

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CREATEADS LLC,

Plaintiff

v.

RITE AID CORPORATION;  
COSTCO WHOLESALE CORPORATION;  
CVS CAREMARK CORPORATION,

Defendants.

C.A. No.

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff CreateAds LLC (“CreateAds”) alleges as follows:

**BACKGROUND**

1. Clive Gay is a visionary in the advertising and reprographic industry. Back in the early 1990s, Mr. Gay was working in London and saw the problems associated with generating visual designs. For example, in advertising, agencies typically required a week or more to generate visual designs. Mr. Gay envisioned an automated method whereby, among other things, software could use predetermined design parameters and predetermined visual design applications to quickly and easily generate visual designs. This led to the filing of the patent application resulting in U.S. Patent No. 5,535,320 (the “CreateAds patent” or “320 patent”). In addition, Mr. Gay, along with Henri Frencken, developed and refined the software over several years and at the cost of several million dollars. Aspects of this software power two of Mr. Gay’s companies, CreateAds.com ([www.createads.com](http://www.createads.com)) and Simply D’nA ([www.simplydna.com](http://www.simplydna.com)), which at their peak had over 80 employees including eight software developers. The technology

of the CreateAds patent has been adopted by several segments of the visual design industry, including business marketing, customized user interfaces, personalized products, and advertising.

2. CreateAds is the owner by assignment of the '320 patent. The CreateAds patent is entitled "Method of Generating a Visual Design." The CreateAds patent issued on July 9, 1996, based on U.S. Patent Application No. 268,613, filed July 1, 1994, and United Kingdom Patent Application No. 9313761, filed July 2, 1993. A true and correct copy of the CreateAds patent is attached hereto as Exhibit A.

### **PARTIES**

3. CreateAds is a Delaware limited liability company.

4. Defendant Rite Aid Corporation ("Rite Aid") is a Delaware corporation with a principal place of business at 30 Hunter Lane, Camp Hill, Pennsylvania 17011. Rite Aid has appointed The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, Delaware 19801, as its agent for service of process.

5. Defendant Costco Wholesale Corporation ("Costco") is a Washington corporation with a principal place of business at 999 Lake Drive, Issaquah, Washington 98027. Costco has appointed John Sullivan, 999 Lake Drive, Issaquah, Washington 98027, as its agent for service of process.

6. Defendant CVS Caremark Corporation ("CVS") is a Delaware corporation with a principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895. CVS has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, as its agent for service of process. Hereinafter, Rite Aid, Costco, and CVS are collectively referred to as "Defendants."

**JURISDICTION AND VENUE**

7. This action arises under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants because, among other reasons, Defendants are incorporated under the laws of the State of Delaware or have established minimum contacts with the forum state of Delaware. Defendants, directly and/or through third-party intermediaries, make, use, import, offer for sale, and/or sell products and services within the state of Delaware. Additionally, on information and belief, Defendants have committed and continue to commit acts of direct and indirect infringement in this District by making, using, importing, offering for sale, and/or selling infringing products, and inducing others to perform method steps claimed by CreateAds' patent in Delaware.

9. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(c) and 1400(b) because, among other reasons, Defendants are incorporated under the laws of the State of Delaware, or, on information and belief, Defendants have conducted and continue to conduct regular and ongoing business in Delaware. Additionally, on information and belief, Defendants have committed and continue to commit acts of direct and indirect infringement in this District by making, using, importing, offering for sale, and/or selling infringing products, and inducing others to perform method steps claimed by CreateAds' patent in Delaware.

10. Joinder of the Defendants in the present action is proper pursuant to 35 U.S.C. § 299 because the claims against all three defendants arise out of the same

transaction, occurrence, or series of transactions, or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process. Each Defendant offers template-based visual design generation products and services operated by PNI Digital Media Inc. (“PNI”). PNI is a corporation existing in and operating under the laws of Canada.

**COUNT I**  
**(Infringement of U.S. Patent No. 5,535,320)**

11. In violation of one or more provisions of 35 U.S.C. § 271, Rite Aid has been and still is infringing one or more claims of the CreateAds patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, template-based visual design generation products and services, including, but not limited to, the products and services included in the “My Projects” section of the [www.mywayphotos.riteaid.com](http://www.mywayphotos.riteaid.com) website (“Rite Aid Photos Website”), which is operated by PNI.

12. Additionally, Rite Aid also has infringed and continues to infringe the CreateAds patent by actively inducing infringement of the CreateAds patent. On March 6, 2013, Rite Aid received a letter notifying it that its template-based visual design generation products and services infringe one or more claims of the CreateAds patent. Rite Aid has had actual knowledge of the CreateAds patent since at least March 6, 2013,<sup>1</sup> or alternatively since being served with this complaint, and Rite Aid has induced infringement of the CreateAds patent since at least this time by providing instructions and assistance to users/customers on how to utilize the “My Projects” section of the Rite Aid Photos website such that a plurality of visual design elements and a plurality of

---

<sup>1</sup> See Exhibit B.

predetermined design parameters are stored; one of a plurality of predetermined visual design applications, wherein each predetermined visual design application is associated with a predetermined design parameter, and a visual design element, are selected; and a visual design using the selected visual design element, with the size and position of the element in the visual design being determined by the predetermined design parameter, and a representation of the visual design, are generated. By continuing the representative aforementioned activities with knowledge of the CreateAds patent, Rite Aid has known, or should have known, that it was inducing infringement by causing the method steps of the CreateAds patent to be performed.

