

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SEARCHMETRICS INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-11032 (CSS)

Searchmetrics Inc. and Searchmetrics  
GmbH,

Plaintiffs,

v.

BrightEdge Technologies, Inc.,

Defendant

Adv. No. \_\_\_\_\_ (CSS)

**COMPLAINT AND CLAIM OBJECTION**

Searchmetrics Inc., the debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”) and Searchmetrics GmbH (“**GmbH**” and together with the Debtor, the “**Plaintiffs**” or “**Searchmetrics**”) for their complaint (the “**Complaint**”) against defendant BrightEdge Technologies, Inc. (“**BrightEdge**”), and objects to any claim asserted by BrightEdge Technologies, Inc. and alleges as follows:

**PRELIMINARY STATEMENT**

This Complaint covers four separate but related areas of controversy after providing general background information. First, the Complaint addresses the Debtor’s affirmative claims against BrightEdge following BrightEdge’s concerted and tortious acts directed at Searchmetrics’

---

<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Searchmetrics Inc. (1635). The mailing address for the Debtor, solely for purposes of notices and communications, is c/o EisnerAmper LLP, 750 Third Avenue, New York, New York 10017, *Attn:* Wayne P. Weitz.

and its products, which have continued even after the Debtor sent a cease and desist letter to BrightEdge (First through Eighth Causes of Action). Second, the Complaint addresses the trade secret misappropriation and conspiracy claims BrightEdge has asserted against the Debtor and seeks declaratory relief regarding the controversies related to these claims (Ninth through Thirteenth Causes of Action). Third, the Complaint addresses the patent infringement claims BrightEdge has asserted against Searchmetrics related to five software patents and seeks declaratory relief regarding the controversies related to these claims concerning patent invalidity, non-infringement, and an absence of any damages or other basis for relief (Fourteenth through Twenty-Sixth Causes of Action). Fourth, the Complaint objects to BrightEdge's claims, requests estimation of BrightEdge's claims, and seeks a setoff related to the various claims (Twenty-Seventh through Twenty-Ninth Causes of Action).<sup>2</sup>

### **THE PARTIES AND JURISDICTION**

1. Plaintiff Searchmetrics Inc. is a Delaware corporation. It is a wholly-owned subsidiary of GmbH.

2. Plaintiff Searchmetrics GmbH is a limited liability entity organized under the laws of Germany. GmbH is a software company based in Berlin.

3. Searchmetrics provides search analytics, digital marketing software, and search engine optimization ("SEO") products and services. Searchmetrics is the pioneer and leading global enterprise platform for SEO. Searchmetrics licenses software as a service (SAAS) that helps companies develop and execute long-term digital marketing and content strategies.

---

<sup>2</sup> Reference is made to the *Declaration of Wayne P. Weitz in Support of Chapter 11 Petition and First Day Pleadings* (the "**First Day Declaration**"), which has been filed contemporaneously herewith and is incorporated herein as if set forth in full. The First Day Declaration contains information relating to the events and circumstances leading to this filing, as well as history of the BE Litigation (as defined below).

Searchmetrics Inc. licenses the SAAS platform from GmbH and licenses the SAAS platform to companies in the U.S. and other countries.

4. Defendant BrightEdge Technologies, Inc. is a Delaware corporation providing SEO services in the United States.

5. Whenever in this Complaint an act or omission of BrightEdge is alleged, this allegation shall be deemed to include an allegation that BrightEdge acted through its authorized agents, partners, officers, directors or employees and that such act or omission was authorized by the officers and directors of the corporation, partnership or company.

6. On March 4, 2014, BrightEdge sued Searchmetrics GmbH and Searchmetrics Inc. in the United States District Court for the Northern District of California (the “**Patent Lawsuit**”) for allegedly infringing five United States patents held by BrightEdge. Case No. 3:14-cv-01009-HSG.

7. On November 26, 2013, BrightEdge commenced an action in the Santa Clara County Superior Court for the State of California (the “**State Court Lawsuit**”) against one of its former employees, Gabriel Martinez, who was an employee of the Debtor at the time. Case No. 1:13-cv-256794. On April 21, 2015, BrightEdge amended its lawsuit against Mr. Martinez. BrightEdge’s amended complaint added Searchmetrics Inc. as a defendant, as well as two additional individuals, Shaun Siler and Cullen McAlpine, both of whom at the time were Debtor employees. The only claims against Searchmetrics Inc. that survived the pleading stage are misappropriation of trade secrets and conspiracy. On May 26, 2015, Searchmetrics Inc. filed a cross-complaint against BrightEdge, its founder and CEO Jim Yu, and its Vice President of Business Development Tom Ziola for trade libel, interference with prospective economic

advantage, unfair competition, and false advertising.<sup>3</sup> There is no trial date or discovery deadline set in the State Court Lawsuit.<sup>4</sup>

8. The Patent Lawsuit and the State Court Lawsuit, together with Debtor's counterclaim, are collectively referred to herein as the "BE Litigation."

9. This Court has jurisdiction over this adversary proceeding by virtue of 28 U.S.C. § 1334(b) and pursuant to 28 U.S.C. § 157(a), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware. The relief requested herein arises under title 11 and relates to the above-captioned Chapter 11 Case.

10. In accordance with rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (as may be amended, the "**Local Rules**"), Searchmetrics consents to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter a final order or judgment absent the consent of the parties.

11. This adversary proceeding is a "core" proceeding as defined in 28 U.S.C. § 157(b)(2)(A), (B), (C), and (O).

12. This is an action pursuant to Rule 3007, and 7001, *et seq.* of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), section 502(c) of the Bankruptcy Code, and 28 U.S.C. § 2201 (the "**Declaratory Judgment Act**").

13. Venue in this District is properly laid pursuant to 28 U.S.C. § 1409.

---

<sup>3</sup> Jim Yu and Tom Ziola are not named defendants in this adversary proceeding.

<sup>4</sup> Shaun Siler and Gabriel Martinez each filed Chapter 13 bankruptcy petitions in fall 2016 in separate divisions of the United States Bankruptcy Court for the Northern District of California. This adversary proceeding is not stayed by the automatic stay invoked in their individual chapter 13 cases.

### **NATURE OF ACTION**

14. On May 8, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) thereby initiating its Chapter 11 Case.

15. The Debtor continues in possession of its assets and is operating its business as a debtor-in-possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

### **GENERAL ALLEGATIONS RELATED TO BRIGHTEDGE’S TORTIOUS CONDUCT**

16. In or about October 2013, representatives of Searchmetrics met in Palo Alto with representatives of BrightEdge to discuss a possible merger of Searchmetrics and BrightEdge, or, alternatively, an acquisition of Searchmetrics by BrightEdge. In the meeting, Searchmetrics disclosed to BrightEdge information regarding Searchmetrics’ revenues, business model, number of employees, number of customers, funds raised by Searchmetrics and its growth plans. Searchmetrics explained the structure and function of its research module, which consists of a large database with aggregated rankings. Among other things, Searchmetrics disclosed how it aggregates and counts its data to determine keyword rankings. Searchmetrics also discussed the difference between Searchmetrics Suite and Searchmetrics Essentials, an entry level product. Ultimately, Searchmetrics decided against a merger with, or acquisition by, BrightEdge.

