

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

M-EDGE ACCESSORIES LLC,

Plaintiff,

v.

AMAZON.COM INC.,

Defendant.

Civil Action No: MJG 11 cv 3332

Honorable Judge Marvin J. Garbis

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff M-Edge Accessories LLC (“M-Edge”) hereby complains of Defendant Amazon.com Inc. (“Amazon”) as follows:

NATURE OF THE CASE

1. This case presents a classic example of unlawful corporate bullying. M-Edge developed a very successful product line: personal electronic device jackets with multiple features for the Kindle and other e-Readers. Amazon thereafter repeatedly sought to hijack M-Edge’s product through threats, lies, interference with M-Edge’s customer relationships, and patent infringement. M-Edge now asserts claims for patent infringement, unfair competition, intentional interference with contracts and economic relations, and false advertising.

THE PARTIES

2. M-Edge Accessories LLC (“M-Edge”) is a Maryland limited liability company of approximately 50 employees located at 1360 Blair Drive, Odenton, Maryland 21113-1343. Dr. Patrick Mish founded M-Edge in 2006 to create fashionable and protective accessories for e-Readers. M-Edge’s products have been featured in numerous publications such as People Magazine. Before Amazon “de-listed” M-Edge from www.amazon.com, M-Edge’s products

routinely constituted at least 20 of the top 25 most popular products in Amazon's "Kindle Store." One such product was M-Edge's innovative lighted jacket which M-Edge patented.

3. Defendant Amazon.com Inc. ("Amazon") is a Delaware corporation with its corporate headquarters and principal place of business at 1200 12th Avenue South, Suite 1200, Seattle, Washington 98114-2734. Amazon has appointed as its registered agent Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 08501.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1367(a).

5. Amazon transacts substantial business in this judicial district and has committed acts of patent infringement in this judicial district, at least by soliciting advertising from Maryland companies and by operating Internet websites and conducting business over those Internet websites that are accessible to residents of Maryland, including www.amazon.com, which offers for sale products which infringe United States Patent No. 8,047,670 (the "'670 Patent"). Amazon also has directed its tortious activity against a Maryland company, resulting in injury within Maryland.

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

BACKGROUND

7. In 2008, Amazon released the first generation Kindle e-Reader. Though the device was popular, it came with a flimsy cover which consumers did not like; among other problems, the device frequently fell out of the cover. M-Edge addressed this shortcoming by producing a superior jacket which it marketed on www.amazon.com.

8. After Oprah Winfrey discussed the Kindle on her show in October of 2008, M-Edge sold out its entire inventory within a matter of hours.

9. Amazon quickly recognized the success of the M-Edge product line, and at a January of 2009 meeting in San Francisco, Amazon executives represented that they wanted M-Edge to be a “special partner” with Amazon – a relationship under which Amazon would give M-Edge pre-launch information about next generation Kindle e-Readers.

10. M-Edge thereafter entered into an agreement with Amazon Services, LLC. That agreement and its revisions are not the subject of the causes of action asserted herein. In the course of discussing those contracts with M-Edge, however, Amazon executives made several threats against M-Edge. Such threats are alleged herein for the sole purpose of demonstrating that the threats made by Amazon executives in 2011 were not aberrant actions by a rogue employee, but a regular business practice of Amazon.

11. For example, in 2010, Amazon.com executives Jay Marine and Sara Otepka, expressly threatened to “de-list” M-Edge, despite having no valid grounds to do so. Otepka also threatened that Amazon would “play” with M-Edge’s www.amazon.com product pages in such a way that “no one will be able to find you.” Otepka also threatened that Amazon would deny M-Edge pre-launch access to the Kindle 3 and future generation Kindles.

12. On July 28, 2010, Amazon announced the launch of the Kindle 3. This came as a surprise to M-Edge, as Amazon had only allowed M-Edge access to the device in Seattle one day earlier, leaving no time to re-tool accessories for the new dimensions of the device. Amazon also launched its own lighted jacket to compete with M-Edge’s products and began “knocking off” M-Edge in other ways, including copying M-Edge’s most popular jacket colors.