13. In violation of one or more provisions of 35 U.S.C. § 271, Costco has been and still is infringing one or more claims of the CreateAds patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, template-based visual design generation products and services, including, but not limited to, the products and services included in the “Photo Products” section of the [www.costcophotocenter.com](http://www.costcophotocenter.com) (“Costco Photo Center website”), which is operated by PNI.

14. Additionally, Costco also has infringed and continues to infringe the CreateAds patent by actively inducing infringement of the CreateAds patent. On March 6, 2013, Costco received a letter notifying it that its template-based visual design generation products and services infringe one or more claims of the CreateAds patent. Costco has had actual knowledge of the CreateAds patent since at least March 6, 2013,<sup>2</sup> or alternatively since being served with this complaint, and Costco has induced

---

<sup>2</sup> See Exhibit C.

infringement of the CreateAds patent since at least this time by providing instructions and assistance to users/customers on how to utilize the products and services included in the “Photo Products” section of the Costco Photo Center website such that a plurality of visual design elements and a plurality of predetermined design parameters are stored; one of a plurality of predetermined visual design applications, wherein each predetermined visual design application is associated with a predetermined design parameter, and a visual design element, are selected; and a visual design using the selected visual design element, with the size and position of the element in the visual design being determined by the predetermined design parameter, and a representation of the visual design, are generated. By continuing the representative aforementioned activities with knowledge of the CreateAds patent, Costco has known, or should have known, that it was inducing infringement by causing the method steps of the CreateAds patent to be performed.

15. In violation of one or more provisions of 35 U.S.C. § 271, CVS has been and still is infringing one or more claims of the CreateAds patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, template-based visual design generation products and services, including, but not limited to, the products and services included in the “My Projects” section of the [www.cvsphoto.com](http://www.cvsphoto.com) website (“the CVS Photo website”), which is operated by PNI.

16. Additionally, CVS also has infringed and continues to infringe the CreateAds patent by actively inducing infringement of the CreateAds patent. On March 6, 2013, CVS received a letter notifying it that its template-based visual design generation products and services infringe one or more claims of the CreateAds patent.

CVS has had actual knowledge of the CreateAds patent since at least March 6, 2013,<sup>3</sup> or alternatively since being served with this complaint, and CVS has induced infringement of the CreateAds patent since at least this time by providing instructions and assistance to users/customers on how to utilize the products and services included in the “My Projects” section of the CVS Photo website such that a plurality of visual design elements and a plurality of predetermined design parameters are stored; one of a plurality of predetermined visual design applications, wherein each predetermined visual design application is associated with a predetermined design parameter, and a visual design element, are selected; and a visual design using the selected visual design element, with the size and position of the element in the visual design being determined by the predetermined design parameter, and a representation of the visual design, are generated. By continuing the representative aforementioned activities with knowledge of the CreateAds patent, CVS has known, or should have known, that it was inducing infringement by causing the method steps of the CreateAds patent to be performed.

17. To the extent that facts learned in discovery show that Defendants’ infringement of the CreateAds patent is or has been willful, CreateAds reserves the right to request such a finding at the time of trial.

18. To the extent applicable, the requirements of 35 U.S.C. § 287(a) have been met with respect to the CreateAds patent. For example, the ‘320 patent is clearly identified on the homepage of the CreateAds.com website ([www.createads.com](http://www.createads.com)).

19. As a result of Defendants’ infringement of the CreateAds patent, CreateAds has suffered monetary damages in an amount adequate to compensate for

---

<sup>3</sup> See Exhibit D.

Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court, and CreateAds will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

20. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the CreateAds patent, CreateAds will be greatly and irreparably harmed.

**PRAYER FOR RELIEF**

CreateAds prays for the following relief:

A. A judgment that Rite Aid has infringed, directly or indirectly, one or more claims of the CreateAds patent;

B. A judgment that Costco has infringed, directly or indirectly, one or more claims of the CreateAds patent;

C. A judgment that CVS has infringed, directly or indirectly, one or more claims of the CreateAds patent;

D. A permanent injunction enjoining Rite Aid and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from infringing either of the CreateAds patent;

E. A permanent injunction enjoining Costco and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all



others acting in active concert or participation with it, from infringing either of the CreateAds patent;

F. A permanent injunction enjoining CVS and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from infringing either of the CreateAds patent;

G. A judgment and order requiring Defendants to pay CreateAds its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's acts of infringement in accordance with 35 U.S.C. § 284;

H. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to CreateAds its reasonable attorneys' fees against Defendants;

I. A judgment and order requiring Defendants to provide an accounting and to pay supplemental damages to CreateAds, including, without limitation, prejudgment and post-judgment interest; and

J. Any and all other relief to which CreateAds may be entitled.

**JURY TRIAL DEMANDED**

CreateAds hereby demands a trial by jury of all issues so triable.

March 7, 2013

BAYARD, P.A.

OF COUNSEL:

Alexander C. D. Giza  
Daniel P. Hipkind  
RUSS, AUGUST & KABAT  
12424 Wilshire Boulevard 12<sup>th</sup> Floor  
Los Angeles, California 90025  
agiza@raklaw.com  
dhipkind@raklaw.com  
(310) 826-7474

/s/ Stephen B. Brauerman (sb4942)  
Richard D. Kirk (rk0922)  
Stephen B. Brauerman (sb4952)  
Vanessa R. Tiradentes (vt5398)  
222 Delaware Avenue, Suite 900  
Wilmington, DE 19801  
(302) 655-5000  
rkirk@bayardlaw.com  
sbrauerman@bayardlaw.com  
vtiradentes@bayardlaw.com

*Attorneys for Plaintiff CreateAds LLC*