

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

ContactWave LLC,

Plaintiff,

v.

Macy's Inc.,

Defendant.

CASE No. 2:24-cv-00989-RWS-RSP

(Lead Case)

Patent Case

Jury Trial Demanded

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1. Plaintiff ContactWave LLC (“Plaintiff”), through its attorneys, complains of Macy’s Inc. (“Defendant”), and alleges the following:

PARTIES

2. Plaintiff ContactWave LLC is a limited liability company organized and existing under the laws of NM that maintains its principal place of business at 1209 Mountain Rd Pl NE STE n, Albuquerque, NM 87110.

3. Defendant Macy’s Inc. is a corporation organized and existing under the laws of DE that maintains an established place of business at 6209 W Park Blvd, Plano, TX 75093.

JURISDICTION

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

5. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District. As described below, Defendant has committed acts of patent infringement giving rise to this action within this District.

VENUE

7. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendant has an established place of business in this District. In addition, Defendant has committed acts of patent infringement in this District, and Plaintiff has suffered harm in this district.

PATENT-IN-SUIT

8. Plaintiff is the assignee of all right, title and interest in United States Patent No. 9,531,665 (the “Patent-in-Suit”); including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patent-in-Suit. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the Patent-in-Suit by Defendant.

THE '665 PATENT

9. The '665 Patent is entitled “Information messaging system,” and issued 2016-12-27. The application leading to the '665 Patent was filed on 2015-02-10. A true and correct copy of the '665 Patent is attached hereto as Exhibit 1 and incorporated herein by reference.

10. Prior to the invention of the '665 Patent, contact information published on business websites was displayed without standardization. As the patent specification states, “At the present time, contact information is published on a web page using free text, usually using HTML programming language. There is no standard format or template for publishing contact information; consequently each web page has its unique format and template for publishing

contact information.” (’665 Patent, 3:63-4:8). This lack of standardization created technical inefficiencies for users.

11. The patent explains the cumbersome process users faced: “Presently, to save contact information displayed on a web page, customer is required to manually write down the contact information on paper or print the web page containing the contact information and manually enter the contact information into mobile communication device. This is a tedious and cumbersome process and many users choose not to save contact information published on a web page into mobile communication device.” (’665 Patent, 4:2-8.)

12. Thus, prior to the invention of the ’665 Patent, there was “no invention in the prior art that enables customers to send a contact information published on a web page directly to communication devices such as mobile phones; and thereafter integrate the said contact information into the contact list of the said mobile phone without requiring the customer to enter the said contact information manually into the communication device.” (’665 Patent, 2:21-27.)

13. The ’665 Patent specification identifies that conventional messaging approaches lacked effective technical mechanisms to verify user consent and control message flow across multiple vendors. As the ’665 Patent explains, “[i]t is a common practice in web commerce for customers to look for a product online and then subsequently purchase the said product by another means” (’665 Patent, 2:8-13), but conventional methods of the prior art lacked a coordinated approach to manage these cross-vendor relationships.

14. The ’665 Patent addresses these technological deficiencies of the prior art by providing inventive and unconventional systems and methods for transmitting contact information directly to mobile devices.

15. Claim 1 implements a technical solution through its multi-step verification protocol that conditions message delivery on verified acceptance of related messages, for example in limitations reciting “verifying, by the server application through the server, from the received acceptance information that the first mobile user has accepted the first vendor message of the vendor; and sending... a first vendor message of the plurality of vendor messages of the second vendor... only after the verifying.” This verification architecture, required by the method of Claim 1, creates a filtering mechanism that improved the functioning of the server, preventing system overload from unwanted messages while maintaining relevant commercial communications.

16. As the specification explains, this approach enables businesses to “send a targeted ad campaign to users who have already downloaded their contact information into their mobile communication devices” (’665 Patent, 8:13-16), establishing a technically-efficient targeting mechanism that improves system performance by drastically reducing unnecessary message processing and transmission. The method of Claim 1 implemented a consent-based gating approach that enabled a degree of efficiency not possible in prior messaging frameworks.

