

Act of Congress relating to patents, and under 28 U.S.C. § 1331 as this action arises under the laws of the United States, particularly the Patent Act and 18 U.S.C. § 1030, commonly referred to as the Computer Fraud and Abuse Act (“CFAA”).

5. This Court has personal jurisdiction over Maxim because Maxim has substantial contacts with the forum state of Kansas. Maxim, directly and/or through third party manufacturers, makes, assembles, and/or distributes products that are and have been offered for sale, sold, purchased, and used within the State of Kansas. In addition, Maxim, directly and/or through its distribution networks, regularly places its products within the stream of commerce, with the knowledge and/or understanding that such products will be sold in Kansas, and operates an interactive website through which persons in Kansas can and do order products from Maxim, which are shipped to Kansas. Further, Maxim, directly and/or through others at its direction, accessed a Jack Henry computer server in Lenexa, Kansas, without authorization.

6. Venue is proper in this District under 28 U.S.C. § 1391(b) and/or (c), and 28 U.S.C. § 1400(b), because a substantial part of the events or omissions giving rise to the action occurred in the District of Kansas and the defendant is subject to personal jurisdiction in the District of Kansas pursuant to the Kansas Long-Arm Statute Kan. Stat. Ann. Sec. 60-308.

GENERAL ALLEGATIONS

7. Jack Henry is a company that specializes in providing information processing solutions, including web based banking products, for regional, local and community banks and credit unions throughout the United States.

8. One of Jack Henry’s clients is First United Bank & Trust Co. (“First United”) located in Durant, Oklahoma. First United licenses Jack Henry’s banking products and data processing services, including web based banking products and services that the customers of First United can use.

9. On October 7, 2011, counsel for Maxim sent a demand letter to First United, expressly accusing First United of infringing four of Maxim's patents. Specifically, the letter stated "[i]t is our belief that First United Bank is infringing a number of the patents within the Maxim Mobile Transaction Patent Portfolio." Maxim stated that the mobile platforms provided by First United to its customers "infringe certain claims within the portfolio via direct infringement, joint infringement, contributory infringement and/or inducement." Maxim stated, in regards to its patent portfolio, that it was "fully committed to its enforcement and preservation" and that if Maxim did not hear from First United within one month, Maxim would "assume that First United Bank does not want to obtain a license in a non-litigious manner and will act accordingly."

10. The letter to First United was a clear and unmistakable threat of litigation. Maxim has filed a number of actions against persons it alleges to be infringing its patents within the past several months, including several within the past week.

11. Specifically, the four patents allegedly infringed are United States Patent Nos. 5,940,510 ('510), 5,949,880 ('880), 6,105,013 ('013), and 6,237,095 ('095). On information and belief, these four patents have been assigned to Maxim. Copies of all four patents are attached hereto as Exhibits 1, 2, 3 and 4.

12. Following receipt of the letter threatening litigation, First United contacted Jack Henry, because the mobile banking application allegedly infringed is a Jack Henry product that First United licenses from Jack Henry. First United sought indemnification from Jack Henry for the claims of alleged infringement. Based on the allegations in the October 7th letter, Jack Henry is the real party that Maxim alleges is infringing its patents.

13. Jack Henry, in reviewing the letter to First United and the attachments provided by Maxim, realized that it contained information that could only be obtained from a Jack Henry server. Further investigation revealed that the person who appears to have provided that information to Maxim had attempted on at least four (4) occasions to hack Jack Henry's proprietary server in Lenexa, Kansas. Additional assessment determined that the IP address of the hacking attempts originated in the Rostov-on-Don region of Russia, a town which sits close to the Sea of Azov and the southeastern border with Ukraine. The screenshots showed, in the Russian language, that the searches were performed in "Moscow Daylight Time." Jack Henry utilized the services of an expert in the Russian language to interpret the information. Further, the hacker used common hacking software, including Paros and Wireshark, to gain access to Jack Henry's server.

14. Jack Henry believes, after additional research, that the person hired by or on behalf of Maxim to hack Jack Henry's server is one Dimitre Tkachenko. Upon information and belief, Mr. Tkachenko is a resident of the Rostov-on-Don region of Russia, is a data programmer, speaks both English and Russian and is believed to use the screen name "Dimatk." The individual who attempted to hack into Jack Henry's server used the fake login name of "Dimatk."

15. It thus appears that Maxim, without authorization and acting through an agent in Russia, used a fake password and login in an attempt to gain access to Jack Henry's proprietary financial computer system in Lenexa, Kansas. Maxim's letter to First United included screenshots that documented the actions of the Russian hacker, including evidence of the hacking software used and the hacker's presence on the Jack Henry server. Jack Henry, upon learning this, commenced an immediate investigation as to the extent of the unauthorized access.

