

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

2013 NOV 25 P 2:48

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

BUYSAFE, INC.,

Plaintiff,

v.

GOOGLE, INC.,

Defendant.

Civil Action No.

3-13-cv-781
HEH

COMPLAINT

Plaintiff buySAFE, Inc. (“buySAFE” or “Plaintiff”), by and through its attorneys, for its Complaint against Defendant Google Inc. (“Google” or “Defendant”) alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement and unfair competition arising under the laws of the United States, Title 35, United States Code, Sections 1, *et seq.*, and the laws of the State of California, California Business and Professions Code, Sections 17200, *et seq.*

THE PARTIES

2. Plaintiff buySAFE is a Delaware corporation with its principal place of business located at 1611 N. Kent Street #803, Arlington, Virginia 22209. buySAFE sells to Internet retailers a patented service that provides third-party certification and transactional guarantees for online merchants.

3. Defendant Google is a Delaware corporation with its principal place of business located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the

United States, 35 U.S.C. § 271 *et seq.* This is also an action for related claims that form the same case and controversy at issue in the patent infringement claim.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the claim arising under the laws of the State of California asserted in this action pursuant to 28 U.S.C. § 1367(a).

6. This Court has personal jurisdiction over Google because Google has transacted business in the Commonwealth of Virginia, and has committed, and continues to commit, acts of patent infringement in the Commonwealth of Virginia.

7. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c), among other reasons, because:

- a. Defendant Google is subject to personal jurisdiction in this District;
- b. On information and belief, Google has committed acts of infringement in this District;
- c. Google has knowingly and purposefully directed its infringing and tortious acts to this District, knowing that buySAFE does business in this District and would suffer injuries as a result of those acts in this District. buySAFE's headquarters, servers and primary place of business are in this District, the invention was conceived and the patent was written in this District and the primary inventors all live and work in this District and as a result of Google's actions buySAFE and its employees, the large majority of whom all live and work in this District are suffering injuries in this District. Google willfully and knowingly infringed Plaintiff's patent to compete against Plaintiff in this District.

BACKGROUND

8. The majority of consumers believe that shopping online is riskier than shopping at a brick and mortar store. These consumers worry that Internet transactions are less safe and that they will have greater difficulty in resolving issues with orders in the inherently disconnected online shopping environment than they would at a brick and mortar store.

9. Founded in 2003, buySAFE addresses the concerns of online shoppers by providing third-party certification and transactional guarantees for Internet retailers. Because there is significant consumer demand for such certification and guarantees, numerous Internet retailers have purchased buySAFE's services and offer buySAFE's transactional guarantees without cost to the consumers who make purchases on their websites.

10. buySAFE has also invented methods for performing systematic analysis of consumer behavior data to predict consumer demand in relation to the offering of a third-party transactional guarantee. These methods provide valuable insight into consumer behavior relating to online purchase transactions. In part, the methods allow the obtaining of such information throughout a period of time spanning from product search to post-purchase consumer behavior. Such information aids in the management and assessment of the efficacy of transaction-related offerings.

11. buySAFE obtained a patent on these methods, United States Patent No. 8,515,791 ("the '791 Patent"), which issued on August 20, 2013.

12. Sometime in 2011, Google launched Google Trusted Stores. Google Trusted Stores is designed to compete directly with buySAFE by providing merchants with a trust seal and guaranteeing the purchases of online shoppers.

13. On information and belief, Google linked its Trusted Stores program to its

established Internet advertising business (AdWords) by using its Internet advertising sales managers to introduce Google's new program, thereby linking its new Trusted Stores program with AdWords. On information and belief, Google has also integrated Google Trusted Stores signaling and promotion in its Product Listing Ads and on Google Shopping.

14. On information and belief, in or around October 2011, Google told at least two customers of buySAFE that participants in Google's Trusted Stores program will have a material advantage with respect to how their ads are promoted and positioned within Google search results. Indeed, that advantage is so significant that few, if any, online merchants will have any choice but to use Google's Trusted Stores program. On information and belief, Google has made the same representations to other buySAFE customers and potential customers.

15. When an online shopper visits a Google Trusted Stores merchant, Google's servers save a cookie to the user's computer. The cookie is used by Google to track the user's activity on that merchant's website and on other Google Trusted Stores websites.

