

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

eCOMSYSTEMS, INC.,
Plaintiff,

v.

SHARED MARKETING SERVICES, INC.,
and ACE HARDWARE CORPORATION,

Defendants.

Civ. Action No. _____

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT AND INJUNCTIVE RELIEF

Plaintiff, eComSystems, Inc. ("eCom"), by its undersigned attorneys, sues the Defendants, SHARED MARKETING SERVICES, INC. ("SMS") and ACE HARDWARE CORPORATION ("Ace") and for its complaint, alleges as follows:

NATURE OF THIS ACTION

1. This is an action for patent infringement and other relief arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271, 281-285.

THE PARTIES

2. Plaintiff eComSystems, Inc. ("eCom") is a corporation organized and existing under the laws of the State of Florida, and having its principal place of business at 8237 Vicela Dr., Sarasota, FL 43240.

3. Defendant Shared Marketing Services, Inc. ("SMS"), upon information and belief, is a corporation organized and existing under the laws of the State of Illinois, and having its principal place of business at 444 North Michigan Avenue, 28th Floor, Chicago, IL 60611.

4. Defendant Ace Hardware Corporation ("Ace"), upon information and belief, is a private, cooperative corporation organized and existing under the laws of the State of Illinois, and having its principal place of business at 2200 Kensington Ct., Oak Brook, IL 60523.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a), and 1367.

6. This Court has personal jurisdiction over SMS because, *inter alia*: (1) SMS does business in the State of Florida, and in this judicial district and division; and (2) under the Florida Long Arm Statute, Fla. Stat. § 48.193, SMS infringes the patents described below in this State, judicial district and division.

7. This Court has personal jurisdiction over Ace because, *inter alia*: (1) Ace does business in the State of Florida and in this judicial district and division; (2) engages in substantial and not isolated activity within this State and District; and (3) under the Florida Long Arm Statute, Fla. Stat. § 48.193, operates a business within Florida and infringes the patents described below in this State, judicial district and division.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 (b) and (c) and 1400(b) because SMS is distributing and selling the infringing product in this district.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 7,315,983

9. On January 1, 2008, United States Patent No. 7,315,983 ("the '983 patent"), entitled "System and Method for Computer-Created Advertisements," was duly and legally issued by the United States Patent and Trademark Office. eCom owns the

'983 patent, and the '983 patent has been valid and enforceable. A true and correct copy of the '983 patent is attached as Exhibit A to this Complaint.

10. SMS has been and is directly infringing, and is actively inducing others to infringe and/or is contributorily infringing the '983 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Brand Construction Kit ("BCK"). A true and correct copy of the SMS web site advertising the BCK product is attached as Exhibit F to this Complaint. SMS has offered to sell and is selling at least BCK to, *inter alia*, Ace within this District. SMS has offered to sell and is selling the Ace Brand Place system, based on BCK, to Ace.

11. Upon information and belief, SMS has known of the existence of the '983 patent due to, *inter alia*, discussions between the President of SMS, Rick Lattanzio, and the President of eCom, Jon C. Evans on or about October 22, 2009, at the Ace Fall Convention in Atlanta, GA. A true and correct copy of correspondence explaining the discussions is attached as Exhibit G to this Complaint. Despite such knowledge, SMS has continued its infringement of the '983 patent with knowledge of Plaintiffs' patent rights, and SMS's infringement is willful.

12. Upon information and belief, SMS will continue to infringe the '983 patent unless and until it is enjoined by this Court.

13. SMS has caused and will continue to cause Plaintiffs injury and damage by infringing the '983 patent. Plaintiffs will suffer further injury unless and until SMS is enjoined from infringing the '983 patent.

14. Ace has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '983 patent in this District and elsewhere by

making, using, offering to sell and/or selling at least its Ace Brand Place advertisement interface that uses BCK. A true and correct copy of the Ace Brand Place "How To" Guide is attached as Exhibit H to this Complaint.

15. Upon information and belief, Ace has known of the existence of the '983 patent due to, *inter alia*, correspondence with Ace's Director of Marketing and Marketing Manager, Brian Wiborg, dated April 13, 2010, and correspondence and discussions with Ace's Counsel, Scott W. Petersen, and Ace's Associate General Counsel, Julie A. Browning, during October and November of 2009. True and correct copies of such correspondence are attached as Exhibits I, G and J to this Complaint. Despite such knowledge, Ace has continued its infringement of the '983 patent with knowledge of Plaintiffs' patent rights, and Ace's infringement is willful.

