

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LANDMARK TECHNOLOGY, LLC,

Plaintiff,

v.

BODY CENTRAL CORP.,
CASUAL MALE RETAIL GROUP, INC.,
CHRISTOPHER & BANKS, INC.,
VITAMIN SHOPPE, INC.,
TWEEN BRANDS, INC.,
STEIN MART, INC.,
STAGE STORES, INC.,
CARTER'S, INC.,
THE BUCKLE, INC.,
GNC HOLDINGS, INC.

Defendants.

CASE NO. 6:11-cv-322

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Landmark Technology, LLC ("Landmark"), for its Complaint against Body Central Corp., Casual Male Retail Group, Inc., Christopher & Banks, Inc., Vitamin Shoppe, Inc., Tween Brands, Inc., Stein Mart, Inc., Stage Stores, Inc., Carter's, Inc., The Buckle, Inc., and GNC Holdings, Inc. (collectively, "Defendants"), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*
2. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants have transacted and are transacting business in the Eastern District of Texas that includes, but is not limited to, the use of products and systems that practice the subject matter claimed in the patents involved in this action.

4. Venue is proper in this district under 28 U.S.C. §1391(b-c) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District where Defendants have done business and committed infringing acts and continue to do business and to commit infringing acts.

PARTIES

5. Plaintiff Landmark Technology, LLC ("Plaintiff") is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 719 W. Front Street, Suite 157, Tyler, Texas 75702.

6. Plaintiff is informed and believes, and on that basis alleges, that Defendant Body Central Corp. ("Body Central"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 6225 Powers Avenue, Jacksonville, FL 32217. Plaintiff is further informed and believes, and on that basis alleges, that Body Central is in the business of selling women's clothing, footwear and other accessories, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.bodyc.com> (the "Body Central Website"). Plaintiff is further informed and believes, and on that basis alleges, that Body Central uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Body Central exchanges electronically business information with trading

partners¹ for ordering and receiving goods. Body Central confirms they are using this system in its publicly filed 10-K with the following excerpt: "We replaced our point-of-sale software system in the second half of fiscal year 2010. We expect this upgrade to enhance customer service, improve operational efficiency, increase management reporting and control and increase synergies between our direct business and our retail stores. Our new system complements our core functions of purchasing, merchandising, finance and accounting, inventory and order management and warehousing and distribution." Body Central derives a significant financial benefit through the use of its EDI-enabled system in that it allows Body Central to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Body Central has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Body Central Website and by engaging in monetary and business transactions through its EDI-enabled system.

7. Plaintiff is informed and believes, and on that basis alleges, that Defendant Casual Male Retail Group, Inc. ("Casual Male"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 555 Turnpike Street, Canton MA 02021. Plaintiff is further informed and believes, and on that basis alleges, that Casual Male is in the business of distributing and selling clothing, footwear and other items, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at

¹ Organizations that send or receive business information between each other in this manner are referred to as "trading partners" in EDI terminology.

<http://www.casualmale.com> (the "Casual Male Website"). Plaintiff is further informed and believes, and on that basis alleges, that Casual Male uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Casual Male exchanges electronically business information with trading partners for ordering and receiving goods. Casual Male confirms they are using this system in its publicly filed 10-K with the following excerpt: "Our merchandising management systems are updated daily with all store transactions and provide daily sales, inventory, pricing and merchandise information and management reports to assist us in operating our retail business. Our merchandising system applications also facilitate the placement and tracking of purchase orders and utilize EDI technology." Casual Male derives a significant financial benefit through the use of its EDI-enabled system in that it allows Casual Male to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Casual Male has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Casual Male Website and by engaging in monetary and business transactions through its EDI-enabled system.

