

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MANTIS COMMUNICATIONS, LLC

Plaintiff,

v.

**CULVER FRANCHISING SYSTEM,
INC.**

Defendant.

Civil Action No. 2:17-cv-324

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.* in which Plaintiff Mantis Communications, LLC (“Mantis” or “Plaintiff”) files this action against defendant Culver Franchising System, Inc. (“Culver’s” or “Defendant”) for infringing U.S. Patent Nos. 7,403,788 (“the ’788 Patent”), 7,792,518 (“the ’518 Patent”), 8,131,262 (“the ’262 Patent”), 8,437,784 (“the ’784 Patent”), 8,761,732 (“the ’732 Patent”), 8,938,215 (“the ’215 Patent”), and 9,092,803 (“the ’803 Patent”) (collectively, “patents-in-suit” or “Mantis patents”).

BACKGROUND

1. Plaintiff Mantis is a Texas Limited Liability Company and is the owner by assignment of the patents-in-suit.
2. Companies including Defendant have adopted the inventions disclosed in the Mantis patents.
3. The Mantis patents have been cited in patents and patent applications filed by companies including: Research In Motion Limited, Motorola, Tekelec, and Visa.
4. The patents-in-suit share a common specification and are entitled “System and Method to Initiate a Mobile Data Communication Utilizing a Trigger System.” True and correct copies of the patents-in-suit are attached hereto as Exhibits A through G.

5. The patents-in-suit relate back to a provisional patent application dated July 19, 2002 (Provisional Application No. 60/397,435). The patents-in-suit claim specific systems and methods to enable organizations to execute direct marketing techniques and promotions by engaging users in a more convenient way by triggering interactions through their mobile communication devices.

6. The claims of the patents-in-suit are directed at a technical solution to solve a problem unique to computer communications networks and related devices – initiating a communication between an organization and a user of a mobile device triggered by an initial request or interaction by the user.

7. Use of a trigger system to initiate communication between an organization and a user using a mobile device presented new and unique advantages over the state of the art at the time. For example, although the wireless channel theoretically provided marketers a new ability to reach individuals in a time-sensitive way, there was a lack of standardization, and there was no practical way for a user’s non-mobile-device interactions to trigger timely intercommunications with their mobile devices.

8. Although the systems and methods taught in the claims of the patents-in-suit have by today been widely adopted by leading businesses, at the time of the invention, the technologies taught in the claims of the patents-in-suit were innovative.

9. Further the claims of the patents-in-suit improved upon the functioning of communications interfaces and devices by providing for faster and easier methods to trigger a communication between an organization and user. For example, the claims of the patents-in-suit enable simple, fast, practical, and economical means to instantly deliver offers, coupons, promotions and other user-customized content to users on the go.

10. The claims of the patents-in-suit are not directed to a “method of organizing human activity,” “fundamental economic practice long prevalent in our system of commerce,” or “a building block of the modern economy.” Instead, they are limited to the narrow set of methods and systems for communications interfaces and devices.

11. The claims of the patents-in-suit are directed at very particular, narrow methods and systems for triggering a communication between an organization and a user using technologies unique to the mobile devices. The inventive concept in the claims of the patents-in-suit is a technological one rather than an entrepreneurial one. The use of a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device is a specific solution to the technological problem of mobile electronic communications devices that lack standardization.

12. The claims of the patents-in-suit are directed toward a solution rooted in computer technology and use technology unique to computers and networks to overcome a problem specifically arising in the realm of communications devices on computer networks. For example, the claims of the patents-in-suit are directed toward using a triggering system in a computer network using electronic devices which are specifically configured to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily used by the communications methods of the prior art.

13. The use of a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device was not a longstanding or fundamental economic practice at the time of invention of the patents-in-suit. The use of a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device was not at the time of the invention a fundamental principle in ubiquitous use on the Internet or computers in general.

14. The claims of the patents-in-suit are not directed at a method for organizing human activity as the claims teach specific systems and methods for using triggering systems to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device.

15. The claims of the patents-in-suit are not directed at a mathematical relationship or formula as the claims teach specific systems and methods to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device.

16. The inventions claimed in the patents-in-suit go beyond manipulating, reorganizing, or collecting data by receiving information or a signal and generating content based on user request data thereby fundamentally altering information. One or more of the claims of the patents-in-suit require “transforming” data associated with the trigger system by receiving information or a signal and then generating content based on user request data. Therefore, the claimed features in the patents-in-suit fundamentally alter data and go beyond the mere collection, organization, manipulation, or reorganization of data.

17. One or more of the claims of the patents-in-suit require a specific trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device and are meaningful limitations that tie the claimed methods and systems to specific machines.

18. The claims of the patents-in-suit not only recite a process for generating content based on user requested data, the claims involve a protocol for using a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device.

19. The claims of the patents-in-suit cannot be performed by a human, in the mind, or by pen and paper. The claims as a whole are directed to using a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device. These limitations require a message application server that can communicate with a trigger system with a trigger client component and a trigger server component, wherein the message application server is capable of processing a trigger signal, deriving a mobile device address from at least one unique identifier, and generating content based on user request data – all elements that cannot be done by a human, in one’s mind, or by paper and pencil.

20. The use of trigger systems to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device is not a conventional activity that humans engaged in before computers, nor is it a conventional activity that humans are capable of performing mentally or by pen and paper.

21. One or more of the claims of the patents-in-suit require a fixed step-by-step procedure using a trigger system for accomplishing the initiation of communications on electronic devices in order to enable targeted content delivery to a mobile device.