16. Upon information and belief, Ace will continue to infringe the '983 patent unless and until it is enjoined by this Court.

17. Ace has caused and will continue to cause Plaintiffs injury and damage by infringing the '983 patent. Plaintiffs will suffer further injury unless and until Ace is enjoined from infringing the '983 patent.

COUNT II - INFRINGEMENT OF U.S. PATENT NO. 7,665,105

18. On February 16, 2010, United States Patent No. 7,665,105 ("the '105 patent"), entitled "System and Method for Computer-Created Advertisements," was duly and legally issued by the United States Patent and Trademark Office. eCom owns the '105 patent, and the '105 patent has been valid and enforceable. A true and correct copy of the '105 patent is attached as Exhibit B to this Complaint.

19. SMS has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '105 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Brand Construction Kit ("BCK"). A true and correct copy of the SMS web site advertising the BCK product is attached as Exhibit F to this Complaint. SMS has offered to sell and is selling at least its Brand Construction Kit to, *inter alia*, Ace.

20. Upon information and belief, SMS has known of the existence of the '105 patent due to, *inter alia*, discussions between the President of SMS, Rick Lattanzio, and the President of eCom, Jon C. Evans on or about October 22, 2009, at the Ace Fall Convention in Atlanta, GA. A true and correct copy of correspondence explaining the discussions is attached as Exhibit G to this Complaint. Despite such knowledge, SMS has continued its infringement of the '105 patent with knowledge of Plaintiffs' patent rights, and SMS's infringement is willful.

21. Upon information and belief, SMS will continue to infringe the '105 patent unless and until it is enjoined by this Court.

22. SMS has caused and will continue to cause Plaintiffs injury and damage by infringing the '105 patent. Plaintiffs will suffer further injury unless and until SMS is enjoined from infringing the '105 patent.

23. Ace has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '105 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Ace Brand Place advertisement interface that uses BCK. A true and correct copy of the Ace Brand Place "How To" Guide is attached as Exhibit H to this Complaint.

24. Upon information and belief, Ace has known of the existence of the '105 patent due to, *inter alia*, correspondence with Ace's Director of Marketing and Marketing Manager, Brian Wiborg, dated April 13, 2010, and correspondence and discussions with Ace's Counsel, Scott W. Petersen, and Ace's Associate General Counsel, Julie A. Browning, during October and November of 2009. True and correct copies of such correspondence are attached as Exhibits I, G and J to this Complaint. Despite such knowledge, Ace has continued its infringement of the '105 patent with knowledge of Plaintiffs' patent rights, and Ace's infringement is willful.

25. Upon information and belief, Ace will continue to infringe the '105 patent unless and until it is enjoined by this Court.

26. Ace has caused and will continue to cause Plaintiffs injury and damage by infringing the '105 patent. Plaintiffs will suffer further injury unless and until Ace is enjoined from infringing the '105 patent.

COUNT III - INFRINGEMENT OF U.S. PATENT NO. 7,673,237

27. On March 2, 2010, United States Patent No. 7,673,237 ("the '237 patent"), entitled "System and Method for Computer-Created Advertisements," was duly and legally issued by the United States Patent and Trademark Office. eCom owns the '237 patent, and the '237 patent has been valid and enforceable. A true and correct copy of the '237 patent is attached as Exhibit C to this Complaint.

28. SMS has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '237 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Brand Construction Kit ("BCK"). A true and correct copy of the SMS web site advertising the BCK product is attached as

Exhibit F to this Complaint. SMS has offered to sell and is selling at least its Brand Construction Kit to, *inter alia*, Ace.

29. Upon information and belief, SMS has known of the existence of the '237 patent due to, *inter alia*, discussions between the President of SMS, Rick Lattanzio, and the President of eCom, Jon C. Evans on or about October 22, 2009, at the Ace Fall Convention in Atlanta, GA. A true and correct copy of correspondence explaining the discussions is attached as Exhibit G to this Complaint. Despite such knowledge, SMS has continued its infringement of the '237 patent with knowledge of Plaintiffs' patent rights, and SMS's infringement is willful.

30. Upon information and belief, SMS will continue to infringe the '237 patent unless and until it is enjoined by this Court.

