

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DUNNHUMBY USA, LLC, et al.,

Plaintiffs,

v.

EMNOS USA CORP.,

Defendant.

Case No. 1:13-cv-00399

Honorable Amy J. St. Eve

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs dunnhumby USA, LLC and dunnhumby Limited (collectively "dunnhumby"), for their first amended complaint against Defendant emnos USA Corp. ("emnos USA"), state and allege as follows:

INTRODUCTION

1. This is an action for patent infringement arising out of the unauthorized inclusion of dunnhumby's patented methods and systems in emnos USA's ANALYZER product.

PARTIES

2. dunnhumby USA, LLC is an Ohio limited liability company with its principal place of business at 444 West 3rd Street, Cincinnati, Ohio 45202.

3. dunnhumby Limited is a private limited company of the United Kingdom with its principal place of business at 71-75 Uxbridge Road, Aurora House, London, UK W5 5SL.

4. emnos USA is a Delaware corporation that is located at 300 N. LaSalle, Suite 5575 Chicago, Illinois 60654 and that conducts business in this judicial district.

5. emnos USA is a wholly owned subsidiary of emnos GmbH (collectively, "emnos").

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over dunnhumby's patent infringement claims under 28 U.S.C. § 1338(a) because these claims arise under Acts of Congress relating to patents including, but not limited to, 35 U.S.C. §§ 271(a)-(c), 281, and 283-285.

7. This Court has personal jurisdiction over emnos USA because emnos USA resides in Illinois and conducts its principal operations in Illinois.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and § 1400(b).

FACTUAL BACKGROUND

dunnhumby Invents and Patents Revolutionary Consumer Analytics Product

9. dunnhumby is the world's leading customer science company. dunnhumby analyzes data and applies insights from more than 400 million customers across the globe.

10. In 2003, dunnhumby Limited and The Kroger Co. formed dunnhumby USA, LLC as a joint venture.

11. In 2004, dunnhumby began offering its "Shop" product, which revolutionized the field of customer data analytics.

12. The dunnhumby Shop provides an Internet website portal that allows users to generate predefined reports from an enormous database of marketing and consumer information regarding retail transactions (e.g., from Kroger customer loyalty cards), consumer behavior, and consumer trends.

13. That same year, dunnhumby applied for a U.S. patent covering this groundbreaking technology.

14. On July 3, 2012, the U.S. Patent and Trademark Office ("USPTO") duly and legally issued U.S. Patent No. 8,214,246 (the "'246 Patent"), titled "Method for Performing

Retail Sales Analysis." A copy of the '246 Patent is attached as Exhibit 1.

15. dunnhumby Limited is the owner by assignment of all right, title, and interest in and to the '246 Patent.

16. dunnhumby USA, LLC is a licensee of the '246 Patent.

emnos Hires Former dunnhumby Employees

17. emnos is a direct competitor of dunnhumby in the field of customer data analytics.

18. Over the years, emnos has hired multiple former dunnhumby employees for the purpose, on information and belief, to benefit from the knowledge and experience these employees obtained while working at dunnhumby.

19. For example, the Managing Director of emnos GmbH since its founding in 2003 has been Patrick Rohrbasser, who was previously the Sales and Marketing Director for dunnhumby Limited.

20. The Chief Executive Officer of emnos GmbH, Jesús García, also previously worked at dunnhumby Limited.

21. When emnos USA was formed in 2010, it hired Adam Holyk—another former dunnhumby employee—as Managing Director, who was "responsible for the entire North American business." http://www.emnos.com/press/news/news-article/select_category/22/article/emnos-opens-new-branch-office-in-the-usa/71/; *see also* <http://www.research-live.com/news/people/emnos-enters-us-with-dunnhumby-man-at-the-helm/4004580.article> (article titled "Emnos enters US with Dunnhumby man at the helm").

22. The current Managing Director of emnos USA, Matthew Green, is yet another former dunnhumby employee. He worked at dunnhumby for six years and was a Vice President, Client Leadership, for dunnhumby USA, LLC.

23. According to the website of emnos GmbH, located at <http://www.emnos.com/company/our-team/management-board/>, three of the five members of the current management board of emnos GmbH—i.e., Rohrbasser, García, and Green—are former dunnhumby employees.

emnos Attempts to Patent Methods and Systems Based on dunnhumby's Patent Application

24. The patent application that issued as dunnhumby's '246 Patent was filed on September 30, 2004, and it became publically available when it was published on or about March 30, 2006.

