

1 Brett M. Schuman (SBN 189247)
2 *bschuman@goodwinlaw.com*
3 David L. Simson (SBN287900)
4 *dsimson@goodwinlaw.com*
5 **GOODWIN PROCTER LLP**
6 Three Embarcadero Center
7 San Francisco, California 94111
8 Tel.: (415) 733-6000
9 Fax.: (415) 677-9041

10 Attorneys for Plaintiff
11 PredictSpring, Inc.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 PREDICTSPRING, INC.,

15 Plaintiff,

16 vs.

17 AERITAS, LLC

18 Defendant.

Case No. 17-3561

**COMPLAINT FOR DECLARATORY
RELIEF**

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff PredictSpring, Inc. (“PredictSpring”) as and for its Complaint against defendant Aeritas, LLC (“Aeritas”), alleges as follows:

INTRODUCTION

1. This is a suit for declaratory judgment action arising out of a patent dispute between Aeritas and PredictSpring’s customer Charlotte Russe, Inc. (“Charlotte Russe”). Aeritas has accused Charlotte Russe of infringing U.S. Patent Nos. 7,706,819 (“the ’819 patent”); 8,055,285 (“the ’285 patent”); and 9,390,435 (“the ’435 patent,” collectively the “patents-in-suit”), based on Charlotte Russe’s use of PredictSpring’s mobile ecommerce platform and mobile application.

2. Under the terms of their contract, PredictSpring has an obligation to defend, indemnify and hold harmless its customer Charlotte Russe against Aeritas’ claim.

3. PredictSpring denies that its mobile ecommerce platform and mobile application infringe the patents-in-suit asserted against Charlotte Russe by Aeritas.

4. PredictSpring has an apprehension that Aeritas will attempt to assert the patents-in-suit against its other of its customers.

5. There is a current, actual controversy between the parties that requires this Court’s intervention.

THE PARTIES

6. Plaintiff PredictSpring is a Delaware corporation with its principal place of business at 5050 El Camino Real, Suite 226, Los Altos, CA 94022.

7. On information and belief, defendant Aeritas is a Texas limited liability company with a principal place of business at 5001 Spring Valley Road, Suite 1130E, Dallas, Texas 75244.

BACKGROUND OF THE CONTROVERSY

8. On information and belief, Aeritas’ sole business is asserting patents that it owns or is assigned, including the patents-in-suit, and Aeritas generates revenue solely through licensing its patents.

9. On information and belief, Aeritas has not in at least the past 15 years made, sold or offered for sale any products or services covered by the patents-in-suit, and has no plans to do in the

1 future.

2 10. On March 4, 2016, Aeritas filed a lawsuit in the Eastern District of Texas, captioned
3 *Aeritas, LLC v. Charlotte Russe, Inc.*, Case No. 6:17-cv-00328 (the “CR Complaint”), in which
4 Aeritas asserted infringement of the patents-in-suit against PredictSpring’s customer Charlotte
5 Russe. A true and correct copy of the CR Complaint is attached as Exhibit A.

6 11. The CR Complaint describes Charlotte Russe’s mobile applications for iOS and
7 Android as the “Accused Instrumentality,” and predicates the infringement claims against Charlotte
8 Russe on Charlotte Russe’s use of the mobile applications. Ex. A at ¶¶ 12-24.

9 12. Charlotte Russe’s mobile applications for iOS and Android are made and provided by
10 PredictSpring, and interact with PredictSpring’s mobile ecommerce platform (“PredictSpring’s
11 Servers”).

12 13. Charlotte Russe is a Delaware Corporation with a principal place of business at 575
13 Florida Street, Suite 200, San Francisco, California 94110, within this district.

14 14. Since November 2012, Aeritas has sued eight other defendants for infringement of
15 one or more of the patents-in-suit, based on each defendant’s mobile application. These defendants
16 include Cinemark USA, Inc.; G6 Hospitality, LLC; GameStop Corp.; La Quinta Holdings, Inc.;
17 Nordstrom, Inc.; Macy’s, Inc.; Walgreen Co.; and Groupon, Inc.

18 15. Based on Aeritas’ history of litigation, PredictSpring has an apprehension that Aeritas
19 will accuse PredictSpring’s other customers of infringement of the patents-in-suit. As the supplier of
20 the Charlotte Russe instrumentalities accused of infringement by Aeritas, PredictSpring has great
21 interest in defending its products and its actions against charges of infringement.

