

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
WHEELING DIVISION**

ECLIPSE IP, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. <u>5:12-cv-147 (Bailey)</u>
	)	Electronically Filed: October 2, 2012
	)	<b>COMPLAINT</b>
LUCY ACTIVEWEAR, INC.,	)	
	)	<b>DEMAND FOR JURY TRIAL</b>
Defendant.	)	
	)	
	)	
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**COMPLAINT**

Plaintiff Eclipse IP LLC ("Eclipse"), by counsel, complains of defendant Lucy Activewear, Inc. ("Lucy") as follows:

**NATURE OF LAWSUIT**

1. This is a suit for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1 *et seq.* This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

## **PARTIES AND PATENTS**

2. Eclipse is a company organized and existing under the laws of Florida and having a principal place of business address at 115 NW 17th Street, Delray Beach, Florida 33444.

3. Eclipse owns all right, title, and interest in and has standing to sue for infringement of United States Patent No. 7,479,899 (“the ‘899 patent”), entitled “Notification Systems and Methods Enabling a Response to Cause Connection Between a Notified PCD and a Delivery or Pickup” (Exhibit A); United States Patent No. 7,876,239 (“the ‘239 patent”), entitled “Secure Notification Messaging Systems and Methods Using Authentication Indicia” (Exhibit B); United States Patent No. 7,319,414 (“the ‘414 patent”), entitled “Secure Notification Messaging Systems and Methods Using Authentication Indicia” (Exhibit C); United States Patent No. 7,482,952 (“the ‘952 patent”), entitled “Response Systems and Methods for Notification Systems for Modifying Future Notifications” (Exhibit D); and United States Patent No. 7,119,716 (“the ‘716 patent”), entitled “Response Systems and Methods for Notification Systems for Modifying Future Notifications” (Exhibit E) (collectively, “the Eclipse Patents”).

4. On information and belief, Lucy Activewear, Inc. (hereinafter “Lucy”) is a corporation incorporated in Delaware and has its principal place of business at 1601 Harbor Bay Parkway, Alameda, California 94502.

5. On information and belief, Lucy does regular business in this judicial district and has committed acts of infringement in this judicial district.

### **JURISDICTION AND VENUE**

6. On information and belief, this Court has personal jurisdiction over Lucy because it transacts regular business in this judicial district in Ohio, Brooke, Hancock and Marshall Counties, West Virginia; is operating and/or supporting products or services that fall within one or more claims of Eclipse’s patents in this judicial district including Ohio, Brooke, Hancock and Marshall Counties, West Virginia; and has committed the tort of patent infringement in the above counties.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(d) and 1400(b).

### **DEFENDANT’S ACTS OF PATENT INFRINGEMENT**

8. Lucy has infringed one or more claims of the ‘899 patent through, among other activities: the use of its electronic order, purchase, and product return status messaging and information systems that include URL links; and providing the users or recipients of electronic messages with authentication modifications to

future electronic messages, and additional information associated with the status of a purchase or return.

9. Lucy has actively induced and/or contributed to the infringement by others of one or more claims of the '899 patent through, among other activities: by continuing to provide to customers the use of its electronic order, purchase, and product return status messaging and information systems that include URL links, after having received notice of its infringement of the '899 patent; and by continuing to provide customers electronic messages with authentication, modifications to future electronic messages, and additional information associated with the status of a purchase or return, after having received notice of its infringement of the '899 patent.

10. On information and belief, Lucy's infringement of the '899 patent as set forth herein has been and is willful, deliberate and in disregard of Eclipse's patent rights, and Eclipse is therefore entitled to increased damages up to three times the amount of actual damages and attorneys' fees, pursuant to 35 U.S.C. §§ 284, 285.

11. Lucy has infringed one or more claims of the '239 patent through, among other activities: the use of its electronic order, purchase, and product return status messaging and information systems that include URL links; and providing the users or recipients of electronic messages with authentication modifications to

future electronic messages, and additional information associated with the status of a purchase or return.

