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*Attorneys for Plaintiff Social Technologies LLC*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SOCIAL TECHNOLOGIES LLC, a Georgia  
limited liability company,

Plaintiff,

vs.

APPLE INC., a California corporation,

Defendant.

Case Number:

**COMPLAINT FOR**

**(1) Trademark Infringement  
(Lanham Act)**

**(2) Trademark Infringement  
(Common Law)**

**(3) Unfair Competition (Cal. Bus.  
& Prof. Code §17200)**

**(4) Declaratory Judgment of Validity**

**(5) Declaratory Judgment of Non-  
Infringement**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Social Technologies Inc. (“Social Tech”) brings this action to enjoin Apple, Inc.’s  
2 (“Apple”) illegal use of Social Tech’s MEMOJI trademark. Social Tech seeks preliminary and  
3 permanent injunctive relief and all other remedies available under the laws of the United States and  
4 the State of California and alleges with knowledge as to itself and its own acts, and on information  
5 and belief as to all other matters, as follows:

6 **NATURE OF ACTION**

7  
8 1. In April, 2016, Social Tech filed an intent-to-use application with the PTO for a  
9 stylized mark which includes as its dominant element the word “MEMOJI”.

10 2. Social Tech uses the mark in commerce in connection with a messaging mobile  
11 application and has received a registered trademark (hereinafter “MEMOJI”).

12 3. Before Social Tech obtained the registration, and with full notice of Social Tech’s  
13 pending application, Apple, upon information and belief, formed a subsidiary - non-party Memofun  
14 Apps LLC (“Memofun”) - to become the assignee of purported goodwill connected to a forgotten  
15 and abandoned mobile application using the name Memoji, and a suspended trademark application  
16 that went along with it, from non-party assignors Big 3 ENT, LLC and Lucky Bunny, LLC.  
17

18 4. Memofun then assigned those purported rights to Defendant Apple on June 4, 2018.

19 5. On the same day, Apple announced a feature for its new operating system, which  
20 was subsequently released to the public on September 17, 2018, called and marketed as “Memoji”  
21 (hereinafter the “Infringing Memoji”).

22 6. Apple’s Infringing Memoji feature allows users to make animated caricatures of  
23 themselves and send them in messages to friends and family.  
24

25 7. As Apple well knew, however, Social Tech had a pending trademark application and  
26 had used the MEMOJI mark in commerce on an app available in the Google Play store since June  
27 28, 2018, and in online marketing prior thereto.



**FACTUAL ALLEGATIONS**

**Social Tech's MEMOJI App**

16. Social Tech is a company focused on the development of mobile applications to enhance the personal messaging experience. Social Tech has previously released an app known as "HELLOJIS" and another more recently, "MEMOJI".

17. Social Tech's MEMOJI app allows users to edit videos and photographs and send as messages. Social Tech came up with the name MEMOJI in 2016 and filed an intent-to-use application on April 1, 2016 after seeing that the name was not in use.

Social Tech's MEMOJI trademark is:



