## UNITED STATES DISTRICT COURT
## MIDDLE DISTRICT OF FLORIDA
## TAMPA DIVISION

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|---|---|---|
| AFTERWORDS, INC., | ) ) ) | |
| Plaintiff, | ) ) | |
| vs. | ) ) | Civil Action No. |
| | ) ) | **Jury Trial Demanded** |
| GETTATTLE INC., | ) ) | |
| Defendant. | ) ) ) | |
| | ) | |

## COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL, INJUNCTIVE RELIEF SOUGHT

Plaintiff, AfterWords, Inc. ("Plaintiff" or "AfterWords"), brings this action against Defendant, GetTattle Inc. ("Defendant"), for infringing U.S. Patent No. 10,430,811 (**Exhibit 1**) (the "'811 Patent"). AfterWords seeks permanent injunctive relief; compensatory and enhanced damages; interest; attorney's fees; and all costs resulting from Defendant's direct and indirect infringement of the '811 Patent.

## THE PARTIES

1.  Plaintiff AfterWords, Inc. is a Florida corporation with its principal offices located at 18801 North Dale Mabry Highway, #1008, Lutz, Florida 33548.

2.  On information and belief, Defendant GetTattle Inc. is a Delaware corporation with offices located at 16192 Coastal Highway, Lewes, Delaware 19958.

## JURISDICTION AND VENUE

3.      This is an action for patent infringement under 35 U.S.C. § 271.

4.      This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, both because the action involves a federal question and because the action relates to a patent.

5.      Defendant advertises on its website that it does business with a number of customers either headquartered and/or doing business in Florida. These include Hooters (headquartered in Clearwater, Florida), Virtual Dining Concepts (headquartered in Orlando, Florida), Carrot Express (headquartered in Miami, Florida), Chili's, MOD Pizza, Robeks, Dave's Hot Chicken, Mellow Mushroom, Quiznos, Pieology, Blaze Pizza, The Counter Custom Burgers, and Primanti Bros.  Defendant advertises that it does business with "220+ leading brands", but not all of them are publicized on its website, so it may well do business with other companies headquartered and/or doing business in Florida.

6.      This Court has personal jurisdiction over Defendant because Defendant has (a) used, offered to sell, and/or sold infringing services in Florida; (b) purposely directed its activities toward Florida; (c) induced customers to use infringing services in Florida; and (d) continuous and systematic business contact with Florida through its provision of infringing services to customers in Florida.

7.      Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400 because (a) a substantial part of the acts of infringement that give rise to AfterWords' claims occurred in this judicial district; (b) Defendant has used,

offered to sell, and/or sold infringing services in this judicial district; and (c) Defendant has induced customers to use infringing services in this judicial district.

## BACKGROUND

8.      AfterWords provides an intelligent customer satisfaction and engagement system that integrates a restaurant or retail customer's sales transaction detail with the satisfaction measurement process, enabling operators to deliver intelligent surveys to their customers.  The result is more immediate, insightful, and actionable satisfaction results.   AfterWords' intelligent surveys increase customer satisfaction, improve customer retention, and provide new insight for fine-tuning restaurant or retail operations.

9.      On June 28, 2019, AfterWords filed U.S. Patent Application No. 16/456,490 for a "Transaction-Specific Customer Survey System."   This application was a continuation-in-part of U.S. Patent Application No. 16/279,387, filed on February 19, 2019, which in turn was a continuation of U.S. Application No. 14/997,434, filed on January 15, 2016.

10.     Generally speaking, AfterWords' claimed invention provides a method and system for automatically generating context-based survey questions predicated on customers' actual purchase experience with a merchant, thus eliminating for the customer the need to respond to obvious, redundant, and even irrelevant questions, and providing to the merchant customer feedback directly bound to the actual purchase event and correlating data.  Purchase information is

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stored at the time of purchase and the customer is given an identifier for the purchase. Then, at the customer's convenience, either at the point of sale or through a networked computer, the customer can provide responses to questions that are selectively and automatically generated based on the items purchased, or other definable attributes associated with the sale, and based upon configurable preferences of the merchant. Survey questions are displayed and feedback responses are stored, analyzed and associated with purchase information in real time.

