

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

AFFINION NET PATENTS, INC.	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:07-cv-00374-TJW
v.	)	
	)	JURY TRIAL DEMANDED
TSYS LOYALTY, INC.	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

Plaintiff Affinion Net Patents, Inc. alleges as follows:

**THE PARTIES**

1. Plaintiff Affinion Net Patents, Inc. (“Affinion”) is a Delaware corporation having its principal place of business at 100 Connecticut Avenue, Norwalk, CT 06050-3541. Affinion is the assignee of U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012. Copies of the patents are attached as Exhibits A, B, and C hereto.

2. Defendant TSYS Loyalty, Inc. (“TSYS”) is a Georgia corporation with offices at 5897 Windward Parkway, Suite 200, Alpharetta, GA 30005. TSYS operates Internet-based loyalty/incentive programs and other related services for itself and clients. TSYS operates client-branded Internet web sites that are accessible to and marketed to residents of this District, including

www.1sttechrewards.com,	www.bonuscheckcard.com,	www.cfgbusinessrewards.com,
www.circlerewards.com,	www.escstellarstars.com,	www.ftcurewards.com,
www.mibankrewards.com,	www.mypurchaseperks.com,	www.myselectpoints.com,
www.patelcopoints.com,	www.plusonerewards.com,	www.productivityrewards.com,

www.rbccenturaredemption.com, www.rewards.haacard.com, www.searschoicerewards.com, www.uatexpediakorprewards.com, www.uatviewmyrewards.com, www.viewmyrewards.com, www.whitneypointsplus.com, and www.yourbankmiles.com.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. This Court has personal jurisdiction over defendant TSYS.
5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

### **NATURE OF THE ACTION**

6. Affinion brings this action for infringement of U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012, fraudulent misrepresentation, and breach of contract.

7. U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012, each entitled “Fully Integrated, On-Line Interactive Frequency and Award Redemption Program,” were duly and properly issued by the PTO on June 30, 1998, December 28, 1999, and June 10, 2003 respectively, and are valid and enforceable.

8. The assignee of U.S. Patent Nos. 5,774,870 and 6,009,412 at the time they were issued was Netcentives, Inc. The assignee of U.S. Patent No. 6,578,012 at the time it was issued was Trilegiant Corporation.

9. Upon information and belief, TSYS has, since prior to the issuance of U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012, developed and operated Internet-based online rewards programs. In developing and operating those programs, TSYS infringes and/or induces infringement of one or more claims of these patents.

10. In July 2000, Netcentives Inc. and TSYS, then named Enhancement Services Corporation, entered into a Patent License Agreement (“the License”) whereby Netcentives Inc.

granted to TSYS a nonexclusive license to practice U.S. Patent Nos. 5,774,870 and 6,009,412, as well as any patent issuing from a continuation or divisional thereof, in the United States. U.S. Patent No. 6,578,012 issued from a continuation of U.S. Patent No. 6,009,412. The terms of the License are confidential.

11. TSYS and Netcentives considered the royalty terms set forth in the License to be a reasonable royalty.

12. On December 7, 2001, Netcentives, Inc. assigned its rights under U.S. Patent Nos. 5,774,870 and 6,009,412, including the right to recover damages for past infringement, to Trilegiant Corporation. All terms of the License transferred to Trilegiant Corporation at that time and remained in effect and binding on Trilegiant Corporation and TSYS, including the royalty terms set forth in the License.

13. On May 23, 2002, TSYS represented and warranted to Trilegiant Corporation that it was not at that time operating, and had not since November 30, 2001 operated, any online rewards program or other business practice covered by U.S. Patent Nos. 5,774,870 and 6,009,412. TSYS made these representations and warranties in connection with its purported termination of the License.

14. Trilegiant Corporation reasonably relied on TSYS's representations and warranties.

15. On information and belief, and without Trilegiant Corporation's knowledge, TSYS did in fact operate online rewards programs or other business practices covered by U.S. Patent Nos. 5,774,870 and 6,009,412 between November 31, 2001 and May 23, 2002, and its representations and warranties to the contrary were deliberately false, deceptive, and made with the intent to mislead Trilegiant Corporation.

16. TSYS's purported termination of the License is void and/or voidable at the option of Affinion as a consequence of TSYS's false, deceptive, and fraudulent misrepresentations and warranties.

17. On January 28, 2004, Trilegiant Corporation assigned its rights under U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012, including the right to recover damages for past infringement, to Trilegiant Loyalty Solutions, Inc. All terms of the License transferred to Trilegiant Loyalty Solutions, Inc. at that time and remained in effect and binding on Trilegiant Loyalty Solutions, Inc. and TSYS, including the royalty terms set forth in the License.

18. On October 15, 2005, Trilegiant Loyalty Solutions, Inc. assigned its rights under U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012, including the right to recover damages for past and future infringement, to Affinion. All terms of the License transferred to Affinion at that time and remained in effect and binding on Affinion and TSYS, including the royalty terms set forth in the License.

19. On April 17, 2007, Enhancement Services Corporation changed its name to TSYS Loyalty, Inc.

20. Affinion has standing to sue for infringement of U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012 and to collect damages for such infringement.

21. Affinion has standing to sue for breach of the License and fraudulent misrepresentation.

**CLAIM I**  
**Infringement of U.S. Patent No. 5,774,870**

22. Affinion realleges the allegations of Paragraphs 1-21 above as if set forth herein.

23. TSYS has infringed and/or induced or contributed to the infringement of U.S. Patent No. 5,774,870 and will continue to do so unless enjoined by this Court.

