

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GEOTAG, INC.,

Plaintiff,

v.

**STARBUCKS CORP., INC.
et al.,**

Defendants.

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**Civil Action No. 2:10-cv-00572-TJW
JURY TRIAL DEMANDED**

**DEFENDANT DR PEPPER SNAPPLE GROUP INC.’S ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF’S COMPLAINT FOR PATENT
INFRINGEMENT**

Defendant Dr Pepper Snapple Group, Inc. (“Dr Pepper”) answers Plaintiff GeoTag Inc.’s (“GeoTag”) Complaint for Patent Infringement (“Complaint”) as follows, denying GeoTag’s allegations and averments, except as specifically admitted herein:

PARTIES

1. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 1, and therefore denies these allegations.
2. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 2, and therefore denies these allegations.
3. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 3, and therefore denies these allegations.
4. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 4, and therefore denies these allegations.
5. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 5, and therefore denies these allegations.
6. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 6, and therefore denies these allegations.

7. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 7, and therefore denies these allegations.

8. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 8, and therefore denies these allegations.

9. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 9, and therefore denies these allegations.

10. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 10, and therefore denies these allegations.

11. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 11, and therefore denies these allegations.

12. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 12, and therefore denies these allegations.

13. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 13, and therefore denies these allegations.

14. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 14, and therefore denies these allegations.

15. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 15, and therefore denies these allegations.

16. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 16, and therefore denies these allegations.

17. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 17, and therefore denies these allegations.

18. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 18, and therefore denies these allegations.

19. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 19, and therefore denies these allegations.

20. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 20, and therefore denies these allegations.

21. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 21, and therefore denies these allegations.

22. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 22, and therefore denies these allegations.

23. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 23, and therefore denies these allegations.

24. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 24, and therefore denies these allegations.

25. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 25, and therefore denies these allegations.

26. Dr Pepper admits the allegations in paragraph 26.

27. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 27, and therefore denies these allegations.

28. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 28, and therefore denies these allegations.

29. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 29, and therefore denies these allegations.

30. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 30, and therefore denies these allegations.

31. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 31, and therefore denies these allegations.

32. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 32, and therefore denies these allegations.

33. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 33, and therefore denies these allegations.

34. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 34, and therefore denies these allegations.

35. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 35, and therefore denies these allegations.

36. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 36, and therefore denies these allegations.

37. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 37, and therefore denies these allegations.

38. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 38, and therefore denies these allegations.

39. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 39, and therefore denies these allegations.

40. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 40, and therefore denies these allegations.

41. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 41, and therefore denies these allegations.

42. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 42, and therefore denies these allegations.

43. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 43, and therefore denies these allegations.

44. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 44, and therefore denies these allegations.

45. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 45, and therefore denies these allegations.

46. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 46, and therefore denies these allegations.

47. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 47, and therefore denies these allegations.

48. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 48, and therefore denies these allegations.

49. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 49, and therefore denies these allegations.

50. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 50, and therefore denies these allegations.

JURISDICTION AND VENUE

51. Paragraph 51 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Dr Pepper admits that Plaintiff purports to bring this action under the patent laws of the United States, and admits that this Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) over actions arising under the patent laws of the United States. Dr Pepper denies that it has committed any act of patent infringement, including any act of patent infringement in the State of Texas or in this judicial district. Dr Pepper admits that it is subject to personal jurisdiction in this forum. With respect to allegations relating to other defendants, Dr Pepper lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations, and therefore denies these allegations. Dr Pepper denies all remaining allegations in paragraph 51.

52. Paragraph 52 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Dr Pepper denies that it has committed any act of patent infringement, including any act of patent infringement in the State of Texas or in this judicial district. Dr Pepper admits that it is subject to personal jurisdiction in this forum. To the extent the allegations of paragraph 52 are directed to other defendants, Dr Pepper lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations, and therefore denies these allegations. Dr Pepper denies all

remaining allegations in paragraph 52, and reserves its rights to move the Court to transfer venue pursuant to 28 U.S.C. § 1404, at a minimum.

53. Paragraph 53 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Dr Pepper admits that a court in this forum previously heard an action entitled *Geomas (International), Ltd., et al. vs. Idearc Media Services-West, Inc., et al.*, Civil Action No. 2:06-CV-00475-CE. With respect to all remaining allegations, Dr Pepper lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations, and therefore denies these allegations.

