

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

COMMUNITY UNITED IP, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:12-cv-01136-LPS
	)	
LIVEPERSON, INC.,	)	
1-800-FLOWERS.COM, INC.,	)	<b>JURY TRIAL DEMANDED</b>
DISCOVER CARD SERVICES, INC.,	)	
EARTHLINK, INC., QVC, INC. and	)	
CELLCO PARTNERSHIP D/B/A VERIZON	)	
WIRELESS,	)	
	)	
Defendants.	)	
_____	)	

**AMENDED COMPLAINT**

For its Complaint, Plaintiff Community United IP, LLC ("CUIP"), by and through the undersigned counsel, alleges as follows:

**THE PARTIES**

1. CUIP is a Delaware limited liability company with a place of business located at Four Seasons Business Park, 2-C Terrace Way, Greensboro, North Carolina 27403.

2. Defendant LivePerson, Inc. ("LivePerson") is a Delaware corporation with, upon information and belief, a place of business located at 475 10th Avenue, 5th Floor, New York, New York 10018.

3. Defendant 1-800-Flowers.com, Inc. ("1-800-Flowers") is a Delaware corporation with, upon information and belief, a place of business located at One Old Country Road, Carle Place, New York 11514.

4. Defendant Discover Card Services, Inc. ("Discover") is a Delaware corporation with, upon information and belief, a place of business located at 2500 Lake Cook Road, Riverwoods, Illinois 60015.

5. Defendant EarthLink, Inc. ("EarthLink") is a Delaware corporation with, upon information and belief, a place of business located at 1375 Peachtree Street, Suite 400, Atlanta, Georgia 30309.

6. Defendant QVC, Inc. ("QVC") is a Delaware corporation with, upon information and belief, a place of business located at 1200 Wilson Drive, West Chester, Pennsylvania 19380.

7. Defendant Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") is a Delaware general partnership with, upon information and belief, a place of business at 1 Verizon Way, Basking Ridge, New Jersey 07920.

8. As described in further detailed below, customer service products and services provided by LivePerson to and used by 1-800-Flowers, Discover, EarthLink, QVC and Verizon Wireless infringe CUIP's patent.

#### **JURISDICTION AND VENUE**

9. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*

10. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

11. Upon information and belief, each Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

12. Venue is proper in this District pursuant to §§ 1391(b), (c) and 1400(b).

**THE PATENT-IN-SUIT**

13. On January 19, 1999, United States Patent No. 5,862,223 (the "'223 patent"), entitled "Method And Apparatus For A Cryptographically-Assisted Commercial Network System Designed To Facilitate And Support Expert-Based Commerce," was duly and lawfully issued by the U.S. Patent and Trademark Office ("USPTO"). A true and correct copy of the '223 patent is attached hereto as Exhibit A.

14. CUIP is the assignee and owner of the right, title and interest in and to the '223 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,862,223**

15. CUIP repeats and realleges the allegations of paragraphs 1 through 14 as if fully set forth herein.

16. The allegations of infringement contained herein arise, at least in part, out of the same series of occurrences relating to the use of the same accused products or processes, including but not limited to LP Chat, including but not limited to LP Chat Pro, LP Chat Premier and LP Chat Enterprise, (collectively, the "LivePerson platform") and products and services based on or using the LivePerson platform, which, among other features, route a communication from an end user to a particular person and a response from that particular person to the end user. *See* Exh. B at 52 ("In this way, visitors requesting chats from a specific page of your website can be directed to an agent with appropriate skills and chat can be initiated with visitors on specific pages by agents with appropriate skills."); Exhs. C-F.

17. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendants have infringed and continue to infringe at least claim 121 of the '223 patent by making, using, offering for sale, and/or selling within this district and elsewhere in the United States and/or importing into this district and elsewhere in the United States, certain computer program products and services which use or incorporate the LivePerson platform or features of the LivePerson platform, including without limitation electronically managing communications between an expert and an end user using the LivePerson platform or features of the LivePerson platform, applications developed using the LivePerson platform or features of the LivePerson platform or that utilize the LivePerson platform or features of the LivePerson platform in their operation, and the LivePerson platform.

18. Questions of fact common to all Defendants will arise in the action, including questions of fact relating to the infringement of the '223 patent.

19. Defendants will be deemed to have knowledge of the '223 patent and their infringement of the '223 patent at least as of September 14, 2012, the filing date of CUIP's initial Complaint.

20. Defendants have not altered their infringing conduct after being served CUIP's initial Complaint.

21. Upon information and belief, Defendants' continued infringement despite their knowledge of the '223 patent and CUIP's accusations of infringement has been objectively reckless and willful.

22. Upon information and belief, despite its knowledge of the '223 patent and CUIP's accusations of infringement, LivePerson has actively, knowingly and intentionally induced, and continues to actively, knowingly and intentionally induce,

infringement of the '223 patent by making, using, offering for sale, selling, and/or importing into the United States the products and services specified in Paragraph 17 with knowledge that its customers and end users will use, market, sell, offer to sell, and/or import those products and services; and with knowledge and specific intent to encourage and facilitate those infringing sales and uses of those products and services through the creation and dissemination of promotional and marketing materials, instructional materials, product manuals and technical materials.

23. CUIP is entitled to recover from Defendants the damages sustained by CUIP as a result of the their infringement of the '223 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**JURY DEMAND**

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

**PRAYER FOR RELIEF**

WHEREFORE, CUIP requests that this Court enter judgment against Defendants as follows:

- A. An adjudication that Defendants have infringed the '223 patent;
- B. An award of damages to be paid by Defendants adequate to compensate CUIP for their past infringement of the '223 patent 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. To the extent Defendants' conduct subsequent to the date of their notice of the '223 patent is found to be objectively reckless, enhanced damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement of the '223 patent;

D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of CUIP's reasonable attorneys' fees; and

E. An award to CUIP of such further relief at law or in equity as the Court deems just and proper.

Dated: November 16, 2012

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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*Community United IP, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2012, I electronically filed the above document(s) with the Clerk of Court using CM/ECF which will send electronic notification of such filing(s) to all registered counsel.

/s/ Richard C. Weinblatt  
Richard C. Weinblatt #5080