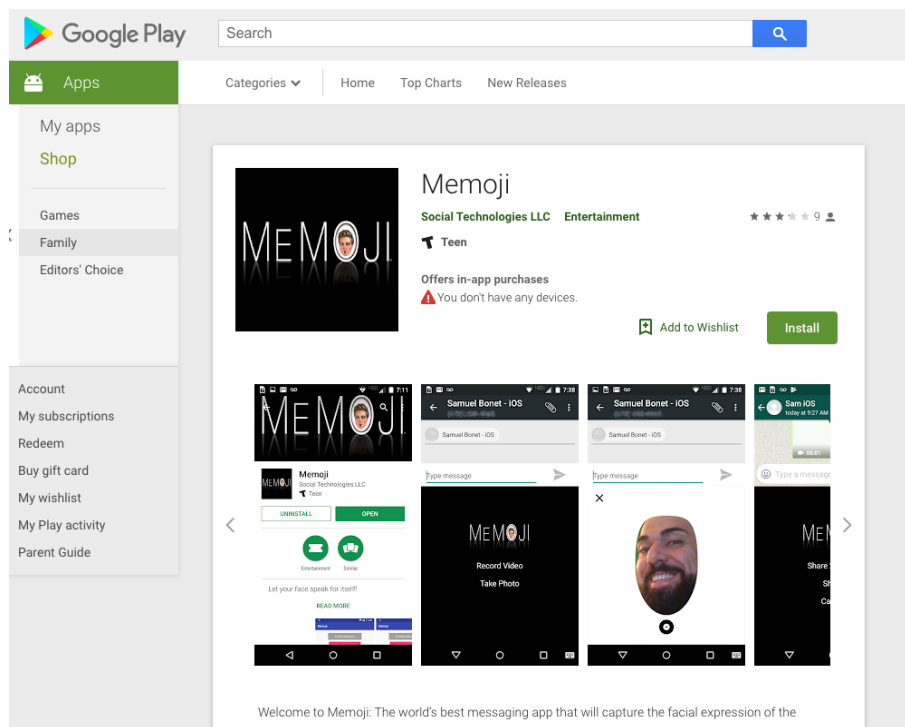
18. On November 15, 2017, the PTO issued a "Notice of Publication" for MEMOJI, explaining that "The mark of the application identified appears to be entitled to registration," and that the mark would be published on December 5, 2017.

19. No opposition was filed with the PTO, and the PTO entered a Notice of Allowance on January 30, 2018.

20. On or around May 21, 2018, an unknown person believed to be acting at the direction of Apple left a message with Social Tech inquiring about buying its rights in the name MEMOJI.

21. Social Tech returned the call and, after the inquiring person declined to identify the company he worked for, indicated that its rights in the name MEMOJI were not for sale.

22. Social Tech filed its Statement of Use on June 30, 2018 and the PTO registered Social Tech's MEMOJI mark on September 18, 2018 (Reg. No. 5,566,242), with a "first use" and use "in commerce" of June 28, 2018 - the date the app became available through the Google Play store:

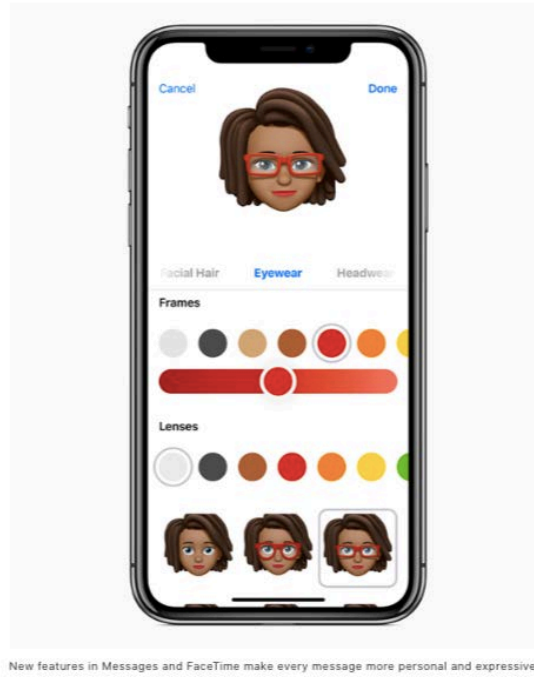


### Apple Announces "Memoji" for Its New iPhone

23. On June 4, 2018, Apple announced its new iPhone operating system for the iPhone. Among the new features Apple touted in the press release was the Infringing Memoji.

## Newsroom

## Memoji and Fun Camera Effects



Apple's press release detailed the Infringing Memoji feature in more detail:

New features make communicating with friends and family from iPhone X more expressive with new Animoji and personalized Memoji characters that are customizable and fun. Create beautifully designed Memoji right within Messages by choosing from a set of inclusive and diverse characteristics to form a unique personality. The existing set of Animoji also expands with ghost, koala, tiger and T. rex. All Animoji and Memoji now feature winks and tongue detection to capture even more expressions.

