

JUDGE DANIELS

'08 CIV 48077

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

SERIOUS USA, INC.; SERIOUS IP, INC.;
and DXPDD, LLC,

Plaintiffs,

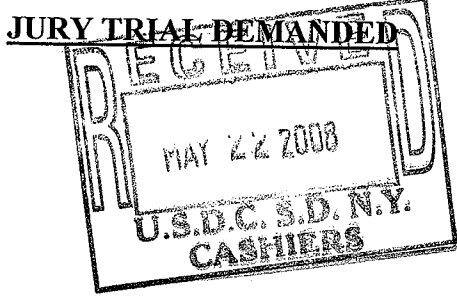
v.

INTERACTIVE CARD SOLUTIONS LLC
and INTERACTIVE CARD
TECHNOLOGIES LLC,

Defendants.

----- X

Civil Action No. _____



COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Serious USA, Inc. ("Serious"), Serious IP, Inc. ("Serious IP") and DXPDD, LLC ("DXPDD") (Serious, Serious IP and DXPDD collectively "Plaintiffs") by and through their undersigned counsel, as and for its Complaint for Patent Infringement (the "Complaint") against Defendants Interactive Card Solutions LLC ("ICS") and Interactive Card Technologies LLC ("ICT") (collectively "Defendants") states as follows:

THE PARTIES

1. Serious is a Delaware corporation with its principal place of business at 495 Broadway, Floor 4, New York, New York 10012.
2. Serious IP is a Delaware corporation with its principal place of business at 495 Broadway, Floor 4, New York, New York 10012. Serious IP is a wholly owned subsidiary of Serious.

3. DXPDD is a Delaware limited liability company with its principal place of business at 495 Broadway, Floor 4, New York, New York 10012. DXPDD is a wholly owned subsidiary of Serious IP.

4. Upon information and belief, ICS and ICT are corporations with headquarters at 10 West 18th Street, 3rd Floor, New York, NY 10011.

5. Upon information and belief, both ICS and ICT were formed pursuant to the laws of the State of Delaware and both have listed as its founding members Corey Perkins (“Perkins”), Casey Archer (“Archer”), and Brent Smith (“Smith”).

6. Perkins, Archer and Smith are all former senior employees of Serious. Between August and October of 2004, Perkins resigned and Archer and Smith were let go due to the formation of ICT, a competitive business, while employed by Serious and using Serious’ confidential and proprietary information.

7. On December 27, 2004, Serious filed a Summons and Complaint and an Order to Show Cause with Temporary Restraining Order in the Supreme Court of the State of New York, New York County, captioned *Serious USA, Inc. v. Casey Archer, et al.*; Case No. 604373/04 (Edmead, J.), against ICT, Archer, Perkins and Smith (collectively the “State Court Defendants”), alleging, *inter alia*, breach of contract, breach of confidentiality agreements, breach of fiduciary duties and unfair competition claims especially with respect to starting the competing ICT business by using Serious’ trade secrets, technology know-how, client contacts, business plan and other confidential information, all while still being employed by Serious.

8. On December 28, 2004, Judge Edmead issued the temporary restraining order requested by Serious against the State Court Defendants. The temporary restraining order prohibited the State Court Defendants from, *inter alia*, participating in any business in the

interactive CD/DVD card industry or contacting, among others, any of Serious' clients, investors, vendors or suppliers concerning any business opportunity.

9. On January 18, 2005, after hearing oral argument, Judge Edmead continued the restraining order against the State Court Defendants.

10. On February 16, 2005, before the Court reached a decision, the parties entered into a Stipulation of Settlement and Order that was filed in the New York County Clerk's Office. The Stipulation of Settlement was so ordered by Judge Carol Edmead (the "Order") and set forth the terms of a temporary injunction (which expired on June 2, 2005) and a permanent injunction. The permanent injunction prohibits the State Court Defendants from using or transferring to others for any competitive purpose any of Serious' intellectual property, including without limitation Serious' marketed CD and DVD products, Serious' licenses, business strategies, supply methods, sales methods and processes, Serious' patents and strategies to acquire patents and other rights, and Serious' confidential information and trade secrets.

11. The Order also provides that Serious is entitled to bring a special proceeding for contempt if the State Court Defendants violate the Order, which proceeding shall be assigned to Judge Edmead.

12. The State Court Defendants violated the Order on multiple occasions and on October 3 2007 Serious brought a special proceeding for contempt of court. Judge Edmead found that the State Court Defendants violated the Order but exercised her discretion to deny Serious' request for damages.

JURISDICTION AND VENUE

13. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq. This Court accordingly has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

PATENTS IN SUIT

15. On March 29, 2005, United States Design Patent No. D503,404 (the “‘404 Patent”), entitled CD CARD, duly and legally issued to Wood. Serious IP is the owner by assignment of the ‘404 Patent. A true copy of the ‘404 Patent is annexed hereto as Exhibit A.

