

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | |
|--|---|
| Fifth Market, Inc., |) |
| a Tennessee corporation, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| CME Group, Inc., |) |
| a Delaware Corporation, and |) |
| |) |
| Board of Trade of the City of Chicago, Inc., |) |
| a Delaware Corporation, |) |
| |) |
| Defendants. |) |
| _____ |) |

Case No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Fifth Market, Inc. (“Fifth Market”), by and through its attorneys, for its Complaint against Defendants, CME Group, Inc. and Board of Trade of the City of Chicago, Inc., jointly and severally, hereinafter collectively referred to as “CME/CBOT,” states as follows:

1. Plaintiff Fifth Market is a Tennessee corporation with a principal place of business at 104 Woodmont Boulevard, Nashville, Tennessee 37205.
2. Defendant Board of Trade of the City of Chicago, Inc., (hereinafter “CBOT”) is a corporation formed under the laws of the State of Delaware with its principal place of business at 141 West Jackson Boulevard, Chicago, Illinois. CBOT may be served at the offices of its registered agent, the National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.
3. Defendant CME Group, Inc. (hereinafter “CME”) is a corporation formed under the laws of the State of Delaware with its principal place of business at 20 South Wacker Drive, Chicago, Illinois. CME may be served with process within the State of Delaware

at the offices of its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

4. Upon information and belief, all of the Class A Membership of CBOT is held by CME. Also upon information and belief, such Class A Membership may not be transferred to or held by an entity other than CME, unless authorized by an amendment to the Certificate of Incorporation, and that the Class A Member effectively has the exclusive right to vote on any matter to be voted on by the members of CBOT, unless otherwise authorized by CME or applicable law. Further, the Certificate of Incorporation of CBOT states that the Board of Directors of CBOT shall at all times be comprised of the same directors as those of CME.

5. Accordingly, upon information and belief, Plaintiff alleges that CME is the alter ego or agent of CBOT, specifically alleging as follows:

- a) CBOT is dominated by CME;
- b) there is an overlapping business relationship between CME and CBOT that is controlled by CME;
- c) CME files a consolidated financial statement including CBOT;
- d) CME possesses the capacity to influence CBOT's major business decisions;
- e) there is unity of interest and ownership such that the separate personalities of the subsidiary and parent no longer exist;
- f) CME exercises complete authority over the general policy of CBOT;
- g) there is a close connection relationship between the defendants and the cause of action; and
- h) an inequitable and/or unjust result will follow if CME is not held liable for the liability of CBOT.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the acts of Congress relating to patents, namely 35 U.S.C. §§ 1, *et. seq.* This Court thereby has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Upon information and belief Defendants CME/CBOT have solicited business in the State of Delaware, are doing business in this judicial district, and have attempted to derive financial benefit from residents of the State of Delaware, including benefits directly related to the instant cause of action set forth herein.

8. In addition, CME/CBOT are residents of this judicial district and each has appointed a resident agent in Delaware, as set forth hereinabove.

9. Upon information and belief Defendant CBOT provides electronic trading software within this district to residents of this district, which software is used for transacting commerce on the CBOT exchange. This Court therefore has jurisdiction generally over CME/CBOT.

10. Defendants CME/CBOT have committed and continue to commit acts of patent infringement in this district. Therefore, this Court has specific jurisdiction over CME/CBOT.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) in that, among other things, the acts of infringement complained of have been committed in this judicial district, and Defendants CME/CBOT reside in this judicial district.

FACTS AND STATEMENT OF CLAIM

COUNT I INFRINGEMENT OF U.S. PATENT NO. 6,418,419 B1

12. Plaintiff Fifth Market is the owner of U.S. Patent No. 6,418,419 B1 (the '419 patent), titled "Automated System For Conditional Order Transactions in Securities or

other Items in Commerce,” which issued on July 9, 2002. A copy of the ‘419 patent is attached as Exhibit A.

13. Plaintiff Fifth Market is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287.

14. Defendants CME/CBOT have infringed and/or continue to infringe the ‘419 patent by making, using, selling and/or offering for sale products and methods covered by claims of the ‘419 patent without Plaintiff Fifth Market’s authorization, in violation of 35 U.S.C. § 271(a).

15. In addition, Defendants CME/CBOT’s actions have constituted and/or continue to constitute contributory infringement of the ‘419 patent in violation of 35 U.S.C. § 271(c) and/or the active inducement of others under 35 U.S.C. § 271(b) to engage in direct infringement under 35 U.S.C. § 271(a) with a knowledge and an intent to induce the specific infringement.

