

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

CARD ACTIVATION TECHNOLOGIES, INC.,

Plaintiff,

v.

FASHION BUG RETAIL COMPANIES, INC.,
GUESS?, INC.,
J.C. PENNEY CORPORATION, INC.,
LANE BRYANT, INC.
MACY'S RETAIL HOLDINGS, INC.,
PANERA BREAD COMPANY,
STARBUCKS CORPORATION, AND
NORDSTROM, INC.,

Defendants.

Civil Action No. 4:10-cv-117

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT
AND JURY DEMAND**

Comes now the Plaintiff, Card Activation Technologies, Inc. ("CAT"), by and through its attorneys, Stinson Morrison Hecker LLP, and for its First Amended Complaint for Patent Infringement against Fashion Bug Retail Companies, Inc., Guess?, Inc., J.C. Penney Corporation, Inc., Lane Bryant, Inc., Macy's Retail Holdings, Inc., Panera Bread Company, Starbucks Corporation, and Nordstrom, Inc., states:

PARTIES, JURISDICTION AND VENUE

1. This is a civil action for patent infringement, injunctive relief and damages arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.* Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. CAT is a corporation incorporated under the laws of the State of Delaware.

3. Defendant, Fashion Bug Retail Companies, Inc., ("Fashion Bug") is a Delaware corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Bensalem, Pennsylvania.

4. Defendant, Guess?, Inc. ("Guess"), is a Delaware corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Los Angeles, California.

5. Defendant, J.C. Penney Corporation, Inc. ("J.C. Penney"), is a Delaware corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Plano, Texas.

6. Defendant, Lane Bryant, Inc. ("Lane Bryant") is a Delaware corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Columbus, Ohio.

7. Defendant, Macy's Retail Holdings, Inc. ("Macy's"), is a Delaware corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Ohio.

8. Defendant, Panera Bread Company ("Panera"), is a Delaware corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in St. Louis, Missouri.

9. Defendant, Starbucks Corporation ("Starbucks"), is a Washington corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Seattle, Washington.

10. Defendant, Nordstrom, Inc., ("Nordstrom") is a Washington corporation, which operates retail stores throughout the United States, including the State of Missouri, with its principal place of business in Seattle, Washington.

11. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

FIRST CLAIM FOR RELIEF
(Patent Infringement Under 35 U.S.C. § 271)

12. CAT realleges and incorporates by reference all previous allegations as if fully set forth herein.

13. CAT is the owner of United States Patent No. 6,032,859 entitled "Method for Processing Debit Purchase Transactions Using a Counter-Top Terminal System," issued on March 7, 2000 (the "'859 Patent"). A true and correct copy of the '859 Patent is attached hereto as Exhibit A and incorporated herein by this reference. CAT is the owner of the entire right, title and interest in the '859 Patent.

14. The United States Patent Office issued an Ex Parte Reexamination Certificate for the '859 Patent on October 5, 2010. A true and correct copy of the Reexamination Certificate is attached hereto as Exhibit B and incorporated herein by this reference.

15. Fashion Bug, Guess?, Inc., J.C. Penney, Lane Bryant, Macy's, Panera, Starbucks, and Nordstrom (collectively referred to as "Defendants") have directly infringed Claims 1, 10, 20 and / or 29 of the '859 Patent and continue to do so by performing, directing, or controlling the performance of each step set forth in Claims 1, 10, 20, and 29 of the '859 Patent.

16. CAT is entitled to recover from Defendants the damages sustained by CAT as the result of Defendants' wrongful acts of infringement in an amount subject to proof at trial.

17. The Defendants' infringement of the '859 Patent has been willful and deliberate, entitling CAT to increased damages under 35 U.S.C. § 284, and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

REQUEST FOR PLACE OF TRIAL AND JURY DEMAND

CAT hereby requests trial by jury to occur in the United States District Court for the Western District of Missouri.

REQUEST FOR RELIEF

WHEREFORE, CAT asks this Court to enter judgment in its favor against Defendants granting the following relief:

- A. An adjudication that Defendants have infringed and continue to infringe Claims 1, 10, 20, and / or 29 of the '859 Patent;
- B. An accounting of all damages sustained by CAT as the result of Defendants' acts of infringement;
- C. An award to CAT of actual damages adequate to compensate CAT for Defendants' acts of patent infringement, together with pre-judgment interest;
- D. An award to CAT of enhanced damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement;
- E. An award of CAT's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law; and
- F. Any other, further, and different relief as this Court deems just and proper.

Dated this 29th day of December, 2010.

Respectfully submitted,

CARD ACTIVATION TECHNOLOGIES, INC.,
Plaintiff,

By: s/ **Victor C. Padios**

Victor C. Padios (MO Bar No. 55069)

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed on December 29, 2010, with the Clerk of the Court for the Western District of Missouri via the CM/ECF system. This system will send notice of filing to all Counsel of Record.

s/ **Victor C. Padios**

Victor C. Padios