17. Unbeknownst to Searchmetrics at the time, on or about October 1, 2013, BrightEdge willfully, without justification, and without privilege, caused to be communicated to AirBnB that BrightEdge has “had a windfall of searchmetrics [sic] customers reach out to us over the last week with the recent change in the Google Algorithm. With this recent change, they have lost the ability to measure their revenue and traffic efforts in searchmetrics [sic] effectively and are turning to BrightEdge for help.”

18. BrightEdge's statements disparaged Searchmetrics' products and services by falsely indicating that, due to a change in the Google search algorithm, Searchmetrics could no longer measure traffic and revenue effectively. It is very important for customers to understand how much traffic and revenue their SEO efforts produce. Only by measuring traffic and revenue can an SEO platform like Searchmetrics show the results of its work in optimizing content or links. If an SEO platform loses the ability to measure traffic and revenue, one of the major reasons for a customer to utilize that platform is eliminated.

19. BrightEdge's statements to AirBnB were false. Searchmetrics does not measure traffic and revenue with its technology. Searchmetrics uses third party application program interfaces ("API") from Google Analytics API or Adobe Analytics API. Searchmetrics integrates with these large partners to aggregate traffic and revenue via their APIs for Searchmetrics' customers.

20. On or about March 14, 2014, BrightEdge released its "Data Cube," a data repository that the company stated: "consists of billions of pieces of data, including content, rich media, search terms, and social signals – all at Internet scale – to provide companies with the insights they need to make strategic business decisions that drive revenue."

21. In or about March 2014, BrightEdge willfully, without justification, and without privilege caused to be communicated to WebMetro a spreadsheet stating that for "Search Metrics" [sic], the number of "Keywords Tracked" is "500,000,000" and the number for "Bright Edge" [sic] is "2,000,000,000."

22. BrightEdge's statements disparaged Searchmetrics' products and services by falsely indicating that BrightEdge's data contained many times more keywords than Searchmetrics' data. A keyword is a search query that users employ to obtain search results. The user obtains

paid ads and organic results from Google in response to the keyword query. If an SEO provider has more keywords, it has more rankings and, therefore, more knowledge.

23. BrightEdge's statements to WebMetro comparing the number of keywords in its data with Searchmetrics' data were false. As BrightEdge stated in its release of Data Cube, the "billions of pieces of data" that BrightEdge claims are contained in its Data Cube do not consist of keywords alone but a variety of data that BrightEdge declines to identify specifically.

24. Searchmetrics is informed and believes and thereon alleges that, based on this and other false statements by BrightEdge regarding Searchmetrics' products and services, WebMetro entered into a contract with BrightEdge rather than Searchmetrics.

25. In or about May 2014, BrightEdge willfully, without justification, and without privilege caused to be communicated to Jet2.com Limited that Searchmetrics uses a "Num = 100" approach to collect ranking data.

26. BrightEdge's statements disparaged Searchmetrics' products and services by falsely indicating that Searchmetrics uses what is referred to as "num=100" crawling, which produces 100 results, rather than page-by-page crawling, which is how the average user will see results from a keyword search using a search engine like Google. The goal of an SEO platform is to closely simulate what the user sees to give an unbiased picture to customers how search engines rank their content. Crawling using the num=100 parameter can produce different results compared to regular crawling and less data.

27. BrightEdge's statements to Jet2.com Limited were false. Searchmetrics has never used "num=100" crawling and never indicated that it will or would use "num=100" crawling.

28. Searchmetrics is informed and believes and thereon alleges that, based on this and other false statements by BrightEdge regarding Searchmetrics' products and services, Jet2.com

Limited entered into a contract with BrightEdge for SEO products and services rather than Searchmetrics.

29. In or about December 2014, BrightEdge willfully, without justification, and without privilege caused to be communicated by email to the “Zappos Team” that “[o]ur discovery spans billions of keywords vs. the 500M or less in Search Metrics [sic].”

30. As described above, BrightEdge’s statements disparaged Searchmetrics’ products and services by falsely indicating that BrightEdge’s data contained many times more keywords than Searchmetrics’ data.

31. As described above, BrightEdge’s statements to Zappos comparing the number of keywords in its data with Searchmetrics’ data were false.

32. In or about December 2014, BrightEdge also willfully, without justification, and without privilege caused to be communicated by email to the “Zappos Team” that “SearchMetrics [sic] uses ‘Num 100’ queries in google to collect ranking data. This query forces Google to return a single SERP result with 100 listings. The problem with this type of data grab is that it eliminates about 40% of universal listings and it assumes rankings 1-10 are page one, 11-20 page 2 etc.” The term “SERP” refers to “search engine results page.” If a normal user queries a keyword in Google, the SERP has 10 organic results and some paid results. If a keyword query in Google uses the num=100 parameter, the SERP has around 100 results. The num=100 parameter changes the output from Google on the SERP.

33. As described above, BrightEdge’s statements disparaged Searchmetrics’ products and services by falsely indicating that Searchmetrics uses “num=100” crawling rather than page-by-page crawling.



34. As described above, BrightEdge's statements to Zappos attributing "num=100" crawling to Searchmetrics were false.

35. BrightEdge's statements regarding both keywords and crawling disparaged Searchmetrics' products and services by falsely indicating that Searchmetrics' platform has less and lower quality data. The amount and quality of data is a key element for an SEO platform. The decisions of customers to purchase SEO products and services are heavily based on this consideration.

36. On or about March 14, 2014, BrightEdge and Searchmetrics participated in a moderated discussion at the Rockstar Conference in San Jose. The Rockstar Conference is an annual and exclusive event where large companies with popular brands that represent the target customer group for SEO providers are invited. During the discussion, BrightEdge stated that it has "billions of keywords" in its data set. BrightEdge also commented that it does not look at "all 100 results at the same time because we know that's not accurate."

37. Searchmetrics is informed and believes and thereon alleges that BrightEdge's statements claimed the amount and quality of BrightEdge's data were superior to Searchmetrics' data and were so understood by those who heard the statements.

38. As described above, BrightEdge's statements at the Rockstar Conference regarding keywords and crawling disparaged Searchmetrics' products and services by falsely indicating that Searchmetrics has less and lower quality data than BrightEdge.

39. As described above, BrightEdge's statements at the Rockstar Conference were false.

40. On or about February 11, 2015, Searchmetrics wrote to BrightEdge regarding false and defamatory statements made by BrightEdge, including, but not limited to, the statements to

AirBnB, Jet2.com Limited, Zappos and WebMetro described above. Searchmetrics requested that BrightEdge stop making unlawful statements and make corrective statements to the affected parties.

41. On or about February 27, 2015, BrightEdge responded that, “[o]n information and belief, BrightEdge denies any and all allegations and conclusions expressed in such letter and further rejects any and all demands made upon BrightEdge in such letter.”

42. In or about February 2015, BrightEdge willfully, without justification, and without privilege caused to be communicated a Power Point presentation to Performics that included a slide stating that the “Keyword Discovery” feature from “Brightedge” [sic] includes “3+ billion Keywords” and “Search Metrics” includes only “100 Million.”

43. As described above, BrightEdge’s statements to Performics regarding keywords disparaged Searchmetrics’ products and services by falsely indicating that Searchmetrics has less and lower quality data.