<https://www.apple.com/newsroom/2018/06/apple-previews-ios-12/>

24. Apple aggressively marketed the Infringing Memoji as a part of the launch of its new operating system.

### **Apple's Willful Infringement Causes Confusion and Damage**

25. Apple's launch of the Infringing Memoji completely swamped Social Tech's efforts to associate the MEMOJI mark with its own brand.

26. MEMOJI is an invented word that does not appear in any common dictionaries.

1           27. Both Social Tech and Apple are using MEMOJI for very similar products: software  
2 to create images using a device's camera that are edited, embedded into messages and sent. Both  
3 have filed PTO applications under the same Class (09 Computer Application Software – Social  
4 Tech's has matured to registration; Apple's is "suspended" because of Social Tech's prior filed  
5 application and likelihood of confusion).

6           28. Both Social Tech and Apple are marketing their MEMOJI brands using very similar  
7 messaging: for Social Tech, that MEMOJI is "The world's best messaging app that will capture the  
8 facial expression of the end user with full-motion capabilities, and transpose the image into a  
9 custom, personalized emoji of the users actual face;" for Apple, its Infringing Memoji feature  
10 "make[s] communicating with friends and family from iPhone X more expressive with . . .  
11 personalized Memoji characters that are customizable and fun".

12           29. Both Social Tech and Apple are using their products through the same channels,  
13 namely, through mobile phones and devices—for Social Tech MEMOJI is available through the  
14 Google Play store for use on Android phones; for Apple, Infringing Memoji is touted as a messaging  
15 feature for iPhones and iPads.  
16

17           30. These obvious similarities, coupled with the sheer size of Apple compared to small  
18 startup Social Tech, make it difficult for Social Tech to protect its MEMOJI brand and reputation,  
19 and to develop goodwill and identity.  
20

21           31. After Apple used its biggest platform - its yearly keynote address - to announce the  
22 Infringing Memoji, Social Tech decided to cut its funding and development process short and  
23 advance the timeline for its MEMOJI app (to stem whatever loss it could from Apple's use of the  
24 Infringing Memoji.  
25

26           32. Social Tech released a basic but functional version of its app through the Google  
27 Play store on June 28, 2018.  
28

1           33. If Apple had not announced its Infringing Memoji product, Social Tech could have  
2 proceeded with the full development of the MEMOJI app on its planned schedule and released a  
3 more complete product rather than having to rush to market with a more basic product.

4           34. Apple's infringing product has, since the day of its announcement, caused Social  
5 Tech to lose control of its brand: a Google search and YouTube search for MEMOJI is dominated  
6 by Apple's Infringing Memoji.

7           35. Apple is a classic willful infringer. Apple knew about Social Tech's senior rights to  
8 MEMOJI, both as a matter of registration with the PTO and a matter of use by Social Tech in  
9 commerce.

10           36. Apple knew that its Infringing Memoji feature was such a closely related service to  
11 Social Tech's MEMOJI app that confusion was virtually certain, and Apple knew or should have  
12 known that its assignment from Lucky Bunny was in gross. Yet, Apple still went ahead and used  
13 the Infringing Memoji mark anyway.

14           37. As expected, comments posted online by users and potential users have expressed  
15 actual confusion and frustration after finding Social Tech's MEMOJI instead of Apples, a classic  
16 case of reverse confusion. In one instance, a negative review was left on Social Tech's Google Play  
17 store because Social Tech MEMOJI didn't offer the same functionality as Apple's Infringing  
18 Memoji.

19           38. Counsel for Social Tech sent a letter to Apple on June 13, 2018, informing Apple of  
20 Social Tech's full intention to release its MEMOJI app and carry through filing the of Statement of  
21 Use to obtain a registration.

22           39. Despite this notice and subsequent registration of Social Tech's MEMOJI mark on  
23 September 18, 2018, Apple has not changed the name of its Infringing Memoji feature or stopped  
24 its willful, deliberate infringement of Social Tech's mark.



