

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

Phoenix Licensing, L.L.C., an Arizona limited liability company, and LPL Licensing, L.L.C., a Delaware limited liability company;

Plaintiffs,

vs.

Aegon USA, Inc., an Iowa corporation; Aegon Direct Marketing Services, Inc., a Maryland corporation; Transamerica Affinity Services, Inc., a Maryland corporation; Stonebridge Life Insurance Company, a Vermont corporation; Monumental Life Insurance Company, a Maryland corporation; American International Group, Inc., a Delaware corporation; AIG Federal Savings Bank, a federal savings bank; American General Finance, Inc., an Indiana corporation; National Union Fire Insurance Company of Pittsburgh, PA, a Pennsylvania corporation; American General Life and Accident Insurance Company, a Tennessee corporation; United States Life Insurance Company in the City of New York, a New York corporation; BB&T Corporation, a North Carolina corporation; Branch Banking and Trust Company, a North Carolina corporation; BB&T Financial FSB, a federally chartered bank; BB&T Insurance Services, Inc., a North Carolina corporation; Comerica Inc., a Delaware corporation; Comerica Bank, a Michigan corporation; Comerica Insurance Services, Inc., a Michigan corporation; Huntington Bancshares Incorporated, a Maryland corporation; Huntington National Bank, a national banking association; Huntington Insurance, Inc., an Ohio corporation; M&I Marshall & Ilsley Bank, a Wisconsin corporation; M&I FSB, a federally chartered bank; Union Bank, N.A., a national banking association;

Defendants.

CASE No. _____

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Phoenix Licensing, L.L.C. (“Phoenix”) and LPL Licensing, L.L.C. (“LPL”) sue Aegon USA, Inc.; Aegon Direct Marketing Services, Inc.; Transamerica Affinity Services, Inc.; Stonebridge Life Insurance Company; Monumental Life Insurance Company; American International Group, Inc.; AIG Federal Savings Bank; American General Finance, Inc.; National Union Fire Insurance Company of Pittsburgh, PA; American General Life and Accident Insurance Company; United States Life Insurance Company in the City of New York; BB&T Corporation; Branch Banking and Trust Company; BB&T Financial FSB; BB&T Insurance Services, Inc.; Comerica Inc.; Comerica Bank; Comerica Insurance Services, Inc.; Huntington Bancshares Incorporated; Huntington National Bank; Huntington Insurance, Inc.; M&I Marshall & Ilsley Bank; M&I FSB; Union Bank, N.A.

Introduction

1. Plaintiff Phoenix owns the inventions for the following marketing technology (*i.e.*, the “patented marketing technology”):
 - (a) Computerized apparatuses, methods, or systems that implement decision criteria, product information, and client information to automatically select and present products appropriate for the client via client communications (for example, a direct mail communication incorporating variable information) as described and claimed in United States Patent Number 5,987,434 entitled “Apparatus and Method for Transacting Marketing and Sales of Financial Products” (the “434 patent”); and
 - (b) Apparatuses, methods, or systems that automatically prepare customized replies to responses, generated from marketing communications delivered to clients for products or services, such as financial products or services, as described and claimed in United States Patent Number 6,999,938 entitled

“Automated Reply Generation Direct Marketing System” (the “‘938 patent”).
(The ‘434 patent and the ‘938 patent are collectively referred to as the
“Patents.”)

2. Pursuant to a license agreement dated December 1, 2006, Plaintiff LPL is the exclusive licensee of the Patents.

3. Defendants (a) have used, and continue to use, Plaintiff Phoenix’s patented marketing technology that they make, use, import, sell, and offer to sell, without Plaintiffs’ permission; and (b) have contributed to or induced, and continue to contribute to or induce, others to infringe the Patents.

4. Plaintiffs seek damages for patent infringement and an injunction preventing Defendants from making, using, selling, or offering to sell, and from contributing to and inducing others to make, use, sell, or offer to sell, the patented marketing technology without Plaintiffs’ permission.

Jurisdiction and Venue

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq.* The Court has original jurisdiction over this patent infringement action under 28 U.S.C. § 1338(a).

6. Within this judicial district each of the Defendants has committed acts and continues to commit acts that give rise to this action, including making sales of infringing products and offering for sale infringing products. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and § 1400.

Plaintiffs Phoenix and LPL

7. Phoenix Licensing, L.L.C. is an Arizona limited liability company having a principal place of business in Scottsdale, Arizona.

8. LPL Licensing, L.L.C. is a Delaware limited liability company having a

principal place of business in Scottsdale, Arizona.

Defendants

Aegon

9. Upon information and belief, Defendant Aegon USA, Inc. is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa.

10. Upon information and belief, Defendant Aegon Direct Marketing Services, Inc. is a Maryland corporation with its principal place of business in Baltimore, Maryland.

11. Upon information and belief, Defendant Transamerica Affinity Services, Inc. is a Maryland corporation with its principal place of business in Baltimore, Maryland.

12. Upon information and belief, Defendant Stonebridge Life Insurance Company is a Vermont corporation with its principal place of business in Plano, Texas.

13. Upon information and belief, Defendant Monumental Life Insurance Company is a Maryland corporation with its principal place of business in Baltimore, Maryland.

AIG

14. Upon information and belief, Defendant American International Group, Inc. is a Delaware corporation with its principal place of business in New York, New York.

