

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

ECEIPT LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 2:16-cv-1111-JRG-RSP
v.)	
)	
BG RETAIL, LLC, D/B/A)	
FAMOUS FOOTWEAR)	
)	
Defendant.)	
_____)	

FIRST AMENDED COMPLAINT AGAINST FAMOUS FOOTWEAR

For its Complaint, Plaintiff eCeipt LLC ("eCeipt"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. eCeipt is a Texas limited liability company with a place of business located at 1400 Preston Road, Suite 400, Plano, Texas 75093.
2. Defendant BG Retail, LLC is a Delaware limited liability company with, upon information and belief, a place of business located at 2400 Preston Road, Plano, Texas 75093.
3. Upon information and belief, Defendant conducts business as Famous Footwear.
4. Upon information and belief, Defendant has registered with the Texas Secretary of State to conduct business in Texas.
5. Upon information and belief, Defendant is a subsidiary of Caleres, Inc., the previously named defendant in this lawsuit.

JURISDICTION AND VENUE

6. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*

7. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

8. Upon information and belief, Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

9. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENT-IN-SUIT

10. On February 4, 2014, United States Patent No. 8,643,875 (the "'875 patent"), entitled "Receipt Handling Systems, Print Drivers And Methods Thereof," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '875 patent is attached hereto as Exhibit A.

11. eCeipt is the assignee and owner of the right, title and interest in and to the '875 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,643,875

12. eCeipt repeats and realleges the allegations of paragraphs 1 through 11 as if fully set forth herein.

13. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant has infringed and continues to infringe the '875 patent by making, using, importing, offering for sale, and/or selling computer implemented methods for processing receipts that obtain transaction data from a point-of-sale (POS) computer system at a store location, the transaction data including

a plurality of categories of information necessary to describe a purchasing transaction of a customer at the store location; obtain image data from the POS system at a store location, the image data representing a receipt corresponding to the purchasing transaction of the customer at the store location; obtain an e-mail address of the customer from a customer information database persistently associated with the POS system; provide, to a display device at the store location, an option to print the receipt at the store location and an option to e-mail the receipt to the customer; obtains a selection of at least one of the provided options; if the option to print is selected, initiates printing of the image data at the store location; and if the option to e-mail is selected, e-mail the receipt to the customer, including: providing the e-mail address obtained from the customer information database to a display device at the store location; obtaining customer confirmation whether the e-mail address is correct; if the e-mail address is not correct, obtaining a corrected e-mail address of the customer; transmitting the image data and the transaction data to a server in communication with one or more POS systems at one or more store locations, including generating a data file, the data file including the transaction data, the correct e-mail address of the customer and a file name corresponding to the image data; assigning an e-mail template based on the data file transmitted to the server; and sending an e-mail to the correct customer e-mail address, wherein the content of the email is based on the assigned e-mail template, where the e-mail provides the image data obtained by the server.

14. eCeipt's initial complaint was filed on October 7, 2016.

15. Caleres, Inc. was served the initial complaint on October 17, 2016.

16. By no later than December 21, 2016, counsel representing Caleres, Inc. informed eCeipt that the entity that should have been named as the defendant is BG Retail, LLC, a subsidiary of Caleres, Inc.

17. Thus, Defendant has been on notice of the '875 patent and the initial complaint since, at the latest, December 21, 2016.

18. Upon information and belief, Defendant has not altered its infringing conduct after receiving notice of the '875 patent and its infringing conduct.

19. Upon information and belief, Defendant's continued infringement despite its knowledge of the '875 patent and the accusations of infringement has been objectively reckless and willful.

20. In particular, Defendant's customers' ability to select the option of and then, based on their selection, have purchasing transaction receipts printed at the store location or e-mailed to the customer is facilitated by the use of technology patented under the '875 patent.

21. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its sales personnel, the use of its methods of processing receipts that infringe the '875 patent when used as intended by Defendant's customers and end-users. Defendant's customers and end-users use such methods. Defendant further instructs its customers and end-users how to use such methods in a manner that infringe the '875 patent (e.g., through instructions).

22. In particular, Defendant instructs its customers and end-users through at least instructions and training, respectively.

23. Defendant still further makes such methods for processing receipts available to its customers and end-users, thus enabling and encouraging its customers and end-users to use such methods to infringe the '875 patent.

24. As such, on information and belief, despite the information Defendant obtained from the original complaint in this action, Defendant continues to specifically intend for and

encourage its customers and end-users to use its methods in a manner that infringe the claims of the '875 patent.

25. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such methods for processing receipts constitute an objectively high likelihood of infringement of the '875 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the date of its notice of the '875 patent, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '875 patent and that the '875 patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any changes to the relevant operation of its accused methods and has not provided its end-users with instructions on how to avoid infringement the '875 patent. Instead, Defendant has continued to, and still is continuing to, among other things, make, use, offer for sale, and/or sell methods patented under the '875 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '875 patent in disregard of eCeipt's rights under the '875 patent.

26. eCeipt is entitled to recover from Defendant the damages sustained by eCeipt as a result of Defendant's infringement of the '875 patent 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.

JURY DEMAND

eCeipt hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, eCeipt requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '875 patent;
- B. A judgment that Defendant has induced infringement of the '875 patent;
- C. An award of damages to be paid by Defendant adequate to compensate eCeipt for Defendant's past infringement of the '875 patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of eCeipt's reasonable attorneys' fees;
- E. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '875 patent subsequent to the date of its notice of the '875 patent; and
- F. An award to eCeipt of such further relief at law or in equity as the Court deems just and proper.

Dated: December 27, 2016

/s/Stafford Davis w/ permission of lead attorney
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 27th day of December, 2016.

/s/ Stafford Davis

Attorney for Plaintiff eCeipt LLC