

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

AVERY DENNISON RFID COMPANY and	)	
AVERY DENNISON RETAIL	)	
INFORMATION SERVICES LLC	)	
	)	
Plaintiffs,	)	Civil Action No. _____
	)	
v.	)	
	)	
EVERYTHING LIMITED	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	<i>Publicly-Available Redacted Version</i>
_____	)	

**COMPLAINT FOR DECLARATORY JUDGEMENT**

Plaintiffs, Avery Dennison RFID Company (“RFID”) and Avery Dennison Retail Information Services LLC (“RBIS”) (collectively “AD” or “Avery Dennison”) bring this Complaint against EVERYTHING Limited (“Defendant” or “EVERYTHING”) for a declaratory judgment that AD, by way of the sale, offering for sale, use, making, marketing and, advertising of their atma.io™ product cloud platform (the “atma Platform” or “atma.io”), does not infringe on EVERYTHING’s alleged rights in United States Patent Nos. 9,582,595 and 9,794,321 and that Avery Dennison’s use of the terms “product cloud” and “unique digital IDs” does not infringe EVERYTHING’s alleged trademark rights, under the Lanham Act, and aver as follows:

**PARTIES**

1. RFID is a Delaware corporation with its principal place of business located at 207 Goode Avenue, Glendale, California 91203.
2. RBIS is a Nevada Limited Liability Company with its principal place of business located at 207 Goode Avenue, Glendale, California 91203.

3. From about June 1, 2013 until about the fall of 2017, RBIS had its global headquarters at 1700 West Park Drive, Westborough, Massachusetts. In the fall of 2017, RBIS relocated its global headquarters outside of Massachusetts and opened an office in Boston, Massachusetts at 101 Federal Street, Suite 1900. RBIS occupied the Boston office until about November 30, 2018. On December 1, 2018, RBIS opened an office at 3 Allied Drive Suite 303, Dedham, Massachusetts. In addition to having the Dedham office in Massachusetts, RBIS has employees working remotely in Massachusetts, including Deon Stander, the Vice President and General Manager, Retail Branding and Information Solutions, and Max Winograd, RBIS's Vice President, Connected Products.

4. On information and belief, EVERYTHING is a privately held company organized under the laws of the United Kingdom, with a principal place of business at 122 East Road London, United Kingdom, N1 6FB.

5. On information and belief, EVERYTHING does not have an office or employees in the United States. Upon information and belief, EVERYTHING has ownership rights in EVERYTHING, Inc. located at 23 West 23rd Street, New York, New York, 10010.

#### **NATURE OF THE ACTION**

6. This is an action for a declaratory judgment of non-infringement arising under: (i) the patent laws of the United States, Title 35 of the United States Code; and (ii) the trademark laws of the United States, Title 15 of the United States Code, based on the Declaratory Judgment Act, Title 28 of the United States Code § 2201 & 2202.

7. Avery Dennison seeks relief because EVERYTHING has created a definite and concrete controversy with respect to its alleged intellectual property rights ("EVERYTHING IP

Rights”) against Avery Dennison based at least upon Avery Dennison’s launch of the atma Platform.

8. The EVERYTHING IP Rights which EVERYTHING has threatened to assert against AD in connection with Avery Dennison’s atma Platform include: United States Patent Nos. 9,582,595 (“the ’595 patent”) and 9,794,321 (“the ’321 patent”), collectively (“the EVERYTHING Patents”); and United States Trademark Registration No. 6304567 for “EVERYTHING PRODUCT CLOUD,” and trademark rights in the phrase “Active Digital Identities.”

9. Upon information and belief, EVERYTHING is the current owner of the EVERYTHING Patents.

10. Upon information and belief, EVERYTHING is the current owner of United States Trademark Registration No. 6304567 for “EVERYTHING PRODUCT CLOUD.”

11. Upon information and belief, EVERYTHING is not the owner of any U.S. Registration from the United States Patent and Trademark Office for the term “Active Digital Identities” or any U.S. application for registering for the term “Active Digital Identities” with the United States Patent and Trademark Office.

12. A true and correct copy of the ’595 patent is attached hereto as Exhibit A.

13. A true and correct copy of the ’321 patent is attached hereto as Exhibit B.

14. A true and correct copy of U.S. Trademark Registration No. 6304567 for “EVERYTHING PRODUCT CLOUD” is attached as Exhibit C.

15. United States Trademark Registration No. 6304567, registered March 30, 2021 (“the EVERYTHING Registration”), describes the services as “platform as a service (PaaS) featuring computer software platforms for use in connection with consumer and commercial products and services, namely, for digitally identifying products and managing data.”

16. EVERYTHING and Avery Dennison have had discussions over the course of months that have created a definite and concrete controversy regarding whether Avery Dennison's, *inter alia*, use of the atma Platform infringes the '321 and '595 patents under 35 U.S.C. § 271(a) and (b).

17. EVERYTHING has created a definite and concrete controversy regarding EVERYTHING's alleged rights in EVERYTHING PRODUCT CLOUD and whether Avery Dennison's use of the term "product cloud" violates EVERYTHING's alleged rights in EVERYTHING PRODUCT CLOUD under the trademark laws of the United States, Title 15 of the United States Code.

18. EVERYTHING has also created a definite and concrete controversy regarding EVERYTHING's alleged rights in "Active Digital Identities" and whether Avery Dennison's use of the term "unique digital IDs" violates EVERYTHING's alleged rights in "Active Digital Identities" under the trademark laws of the United States, Title 15 of the United States Code.

## **FACTUAL BACKGROUND**

### **Background**

19. Avery Dennison has been and is a leader in the field of product labeling and identification. Avery Dennison's internationally known product identification business includes the manufacture and sale of tags/labels with radio frequency identification (RFID), "Quick Response" or "QR" codes, and other bar codes. Avery Dennison also provides printers for printing tags and labels containing RFID inlays, QR codes, and other bar codes.

20. QR codes (and other two- and three- dimensional labels) can encode information that is capable of being read by tag readers or other equipment. For purposes of labeling products,

the encoded information is often some type of identifier that identifies the type of product and/or provides a product serial number. An example of a QR code is shown below.

*QR Code*



21. RFID tags can similarly store and encode information that is capable of being read by specially made RFID readers. Like QR codes and other labels, Avery Dennison often uses RFID tags to store product information or serial number information about the products on which the RFID tag is affixed. RFID tags can communicate wirelessly with RFID readers, which is often useful for supply chain tracking. An example of an AD RFID tag is show below:

*Example RFID Tag*



22. Avery Dennison has been selling these tags and labels to businesses in the retail, garment, and footwear industries for well over a decade. Many of the labels include product identifiers that are standardized by industry standard setting organizations such as the organization

GS1 (<https://www.gs1.org/>). Avery Dennison is a member of GS1, which standardizes the format for storing unique product information on many different types of labels and tags.

