

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

FILED-CLERK
DISTRICT COURT

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TX EASTERN-MARSHALL

GRAPHON CORP , a Delaware corporation,

Plaintiff,

vs

(1) AUTOTRADER.COM, INC., a Delaware corporation, and (2) AUTOTRADER.COM, LLC, a Delaware limited liability company,

Defendants.

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BY _____

Civil Action No. 2-05 CV-530 TJW

(JURY)

COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL

Plaintiff, GraphOn Corp alleges the following in support of its Complaint for Patent Infringement and Demand for Jury Trial (“Complaint”) against Defendants AutoTrader.com, Inc. and AutoTrader.com, LLC (“the AutoTrader defendants”):

PARTIES

1 Plaintiff, GraphOn Corp (“GraphOn”) is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 5400 Soquel Avenue, Suite A2, Santa Cruz, California.

2 Upon information and belief, Defendant AutoTrader.com, Inc. is a corporation organized and existing under the laws of the State of Delaware, and whose principal place of business is 5775 Peachtree Dunwoody Road, Suite A-200, Atlanta, Georgia.

3. Upon information and belief, Defendant AutoTrader.com, LLC is a limited liability company organized and existing under the laws of the State of Delaware, and whose principal place of business is 5775 Peachtree Dunwoody Road, Suite A-200, Atlanta, Georgia

JURISDICTION

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. §§ 101,

et seq. and 271, *et seq.* This Court has personal jurisdiction over the AutoTrader defendants because the AutoTrader defendants infringe GraphOn's patents by offering on their website, www.AutoTrader.com ("the Website"), vehicle listing services to its customers and/or vehicle purchasers who reside in, or may be found in, the Eastern District of Texas.

VENUE

5 Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b) because the AutoTrader defendants have committed acts of infringement in this district and, through the Website, have a regular and established place of business in this district.

COUNT 1

(Patent Infringement)

6 Paragraphs 1 through 5 of the Complaint set forth above are incorporated herein by reference.

7 On November 27, 2001, United States Patent No. 6,324,538 ("the '538 Patent") entitled "Automated On-Line Information Service and Directory, Particularly for the World Wide Web" was duly and legally issued to Ralph E. Wesinger, Jr. and Christopher D. Colely. All rights and interest in the '538 Patent have been assigned to GraphOn. A true and correct copy of the '538 Patent is attached hereto as Exhibit A.

8 On February 1, 2005, United States Patent No. 6,850,940 ("the '940 Patent") entitled "Automated On-Line Information Service and Directory, Particularly for the World Wide Web" was duly and legally issued to Ralph E. Wesinger, Jr. and Christopher D. Colely. All rights and interest in the '940 Patent have been assigned to GraphOn. A true and correct copy of the '940 Patent is attached hereto as Exhibit B.

9 The AutoTrader defendants offer on the Website, a vehicle listing service to help their customers sell vehicles to buyers.

10 Upon information and belief, the AutoTrader defendants have infringed and continue to infringe under 35 U.S.C. § 271 the '538 Patent and the '940 Patent ("the patents-in-suit"). The infringing

acts include, but are not limited to, offering vehicle listing services on the Website that are covered by one or more claims of the patents-in-suit

11. The AutoTrader defendants' acts of infringement have caused damage to GraphOn. Under 35 U.S.C. § 284, GraphOn is entitled to recover from the AutoTrader defendants the damages sustained by GraphOn as a result of their infringement of the patents-in-suit. The AutoTrader defendants' infringement of GraphOn's exclusive rights under the patents-in-suit will continue to damage GraphOn's business, causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

12. Upon information and belief, the AutoTrader defendants' infringement of the patents-in-suit have been willful and deliberate, and entitles GraphOn to increased damages under 35 U.S.C. § 284 and attorney fees and costs under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, GraphOn respectfully requests that this Court enter judgment against the AutoTrader defendants as follows:

(a) For judgment that the AutoTrader defendants have infringed and continue to infringe the '538 Patent and the '940 Patent;

(b) For preliminary and permanent injunctions under 35 U.S.C. § 283 against the AutoTrader defendants and their directors, officers, employees, agents, subsidiaries, parents, attorneys, and all persons acting in concert, on behalf of, in joint venture, or in partnership with the AutoTrader defendants from further acts of infringement;

(c) For damages to be paid by the AutoTrader defendants adequate to compensate GraphOn for their infringement, including interests, costs, and disbursements as the Court may deem appropriate under 35 U.S.C. § 284.

(d) For judgment finding that the AutoTrader defendants' infringement was willful and deliberate, entitling GraphOn to increased damages under 35 U.S.C. § 284;

(e) For judgment finding this to be an exceptional case, and awarding GraphOn attorney fees under 35 U.S.C. § 285 and;

(f) For such other and further relief at law and in equity as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to the Federal Rules of Civil Procedure Rule 38, Plaintiff GraphOn Corp. hereby demands a trial by jury.

DATED: November 22, 2005

Respectfully submitted,

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