8. Plaintiff is informed and believes, and on that basis alleges, that Defendant Christopher & Banks, Inc. ("Christopher & Banks"), is a corporation organized under the laws of the State of Minnesota, with its principal place of business at 2400 Xenium Ln N, Plymouth, MN 55441. Plaintiff is further informed and believes, and on that basis alleges, that Christopher & Banks is in the business of distributing and selling clothing, accessories and other items, and

derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.christopherandbanks.com> (the "Christopher & Banks Website"). Plaintiff is further informed and believes, and on that basis alleges, that Christopher & Banks uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Christopher & Banks exchanges electronically business information with trading partners for ordering and receiving goods.

Christopher & Banks confirms they are using this system in its publicly filed 10-K with the following excerpts: (1) "We completed the implementation of a new merchandise planning and allocation system in fiscal 2009 and expanded use of the system in fiscal 2010 and 2011.

Through the use of the new allocation modules, we have gained increased flexibility in product placement. Functionality from this system has allowed us to more readily manage our merchandise assortments based on differences in store sales volume and regional climates, as well as customer size and fashion preferences. The system has provided us with improved forecasting of sales, merchandise margins and inventory levels and allows us to continue to maintain strict inventory controls." (2) "In fiscal 2011, we completed our rollout of upgraded point-of-sale hardware and software to all stores and implemented a new product lifecycle management system." Christopher & Banks derives a significant financial benefit through the use of its EDI-enabled system in that it allows Christopher & Banks to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Christopher & Banks has done and continues to do

business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Christopher & Banks Website and by engaging in monetary and business transactions through its EDI-enabled system.

9. Plaintiff is informed and believes, and on that basis alleges, that Defendant Vitamin Shoppe, Inc. ("Vitamin Shoppe"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 2101 91st Street, North Bergen, NJ 07047. Plaintiff is further informed and believes, and on that basis alleges, that Vitamin Shoppe is in the business of distributing and selling vitamins, nutritional supplements and other items, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.vitaminshoppe.com> (the "Vitamin Shoppe Website"). Plaintiff is further informed and believes, and on that basis alleges, that Vitamin Shoppe uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Vitamin Shoppe exchanges electronically business information with trading partners for ordering and receiving goods. Vitamin Shoppe confirms they are using this system in its publicly filed 10-K with the following excerpt: "We maintain a distribution center which we use in conjunction with a just-in-time inventory ordering system that we use to replenish our stores based upon customer demand of a given product or products." Vitamin Shoppe derives a significant financial benefit through the use of its EDI-enabled system in that it allows Vitamin Shoppe to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant

hereto, Vitamin Shoppe has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Vitamin Shoppe Website and by engaging in monetary and business transactions through its EDI-enabled system.

10. Plaintiff is informed and believes, and on that basis alleges, that Defendant Tween Brands, Inc. ("Tween Brands"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 8323 Walton Parkway, New Albany, OH 43054. Plaintiff is further informed and believes, and on that basis alleges, that Tween Brands is in the business of distributing and selling clothing, accessories and other items, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.shopjustice.com> (the "Tween Brands Website"). Plaintiff is further informed and believes, and on that basis alleges, that Tween Brands uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Tween Brands exchanges electronically business information with trading partners for ordering and receiving goods. Tween Brands confirms they are using this system in its publicly filed 10-K with the following excerpt: "During fiscal 2006 we continued our information technology systems initiative, including upgrading processes and programs and replacing legacy systems with state-of-the-art software and systems. In fiscal 2006, we developed a 'data warehouse,' enabling us to better monitor our business and make more informed decisions. We are currently upgrading the merchandise planning and allocation systems and are developing new enterprise resource planning programs to replace dated financial

systems." Tween Brands derives a significant financial benefit through the use of its EDI-enabled system in that it allows Tween Brands to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Tween Brands has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Tween Brands Website and by engaging in monetary and business transactions through its EDI-enabled system.

