

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

LANDMARK TECHNOLOGY, LLC,

Plaintiff,

v.

BRINKER INTERNATIONAL, INC., CHILI'S, INC.
AND MAGGIANO'S, INC.,

Defendants.

CASE NO. 6:12-CV-998

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Landmark Technology, LLC ("Landmark"), for its Complaint against Brinker International, Inc., Chili's, Inc. and Maggiano's Inc., (collectively, "Defendants"), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*
2. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).
3. This Court has personal jurisdiction over Defendants because Defendants have transacted and are transacting business in the Eastern District of Texas that includes, but is not limited to, the use of products and systems that practice the subject matter claimed in the patents involved in this action.
4. Venue is proper in this district under 28 U.S.C. §1391(b-c) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District where Defendants have done business and committed infringing acts and continue to do business and to commit infringing acts.

PARTIES

5. Plaintiff Landmark Technology, LLC ("Plaintiff") is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 719 W. Front Street, Suite 157, Tyler, Texas 75702.

6. Plaintiff is informed and believes, and on that basis alleges, that Defendant Brinker International, Inc. ("Brinker"), is a corporation organized under the laws of the State of Delaware, with its principal place of business at 6820 LBJ Freeway, Dallas, TX 75240. Plaintiff is informed and believes, and on that basis alleges, that Defendant Chili's, Inc. ("Chili's"), is a subsidiary of Brinker and a corporation organized under the laws of the State of Delaware, with its principal place of business at 48 W. 25 St., New York, New York, 10010. Plaintiff is informed and believes, and on that basis alleges, that Defendant Maggiano's, Inc. ("Maggiano's"), is a subsidiary of Brinker and a corporation organized under the laws of the State of California, with its principal place of business at 12723 Wentworth St., Arieta, California, 91331. Plaintiff is further informed and believes, and on that basis alleges, that Defendants operate are in the food and restaurant business, and derive a significant portion of their revenue from sales and distribution via Internet-based electronic commerce conducted on and using at least, but not limited to, the Internet websites located at <http://www.brinker.com/>, <http://www.chilis.com>, <http://www.maggianos.com/> (the "Websites"). Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Defendants have done and continue to do business in this judicial district, including, but not limited to, by selling products to customers located in this judicial district by way of the Defendants' Websites.

7. Plaintiff is informed and believes, and on that basis alleges, that Brinker operates the Websites in conjunction with each respective subsidiary. Specifically, Plaintiff is informed and believes, and on that basis alleges, that Brinker and Chili's collectively operate the Internet website located at <http://www.chilis.com/>. Plaintiff is informed and believes, and on that basis alleges, that Brinker and Maggiano's collectively operate the Internet websites located at <http://www.maggianos.com>.

FACTS

8. On November 19, 1996, United States Patent No. 5,576,951 entitled "Automated Sales and Services System" was duly and legally issued to Lawrence B. Lockwood ("Lockwood") as inventor. A true and correct copy of United States Patent No. 5,576,951 is attached hereto as Exhibit "A" and incorporated herein by this reference. Following a reexamination of Patent No. 5,576,951, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number US 5,576,951 C1, on January 29, 2008, confirming the validity of all ten (10) original claims and allowing twenty-two (22) additional claims. A true and correct copy of Ex Parte Reexamination Certificate, Number US 5,576,951 C1 is attached hereto as Exhibit "B" and incorporated herein by this reference. (United States Patent No. 5,576,951, together with the additional claims allowed by Ex Parte Reexamination Certificate, Number US 5,576,951 C1, shall hereinafter be referred to as the "'951 Patent.") On September 1, 2008, Lockwood licensed all rights in the '951 Patent to Plaintiff. Plaintiff is the exclusive licensee of the entire right, title and interest in and to the '951 Patent, including all rights to enforce the '951 Patent and to recover for infringement. The '951 Patent is valid and in force.

9. On March 7, 2006, United States Patent No. 7,010,508 entitled "Automated Multimedia Data Processing Network" (the "'508 Patent") was duly and legally issued to Lawrence B. Lockwood as inventor. A true and correct copy of the '508 Patent is attached hereto as Exhibit "C" and incorporated herein by this reference. On September 1, 2008, Lockwood licensed all rights in the '508 Patent to Plaintiff. Plaintiff is the exclusive licensee of the entire right, title and interest in and to the '508 Patent, including all rights to enforce the '508 Patent and to recover for infringement. The '508 Patent is valid and in force.

10. On or about May 7, 2010, Plaintiff sent Brinker a letter informing Brinker of the '951 Patent and the '508 Patent and that Defendants' actions, as more fully described below, constituted infringement of the '951 Patent and the '508 Patent.

11. As more fully laid out below, Defendants have been and are now infringing the '951 Patent and the '508 Patent, in this judicial district and elsewhere, by selling and distributing

their products and services using electronic commerce systems, which, individually or in combination, incorporate and/or use subject matter claimed by the '951 Patent and the '508 Patent.

FIRST CLAIM FOR RELIEF

(Direct Infringement of the '951 Patent, in Violation of 35 U.S.C. § 271(a))

12. Plaintiff refers to and incorporates herein by reference paragraphs 1-9.

13. The claims of the '951 Patent relate to "a computer search system for retrieving information" and "a computerized system for selecting and ordering a variety of information, goods and services," each comprising a variety of features.

