

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DIGONEX TECHNOLOGIES, INC.,)
)
Plaintiff,)
)
v.) Case No.
)
QCUE, INC.,) **DEMAND FOR JURY TRIAL**
)
Defendant.)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Digonex Technologies, Inc. (“Digonex”) for its Complaint against Defendant Qcue, Inc. (“Qcue”) avers the following:

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent Nos. 8,095,424 B2 (“the ’424 Patent”) and 8,112,303 B2 (“the ’303 Patent”) (collectively, “the Patents-in-Suit”).

THE PARTIES

2. Plaintiff Digonex is an Indiana corporation with its principal place of business at 150 West Market Street, Suite 728, Indianapolis, Indiana.

3. On information and belief, Defendant Qcue is a Texas corporation with its principal place of business at 505 Walsh Street, Austin, Texas.

JURISDICTION & VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Qcue *inter alia* because, on information and belief, Qcue has sold or offered for sale infringing products and/or services in Indiana and in

this Judicial District. For example, on information and belief, Qcue sold or offered to sell its infringing products or services to at least one professional sports team based in this District.

6. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391 and 1400. On information and belief, Defendant has sold or offered to sell its infringing products or services in this District.

GENERAL ALLEGATIONS

7. Digonex is a leading developer and provider of dynamic pricing software. This technology enables sellers of products and services to optimize revenues by adjusting prices based on sales and other measures of shifting demand.

8. On January 10, 2012, plaintiff Digonex was duly and legally issued the '424 Patent, entitled "Dynamic Pricing of Items Based on Sales Criteria." A copy of the '424 Patent is attached to this Complaint as **Exhibit A**. Digonex has been and still is the owner of all rights, title and interest in the '424 Patent.

9. On February 7, 2012, plaintiff Digonex was duly and legally issued the '303 Patent, entitled "Digital Online Exchange for Pricing Items to Exhaust Inventory by an Expiration Time." A copy of the '303 Patent is attached to this Complaint as **Exhibit B**. Digonex has been and still is the owner of all rights, title and interest in the '303 Patent.

10. Defendant Qcue sells and offers to sell dynamic pricing software products ("Qcue Products") aimed at pricing tickets for events. Qcue refers to its infringing Qcue Products by a variety of names, including "Dynamic Pricing Dashboard," "the Qcue Product," and "software-based dynamic pricing solution."

11. Defendant's Qcue Products embody and/or practice the '424 Patent's claimed method and system for dynamically pricing items for sale, based upon the category to which the item is assigned relative to other items in the category.

12. Defendant's Qcue Products embody and/or practice the '303 Patent's claimed method and system for dynamically pricing items for sale, which items are available in limited quantities and must be sold within a set expiration time.

13. Defendant offers for sale and sells its Qcue Products to sports teams, event venues and promoters, and ticketing organizations throughout the United States, including the State of Indiana. For example, on information and belief, Qcue has offered to sell and/or sold its infringing Qcue Products to sports franchises in the United States, including sports franchises in Major League Baseball, Major League Soccer, National Basketball Association, National Hockey League, and NASCAR.

14. Digonex and Qcue are the two primary providers of commercial dynamic pricing software systems for ticket sales and events in the United States.

15. On information and belief, Defendant is aware or should be aware that its Qcue Products meet each and every limitation of one or more claims of the Patents-in-Suit. Qcue referenced on its own patent application before the United States Patent and Trademark Office two Digonex patents that are related to the Patents-in-Suit. See **Exhibit C**, U.S. Patent Application Publication 2012/0016718 A1 at [0003] (referring to Eglen et al. patents). Furthermore, on February 7, 2012, the same day the '303 Patent issued, Digonex issued a press release announcing the United States Patent Office's issuance of the Patents-in-Suit. The press release can be viewed at <http://www.prnewswire.com/news-releases/digonex-positions-to-dominate-dynamic-pricing-market-with-2-new-patents-138845869.html>. A copy of this press release is attached as **Exhibit D**. On information and belief, as a competitor of Digonex, Qcue was aware of the press release and the statements made therein.

FIRST CLAIM FOR RELIEF

Infringement of U.S. Patent No. 8,095,424

16. Digonex incorporates by reference paragraphs 1 through 15 as if fully set forth herein.

17. Qcue has been, is currently, and will continue to directly infringe one or more claims of the of the '424 Patent by making, using, selling, and/or offering to sell within the United States dynamic pricing systems that embody the patented invention.