16. Upon information and belief, Defendants CME/CBOT significantly, actively, and intentionally aided, abetted, participated in and were and are a proximate, contributory and concurring cause of the aforesaid infringement, because, without limitation, Defendants CME/CBOT induced others to use, sell and/or offer to sell the infringing products and methods.

17. Defendants CME/CBOT’s infringement of the ‘419 patent is willful, deliberate and intentional.

18. By Defendants CME/CBOT’s infringement of the ‘419 patent, it has made unlawful gains and profits, and Fifth Market, due to the same infringing conduct, has been deprived of rights and remunerations that would have otherwise come to Fifth Market, but for the infringement. Defendants CME/CBOT have thus caused irreparable harm to Plaintiff Fifth Market and will continue to do so unless enjoined.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 7,024,387 B1

19. Plaintiff Fifth Market realleges and incorporates paragraphs 1-17 as if set forth herein in full.

20. Plaintiff Fifth Market is the owner of U.S. Patent No. 7,024,387 B1 (the '387 patent), titled "Automated System For Conditional Order Transactions in Securities or Other Items in Commerce," which issued on April 4, 2006. A copy of the '387 patent is attached as Exhibit B.

21. Plaintiff Fifth Market is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287.

22. Defendants CME/CBOT have infringed and/or continue to infringe the '387 patent by making, using, selling and/or offering for sale products and methods covered by claims of the '387 patent without Plaintiff Fifth Market's authorization, in violation of 35 U.S.C. § 271(a).

23. In addition, Defendants CME/CBOT's actions have constituted and/or continue to constitute contributory infringement of the '387 patent in violation of 35 U.S.C. § 271 (c) and/or the active inducement of others under 35 U.S.C. § 271(b) to engage in direct infringement under 35 U.S.C. § 271(a) with a knowledge and an intent to induce the specific infringement.

24. Upon information and belief, Defendants CME/CBOT significantly, actively, and intentionally aided, abetted, participated in and was and is a proximate, contributory and concurring cause of the aforesaid infringement, because, without limitation, Defendants CME/CBOT induced others to use, sell and/or offer to sell the infringing products and methods.

25. Defendants CME/CBOT's infringement of the '387 patent is willful, deliberate and intentional.

26. By Defendants CME/CBOT's infringement of the '387 patent, they have made unlawful gains and profits, and Fifth Market, due to the same infringing conduct, has been deprived of rights and remunerations that would have otherwise come to Fifth Market, but for the infringement. Defendants CME/CBOT have thus caused irreparable harm to Plaintiff Fifth Market and will continue to do so unless enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fifth Market prays for judgment and relief including:

(A) Judgment, jointly and severally, that Defendants CME/CBOT have been and are infringing one or more claims of the '419 and '387 patents pursuant to 35 U.S.C. §§ 271(a), (b) and/or (c);

(B) Preliminary and permanent injunctive relief prohibiting and enjoining Defendants CME/CBOT, and each of their officers, agents, servants, employees, licensees, attorneys, related business entities and all those acting or attempting to act in active consent or participation with them from infringing the '419 and '387 patents;

(C) A judgment, jointly and severally, that Defendants CME/CBOT be ordered to account for and pay all damages caused by reason of CME/CBOT's infringement pursuant to 35 U.S.C. § 284, including enhanced damages for willful infringement under 35 U.S.C. § 284 of trebled damages or an amount to be determined by the Court;

(D) A judgment, jointly and severally, that CME/CBOT be ordered to pay Fifth Market's costs, expenses and reasonable attorney's fees pursuant to 35 U.S.C. §§ 284 and 285;

(E) An award of pre-judgment and post-judgment interest on the damages caused to Fifth Market by CME/CBOT's infringement; and

(F) Such other and further relief as the Court may deem just and proper under the circumstances.

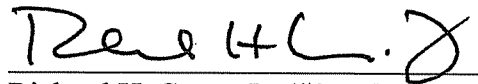
JURY DEMAND

Plaintiff Fifth Market demands trial by jury on all issues so triable.

Dated: December 21, 2007

Respectfully submitted,

CROSS & SIMON, LLC



Richard H. Cross, Jr. (#3576)
Sean T. O'Kelly (#4349)
913 North Market Street, 11th Floor
Wilmington, DE 19801
(302) 777-4200
(302) 777-4224 (facsimile)
Attorneys for Plaintiff, Fifth Market, Inc.

OF COUNSEL:

Michael K. Mutter
Quentin R. Corrie
Michael K. Botts
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747