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Call, Inc. d/b/a MedForce*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CALL, INC. d/b/a MEDFORCE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:11-CV-03723-FLW-TJB
)	
)	
Advanced Health Media, LLC.)	
)	
Defendant.)	

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Call, Inc. d/b/a MedForce ("MedForce"), by its undersigned attorneys, hereby alleges the following for its First Amended Complaint for Declaratory Judgment against Defendant, Advanced Health Media, LLC ("Defendant" or "AHM").

NATURE OF THE ACTION

1. This is an action pursuant to Title 28, United States Code §§ 2201 and 2202, seeking a declaratory judgment that MedForce does not infringe, contribute to the infringement of, or induce others to infringe any valid and enforceable claim of U.S. Patent No. 7,822,628 ("the '628 patent"), U.S. Patent Number 7,877,282 ("the '282 patent") or U.S. Patent No. 7,774,221 ("the '221 patent") (collectively, "the patents at issue") each of which are assigned on their face to AHM. The action arises under the Patent Laws of the United States, Title 35, United States Code §§ 101 *et seq.* This action also alleges that AHM tortiously interfered with MedForce's prospective economic advantage and business relations by unjustifiably accusing MedForce of infringing the patents at issue, at a time when AHM knew MedForce was seeking to sell its company and had prospective buyers interested in buying the company, with the expectation that such accusations would necessarily be disclosed to the interested third parties and hinder such a sale.

THE PARTIES

2. Plaintiff, Call, Inc. is a Pennsylvania corporation with its principal place of business located at 2005 South Easton Road, Suite 208, Doylestown Pennsylvania 18901. MedForce is a division of Call, Inc. with its principal place of business located at 20 Avenue of the Commons, Suite 203, Shrewsbury, New Jersey, 07702. MedForce is a full-service communication company that develops customized programs that complement current marketing or clinical initiative for clients in the pharmaceutical industry.

3. Upon information and belief, Defendant AHM is a Delaware corporation, having its principal place of business at 300 Somerset Corporate Blvd, Bridgewater, NJ 08807. Upon information and belief, AHM is doing business in this judicial district.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 2201, 2202, 1331, and 1338 because the matter in controversy arises under an act of Congress relating to patents (35 U.S.C. §§ 1, *et seq.*) and under principles of supplemental jurisdiction.

5. Venue is proper in this judicial district pursuant to the provisions of 28 U.S.C. §§ 1391(b) and (c).

6. Upon information and belief, this Court has personal jurisdiction over Defendant by virtue of, *inter alia*, Defendant's continuous and systematic contacts with the District of New Jersey. On information and belief, the Defendant is registered to do business in the State of New Jersey, maintains offices in the State of New Jersey, has solicited business in the State of New Jersey, has transacted business within the State of New Jersey and has attempted to derive financial benefit from residents of the State of New Jersey.

EXISTENCE OF AN ACTUAL CONTROVERSY

7. An actual controversy exists between MedForce and Defendant with respect to which MedForce requires a declaration of rights by this Court. The controversy relates to the '628 patent, the '282 patent and the '221 patent, all of which are believed to be owned and/or controlled by Defendant, and all of which Defendant has asserted are infringed by MedForce. A copy of the '628 patent is attached hereto as Exhibit A; a copy of the '282 patent is attached hereto as Exhibit B; and a copy of the '221 patent is attached hereto as Exhibit C.

8. On or about May 24, 2011, MedForce received at its Shrewsbury, New Jersey place of business a letter from Kurt Olander, counsel for AHM, alleging that "based on [AHM's] knowledge of MedForce's customer requirements and industry standards, [MedForce's event

planning software] is infringing on AHM's ['628 and '282 patents]." The letter further stated that AHM was willing to discuss terms for a possible license of the '628 and '282 patents to MedForce. The letter closed with the following statement: "if we cannot reach a resolution within a reasonable period of time, AHM will take such measures as it deems necessary to enforce and protect the intellectual property assets of AHM."

9. On June 1, 2011, counsel for MedForce responded to Mr. Olander's May 23, 2011 letter and explained that MedForce was investigating the allegations made by MedForce. MedForce's counsel requested additional information from AHM about the basis for their claims of infringement.

