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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

TREEMO, INC. a Washington
Corporation,

Plaintiff,

v.

FLIPBOARD, INC., a California
Corporation,

Defendant.

CASE NO.

**DECLARATORY JUDGMENT
OF NON-INFRINGEMENT OF
TRADEMARK RIGHTS**

JURY TRIAL DEMANDED

Plaintiff Treemo, Inc. for its Complaint against Defendant Flipboard, Inc., states as follows:

1. Plaintiff Treemo, Inc. is a Delaware corporation with its principal place of business at 101 Yesler Way #207; Seattle, Washington 98104.

2. Defendant Flipboard, Inc. is a Delaware corporation with a principal place of business and registered agent at 818 Emerson St.; Palo Alto, CA 94301.

3. This Court has jurisdiction of this civil action for Declaratory Judgment of non-infringement of trademark rights under the Declaratory

1 Judgments Act, 28 U.S.C. §§ 2201 and 2202, and the Lanham Act, 15 U.S.C.
2 §1125(a) and (c).

3 4. Venue is proper in this Court under 28 U.S.C. § 1391, as Defendant
4 Flipboard, Inc. has sent e-mail and letters, and made telephone calls by its agent,
5 attorney John Slafsky of Wilson Sonsini Goodrich & Rosati, to Plaintiff Treemo,
6 Inc. and its counsel here in this District, asserting likely confusion between
7 Treemo, Inc.'s FLOWBOARD mark and Flipboard, Inc.'s FLIPBOARD mark
8 and threatening legal action against Treemo, Inc., thereby creating an actual
9 controversy between the parties and causing harm in this District by way of these
10 threats of trademark infringement and unfair competition.

11
12 **DECLARATORY JUDGMENT FOR NO FEDERAL**
13 **TRADEMARK INFRINGEMENT**

14 5. Plaintiff Treemo, Inc. incorporates and re-alleges the facts and
15 statements recited in paragraphs 1-4 above.

16 6. Plaintiff Treemo, Inc. markets a software product for the creation of
17 side-scrolling presentations with images, text, video links, and photo galleries.
18 Plaintiff Treemo, Inc. markets its product online using the trademark
19 FLOWBOARD.

20 7. Plaintiff Treemo, Inc. applied for federal trademark registration of its
21 FLOWBOARD mark, serial no. 85699055, on August 9, 2012. During its
22 examination, the Trademark Office "found no conflicting marks that would bar
23 registration." Accordingly, the application was allowed and published for
24 opposition on February 26, 2013. No opposition was filed, and Treemo's
25 application was allowed on April 23, 2013.

1 8. Defendant Flipboard, Inc. markets a software product that brings
2 together world news and social news in a magazine format designed for a
3 smartphone or a tablet.

4 9. Defendant Flipboard, Inc. is the owner of trademark registration
5 number 4,179,857; registered on July 24, 2012 for the FLIPBOARD mark. The
6 FLIPBOARD mark is registered for use in connection with several goods
7 including, *inter alia*, “online social networking services; providing a social
8 networking website for entertainment and social communications purposes;
9 computer services, namely, providing data, information and updates on topics of
10 interest to users of an on-line community, namely, social networking
11 information.”

12 10. On information and belief, despite Defendant Flipboard, Inc.’s
13 material representations to the Trademark Office, Flipboard, Inc. does not now
14 nor has it ever used the FLIPBOARD mark to provide a social networking
15 website for entertainment or social communication purposes, nor does it use the
16 FLIPBOARD mark in connection with many of the goods and services as it
17 represented to the Trademark Office.

18 11. There is no reasonable likelihood of confusion, mistake, or error in
19 the marketplace for ordinary consumers who are seeking products of either
20 Plaintiff Treemo, Inc. or Defendant Flipboard, Inc.

21 12. FLOWBOARD and FLIPBOARD are distinct in sound, appearance,
22 and connotation as applied to their respective goods. Although the ending
23 --BOARD portions are the same, that portion comprises a word which has become
24 generically used in association with tablet computing devices. For example, a
25 recent search of the Trademark Office records revealed approximately 591
26 registrations or pending applications for marks which incorporate some form of
27 the word BOARD in the same international class as Defendant Flipboard, Inc.’s
28

1 mark. In addition, the initial portions of the respective marks FLOW versus FLIP
2 connote substantially different images in the minds of ordinary consumers.

3 13. On information and belief, neither Treemo nor Flipboard know of
4 any single *bona fide* instance of confusion between the FLIPBOARD mark for
5 Flipboard's product and the FLOWBOARD mark for Treemo's product.

6 14. Plaintiff Treemo, Inc. is entitled to a Declaration and Judgment that
7 its FLOWBOARD mark does not infringe any of Defendant Flipboard, Inc.'s
8 rights in any of its trademarks.

9 **WHEREFORE, PLAINTIFF PRAYS THAT:**

10 A. An Order be entered declaring that Treemo, Inc.'s FLOWBOARD
11 mark is not confusingly similar to Flipboard's mark and may be used without
12 interference from Flipboard; and that

13 B. Such further and other relief be granted, including costs of suit, as
14 may be just and equitable in the circumstances.

15
16 **JURY DEMAND**

17 Plaintiff Treemo, Inc. demands a trial by jury for all issues so triable.

18
19 Dated July 11, 2013

Respectfully submitted,

20
21 /s/ John Whitaker

John Whitaker, WSBA No: 28868

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