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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LANDMARK TECHNOLOGY, LLC,
Plaintiff,
v.
GOURMETGIFTBASKETS.COM, INC.
Defendant.

CASE NO. '17CV0851 AJB KSC

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

Plaintiff Landmark Technology, LLC (“Landmark”), for its Complaint
against GourmetGiftBaskets.com, Inc. (“Defendant” or
“GourmetGiftBaskets.com”), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement in violation of the Patent Act
of the United States, 35 U.S.C. §§ 1 *et seq.*

1 business in this judicial district, including, but not limited to, providing
2 products/services to customers located in this judicial district by way of the
3 GourmetGiftBaskets.com Website.

4 **FACTS**

5 7. On September 11, 2001, United States Patent No. 6,289,319 entitled
6 “Automated Business and Financial Transaction Processing System” was duly and
7 legally issued to Lawrence B. Lockwood as inventor. A true and correct copy of
8 United States Patent No. 6,289,319 is attached hereto as Exhibit A and incorporated
9 herein by this reference.

10 8. Specifically, the ’319 Patent claims a novel automatic data processing
11 system, including an interactive multimedia terminal capable of providing a video-
12 based user interface while both dynamically sending and fetching remote
13 information in order to fetch new inquiring sequences for the user. Conventional
14 terminals prior to the invention claimed in the ’319 Patent, such as that disclosed in
15 U.S. Pat. No. 4,359,631, were incapable of supporting an interactive video
16 presentation while at the time sending and fetching information to and from remote
17 locations; attempting to perform these functions at the same time on prior art
18 terminals would have resulted in the congestion of their systems, rendering them
19 virtually inoperable.

20 9. To solve these issues, the ’319 Patent introduced a novel hardware
21 improvement in the claimed terminal. As demonstrated in Figure 2 of the ’319
22 Patent, a DMA unit was positioned independently along its own information
23 handling connection within the terminal, unlike the systems of the prior art. This
24 unconventional hardware architecture enabled a higher level of interactivity and
25 personalization of user transactions. In an amendment filed on September 19, 1995,
26 during prosecution of the ’319 Patent, the inventor stressed that his claims “define a
27 new set of interrelated apparatuses” and thus that “the claims do not merely recite
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1 the use of ‘conventional hardware,’” but were directed to a “claimed new machine,”
2 not a method of doing business.

3 10. Following a reexamination of Patent No. 6,289,319, the United States
4 Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number
5 US 6,289,319 C1, on July 17, 2007, confirming the validity of all six (6) original
6 claims and allowing twenty-two (22) additional claims. A true and correct copy of
7 Ex Parte Reexamination Certificate, Number US 6,289,319 C1 is attached hereto as
8 Exhibit B and incorporated herein by this reference.

9 11. Following a second reexamination of Patent No. 6,289,319, the United
10 States Patent and Trademark Office issued an Ex Parte Reexamination Certificate,
11 Number US 6,289,319 C2, on January 31, 2013, confirming the validity of all
12 twenty eight (28) original claims. A true and correct copy of Ex Parte
13 Reexamination Certificate, Number US 6,289,319 C2 is attached hereto as Exhibit C
14 and incorporated herein by this reference (United States Patent No. 6,289,319,
15 together with the additional claims allowed by Ex Parte Reexamination Certificate,
16 Number US 6,289,319 C1, and reaffirmed by Ex Parte Reexamination Certificate,
17 Number US 6,289,319 C2 shall hereinafter be referred to as the “’319 Patent.”)

18 12. On September 1, 2008, Lockwood licensed all rights in the ’319 Patent
19 to Landmark. Landmark is the exclusive licensee of the entire right, title and
20 interest in and to the ’319 Patent, including all rights to enforce the ’319 Patent and
21 to recover for infringement. The ’319 Patent is valid and in force.

22 13. On or about May 23, 2016, Landmark sent GourmetGiftBaskets.com a
23 letter informing GourmetGiftBaskets.com of the ’319 Patent that
24 GourmetGiftBaskets.com’s actions, as more fully described below, constituted
25 infringement of the ’319 Patent.

26 14. As more fully laid out below, GourmetGiftBaskets.com has been and is
27 now infringing the ’319 Patent, in this judicial district and elsewhere, by providing
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1 its products/services using electronic transaction systems, which, individually or in
2 combination, incorporate and/or use subject matter claimed by the '319 Patent.