10. On or about June 23, 2011, MedForce's counsel received a letter (by regular mail) dated June 17, 2011, from AHM's counsel asserting that "all of the currently competitive technologies in the domain of healthcare speaker meeting logistics implement the features of claim 1 of the '282 patent highlighted above." AHM's purportedly based that assertion on "*inter alia*, widely-distributed Requests for Proposal in this area that request features such as those defined in claim 1 of the '282 patent." The letter further stated that "with respect to MedForce we understand that MedForce has a number of times in recent years successfully responded to RFPs that request features such as those defined in claim 2 of the '282 patent." The letter specifically alleged that "[AHM] believe[s] that MedForce products that are presently deployed [with a specific customer] infringe at least claim 1 of the '282 patent" and that "MedForce's currently deployed systems also infringe at least [claim 10] of the '282 patent and [claims 1, 7 and 11 of the] '628 patent"

11. Mr. Olander's June 17th letter also identified U.S. Patent No. 7,774,221 for the first time and alleged that "MedForce's currently deployed systems also infringe at least the five independent claims of the '221 patent. . . ." The letter further stated that AHM was willing to

license the '221 patent to MedForce. The letter closed with the following statement: "in the event an agreement to amicably resolve this matter cannot be reached within the next two weeks, AHM may initiate a patent infringement action in the United States District Court for the District of New Jersey."

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
(U.S. PATENT NO. 7,822,628)

12. Paragraphs 1-11 are incorporated herein by reference, as if repeated in full.

13. An actual and continuing controversy exists between MedForce and Defendant concerning infringement of the '628 patent which requires a declaration of rights by this Court.

14. MedForce has not infringed, contributed to the infringement of, or induced others to infringe the '628 patent because, *inter alia*, MedForce's meeting planning system does not utilize at least one or more "business rules" as required by each of the claims of the '628 patent.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY
(U.S. PATENT NO. 7,822,628)

15. Paragraphs 1-14 are incorporated herein by reference, as if repeated in full.

16. The '628 patent is invalid for failing to comply with the requirements for patentability as set forth in the United States Patent Laws, Title 35 U.S.C. §§1, *et seq.*, including but not limited to: (i) § 101, at least for the reason that the claims are directed to abstract ideas and thus fail to encompass patentable subject matter under the requirements set forth in Bilski v. Kappos, 130 S. Ct. 3218 (2010) and CyberSource Corp. v. Retail Decisions, Inc., No. 2009-1358, 2011 U.S. App. LEXIS 16871 (Fed. Cir. Aug. 16, 2011); (ii) § 102 and/or § 103 in view of, *inter alia*, U.S. Patent Application Publication Nos. 2002/0032592, 2002/0156787, 2002/0016729 and 2002/0210445, and U.S. Patent Nos. 7,046,779, 7,653,566 and 6,775,658; (iii) and/or § 112.

COUNT III
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
(U.S. PATENT NO. 7,877,282)

17. Paragraphs 1-16 are incorporated herein by reference, as if repeated in full.

18. An actual and continuing controversy exists between MedForce and Defendant concerning infringement of the '282 patent which requires a declaration of rights by this Court.

19. MedForce has not infringed, contributed to the infringement of, or induced others to infringe the '282 patent because, *inter alia*, MedForce's meeting planning system does not utilize at least one or more "business rules" as required by each of the claims of the '282 patent.

COUNT IV
DECLARATORY JUDGMENT OF INVALIDITY
(U.S. PATENT NO. 7,877,282)

20. Paragraphs 1-19 are incorporated herein by reference, as if repeated in full.

21. The '282 patent is invalid for failing to comply with the requirements for patentability as set forth in the United States Patent Laws, Title 35 U.S.C. §§ 1, *et seq.*, including but not limited to: (i) § 101, at least for the reason that the claims are directed to abstract ideas and thus fail to encompass patentable subject matter under the requirements set forth in Bilski and CyberSource; (ii) § 102 and/or § 103 in view of, *inter alia*, U.S. Patent Application Publication Nos. 2002/0032592, 2002/0156787, 2002/0016729 and 2002/0210445, and U.S. Patent Nos. 7,046,779, 7,653,566 and 6,775,658; (iii) and/or § 112.

COUNT V
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
(U.S. PATENT NO. 7,774,221)

22. Paragraphs 1-21 are incorporated herein by reference, as if repeated in full.

23. An actual and continuing controversy exists between MedForce and Defendant concerning infringement of the '221 patent which requires a declaration of rights by this Court.

24. MedForce has not infringed, contributed to the infringement of, or induced others to infringe the '221 patent because, *inter alia*, MedForce's meeting planning system does not utilize at least one or more "business rules" as required by each of the claims of the '221 patent.

