

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF DELAWARE**

FUNDSXPRESS FINANCIAL)	
NETWORK, INC.,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	DEMAND FOR JURY TRIAL
)	
SONIC INDUSTRY, LLC,)	
)	
Defendant.)	

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT**

Plaintiff FundsXpress Financial Network, Inc. (“FundsXpress”), files this Complaint for Declaratory Judgment of Non-Infringement against Defendant Sonic Industry, LLC (“Sonic”), and respectfully shows the Court as follows:

NATURE OF THE ACTION

1. This action is based on the patent laws of the United States, Title 35 of the United States Code. In particular, Sonic claims to be the exclusive licensee of United States Patent No. 5,954,793 (“the ’793 Patent”) (attached hereto as Exhibit A). Sonic has overtly alleged, in threatened litigation, that certain of FundsXpress’s online banking products infringe the ’793 Patent. Because FundsXpress denies such allegations, a live controversy has arisen between the parties, and FundsXpress seeks a declaration of non-infringement.

2. Upon information and belief, Sonic’s only business is to bring patent infringement lawsuits. Indeed, since December 2011, Sonic has brought a total of 22 patent infringement lawsuits, all claiming infringement of the ’793 Patent. In addition, Sonic has sent letters to at least 15 financial institution customers of FundsXpress, alleging that each customer infringes the ’793 Patent by making available to their banking customers through online banking the ability to

remotely set limits on an account and then receive alerts when the account reaches the predetermined limit. But the accused online banking products are provided by FundsXpress, and the hardware and software used to perform the accused activity are owned and maintained by and at FundsXpress's facilities.

3. FundsXpress provides such online banking products, which have been accused of infringement by Sonic, to numerous financial institutions dispersed throughout the United States.

4. Sonic has accused at least 15 FundsXpress customers, located in both Florida and Texas, of infringement by virtue of their use of such FundsXpress online banking. Sonic's litigation counsel has directed letters to FundsXpress customers that include a draft complaint for infringement of the '793 Patent. A true and correct copy of such a letter is attached hereto as Exhibit B. Each of these accused customers uses FundsXpress online banking products to provide the account services that are accused of infringement.

5. Because the FundsXpress products are accused of infringement, the accused customers have sought defense and indemnification from FundsXpress against Sonic's allegations.

6. If the accused FundsXpress products infringe the '793 Patent, FundsXpress may be obligated to indemnify its customers from losses or damages those customers incur as a result of such infringement.

8. Furthermore, if the accused customers of FundsXpress are deemed to be direct infringers of the '793 Patent, FundsXpress may be deemed liable to Sonic under theories of induced or contributory infringement.

9. It is clear that, given the allegations made against FundsXpress online banking products, FundsXpress is a real party-in-interest with respect to Sonic's infringement claims.

Contrary to Sonic's allegations, however, FundsXpress and its customers do not infringe and have not infringed the '793 Patent, and therefore have a right to engage in the complained-of activity. But as a result of Sonic's actions, FundsXpress risks a suit accusing FundsXpress of direct, contributory or induced infringement by continuing to offer its online banking products to its customer base. Thus, rather than continue to run that risk and/or have various courts flooded with at least 15 more separate lawsuits, which is apparently Sonic's plan, FundsXpress files this action and seeks a declaration of its legal rights—that its online banking products do not infringe the '793 Patent.

THE PARTIES

10. Plaintiff FundsXpress is a corporation organized under Texas law, with a principal place of business at 11950 Jollyville Road, Austin, TX 78759. FundsXpress provides online banking and other products to numerous financial institution customers dispersed throughout the United States.

11. On information and belief, Sonic is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business at 3422 Old Capital Trail, PMB (STE) 1549, Wilmington, Delaware 19808-6192.

JURISDICTION AND VENUE

12. This is a civil action seeking a declaration of non-infringement of United States Patent No. 5,954,793 (the "'793 Patent") and, thus, arises under the United States patent laws, 35 U.S.C. § 271 *et seq.*, and is being further brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

13. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1331 and § 1338(a).

