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.	No. 6:10-cv-00491-LED Jury Trial Demanded

PLAINTIFF'S OPPOSITION TO RUSSELL BRANDS'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

Plaintiff Parallel Networks, LLC ("Parallel Networks") hereby responds to and opposes Russell Brands, LLC's ("Russell Brands") Motion to Dismiss for Failure to State a Claim or, in the Alternative, for a More Definite Statement ("RB Motion") (D.I. 344). Russell Brands asks this Court to dismiss Parallel Networks' accusation that Russell Brands infringes U.S. Patent No. 6,446,111 ("the '111 patent") and the further accusation that Russell Brands willfully infringes the '111 patent. For the reasons discussed below, Russell Brands's motion should be denied. In the event that this Court grants Russell Brands's motion in whole or in part, Parallel Networks respectfully asks this Court to grant Parallel Networks leave to amend its complaint.

Russell Brands's motion should be denied:

1. Russell Brands seeks the same relief sought by defendant BergdorfGoodman.com, LLC ("Bergdorf Goodman") in a motion to dismiss filed on November 19, 2010 (D.I. 255), and incorporates by reference and adopts Bergdorf 's motion to dismiss. (RB Motion at 1). Parallel Networks incorporates fully herein its showing in opposition to Bergdorf Goodman's motion

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(D.I. 360). For the reasons stated in Parallel Networks's opposition to Bergdorf Goodman's motion, Russell Brands's motion should be denied.

2. Russell Brands further alleges that Parallel Networks's complaint fails to distinguish Russell Brands from the other defendants in this action. On the contrary, as to Russell Brands, Parallel Networks correctly identified—as Russell Brands does not deny—the accused infringing website as www. russellathletic.com. (*See* D.I. 1, Original Complaint for Patent Infringement ("Complaint") at ¶¶279-282). For the reasons shown in Parallel Networks's response to Bergdorf Goodman's motion, the allegation of direct infringement has been properly pled against Russell Brands:

> 279. On information and belief, Defendant RUSSELL BRANDS, LLC has been and now is infringing at least claim 1 the '111 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising making and using its website at www.russellathletic.com, which comprises a server coupled to a communications link that receives a request from a client device and collects data items as a function of the requests; an executable applet dynamically generated by the server in response to the client request; a constituent system associated with the applet comprising a subset of the data items and a further constituent system comprising a data interface capability configured to provide a plurality of operations associated with the subset of data items; with such applet operable to be transferred over the communications link to the client device.

(Complaint at ¶279). Russell Brands thus does not offer any new argument at all that the allegation of direct infringement against Russell Brands or the identification of the Accused Instrumentality is anything other than fully complete and proper.

3. The attempt by Russell Brands to seek the dismissal of the allegations of indirect infringement and willful infringement is equally without merit. Parallel Networks properly pled the allegation of willful infringement:

> 305. On information and belief, prior to the filing of the complaint, Defendants' infringement was willful and continues to be willful. On information and belief, prior to the filing of this Complaint,

> Defendants were aware of the '111 patent and knew or should have known that Defendants were infringing at least claim 1 of the '111 patent. On information and belief, Defendants in their infringing activities acted as they did despite an objectively high likelihood that their actions constituted infringement of a valid patent. The Defendants' infringing activities were intentional and willful in that the risk of infringement was known to Defendants or was so obvious that it should have been known to Defendants.

(Complaint at ¶305). Russell Brands again does not offer any new argument on the issue of willful infringement, and so its motion should be denied for the reasons stated in Parallel Networks's response to Bergdorf Goodman's motion.

4. Russell Brands attempts to offer one additional argument with respect to the allegation of contributory infringement. Specifically, in support of its motion to dismiss, Russell Brands argues that it does not sell a "component" within the meaning of 35 U.S.C. §271(c). Given that the claims of the '111 patent are directed to systems and methods (and not articles of manufacture), this argument should be rejected for the reasons stated in Parallel Networks's opposition to Bergdorf Goodman's motion to dismiss. Even Russell Brands's own authority, *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282 (Fed. Circ. 2005), contradicts its position. There the court clearly distinguished between apparatus claims and method claims for the purposes of the application of 35 U.S.C. §271. *Id.* at 1319. Secondly, as Russell Brands fails to acknowledge, a complaint alleging indirect infringement is sufficient if it identifies a direct infringer and identifies the infringing methods or systems. *Realtime Data, LLC v. Morgan Stanley*, C.A. No. 6:09 CV 326, at 1 (E.D. Texas June 10, 2010) (Exhibit A). Russell Brands does not challenge that these elements are properly pled, and there are no further elements that are required to be pled for indirect infringement. *PA Advisors, LLC v. Google Inc.*, C.A. No. 2:07-CV-480 (DF) at 13 (E.D. Texas August 8, 2008) (Exhibit B). To be specific, Parallel Networks has complied with the legal requirements for pleading indirect infringement: Parallel

Networks identified the direct infringer ("clients using www.russellathletic.com are direct infringers"), the method or system that indirectly infringes the patent-in-suit ("the website www.russellathletic.com"), and also a specific claim ("claim 1 of the '111 patent"). (Complaint at ¶¶280-81). No further elements of indirect infringement need to be pled. *PA Advisors*, Civ. No. 2:07-CV-480 (DF) at 13 (Exhibit B).

CONCLUSION

For the foregoing reasons, Russell Brands's motion should be denied. In the alternative, in the event this Court grants Russell Brands's motion either in whole or in part, Parallel Networks requests leave to file an amended complaint at a time ordered by the Court.

Dated: December 10, 2010

Respectfully submitted,

By: */s/ Charles Craig Tadlock*

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 10th day of December, 2010, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Charles Craig Tadlock
Charles Craig Tadlock