COUNT VI
DECLARATORY JUDGMENT OF INVALIDITY
(U.S. PATENT NO. 7,774,221)

25. Paragraphs 1-24 are incorporated herein by reference, as if repeated in full.

26. The '221 patent is invalid for failing to comply with the requirements for patentability as set forth in the United States Patent Laws, Title 35 U.S.C. §§ 1, *et seq.*, including but not limited to: (i) § 101, at least for the reason that the claims are directed to abstract ideas and thus fail to encompass patentable subject matter under the requirements set forth in Bilski and CyberSource; (ii) § 102 and/or § 103 in view of, *inter alia*, U.S. Patent Application Publication Nos. 2002/0032592, 2002/0156787, 2002/0016729 and 2002/0210445, and U.S. Patent Nos. 7,046,779, 7,653,566 and 6,775,658; (iii) and/or § 112.

COUNT VII
DECLARATORY JUDGMENT OF TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE AND BUSINESS RELATIONSHIP

27. Paragraphs 1-26 are incorporated herein by reference, as if repeated in full.

28. At the time when MedForce received Kurt Olander's May 23, 2011 and June 17, 2011 letters, MedForce was engaged in discussions with several third parties regarding their potential purchase of MedForce.

29. Negotiations with respect to these prospective business relationships began prior to May 24, 2011, when AHM first asserted its '628 and '282 patents against MedForce. Based on the communications between MedForce and the third parties prior to May 24, 2011, MedForce had a reasonable expectation of future economic benefit and value from these prospective business relations.

30. Upon information and belief, AHM knew and knows that MedForce was in negotiations with these third parties for the sale of its company, and that MedForce would be and was required to disclose AHM's letters and the threats of litigation to the third parties with whom MedForce was in negotiations. Specifically, several months ago, Peter Collins, a Vice-President of AHM, told a MedForce employee that he was aware that MedForce had "put a book together" and was "on the market."

31. AHM has tortiously, intentionally and without justification interfered with MedForce's prospective economic advantage and business relations by sending its May 23, 2011 and June 17, 2011 letters, alleging MedForce's infringement of the patents at issue and threatening to sue MedForce for such alleged infringement, even though AHM knew and knows that MedForce's meeting planning software does not infringe any of the patents at issue and/or that the patents at issue are invalid.

32. AHM's letters were sent in bad faith, for the purpose of harming MedForce's prospective sale of its company, creating confusion, mistake, and deception among potential purchasers of MedForce, diverting prospective purchasers, and interfering with MedForce's prospective economic advantage and business relations, as evident from, *inter alia*, AHM's baseless assertion "that all of the currently competitive technologies in the domain of healthcare speaker meeting logistics implement the features of claim 1 of the '282 patent" Despite AHM's claim that all currently competitive technologies in the domain of healthcare speaker meeting logistics infringe its patents, MedForce is unaware of any other company in the industry that has been accused of patent infringement by AHM. Upon information and belief, AHM sent its patent threat letters to MedForce – and only to MedForce – because it knew MedForce was in negotiations to sell its business, knew that MedForce would need to disclose the patent threat letters to potential purchasers, and knew and intended that the spectre of expensive patent

litigation would deter potential bidders from purchasing MedForce or would decrease the price they would be willing to pay for MedForce.

33. As a direct consequence of these disclosures, MedForce's prospective economic advantage and business relations have been disrupted, and MedForce's business has suffered financial injury. Specifically, at least one potential bidder for MedForce has advised that it has been "put off by the AHM situation" and did not submit a bid for that reason. That potential bidder also advised that it would be interested in bidding when the AHM threat is resolved. Referring to MedForce's dispute with AHM, a second potential bidder has advised MedForce that they do not believe they can close over this issue.

34. Upon information and belief, if not for AHM's interference, there was a reasonable probability that MedForce would have realized the economic benefit from a sale of its company as evidenced by two bidders informing MedForce that the dispute with AHM was the reason they were not submitting bids.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MedForce respectfully requests that the Court issue:

- A. A judgment declaring that MedForce has not infringed, contributed to the infringement of, or induced others to infringe the '628 patent;
- B. a judgment declaring that the '628 patent is invalid;
- C. a judgment declaring that MedForce has not infringed, contributed to the infringement of, or induced others to infringe the '282 patent;
- D. a judgment declaring that the '282 patent is invalid;
- E. a judgment declaring that MedForce has not infringed, contributed to the infringement of, or induced others to infringe the '221 patent;
- F. a judgment declaring that the '221 patent is invalid;

G. a judgment that AHM tortiously interfered with MedForce's prospective business relations and an award to MedForce of its actual damages, plus attorneys' fees and costs of this suit, together with such punitive damages and exemplary damages as the law shall permit or the Court shall find just, plus interest;

H. a judgment declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and entitling MedForce to an award of its reasonable attorneys' fees and costs in this action; and

I. such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 19, 2011

PLAINTIFF, CALL, INC. d/b/a MEDFORCE,

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