**The Avery Dennison-EVERYTHING Services Agreement**

23. Prior to 2015, AD had provided RFID tags with a unique identifier (*e.g.*, an identifier unique to that particular product). By providing a link to a unique digital identity in a tag affixed to an item, the individual product could be identified and tracked.

24. In about early 2015, AD discussed working with EVERYTHING in the digital identity space. EVERYTHING and RBIS entered into a Services Authorisation Form and Agreement with EVERYTHING, with an effective date of [REDACTED] (“the Services Agreement”).

25. A true and correct copy of the Services Agreement is attached as Exhibit D.

26. At least a substantial part of the negotiation for the Services Agreement took place in Massachusetts as RBIS’s headquarters were then located in Massachusetts. RBIS’s Mr. Stander and its then interim Chief Executive Officer, Christopher Palmer, had discussions with EVERYTHING and negotiated the Services Agreement with EVERYTHING from Massachusetts. Mr. Stander received communications from EVERYTHING in Massachusetts and sent communications to EVERYTHING from Massachusetts related to negotiating the Services Agreement. RBIS’s Mr. Palmer executed the Services Agreement on behalf of RBIS and on information and belief he did so in Massachusetts.

27. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

28.

[REDACTED]

29.

[REDACTED]

30.

[REDACTED]

31.

[REDACTED]

32. [REDACTED]

33. Upon information and belief, EVERYTHING is the current owner of the '595 patent, entitled "Computer-Implemented Object Information Service and Computer-Implemented Method for Obtaining Information About Objects From Same." The '595 patent issued on February 28, 2017, and is based on an application serial no. 14/457,096 that was filed on August 11, 2014, [REDACTED]. Thus, patent application serial no. 14/457,096 is a patent "application" [REDACTED].

34. Upon information and belief, EVERYTHING is the current owner of the '321 patent, entitled "System, Method and a Tag for Mapping Tagged Objects to Context-Aware Applications." The '321 patent issued on October 17, 2017, and is based on an application that was filed on December 23, 2013, [REDACTED]. Thus, patent application serial no. 14/457,096 is a patent "application" [REDACTED].

35. Upon information and belief, the only issued United States patents that EVERYTHING owns and has owned since 2015 are the '595 patent and '321 patent.

**The Cooperation Agreement**

36. RBIS and EVERYTHING furthered their relationship by entering into a Cooperation Agreement effective January 31, 2016 ("the Cooperation Agreement"). A true and correct copy of the Cooperation Agreement is attached hereto in Exhibit E.

37. Mr. Stander executed the Cooperation Agreement on behalf of RBIS in Massachusetts in January 2016. RBIS and EVERYTHING negotiated the Cooperation Agreement at least in part in Massachusetts. RBIS sent communications to EVERYTHING and received communications from EVERYTHING related to negotiating the Cooperation Agreement in Massachusetts.

38. [REDACTED]

### **The Janela™ Solution**

39. As a result of the Avery Dennison-EVERYTHING relationship, on or about about April 18, 2016, Avery Dennison launched its Janela™ solution powered by the EVERYTHING Smart Products Platform (<https://rbis.averydennison.com/en/home/our-solutions/apparel-and-footwear-branding/introducing-janela-smart-product-platform.html>). The Janela™ solution enabled apparel and footwear products to have a unique, serialized label, which connects to EVERYTHING's IoT cloud-based software. Every Janela™ product is “born” digital with the ability to capture real-time data, enhance consumer experiences, and make the manufacturing and selling of products more efficient and intelligent (<https://www.youtube.com/watch?v=qjOnPw85HTw>). With the Janela™ solution, an Avery Dennison product tag could have a unique identification linked to a digital identity maintained in the EVERYTHING Platform.

40. The intent of the Avery-Dennison/EVERYTHING relationship was to bring existing Avery Dennison customers to the EVERYTHING platform and in fact Avery Dennison brought several opportunities to EVERYTHING. However, from 2016 through 2020, RBIS experienced disappointing interactions with EVERYTHING, including EVERYTHING failing to meet deadlines,

missing meetings with potential customers, employing uncooperative personnel, exhibiting unprofessional behavior, failing to focus on the apparel industry, not providing the adequate level of support, and experiencing a high rate of employee. Further, in 2019 EVERYTHING exhibited at a trade show with Avery Dennison competitors. In addition, between 2016 through 2020, EVERYTHING's technical support for Janela™ failed to meet Avery Dennison's expectations. For example, EVERYTHING's ADI Platform would have significant, random down times.

41. Avery Dennison and EVERYTHING continue to support customers that are using the Janela™ solution.

**The atma Platform, Business Discussions, and Infringement Threats**

42. In addition to the ongoing difficulties with EVERYTHING, Avery Dennison saw a future in which data would not be carried on the chip but rather in the cloud. As a result, Avery Dennison elected to pursue the building of an alternative, different, better, and more purposeful built platform. Avery Dennison began developing its own solution for customers to manage data associated with Avery Dennison unique identification tags. This solution became known as the atma Platform. The atma Platform is outside of any restrictions in the AD-EVERYTHING contracts.

43. On or around October 2019, Avery Dennison began hiring technical personnel—who were previously unconnected to Avery Dennison—to start building and developing Avery Dennison's atma Platform for managing data associated with unique identifiers in Avery Dennison tags. The personnel hired to develop Avery Dennison's atma Platform were in a new Avery Dennison office location.

44. On or about the first calendar quarter of 2020, Avery Dennison presented information regarding its new atma Platform to EVERYTHING technical and business personnel.

45. On June 17, 2020, Mr. Niall Murphy, Chief Executive Officer of EVERYTHING, sent an email to Mr. Stander in Massachusetts. A true and correct copy of the Mr. Murphy's June

17, 2020 email is attached as Exhibit F. [REDACTED]

46. Upon information and belief, at the time of the June 17, 2020 email, EVERYTHING's only patents were the '321 and '595 patents. Given the context of the June 17, 2020 email, Avery Dennison understood [REDACTED]

[REDACTED]

47. On July 24, 2020, Mr. Stander and Mr. Murphy had communications that Mr. Stander sent and received in Massachusetts about the relationships between the parties.

