

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

XCELLASAVE, INC.,

Plaintiff,

v.

LIVINGSOCIAL, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Xcellasave, Inc. (“Xcellasave”), for its Complaint against Defendant LivingSocial, Inc. (“LivingSocial”), hereby alleges as follows:

The Parties

1. Plaintiff Xcellasave is a corporation organized and existing under the laws of Delaware with its principal place of business at 65-12 69th Place, Middle Village, New York 11370.

2. Defendant LivingSocial is a corporation organized and existing under the laws of Delaware, and has its headquarters and principal place of business in Washington, DC.

Nature Of The Action

3. This is a civil action for infringement of United States Patent Number 8,254,894, arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

Jurisdiction And Venue

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b), because LivingSocial is subject to personal jurisdiction in this district, and has committed acts of infringement in this district.

6. This Court has personal jurisdiction over LivingSocial because LivingSocial is a Delaware resident. LivingSocial also provides marketing, advertisements, promotional information, and infringing products and services within this District.

The Patent-In-Suit

7. United States Patent No. 8,254,894 (“the ’894 patent”), entitled “Method For Advertising On Digital Cellular Telephones And Reducing Costs To The End User,” was duly and legally issued by the United States Patent and Trademark Office on March 13, 2012. Xcellasave is the assignee of all rights, title, and interest in the ’894 patent, and it possesses all rights to sue and recover for any current or past infringement of the ’894 patent. A copy of the ’894 patent is attached hereto as Exhibit A.

COUNT I

Infringement Of The ’894 Patent

8. Paragraphs 1 through 7 are incorporated by reference as if fully stated herein.

9. The ’894 patent is valid and enforceable.

10. LivingSocial has infringed, and continues to infringe, one or more claims of the ’894 patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products and/or methods encompassed by those claims, including for example, by making, using, selling, offering for sale, and/or importing mobile phone applications for

displaying interactive advertisements (“the Accused Products”), such as, for example, the LivingSocial applications for iPhone and Android-based mobile devices.

11. Third parties, including LivingSocial’s customers, have infringed, and continue to infringe, one or more claims of the ’894 patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, the Accused Products.

12. LivingSocial has had knowledge of and notice of the ’894 patent and its infringement since at least August 28, 2012, through a letter sent by counsel for Xcellasave to LivingSocial concerning the ’894 patent and its infringement.

13. Despite LivingSocial’s knowledge of and notice of the ’894 patent and its infringement, LivingSocial has continued to make, use, sell, offer for sale, and/or import the infringing Accused Products, and has continued to create and disseminate promotional and marketing materials, supporting materials, instructions, and/or technical information related to the Accused Products.

14. LivingSocial has induced infringement, and continues to induce infringement, of one or more claims of the ’894 patent under 35 U.S.C. § 271(b). LivingSocial actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the ’894 patent by selling or otherwise supplying the Accused Products; with the knowledge and intent that third parties, including LivingSocial’s customers, will use, sell, and/or offer for sale in the United States, and/or import into the United States, the Accused Products to infringe the ’894 patent; and with the knowledge and intent to encourage and facilitate the infringement through the dissemination of the Accused Products and the creation

and dissemination of promotional and marketing materials, supporting materials, instructions, and/or technical information related to the Accused Products.

15. LivingSocial has contributed to the infringement by third parties, including LivingSocial's customers, and continues to contribute to infringement by third parties, of one or more claims of the '894 patent under 35 U.S.C. § 271(c), by selling and/or offering for sale in the United States, and/or importing into the United States, the Accused Products, knowing that those products constitute a material part of the inventions of the '894 patent, knowing that those products are especially made or adapted to infringe the '894 patent, and knowing that those products are not staple articles of commerce suitable for substantial noninfringing use.

16. Xcellasave has been and continues to be damaged by LivingSocial's infringement of the '894 patent.

17. LivingSocial's conduct in infringing the '894 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

Prayer For Relief

WHEREFORE, Xcellasave prays for judgment as follows:

- A. That LivingSocial has infringed the patent-in-suit;
- B. That Xcellasave be awarded all damages adequate to compensate it for LivingSocial's infringement of the patent-in-suit, such damages to be determined by a jury and, if necessary to adequately compensate Xcellasave for the infringement, an accounting, and that such damages be trebled and awarded to Xcellasave with pre-judgment and post-judgment interest;

C. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Xcellasave be awarded the attorney fees, costs, and expenses that it incurs prosecuting this action; and

D. That Xcellasave be awarded such other and further relief as this Court deems just and proper.

Demand For Jury Trial

Plaintiff Xcellasave hereby demands a trial by jury on all issues so triable.

Dated: August 29, 2012

FARNAN LLP

/s/ Brian E. Farnan

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