

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

**RETROSPECTION MARKETING
LLC**, a Texas limited-liability company,

Plaintiff,

vs.

KOHL'S CORPORATION, a Delaware
corporation,

Defendant.

Civil Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint against Defendant Kohl's Corporation ("Defendant"), Plaintiff Retrospection Marketing LLC ("Plaintiff") hereby alleges as follows.

JURISDICTION AND VENUE

1. This is an action including for infringement under the patent laws of the United States, 35 U.S.C. § 101, *et. seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over Defendant because it regularly conducts business in Texas and in this District, where it has committed the infringing acts alleged herein.

3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c) and 1400.

PARTIES

4. Plaintiff is a Texas limited-liability company having a principal place of business at 5068 West Plano Parkway, Suite 300, Plano, Texas 75093.

5. On information and belief, Defendant is a Delaware corporation having a principal place of business at N56 W17000 Ridgewood Drive, Menomonee Falls, WI 53051, and an Internet web site at <kohls.com>. Defendant is registered to do business in Texas and may be served via its registered agent, Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

COUNT I—INFRINGEMENT OF U.S. PATENT NO. 7,296,062

6. Plaintiff re-alleges and incorporates by reference paragraphs 1-5 above, as if fully set forth herein.

7. Plaintiff is the owner by assignment of U.S. Patent No. 7,296,062 (“the ‘062 patent”), which is entitled “Method for Generating a Presentation for Re-Locating an Information Page That Has Already Been Called,” and which duly and lawfully issued on November 13, 2007. A true and correct copy of the ‘062 patent is attached hereto as

Exhibit A. The co-inventors on the '062 patent, Mr. Bengi and Mr. Kuth, are members and owners of Plaintiff, and Plaintiff is in the business of utilizing and commercializing the inventive methods covered by the '062 patent.

8. The claims of the '062 patent are directed to, for example, a “method for generating a presentation for re-locating an information page that has been called, via a network selected from the group consisting of the Internet, an intranet, and an extranet, from a home page of an information vendor having a vendor server and which has subsequently been exited,” and Claim 1, for example, recites elements including, *inter alia*, (a) “when a user, via a user computer in communication with said vendor server, calls a home page, comprising home page contents, of an information vendor, registering said user at said vendor server,” (b) “at said vendor server registering information pages of said information vendor called by said user directly and indirectly proceeding from said home page,” (c) “at said vendor server only temporarily generating a displayable presentation, for display at said user computer which visually identifies a sequence of said information pages of said information vendor called by said user,” and (d) “deleting said presentation from said vendor server, with no storage of said presentation or said information pages at said vendor server, when said user exits an information session with said information vendor.”

9. On information and belief, Defendant has made, used, offered for sale, sold and/or imported into the United States systems and/or methods covered by the claims of the '062 patent, and continues to do so. For example, the functionality provided at <kohls.com> employs the method covered by Claim 1 of the '062 patent, as explained in detail in Exhibit B attached hereto.

10. First, Defendant's accused infringing functionality includes a "method for generating a presentation for re-locating an information page that has been called, via a network selected from the group consisting of the Internet, an intranet, and an extranet, from a home page of an information vendor having a vendor server and which has subsequently been exited," as exemplified by the analysis shown in Exhibit B.

11. The element of "relocating an information page" includes the links in the "Item You Viewed" dialog box/section, that can take a user to a previously-visited product page on the Defendant's websites. The element of "called, via a network, selected from the group consisting of the Internet . . . from a home page of an information vendor" includes the user connecting to the Defendant's websites, home pages and product pages, using the Internet and its computer browser. The element of a "vendor server" includes computer server(s) that operate the Defendant's websites. The element of "exited" includes the user leaving a product information page or a home page.

12. Claim 1, element (a) recited above requires “when a user, via a user computer in communication with said vendor server, calls a home page, comprising home page contents, of an information vendor, registering said user at said vendor server.” The element of a “user” includes a person who visits Defendant’s websites. A “user computer” (UC) includes the person’s computer. A “home page” includes the page that opens when a user has entered, or uses a search engine to reach the following URL: “http://www.kohls.com.” “Home page contents” include products shown on the home page and from which further product pages on Defendant’s websites can be called. An “information vendor” includes Defendant. “Registering said user at said vendor server” includes as described for registration on vendor servers (VS) via cookies at column 4, lines 32-39 of the ‘062 patent.