11. Plaintiff is informed and believes, and on that basis alleges, that Defendant Stein Mart, Inc. ("Stein Mart"), is a corporation organized under the laws of the State of Florida, with its principal place of business at 1200 Riverplace Blvd., Jacksonville, FL 32207. Plaintiff is further informed and believes, and on that basis alleges, that Stein Mart is in the business of distributing and selling clothing, accessories and other items, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.steinmart.com> (the "Stein Mart Website"). Plaintiff is further informed and believes, and on that basis alleges, that Stein Mart uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Stein Mart exchanges electronically business information with trading partners for ordering and receiving goods. Stein Mart confirms they are using this system in its publicly filed 10-K with the following excerpt: "Capital expenditures for 2010 include approximately \$19 million for systems improvements, with the largest portion for our new merchandise information system. The remaining capital

amounts are for improvements in our point-of-sale system..." Stein Mart derives a significant financial benefit through the use of its EDI-enabled system in that it allows Stein Mart to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Stein Mart has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Stein Mart Website and by engaging in monetary and business transactions through its EDI-enabled system.

12. Plaintiff is informed and believes, and on that basis alleges, that Defendant Stage Stores, Inc. ("Stage Stores"), is a corporation organized under the laws of the State of Nevada, with its principal place of business at 10201 Main Street, Houston, TX 77025. Plaintiff is further informed and believes, and on that basis alleges, that Stage Stores is in the business of distributing and selling clothing, footwear, accessories and other items, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.stagestores.com> (the "Stage Stores Website"). Plaintiff is further informed and believes, and on that basis alleges, that Stage Stores uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Stage Stores exchanges electronically business information with trading partners for ordering and receiving goods. Stage Stores confirms they are using this system in its publicly filed 10-K with the following excerpts: (1) "The Company has formal guidelines for vendors with respect to shipping and invoicing for merchandise." (2) "Integrated merchandising

and warehouse management systems support all corporate and distribution center locations that support the stores." Stage Stores derives a significant financial benefit through the use of its EDI-enabled system in that it allows Stage Stores to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Stage Stores has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Stage Stores Website and by engaging in monetary and business transactions through its EDI-enabled system.

13. Plaintiff is informed and believes, and on that basis alleges, that Defendant Carter's, Inc. ("Carter's"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1170 Peachtree Street NE, Suite 900, Atlanta, GA 30309. Plaintiff is further informed and believes, and on that basis alleges, that Carter's is in the business of distributing and selling infant's and children's clothing, toys and other items and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.carters.com> (the "Carter's Website"). Plaintiff is further informed and believes, and on that basis alleges, that Carter's uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Carter's exchanges electronically business information with trading partners for ordering and receiving goods. Carter's confirms they are using this system in its publicly filed 10-K with the following excerpt: "We invested \$37.5 million in capital expenditures during fiscal 2008 compared to

\$21.9 million in fiscal 2007. Major investments included... a new point of sale system for our retail stores..." Carter's derives a significant financial benefit through the use of its EDI-enabled system in that it allows Carter's to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Carter's has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Carter's Website and by engaging in monetary and business transactions through its EDI-enabled system.

14. Plaintiff is informed and believes, and on that basis alleges, that Defendant The Buckle, Inc. ("Buckle"), is a corporation organized under the laws of the State of Nebraska, with its principal place of business at 2407 West 24th Street, Kearney, NE 68845. Plaintiff is further informed and believes, and on that basis alleges, that Buckle is in the business of distributing and selling clothing, footwear and other items and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.buckle.com> (the "Buckle Website"). Plaintiff is further informed and believes, and on that basis alleges, that Buckle uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby Buckle exchanges electronically business information with trading partners for ordering and receiving goods. Buckle confirms they are using this system in its publicly filed 10-K with the following excerpt: "The Company has developed an effective computerized system for tracking merchandise from the time it is checked in at the Company's distribution center until it arrives at the stores and is sold to a customer. The

system's function is to insure that store shipments are delivered accurately and promptly, to account for inventory, and to assist in allocating merchandise among stores. Management can track, on a daily basis, which merchandise is selling at specific locations and direct transfers of merchandise from one store to another as necessary." Buckle derives a significant financial benefit through the use of its EDI-enabled system in that it allows Buckle to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Buckle has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Buckle Website and by engaging in monetary and business transactions through its EDI-enabled system.

