

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WESTERN EXPRESS BANCSHARES, LLC,
DANIEL W. DAVIS, and
STEVEN L. ZIMMERS,

Plaintiffs,

-against-

NETSPEND CORPORATION,

Defendant.

Civil Action No. _____

PATENT COMPLAINT:

JURY TRIAL DEMANDED

Plaintiffs Western Express Bancshares, LLC (“Western Express”), Daniel W. Davis (“Davis”), and Steven L. Zimmers (“Zimmers,” hereinafter, collectively, “Plaintiffs”), by and through their attorneys Pryor Cashman LLP, as and for their Complaint against defendant NetSpend Corporation (“Defendant” or “NetSpend”) allege as follows:

NATURE OF THE ACTION

1. This is a civil action against Defendant for the infringement of U.S. Patent No. 8,498,932 (the “Patent”), arising under the patent laws of the United States, as set forth in Title 35 of the U.S. Code. A true and correct copy of the Patent is attached hereto as Exhibit A.

PARTIES

2. Plaintiff Western Express is a Delaware limited liability company, with its principal place of business at 86 Drake Avenue, New Rochelle, New York 10805.

3. Plaintiff Davis is an individual residing in Florida.

4. Plaintiff Zimmers is an individual residing in Ohio.

5. Upon information and belief, Defendant NetSpend is a Delaware corporation, with its principal place of business at 701 Brazos Street, Suite 1200, Austin, Texas 78701.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Upon information and belief, Defendant is subject to personal jurisdiction in the Southern District of New York (the “District”) consistent with principles of due process and New York law, including N.Y. C.P.L.R. §§ 301 and/or 302, because Defendant is, and has been, registered to do business in New York since at least 2011; Defendant, by selling and/or offering to sell its product(s) and/or service(s) to New York consumers, transacts business in this District; Defendant, by selling and/or offering to sell its product(s) and/or service(s) to New York consumers via New York retailer(s), has contracted to supply goods and/or services in this District; Defendant, by selling and/or offering to sell its product(s) and/or service(s) to New York consumers, has committed patent infringement within this District; Defendant, by selling and/or offering to sell its product(s) and/or service(s) to New York consumers, has committed patent infringement that has injured Plaintiff in this District, and Defendant regularly does and/or solicits business in this District and/or derives substantial revenue from goods used and/or services rendered in this District; and/or Defendant has otherwise purposefully availed itself of the benefits and protections of New York law in this District.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b).

BACKGROUND

9. On July 30, 2013, the United States Patent and Trademark Office (the “Patent Office”) duly and lawfully issued U.S. Patent No. 8,498,932 (the “Patent”), entitled “Card Based Transfer Account,” based upon an application filed by the inventor, Scott Matthews. A true and

correct copy of the Patent is attached hereto as Exhibit A.

10. On June 3, 2015, the Patent Office issued a Certificate of Correction for the Patent, which is attached hereto as Exhibit B.

11. Prior to the Patent's initial issuance, all right, title, and interest in the Patent was transferred by the inventor to International Gateway Exchange, LLC ("IGE"). IGE subsequently, but also prior to the Patent's initial issuance, assigned all of its rights to Plaintiffs Western Express and Davis. Plaintiff Davis subsequently assigned half of his interest to Plaintiff Zimmers. Therefore, Plaintiffs Western Express, Davis, and Zimmers are the sole and exclusive owners of all right, title, and interest in the Patent.

12. Upon information and belief, Defendant NetSpend, without authorization from Western Express, Davis, or Zimmers, (i) has been and is directly and indirectly infringing the Patent by practicing methods that are claimed in the Patent; (ii) has been and is contributing to others' infringement of the Patent; and (iii) has been and is inducing others to infringe the Patent by practicing methods that are claimed in the Patent. By way of example and not limitation, Defendant is a provider of prepaid debit cards, including but not limited to the NetSpend Visa® Prepaid Debit Card, that are distributed to retailers and consumers within the State of New York and other states, the arts of which infringe of the claimed method(s) of the Patent.

13. On February 5, 2015, Plaintiffs, through an agent, purchased a NetSpend Visa® Prepaid Debit Card at a retailer located within this District, namely, at Family Dollar Store #09344, located at 2500 White Plains Road, Bronx, New York 10467. The instructions for use that accompany the NetSpend Visa® Prepaid Debit Card, as sold by retailers to consumers, reflect the steps of the claimed invention of the Patent.

14. Defendant has profited through infringement of the Patent. As a result of

Defendant directly and/or contributorily infringing, and/or inducing the infringement of, one or more claims of the Patent, Plaintiffs have suffered, and will continue to suffer, monetary damages. Plaintiffs are entitled to recover from Defendant the damages suffered by Plaintiffs as a result of Defendant's unlawful acts of infringement, but in no event less than a reasonable royalty.

15. Upon information and belief, Defendant intends to continue its unlawful infringement of the Patent. Therefore, Plaintiffs continue and will continue to suffer both monetary and irreparable harm—the latter having no adequate remedy at law—from Defendant's unlawful infringement unless the same is enjoined by this Court. Plaintiffs' loss of control over the terms and offering of their own patented method and Defendant's offering of access to the patented method to retailers and consumers constitutes non-monetary harm to Plaintiffs that can only be remedied by a permanent injunction. Plaintiffs are therefore entitled to the same.

CLAIM FOR RELIEF: PATENT INFRINGEMENT

16. Plaintiffs re-allege and incorporate by reference the allegations set forth in Paragraphs 1-15.

17. Upon information and belief, Defendant has been and is directly and/or contributorily infringing one or more claims of the Patent, and/or has been and is inducing others to infringe the Patent, by, *inter alia*, making, using, offering to sell, or selling in the United States, or importing into the United States, end products and/or providing services covered by one or more of the method claims of the Patent, including, by way of example and not limitation, by its offering for sale to consumers, through retailers, of prepaid debit cards, including but not limited to the NetSpend Visa® Prepaid Debit Card.

18. Defendant has committed the foregoing infringing activities without authorization

or license from Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief in their favor against Defendant as follows:

- A. For a judgment declaring that Defendant has infringed the Patent;
- B. For an award of damages to Plaintiffs adequate to compensate Plaintiffs for Defendant's infringement of the Patent pursuant to 35 U.S.C. § 284, but in no event less than a reasonable royalty for Defendant's use of the methods claimed in the Patent;
- C. For a declaration that this case is exceptional and, therefore, that Plaintiffs are entitled to Plaintiffs' expenses, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;
- D. For an award of pre- and post-judgment interest;
- E. For a judgment enjoining Defendant from any further acts of infringement pursuant to 35 U.S.C. § 283; and/or
- F. For any other or further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request a trial by jury for all issues so triable.

Dated: July 7, 2015
New York, New York

PRYOR CASHMAN LLP

/s/ Andrew S. Langsam

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