16. On information and belief, through the cookie and related code provided to the merchant by Google Trusted Stores, Google is able to collect consumer purchase information, including: what websites the user has visited; what search terms the user used to arrive at the website; which pages the user views on the retailer's website; what items, by title, the user purchased and for how much; and the date and time of purchase and the amount paid for shipping. On information and belief, all of the consumer purchase information is automatically sent to Google, whether or not the user opts in for Google Trusted Stores' purchase guarantee. If the user opts in for Google Trusted Stores' purchase guarantee, then the consumer purchase information is further associated with that user's Google Account.

17. On information and belief, Google intends to use this information to improve the

targeting of its search advertisements to users, among other things. The additional profits Google will be able to earn from its advertising business will more than offset the cost of providing the Google Trusted Stores purchase guarantee to buySAFE's customers and potential customers at no charge.

18. As a result of Google's actions, buySAFE has lost customers and potential customer who have adopted Google's free Trusted Stores program.

COUNT I: PATENT INFRINGEMENT
(U.S. Patent No. 8,515,791)

19. Plaintiff incorporates by reference paragraphs 1 through 18 as if fully stated herein.

20. On August 20, 2013, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,515,791 entitled "Method, System and Components for Obtaining, Evaluating, and/or Utilizing Seller, Buyer and Transaction Data." A true and correct copy of the '791 patent is attached hereto as **Exhibit A**.

21. Plaintiff is the lawful owner by assignment of all right, title and interest in and to the '791 patent and has exclusive rights to enforce that patent and seek damages and other relief for its infringement.

22. Upon information and belief, Google makes, uses, sells, offers to sell, and/or imports into the United States for subsequent sale or use products, services, methods, or processes that infringe one or more of the claims of the '791 Patent, through its Google Trusted Stores program as implemented on its participating merchants' websites, including, but not limited to, Overstock.com, BabyAge.com, AutoAnything.com and Wayfair.com.

23. The foregoing actions by Google constitute infringement of the '791 patent under 35 U.S.C. § 271 *et seq.*

24. On information and belief, as of at least the date of the filing of this complaint, Google's continuing infringement of the '791 Patent is willful and deliberate.

25. Defendant's infringement of buySAFE's patent has caused and will continue to cause irreparable harm to buySAFE by the loss of market share, goodwill, and bargaining position in buySAFE's negotiations to raise additional capital, for which there is no adequate remedy at law. Moreover, Defendant's unauthorized, infringing use of Plaintiff's patented invention has threatened the value of this intellectual property because Defendant's conduct results in Plaintiff's loss of its lawful patent rights to exclude others from making, using, selling, offering to sell, and/or importing the patented inventions.

26. Google's disregard for buySAFE's property rights similarly threatens buySAFE's relationships with potential licensees of this intellectual property. Google will derive a competitive advantage over any of buySAFE's future licensees from using buySAFE's patented technology without paying compensation for such use. Accordingly, unless and until Google's continued acts of infringement are enjoined, buySAFE will suffer further irreparable harm for which there is no adequate remedy at law.

27. Google's conduct renders this case "exceptional" as described under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff buySAFE respectfully requests final judgment as follows:

A. Declaration that Google has willfully infringed one or more of the claims of each of the '791 Patent;

B. Declaration that buySAFE has been irreparably harmed by the infringing activities of Google;

C. Injunction of Google, its officers, agents, servants, employees and those persons

in active concert or participation with any of them, as well as all successor or assignees of the interests or assets related to the Google Trusted Stores program, from further infringement of the '791 Patent;

D. Award to buySAFE of damages resulting from Google's patent infringement pursuant to 35 U.S.C. § 284;

E. Award to buySAFE of costs and interest pursuant to 35 U.S.C. § 284;

F. Award to buySAFE of treble damages pursuant to 35 U.S.C. § 284;

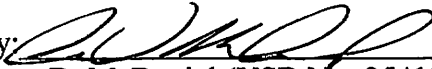
G. Declaration that this is an exceptional case within the meaning of 35 U.S.C. § 285 and an award to buySAFE of its attorneys' fees, costs, and expenses incurred in prosecuting this action.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, buySAFE hereby demands a trial by jury of all issues so triable.

November 25, 2013

BUYSAFE, INC.

By:  _____

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