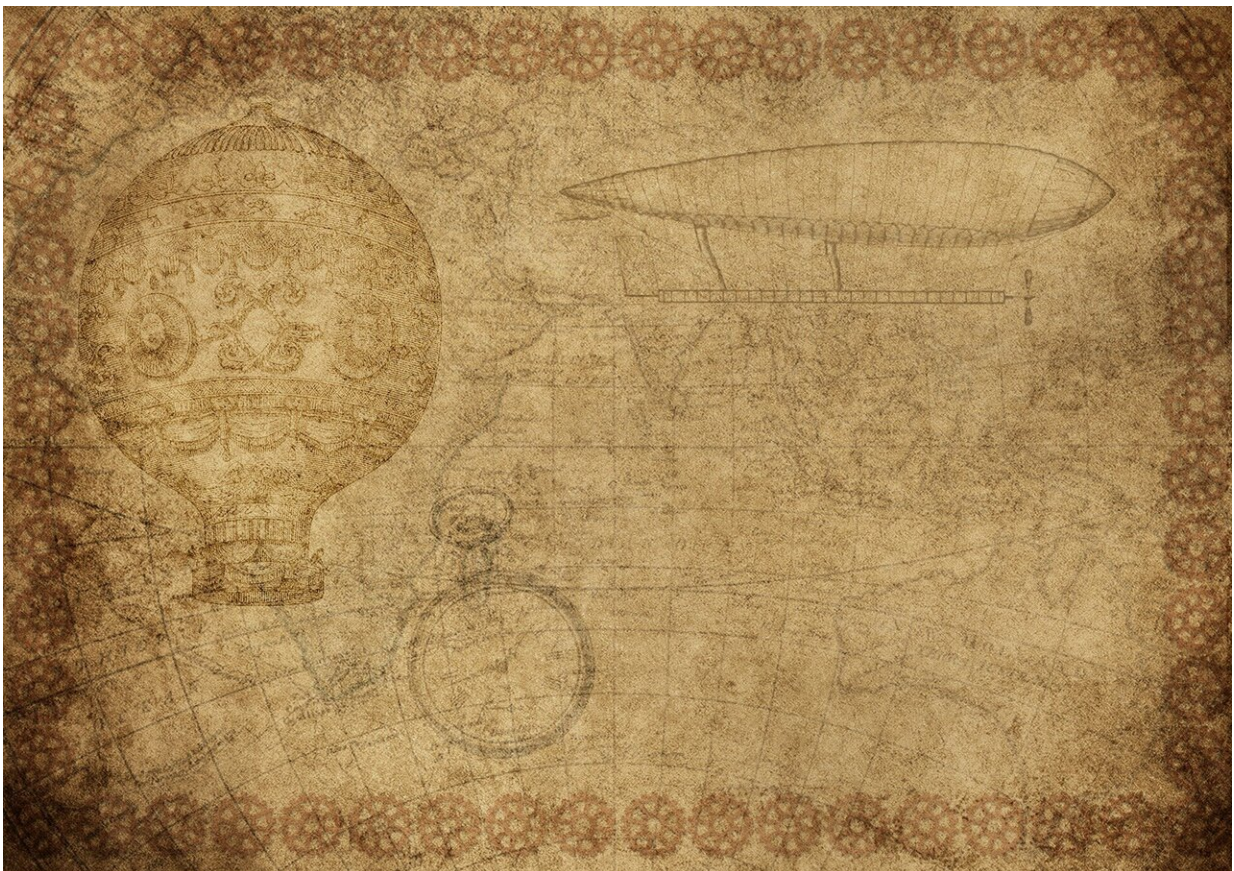


'Any business with a web presence is a potential target': Washington state sues 'patent troll'

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In February, SaltWorks, a Woodinville maker of sea salt consumer

products, got some unsettling legal news: The 19-year-old company was being sued for allegedly infringing on a patent covering technology in its e-commerce system.

Although the [patent](#) in the lawsuit appeared so generic it could apply to any kind of e-commerce, SaltWorks reportedly settled with the plaintiff, North Carolina-based Landmark Technology A, rather than wage a costly court battle.