3 **FIRST CLAIM FOR RELIEF**

4 **(Direct Infringement of the '319 Patent, in Violation of 35 U.S.C. §**
5 **271(a))**

6 15. Landmark refers to and incorporates herein by reference paragraphs 1-
7 14.

8 16. GourmetGiftBaskets.com has directly infringed, and continues to
9 directly infringe, at least Claims 1, 3, 7, 8, 9, 11, and/or 18 of the '319 Patent in this
10 judicial district and elsewhere in California and the United States, through the sales
11 and distribution via electronic transactions conducted on and using at least, but not
12 limited to, its website located at <http://www.GourmetGiftBaskets.com.com>.

13 17. The claims of the '319 Patent relate to “an automated data processing
14 system for processing business and financial transactions between entities from
15 remote sites” comprising a variety of features.

16 18. The GourmetGiftBaskets.com functionality referenced above is “an
17 automated data processing system for processing business and financial transactions
18 between entities from remote sites” practicing the claims of the '319 Patent.

19 19. By way of example only, and without limitation,
20 GourmetGiftBaskets.com' Website, functionality and supporting server infringes at
21 least Claims 1, 3, 7, 8, 9, 11, and/or 18 of the '319 Patent in that, the
22 GourmetGiftBaskets.com Website, functionality and supporting server, and/ provide
23 a system that practices all of the limitations of the claims and on which
24 GourmetGiftBaskets.com processes business information and places purchase
25 orders, including:

26 a. The functionality and supporting server is an automatic data processing
27 system for processing business and financial transactions between entities from

1 remote sites running the GourmetGiftBaskets.com’s functionality which is in
2 communication with the GourmetGiftBaskets.com’s server.

3 b. The GourmetGiftBaskets.com’s system includes a central processor
4 (the server and its supporting systems) programmed and connected to process a
5 variety of inquiries and orders transmitted from the GourmetGiftBaskets.com’s
6 functionality running at said remote sites. GourmetGiftBaskets.com’s system allows
7 for a broad range of transactions, thus a range of orders are possible. The system
8 processes a “variety of inquiries and orders,” such as inquiries regarding order
9 history and order status, and the placement of orders for products.

10 c. The system is operated through a terminal (e.g., the
11 GourmetGiftBaskets.com’s computer(s) at each of said remote sites), which terminal
12 includes a data processor and operates in response to operational sequencing lists of
13 program instructions (the code constituting the transaction systems). That terminal
14 includes a DMA positioned independently on its own information handling
15 connection, or its equivalent.

16 d. The system fetches additional inquiring sequences in response to a
17 plurality of data entered through a keyboard and in response to information received
18 from the central processor. For example, the Website asks the user to enter a new
19 email address or password when those that were entered do not match those stored
20 remotely.

21 e. The server of the System and GourmetGiftBaskets.com’s computerized
22 station(s), together with software, practice all of the remaining limitations of Claim
23 1, 3, 7, 8, 9, 11, and/or 18 of the ’319 Patent. GourmetGiftBaskets.com’s Website,
24 functionality and server, and incorporated and/or related systems, put the invention
25 into service.

26 20. GourmetGiftBaskets.com’s Website exerts control over the transactions
27 placed via the claimed terminal. For example, as explained at
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1 <http://www.gourmetgiftbaskets.com/Privacy.aspx>, GourmetGiftBaskets.com's
2 Website may use cookies because "[c]ookies can help customize the Site for
3 visitors."

4 21. GourmetGiftBaskets.com, on information and belief, is also engaged in
5 internal use of the claimed system, by developing and testing versions of its Website
6 on its own servers. For example, as reported at [http://www.nhbr.com/March-4-](http://www.nhbr.com/March-4-2016/Tech-Tidbits-From-Across-NH/)
7 [2016/Tech-Tidbits-From-Across-NH/](http://www.nhbr.com/March-4-2016/Tech-Tidbits-From-Across-NH/), GourmetGiftBaskets.com is actively engaged
8 in "implementing" the "e-commerce platform" on its website as well as "creating a
9 new website using responsive design." GourmetGiftBaskets.com, therefore, by the
10 acts complained of herein, is making, using, selling, or offering for sale in the
11 United States, including in the Southern District of California, products and/or
12 services embodying the invention, and has in the past and is now continuing to
13 infringe the '319 Patent, either literally or under the doctrine of equivalents, in
14 violation of 35 U.S.C. § 271(a).

