

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**FREE STREAM MEDIA CORP. d/b/a
SAMBA TV,**

Plaintiff,

v.

ALPHONSO INC.,

Defendant.

Civil Action No. 2:15-cv-1725

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Free Stream Media Corp., doing business as Samba TV, files this Complaint for Patent Infringement against Defendant Alphonso Inc. (“Alphonso”) and alleges as follows:

THE PARTIES

1. Free Stream Media Corp. is incorporated under the laws of Delaware with its principal place of business at 528 Folsom Street, San Francisco, California, 94105.

2. Upon information and belief, Alphonso is incorporated under the laws of Delaware with its principal places of business at 224 W. 35th Street, 11th Floor, New York, New York 10001 and 735 Industrial Road, Suite 220, San Carlos, California, 94070.

PATENT-IN-SUIT

3. Free Stream Media Corp. is the owner of the entire right, title, and interest in and to U.S. Patent No. 9,026,668 (“the ’668 Patent”), entitled “Real-Time and Retargeted Advertising on Multiple Screens of a User Watching Television,” which was issued by the United States Patent and Trademark Office on May 5, 2015. A copy of the ’668 Patent is attached as Exhibit A hereto.

4. The ’668 Patent is valid and enforceable.

5. Alphonso has had knowledge of the '668 Patent at least as early as June 17, 2015.

6. Upon information and belief, Alphonso makes, uses, sells, and/or offers for sale within the United States and/or imports into the United States products that infringe the '668 Patent, including but not limited to the Alphonso Platform.

JURISDICTION AND VENUE

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

8. This Court has subject-matter jurisdiction over Free Stream Media Corp.'s claims under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Alphonso. Upon information and belief, Alphonso has continuous and systemic business contact with the State of Texas and has committed acts of patent infringement within the State of Texas and the Eastern District of Texas. For example, upon information and belief, Alphonso, directly and/or through intermediaries (including advertising agencies and others), conducts and solicits business in the State of Texas and attempts to derive benefit from residents of the State of Texas by marketing, selling, offering for sale, making, and/or using its products and/or services, including the Alphonso Platform, in the State of Texas and the Eastern District of Texas.

10. Upon information and belief, the Alphonso Platform collects and/or has collected data from device(s) and user(s) of devices located in the State of Texas and the Eastern District of Texas.

11. For example, Alphonso has collected data from devices located in Lewisville, Texas as shown in Exhibit B.

12. Upon information and belief, data collected by Alphonso in the State of Texas and the Eastern District of Texas is used by the Alphonso Platform.

13. Upon information and belief, Alphonso derives and/or seeks to derive financial or other benefit from the data collected in the State of Texas and the Eastern District of Texas.

14. As described herein, such acts constitute infringement occurring within the State of Texas and the Eastern District of Texas.

15. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b). Alphonso is subject to personal jurisdiction in this judicial district, and as such, resides in this judicial district for venue purposes. In addition, upon information and belief, Alphonso has committed acts of infringement by, among other things, marketing, selling, offering for sale, making, and/or using infringing products, including the Alphonso Platform, in the State of Texas and the Eastern District of Texas.

COUNT FOR PATENT INFRINGEMENT

16. Free Stream Media Corp. repeats and realleges the allegations in paragraphs 1–15 as though fully set forth herein.

17. The United States Patent and Trademark Office duly and legally issued the '668 Patent on May 5, 2015.

18. Upon information and belief, Alphonso has infringed, contributed to the infringement of, and/or induced infringement of the '668 Patent, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States, or by intending that others make, use, sell and/or offer for sale within the United States and/or import into the United States products and/or methods covered by one or more claims of the '668 Patent, including but not limited to the Alphonso Platform.

19. For example, upon information and belief, the Alphonso Platform infringes one or more claims of the '668 Patent. Upon information and belief, Alphonso makes, uses, sells, and/or offers for sale within the United States and/or imports into the United States the Alphonso Platform or components thereof and thus directly infringes the '668 Patent.

20. Upon information and belief, Alphonso indirectly infringes the '668 Patent by inducing infringement by others, such as advertising agencies, advertising partners, advertisers, and/or other third parties in the United States. For example, upon information and belief, direct infringement may be the result of activities performed by advertising agencies, advertising partners, advertisers, and/or others who make and/or use the Alphonso Platform. Alphonso received actual notice of the '668 Patent at least by June 17, 2015.

