

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RED RIVER INNOVATIONS LLC,

Plaintiff,

v.

ZUMIEZ INC. and EVERGAGE, INC.,

Defendants.

Civil Action No. 4:16-cv-3257

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Plaintiff, Red River Innovations LLC (“RRI”), makes the following allegations against Defendants Zumiez Inc. (“Zumiez”) and Evergagage, Inc. (“Evergagage”) (collectively “Defendants”):

THE PARTIES

1. RRI is a Texas limited liability company having its principal place of business at 7 Legato Way, The Woodlands, Texas 77382.

2. On information and belief, Zumiez is a Washington corporation having its principal place of business at 4001 204th Street SW, Lynnwood, WA 98036.

3. On information and belief, Evergagage is a Delaware corporation having its principal place of business at 212 Elm Street, Suite 402, Somerville, MA 02144.

NATURE OF THE ACTION

4. This is a civil action for the infringement of United States Patent No. 7,958,138 (“the ’138 Patent”) (or, “the Patent-in-Suit”) under the Patent Laws of the United States 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United

States, including 35 U.S.C. § 271, *et seq.*

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b). On information and belief, Defendants, directly and/or through subsidiaries or intermediaries, have transacted business in this District, and have committed acts of patent infringement in this District.

7. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including (i) at least a portion of the infringements alleged herein; and (ii) directly and/or through subsidiaries or intermediaries, regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

JOINDER

8. On information and belief, joinder of Defendants is proper under 35 U.S.C. § 299 because of the relationship between Defendants with respect to using, making, developing, publishing, distributing, advertising and/or operating in the United States websites that identify and provide additional reading material related to a concept within requested electronic text, as described and claimed in the '138 Patent, including, but not limited to the website at www.zumiez.com.

THE PATENT-IN-SUIT

9. On June 7, 2011, the USPTO duly and legally issued the '138 Patent entitled "Method And Apparatus For Enhancing Electronic Reading By Identifying Relationships Between Sections Of Electronic Text." A true and correct copy of the '138 Patent is attached as Exhibit A.

10. RRI owns the '138 Patent and holds the right to sue and recover damages for infringement thereof, including past infringement.

BACKGROUND

11. On March 14, 2016, RRI informed Christopher K. Visser, Zumiez's General Counsel, that "the search box at www.zumiez.com incorporates features and functionality that infringe at least claim 1 of RRI patent 7,958,138."

12. On October 13, 2016, after numerous communications between RRI and Zumiez, Zumiez informed RRI that Zumiez's current website was developed by Evergage.

13. On October 13, 2016, RRI contacted Karl Wirth, CEO and Founder at Evergage, and informed Evergage that it is providing technology to Zumiez that infringes at least claim 1 of RRI patent 7,958,138. Mr. Wirth did not respond to RRI.

14. On October 25, 2016, RRI contacted Zumiez regarding Evergage. Zumiez did not respond.

COUNT 1: INFRINGEMENT OF THE '138 PATENT

15. Paragraphs 1-14 are incorporated by reference as if fully restated herein.

16. The '138 Patent is valid and enforceable under United States Patent Laws.

17. Defendants, directly or through intermediaries, have used, made, developed, published, distributed, advertised and/or operated websites, including, but not limited to, www.zumiez.com.

18. Defendants have been and are now directly infringing and/or indirectly infringing the '138 Patent by way of inducement, literally and/or under the doctrine of equivalents, in this District, and elsewhere, in violation of 35 U.S.C. § 271, by, among other things, using, making, developing, publishing, distributing, advertising and/or operating in the United States websites that identify and provide additional reading material related to a concept within requested electronic text, as described and claimed in the '138 Patent, including, but not limited to www.zumiez.com, which is covered by at least claims 1, 3, 4, 6, 12, 22-23, 25 and 27 of the '138 Patent. For example, after a request for electronic text through the search box located at www.zumiez.com, the Zumiez system automatically identifies and graphically presents additional reading material that is related to a concept within the requested electronic text, as

described and claimed in the '138 Patent.

19. On information and belief, Evergage developed www.zumiez.com.

20. On information and belief, Zumiez has had knowledge of the '138 Patent, as well as the fact that Zumiez and/or their customers have used www.zumiez.com in a manner that infringes the '138 Patent, since at least March 14, 2016.

21. On information and belief, Evergage has had knowledge of the '138 Patent, as well as the fact that their customers use websites, such as www.zumiez.com, in a manner that infringes the '138 Patent, since at least October 13, 2016.

22. On information and belief, Defendants actively induce customers, distributors, retailers and/or end users of their websites to infringe the '138 Patent by, among other things, advertising and promoting their websites, including, but not limited to, www.zumiez.com.

23. On information and belief, Defendants engage in the foregoing activities because they specifically intend customers, distributors, retailers and/or end users to use, make, develop, publish, distribute, advertise and/or operate websites covered by at least claims 1, 3, 4, 6, 12, 22-23, 25 and 27 of the '138 Patent.

24. On information and belief, through Defendants' policies or practices of not investigating whether their products and services infringe the patents of others, Defendants intentionally took steps to avoid learning the extent of their infringement of the '138 Patent.

25. Defendants' infringement has been and continues to be willful and deliberate, entitling RRI to additional damages. Defendants have engaged in reckless conduct despite an objectively high likelihood that their actions constituted infringement of a valid patent.

26. RRI has been damaged by Defendants' infringement of the '138 Patent.

PRAYER FOR RELIEF

Wherefore, RRI respectfully requests that this Court enter judgment against Defendants as follows:

- a) adjudging that the Defendants have infringed, literally or under the doctrine of equivalents, the '138 Patent;

- b) awarding RRI the damages to which it is entitled under 35 U.S.C. § 284 for Defendants' infringement;
- c) awarding RRI attorneys' fees pursuant to 35 U.S.C. § 285;
- d) awarding RRI pre-judgment and post-judgment interest on its damages; and
- e) awarding RRI such other and further relief in law or equity that the Court deems just and proper.

DEMAND FOR JURY TRIAL

RRI hereby demands a trial by jury on all claims and issues so triable.

Dated: November 4, 2016

Respectfully submitted,

By: /s/ Bradford J. Black

Bradford J. Black
Attorney-in-Charge
Texas Bar No. 24086243
S.D. Texas No. 2166172
BLACK & HAMILL LLP
4 Embarcadero Center, Ste. 1400
San Francisco, CA 94111
Email: bblack@blackhamill.com
Tel: (415) 813-6210
Fax: (415) 813-6222

Pritesh Soni
Texas Bar No. 24063926
S.D. Texas No. 1097849
The Soni Law Firm PLLC
Two Greenway Plaza, Ste. 600
Houston, TX 77046
Email: psoni@sonilawfirm.com
Tel: (832) 429-7664
Fax: (713) 526-8105

**ATTORNEYS FOR PLAINTIFF
RED RIVER INNOVATIONS LLC**