12. Lucy has actively induced and/or contributed to the infringement by others of one or more claims of the '239 patent through, among other activities: by continuing to provide to customers the use of its electronic order, purchase, and product return status messaging and information systems that include URL links, after having received notice of its infringement of the '239 patent; and by continuing to provide customers electronic messages with authentication, modifications to future electronic messages, and additional information associated with the status of a purchase or return, after having received notice of its infringement of the '239 patent.

13. On information and belief, Lucy's infringement of the '239 patent as set forth herein has been and is willful, deliberate and in disregard of Eclipse's patent rights, and Eclipse is therefore entitled to increased damages up to three times the amount of actual damages and attorneys' fees, pursuant to 35 U.S.C. §§ 284, 285.

14. Lucy has infringed one or more claims of the '414 patent through, among other activities: the use of its electronic order, purchase, and product return status messaging and information systems that include URL links; and providing the users or recipients of electronic messages with authentication modifications to

future electronic messages, and additional information associated with the status of a purchase or return.

15. Lucy has actively induced and/or contributed to the infringement by others of one or more claims of the '414 patent through, among other activities: by continuing to provide to customers the use of its electronic order, purchase, and product return status messaging and information systems that include URL links, after having received notice of its infringement of the '414 patent; and by continuing to provide customers electronic messages with authentication, modifications to future electronic messages, and additional information associated with the status of a purchase or return, after having received notice of its infringement of the '414 patent.

16. On information and belief, Lucy's infringement of the '414 patent as set forth herein has been and is willful, deliberate and in disregard of Eclipse's patent rights, and Eclipse is therefore entitled to increased damages up to three times the amount of actual damages and attorneys' fees, pursuant to 35 U.S.C. §§ 284, 285.

17. Lucy has infringed one or more claims of the '952 patent through, among other activities: the use of its electronic order, purchase, and product return status messaging and information systems that include URL links; and providing the users or recipients of electronic messages with authentication modifications to

future electronic messages, and additional information associated with the status of a purchase or return.

18. Lucy has actively induced and/or contributed to the infringement by others of one or more claims of the '952 patent through, among other activities: by continuing to provide to customers the use of its electronic order, purchase, and product return status messaging and information systems that include URL links, after having received notice of its infringement of the '952 patent; and by continuing to provide customers electronic messages with authentication, modifications to future electronic messages, and additional information associated with the status of a purchase or return, after having received notice of its infringement of the '952 patent.

19. On information and belief Lucy's infringement of the '952 patent as set forth herein has been and is willful, deliberate and in disregard of Eclipse's patent rights, and Eclipse is therefore entitled to increased damages up to three times the amount of actual damages and attorneys' fees, pursuant to 35 U.S.C. §§ 284, 285.

20. Lucy has infringed one or more claims of the '716 patent through, among other activities: the use of its electronic order, purchase, and product return status messaging and information systems that include URL links; and providing the users or recipients of electronic messages with authentication modifications to

future electronic messages, and additional information associated with the status of a purchase or return.

21. Lucy has actively induced and/or contributed to the infringement by others of one or more claims of the '716 patent through, among other activities: by continuing to provide to customers the use of its electronic order, purchase, and product return status messaging and information systems that include URL links, after having received notice of its infringement of the '716 patent; and by continuing to provide customers electronic messages with authentication, modifications to future electronic messages, and additional information associated with the status of a purchase or return, after having received notice of its infringement of the '716 patent.

22. On information and belief, Lucy's infringement of the '716 patent as set forth herein has been and is willful, deliberate and in disregard of Eclipse's patent rights, and Eclipse is therefore entitled to increased damages up to three times the amount of actual damages and attorneys' fees, pursuant to 35 U.S.C. §§ 284, 285.

**CLAIMS FOR RELIEF**

**COUNT I**

**(Patent Infringement of U.S. Patent No. 7,479,899**

**Under 35 U.S.C. § 271, *et seq.*)**

23. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 22 above and incorporates them by reference.

24. On January 20, 2009, United States Patent No. 7,479,899, entitled, “Notification Systems and Methods Enabling a Response to Cause Connection Between a Notified PCD and a Delivery or Pickup Representative” was duly and legally issued by the United States Patent and Trademark Office. Eclipse IP is the owner of the entire right, title and interest in and to the ‘899 patent. A true and correct copy of the ‘899 patent is attached as Exhibit A to this complaint.

