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9 Attorneys for Plaintiff,
10 QUIBI HOLDINGS, LLC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13
14 QUIBI HOLDINGS, LLC.

15 Plaintiff,

16 v.

17 INTERLUDE US, INC. d/b/a EKO,

18 Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY
JUDGMENT OF
(1) NON-INFRINGEMENT
OF U.S. PATENT
NO. 10,460,765; AND (2) NO
MISAPPROPRIATION OF
TRADE SECRETS**

**DEMAND FOR JURY
TRIAL**

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1 **PRELIMINARY STATEMENT**

2 1. Plaintiff Quibi Holdings, LLC (“Quibi”) has developed a new digital
3 platform for delivering premium entertainment content to consumers — using
4 innovative technology that for the first time makes video beautiful on your phone.
5 Quibi’s streaming service features top talent and extraordinary storytelling,
6 designed for the small screen and delivered in episodes of 10 minutes or less.

7 2. Set to launch on April 6, 2020, Quibi’s mobile app is the product of
8 many months of tireless work by Quibi’s talented team of engineers, who designed,
9 engineered, tested, and refined the app. Quibi demonstrated key features of its app,
10 including its new Turnstyle technology, in a keynote address at the Consumer
11 Electronics Show (“CES”) on January 8, 2020. Unfortunately, with the advertised
12 launch of a high-profile new service, Quibi has already been targeted by a company
13 looking to make a name for itself and to capitalize on Quibi’s early acclaim by
14 making demonstrably false claims of intellectual property infringement.

15 3. Defendant Interlude US, Inc., d/b/a Eko (“Eko”) is a company that
16 promotes interactive video. After seeing Quibi’s keynote address at CES, Eko
17 embarked on a campaign of threats and harassment to coerce money or a licensing
18 deal from Quibi. Eko’s activities include wrongfully (1) accusing Quibi of
19 infringing an Eko patent, U.S. Patent No. 10,460,765 (“the ’765 patent”), and of
20 misappropriating trade secrets; (2) submitting a Notice of Complaint to the Apple
21 App Store in an attempt to derail the scheduled launch of Quibi’s app; and
22 (3) pitching to the *Wall Street Journal* and at least one other news outlet the false
23 narrative that Quibi infringes the ’765 patent and has misappropriated Eko’s trade
24 secrets.

25 4. As a result, an actual case and controversy exists between Quibi and
26 Eko, requiring Quibi to seek a declaratory judgment addressing the parties’ rights
27 and obligations, and to enjoin Eko from taking any further steps to improperly
28 tarnish Quibi’s brand or to interfere with Quibi’s highly anticipated launch.

1 **NATURE OF THE ACTION**

2 5. This is an action for declaratory judgment of non-infringement of all
3 claims of U.S. Patent No. 10,460,765 under the Declaratory Judgment Act,
4 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C.
5 § 1, et seq., and for a declaratory judgment of no misappropriation of trade secrets
6 under the Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1839, and the
7 California Uniform Trade Secrets Act (“CUTSA”), Cal. Civ. Code § 3426.1.

8 **PARTIES**

9 6. Plaintiff Quibi is a limited liability company organized and existing
10 under the laws of Delaware with its principal place of business at 6555 Barton
11 Avenue, Los Angeles, California 90038. Quibi is the creator and owner of its
12 Turnstyle technology, which is incorporated in its app, available for pre-order at the
13 Apple App Store and Google Play store.

14 7. Defendant Eko is a corporation formed under the laws of Delaware.
15 Eko promotes itself as selling interactive video content, where users select the plot
16 and endings of videos, and an associated platform for the delivery and viewing of
17 such content. Eko’s principal place of business in the United States is 235 Park
18 Avenue South, New York, New York 10003. Eko or its affiliate maintains its
19 corporate headquarters at HaBarzel St 21, Tel Aviv, Yafo, Israel.

20 8. Eko claims to be the assignee and owner of the ’765 patent.

21 **JURISDICTION AND VENUE**

22 9. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331,
23 1338(a), 2201 and 2202 because the claims in this Complaint here are based on
24 Quibi’s non-infringement of the ’765 patent and lack of trade secret
25 misappropriation under the DTSA.

26 10. The Court has personal jurisdiction over Eko by virtue of its contacts
27 with this District, which include at least (a) conducting business meetings in the
28 District, including an informational meeting with Quibi, (b) sending an

1 infringement demand letter to Quibi, a resident of this District, (c) causing a Notice
2 of Complaint alleging patent infringement and misappropriation of trade secrets to
3 be sent to Quibi through the Apple App Store, and (d) promoting, selling, and
4 offering to sell content available on its digital platform to residents in this District.

