

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BLUE CALYPSO, INC.,

Plaintiff,

v.

LIVINGSOCIAL, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint against Defendant LivingSocial, Inc. (“LivingSocial” or “Defendant”), Plaintiff Blue Calypso, Inc. (“Blue Calypso” or “Plaintiff”) alleges the following:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, et seq.

THE PARTIES

2. Plaintiff Blue Calypso, Inc. is a Delaware corporation with its principal place of business at 19111 North Dallas Parkway, Suite 200, Dallas, Texas 75287, in the Eastern District of Texas.

3. Defendant LivingSocial, Inc. is a Delaware corporation with its principal place of business at 1445 New York Avenue NW, Suite 200, Washington, DC 20005.

4. LivingSocial’s registered agent for service of process is Corporation Service Company D/B/A CSC-Lawyers Incorporating Service Company, 1021 Main Street, Suite 1150, Houston, Texas 77002-6508

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7. Defendant is subject to this Court's personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due to Defendant's substantial business conducted within the State of Texas and within this judicial district, including acts constituting direct and/or indirect infringement as alleged herein occurring within the State of Texas and within this judicial district.

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

9. This case is related to and involves the same patents involved in the following prior action in the United States District Court for the Eastern District of Texas, Tyler Division: *Blue Calypso, Inc. v. Groupon, Inc.*, Civil Action No. 6:12-cv-486.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,664,516

10. The allegations set forth in the foregoing paragraphs 1 through 9 are incorporated into this First Count.

11. On February 16, 2010, United States Patent No. 7,664,516 ("the '516 Patent"), entitled "Method and System for Peer-to-Peer Advertising Between Mobile Communication Devices," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '516 Patent is attached as Exhibit A to this Complaint.

12. Blue Calypso is the assignee and owner of the right, title and interest in and to the '516 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for the infringement of it.

13. Blue Calypso has marked all or substantially all of its products covered by the '516 Patent in accordance with 35 U.S.C. § 287(a). LivingSocial has received constructive notice of the '516 Patent prior to the filing of this lawsuit and of the '516 Patent, and at least as early as its issuance, in accordance with 35 U.S.C. § 287(a).

14. LivingSocial has and continues to infringe the '516 Patent by operating a computer-based program as shown in Exhibits C and D, which depict screenshots of LivingSocial's computer-based program. LivingSocial's computer-based program includes functionality for enrolling both consumers and advertisers and for offering deals to consumers, as depicted in Exhibit C, based on identification of at least a geographic match between the consumer's profile information and the advertiser's deal. After offering the deal to the consumer based on such a geographic match, LivingSocial provides additional functionality for encouraging the consumer to refer the deal to other consumers. In particular, LivingSocial provides content to the referring consumer to carry out such a referral as depicted in Exhibit D.

15. In violation of 35 U.S.C. § 271, LivingSocial has infringed and continues to infringe one or more claims of the the '516 Patent, literally and/or under the doctrine of equivalents, directly and/or indirectly.

16. LivingSocial induces infringement of the '516 Patent by, for example, encouraging use of its computer-based program by consumers and advertisers through the use of discounts and incentives. LivingSocial contibutorily infringes the '516 Patent by, for example,

providing content and functionality used by consumers to refer deals to other consumers (as shown in Exhibit D).

17. LivingSocial has caused and continues to cause damage to Blue Calypso, and Blue Calypso is entitled to recover from LivingSocial the damages sustained by LivingSocial as a result of LivingSocial's wrongful acts in an amount subject to proof at trial. LivingSocial's infringement of the '516 Patent has caused and will continue to cause irreparable harm to Blue Calypso for which there is no adequate remedy at law unless and until LivingSocial is enjoined by this Court from infringing the '516 Patent.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,155,679

18. The allegations set forth in the foregoing paragraphs 1 through 17 are incorporated into this Second Count.

19. On April 10, 2012, United States Patent No. 8,155,679 ("the '679 Patent"), entitled "System and Method for Peer-to-Peer Advertising Between Mobile Communication Devices," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '679 Patent is attached as Exhibit B to this Complaint.