25. On information and belief, Lucy: (1) has infringed and continues to infringe claims of the ‘899 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the ‘899 patent, and/or has actively induced and continues to actively induce others to infringe claims of the ‘899 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

## **COUNT II**

**(Patent Infringement of U.S. Patent No. 7,876,239**

**Under 35 U.S.C. § 271, *et seq.*)**

26. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 25 above and incorporates them by reference.

27. On January 25, 2011, United States Patent No. 7,876,239, entitled, “Secure Notification Messaging System and Methods Using Authentication Indicia” was duly and legally issued by the United States Patent and Trademark Office. Eclipse IP is the owner of the entire right, title and interest in and to the ‘239 patent. A true and correct copy of the ‘239 patent is attached as Exhibit B to this complaint.

28. On information and belief, Lucy: (1) has infringed and continues to infringe claims of the ‘239 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the ‘239 patent, and/or has actively induced and continues to actively induce others to infringe claims of the ‘239 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

### **COUNT III**

#### **(Patent Infringement of U.S. Patent No. 7,319,414**

#### **Under 35 U.S.C. § 271, *et seq.*)**

29. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 28 above and incorporates them by reference.

30. On January 15, 2008, United States Patent No. 7,319,414, entitled, “Secure Notification Messaging System and Methods Using Authentication

Indicia” was duly and legally issued by the United States Patent and Trademark Office. Eclipse IP is the owner of the entire right, title and interest in and to the ‘414 patent. A true and correct copy of the ‘414 patent is attached as Exhibit C to this complaint.

31. On information and belief, Lucy: (1) has infringed and continues to infringe claims of the ‘414 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the ‘414 patent, and/or has actively induced and continues to actively induce others to infringe claims of the ‘414 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

#### **COUNT IV**

#### **(Patent Infringement of U.S. Patent No. 7,482,952**

#### **Under 35 U.S.C. § 271, *et seq.*)**

32. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 31 above and incorporates them by reference.

33. On January 27, 2009, United States Patent No. 7,482,952, entitled, “Response Systems and Methods for Notification Systems for Modifying Future Notifications” was duly and legally issued by the United States Patent and Trademark Office. Eclipse IP is the owner of the entire right, title and interest in

and to the '952 patent. A true and correct copy of the '952 patent is attached as Exhibit D to this complaint.

34. On information and belief, Lucy: (1) has infringed and continues to infringe claims of the '952 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the '952 patent, and/or has actively induced and continues to actively induce others to infringe claims of the '952 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

### **COUNT V**

#### **(Patent Infringement of U.S. Patent No. 7,119,716**

#### **Under 35 U.S.C. § 271, *et seq.*)**

35. Eclipse incorporates by reference and realleges the allegations set forth in paragraphs 1 through 34 above and incorporates them by reference.

36. On October 10, 2006, United States Patent No. 7,119,716, entitled, "Response Systems and Methods for Notification Systems for Modifying Future Notifications" was duly and legally issued by the United States Patent and Trademark Office. Eclipse IP is the owner of the entire right, title and interest in and to the '716 patent. A true and correct copy of the '716 patent is attached as Exhibit E to this complaint.

37. On information and belief, Lucy: (1) has infringed and continues to infringe claims of the '716 patent, literally and/or under the doctrine of equivalents, and/or (2) has contributed and continues to contribute to the literal infringement and/or infringement under the doctrine of equivalents of claims of the '716 patent, and/or has actively induced and continues to actively induce others to infringe claims of the '716 patent, literally and/or under the doctrine of equivalents, in this district and elsewhere in the United States.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Eclipse asks this Court to enter judgment against Lucy and against each of the its respective subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it, granting the following relief:

(a) An award of damages adequate to compensate Eclipse for the infringement that has occurred, together with prejudgment interest from the date infringement of the Eclipse Patents began;

(b) An award to Eclipse of all remedies available under 35 U.S.C. §§ 284 and 285, including enhanced damages up to and including trebling of Eclipse's damages for Lucy's willful infringement, and reasonable attorneys' fees and costs; and

(c) Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Eclipse demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Respectfully submitted this 2<sup>nd</sup> day of October 2012.

s/Joseph H. Fox, Esquire  
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