

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

INTERSTELLAR INC.,

Plaintiff,

-against-

KAHOOT! EDU, INC. and KAHOOT! ASA,

Defendants.

Case No. 24-CV-727

**COMPLAINT FOR PATENT
INFRINGEMENT AND JURY
TRIAL DEMAND**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Interstellar Inc. (“Interstellar” or “Plaintiff”) by its attorneys, Culhane PLLC, for its Complaint against Defendants Kahoot! EDU, Inc. (“Kahoot! EDU”) and Kahoot! ASA (“Kahoot! ASA”) (collectively, “Defendants” or “Kahoot!”), alleges and states as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. This Court has exclusive subject matter jurisdiction pursuant to 35 U.S.C. §§ 1331 and 1338(a).

PARTIES

2. Plaintiff Interstellar Inc. is an Illinois corporation with its principal place of business located at 6117 N Kirkwood Ave., Chicago, IL 60646.

3. Upon information and belief, Kahoot! EDU is a Texas corporation with a principal place of business at 823 Congress Ave. Ste 300, Austin, TX 78701 and an address at 701 Brazos St., Ste 1601, Austin, TX 78701. Upon information and belief, Kahoot! EDU sells and offers to sell products and services throughout Texas, including in this judicial district, and introduces

products that result in infringement into the stream of commerce knowing that they will be sold and used in Texas and this judicial district.

4. Upon information and belief, Kahoot! ASA is a Norwegian corporation with a principal place of business at Fridtjof Nansens Plass 7 Oslo, 0160 Norway. Upon information and belief, Kahoot! ASA sells and offers to sell products and services throughout Texas, including in this judicial district, and introduces products that result in infringement into the stream of commerce knowing that they will be sold and used in Texas and this judicial district.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a), as Plaintiff alleges claims arising under the patent laws of the United States, Title 35, United States Code.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b) because Defendants have committed acts of infringement and have a regular and established place of business in this judicial district.

7. This Court has personal jurisdiction over Kahoot! EDU because it is a corporation organized and existing under the laws of the state of Texas, has a principal place of business in this district, and conducts substantial business within this district. Kahoot! EDU committed acts of patent infringement in this district, induced infringement in this district, and contributed to infringement by others by making, using, selling, offering to sell, and/or importing the product accused of infringement in this complaint into this district.

8. This Court has personal jurisdiction over Kahoot! ASA because it directly or through subsidiaries or intermediates solicits and conducts substantial business in this district. Kahoot! ASA committed acts of patent infringement in this district, induced infringement in this

district, and contributed to infringement by others by making, using, selling, offering to sell, and/or importing the Accused Product into this district. Additionally, Kahoot! ASA regularly does and solicits business, engages in persistent course of conduct, and/or derives substantial revenue from products and/or services provided to individuals and companies in this district. Kahoot! ASA has purposely established substantial, systematic, and continuous contacts with others in this district and should therefor reasonably expect to be haled into court in this district.

FACTUAL BACKGROUND

Interstellar's Innovation

9. Interstellar is a company that creates research-driven online games and events, bringing the most popular features of athletic sports into the classroom. Interstellar's web application facilitates live, online academic competition between users or groups of users, based on multiple choice and fill-in-the-blank questions. A variety of educators, including teachers, school district administrators, parents, and members of the business community, utilize the product to gamify assessment, spark motivation and improve learning outcomes.

10. Interstellar's founder and CEO, Mr. Timothy Kelley, began to formulate the concept underlying the patent in suit in 2008 while he was a part-time, volunteer rowing coach at his high school alma mater. Over the years, Mr. Kelley had emerged as a nationally recognized coach with success developing creative testing formats on the rowing machine for his athletes. With this experience, he identified the possible benefit to a teacher of a flexible testing tool that would allow a classroom of students to compete over a series of questions, either against each other or against another team, in an online environment featuring the classic, game-based elements of sports-like rankings, statistics, real-time scoring, bracket tournament and championship. He

anticipated that such an offering could transform the commonly tedious quiz into a dramatic contest between classmates and classes, with significant educational gains to follow.