15. Upon information and belief, Defendant AIG Federal Savings Bank is a federal savings bank with its principal place of business in Wilmington, Delaware.

16. Upon information and belief, Defendant American General Finance, Inc. is an Indiana corporation with its principal place of business in Evansville, Indiana.

17. Upon information and belief, Defendant National Union Fire Insurance Company of Pittsburgh, PA is a Pennsylvania corporation with its principal place of business in New York, New York.

18. Upon information and belief, Defendant American General Life and Accident Insurance Company is a Tennessee corporation with its principal place of business in Nashville, Tennessee.

19. Upon information and belief, Defendant United States Life Insurance Company in the City of New York is a New York corporation with its principal place of business in New York, New York.

BB&T

20. Upon information and belief, Defendant BB&T Corporation is a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina.

21. Upon information and belief, Defendant Branch Banking and Trust Company is a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina.

22. Upon information and belief, Defendant BB&T Financial FSB is a federally chartered bank with its principal place of business in Raleigh, North Carolina.

23. Upon information and belief, Defendant BB&T Insurance Services, Inc. is a North Carolina corporation with its principal place of business in Raleigh, North Carolina.

Comerica

24. Upon information and belief, Defendant Comerica Inc. is a Delaware corporation with its principal place of business in Dallas, Texas.

25. Upon information and belief, Defendant Comerica Bank is a Michigan

corporation with its principal place of business in Dallas, Texas.

26. Upon information and belief, Defendant Comerica Insurance Services, Inc. is a Michigan corporation with its principal place of business in Bingham Farms, Michigan.

Huntington

27. Upon information and belief, Defendant Huntington Bancshares Incorporated is a Maryland corporation with its principal place of business in Columbus, Ohio.

28. Upon information and belief, Defendant Huntington National Bank is a national banking association with its principal place of business in Columbus, Ohio.

29. Upon information and belief, Defendant Huntington Insurance, Inc. is an Ohio corporation with its principal place of business in Bowling Green, Ohio.

Marshall & Ilsley

30. Upon information and belief, Defendant M&I Marshall & Ilsley Bank is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin.

31. Upon information and belief, Defendant M&I FSB is a federally chartered bank with its principal place of business in Las Vegas, Nevada.

Union Bank

32. Upon information and belief, Defendant Union Bank, N.A. is a national banking association with its principal place of business in San Francisco, California.

First Claim for Patent Infringement
(infringement of the '434 patent)

33. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 32 above and further allege as follows:

34. The United States Patent and Trademark Office issued the '434 patent on November 16, 1999 for inventions covering the following marketing technology: computerized apparatuses, methods, or systems that implement decision criteria, product information, and client information to automatically select and present products appropriate for the client (for example, a direct mail communication incorporating variable information), as described and claimed in the '434 patent. Attached as Exhibit A is a copy of the '434 patent. Through assignment, Plaintiff Phoenix is the owner of all right, title, and interest in the '434 patent, including all rights to pursue and collect damages for past infringements of the patent.

35. Defendants have infringed, contributed to the infringement, and induced others to infringe the '434 patent and, unless enjoined, will continue to do so, by manufacturing, importing, using, selling, or offering for sale Plaintiffs' patented marketing technology and by contributing to or inducing others to infringe the claims of the '434 patent without a license or permission from Plaintiffs.

36. Plaintiffs have been damaged by Defendants' infringement of the '434 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the '434 patent.

37. The Defendants are and have been willfully infringing one or more claims of the '434 patent.

38. Plaintiffs are entitled to recover damages from the Defendants to compensate them for the infringement.

Second Claim for Patent Infringement
(infringement of the '938 patent)

39. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 32 above and further alleges as follows:

40. The United States Patent and Trademark Office issued the '938 patent on February 14, 2006 for inventions covering the following marketing technology: apparatuses, methods, or systems that automatically prepare customized replies to responses, generated from marketing communications delivered to clients for products or services, such as financial products or services, as described and claimed in the '938 patent. Attached as Exhibit B is a copy of the text of the '938 patent. Through assignment, Plaintiff Phoenix is the owner of all right, title, and interest in the '938 patent, including all rights to pursue and collect damages for past infringements of the patent.

41. Defendants have infringed, contributed to the infringement, and induced others to infringe the '938 patent and, unless enjoined, will continue to do so, by manufacturing, importing, using, selling, or offering for sale Plaintiffs' patented marketing technology and by contributing to or inducing others to infringe the claims of the '938 patent without a license or permission from Plaintiffs.

42. Plaintiffs have been damaged by Defendants' infringement of the '938 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the '938 patent.

43. The Defendants are and have been willfully infringing one or more claims of the '938 patent.

44. Plaintiffs are entitled to recover damages from the Defendants to compensate them for the infringement.

45. Plaintiffs demand trial by jury of all issues relating to these claims regarding the '434 and '938 patents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment as follows:

- A. A decree preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, and all persons in active concert with them, from infringing, contributing to the infringement of, or inducing others to infringe, the '434 and '938 Patents;
- B. Compensatory damages for Defendants' infringement of the '434 and '938 Patents;
- C. Trebled damages as a consequence of Defendants' willful infringement;
- D. Costs of suit and attorneys' fees on the basis that this patent infringement case is exceptional;
- E. Pre-judgment interest; and
- F. All such other relief as justice requires.

Date: June 24, 2010

Respectfully Submitted,

/s/ S. Calvin Capshaw

S. Calvin Capshaw

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