15. Plaintiff is informed and believes, and on that basis alleges, that Defendant GNC Holdings, Inc. ("GNC"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 300 Sixth Avenue, Pittsburgh, PA 15222. Plaintiff is further informed and believes, and on that basis alleges, that GNC is in the business of distributing and selling vitamins, nutritional supplements and other items and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet website located at <http://www.gnc.com> (the "GNC Website"). Plaintiff is further informed and believes, and on that basis alleges, that GNC uses an Electronic Data Interchange (EDI) enabled system that can be described as an automated data processing system for the transfer of structured data, by agreed upon message standards, from one enterprise business system to another whereby GNC exchanges electronically business information with trading partners for ordering and receiving goods. GNC confirms they are

using this system in its publicly filed 10-K with the following excerpt: "Our sophisticated manufacturing and warehousing facilities support our Retail and Franchise segments and enable us to control the production and distribution of our proprietary products, to better control costs, protect product quality, monitor delivery times and maintain appropriate inventory levels." GNC derives a significant financial benefit through the use of its EDI-enabled system in that it allows GNC to reduce or eliminate costs associated with printing, handling, organizing and storing paper documents and to increase the speed by which transactions can be completed. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, GNC has done and continues to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the GNC Website and by engaging in monetary and business transactions through its EDI-enabled system.

FACTS

16. On November 19, 1996, United States Patent No. 5,576,951 entitled "Automated Sales and Services System" was duly and legally issued to Lawrence B. Lockwood ("Lockwood") as inventor. A true and correct copy of United States Patent No. 5,576,951 is attached hereto as Exhibit "A" and incorporated herein by this reference. Following a reexamination of Patent No. 5,576,951, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number US 5,576,951 C1, on January 29, 2008, confirming the validity of all ten (10) original claims and allowing twenty-two (22) additional claims. A true and correct copy of Ex Parte Reexamination Certificate, Number US 5,576,951 C1 is attached hereto as Exhibit "B" and incorporated herein by this reference. (United States Patent No. 5,576,951, together with the additional claims allowed by Ex Parte Reexamination Certificate, Number US 5,576,951 C1, shall hereinafter be referred to as the "'951 Patent.") On September 1, 2008, Lockwood licensed all rights in the '951 Patent to Plaintiff. Plaintiff is the exclusive

licensee of the entire right, title and interest in and to the '951 Patent, including all rights to enforce the '951 Patent and to recover for infringement. The '951 Patent is valid and in force.

17. On September 11, 2001, United States Patent No. 6,289,319 entitled "Automated Business and Financial Transaction Processing System" was duly and legally issued to Lawrence B. Lockwood as inventor. A true and correct copy of United States Patent No. 6,289,319 is attached hereto as Exhibit "C" and incorporated herein by this reference. Following a reexamination of Patent No. 6,289,319, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number US 6,289,319 C1, on July 17, 2007, confirming the validity of all six (6) original claims and allowing twenty-two (22) additional claims. A true and correct copy of Ex Parte Reexamination Certificate, Number US 6,289,319 C1 is attached hereto as Exhibit "D" and incorporated herein by this reference. (United States Patent No. 6,289,319, together with the additional claims allowed by Ex Parte Reexamination Certificate, Number US 6,289,319 C1, shall hereinafter be referred to as the "'319 Patent.") On September 1, 2008, Lockwood licensed all rights in the '319 Patent to Plaintiff. Plaintiff is the exclusive licensee of the entire right, title and interest in and to the '319 Patent, including all rights to enforce the '319 Patent and to recover for infringement. The '319 Patent is valid and in force.

