

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BUYERLEVERAGE EMAIL SOLUTIONS,  
LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

SBC INTERNET SERVICES, INC., AT&T  
SERVICES, INC., COMCAST CABLE  
COMMUNICATIONS LLC, MICROSOFT  
CORPORATION, TIME WARNER CABLE,  
INC., YAHOO! INC. and RETURN PATH,  
INC.,

Defendants.

Case No. 1:11-cv-00645-RGA

DEMAND FOR JURY TRIAL

---

**FOURTH AMENDED COMPLAINT**

Plaintiff, BuyerLeverage Email Solutions LLC (“BuyerLeverage”), complains of Defendants, SBC Internet Services, Inc. (“SBC”), AT&T Services, Inc. (“AT&T”), Comcast Cable Communications LLC (“Comcast”), Microsoft Corporation (“Microsoft”), Time Warner Cable, Inc. (“Time Warner Cable”), Yahoo! Inc. (“Yahoo!”), and Return Path, Inc. (“Return Path”) as follows:

**NATURE OF LAWSUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**THE PARTIES**

2. BuyerLeverage is a Delaware limited liability company with its principal place of business at 1000 N. West Street, Suite 1200, Wilmington, DE 19801. BuyerLeverage is the named assignee of, owns all right, title and interest in, and has standing to sue for infringement of United States Patent No. 7,072,943, entitled “System and Method for Granting Deposit-

Contingent E-Mailing Rights” issued July 4, 2006 (“the ‘943 patent”) (a true and correct copy of the Patent is attached as Exhibit A); United States Patent No. 7,636,756, entitled “System and Method for Granting Deposit-Contingent E-Mailing Rights” issued December 22, 2009 (“the ‘756 patent”) (a true and correct copy of the Patent is attached as Exhibit B); United States Patent No. 7,725,546, entitled “System and Method for Granting Deposit-Contingent E-Mailing Rights” issued May 25, 2010 (“the ‘546 patent”) (a true and correct copy of the Patent is attached as Exhibit C); and United States Patent No. 7,962,561, entitled “System and Method for Granting Deposit-Contingent E-Mailing Rights” issued June 14, 2011 (“the ‘561 patent”) (a true and correct copy of the Patent is attached as Exhibit D). Hereon forward said patents shall collectively be referred to as “the asserted patents.”

3. Defendant SBC is a Delaware corporation with a place of business at 2623 Camino Ramon, San Ramon, CA 94583. SBC resides in this judicial district, and transacts business in this judicial district and throughout the State of Delaware.

4. Defendant AT&T is a Delaware corporation with a place of business at 208 S. Akard Street, Dallas, TX 75202. AT&T resides in this judicial district, and transacts business in this judicial district and throughout the State of Delaware.

5. Defendant Comcast is a Pennsylvania corporation with a place of business at 1701 John F. Kennedy Blvd., Philadelphia, PA 19103. Comcast resides in this judicial district, and transacts business in this judicial district and throughout the State of Delaware.

6. Defendant Microsoft is a Washington corporation with a place of business at One Microsoft Way, Redmond, WA 98052. Microsoft resides in this judicial district, and transacts business in this judicial district and throughout the State of Delaware.

7. Defendant Time Warner Cable is a Delaware corporation with a place of business at 60 Columbus Circle, New York, NY 10023. Time Warner Cable resides in this judicial district, and transacts business in this judicial district and throughout the State of Delaware.

8. Defendant Yahoo! is a Delaware corporation with a place of business at 701 1st Avenue, Sunnyvale, CA 94089. Yahoo! resides in this judicial district, and transacts business in this judicial district and throughout the State of Delaware.

9. Defendant Return Path is a Delaware corporation with a place of business at 304 Park Avenue South, 7th Floor, New York, NY 10010.

### **JURISDICTION AND VENUE**

10. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

11. Personal jurisdiction over defendants is proper in this Court. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

### **DEFENDANTS' ACTS OF PATENT INFRINGEMENT**

12. Upon information and belief, SBC uses Yahoo! to host and operate its email service. By use of the Return Path Email Certification Program (or data emanating from that program) SBC, through Yahoo!, filters the emails of those senders it cannot yet otherwise reliably evaluate (so-called "Unknown Senders") by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive. This is what allows SBC to provide senders of legitimate email with the opportunity to prove their trustworthiness, without, at the same time, opening the door to spammers.

13. SBC has, without limitation, infringed under 35 U.S.C. § 271(a), at least, claims 1 and 25 of the '943 patent, claims 1 and 12 of the '546 patent, claims 1 and 27 of the '756 patent,

and claims 1 and 14 of the '561 patent through its use, through Yahoo!, of preferred sender addresses emanating from, or based on, the Email Certification Program (formerly "Bonded Sender") administered by Return Path for filtering unwanted e-mails (i.e. "spam").