AMAZON DEMANDS A SHARE OF M-EDGE'S SALES TO OTHER RETAILERS

13. Beginning in 2009, M-Edge began to sell its products directly to several large retail chains (not through Amazon). By September of 2011, M-Edge had ten non-Amazon retail customers – all of which were known to Amazon – and the list was growing.

14. Amazon was quite aware of M-Edge's success with other retailers, and began scheming to get a cut of such M-Edge sales.

15. In January of 2011, M-Edge and Amazon held a meeting at the Consumer Electronics Show in Las Vegas. At this meeting, Amazon executives, including Colin English (Senior product manager at Amazon), demanded that M-Edge enter into a program it would later call the Preferred Vendor Program. They also demanded that M-Edge pay the salary of one of Amazon's full-time employees, at a cost of nearly \$150,000 per year to M-Edge. When M-Edge balked at these demands, Amazon executives replied that Amazon may have to "rebalance its portfolio." M-Edge understood this phrase to be yet another threat to harm M-Edge.

16. Amazon summoned M-Edge to Seattle for a meeting on June 6, 2011. At this meeting, Amazon executive David Vasen stated that Amazon would be starting a "Preferred Vendor Program" which M-Edge would have to join.

17. On July 11, 2011, Vasen revealed the details of the Preferred Vendor Program to M-Edge. Incredibly, the centerpiece of the program was a requirement that M-Edge pay Amazon 10% of the manufacturer suggested retail price of M-Edge's sales to other retailers. Vasen also made clear that there would be adverse consequences if M-Edge did not agree to Amazon's demand. Specifically, Vasen threatened M-Edge that Amazon would contact such retailers, and the result would be "not a good thing for M-Edge." Seeing no possible justification for Amazon's demand, M-Edge expressed reluctance to enter into the "program." Such sales were

not the subject of any contract with Amazon, and M-Edge was not using any Amazon intellectual property in the products it was selling to such retailers.

18. On August 19, 2011, Vasen again demanded that M-Edge pay Amazon a share of M-Edge's sales to other retailers. M-Edge refused.

AMAZON SETS OUT TO PUNISH M-EDGE

19. In or about September of 2011, Amazon actively sought to discourage M-Edge's customers and potential customers – the identities of which were all known to Amazon – from buying from M-Edge. Amazon's efforts included circulating to M-Edge's customers and potential customers in the United States and in the United Kingdom a list of "Amazon Approved Accessory Vendors," on which list M-Edge was conspicuously absent. The purpose of the list was to create the false impression that the sale of an accessory that can be used with Kindles – M-Edge's products – required Amazon's approval. Amazon also deliberately sought to create the impression that M-Edge had done something wrong and hence was not "approved." Amazon buttressed that message with discussions with M-Edge customers and potential customers in which Amazon verbally discouraged such retailers from dealing with M-Edge by saying among other things, that since M-Edge is not an Amazon approved vendor, its products should not be bought. Amazon executives also stated to such retailers that there would be repercussions if they did not follow Amazon's directive not to buy from M-Edge.

20. M-Edge is not using any Amazon trademarks or other intellectual property in its products, so there is no need to obtain Amazon's "approval" to sell any of such products.

21. Amazon's efforts had their intended effect. Almost immediately, customers and potential customers asked M-Edge why it was not on Amazon's list. Worse, several customers

and potential customers have refused to deal with M-Edge and others have expressed reluctance to deal with M-Edge, fearing repercussions with Amazon.

22. Several -- at least fourteen -- potential customers, including the retail giant Sam's Club, have since refused to deal with M-Edge after being contacted by Amazon.

23. On September 30, 2011 Vasen sent M-Edge an email in which he stated "M-Edge is not an 'approved' or 'preferred' Kindle Accessories manufacturer."

