

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

STRATOSAUDIO, INC.,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

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Case No. 6:20-cv-1131

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff StratosAudio, Inc. (“Plaintiff” or “StratosAudio”) makes the following actions against Defendant Volkswagen Group of America, Inc. (“Defendant” or “Volkswagen Group”):

INTRODUCTION

1. This complaint arises from Defendant’s unlawful infringement of the following U.S. Patents owned by StratosAudio, Inc.: U.S. Patent No. 8,166,081; U.S. Patent No. 8,688,028; U.S. Patent No. 8,903,307; U.S. Patent No. 9,584,843; U.S. Patent No. 8,200,203; U.S. Patent No. 9,294,806; and U.S. Patent No. 9,355,405 (collectively the “Asserted Patents”).

PARTIES

2. StratosAudio is a privately held company incorporated under the laws of Delaware. StratosAudio was founded in 2001 and is headquartered in Kirkland, Washington.

3. StratosAudio is a pioneer in the field of media enhancement systems, especially as it relates to interactive advertising, programming, and other data manipulation that enables the identification of broadcast media content using data transmitted in an associated datastream, the combination of such streams used in personalized media distribution, with widely applicable adaptation in commercial media and entertainment systems including vehicle head unit consoles.

4. Based on years of research and development, StratosAudio has created an international patent portfolio comprising more than seventy (70) issued patents broadly directed to media enhancement systems.

5. StratosAudio has, over the years, invested millions of dollars innovating and creating audio media enhancement systems of the type described in StratosAudio's patents.

6. StratosAudio is partly owned by an individual located in this judicial district in Temple, Texas. This individual is also a named inventor on a number of the asserted patents.

7. Volkswagen Group is a New Jersey corporation with its principal place of business in Herndon, Virginia. Volkswagen Group may be served through its registered agent for service in the State of Texas, Corporation Service Company D/B/A CSC Lawyers Inco., 211 E. 7th Street Suite 620, Austin, TX 78701. Volkswagen Group is registered to do business in the State of Texas and has been since at least June 7, 1973.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, 35 U.S.C. § 1, et seq., including § 271. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendant because, among other things, Defendant has done business in this District, and has committed and continues to commit acts of

patent infringement in this District giving rise to this action, and has established minimum contacts with this forum such that the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice. Defendant, directly and indirectly through subsidiaries and intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, making, using, selling, offering to sell, and importing products that infringe the asserted patents.

10. Venue is proper in this District under 28 U.S.C. § 1400(b) because, among other things, Defendant has transacted business in this District and has committed acts of infringement in and has a regular and established place of business in this judicial district. For example, the Volkswagen Group conducts its business of the exclusive distribution of new Volkswagen and Audi automobiles to the consuming public in this judicial district through its authorized dealers in this judicial district, including selling automobiles, directly and/or indirectly, to and through, for example, Volkswagen of Waco, located at 2301 W. Loop 340, Waco TX, 76712; Onion Creek Volkswagen, located at 10812 S IH 35 Frontage Road, Austin TX, 78748; Hewlett Volkswagen, located at 7951 Hewlett Loop Road, Georgetown, TX, 78626; Audi North Austin, located at 12971 Pond Springs Road, Austin TX 78729-7798, and Audi South Austin, located at 4738 S IH 35 Frontage Road, Austin TX 78745. On information and belief, the Volkswagen Group's new Volkswagen and Audi vehicles are available for purchase through its authorized dealers only, such as Volkswagen of Waco, Onion Creek Volkswagen, Hewlett Volkswagen, Audi North Austin, and Audi South Austin.

11. The Volkswagen Group's dealerships in this judicial district are all named with the "Volkswagen" or "Audi" designation (e.g., Volkswagen of Waco and Audi North Austin). The Volkswagen and Audi dealerships in this judicial district all prominently display Volkswagen and

Audi trademarks, respectively, including the Volkswagen and Audi logos, with no reservations or disclaimers. The Volkswagen Group authorizes its Volkswagen and Audi dealers in this judicial district to utilize Volkswagen's and Audi's trademarks, trade name, and other intellectual property associated with the distribution and sale of automobiles and provision of related services.

12. Volkswagen and Audi dealerships in this judicial district are held out to the consuming public as places of Volkswagen and Audi, respectively, where the Volkswagen Group, through its dealers, sells Volkswagen and Audi cars. Volkswagen's website (www.vw.com) and Audi's website (www.audiusa.com/us/web/en.html) direct users to enter their zip code so that the websites can display to the website user Volkswagen and Audi vehicles, respectively, available in inventory in their area, so that Volkswagen and Audi can identify a franchised dealer in their area. For both Volkswagen and Audi, the user can contact a franchised dealer through the website by inputting their contact details, or can select to navigate to a franchised dealer in their area. Once the user selects a franchised dealer website from the Volkswagen or Audi website, the user can view inventory, view trade-in information, apply for financing, and arrange a test drive at the franchised Volkswagen and Audi dealerships in their area, including dealerships in this judicial district. Upon input of zip code information from this judicial district, Volkswagen and Audi name and ratify their respective dealers in this judicial district, such as Volkswagen of Waco and Audi North Austin, as their places of business where: 1) the user of a website may test drive its cars; 2) a website user may review inventory and schedule a test drive at a dealer in this judicial district; 3) it collects customer information and provides that information to its dealers in this judicial district; Volkswagen and Audi enable website users to solicit quotes to purchase a vehicle from dealers in this judicial district; and 4) to apply for financing from dealers in this judicial district.

13. The Volkswagen Group also conducts business through its authorized Volkswagen and Audi dealers in this judicial district by providing new purchase warranties and service pursuant to those warranties to the consuming public. The Volkswagen Group further delegates maintenance responsive to vehicle safety recalls to its authorized dealers in this judicial district by informing Volkswagen and Audi owners of the defect and directing Volkswagen and Audi owners to their respective authorized dealers for repair of the defect.

14. Volkswagen and Audi also control the sale of automobiles in this judicial district by, among other items, establishing criteria and certifying vehicles as part of a “Volkswagen Certified Pre-Owned Vehicles” program or as part of an “Audi Certified Pre-Owned Vehicles” program. The Volkswagen Group directly controls aspects of employees of its authorized dealers by training service technicians. The Volkswagen Group also provides direct and indirect financial input into the operations of its authorized dealers in this district by, on information and belief, offering vehicle financing through Volkswagen Credit and Audi Financial Services, and by offering “floor plan” loans directly to its authorized dealers in this judicial district. On information and belief, The Volkswagen Group further conducts business through its control over the sale and/or ownership transfer of its authorized dealers in this judicial district, which includes the right to refuse any transfer of ownership of its authorized dealers, and through its control of specific geographic areas in which its authorized dealers in this judicial district may operate.

COUNT I – INFRINGEMENT OF THE ‘081 PATENT

15. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

16. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 8,166,081 entitled “System and Method for Advertisement Transmission and Display”

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