14. SBC has had knowledge of the asserted patents since at least November 29, 2011, the date on which the second amended complaint was filed in this matter. SBC has had knowledge that Yahoo!'s email service operates in an infringing manner since at least November 29, 2011.

15. Upon information and belief, SBC has marketed and offered SBC-branded email services to its customers since having knowledge of the asserted patents and the infringement by Yahoo!'s email service.

16. Upon information and belief, SBC-branded email services are hosted by Yahoo! and operated by Yahoo!.

17. Upon information and belief, for incoming emails to SBC-brand email customers, Yahoo!, through use of the Return Path Email Certification Program (or data emanating from that program), filters the emails of those senders it cannot yet otherwise reliably evaluate (so-called "Unknown Senders") by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive.

18. SBC has, without limitation, infringed under 35 U.S.C. § 271(b), at least, claim 25 of the '943 patent, claim 1 of the '546 patent, claim 27 of the '756 patent, and claim 14 of the '561 patent by actively inducing its customers to use a Yahoo! hosted and operated email service which uses preferred sender addresses emanating from, or based on, the Email Certification Program (formerly "Bonded Sender") administered by Return Path for filtering unwanted e-mails (i.e. "spam").

19. Upon information and belief, AT&T uses Yahoo! to host and operate its email service. By use of the Return Path Email Certification Program (or data emanating from that program) AT&T, through Yahoo!, filters the emails of those senders it cannot yet otherwise reliably evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive. This is what allows AT&T to provide senders of legitimate email with the opportunity to prove their trustworthiness, without, at the same time, opening the door to spammers.

20. AT&T has, without limitation, infringed under 35 U.S.C. § 271(a), at least, claims 1 and 25 of the ‘943 patent, claims 1 and 12 of the ‘546 patent, claims 1 and 27 of the ‘756 patent, and claims 1 and 14 of the ‘561 patent through its use, through Yahoo!, of preferred sender addresses emanating from, or based on, the Email Certification Program (formerly “Bonded Sender”) administered by Return Path for filtering unwanted e-mails (i.e. “spam”).

21. AT&T has had knowledge of the asserted patents since at least November 29, 2011, the date on which the second amended complaint was filed in this matter. AT&T has had knowledge that Yahoo!’s email service operates in an infringing manner since at least November 29, 2011.

22. Upon information and belief, AT&T has marketed and offered AT&T-branded email services to its customers since having knowledge of the asserted patents and the infringement by Yahoo!’s email service.

23. Upon information and belief, AT&T-branded email services are hosted by Yahoo! and operated by Yahoo!.

24. Upon information and belief, for incoming emails to AT&T-brand email customers, Yahoo!, through use of the Return Path Email Certification Program (or data

emanating from that program), filters the emails of those senders it cannot yet otherwise reliably evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive.

25. AT&T has, without limitation, infringed under 35 U.S.C. § 271(b), at least, claim 25 of the ‘943 patent, claim 1 of the ‘546 patent, claim 27 of the ‘756 patent, and claim 14 of the ‘561 patent by actively inducing its customers to use a Yahoo! hosted and operated email service which uses preferred sender addresses emanating from, or based on, the Email Certification Program (formerly “Bonded Sender”) administered by Return Path for filtering unwanted e-mails (i.e. “spam”).

26. By use of the Return Path Email Certification Program (or data emanating from that program) Comcast filters the emails of those senders it cannot yet otherwise reliably evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive. This is what allows Comcast to provide senders of legitimate email with the opportunity to prove their trustworthiness, without, at the same time, opening the door to spammers.

27. Comcast has, without limitation, infringed under 35 U.S.C. § 271, at least, claims 1 and 25 of the ‘943 patent, claims 1 and 12 of the ‘546 patent, claims 1 and 27 of the ‘756 patent, and claims 1 and 14 of the ‘561 patent through its use of preferred sender addresses emanating from, or based on, the Email Certification Program (formerly “Bonded Sender”) administered by Return Path for filtering unwanted e-mails (i.e. “spam”).

28. By use of the Return Path Email Certification Program (or data emanating from that program) Microsoft filters and/or provides for the filtering of the emails of those senders it

cannot yet otherwise reliably evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive. This is what allows Microsoft to provide senders of legitimate email with the opportunity to prove their trustworthiness, without, at the same time, opening the door to spammers.

29. Microsoft has, without limitation, infringed under 35 U.S.C. § 271, at least, claims 1 and 25 of the ‘943 patent, claims 1 and 12 of the ‘546 patent, claims 1 and 27 of the ‘756 patent, and claims 1 and 14 of the ‘561 patent through its use of preferred sender addresses emanating from, or based on, the Email Certification Program (formerly “Bonded Sender”) administered by Return Path for filtering unwanted e-mails (i.e. “spam”).

30. By use of the Return Path Email Certification Program (or data emanating from that program) Time Warner Cable filters the emails of those senders it cannot yet otherwise reliably evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive. This is what allows Time Warner Cable to provide senders of legitimate email with the opportunity to prove their trustworthiness, without, at the same time, opening the door to spammers.