COUNT I

54. Dr Pepper admits U.S. Patent No. 5,930,474 (“474 Patent”) on its face lists a title of “Internet Organizer for Accessing Geographically and Topically Based Information” with an issue date of July 27, 1999. Dr Pepper denies all remaining allegations of paragraph 54.

55. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 55, and therefore denies these allegations.

56. Paragraph 56 contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed required, Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 56, and therefore denies these allegations.

57. To the extent that the allegations of paragraph 57 are directed to Dr Pepper, they are denied. To the extent the allegations of paragraph 57 are directed to other defendants, Dr Pepper lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations, and therefore denies these allegations.

58. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 58, and therefore denies these allegations.

59. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 59, and therefore denies these allegations.

60. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 60, and therefore denies these allegations.

61. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 61, and therefore denies these allegations.

62. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 62, and therefore denies these allegations.

63. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 63, and therefore denies these allegations.

64. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 64, and therefore denies these allegations.

65. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 65, and therefore denies these allegations.

66. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 66, and therefore denies these allegations.

67. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 67, and therefore denies these allegations.

68. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 68, and therefore denies these allegations.

69. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 69, and therefore denies these allegations.

70. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 70, and therefore denies these allegations.

71. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 71, and therefore denies these allegations.

72. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 72, and therefore denies these allegations.

73. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 73, and therefore denies these allegations.

74. Dr Pepper denies the allegations in paragraph 74.

75. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 75, and therefore denies these allegations.

76. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 76, and therefore denies these allegations.

77. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 77, and therefore denies these allegations.

78. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 78, and therefore denies these allegations.

79. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 79, and therefore denies these allegations.

80. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 80, and therefore denies these allegations.

81. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 81, and therefore denies these allegations.

82. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 82, and therefore denies these allegations.

83. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 83, and therefore denies these allegations.

84. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 84, and therefore denies these allegations.

85. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 85, and therefore denies these allegations.

86. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 86, and therefore denies these allegations.

87. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 87, and therefore denies these allegations.

88. Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 88, and therefore denies these allegations.

89. Paragraph 89 does not require a response by Dr Pepper. To the extent that paragraph 89 is deemed to require a response, Dr Pepper denies the allegations of paragraph 89 and affirmatively states that Plaintiff's purported reservations of right in paragraph 89 is not effective and Dr Pepper will oppose any requests by Plaintiff based on paragraph 89 for a finding of willful infringement at time of trial.

90. To the extent that the allegations of paragraph 90 are directed at Dr Pepper, they are denied. To the extent that the allegations of paragraph 90 are directed at other defendants, Dr Pepper lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations, and therefore denies these allegations.

PRAYER FOR RELIEF

Dr Pepper denies that GeoTag is entitled to any of the requested relief and denies any allegations in GeoTag's Prayer for Relief.

AFFIRMATIVE DEFENSES

Dr Pepper alleges and asserts the following defenses, affirmative or otherwise, without assuming any burden of proof that it would not otherwise have. In addition to the affirmative defenses described below and subject to its responses above, Dr Pepper specifically reserves all rights to allege additional defenses, affirmative or otherwise, that become known through the course of discovery.

FIRST AFFIRMATIVE DEFENSE: Non-Infringement of the '474 Patent

Dr Pepper does not infringe and has not infringed (not directly, contributorily, by inducement, or in any other way) literally or under the doctrine of equivalents any claim of the '474 Patent.

SECOND AFFIRMATIVE DEFENSE: Invalidity of the '474 Patent

The claims of the '474 Patent are invalid for failure to satisfy one or more of the requirements of Title 35 of the United States Code including but not limited to §§ 101, 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE: Waiver, Acquiescence, and/or Consent

GeoTag's claims of infringement under the '474 Patent are barred, in whole or in part, by the doctrines of waiver, acquiescence, and/or consent.

FOURTH AFFIRMATIVE DEFENSE: Unclean Hands

GeoTag's claims of infringement under the '474 Patent are barred, in whole or in part, by unclean hands.

FIFTH AFFIRMATIVE DEFENSE: Laches

GeoTag's claims of infringement under the '474 Patent are barred, in whole or in part, by laches.

SIXTH AFFIRMATIVE DEFENSE: Estoppel

GeoTag's claims of infringement under the '474 Patent are barred, in whole or in part, by the doctrines of equitable estoppel and/or prosecution history estoppel.