11.     The '811 Patent subsequently issued on October 1, 2019.

12.     The '811 Patent is presumptively valid and enforceable.

13.     The validity of the '811 Patent has never been challenged.

14.     Claim 19 of the '811 Patent claims:

A computer-implemented method for providing transaction-specific surveys comprising the operations of:

(a)     providing a survey server configured to receive and store transaction data generated by point-of-sale interface relating to a commercial transaction between a consumer and a vendor, wherein

    (i)  the transaction data comprises purchase detail identifiers and a survey token; and

    (ii) the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier;

(b)     receiving by the survey server, a survey token;

(c)     retrieving by survey server, the transaction data having the stored survey token corresponding to the received survey token;

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(d)    determining by survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the survey question data and the purchase detail identifier;

(e)    generating by the survey server, a Survey Module comprising software code for displaying the at least one Survey Question as an integrated component within a graphical user interface;

(f)    transmitting by the survey server, the Survey Module to a vendor survey interface; and

(g)    receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question.

15.    On information and belief, Defendant is infringing at least Claim 19 of the '811 Patent.

16.    AfterWords first became aware of Defendant's potential infringement of the '811 Patent in or around 2021.

17.    At that time, on May 12, 2021, AfterWords put Defendant on notice of its potential infringement of AfterWords' rights under the '811 Patent and a related patent, U.S. Patent No. 10,380,611 (together, the "Patents"), both directed to the implementation of transaction-specific guest surveys (**Exhibit 2**).

18.    AfterWords received a response from counsel for Defendant on May 25, 2021 (**Exhibit 3**), requesting a call to discuss AfterWords' Patents and the potential infringement, which call occurred on June 8, 2021.  At the conclusion of the call, counsel for Defendant advised he would review the patents and prosecution histories, to the extent necessary, and evaluate how they read on Defendant's own guest survey system.

19.     A month and a half later, on July 20, 2021, counsel for Defendant came back again asking AfterWords to explain how the Patents read on Defendant's system (**Exhibit 4**).

20.     AfterWords responded on July 23, 2021, asking if Defendant did not believe the Patents read on Defendant's system, Defendant provide detail on the claim elements it did not believe were present so the parties would be able to engage in a bilateral discussion as to whether Defendant had an infringement issue, and if it did whether there is a mutually-agreeable solution (**Exhibit 5**).

21.     Defendant did not further respond.
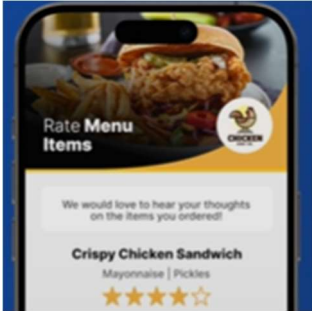
22.     At the time of the foregoing communications, although based on publicly-available information it appeared Defendant may very well have been practicing, or at least intending to practice, AfterWords' inventions as disclosed in its Patents, Afterwortds had not yet seen anything to indicate that Defendant was actually using or selling its potentially-infringing guest survey system. AfterWords, therefore, continued to monitor Defendant's activity to determine whether there was an infringement and whether further action was necessary.

23.     Recently, AfterWords was alerted that Defendant has since posted additional information on its website regarding the operation of its guest survey system.

24.     In reviewing the website, not only does it appear Defendant is now using and selling the system to customers, but additional information regarding

the operation of the system is now included in Defendant's online demo video library.

25.     AfterWords thereafter compared the information now included on Defendant's website to the claims of the Patents, and as shown by the following claim charts, at least Claim 19 of the '811 Patent reads on Defendant's system.
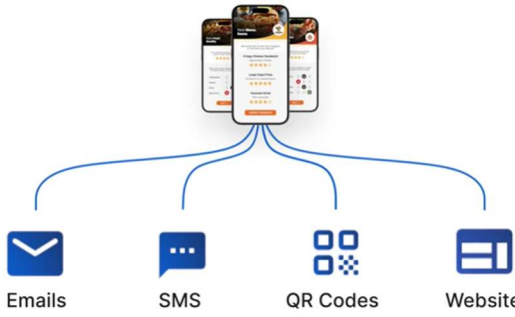
| Claim Elements | Tattle Software / Analysis |
|---|---|
| A computer-implemented method for providing transaction-specific surveys comprising the operations of: | Defendant's demonstration video No. 5 discusses its menu-level-item-feedback that prepopulates each guest item ordered in Defendant's surveys.[1]  An example screen capture is shown below:<br><br><br><br>Defendant's surveys are transaction-specific in that they are tailored to the items each consumer ordered. |

[1] Tattle, Watch A Demo, *see* https://get.tattleapp.com/watch-the-official-tattle-demo/?utm_source=Email+Nurturing&utm_medium=Email&utm_content=7-min+Demo+Video&utm_campaign=Video+Demo.