25. On or about October 30, 2009, patent application US 2011/0106581 (the "emnos Patent Application") was filed with the USPTO, naming former dunnhumby employee Rohrbasser as an inventor. emnos GmbH is the assignee.

26. The emnos Patent Application twice references the patent application that issued as the '246 Patent. For example, the emnos Patent Application states:

retail transaction data and/or consumer data can be analyzed in different ways. For instance, from ***US 2006/0069585 A1*** it is known to provide, based on the retail transaction data and/or consumer data, projects, which are generated as spreadsheet based interactive reports. A user can select via a user interface an analysis project from a predefined list of available analysis projects to answer thereby predefined business questions.

(Emphasis added.)

27. The emnos Patent Application also states:

The collection of such data sets and its analysis is the basis for the generation of reports answering relevant business questions. ***US 2006/0069585 A1***, pertains to the analysis of transaction data or retail sales data. It provides, based on the retail transaction data and/or consumer data, projects, which are generated as spreadsheet based interactive reports. A user can select via a user interface an analysis project from a predefined list of available analysis projects to answer predefined business questions.

(Emphasis added.)

28. emnos GmbH abandoned the emnos Patent Application. It never issued as a U.S. patent.

emnos Introduces Infringing "ANALYZER" Product Based on dunnhumby's Shop Product

29. Although emnos abandoned its patent application based on dunnhumby's '246 Patent application, emnos recently began offering a product that competes directly with dunnhumby's Shop Product.

30. The "emnos Insight Portal," according to <http://www.emnos.com/products/>, is "[w]eb-based and accessible from anywhere" and "enables retailers and consumer businesses to deploy customer insight in every area of their business. Whether you are in Marketing, Merchandising, Category Management, Buying, or Store Management, this integrated suite will help you make better commercial decisions that are tuned to the needs of the customers."

31. The emnos Insight Portal has "modules" that provide certain functionality and features.

32. One such module for the web portal—the emnos ANALYZER—purportedly "[o]ffers predefined customer insight reports which can be customized in terms of products, customers, stores and time periods" and "[h]elps to optimise decisions in marketing, sales and category management."

33. emnos also has described the ANALYZER as a tool that: "offers standard customer insight reports, which can be customized in terms of products, customers, stores and time periods."

http://www.emnos.com/fileadmin/bilder_emnos/Downloads_PDF/emnos_product_folder_EN_screen.pdf.

34. emnos also has described the ANALYZER as follows:

The emnos Analyzer is a scalable and highly flexible reporting system that is able to answer core business questions down to individual store and SKU level. New product launches, cross purchase and switching activities as well as key measures on any desired level can be accessed directly in order to speed up and optimise decision processes in marketing, sales and category management.

35. On information and belief, emnos has attempted to duplicate the functionality of dunnhumby's Shop product, thereby knowingly infringing claims of the '246 Patent.

36. For example, the specification describes the patented invention thus:

The invention provides a user with substantial flexibility in requesting and generating analysis projects on transaction and/or consumer data that is stored in one or more databases. Exemplary embodiments of the invention provide a method for retailers and other authorized users, such as suppliers, to access and perform sophisticated, highly specialized analysis on transaction and/or consumer data, such as retail sales and consumer data, from a remote location using an internet connected computer. The transaction and/or consumer data that is accessed can be a compilation of retail transaction data (collected from EPOS systems, for example) and/or consumer data (which has been collected from frequent-shopper or loyalty cards used by consumers when they shop, for example). Projects are generated as spreadsheet based interactive reports, which are easy to manipulate for further analysis and presentations. Insights from these projects can lead to better decisions on new product launches, sampling, merchandizing, assortment, distribution, and other sales and marketing priorities. Exemplary projects may be interactive, allowing the user to manipulate and extract information which is specific to the user's particular needs.

('246 Patent, Abstract.)

37. No later than October 30, 2009—when the emnos Patent Application was filed—emnos GmbH had knowledge of the patent application that issued as the '246 Patent.

38. On information and belief, emnos USA and its affiliates, including emnos GmbH, have had knowledge of the '246 Patent since July 3, 2012—the date the '246 Patent issued.