18. On March 7, 2006, United States Patent No. 7,010,508 entitled "Automated Multimedia Data Processing Network" (the "'508 Patent") was duly and legally issued to Lawrence B. Lockwood as inventor. A true and correct copy of the '508 Patent is attached hereto as Exhibit "E" and incorporated herein by this reference. On September 1, 2008, Lockwood licensed all rights in the '508 Patent to Plaintiff. Plaintiff is the exclusive licensee of the entire right, title and interest in and to the '508 Patent, including all rights to enforce the '508 Patent and to recover for infringement. The '508 Patent is valid and in force.

19. As more fully laid out below, Defendants have been and are now infringing the '951 Patent, the '319 Patent, and the '508 Patent, in this judicial district and elsewhere, by selling and distributing their products and services using electronic commerce systems, which, individually or in combination, incorporate and/or use subject matter claimed by the '951 Patent, the '319 Patent, and the '508 Patent.

BACKGROUND OF ELECTRONIC DATA INTERCHANGE TECHNOLOGY

20. EDI is a standards based system, typically following ANSI ASC X12² standards in the United States. Documents exchanged electronically between businesses must follow strict formatting standards in order that separate entities with an EDI-enabled system may send and receive electronic documents without a need to convert these documents into a format their system(s) can process or understand. By following these standards, any number of separate entities can become trading partners because their particular EDI-enabled systems communicate using a standard electronic language.

21. While the EDI electronic documents follow a standardized format, the hardware and software incorporated into an overall EDI-enabled system does not. That is, EDI-enabled systems do not contain the same features and capabilities for each entity. The overall reach or capabilities of a particular EDI-enabled system is case dependent. An EDI-enabled system may incorporate several hardware systems and general retail or specialized software programs in order to form a synchronized electronic system that has the ability to handle some or all of inventory, retail, point-of-sale (POS) and order management functions, among others.

² American National Standards Institute ("ANSI") ASC X12 is the official designation of the U.S. national standards body for the development and maintenance of EDI standards. The group is an accredited standards committee under the ANSI.

22. Entities, including Defendants establish guidelines by which others must comply in order to become a trading partner. For example, entities must notify trading partners of the information to include on a purchase order form. In fact, several third party EDI solution providers design and/or sell software or Internet based interfaces that comply with these requirements so that entities may more easily become trading partners.

23. Point-of-sale (POS) terminal hardware and software is often incorporated into an overall EDI-enabled system. In-store POS terminals alone can contain specialized software and hardware that may be used to scan items for price and product information.

24. As an element of an EDI-enabled system, the POS terminal is connected via an electronic communications network such as an intranet to "back office" computers or otherwise incorporated into a more comprehensive system. This more comprehensive system can be a part of the overall EDI-enabled system or possibly the entire EDI-enabled system depending on the capabilities each defendant's system has implemented.

25. The EDI-enabled system can contain software and/or hardware that will take the information gathered at the point-of-sale and then process and analyze that data. A typical capability includes automatically updating inventory levels for a particular item.

26. Additionally, an EDI-enabled system may have the ability to take this information and alert the proper employees of items in need of replenishment.

27. Alternatively, the EDI-enabled system may include specialized software that allows for automatic order placement based on a regular schedule for commonly sold items and inventory levels. This function would involve analyzing inventory levels or date and combine that data with stored information such as a set quantity desired and shipment location.

28. In any event, a purchase order will include with it the required order form, typically the ASC X12 standard 850 purchase order. This is an electronic document which complies with the required EDI formatting standards and is then sent from one entity to another directly or perhaps indirectly through a third party. This exchange takes place over a communications network such as the Internet or a Value Added Network (VAN) and the details of this electronic exchange can then be stored on the EDI-enabled system for later review and/or analysis.

29. Online POS transactions may also be incorporated into an overall EDI-enabled system. Online POS transactions can be stored, processed and analyzed as part of an overall EDI-enabled system in the same way as in-store POS transactions. For example, the details of a POS transaction that occurs online can then be stored and the inventory level of a particular item can be adjusted in real time.

