

**FILED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

2014 NOV 20 P 5:02

CARFAX, INC.,

Plaintiff,

v.

RED MOUNTAIN TECHNOLOGIES, LLC;  
BRISTOL WEST HOLDINGS, INC.;  
BRISTOL WEST INSURANCE COMPANY,  
INC.; and BRISTOL WEST CASUALTY  
INSURANCE COMPANY, INC.,

Defendants.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civ. Act. No. 1:14 CV 1590  
GBL/IDD

**COMPLAINT**

Plaintiff, Carfax, Inc. (“Carfax”), for its complaint against defendants, Red Mountain Technologies, LLC (“Red Mountain”), Bristol West Holdings, Inc., Bristol West Insurance Company, Inc., and Bristol West Casualty Insurance Company, Inc. (collectively, “Bristol West”), to the best of its knowledge, information, and belief, alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for infringement of United States Patent No. 8,255,243 (“the ‘243 Patent”) and United States Patent No. 8,255,244 (“the ‘244 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

2. Carfax also seeks relief under the Virginia state common law for tortious interference with a contract or business expectancy.

3. Finally, Carfax seeks a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, that Carfax has not and does not infringe United States Patent No. 8,731,977 (“the ’977 Patent”).

### **THE PARTIES**

4. Carfax is a corporation organized, existing, and doing business under the laws of the Commonwealth of Pennsylvania, with its office and principal place of business at 5860 Trinity Parkway, Suite 600, Centreville, Virginia 20120.

5. On information and belief, Red Mountain is a limited liability company organized, existing, and doing business under the laws of the State of Alabama, with its office and principal place of business at 2200 Woodcrest Place, Birmingham, Alabama 35209.

6. On information and belief, Bristol West Holdings, Inc. is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its office and principal place of business at 900 South Pine Island Road, Suite 600, Plantation, Florida 33324.

7. On information and belief, Bristol West Insurance Company, Inc. is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business at 5990 West Creek Road, Independence, Ohio 44131.

8. On information and belief, Bristol West Casualty Insurance Company, Inc. is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business at 717 East 9th Street, Suite 19, Cleveland, OH 44114.

9. On information and belief, Bristol West is a customer of Red Mountain.

**JURISDICTION AND VENUE**

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

11. This action also arises under Virginia state law, including Virginia state common law for tortious interference. This Court has subject matter jurisdiction over this claim under 28 U.S.C. § 1367 because Carfax's Virginia state common law claim arises out of the same facts and circumstances as its federal claims.

12. This Court has personal jurisdiction over Bristol West because Bristol West regularly conducts business in the Eastern District of Virginia, and therefore has substantial and continuous contacts within this judicial district, at least because it is licensed to sell and has sold insurance policies in this judicial district. Further, Bristol West has purposefully availed itself to the privileges of conducting business in this judicial district and some of Bristol West's acts of patent infringement have taken place in this judicial district. In particular, upon information and belief, Bristol West maintains insurance agents throughout Virginia that use vehicle history data and the methods claimed by the '243 and '244 Patents to evaluate risk and assist in underwriting the insurance policies sold in this judicial district. Therefore, all or a substantial part of the events giving rise to Carfax's claims for patent infringement, including acts of infringement, are occurring in this judicial district. Accordingly, exercise of personal jurisdiction over Bristol West will not offend traditional notions of fair play and substantial justice.

13. This Court has personal jurisdiction over Red Mountain because Red Mountain regularly conducts business in the Eastern District of Virginia, and therefore has substantial and continuous contacts within this judicial district, at least because it has sold vehicle history data to Bristol West, and induces and/or contributes to Bristol West's infringing use of such information in this judicial

district. Therefore, all or a substantial part of the events giving rise to Carfax's claims for patent infringement, including acts of infringement, are occurring in this judicial district. Further, Red Mountain has purposefully availed itself to the privileges of conducting business in this judicial district. In particular, upon information and belief, Red Mountain offers its vehicle history data and vehicle history reports to consumers using the Auto Check Auction website at [www.autocheckauctions.com](http://www.autocheckauctions.com), which is available online to consumers in this judicial district. Additionally, Red Mountain's threats of infringement include actions by Carfax, a resident of this judicial district. Accordingly, exercise of personal jurisdiction over Red Mountain will not offend traditional notions of fair play and substantial justice.

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

### **BACKGROUND**

15. Carfax is a leading source of vehicle history data, providing such information to millions of consumers each year. Thousands of businesses, service providers, and government entities also rely on such information from Carfax. Carfax has valid and enforceable data service contracts with these customers.