44. BrightEdge’s statements to Performics were false.

45. In or about March 2015, BrightEdge, without justification, and without privilege caused to be communicated in telephone calls to schuh, a current Searchmetrics customer, that BrightEdge has 5 times more keywords than the nearest competitor.

46. BrightEdge’s statement contrasted unfavorably the amount of Searchmetrics’ data with the amount of BrightEdge’s data and was so understood by schuh.

47. BrightEdge’s statement to schuh was false.

48. Searchmetrics is informed and believes and thereon alleges that there are many other instances as yet unknown to Searchmetrics where BrightEdge has made or caused to be made false and disparaging statements regarding Searchmetrics’ products and services to existing and

prospective Searchmetrics customers. Searchmetrics is further informed and believes and thereon alleges that, to the present day, BrightEdge has continued to make or caused to be made false statements to Searchmetrics' customers, potential customers and the business community disparaging the quantity and quality of Searchmetrics' data and continue to make false statements to individuals, entities and the public regarding the claimed superiority of the quantity and quality of BrightEdge's data.

**GENERAL ALLEGATIONS RELATED TO  
BRIGHTEDGE'S TRADE SECRET CONTENTIONS**

49. In early 2013, Searchmetrics Inc. was actively working to grow its U.S. sales team, which, at the time, consisted of approximately three people: two on the East Coast and one on the West Coast, Shaun Siler.

50. Searchmetrics Inc. attempted to grow its U.S. sales team using its own internal efforts and using several third-party recruiting firms. In or around March 2013, a third-party recruiting firm informed Searchmetrics Inc. of a potential candidate with experience in the field, including employment by Hearst Media Group and BrightEdge. This candidate was Gabriel Martinez. The third-party recruiter informed Searchmetrics Inc. that Mr. Martinez had informed it that there had been a lot of upheaval in the management and staffing at BrightEdge, that he was originally brought on by a sales manager he really liked at BrightEdge, that the sales manager he liked left BrightEdge, and that he would prefer to work in a more energetic environment where he could come to work excited.

51. Shortly thereafter, Mr. Martinez began interviewing with Searchmetrics Inc.

52. On or about April 8, 2013, Mr. Martinez provided notice to BrightEdge that he would be ending his employment there.

53. On or about April 22, 2013, Mr. Martinez joined Searchmetrics Inc. as a Senior Sales Manager, subject to the terms of a written agreement in which he expressly confirmed that he “understood and agreed that by accepting [his offer of employment, [he is] representing to [Searchmetrics Inc.] that [his] performance will not breach any other agreement to which [he is] a party....[He is] not to bring with [him] to [Searchmetrics Inc.], or use or disclose to any person associated with [Searchmetrics Inc.], any confidential or proprietary information belonging to any former employer or other person or entity with respect to which [he] owe[s] an obligation of confidentiality under any agreement or otherwise.”

54. On or about May 4, 2013, BrightEdge sent a letter to Mr. Martinez, which was forwarded to Searchmetrics Inc., claiming he improperly downloaded BrightEdge confidential and proprietary information, that he had been caught, and that “[a]ll of the ...records ha[d] been preserved.” Therefore, the letter stated “there [w]as absolutely no use in [Mr. Martinez] attempting to delete the [information] now or dispos[e] of or eras[e] any data on any electronic device.” On information and belief, BrightEdge has since lost or destroyed this material it claimed to have preserved and supported its position.

55. On or about May 7, 2013, BrightEdge sent a letter to Searchmetrics Inc., advising Searchmetrics that Mr. Martinez was formerly employed at BrightEdge, explaining the BrightEdge had concerns regarding Mr. Martinez, and assuring Searchmetrics that BrightEdge did not accuse Searchmetrics of any wrongdoing. Searchmetrics Inc. replied to the BrightEdge confirming it did not believe it possessed any non-public information about BrightEdge.

56. On or about September 23, 2013, Cullen McAlpine joined Searchmetrics Inc. as a Senior Sales Manager, subject to the terms of a written agreement, which contained the same substantive terms regarding confidential and proprietary information of former employers and

other third parties as the written agreement between Mr. Martinez and Searchmetrics Inc. Mr. McAlpine is a former employee of BrightEdge.

57. Shortly after the merger and acquisition discussions mentioned above ended, BrightEdge sued Mr. Martinez on November 26, 2013.

58. Seventeen months later, on April 21, 2015, BrightEdge amended its complaint. BrightEdge's operative complaint asserts that Searchmetrics Inc. misappropriated BrightEdge's alleged compilation trade secrets that Mr. Martinez and Mr. McAlpine are alleged to have brought from BrightEdge to Searchmetrics Inc. BrightEdge's operative complaint asserts that Searchmetrics Inc. conspired with Messrs. McAlpine, Martinez and Siler to misappropriate BrightEdge trade secrets.

59. Searchmetrics Inc. has not misappropriated any BrightEdge trade secret. Even if the material in question is a trade secret and even if Searchmetrics Inc. possessed or used the material, Searchmetrics Inc. has not caused BrightEdge any legally recognizable damage based on its conduct. Further, Searchmetrics Inc. has not conspired with Mr. Martinez, Mr. Siler, or Mr. McAlpine to misappropriate any alleged BrightEdge trade secret or to commit any other tort. Further, none of the alleged BrightEdge trade secrets are trade secrets pursuant to California law. Accordingly, an actual and justiciable controversy exists between Searchmetrics Inc. and BrightEdge as to each of these points.

60. Searchmetrics Inc., therefore, requests a judicial determination and declaration that the alleged trade secret compilations are not trade secrets pursuant to California law, that Searchmetrics Inc. has not misappropriated any BrightEdge trade secret alleged against it, that Searchmetrics Inc. has not caused BrightEdge any legally recognizable damage based on its

conduct, and that Searchmetrics Inc. has not conspired with Mr. Martinez, Mr. Siler, or Mr. McAlpine to misappropriate any alleged BrightEdge trade secret or to commit any other tort.

61. Searchmetrics Inc. is informed and believes, and based thereon alleges that BrightEdge brought and/or is maintaining its trade secret misappropriation claims against Searchmetrics Inc. in the State Court Lawsuit in bad faith, which entitles Searchmetrics Inc. to recover from BrightEdge the attorneys' fees and costs incurred defending against the claims.

**GENERAL ALLEGATIONS RELATED TO  
BRIGHTEDGE'S PATENT CONTENTIONS**

62. Searchmetrics developed and began selling search engine optimization software known as the Searchmetrics' Suite product ("**Searchmetrics Suite**") in the United States beginning as early as June 8, 2008. Since that time, Searchmetrics released several versions of Searchmetrics Suite (version 4.3 of Searchmetrics Suite available as of August 14, 2009 and version 5.2 of Searchmetrics Suite available as of February 1, 2010). These versions of Searchmetrics Suite were publically available prior to the filing date of BrightEdge's patents discussed below.

63. On its face, U.S. Patent No. 8,135,706 (the "**706 patent**") titled "Operationalizing Search Engine Optimization" states that it was issued by the United States Patent and Trademark Office ("**PTO**") on March 13, 2012, and that it was assigned to BrightEdge.

64. On its face, U.S. Patent No. 8,478,700 (the "**700 patent**") titled "Opportunity Identification and Forecasting for Search Engine Optimization" states that it was issued by the PTO on July 2, 2013 and that it was assigned to BrightEdge.

