

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

KROY IP HOLDINGS, LLC,	§	
	§	
Plaintiff,	§	Civil Action No. 6:11-CV-330 (LED)
	§	
v.	§	
	§	
LOYALTYWORKS INC.,	§	
FROSCH INTERNATIONAL	§	
TRAVEL INC., ACI WORLDWIDE INC.,	§	
CAPITA TECHNOLOGIES INC.,	§	<b>JURY TRIAL DEMANDED</b>
PERFORMANCE SYSTEMS GROUP,	§	
INC. AND LW ACQUISITION, LLC	§	
	§	
Defendants.	§	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Kroy IP Holdings, LLC, (“Plaintiff”), by and through its undersigned counsel, files this First Amended Complaint for patent infringement against the entities that own [www.loyaltyworks.com](http://www.loyaltyworks.com), Performance Systems Group, Inc. and LW Acquisition, LLC, which entities were previously unknown, Loyaltyworks Inc., Frosch International Travel Inc., ACI Worldwide Inc., and Capita Technologies Inc. (collectively, “Defendants”) as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop each Defendant’s infringement of Plaintiff’s United States Patent No. 6,061,660 entitled “System and Method For Incentive Programs and Award Fulfillment” (the “’660 patent”; a copy of which is attached hereto as Exhibit A). Plaintiff is the legal owner of all of the rights under the ’660 patent to bring this infringement against the Defendants. Plaintiff seeks injunctive relief and monetary damages.

2.

**PARTIES**

3. Plaintiff Kroy IP Holdings, LLC (“Plaintiff”) is a Limited Liability Company organized under the laws of the State of Delaware and is located at 301 South Fremont Avenue, Suite 300, Baltimore, Maryland 21230. Plaintiff is the sole owner of the ’660 patent, which includes the right to exclude the Defendants from making, using, selling, offering to sell, advertising or importing the patented invention(s) of the ’660 patent and the right to sublicense the ’660 patent, collect damages and sue for infringement and recover past damages.

4. Upon information and belief, Defendant Loyaltyworks Inc. (“Loyaltyworks”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 2337 Perimeter Park Drive, Suite 220, Atlanta, Georgia 30341.

5. Upon information and belief, Defendants Performance Systems Group, Inc. and LW Acquisition, LLC are organized and existing under the laws of the State of Georgia, with their principal place of business located at 2337 Perimeter Park Drive, Suite 220, Atlanta, Georgia 30341. Performance Systems Group, Inc. owns RewardTrax®, a software product used and advertised on www.loyaltyworks.com. LW Acquisition, LLC owns and operates the website, www.loyaltyworks.com, and licenses and administers RewardTrax® owned by Performance Systems Group, Inc. Performance Systems Group, Inc. and LW Acquisition, LLC are hereinafter referred to as “Loyaltyworks Owners.”

6. Upon information and belief, Defendant Frosch International Travel Inc. (“Frosch”) is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at One Greenway Plaza, Suite 800, Houston, Texas 77046.

7. Upon information and belief, Defendant ACI Worldwide Inc. (“ACI”) is a corporation organized and existing under the laws of the State of Nebraska, with its principal place of business located at 6060 Coventry Drive, Elkhorn, Nebraska, 68022-6482.

8. Upon information and belief, Defendant Capita Technologies Inc. (“Capita”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 17600 Gillette Avenue, Irvine, California 92614-5702.

**JURISDICTION AND VENUE**

9. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281-285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

10. Upon information and belief, Defendants have transacted business and committed acts of infringement within the State of Texas, and more importantly, within this District, and are subject to the personal jurisdiction of this Court. The Court has personal jurisdiction over each Defendant because upon information and belief: each Defendant has minimum contacts within the State of Texas and the Eastern District of Texas; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff’s causes of action arise directly from Defendants’ business contacts and other activities in the State of Texas and in the Eastern District of Texas.