1           40. In or about September 2018, Apple released its new operating system to the general  
2 public with the Infringing Memoji feature included.

3           41. This release has exacerbated the confusion that Apple started with its June 4, 2018  
4 product announcement and will result in the further association of the MEMOJI mark with Apple  
5 even though the name belongs to Social Tech.

6  
7  
8                           **FIRST CAUSE OF ACTION**

9                           **(Trademark Infringement – Lanham Act)**

10           42. Social Tech repeats and realleges each and every previous allegation and  
11 incorporates them by reference as if fully set forth herein.

12           43. Social Tech has used the MEMOJI mark to seek investors since April 2016.

13           44. Social Tech has used the MEMOJI mark since January 4, 2017 on its website and on  
14 YouTube.

15           45. Social Tech has used the MEMOJI mark since June 28, 2018 on the Google Play  
16 store where its app is offered, as well as on Facebook and other social media, in an effort to identify  
17 with MEMOJI across the United States, including California, and worldwide.

18           46. In addition, Social Tech has a valid, registered trademark (Reg. No. 5,566,242) for  
19 MEMOJI. Social Tech thus has an action under the Lanham Act's protections for registered and  
20 unregistered marks.

21           47. Apple's use of the Infringing Memoji mark infringes on Social Tech's MEMOJI  
22 mark and has caused and will likely continue to cause confusion as to source, sponsorship,  
23 affiliation, or association.

24           48. With two companies using the near identical mark consisting of a made-up word to  
25 sell a very similar product (both related to mobile messaging), confusion is highly likely: actual or  
26  
27  
28

1 potential customers of Social Tech’s MEMOJI are likely to be confused and believe Apple is the  
2 true source, sponsor, or approver of Social Tech’s app, and vice versa; actual or potential customers  
3 of Apple’s Infringing Memoji may be confused and believe Social Tech is the true source, sponsor,  
4 or approver of Apple’s “Memoji.”

5 49. Apple’s wrongful activities have caused Social Tech irreparable injury. Even after  
6 receiving the June 13, 2018 letter from Social Tech’s counsel, Apple continues to use the Infringing  
7 Memoji mark. This causes injury and loss of control over Social Tech’s goodwill and reputation,  
8 and loss of identity and ability to move into new markets that cannot be remedied through damages,  
9 and Social Tech has no adequate remedy at law.

10 50. Social Tech is entitled to preliminary and permanent injunctions pursuant to 15  
11 U.S.C. § 1116 restraining and enjoining Apple and its agents, servants, employees, and all persons  
12 acting thereunder, in concert with, or on their behalf, from using in commerce the Infringing Memoji  
13 mark or any colorable imitation thereof.

14 51. Pursuant to 15 U.S.C. § 1117, Social Tech is also entitled to recover (1) Apple’s  
15 profits (2) Social Tech’s ascertainable damages, and (3) Social Tech’s costs of suit.

16 52. Apple’s willful infringement of Social Tech’s MEMOJI mark without excuse or  
17 justification renders this an exceptional case and entitles Social Tech to its reasonable attorneys’  
18 fees.

## 19 **SECOND CAUSE OF ACTION**

### 20 **(Trademark Infringement – Common Law)**

21 53. Social Tech repeats and realleges each and every previous allegation and  
22 incorporates them by reference as if fully set forth herein.

23 54. Social Tech has common law rights in the MEMOJI mark under California law.  
24 Social Tech has used the MEMOJI mark since April 2016 in seeking investors, since January 4,  
25

1 2017 on its website and on YouTube, and since June 28, 2018 on the Google Play store where its  
2 app is offered, as well as on Facebook and other social media, all starting several years before Apple  
3 announced its Infringing Memoji feature on June 4, 2018.

4 55. Apple's use of the Infringing Memoji mark infringes on Social Tech's MEMOJI  
5 mark and has caused and will likely continue to cause confusion as to source, sponsorship,  
6 affiliation, or association.