11. In 2009, Mr. Kelley decided to enroll in a Master in Public Administration (MPA) program to examine the game-based testing concept further. Surprised to learn from influential faculty operating in the U.S. education landscape that such an idea had not been attempted, Mr. Kelley put together a team early in 2011 both for the development of a web application that might bring the concept to life and the formulation of a patent to protect their efforts.

12. After nearly 2 years of painstaking engineering and testing, where complex, real-world challenges to implementation were systematically identified and overcome, the first pilot of the envisioned functionality was organized early in 2013 between groups of students competing from schools across the United States. It was well received by students and teachers alike. Later that fall, Interstellar launched Math Madness, a national event patterned off NCAA March Madness – 4 weeks of league play followed by a 6-week bracket tournament. More recently, Interstellar developed and began marketing Intra-District Play, which allows classes from across a school district to compete in a league and tournament structure similar to Math Madness, harnessing the competitive dynamic between schools to engage students in a fashion similar to scholastically organized athletic conferences.

13. Mr. Kelley has grown Interstellar organically over the years, without resort to outside investment. Now, approximately 25,000 subscribers compete on Interstellar’s platform (www.aretelabs.com) each year.

Interstellar’s Patent

14. The United States Patent and Trademark Office duly and legally issued U.S. Patent No. 10,339,825, entitled “System and Method for On-Line Academic Competition” (“the ’825

Patent”) on July 2, 2019. The ’825 Patent is based on U.S. Patent Application No. 13/439,305 with a filing date of April 4, 2012. A true and correct copy of the ’825 Patent is attached hereto as

Exhibit 1.

15. Through assignment, Interstellar is the owner of all right, title, and interest in and to the ’825 Patent and, as such, has the right to sue and recover for past, present, and future infringement of the ’825 Patent and to obtain the relief claimed in this Complaint.

16. The ’825 Patent is in full force and effect.

17. The ’825 Patent describes and claims a system and method for on-line academic competition that incorporates elements of competition, such as a real time scoreboard, allowing contestants and teams to view their progress in real time. Claim 1 of the ’825 Patent is as follows:

Claim 1. A system for on-line academic competition, comprising:

a database that stores test questions, team and individual contestant profiles, and test response statistics for the team and individual contestants; and

a processor programmed to interact with the database and with individual contestant processing devices to perform the steps of:

enabling the creation of teams of individual contestants for participation in an academic competition;

enabling a user, through a user interface connected to said database, to perform at least one of the following: (1) create a league of teams and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;

presenting a series of test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition;

providing a real time scoreboard with time clock to each contestant processing device that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly while answering the series of questions during an academic competition, where each correctly answered question contributes on the real time scoreboard to at least one of (1) an

individual score of the individual contestant and (2) a team score of the individual contestant's team; and

enabling teams of individual contestants to compete over a series of test questions for an allotted time period in an online format including both a test item presentation area and the real time scoreboard with time clock, at least one of (1) live, if the teams have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team scores of the competing teams, and (2) non-live, if the teams do not have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team score of the individual contestant's team.

18. Claim 14 of the '825 Patent is as follows:

Claim 14. A method for on-line academic competition, comprising:

enabling, using a processing device, the creation of teams of individual contestants for participation in an academic competition;

enabling a user, through a user interface, to perform at least one of the following: (1) create a league of teams and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;

presenting, using a processing device, a series of test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition;

providing a real time scoreboard with time clock at each contestant processing device that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly while answering the series of questions during an academic competition, where each correctly answered question contributes on the real time scoreboard to at least one of (1) an individual score of the individual contestant and (2) a team score of the individual contestant's team; and

enabling teams of individual contestants to compete over a series of test questions for an allotted time period in an online format including both a test item presentation area and the real time scoreboard with time clock, at least one of (1) live, if the teams have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team scores of the competing teams, and (2) non-live, if the teams do not have common time availability, wherein the real time scoreboard

displays in real time at least one of (a) the individual score of the individual contestant and (b) the team score of the individual contestant's team.