16. On January 21, 2003, United States Patent No. 6,510,124 (the “‘124 Patent”), entitled CD CARD, duly and legally issued to Wood. Serious IP is the owner by assignment of the ‘124 Patent. A true copy of the ‘124 Patent is annexed hereto as Exhibit B.

17. On July 13, 2004, United States Patent No. 6,762,988 (the “‘988 Patent”), entitled CD CARD, duly and legally issued to Wood. Serious IP is the owner by assignment of the ‘988 Patent. A true copy of the ‘988 Patent is annexed hereto as Exhibit C.

18. On December 11, 2007, United States Patent No. 7,308,696 (the “‘696 Patent”) entitled DATA STORAGE APPARATUS, duly and legally issued to Wood. Serious IP is the owner by assignment of the ‘696 Patent. A true copy of the ‘696 Patent is annexed hereto as Exhibit D.

19. On November 9, 1999, United States Patent No. 5,982,736 (the “‘736 Patent”), entitled TRADING CARD OPTICAL COMPACT DISC AND METHODS OF USING AND FORMING SAME, duly and legally issued to Pierson. DXPDD is the owner by assignment of the ‘736 Patent. A true copy of the ‘736 Patent is annexed hereto as Exhibit E.

20. On October 16, 2001, United States Patent No. 6,304,544 (the “‘544 Patent”), entitled CARD COMPACT DISC, COMPACT DISC INTERFACE SEAT AND METHODS

OF USING SAME, duly and legally issued to Pierson, et al. DXPDD is the owner by assignment of the '544 Patent. A true copy of the '544 Patent is annexed hereto as Exhibit F.

21. On June 20, 2000, United States Patent No. 6,078,557 (the "'557 Patent"), entitled METHOD OF USING OPTICAL COMPACT DISC, duly and legally issued to Pierson. DXPDD is the owner by assignment of the '557 Patent. A true copy of the '557 Patent is annexed hereto as Exhibit G.

22. On January 18, 2000, United States Patent No. 6,016,298 (the "'298 Patent"), entitled CALLING CARD, duly and legally issued to Fischer. Serious is the owner by assignment of the '298 Patent. A true copy of the '298 Patent is annexed hereto as Exhibit H.

COUNT I

Infringement Of United States Design Patent No. D503,404 by ICS and ICT

23. Serious IP repeats the allegations contained in Paragraphs 1 through 22 as though fully set forth herein.

24. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '404 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of their products, including, but not limited to, its iactive giftcard™.

25. Upon information and belief, Defendants have had notice of the '404 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling Serious IP to enhanced damages pursuant to 35 U.S.C. § 284.

26. As a result of Defendants' infringement of the '404 Patent, Serious IP has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

27. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '404 Patent, Serious IP will be irreparably harmed.

28. Upon information and belief, with full knowledge of the '404 Patent, Defendants willfully and wantonly infringed the '404 Patent in deliberate and intentional disregard of Serious IP's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT II

Infringement Of United States Patent No. 6,510,124 by ICS and ICT

29. Serious IP repeats the allegations contained in Paragraphs 1 through 28 as though fully set forth herein.

30. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '124 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactive giftcard™.

31. Upon information and belief, Defendants have had notice of the '124 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling Serious IP to enhanced damages pursuant to 35 U.S.C. § 284.

32. As a result of Defendants' infringement of the '124 Patent, Serious IP has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

33. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '124 Patent, Serious IP will be irreparably harmed.

34. Upon information and belief, with full knowledge of the '124 Patent, Defendants willfully and wantonly infringed the '124 Patent in deliberate and intentional disregard of Serious IP's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT III

Infringement Of United States Patent No. 6,762,988 by ICS and ICT

35. Serious IP repeats the allegations contained in Paragraphs 1 through 34 as though fully set forth herein.

36. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '988 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactive giftcard™.

37. Upon information and belief, Defendants have had notice of the '988 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling Serious IP to enhanced damages pursuant to 35 U.S.C. § 284.

38. As a result of Defendants' infringement of the '988 Patent, Serious IP has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

39. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '988 Patent, Serious IP will be irreparably harmed.

40. Upon information and belief, with full knowledge of the '988 Patent, Defendants willfully and wantonly infringed the '988 Patent in deliberate and intentional disregard of Serious IP's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT IV

Infringement Of United States Patent No. 7,308,696 by ICS and ICT

41. Serious IP repeats the allegations contained in Paragraphs 1 through 40 as though fully set forth herein.

42. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '696 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactive giftcard™.

43. Upon information and belief, Defendants have had notice of the '696 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling Serious IP to enhanced damages pursuant to 35 U.S.C. § 284.

44. As a result of Defendants' infringement of the '696 Patent, Serious IP has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

45. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '696 Patent, Serious IP will be irreparably harmed.

46. Upon information and belief, with full knowledge of the '696 Patent, Defendants willfully and wantonly infringed the '696 Patent in deliberate and intentional disregard of Serious IP's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT V

Infringement Of United States Patent No. 5,982,736 by ICS and ICT

47. DXPDD repeats the allegations contained in Paragraphs 1 through 46 as though fully set forth herein.

48. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '736 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactivecard™.