18. Qcue has been, is currently, and will continue to actively induce and encourage infringement by others of the '424 Patent. On information and belief, Qcue had knowledge of the '424 Patent and induced and encouraged the direct infringement of the patent by selling to its customers dynamic pricing systems that embody or practice the patented invention. Upon information and belief, Qcue acted with specific intent to induce and encourage its customers' infringement by selling infringing products to them and instructing customers to infringe.

19. Qcue has been, is currently, and will continue to contribute to the infringement of the '424 Patent by selling and/or offering to sell the Qcue Products, which are a material component of Qcue's customers' dynamic pricing sales and/or ticketing systems. Upon information and belief, the infringing Qcue Products are especially made or adapted for use with dynamic pricing sales and/or ticketing systems, and are not a staple article or commodity of commerce suitable for substantial noninfringing use. Upon information and belief, Qcue had knowledge of the '424 Patent and knew that the combination for which its infringing Qcue Products were made infringed the '424 Patent.

20. As a direct and proximate consequence of Qcue's infringement of the '424 Patent, Digonex has suffered and will continue to suffer irreparable injury and damages, in an amount not yet determined, for which Digonex is entitled to relief. Digonex seeks damages and preliminary and permanent injunctive relief against further infringement.

21. Qcue's acts of direct and indirect infringement are willful because, on information and belief, Qcue knew or should have known of the '424 Patent and that its acts of making, using, offering to sell, and selling the accused systems would directly infringe the '424 Patent, but acted despite an objectively high likelihood that such activities would infringe the '424 Patent.

SECOND CLAIM FOR RELIEF
Infringement of U.S. Patent No. 8,112,303

22. Digonex incorporates by reference paragraphs 1 through 21 as if fully set forth herein.

23. Qcue has been, is currently, and will continue to directly infringe one or more claims of the of the '303 Patent by making, using, selling, and/or offering to sell within the United States dynamic pricing systems that embody the patented invention.

24. Qcue has been, is currently, and will continue to actively induce and encourage infringement by others of the '303 Patent. On information and belief, Qcue had knowledge of the '303 Patent and induced and encouraged the direct infringement of the patent by selling to its customers dynamic pricing systems that embody or practice the patented invention. Upon information and belief, Qcue acted with specific intent to induce and encourage its customers' infringement by selling its infringing product to them and instructing customers to infringe.

25. Qcue has been, is currently, and will continue to contribute to the infringement of the '303 Patent by selling and/or offering to sell the Qcue Products, which are a material component of Qcue's customers' dynamic pricing sales and/or ticketing systems. Upon information and belief, the infringing Qcue Products are especially made or adapted for use with dynamic pricing sales and/or ticketing systems, and are not a staple article or commodity of commerce suitable for substantial noninfringing use. Upon information and belief, Qcue had

knowledge of the '303 Patent and knew that the combination for which its infringing Qcue Products were made infringed the '303 Patent.

26. As a direct and proximate consequence of Qcue's infringement of the '303 Patent, Digonex has suffered and will continue to suffer irreparable injury and damages, in an amount not yet determined, for which Digonex is entitled to relief. Digonex seeks damages and preliminary and permanent injunctive relief against further infringement.

27. Qcue's acts of direct and indirect infringement are willful because, on information and belief, Qcue knew or should have known of the '303 Patent and that its acts of making, using, offering to sell, and selling the accused systems would directly infringe the '303 Patent, but acted despite an objectively high likelihood that such activities would infringe the patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Digonex prays for the following relief against Defendant Qcue:

- a) entry of a judgment declaring that Qcue has infringed one or more claims of the '424 and '303 Patents;
- b) entry of a judgment declaring that Qcue's infringement of the '424 and '303 Patents is willful;
- c) a preliminary and permanent injunction against the continuing infringement of the '424 and '303 Patents;
- d) an award of damages to compensate Digonex for Qcue's infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of Qcue's willful infringement;
- e) an award of pre-judgment and post-judgment interest and costs to Digonex;
- f) entry of a judgment declaring that the actions of defendants have made this an exceptional case and awarding reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and
- g) such other and further relief as the Court may deem just and fair.

JURY DEMAND

Plaintiff Digonex Technologies, Inc., pursuant to Rule 38 of the Federal Rules of Civil Procedure, hereby demands a trial by jury.

Dated: March 23, 2012

Respectfully submitted,

/s/ Holiday W. Banta

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