5 11. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and
6 1391(c). Eko is subject to suit in this District by virtue of its commercial activities
7 in this District, and based on its specific contacts with Quibi that give rise to the
8 claims alleged in this complaint. Venue in this District also is proper because a
9 substantial part of the events giving rise to the claims in this action occurred in this
10 District. Quibi has its principal place of business in this District, its development
11 activities took place here, and Quibi sells and offers for sale the service targeted by
12 Eko from Quibi's corporate headquarters and place of business in Los Angeles.

13 **THE PATENT-IN-SUIT**

14 12. The '765 patent, entitled "Systems and Methods for Adaptive and
15 Responsive Video," states on its face that it issued on October 29, 2019. A true and
16 correct copy of the '765 patent is attached as Exhibit A.

17 **STATEMENT OF FACTS**

18 **A. BACKGROUND RE: QUIBI'S DEVELOPMENT**

19 13. Founded in 2018 by Jeffrey Katzenberg, Quibi was created to deliver
20 exclusive short-form premium video content to subscribers on a single-purpose
21 mobile platform. Quibi has engaged with top talent and directors to develop
22 content to be launched through the Quibi app.

23 14. Early in Quibi's development, Quibi's team of product designers and
24 engineers knew that it was important to enhance and optimize the customer-viewing
25 experience regardless of whether the phone was being held in "portrait" or
26 "landscape" mode, and that an opportunity existed to create new technology that
27 delivered a more elegant means of streaming video content that seamlessly adapted
28 to those changes in orientation.

1 15. With that task in mind, beginning in September 2018, Quibi undertook
2 development of an app feature known as Turnstyle for determining the orientation
3 of a user’s phone and seamlessly switching content and displaying it based on
4 orientation. This is one of the features Quibi displayed at CES, and the feature that
5 Eko’s letters and false statements to the press now target. As explained in the
6 following sections, Eko’s allegations are entirely without merit.

7 **B. QUIBI AND ITS FOUNDER’S LIMITED CONTACTS WITH EKO**

8 16. In late March 2017, Quibi’s founder, Mr. Katzenberg, held an
9 informational meeting with Eko’s CEO, Yoni Bloch. The purpose of the meeting
10 was for Eko to pitch Mr. Katzenberg for an investment in Eko, which by then had a
11 publicly available digital platform and content that was being actively marketed by
12 Eko.¹ The meeting was not conducted under a non-disclosure agreement or any
13 other expectation of confidentiality. No confidential information was requested or
14 provided to Mr. Katzenberg.

15 17. While Mr. Katzenberg barely remembers the meeting, an email sent on
16 March 23, 2017, by Mr. Bloch to Mr. Katzenberg reflects that Eko’s focus was in
17 pitching its choice-driven, interactive entertainment model, as discussed in an article
18 published in *The New Yorker* that Mr. Bloch forwarded via a link in his email.
19 Mr. Katzenberg ultimately thanked Mr. Bloch for his visit and decided not to invest.

20 18. In July 2018, Mr. Katzenberg formed Quibi based on an idea he had
21 generated several years earlier for a “quick bites” entertainment service. Quibi
22 developed its service and technology during 2018 and 2019 entirely independently
23 — without any input, reference to, or materials or information from Eko.

24 19. In February 2019, well after development of Quibi’s app was
25 underway, two Quibi employees held a breakfast meeting with Eko at a Beverly
26

27 ¹ As noted below, by that point, the U.S. Patent and Trademark office had
28 published the application for the Eko patent at issue in this lawsuit, mooted any
claim of confidentiality in that application’s material as a matter of law.

1 Hills restaurant. The purpose of the meeting was to get reacquainted and for Eko to
2 pitch unscripted video content to Quibi. The meeting was not conducted under a
3 NDA or other expectation of confidentiality, and no proprietary information or trade
4 secrets were exchanged. The participants indicated that they would keep in touch.

5 20. On March 28, 2019, two Quibi employees visited Eko's offices in New
6 York and demonstrated features of Quibi's platform. Again, no nondisclosure
7 agreement was in place, and no proprietary information or trade secrets were
8 exchanged. Following the New York meeting, on April 1, 2019, an Eko employee
9 emailed Quibi, "Loved your demo, and excited to see where you guys are headed."

10 21. Eko's recent demand letter to Quibi alleges that certain employees of
11 Quibi who previously worked at Snap obtained unspecified "trade secrets" and
12 "source code" for Eko's service while working at Snap. (Ex. B.) These allegations
13 are untrue and implausible on their face: The employees referenced by Eko are not
14 engineers or computer programmers, do not read source code, and would have had
15 no reason to request or obtain Eko code. In any event, no Quibi employee brought
16 or used any Eko trade secrets, computer code, or proprietary information to Quibi.