49. Upon information and belief, Defendants have had notice of the '736 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling DXPDD to enhanced damages pursuant to 35 U.S.C. § 284.

50. As a result of Defendants' infringement of the '736 Patent, DXPDD has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

51. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '736 Patent, DXPDD will be irreparably harmed.

52. Upon information and belief, with full knowledge of the '736 Patent, Defendants willfully and wantonly infringed the '736 Patent in deliberate and intentional disregard of DXPDD's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT VI

Infringement Of United States Patent No. 6,304,544 by ICS and ICT

53. DXPDD repeats the allegations contained in Paragraphs 1 through 52 as though fully set forth herein.

54. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '544 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactivecard™.

55. Upon information and belief, Defendants have had notice of the '544 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling DXPDD to enhanced damages pursuant to 35 U.S.C. § 284.

56. As a result of Defendants' infringement of the '544 Patent, DXPDD has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

57. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '544 Patent, DXPDD will be irreparably harmed.

58. Upon information and belief, with full knowledge of the '544 Patent, Defendants willfully and wantonly infringed the '544 Patent in deliberate and intentional disregard of DXPDD's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT VII

Infringement Of United States Patent No. 6,078,557 by ICS and ICT

59. DXPDD repeats the allegations contained in Paragraphs 1 through 58 as though fully set forth herein.

60. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '557 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactivecard™.

61. Upon information and belief, Defendants have had notice of the '557 Patent as early as August 2004 and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling DXPDD to enhanced damages pursuant to 35 U.S.C. § 284.

62. As a result of Defendants' infringement of the '557 Patent, DXPDD has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

63. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '557 Patent, DXPDD will be irreparably harmed.

64. Upon information and belief, with full knowledge of the '557 Patent, Defendants willfully and wantonly infringed the '557 Patent in deliberate and intentional disregard of DXPDD's rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

COUNT VIII

Infringement Of United States Patent No. 6,016,298 by ICS and ICT

65. Serious repeats the allegations contained in Paragraphs 1 through 64 as though fully set forth herein.

66. Upon information and belief, Defendants have been, still are, and will continue infringing, contributing to the infringement of, and/or inducing the infringement of the '298 Patent in violation of 35 U.S.C. § 271 by making, selling, using and/or offering for sale one or more of its products, including, but not limited to, its iactivecard™.

67. Upon information and belief, Defendants have had notice of the '298 Patent and have acted with reckless disregard as to its infringement, which has been and continues to be willful, entitling Serious to enhanced damages pursuant to 35 U.S.C. § 284.

68. As a result of Defendants' infringement of the '298 Patent, Serious has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

69. Unless an injunction is issued enjoining Defendants and their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from infringing the '298 Patent, Serious will be irreparably harmed.

70. Upon information and belief, with full knowledge of the '298 Patent, Defendants willfully and wantonly infringed the '298 Patent in deliberate and intentional disregard of Serious' rights, making this an exceptional case pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

A. A declaration that Defendants have infringed, are infringing, have induced and are inducing, and have contributed and are contributing to the infringement of United States Design Patent No. D503,124 and United States Patent Nos. 6,510,124; 6,762,988; 7,308,696; 6,078,557; 6,304,544, 5,982,736; 6,016,298 (collectively, the “patents in suit”);

B. A preliminary and permanent injunction enjoining Defendants, their officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, from further infringement, inducing infringement, and contributing to infringement of the patents in suit;

C. An award of damages in favor of Plaintiffs and against Defendants sufficient to fully compensate Plaintiffs for Defendants’ infringement of the patents in suit and an assessment of prejudgment interest and post-judgment interest;

D. A finding by the Court that Defendants’ infringement of the patents in suit is willful, and an award of enhanced damages pursuant to 35 U.S.C. § 284;

E. Trebling the compensatory damages due Plaintiffs;

F. A finding by the Court that this is an exceptional case under 35 U.S.C. § 285 and an award to Plaintiffs of their attorneys’ fees, costs and expenses in this action; and

G. Such other and further relief as the Court deems just and equitable.

Dated: New York, New York
May 22, 2008

DREIER LLP

By: 

Seth H. Ostrow (SO 9605)

Arianna Frankl (AF 7764)

Karine Louis (KL 6652)

499 Park Avenue
New York, New York 10022
Telephone: (212) 328-6100
Facsimile: (212) 328-6101


Attorneys for Plaintiffs Serious USA, Inc.,
Serious IP, Inc. and DXPDD, LLC

DEMAND FOR JURY TRIAL

Serious USA, Inc. hereby demands trial by jury of all claims and issues so triable.

Dated: New York, New York
May 22, 2008

DREIER LLP

By: 
Seth H. Ostrow (SO 9605)
Arianna Frankl (AF 7764)
Karine Louis (KL 6652)

499 Park Avenue
New York, New York 10022
Telephone: (212) 328-6100
Facsimile: (212) 328-6101

Attorneys for Plaintiffs Serious USA, Inc.,
Serious IP, Inc. and DXPPD, LLC

353526