21. Upon information and belief, Alphonso's affirmative acts of making, selling, and offering to sell the Alphonso Platform, causing the Alphonso Platform to be used and providing guidance and instruction for the Alphonso Platform induced advertising agencies, advertising partners, advertisers, and/or other third parties to use the Alphonso Platform in its normal and customary way to infringe the '668 Patent. Upon information and belief, through its making, sales, and offers for sale of the Alphonso Platform, Alphonso specifically intended advertising agencies, advertising partners, advertisers, and/or other third parties to infringe the '668 Patent, and Alphonso was aware that use of the Alphonso Platform in its normal and customary way would infringe the '668 Patent. Upon information and belief, Alphonso performed the acts that constitute induced infringement with knowledge of the '668 Patent and with knowledge or willful blindness that the induced acts would constitute infringement.

22. Upon information and belief, Alphonso also indirectly infringes the '668 Patent by contributing to infringement by others, such as advertising agencies, advertising partners,

consumers, and/or other third parties in the United States. Upon information and belief, direct infringement is the result of activities performed by Alphonso, advertising agencies, advertising partners, consumers, and/or other third parties making or using the Alphonso Platform for its intended use. Alphonso received actual notice of the '668 Patent at least by June 17, 2015.

23. Upon information and belief, Alphonso's affirmative acts of making, selling and offering for sale the Alphonso Platform and causing the Alphonso Platform to be made and sold contribute to Alphonso's advertising agencies, advertising partners, consumers, and/or other third parties making or using the Alphonso Platform in its normal and customary way to infringe the '668 Patent. Upon information and belief, the Alphonso Platform is material to the claimed invention, has no substantial non-infringing uses, and is known by Alphonso to be especially made or especially adapted for use in an infringement of the '668 Patent.

24. Alphonso's acts of infringement have caused damage to Free Stream Media Corp., and Free Stream Media Corp. is entitled to recover from Alphonso the damages sustained as a result of Alphonso's infringement of the '668 Patent, but in no event less than a reasonable royalty.

25. Alphonso's acts of infringement have caused, and unless restrained and enjoined, will continue to cause, irreparable injury and damage to Free Stream Media Corp. for which there is no adequate remedy at law.

26. Alphonso's infringement of the '668 Patent is exceptional and entitles Free Stream Media Corp. to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

27. Upon information and belief, Alphonso copied Free Stream Media Corp.'s patented technologies, engaged and continues to engage in direct competition with Free Stream Media Corp. using copied technology, and has attempted and continues to attempt to substantially undercut Free Stream Media Corp.'s pricing with copied technology and knowledge of Free Stream Media

Corp.'s intellectual property rights, including the '668 Patent. Upon information and belief, Alphonso lacks a meritorious defense to its infringement of the '668 Patent.

JURY DEMAND

Free Stream Media Corp. respectfully demands a jury trial on all issues and claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Free Stream Media Corp. respectfully requests this Court enter judgment in its favor and grant the following relief against Alphonso:

1. Judgment that Alphonso infringes the '668 Patent;
2. Judgment that Alphonso's infringement of the '668 Patent was willful, and that Alphonso's continued infringement of the '668 Patent is willful;
3. Award Free Stream Media Corp. damages in an amount adequate to compensate Free Stream Media Corp. for Alphonso's infringement of the '668 Patent, but in no event less than a reasonable royalty under 35 U.S.C. § 284;
4. Award Free Stream Media Corp. enhanced damages pursuant to 35 U.S.C. § 284;
5. Award Free Stream Media Corp. pre-judgment and post-judgment interest to the full extent allowed under the law;
6. Award Free Stream Media Corp. costs;
7. Enter an order finding this to be an exceptional case and award Free Stream Media Corp. its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
8. Enter a permanent injunction against Alphonso and its respective officers, directors, shareholders, agents, servants, employees, attorneys, all parent, subsidiary and affiliate corporations, their successors in interest and assigns, and all other entities and individuals acting

in concert with it or on its behalf, including customers, from making, importing, using, offering for sale, and/or selling any product or service falling within the scope of any claim of the '668 Patent or otherwise infringing or contributing to or inducing infringement of any claim of the '668 Patent;

9. Award, in lieu of an injunction, a compulsory ongoing royalty;
10. Order and accounting of damages; and
11. Award such other relief as the Court may deem appropriate and just under the circumstances.

DATED: November 6, 2015

Respectfully submitted,

By: /s/Eric H. Findlay
Eric H. Findlay
efindlay@findlaycraft.com
FINDLAY CRAFT PC
102 North College Avenue, Suite 900
Tyler, Texas 75702
Telephone: (903) 534-1100
Facsimile: (903) 534-1137

G. Hopkins Guy, III
hop.guy@bakerbotts.com
Jeremy J. Taylor
jeremy.taylor@bakerbotts.com
BAKER BOTTS L.L.P.
1001 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 739-7500
Facsimile: (650) 739-7699

**ATTORNEYS FOR PLAINTIFF
FREE STREAM MEDIA CORP. d/b/a
SAMBA TV**