24. Thereafter, Amazon continued to display M-Edge products in its Kindle Store, while at the same time representing that M-Edge covers were "currently unavailable." Also, when a user types a search for "M-Edge" in the Kindle Store, Amazon also displays covers made by Amazon and other vendors.

**COUNT I
PATENT INFRINGEMENT**

25. Plaintiff realleges and incorporates paragraphs 1 through 24 of this Second Amended Complaint as paragraphs 1 through 24 of Count I.

26. Plaintiff owns all right, title and interest in, and has standing to sue (including for past damages) for infringement of, United States Patent No. 8,047,670 entitled "Booklight for a Protective Cover of an eReader" which issued on November 1, 2011 (the "'670 Patent"). The '670 Patent is attached hereto as Exhibit A.

27. Amazon has infringed, and is now at least directly infringing, at least claim 1 of the '670 Patent through, among other activities, the manufacture, use, sale and/or offer for sale of covers for e-Readers with integrated lights, including but not limited to Amazon's Kindle Lighted Leather Cover.

28. In the alternative, Amazon also has infringed the '670 Patent by contributing to the infringement of others through the use, sale, and offer for sale of such products with its

Kindle e-Readers. Specifically, in the alternative, to the extent the claims of the patent are construed to require a battery, as opposed to simply a light source, the accused Kindle Lighted Leather Covers provide a material component of the assembly claimed by the '670 Patent which is especially designed and made for use with Amazon's Kindle e-Reader that provides power for the light source. Furthermore, Amazon is now selling and offering such Kindle Lighted Leather Covers with knowledge of the '670 Patent, and with the knowledge that its accused covers are made and used in a manner such that there are no reasonable non-infringing uses. Amazon has had actual notice of infringement of the '670 Patent by no later than November 18, 2011, which is the filing date of the original Complaint for Patent Infringement. A claim chart applying claims of the '670 Patent as to the Kindle Lighted Leather Covers is attached as Exhibit B.

29. Amazon's infringement and contributory infringement has injured Plaintiff and Plaintiff is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

COUNT II UNFAIR COMPETITION

30. Plaintiff realleges and incorporates paragraphs 1 through 29 of this Second Amended Complaint as paragraphs 1 through 29 of Count II.

31. Amazon has damaged and jeopardized M-Edge's business by using fraud, deceit, trickery and other unfair methods. Among other conduct,

a. Amazon falsely promised M-Edge pre-launch access to next generation Kindles, but then refused to provide pre-launch access in a manner sufficient to enable M-Edge to retool its existing products.

b. In 2011, Amazon demanded 10% of the MSRP on M-Edge's sales to third party vendors, even though Amazon had nothing to do with such sales. Amazon also threatened to interfere with M-Edge's relationships with such retailers unless M-Edge agreed to Amazon's demands.

c. When M-Edge refused Amazon's demands, Amazon punished M-Edge by, among other conduct, contacting M-Edge's customers and potential customers and stating that they should not be doing business with M-Edge. Specifically, Amazon contacted each major retailer and stated that M-Edge is not an approved Amazon vendor, and therefore M-Edge's products should not be purchased; Amazon also warned of repercussions if its directive was not followed. M-Edge, however, is not using any Amazon trademarks or other intellectual property in its products, so there is no need to obtain Amazon's "approval" to sell any such products.

32. Amazon engaged in deliberate wrongdoing with wrongful motives and ill will specifically directed at M-Edge.

33. Amazon's conduct constitutes unfair competition under Maryland state law. M-Edge has been damaged by such conduct.

**COUNT III
INTENTIONAL INTERFERENCE WITH CONTRACTS
AND ECONOMIC RELATIONS**

34. Plaintiff realleges and incorporates paragraphs 1 through 33 of this Second Amended Complaint as paragraphs 1 through 33 of Count III.

35. Amazon engaged in intentional and willful acts calculated to cause damage to M-Edge in its lawful business, with the unlawful purpose to cause such damage and loss. Amazon performed such acts without right or justifiable cause.