30. In either case, POS transactions that are incorporated into an overarching EDI-enabled system allow for some combination of automatic inventory tracking, future order placement assistance, as well the ability to store and compile sales data.

31. For each particular EDI-enabled system, several types of hardware and/or software may be incorporated, such as inventory management software, accounting software, EDI solution software which provides the interface by which a company may trade with third parties, POS hardware and software, warehouse, "back office" or personal computers and display and entry devices through which defendants manage their inventory, retail, point-of-sale (POS) and order placement and receiving system.

32. It is the combination of some or all of these elements that results in a system that infringes the '319 and '508 patents. Defendants each have an EDI-enabled system which

incorporates various hardware systems and specialized software that practices some or all of the claims of the '319 and '508 patents.

FIRST CLAIM FOR RELIEF

(Direct Infringement of the '951 Patent, in Violation of 35 U.S.C. § 271(a))

Against All Defendants

33. Plaintiff refers to and incorporates herein by reference paragraphs 1-18.

34. The claims of the '951 Patent relate to "a computer search system for retrieving information" and "a computerized system for selecting and ordering a variety of information, goods and services," each comprising a variety of features.

35. The Body Central Website, the Casual Male Website, the Christopher & Banks Website, the Vitamin Shoppe Website, the Tween Brands Website, the Stein Mart Website, the Stage Stores Website, the Carter's Website, the Buckle Website and the GNC Website (collectively, the "Websites") are each, individually, "computer search system[s] for retrieving information" and "computerized system[s] for selecting and ordering a variety of information, goods and services" practicing the claims of the '951 Patent.

36. By way of example only, and not limited to it, each Defendant's Websites infringe Claim 10 of the '951 Patent in that, for example, the Defendant's Websites provide a system that practices all of the limitations of the claim and on which it's customers search for information about products and purchase products, including:

a. Each of the Websites is a computerized system for selecting and ordering a variety of information, goods and services.

b. Each of the Websites includes a plurality of computerized data processing installations (the web server and its supporting systems) programmed for processing orders for said information, goods and services.

c. Each of the Websites is operated through at least one computerized station (the customer's computer).

d. The web server of each of the Websites and that Defendant's customers' computers practice all of the remaining limitations of Claim 10 of the '951 Patent.

37. Defendants, therefore, by the acts complained of herein, are making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the invention, and have in the past and are now continuing to infringe the '951 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

38. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

39. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

40. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '951 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

SECOND CLAIM FOR RELIEF

(Inducing Infringement of the '951 Patent, in Violation of 35 U.S.C. § 271(b))

Against All Defendants

41. Plaintiff refers to and incorporates herein by reference paragraphs 1-18, 33-35.

42. Plaintiff is informed and believes, and on that basis alleges, that each Defendant has actively and knowingly induced infringement of the '951 Patent, in violation of 35 U.S.C. § 271(b) by, among other things, inducing its customers (the endusers of its Website(s)) to utilize their own computers in combination with its Website(s), and incorporated and/or related systems, to search for and order information and products from its Website(s) in such a way as to infringe the '951 Patent.

43. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

44. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. Plaintiff does not have an adequate remedy at law.

45. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '951 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

THIRD CLAIM FOR RELIEF

(Direct Infringement of the '319 Patent, in Violation of 35 U.S.C. § 271(a))

Against All Defendants

46. Plaintiff refers to and incorporates herein by reference paragraphs 1-18, 20-32.

47. The claims of the '319 Patent relate to "an automated data processing system for processing business and financial transactions between entities from remote sites" comprising a variety of features.

48. The Body Central EDI-enabled system, the Casual Male EDI-enabled system, the Christopher & Banks EDI-enabled system, the Vitamin Shoppe EDI-enabled system, the Tween Brands EDI-enabled system, the Stein Mart EDI-enabled system, the Stage Stores EDI-enabled system, the Carter's EDI-enabled system, the Buckle EDI-enabled system and the GNC EDI-enabled system (collectively, the "EDI-enabled systems") are each, individually, "an automated data processing system for processing business and financial transactions between entities from remote sites" practicing the claims of the '319 Patent.