SaltWorks, which declined to comment on the matter, isn't the only company targeted by Landmark.

In recent years, at least 10 Washington state firms, including Seattle-area businesses Jones Soda and The Essential Baking Company, reportedly have been sued by Landmark or a predecessor under what is known as patent trolling. According to the state Attorney General's Office, this "predatory" strategy uses "bad faith" patent claims to force small businesses into quick cash settlements.

But Landmark may be getting some of its own medicine.

On Thursday, Landmark became the first company to be sued under the Washington state's Patent Troll Protection Act, a 2015 law that, according to the Attorney General's Office, was intended to "'crack down' on 'patent trolls' who harass and threaten small businesses with patent infringement claims."

"Landmark extorts small businesses, demanding payment for webpages that are essential for running a business," Attorney General Bob Ferguson said in a statement Thursday. "It backs them into a corner—pay up now, or get buried in [legal fees](#)."

With the lawsuit, Ferguson said he's "putting patent trolls on notice:

Bully businesses with unreasonable patent assertions, and you'll see us in court."

John A. Lee, a Menlo Park, Calif., attorney listed in court documents as legal counsel for Landmark Technology A, did not respond to questions about the case. Court documents also list Lee as counsel for a second company, Landmark Technology, based in San Diego, which brought earlier patent infringement cases against Washington firms. According to the Attorney General's Office, Landmark Technology A is a successor to Landmark Technology, and is registered in North Carolina with a single member, Raymond Mercado, a North Carolina resident.

According to Ferguson, Landmark Technology A's "entire business model consists of demanding licensing fees from other companies." Between January 2019 and July 2020, the company sent "identical form demand letters" to nearly 1,200 [small businesses](#) across the country. Companies were told they had infringed on a patent owned by LTA that covers a broad swath of e-commerce operations and in many cases were threatened with litigation unless they paid Landmark a \$65,000 licensing fee.

According to Thursday's lawsuit, filed in U.S. District Court, Landmark Technology A "primarily targets customer login pages on company websites, but has also demanded license fees for webpages containing privacy practices, shopping carts, products for sale, and company home pages. In short, any business with a web presence is a potential target for LTA."

But in a 2014 legal action, the attorney general's lawsuit notes, the United States Patent and Trademark Office determined that the patent in question would likely be ruled invalid because it "does not recite a technological feature that is novel and unobvious over the prior art, and is therefore not a technological invention."

However, because the cost of taking LTA to court is so high, most companies likely settle, according to Ferguson.

"While absurd on its face that LTA has patented all company websites, individual businesses lack the resources needed to combat LTA's extortive demands," the lawsuit says. According to the lawsuit, four Washington companies have settled with LTA for between \$15,000 and \$20,000.

"Fighting these entities is expensive," said Ben Hodges, a Seattle attorney who has represented several firms named in Landmark lawsuits. The legal costs to merely file an initial response to LTA can be roughly similar to the amount LTA often settles for, which can be unsustainable for smaller firms, Hodges said.

"You don't see them going after the Amazons, the Microsofts of the world," Hodges added. "You see them going after small, family-owned businesses."

Five Washington businesses named in LTA's lawsuits either did not respond to questions about the litigation or declined to comment—in some cases citing requirements included in the settlements. Those firms were SaltWorks, Spokane-based Stoneway Electric Supply, and Seattle-based firms Tom Bihn Inc., Essential Baking, and Specialty Bottle.

Washington firms named in earlier suits by LTA's predecessor, Landmark Technology, included Jones Soda, Totally Chocolate, Thrift Books, and Gensco.

Joe Mullin, a policy analyst and patent expert with the Electronic Frontier Foundation, which advocates for "civil liberties in the digital world," said LTA relies on a two-part strategy: target firms that are too small to have resources for a legal battle, but settle before the case gets

to court.

LTA "avoids having their patents litigated on the merits," Mullin said. "They tend to have cases that settle well before a judge reaches any conclusions about the quality of their patent (claim)."

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