17 **C. QUIBI'S PUBLIC UNVEILING OF TURNSTYLE**

18 22. As stated above, Quibi's team of engineers designed, developed,
19 tested, and refined Quibi's app over many months starting in September 2018. On
20 March 8, 2019, Quibi applied for a patent for various aspects of its technology,
21 which has issued as U.S. Patent No. 10,554,926 ("Quibi's '926 patent").

22 23. Mr. Katzenberg and his team demonstrated key features of Quibi's app
23 to the world during the keynote address at CES on January 8, 2020. As the
24 presentation showed, Quibi's app presents an elegant delivery of content that is
25 responsive to changes in the orientation of a user's phone. The images excerpted
26 below from the CES keynote address show streaming content that changes based on
27 a change in the orientation of a user's phone:
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D. EKO’S MERITLESS ACCUSATIONS OF INFRINGEMENT

24. Two weeks after CES, on January 28, 2020, Eko’s attorneys sent a demand letter to Quibi, asserting that Quibi’s Turnstyle feature employs the technology claimed and disclosed in the ’765 patent. The letter demanded that “Quibi immediately stop the use of its Turnstyle technology” A copy of Eko’s January 28 letter is attached as Exhibit B.

25. On February 10, 2020, Quibi responded to the January 28 letter, explaining that Quibi’s Turnstyle feature does not use any invention claimed in the ’765 patent, and that Quibi’s technology was developed independently and not using any Eko trade secret. A copy of Quibi’s February 10 letter is attached as Exhibit C.

26. Also in early February 2020, Eko contacted a technology reporter for Recode.net and reiterated the false allegations that Quibi’s Turnstyle feature infringes Eko’s ’765 patent and was created using misappropriated trade secrets.

27. On or about March 2, 2020, Eko sent a notice to Apple Inc. alleging that Quibi’s app infringes Eko’s ’765 patent and was created using misappropriated trade secrets. A copy of the Notice of Complaint transmitted to Quibi by the Apple App Store is attached as Exhibit D.

1 33. Claim 1 of the '765 patent recites in part:
2 receiving video from a first video presentation;
3 receiving, simultaneously with the video from the first video presentation,
4 video from a second, different video presentation;
5 ...
6 providing a mapping of video presentations to media player window height
7 ranges and media player window width ranges; and
8 during playback of the video from the first video presentation:
9 determining that a media player window in which the video is playing has
10 been resized to change from first dimensions comprising a first height and a
11 first width to second, different dimensions comprising a second height and a
12 second width;
13 determining that the second height is included in a particular one of the
14 media player window height ranges;
15 determining that the second width is included in a particular one of the media
16 player window width ranges;
17 evaluating the mapping to determine that the second video presentation is
18 mapped to both the particular media player window height range and the
19 particular media player window width range; and
20 in response to the evaluating, seamlessly transitioning from the video from
21 the first video presentation to the video from the second video presentation
22 based on the change.

23 34. The patent application that became the '765 patent initially began
24 without these limitations. Eko sought broad claims that would cover transitioning
25 videos in response to changing the orientation of a smartphone, such as shown in
26 FIG. 2 of the '765 patent (illustrating a mobile device that is rotated).

27 35. But Eko's broad claims were repeatedly rejected by the U.S. Patent
28 Office. Eko then changed course and focused on transitioning video presentations

1 in response to resizable media player windows. This is a different embodiment
2 from FIG. 2 of the '765 patent, as the patent makes clear: “[R]ather than physically
3 rotating or repositioning the user device, the user changes the window size or state
4 (e.g., minimized, maximized, thumbnailed) of the media player **300** using an input
5 device (e.g., mouse, keyboard, touchscreen, etc.).” (Col. 5, lines 50-54.)

6 36. It is clear from the '765 patent and its path through the U.S. Patent
7 Office that the '765 patent's claims are inapplicable to Quibi's app and its Turnstyle
8 functionality. For example, Quibi's app does not determine whether a media player
9 window has been resized from first dimensions to second, different dimensions,
10 dimensions; evaluate a mapping to determine whether the second, different
11 dimensions are included within particular height and width ranges; and transition
12 between two different video presentations in response to evaluating the mapping, as
13 required by the claims of the '765 patent.

14 37. The Quibi app receives in a single stream a first video asset in portrait
15 mode and a second video asset in landscape mode, and selectively presents one of
16 those two video assets based on the orientation of the user's device. Quibi's app
17 does not provide a mapping of video presentations to media player window
18 height/width ranges, such as required by the '765 patent's claims.