65. On its face, U.S. Patent No. 8,478,746 (the "**746 patent**") titled "Operationalizing Search Engine Optimization" states that it was issued by the PTO on July 2, 2013 and that it was assigned to BrightEdge.

66. On its face, U.S. Patent No. 8,577,863 (the “**’863 patent**”) titled “Correlating Web Page Visits and Conversions with External References” states that it was issued by the PTO on November 5, 2013 and that it was assigned to BrightEdge.

67. On its face, U.S. Patent No. 8,671,089 (the “**’089 patent**”) titled “Correlating Web Page Visits and Conversions with External References” states that it was issued by the PTO on March 11, 2014 and that it was assigned to BrightEdge.

68. On information and belief, BrightEdge claims to be the owners of all right, title, and interest in the ’706, ’700, ’746, ’863, and ’089 patents (collectively, the “**Patents-in-Suit**”), including the right to assert all causes of action arising under those patents and the right to any remedies for infringement.

69. On March 4, 2014, BrightEdge filed the Patent Lawsuit for infringement of the ’706, ’700, ’746 and ’863 patents. On March 18, 2014, BrightEdge filed an amended complaint adding allegations of infringement of the ’089 patent and reasserting its allegations related to the ’706, ’700, ’746 and ’863 patents, alleging that Searchmetrics has infringed or is infringing one or more claims of the Patents-in-Suit and that the Patents-in-Suit are valid.

70. In the March 4, 2014 complaint in the Patent Lawsuit, BrightEdge alleged that it had suffered irreparable injury due to Searchmetrics’ alleged infringement, and requested a permanent injunction and an award of damages against Searchmetrics. For a permanent injunction to be awarded, a plaintiff must establish (1) it suffered irreparable injury; (2) remedies available at law such as monetary damages are inadequate to compensate for the injury; (3) considering the balance of hardships between plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction. BrightEdge cannot establish any of these required elements and it cannot establish any damages caused by Searchmetrics.

71. Searchmetrics does not infringe the Patents-in-Suit. Additionally, the Patents-in-Suit are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112. Accordingly, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether Searchmetrics infringes any valid claim of the Patents-in-Suit. Absent a declaration of non-infringement and/or invalidity, BrightEdge will continue to wrongly assert the Patents-in-Suit against Searchmetrics, and thereby cause Searchmetrics harm.

72. Searchmetrics, therefore, requests a judicial determination and declaration that Searchmetrics has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any claim of the Patents-in-Suit, that each claim of the Patents-in-Suit is invalid, and that Searchmetrics has caused no harm and owes no damages or other relief to BrightEdge relating to the alleged infringement.

### **FIRST CAUSE OF ACTION**

#### **(Damages for Trade Libel – Searchmetrics Inc. against BrightEdge)**

73. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 72 above, as if fully set forth herein.

74. As alleged above, BrightEdge caused to be made statements that disparaged Searchmetrics Inc.'s ability to measure revenue and traffic and the quantity and quality of Searchmetrics Inc.'s data.

75. As alleged above, BrightEdge caused these statements to be made to employees of AirBnB, Jet2.com Limited, WebMetro, Zappos, and Performics, attendees at the 2014 Rockstar conference, and employees of other entities.

76. BrightEdge's statements were statements of fact and were false.



77. Searchmetrics Inc. is informed and believes and thereon alleges that BrightEdge knew that these statements were false or acted with reckless disregard of the truth or falsity of these statements.

78. Searchmetrics Inc. is informed and believes and thereon alleges that BrightEdge knew or should have recognized that Searchmetrics Inc.'s customers and prospective customers might act in reliance on these statements causing Searchmetrics Inc. financial loss.

79. As a proximate result of the statements that BrightEdge caused to be made, Searchmetrics Inc.'s prospective customers have been deterred from buying or continuing to buy Searchmetrics Inc.'s above-described products and services and from otherwise dealing with Searchmetrics Inc. and Searchmetrics Inc. has thereby suffered injury to its business and pecuniary loss in the sum of at least \$1,344,000.00.

## **SECOND CAUSE OF ACTION**

### **(Permanent Injunction for Trade Libel – Searchmetrics against BrightEdge)**

80. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 79 above, as if fully set forth herein.

81. As alleged above, BrightEdge caused to be made statements that disparaged Searchmetrics' ability to measure revenue and traffic and the quantity and quality of Searchmetrics' data.

82. As alleged above, BrightEdge caused these statements to be made to employees of AirBnB, Jet2.com Limited, WebMetro, Zappos, and Performics, attendees at the 2014 Rockstar conference, and employees of other entities.

83. BrightEdge's statements were statements of fact and were false.

84. Searchmetrics is informed and believes and thereon alleges that BrightEdge knew that these statements were false or acted with reckless disregard of the truth or falsity of these statements.

85. Searchmetrics is informed and believes and thereon alleges that BrightEdge knew or should have recognized that Searchmetrics' customers and prospective customers might act in reliance on these statements causing Searchmetrics loss.

86. As a proximate result of the statements that BrightEdge caused to be made, Searchmetrics' prospective customers have been deterred from buying or continuing to buy Searchmetrics' above-described products and services and from otherwise dealing with Searchmetrics.

87. Searchmetrics is informed and believes and thereon alleges that BrightEdge's unlawful acts as described above are a serious and continuing threat to Searchmetrics' reputation, goodwill, and financial health. If BrightEdge is allowed to continue its wrongful acts, Searchmetrics will suffer further immediate and irreparable injury, loss, and damage.

88. Searchmetrics is further informed and believes and based thereon alleges that, in the absence of a permanent injunction as prayed for below BrightEdge and its agents, will continue to violate Searchmetrics' rights by engaging in the conduct alleged above.

### **THIRD CAUSE OF ACTION**

#### **(Damages for Interference with Prospective Economic Advantage – Searchmetrics Inc. against BrightEdge)**

89. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 88 above, as if fully set forth herein.

90. At various times during the period from October 2013 through March 2015, AirBnB, Jet2.com Limited, Zappos, WebMetro and Performics were in discussions with

Searchmetrics Inc. to utilize its SEO products and services. Based on these discussions, it was reasonably probable that these companies would enter into contracts with Searchmetrics Inc. to utilize its SEO platform.

91. Searchmetrics Inc. is informed and believes and thereon alleges that BrightEdge knew of the above-described relationships existing between Searchmetrics Inc. and these companies, in that BrightEdge inquired of, or was informed by, such companies that they were in discussions with Searchmetrics Inc.

92. In telephone calls, meetings, emails, Power Point presentations and spreadsheets, as alleged above, BrightEdge falsely represented to AirBnB, Jet2.com Limited, Zappos, WebMetro and Performics that Searchmetrics Inc. had lost the ability to effectively measure traffic and revenue and/or that the quantity and quality of Searchmetrics Inc.'s data was insufficient.

93. BrightEdge's false representations constituted trade libel and an unfair trade practice in violation of California Business and Professions Code section 17200.

94. Searchmetrics Inc. is informed and believes and thereon alleges that, by its unjustified and unprivileged conduct, as alleged above, BrightEdge intended to disrupt Searchmetrics Inc.'s prospective economic advantage in obtaining contracts with these companies to utilize Searchmetrics Inc.'s SEO products and services.

