

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

PARALLEL NETWORKS, LLC,

Plaintiff,

v.

ADIDAS AMERICA, INC., et al.,

Defendants.

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Civil Action No. 6:10-cv-00491-LED

(JURY TRIAL)

HARLEY-DAVIDSON, INC. AND H-D MICHIGAN, INC.’S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO PARALLEL NETWORKS, LLC’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT AND DAMAGES

Defendants Harley-Davidson, Inc. and H-D Michigan, Inc. (collectively “Harley-Davidson”) hereby answer the Original Complaint of Parallel Networks, LLC (“Parallel”) as follows:

ANSWER TO PARAGRAPHS 1-26: Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 1-26 of the Complaint, and on that basis, Harley-Davidson denies all allegations therein.

ANSWER TO PARAGRAPH 27: Harley-Davidson admits that H-D Michigan, Inc. is a corporation having a place of business in Ann Arbor, Michigan. Except as expressly admitted herein, Harley-Davidson denies all allegations of paragraph 27.

ANSWER TO PARAGRAPH 28: Harley-Davidson admits that Harley-Davidson Inc. is a Wisconsin corporation, with a place of business in Milwaukee, Wisconsin. By way of further response, Harley Davidson states that Harley-Davidson, Inc. is a holding company that does not

do business in Texas, but rather, is the ultimate parent corporation and shareholder of certain operating companies, including: (a) Harley-Davidson Motor Company LLC (f/k/a Harley-Davidson Motor Company, Inc.), a limited liability Wisconsin corporation, that is responsible for the manufacture and sale of motorcycles, parts and accessories, and general merchandise to Harley-Davidson dealers; and (b) H-D (Michigan) LLC (f/k/a H-D (Michigan), Inc.), a limited liability Michigan corporation, that is the owner of Harley-Davidson trademarks and responsible for protecting those marks from unauthorized use. Except as expressly admitted herein, Harley-Davidson denies all allegations of paragraph 28.

ANSWER TO PARAGRAPHS 29-61: Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 29-61 of the Complaint, and on that basis, Harley-Davidson denies all allegations therein.

ANSWER TO PARAGRAPH 62: Harley-Davidson admits that Plaintiff purports to state a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Harley-Davidson denies that plaintiff has in fact stated a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Harley-Davidson admits that this Court has subject matter jurisdiction over Harley-Davidson pursuant to 28 U.S.C. §§ 1331 and 1338(a). Except as expressly admitted herein, Harley-Davidson denies the allegations in paragraph 62 as they relate to Harley-Davidson. Harley-Davidson lacks sufficient information to admit or deny the allegations of paragraph 62 with respect to all other defendants, and therefore denies the same.

ANSWER TO PARAGRAPH 63: Harley-Davidson admits that venue over it exists in this District under 28 U.S.C. § 1391(c). However, Harley-Davidson does not admit that this is the most appropriate or convenient forum to exercise jurisdiction over this case. Harley-Davidson denies that it committed the tort of patent infringement within Texas and this district. Harley-Davidson denies having committed acts within this judicial district that would give rise to

this action. Except as expressly admitted herein, Harley-Davidson denies the allegations in paragraph 63 as they relate to Harley-Davidson. Harley-Davidson lacks sufficient information to admit or deny the allegations of paragraph 63 with respect to all other defendants, and therefore denies the same.

ANSWER TO PARAGRAPH 64: Harley-Davidson admits that the '111 shows on its face that it was issued on September 3, 2002. Except as expressly admitted herein, Harley-Davidson denies any other allegations in paragraph 64.

ANSWER TO PARAGRAPH 65: Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint, and on that basis, Harley-Davidson denies all allegations therein.

ANSWER TO PARAGRAPH 66: Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint, and on that basis, Harley-Davidson denies all allegations therein.

ANSWER TO PARAGRAPHS 67-162: Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 67-162 of the Complaint, and on that basis, Harley-Davidson denies all allegations therein.

ANSWER TO PARAGRAPHS 163-170: Harley-Davidson denies each and every allegation set forth in paragraphs 163-170.

ANSWER TO PARAGRAPHS 171-302: Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraphs 171-302 of the Complaint, and on that basis, Harley-Davidson denies all allegations therein.

ANSWER TO PARAGRAPH 303: Harley-Davidson denies the allegations in paragraph 303 as they relate to Harley-Davidson. Harley-Davidson lacks knowledge and

information sufficient to form a belief as to the truth of the allegations in paragraph 303 with respect to all other defendants named in the Complaint, and therefore denies the same.

ANSWER TO PARAGRAPH 304: Harley-Davidson denies the allegations in paragraph 304 as they relate to Harley-Davidson. Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 304 with respect to all other defendants named in the Complaint, and therefore denies the same.

ANSWER TO PARAGRAPH 305: Harley-Davidson denies the allegations in paragraph 305 as they relate to Harley-Davidson. Harley-Davidson lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 305 with respect to all other defendants named in the Complaint, and therefore denies the same.

PRAYER FOR RELIEF

1. Harley-Davidson requests that the Court deny all relief to Parallel Networks, including that requested by Parallel Networks in its Prayer for Relief.