17. The lack of standardization in conventional contact information system and methods of the prior art, and the absence of effective message verification mechanisms therein, compounded each other’s negative effects. Without standardized contact information, businesses lacked a reliable technical foundation to establish verified communication pathways with interested consumers. The inefficient, non-standardized approach of the prior art effectively prevented the establishment of consent-based messaging relationships since there was no technological mechanism to connect web-based contact information with mobile users in a structured, permission-based framework.

18. Claim 1 provides a comprehensive technical solution that addresses both deficiencies through its server-based verification architecture. The verification method of Claim 1 directly solves the cross-vendor messaging problems that resulted from the lack of standardization in conventional contact information systems and methods. As the specification explains, the invention creates a technological ecosystem where “Pete’s Pizza Store is able to send a discount offer to all mobile users who have previously accepted a discount offer from Pete’s Pizza Store” or even enables “Pete’s Pizza Store... to send a discount offer to all mobile users who have previously accepted a discount offer from John’s Pizza Store” (’665 Patent, 12:13-24).

19. These inventive concepts are captured in the “verifying” limitation of Claim 1, as well as in the “sending” limitation, which occurs “only after the verifying of the first mobile user.”

20. None of the methods of the ’665 Patent were previously performed by human beings or capable of being performed in the human mind.

COUNT 1: INFRINGEMENT OF THE ’665 PATENT

21. Plaintiff incorporates the above paragraphs herein by reference.

22. **Direct Infringement.** Defendant has been and continues to directly infringe one or more claims of the ’665 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least the Defendant products identified in the charts incorporated into this Count below (among the “Exemplary Defendant Products”) that infringe at least the exemplary claims of the ’665 Patent also identified in the charts incorporated into this Count below (the “Exemplary ’665 Patent Claims”) literally or by the doctrine of equivalents. On information and belief, numerous other devices that infringe the claims of the

'665 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

23. Defendant also has and continues to directly infringe, literally or under the doctrine of equivalents, the Exemplary '665 Patent Claims, by having its employees internally test and use these Exemplary Products.

24. **Actual Knowledge of Infringement.** The service of the Original Complaint filed on December 2, 2024, in conjunction with the attached claim charts and references cited, constitutes actual knowledge of infringement as alleged here.

25. Despite such actual knowledge, Defendant continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '665 Patent. On information and belief, Defendant has also continued to sell the Exemplary Defendant Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '665 Patent. See Exhibit 2 (extensively referencing these materials to demonstrate how they direct end users to commit patent infringement).

26. **Induced Infringement.** At least since being served by this Complaint and corresponding claim charts, Defendant has actively, knowingly, and intentionally continued to induce infringement of the '665 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Products to their customers for use in end-user products in a manner that infringes one or more claims of the '665 Patent.

27. Exhibit 2 includes charts comparing the Exemplary '665 Patent Claims to the Exemplary Defendant Products. As set forth in these charts, the Exemplary Defendant Products

practice the technology claimed by the '665 Patent. Accordingly, the Exemplary Defendant Products incorporated in these charts satisfy all elements of the Exemplary '665 Patent Claims.

28. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 2.

29. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

JURY DEMAND

30. Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A judgment that the '665 Patent is valid and enforceable
- B. A judgment that Defendant has infringed directly and indirectly one or more claims of the '665 Patent;
- C. An accounting of all damages not presented at trial;
- D. A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendant's continuing or future infringement, up until the date such judgment is entered with respect to the '665 Patent, including pre- or post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284;
- E. And, if necessary, to adequately compensate Plaintiff for Defendant's infringement, an accounting:

- i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Plaintiff be awarded its reasonable attorneys fees against Defendant that it incurs in prosecuting this action;
- ii. that Plaintiff be awarded costs, and expenses that it incurs in prosecuting this action; and
- iii. that Plaintiff be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: March 19, 2025

Respectfully submitted,

/s/ Isaac Rabicoff
Isaac Rabicoff
Rabicoff Law LLC
4311 N Ravenswood Ave Suite 315
Chicago, IL 60613
7736694590
isaac@rabilaw.com

Counsel for Plaintiff
ContactWave LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on all parties who have appeared in this case on March 19, 2025, via the Court's CM/ECF system.

/s/ Isaac Rabicoff
Isaac Rabicoff