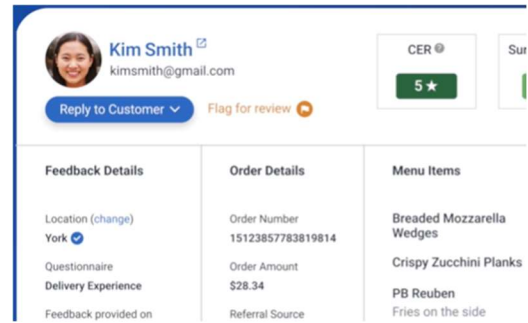| | |
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| (a) providing a survey server configured to receive and store transaction data generated by point-of-sale interface relating to a commercial transaction between a consumer and a vendor, wherein | Defendant's "Integrations" webpage states that "Tattle integrates with POS, digital ordering, kiosks . . . [and] can also build new integrations with in-house techstack or other platforms."[2]  Defendant's demonstration video No. 5 similarly states that Defendant gathers data about the menu items ordered by a customer by integrating Defendant's software with its client's existing techstack, such as the point-of-sale system ("POS").<br><br>Data about the menu items ordered falls within the definition of "transaction data" for the '811 Patent.  The '811 Patent defines transaction data to "include price, quantity, and **name of each item purchased**, time and date of purchase, employees on duty, the mode of service delivery, and/or any other relevant information associated with a purchase.  *See* '811 Patent Col. 5, Lns. 34-39.<br><br>Defendant's demonstration video No. 5 states that data captured from the POS system is used to create a survey that is distributed through multiple channels, such as email, QR codes, and text message.  Defendant's surveys are generated by a server or network device. |

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[2]  *See* Tattle, *Integrations* (last visited May 3, 2024), *see* https://get.tattleapp.com/integrations.

| **Claim Elements** | **Tattle Software / Analysis** |
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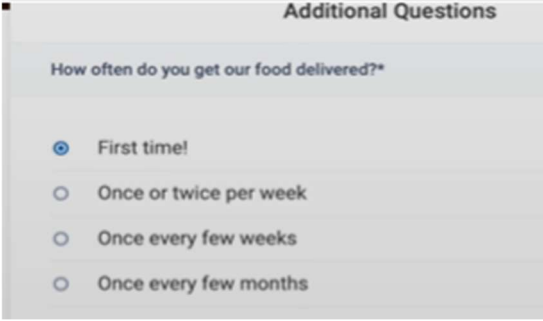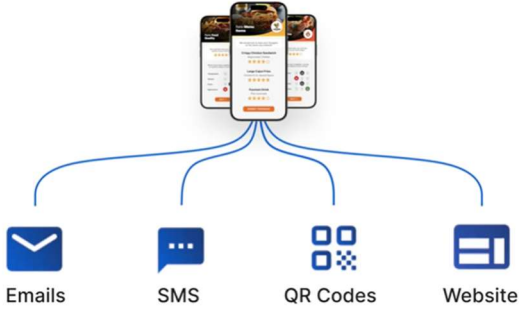| (i) the transaction data comprises purchase detail identifiers and a survey token; and | Screen capture from demonstration video No. 1 illustrating that Defendant's survey includes unique information identifying a transaction, such as an order number. |
|---|---|
| |  |
| | Defendant's software relies on transaction data that includes purchase detail identifiers and a survey token as defined in the '811 Patent.  Defendant's software generates a survey sent to consumers that concerns the consumer's unique transaction. Defendant's survey incorporates, or is linked to, data that identifies the unique transaction and identifies the customer.  Such data falls within the definitions of "purchase detail identifies" and "survey token" in the '811 Patent. Defendant demonstration video No. 1 includes a screen capture indicating that surveys include unique transaction information, such as an order number. |
| | The '811 Patent defines a "survey token" as data that identifies a transaction: |

