

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

**BLUE CALYPSO, INC.,
Plaintiff**

v.

**IZEA, INC.
Defendant**

Civil Action No. 6:12-cv-786

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Blue Calypso files this Second Amended Complaint and demand for jury trial seeking relief for patent infringement by Izea. Blue Calypso alleges the following:

THE PARTIES

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

2. On information and belief, Defendant IZEA, Inc. is a Nevada corporation, with its principal place of business at 150 North Orange Avenue, Suite 412, Orlando, FL 32801. Defendant IZEA, Inc. may be served with summons by serving its registered agent for the service of process, VCorp Services, LLC., 1645 Village Center Circle Suite 170, Las Vegas, Nevada 89134.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 et. seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Izea because Izea has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and

within this judicial district and because Izea has committed acts of patent infringement within the State of Texas and within this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 139(b) and (c) and 1400(b).

INFRINGEMENT

6. 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. Blue Calypso owns the ‘516 patent by assignment. A true and correct copy of the ‘516 patent is attached as Exhibit A.

7. 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 Communications Devices” was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso owns the ‘679 patent by assignment. A true and correct copy of the ‘679 patent is attached as Exhibit B.

8. On May 7, 2013, United States Patent No. 8,438,055 (“the ‘055 patent”) entitled “System and Method for Providing Endorsed Advertisements and Testimonials between Communication Devices” was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso owns the ‘055 patent by assignment. A true and correct copy of the ‘055 patent is attached as Exhibit C.

9. On May 28, 2013, United States Patent No. 8,452,646 (“the ‘646 patent”) entitled “System and Method for Providing Endorsed Electronic Offers Between Communication Devices” was duly and legally issued by the United States Patent and Trademark Office. Blue

Calypso owns the '646 patent by assignment. A true and correct copy of the '646 patent is attached as Exhibit D.

10. On June 4, 2013, United States Patent No. 8,457,670 ("the '670 patent") entitled "System and Method for Peer-To-Peer Advertising Between Mobile Communication Devices" was duly and legally issued by the United State Patent and Trademark Office. Blue Calypso owns the '670 patent by assignment. A true and correct copy of the '670 patent is attached as Exhibit E.

11. Izea operates at least three platforms that infringe one or more claims of the '516, '679, '055, '646, and '670 patents, including Sponsored Tweets, Social Sparks, and WeRewards.

12. Sponsored Tweets operates a system typified by the screen shots attached as Exhibits F, and G. In doing so Sponsored Tweets infringes one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of equivalents. Sponsored Tweets directly infringes by using the system and making it available to advertisers and consumers. Sponsored Tweets induces infringement by consumers and advertisers by encouraging them to use it system. Sponsored Tweets contributorily infringes by providing content to consumers for use in the system.

13. Social Sparks operates a system described by the screen shot of the Social Sparks "How It Works" webpage attached as Exhibit H. In doing so Social Sparks infringes one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of equivalents. Social Sparks directly infringes by using the system and making it available to advertisers and consumers. Social Sparks induces infringement by consumers and advertisers by encouraging them to use it system. Social Sparks contributorily infringes by providing content to consumers for use in the system.

14. WeRewards operates a system described by the screen shots of Izea's promotional video attached as Exhibits I and J. In doing so WeRewards infringes one or more claims of the '516 and the '679, literally or under the doctrine of equivalents. WeRewards directly infringes by using the system and making it available to advertisers and consumers. WeRewards induces infringement by consumers and advertisers by encouraging them to use its system. WeRewards contributorily infringes by providing content to consumers for use in the system.

15. On information and belief, Izea will continue to infringe the '516, '679, '055, '646, and '670 patents unless and until it is enjoined by this Court.

16. Izea has caused and will continue to cause Blue Calypso irreparable injury and damage by infringing the '516, '679, '055, '646, and '670 patents. Blue Calypso will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Izea is enjoined from infringing the '516, '679, '055, '646, and '670 patents.

PRAYER FOR RELIEF

WHEREFORE, Blue Calypso respectfully requests that this Court:

1. Enter judgment that Izea has infringed the '516, '679, '055, '646, and '670 patents;
2. Enter an order permanently enjoining Izea and its officers, agents, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '516, '679, '055, '646, and '670 patents;
3. Award Blue Calypso damages in an amount sufficient to compensate it for Izea's infringement of the '516, '679, '055, '646, and '670 patents, together with prejudgment and post-judgment interest and costs under 35 U.S.C. § 284;

4. Award Blue Calypso an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;

5. Declare this case to be “exceptional” under 35 U.S.C. § 285 and award Blue Calypso its attorney fees, expenses, and costs incurred in this action; and

6. Award Blue Calypso such other and further relief as this Court deems just and proper.

JURY DEMAND

Blue Calypso hereby requests a trial by jury on issues so triable by right.

Dated: June 13, 2013

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Carl E. Bruce

Thomas M. Melsheimer
Texas Bar No. 13922550
txm@fr.com
Carl E. Bruce
Texas Bar No. 24036278
ceb@fr.com
David B. Conrad
Texas Bar No. 24049042
1717 Main Street, Suite 5000
Dallas, Texas 75201
Telephone (214) 747-5071
Facsimile (214) 747-2091

Robert E. Hillman
Massachusetts BBO No. 234,820
Hillman@fr.com
One Marina Park Drive
Boston, MA 02210

COUNSEL FOR BLUE CALYPSO, INC.

By: /s/ Jack Wesley Hill

Jack Wesley Hill
Texas Bar No. 24032294
wh@wsfirm.com
WARD & SMITH LAW FIRM
1127 Judson Road, Suite 220
Longview, Texas 75601
Telephone (903) 757-6400
Facsimile (903) 757-2323

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

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on June 13, 2013, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Carl E. Bruce
