

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

LODSYS GROUP, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.;
LAMPS PLUS, INC.;
NORDSTROM, INC.;

Defendants.

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CIVIL ACTION NO. 2:12-cv-730-JRG

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lodsys Group, LLC (“Lodsys”), for its complaint against the above-named defendants, alleges as follows:

THE PARTIES

1. Lodsys is a Texas limited liability company with its principal place of business in Marshall, Texas.
2. Defendant Charter Communications, Inc. (“Charter”) is a Delaware corporation with its principal place of business in St. Louis, Missouri.
3. Defendant Lamps Plus, Inc. (“Lamps Plus”) is a California corporation with its principal place of business in Chatsworth, California.
4. Defendant Nordstrom, Inc. (“Nordstrom”) is a Washington corporation with its principal place of business in Seattle, Washington.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in that defendants reside in this district, a substantial part of the events giving rise to the claims

occurred in this district, and/or the defendants have a regular and established practice of business in this district and have committed acts of infringement in this district.

6. This Court has general and specific personal jurisdiction over defendants, because each defendant has substantial contacts with the forum as a result of conducting substantial business in the State of Texas and within this district. Upon information and belief, each defendant regularly solicits business in the State of Texas and this district; derives revenue from products and/or services provided to individuals residing the State of Texas and this district; conducts business utilizing the claimed systems and methods with and for customers residing in the State of Texas and this district; and provides and/or markets products and services directly to consumers in the State of Texas and this district.

7. Defendants are properly joined in this action because Lodsys' original Complaint for Patent Infringement [dkt. no. 1] asserted claims against each of the defendants for their manufacture, use, sale, importation, and/or offers to sell infringing websites with live interactive chat technology that was identically sourced and configured the same way to infringe during the same time period and/or the same infringing process. On January 11, 2013, the Court entered an Order of Dismissal of Certain Claims [dkt. no. 14] against defendants. Subsequently, Defendant Charter moved to dismiss for improper joinder, however, Lodsys has already agreed to voluntarily sever its claims against Defendant Charter. *See* Unopposed Motion for Extension of Time, to Sever Claims against Charter Communications, Inc., and to File Amended Complaint [dkt. no. 31]. Neither Defendant Lamps Plus nor Defendant Nordstrom has requested severance. *See* 35 USC § 299(c) (“A party that is an accused infringer may waive the limitations set forth in this section with respect to that party.”).

INFRINGEMENT OF U.S. PATENT NO. 7,620,565

8. On November 17, 2009, U.S. Patent No. 7,620,565 (the “‘565 patent”) was duly and legally issued for a “Customer-Based Product Design Module.” A true and correct copy of the ‘565 patent is attached hereto as Exhibit A. Lodsys is the owner by assignment of all rights, title, and interest in and to the ‘565 patent.

9. Defendant Charter has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Charter's website), one or more of the claims of the '565 patent. Charter manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Charter's websites such as www.charter.com, with feedback soliciting features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

10. Prior to filing Lodsys' original Complaint, Lodsys informed Charter of the patents-in-suit and offered to enter into a licensing arrangement that would allow Charter to continue practicing the inventions claimed in patents-in-suit. Charter, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Charter chose to continue its infringement. On information and belief, Charter continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Charter was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, Charter acted knowingly, willfully, and with intent to infringe the patents-in-suit.

11. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Charter is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of www.charter.com).

12. At least from the time Charter received notice from Lodsys, Charter has purposely and voluntarily made the www.charter.com website with feedback soliciting features available to customers, with the expectation that its website with feedback soliciting features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Charter has thereby induced the end users of its website with feedback soliciting features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Charter knew or should have known that its actions would induce direct infringement.

13. On information and belief, and in the alternative to direct infringement, Charter has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the www.charter.com website with feedback soliciting features to end users within the Eastern District of Texas, knowing that its website with feedback soliciting features to be especially made or adapted for use by end users in combination with a computing device to infringe the '565 patent from at least the time Charter received notice of the patents-in-suit from Lodsys. On information and belief, the www.charter.com website with feedback soliciting features has no substantial noninfringing uses, and Charter acted knowing that its website with feedback soliciting features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

14. Defendant Lamps Plus has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Lamps Plus' website), one or more of the claims of the '565 patent. Lamps Plus manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Lamps Plus' websites such as www.lampsplus.com, with survey features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

15. Prior to filing Lodsys' original Complaint, Lodsys informed Lamps Plus of the patents-in-suit and offered to enter into a licensing arrangement that would allow Lamps Plus to continue practicing the inventions claimed in patents-in-suit. Lamps Plus, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Lamps Plus chose to continue its infringement. On information and belief, Lamps Plus continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Lamps Plus was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, Lamps Plus acted knowingly, willfully, and with intent to infringe the patents-in-suit.

16. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Lamps Plus is liable for indirect infringement of the '565

patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of www.lampsplus.com).