16. Jack Henry's investigation revealed that Maxim's Russian agent spent over one (1) hour on Jack Henry's server in Lenexa, Kansas. Utilizing common hacking software described above, he decompiled the source code of Jack Henry's proprietary software, watched communication taking place on Jack Henry's server, and manipulated source code during communications to determine what information was required for logging in.

17. In response to this unauthorized access, Jack Henry had to spend valuable time and resources to determine the extent of the unauthorized access, including determining who accessed the site, when the site was accessed, what was done and what steps needed to be taken to safeguard against this again. The amount spent by Jack Henry for purposes of this investigation exceeds five thousand dollars (\$5000.00).

18. Jack Henry has separately evaluated the patents allegedly infringed, including the information provided by Maxim in the letter to First United, and determined that its product does not infringe, either directly or indirectly, the patents referenced by Maxim, and that the patent claims contained in those patents are invalid.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

19. Jack Henry incorporates by reference each and every allegation set forth in paragraphs 1-16 as if fully set forth herein.

20. Neither Jack Henry nor its customers have directly or indirectly infringed and are not directly or indirectly infringing any claim in the '510, '880, '013, and '095 patents.

21. Jack Henry and its customers have not jointly infringed, contributorily infringed and/or induced infringement of any of the claims in the '510, '880, '013, and '095 patents.

22. One or more of the claims of each of the '510, '880, '013, and '095 patents are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of the United States Code, including without limitation §§ 102, 103 and/or 112.

23. Jack Henry is entitled to a declaratory judgment that it has not infringed and is not infringing the '510, '880, '013, and '095 patents and/or that the claims of the '510, '880, '013, and '095 patents are invalid.

SECOND CLAIM FOR RELIEF

(Violation of 18 U.S.C. § 1030)

24. Jack Henry incorporates by reference each and every allegation set forth in paragraphs 1-21 as if fully set forth herein.

25. 18 U.S.C. § 1030(g) creates a civil cause of action for violation of the CFAA.

26. Maxim violated 18 U.S.C. § 1030(a)(2)(C) by, through one or more agents acting on its behalf, intentionally accessing Jack Henry's proprietary server in Lenexa, Kansas without authorization.

27. Jack Henry's server is considered a protected computer under the CFAA.

28. This unauthorized access on the part of Maxim caused Jack Henry damage and loss in the form of response costs, damage assessments, system analysis, wages of employees, experts and/or contractors for performing these tasks, harm to its reputation and attorney's fees.

29. The damages and loss to Jack Henry as a direct result of Maxim's actions exceeds five thousand dollars (\$5,000.00) in one year as required under 18 U.S.C. § 1030(c)(4)(A)(i)(I).

WHEREFORE, Jack Henry requests the Court to enter judgment in its favor and against Maxim as follows:

- a. An order declaring that neither Jack Henry nor its customers have directly or indirectly infringed, and are not directly or indirectly infringing, any claim of the '510, '880, '013, and '095 patents;
- b. An order declaring Jack Henry and its customers have not and are not currently jointly infringing, contributorily infringing and/or inducing infringement in the use of Jack Henry's products;
- c. An order declaring the claims of the '510, '880, '013, and '095 patents to be invalid;
- d. An order awarding Jack Henry its costs including expert fees, disbursements, and reasonable attorneys' fees incurred in this action, pursuant to 35 U.S.C. § 285;
- e. An order enjoining Maxim, or anyone acting on its behalf, directly or indirectly, from further unauthorized access to Jack Henry's server;
- f. An order requiring Maxim to produce all documentation, including copies made thereof, of any and all information, including but not limited to source code, obtained from Jack Henry's server;
- g. An order requiring Maxim to identify all individuals who accessed the Jack Henry server, account for any and all payments made to or consideration flowing to said persons, and identify and produce all documentation relating to said accessing of Jack Henry's computers;
- h. An order awarding Jack Henry all damages provided under the CFAA, including but not limited to its costs incurred as a result of Maxim's unauthorized actions, including consultant fees and attorney's fees; and
- i. An order granting such further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates the place of trial in this matter to be Kansas City, Kansas.

Respectfully submitted,

POLSINELLI SHUGHART PC

/s/ Russell S. Jones, Jr.

RUSSELL S. JONES Jr. D. Kan. #70214

JOSHUA McCAIG MO #56059

Twelve Wyandotte Plaza

120 W. 12th Street

Kansas City, MO 64105

Phone: (816) 421-3355

Fax: (816) 374-0509

rjones@polsinelli.com

jmccaig@polsinelli.com

RICHARD P. STITT

KS#14368

6201 College Blvd., Suite 500

Overland Park, KS 66211

Phone: (913) 451-8788

Fax: (913) 451-6205

rstitt@polsinelli.com

ATTORNEYS FOR PLAINTIFF