19 38. These features of Turnstyle were displayed at CES and should have
20 been plain to Eko. Quibi's keynote presentation included a video demonstration in
21 which a user was shown rotating a mobile device, and the Quibi app was shown
22 transitioning from full-screen portrait-mode video to full-screen landscape-mode
23 video in response to the rotating of the device — not in response to any resizing of
24 a media player window.

25 39. In addition to the video shown during the keynote address, a demo
26 version of Quibi's app was made available to CES attendees. Users of the demo
27 version could personally rotate a mobile device running Quibi's app and observe
28 that the app transitions from full-screen portrait-mode video to full-screen

1 landscape-mode video in response to the rotating, not in response to any “resizing”
2 of a media player window. Because Eko claims to have attended CES and seen
3 Quibi’s presentation of features of Quibi’s app, there is no good-faith basis for Eko
4 to allege that Quibi infringes the claims of the ’765 patent.

5 40. Quibi’s app also does not infringe other limitations of the ’765 patent
6 claims stemming from determining whether a media player window has been
7 resized.

8 41. For example, Quibi’s app does not perform “during playback of the
9 video from the first video presentation”, “determining that the second height [or
10 second width] is included in a particular one of the media player window height [or
11 width] ranges”, or an equivalent thereto. The Quibi app features no such
12 determination.

13 42. Quibi’s app also does not perform “during playback of the video from
14 the first video presentation”, “evaluating the mapping to determine that the second
15 video presentation is mapped to both the particular media player window height
16 range and the particular media player window width range”, or an equivalent
17 thereto. No such evaluating occurs in Quibi’s. Instead, the Quibi app queries the
18 orientation of a mobile device to determine which of two video assets to present.

19 43. Quibi’s app also does not perform “during playback of the video from
20 the first video presentation”, “in response to the evaluating, seamlessly transitioning
21 from the video from the first video presentation to the video from the second video
22 presentation based on the change”, or an equivalent thereto. In the Quibi app, a
23 single stream is received; and, as was obvious from Quibi’s CES demonstration,
24 transitioning from presenting a first video asset to presenting a second video asset
25 occurs in response to a *change in orientation* of a mobile device. It does not occur
26 in response to any “evaluating the mapping”. No such evaluating ever occurs.

27 44. For at least the reasons above, Quibi has not infringed and does not
28 infringe any claim of the ’765 patent.

1 50. Contrary to Eko’s allegations, Quibi has not used or misappropriated
2 any Eko trade secret. Quibi’s app was developed independently by Quibi’s
3 engineers without reference to or use of any trade secret of Eko. Quibi’s app is the
4 product of many months of effort in designing, engineering, testing and refining the
5 app. In contrast to the baseless allegations in Eko’s January 28 letter, the
6 development of Quibi’s app was well underway at the time Quibi’s employees
7 agreed to an informational meeting with Eko.

8 51. Also contrary to the unsubstantiated allegations in the January 28
9 letter, no former employee of Snap brought documents or confidential information
10 about Eko to Quibi. And no Quibi employee or executive received trade secrets
11 from Eko or other proprietary information that would support a claim for
12 misappropriation of trade secrets under the DSTA or CUTSA.

13 52. The DTSA and CUTSA require Eko to identify with specificity the
14 alleged trade secrets that it claims Quibi has misappropriated. Eko has not done so.
15 Instead, Eko has alleged generally that Quibi employees received unspecified
16 “proprietary information” from Eko while at Quibi. Eko further alleges that, years
17 before joining Quibi, two Quibi employees received unidentified “source code”
18 from Eko, an allegation that is implausible on its face because, among other
19 reasons, the identified employees are not engineers or computer programmers, do
20 not have technical backgrounds, and do not read code.

21 53. The ’765 patent was published on March 2, 2017, at which time the
22 alleged invention claimed in the patent and its associated background disclosures
23 became publicly known (to the extent they were not already publicly known) and
24 therefore could not be a trade secret. The Eko media player and promotional
25 materials about it also were publicly available, and not a trade secret. Nothing in
26 Eko’s letter demands or statements to the media suggests that any of the
27 information that Eko claims was “disclosed” to Quibi was a trade secret.
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to 18 U.S.C. § 1836(b)(3)(D) and Cal. Civ. Code § 3426.4.

I. Finding this case to be exceptional under 35 U.S.C. § 285 and awarding Quibi its costs and reasonable attorney fees; and

J. Awarding Quibi any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Quibi hereby demands trial by jury on all issues raised by the Complaint.

Dated: March 9, 2020

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
Michael A. Jacobs

Attorneys for Plaintiff
QUIBI HOLDINGS, LLC

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