

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. _____

RAINBOW REWARDS USA, INC., a Delaware corporation,

Plaintiff,

v.

SOURCE, INC., a Delaware corporation,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Rainbow Rewards USA, Inc. (“Rainbow Rewards”) complains against defendant Source, Inc. (“Source”) as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, seeking a declaration that all claims of the United States Patent number RE 36,116 (“the ‘116 patent”) (a copy of the ‘116 Patent is attached as Exhibit 1) are invalid and/or unenforceable, and that Rainbow Rewards does not infringe any claim(s) of the ‘116 patent.

2. Rainbow Rewards is a Delaware corporation with its principal place of business in Denver, Colorado.

3. Source is a Delaware corporation and, upon information and belief, has its principal place of business in Newhall, California. On information and belief, Source owns the rights in the '116 patent, whose validity, enforceability and infringement are challenged in this action.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Source under Colorado's long arm statute, C.R.S. § 13-1-124, because Source conducts a substantial part of its business in this State including actively marketing its products and services related to the '116 patent in this State through its websites such as www.sourceinc.tv, www.slnint.com, www.scoreinfo.tv, and www.scoremall.com. Source has also threatened Rainbow Rewards with a claim for patent infringement in the State of Colorado.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).

7. This action is properly brought under 28 U.S.C. § 2201, because an actual controversy exists between Rainbow Rewards and Source concerning the validity of the claims of the '116 patent, and whether Rainbow Rewards infringes any valid claims of the '116 patent. Specifically, on or about December 12, 2006, Source caused a letter to be sent to Rainbow Rewards, asserting that Rainbow Rewards' loyalty program infringes at least one claim of the '116 patent. A copy of this letter is attached as Exhibit 2.

GENERAL ALLEGATIONS

8. Rainbow Rewards provides a consumer loyalty program through which merchants can offer rewards to its customers who can receive cash-back in connection with one or more purchases made at one or more participating merchants.

9. Upon information and belief, Source provides a reciprocal loyalty platform through which loyalty program providers, such as Rainbow Rewards, can offer their services to merchants and consumers.

10. On information and belief, Source owns the rights in the '116 patent.

**FIRST CLAIM FOR RELIEF
(Declaration of Invalidity)**

11. Rainbow Rewards incorporates by reference the allegations set forth in Paragraphs 1 through 10 of this Complaint as if fully set forth herein.

12. All of the claims of the '116 patent are invalid and/or unenforceable.

13. An actual controversy exists between Rainbow Rewards and Source regarding the validity and/or enforceability of the claims of the '116 patent.

14. Rainbow Rewards is entitled to a declaration from this Court that none of the claims of the '116 patent is valid and/or enforceable.

**SECOND CLAIM FOR RELIEF
(Declaration of Non-Infringement)**

15. Rainbow Rewards incorporates by reference the allegations set forth in Paragraphs 1 through 10 of this Complaint as if fully set forth herein.

16. Rainbow Rewards' loyalty program does not infringe any valid and enforceable claim(s) of the '116 patent.

17. An actual controversy exists between Rainbow Rewards and Source regarding the infringement of the claims of the '116 patent by Rainbow Rewards.

18. Rainbow Rewards is entitled to a declaration from this Court that it is not infringing any valid and enforceable claim(s) of the '116 patent.

19. The present case is exceptional because Source has acted maliciously and with an intent to harm Rainbow Rewards. Accordingly, Rainbow Rewards is entitled to recover its reasonable attorneys fees and costs attendant to this matter.

PRAYER FOR RELIEF

Wherefore, Rainbow Rewards respectfully requests that this Court:

- a. Enter judgment in its favor on the claims asserted in this Complaint;
- b. Declare that none of the claims of the '116 patent is valid and enforceable;
- c. Declare that Rainbow Rewards does not infringe any valid or enforceable claim(s) of the '116 patent;
- d. Award Rainbow Rewards its legal costs and expenses, including reasonable attorneys' fees; and
- e. Award such other and further relief as the Court deems just in the circumstances.

JURY DEMAND

Rainbow Rewards demands a trial by jury on all issues so triable.

DATED: February 1, 2007.

s/Srecko Vidmar
Thomas J. Rossa (*Admitted in this District*)
Srecko Vidmar (Colo. Atty. Reg. No. 34921)

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