

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

PARALLEL NETWORKS, LLC,	§
	§
Plaintiff,	§
	§
v.	§
ADIDAS AMERICA, INC.; ADIDAS	§
INTERACTIVE, INC.; AÉROPOSTALE,	§
INC.; AMERICAN GIRL, LLC;	§
AMERICAN SUZUKI MOTOR	§
CORPORATION; ANDERSEN	§
CORPORATION; ANDERSEN WINDOWS,	§
INC.; ASICS AMERICA CORPORATION;	§
AT&T INC.; BBY SOLUTIONS, INC.;	§
BERGDORFGOODMAN.COM, LLC;	§
BESTBUY.COM, LLC;	§
BLOOMINGDALE’S, INC.; BRIGGS &	§
STRATTON CORPORATION; BRIGGS &	§
STRATTON POWER PRODUCTS GROUP,	§
LLC; BRUNSWICK BILLIARDS, INC.;	§
BRUNSWICK CORPORATION; CHICO’S	§
RETAIL SERVICES, INC.; CITIZEN	§
WATCH COMPANY OF AMERICA, INC.;	§
DILLARD’S, INC.; EASTMAN KODAK	§
COMPANY; GENERAL MOTORS LLC;	§
THE GILLETTE COMPANY; THE	§
GOODYEAR TIRE & RUBBER	§
COMPANY; H-D MICHIGAN, INC.;	§
HARLEY-DAVIDSON, INC.; HASBRO,	§
INC.; HAYNEEDLE, INC.; HERMAN	§
MILLER, INC.; HSN INTERACTIVE LLC;	§
HSN LP; THE J. JILL GROUP, INC.;	§
JILL ACQUISITION LLC; JONES	§
INVESTMENT COMPANY, INC.;	§
JONES RETAIL CORPORATION; KODAK	§
IMAGING NETWORK, INC.; KOHL’S	§
DEPARTMENT STORES, INC.;	§
LG ELECTRONICS USA, INC.;	§
MACY’S WEST STORES, INC.;	§
MACYS.COM, INC.;	§
MATTEL, INC.;	§
MITSUBISHI MOTOR SALES OF AMERICA, INC.;	§
MITSUBISHI MOTORS NORTH AMERICA, INC.;	§
MOTOROLA, INC.;	§
MOTOROLA	§

CIVIL ACTION NO. 6:10-CV-00491-LED

JURY TRIAL DEMANDED

TRADEMARK HOLDINGS, LLC; §
NAUTICA APPAREL, INC.; NAUTICA §
RETAIL USA, INC.; NAVISTAR, INC.; §
NEW BALANCE ATHLETIC SHOW, INC.; §
NISSAN NORTH AMERICA, INC.; PRL §
USA HOLDINGS, INC.; THE PROCTER & §
GAMBLE COMPANY; RALPH LAUREN §
MEDIA LLC; RUSSELL BRANDS, LLC; §
SUBARU OF AMERICA, INC.; SUNGLASS §
HUT TRADING, LLC; VICTORIA'S §
SECRET; WOLVERINE WORLD WIDE §
IN.; and WOMEN'S APPAREL GROUP, §
LLC d/b/a BOSTON APPAREL GROUP, §
LLC, §

Defendants. §

**ANSWER AND COUNTERCLAIMS OF DEFENDANT AÉROPOSTALE, INC., IN
 RESPONSE TO PARALLEL NETWORKS, LLC'S ORIGINAL COMPLAINT FOR
PATENT INFRINGEMENT**

Defendant Aéropostale, Inc. (“Aéropostale”), answers Plaintiff Parallel Networks LLC’s
 (“Parallel Networks”) Original Complaint for Patent Infringement (“Complaint”) as follows:

PARTIES

1. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.
2. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.
4. Aéropostale admits the allegations in paragraph 4.
5. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.

6. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

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11. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

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59. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59.

60. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61.

JURISDICTION

62. With respect to the allegations set forth in paragraph 62, Aéropostale admits that this Court has subject matter jurisdiction over Parallel Networks' claims. Aéropostale admits that this Court has personal jurisdiction over it in this particular action. However, Aéropostale denies that it has committed acts in this jurisdiction that give rise to any cause of action by Parallel Networks and denies the remaining allegations in paragraph 62, as they relate to Aéropostale. To the extent the allegations in paragraph 62 are directed to other entities, Aéropostale is without knowledge or information sufficient to form a belief as to the truth of such allegations.

63. With respect to the allegations set forth in paragraph 63, Aéropostale admits that venue is proper in this judicial district, but denies that this district is a convenient or appropriate forum in which to proceed with this dispute. Aéropostale expressly reserves its rights under 28 U.S.C. § 1404. Aéropostale admits that this Court has personal jurisdiction over it in this particular action. However, Aéropostale denies that it has committed acts in this jurisdiction that give rise to any cause of action by Parallel Networks and denies the remaining allegations in paragraph 63, as they relate to Aéropostale. To the extent the allegations in paragraph 63 are directed to other entities, Aéropostale is without knowledge or information sufficient to form a belief as to the truth of such allegations.

COUNT I

64. Aéropostale admits the allegations in paragraph 64.

65. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65.

66. With respect to the allegations set forth in paragraph 66, Aéropostale states that the claims of the '111 patent speak for themselves, and no responsive pleading is required. To the extent that a responsive pleading is required, Aéropostale admits that paragraph 66 seems to reflect an effort to paraphrase the limitations of claim 1 of the '111 patent, but denies that the patent "covers" such "systems and methods," as Parallel Networks has failed to include all of the required limitations recited in claim 1.

67. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67.

68. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68.

69. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69.

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73. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73.

74. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74.

75. Aéropostale denies the allegations in paragraph 75.

76. Aéropostale denies the allegations in paragraph 76.
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299. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 299.

300. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 300.

301. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 301.

302. Aéropostale is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 302.

303. Aéropostale denies the allegations in paragraph 303, as they relate to Aéropostale. To the extent the allegations in paragraph 303 are directed to other entities, Aéropostale is without knowledge or information sufficient to form a belief as to the truth of such allegations.

304. The allegations in paragraph 304 relating to constructive notice are legal conclusions to which no responsive pleading is required; to the extent a response is required, Aéropostale denies the allegations, as they relate to constructive notice of Aéropostale. To the extent the allegations in paragraph 304 concerning constructive notice are directed to other entities, Aéropostale is without knowledge or information sufficient to form a belief as to the truth of such allegations. Aéropostale is without knowledge sufficient to form a belief as to the truth of the allegations regarding marking requirements.

COUNT II

305. Aéropostale denies the allegations in paragraph 305, as they relate to Aéropostale. To the extent the allegations in paragraph 305 are directed to other entities, Aéropostale is

without knowledge or information sufficient to form a belief as to the truth of such allegations.

PRAYER FOR RELIEF

These paragraphs set forth the statement of relief requested by Parallel Networks to which no response is required. Aéropostale denies that Parallel Networks is entitled to any of the requested relief and deny any allegations.

DEMAND FOR JURY TRIAL

This paragraph sets forth Parallel Networks' request for a jury trial and all issues triable of right before a jury to which no response is required.

AFFIRMATIVE DEFENSES

Subject to the responses above, Aéropostale alleges and asserts the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to its responses above, Aéropostale specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery.

306. The claims of the '111 patent are invalid and/or unpatentable for failure to satisfy one or more of the requirements of §§ 101, 102, 103, 112, 132, 251 of Title 35 of the United States Code.

307. Parallel Networks' claims are barred, in whole or in part, by the doctrine of laches.

308. Parallel Networks' request for relief is barred or otherwise limited by 35 U.S.C. § 288.

309. Parallel Networks cannot satisfy the requirements applicable to its request for injunctive relief and has an adequate remedy at law.

310. Parallel Networks' alleged damages are limited because it has not satisfied the requirements for obtaining damages under 35 U.S.C. § 287, and the limitations period further bars past damages claims.

311. Aéropostale reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, which may now exist or in the future may be available based on discovery and further factual investigation in this case.

COUNTERCLAIMS

Aéropostale, for its Counterclaims against Parallel Networks and upon information and belief, states and alleges as follows:

THE PARTIES

1. Defendant/Counterclaim Plaintiff Aéropostale, Inc., is a Delaware corporation with its principal place of business in New York, New York.

2. On information and belief, plaintiff Parallel Networks, Inc. ("Parallel Networks"), is a Texas limited liability company with a place of business located in Tyler, Texas.

JURISDICTION AND VENUE

3. Subject to Aéropostale's affirmative defenses and denials, Aéropostale alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202, and venue for these Counterclaims is proper in this district.

4. This Court has personal jurisdiction over Parallel Networks.

FACTUAL BACKGROUND

5. In its Complaint, Parallel Networks asserts that Aéropostale has infringed U.S. Patent No. 6,446,111 (the “‘111 patent”).

6. The ‘111 patent is invalid, unpatentable, unenforceable, and/or has not been and is not infringed by Aéropostale, directly or indirectly.

7. Consequently, there is an actual case or controversy between the parties over the non-infringement, invalidity, unpatentability, and/or unenforceability of the ‘111 patent.

COUNT ONE

Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,446,111

8. Aéropostale restates and incorporates by reference its allegations in paragraphs 1 through 7 of its Counterclaims.

9. An actual case or controversy exists between Aéropostale and Parallel Networks whether the ‘111 patent is not infringed by Aéropostale.

10. A judicial declaration is necessary and appropriate so that Aéropostale may ascertain its rights regarding the ‘111 patent.

11. Aéropostale has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the ‘111 patent.

COUNT TWO

Declaratory Judgment of Invalidity of U.S. Patent No. 6,446, 111

12. Aéropostale restates and incorporates by reference its allegations in paragraphs 1 through 7 of its Counterclaims.

13. An actual case or controversy exists between Aéropostale and Parallel Networks as to whether the claims of the ‘111 patent are invalid and/or unpatentable.

14. A judicial declaration is necessary and appropriate so that Aéropostale may ascertain its rights as to whether the claims of the '111 patent are invalid and/or unpatentable.

15. The claims of the '111 patent are invalid and unpatentable for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 101, 102, 103, 112, 132, and 251.

PRAYER FOR RELIEF

WHEREFORE, Aéropostale prays for judgment as follows:

- i. A judgment dismissing with prejudice Parallel Networks' complaint against Aéropostale;
- ii. A judgment in favor of Aéropostale on all of its Counterclaims;
- iii. A declaration that Aéropostale has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid claims of the '111 patent;
- iv. A declaration that the claims of the '111 patent are invalid and unpatentable;
- v. An injunction against Parallel Networks and its affiliates, subsidiaries, assigns, employees, agents, or anyone acting in privity or concert with Parallel Networks from charging infringement or instituting any legal action for infringement of the '111 patent against Aéropostale or anyone acting in privity with Aéropostale;
- vi. A judgment limiting or barring Parallel Networks' ability to enforce the '111 patent in equity;
- vii. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, Aéropostale respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: November 29, 2010

Respectfully submitted,

By: /s/ C. Erik Hawes

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ATTORNEYS FOR DEFENDANT/
COUNTERCLAIM PLAINTIFF
AÉROPOSTALE, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing via the Court's CM/ECF system per Local Rule CV-5(a)(3) .

Dated: November 29, 2010

By: /s/ C. Erik Hawes
C. Erik Hawes