HARLEY-DAVIDSON'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State Sufficient Facts to Constitute Claims)

2. Plaintiff fails to state a claim on which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Invalidity)

3. The '111 patent (the "Asserted Patent") is invalid for failure to comply with the requirements of patentability stated in Title 35, United States Code § 1, *et seq.*

THIRD AFFIRMATIVE DEFENSE
(Laches)

4. Plaintiff is time barred under the doctrine of laches to bring this action against Harley-Davidson. Plaintiff unreasonably delayed in filing this action, and unreasonably delayed in prosecuting the asserted claims, after Plaintiff knew, or should have known of the alleged infringing acts. In the interim, Harley-Davidson has invested time and money into building its business and goodwill. To allow Plaintiff to bring an action now after its unreasonable delay would result in material prejudice to Harley-Davidson.

FOURTH AFFIRMATIVE DEFENSE
(Innocent Intent)

5. Harley-Davidson has engaged in all relevant activities in good faith, thereby precluding Plaintiff, even if it prevails, from recovering its reasonable attorney's fees and/or costs under 35 U.S.C. § 285.

FIFTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

6. By reason of proceedings in the United States Patent and Trademark Office during the prosecution of the application that ultimately led to the issuance of the Asserted Patent, Plaintiff is estopped from asserting that any claim of the Asserted Patent is infringed by Harley-Davidson under the doctrine of equivalents for one or more of Plaintiff's asserted claims.

SIXTH AFFIRMATIVE DEFENSE
(Non-Infringement)

7. No product or service made, used, imported, sold or offered for sale by Harley-Davidson infringes directly or indirectly, any valid and enforceable claim of the Asserted Patent.

SEVENTH AFFIRMATIVE DEFENSE
(Absence of Liability for Infringement)

8. To the extent that Parallel Networks asserts that Harley-Davidson indirectly infringes, either by contributory infringement or inducement of infringement, Harley-Davidson is

not liable to Parallel Networks for the acts alleged to have been performed before Harley-Davidson knew that its actions would cause indirect infringement.

COUNTERCLAIMS

Counter-Plaintiffs Harley-Davidson, Inc. and H-D Michigan, Inc. (collectively “Harley-Davidson”) allege as follows for their Counterclaim against Counter-Defendant Parallel Networks, LLC.

NATURE OF THE LAWSUIT

This Counterclaim is an action for a declaration of patent non-infringement, patent invalidity, and unenforceability arising under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et. seq.*, and the patent laws of the United States, 35 U.S.C. § 1, *et. seq.*

THE PARTIES

1. Counterclaimant Harley-Davidson, Inc. is incorporated in Wisconsin with its principal place of business 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208.
2. Counterclaimant H-D Michigan, Inc. has its principal place of business at 315 West Huron Street, Suite 400, Ann Arbor, Michigan 48103.
3. The Complaint alleges that Parallel Networks, LLC is a Texas Limited Liability Company with its principal place of business at 100 E. Ferguson Street, Suite 602 in Tyler, Texas.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over these counterclaims based on 28 U.S.C. §§ 1331, 1338, 2201-02 and under Fed. R. Civ. P. 13(a) in that this is a compulsory counterclaim to the allegations of the Complaint.

5. Venue is proper in this judicial district because the declaratory relief sought is a compulsory counterclaim to claims filed by Plaintiff in this case and pursuant to 28 U.S.C. §§ 1367 and 1391(b).

6. By virtue of the Complaint filed by Plaintiff in this action, there is an actual and justiciable controversy between Harley-Davidson and Plaintiff concerning non-infringement, invalidity, and unenforceability with respect to the Asserted Patent. A judicial declaration is needed and appropriate to resolve this controversy.

COUNT I—INVALIDITY—NON-INFRINGEMENT—UNENFORCEABILITY

7. Harley-Davidson realleges and incorporates herein the foregoing responses and allegations.

8. Harley-Davidson seeks a declaration that the products and services made, used, imported, sold or offered for sale by Harley-Davidson have not and do not infringe, directly or indirectly, any valid and enforceable claim of the Asserted Patent and/or that the Asserted Patent is either invalid or otherwise unenforceable for one or more of the grounds set forth in 35 U.S.C. § 1, *et seq.*

9. This case qualifies as an exceptional case under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Harley-Davidson respectfully requests that this Court:

- A. Dismiss Plaintiff's Complaint with prejudice;
- B. Order and adjudge that Harley-Davidson has not infringed any valid, enforceable claim of the Asserted Patent;
- C. Order and adjudge that the Asserted Patent is invalid under the patent laws of the United States for failure to comply with requirements of patentability set forth in Title 35, United States Code § 1, *et seq.*;
- D. Order and adjudge that the Asserted Patent is unenforceable;
- E. Order and adjudge that this case is exceptional pursuant to 35 U.S.C. § 285, and award Harley-Davidson its reasonable attorney's fees; and
- F. Grant Harley-Davidson such further relief as this Court deems just and appropriate.

JURY DEMAND

Harley-Davidson hereby demands a jury trial on all issues so triable in this case.

DATED: November 24, 2010

Respectfully submitted,

/s/ Jason C. White

Jason C. White – Lead Attorney

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ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who are deemed to have consented to electronic service pursuant to Local Rule CV-5(a)(3)(A) via the Court's CM/ECF system which will send notification electronically to all attorneys of record. Any other counsel of record will be served by first class mail on this date.

Dated: November 24, 2010

/s/ Jason C. White
Jason C. White