

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Eolas Technologies Incorporated,)
)
Plaintiff,)
)
vs.)
)
Adobe Systems Inc., Amazon.com, Inc., Apple)
Inc., Argosy Publishing, Inc., Blockbuster Inc.,)
CDW Corp., Citigroup Inc., eBay Inc., Frito-Lay,)
Inc., The Go Daddy Group, Inc., Google Inc., J.C.)
Penney Company, Inc., JPMorgan Chase & Co.,)
New Frontier Media, Inc., Office Depot, Inc.,)
Perot Systems Corp., Playboy Enterprises)
International, Inc., Rent-A-Center, Inc., Staples,)
Inc., Sun Microsystems Inc., Texas Instruments)
Inc., Yahoo! Inc. and YouTube, LLC,)
)
Defendants.)
)
)
)
)

Civil Action No. 6:09-cv-446

Honorable Judge Leonard E. Davis

JURY TRIAL DEMANDED

**DEFENDANT CDW LLC’S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS’
SUGGESTION, ARGUMENT OR EVIDENCE THAT CDW COULD COMPLETELY
REMOVE OR DISABLE ACCUSED FEATURES AT MINIMAL COST**

The Court should preclude Plaintiff from suggesting, arguing, or presenting evidence that Defendant CDW could remove or disable accused functionality at minimal cost, rather than incur the costs of defending against Plaintiffs’ infringement allegations. CDW’s motion in limine is directed to arguments anticipated from Plaintiffs that CDW could inexpensively completely remove or disable the accused functionality (as distinct from altering or replacing that functionality with non-infringing alternatives), and that CDW’s failure to do so is evidence of the value of the accused features. Plaintiff’s have already agreed that CDW’s decision to defend against their allegations of infringement may not be presented as evidence of the value of the accused features. In light of Plaintiffs’ agreement, CDW’s decision to challenge Plaintiffs’

claims of infringement cannot be advanced as evidence of the value, if any, of the accused features. This motion is not intended to preclude evidence concerning non-infringing alternatives.

CONCLUSION

The Court should grant CDW's Motion in Limine and exclude Plaintiffs' suggestion, argument or evidence that CDW could completely remove or disable accused features at minimal cost.

Dated: January 6, 2012

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

By: /s/ John R. Labbé

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CDW LLC

CERTIFICATE OF SERVICE

I, John R. Labbé, an attorney, hereby certify that I caused a copy of the foregoing DEFENDANT CDW LLC'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' SUGGESTION, ARGUMENT OR EVIDENCE THAT CDW COULD COMPLETELY REMOVE OR DISABLE ACCUSED FEATURES AT MINIMAL COST to be served on all counsel of record via electronic mail via the Court's ECF system.

/s/ John R. Labbé
John R. Labbé