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Attorneys for Plaintiff,
iAccess, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

IACCESS, Inc., a Utah Corporation

Plaintiff,

vs.

WEBcard Technologies, Inc., a
California Corporation

Defendant.

**FIRST AMENDED
COMPLAINT**

Civil No. 2:01-CV-00192C

Judge Tena Campbell

COMES NOW Plaintiff, iAccess, Inc., by and through its attorneys, and complains and
alleges against Defendant as follows:

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STATUS OF PARTIES

1. Plaintiff, iAccess, Inc. (“IACCESS”), is a Utah Corporation, formerly known as iAccess.com, LLC, a Utah limited liability company, and having a principal place of business at 14850 South Pony Express Road, Bluffdale, Utah 84065.

2. Upon information and belief, Defendant, WEBcard Technologies, Inc. (“WEBCARD”), is a corporation organized and existing under the laws of the state of California, and having a principle place of business at 3949 Ruffin Road, Suite D, San Diego, California 92123.

JURISDICTION AND VENUE

3. This action arises in part under the Patent Act and the Lanham Act. This Court has jurisdiction over the causes of action asserted herein pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 2201(a) and 2202, in that items allegedly covered by the patent at issue were sold in this district and the defendants are otherwise doing business in this district. In addition, this Court has supplemental jurisdiction over the causes of action arising under state law pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) because Defendant has marketed its products in this district, made allegations of infringement against goods made in this district and otherwise caused injury within this district.

BACKGROUND AND GENERAL ALLEGATIONS

5. Plaintiff IACCESS specializes in the manufacture and distribution of shaped compact discs which are used by its customers to show computerized advertisements or demonstrations regarding their products and services.

6. Plaintiff's most popular product is a compact disc which is sized slightly larger than a business card and which is used by many of its clients in place of a business card.

7. In July of 1998, IACCESS began marketing its compact disc to consumers.

8. On September 25, 1998, IACCESS filed a patent application in the name of Stephen O. Smyth and Daniel Gomez, for the design of its compact disc, which application is still pending. A copy of the patent application is attached hereto as Exhibit A.

9. IACCESS' compact discs were highly successful, as customers realized the marketing opportunity available from a business card sized compact disc which would provide a multimedia presentation of the customer's products or services when placed in the compact disc drive of a computer.

10. On November 6, 1998, Jimit Mehta and Jason D. Coker filed a design patent application for a compact disc (hereinafter the "Mehta/Coker Application"). The Mehta/Coker Application was assigned to Spike International, Inc., which has since changed its name to WEBcard Technologies, Inc.

11. On information and belief, Mr. Smyth and Mr. Gomez invented the subject matter of the Mehta/Coker application prior to the invention thereof by Mr. Mehta and Mr. Coker.

12. Upon filing the Mehta/Coker Application and thereafter, Mr. Mehta and Mr. Coker failed to disclose to the U.S. Patent and Trademark Office IACCESS' prior sales of shaped compact discs.

13. Mr. Mehta, Mr. Coker and WEBCard also failed to disclose to the U.S. Patent and Trademark Office the existence of other patents and printed publications which were publically available more than one year prior to the filing date of the Mehta/Coker Application and which showed a virtually identical design to the design claimed in the Mehta/Coker Application. A copy of relevant portions of one German patent published more than one year prior to the filing date of the Mehta/Coker Application is attached hereto as Exhibit B.

14. On January 2, 2001, WEBCARD's patent application issued as U.S. Patent No. Des. 435,853 ("the '853 patent"). A copy of the '853 patent is attached hereto as Exhibit C.

15. Since the issuance of the '853 patent, WEBCARD has asserted that, pursuant to its patent, those using an "optical-shaped disk" which is similar to that of WEBCARD's are infringing. A copy of portions of WEBCARD's website, including the page WEBCard Patent Information, is attached hereto as Exhibit D.

16. WEBCARD has further suggested to customers of IACCESS that they must pay WEBCARD a royalty for cards purchased from IACCESS.

17. Due to the threats of WEBCARD, IACCESS' customers and potential customers of IACCESS have expressed concern over continuing to purchase IACCESS' compact discs until the patent infringement issue is resolved.

FIRST CLAIM FOR RELIEF

(DECLARATORY JUDGMENT OF INVALIDITY)

18. IACCESS hereby incorporates the allegations of paragraphs 1 through 17 of this Complaint and further alleges:

19. On information and belief, Mr. Smyth and Mr. Gomez of IACCESS invented the subject matter of the Mehta/Coker Application prior to Mr. Mehta and Mr. Coker.