22 **JURISDICTION AND VENUE**

23 16. This is an action pursuant to 28 U.S.C. § 2201 and § 2202 for a declaration of the
24 rights of the parties with respect to an actual controversy concerning the patents-in-suit. The
25 patents-in-suit are presently assigned to and owned by Aeritas. By virtue of PredictSpring’s
26 obligations to Charlotte Russe, an actual controversy exists between PredictSpring and Aeritas
27 regarding the infringement of the patents-in-suit. Further, as set forth above, Aeritas has taken
28 actions – such as initiating litigation against other companies for alleged infringement of the same

1 patents – that demonstrate the existence of a substantial controversy between parties having adverse
2 legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

3 17. This Court has original jurisdiction over the subject matter of this action pursuant to
4 28 U.S.C. §§ 1331 and 1338(a) for the claims herein arising under the United States Patent Act, 35
5 U.S.C. § 1 *et seq.* The existence of this controversy is demonstrated by, for example, the CR
6 Complaint.

7 18. This Court has personal jurisdiction over Defendant pursuant to the laws of the State
8 of California, including California’s long-arm statute (California Code of Civil Procedure § 410.10).

9 19. Personal jurisdiction also exists over Defendant because it has availed itself of the
10 Northern District of California by, among other things, conducting its patent enforcement activities
11 in this District and towards residents of this District. Specifically, but without limitation, Aeritas has
12 commenced litigation against at least Charlotte Russe which is based in San Francisco, California,
13 and has in the past also commenced litigation against Virgin America, which is based in
14 Burlingame, California, also within this district.

15 20. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)
16 because a substantial part of the events giving rise to PredictSpring’s claim occurred in this district.
17 Plaintiff PredictSpring and a substantial portion of its employees currently reside in this District, as
18 does plaintiff’s customer Charlotte Russe and a substantial portion of its employees. A substantial
19 portion of the events giving rise to this action, including the development of the accused
20 PredictSpring mobile ecommerce platform and related mobile application, and adapting them for use
21 by Charlotte Russe, took place in this District.

22
23 **COUNT 1: DECLARATORY JUDGMENT OF**
NON-INFRINGEMENT OF U.S. PATENT NO. 7,706,819

24 21. PredictSpring repeats and realleges the allegations set forth in paragraphs 1 through
25 20 as if fully set forth herein.

26 22. On information and belief, Aeritas is the owner of the ’819 patent, issued on April 27,
27 2010, to Malik Mamdani et al., and which is entitled “Mixed Mode Interaction.” A true and accurate
28 copy of the ’819 patent is attached as Exhibit B.

23. PredictSpring does not infringe any of the claims of the '819 patent, nor does Charlotte Russe or any other client of PredictSpring using PredictSpring's mobile ecommerce platform and related mobile applications infringe any claims of the '819 patent.

24. In the CR Complaint, Aeritas accused Charlotte Russe of infringing at least claim 17 of the '819 patent. Claim 17 of the '819 patent reads as follows:

17. A communication method, comprising:

at a first time, receiving an input from a mobile communications device, where the input is one of: a spoken input, and a non-verbal input;

obtaining data identifying a current location of the mobile communications device at the first time;

retrieving information, where the retrieved information is a function of the input and the current location of the mobile communications device;

causing delivery, to the mobile communications device by a notification server, in response to the input, of one of: a verbal response, and a non-verbal response, where the verbal response or the non-verbal response, as the case may be, is based on the retrieved information and includes a drill-down menu by which additional information related to the retrieved information can be obtained; and

providing additional information related to the retrieved information in response to receipt of at least one additional input provided via the drill-down menu.

25. PredictSpring's communication methods do not practice at least the limitation of "causing delivery, to the mobile communications device by a notification server, in response to the input, of one of: a verbal response, and a non-verbal response, where the verbal response or the non-verbal response, as the case may be, is based on the retrieved information and includes a drill-down menu by which additional information related to the retrieved information can be obtained."

PredictSpring's Servers deliver responses to the mobile device that include, for example, links corresponding to web pages. Such links to web pages are not "drill-down menus" that include "multiple menu levels" allowing the "mobile subscriber [to] 'drill-down' through multiple menu levels." See Ex. B ('819 patent) at col. 6 lines 9-11.

26. A judicial declaration that the claims of the '819 patent are not infringed is

appropriate and necessary.

**COUNT 2: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF U.S. PATENT NO. 8,055,285**

27. PredictSpring repeats and realleges the allegations set forth in paragraphs 1 through 26 as if fully set forth herein.

28. On information and belief, Aeritas is the owner of the '285 patent, issued on November 8, 2011, to Malik Mamdani et al., and which is entitled "Mixed Mode Interaction." A true and accurate copy of the '285 patent is attached as Exhibit C.

29. PredictSpring does not infringe any of the claims of the '285 patent, nor does Charlotte Russe or any other client of PredictSpring using PredictSpring's mobile ecommerce platform and related mobile applications infringe any claims of the '285 patent.

