

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CODEPRO INNOVATIONS LLC

Plaintiff,

v.

SAFEWAY INC.

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff CodePro Innovations LLC ("CodePro" or "Plaintiff"), by way of Complaint against defendant Safeway Inc. ("Safeway" or "Defendant"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*

THE PARTIES

2. Plaintiff CodePro is a limited liability company organized under the laws of the State of Texas with its principal place of business at 777 Enterprise Drive, Hewitt, Texas 76643.

3. Defendant Safeway Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 5918 Stoneridge Mall Road, Pleasanton, California 94588. Upon information and belief, Safeway conducts retail operations under multiple brands including Safeway, Genuardi's, Dominick's, Carrs, Vons, Pavilions, Randalls and Tom Thumb.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338

6. Safeway is subject to this Court's specific and general personal jurisdiction pursuant to due process by virtue of its incorporation in this forum and its systematic and regularly conducted business activities in this forum, including least committing in this forum some of the acts of infringement alleged and described in further detail herein. As such, Safeway has purposefully availed itself of the privilege of conducting business within this Judicial District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being haled into court in this Judicial District; has purposefully directed activities at residents of this State; and at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

7. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(c) and 1400(b).

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,924,078

8. The allegations set forth in the foregoing paragraphs 1 through 7 are hereby realleged and incorporated herein by reference.

9. On July 13, 1999, U.S. Patent No. 5,924,078 ("the '078 patent"), entitled "Consumer-Provided Promotional Code Actuatable Point-of-Sale Discounting System," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '078 Patent is attached as Exhibit A to this Complaint.

10. CodePro is the assignee and owner of the right, title and interest in and to the '078 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

11. In violation of 35 U.S.C. § 271, Safeway has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, the '078 Patent by making and using in the United States, including in this Judicial District, systems and methods that practice the subject matter claimed in one or more claims of the '078 Patent ("the '078 Accused Products and Services"), without the authority of CodePro. The '078 Accused Products and Services include, without limitation, Safeway's loyalty card discount and Gas Rewards Points programs, and hardware and software for implementing Safeway's loyalty card discount and Gas Rewards Programs, including hardware and software for accepting Safeway loyalty card account information entered by consumers and providing discounts related to said information. On information and belief, Safeway's loyalty card programs include Safeway Club Card, Genuardi's Club Card, Fresh Values Card, CarrsPlus/Safeway Club Card, VonsClub Card, Pavilions ValuePlus Card, Randalls Remarkable Card and Tom Thumb Reward Card.

12. CodePro provided actual notice to Safeway of its infringement of the '078 Patent in a letter sent by certified mail on June 5, 2012.

13. Safeway has had actual knowledge of the '078 Patent and its infringement of that patent since at least the date that Safeway received the June 5, 2012 letter.

14. CodePro has been harmed by Safeway's infringing activities.

15. CodePro provided notice of infringement of the '078 Patent to Safeway, but Safeway thereafter continued to infringe the patent. On information and belief, Safeway's infringement has been and continues to be willful.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,717,866

16. The allegations set forth in the foregoing paragraphs 1 through 15 are hereby realleged and incorporated herein by reference.

17. On February 10, 1998, U.S. Patent No. 5,717,866 ("the '866 patent"), entitled "Method for Comparative Analysis of Consumer Response to Product Promotions," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '866 Patent is attached as Exhibit B to this Complaint.

18. CodePro is the assignee and owner of the right, title and interest in and to the '866 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

19. In violation of 35 U.S.C. § 271, Safeway has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, the '866 Patent by making and using in the United States, including in this Judicial District, systems and methods for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions which practice the subject matter claimed in one or more claims of the '866 Patent ("the '866 Accused Products and Services"), without the authority of CodePro. The '866 Accused Products and Services include, without limitation, Safeway's loyalty card discount and Gas Rewards Points programs, and hardware and software for implementing Safeway's loyalty card discount and Gas Rewards Programs, including hardware and software for accepting Safeway loyalty card account information entered by consumers and providing discounts related to said information. On information and belief, Safeway's loyalty card programs include Safeway Club Card, Genuardi's Club Card, Fresh Values Card, CarrsPlus/Safeway Club Card, VonsClub Card, Pavilions ValuePlus Card, Randalls Remarkable Card and Tom Thumb Reward Card.

20. CodePro provided actual notice to Safeway of its infringement of the '866 Patent in a letter sent by certified mail on June 5, 2012.

21. Safeway has had actual knowledge of the '866 Patent and its infringement of that patent since at least the date that Safeway received the June 5, 2012 letter.

22. CodePro has been harmed by Safeway's infringing activities.

23. CodePro provided notice of infringement of the '866 Patent to Safeway, but Safeway thereafter continued to infringe the patent. On information and belief, Safeway's infringement has been and continues to be willful.

JURY DEMAND

CodePro demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, CodePro respectfully requests that this Court enter judgment for CodePro and against Safeway as follows:

- A. An adjudication that Safeway has infringed the '078 and '866 patents;
- B. An award of damages to be paid by Safeway adequate to compensate CodePro for past infringement of the '078 and '866 patents and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. An injunction ordering Safeway to pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;
- D. An award of treble damages under 35 U.S.C. § 284;

E. A declaration finding this to be an exceptional case, and awarding CodePro attorney fees under 35 U.S.C. § 285; and

F. For such further relief at law and in equity as the Court may deem just and proper.

Dated: July 23, 2012

STAMOULIS & WEINBLATT LLC

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