20. Blue Calypso is the assignee and owner of the right, title and interest in and to the '679 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for the infringement of it.

21. Blue Calypso has marked all or substantially all of its products covered by the '679 Patent in accordance with 35 U.S.C. § 287(a). LivingSocial has received constructive notice of the '679 Patent prior to the filing of this lawsuit and of the '679 Patent, and at least as early as its issuance, in accordance with 35 U.S.C. § 287(a).

22. LivingSocial has and continues to infringe the '679 Patent by operating a computer-based program as shown in Exhibits C and D, which depict screenshots of LivingSocial's computer-based program. LivingSocial's computer-based program includes functionality for enrolling both consumers and advertisers and for offering deals to consumers, as depicted in Exhibit C, based on identification of at least a geographic match between the consumer's profile information and the advertiser's deal. After offering the deal to the consumer based on such a geographic match, LivingSocial provides additional functionality for encouraging the consumer to refer the deal to other consumers. In particular, LivingSocial provides content to the referring consumer to carry out such a referral as depicted in Exhibit D.

23. In violation of 35 U.S.C. § 271, LivingSocial has infringed and continues to infringe one or more claims of the the '679 Patent, literally and/or under the doctrine of equivalents, directly and/or indirectly.

24. LivingSocial induces infringement of the '679 Patent by, for example, encouraging use of its computer-based program by consumers and advertisers through the use of discounts and incentives. LivingSocial contributorily infringes the '679 Patent by, for example, providing content and functionality used by consumers to refer deals to other consumers (as shown in Exhibit D).

25. LivingSocial has caused and continues to cause damage to Blue Calypso, and Blue Calypso is entitled to recover from LivingSocial the damages sustained by LivingSocial as a result of LivingSocial's wrongful acts in an amount subject to proof at trial. LivingSocial's infringement of the '679 Patent has caused and will continue to cause irreparable harm to Blue Calypso for which there is no adequate remedy at law unless and until LivingSocial is enjoined by this Court from infringing the '679 Patent.

JURY DEMAND

26. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Blue Calypso demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Blue Calypso demands judgment for itself and against Defendant LivingSocial as follows:

- A. An adjudication that LivingSocial has infringed the '516 Patent and the '679 Patent;
- B. That this Court enter an order permanently enjoining LivingSocial and its officers, agents, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '516 Patent and '679 Patent;
- C. An award of damages to be paid by LivingSocial adequate to compensate Blue Calypso for LivingSocial's infringement of the '516 Patent and the '679 Patent together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- D. That this Court order an accounting of all infringing acts including, but not limited to, those acts not presented at trial, and award Blue Calypso additional damages for any such acts;
- E. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Blue Calypso's attorneys' fees, expenses, and costs incurred in this action; and
- F. An award to Blue Calypso of such further relief at law or in equity as the Court deems just and proper.

Dated: August 24, 2012

Respectfully submitted,

/s/ Melissa Richards Smith

Melissa Richards Smith – Lead Attorney
Texas State Bar No. 24001351
GILLAM & SMITH, L.L.P.
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
Email: melissa@gillamsmithlaw.com

W. Bryan Farney
Texas State Bar No. 06826600
Steven R. Daniels
Texas State Bar No. 24025318
Bryan D. Atkinson
Texas State Bar No. 24036157
FARNEY DANIELS, LLP
800 W. Austin Avenue, Suite 200
Georgetown, Texas 78626
Telephone: (512) 582-2828
Facsimile: (512) 582-2829
Email: bfarney@farneydaniels.com
Email: sdaniels@farneydaniels.com
Email: batkinson@farneydaniels.com

**COUNSEL FOR PLAINTIFF
BLUE CALYPSO, INC.**