

residents of the state of Texas directly related to the instant patent infringement cause of action set forth herein. Further, on information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. §1391(c) and §1400(b) because acts constituting infringement have occurred in this judicial district.

Background

5. On July 10, 1990, United States Patent No. 4,941,090 (the '090 patent) entitled "Centralized Consumer Cash Value Accumulation System For Multiple Merchants" was duly and legally issued to Patrick D. McCarthy and which patent is now exclusively licensed to Source. Source has the sole right to bring all actions for infringement of the '090 patent and recover all damages for infringement of this patent.

6. On May 26, 1992, United States Patent No. 5,117,355 (the '355 patent) entitled "Centralized Consumer Cash Value Accumulation System For Multiple Merchants" was duly and legally issued to McCarthy and which is now exclusively licensed to Source. Source has the sole right to bring all actions for infringement of the '355 patent and recover all damages for infringement of this patent.

7. On April 13, 1993, United States Patent No. 5,202,826 (the '826 patent) entitled "Centralized Consumer Cash Value Accumulation System For Multiple Merchants" was duly and legally issued to McCarthy and which is now exclusively licensed to Source. Source has the sole right to bring all actions for infringement of the '826 patent and recover all damages for infringement of this patent.

8. On February 23, 1999, United States Patent No. Re: 36,116 (the '116 patent, attached hereto) entitled "Centralized Consumer Cash Value Accumulation System for Multiple Merchants" was duly and legally issued to McCarthy and which is now exclusively licensed to Source. Source

has the sole right to bring all actions for infringement of the '116 patent and recover all damages for infringement of this patent.

9. On information and belief, American Express owns, operates and is otherwise responsible for the following cards and associated reward, rebate and/or loyalty programs: "TrueEarningsSM cards, including the "TrueEarningsSM Card from Costco and American Express" (for individual consumers) and the "TrueEarningsSM Business Card from Costco and American Express"; "American Express Cash Rebate Card"; "Platinum Business Cash Rebate Card"; "Platinum Premium Business Cash Rebate Card"; "Blue Cash[®] Card"; "Blue Cash[®] for Business Card"; and "American Express[®]/Business ExtrAA[®] Corporate Card." Additionally, on information and belief, American Express owns, operates and is otherwise responsible for the following reward, rebate and/or loyalty programs which are associated with a number of American Express cards: OPEN SavingsSM program; and Savings at WorkSM program. The aforementioned reward, rebate and/or loyalty programs, and similar programs whose identities are not yet known, will hereafter be collectively referred to as the "Accused Instrumentalities." On information and belief, the Accused Instrumentalities utilize and practice the claimed inventions in the '116 patent.

Defendant's Infringement

10. Source incorporates by reference, paragraphs 1-9 herein.

11. On information and belief, American Express, through its Accused Instrumentalities, has and/or is currently infringing, contributorily infringing, and/or actively inducing the infringement of the '116 patent by making, using, selling, offering for sale and/or selling within this judicial district and elsewhere in the United States, without license or authority from Source, hardware, processes and methods that practice the inventions claimed in the '116 patent.

12. On information and belief, American Express's misappropriation of Plaintiff's inventions through infringement of the '116 patent has been willful and deliberate. On information and belief, American Express will continue its infringing activities and will continue this unlawful conduct unless restrained by this Court.

13. On information and belief, American Express's appropriation of the inventions through infringement of the '116 patent has allowed American Express to gain substantial market share in the customer loyalty, rebate and rewards and member services market and to reap unjustified profits. American Express's infringement has caused and will continue to cause irreparable harm to Source.

14. As a result of this unlawful behavior, Source has been damaged and will continue to be damaged by American Express's infringement of the '116 patent.

Demand for Jury Trial

15. Source respectfully demands a trial by jury for all claims alleged herein.

Prayer

16. Source respectfully prays for and asks the Court to find and enter judgment as to the following:

A) That this Court adjudge that United States Patent No. Re 36,116 is valid and that American Express is and has infringed the patents by direct infringement under 35 U.S.C. § 271(a), contributory infringement under 35 U.S.C. §271(c) and/or by inducing infringement under 35 U.S.C. §271(b) as claimed in the Complaint;

B) That Source be awarded under 35 U.S.C. §284, in an amount to be proven at trial, damages adequate to compensate Source for American Express's infringement of the '116 patent;

- C) That Source be awarded its costs and prejudgment interest on its damages, as provided for by 35 U.S.C. §284;
- D) That this court enter a preliminary and permanent injunction against Defendant and all of its officers, agents, affiliates, servants, employees, and attorneys, and all other persons in active concert or participation with them, against further infringement, inducing infringement, and/or contributing to the infringement of the '116 patent;
- E) An accounting be had for the damages to Source arising out of American Express's infringing activities, together with interest and costs and that such damages be awarded to Source;
- F) That Defendant be adjudged a willful infringer and that the damages to Source be increased under 35 U.S.C. §284 to three (3) times the amount found or measured;
- G) An award of attorney fees to Plaintiff under 35 U.S.C. §285;
- H) That the Defendant be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of their compliance with the requested injunction; and
- I) That Plaintiff be entitled to such other and further relief as the Court may deem appropriate.

DATED: August 8, 2006

Respectfully submitted,

/s/ Jerry W. Gunn

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this pleading was served on all counsel who has consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.R.Civ.P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by mail, on this the 8th day of August, 2006.

/s/ Jerry W. Gunn