95. Searchmetrics Inc. is informed and believes and thereon alleges that BrightEdge's conduct, as alleged above, disrupted Searchmetrics Inc.'s economic advantage in obtaining contracts with these companies to utilize Searchmetrics Inc.'s SEO products and services.

96. As a direct, proximate, and foreseeable result of BrightEdge's wrongful conduct, as alleged above, Searchmetrics Inc. has suffered damages in an amount that exceeds \$1,344,000.00.

97. Searchmetrics Inc. is informed and believes and thereon alleges that BrightEdge's acts were willful, oppressive, fraudulent and malicious and, therefore, Searchmetrics Inc. is entitled to punitive damages under California state law.

**FOURTH CAUSE OF ACTION**

**(Permanent Injunction for Interference with Prospective  
Economic Advantage – Searchmetrics against BrightEdge)**

98. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 97 above, as if fully set forth herein.

99. At various times during the period from October 2013 through March 2015, AirBnB, Jet2.com Limited, Zappos, WebMetro and Performics were in discussions with Searchmetrics Inc. to utilize its SEO products and services. Based on these discussions, it was reasonably probable that these companies would enter into contracts with Searchmetrics Inc. to utilize its SEO platform.

100. Searchmetrics is informed and believes and thereon alleges that BrightEdge knew of the above-described relationships existing between Searchmetrics Inc. and these companies, in that BrightEdge inquired of, or was informed by, such companies that they were in discussions with Searchmetrics Inc.

101. In telephone calls, meetings, emails, Power Point presentations and spreadsheets, as alleged above, BrightEdge falsely represented to AirBnB, Jet2.com Limited, Zappos, WebMetro and Performics that Searchmetrics had lost the ability to effectively measure traffic and revenue and/or that the quantity and quality of Searchmetrics' data was insufficient.

102. BrightEdge's false representations constituted trade libel and an unfair trade practice in violation of California Business and Professions Code section 17200.

103. Searchmetrics is informed and believes and thereon alleges that, by its unjustified and unprivileged conduct, as alleged above, BrightEdge intended to disrupt Searchmetrics Inc.'s prospective economic advantage in obtaining contracts with these companies to utilize Searchmetrics' SEO products and services.

104. Searchmetrics is informed and believes and thereon alleges that BrightEdge's conduct, as alleged above, disrupted Searchmetrics Inc.'s economic advantage in obtaining contracts with these companies to utilize Searchmetrics' SEO products and services.

105. Searchmetrics is informed and believes and thereon alleges that BrightEdge's unlawful acts as described above are a serious and continuing threat to Searchmetrics' reputation and goodwill. If BrightEdge is allowed to continue its wrongful acts, Searchmetrics will suffer further immediate and irreparable injury, loss, and damage, and could be forced to liquidate.

#### **FIFTH CAUSE OF ACTION**

##### **(Disgorgement for Unfair Competition under California Business and Professions Code Section 17200, *et seq.* – Searchmetrics Inc. against BrightEdge)**

106. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 105 above, as if fully set forth herein.

107. BrightEdge has committed and is continuing to commit acts of unfair competition against Searchmetrics Inc. as defined by California Business and Professions Code section 17200, by, among other things, making false statements to Searchmetrics Inc.'s customers and potential customers disparaging Searchmetrics Inc.'s SEO products and services in order to induce current customers to not purchase or discontinue using Searchmetrics Inc.'s products and services and/or to deter prospective customers.

108. Searchmetrics Inc. is informed and believes and thereon alleges that, as a direct, proximate, and foreseeable result of BrightEdge's conduct, as alleged above, BrightEdge has

received and will receive money, profits, and other benefits that rightfully belong to Searchmetrics Inc., including recurring license fees. Accordingly, Searchmetrics Inc. is entitled to disgorgement of all such money, profits and other benefits.

#### **SIXTH CAUSE OF ACTION**

##### **(Permanent Injunction for Unfair Competition under California Business and Professions Code Section 17200, *et seq.* – Searchmetrics against BrightEdge)**

109. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 108 above, as if fully set forth herein.

110. BrightEdge has committed and is continuing to commit acts of unfair competition against Searchmetrics as defined by California Business and Professions Code section 17200, by, among other things, making false statements to Searchmetrics Inc.'s customers and potential customers disparaging Searchmetrics' SEO products and services in order to induce current customers to not purchase or discontinue using Searchmetrics' products and services and/or to deter prospective customers.

111. BrightEdge's unlawful acts as described above are a serious and continuing threat to Searchmetrics' reputation, goodwill, and financial health. If BrightEdge is allowed to continue its wrongful acts, Searchmetrics will suffer further immediate and irreparable injury, loss, and damage, and could be forced to liquidate.

#### **SEVENTH CAUSE OF ACTION**

##### **(Damages for False Advertising Under California Business and Professions Code Section 17500, *et seq.* – Searchmetrics Inc. against BrightEdge)**

112. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 111 above, as if fully set forth herein.

113. Beginning in or about March 2014 and continuing to the present time, as alleged above, BrightEdge has in advertising and disseminating to the public statements regarding BrightEdge's SEO data, including data contained in its Data Cube.

114. BrightEdge has engaged in the advertising and public statements herein alleged with the intent to directly or indirectly to induce the public to enter into contracts relating to SEO services provided by BrightEdge.

115. BrightEdge's advertising and public statements were and are untrue or misleading and likely to deceive the public. BrightEdge states that BrightEdge's SEO data contains billions of keywords and many times the number of keywords as its nearest competitor, including Searchmetrics Inc. However, BrightEdge fails to state that its SEO data does not contain billions of keywords and that the "billions of pieces of data" that BrightEdge claims are contained in its Data Cube do not consist entirely of keywords but a variety of data that BrightEdge declines to identify specifically.

116. In making and disseminating the statements herein alleged, BrightEdge knew, or by the exercise of reasonable care should have known, that the statements were untrue or misleading, and so acted in violation of California Business and Professions Code Section 17500.

117. Searchmetrics Inc. is informed and believe and thereon alleges that, as a direct, proximate, and foreseeable result of BrightEdge's conduct, as alleged above, BrightEdge has received and will receive money, profits, and other benefits that rightfully belong to Searchmetrics Inc., including recurring license fees. Accordingly, Searchmetrics Inc. is entitled to disgorgement of all such money, profits and other benefits.

**EIGHTH CAUSE OF ACTION**

**(Permanent Injunction for False Advertising Under California Business and Professions Code Section 17500, *et seq.* – Searchmetrics against BrightEdge)**

118. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 117 above, as if fully set forth herein.

119. Beginning in or about March 2014 and continuing to the present time, as alleged above, BrightEdge has in advertising and disseminating to the public statements regarding BrightEdge's SEO data, including data contained in its Data Cube.

120. BrightEdge has engaged in the advertising and public statements herein alleged with the intent to directly or indirectly to induce the public to enter into contracts relating to SEO services provided by BrightEdge.

121. BrightEdge's advertising and public statements were and are untrue or misleading and likely to deceive the public. BrightEdge states that BrightEdge's SEO data contains billions of keywords and many times the number of keywords as its nearest competitor, including Searchmetrics. However, BrightEdge fails to state that its SEO data does not contain billions of keywords and that the "billions of pieces of data" that BrightEdge claims are contained in its Data Cube do not consist entirely of keywords but a variety of data that BrightEdge declines to identify specifically.

