

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

OPTIMIZE TECHNOLOGY	§	
SOLUTIONS, LLC,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 2:11-CV-00419-JRG
v.	§	
	§	
(1) STAPLES, INC.,	§	
(2) DILLARD’S, INC.,	§	
(3) HSN, INC.,	§	<u>JURY TRIAL DEMANDED</u>
(4) J. C. PENNEY CORPORATION, INC.,	§	
and	§	
(5) RECREATIONAL EQUIPMENT, INC.,	§	
	§	
Defendants.	§	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Optimize Technology Solutions, LLC, and files this its Second Amended Complaint for patent infringement against Staples, Inc., Dillard’s, Inc., HSN, Inc., J. C. Penney Corporation, Inc., and Recreational Equipment, Inc. (collectively “Defendants”), and would show the Court as follows:

I.
PARTIES

1. Plaintiff Optimize Technology Solutions, LLC (“Optimize”) is a Texas limited liability company with its principal place of business at 3701 Turtle Creek Blvd., Suite 12G, Dallas, TX 75219.

2. Upon information and belief, Defendant Staples, Inc. (“Staples”) is a Delaware corporation with its principal place of business at 500 Staples Drive, Framingham, MA 01702.

3. Upon information and belief, Defendant Dillard’s, Inc. (“Dillard’s”) is a Delaware corporation with its principal place of business at 1600 Cantrell Road, Little Rock, AR 72201.

4. Upon information and belief, Defendant HSN, Inc. (“HSN”) is a Delaware corporation with its principal place of business at 1 HSN Drive, St. Petersburg, FL 33729.

5. Upon information and belief, Defendant J. C. Penney Corporation, Inc. (“J.C. Penney”) is Delaware Corporations with its principal place of business at 6501 Legacy Drive, Plano, Texas 75024.

6. Upon information and belief, Defendant Recreational Equipment, Inc. (“REI”) is a Washington corporation with its principal place of business at 6750 South 228th Street, Kent, WA 98032.

II. **JURISDICTION AND VENUE**

7. This is an action for patent infringement arising under the Patent and Trademark Act, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

8. This Court has personal jurisdiction over the Defendants. Upon information and belief, Defendants are subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including (a) at least a portion of the infringements alleged herein; and (b) regularly doing or soliciting business and/or deriving revenue from goods and/or services provided to individuals in Texas and in this judicial district.

9. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). On information and belief, each Defendant has transacted business in this district, and has committed acts of patent infringement in this district.

III.
THE OPTIMIZE PATENT

10. On December 11, 2001, United States Patent No. 6,330,592 (the “’592 Patent”), entitled “Method, Memory, Product, and Code for Displaying Pre-Customized Content Associated with Visitor Data” was duly and legally issued by the United States Patent and Trademark Office (the “USPTO”) to Michael K. Makuch and Neil Webber. Optimize is the owner of the entire right, title and interest in and to the ’592 Patent. A true and correct copy of the ’592 Patent is attached hereto as Exhibit A.

IV.
FIRST CLAIM FOR RELIEF

(PATENT INFRINGEMENT OF THE ’592 PATENT)
(35 U.S.C. § 271)

11. Optimize incorporates the allegations set forth above in paragraphs 1 through 10.

12. Upon information and belief, Defendant Staples has been and now is directly infringing in the United States, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale and/or importing methods and/or systems utilized by various websites (including, but not limited to, <http://www.staples.com>) that provide pre-customized displays, including the recommendations capability provided by the various websites (including, but not limited to, <http://www.staples.com>), in a manner covered by one or more claims of the ’592 Patent, all to the injury of Plaintiff. Defendant Staples is thus liable for infringement of the ’592 Patent pursuant to 35 U.S.C. § 271.

13. Upon information and belief, Defendant Dillard’s has been directly infringing in the United States, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale and/or importing methods and/or systems utilized by various websites (including, but not limited to, <http://www.dillards.com>) that provide pre-customized displays, including the recommendations capability provided by the various websites

(including, but not limited to, <http://www.dillards.com>), in a manner covered by one or more claims of the '592 Patent, all to the injury of Plaintiff. Defendant Dillard's is thus liable for infringement of the '592 Patent pursuant to 35 U.S.C. § 271.

