

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

LANDMARK TECHNOLOGY, LLC,

Plaintiff,

v.

ZALE CORP.,
BLUE NILE, INC.,
CANON USA, INC.,
EDDIE BAUER, INC.,
KOHL'S CORP.,
LOWE'S COMPANIES, INC.,
WALGREEN CO.,
GOLFSMITH INTERNATIONAL HOLDINGS, INC.
BIDZ.COM, Inc.,
Defendants.

CASE NO. 6:08-cv-00377

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Landmark Technology, LLC ("Landmark"), for its First Amended Complaint against Zale Corporation, Blue Nile, Inc., Canon USA, Inc., Eddie Bauer, Inc., Kohl's Corporation, Lowe's Companies, Inc., Walgreen Co., Bidz.com, Inc., and Golfsmith International 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. The 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 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169. Plaintiff operates offices at 719 W. Front Street, Suite 157, Tyler, Texas, 75702.

6. Plaintiff is informed and believes, and on that basis alleges, that Defendant Zale Corp. (“Zale”), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 901 W. Walnut Hill Lane, Irving, Texas 75038. Plaintiff is further informed and believes, and on that basis alleges, that Zale is in the business of designing, manufacturing, marketing, selling and/or distributing jewelry, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Zale has done and continues to do business in this judicial district.

7. Plaintiff is informed and believes, and on that basis alleges, that Defendant Blue Nile, Inc. (“Blue Nile”), is a corporation organized under the laws of the State of Delaware with its principal place of business at 705 Fifth Avenue South, Suite 900, Seattle, Washington 98104. Plaintiff is further informed and believes, and on that basis alleges, that Blue Nile is in the business of designing, manufacturing, marketing, selling and/or distributing jewelry, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic

commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Blue Nile has done and continues to do business in this judicial district.

8. Plaintiff is informed and believes, and on that basis alleges, that Defendant Canon USA (“Canon”), is a corporation organized under the laws of the State of New York, with its principal place of business at 1 Canon Plaza, Lake Success, New York 11042. Plaintiff is further informed and believes, and on that basis alleges, that Canon is in the business of designing, manufacturing, marketing, selling and/or distributing electronic components, cameras, copiers, printers and other office equipment, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Canon has done and continues to do business in this judicial district.

9. Plaintiff is informed and believes, and on that basis alleges, that Defendant Eddie Bauer, Inc. (“Eddie Bauer”), is a corporation organized under the laws of the State of Delaware with its principal place of business at 10401 NE 8th Street, Suite 500, Bellevue, Washington 98004. Plaintiff is further informed and believes, and on that basis alleges, that Eddie Bauer is in the business of designing, manufacturing, marketing, selling and/or distributing clothing, camping equipment and accessories, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Eddie Bauer has done and continues to do business in this judicial district.

10. Plaintiff is informed and believes, and on that basis alleges, that Defendant Kohl's Corporation (“Kohl's”), is a corporation organized under the laws of the State of Wisconsin with its principal place of business at N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051. Plaintiff is further informed and believes, and on that basis alleges, that Kohl's is in the business of designing, manufacturing, marketing, selling and/or distributing clothing, household goods, and other products, and derives a significant portion of its revenue

from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Kohl's has done and continues to do business in this judicial district.

11. Plaintiff is informed and believes, and on that basis alleges, that Defendant Lowe's Companies, Inc. ("Lowe's"), is a corporation organized under the laws of the State of North Carolina with its principal place of business at 1000 Lowe's Blvd., Mooresville, North Carolina, 28117. Plaintiff is further informed and believes, and on that basis alleges, that Lowe's is in the business of designing, manufacturing, marketing, selling and/or distributing tools, home improvement products and other products and services, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Lowe's has done and continues to do business in this judicial district.

12. Plaintiff is informed and believes, and on that basis alleges, that Defendant Walgreen, Co. ("Walgreen"), is a corporation organized under the laws of the State of Illinois with its principal place of business at 200 Wilmot Road, Deerfield, Illinois 60015. Plaintiff is further informed and believes, and on that basis alleges, that Walgreen is in the business of designing, manufacturing, marketing, selling and/or distributing consumer health and beauty products, medications, and related products, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Walgreen has done and continues to do business in this judicial district.

13. Plaintiff is informed and believes, and on that basis alleges, that Defendant Golfsmith International Holdings, Inc. ("Golfsmith"), is a corporation organized under the laws of the State of Delaware with its principal place of business at 11000 N. IH-35, Austin, Texas, 78753. Plaintiff is further informed and believes, and on that basis alleges, that Golfsmith is in the business of marketing, selling and/or distributing sporting good products and services, and

derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Golfsmith has done and continues to do business in this judicial district.

