

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

WOLF RUN HOLLOW, LLC,

Plaintiff,

v.

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

Civil Action No. 2:14-cv-25

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Wolf Run Hollow, LLC ("Plaintiff" or "WRH"), by and through its undersigned counsel, files this First Amended Complaint against Defendant Kohl's Department Stores, Inc. ("Kohl") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent No. 6,115,817 entitled "*Methods and Systems for Facilitating Transmission of Secure Messages Across Insecure Networks*" (the "'817 patent"; a copy of which is attached hereto as Exhibit A). Wolf Run Hollow, LLC is the owner by assignment of the '817 patent. Wolf Run Hollow, LLC seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff Wolf Run is a Texas limited liability company having a principal place of business of 719 West Front Street, Suite 174, Tyler, Texas 75702.

3. Defendant Kohl's Department Stores, Inc. ("Kohl") is a Delaware company with its Corporate Headquarters at N56 W17000 Ridgewood Dr., Menomonee Falls, WI 53051. Defendant engages in business in Texas and may be served with process by serving their registered

agent Corporation Creations Network, Inc., 3411 Silverside Road #104, Rodney Building, Wilmington, DE 19810.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § *et seq.*, including 35 U.S.C. § 271, 281, and 284-85, among others. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1331 and §1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts with the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through authorized intermediaries, ships, distributes, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the Accused Instrumentalities as detailed below. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who use the Defendant's products and services in the State of Texas and in the Eastern District of Texas. Defendant derives substantial revenue from Defendant's infringing use of the Accused Instrumentalities which are provided to individuals in Texas and in this district.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§1391 and 1400(b). On information and belief, Defendant has transacted business in this district, and has directly and/or indirectly committed and/or induced acts of patent infringement in this district.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,115,817

8. WRH refers to and incorporates herein the allegations of Paragraphs 1-7 above.

9. The '817 patent was duly and legally issued by the United States Patent and Trademark Office on September 5, 2000, after full and fair examination. The '817 patent is in full force and effect. Plaintiff is the owner by assignment of the '817 patent and possesses all rights of recovery under the '817 patent, including the exclusive right to sue for infringement and recover past damages.

10. The claims of the 817 patent entitled "*Method and Systems For Facilitating Transmission of Secure Messages Across Insecure Networks*", were novel at the time it was filed with the USPTO because they claim an invention that allowed parties already communicating over an insecure network to request a recipient's software object. This software object allows the two parties to communicate over the network securely. The '817 patent allows user's browsing an insecure website to request the recipient's software object by the press of a button on the website wherein said software object can be self-executable, then allowing the user to send encrypted information to a recipient. The '817 patent applies to all types of communications including, text messages, files, documents, or any other data to be transmitted from a sender to a recipient, and any combination thereof. See Exhibit A '817 patent Col. 1, Line 25-30.

11. Defendant owns, operates, advertises, controls, sells, and otherwise provides systems and methods that infringe the '817 patent. The '817 patent provides, among other things,

“a method for facilitating the transmission of a secure message from a sender to a recipient comprising the steps, performed by a processor, of: (1) receiving a request for a recipient’s security software object from a sender; (2) transmitting the software object in response to the request, the software object comprising a security procedure and recipient information; (3) receiving a secured message secured using the security procedure and the recipient information; and (4) transmitting the secured message to the recipient based on the recipient information.”

12. Defendant makes, uses, provides, owns, operates, advertises, controls, and offers their secured checkout functionality (“Accused Instrumentality”) located on their website http://www.kohls.com/checkout/shopping_cart.jsp which directly and/or indirectly infringes the ‘817 patent.

13. Specifically, Defendant (1) receives a request for a recipient’s security software object from a sender, when a customer adds an item to their shopping cart and presses the “Proceed to Checkout” or “Checkout” button on Defendant’s website http://www.kohls.com/checkout/shopping_cart.jsp; (2) Defendant transmits a software object in response to the request, the software object comprising a security procedure and recipient information, said software object being https://www.kohls.com/checkout/shipping_billing_information.jsp?_requestid=2359065; (3) Defendant receives a secured message, which includes at least the customer’s selected product they are ordering, quantity, and shipping address which is secured using the security procedure and the recipient information. That is, after a customer adds a product to their cart, and the customer presses the “Proceed to Checkout” or “Checkout” button, the software object is sent to the customer’s browser, a secure connection is established using the security procedure https, and the message, including at least the product ordered, quantity, and/or shipping address, is

encrypted using the encryption algorithm, TLS_RSA_WITH_AES_256_CBC_SHA, 256 bit keys, and the message is secured with the recipient information, the initial TLS handshake occurs using the recipient information corresponding to the first https command received by the user's browser; (4) and the secured message is transmitted to the recipient based on the recipient information, i.e. the Defendant's servers, route the secured message to Defendants shipping servers and email servers, based on the recipient information i.e. the Defendants servers further transmit the secured messages sent to www.kohls.com/checkout/shipping_billing_information.jsp to Defendant's shipping servers and email servers i.e. the recipient. The customer then receives an order confirmation email containing the secured message.

14. Defendant also infringes under 35 U.S.C. § 271(b) and (c) by inducing and/or contributing to infringement of the '817 patent in the State of Texas, literally or under the doctrine of equivalents, in this judicial district, and elsewhere in the United States, by, among other things, performing certain steps of the methods and systems claimed by the '817 patent, and advising, encouraging, contributing, or otherwise inducing others to perform the remaining steps claimed by the '817 patent to the injury of WRH. Since at least the filing date of this Complaint, Defendant has had knowledge of the '817 patent, and by continuing the actions described above, has had specific intent to induce infringement of the '817 patent pursuant to 35 U.S.C. § 271(b). Furthermore, the Accused Instrumentalities and its components are material to practicing the invention, and have no substantial non-infringing uses, and is known by Defendant to be especially made and especially adapted for use in infringement of the '817 patent.

15. Defendant is willfully and intentionally infringing the '817 Patent from at least the date of the filing of this law suit.

16. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

17. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of the Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

18. Defendant's infringement of Plaintiff's exclusive rights under the '817 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against the Defendant, and that the Court grant Plaintiff the following relief:

- A. A judgment in favor of Plaintiff that Defendant has infringed one or more of the claims, directly, jointly and/or indirectly, by way of inducing and/or contributing to the infringement of the '817 patent;
- B. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and their officers, directors, agents servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '817 patent, or such other equitable relief the Court determines is warranted;

- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- D. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Complaint at the latest, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and
- F. Any further relief that this Court deems just and proper.

DATED May 2, 2014.

Respectfully submitted,

By: /s/ Austin Hansley

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**ATTORNEY FOR PLAINTIFF WOLF
RUN HOLLOW, LLC.**

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2014, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Austin Hansley
Austin Hansley