31. SMS has caused and will continue to cause Plaintiffs injury and damage by infringing the '237 patent. Plaintiffs will suffer further injury unless and until SMS is enjoined from infringing the '237 patent.

32. Ace has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '237 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Ace Brand Place advertisement interface that uses BCK. A true and correct copy of the Ace Brand Place "How To" Guide is attached as Exhibit H to this Complaint.

33. Upon information and belief, Ace has known of the existence of the '237 patent due to, *inter alia*, correspondence with Ace's Director of Marketing and Marketing Manager, Brian Wiborg, dated April 13, 2010, and correspondence and discussions with Ace's Counsel, Scott W. Petersen, and Ace's Associate General Counsel, Julie A.

Browning, during October and November of 2009. True and correct copies of such correspondence are attached as Exhibits I, G and J to this Complaint. Despite such knowledge, Ace has continued its infringement of the '237 patent with knowledge of Plaintiffs' patent rights, and Ace's infringement is willful.

34. Upon information and belief, Ace will continue to infringe the '237 patent unless and until it is enjoined by this Court.

35. Ace has caused and will continue to cause Plaintiffs injury and damage by infringing the '237 patent. Plaintiffs will suffer further injury unless and until Ace is enjoined from infringing the '237 patent.

COUNT IV - INFRINGEMENT OF U.S. PATENT NO. 7,698,719

36. On April 13, 2010, United States Patent No. 7,698,719 ("the '719 patent"), entitled "System and Method for Computer-Created Advertisements," was duly and legally issued by the United States Patent and Trademark Office. eCom owns the '719 patent, and the '719 patent has been valid and enforceable. A true and correct copy of the '719 patent is attached as Exhibit D to this Complaint.

37. SMS has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '719 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Brand Construction Kit ("BCK"). A true and correct copy of the SMS web site advertising the BCK product is attached as Exhibit F to this Complaint. SMS has offered to sell and is selling at least its Brand Construction Kit to, *inter alia*, Ace.

38. Upon information and belief, SMS has known of the existence of the '719 patent due to, *inter alia*, discussions between the President of SMS, Rick Lattanzio, and

the President of eCom, Jon C. Evans on or about October 22, 2009, at the Ace Fall Convention in Atlanta, GA. A true and correct copy of correspondence explaining the discussions is attached as Exhibit G to this Complaint. Despite such knowledge, SMS has continued its infringement of the '719 patent with knowledge of Plaintiffs' patent rights, and SMS's infringement is willful.

39. Upon information and belief, SMS will continue to infringe the '719 patent unless and until it is enjoined by this Court.

40. SMS has caused and will continue to cause Plaintiffs injury and damage by infringing the '719 patent. Plaintiffs will suffer further injury unless and until SMS is enjoined from infringing the '719 patent.

41. Ace has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '719 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Ace Brand Place advertisement interface that uses BCK. A true and correct copy of the Ace Brand Place "How To" Guide is attached as Exhibit H to this Complaint.

42. Upon information and belief, Ace has known of the existence of the '719 patent due to, *inter alia*, correspondence with Ace's Director of Marketing and Marketing Manager, Brian Wiborg, dated April 13, 2010, and correspondence and discussions with Ace's Counsel, Scott W. Petersen, and Ace's Associate General Counsel, Julie A. Browning, during October and November of 2009. True and correct copies of such correspondence are attached as Exhibits I, G and J to this Complaint. Despite such knowledge, Ace has continued its infringement of the '719 patent with knowledge of Plaintiffs' patent rights, and Ace's infringement is willful.

43. Upon information and belief, Ace will continue to infringe the '719 patent unless and until it is enjoined by this Court.

44. Ace has caused and will continue to cause Plaintiffs injury and damage by infringing the '719 patent. Plaintiffs will suffer further injury unless and until Ace is enjoined from infringing the '719 patent.

COUNT V - INFRINGEMENT OF U.S. PATENT NO. 7,707,081

45. On April 27, 2010, United States Patent No. 7,707,081 ("the '081 patent"), entitled "System and Method for Computer-Created Advertisements," was duly and legally issued by the United States Patent and Trademark Office. eCom owns the '081 patent, and the '081 patent has been valid and enforceable. A true and correct copy of the '081 patent is attached as Exhibit E to this Complaint.

