame when the Asserted Patents were in effect and thereafter, has made available and offered its MSC Website to persons located in the Northern District of Texas. The MSC Website provided to these individuals by MSC has implemented features and functionality that infringed the Asserted Patents. As alleged above, MSC's Regional Inventory Center in Dallas supports its MSC Website e-commerce operation.

12. MSC's Regional Inventory Center in Dallas located in the Northern District of Texas is a physical, geographical location in the District from which the business of MSC is carried out. This facility located in the Northern District of Texas is a regular and established place of business of MSC. Furthermore, the Regional Inventory Center in Dallas located in the Northern District of Texas is a place of business of MSC.

13. MSC directs and controls the operation of the Regional Inventory Center in Dallas for the benefit of MSC. The activities and operations conducted at this facility are a regular and established part of the business of MSC. The individuals conducting these activities and operations for the benefit of MSC are employees of MSC or, alternatively, are operating under the direction and control of MSC when conducting these activities and operations.

### **THE ASSERTED PATENTS**

14. 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.

15. 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.

16. 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**

17. The Asserted Patents are directed to improvements in the field 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](https://en.wikipedia.org/wiki/Online_advertising).

18. 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.”

19. 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.”

20. 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.”

21. 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 bringing 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.”

22. 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 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**

23. 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 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**

One of the innovations MSC has used to build the popularity and profitability of the MSC Website is the cursor modification technology covered by the Asserted Patents (the “Accused Instrumentality”). MSC’s adoption and continued use of the patented cursor modification technology has been an important aspect of its strategy to increase revenue and profits.

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

24. MSC has directly infringed Claim 72 of the `102 Patent by using the method claimed therein. In particular, MSC has infringed Claim 72 by using the claimed method when providing web pages to individuals for use on the MSC Website that operates to modify the appearance of those pages relating to the display of cursors.

25. Since at least 2016, MSC 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 MSC.

26. The method performed by MSC via the Accused Instrumentality has included the step of MSC receiving a request to provide a web page to a user terminal.

27. The method performed by MSC via the Accused Instrumentality has included the step of MSC transmitting and providing a web page to a user terminal in response to the request for a web page.

28. The web page provided by MSC 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.

29. The method performed by MSC via the Accused Instrumentality has included the step of MSC 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 MSC's instructions.

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

31. For example, Figure 1 below is a screenshot of a session capture of network traffic to and from the MSC Website that shows the connection between MSC Website's server system and a remote user's terminal.