39. The dunnhumby Shop product embodies one or more claims of the '246 Patent.

40. emnos USA has infringed and continues to infringe, has actively induced and currently is actively inducing others to infringe, and/or has contributorily infringed and currently

is contributorily infringing claims of the '246 Patent in the United States by making, using, offering for sale, and selling products that are covered by claims of the '246 Patent.

41. More specifically, with respect to contributory infringement, emnos USA makes, uses, sells, offers to sell, supplies, and/or causes to be supplied to end users at least its emnos ANALYZER, which performs the methods and systems disclosed and claimed in the '246 Patent.

42. The emnos ANALYZER is material to practicing the invention claimed in the '246 Patent and has no substantial non-infringing uses.

43. Indeed, every known description of the emnos ANALYZER product demonstrates an infringing use, including extensive documentation provided to consumer packaged goods companies and retailers.

44. On information and belief, the emnos ANALYZER is designed to perform the methods and systems disclosed and claimed in the '246 Patent.

45. With respect to emnos USA's inducing others to infringe, emnos USA provided its ANALYZER product to third parties, including at least a large U.S. drug retailing chain (the "Drug Store Chain"), and instructed them how to use the product in a manner that infringes one or more claims of the '246 Patent.

46. On information and belief, emnos USA provided such instruction orally and through written materials, including the descriptions of the ANALYZER referenced above.

47. According to emnos's website, one form of instruction was provided through "user forums," where users of the emnos ANALYZER are taught "new ways to optimize the use of the [emnos ANALYZER]" and "share best practices."

48. These third parties, including the Drug Store Chain, used the emnos ANALYZER as emnos USA instructed, and these third parties infringed one or more claims of

the '246 Patent by at least using the emnos ANALYZER, which embodies the patented invention.

49. On information and belief, emnos USA intended these third parties, including the Drug Store Chain, to infringe claims of the '246 Patent and knew the acts of these third parties constituted infringement.

50. emnos USA's actions constituting direct and/or indirect infringement of the claims of the '246 Patent were committed despite an objectively high likelihood that its actions constituted infringement of a valid patent. emnos USA either knew or should have known that its reckless actions constituted infringement of a valid patent.

51. dunnhumby owned the patent through the period of the infringing acts of emnos USA and the third parties, and dunnhumby still owns the '246 Patent.

52. emnos USA's infringement of claims of the '246 Patent has injured dunnhumby, continues to injure dunnhumby, and will cause irreparable injury in the future unless emnos USA is enjoined from further infringing claims of the patent.

FIRST CLAIM FOR RELIEF

53. dunnhumby incorporates the foregoing paragraphs by reference as though fully set forth herein.

54. emnos USA has willfully infringed and continues to infringe—directly, contributorily, and/or by active inducement—claims of the '246 Patent, by making, importing, offering to sell, selling, supplying, causing to be supplied, using, and/or causing to be used, in or into the United States, devices and/or systems that embody or practice the inventions claimed in the '246 Patent. The products that embody the inventions claimed in the '246 Patent include at least emnos USA's ANALYZER.

55. emnos USA's past and continued infringement was and is willful.

56. dunnhumby has complied with the statutory requirement of giving notice of the '246 Patent to emnos USA at least by filing this lawsuit and providing emnos USA a copy of the complaint.

WHEREFORE, Plaintiff dunnhumby prays for the following judgment and relief:

- a. that emnos USA has infringed claims of the '246 Patent;
- b. that dunnhumby is entitled to temporary and permanent injunctions enjoining emnos USA and its agents, servants, officers, directors, employees, and persons or entities acting in concert with emnos USA from infringing directly or indirectly, inducing others to infringe, and/or contributing to the infringement of claims of the '246 Patent;
- c. that emnos USA account for and pay to dunnhumby the damages to which it is entitled as a consequence of emnos USA's continued infringement following the period of infringement established by dunnhumby at trial;
- d. that dunnhumby is entitled to interest and costs; and
- e. any other relief that the Court finds just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff dunnhumby demands a jury trial on all issues so triable.

Dated: June 17, 2013

/s/ Kevin W. Kirsch

Kevin W. Kirsch

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ATTORNEYS FOR PLAINTIFFS
DUNNHUMBY USA, LLC AND
DUNNHUMBY LIMITED

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via CM/ECF on June 17, 2013, upon all counsel of record.

/s/ Jared A. Brandyberry
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