

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LODSYS GROUP, LLC,

Plaintiff,

v.

ORIENTAL TRADING COMPANY, INC.;
SAKS, INC.;
SOMERSET INVESTMENT, INC.;

Defendants.

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CIVIL ACTION NO. 2:13-cv-57-JRG

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lodsys Group, LLC (“Lodsys”), for its complaint against the above-named defendants, alleges as follows:

THE PARTIES

1. Lodsys is a Texas limited liability company with its principal place of business in Marshall, Texas.
2. Defendant Oriental Trading Company, Inc. (“Oriental Trading”) is a Delaware corporation with its principal place of business in Omaha, Nebraska.
3. Defendant Saks, Inc. (“Saks”) is a Tennessee corporation with its principal place of business in New York, New York.
4. Defendant Somerset Investments, Inc. (“Somerset”) is an Oregon corporation with its principal place of business in Salem, Oregon.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in that defendants reside in this district, a substantial part of the events giving rise to the claims

occurred in this district, and/or the defendants have a regular and established practice of business in this district and have committed acts of infringement in this district.

6. This Court has general and specific personal jurisdiction over defendants, because each defendant has substantial contacts with the forum as a result of conducting substantial business in the State of Texas and within this district. Upon information and belief, each defendant regularly solicits business in the State of Texas and this district; derives revenue from products and/or services provided to individuals residing the State of Texas and this district; conducts business utilizing the claimed systems and methods with and for customers residing in the State of Texas and this district; and provides and/or markets products and services directly to consumers in the State of Texas and this district.

7. Defendants are properly joined in this action because each of the defendants make or utilize infringing websites with live interactive chat technology and/or the same infringing process.

INFRINGEMENT OF U.S. PATENT NO. 7,620,565

8. On November 17, 2009, U.S. Patent No. 7,620,565 (the “‘565 patent”) was duly and legally issued for a “Customer-Based Product Design Module.” A true and correct copy of the ‘565 patent is attached hereto as Exhibit A. Lodsys is the owner by assignment of all rights, title, and interest in and to the ‘565 patent.

9. Defendant Oriental Trading has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Oriental Trading’s website), one or more of the claims of the ‘565 patent. Oriental Trading manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Oriental Trading’s website www.orientaltrading.com, with live interactive chat features — which infringe at least claim 15 of the ‘565 patent under 35 U.S.C. § 271.

10. Prior to filing this complaint, Lodsys informed Oriental Trading of the patents-in-suit and offered to enter into a licensing arrangement that would allow Oriental Trading to

continue practicing the inventions claimed in patents-in-suit. Oriental Trading, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Oriental Trading chose to continue its infringement. On information and belief, Oriental Trading continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Oriental Trading was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, Oriental Trading acted knowingly, willfully, and with intent to infringe the patents-in-suit.

11. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Oriental Trading is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of www.orientaltrading.com).

12. At least from the time Oriental Trading received notice from Lodsys, Oriental Trading has purposely and voluntarily made the www.orientaltrading.com website with live interactive chat features available to customers, with the expectation that its website with live interactive chat features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Oriental Trading has thereby induced the end users of its website with live interactive chat features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Oriental Trading knew or should have known that its actions would induce direct infringement.

13. On information and belief, and in the alternative to direct infringement, Oriental Trading has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the www.orientaltrading.com website with live interactive chat features to end users within the Eastern District of Texas, knowing that its website with live interactive chat features to be especially made or adapted for use by end users to infringe the '565 patent from at least the time Oriental Trading received notice of the patents-in-suit from Lodsys. On information and belief, the www.orientaltrading.com website with live

interactive chat features has no substantial noninfringing uses, and Oriental Trading acted knowing that its website with live interactive chat features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

14. Defendant Saks has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Saks' website), one or more of the claims of the '565 patent. Saks manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Saks' website www.saksfifthavenue.com, with live interactive chat features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

15. Prior to filing this complaint, Lodsys informed Saks of the patents-in-suit and offered to enter into a licensing arrangement that would allow Saks to continue practicing the inventions claimed in patents-in-suit. Saks, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Saks chose to continue its infringement. On information and belief, Saks continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Saks was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, Saks acted knowingly, willfully, and with intent to infringe the patents-in-suit.

16. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Saks is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of www.saksfifthavenue.com).

17. At least from the time Saks received notice from Lodsys, Saks has purposely and voluntarily made the www.saksfifthavenue.com website with live interactive chat features available to customers, with the expectation that its website with live interactive chat features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Saks has thereby induced the end users of its website with

live interactive chat features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Saks knew or should have known that its actions would induce direct infringement.