122. In making and disseminating the statements herein alleged, BrightEdge knew, or by the exercise of reasonable care should have known, that the statements were untrue or misleading, and so acted in violation of California Business and Professions Code Section 17500.

123. Unless restrained by this court, BrightEdge will continue to engage in untrue and misleading advertising, as alleged above, in violation of Section 17500 of the California Business and Professions Code, thus tending to render judgment in the instant action ineffectual.



Searchmetrics has no adequate remedy at law in that BrightEdge will continue to engage in untrue and misleading advertising alleged above.

**NINTH CAUSE OF ACTION**

**(Declaratory Relief Regarding No Trade Secret  
Misappropriation – Searchmetrics Inc. against BrightEdge)**

124. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 123 above, as if fully set forth herein.

125. BrightEdge contends that Searchmetrics Inc. has or is misappropriating BrightEdge's alleged compilation trade secrets.

126. Searchmetrics Inc. has not misappropriated any alleged BrightEdge trade secret.

127. As set forth above, an actual and justiciable controversy exists between Searchmetrics Inc. and BrightEdge as to this issue.

128. A judicial declaration is necessary and appropriate so that Searchmetrics Inc. may ascertain its rights in this regard.

129. Accordingly, Searchmetrics Inc. respectfully requests that this Court enter a declaratory judgment that Searchmetrics Inc. has not misappropriated any BrightEdge trade secret alleged against it.

**TENTH CAUSE OF ACTION**

**(Declaratory Relief Regarding No Causation of Trade Secret  
Damages – Searchmetrics Inc. against BrightEdge)**

130. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 129 above, as if fully set forth herein.

131. BrightEdge contends that Searchmetrics Inc. has caused it to sustain trade secret misappropriation damages.

132. Searchmetrics Inc. has not caused any legally recognizable trade secret damage to BrightEdge based on Searchmetrics Inc.'s conduct.

133. As set forth above, an actual and justiciable controversy exists between Searchmetrics Inc. and BrightEdge as to this issue.

134. A judicial declaration is necessary and appropriate so that Searchmetrics Inc. may ascertain its rights in this regard.

135. Accordingly, Searchmetrics Inc. respectfully requests that this Court enter a declaratory judgment that Searchmetrics Inc. has not caused BrightEdge any legally recognizable trade secret misappropriation damage based on its conduct.

#### **ELEVENTH CAUSE OF ACTION**

##### **(Declaratory Relief Regarding No Conspiracy – Searchmetrics Inc. against BrightEdge)**

136. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 135 above, as if fully set forth herein.

137. BrightEdge contends that Searchmetrics Inc. has conspired with Messrs. McAlpine, Martinez, and/or Siler to misappropriate alleged BrightEdge trade secrets.

138. Searchmetrics Inc. has not conspired with any of them to misappropriate any BrightEdge trade secret or to commit any other tort.

139. As set forth above, an actual and justiciable controversy exists between Searchmetrics Inc. and BrightEdge as to this issue.

140. A judicial declaration is necessary and appropriate so that Searchmetrics Inc. may ascertain its rights in this regard.

141. Accordingly, Searchmetrics Inc. respectfully requests that this Court enter a declaratory judgment that Searchmetrics Inc. has not conspired with Mr. Martinez, Mr. Siler, or Mr. McAlpine to misappropriate any alleged BrightEdge trade secret or to commit any other tort.

**TWELFTH CAUSE OF ACTION**

**(Declaratory Relief Regarding No Trade Secrets – Searchmetrics Inc. against BrightEdge)**

142. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 141 above, as if fully set forth herein.

143. BrightEdge contends that its materials that it alleges Searchmetrics Inc. used are compilation trade secrets.

144. Searchmetrics Inc. contends that the compilations are not trade secrets.

145. As set forth above, an actual and justiciable controversy exists between Searchmetrics Inc. and BrightEdge as to this issue.

146. A judicial declaration is necessary and appropriate so that Searchmetrics Inc. may ascertain its rights in this regard.

147. Accordingly, Searchmetrics Inc. respectfully requests that this Court enter a declaratory judgment that the alleged trade secret compilations are not trade secrets pursuant to California law.

**THIRTEENTH CAUSE OF ACTION**

**(Declaratory Relief Regarding BrightEdge's Bad Faith  
Litigation – Searchmetrics Inc. against BrightEdge)**

148. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 147 above, as if fully set forth herein.

149. Searchmetrics Inc. contends that BrightEdge brought and is maintaining the State Court Lawsuit against Searchmetrics Inc. in bad faith.

150. On information and belief, BrightEdge contends it did not bring or maintain the State Court Lawsuit against Searchmetrics Inc. in bad faith.

151. As set forth above, an actual and justiciable controversy exists between Searchmetrics Inc. and BrightEdge as to this issue.

152. A judicial declaration is necessary and appropriate so that Searchmetrics Inc. may ascertain its rights in this regard.

153. Accordingly, Searchmetrics Inc. respectfully requests that this Court enter a declaratory judgment that BrightEdge brought and maintained the State Court Lawsuit against Searchmetrics Inc. in bad faith.

#### **FOURTEENTH CAUSE OF ACTION**

##### **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,135,706 – Searchmetrics against BrightEdge)**

154. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 153 above, as if fully set forth herein.

155. Upon information and belief, BrightEdge contends that the '706 patent is valid.

156. The claims of the '706 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

157. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '706 patent are invalid.

158. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '706 patent is invalid.

159. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '706 patent are invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

**FIFTEENTH CAUSE OF ACTION**

**(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,135,706  
Under 35 U.S.C. § 101 – Searchmetrics against BrightEdge)**

160. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 159 above, as if fully set forth herein.

161. Upon information and belief, BrightEdge contends that the '706 patent is valid.

162. The claims of the '706 patent are invalid under 35 U.S.C. § 101 for failure to recite eligible subject matter pursuant to the Supreme Court's decision in *Alice v. CLS Bank*, 134 S. Ct. 2347 (2014).

163. The claims of the '706 patent are directed to patent-ineligible concepts including abstract ideas and mental steps.

164. The claims of the '706 patent fail to contain an "inventive concept" sufficient to transform the claimed abstract idea into patent-eligible claims.

165. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '706 patent are invalid under 35 U.S.C. § 101.

166. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '706 patent is invalid under 35 U.S.C. § 101.

167. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '706 patent are invalid under 35 U.S.C. § 101.

**SIXTEENTH CAUSE OF ACTION**

**(Declaratory Relief Regarding Invalidity of  
U.S. Patent No. 8,478,700 – Searchmetrics against BrightEdge)**

168. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 167 above, as if fully set forth herein.

169. Upon information and belief, BrightEdge contends that the '700 patent is valid.

170. The claims of the '700 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

171. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '700 patent are invalid.

172. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '700 patent is invalid.

173. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '700 patent are invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

**SEVENTEENTH CAUSE OF ACTION**

**(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,478,700  
Under 35 U.S.C. § 101 – Searchmetrics against BrightEdge)**

174. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 173 above, as if fully set forth herein.

175. Upon information and belief, BrightEdge contends that the '700 patent is valid.

176. The claims of the '700 patent are invalid under 35 U.S.C. § 101 for failure to recite eligible subject matter pursuant to the Supreme Court's decision in *Alice v. CLS Bank*, 134 S. Ct. 2347 (2014).