48. In September 2020, Avery Dennison and EVERYTHING had further discussions about the relationships between the parties and Avery Dennison continuing with its own solution (*i.e.*, atma.io) over a video conferencing platform. Curt Shacker, an executive vice-president of business development and partnerships, Dominique Guinard, the chief technical officer, Keith Turco, president and managing director America, Perraine Bradley, Director of Product, and Peter James, vice-president of product participated in these discussions on behalf of EVERYTHING.

[REDACTED]

49. On about October 14, 2020, Mr. Stander received a letter from Mr. Murphy in Massachusetts. A true and correct copy of Mr. Murphy's October 14, 2020 letter is attached as Exhibit G. The letter was addressed to Mr. Stander at 700 West Park Drive, Suite 4500, Westborough, Massachusetts 01581. [REDACTED]

[REDACTED]

50. Mr. Stander responded to Mr. Murphy with a letter sent from Massachusetts on or about November 17, 2020. The letter stated that Avery Dennison had not violated any of the provisions of the agreements between Avery Dennison and EVRYTHNG.

51. On about December 9, 2020, EVERYTHING and Avery Dennison had further discussions about their relationship via a video conferencing platform. Mr. Murphy and Mr. Keith Turco attended these discussions on behalf of EVERYTHING. RBIS employees also attended this meeting. During the discussions, Mr. Keith Turco stated that EVERYTHING has “a ton of patents.” Avery Dennison understood this statement by EVERYTHING’s representative to be a threat of patent assertion based on Avery Dennison’s development and use of the atma Platform. During these conversations, EVERYTHING proposed potential future business relationships between EVERYTHING and Avery Dennison. [REDACTED]

52. In February 2021, EVERYTHING and Avery Dennison had additional conversations regarding their relationship. Mr. Stander participated in a videoconference from Massachusetts. Mr. Murphy attended these discussions. Despite discussing some potential future relationships, EVERYTHING and Avery Dennison were unable to agree on a structure for a future relationship. EVERYTHING made statements which Avery Dennison understood to be threats of patent assertion against Avery Dennison with respect to the atma Platform. For instance, EVERYTHING again

offered patent licenses to Avery Dennison for the '321 and '595 patents and stated that Avery Dennison is assuming that EVERYTHING will not defend its rights in reference to the '321 and '595 patents, which Avery Dennison understood to be a threat of patent assertion based on Avery Dennison using the atma Platform.

53. On March 5, 2021, Mr. Murphy, sent a letter to Mr. Stander in Massachusetts,

[REDACTED]

[REDACTED] A true and correct copy of Mr. Murphy's March 5, 2021 letter is attached hereto as Exhibit H. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

54. Mr. Murphy further offered a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. H).

55. Given the history and context, [REDACTED]

[REDACTED]

[REDACTED]

56. On March 11, 2021, Mr. Stander sent a letter from Massachusetts to Mr. Murphy responding to Mr. Murphy's March 5, 2011 letter. A true and correct copy of Mr. Stander's March

11, 2011 letter is attached as Exhibit I. Mr. Stander expressed that Avery Dennison disagreed that it “will be required to make use of certain EVERYTHING intellectual property and that there was no validity to a claim that Avery Dennison was infringing any valid EVERYTHING intellectual property (Ex. I). Mr. Stander explained that the ’321 patent is related to the GS1 Digital Link standard and that Atma.io Platform “does not use a predefined set of rules to map an object identifier and contextual information to any entry point associated with a specific computer application. Therefore, atma.io does not infringe one or more claims of the ’321 patent” (Ex. I).

57. Mr. Stander further stated in the March 11, 2021 letter that the claims of the ’595 patent are “drawn to a computer-implemented method to access an online entity associated with an individual product. We firmly believe that the ’595 patent is invalid for lack of novelty and/or obviousness over the prior art and/or lack of patent eligible subject matter” (Ex. I).

58. On or about March 17, 2021, AD publicly launched the atma Platform. The atma platform is owned and operated by RFID.

59. On or about April 9, 2021, Mr. Murphy sent a letter to Mr. Stander in Massachusetts and Mr. Ignacio Walker, Chief Legal Officer of Avery Dennison Corporation, in the United States, referring to the Services Agreement and purportedly providing official notice that EVERYTHING believed RBIS to be in breach of the Services Agreement and Cooperation Agreement. A true and correct copy of Mr. Murphy’s April 9, 2021 letter is attached hereto as Exhibit J. Mr. Murphy indicated that “[i]n addition to these material breaches of the Agreements, RBIS is presently improperly using EVERYTHING intellectual property and trade secrets in its Atma platform ... this misconduct must also cease immediately” (Ex. J at 1).

60. In his April 9 letter, Mr. Murphy asserted that EVERYTHING believes, “RBIS is using EVERYTHING’s terminology to describe the Atma product and in order to cause confusion

... [f]or example, RBIS is using terminology such as ‘Product Cloud’ and “EVERYTHING Product Cloud” is a trademarked term” (Ex. J at 4). Mr. Murphy also asserted that RBIS was “similarly” using the term ‘unique digital IDs’ to “echo and pass of as EVERYTHING’s trademarked ‘Active Digital Identities’” (Ex. J at 4).

61. Upon information and belief, on September 13, 2020, during prosecution of the EVERYTHING Registration, the Examining Attorney at the U.S. Patent & Trademark Office entered a disclaimer on the record indicating that no rights exist in the exclusive use of “PRODUCT CLOUD” apart from the entire mark as shown – *i.e.*, “No claim is made to the exclusive right to use “PRODUCT CLOUD” apart from the mark as shown.” Thus, Mr. Murphy’s April 9, 2021 letter accusations regarding the term “PRODUCT CLOUD” were meritless.

62. On information and belief, EVERYTHING has not been granted any trademark rights in the phrase “unique digital IDs” from the United States Patent and Trademark Office and therefore Mr. Murphy’s accusations regarding this phrase were meritless.

63. In the April 9, 2021 letter, Mr. Murphy states, “EVERYTHING takes the misuse of its intellectual property and of its confidential, proprietary, and trade secret information very seriously, and it will take all steps necessary to prevent the continued misuse and misappropriation of its intellectual property, trade secrets and Confidential Information through deployment of the Atma Platform. This would include the Atma platform’s unlicensed use of EVERYTHING’s material patent portfolio in this space (as acknowledged by Mr. Stander in your letter of March 11, 2021)” (Ex. J at 5-6). Because (i) Mr. Stander’s March 11, 2021 letter expressly discussed the ’321 and ’595 patents, (ii) Mr. Murphy was responding to Mr. Stander’s March 11, 2021 letter, and (iii) EVERYTHING’s only issued U.S. patents are the ’595 and ’321 patents, EVERYTHING was referring to the ’321 and ’595 patents in the April 9, 2021 letter.