| Claim Elements | Tattle Software / Analysis |
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| | "As used herein a 'token' can be any identifying information that **identifies a particular customer or transaction**.  In the case of a customer token, for example, the token can be a unique identifier generated at the point of sale or the token can be a loyalty program account number. The customer token can also be a name, email address or the like." *See* '811 Patent, Col. 5, Lns. 46-51.<br><br>The '811 Patent defines "purchase detail identifiers" as a type of transaction data that identifies the purchase or "unique transaction."<br><br>"The purchase detail can include a wide variety of data elements or vendor data categories relating to the customer experience, including the items purchased (using a product identifier), transaction amounts (i.e., price), the server (i.e., waitress or waiter), the table, the time of day, the mode of service delivery, and more."  *See* '811 Patent, Col. 12, Lns. 1-6. |

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| (ii) the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier; | The '811 Patent defines "campaign data" to include settings that define surveys and questions presented to consumers. *See* '811 Patent Col. 18.  Defendant's surveys vary based on a "configurable condition," as that term is defined in the '811 Patent, which can include the presence of a particular menu item.<br><br>"A wide variety of configurable Conditions can be specified as part of the Campaign.  Typical Conditions can include, for instance, determining whether: (i) the transaction data includes a particular product/service identifier." *See* '811 Patent Col. 15, Lns. 26-39.<br><br>Defendant's system must store data concerning "purchase detail identifiers" that define the consumer's unique transaction, such as a menu item ordered.  The fact that Defendant's surveys are targeted to specific menu items indicates that a package of survey questions (*i.e.*, a "campaign") is presented to consumers depending on what the consumer ordered (*i.e.*, a "configurable Condition").  Defendant's survey question could also be built using other configurable conditions, such as asking about a consumer's delivery experience when the consumer ordered delivery. Customization of the questions is illustrated below with a screen capture from Defendant's demonstration video No. 1. |

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| **Claim Elements** | **Tattle Software / Analysis** |
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| Claim Elements | Tattle Software / Analysis |
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| (b) receiving by the survey server, a survey token;<br><br>(c) retrieving by survey server, the transaction data having the stored survey token corresponding to the received survey token; | Screenshot from demonstration Video No. 5 showing distribution channels for a Defendant survey:<br><br><br><br>Defendant's system receives a survey token.  The token can be any data or information that is useful for identifying the customer or transaction, such as a (i) randomly generated number; (ii) a customer account ID, or (iii) a combination of transaction data elements, such a facility identifier and the date and time of the transaction.  *See* '811 Patent Col. 5, Lns. 45-50.<br><br>Defendant's demonstration video No. 5 states that Defendant's surveys are accessed using a QR code, text message, or through a web interface.  A QR code or text message, for example, includes a link or coded data that acts as a token to identify the consumer or transaction and that must be received by the survey server to generate a survey. |

| Claim Elements | Tattle Software / Analysis |
|---|---|
| (d) determining by survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the survey question data and the purchase detail identifier; | The fact that Defendant's surveys are targeted to specific menu items indicates that Defendant's server is analyzing "unique transaction" data to determine whether a given "configurable Condition" is satisfied (*i.e.*, presence of a menu item or part of a consumer experience) and using this information to generate a package of tailored survey questions.  An example is generating a question about delivery service where the particular consumer ordered delivery, which is an example illustrated in Defendant's demonstration video No. 1. |
| (e) generating by the survey server, a Survey Module comprising software code for displaying the at least one Survey Question as an integrated component within a graphical user interface;<br><br>(f) transmitting by the survey server, the Survey Module to a vendor survey interface; and | Defendant's survey questions are embedded within a graphical user interface whether by a hosted website or Defendant's own mobile application.<br><br>The '811 Patent describes embedding a survey in a merchant website, in an email, or a separate mobile software application running on a consumer device. The "vendor survey interface" can be defined as a web server hosting the merchant's branded website or a software application running on the consumer's mobile device. *See*'811 Patent Claims 2, 5; *see also* Col. 17, Lns. 11-21. |

| Claim Elements | Tattle Software / Analysis |
|---|---|
| (g) receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question. | The Respondent Header is a package of data including the survey responses.  *See* '811 Patent Col. 19, Lns. 19-23.  Defendant's software is transmitting the survey responses to a server from the user device utilized by the consumer or vendor survey interface. |

26.     As a result, without a license to practice the '811 Patent, Defendant's ongoing conduct infringes at least Claim 19 of the '811 Patent.