177. The claims of the '700 patent are directed to patent-ineligible concepts including abstract ideas and mental steps.

178. The claims of the '700 patent fail to contain an "inventive concept" sufficient to transform the claimed abstract idea into patent-eligible claims.

179. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '700 patent are invalid under 35 U.S.C. § 101.

180. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '700 patent is invalid under 35 U.S.C. § 101.

181. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '700 patent are invalid under 35 U.S.C. § 101.

#### **EIGHTEENTH CAUSE OF ACTION**

##### **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,478,746 – Searchmetrics against BrightEdge)**

182. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 181 above, as if fully set forth herein.

183. Upon information and belief, BrightEdge contends that the '746 patent is valid.

184. The claims of the '746 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

185. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '746 patent are invalid.

186. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '746 patent is invalid.

187. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '746 patent are invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

#### **NINETEENTH CAUSE OF ACTION**

##### **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,478,746 Under 35 U.S.C. § 101 – Searchmetrics against BrightEdge)**

188. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 187 above, as if fully set forth herein.

189. Upon information and belief, BrightEdge contends that the '746 patent is valid.

190. The claims of the '746 patent are invalid under 35 U.S.C. § 101 for failure to recite eligible subject matter pursuant to the Supreme Court's decision in *Alice v. CLS Bank*, 134 S. Ct. 2347 (2014).

191. The claims of the '746 patent are directed to patent-ineligible concepts including abstract ideas and mental steps.

192. The claims of the '746 patent fail to contain an "inventive concept" sufficient to transform the claimed abstract idea into patent-eligible claims.

193. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '746 patent are invalid under 35 U.S.C. § 101.



194. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '746 patent is invalid under 35 U.S.C. § 101.

195. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '746 patent are invalid under 35 U.S.C. § 101.

**TWENTIETH CAUSE OF ACTION**

**(Declaratory Relief Regarding Noninfringement of  
U.S. Patent No. 8,577,863 – Searchmetrics against BrightEdge)**

196. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 195 above, as if fully set forth herein.

197. BrightEdge contends that Searchmetrics has or is infringing one or more claims of the '863 patent.

198. On information and belief, BrightEdge claims to be the owner of all right, title and interest in the '863 patent, including the right to assert all causes of action arising under that patent and the right to any remedies for infringement of it.

199. Searchmetrics does not infringe any claim of the '863 patent, directly or indirectly.

200. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to Searchmetrics' noninfringement of the '863 patent.

201. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights regarding the '863 patent.

202. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that Searchmetrics has not and does not infringe, under any theory of infringement, any valid and enforceable claim of the '863 patent.

**TWENTY-FIRST CAUSE OF ACTION**

**(Declaratory Relief Regarding Invalidity of  
U.S. Patent No. 8,577,863 – Searchmetrics against BrightEdge)**

203. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 202 above, as if fully set forth herein.

204. Upon information and belief, BrightEdge contends that the '863 patent is valid.

205. The claims of the '863 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

206. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '863 patent are invalid.

207. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '863 patent is invalid.

208. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '863 patent are invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

**TWENTY-SECOND CAUSE OF ACTION**

**(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,577,863  
Under 35 U.S.C. § 101 – Searchmetrics against BrightEdge)**

209. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 208 above, as if fully set forth herein.

210. Upon information and belief, BrightEdge contends that the '863 patent is valid.

211. The claims of the '863 patent are invalid under 35 U.S.C. § 101 for failure to recite eligible subject matter pursuant to the Supreme Court's decision in *Alice v. CLS Bank*, 134 S. Ct. 2347 (2014).

212. The claims of the '863 patent are directed to patent-ineligible concepts including abstract ideas and mental steps.

213. The claims of the '863 patent fail to contain an "inventive concept" sufficient to transform the claimed abstract idea into patent-eligible claims.

214. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '863 patent are invalid under 35 U.S.C. § 101.

215. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '863 patent is invalid under 35 U.S.C. § 101.

216. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '863 patent are invalid under 35 U.S.C. § 101.

### **TWENTY-THIRD CAUSE OF ACTION**

#### **(Declaratory Relief Regarding Noninfringement of U.S. Patent No. 8,671,089 – Searchmetrics against BrightEdge)**

217. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 216 above, as if fully set forth herein.

218. BrightEdge contends that Searchmetrics has or is infringing one or more claims of the '089 patent.

219. On information and belief, BrightEdge claims to be the owner of all right, title and interest in the '089 patent, including the right to assert all causes of action arising under that patent and the right to any remedies for infringement of it.

220. Searchmetrics does not infringe any claim of the '089 patent, directly or indirectly.

221. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to Searchmetrics' noninfringement of the '089 patent.

222. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights regarding the '089 patent.

223. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that Searchmetrics has not and does not infringe, under any theory of infringement, any valid and enforceable claim of the '089 patent.

#### **TWENTY-FOURTH CAUSE OF ACTION**

##### **(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,671,089 – Searchmetrics against BrightEdge)**

224. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 223 above, as if fully set forth herein.

225. Upon information and belief, BrightEdge contends that the '089 patent is valid.

226. The claims of the '089 patent are invalid for failure to comply with one or more of the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

227. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '089 patent are invalid.

228. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '089 patent is invalid.

229. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '089 patent are invalid pursuant to Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

**TWENTY-FIFTH CAUSE OF ACTION**

**(Declaratory Relief Regarding Invalidity of U.S. Patent No. 8,671,089  
Under 35 U.S.C. § 101 – Searchmetrics against BrightEdge)**

230. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 229 above, as if fully set forth herein.

231. Upon information and belief, BrightEdge contends that the '089 patent is valid.

232. The claims of the '089 patent are invalid under 35 U.S.C. § 101 for failure to recite eligible subject matter pursuant to the Supreme Court's decision in *Alice v. CLS Bank*, 134 S. Ct. 2347 (2014).

233. The claims of the '089 patent are directed to patent-ineligible concepts including abstract ideas and mental steps.

234. The claims of the '089 patent fail to contain an "inventive concept" sufficient to transform the claimed abstract idea into patent-eligible claims.

235. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether the claims of the '089 patent are invalid under 35 U.S.C. § 101.

236. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights as to whether the '089 patent is invalid under 35 U.S.C. § 101.

237. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that the claims of the '089 patent are invalid under 35 U.S.C. § 101.

### **TWENTY-SIXTH CAUSE OF ACTION**

#### **(Declaratory Relief Regarding No Patent Damages – Searchmetrics against BrightEdge)**

238. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 237 above, as if fully set forth herein.

239. Upon information and belief, BrightEdge contends that it has suffered irreparable harm by Searchmetrics' infringement of the Patents-in-Suit and is entitled to an award of damages and/or injunctive relief.

240. BrightEdge is not entitled to an award of damages and/or injunctive relief because Searchmetrics has not and will not infringe, either directly or indirectly, any valid patent asserted by BrightEdge.

241. BrightEdge's claim for damages for alleged infringement of the Patents-in-Suit is limited by 35 U.S.C. § 286 and 35 U.S.C. § 287.

242. As set forth above, an actual and justiciable controversy exists between Searchmetrics and BrightEdge as to whether Searchmetrics has caused BrightEdge harm meriting an award of damages and/or injunctive relief.