49. By way of example, only, and not limited to it, each Defendant's EDI-enabled systems infringe Claim 1 of the '319 Patent in that, for example, the Defendant's EDI-enabled systems provide a system that practices all of the limitations of the claim and on which Defendants process business information and place purchase orders, including:

a. Each of the EDI-enabled systems is an automatic data processing system for processing business and financial transactions between entities from remote sites. That is, between the particular Defendant and its trading partners or its point-of-sale terminal(s).

b. Each of the EDI-enabled systems includes a central processor (the server and its supporting systems) programmed and connected to process a variety of inquiries and orders transmitted from said remote sites. Each Defendant's EDI-enabled system allows for a broad range of transactions, thus a range of orders are possible. Each of the EDI-enabled systems processes a "variety of inquiries," such as inquiries regarding order history and order status.

c. Each of the EDI-enabled systems is operated through a terminal (the Defendants' computer(s) or point-of-sale terminal(s)) at each of said remote sites, which terminal includes a data processor and operates in response to operational sequencing lists of program instructions (the HTML code constituting the web pages of web-based EDI-enabled systems and/or the code constituting the software application of software-based EDI-enabled systems).

d. The server of each of the EDI-enabled systems and that Defendant's computerized station(s) practice all of the remaining limitations of Claim 1 of the '319 Patent.

50. Defendants, therefore, by the acts complained of herein, are making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the invention, and have in the past and are now continuing to infringe the '319 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

51. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

52. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

53. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '319 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

FOURTH CLAIM FOR RELIEF

(Direct Infringement of the '508 Patent, in Violation of 35 U.S.C. § 271(a))

Against All Defendants

54. Plaintiff refers to and incorporates herein by reference paragraphs 1-18.

55. The claims of the '508 Patent relate to "an automated multimedia system for data processing for delivering information on request to at least one user," comprising a variety of features.

56. The Body Central Website, the Casual Male Website, the Christopher & Banks Website, the Vitamin Shoppe Website, the Tween Brands Website, the Stein Mart Website, the Stage Stores Website, the Carter's Website, the Buckle Website and the GNC Website (collectively, the "Websites") are each, individually, "an automated multimedia system for data processing for delivering information on request to at least one user," practicing the claims of the '508 Patent.

57. By way of example, only, and not limited to it, each Defendant's Websites infringe Claim 8 of the '508 Patent in that, for example, the Defendant's Websites provide a system that practices all of the limitations of the claim and on which it's customers search for information about products, including:

a. Each of the Websites is an automated multimedia system for data processing for delivering information on request to at least one user. That is, it uses text and

graphics, among other means, to deliver product information and other information to the customers of the particular Defendant.

b. Each of the Websites includes at least one computerized station (the server and its supporting systems).

c. The web server of each of the Websites practices all of the remaining limitations of Claim 8 of the '508 Patent.

58. Defendants, therefore, by the acts complained of herein, are making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the invention, and have in the past and are now continuing to infringe the '508 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

59. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

60. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

61. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '508 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

FIFTH CLAIM FOR RELIEF

(Inducing Infringement of the '508 Patent, in Violation of 35 U.S.C. § 271(b))

Against All Defendants

62. Plaintiff refers to and incorporates herein by reference paragraphs 1-18, 54-56.

63. Plaintiff is informed and believes, and on that basis alleges, that each Defendant has actively and knowingly induced infringement of the '508 Patent, in violation of 35 U.S.C. § 271(b) by, among other things, inducing its customers (the endusers of its Website(s)) to utilize their own computers in combination with its Website(s), and incorporated and/or related systems, to search for and order information and products from its Website(s) in such a way as to infringe the '508 Patent.

64. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

65. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable damage. Plaintiff does not have an adequate remedy at law.

66. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '508 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

SIXTH CLAIM FOR RELIEF

(Direct Infringement of the '508 Patent, in Violation of 35 U.S.C. § 271(a))

Against All Defendants

67. Plaintiff refers to and incorporates herein by reference paragraphs 1-18, 20-32.

68. The claims of the '508 Patent relate to "an automated multimedia system for data processing for delivering information on request to at least one user," comprising a variety of features.

69. The Body Central EDI-enabled system, the Casual Male EDI-enabled system, the Christopher & Banks EDI-enabled system, the Vitamin Shoppe EDI-enabled system, the Tween Brands EDI-enabled system, the Stein Mart EDI-enabled system, the Stage Stores EDI-enabled system, the Carter's EDI-enabled system, the Buckle EDI-enabled system and the GNC EDI-enabled system (collectively, the "EDI-enabled systems") are each, individually, "an automated multimedia system for data processing for delivering information on request to at least one user," practicing the claims of the '508 Patent.

70. By way of example, only, and not limited to it, each Defendant's EDI-enabled systems infringe Claim 8 of the '508 Patent in that, for example, the Defendant's EDI-enabled systems provide a system that practices all of the limitations of the claim and on which Defendants obtain information about products and transactions, including:

a. Each of the EDI-enabled systems is an automated multimedia system for data processing for delivering information on request to at least one user. That is, The EDI-enabled system uses text and graphics, among other means, to deliver business transaction information, such as order status, and other information to the particular Defendant.

b. Each of the EDI-enabled systems includes at least one computerized station (the computer(s) through which the EDI-enabled system is implemented and the server and its supporting systems).

c. The server and that Defendant's computerized station(s) practice all of the remaining limitations of Claim 8 of the '508 Patent.

71. Defendants, therefore, by the acts complained of herein, are making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the invention, and have in the past and are now continuing to infringe the '508 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

72. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

73. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

74. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '508 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

JURY DEMAND

75. Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- A. For an order finding that the '951 Patent is valid and enforceable;
- B. For an order finding that the '319 Patent is valid and enforceable;
- C. For an order finding that the '508 Patent is valid and enforceable;

D. For an order finding that, by the acts complained of herein, Defendants have directly infringed, and induced others to infringe, the '951 Patent in violation of 35 U.S.C. § 271;

E. For an order finding that, by the acts complained of herein, Defendants have directly infringed the '319 Patent in violation of 35 U.S.C. § 271;

F. For an order finding that, by the acts complained of herein, Defendants have directly infringed, and induced others to infringe, the '508 Patent in violation of 35 U.S.C. § 271;

G. For an order finding that Defendants have willfully infringed the '951 Patent, the '319 Patent and the '508 Patent;

H. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all others acting in concert or privity with any of them, from infringing the '951 Patent, and from inducing others to infringe the '951 Patent;

I. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all others acting in concert or privity with any of them, from infringing the '319 Patent;

J. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all others acting in concert or privity with any of them, from infringing the '508 Patent, and from inducing others to infringe the '508 Patent;

K. For an order directing Defendants to deliver to Plaintiff for destruction or other disposition all infringing products and systems in their possession;

L. For an order directing Defendants to file with the Court, and serve upon Plaintiff's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Defendants have complied with the injunction;

M. For an order awarding Plaintiff general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Defendants' profits or gains of any kind from their acts of patent infringement;

N. For an order awarding enhanced damages pursuant to 35 U.S.C. § 284 due to the willful and wanton nature of Defendants' infringement

O. For an order awarding Plaintiff all of its costs, including its attorneys' fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

P. For an order awarding Plaintiff pre-judgment and post-judgment interest; and

Q. For an order awarding Plaintiff such other and further relief as the Court may deem just and proper.

DATED: September 1, 2011

Respectfully Submitted,

OF COUNSEL:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 1st day of September, 2011, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by, electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Charles Ainsworth

Charles Ainsworth