24. TSYS's continuing acts of infringement constitute willful infringement of U.S. Patent No. 5,774,870.

25. TSYS's infringement of U.S. Patent No. 5,774,870 has caused Affinion damages and harm and will continue to cause Affinion such damages and harm unless its infringement is enjoined by this Court.

26. Affinion is entitled to an injunction and damages in an amount no less than the royalty set forth in the License, which constitutes a reasonable royalty.

**CLAIM II**  
**U.S. Patent No. 6,009,412**

27. Affinion realleges the allegations of Paragraphs 1-26 above as if set forth herein.

28. TSYS has infringed and/or induced or contributed to the infringement of U.S. Patent No. 6,009,412 and will continue to do so unless enjoined by this Court.

29. TSYS's continuing acts of infringement constitute willful infringement of U.S. Patent No. 6,009,412.

30. TSYS's infringement of U.S. Patent Nos. 6,009,412 has caused Affinion damages and harm and will continue to cause Affinion such damages and harm unless its infringement is enjoined by this Court.

31. Affinion is entitled to an injunction and damages in an amount no less than the royalty set forth in the License, which constitutes a reasonable royalty.

**CLAIM III**  
**Infringement of U.S. Patent No. 6,578,012**

32. Affinion realleges the allegations of Paragraphs 1-31 above as if set forth herein.

33. TSYS has infringed and/or induced or contributed to the infringement of U.S. Patent No. 6,578,012 and will continue to do so unless enjoined by this Court.

34. TSYS's continuing acts of infringement constitute willful infringement of U.S. Patent No. 6,578,012.

35. TSYS's infringement of U.S. Patent No. 6,578,012 has caused Affinion damages and harm and will continue to cause Affinion such damages and harm unless its infringement is enjoined by this Court.

36. Affinion is entitled to an injunction and damages in an amount no less than the royalty set forth in the License, which constitutes a reasonable royalty.

**CLAIM IV**  
**Fraudulent Misrepresentation**

37. Affinion realleges the allegations of Paragraphs 1-36 above as if set forth herein. TSYS falsely represented and warranted to Trilegiant Corporation in connection with its purported termination of the License that it was no longer operating and had not since November 1, 2001 operated any online rewards program or other business practice covered by U.S. Patent Nos. 5,774,870 and 6,009,412. That representation was false, was known by TSYS to be false, and was made for the purpose of having Trilegiant Corporation rely on it.

38. Trilegiant Corporation reasonably relied on TSYS's fraudulent misrepresentations.

39. TSYS's purported termination of the License is void and/or voidable at the option of Affinion.

40. Affinion has suffered damages and harm from TSYS's fraudulent misrepresentation.

41. Affinion is entitled to damages sufficient at least to put it where it would have been but for TSYS's fraudulent misrepresentation, as well as any damages suffered as a consequence of TSYS's fraudulent misrepresentation, as well as any punitive damages.

**CLAIM V**  
**Breach of Contract**

42. Affinion realleges the allegations of Paragraphs 1-41 above as if set forth herein.

43. The License is in full force and effect.

44. TSYS has not made royalty payments under the License despite its operation of online rewards programs or other business practices covered by U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012.

45. TSYS has materially breached the License.

46. Affinion has suffered damages and harm from TSYS's breach of the License.

47. Affinion is entitled to enforce the License and to damages sufficient to put it where it would have been but for TSYS's breach of the License, as well as any damages suffered as a consequence of TSYS's breach.

**PRAYER FOR RELIEF**

WHEREFORE, Affinion prays for judgment as follows:

A. That this Court adjudge and decree that U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012 are valid, enforceable, and infringed by TSYS;

B. That this Court adjudge and decree that TSYS's infringement of U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012 has been willful;

C. That this Court adjudge and decree that TSYS's purported termination of License is void or voidable at the option of Affinion due to TSYS's fraudulent misrepresentations;

D. That this Court adjudge and decree that the License is in full force and effect and that TSYS has materially breached the License;

E. That this Court preliminarily and/or permanently enjoin TSYS, its agents, servants, employees, attorneys, and all others in active concert or participation with TSYS from infringing U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012;

F. That this Court award Affinion damages adequate to compensate for TSYS's infringement of U.S. Patent Nos. 5,774,870, 6,009,412, and 6,578,012 in an amount no less than the royalty set forth in the License, which constitutes a reasonable royalty;

G. That those damages be trebled as a result of TSYS's willful infringement and fraudulent misrepresentation;

H. That the Court enforce the License and award Affinion damages sufficient to put it where it would have been but for TSYS's breach of the License and fraudulent misrepresentation, as well as any damages suffered as a consequence of TSYS's breach and fraudulent misrepresentation;

I. That this Court award punitive damages for TSYS's fraudulent misrepresentations.

J. That this Court award Affinion its costs, disbursements, and attorneys fees for this action, including those pursuant to 35 U.S.C. § 285; and

K. That this Court award Affinion such further relief as this Court may deem just and appropriate.

### **JURY DEMAND**

Plaintiff Affinion demands a trial by jury.



Dated: August 28, 2007

Respectfully submitted,

/s/ Jennifer Parker Ainsworth

Jennifer Parker Ainsworth

State Bar No. 00784720

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