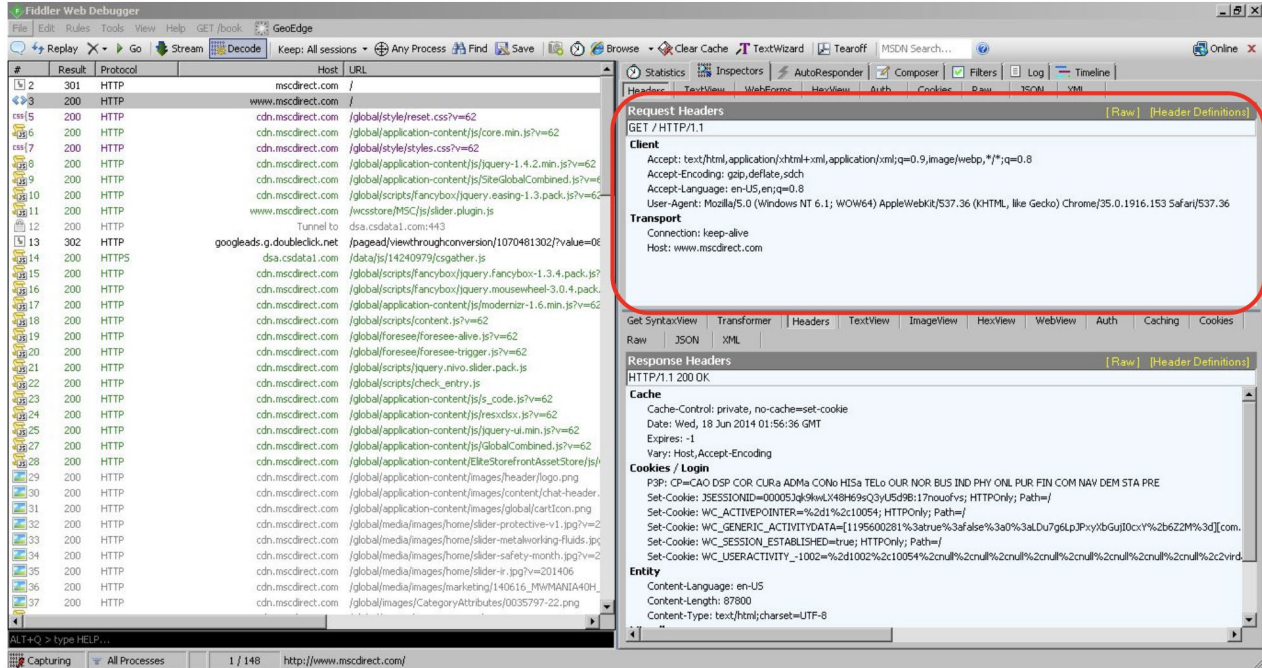


Figure 1

32. Figure 2 below is a screenshot of the display of a remote user terminal showing a product page (specified content information) provided by the MSC Website in response to a request from the remote user terminal prior to cursor modification, showing the initial cursor image as an arrow.

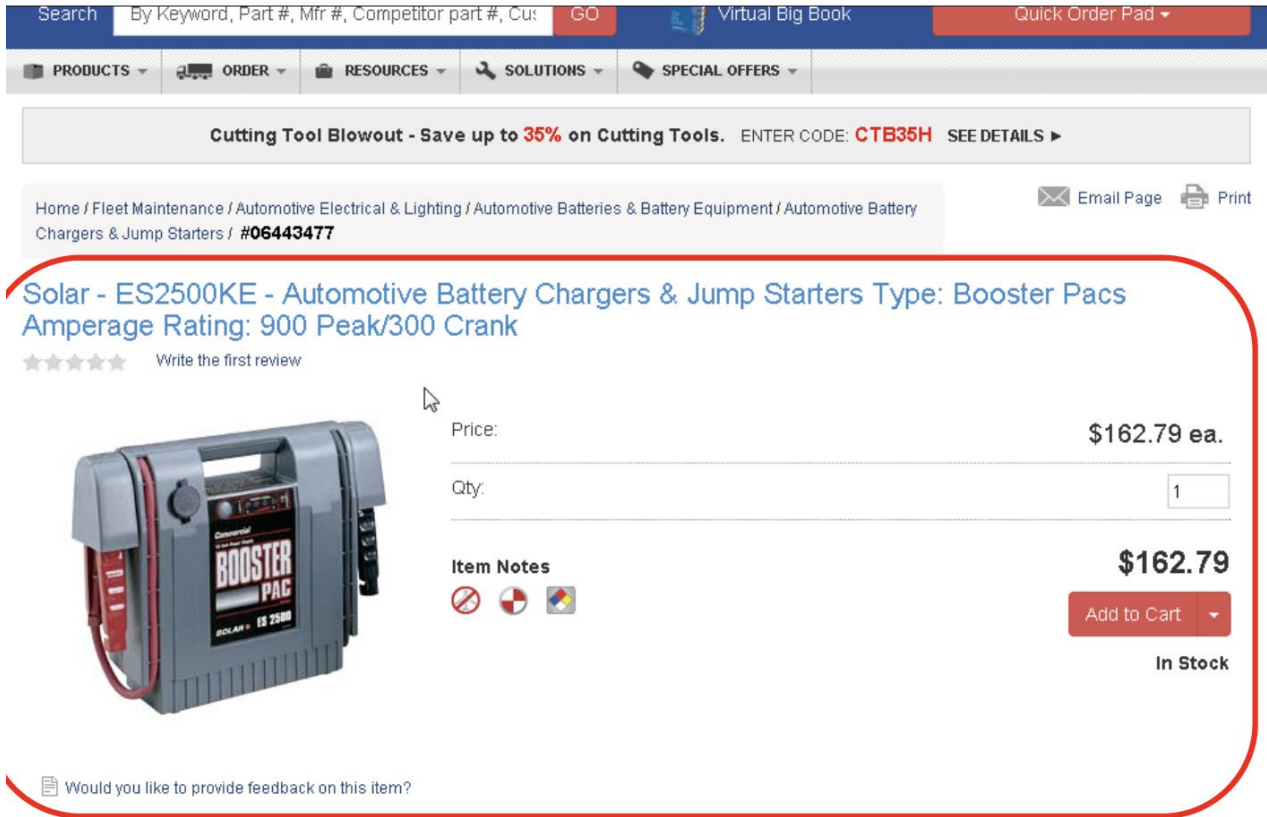


Figure 2

33. Figure 3 below is a screenshot of the display of a product page provided by the MSC Website to a remote user terminal after modification of the initial cursor image to a specific image comprising a shaded, semi-transparent image of the displayed product in response to movement of the initial cursor image over the display of at least a portion of the product image displayed on the display of the user's terminal.

