

May 4, 2015

By Certified Mail

Noah Glass

Chief Executive Officer

OLO

26 Broadway, 24th Floor

New York, NY 10004

Re: Demand to Cease and Desist Unfair Business Practices and Misrepresentations

Dear Mr. Glass:

This letter constitutes a formal demand by Ameranth, Inc. that OLO, and its employees, officers and representatives, immediately cease and desist from engaging in unfair business practices and misrepresentations regarding Ameranth, its licensees and its patents, several of which patents OLO is currently being sued for infringing in the United States District Court for the Southern District of California.

As you know, OLO (also known as Mobo Systems, Inc.) and several other defendants who are being sued by Ameranth for patent infringement in federal court filed four Covered Business Method (“CBM”) petitions with the Patent Trial And Appeal Board (“PTAB”) in October of 2013 challenging the validity of each and every claim of Ameranth’s ‘077, ‘325, ‘850 and ‘733 patents.

These CBM proceedings were finally concluded in March of 2015. Claims from each of every one of Ameranth's #4 patents were confirmed to be valid by the USPTO PTAB, including all the claims of Ameranth's '077 patent, claims 12-16 of the '850 patent, claims 11-15 of the '325 patent, and claims 3, 6-9, 11, and 13-16 of the '733 patent. These include multiple patent claims that Ameranth is suing OLO for infringing, including all of the data synchronization claims of Ameranth's '325, '850 and '077 patents practiced by OLO and the menu generation claims of the '077 patent.

For some time, Ameranth has been hearing reports and rumors that OLO has attempted to unfairly compete for restaurant customers' online and mobile ordering business against on-line ordering companies licensed by Ameranth, and that OLO has been doing so by misrepresenting that Ameranth's patents have been invalidated and that such restaurant customers therefore should not be concerned about infringement of the patents. Ameranth has now received documented proof of such misrepresentations and unfair business practices by OLO, confirming the accuracy of the previous reports of OLO's misconduct.

Attached to this letter please find a copy of an email sent, just last week on April 29, 2015, by OLO Sales Director (and OLO's #4 employee), Juan George to Scott Scherer and Rich Hope of Jersey Mike's entitled "Patent Update." Jersey Mike's is a customer of Splick-It, and both Splick-It and Jersey Mike's are licensees of Ameranth entitled to use Ameranth's patented online and mobile ordering technology.

In his email, which was a blatant attempt to disparage Ameranth and Splick-it and to disrupt the existing business relationship between Splick-It and Jersey Mike's and to seek to win the Jersey Mike's business away from Splick-It for OLO, Mr. George made the following gross misrepresentations:

As a follow-up to our exchange back in August when Jersey Mike's elected to renew it's [sic] contract with splick-it, I wanted to follow up with you on the latest on Olo's patent litigation.

All the Ameranth patent claims that we were being sued over and that have been ruled on by the PTAB (Patent Trademark Appeals Board) have been invalidated – they are no longer patents. There are a few yet to be ruled on and Ameranth can appeal, but this is a clear indicator of the validity and a step in the right direction. In addition, you may (or may not) find this recent piece from HBO's [John Oliver's taking down of patent trolls](#) **enjoyable & enlightening. I certainly did.** (Emphasis added.)

Mr. George's representations are false and misleading in multiple material respects. Contrary to his statement, none of our patents have been 'invalidated' and it is entirely untrue that all the claims on which Ameranth is suing OLO for infringement have been invalidated. Only some of the claims of the '325 and '850 patents on which Ameranth sued OLO were invalidated by the PTAB (and even those are being appealed by Ameranth to the Federal Circuit to reverse what Ameranth believes was an incorrect ruling). Importantly, all of the claims of Ameranth's '077 patent for which OLO is being sued for infringement, and all of the 'data synchronization' claims of the '325 and '850 patents for which Ameranth is suing OLO, survived the CBM challenges and #38 claims were found to be valid by the PTAB, In fact our patents and claims are **strengthened, significantly**, by their having been reconfirmed as valid, by a panel of three Administrative Law Judges (ALJ's) - the highest authority within the USPTO. These claims are still very much being asserted against OLO for its infringement. (Ameranth did not sue OLO for infringement of the '733 patent.) Further, as you know, it only takes a single valid claim of one patent to be found to be infringed for OLO and its customers using OLO's infringing technology to be held liable for past and future damages to Ameranth. Yet further, Ameranth has additional patents pending with more than #100 claims pending their allowance.

That OLO would make such false representations to an existing Ameranth patent licensee (a fact that was clearly known to Mr. George and OLO) to seek to influence them to cease being an Ameranth licensee and a

customer of Splick-it is unethical and actionable by either Ameranth, Splick-it or both.

Furthermore, Mr. George's insinuation that Ameranth is a "patent troll" is libelous, and likewise entirely false. Ameranth conceived, developed and first brought to market a number of innovative and **award-winning** hospitality products for online/mobile ordering, reservation and table management, long before OLO even existed; thus in fact Ameranth is an industry trailblazer, and not a "troll." Companies like Taco Bell, which publicly licensed our patents entirely outside any litigation, prove these defamatory allegations false. Further, your company's conduct in the hospitality marketplace is becoming increasingly recognized and infamous. One needs only look deeper into the attached email string with Jersey Mike's to clearly see that OLO seeks to disrupt and interfere with the **existing** business relationships of your competitors, rather than competing fairly for new business, when new, competitive RFP's are issued.