64. The April 9, 2021 letter concluded with a demand by EVERYTHING that “RBIS take all appropriate steps to preserve, and prevent the destruction, of all hard copy, electronic or other records related to . . . the foregoing matters and activities” (Ex. J at 6).

65. EVERYTHING stated in its April 9, 2021 letter that EVERYTHING was providing notice of alleged material breach of the Services Agreement and the Cooperation Agreement and “absence a full cure” of the alleged material breaches, the Services Agreement and the Cooperation Agreement “shall terminate in thirty (30) days” (Ex. J at 1).

66. On the basis of the foregoing communications from EVERYTHING to Avery Dennison, an actual, immediate, and substantial controversy exists between Avery Dennison and EVERYTHING regarding EVERYTHING’s alleged patent and trademark rights in connection with the Avery Dennison’s atma platform.

#### **Other Licensing Efforts by EVERYTHING**

67. In addition to offering licenses to Avery Dennison, EVERYTHING conducts licensing activity with respect to at least its ’321 patent in Massachusetts and throughout the entirety of the United States by stating that it offers certain “royalty-free license for use of” its “patented context-based product URI redirection technology for use with the GS1 Digital standard link.” A true and correct copy of <https://EVERYTHING.com/gsldigitallink/> is attached as Exhibit K. EVERYTHING in its licensing offer states that “If you are implementing a solution with GS1 Digital Link and intend to make use of context aware redirection to provide different experiences for a given GS1 Digital Link, you will need a license from EVERYTHING which is the owner of the US Patent No. 9,794,321B2 (Ex. K). EVERYTHING further states that the ’321 patent contains “Essential claims for certain implementations of the GS1 Digital Standard Release 1.1” (Ex. K). EVERYTHING also states that “it is offering to grant a royalty free, non-exclusive license to the

Patent to users of the GS1 Link Standard 1.1” for certain uses and under certain terms. EVERYTHING has provided its licensing terms in each state in the United States (Ex. K).

68. On information and belief, EVERYTHING has conducted additional licensing efforts with respect to the ’321 and ’595 patent in the United States including Massachusetts.

### **JURISDICTION AND VENUE**

69. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*, as amended.

### **Subject Matter Jurisdiction**

70. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) as the present case arises, at least in part, under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

71. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 as the present case arises, at least in part, under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, as amended, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

72. Under all the circumstances, there is a substantial, definite, and concrete controversy of sufficient immediacy and reality between Avery Dennison and EVERYTHING regarding the ’321 and ’595 patents and EVERYTHING’s alleged trademarks to warrant issuance of a declaratory judgment.

73. A substantial controversy exists because Avery Dennison and EVERYTHING have adverse interests with respect to EVERYTHING’s patent and trademark rights. EVERYTHING has

claimed that Avery Dennison infringes and/or misuses EVERYTHING's alleged patent and trademark rights.

74. A substantial controversy exists because Avery Dennison has recently launched its atma Platform and EVERYTHING has stated that Avery Dennison needs [REDACTED], and has threatened that it will assert its patent rights against Avery Dennison with respect to the atma Platform as set forth above.

75. For instance, EVERYTHING stated on April 9, 2021 that "EVERYTHING takes the misuse of its intellectual property and of its confidential, proprietary, and trade secret information very seriously, and it will take all steps necessary to prevent the continued misuse and misappropriation of its intellectual property, trade secrets and Confidential Information through deployment of the Atma Platform. This would include the Atma platform's unlicensed use of EVERYTHING's material patent portfolio in this space (as acknowledged by Mr. Stander in your letter of March 11, 2021)" (Ex. J at 5-6). Mr. Stander's March 11 letter expressly discussed the '321 and '595 patents. Accordingly, there is a definite and concrete dispute between the parties over whether Avery Dennison has infringed the '321 and '595 patents with respect to the atma Platform.

76. A substantial controversy exists because EVERYTHING stated in its April 9, 2021 letter that "RBIS is using EVERYTHING's terminology to describe the Atma product and in order to cause confusion among consumers that RBIS is providing the same product as EVERYTHING. For example, RBIS is using terminology such as "Product Cloud" in external communications and job ads; EVERYTHING Product Cloud is a trademarked term. Similarly, RBIS is using the term "unique digital IDs" to echo and pass off as EVERYTHING's trademarked "Active Digital Identities." EVERYTHING further stated that "EVERYTHING takes the misuse of its intellectual

property and of its confidential, proprietary, and trade secret information very seriously, and it will take all steps necessary to prevent the continued misuse and misappropriation of its intellectual property, trade secrets and Confidential Information through deployment of the Atma Platform” (Ex. J at 4). Thus, there is a definite and concrete dispute between Avery Dennison and EVERYTHING regarding Avery Dennison’s alleged use of the terms “product cloud” and “unique digital IDs” and EVERYTHING’s alleged marks.

77. Under all the facts as described above, there is a definite and concrete dispute with respect to Avery Dennison and EVERYTHING regarding EVERYTHING’s ’321 and ’595 patents and EVERYTHING’s alleged Trademark Rights.

#### **Personal Jurisdiction**

78. This Court has personal jurisdiction over EVERYTHING pursuant to the Massachusetts long-arm statute, G.L. c. 223A, § 3, and Federal Rule of Civil Procedure 4(k)(2).

79. FED. R. CIV. P. (k)(2) addresses service of an original complaint and summons for Federal claims outside state-court jurisdiction. FED. R. CIV. P. (k)(2) provides that for a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws. Under FED. R. CIV. P. (k)(2), this Court has personal jurisdiction over EVERYTHING if (1) the plaintiff’s claim arises under federal law, (2) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction, and (3) the exercise of jurisdiction comports with due process.

80. The Massachusetts long-arm statute provides in relevant part that a “court may exercise personal jurisdiction over a person, who acts directly by an agent, as to cause of action in

law or equity arising from the persons': (a) transacting any business in this commonwealth; (b) contracting to supply services or things in this commonwealth; (c) causing tortious injury by act or omission in this commonwealth.”

81. By its conduct and actions, EVERYTHING has transacted business in Massachusetts and contracted to supply services in Massachusetts.

82. Avery Dennison may properly serve EVERYTHING with the summons and complaint under the Massachusetts long-arm statute.

83. Avery Dennison's service of the summons and complaint for this action or filing a waiver of service of the summons and complaint establishes personal jurisdiction under FED. R. CIV. P. (k)(2).

84. Avery Dennison's claims arise under Federal law because they are declaratory judgment claims for noninfringement of patents and trademarks under the Federal patent statute and the Federal Lanham Act.