16. On August 28, 2012, the United States Patent and Trademark Office duly and legally issued the '243 Patent, entitled "System and Method for Insurance Underwriting and Rating." Carfax is the owner by assignment of all right, title, and interest in the '243 Patent, including the right to assert all causes of action arising under the patent and the right to any remedies for infringement of the patent. A true and correct copy of the '243 Patent is attached hereto as **Exhibit A**.

17. On August 28, 2012, the United States Patent and Trademark Office duly and legally issued the '244 Patent, entitled "System and Method for Insurance Underwriting and Rating." Carfax is

the owner by assignment of all right, title, and interest in the '244 Patent, including the right to assert all causes of action arising under the patent and the right to any remedies for infringement of the patent. A true and correct copy of the '244 Patent is attached hereto as **Exhibit B**.

18. Upon information and belief, Red Mountain is an aggregator and provider of vehicle history data to the insurance industry.

19. Upon information and belief, Bristol West is an insurance provider and underwriter, and a customer of Red Mountain's vehicle history data services.

20. Bristol West is a former customer and consumer of Carfax's vehicle history data services. Bristol West used vehicle history data provided to it by Carfax to practice the patented methods for underwriting and analyzing insurability claimed by the '243 and '244 Patents.

21. Upon information and belief, after the issuance of the '243 and '244 Patents but before Bristol West became a Red Mountain customer, Red Mountain approached and contacted customers of Carfax, including Bristol West, to inform them of Red Mountain's belief that Carfax's '243 and '244 Patents are invalid. Further, upon information and belief, Red Mountain encouraged one or more of Carfax's customers, including Bristol West, to cease business dealings with Carfax, and instead utilize Red Mountain's vehicle history data in a manner that would infringe the '243 and '244 Patents.

22. Upon information and belief, Red Mountain is the owner by assignment of United States Patent No. 8,731,977 ("the '977 Patent"), entitled "System and Method for Analyzing and Using Vehicle Historical Data," and which was issued by the United States Patent and Trademark Office on May 20, 2014.

23. Upon information and belief, Progressive Insurance Inc. (“Progressive”) was seeking a provider of vehicle history data for underwriting and analyzing insurability of automotive insurance policies, including the services offered by each of Carfax and Red Mountain.

24. Upon information and belief, Red Mountain threatened Progressive with patent infringement litigation if Progressive selected Carfax as Progressive’s provider of vehicle history data. In particular, upon information and belief, Red Mountain’s threat was that Progressive’s use of vehicle history data provided by Carfax would infringe the ’977 Patent.

25. As a result of Red Mountain’s threats of patent litigation, negotiations between Progressive and Carfax were hampered. Progressive subsequently sought assurances from Carfax and indicated that it may delay implementation of a system using vehicle history data provided by Carfax.

#### **COUNT I: INFRINGEMENT OF THE ’243 PATENT**

26. Paragraphs 1-25 are incorporated herein as set forth above.

27. Bristol West, through its use of vehicle history data to evaluate risk and assist in underwriting auto insurance policies, has directly infringed and continues to directly infringe at least claim 1 of the ’243 patent, in violation of 35 U.S.C. § 271.

28. Red Mountain, through its sales and marketing of vehicle history data to evaluate risk and assist in underwriting auto insurance policies, has contributed to and continues to contribute to the infringement by others, including Bristol West, and induced and continues to induce others, including Bristol West, to infringe at least claim 1 of the ’243 patent, in violation of 35, U.S.C. § 271.

29. Red Mountain knew and intended that Bristol West would use the vehicle history data provided by Red Mountain to practice the methods for underwriting and analyzing insurability claimed by the '243 Patent in the same manner that Bristol West previously used the vehicle history data provided by Carfax, and Bristol West did in fact use, and continues to use, the Red Mountain data to practice the patented methods in violation of Carfax's rights.

30. Bristol West and Red Mountain's infringement of the '243 patent has been, and continues to be, deliberate, willful, and knowing.

31. Carfax has been, and continues to be, damaged and irreparably harmed by Bristol West and Red Mountain's infringement of the '243 Patent and will continue to be harmed unless Bristol West and Red Mountain's infringing acts are permanently enjoined by this Court pursuant to 35 U.S.C. § 283.

## **COUNT II: INFRINGEMENT OF THE '244 PATENT**

32. Paragraphs 1-31 are incorporated herein as set forth above.

33. Bristol West, through its use of vehicle history data to evaluate risk and assist in underwriting auto insurance policies, has directly infringed and continues to directly infringe at least claim 1 of the '244 patent, in violation of 35 U.S.C. § 271.