46. SMS has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '081 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Brand Construction Kit ("BCK"). A true and correct copy of the SMS web site advertising the BCK product is attached as Exhibit F to this Complaint. SMS has offered to sell and is selling at least its Brand Construction Kit to, *inter alia*, Ace.

47. Upon information and belief, SMS has known of the existence of the '081 patent due to, *inter alia*, discussions between the President of SMS, Rick Lattanzio, and the President of eCom, Jon C. Evans on or about October 22, 2009, at the Ace Fall Convention in Atlanta, GA. A true and correct copy of correspondence explaining the discussions is attached as Exhibit G to this Complaint. Despite such knowledge, SMS

has continued its infringement of the '081 patent with knowledge of Plaintiffs' patent rights, and SMS's infringement is willful.

48. Upon information and belief, SMS will continue to infringe the '081 patent unless and until it is enjoined by this Court.

49. SMS has caused and will continue to cause Plaintiffs injury and damage by infringing the '081 patent. Plaintiffs will suffer further injury unless and until SMS is enjoined from infringing the '081 patent.

50. Ace has been and is directly infringing and is actively inducing others to infringe and/or is contributorily infringing the '081 patent in this District and elsewhere by making, using, offering to sell and/or selling at least its Ace Brand Place advertisement interface that uses BCK. A true and correct copy of the Ace Brand Place "How To" Guide is attached as Exhibit H to this Complaint.

51. Upon information and belief, Ace has known of the existence of the '081 patent due to, *inter alia*, correspondence with Ace's Director of Marketing and Marketing Manager, Brian Wiborg, dated April 13, 2010, and correspondence and discussions with Ace's Counsel, Scott W. Petersen, and Ace's Associate General Counsel, Julie A. Browning, during October and November of 2009. True and correct copies of such correspondence are attached as Exhibits I, G and J to this Complaint. Despite such knowledge, Ace has continued its infringement of the '081 patent with knowledge of Plaintiffs' patent rights, and Ace's infringement is willful.

52. Upon information and belief, Ace will continue to infringe the '081 patent unless and until it is enjoined by this Court.

53. Ace has caused and will continue to cause Plaintiffs injury and damage by infringing the '081 patent. Plaintiffs will suffer further injury unless and until Ace is enjoined from infringing the '081 patent.

PRAYER FOR RELIEF

WHEREFORE, eCom respectfully request this Court:

- (1) To enter judgment that SMS has infringed the '983, '105, '237, '719, and '081 patents;
- (2) To enter an order temporarily and permanently enjoining SMS and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '983, '105, '237, '719, and '081 patents, and from manufacturing, selling or offering for sale the infringing product;
- (3) To award eCom damages in amounts sufficient to compensate it for SMS's infringement of the '983, '105, '237, '719, and '081 patents, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;
- (4) To treble the damages awarded eCom by reason of SMS's willful infringement of the '983, '105, '237, '719, and '081 patents;
- (5) To declare this case exceptional under 35 U.S.C. § 285 and to award eCom their attorneys' fees, expenses and costs incurred in this action;
- (6) To enter judgment that Ace has infringed the '983, '105, '237, '719, and '081 patents;

- (7) To enter an order permanently enjoining Ace and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '983, '105, '237, '719, and '081 patents;
- (3) To award eCom damages in amounts sufficient to compensate it for Ace's infringement of the '983, '105, '237, '719, and '081 patents, together with prejudgment and post judgment interest and costs, pursuant to 35 U.S.C. § 284;
- (4) To treble the damages awarded eCom by reason of Ace's willful infringement of the '983, '105, '237, '719, and '081 patents; and
- (8) To award eCom such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues appropriately triable by a jury.

Dated: July 9, 2010

Of Counsel:

REMENICK, PLLC
1025 Thomas Jefferson Street, NW
Suite 175
Washington, DC 20007
(202) 570-7380 (Phone)
(888) 570-7381 (Fax)
James Remenick
DC Bar No. 433973
E-mail: jremenick@remenicklaw.com
Mathew J. Smith
DC Bar No. 982391
E-mail: msmith@remenicklaw.com

Of Counsel

ROGERS TOWERS, P.A.
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207
(904) 398-3911 (phone)
(904) 396-0663 (fax)

*FBN
199990*

Robert Middleton, for
James W. Middleton
Florida Bar No. 508152
E-mail: jm Middleton@rtlaw.com

Trial Counsel for Plaintiff
eComSystems, Inc.