



SIDLEY AUSTIN LLP  
555 CALIFORNIA STREET  
SUITE 2000  
SAN FRANCISCO, CA 94104  
(415) 772 1200  
(415) 772 7400 FAX

vwinters@sidley.com  
(415) 772 7441

BEIJING	HONG KONG	SAN FRANCISCO
BOSTON	HOUSTON	SHANGHAI
BRUSSELS	LONDON	SINGAPORE
CHICAGO	LOS ANGELES	SYDNEY
DALLAS	NEW YORK	TOKYO
GENEVA	PALO ALTO	WASHINGTON, D.C.

FOUNDED 1866

March 5, 2015

**BY EMAIL**

Jason Dollard  
Of Counsel  
Leslie Robert EVans & Associates, P.A.  
214 Brazilian Avenue, Suite 200  
Palm Beach, FL 33480

Re: ArrivalStar Patents

Dear Mr. Dollard:

We represent TheRealReal, Inc. You have twice sent communications to our client, taking the position that because our client utilizes the services of Federal Express for our client's shipping activities, our client somehow infringes patents that your client holds. Neither of your communications disclosed that Federal Express holds a license to the patent portfolio that your letters discuss. On March 2, 2015, however, Federal Express sent your client a letter, copied to TheRealReal, that disclosed the existence of that portfolio license. In particular, Federal Express disclosed that: "**FedEx has licensed the ArrivalStar patent portfolio, and the license extends to anything 'in connection with any product, service, or system provided to or for FedEx or its Affiliates.'**" This license covers [TheRealReal's] activity because all such activity regarding FedEx shipments depends on location-tracking and data services provided by FedEx." Even leaving aside the issue whether anything that TheRealReal does could remotely be within the scope of the claims of ArrivalStar's patents, ArrivalStar has no claim—and, to be specific, has no basis, colorable or otherwise, to make a claim—that anything that TheRealReal does is within the scope of the ArrivalStar portfolio that your letter discusses.

Separately, and taking up the issue whether anything that TheRealReal does could remotely be within the scope of the claims of ArrivalStar's patent claims as you have disclosed them, your March 2, 2015 email to my colleague Ezekiel Rauscher takes the position that ArrivalStar's infringement allegation against TheRealReal "has nothing to do with the licensing agreement with FedEx." But, as any appropriate investigation would have disclosed, and as we have in any event explained, TheRealReal does not perform any vehicle tracking; it merely sends its customers a FedEx tracking number. TheRealReal therefore does not infringe—and, to be specific, ArrivalStar has no basis to accuse TheRealReal of infringing—any of the ArrivalStar patents that you have sent to us, all of which require vehicle tracking.

Jason Dollard  
March 5, 2015  
Page 2

ArrivalStar's initial demand letter, dated February 9, 2015, asserted three patents, and purported to analyze an exemplary claim, Claim 21 of the '359 patent, which is presumably the claim that ArrivalStar believes to be the strongest. Mr. Rauscher explained to you by telephone that TheRealReal does not track vehicles or communicate the status of vehicles, which are required by elements (b) and (c) of that claim. ArrivalStar thus has no colorable argument that TheRealReal infringes. ArrivalStar's response recognized this: rather than responding on the merits (such as they are), it sent a different patent—the '060 patent, which like the other three patents requires elements that require vehicle tracking, such as "storing data associated with a plurality of vehicles." Again, TheRealReal does not do this, so ArrivalStar again lacks a basis to assert infringement of this new patent.

As always with patent trolls, we come to the realpolitik of the situation: your client's demands for money. As an initial matter, we reject ArrivalStar's unilateral designation of confidentiality or of restricted use on its communications with us or our client. Neither you nor ArrivalStar sought or obtained our agreement that those communications would be confidential or that their use would be restricted. The fact that ArrivalStar is demanding a lump sum license fee of \$45,000 for its entire U.S. and Canadian portfolio is telling evidence of that portfolio's actual, real-world commercial value: which is to say, it has none. The value of the portfolio, such as it is, is to hold a Damoclean sword of patent litigation defense costs over the heads of businesses, such as TheRealReal, that actually provide goods and services that consumers want. As you may be aware, the courts have begun to use 35 U.S.C. 285 to impose awards of defense costs against patentees who engage in precisely that behavior.

To allow TheRealReal to continue to focus on its customers, rather than on the distraction that ArrivalStar's posturing presents, we give you a choice. The first option is that provide us with a copy of the Federal Express portfolio license that FedEx discussed in its letter to you (with, as you deem fit, the financial terms redacted), so that we can test with the percipient document your assertion that TheRealReal is not licensed. You have no principled basis to refuse this request, as we would obtain this license in discovery were this matter to proceed to litigation. We expect that when we are also able to read that license, these discussions will come to an end. Alternatively, and solely to allow TheRealReal to focus on its mission rather than on a distraction, you can provide TheRealReal with a license to the complete portfolio of ArrivalStar patents for the sum of \$5,000. That sum is not negotiable.

Jason Dollard  
March 5, 2015  
Page 3

Please let us know how you'd like to proceed.

Very truly yours,



Vernon M. Winters

VMW:lcd