85. Upon information and belief, EVERYTHING is a United Kingdom company with offices in England. Upon information and belief, EVERYTHING does not have offices and employees in any state of the United States. Upon information and belief, EVERYTHING is not incorporated in any state of the United States. Upon information and belief, EVERYTHING is not subject to general jurisdiction in any state of the United States.

86. The exercise by this Court of personal jurisdiction over EVERYTHING comports with due process under the United States Constitution because: (i) EVERYTHING has directed its activities to residents of the forum; (ii) Avery Dennison's declaratory judgment claims arise out of EVERYTHING's activities with the forum; and (iii) the assertion of personal jurisdiction over

EVERYTHING is fair and reasonable. Factors (i) and (ii) are often referred to as the “minimum contacts” prong of personal jurisdiction.

87. The “forum” for purposes of FED. R. CIV. P. (k)(2) and due process is the United States.

88. EVERYTHING has directed communications to and engaged in business activities in United States, including specifically the Commonwealth, with respect to the EVERYTHING IP Rights at issue in this declaratory judgment action. For example, EVERYTHING conveyed threats to assert its patents to Avery Dennison in conversations with respect to the '595 patent and the '321 patent, and sent warning letters threatening assertion of the '595 and '321 patents and its alleged rights in “EVERYTHING Product Cloud” and in “unique digital identities” in the United States and in Massachusetts.

89. EVERYTHING has conducted licensing activities in the United States and in Massachusetts with respect to Avery Dennison and the '321 and '595 patents. EVERYTHING has negotiated and entered into contracts with Avery Dennison, which referred to EVERYTHING's Patent Rights and Trademark Rights, in the United States, including Massachusetts.

90. Avery Dennison's declaratory judgment claims arise out of EVERYTHING's contacts with the United States including Massachusetts because they arise out of their business relationship and EVERYTHING's communications regarding its alleged patent and trademark rights. EVERYTHING's contacts in the United States are related to licensing of the '321 and '595 patents and accusations of infringement against Avery Dennison, including allegations that Avery Dennison has alleged need for a license and an alleged need for a release to the '321 and '595 patents and EVERYTHING would assert its patents against Avery Dennison. EVERYTHING's

contacts with the United States including Massachusetts further include its allegations with respect to “EVERYTHING Product Cloud” and “unique digital IDs.”

91. The assertion of personal jurisdiction over EVERYTHING is fair and reasonable. For example, exercise of personal jurisdiction is proper because the “minimum contacts” prong of the personal jurisdiction test is satisfied and EVERYTHING has directed its activities of patent and trademark assertion to persons in Massachusetts. EVERYTHING has sent warning letters to AD to the United States in Massachusetts establishing minimum contacts and expressed warnings in conversations with AD employees in the United States and in Massachusetts. In addition, EVERYTHING has conducted licensing activities in the United States and in Massachusetts with respect to Avery Dennison specifically and licensing efforts generally with respect to the ’321 patent. Thus, EVERYTHING purposefully availed itself of the United States and Massachusetts.

92. To determine whether the exercise of personal jurisdiction is reasonable and fair, five factors may be considered: “(1) the burden on the defendant, (2) the forum’s interest in adjudicating the dispute, (3) the plaintiff’s interest in obtaining convenient and effective relief, (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the states in furthering fundamental substantive social policies.”

93. EVERYTHING would not be unfairly burdened by the exercise of personal jurisdiction by this Court for at least the same factual reasons that EVERYTHING has “minimum contacts.” Since EVERYTHING is the enforcer of rights under United States patent and trademark laws, EVERYTHING is not unfairly burdened by personal jurisdiction in the United States. Exercising personal jurisdiction over EVERYTHING is not unfair because EVERYTHING is a UK entity with offices in the UK and Massachusetts is one of the closest United States forums to EVERYTHING for resolving the patent and trademark issues.

94. The forum, the United States, has an interest in adjudicating United States patent rights and United States registered trademark rights. The United States has an interest in protecting its companies from threats of litigation over United States patents and United States registered trademarks. The United States has an interest in ensuring its companies can operate its business free from a cloud of litigation.

95. Avery Dennison has an interest in the relief sought, so that it does not have a cloud of litigation over its business and can eliminate the threatening communications that are disruptive to its business activities.

### **Venue**

96. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

97. Venue is proper under 28 U.S.C. § 1391(b)(1) because EVERYTHING “resides” in the District of Massachusetts under 28 U.S.C. §§ 1391(c)(2) and (c)(3). Under 28 U.S.C. §§ 1391(c)(2) EVERYTHING has the capacity to sue and be sued in its common name under applicable law. Therefore, EVERYTHING is deemed to reside in any judicial district in which EVERYTHING is subject to personal jurisdiction with respect to the civil action in question. Because EVERYTHING is subject to personal jurisdiction for this action in the District of Massachusetts, EVERYTHING resides in Massachusetts.

98. Venue is proper under 28 U.S.C. § 1391(c)(3) because EVERYTHING is not a resident in the United States and may therefore be sued in any judicial district.

99. Venue is proper under 1391(b)(2) because a substantial part of the events and omissions giving rise to the claim occurred in the District of Massachusetts as described above.

**COUNT I**  
**NON-INFRINGEMENT OF U.S. PAT. NO. 9,582,595**

100. Avery Dennison incorporates by reference all of the above paragraphs as if set forth herein in their entirety.

101. By virtue of EVERYTHING's verbal and written allegations and accusations of patent infringement as set forth above, an actual, immediate, and substantial controversy exists between Avery Dennison and EVERYTHING as to whether Avery Dennison's use and its customers use of the atma Platform infringes at least one claim of the '595 patent.

102. Avery Dennison and others using the atma Platform do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '595 patent under 35 U.S.C. § 271(a). Avery Dennison does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '595 Patent under 35 U.S.C. § 271(b) with respect to the atma Platform.

103. The '595 patent describes its "Field of the Invention" as "identification of objects. More specifically, this invention relates to using a client application to access an online identity associated with an individual product" (Ex. A at 1:33-38). The '595 patent describes a system including a "client device 102," an "objection identification service 114," and an "object information service 112" (Ex. A at 2:17-33).

104. The '595 patent identifies a "client device" (e.g., a smartphone, tablet computer, etc.) as having a mechanism, such as a camera or scanner, for interacting with objects (Ex. A at 2:22-31). The "objects" may be physical or virtual items, such as a location, an event, a thing, a person, a place, an image, a sound, etc. (Ex. A at 2:34-37). The object may include "indicia" such as a "numeric code (such as a serial number, SKU, UPC, JAN, EAN, GTIN, or the like), a one-dimensional barcode, a two-dimensional barcode (such as a QR code) or the like" (Ex. A at 3:32-

36). The client device can scan an object including its indicia to obtain information about the object (Ex. A at 3:26-31; 15:41-47). The client device can send the scanned information to an object identification service 114 (Ex. A at 4:49-58).