18. On information and belief, and in the alternative to direct infringement, Saks has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the www.saksfifthavenue.com website with live interactive chat features to end users within the Eastern District of Texas, knowing that its website with live interactive chat features to be especially made or adapted for use by end users to infringe the '565 patent from at least the time Saks received notice of the patents-in-suit from Lodsys. On information and belief, the www.saksfifthavenue.com website with live interactive chat features has no substantial noninfringing uses, and Saks acted knowing that its website with live interactive chat features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

19. Defendant Somerset has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Somerset's website), one or more of the claims of the '565 patent. Somerset manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Somerset's website www.bookbyte.com, with live interactive chat features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

20. Prior to filing this complaint, Lodsys informed Somerset of the patents-in-suit and offered to enter into a licensing arrangement that would allow Somerset to continue practicing the inventions claimed in patents-in-suit. Somerset, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Somerset chose to continue its infringement. On information and belief, Somerset continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Somerset was made aware and, therefore,

knew of the risk that it infringed the '565 patent. Accordingly, Somerset acted knowingly, willfully, and with intent to infringe the patents-in-suit.

21. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Somerset is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of www.bookbyte.com).

22. At least from the time Somerset received notice from Lodsys, Somerset has purposely and voluntarily made the www.bookbyte.com website with live interactive chat features available to customers, with the expectation that its website with live interactive chat features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Somerset has thereby induced the end users of its website with live interactive chat features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Somerset knew or should have known that its actions would induce direct infringement.

23. On information and belief, and in the alternative to direct infringement, Somerset has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the www.bookbyte.com website with live interactive chat features to end users within the Eastern District of Texas, knowing that its website with live interactive chat features to be especially made or adapted for use by end users to infringe the '565 patent from at least the time Somerset received notice of the patents-in-suit from Lodsys. On information and belief, the www.bookbyte.com website with live interactive chat features has no substantial noninfringing uses, and Somerset acted knowing that its website with live interactive chat features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

24. Defendants' acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendants the damages sustained by Lodsys as a result of defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement is willful and

deliberate, including because defendants became aware of the infringing nature of their respective products and services at the latest when they received a notice letter from Lodsys and/or the filing of Lodsys's Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

INFRINGEMENT OF U.S. PATENT NO. 7,222,078

25. On May 22, 2007, U.S. Patent No. 7,222,078 (the "'078 patent") was duly and legally issued for "Methods and Systems for Gathering Information from Units of a Commodity Across a Network." A true and correct copy of the '078 patent is attached hereto as Exhibit B. Lodsys is the owner by assignment of all rights, title, and interest in and to the '078 patent.

26. Defendant Oriental Trading has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Oriental Trading's website), one or more of the claims of the '078 patent. Oriental Trading manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Oriental Trading's website www.orientaltrading.com, with live interactive chat features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

27. Prior to filing this complaint, Lodsys informed Oriental Trading of the patents-in-suit and offered to enter into a licensing arrangement that would allow Oriental Trading to continue practicing the inventions claimed in patents-in-suit. Oriental Trading, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Oriental Trading chose to continue its infringement. On information and belief, Oriental Trading continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). Oriental Trading was made aware and, therefore, knew of the risk that it infringed the '078 patent. Accordingly, Oriental Trading acted knowingly, willfully, and with intent to infringe the patents-in-suit.

28. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Oriental Trading is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of www.orientaltrading.com).

29. At least from the time Oriental Trading received notice from Lodsys, Oriental Trading has purposely and voluntarily made the www.orientaltrading.com website with live interactive chat features available to customers, with the expectation that its website with live interactive chat features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Oriental Trading has thereby induced the end users of its website with live interactive chat features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Oriental Trading knew or should have known that its actions would induce direct infringement.

30. On information and belief, and in the alternative to direct infringement, Oriental Trading has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the www.orientaltrading.com website with live interactive chat features to end users within the Eastern District of Texas, knowing that its website with live interactive chat features to be especially made or adapted for use by end users to infringe the '078 patent from at least the time Oriental Trading received notice of the patents-in-suit from Lodsys. On information and belief, the www.orientaltrading.com website with live interactive chat features has no substantial noninfringing uses, and Oriental Trading acted knowing that its website with live interactive chat features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

31. Defendant Saks has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Saks' website), one or more of the claims of the '078 patent. Saks manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not

limited to Saks' website www.saksfifthavenue.com, with live interactive chat features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

32. Prior to filing this complaint, Lodsys informed Saks of the patents-in-suit and offered to enter into a licensing arrangement that would allow Saks to continue practicing the inventions claimed in patents-in-suit. Saks, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Saks chose to continue its infringement. On information and belief, Saks continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). Saks was made aware and, therefore, knew of the risk that it infringed the '078 patent. Accordingly, Saks acted knowingly, willfully, and with intent to infringe the patents-in-suit.

33. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Saks is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of www.saksfifthavenue.com).

34. At least from the time Saks received notice from Lodsys, Saks has purposely and voluntarily made the www.saksfifthavenue.com website with live interactive chat features available to customers, with the expectation that its website with live interactive chat features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Saks has thereby induced the end users of its website with live interactive chat features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Saks knew or should have known that its actions would induce direct infringement.

35. On information and belief, and in the alternative to direct infringement, Saks has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the www.saksfifthavenue.com website with live interactive chat features to end users within the Eastern District of Texas, knowing that its

website with live interactive chat features to be especially made or adapted for use by end users to infringe the '078 patent from at least the time Saks received notice of the patents-in-suit from Lodsys. On information and belief, the www.saksfifthavenue.com website with live interactive chat features has no substantial noninfringing uses, and Saks acted knowing that its website with live interactive chat features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

36. Defendant Somerset has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Somerset's website), one or more of the claims of the '078 patent. Somerset manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Somerset's website www.bookbyte.com, with live interactive chat features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

37. Prior to filing this complaint, Lodsys informed Somerset of the patents-in-suit and offered to enter into a licensing arrangement that would allow Somerset to continue practicing the inventions claimed in patents-in-suit. Somerset, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Somerset chose to continue its infringement. On information and belief, Somerset continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). Somerset was made aware and, therefore, knew of the risk that it infringed the '078 patent. Accordingly, Somerset acted knowingly, willfully, and with intent to infringe the patents-in-suit.

38. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Somerset is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of www.bookbyte.com).

39. At least from the time Somerset received notice from Lodsys, Somerset has purposely and voluntarily made the www.bookbyte.com website with live interactive chat

features available to customers, with the expectation that its website with live interactive chat features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Somerset has thereby induced the end users of its website with live interactive chat features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Somerset knew or should have known that its actions would induce direct infringement.

40. On information and belief, and in the alternative to direct infringement, Somerset has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the www.bookbyte.com website with live interactive chat features to end users within the Eastern District of Texas, knowing that its website with live interactive chat features to be especially made or adapted for use by end users to infringe the '078 patent from at least the time Somerset received notice of the patents-in-suit from Lodsys. On information and belief, the www.bookbyte.com website with live interactive chat features has no substantial noninfringing uses, and Somerset acted knowing that its website with live interactive chat features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

41. Defendants' acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendants the damages sustained by Lodsys as a result of defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement is willful and deliberate, including because defendants became aware of the infringing nature of their respective products and services at the latest when they received a notice letter from Lodsys and/or the filing of Lodsys's Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Lodsys respectfully requests a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lodsys Group, LLC, respectfully requests entry of judgment in its favor and against defendants as follows:

(a) Declaration that (1) defendants have infringed U.S. Patent No. 7,620,565; and (2) defendants have infringed U.S. Patent No. 7,222,078;

(b) Awarding the damages arising out of (1) defendants' infringement of U.S. Patent No. 7,620,565; and (2) defendants' infringement of U.S. Patent No. 7,222,078 to Lodsys, together with pre-judgment and post-judgment interest, in an amount according to proof;

(c) Finding defendants' infringement to be willful from the time that defendants became aware of the infringing nature of their respective products and services, which is the time of receiving a notice letter from Lodsys or the filing of Lodsys' Complaint at the latest, and awarding treble damages to Lodsys for the period of such willful infringement pursuant to 35 U.S.C. § 284;

(d) Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

(e) Awarding such other costs and further relief as the Court may deem just and proper.

Dated: April 26, 2013

Respectfully Submitted

By: /s/ Christopher M. Huck
Christopher M. Huck
(admitted pro hac vice)
Michael A. Goldfarb
(admitted pro hac vice)
Kit W. Roth
(admitted pro hac vice)
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ATTORNEYS FOR PLAINTIFF
LODSYS GROUP, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this response was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 26th day April, 2013.

By: /s/ Christopher M. Huck
Christopher M. Huck