17. At least from the time Lamps Plus received notice from Lodsys, Lamps Plus has purposely and voluntarily made the www.lampsplus.com website with survey features available to customers, with the expectation that its website with survey features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Lamps Plus has thereby induced the end users of its website with survey features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Lamps Plus knew or should have known that its actions would induce direct infringement.

18. On information and belief, and in the alternative to direct infringement, Lamps Plus has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the www.lampsplus.com website with survey features to end users within the Eastern District of Texas, knowing that its website with survey features to be especially made or adapted for use by end users in combination with a computing device to infringe the '565 patent from at least the time Lamps Plus received notice of the patents-in-suit from Lodsys. On information and belief, the www.lampsplus.com website with survey features has no substantial noninfringing uses, and Lamps Plus acted knowing that its website with survey features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

19. Defendant Nordstrom has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Nordstrom's website), one or more of the claims of the '565 patent. Nordstrom manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Nordstrom's website shop.nordstrom.com, with user feedback form features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

20. Prior to filing Lodsys' original Complaint, Lodsys informed Nordstrom of the patents-in-suit and offered to enter into a licensing arrangement that would allow Nordstrom to continue practicing the inventions claimed in patents-in-suit. Nordstrom, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Nordstrom chose to continue its infringement. On information and belief, Nordstrom continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Nordstrom was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, Nordstrom acted knowingly, willfully, and with intent to infringe the patents-in-suit.

21. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Nordstrom is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of shop.nordstrom.com).

22. At least from the time Nordstrom received notice from Lodsys, Nordstrom has purposely and voluntarily made the shop.nordstrom.com website with user feedback form features available to customers, with the expectation that its website with user feedback form features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Nordstrom has thereby induced the end users of its website with user feedback form features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Nordstrom knew or should have known that its actions would induce direct infringement.

23. On information and belief, and in the alternative to direct infringement, Nordstrom has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the shop.nordstrom.com website with user feedback form features to end users within the Eastern District of Texas, knowing that its website with user feedback form features to be especially made or adapted for use by end users in combination with a computing device to infringe the '565 patent from at least the time

Nordstrom received notice of the patents-in-suit from Lodsys. On information and belief, the shop.nordstrom.com website with user feedback form features has no substantial noninfringing uses, and Nordstrom acted knowing that its website with feedback soliciting features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

24. Defendants' acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendants the damages sustained by Lodsys as a result of defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement is willful and deliberate, including because defendants became aware of the infringing nature of their respective products and services at the latest when they received a notice letter from Lodsys and/or the filing of Lodsys' original Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

INFRINGEMENT OF U.S. PATENT NO. 7,222,078

25. On May 22, 2007, U.S. Patent No. 7,222,078 (the "'078 patent") was duly and legally issued for "Methods and Systems for Gathering Information from Units of a Commodity Across a Network." A true and correct copy of the '078 patent is attached hereto as Exhibit B. Lodsys is the owner by assignment of all rights, title, and interest in and to the '078 patent.

26. Defendant Charter has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Charter's website), one or more of the claims of the '078 patent. Charter manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Charter's websites such as www.charter.com, with feedback soliciting features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

27. Prior to filing Lodsys' original Complaint, Lodsys informed Charter of the patents-in-suit and offered to enter into a licensing arrangement that would allow Charter to continue practicing the inventions claimed in patents-in-suit. Charter, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for

Lodsys' patent rights, Charter chose to continue its infringement. On information and belief, Charter continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). Charter was made aware and, therefore, knew of the risk that it infringed the '078 patent. Accordingly, Charter acted knowingly, willfully, and with intent to infringe the patents-in-suit.

28. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Charter is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of www.charter.com).

29. At least from the time Charter received notice from Lodsys, Charter has purposely and voluntarily made the www.charter.com website with feedback soliciting features available to customers, with the expectation that its website with feedback soliciting features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Charter has thereby induced the end users of its website with feedback soliciting features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Charter knew or should have known that its actions would induce direct infringement.

30. On information and belief, and in the alternative to direct infringement, Charter has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the www.charter.com website with feedback soliciting features to end users within the Eastern District of Texas, knowing that its website with feedback soliciting features to be especially made or adapted for use by end users in combination with a computing device to infringe the '078 patent from at least the time Charter received notice of the patents-in-suit from Lodsys. On information and belief, the www.charter.com website with feedback soliciting features has no substantial noninfringing uses, and Charter acted knowing that its website with feedback soliciting features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

31. Defendant Lamps Plus has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Lamps Plus' website), one or more of the claims of the '078 patent. Lamps Plus manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Lamps Plus' websites such as www.lampsplus.com, with survey features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

32. Prior to Lodsys' original Complaint, Lodsys informed Lamps Plus of the patents-in-suit and offered to enter into a licensing arrangement that would allow Lamps Plus to continue practicing the inventions claimed in patents-in-suit. Lamps Plus, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Lamps Plus chose to continue its infringement. On information and belief, Lamps Plus continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). Lamps Plus was made aware and, therefore, knew of the risk that it infringed the '078 patent. Accordingly, Lamps Plus acted knowingly, willfully, and with intent to infringe the patents-in-suit.

33. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Lamps Plus is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of www.lampsplus.com).

34. At least from the time Lamps Plus received notice from Lodsys, Lamps Plus has purposely and voluntarily made the www.lampsplus.com website with survey features available to customers, with the expectation that its website with survey features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Lamps Plus has thereby induced the end users of its website with survey features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Lamps Plus knew or should have known that its actions would induce direct infringement.

35. On information and belief, and in the alternative to direct infringement, Lamps Plus has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the www.lampsplus.com website with survey features to end users within the Eastern District of Texas, knowing that its website with survey features to be especially made or adapted for use by end users in combination with a computing device to infringe the '078 patent from at least the time Lamps Plus received notice of the patents-in-suit from Lodsys. On information and belief, the www.lampsplus.com website with survey features has no substantial noninfringing uses, and Lamps Plus acted knowing that its website with survey features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

36. Defendant Nordstrom has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Nordstrom's website), one or more of the claims of the '078 patent. Nordstrom manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Nordstrom's website shop.nordstrom.com, with user feedback form features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

37. Prior to filing Lodsys' original Complaint, Lodsys informed Nordstrom of the patents-in-suit and offered to enter into a licensing arrangement that would allow Nordstrom to continue practicing the inventions claimed in patents-in-suit. Nordstrom, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Nordstrom chose to continue its infringement. On information and belief, Nordstrom continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). Nordstrom was made aware and, therefore, knew of the risk that it infringed the '078 patent. Accordingly, Nordstrom acted knowingly, willfully, and with intent to infringe the patents-in-suit.

38. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Nordstrom is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of shop.nordstrom.com).

39. At least from the time Nordstrom received notice from Lodsys, Nordstrom has purposely and voluntarily made the shop.nordstrom.com website with user feedback form features available to customers, with the expectation that its website with user feedback form features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Nordstrom has thereby induced the end users of its website with user feedback form features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Nordstrom knew or should have known that its actions would induce direct infringement.

40. On information and belief, and in the alternative to direct infringement, Nordstrom has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the shop.nordstrom.com website with user feedback form features to end users within the Eastern District of Texas, knowing that its website with user feedback form features to be especially made or adapted for use by end users in combination with a computing device to infringe the '078 patent from at least the time Nordstrom received notice of the patents-in-suit from Lodsys. On information and belief, the shop.nordstrom.com website with user feedback form features has no substantial noninfringing uses, and Nordstrom acted knowing that its website with user feedback form features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

41. Defendants' acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendants the damages sustained by Lodsys as a result of defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement is willful and deliberate, including because defendants became aware of the infringing nature of their respective products and services at the latest when they received a notice letter from Lodsys

and/or the filing of Lodsys' original Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Lodsys respectfully requests a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lodsys Group, LLC, respectfully requests entry of judgment in its favor and against defendants as follows:

(a) Declaration that (1) defendants have infringed U.S. Patent No. 7,620,565; and (2) defendants have infringed U.S. Patent No. 7,222,078;

(b) Awarding the damages arising out of (1) defendants' infringement of U.S. Patent No. 7,620,565; and (2) defendants' infringement of U.S. Patent No. 7,222,078 to Lodsys, together with pre-judgment and post-judgment interest, in an amount according to proof;

(c) Finding defendants' infringement to be willful from the time that defendants became aware of the infringing nature of their respective products and services, which is the time of receiving a notice letter from Lodsys or the filing of Lodsys' original Complaint at the latest, and awarding treble damages to Lodsys for the period of such willful infringement pursuant to 35 U.S.C. § 284;

(d) Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

(e) Awarding such other costs and further relief as the Court may deem just and proper.

Dated: February 28, 2013

Respectfully Submitted

By: /s/ Christopher M. Huck
Christopher M. Huck
(admitted pro hac vice)
Michael A. Goldfarb
(admitted pro hac vice)
Kit W. Roth
(admitted pro hac vice)
**KELLEY, GOLDFARB,
HUCK & ROTH, PLLC**
700 Fifth Avenue, Suite 6100
Seattle, WA 98104
Telephone: 206-452-0260
Facsimile: 206-397-3062
Email: goldfarb@kdg-law.com
huck@kdg-law.com
roth@kdg-law.com

William E. Davis III
Texas State Bar No. 24047416
THE DAVIS FIRM, PC
111 West Tyler Street
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661
Email: bdavis@bdavisfirm.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this response was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 28th day February, 2013.

By: /s/ Christopher M. Huck
Christopher M. Huck