105. In a preferred embodiment, the “object identification service 114” is an online web service (Ex. A at 5:24-29). Alternatively, the ’595 patent describes how the client may access the object identification service via any connection mechanism including wired communications (Ex. A at 5:34-40). The object identification service 114 can communicate with the client device via network 122 and an “object information service 112” (Ex. A at 5:25-30; Fig. 1A).

106. The object identification service 114 is described as identifying an object 104 and provides a client with “a unique identifier for a particular object based on, e.g., information about the particular object (e.g., process image and processed image information) it receives from the” client (Ex. A at 4:49-60). The identification may be based on the indicia (e.g., codes) present on the object (Ex. A at 5:41-45; 14:29-39).

107. The “object identification service 112 is preferably an online software web service” that generates, maintains, uses, and hosts persistent and structured information profiles that describe and store information about individual objects known to the object information service 112” (Ex. A at 3:59-62; 5:22-23). Each object for which the object information service 112 maintains information “has a unique object identifier associated therewith” (Ex. A at 4:3-6).

108. An Application Programming Interface (API) may be used for communication between the object information service 112 and the client devices 102 (Ex. A at 4:31-33). The API “allows users to access the functionality (e.g., the object information applications 116) of the object information service 112 using a domain associated with the object information service 112”

(Id. at 6:20-26). The '595 patent describes that each object for which the object information service maintains information has a “unique object identifier” (Ex. A at 4:3-5).

109. The '595 patent describes how the “unique object identifier” is preferably a uniform resource identifier (URI) or included in a URI (*id.* at 4:61-62). The '595 patent further describes creating a “unique object identifier” by defining a “Thng,” which is “essentially an abstract notion of an object which may have property data (e.g., location data) associated with it” (*id.* at 6:41-49). Every “thng” in the object information service 112 is assigned a unique identifier (ThngID) at creation time (*id.* at 6:47-48).

110. Claim 1 of the '595 patent, which is the only independent claim, recites:

1. A computer-implemented method, implemented by hardware in combination with software, operable on an object information service, said object information service comprising: (i) an object database, (ii) object information applications for maintaining and accessing information in said object database, and (iii) an Application Programming Interface (API) to said object information applications, said API being externally accessible, wherein said object database maintains a persistent profile for each of a plurality of objects,

the method comprising:

(a) obtaining, at a device, information about an object;

(b) determining an identifier for the object from the information obtained in (a) by:

(b)(1) providing at least some of said information to an identification mechanism;

and

(b)(2) obtaining an identifier for the object from an identification mechanism; and

then

(c) using the identifier and said API to add said object to said object information service, wherein the information service maintains a persistent online profile for the object in said object database, said profile being accessible at the information service using the identifier, and wherein the identifier for the object is unique within the information service; and then, (d) using the identifier and said API to access and store data about the object at said object information service.

111. One example of a distinction between the required limitations of the '595 patent and the atma Platform is that the atma Platform does not perform the steps of (a) obtaining, at a device, information about an object, and (b) determining an identifier for the object from the information obtained in (a), which are required by all the claims of the '595 patent. The atma Platform does not include functionality for determining at a device information about an object (e.g., taking a picture of the object, *etc.*) and using that information to determine an identifier for the object, or its equivalent. The atma platform is a back-end, online service that does not directly interact with any objects to obtain information about those objects.

112. Further, since the atma platform does not perform step (b), it does not perform (b)(1) providing at least some of said information to an identification mechanism; and (b)(2) obtaining an identifier for the object from an identification mechanism; each of which are required limitations of every claim of the '595 patent.

113. Based on at least the foregoing exemplary bases, but by no means limited to only these bases, Avery Dennison's use of the atma Platform does not infringe any claim of the '595 patent.

114. There is no direct infringement of the methods claimed in the '595 patent because neither Avery Dennison nor users of the atma Platform practice every limitation of the claims.

115. Avery Dennison does not induce others to infringe the '595 patent.

116. As set forth above, a substantial, definite, concrete and immediate justiciable controversy exists between Avery Dennison and EVERYTHING with respect to alleged infringement of the '595 Patent, and this controversy is likely to continue. Accordingly, Avery Dennison desires a judicial determination and declaration of non-infringement with respect to the '595 patent.

117. Pursuant at least to 28 U.S.C. §§ 2201 and 2202, a judicial determination that the use of the atma Platform does not infringe any claims of the '595 patent under 35 U.S.C. § 271(a) and (b) is necessary and appropriate.

118. On information and belief, this case is exceptional under 35 U.S.C. § 285 and Avery Dennison should be awarded its attorney fees.

**COUNT II**  
**NON-INFRINGEMENT OF U.S. PAT. NO. 9,794,321**

119. Plaintiffs incorporate by reference all of the above paragraphs as if set forth herein in their entirety.

120. By virtue of EVERYTHING's verbal and written allegations and accusations of patent infringement as set forth above, an actual, immediate, and substantial controversy exists between Avery Dennison and EVERYTHING as to whether Avery Dennison's use and its customers use of the atma Platform infringes at least one claim of the '321 patent.

121. Neither Avery Dennison nor its customers infringes, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '321 patent under 35 U.S.C. § 271(a). Avery Dennison does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '321 Patent under 35 U.S.C. § 271(b) with respect to the atma Platform.

122. The '321 patent is generally directed to “computing system configured to receive an object identifier and contextual information from an end-user, to compute the object identifier and contextual information based on pre-defined set of rules, to map said object identifier and contextual information to an entry point associated with a specific computer application among a plurality of applications, and to provide access to said specific computer application to said end-user” (Ex. B at Abstract).

123. For instance, “[p]referably, the system comprises a context-aware redirector server configured to be connected to a rules database storing the pre-defined set of rules, the context-aware redirector server having an address and being accessible remotely via a data network and configured to receive the object identifier and contextual information, to compute the object identifier and contextual information based on the pre-defined set of rules, to map the object identifier and contextual information to an entry point associated with a specific computer application among a plurality of applications, and to redirect the user automatically to the specific entry point” (Ex. B at 3:21-32).

124. The '321 patent describes that the “context-aware redirection server” is “essentially a smart proxy server” (Ex. B at 7:12-13) where “[t]he objective is to attach multiple target application URLs to a single source URL, where the target URL selection occurs according to a pre-defined set of redirection rules and the context from which the URL is accessed” (Ex. B at 8:10-13).