Defendants' Acts of Infringement

19. Upon information and belief, Kahoot! was founded in 2012 in Norway by Morten Versvik, Johan Brand, and Jamie Booker. It began as a joint education project between them and Alf Inge Wang, a professor at the Norwegian University of Science and Technology (NTNU) where Versvik was a student. (<https://kahoot.com/company/>).

20. Upon information and belief, Kahoot! presented a basic demo of the Kahoot! concept at SXSW EDU in March 2013. In September 2013, Kahoot! was made available to the public.

21. Upon information and belief, Kahoot! makes, sells, offers to sell, uses, and/or imports into the U.S. an online platform (“Accused Product”) which allows users to generate quizzes accessible through a web browser or a mobile application. Kahoot! refers to these user-generated quizzes as “kahoots.”

22. Kahoot! describes the Accused Product as “a game-based learning platform that makes it easy to create, share and play learning games or trivia quizzes in minutes.” (<https://kahoot.com/what-is-kahoot/>).

23. The Accused Product enables users to create an on-line academic competition. Kahoot! advertises that “You can create a kahoot from scratch, use our question bank to mix and match existing questions, edit a template, or customize existing kahoots created by other users.” (<https://kahoot.com/schools/how-it-works/>).

24. The Accused Product enables users to engage in an on-line academic competition. Kahoot! advertises that the Accused Product enables users to “Host a kahoot live in class or via a video conferencing tool to connect students virtually! Questions and answers are displayed on a

shared screen while students answer on their devices but you can choose to display questions on their devices, too!” (<https://kahoot.com/schools/how-it-works/>).

25. Since launching its platform in 2013, Kahoot! added new features over time, including expanding the capabilities for academic competitions.

26. Upon information and belief, in or around April 2016, Kahoot! launched a Team Mode capability. (<https://kahoot.com/blog/2016/04/14/boost-collaboration-team-mode-kahoot/>).

27. Upon information and belief, in or around September 2016, Kahoot! added a Podium feature to acknowledge the players with the top three scores after a competition. Kahoot! advertised that this scoring feature was for “all players that are constantly eager to learn and love celebrating together with their classmates.” (<https://kahoot.com/blog/2016/09/06/kahoot-podium-rewarding-top-3-players/>).

28. Upon information and belief, in or around June 2020, Kahoot! launched Kahoot! Academy. As described, this functionality takes the act of creating and sharing kahoots with other users on the platform to “the next level”, allowing users to “explore content from Verified creators, such as educators and brands.” At the same time, Kahoot! developed and subsequently launched Kahoot! Marketplace, “where educators, brands, and other content creators can share their knowledge by selling their learning content, joining the fast-growing global creator economy!” (<https://kahoot.com/blog/2023/03/15/kahoot-innovations-10-year-anniversary/>).

29. Upon information and belief, in or around February 2022, Kahoot! expanded its display options to include the capability of utilizing personalized backgrounds and themes. (<https://kahoot.com/blog/2022/02/25/introducing-kahoot-themes-customized-experience-2/>).

30. The Accused Product infringes at least claims 1, 2, 9, 11, 14, 15, 22, and 24 of the ’825 Patent, as exemplified in **Exhibit 2**.

31. Defendants compete with Interstellar. Defendants represent on their website that more than 8 million teachers hosted a kahoot in the last 12 months, and that half of US teachers and students hosted or played a kahoot in the last year. (<https://kahoot.com/company/>). Defendants' Accused Product benefits from using the '825 Patent's invention without Interstellar's permission and competes with Interstellar.

32. On or about February 15 and February 21, 2024, Mr. Kelley corresponded with Julie Wessel, Kahoot!'s VP Corporate Development and advised Defendants of Interstellar's business and the '825 Patent. Kahoot!'s responded, but did not address the '825 Patent. Mr. Kelley provided additional details regarding Kahoot!'s infringement of the '825 Patent on or about April 29, 2024. Kahoot! did not respond.

33. Upon information and belief, despite notice being provided to Defendants of their infringing conduct, Defendants have continued to knowingly and willfully sell, offer to sell, advertise, market, and otherwise commercialize the Accused Product.

34. Interstellar has not granted a license or any other authorization to Defendants to make, use, offer for sale, sell, or import into the U.S. any product that is covered by the claims of the '825 Patent.