14. This Court has personal jurisdiction over Sonic. Sonic is present within and has minimum contacts with the State of Delaware and the United States District Court for the District of Delaware. Sonic is a limited liability company organized and existing under the laws of the State of Delaware and has its principal place of business in Wilmington, Delaware.

15. This Court can enter the declaratory relief sought in this Complaint because an actual, live, and justiciable controversy exists between FundsXpress and Sonic within the scope of this Court's jurisdiction pursuant to 28 U.S.C. § 2201. Upon information and belief, Sonic's only business is to bring patent infringement lawsuits. Indeed, since December 2011, Sonic has brought a total of 22 patent infringement lawsuits, all claiming infringement of the '793 Patent. Recently, Sonic, as set forth above, has sent letters to at least 15 financial institution customers of FundsXpress, making the same allegations. In each of those instances, however, the accused product is provided by FundsXpress, and FundsXpress has an interest in determining whether it is liable for indemnification and whether it is liable under theories of direct, induced or contributory infringement.

16. It is clear that Sonic believes that products offered by FundsXpress infringe the '793 Patent. FundsXpress, on the other hand, denies any and all allegations of infringement. The parties have adverse legal interests of sufficient immediacy and reality that an actual case and controversy exists between FundsXpress and Sonic. FundsXpress denies its online banking products infringe; FundsXpress intends to continue to provide the accused products to customers; Sonic has already brought suit against other parties and threatens to do so against numerous FundsXpress customers; and FundsXpress may be obligated to indemnify its customers threatened by Sonic if the accused online banking products infringe the '793 Patent. FundsXpress is a real party-in-interest to Sonic's infringement allegations. Without the

declarations sought in this matter, FundsXpress will continue to suffer actual harm to FundsXpress's legitimate right and business interest in offering its customers online banking products free of baseless claims of patent infringement, which harm has been realized by Sonic's threats to file lawsuits against FundsXpress's online banking customers. The Supreme Court and Federal Circuit have each recognized that declaratory relief is appropriate under such circumstances.

17. Venue is proper in the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1391(b)-(c) and 1400(b).

FIRST CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '793 Patent)

18. FundsXpress hereby incorporates by reference its allegations contained in paragraphs 1 through 13 of this Complaint as though fully set forth herein.

19. FundsXpress does not make, use, offer for sale, sell, import, or export, and has not ever made, used, offered to sell, sold, imported, or exported, a method, device, or apparatus that infringes, either directly, contributorily, or by inducement, any valid and enforceable claim of the '793 Patent, either literally or under the doctrine of equivalents.

20. As set forth in detail above, an actual, live, and justiciable controversy exists between FundsXpress and Sonic concerning the non-infringement of the '793 Patent.

21. Accordingly, FundsXpress seeks and is entitled to a judgment against Sonic that FundsXpress online banking products have not infringed and do not infringe (directly, indirectly, contributorily, or by inducement) any valid and enforceable claim of the '793 Patent, either literally or under the doctrine of equivalents.

EXCEPTIONAL CASE FINDING

22. Because this matter constitutes an exceptional case under 35 U.S.C. § 285, FundsXpress is entitled an award of its reasonable and necessary attorneys' fees.

JURY DEMAND

23. Pursuant to Federal Rule of Civil Procedure 38, FundsXpress demands a trial by jury on all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, FundsXpress prays for a declaratory judgment against Defendant as follows:

A. Declare that FundsXpress has not infringed and does not infringe in any manner any claim of the '793 patent;

B. Permanently enjoin Plaintiff, its successors and assigns, and anyone acting in concert therewith or on its behalf, from attempting to enforce the '793 patent against FundsXpress or any parents, affiliates, or subsidiaries of FundsXpress or any of its respective officers, agents, employees, successors, and assigns.

C. Find this case exceptional and award FundsXpress its costs and expenses, including reasonable attorneys' fees, in accordance with the provisions of 35 U.S.C. § 285 or otherwise; and

D. Award FundsXpress any additional relief as the Court may deem appropriate and just under the circumstances.

FOX ROTHSCHILD LLP

/s/ Gregory B. Williams

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Dated March 22, 2013