

**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 DEMANDED

**ADIDAS AMERICA, INC., AEROPOSTALE, INC., AMERICAN GIRL, LLC,
MATTEL INC., NAUTICA RETAIL USA, INC., AND
RALPH LAUREN MEDIA, L.L.C.'S NOTICE OF JOINDER IN JOINT MOTION BY
ALL 6:10-cv-00111 PARTIES TO BIFURCATE DAMAGES ISSUE**

As the Court is aware, there are pending four separate actions, in which the plaintiff, Parallel Networks, LLC, has asserted the same patent against more than 120 defendants. At the recent scheduling conference in three of the actions, the Court invited suggestions from the parties for the efficient management of the cases. adidas America, Inc. (“adidas”), Aeropostale, Inc. (“Aeropostale”), American Girl, LLC (“American Girl”), Mattel, Inc. (“Mattel”), Nautica Retail USA, Inc. (“Nautica”), and Ralph Lauren Media, L.L.C. (“Ralph Lauren”) all respectfully submit that bifurcating liability from damages, for both discovery and trial, is the first¹ “global” efficiency measure available to the Court. Even the plaintiff recognizes the validity of this approach, as Parallel itself has consented to such bifurcation and agreed that “bifurcation will promote the efficient resolution of this action, help conserve limited judicial resources and enhance the likelihood of settlement.” Joint Motion to Bifurcate Damages Issues (No. 6:10-cv-00111, Dkt. No. 307).

¹ In accordance with the Court’s January 4, 2011, directive, the parties also are exploring additional avenues for enhancing efficiency, and will present these on or before the February 10, 2011, hearing set by the Court.

Bifurcation will substantially reduce the cost of discovery and the length and complexity of trial. It will allow the Court to focus on the primary technical issues, without becoming mired in economic minutiae (e.g., established royalties, and settlement and license agreements) attendant to a patent damages case involving so many defendants. Additionally, the likelihood of the parties resolving their disputes before the second (damages) trial will be high, regardless of who prevails in the first trial. Consequently, adidas, Aeropostale, American Girl, Mattel, Nautica, and Ralph Lauren respectfully join the agreed motion for bifurcation filed in the -111 Parallel Networks litigation.

More specifically, on December 13, 2010, the parties of the civil action styled *Parallel Networks, LLC v. Abercrombie & Fitch Co., et al.*, No. 6:10-cv-00111 (E.D. Tex., filed Mar. 29, 2010) (“the -111 litigation”) filed a Joint Motion by All Parties to Bifurcate Damages Issues (Dkt. No. 307 of the -111 litigation). Following the initial case management conference on January 4, 2011, in which the Court set each of the present matter, the -111 litigation, and two other related cases for the same *Markman* and trial dates, the Court ordered the parties to file briefing to address whether any party in the present matter would similarly seek to bifurcate damages issues:

In addition, parties in cause 6:10cv111 have filed a Joint Motion to Bifurcate Damages Issues. The Court sets that motion for hearing on 2-10-2011 at 10:00 a.m. The Court notifies all parties that it will hold a status conference in each of the above cases at the same time as the hearing on the joint motion on 2-10-2011 at 10:00 a.m. The primary issue at this status conference will be whether to bifurcate any or all of the cases. Any party seeking to bifurcate its case may file briefing on this issue not later than 1-24-2011.

Dkt. No. 392. Defendants adidas, Aeropostale, American Girl, Mattel, Nautica, and Ralph Lauren join in the Joint Motion to Bifurcate Damages Issues (Dkt. No. 307 of the -111 litigation), as though filed in the present matter, to promote the efficient resolution of this action.

Further to the reasons stated in support of bifurcation in the Joint Motion to Bifurcate Damages Issues (Dkt. No. 307 of the -111 litigation), damages information is specific to each of the parties involved in the cases and will, therefore, necessitate particularized discovery relating to each

defendant, spanning myriad industries, corporate forms, and business models. Bifurcation of damages will also help to streamline pre-trial issues faced by the Court by avoiding damages related discovery disputes, admissibility issues, and challenges to damages theories and expert opinion. Moreover, early resolution of these cases through an efficiency strategy such as early summary judgment could result in considerable judicial economy, especially if damages discovery is bifurcated.

For at least the reasons stated in the Joint Motion to Bifurcate Damages Issues and above, adidas, Aeropostale, American Girl, Mattel, Nautica, and Ralph Lauren request that the Court grant the -111 parties' motion and extend the same relief to adidas, Aeropostale, American Girl, Mattel, Nautica, and Ralph Lauren in the present action.

Dated: January 24, 2011

Respectfully submitted,

By: /s/ C. Erik Hawes

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CERTIFICATE OF SERVICE

I certify that on January 24, 2011, all counsel of record were served with the foregoing document through the Court's CM/ECF system under Local Rule CV-5(a)(3).

/s/ *Elizabeth Hudson Ducote*
Elizabeth Hudson Ducote