Search by keyword, Part #, Mfr #, Competitor part #, Cus: GO Virtual Big Book Quick Order Pad

PRODUCTS ORDER RESOURCES SOLUTIONS SPECIAL OFFERS


Cutting Tool Blowout - Save up to 35% on Cutting Tools. ENTER CODE: CTB35H SEE DETAILS ▶

Home / Fleet Maintenance / Automotive Electrical & Lighting / Automotive Batteries & Battery Equipment / Automotive Battery Chargers & Jump Starters / #06443477

Email Page Print

Solar - ES2500KE - Automotive Battery Chargers & Jump Starters Type: Booster Pacs  
Amperage Rating: 900 Peak/300 Crank

★★★★★ Write the first review



\$162.79 ea.

1

\$162.79

Add to Cart

In Stock

Would you like to provide feedback on this item?

Figure 3

34. Since 2016, MSC has continued to use this patented method on its MSC Website for years.

35. For example, Figure 4A below is a screenshot of a web page displayed by the MSC Website reflecting the claimed specific image (the transparent box surrounding the image of the pointing hand 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).

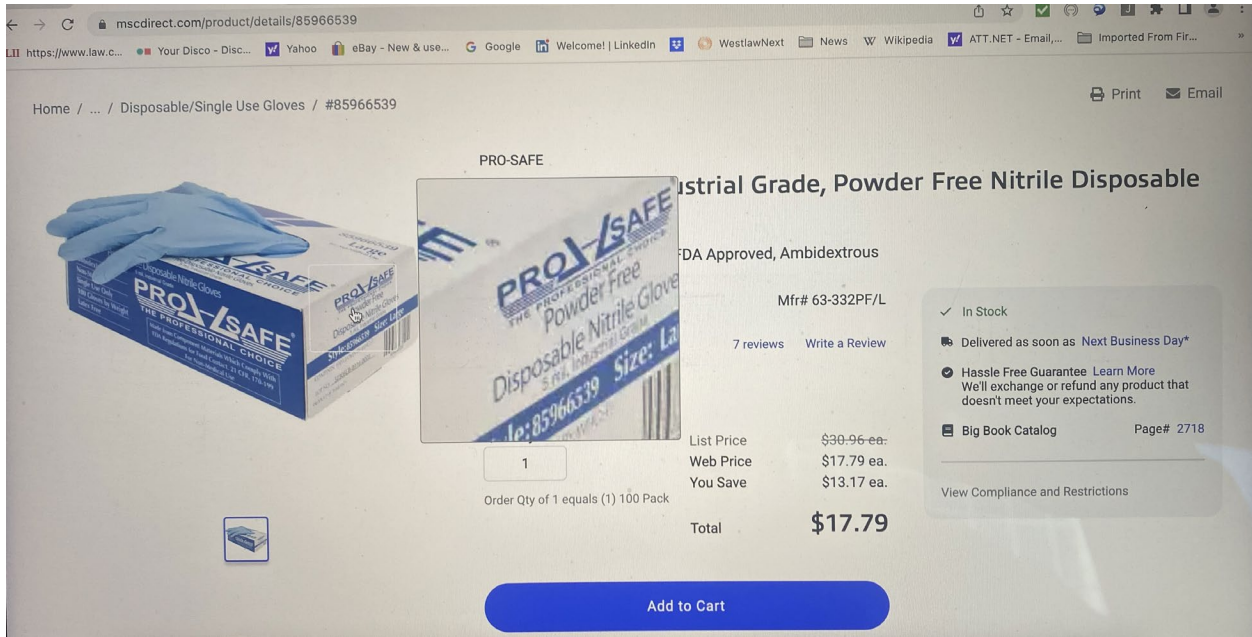


Figure 4A

36. Figure 4B below is another screenshot of the same webpage showing the transformed specific image resulting from MSC's infringing process, but not showing the image of the pointing hand. Figure 4B reflects the claimed specific image (the transparent box 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 to the right of the special image shown.