125. Claims 1, 22, and 29 are the independent claims of the '321 patent.

126. One example of a distinction between the required limitations of the claims of the '321 patent and the atma Platform is that the atma Platform does not maintain, in a rules database, a set of rules comprising, for each object identifier of a plurality of object identifiers, a

corresponding mapping to a plurality of entry points for a corresponding plurality of independent computer applications, which is required by claims 1-21 and 29 of the '321 patent.

127. Similarly, the atma Platform does not determine a specific entry point of a plurality of entry points associated with said particular object identifier, said specific entry point corresponding to a specific computer application of a plurality of independent computer applications associated with said particular object, said determining being based on: (i) the particular object identifier, and (ii) said contextual information associated with the request, and (iii) pre-defined rules from a set of rules mapping object identifiers and contextual information to entry points and corresponding computer applications of said plurality of independent computer applications, said pre-defined rules being in a rules database operatively accessible by said context-aware redirection server, as required by claims 22-28 of the '321 patent.

128. The atma Platform does not maintain or use a pre-defined set of rules to map an object identifier and contextual information to an entry point associated with a specific computer application and thus does not perform this step, or its equivalent.

129. There is no direct infringement of the methods claimed in the '321 patent because neither Avery Dennison nor users of the atma Platform practice every limitation of the claims.

130. Avery Dennison does not induce others to infringe the '321 patent.

131. Based on at least the foregoing exemplary basis, but by no means limited to only this basis, the sale, offer for sale and use of the atma Platform does not infringe any claim of the '321 patent.

132. As set forth above, a substantial, definite, concrete and immediate justiciable controversy exists between Avery Dennison and EVERYTHING with respect to alleged infringement of the '321 patent, and this controversy is likely to continue. Accordingly, AD

desires a judicial determination and declaration of non-infringement with respect to the '321 patent.

133. Pursuant at least to 28 U.S.C. §§ 2201 and 2202, a judicial determination that the sale, offer for sale and use of the atma Platform do not infringe any claims of the '595 patent is necessary and appropriate.

134. On information and belief, this case is exceptional under 35 U.S.C. § 285 and Avery Dennison should be awarded its attorney fees.

**COUNT III**  
**DECLARATION OF NON-INFRINGEMENT AS TO THE TERM**  
**“PRODUCT CLOUD” UNDER THE LANHAM ACT**

135. Plaintiffs incorporate by reference all of the above paragraphs as if set forth herein in their entirety.

136. By virtue of EVERYTHNG’s verbal and written allegations and accusations of trademark infringement as set forth above, an actual, immediate, and substantial controversy exists between Avery Dennison and EVERYTHNG as to whether RFID’s or RBIS’s continued use of the term “product cloud” in connection with the sale, distribution, marketing and advertising of the atma Platform infringes any of Defendant's alleged rights under the Lanham Act, 15 U.S.C. § 1051 *et. seq.*

137. RFID’s and RBIS’s continued use of the phrase “product cloud” in connection with the sale, distribution, marketing and advertising of the atma Platform is not likely to cause confusion as to the source or sponsorship of Avery Dennison’s atma Platform, or with Defendant’s alleged “EVERYTHNG PRODUCT CLOUD” branded software.

138. As set forth above, the EVERYTHNG Registration contains an express disclaimer to any rights in the term “product cloud” apart from its use with the term “EVERYTHNG.”

139. The term “product cloud” is generic to the goods and services to which it is directed, *i.e.*, it is used in connection with a cloud-based product interface, and is not entitled to trademark protection. On information and belief, it is for precisely these reasons, that EVERYTHING accepted the disclaimer of record with respect to the EVERYTHING Registration.

140. While the EVERYTHING Registration, “EVERYTHING PRODUCT CLOUD,” contains the words “product” and “cloud,” any rights associated with the term product cloud have been disclaimed apart from their use with the mark as registered.

141. Even in the event of EVERYTHING being able to establish enforceable rights in the generic “product cloud” wording, Avery Dennison’s use of the wording constitutes a fair use of such wording under the provisions set forth in Section 33(b)(4) of the Lanham Act. Section 33(b)(4) of the Lanham Act allows the use of a term which is descriptive of and used fairly and in good faith only to describe the goods or services of such party.

142. Avery Dennison sells, offers for sale, distributes, markets and advertises the ATMA Platform as the “atma.io™ product cloud platform.” Such use of the explicitly disclaimed and generic term “product cloud” with the “atma.io” designation, and without the “EVERYTHING” designation is distinct from EVERYTHING’s products and services, thus preventing any likelihood of confusion arising among the relevant consumers.

143. Neither Avery Dennison’s atma Platform nor Defendant’s “EVERYTHING Product Cloud” are inexpensive software that would be purchased on impulse, much less without an explicit software subscription or written contract. The respective products are likely to be purchased by discerning and sophisticated purchasers of cloud-based software that make their purchases carefully and only after deliberation, thus additionally eliminating the possibility of any

confusion resulting from Plaintiff's continued use of the disclaimed and generic term "product cloud."

144. Avery Dennison's continued use of "product cloud" as the generic designation of the goods and services sold under the "atma.io™" brand does not infringe any rights of Defendant under 15 U.S.C. § 1114(1)(a).

145. Plaintiffs requests a declaration from the Court that their continued use of the term "product cloud" does not infringe any of Defendant's alleged rights in the mark "EVERYTHING PRODUCT CLOUD" under 15 U.S.C. § 1114(1)(a).

146. Avery Dennison requests that it be awarded its attorney fees because this case is exceptional under 15 U.S.C. § 1117 and/or the Court's inherent powers.

**COUNT IV**  
**DECLARATION OF NO FALSE**  
**DESIGNATION OF ORIGIN AS TO THE TERM**  
**"PRODUCT CLOUD" UNDER THE LANHAM ACT**

147. Plaintiffs incorporate by reference all of the above paragraphs as if set forth herein in their entirety.

148. By virtue of EVERYTHING's verbal and written allegations and accusations of trademark infringement as set forth above, an actual, immediate, and substantial controversy exists between Avery Dennison and EVERYTHING as to whether RFID's or RBIS's continued use of the term "product cloud" in connection with the sale, distribution, marketing and advertising of the atma Platform infringes any of Defendant's alleged rights under 15 U.S.C. § 1125(a).

149. Avery Dennison's continued use of the term "product cloud" in connection with the sale, distribution, marketing and advertising of the atma Platform is not likely to cause confusion as to source of sponsorship and does not constitute a false designation of origin under 15 U.S.C. § 1125(a).