14. The Defendants' Websites are "computer search system[s] for retrieving information" and "computerized system[s] for selecting and ordering a variety of information, goods and services" practicing the claims of the '951 Patent.

15. By way of example only, and not limited to it, Defendants' Websites infringe Claim 10 of the '951 Patent in that, for example, the Defendants' Websites provide a system that practices all of the limitations of the claim and on which their customers search for information about products and purchase products, including:

a. The Websites are computerized systems for selecting and ordering a variety of information, goods and services.

b. The Websites include a plurality of computerized data processing installations (the web server and its supporting systems) programmed for processing orders for said information, goods and services.

c. The Websites are operated through at least one computerized station (the customer's computer).

d. The web server of the Websites and that Defendants' customers' computers practice all of the remaining limitations of Claim 10 of the '951 Patent.

16. Defendants, therefore, by the acts complained of herein, are making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas,

products and/or services embodying the invention, and have in the past and are now continuing to infringe the '951 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

17. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

18. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

19. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '951 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

SECOND CLAIM FOR RELIEF

(Inducing Infringement of the '951 Patent, in Violation of 35 U.S.C. § 271(b))

20. Plaintiff refers to and incorporates herein by reference paragraphs 1-12.

21. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly induced infringement of the '951 Patent, in violation of 35 U.S.C. § 271(b) by, among other things, inducing their customers (the endusers of their Websites) to utilize their own computers in combination with their Websites, and incorporated and/or related systems, to search for and order information and products from their Websites in such a way as to infringe the '951 Patent.

22. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

23. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. Plaintiff does not have an adequate remedy at law.

24. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '951 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

THIRD CLAIM FOR RELIEF

(Direct Infringement of the '508 Patent, in Violation of 35 U.S.C. § 271(a))

25. Plaintiff refers to and incorporates herein by reference paragraphs 1-9.

26. The claims of the '508 Patent relate to "an automated multimedia system for data processing for delivering information on request to at least one user," comprising a variety of features.

27. The Defendants' Websites are "an automated multimedia system for data processing for delivering information on request to at least one user," practicing the claims of the '508 Patent.

28. By way of example, only, and not limited to it, Defendants' Websites infringe Claim 8 of the '508 Patent in that, for example, Defendants' Websites provide a system that practices all of the limitations of the claim and on which their customers search for information about products, including:

a. The Websites are an automated multimedia system for data processing for delivering information on request to at least one user. That is, it uses text and graphics, among other means, to deliver product information and other information to Defendants' customers.

b. The Websites include at least one computerized station (the server and its supporting systems).

c. The web server(s) of the Websites practice all of the remaining limitations of Claim 8 of the '508 Patent.

29. Defendants, therefore, by the acts complained of herein, are making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the invention, and have in the past and are now continuing to infringe the '508 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

30. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

31. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

32. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '508 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

FOURTH CLAIM FOR RELIEF

(Inducing Infringement of the '508 Patent, in Violation of 35 U.S.C. § 271(b))

33. Plaintiff refers to and incorporates herein by reference paragraphs 1-9, 23-25.

34. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively and knowingly induced infringement of the '508 Patent, in violation of 35 U.S.C. § 271(b) by, among other things, inducing their customers (the endusers of their Websites) to utilize their own computers in combination with their Websites, and incorporated and/or related

systems, to search for and order information and products from their Websites in such a way as to infringe the '508 Patent.

35. By reason of the acts of Defendants alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

36. Defendants threaten to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable damage.

Plaintiff does not have an adequate remedy at law.

37. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendants is willful, wanton, and deliberate, without license and with full knowledge of the '508 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- A. For an order finding that the '951 Patent is valid and enforceable;
- B. For an order finding that the '508 Patent is valid and enforceable;
- C. For an order finding that, by the acts complained of herein, Defendants have directly infringed, and induced others to infringe, the '951 Patent in violation of 35 U.S.C. § 271;
- D. For an order finding that, by the acts complained of herein, Defendants have directly infringed, and induced others to infringe, the '508 Patent in violation of 35 U.S.C. § 271;
- E. For an order finding that Defendants have willfully infringed the '951 Patent and the '508 Patent;
- F. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all others acting in concert or privity with any of them, from infringing the '951 Patent, and from inducing others to infringe the '951 Patent;

G. For an order temporarily, preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all others acting in concert or privity with any of them, from infringing the '508 Patent, and from inducing others to infringe the '508 Patent;

H. For an order directing Defendants to deliver to Plaintiff for destruction or other disposition all infringing products and systems in their possession;

I. For an order directing Defendants to file with the Court, and serve upon Plaintiff's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Defendants have complied with the injunction;

J. For an order awarding Plaintiff general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Defendants' profits or gains of any kind from their acts of patent infringement;

K. For an order awarding enhanced damages pursuant to 35 U.S.C. § 284 due to the willful and wanton nature of Defendants' infringement;

L. For an order awarding Plaintiff all of its costs, including its attorneys' fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

M. For an order awarding Plaintiff pre-judgment and post-judgment interest; and

N. For an order awarding Plaintiff such other and further relief as the Court may deem just and proper.

DATED: December 21, 2012

Respectfully Submitted,

OF COUNSEL:

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