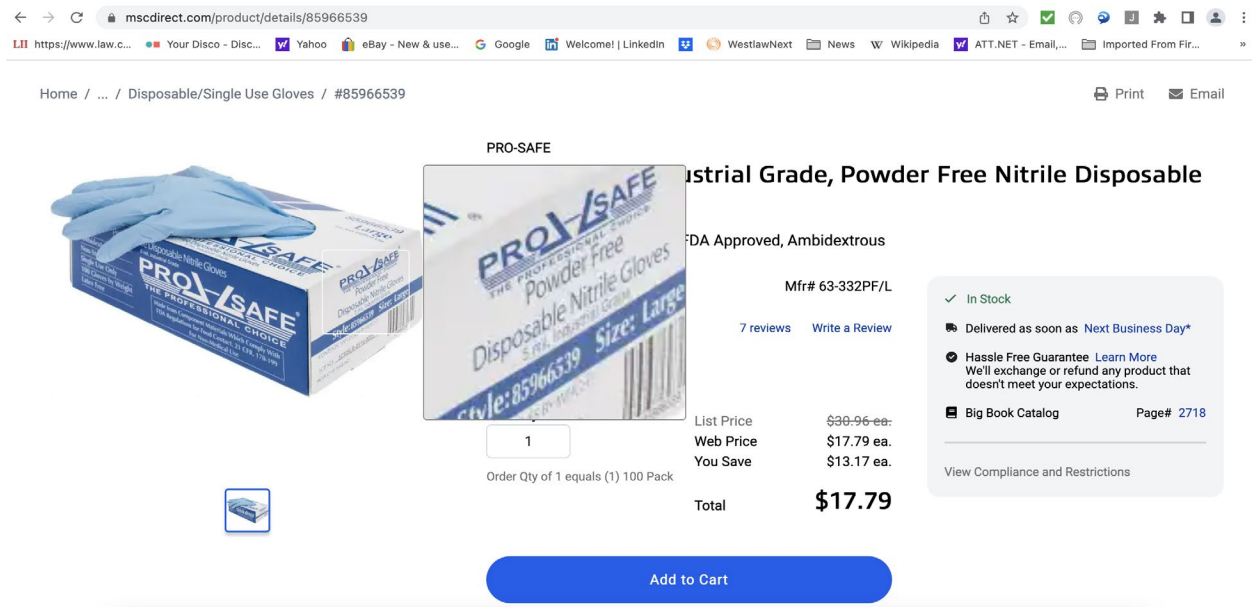


Figure 4B



37. The web page depicted in Figure 4C below reflects the initial generic cursor image displayed on the user terminal's display when the user uses the MSC Website -- the arrow depicted in Figure 4C.