36. For instance, Amazon contacted representatives of third party vendors, existing and potential customers of M-Edge, disparaged M-Edge to such vendors, and indicated that dealing with M-Edge would result in adverse consequences. Specifically, Amazon contacted each major retailer and stated that M-Edge is not an approved Amazon vendor, and therefore M-Edge's products should not be purchased; Amazon also warned of repercussions if its directive was not followed. M-Edge, however, is not using any Amazon trademarks or other intellectual

property in its products, so there is no need to obtain Amazon's "approval" to sell any such products.

37. Amazon's unlawful interference resulted in actual damage and loss to M-Edge. For example, several -- at least fourteen -- potential customers, including the retail giant Sam's Club, have since refused to deal with M-Edge after being contacted by Amazon.

**COUNT IV
LANHAM ACT – FALSE ADVERTISING**

38. Plaintiff realleges and incorporates paragraphs 1 through 37 of this Second Amended Complaint as paragraphs 1 through 37 of Count IV.

39. In violation of 15 U.S.C. § 1125(a)(1)(B), Amazon has made, and is continuing to make false or misleading representations about M-Edge and its products – as well as Amazon products and those of other vendors – in interstate commerce. Such representations are material in that they are and were likely to influence the purchasing decisions of visitors to www.amazon.com and retailers of e-Reader products, and the misrepresentations actually have deceived or had the tendency to deceive a substantial segment of their audience.

40. For instance, Amazon, while displaying photographs of M-Edge products on www.amazon.com, identified such M-Edge products as being “currently unavailable” and returned searches identifying competing Amazon products, as well as other third party competing products, in response to searches of Amazon's Kindle Store using “M-Edge” as a search term.

41. Amazon also represented to third-party retailers that M-Edge is not an Amazon “approved” vendor, and that such retailers should accordingly not buy products from M-Edge. Amazon deliberately has attempted to create the impression that the sale of M-Edge's products could be unlawful. At a minimum, Amazon has intentionally created confusion about whether

Amazon's approval is necessary for M-Edge products which are designed to be used with the Kindle.

42. M-Edge has been and is likely to continue to be injured as a result of the misrepresentations, either by direct diversion of sales or by lessening of goodwill associated with its products.

43. Amazon's representations have been willful.

RELIEF REQUESTED

For **Count I**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendant Amazon.com Inc., and against its subsidiaries, successors, parents, affiliates, officers, directors, 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 Plaintiff for the infringement that has occurred, together with prejudgment interest from the date the infringement began, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;

B. A permanent injunction prohibiting further infringement, inducement and/or contributory infringement of the '670 Patent; and

C. Such other relief that Plaintiff is entitled to under law and any other further relief that this Court or a jury may deem just and proper.

For **Count II**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendant Amazon.com Inc., granting the following relief:

A. An accounting for all of Defendant's profits arising out of its acts of unfair competition;

B. An award of compensatory damages including the losses suffered by M-Edge as the result of Defendant's acts of unfair competition; and

C. An award of punitive damages.

For **Count III**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendant Amazon.com Inc., granting the following relief:

A. An award of compensatory damages including the losses suffered by M-Edge as the result of Defendant's interference; and

B. An award of punitive damages.

For **Count IV**, Plaintiff M-Edge Accessories LLC respectfully requests this Court enter judgment against Defendant Amazon.com Inc., and against its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with it, granting the following relief:

A. The entry of judgment in favor of Plaintiff and against Defendant;

B. An award of actual damages in the amount of (1) Defendant's profit derived from the sales at issue and (2) M-Edge's lost sales as the result of Defendant's conduct;

C. An award of enhanced damages pursuant to 15 U.S.C. § 1117(a); and

D. An award of attorney's fees and costs pursuant to 15 U.S.C. § 1117(a).

JURY DEMAND

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

Respectfully submitted,

/s/ John E. McCann

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the July 13, 2012, I filed the foregoing

SECOND AMENDED COMPLAINT

with the Clerk of Court using the CM/ECF system which will send a notice of electronic filing through the Court's electronic filing systems to the following counsel of record:

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