20. On information and belief, IACCESS was selling discs having the shape which WEBCARD has alleged to infringe prior to the invention of the subject matter of the Mehta/Coker Application.

21. More than one year prior to the filing date of the Mehta/Coker Application, another patent and/or another printed publication showed the subject matter of the Mahta/Coker Application.

22. On information and belief, the '853 patent is invalid under 35 U.S.C. § 102(a) because the invention was disclosed in one or more printed publications prior to the claimed "invention" thereof by Mr. Mehta and Mr. Coker.

23. On information and belief, the '853 patent is invalid under 35 U.S.C. § 102(a) because the invention was in use in this country prior to the "invention" thereof by Mr. Mehta and Mr. Coker.

24. The '853 patent is invalid under 35 U.S.C. § 102(b) because the subject matter of the invention was disclosed in one or more printed publications more than one year prior to the

date of the application which resulted in the '152 patent.

25. The '853 patent is invalid under 35 U.S.C. § 102(f) because the subject matter of the invention was not invented by Mr. Mehta and Mr. Coker.

26. The '853 patent is invalid under 35 U.S.C. § 102(g) because the subject matter of the invention was invented by another in the United States who had not abandoned, suppressed or concealed it prior to the "invention" thereof by Mr. Mehta and Mr. Coker.

27. The '853 patent is invalid under 35 U.S.C. § 103 because the subject matter of the '853 patent is obvious in light of the prior art at the time the "invention" was made.

28. IACCESS is entitled to judgment declaring that the '853 patent is invalid.

SECOND CLAIM FOR RELIEF

(DECLARATORY JUDGMENT OF UNENFORCEABILITY)

29. IACCESS hereby incorporates the allegations of paragraphs 1 through 28 of this Complaint and further alleges:

30. On information and belief, Mr. Mehta, Mr. Coker and/or WEBCARD had knowledge of at least one patent or printed publication describing the subject matter of the Mehta/Coker Application prior to issuance of the '853 patent and failed to disclose those printed publications to the U.S. Patent and Trademark Office as required by 37 C.F.R. § 1.56.

31. On information and belief, Mr. Mehta, Mr. Coker and/or WEBCARD had knowledge of IACCESS' sales of the allegedly infringing compact discs for nearly four months

prior to the filing of its patent application and failed to disclose such use to the U.S. Patent and Trademark Office as required by 37 C.F.R. § 1.56.

32. On information and belief, Mr. Mehta, Mr. Coker and/or WEBCARD had knowledge of others using similarly shaped compact discs both prior to the “invention” described in the Mehta/Coker Application, and prior to the filing date of the Mehta/Coker Application.

33. IACCESS is entitled to judgment declaring that WEBCARD, its counsel, Mr. Mehta and/or Mr. Coker committed inequitable conduct by failing to disclose material prior art and that the ‘853 patent is unenforceable.

THIRD CLAIM FOR RELIEF

(FALSE ADVERTISING UNDER 15 U.S.C. § 1125)

34. IACCESS hereby incorporates the allegations of paragraphs 1 through 33 of this Complaint and further alleges:

35. IACCESS and WEBCARD sell competing products in interstate commerce.

36. In an attempt to market its own products, WEBCARD has repeatedly represented to potential customers that IACCESS is infringing the ‘853 patent.

37. In order to sell its products, WEBCARD has also suggested that they will pursue legal action for patent infringement against those purchasing IACCESS’ compact discs.

38. WEBCARD’s assertions of patent infringement were false and were made in interstate commerce.

39. WEBCARD knew or should have known that its patent was invalid under 35 U.S.C. §§ 102 and 103 and that its patent was unenforceable due to the inequitable conduct of Mr. Mehta, Mr. Coker, WEBCARD and its counsel.

40. IACCESS has lost sales and has had sales delayed due to WEBCARD's false assertions of patent infringement, thereby causing damage to IACCESS in a presently undetermined amount.

41. WEBCARD's false allegations of patent infringement has injured IACCESS and is likely to injure the reputation and good will of IACCESS in an amount to be determined at trial. Furthermore, the harm to IACCESS arising from WEBCARD's false allegations of patent infringement are not fully compensable by money damages. Rather, IACCESS has suffered, and continues to suffer, irreparable harm which has no adequate remedy at law and which will continue unless WEBCARD's conduct is enjoined

FOURTH CLAIM FOR RELIEF

(UNFAIR COMPETITION)

42. IACCESS hereby incorporates the allegations of paragraphs 1 through 41 of this Complaint and further alleges:

43. IACCESS and WEBCARD each sell compact discs which are molded, cut down or otherwise formed in a size similar to that of a business card.