243. A judicial declaration is necessary and appropriate so that Searchmetrics may ascertain its rights regarding any damages or relief sought by BrightEdge.

244. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Searchmetrics requests that this Court enter a judgment that Searchmetrics has caused no harm

and owes no damages or other relief to BrightEdge concerning Searchmetrics' alleged infringement of the Patents-in-Suit.

**TWENTY-SEVENTH CAUSE OF ACTION**

**(Objection to Claims of BrightEdge – Searchmetrics against BrightEdge)**

245. Searchmetrics restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 244 above, as if set forth fully herein.

246. Searchmetrics incorporates all defenses filed in the State Court Action and the Patent Litigation as if set forth fully herein.

247. Upon information and belief, BrightEdge asserts claims against the Debtor and the other defendants in the State Court Lawsuit in an amount of not less than \$34 million (the “**State Law Claim**”).

248. BrightEdge asserts claims for damages against Searchmetrics in an unknown amount in connection with the Patent Litigation (the “**Patent Claim**,” and collectively with the State Law Claim, and inclusive of all claims asserted or accrued by BrightEdge prior to the Petition Date, the “**BE Claims**”).

249. Pursuant to Bankruptcy Rule 3007 and Local Rule 3007-1, the Debtor and/or Searchmetrics, as applicable, object to the BE Claims in their entirety and seek a determination from this Court that the BE Claims should be disallowed.

**TWENTY-EIGHTH CAUSE OF ACTION**

**(Estimation of Claims of BrightEdge – Searchmetrics Inc. against BrightEdge)**

250. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 249 above, as if set forth fully herein.

251. Pursuant to section 502(c) of the Bankruptcy Code, Searchmetrics seeks to have this Court estimate at \$75,000.00 the BE Claims for all purposes, including voting on, and distributions under, any chapter 11 plan proposed by the Debtor.

252. Section 502(c) of the Bankruptcy Code provides that Court shall estimate "...any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case . . . ."

253. The BE Claims are contingent, unliquidated, and disputed, and absent an adjudication of this Court on the amount of the BE Claim, the administration of this case would be unduly delayed.

#### **TWENTY-NINTH CAUSE OF ACTION**

##### **(Setoff of Claims of Searchmetrics Inc. Against BE Claims – Searchmetrics Inc. against BrightEdge)**

254. Searchmetrics Inc. restates and incorporates by reference each of the allegations set forth in paragraphs 1 through 253 above, as if set forth fully herein.

255. Pursuant to applicable law, including section 553 of the Bankruptcy Code and applicable state law, Searchmetrics Inc. holds a right of setoff against BrightEdge.

256. To the extent that the Court determines that the BE Claims against Searchmetrics Inc. have any value, the claims of Searchmetrics Inc. should be setoff against such BE Claims.

#### **PRAYER**

*WHEREFORE* Searchmetrics Inc. and Searchmetrics GmbH, as applicable, pray for judgment against BrightEdge as follows:

- A. For compensatory damages in an amount to be determined according to proof at trial;
- B. For disgorgement of all money, property, profits, and other benefits acquired by means of BrightEdge's unfair business practices or false advertising;




- C. For punitive and exemplary damages, according to proof;
- D. For prejudgment interest;
- E. For a permanent injunction enjoining BrightEdge and its officers, agents, servants, employees, assigns, representatives, and all those acting in concert or participating with BrightEdge, from making, communicating, disseminating or causing to be made, communicated or disseminated, in any manner, directly or indirectly, any statement that (a) BrightEdge's SEO data contains billions of keywords, (b) BrightEdge's SEO data has many times more keywords than its competitors, (c) Searchmetrics uses "num=100" crawling technology, or (d) Searchmetrics is unable to measure its revenue and traffic efforts due to an alteration of the Google algorithm;
- F. For a judicial determination and declaration that Searchmetrics Inc. has not misappropriated any BrightEdge trade secret alleged against it, that Searchmetrics Inc. has not caused BrightEdge any legally recognizable damage based on its conduct, that Searchmetrics Inc. has not conspired with Mr. Martinez, Mr. Siler, or Mr. McAlpine to misappropriate any alleged BrightEdge trade secret or to commit any other tort, and that the alleged trade secret compilations are not trade secrets pursuant to California law;
- G. For a judicial determination and declaration that BrightEdge brought and maintained the State Court Lawsuit against Searchmetrics Inc. in bad faith;
- H. For a judicial determination and declaration that Searchmetrics has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any claim of the Patents-in-Suit;
- I. For a judicial determination and declaration that each claim of the Patents-in-Suit is invalid;
- J. For a judicial determination and declaration that Searchmetrics has caused no harm and owes no damages or other relief to BrightEdge relating to the alleged infringement;
- K. For injunctive relief against BrightEdge, and all persons acting on its behalf or in concert with it, restraining them from further prosecuting or instituting any action against Searchmetrics or Searchmetrics' customers claiming that the Patents-in-Suit are valid or infringed, or for representing that Searchmetrics' products or services, or that others' use thereof, infringe the Patents-in-Suit;
- L. For a judicial determination that the BE Claims should be and are disallowed as a matter of law;
- M. Estimation of the BE Claims at \$75,000.00 for all purposes, including voting on, and distribution under, any chapter 11 plan propounded by the Debtor;

- N. For a judicial determination that the Debtor may exercise its right to setoff under section 553 of the Bankruptcy Code and all other applicable law with respect to any and all of its claims against BrightEdge against the BE Claims;
- O. For costs of suit incurred herein;
- P. For attorney's fees as permitted by law;
- Q. For a declaration that this case is exceptional under 35 U.S.C. § 285; and
- R. For such other and further relief as this Court may deem just and proper.

Dated: May 8, 2017  
Wilmington, Delaware

**CHIPMAN BROWN CICERO & COLE, LLP**



---

William E. Chipman, Jr. (No. 3818)  
Mark D. Olivere (No. 4291)  
Hercules Plaza  
1313 North Market Street, Suite 5400  
Wilmington, Delaware 19801  
Telephone: (302) 295-0191  
Facsimile: (302) 295-0199  
Email: [chipman@chipmanbrown.com](mailto:chipman@chipmanbrown.com)  
[olivere@chipmanbrown.com](mailto:olivere@chipmanbrown.com)

*Proposed Counsel for Debtor/Plaintiff,  
Searchmetrics Inc. and Counsel for Plaintiff,  
Searchmetrics GmbH*

-and-

**DLA PIPER LLP (US)**

Rajiv Dharnidharka (*pro hac admission pending*)  
Carrie Williamson (*pro hac admission pending*)  
Timothy Lohse (*pro hac admission pending*)  
Christine Corbett (*pro hac admission pending*)  
2000 University Avenue  
Palo Alto, California 94303  
Telephone: (650) 833-2000  
Email: [rajiv.dharnidharka@dlapiper.com](mailto:rajiv.dharnidharka@dlapiper.com)  
[carrie.williamson@dlapiper.com](mailto:carrie.williamson@dlapiper.com)  
[timothy.lohse@dlapiper.com](mailto:timothy.lohse@dlapiper.com)  
[christine.corbett@dlapiper.com](mailto:christine.corbett@dlapiper.com)

*Proposed Special Litigation Counsel to  
Debtor/Plaintiff Serchmetrics Inc. and Counsel for  
Plaintiff, Searchmetrics GmbH*