

September 2013

BIG SUITS

Alexsam Inc. v. The Gap Inc.

It took a federal district court jury in Marshall, Texas, just 75 minutes to return a verdict on June 28 that the Gap Inc. doesn't infringe on patents owned by Alexsam Inc.

Alexsam, a business that generates revenues from its patents, sued Gap and several other big retailers in 2010, alleging infringement of patents on a process of activating and recharging gift cards. Gap relied on "rocket docket" court veteran **Alan Fisch** of Fisch Hoffman Sigler for the defense win; Fisch represents most of the retailers. Alexsam tapped **Timothy Maloney** at Chicago's Fitch, Even, Tabin & Flannery.

In the first phase, seven cases were consolidated for an April jury trial on the validity of Alexsam's patents. Alexsam prevailed against Fisch and his clients, setting the stage for separate trials on whether individual retailers infringe the patents. The first of those trials, against Barnes & Noble Inc., kicked off in May, with Alexsam seeking \$72 million. Fisch won a complete defense verdict on June 7.

The second trial against Gap seeking \$34.5 million went to trial June 21. According to a juror, Fisch and a colleague **R. William Sigler** pulled off the win by undermining the testimony of two of Alexsam's expert witnesses, and by clearly explaining how the Gap obtains and processes its gift cards.

Maloney and Fisch will face off again on October 15 in the next trial against J.C. Penney Company Inc.; trials against McDonald's Corporation and The Home Depot Inc. are not yet scheduled.



FOR PLAINTIFF ALEXSAM INC. (KERRVILLE, TEXAS)

Fitch, Even, Tabin & Flannery: Steven Schroer (of the firm's Boulder, Colorado office) and Timothy Maloney, Alison Richards, Steven Schroer, David Gosse, Nicole Little, and Joseph Marinelli (of the firm's Chicago office). The firm was lead counsel.

Gillam & Smith: Harry "Gil" Gillam and Melissa Smith (of the firm's Marshall, Texas office).



FOR DEFENDANT THE GAP INC. (SAN FRANCISCO, CALIFORNIA)

Fisch Hoffman Sigler: Alan Fisch, Jason Hoffman, R. William Sigler, Patrick Lee, Jeffrey Saltman, and David Saunders (of the firm's Washington, D.C. office), and Silvia Jordan and Peter Scoolidge (of the firm's New York office). The firm was lead counsel.

Siebman, Burg, Phillips & Smith: Michael C. Smith (of the firm's Marshall, Texas office). The firm was local counsel.

In-House: Assistant General Counsel Jennifer Sim.