14. Upon information and belief, Defendant HSN has been and now is directly infringing in the United States, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale and/or importing methods and/or systems utilized by various websites (including, but not limited to, <http://www.hsn.com>) that provide pre-customized displays, including the recommendations capability provided by the various websites (including, but not limited to, <http://www.hsn.com>), in a manner covered by one or more claims of the '592 Patent, all to the injury of Plaintiff. Defendant HSN is thus liable for infringement of the '592 Patent pursuant to 35 U.S.C. § 271.

15. Upon information and belief, J.C. Penney has been and now is directly infringing in the United States, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale and/or importing methods and/or systems utilized by various websites (including, but not limited to, <http://www.jcpenney.com>) that provide pre-customized displays, including the recommendations capability provided by the various websites (including, but not limited to, <http://www.jcpenney.com>), in a manner covered by one or more claims of the '592 Patent, all to the injury of Plaintiff. J.C. Penney is thus liable for infringement of the '592 Patent pursuant to 35 U.S.C. § 271.

16. Upon information and belief, Defendant REI has been and now is directly infringing in the United States, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale and/or importing methods and/or systems utilized by various websites (including, but not limited to, <http://www.rei.com>) that provide pre-customized displays, including the recommendations capability provided by the

various websites (including, but not limited to, <http://www.rei.com>), in a manner covered by one or more claims of the '592 Patent, all to the injury of Plaintiff. Defendant REI is thus liable for infringement of the '592 Patent pursuant to 35 U.S.C. § 271.

17. As a consequence of Defendants' infringement of the '592 Patent, Optimize has suffered monetary damages in an amount not yet determined, and Optimize will continue to suffer harm (including irreparable harm) in the future unless and until Defendants' infringing activities are enjoined by this Court.

18. Defendants have been on notice of the '592 Patent and Defendants Staples, HSN, J.C. Penney and REI have not ceased their infringing activities. Plaintiff has complied with the statutory requirements of 35 U.S.C. § 287. Further, Defendants know of the '592 Patent by virtue of the pendency of this suit. The infringement of the '592 Patent by Defendants has been and continues to be willful as Defendants' infringing activities were made with reckless disregard to an objectively high likelihood of infringement as, *inter alia*, (1) Defendants knew or should have known that the asserted claims of the '592 Patent are valid and in fact were confirmed as such during ex parte Reexamination by the U.S.P.T.O.; (2) Defendants are not relying on an opinion of counsel; and (3) Defendants' claim construction positions were objectively baseless.

WHEREFORE, Optimize prays for judgment as set forth below.

V.
PRAYER FOR RELIEF

1. That Defendants be declared to have infringed the claims of the '592 Patent as alleged above;
2. the such infringement of the '592 Patent by Defendants has been willful;
3. that Defendants and their respective officers, agents, servants, employees, and attorneys, and all those persons acting in concert or participation with Defendants or acting on

their behalf, be immediately, preliminarily and permanently enjoined and restrained from infringement of the '592 Patent;

4. that Defendants be ordered to account for and pay to Optimize all damages caused to Optimize by reason of each of their infringement of the '592 Patent pursuant to 35 U.S.C. § 284, including trebled damages;

5. that Optimize be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants' infringement of the '592 Patent;

6. that this be declared an "exceptional case" pursuant to 35 U.S.C. § 285 and that Defendants be ordered to pay Optimize's attorney fees and costs; and

7. that the Court grant such other and further relief as the Court deems just and proper under the circumstances.

VI.
DEMAND FOR JURY TRIAL

Optimize demands trial by jury for all claims for relief herein pursuant to Federal Rule of Civil Procedure 38.

Respectfully submitted,

Dated: March 19, 2014

By: /s/ Elizabeth J. Brown Fore

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this Notice was served on all counsel who are deemed to have consented to electronic service pursuant to Local Rule CV-5(a)(3)(A) on this the 19th day of March, 2014.

/s/ Elizabeth J. Brown Fore
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