31. Time Warner Cable has, without limitation, infringed under 35 U.S.C. § 271, at least, claims 1 and 25 of the ‘943 patent, claims 1 and 12 of the ‘546 patent, claims 1 and 27 of the ‘756 patent, and claims 1 and 14 of the ‘561 patent through its use of preferred sender addresses emanating from, or based on, the Email Certification Program (formerly “Bonded Sender”) administered by Return Path for filtering unwanted e-mails (i.e. “spam”).

32. By use of the Return Path Email Certification Program (or data emanating from that program) Yahoo! filters the emails of those senders it cannot yet otherwise reliably evaluate

(so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive. This is what allows Yahoo! to provide senders of legitimate email with the opportunity to prove their trustworthiness, without, at the same time, opening the door to spammers.

33. Yahoo! has, without limitation, infringed under 35 U.S.C. § 271, at least, claims 1 and 25 of the ‘943 patent, claims 1 and 12 of the ‘546 patent, claims 1 and 27 of the ‘756 patent, and claims 1 and 14 of the ‘561 patent through its use of preferred sender addresses emanating from, or based on, the Email Certification Program (formerly “Bonded Sender”) administered by Return Path for filtering unwanted e-mails (i.e. “spam”).

34. Return Path has had knowledge of the asserted patents since at least as early as November 9, 2011, the date on which it moved to intervene in the instant action. Return Path has had knowledge that users of its Return Path Email Certification Program have been accused of infringing the asserted patents since November 9, 2011.

35. To users of the Return Path Email Certification Program, Return Path has provided and continues to provide exclusive whitelists, including the Safe Sender and Certified Sender lists. These lists allow users of the Return Path Email Certification Program to filter the emails of those senders it cannot yet otherwise reliably evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive.

36. Return Path has, without limitation, infringed under 35 U.S.C. § 271(b), at least, claims 1 and 25 of the ‘943 patent, claims 1 and 12 of the ‘546 patent, claims 1 and 27 of the ‘756 patent, and claims 1 and 14 of the ‘561 patent by actively inducing users of the Return Path Email Certification Program to filter the emails of those senders it cannot yet otherwise reliably



evaluate (so-called “Unknown Senders”) by giving preferential access to emails that are, effectively, subject to an economic performance guarantee that would make the sending of spam cost-prohibitive.

37. Defendants’ infringement has injured and will continue to injure BuyerLeverage, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further use of the methods and systems that fall within the scope of the asserted claims of the alleged patents.

### **NOTICE, KNOWLEDGE, AND WILLFULNESS**

38. For each Defendant, at least the filing of this lawsuit shall constitute actual notice of its infringement of the alleged patents.

39. Microsoft’s infringement has occurred with knowledge of at least the ‘943 patent, willfully and deliberately in violation of 35 U.S.C. § 284. Microsoft was informed of the then-pending ‘943 patent in 2005, and given actual notice of the ‘943 patent as early as June of 2007, when the inventor, Mark Landesmann, communicated to Microsoft the existence of the ‘943 patent, the existence of its pending related patent applications, and the applicability of the ‘943 patent to the type of spam filtering in which Microsoft has engaged and currently engages. With knowledge of ‘943 patent and the technology to which it applies, Microsoft’s current infringement of that patent has been objectively reckless, with complete disregard to BuyerLeverage’s rights in the ‘943 patent.

### **PRAYER FOR RELIEF**

WHEREFORE, BuyerLeverage asks this Court to enter judgment against Defendants, and against Defendants’ subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

A. An award of damages adequate to compensate BuyerLeverage for the infringement that has occurred, together with prejudgment interest from the date infringement of the alleged patents began;

B. A finding that this case is exceptional and an award to BuyerLeverage of its attorneys' fees and costs as provided by 35 U.S.C. § 285;

C. A permanent injunction prohibiting further infringement of the alleged patents;  
and,

D. Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Plaintiff BuyerLeverage demands a trial by jury on all issues presented in this Complaint.

Dated: March 12, 2013

Respectfully submitted,

Timothy J. Haller  
Frederick C. Laney  
Daniel R. Ferri  
Laura A. Kenneally  
NIRO, HALLER & NIRO  
181 West Madison Street, Suite 4600  
Chicago, IL 60602  
Phone: (312) 236-0733  
Fax: (312) 236-3137  
haller@nshn.com  
laney@nshn.com  
dferr@nshn.com  
lkenneally@nshn.com

/s/ George Pazuniak  
George Pazuniak (DE Bar No. 00478)  
PAZUNIAK LAW OFFICE LLC  
1201 Orange Street, 7<sup>th</sup> Floor, Suite 7114  
Wilmington, DE 19801  
Phone: (302) 478-4230  
GP@del-iplaw.com

*Attorneys for BuyerLeverage Email Solutions, LLC*