27.     Defendant's infringement is intentional and willful.

28.     AfterWords placed Defendant on notice of the claims of AfterWords' Patents in 2021.

29.     AfterWords placed Defendant on notice of its infringement on May 21, 2024, requesting a response by May 29, 2024 (**Exhibit 6**).

30.     Counsel for Defendant responded on May 28, 2024, "I confirm receipt of this correspondence. We are evaluating the issues raised in the letter and will revert after completing our evaluation" (**Exhibit 7**).

31.     Accordingly, AfterWords extended its requested response deadline to June 5, 2024 (**Exhibit 8**).

32.     As of the close of business on June 5, 2024, AfterWords has received no response.

33.     Defendant's intentional and willful patent infringement is causing irreparable harm to AfterWords, and, unless an injunction is granted, will continue

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to cause irreparable harm to AfterWords, due to the erosion of AfterWords' market for the guest survey system described in the '811 Patent, the injury that will be caused to AfterWords' reputation if potential customers believe Defendant is the inventor of the invention claimed in the '811 Patent and AfterWords is the infringer, loss of goodwill, and loss of business opportunities.  AfterWords has suffered and will continue to suffer damage, the exact amount of damage being unknown to AfterWords at this time.  The damage to AfterWords is, and will continue to be, irreparable because, among other reasons, of the continuing nature of the patent infringement, which would necessitate a multiplicity of suits for damages if the continuance of the wrongs is not enjoined.

34.    All conditions precedent to the institution and maintenance of this action have occurred or been performed by AfterWords.

35.    AfterWords has engaged the law firm of Shumaker, Loop & Kendrick, LLP to represent it and has obligated itself to pay its attorneys a reasonable fee for their services in this action.

## COUNT I

### Willful Infringement of U.S. Patent No. 10,430,811

36.    AfterWords realleges paragraphs 1-35 of this Complaint as if fully restated herein.

37.    This is an action for patent infringement under 35 U.S.C. § 271.

38.    Defendant is and has been directly infringing the '811 Patent by making, using, selling, and/or offering to sell the right to use its infringing guest survey system.

39.    Defendant also indirectly infringes the '811 Patent by inducing customers to use its infringing guest survey system and thereby infringe.

40.    On information and belief, Defendant has had knowledge of the claims of the '811 Patent since at least October 17, 201, when U.S. Patent Application No. 16/456,490 was published.

41.    Defendant has had actual knowledge of the claims of the '811 Patent since at least May 12, 2021, when AfterWords sent its May 12, 2021 letter.

42.     Despite having the requisite knowledge, Defendant has continued and continues to infringe the '811 Patent notwithstanding an objectively high likelihood that its conduct constitutes infringement, in complete and reckless disregard of AfterWords' patent rights.

43.    As a direct result of Defendant's infringement of the '811 Patent, AfterWords has suffered irreparable harm and monetary damages. If Defendant's infringement is not enjoined, AfterWords will continue to suffer irreparable harm and monetary damages.

44.    Defendant's infringement is intentional, willful, and wanton under 35 U.S.C. § 284, making this an "exceptional case" under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, AfterWords respectfully requests that this Court:

1.      Enter judgment that Defendant has infringed and continues to infringe the '811 Patent in violation of 35 U.S.C. § 271(a), and has induced and continues to induce infringement of the '811 Patent under 35 U.S.C. § 271(b);

2.      Enter judgment that Defendant has willfully infringed the '811 Patent, either directly or indirectly;

3.      Enter an injunction, pursuant to 35 U.S.C. § 283, enjoining Defendant, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them, from further infringing the '811 Patent and inducing others to do the same;

4.      Award AfterWords damages adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention claimed in the '811 Patent;

5.      Increase such damages up to three (3) times the amount found or assessed;

6.      Award AfterWords pre- and post-judgment interest;

7.      Find this is an "exceptional case" under 35 U.S.C. § 285;

8.      Award AfterWords both its costs of this action and its reasonable attorney's fees incurred in prosecuting this action; and

9.    Grant to AfterWords such other and additional relief as is just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff, AfterWords, Inc., hereby demands trial by jury of all issues so triable.

Dated:  June 6, 2024                          Respectfully submitted,

/s/ J. Todd Timmerman
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