

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

Klever Marketing, Inc.,)	
)	
Plaintiff,)	C.A. No: 6:13-cv-474
)	
v.)	
)	
Target Corporation,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	
)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Klever Marketing, Inc. ("Klever Marketing"), by and through its undersigned counsel, for its complaint for Patent Infringement against Defendant Target Corporation ("Target"), hereby states:

THE PARTIES

1. Plaintiff Klever Marketing is a corporation organized and existing under the laws of Delaware, with its principal place of business in 5320 South 900 East, Suite 900, Salt Lake City, Utah 84117.

2. Defendant Target Corporation is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403.

JURISDICTION AND VENUE

3. This is a civil action for the infringement of United State Patent Number 5,420,606 ("the '606 Patent" or "the Patent-in-Suit"), under the Patent Laws of the United States 35 U.S.C. § 1 *et seq.*

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

5. This Court has specific and general personal jurisdiction over Target , which has conducted and continues to conduct business in the State of Texas and in this Judicial District. Target directly sells, offers for sale, and/or advertises products and services in the State of Texas and in this Judicial District. Target has committed acts of infringement in the State of Texas and in this Judicial District, and elsewhere in the United States. Target also derives substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT-IN-SUIT

7. On May 30, 1995, the '606 Patent entitled "Instant Electronic Coupon Verification System," was duly and lawfully issued by the United States Patent and Trademark Office ("USPTO"). The '606 Patent relates to, among other things, the delivery and use of graphical coupons to an electronic communications device. Klever Marketing is the owner of the '606 Patent and has all rights to enforce the '606 Patent. A copy of the '606 Patent is attached as Exhibit A to this Complaint.

COUNT ONE

8. Klever Marketing incorporates by references each of the foregoing paragraphs of this Complaint as though fully set forth herein.

9. Defendant Target has directly infringed, and continues to directly infringe, at least claim 1 of the '606 Patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents. Defendant's infringing acts include, but are not limited to: making, using, selling, offering to sell, and distributing electronic coupons for use at its retail locations. These electronic coupons are distributed directly to consumers through its own application available for download and use on smartphone hardware.

10. The Defendant has indirectly infringed at least claim 1 of the '606 Patent, through induced infringement under 35 U.S.C. § 271. The Defendant was notified by Klever Marketing of its infringement of the '606 Patent on May 29, 2013 . Nevertheless, the Defendant continues its acts of indirect infringement as of the filing of this Complaint by continuing to actively induce consumers to download its electronic coupons onto smartphones and use them at its at retail stores, within the scope of the '606 Patent.

11. With knowledge of the '606 Patent, the Defendant has indirectly infringed, and upon service of the complaint, continues to indirectly infringe the '606 Patent by inducing the direct infringement by consumers, by enabling, instructing, and encouraging consumers to make and use the infringing apparatus described in at least claim 1 of the '606 Patent, while aware that their use is infringing.

12. The Defendant has indirectly infringed at least claim 1 of the '606 Patent, through contributory infringement under 35 U.S.C. § 271. The Defendant was notified by Klever Marketing of its infringement of the '606 Patent on May 29, 2013. Nevertheless, the Defendant

continues its acts of indirect infringement as of the filing of this Complaint by continuing to distribute electronic coupons to smartphones, knowing that their adaptation is for use on smartphone, with no other substantial non-infringing application.

13. The electronic coupons and software for download onto smartphone devices that are used and/or distributed by the Defendant are components of a patented device covered by at least Claim 1 of the '606 Patent. They are material parts of the invention, and their only use is in a system as described and claimed in the '606 Patent. These components are not a staple articles or commodities of commerce suitable for non-infringing uses. The use and/or distribution of these components contribute to the direct infringement of the '606 Patent by consumers of their electronic coupons.

14. Target's use of the technology claimed in the '606 Patent is without license or authorization from Klever Marketing.

15. Klever Marketing has been, and continues to be, damaged by Defendant's infringement of the '606 Patent.

PRAYER FOR RELIEF

WHEREFORE, Klever Marketing prays for entry of judgment as follows:

- a) adjudging that the Defendant has infringed one or more of the claims of the Patent-in-Suit, either literally or under the doctrine of equivalents;
- b) awarding Klever Marketing all damages to which it is entitled under 35 U.S.C. § 284 for Defendant's past infringement and continuing infringement, and ordering a full accounting of same;
- c) awarding Klever Marketing pre-judgment and post-judgment interest on its damages;
- d) awarding costs and attorney's fees to Klever Marketing, pursuant to 35 U.S.C. § 285; and

e) awarding Klever Marketing such further and additional relief as the Court deem as just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Klever Marketing hereby demands a trial by jury on all claims and issues so triable.

Dated: June 11, 2013

Respectfully submitted,

/s/ Frank M. Washko

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