

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LBS INNOVATIONS, LLC,

Plaintiff,

v.

SALLY BEAUTY SUPPLY LLC, *et al.*,

Defendants.

Civil Action No. 2:11-cv-409-JRG

**Jury Trial Demanded**

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**PLAINTIFF'S SECOND AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

Plaintiff LBS Innovations, LLC (“LBSI”) files this Second Amended Complaint against Sally Beauty Supply LLC; Barnes & Nobles, Inc.; Chick-Fil-A, Inc.; 7-Eleven Inc.; American Express Company; BBVA Compass Bancshares, Inc.; Bed Bath & Beyond Inc.; The Home Depot U.S.A. Inc.; Regions Financial Corporation; Safeway Inc.; SunTrust Banks, Inc.; and True Value Company (collectively the “Defendants”) and alleges as follows.

**PARTIES**

1. Plaintiff LBS Innovations, LLC, a Texas Limited Liability Corporation and successor in interest to LBS Innovations LLC, a New Jersey Limited Liability Corporation, has its principal place of business at 815 Brazos Street, Suite 500, Austin, Texas 78701.

2. Upon information and belief, Defendant Sally Beauty Supply LLC (“Sally Beauty”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 3001 Colorado Boulevard, Denton, Texas 76210-6802. Sally Beauty has been served with process.

3. Upon information and belief, Defendant Barnes & Noble, Inc. (“Barnes & Noble”) is a corporation organized and existing under the laws of the State of New York, with its

principal place of business located at 122 5<sup>th</sup> Avenue, Floor 2, New York, New York 10011-5693. Barnes & Nobles has been served with process.

4. Upon information and belief, Defendant Chick-Fil-A, Inc. (“Chick-Fil-A”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 5200 Buffington Road, Atlanta, Georgia 30349-2998. Chick-Fil-A has been served with process.

5. Upon information and belief, Defendant 7-Eleven Inc. (“7-Eleven”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 2711 N. Haskell Ave, Dallas, Texas 75204-2911. 7-Eleven has been served with process.

6. Upon information and belief, Defendant American Express Company (“American Express”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 200 Vesey Street, 30<sup>th</sup> Floor, Mail Drop 01-30-02, New York, New York 10285-0001. American Express has been served with process.

7. Upon information and belief, Defendant BBVA Compass Bancshares, Inc. (“BBVA Compass”) is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business located at 15 South 20<sup>th</sup> Street, Birmingham, Alabama 35233. BBVA Compass has been served with process.

8. Upon information and belief, Defendant Bed Bath & Beyond Inc. (“Bed Bath & Beyond”) is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 650 Liberty Avenue, Union, NJ 07083-8135. Bed Bath & Beyond has been served with process.

9. Upon information and belief, Defendant The Home Depot U.S.A. Inc. (“Home Depot”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 2455 Paces Ferry Road Northwest, Atlanta, Georgia 30339-4024. Home Depot has been served with process.

10. Upon information and belief, Defendant Regions Financial Corporation (“Regions Bank”) is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business located at P.O. Box 10247, Birmingham, Alabama 35202-0247. Regions Bank has been served with process.

11. Upon information and belief, Defendant Safeway Inc. (“Safeway”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 5918 Stoneridge Mall Rd., Pleasanton, California 94588-3229. Safeway has been served with process.

12. Upon information and belief, Defendant SunTrust Banks, Inc. (“SunTrust Banks”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 303 Peachtree Street Northeast, 36<sup>th</sup> Floor, Atlanta, Georgia 30308. SunTrust Banks has been served with process.

13. Upon information and belief, Defendant True Value Company (“True Value”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 8600 W. Bryn Mawr Avenue, Suite 100S, Chicago, IL 60631-3505. True Value has been served with process.

## **JURISDICTION AND VENUE**

14. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

15. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. Upon information and belief, each of the Defendants is subject to this Court's general and/or specific personal jurisdiction because it (a) is a resident of the State of Texas; and/or (b) has designated an agent for service of process in the State of Texas; and/or (c) has committed acts of infringement in the State of Texas as alleged below; and/or (d) is engaged in continuous and systematic activities in the State of Texas. Therefore, this Court has personal jurisdiction over each of the Defendants under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

17. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has a regular and established place of business in this district, and/or has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

## **THE PATENT-IN-SUIT**

18. On July 18, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,091,956 (the "956 Patent") entitled "Situation Information System," a true copy of which is attached as Exhibit A.

19. LBSI is the owner by assignment of the '956 Patent and owns all right, title and interest in the '956 Patent, including the right to sue for and recover all past, present and future damages for infringement of the '956 Patent.

**CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 6,091,956**

20. Defendant Sally Beauty has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.sallybeauty.com](http://www.sallybeauty.com), which has a store or dealer location interface at <http://stores.sallybeauty.com/> ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Sally Beauty has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

21. Defendant Barnes & Noble has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.barnesandnoble.com](http://www.barnesandnoble.com), which has a store or dealer location interface at <http://storelocator.barnesandnoble.com/storelocator/stores.aspx?x=y&>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Barnes & Noble has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

22. Defendant Chick-Fil-A has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.chick-fil-a.com](http://www.chick-fil-a.com), which has a

store or dealer location interface at <http://www.chick-fil-a.com/Locations/Locator>, (“Store Locator”), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Chick-Fil-A has been and/or is now indirectly infringing one or more claims of the ‘956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the ‘956 Patent, including Claim 11, through their use of the infringing instrumentality.

23. Defendant 7-Eleven has been and/or is now directly infringing one or more claims of the ‘956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.7-eleven.com](http://www.7-eleven.com), which has a store or dealer location interface at <http://www.7-eleven.com/Stores/Default.aspx> (“Store Locator”), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, 7-Eleven has been and/or is now indirectly infringing one or more claims of the ‘956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the ‘956 Patent, including Claim 11, through their use of the infringing instrumentality.

24. Defendant American Express has been and/or is now directly infringing one or more claims of the ‘956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.americanexpress.com](http://www.americanexpress.com), which has a store or dealer location interface at <http://www.aetlocator.com/wheretobuy/travelerscheques/> and <http://www.aetlocator.com/us/>, (“Store Locator”), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, American Express has been and/or is now indirectly infringing one or more claims of the ‘956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b),

by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

25. Defendant BBVA Compass has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.bbvacompass.com](http://www.bbvacompass.com), which has a store or dealer location interface at <http://www.bbvacompass.com/locations/index.jsp>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, BBVA Compass has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

26. Defendant Bed Bath & Beyond has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.bedbathandbeyond.com](http://www.bedbathandbeyond.com), which has a store or dealer location interface at <http://www.bedbathandbeyond.com/storeLocator.asp>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Bed Bath & Beyond has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

27. Defendant Home Depot has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.homedepot.com](http://www.homedepot.com), which has a store or dealer location interface at <http://www.homedepot.com/StoreFinder/index.jsp>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Home Depot has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

28. Defendant Regions Bank has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.regions.com](http://www.regions.com), which has a store or dealer location interface at <https://www.regions.com/Locations.rf>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Regions Bank has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

29. Defendant Safeway has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.safeway.com](http://www.safeway.com), which has a store or dealer location interface at <http://www.safeway.com/ShopStores/Store-Locator.page>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition



and/or in the alternative, Safeway has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

30. Defendant Sun Trust has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.suntrust.com](http://www.suntrust.com), which has a store or dealer location interface at <https://www.suntrust.com/FindUs?storesearch=>, ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, Sun Trust has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

31. Defendant True Value has been and/or is now directly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.truevalue.com](http://www.truevalue.com), which has a store or dealer location interface at [http://www.truevalue.com/store\\_locator.jsp](http://www.truevalue.com/store_locator.jsp), ("Store Locator"), when its employees, agents, or representatives use or test its website. In addition and/or in the alternative, True Value has been and/or is now indirectly infringing one or more claims of the '956 Patent, including Claim 11, in violation of 35 U.S.C. § 271 (b), by inducing visitors to its website and Store Locator to directly infringe the '956 Patent, including Claim 11, through their use of the infringing instrumentality.

32. As a direct and proximate consequence of the acts and practices of the Defendants in infringing, directly and/or indirectly, one or more claims of the '956 patent, LBSI has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

33. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to LBSI.

34. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and LBSI is thus entitled to an award of its reasonable attorneys' fees.

#### **DEMAND FOR JURY TRIAL**

35. LBSI, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, LBSI requests entry of judgment that:

1. Defendants have infringed the patent-in-suit;
2. Defendants account for and pay to Plaintiff all damages caused by their respective infringement of the patent-in-suit; and
3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendants' patent infringement;
4. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
5. Costs be awarded to Plaintiff; and
6. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: July 26, 2012

Respectfully submitted,

**BUETHER JOE & CARPENTER, LLC**

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**ATTORNEYS FOR PLAINTIFF  
LBS INNOVATIONS LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on this 26<sup>th</sup> day of July, 2012. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Christopher M. Joe  
Christopher M. Joe