IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOTIVATION INNOVATIONS, LLC, Plaintiff, v. DSW, INC.; VALUE CITY DEPARTMENT STORES, LLC; BED BATH & BEYOND, INC.; and HALLMARK MARKETING CORPORATION, Defendants.	C.A. No. 08-334-SLR **JURY TRIAL DEMANDED**

PLAINTIFF'S RESPONSE TO
VALUE CITY DEPARTMENT STORES, LLC'S COUNTERCLAIM

Plaintiff Motivation Innovations, LLC ("Motivation Innovations") hereby responds to Value City Department Stores, LLC's ("VCDS") counterclaim, served on July 31, 2008 (D.I. 15) as follows:

COUNTERCLAIM

26. This is a counterclaim for a declaratory judgment declaring U.S. Patent No. 5,612,527 ("the '527 patent") invalid, unenforceable and not infringed, and arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and the Federal Declaratory Judgment Act, 28 U.S.C. § 201, *et seq.*

Response:

Admitted that VCDS has alleged a counterclaim for a declaratory judgment; otherwise denied.

27. Jurisdiction of this Court over this Counterclaim is based upon 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202, and upon Rule 13 of the Federal Rules of Civil Procedure.

Response:

Admitted.

28. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b), and Motivation Innovations, LLC (Motivation Innovations"), by virtue of having brought suit against VCDS, has submitted itself to the jurisdiction of this Court.

Response:

Admitted.

29. Motivation Innovations claims to be the assignee of the '527 patent and has brought suit against VCDS herein for alleged infringement of the '527 patent.

Response:

Admitted.

30. An actual case or controversy exists between VCDS and Motivation Innovations based upon Motivation Innovations having filed the First Amended Complaint against VCDS.

Response:

Admitted.

31. Neither VCDS nor any of its customers has infringed any of the claims of the '527 patent.

Response:

Denied.

32. Upon information and belief, and as will likely be supported by evidence after reasonable opportunity for further investigation and discovery, the claims of the '527 patent are invalid, null, and/or void for failure to comply with the conditions and requirements for patentability specified in Title 35 of the United States Code, including, but not limited to Sections §§ 102, 103 and/or 112.

Response:

Denied.

33. As a result of the aforesaid conduct of Motivation Innovations, there is an actual controversy pursuant to 28 U.S.C. § 2201 regarding the validity, enforceability and infringement of the claims of the '527 patent.

Response:

Admitted.

34. VCDS has been injured and damaged by Motivation Innovations' filing of the First Amended Complaint in the present action asserting patents that are invalid, unenforceable and/or not infringed.

Response:

Denied.

PRAYER FOR RELIEF

Motivation Innovations denies that VCDS is entitled to any relief on its counterclaim.

YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

August 27, 2008

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CERTIFICATE OF SERVICE

I, Karen L. Pascale, Esquire, hereby certify that on August 27, 2008, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that I caused a copy of the foregoing document to be served on the following attorneys of record in the manner indicated:

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