34. Red Mountain, through its sales and marketing of vehicle history data to evaluate risk and assist in underwriting auto insurance policies, has contributed to and continues to contribute to the infringement by others, including Bristol West, and induced and continues to induce others, including Bristol West, to infringe at least claim 1 of the '244 patent, in violation of 35, U.S.C. § 271.

35. Red Mountain knew and intended that Bristol West would use the vehicle history data provided by Red Mountain to practice the methods for underwriting and analyzing insurability claimed by the '244 Patent in the same manner that Bristol West previously used the vehicle history data provided by Carfax, and Bristol West did in fact use, and continues to use, the Red Mountain data to practice the patented methods in violation of Carfax's rights.

36. Bristol West and Red Mountain's infringement of the '244 patent has been, and continues to be, deliberate, willful, and knowing.

37. Carfax has been, and continues to be, damaged and irreparably harmed by Bristol West and Red Mountain's infringement of the '244 Patent and will continue to be harmed unless Bristol West and Red Mountain's infringing acts are permanently enjoined by this Court pursuant to 35 U.S.C. § 283.

### **COUNT III: TORTIOUS INTERFERENCE**

38. Paragraphs 1-37 are incorporated herein as set forth above.

39. Carfax has and has had valid contractual relationships or business expectancies with third parties, such as Progressive. Red Mountain has committed tortious acts, including threatening assertion of Red Mountain's '977 Patent against Progressive, which have disrupted and/or prevented contracts and business relationships between Carfax and such third parties.

40. Red Mountain committed these acts with the conscious desire to prevent the relationships and contracts from forming or knew that the interference was certain or substantially certain to occur as a result of their conduct.

41. Carfax has incurred actual harm and damages as a result of Red Mountain's improper actions.



**COUNT IV: DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

42. Paragraphs 1-41 are incorporated herein as set forth above.

43. An actual and justiciable controversy exists between Carfax and Red Mountain as to infringement of the '977 Patent by Carfax, which is evidenced by Red Mountain's threat of litigation in response to Progressive's planned use of vehicle history data provided by Carfax.

44. A judicial declaration is necessary and appropriate so that Carfax may ascertain its rights regarding its products and services in view of the '977 Patent. Carfax has no adequate remedy at law.

45. Under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and Title 35 of the United States Code, Carfax requests a declaration from the Court that Carfax does not infringe and has not infringed any valid and enforceable claim of the '977 Patent.

**JURY DEMAND**

46. Carfax hereby respectfully demands a jury trial on all issues appropriately triable by a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Carfax respectfully prays for the following relief:

- a. Judgment against Bristol West that it has and continues to infringe, either literally or under the doctrine of equivalents, the '243 Patent;
- b. Judgment that Carfax be awarded damages adequate to compensate it for Bristol West's infringement of the '243 Patent, together with pre- and post-judgment interest;
- c. Judgment against Red Mountain that it has and continues to infringe the '243 Patent;
- d. Judgment that Carfax be awarded damages adequate to compensate it for Red Mountain's infringement of the '243 Patent, together with pre- and post-judgment interest;

e. Judgment against Bristol West that it has and continues to infringe, either literally or under the doctrine of equivalents, the '244 Patent;

f. Judgment that Carfax be awarded damages adequate to compensate it for Bristol West's infringement of the '244 Patent, together with pre- and post-judgment interest;

g. Judgment against Red Mountain that it has and continues to infringe the '244 Patent;

h. Judgment that Carfax be awarded damages adequate to compensate it for Red Mountain's infringement of the '244 Patent, together with pre- and post-judgment interest;

i. Judgment permanently enjoining the Defendants, their officers, directors, principals, agents, servants, employees, successors, assigns, affiliates, and all that are in active concert or participation with them, from further infringement of the '243 and '244 Patents;

j. Judgment against Bristol West and Red Mountain for increased damages sustained as a result of Defendants' willful infringement of the '243 and '244 Patents pursuant to 35 U.S.C. § 284.

k. Judgment that this is an exceptional case under 35 U.S.C. § 285 and that Carfax be awarded reasonable attorneys' fees and costs;

l. Judgment against Red Mountain for damages suffered as a result of Red Mountain's tortious interference;

m. Judgment that Carfax does not infringe and has not infringed, either literally or under the doctrine of equivalents, directly or indirectly, the '977 Patent;

n. Judgment that Red Mountain, and all persons acting on its behalf or in concert with it, be permanently enjoined and restrained from charging, orally or in writing, that Carfax infringes the '977 Patent; and

o. Such other and further relief as the Court may deem just and proper.

Dated: November 20, 2014

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