14. Plaintiff is informed and believes, and on that basis alleges, that Defendant Bidz.com, Inc. ("Bidz.com"), is a corporation organized under the laws of the State of Delaware with its principal place of business at 3562 Eastham Drive, Culver City, California, 90232. Plaintiff is further informed and believes, and on that basis alleges, that Bidz.com is in the business of selling products online using both auction and fixed-price sales systems, and derives a significant portion of its revenue from sales and distribution via Internet-based electronic commerce. Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Bidz.com has done and continues to do business in this judicial district.

FACTS

15. 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.

16. 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 5,576,951 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.

17. 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.

18. 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.

FIRST CLAIM FOR RELIEF

(Direct Infringement of the '951 Patent,

in Violation of 35 U.S.C. § 271(a))

Against All Defendants

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

20. Defendants, by the acts complained of herein, and by 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, have in the past and now continue to infringe the '951 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

21. 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.

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

23. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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

24. Plaintiff refers to and incorporates herein by reference the allegations of paragraphs 1-18.

25. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly induced the infringement of the '951 Patent, in violation of 35 U.S.C. § 271(b), by inducing their customers to utilize their own and Defendants' systems, and incorporated and/or related systems, individually or in combination, in such a way as to infringe the '951 Patent.

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

27. 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.

28. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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

(Contributory Infringement of the '951 Patent,

in Violation of 35 U.S.C. § 271(c))

Against All Defendants

29. Plaintiff refers to and incorporates herein by reference the allegations of paragraphs 1-18.

30. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly contributed to the infringement of the '951 Patent, in violation of 35 U.S.C. § 271(c), by selling or offering to sell within the United States, or importing into the United States, one or multiple component(s) of the invention, knowing the same to be especially made or adapted for use in the infringement of the patent.

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

32. 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.

33. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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.

FOURTH CLAIM FOR RELIEF

(Direct Infringement of the '319 Patent,

in Violation of 35 U.S.C. § 271(a))

Against All Defendants

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

35. Defendants, by the acts complained of herein, and by 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, have in the past and now continue to infringe the '319 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

36. 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.

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

38. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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.

FIFTH CLAIM FOR RELIEF

(Inducing Infringement of the '319 Patent,

in Violation of 35 U.S.C. § 271(b))

Against All Defendants

39. Plaintiff refers to and incorporates herein by reference the allegations of paragraphs 1-18.

40. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly induced the infringement of the '319 Patent, in violation of 35 U.S.C. § 271(b), by inducing their customers to utilize their own and Defendants' systems, and incorporated and/or related systems, individually or in combination, in such a way as to infringe the '319 Patent.

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

42. 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.

43. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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.

SIXTH CLAIM FOR RELIEF

(Contributory Infringement of the '319 Patent,

in Violation of 35 U.S.C. § 271(c))

Against All Defendants

44. Plaintiff refers to and incorporates herein by reference the allegations of paragraphs 1-18.

45. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly contributed to the infringement of the '319 Patent, in violation of 35 U.S.C. § 271(c), by selling or offering to sell within the United States, or importing into the United States, one or multiple component(s) of the invention, knowing the same to be especially made or adapted for use in the infringement of the patent.

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

47. 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.

48. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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.

SEVENTH CLAIM FOR RELIEF

(Direct Infringement of the '508 Patent,

in Violation of 35 U.S.C. § 271(a))

Against All Defendants

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

50. Defendants, by the acts complained of herein, and by 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, have in the past and now continue to infringe the '508 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 Defendants' infringement 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.

EIGHTH CLAIM FOR RELIEF

(Inducing Infringement of the '508 Patent,

in Violation of 35 U.S.C. § 271(b))

Against All Defendants

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

55. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly induced the infringement of the '508 Patent, in violation of 35 U.S.C. § 271(b), by inducing their customers to utilize their own and Defendants' systems, and incorporated and/or related systems, individually or in combination, in such a way as to infringe the '508 Patent.

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

57. 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.

58. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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.

NINTH CLAIM FOR RELIEF

(Contributory Infringement of the '508 Patent,

in Violation of 35 U.S.C. § 271(c))

Against All Defendants

59. Plaintiff refers to and incorporates herein by reference the allegations of paragraphs 1-18.

60. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly contributed to the infringement of the '508 Patent, in violation of 35 U.S.C. § 271(c), by selling or offering to sell within the United States, or importing into the United States, one or multiple component(s) of the invention, knowing the same to be especially made or adapted for use in the infringement of the patent.

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

62. 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.

63. Plaintiff is informed and believes, and on that basis alleges, that Defendants' infringement 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.

JURY DEMAND

64. 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, induced others to infringe, and/or have contributed in the infringement of 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, induced others to infringe, and/or have contributed in the infringement of 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, induced others to infringe, and/or have contributed in the infringement of the '508 Patent in violation of 35 U.S.C. § 271;

G. 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;

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 '319 Patent and from inducing others to infringe the '319 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 '508 Patent and from inducing others to infringe the '508 Patent;

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

K. 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;

L. 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, and further for an order that such acts by Defendants were willful and wanton;

M. 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;

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

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

DATED: January 15, 2009

Respectfully Submitted,

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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 15th day of January, 2009, 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