Further, I have no doubt that if your company had actually invented anything, rather than merely replicating the innovations of others without license to do so, and OLO owned Ameranth's patents for online/mobile ordering, OLO would be enforcing them as aggressively as you malign Ameranth as an alleged 'troll' for doing so, and you would find the disrespect that your company and employees exhibit to our innovations, to our patents and to another entrepreneur, as disconcerting and offensive as I do.

Mr. George's misrepresentations on behalf of OLO constitute unfair business practices, wrongful interference with contract, wrongful interference with prospective economic relations, and fraud. Ameranth therefore demands that OLO, Mr. George, and all other OLO officers, employees and representatives immediately cease and desist from spreading such intentional falsehoods in the market place about Ameranth and its patents, and demands that written confirmation of the cessation of such unethical and unlawful practices be sent back to me at Ameranth no later than May 11, 2015.

Ameranth further demands that OLO correct these and any other misrepresentations made to any restaurant customers that OLO unfairly

won or are currently seeking to win, and confirm that you have done so, as well. If you fail to do so, and we learn of it, rest assured, we will take appropriate action.

I will await your timely response before pursuing any further actions.

Sincerely,

A handwritten signature in blue ink that reads "Keith R. McNally". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Keith McNally
President

Enclosure: OLO E-mails

Enclosure – OLO E-mails

From: Juan George <jgeorge@olo.com>
Sent: Wednesday, April 29, 2015 4:34 PM
Subject: Patent Update: Olo: NRA Show?
To: Scott Scherer <sscherer@jerseymikes.com>
Cc: Rich Hope <rhope@jerseymikes.com>

Hi Scott & Rich,

I hope this note finds you well – I was reminded to check-in with you after Brian Sommers tweeted an article written by Olo's Founder & CEO today:

jerseymikebrian

A “Moneyball” approach to restaurant real estate <http://t.co/wmUrXJL3x> via
@SB_Food @JGeo @NHglass #RestaurantRealEstate
[4/29/15, 11:07 AM](#)

As a follow-up to our exchange back in August when Jersey Mike's elected to renew it's contract with splick-it, I wanted to follow up with you on the latest on Olo's patent litigation.

All the Ameranth patent claims that we were being sued over and that have been ruled on by the PTAB (Patent Trademark Appeals Board) [have been invalidated](#) – they are no longer patents. There are a few yet to be ruled on and Ameranth can appeal, but this is a clear indicator of the validity and a step in the right direction. In addition, you may (or may not) find this recent piece from HBO's [John Oliver's taking down of patent trolls](#) enjoyable & enlightening. I certainly did.

In any event, I understand this was a major concern of yours. Since August, Olo has brought on 1,450 sandwich shops representing 9 national/regional brands including Which Wich, Port of Subs & Capriotti's.. As it relates to [Splick.it](#), we are approached regularly by clients seeking to upgrade.

If you're open to meeting, I'll be at the NRA show in Chicago from Friday - Monday. Alternatively, Olo's downtown NYC HQ is 1 hour & 32 minutes away from your offices and I'd be more than happy to come visit you.

My best, Juan

On Sun, Aug 10, 2014 at 10:31 PM, Scott Scherer <sscherer@jerseymikes.com> wrote:

Juan,

Thanks for reaching out but we renewed our contract with Splickit mainly because they licensed the required patents. We can do business with any company involved in litigation of Intellectual Property patents.

Have a nice night,
Scott

Scott Scherer

Chief Information Officer

Jersey Mike's Franchise Systems, Inc.

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From: Juan George [jgeorge@olo.com]

Sent: Sunday, August 10, 2014 10:22 PM

To: Scott Scherer

Subject: Olo: splick-it contract expiration?

Hi Scott.

This is Juan George, Sales Director @Olo. We spoke during the evaluation of online ordering providers in late 2012-early 2013 while JM was still with ONOSYS. Huge fan of the food & congrats on all of the growth!

As you head into 2015 budgeting season, I'm interested to learn A) when splick-it contract expires and B) if you would be open to meeting with Olo closer to the renewal date.

We are in conversations with another client using splick-it, and believe that Olo can alleviate some of the concerns Jersey Mike's may be having (e.g Group Ordering, Guest Checkout, etc.). Any guidance on timing of when we should follow up would be appreciated.

Thanks,
-Juan

p.s. Here are pieces from QSRWeb.com & FastCasual.com published by Olo last week:

1) 5 insights from mobile restaurant customers: The new shopper mindset

Consumers make dining decisions via mobile more than any other category, according to a recent survey by xAd, Telmetrics, and Nielsen. The survey contains a wealth of information, but five key research insights about the changing majority ring particularly true for foodservice operators. **To read more visit:** ["5 insights from mobile restaurant customers"](#)

2) Teaching in-store and digital ordering to play nice

Back in February, Papa John's President and COO Tony Thompson proudly announced, "We are well on our way to becoming the first national pizza chain to achieve a domestic systemwide digital sales mix of 50 percent." He went on to note that this was a "major industry milestone." Consider your current operations. Could your restaurant chain handle one out of every two orders coming from the Internet – not from a customer standing in the store or ordering over the phone? **To read more visit:** ["Teaching in-store and digital ordering to play nice"](#)

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