44. WEBCARD is a competitor of IACCESS.

45. WEBCARD's false allegations of patent infringement are likely to mislead the public as to the ownership of the design used by IACCESS and of the ability of IACCESS to fill customer's orders.

46. WEBCARD's false allegations of patent infringement and other misrepresentations about IACCESS have injured and/or are likely to injure the reputation and good will of IACCESS in an amount to be determined at trial. Furthermore, the harm to IACCESS arising from WEBCARD's acts of unfair competition is not fully compensable by money damages. Rather, IACCESS has suffered, and continues to suffer, irreparable harm which has no adequate remedy at law and which will continue unless WEBCARD's conduct is enjoined.

FIFTH CLAIM FOR RELIEF

(TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS)

47. IACCESS hereby incorporates the allegations of paragraphs 1 through 46 of this Complaint and further alleges:

48. WEBCARD has made representations to IACCESS' customers and potential customers, that IACCESS is infringing the '853 patent and violating WEBCARD's intellectual property rights.

49. On information and belief, WEBCARD made the representations to IACCESS'

customers and potential customers to persuade the same not to enter into contractual relations with IACCESS and/or to terminate existing contractual relations with IACCESS.

50. On information and belief, at the time WEBCARD made the allegations of infringement, WEBCARD knew that either the '853 patent was invalid, or that it was unenforceable due to the inequitable conduct of WEBCARD in not reporting material prior art to the United States Patent and Trademark Office.

51. WEBCARD's misrepresentations regarding IACCESS' conduct and threats to interfere with the use of IACCESS' compact discs by its customers constitutes tortious interference with economic relations.

52. WEBCARD's false assertions of patent infringement and threats to pursue IACCESS' customers have damaged IACCESS in an amount to be determined at trial. Furthermore, the harm to IACCESS arising from WEBCARD's acts of tortious interference with economic relations is not fully compensable by money damages. Rather, IACCESS has suffered, and continues to suffer, irreparable harm which has no adequate remedy at law and which will continue unless WEBCARD's conduct is enjoined.

PRAYER FOR RELIEF

WHEREFORE, IACCESS prays for judgment against WEBCARD as follows:

- A. That the Court adjudge that the '853 patent is invalid.
- B. That the Court adjudge that the '853 patent is unenforceable.

C. That the Court adjudge that WEBCARD's assertions of patent infringement were made in bad faith.

D. For an award of attorneys fees in accordance with 35 U.S.C. § 285.

E. For preliminary and permanent injunctions enjoining WEBCARD from representing to third parties that IACCESS is infringing the '853 patent.

F. That the Court adjudge that WEBCARD has engaged in False Advertising in accordance with 15 U.S.C. § 1125.

G. For an award of attorneys fees in accordance with 15 U.S.C. § 1117.

H. For an award of WEBCARD's profits in accordance with 15 U.S.C. § 1117.

I. That the Court adjudge that WEBCARD has engaged in unfair competition.

J. That the Court adjudge that WEBCARD has engaged in tortious interference with economic relations.

K. For an award of damages in an amount to be determined at trial;

L. For an award of costs.

M. For an award of pre-judgment and post-judgment interest until such awards are paid;
and

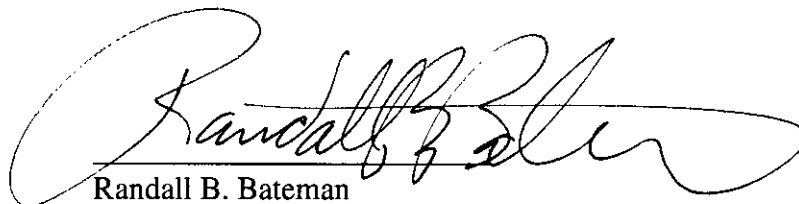
N. That IACCESS have such other and further relief as shall seem just and proper to the Court.

DATED this 5th day of April, 2001

PARR, WADDOUPS, BROWN, GEE & LOVELESS,

and

MORRISS, BATEMAN, O'BRYANT & COMPAGNI, P.C.



Randall B. Bateman

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