13. Claim 1, element (b) recited above requires “at said vendor server registering information pages of said information vendor called by said user directly and indirectly proceeding from said home page.” In the Defendant’s functionality, the visited information product pages are at least temporarily stored (*i.e.*, “registered”) on the server(s) operating the Defendant’s websites, during the time, the vendor server analyzes the RVC (“Recently Viewed Cookie”) sent by UC and builds up the presentation of the new product page including integration of the IYV (“Item You Viewed”) section according to the current contents of the received RVC until the VS sends the new

information product page and the updated RVC to the UC. Further, “directly and indirectly” includes from the home page (directly) or from another product information page (indirectly).

14. Claim 1, element (c) recited above requires “at said vendor server only temporarily generating a displayable presentation, for display at said user computer which visually identifies a sequence of said information pages of said information vendor called by said user.” In the Defendant’s functionality, the product pages shown in the “Item You Viewed” dialog box/section are only temporary, because, if a user closes its browser, or shuts down and restarts its computer, and returns to the Defendant’s websites, the product pages from a previous session are no longer shown in the “Item You Viewed” dialog box/section. Even the “Item You Viewed” dialog box/section is not shown until a second product website is visited (again). A “sequence of said information pages” includes links shown in the “Item You Viewed” dialog box/section.

15. Claim 1, element (d) recited above requires “deleting said presentation from said vendor server, with no storage of said presentation or said information pages at said vendor server, when said user exits an information session with said information vendor.” In the Defendant’s functionality, at least when the internet session (browser) is closed, the presentation has to be deleted (with no storage). It is common knowledge that the HTTP protocol used for the internet connection is stateless, which means the browser cannot send a message when the user leaves the pages of the information vendor.

Therefore, in view of commonly-known and commonly-used internet techniques, this claim cannot be read in a way that deleting the presentation on the vendor server and terminating the session (or leaving the Defendant's web pages) has to occur at the same time.

16. On information and belief, Defendant has caused, encouraged and aided others, including customers, to directly infringe the '062 patent having full knowledge of the '062 patent and the specific intent that its acts and the acts of its customers and/or others to directly and/or indirectly infringe the '062 patent.

17. By the acts of making, using, offering to sell, selling and/or importing the accused infringing systems and/or methods, Defendant has directly infringed the '062 patent under 35 U.S.C. § 271(a).

18. By the acts of actively inducing others to infringe the '062 patent, Defendant has infringed the '062 patent under 35 U.S.C. § 271(b). On information and belief, having knowledge of the '062 patent, Defendant specifically intended for its customers to infringe the '062 patent by using the accused infringing systems and/or methods.

19. The acts of infringement asserted herein have been and continue to be deliberate and willful, at least since Defendant first learned about the '062 patent.

20. Defendant has derived and received gains, profits and advantages from the aforesaid acts of infringement, and Plaintiff has lost profits and has otherwise been damaged and is entitled to monetary relief in an amount to be determined at trial.

21. The infringement of the '062 patent has caused and continues to cause irreparable harm to Plaintiff, for which there is no adequate remedy at law, and the infringement will continue unless and until it is enjoined by this Court.

PRAYER FOR RELIEF

Therefore, Plaintiff prays for the following relief:

- A. A determination that Defendant has infringed the '062 patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents;
- B. A preliminary and permanent injunction against the continuing patent infringement;
- C. An accounting for damages adequate to compensate for the patent infringement under 35 U.S.C. § 284, including Plaintiff's actual damages including lost profits, treble damages, pre-judgment and post-judgment interest, and costs;
- D. A determination of willful patent infringement, and that this is an exceptional case, and an award of reasonable attorney fees and expenses to Plaintiff under 35 U.S.C. § 285; and
- E. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands hereby a jury trial on any issues triable of right by a jury.

Dated: September 29, 2016

Respectfully submitted,

/s/ Stephen M. Lobbin

Stephen M. Lobbin (admitted in E.D. Tex.)

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