COUNT I

INFRINGEMENT OF THE '825 PATENT, 35 U.S.C. § 271

35. Interstellar repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

36. Defendants infringe directly or under the doctrine of equivalents the claims of the '825 Patent because the Accused Product contains each element or its equivalent of at least Claims 1, 2, 9, 11, 14, 15, 22, and 24 of the '825 Patent, as exemplified in **Exhibit 2**.

37. Defendants infringe the '825 Patent under 35 U.S.C. § 271(a).

38. Defendants are making, using, offering to sell, selling and/or importing in the United States products, including specifically the Accused Product, that infringe the claims of the '825 Patent in violation of 35 U.S.C. § 271(a).

39. Defendants infringe the '825 Patent under 35 U.S.C. § 271(b).

40. Defendants induce infringement of the '825 Patent by, for example, actively and knowingly encouraging end users and customers to use the Accused Product within the United States, as exemplified in **Exhibit 2**.

41. Defendants were aware of the '825 Patent and knew that others' actions such as using the Accused Product constitutes infringement of the '825 Patent. Alternatively, Defendants believed that there was a high probability that others infringe the '825 Patent and remained willfully blind to infringing actions of others.

42. Defendants infringe the '825 Patent under 35 U.S.C. § 271(c).

43. Defendants contribute to infringement of the '825 Patent by, for example, selling, offering to sell, and/or importing into the United States the Accused Product which embodies the invention claimed in the '825 Patent, as exemplified in **Exhibit 2**, knowing that the Accused Product is especially made or especially adapted for infringement of the '825 Patent and is not a staple article or commodity of commerce suitable for substantial non-infringing use.

44. Interstellar provided actual notice to Defendants of their infringement on repeated occasions at least as early as February 2024, including, without limitation, via correspondence to Defendants.

45. Defendants have committed and continue to commit acts of infringement under 35 U.S.C. § 271 with the Accused Product. In committing these acts of infringement, Defendants have

acted despite an objectively high likelihood that their actions constituted infringement of a valid patent, and Defendants actually knew or should have known that their actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent.

46. Defendants' infringement has been intentional and willful, making this an exceptional case.

47. Defendants' acts of infringement have caused damage to Interstellar. Interstellar is entitled to recover from Defendants the damages sustained by Interstellar as a result of Defendants' wrongful acts in an amount subject to proof at trial. In addition, Defendants' infringing acts have caused, are causing, and unless such acts are enjoined by the Court, will continue to cause immediate and irreparable harm to Interstellar for which there is no remedy at law, for which Interstellar is entitled to injunctive relief under 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court for an order and judgment in favor of Plaintiff Interstellar and against Defendants as follows:

- A. Holding that Defendants have infringed the '825 Patent in violation of 35 U.S.C. § 271(a), (b) and/or (c);
- B. Granting Plaintiff preliminary and permanent injunctive relief enjoining the Defendants and their officers, agents, servants, employees, attorneys, and those in active concert or participation with each or any of them, from any further acts of infringement, inducement of infringement, or contributory infringement of the '825 Patent;
- C. Awarding Plaintiff its actual damages under 35 U.S.C. § 284 in an amount to be determined at trial;

- D. Ordering, adjudging, and decreeing that the infringement by Defendants has been deliberate, willful and wanton;
- E. Ordering, adjudging and decreeing that infringement by Defendants has been exceptional under 35 U.S.C. § 285;
- F. Awarding Plaintiff trebled damages under 35 U.S.C. § 284, as a result of Defendants' knowing and willful infringement;
- G. Awarding Plaintiff its actual costs and reasonable attorneys' fees, as authorized by 35 U.S.C. § 285;
- H. Awarding Plaintiff pre-judgment and post-judgment interest on the damages award;
- I. In the event a permanent injunction preventing future acts of infringement is not granted, awarding Plaintiff an ongoing licensing fee; and
- J. Granting Plaintiff such other and further relief as this Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff hereby demands trial by jury on all claims and issues so triable.

Dated: Austin, Texas
June 28, 2024

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