30. In the CR Complaint, Aeritas accused Charlotte Russe of infringing at least claim 1 of the '285 patent. Claim 1 of the '285 patent reads as follows:

1. A method, comprising:
 - at a first time, receiving and storing an input in a user profile in a database, the input comprising consumer interest data;
 - at a second time distinct from the first time, obtaining data identifying a current location of the mobile communication device;
 - based on the input stored in the user profile and the current location of the mobile communication device, initiating a search to locate information pertinent to the input;
 - receiving results derived from the search; and
 - in response to the input and the search, delivering, by a notification server, information to the mobile communications device.

31. PredictSpring does not practice at least the limitation of "based on the input stored in the user profile and the current location of the mobile communication device, initiating a search to locate information pertinent to the input." For example, the PredictSpring mobile application uses standard iOS and Android location monitoring services. When the PredictSpring mobile application receives an iOS or Android location monitoring event, it makes a request to PredictSpring's Servers, which may deliver to the mobile device information (if any) pertinent to the current location of the mobile device. PredictSpring's Servers do not, in response to an iOS or Android location

1 monitoring event, search for and return information pertinent to “input comprising consumer interest
2 data” stored in a “user profile in a database.”

3 32. A judicial declaration that the claims of the ’285 patent are not infringed is
4 appropriate and necessary.

5
6 **COUNT 3: DECLARATORY JUDGMENT OF**
NON-INFRINGEMENT OF U.S. PATENT NO. 9,390,435

7 33. PredictSpring repeats and realleges the allegations set forth in paragraphs 1 through
8 32 as if fully set forth herein.

9 34. On information and belief, Aeritas is the owner of the ’435 patent, issued on July 12,
10 2016, to Malik Mamdani et al., and which is entitled “Mixed Mode Interaction.” A true and accurate
11 copy of the ’435 patent is attached as Exhibit D.

12 35. PredictSpring does not infringe any of the claims of the ’435 patent, nor does
13 Charlotte Russe or any other client of PredictSpring using PredictSpring’s mobile ecommerce
14 platform and related mobile applications infringe any claims of the ’435 patent.

15 36. In the CR Complaint, Aeritas accused Charlotte Russe of infringing at least claim 1 of
16 the ’435 patent. Claim 1 of the ’435 patent reads as follows:

17 1. Apparatus, comprising:

18 a processor;

19 computer memory holding computer program instructions to:

20 receive first data indicating a permission to provide a mobile
21 device user a notification, the notification having an associated
notification criteria;

22 at a given time, determine a location of a mobile device;

23 based at least in part on a determined location of the mobile device
24 and the notification criteria, to provide to the mobile device the
notification, the notification being associated at the mobile
25 device with one of: an audible, visual and tactile alert;

26 receive second data as a result of an input being received at the
mobile device following the notification;

27 retrieve information associated with the input and the determined
28 location of the mobile device; and

1 provide to the mobile device a response to the input, the response
2 based on the retrieved information.

3 37. PredictSpring's Servers do not practice at least the limitation of "at a given time,
4 determine a location of a mobile device," because PredictSpring's Servers do not include "computer
5 program instructions to ... at a given time, determine a location of a mobile device." To the extent
6 that computer program instructions on PredictSpring's Servers cause any action to be taken based in
7 whole or in part on the location of a mobile device, that location is supplied to PredictSpring's
8 Servers by the mobile device itself, as determined by the iOS or Android operating system on the
9 mobile device.

10 38. A judicial declaration that the claims of the '435 patent are not infringed is
11 appropriate and necessary.

12 **JURY DEMAND**

13 PredictSpring, Inc. hereby demands a trial by jury on all issues triable to a jury in this case.
14

15 **REQUEST FOR RELIEF**

16 WHEREFORE, PredictSpring demands judgment against Defendants:

17 (a) Adjudging and declaring that PredictSpring's mobile ecommerce platform and related
18 mobile applications do not infringe any claim of the '819 patent;

19 (b) Adjudging and declaring that PredictSpring mobile ecommerce platform and related
20 mobile applications do not infringe any claim of the '285 patent;

21 (c) Adjudging and declaring that PredictSpring's mobile ecommerce platform and related
22 mobile applications do not infringe any claim of the '435 patent;

23 (d) Awarding PredictSpring its attorneys' fees and costs pursuant to 35 U.S.C. § 285,
24 and/or other applicable laws, and

25 (e) Awarding PredictSpring such other and further relief, in law and equity, as this Court
26 deems just and proper.

27 //

28 //

1 Dated: June 20, 2017

Respectfully submitted,

2
3 By: /s/ Brett M. Schuman

Brett M. Schuman

bschuman@goodwinlaw.com

4 David L. Simson

dsimson@goodwinlaw.com

5 **GOODWIN PROCTER LLP**

Three Embarcadero Center

6 San Francisco, CA 94111

7 Tel.: (415) 733-6000

Fax.: (415) 677-9041

8 Attorneys for Plaintiff

9 PredictSpring, Inc.