150. As discussed, *supra*, EVERYTHING lacks trademark rights in the term “product cloud,” by virtue of its express disclaimer, let alone strong enough rights to preclude Avery Dennison’s use of the term “product cloud” in connection with the sale, distribution, marketing and advertising of the atma Platform. Alternatively, Avery Dennison’s use of the term “product cloud” constitutes a fair use of such wording under the provisions of Section 33(b)(4) of the Lanham Act.

151. Avery Dennison requests a declaration from the Court that its continued use of the term “product cloud” in connection with the sale, distribution, marketing and advertising of the ATMA Platform does not constitute unfair competition and/or a false designation of origin with respect to EVERYTHING under 15 U.S.C. § 1125(a).

152. Avery Dennison requests that it be awarded its attorney fees because this case is exceptional under 15 U.S.C. § 1117 and/or the Court’s inherent powers.

**COUNT V**  
**DECLARATION OF NO FALSE**  
**DESIGNATION OF ORIGIN AS TO THE TERM**  
**“UNIQUE DIGITAL IDs” UNDER THE LANHAM ACT**

153. Plaintiffs incorporate by reference all of the above paragraphs as if set forth herein in their entirety.

154. By virtue of EVERYTHING’s verbal and written allegations and accusations of trademark infringement as set forth above, an actual, immediate, and substantial controversy exists between Avery Dennison and EVERYTHING as to whether RFID’s or RBIS’s continued use of the term “unique digital IDs” in connection with the sale, distribution, marketing and advertising of the atma Platform infringes any of Defendant’s alleged rights under 15 U.S.C. § 1125(a).

155. Avery Dennison’s continued use of the term “unique digital IDs” in connection with the sale, distribution, marketing and advertising of the atma Platform is not likely to cause

confusion as to source of sponsorship and does not constitute a false designation of origin under 15 U.S.C. § 1125(a).

156. As set forth above, EVERYTHING has alleged in written communications to AD employees that the use of the term “unique digital IDs” infringes upon EVERYTHING’s purported trademark rights in the phrase “Active Digital Identities.”

157. Upon information and belief, EVERYTHING is not the record owner of any federal registration or application for federal registration for the protection of the mark “Active Digital Identities.”

158. Although both “Active Digital Identities” and “unique digital IDs” use the word “digital” and one or another form of “identities” (*i.e.*, “Identities” or “IDs”), the phrases are different in the use of “Active” and “unique.”

159. The term “digital identity” is a generic phrase, composed of two terms used in precisely their generic sense – that is, “digital,” referring to something composed of data in the form of especially binary digits, and that ‘something’ being an “identity,” referring to “the distinguishing character of an item.” In other words, the term “digital identity” means the distinguishing character of an item expressed or composed of data in the form of binary digits.

160. Avery Dennison uses the term “unique digital IDs” in only a generic sense – that is, to refer to digital identities that are unique for the item. Avery Dennison’s use of the term “unique digital identities” is entirely generic.

161. Moreover, Avery Dennison uses the term “unique digital IDs” along with the in connection with the “atma.io™” designation in connection with the sale, distribution, marketing and advertising of the atma Platform.

162. Avery Dennison's use of the "atma.io" designation with the term "unique digital IDs" is diminishes, if not precludes, any possible confusion.

163. EVERYTHING lacks Federal trademark rights in the term "Active Digital Identities," by virtue of its generic nature, let alone strong enough rights to preclude Avery Dennison's use of the term "unique digital IDs" in connection with the sale, distribution, marketing and advertising of the atma Platform. Moreover, even if EVERYTHING were able to establish trademark rights in the term "Active Digital Identities," Avery Dennison's use of the wording "unique digital IDs" would constitute a fair use of such wording under the provisions of Section 33(b)(4) of the Lanham Act.

164. To the extent EVERYTHING could maintain any Federal trademark rights in the generic term "Active Digital Identities," Avery Dennison's use of the different term "unique digital IDs" in connection with the sale, distribution, marketing and advertising of the atma Platform is not likely to cause confusion as to source of sponsorship and does not constitute a false designation of origin under 15 U.S.C. § 1125(a).

165. AD requests a declaration from the Court that its continued use of the term "unique digital IDs" in connection with the sale, distribution, marketing and advertising of the atma Platform does not constitute a false designation of origin with respect to EVERYTHING under 15 U.S.C. § 1125(a).

166. Avery Dennison requests that it be awarded its attorney fees because this case is exceptional under 15 U.S.C. § 1117 and/or the Court's inherent powers.

### **DEMAND FOR JURY TRIAL**

Avery Dennison hereby demands a trial by jury of all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Avery Dennison requests that the Court grant an Order and Entry of Judgment against EVERYTHING as follows:

A. Declaring that neither RFID nor RBIS has infringed any claim of the '595 patent under 35 U.S.C. §§ 271(a) and (b) by, *inter alia*, using or inducing others to use the atma Platform;

B. Declaring that neither RFID nor RBIS has infringed any claim of the '321 patent under 35 U.S.C. §§ 271(a) and (b) by, *inter alia*, using or inducing others to use the atma Platform;

C. Declaring that Plaintiffs' use of "Product Cloud" in connection with their atma Platform and related services does not:

(i) constitute trademark infringement of EVERYTHING's alleged rights in "EVERYTHING Product Cloud" under 15 U.S.C. § 1114(1)(a); and

(ii) constitute false designation of origin under 15 U.S.C. § 1125(a);

D. Declaring that Plaintiffs' continued use of "unique digital IDs" in connection with their atma Platform and related services does not constitute false designation of origin under 15 U.S.C. § 1125(a);

E. Declaring the case exceptional under 35 U.S.C. § 285 and 15 U.S.C. § 1117 and awarding Avery Dennison its reasonable attorneys' fees in this action;

D. Awarding Avery Dennison its costs and expenses in this action; and

E. Granting such other and further relief as the Court deems proper and just.

Avery Dennison RFID Company and Avery Dennison  
Retail Information Services LLC,

By their attorneys,

/s/ Heather B. Repicky

Heather B. Repicky (BBO # 663347)

hrepicky@nutter.com

Nutter McClennen & Fish LLP

Seaport West

155 Seaport Boulevard

Boston, MA 02210

(617) 439-2000

-and-

Michael J. Bonella (#79175) (pro hac vice forthcoming)

Joseph R. Klinicki (#308904) (pro hac vice forthcoming)

FLASTER GREENBERG, P.C.

1835 Market Street, Suite 1050

Philadelphia, PA 19103

Telephone 215.279.9393

Facsimile 215.279.9394

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