SEVENTH AFFIRMATIVE DEFENSE: Bar to Damages

GeoTag's claims for damages are barred, in whole or in part, under 35 U.S.C. § 286 (six-year time limitation on damages), 35 U.S.C. § 287 (marking), and 28 U.S.C. § 1498 (government manufacture and use).

EIGHTH AFFIRMATIVE DEFENSE: No Injunctive Relief

GeoTag is not entitled to any injunctive relief as it has, at a minimum, an adequate remedy at law and no irreparable injury.

NINTH AFFIRMATIVE DEFENSE: Failure to State a Claim

GeoTag's Complaint fails to state a claim upon which relief can be granted.

COUNTERCLAIMS

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Dr Pepper asserts the following Counterclaims against GeoTag:

THE PARTIES

1. Counterclaim-Plaintiff Dr Pepper is a corporation organized and existing under the laws of the state of Delaware with its principal place of business located at 5301 Legacy Drive, Plano, Texas 75024.
2. Counterclaim-Defendant GeoTag purports to be a Delaware corporation with a place of business in Plano, Texas.

JURISDICTION AND VENUE

3. Subject to Dr Pepper's affirmative defenses and denials, Dr Pepper alleges that this Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202, and venue for these Counterclaims is proper in this district.
4. GeoTag is subject to personal jurisdiction in the State of Texas and this judicial district by virtue of the fact that the GeoTag brought patent infringement claims in this judicial district. GeoTag has therefore consented to personal jurisdiction in this judicial district.
5. Church & Dwight maintains its right to seek a transfer of venue on forum non conveniens grounds pursuant to 28 U.S.C. § 1404. To the extent that this action remains in this district, venue is appropriate because GeoTag has consented to the propriety of venue in this Court by filing its claim for patent infringement in this Court, in response to which these counterclaims are asserted.

FACTUAL BACKGROUND

6. In its Complaint for Patent Infringement, GeoTag asserts that Dr Pepper has infringed the '474 Patent. Dr Pepper denies GeoTag's allegations of infringement and further denies that the '474 Patent is valid. Consequently, there is an actual case or controversy between the parties over the non-infringement and/or invalidity of the '474 Patent.

COUNT ONE

Declaratory Judgment of Non-Infringement of the '474 Patent

7. Dr Pepper restates and incorporates by reference its allegations in paragraphs 1 through 6 of its Counterclaims.

8. Dr Pepper has not infringed and is not infringing (either directly, contributorily, or by inducement) any claim of the '474 Patent.

9. An actual case or controversy exists between Dr Pepper and GeoTag as to whether the '474 Patent is not infringed by Dr Pepper.

10. Dr Pepper seeks a judicial declaration finding that Dr Pepper has not infringed and does not infringe, directly or indirectly, any claim of the '474 Patent.

COUNT TWO

Declaratory Judgment of Invalidity of the '474 Patent

11. Dr Pepper restates and incorporates by reference its allegations in paragraphs 1 through 10 of its Counterclaims.

12. The '474 Patent is invalid, void and unenforceable for failure to satisfy one or more of the requirements for patentability specified in 35 U.S.C. § 100 *et seq.*, including, but not limited to §§ 101, 102, 103, and 112.

13. An actual case or controversy exists between Dr Pepper and GeoTag as to whether the '474 Patent is invalid.

14. Dr Pepper seeks a judicial declaration finding that the '474 Patent is invalid.

EXCEPTIONAL CASE

15. This case is exceptional under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Dr Pepper prays for judgment as follows:

- a. A judgment in favor of Dr Pepper denying GeoTag all relief requested in its Complaint in this action and dismissing GeoTag's Complaint with prejudice;
- b. A judgment in favor of Dr Pepper on all of its Counterclaims;

- c. A declaration that Dr Pepper has not infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any valid claims of the '474 Patent;
- d. A declaration that the '474 Patent is invalid;
- e. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award to Dr Pepper of its reasonable costs and expenses of litigation, including attorneys' fees and expert witness fees; and
- f. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, Dr Pepper respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: March 14, 2011

Respectfully submitted,

/s/ Daniel T. Conrad

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Dr Pepper Snapple Group, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on March 14, 2011.

/s/ Daniel T. Conrad _____