

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MYMAIL, LTD.,	§	
	§	
Plaintiff,	§	CIVIL ACTION
	§	
vs.	§	6:04-CV-189
	§	
AMERICA ONLINE, INC., et al.	§	JURY TRIAL REQUESTED
	§	
Defendants.	§	

MYMAIL’S THIRD AMENDED COMPLAINT

Pursuant Rule 15 of the Federal Rules of Civil Procedure and the Court’s May 26, 2005 Docket Control Order, Plaintiff MyMail, Ltd. (“MyMail”) files this Third Amended Complaint for infringement of U.S. Patent No. 6,571,290 (the “’290 patent”) under 35 U.S.C. § 271. A copy of the ’290 patent is attached as Exhibit “A.”

PARTIES

1. Plaintiff MyMail is a limited partnership organized under the laws of the State of Texas. MyMail maintains its principal place of business at 3300 Montecito, Denton, Texas, 76205.

2. Upon information and belief, Defendant America Online, Inc. (“AOL”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. AOL offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “AOL”. In conjunction with this offering for sale, selling, advertising, and providing such network

services, AOL ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

3. Upon information and belief, Defendant NetZero, Inc. (“NetZero”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. NetZero offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “NetZero”. In conjunction with this offering for sale, selling, advertising, and providing such network services, NetZero ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

4. Upon information and belief, Defendant Juno Online Services, Inc. (“Juno”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. Juno offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “Juno”. In conjunction with this offering for sale, selling, advertising, and providing such network services, Juno ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

5. Upon information and belief, Defendant NetBrands, Inc. (“NetBrands”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of California. NetBrands offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not

limited to “Bluelight”. In conjunction with this offering for sale, selling, advertising, and providing such network services, NetBrands ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

6. Upon information and belief, Defendant Earthlink, Inc. (“Earthlink”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. Earthlink offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “Earthlink”. In conjunction with this offering for sale, selling, advertising, and providing such network services, Earthlink ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

7. Upon information and belief, Defendant Prodigy Communications Corporation (“Prodigy”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. Prodigy offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “SBC Yahoo!”. In conjunction with this offering for sale, selling, advertising, and providing such network services, Prodigy ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

8. Upon information and belief, Defendant Southwestern Bell Internet Services, Inc. (“SBIS”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. SBIS offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more

particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “SBC Yahoo!”. In conjunction with this offering for sale, selling, advertising, and providing such network services, SBIS ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

9. Upon information and belief, Defendant SBC Internet Services, Inc. (“SBC”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of California. SBC offers for sale, sells, advertises, and provides network services, including remote network access, to consumers in the United States and, more particularly, in the Eastern District of Texas, under one or more brand names, including but not limited to “SBC Yahoo!”. In conjunction with this offering for sale, selling, advertising, and providing such network services, SBC ships, distributes, and makes available online, software products that allow users to remotely access and use the network services.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1338(a).

11. This Court has personal jurisdiction over each Defendant. Each Defendant has conducted and does conduct business within the State of Texas. Each Defendant, directly or through intermediaries, offers for sale, sells, advertises, and provides network services, including remote network access, in the United States, the State of Texas, and the Eastern District of Texas. In conjunction with this offering for sale, selling, advertising, and providing such network services, each Defendant, either directly or through intermediaries (including distributors, retailers, and others), ships, distributes, and makes available online, software

products that allow users to remotely access and use the network services. Defendants have voluntarily sold infringing services and distributed infringing products in this District, either directly to customers in this District or through intermediaries with the expectation that the services and products will be sold and distributed to customers in this District. These infringing services and products have been and continue to be purchased and used by consumers in the Eastern District of Texas. Each Defendant has committed acts of infringement within the State of Texas and, more particularly, within the Eastern District of Texas. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

COUNT 1

PATENT INFRINGEMENT

12. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-12 above.

13. United States Patent No. 6,571,290 (the “’290 patent”), entitled “Method and Apparatus for Providing Fungible Intercourse Over a Network,” was duly and legally issued by the United States Patent and Trademark Office on May 27, 2003, after full and fair examination. The ’290 patent relates to, among other things, simplifying the process of accessing a network by a computer user. Plaintiff is the assignee of all rights, title, and interest in and to the ’290 patent and possesses all rights of recovery under the ’290 patent.

14. Each Defendant is infringing the ’290 patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling within the United States products and services that practice the inventions of the ’290 patent; (b) importing into the United States the inventions of the ’290 patent; (c) contributing to the infringement of the ’290 patent by others in the United States; and/or (d) inducing others to infringe the ’290 patent within the United States.

15. Plaintiff has at all times complied with 35 U.S.C. § 287.

16. Upon information and belief, each Defendants' infringement has been willful after receipt of notice of the '290 patent.

PRAYER FOR RELIEF

Plaintiff prays for the following relief:

A. A judgment that each Defendant has directly infringed the '290 patent, contributorily infringed the '290 patent, and/or induced infringement of the '290 patent;

B. An injunction preventing each Defendant and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and inducing the infringement of the '290 patent;

C. A judgment and order requiring each Defendant to pay Plaintiff damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

D. A judgment and order requiring each Defendant to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;

E. A judgment and order requiring each Defendant to pay Plaintiff the costs of this action (including all disbursements) and attorneys fees as provided by 35 U.S.C. § 285;

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands that all issues be determined by jury.

DATED: July 26, 2005

Respectfully submitted,

McKOOL SMITH, P.C.

/s/ Douglas A Cawley (w/p C. Miller)

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**ATTORNEYS FOR PLAINTIFF
MYMAIL,LTD.**

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing document was served on the following counsel via the Court's ECF system or by U.S. Mail on this 26th day of July 2005:

/s/ Charles W. Miller
Charles W. Miller

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