15 22. GourmetGiftBaskets.com threatens to continue to engage in the acts
16 complained of herein and, unless restrained and enjoined, will continue to do so, all
17 to Landmark's irreparable injury. It would be difficult to ascertain the amount of
18 compensation that would afford Landmark adequate relief for such future and
19 continuing acts, and a multiplicity of judicial proceedings would be required.
20 Landmark does not have an adequate remedy at law to compensate it for the injuries
21 threatened.

22 23. By reason of the acts of GourmetGiftBaskets.com alleged herein,
23 Landmark has suffered damage in an amount to be proved at trial.

24 24. Landmark is informed and believes, and on that basis alleges, that the
25 infringement by GourmetGiftBaskets.com is willful, wanton, and deliberate, without
26 license and with full knowledge of the '319 Patent, thereby making this an
27 exceptional case entitling Landmark to attorneys' fees and enhanced damages.

SECOND CLAIM FOR RELIEF

(Inducing Infringement of the '319 Patent, in Violation of 35 U.S.C. § 271(b))

25. Landmark refers to and incorporates herein by reference paragraphs 1-21.

26. Landmark is informed and believes, and on that basis alleges, that GourmetGiftBaskets.com has actively and knowingly induced infringement of the '319 Patent, in violation of 35 U.S.C. § 271(b) by, among other things, inducing its customers to utilize their own device in combination with

<https://www.GourmetGiftBaskets.com> and

<https://www.gourmetgiftbaskets.com/cart.aspx>, and incorporated and/or related systems, to search for and order information and products from www.GourmetGiftBaskets.com in such a way as to infringe the '319 Patent.

27. For example, GourmetGiftBaskets.com is inducing its customers to infringe by encouraging them to create new accounts and to sign in to their accounts using their login information to retrieve their order histories, e.g., at <https://www.gourmetgiftbaskets.com/login.aspx>.

28. By reason of the acts of GourmetGiftBaskets.com alleged herein, Landmark has suffered damage in an amount to be proved at trial.

29. GourmetGiftBaskets.com threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Landmark's irreparable injury. Landmark does not have an adequate remedy at law.

30. Landmark is informed and believes, and on that basis alleges, that the infringement by GourmetGiftBaskets.com is willful, wanton, and deliberate, without license and with full knowledge of the '319 Patent, thereby making this an exceptional case entitling Landmark to attorneys' fees and enhanced damages.

1 **JURY DEMAND**

2 Landmark demands a jury trial on all issues so triable.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Landmark prays for relief as follows:

5 A. Judgment that GourmetGiftBaskets.com has directly infringed, and
6 induced others to infringe, the '319 Patent either literally and/or under the doctrine
7 of equivalents;

8 B. Judgment that GourmetGiftBaskets.com' infringement of the '319
9 Patent has been willful;

10 C. Judgment permanently enjoining GourmetGiftBaskets.com, its officers,
11 directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches,
12 parents, attorneys, representatives, and all others acting in concert or privity with
13 any of them, from infringing the '319 Patent, and from inducing others to infringe
14 the '319 Patent;

15 D. Judgment awarding Landmark general and/or specific damages,
16 including a reasonable royalty and/or lost profits, in amounts to be fixed by the
17 Court in accordance with proof, including enhanced and/or exemplary damages, as
18 appropriate, as well as all of GourmetGiftBaskets.com' profits or gains of any kind
19 from its acts of patent infringement;

20 E. Judgment awarding Landmark enhanced damages pursuant to 35
21 U.S.C. § 284 due to the willful and wanton nature of GourmetGiftBaskets.com's
22 infringement;

23 F. Judgment awarding Landmark all of its costs, including its attorneys'
24 fees, incurred in prosecuting this action, including, without limitation, pursuant to 35
25 U.S.C. § 285 and other applicable law;

26 G. Judgment awarding Landmark pre-judgment and post-judgment
27 interest; and

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H. Judgment awarding Landmark such other and further relief as the Court may deem just and proper.

Dated: April 26, 2017

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Landmark demands a jury trial on all claims as to which it has a right to a jury trial.

Dated: April 26, 2017

Respectfully submitted,

BANIE & ISHIMOTO LLP

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