

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SOURCE, INC.,

Plaintiff,

v.

CENDANT CORP.,

Defendant.

Civil Action No. 2-05CV-347 TJW

Jury Demanded

The Honorable T. John Ward
United States District Judge

CENDANT’S ANSWER AND COUNTERCLAIMS AGAINST SOURCE

Cendant Corporation (“Cendant”) respectfully submits this answer and affirmative defenses to the original complaint filed by Source, Inc. (“Source”), as well as its counterclaims against Source, and states as follows:

Parties

1. Cendant states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of Source’s complaint, which statement has the effect of a denial of these allegations.

2. Cendant admits that it is a Delaware corporation having a principal place of business at 9 West 57th Street, New York, New York 10019. Cendant admits that its agent to receive service of process is the Office of General Counsel at that same address.

Jurisdiction

3. Cendant admits that this Court has federal question jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 1338(a). Cendant denies the remaining allegations in paragraph 3.

4. Cendant admits that it currently does business in Texas, and that it does business within this judicial district, including through its TripRewards program and website. Cendant admits that venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b), but denies that it has committed any acts of patent infringement, and therefore denies that it has attempted to obtain benefits related in any matter to the alleged patent infringement. Cendant denies the remaining allegations in paragraph 4.

Background

5. Cendant admits that, on July 10, 1990, U.S. Patent No. 4,941,090 (the “’090 patent”) entitled “Centralized Consumer Cash Value Accumulation System For Multiple Merchants” was issued to Patrick D. McCarthy. Cendant states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 of Source’s complaint, which statement has the effect of a denial of these allegations.

6. Cendant admits that, on May 26, 1992, U.S. Patent No. 5,117,355 (the “’355 patent”) entitled “Centralized Consumer Cash Value Accumulation System For Multiple Merchants” was issued to Patrick D. McCarthy. Cendant states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 of Source’s complaint, which statement has the effect of a denial of these allegations.

7. Cendant admits that, on April 13, 1993, U.S. Patent No. 5,202,826 (the “’826 patent”) entitled “Centralized Consumer Cash Value Accumulation System For Multiple Merchants” was issued to Patrick D. McCarthy. Cendant states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 of Source’s complaint, which statement has the effect of a denial of these allegations

8. Cendant admits that, on February 23, 1999, U.S. Patent No. Re 36,116 (the “’116 patent”) entitled “Centralized Consumer Cash Value Accumulation System For Multiple Merchants” was issued to Patrick D. McCarthy. Cendant states that it lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 8 of Source’s complaint, which statement has the effect of a denial of these allegations.

9. Cendant denies the allegations in paragraph 9.

Source’s Infringement Allegations

10. Cendant incorporates by reference its responses to paragraphs 1-9 as though set forth here.

11. Cendant denies the allegations in paragraph 11.

12. Cendant denies the allegations in paragraph 12.

13. Cendant denies the allegations in paragraph 13.

14. Cendant denies the allegations in paragraph 14.

Source’s Demand for Jury Trial

15. Cendant states that Source’s demand for jury trial does not require an answer.

Source’s Prayer

16. Cendant denies that Source is entitled to any relief whatsoever.

CENDANT’S AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Source is not entitled to any relief against Cendant because Cendant is not infringing, and has not infringed, directly, by inducement, contributorily, or in any way, any valid and asserted claim of any of the ’090, ’355, ’826, and ’116 patents (collectively, the “Source asserted patents”).

Second Affirmative Defense

2. The claims of the '090 patent are invalid under one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 102, 103 and 112.

Third Affirmative Defense

3. The claims of the '355 patent are invalid under one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 102, 103 and 112.

Fourth Affirmative Defense

4. The claims of the '826 patent are invalid under one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 102, 103 and 112.

Fifth Affirmative Defense

5. The claims of the '116 patent are invalid under one or more sections of Title 35 of the U.S. Code, including, without limitation, 35 U.S.C. §§ 102, 103 and 112.

CENDANT'S COUNTERCLAIMS AGAINST SOURCE

As for its counterclaims against Source, Cendant complains as follows:

1. Cendant is a corporation organized under the laws of the State of Delaware with a principal place of business at 9 West 57th Street, New York, New York 10019.

2. On information and belief, Source is a corporation organized under the laws of the State of Delaware, with a principal place of business in Newhall, California.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

4. Source is subject to personal jurisdiction in this judicial district.

5. Venue for this counterclaim is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I

(For Declaratory Judgment of Non-Infringement)

6. Cendant repeats and realleges the allegations of the preceding paragraphs in this counterclaim as if fully set forth herein.

7. Contrary to Source's allegations, Cendant is not infringing, and has not infringed, directly, by inducement, contributorily, or in any way, any valid and asserted claim of any of the Source asserted patents.

8. To resolve the legal and factual questions raised by Source, and to afford relief from the uncertainty and controversy that Source's accusations have precipitated, Cendant is entitled to a declaratory judgment that it does not infringe any valid and asserted claim of any of the Source asserted patents.

COUNT II

(For Declaratory Judgment of Invalidity)

9. Cendant repeats and realleges the allegations of the preceding paragraphs in this counterclaim as if fully set forth herein.

10. Contrary to Source's allegations, one or more of the claims of the Source asserted patents is invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and 112.

11. To resolve the legal and factual questions raised by Source, and to afford relief from the uncertainty and controversy that Source's accusations have precipitated, Cendant is entitled to a declaratory judgment that one or more of the claims of the Source asserted patents is invalid.

CENDANT'S PRAYER FOR RELIEF

WHEREFORE, Cendant respectfully requests that this Court enter judgment in its favor and grant the following relief:

A. A declaration that Cendant does not infringe any valid and asserted claim of U.S. Patent Nos. 4,941,090, 5,117,355, 5,202,826, and Re 36,116;

B. A declaration that U.S. Patent Nos. 4,941,090, 5,117,355, 5,202,826, and Re 36,116 are invalid;

C. Dismissal of all of Source's claims in their entirety with prejudice;

D. A declaration that Source take nothing by way of its complaint;

E. An order awarding Cendant its costs pursuant to 35 U.S.C. § 284;

F. An order finding that this is an exceptional case and awarding Cendant its reasonable attorney fees pursuant to 35 U.S.C. § 285; and

G. An order awarding such additional relief as the Court may deem appropriate and just under the circumstances.

CENDANT'S DEMAND FOR JURY TRIAL

Cendant hereby demands a trial by jury on all issues so triable.

Dated: November 28, 2005

Respectfully submitted,

CENDANT CORPORATION

By: /s/ J. Thad Heartfield

J. Thad Heartfield
Texas Bar No. 09346800
HEARTFIELD & MCGINNIS, L.L.P.
2195 Dowlen Road
Beaumont, Texas 77706
Phone: 409.866.3318
Fax: 409.866.5789
E-mail: thad@heartfieldmcginnis.com

Attorneys for defendant and counter-
claim plaintiff Cendant Corp.

Of counsel:

McDERMOTT WILL & EMERY LLP
Fay E. Morisseau (State Bar No. 14460750)
Matthew F. Weil (*Pro Hac Vice* application in process)
David M. Stein (State Bar No. 00797494)
18191 Von Karman Avenue, Suite 500
Irvine, CA 92612-7108
Phone: 949.851.0633
Fax: 949.851.9348
E-mail: fmorisseau@mwe.com
E-mail: mweil@mwe.com
E-mail: dstein@mwe.com

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 have 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 certified mail, return receipt requested, on this the 28th day of November, 2005.

/s/ J. Thad Heartfield
J. Thad Heartfield