

**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. 2:16-cv-704

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

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

THE PARTIES

1. Samba TV is incorporated under the laws of Delaware with its principal place of business at 301 Brannan Street, San Francisco, California, 94107.
2. Alphonso is incorporated under the laws of Delaware with its principal place of business at 735 Industrial Road, Suite 220, San Carlos, California, 94070.

PATENT-IN-SUIT

3. Samba TV is the owner of the entire right, title, and interest in and to U.S. Patent No. 9,386,356 (“the ’356 Patent”), entitled “Targeting with Television Audience Data Across Multiple Screens,” which was issued by the United States Patent and Trademark Office on July 5, 2016.
4. The ’356 Patent is valid and enforceable.

5. 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 '356 Patent, including but not limited to the Alphonso Platform.

JURISDICTION AND VENUE

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

7. This Court has subject-matter jurisdiction over Samba TV's claims under 28 U.S.C. §§ 1331 and 1338(a).

8. 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.

9. 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.

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

11. 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.

12. 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.

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

14. 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

15. Samba TV repeats and realleges the allegations in paragraphs 1–14 as though fully set forth herein.

16. Upon information and belief, Alphonso infringes, contributes to the infringement of, and/or induces infringement of one or more claims of the '356 Patent, including at least claim 1, under 35 U.S.C. § 271 either literally or under the doctrine of equivalents, by making, using, selling, 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 '356 Patent, including but not limited to the Alphonso Platform or components thereof.

17. On information and belief, the Alphonso Platform meets the limitations of the claims of the '356 Patent. For example, claim 1 of the '356 Patent recites:

1. A system comprising:

a television to generate a fingerprint data;

a relevancy-matching server to:

match primary data generated from the fingerprint data with targeted data, based on a relevancy factor, and search a storage for the targeted data;

wherein the primary data is any one of a content identification data and a content identification history;

a mobile device capable of being associated with the television to:

process an embedded object, constrain an executable environment in a security sandbox, and execute a sandboxed application in the executable environment; and

a content identification server to:

process the fingerprint data from the television, and communicate the primary data from the fingerprint data to any of a number of devices with an access to an identification data of at least one of the television and an automatic content identification service of the television.

18. According to Alphonso, through its partnerships with mobile applications, TV anywhere applications, gaming and living room devices, set-top box and TV OEMs, Alphonso understands what people are watching on television, and in real-time, can deliver advertisements to this audience through mobile applications and websites. *See* Exhibit B.

19. For instance, according to Alphonso's CEO Ashish Chordia, the Alphonso Platform enables televisions, set-top boxes, living room devices, or mobile apps to collect data on what people are watching on those devices and within a few minutes provide an advertisement on their digital device. *See* Exhibit C.

20. According to Alphonso, the Alphonso Platform reinforces advertisements by extending brand advertising onto users' mobile device, either in real-time, or time-shifted or in a place-shifted setting. *See* Exhibit D.

21. Upon information and belief, Alphonso directly infringes one or more claims of the '356 Patent, including at least claim 1, under 35 U.S.C. § 271(a), literally and/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 the Alphonso Platform or components thereof.

22. In addition to direct infringement, Alphonso indirectly infringes one or more claims of the '356 Patent, including at least claim 1, under 35 U.S.C. § 271(b) and 35 U.S.C. § 271(c).

23. Upon information and belief, Alphonso actively induces others, such as advertising agencies, advertising partners, advertisers, and/or other third parties in the United States to directly infringe one or more of the claims of the '356 Patent, literally or under the doctrine of equivalents, by making, using, selling, or offering to sell the Alphonso Platform or components thereof. Alphonso has received actual notice of the '356 Patent from at least the filing of this complaint.

24. Upon information and belief, Alphonso instructs third parties to make, use, sell, or offer for sale the Alphonso Platform in a manner that infringes one or more claims of the '356 Patent, including through materials and communication from Alphonso. Upon information and belief, through its making, using, selling, and/or offering to sell the Alphonso Platform and through other materials and communication, Alphonso specifically intends advertising agencies, advertising partners, advertisers, and/or other third parties to infringe one or more claims of the '356 Patent. Upon information and belief, Alphonso is aware that use of the Alphonso Platform in its normal and customary way infringes the '356 Patent and performs acts that constitute induced infringement with knowledge of the '356 Patent and with knowledge or willful blindness that the induced acts constitute infringement of one or more claims of the '356 Patent.

25. Upon information and belief, Alphonso also contributes to the infringement of others, such as advertising agencies, advertising partners, consumers, and/or other third parties in the United States who make, use, sell, and/or offer to sell the Alphonso Platform or components thereof. 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 or components thereof for their intended use. Alphonso has received actual notice of the '356 Patent from at least the filing of this complaint.

26. Upon information and belief, Alphonso contributes to the infringement of one or more claims of the '356 Patent by making, using, selling and/or offering to sell the Alphonso Platform and/or causing others to make, use, sell, and/or offer to sell the Alphonso Platform or components thereof. Upon information and belief, the Alphonso Platform or components thereof

are material to the claimed invention, have no substantial non-infringing uses, and are known by Alphonso to be especially made or especially adapted for use in an infringement of the '356 Patent.

27. Alphonso's acts of infringement cause damage to Samba TV, and Samba TV is entitled to recover from Alphonso damages sustained as a result of Alphonso's infringement of the '356 Patent, but in no event less than a reasonable royalty.

28. Alphonso's acts of infringement, unless restrained and enjoined, will cause irreparable injury and damage to Samba TV for which there is no adequate remedy at law.

29. Alphonso's infringement of the '356 Patent is exceptional and entitles Samba TV to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

30. Upon information and belief, Alphonso copied Samba TV's patented technologies, engaged and continues to engage in direct competition with Samba TV using copied technology, and has attempted and continues to attempt to substantially undercut Samba TV's pricing with copied technology and knowledge of Samba TV's intellectual property rights, including the '356 Patent. Upon information and belief, Alphonso lacks a meritorious defense to its infringement of the '356 Patent.

JURY DEMAND

Samba TV respectfully demands a jury trial on all issues and claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Samba TV respectfully requests this Court enter judgment in its favor and grant the following relief against Alphonso:

1. Judgment that Alphonso infringes the '356 Patent;
2. Judgment that Alphonso's continued infringement of the '356 Patent is willful;
3. Award Samba TV damages in an amount adequate to compensate Samba TV for Alphonso's infringement of the '356 Patent, but in no event less than a reasonable royalty under 35 U.S.C. § 284;

4. Award Samba TV enhanced damages pursuant to 35 U.S.C. § 284;
5. Award Samba TV pre-judgment and post-judgment interest to the full extent allowed under the law;
6. Award Samba TV costs;
7. Enter an order finding this to be an exceptional case and award Samba TV 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 '356 Patent or otherwise infringing or contributing to or inducing infringement of any claim of the '356 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: July 5, 2016

Respectfully submitted,

/s/ Eric H. Findlay

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