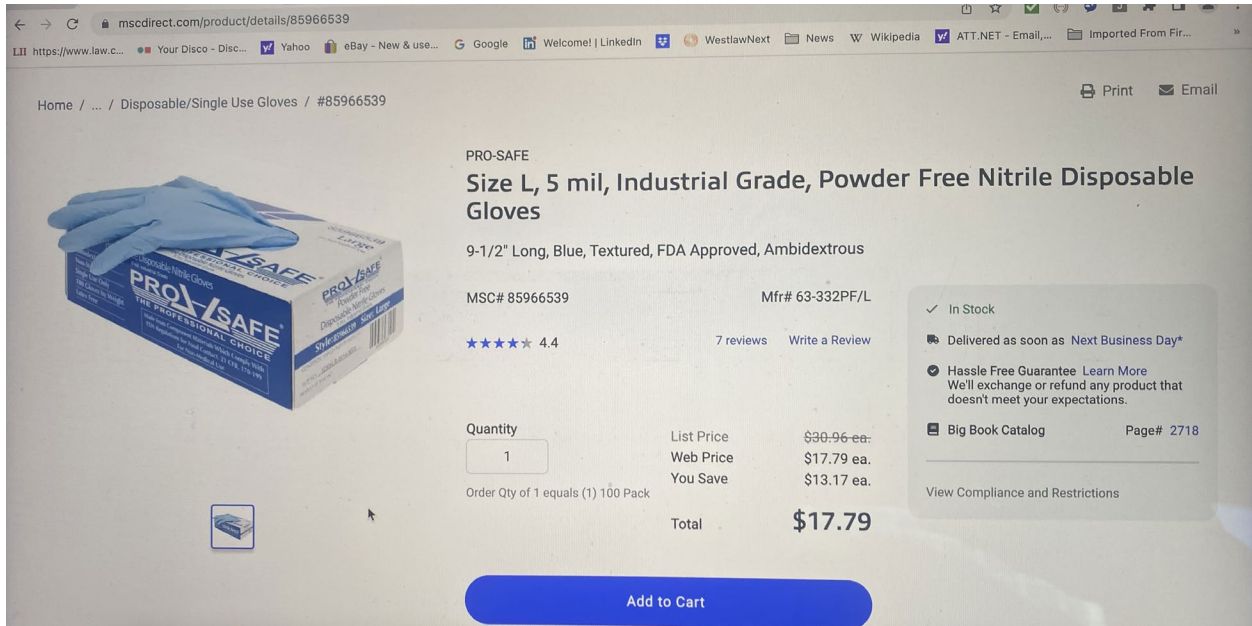


Figure 4C

38. The web page image in Figure 4A reflects the modification of the initial cursor depicted in Figure 4C to a "specific image," which comprises the transparent box surrounding the image of the pointing hand depicted in Figure 4A. This modification is a consequence of the user moving the cursor image over the display of the box of gloves on the user's terminal.

39. MSC's instructions have indicated code provided and controlled by MSC 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.

40. The transparent box surrounding the image of the pointing hand in Figure 4A 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 transparent box is not merely the image of a

hand, arrow 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 transparent box. That highlighting of, and attention 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 transparent box to the right of the specific image. The specific image generated by MSC's Accused Instrumentality relates the content displayed within the transparent box to the content being displayed on the screen.

41. 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, MSC performed those steps because it initiated and controlled the performance of those steps.

42. 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.

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

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

44. MSC 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 MSC Website and to shop for products and services on the website. By doing so, MSC has infringed Claims 1 and 38 of the '449 Patent by making and using the claimed system and making the MSC Website available to others for use. In addition, MSC has infringed Claim 53 of the '449 Patent by using the claimed method when providing the MSC Website for use by others.

45. Since at least 2016, MSC has made and used the Accused Instrumentality 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.

46. MSC's Accused Instrumentality has transmitted a web page to a user's terminal in response to a request from the user terminal for the web page.

47. MSC's Accused Instrumentality has 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.

48. MSC's Accused Instrumentality has 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.

49. MSC's Accused Instrumentality has 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.

50. The web page transmitted by MSC containing the instructions and code 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.

51. The specific image to be displayed, and actually displayed, by MSC 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.

52. MSC's code 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.

53. The resulting specific image has been related to at least a portion of the information to be displayed on said display of the remote user's terminal.

54. Figure 4A set forth in Paragraph 35 above depicts an example of the claimed specific image and the claimed corresponding portion of the specified content information displayed by MSC's system on the display of the website user's terminal since at least 2016.

55. MSC, through the Accused Instrumentality, has used the claimed system for purposes of infringement and has put the claimed system into service. In particular, MSC has controlled each element of the system 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 by MSC through its website. MSC has provided and controlled any functionality required by the claimed system that has taken place on the user/customer's computer.

56. Lexos Media IP incorporates by reference herein the allegations above in Paragraphs 25-41.

57. Since at least 2016, MSC has continued to put the claimed system into service.

58. 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.

59. Lexos Media IP has been damaged by MSC's infringing activities.

#### **DEMAND FOR JURY TRIAL**

60. 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 MSC has directly infringed one or more claims of the Asserted Patents;
- (b) A judgment and order requiring MSC 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 10, 2022

Respectfully submitted,

**BUETHER JOE & COUNSELORS, LLC**

*/s/ Eric W. Buether*

Eric W. Buether (Lead Counsel)

State Bar No. 03316880

Eric.Buether@BJCIPLaw.com

Christopher M. Joe

State Bar No. 00787770

Chris.Joe@BJCIPLaw.com

Kenneth P. Kula

State Bar No. 24004749

Ken.Kula@BJCIPLaw.com

1700 Pacific Avenue

Suite 4750

Dallas, Texas 75201

Telephone: (214) 466-1271

Facsimile: (214) 635-1827

**ATTORNEYS FOR PLAINTIFF  
LEXOS MEDIA IP, LLC**