

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

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U.S. DISTRICT COURT
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TX EASTERN-MARSHALL

SOURCE, INC.

Plaintiff

vs.

AMERICAN EXPRESS COMPANY

Defendant

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CIVIL ACTION NO 2-05CV-364 *CSO*

JURY

BY _____

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Source, Inc ("Plaintiff" or "Source"), files this Original Complaint and in support thereof would show the Court the following:

Parties

1. Source is a Delaware corporation with its principal place of business in Newhall, California

2. On information and belief, Defendant, American Express Company ("Defendant" or "American Express"), is a corporation having a principal place of business at 200 Vesey Street, New York, New York. On information and belief, American Express's agent to receive service of process is the Office of General Counsel, at the aforementioned address.

Jurisdiction

3. This Court has federal question jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

4. On information and belief, American Express has solicited business in the state of Texas, transacted business within the state of Texas and attempted to derive financial benefit from

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, attached hereto) entitled "Centralized Consumer Cash Value Accumulation System For Multiple Merchants" was duly and legally issued to Patrick D. McCarthy and which patent is now legally controlled by 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, attached hereto) entitled "Centralized Consumer Cash Value Accumulation System For Multiple Merchants" was duly and legally issued to McCarthy and which is now legally owned and controlled by 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, attached hereto) entitled "Centralized Consumer Cash Value Accumulation System For Multiple Merchants" was duly and legally issued to McCarthy and which patent is now legally controlled by 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 legally owned and controlled by 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, by its conduct of its ownership, operation, and issuance to consumers a credit card known as "The True Earnings Card," which is a rewards and rebate and loyalty program, has utilized and practiced the claimed inventions in the '090, '355, '826 and '116 patents.

Defendant's Infringement

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

11. On information and belief, American Express, through its True Earnings Card program, is currently infringing, contributorily infringing, and/or actively inducing the infringement of the '090, '355, '826 and '116 patents 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 '090, '355, '826 and '116 patents.

12. On information and belief, American Express's misappropriation of Plaintiff's inventions through infringement of the '090, '355, '826 and '116 patents has been willful and deliberate. It is also Source's belief that 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 '090, '355, '826 and '116 patents 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 '090, '355, '826 and '116 patents.

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 Nos 4,941,090, 5,117,355, 5,202,826 and the Re 36,116 are 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 '090, '355, '826 and '116 patents;

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 '090, '355, '826 and '116 patents;

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;

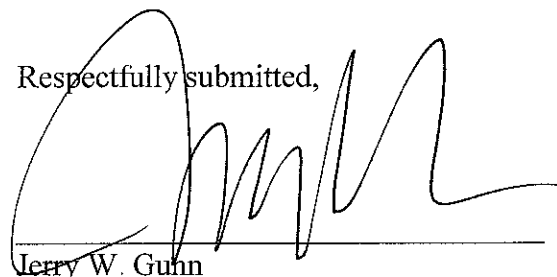
F) That Defendant be adjudged a willful infringer and that the damages to Source be increased under 35 U.S.C. § 284 to three (3) times the amount found or measured;

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.

Respectfully submitted,



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