11. Upon information and belief, Defendants have made, used, offered for sale, imported, sold, or advertised, and continue to make, use, offer to sell, import, sell, or advertise, online products and services that infringe one or more claims of the ’660 patent. More specifically, each Defendant, directly and/or through intermediaries, makes, uses, sells, ships, distributes, offers for sale, or advertises its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, each Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has

contributed to patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

**COUNT I – PATENT INFRINGEMENT**

13. On May 9, 2000, the United States Patent and Trademark Office duly and legally issued the '660 patent to the inventors York Eggleston and Andrey Ukhov. All rights, title and interest in and to the '660 patent have been assigned to Kroy IP Holdings, LLC including the right to exclude the Defendants from making, using, selling, offering to sell, advertising or importing the patented invention(s) of the '660 patent, and the right to sublicense the '660 patent, collect damages and initiate lawsuits against the Defendants. The '660 patent is in full force and effect.

14. Upon information and belief, the Defendants have infringed and continue to infringe one or more claims of the '660 patent by making, using, importing, providing, offering to sell, advertising and/or selling (directly or through intermediaries), in this District and elsewhere in the United States, infringing products and services that include online promotions and incentive programs and online builder applications for promotion and incentive programs. Upon information and belief, the Defendants have also contributed to the infringement of one or more claims of the '660 patent, and/or actively induced others to infringe one or more claims of the '660 patent, in this District and elsewhere in the United States.

15. Defendant Loyaltyworks offers online products and services that infringe the '660 patent including the RewardTrax® program and other incentive programs and promotions programs relevant to the '660 patent which products and services are available at [www.loyaltyworks.com](http://www.loyaltyworks.com).

16. Defendants Loyaltyworks Owners offer online products and services that infringe the '660 patent including the RewardTrax® program and other incentive programs and promotions programs relevant to the '660 patent which products and services are available at [www.loyaltyworks.com](http://www.loyaltyworks.com).

17. Defendant Frosch offers online products and services that infringe the '660 patent including the Incentel program and other incentive programs and promotions programs relevant to the '660 patent which products and services are available at [www.frosch.com](http://www.frosch.com).

18. Defendant ACI offers online products and services that infringe the '660 patent including the Retail Commerce Server program and incentive programs and promotions programs relevant to the '660 patent which products and services are available at [www.aciworldwide.com](http://www.aciworldwide.com).

19. Defendant Capita offers online products and services that infringe the '660 patent including the Promotions Builder web application programs and other incentive programs and promotions program relevant to the '660 patent which products and services are available at [www.capita.com](http://www.capita.com).

20. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

21. Plaintiff is entitled to recover from each of the Defendants the damages sustained by Plaintiff as a result of the Defendants' wrongful acts in an amount subject to proof at trial.

22. Upon information and belief, the infringement of one or more claims of the '660 patent by each of the Defendants is willful and deliberate from the time Defendants became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest. Upon information and belief, the inducement and contributory infringement of one or more claims of the '660 patent by each of the Defendants is willful and deliberate from the time Defendants became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest. As a result, Plaintiff is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285 with respect to these defendants.

23. Each defendant's infringement of Plaintiff's rights under the '660 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**JURY DEMAND**

24. Plaintiff demands a trial by jury on all issues.

**PRAYER FOR RELIEF**

Plaintiff Kroy IP Holdings, LLC, respectfully requests the following relief:

- A. An adjudication that each of the Defendants has infringed and continues to infringe claims of the '660 patent;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendants' acts of infringement together with prejudgment interest;
- C. An award of enhanced damages, up to and including trebling of Plaintiff's damages pursuant to 35 U.S.C. § 284 for willful infringement by the each of the Defendants;

- D. An award of Plaintiff's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law with respect to the Defendants;
- E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '660 patent; and
- F. Any further relief that this Court deems just and proper.

Dated: April 2, 2012

Respectfully submitted,

/s/ Stevenson Moore

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**ATTORNEYS FOR PLAINTIFF,  
KROY IP HOLDINGS, LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 2, 2012 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail.

*/s/ Stevenson Moore* \_\_\_\_\_  
Stevenson Moore