

Subject: False accusations in EFF Article

Date: 4/19/13 7:47 AM

To: "daniel@eff.org" <daniel@eff.org>, "julie@eff.org" <julie@eff.org>

Daniel and Julie,

I write concerning your recent article about 1-800 CONTACTS' patent infringement claims against DITTO.com. I represent 1-800 CONTACTS in that case, and there are some troubling misrepresentations in the article that my client would like to clear up.

First, you allege that 1-800 CONTACTS merely sells eyeglasses and does not provide a 3D virtual try on system like DITTO. You make this statement in order to compare 1-800 CONTACTS to a patent troll, suggesting 1-800 CONTACTS is asserting a patent on technology that it does not practice. That comparison is offensive and the allegation is false. As you can see in the following links, 1-800 CONTACTS is in the online eyeglasses industry and practices the technology it is seeking to protect in the lawsuit against DITTO.

http://www.cnet.com/8301-17918_1-57579750-85/how-do-i-look-glasses.com-app-lets-you-try-on-shades-at-home/

<http://mashable.com/2013/04/17/glasses-3d-ipad/>

Thus, contrary to the assertion in your article, 1-800 CONTACTS satisfies subsection (d)(2) of the proposed SHIELD Act, because it has made substantial investment to produce and exploit the technology covered by the asserted patent. 1-800 CONTACTS' claims against DITTO are nothing like a troll suit.

Second, and most important, you suggest that 1-800 CONTACTS did not develop its 3D try on technology or try to enter this area until its CEO had tried DITTO's technology. This is also false. 1-800 CONTACTS began developing its 3D try on technology long before DITTO was founded. 1-800 CONTACTS invested significant time and resources to do so. They had a working version of their system long before DITTO ever launched its platform. The fact that 1-800 CONTACTS' CEO (the inventor of its technology) tried DITTO's system when it came out, as well as other virtual try on systems, is quite unremarkable. This is something every competitor does to understand their marketplace. It is certainly not the scandalous fact you portray it as.

Moreover, as 1-800 CONTACTS moved forward in perfecting its 3D try on system, 1-800 CONTACTS invested significant time and resources to acquire and license the existing patent rights needed to practice its technology. Clearly, DITTO did not do the same. Further, 1-800 CONTACTS' action of ensuring that it either owned or licensed the relevant technology before launching its platform should be commended as a responsible business practice, not condemned.

1-800 CONTACTS appreciates and respects the efforts of EFF to stop patent trolls. As an online retailer, 1-800 CONTACTS deals with troll suits quite often. However, the infringement case against DITTO based on 1-800 CONTACTS' patent rights cannot reasonably be compared to such abuses of the patent system. 1-800 CONTACTS respectfully requests that you correct the misstatements in your article, which have resulted in a considerable amount of confusion among consumers.

Feel free to contact me to discuss this matter at any time.

Regards,