7 56. Apple's wrongful activities have caused Social Tech irreparable injury which cannot  
8 be remedied through damages, and Social Tech has no adequate remedy at law. Social Tech is  
9 entitled to preliminary and permanent injunctions pursuant to 15 U.S.C. § 1116 restraining and  
10 enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert  
11 with, or on their behalf, from using in commerce the Infringing Memoji mark or any colorable  
12 imitation thereof.

13 57. Social Tech is also entitled to recover (1) Apple's profits (2) Social Tech's  
14 ascertainable damages, and (3) Social Tech's costs of suit. Apple's willful infringement of Social  
15 Tech's MEMOJI mark without excuse or justification entitles Social Tech to its reasonable attorney  
16 fees and punitive damages.

17 **THIRD CAUSE OF ACTION**

18 **(Unfair Competition – Cal. Bus. & Prof. Code § 17200 and Common Law)**

19 58. Social Tech repeats and realleges each and every previous allegation and  
20 incorporates them by reference as if fully set forth herein.

21 59. Apple's acts, as alleged above, constitute unlawful and/or unfair business practices  
22 in violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200  
23 et seq.



66. In a letter dated June 14, 2018, counsel for Apple stated to Social Tech, through counsel, that if Social Tech’s application matured to registration, which it since has, “Apple will be able to cancel the registration because Apple’s common law rights in the MEMOJI mark predate your client’s April 1, 2016 filing date.”

67. Apple stated in the same letter that, assuming likelihood of confusion – which Apple has since admitted - Social Tech’s use of its MEMOJI mark infringes Apple’s Infringing Memoji “because Apple’s rights are prior to those of [Social Tech]”.

67. Apple has no common law rights in the MEMOJI mark.

68. A judicial declaration is therefore necessary and appropriate so that Social Tech may ascertain its rights regarding the use of its trademark registration under 15 U.S.C. §§ 1051 et seq.

69. Social Tech seeks a declaration that it owns and has the right to use its MEMOJI trademark for any and all purposes and that its MEMOJI Mark is a valid, enforceable and federally registered mark protectible under the Lanham Act as issued by the PTO. In addition, Social Tech seeks a declaration that Apple is not entitled to a federal registration for the mark MEMOJI.

### **FIFTH CAUSE OF ACTION**

#### **(DECLARATION OF NON-INFRINGEMENT UNDER COMMON LAW)**

70. Social Tech repeats and realleges each and every previous allegation and incorporates them by reference as if fully set forth herein.

70. Social Tech’s seeks a judicial declaration that its use of its MEMOJI mark does not infringe, and at all times has not infringed, any existing and valid marks owned by Apple through common law use.

**PRAYER FOR RELIEF**

WHEREFORE, Social Tech hereby requests that this Court:

A. Enter preliminary and permanent injunctions restraining and enjoining Apple and its agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, from using in commerce the Infringing Memoji mark or any colorable imitation or confusingly similar variation thereof;

B. Award Social Tech its ascertainable damages, costs, and attorney fees, including royalty fees, damages for corrective advertising, and punitive damages;

C. Award Social Tech Apple's profits attributable to Apple's unauthorized use of Social Tech's MEMOJI mark;

D. Award Social Tech all amounts by which Apple has been unjustly enriched through its use of Social Tech's MEMOJI mark;

E. Declare that Social Tech that it owns and has the right to use its MEMOJI trademark for any and all purposes and that its MEMOJI Mark is a valid, enforceable and federally registered mark protectible under the Lanham Act as issued by the PTO, and that Apple is not entitled to a federal registration for the mark MEMOJI.

F. Declare that Social Tech's use of its MEMOJI mark does not infringe any existing and valid marks owned by Apple through common law use.

G. Award such other and further relief as this Court deems just and proper.  
Social Tech demands a trial by jury on all issues so triable.

Dated: September 27, 2018

Respectfully submitted,

/s/Nicholas Ranallo

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*Attorneys for Plaintiff Social Technologies LLC*

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues and causes of action triable to a jury.

Respectfully submitted,

/s/Nicholas Ranallo

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