22. The prior art cited on the face of the patents-in-suit shows that the inventions disclosed in the claims of the patents-in-suit are not a patent ineligible abstract idea. The inventions taught in the claims of the patents-in-suit are narrower than the cited prior art, and therefore, are not an abstract idea. For example, none of the systems and methods described in the prior art discloses using a trigger to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device. Many of the claims of the patents-in-suit require the use of a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device. This requirement is absent in the prior art and thus, the claims of the patents-in-suit are directed toward significantly more than an abstract idea and the claims of the patents-in-suit do not preempt the field of electronic communications or marketing.

23. The inventions in the claims of the patents-in-suit are rooted in computer technology and overcame a problem specifically arising in the realm of computer networks. At the time of the invention, limitations in the prior art that the patents-in-suit were directed to solve included the lack of standardization, the lack of convenience in triggering communications using prior art systems in a timely manner, as well as the lack of familiarity and cumbersome nature of initiating a communication using a mobile device.

24. The claims of the patents-in-suit require the use of a computer system. The use of a computer system plays a significant part in permitting the claimed methods to be performed. For example, the use of a trigger system to communicate with a message application server is integral to the success of targeted content delivery to a mobile device and can only be performed using a computer system. The use of a computer system using a trigger system and message application server is not merely an issue of processing data more quickly, it is integral to accomplishing targeted content delivery to a mobile device.

25. The claims of the patents-in-suit do not preempt a field or preclude the use of other effective targeted content delivery to mobile devices. The claims of the patents-in-suit include inventive elements such as the claimed trigger systems. The elements in the claims of the patents-in-suit greatly limit the breadth of the claims. These limitations are not necessary or obvious tools for achieving the initiation of communications on electronic devices in order to enable targeted content delivery to a mobile device, and they ensure that the claims do not preempt other techniques for targeted content delivery to mobile devices. Other techniques for targeted content delivery on mobile devices that would not be included in the scope of the claims of the patents-in-suit include at least the prior art on the face of the patents-in-suit.

26. The claims of the patents-in-suit do not preempt initiating communications on electronic devices in order to enable targeted content delivery to a mobile device, as other technologies are available.

27. The claims of the patents-in-suit not only recite a process for generating content based on user requested data, the claims involve a protocol for using a trigger system to initiate communications on electronic devices in order to enable targeted content delivery to a mobile device. The inventions disclosed in the claims of the patents-in-suit have a concrete effect in communication to a mobile device. The claims are directed to solving a technological problem of mobile electronic communications devices that lack standardization and usability. The prior art disclosed on the face of the patents-in-suit show that the claims of the patents-in-suit are directed at solving this problem using unconventional and novel techniques.

28. The use of a trigger system to initiate communications on electronic devices in order to enable targeted content deliver on a mobile device confers benefits on a computer system.

29. The claims of the patents-in-suit require steps that are not conventional or routine. The use of a trigger system to initiate communications on electronic devices in order to enable targeted content deliver on a mobile device was not ubiquitous at the time of the invention. Further, elements in the dependent claims of the patents-in-suit require additional steps that are not convention or routine.

PARTIES

30. Mantis is a Texas Limited Liability Company with a principal place of business at 2600 Avenue K, Plano Texas 75074.

31. Culver Franchising System, Inc. is a Wisconsin corporation with its principal place of business at 1240 Water Street, Prairie du Sac, WI 53578. Culver's may be served with process by delivering a summons and a true and correct copy of this complaint to its registered agent for receipt of service of process, Diana Shebel 1240 Water St, Prairie Du Sac, WI 53578.

JURISDICTION AND VENUE

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

33. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant has established minimum contacts with the forum state of Texas. Defendant, directly or through third-party intermediaries, makes, uses, imports, offers for sale, or sells products or services within the state of Texas, and particularly within the Eastern District of Texas. Defendant has purposefully availed itself of the benefits of doing business in the State of Texas and the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice. Defendant has twelve regular and established restaurants in the state of Texas, including in Austin, McKinney, Kerrville, Rockwall, The Woodlands, and San Antonio.

34. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(c) and 1400(b) because Defendant is subject to personal jurisdiction in this District, has transacted business in this district and has committed acts of patent infringement in this District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,403,788

35. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

36. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's

targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '788 patent.

37. Defendant has directly infringed and continues to infringe the '788 Patent in this District and elsewhere in the United States by, among other things, making, using, offering for sale, or selling targeted content delivery products or services.

38. By making, using, offering for sale, or selling targeted content delivery products and/or services infringing the claims of the '788 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '788 Patent pursuant to 35 U.S.C. § 271(a).

39. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-1, which is incorporated herein by reference in its entirety.

40. As a result of Defendant's infringement of the '788 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

41. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the claims of the '788 Patent, Mantis will be greatly and irreparably harmed.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 7,792,518

42. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

43. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '518 Patent.

44. Defendant has directly infringed and continues to infringe the '518 Patent in this District and elsewhere in the United States by, among other things, making, using, offering for

sale, or selling targeted content delivery products or services.

45. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-2, which is incorporated herein by reference in its entirety.

46. By making, using, offering for sale, or selling target content delivery products or services infringing the claims of the '518 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '518 Patent pursuant to 35 U.S.C. § 271(a).

47. As a result of Defendant's infringement of the '518 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

48. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the claims of the '518 Patent, Mantis will be greatly and irreparably harmed.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 8,131,262

49. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

50. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '262 Patent.

51. Defendant has directly infringed and continues to infringe the '262 Patent in this District and elsewhere in the United States by, among other things, making, using, offering for sale, or selling target content delivery products or services.

52. By making, using, offering for sale, or selling target content delivery products or services infringing the claims of the '262 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '262 Patent pursuant to 35 U.S.C. § 271(a).

53. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-3, which is incorporated herein by reference in its entirety.

54. As a result of Defendant's infringement of the '262 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

55. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the claims of the '262 Patent, Mantis will be greatly and irreparably harmed.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 8,437,784

56. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

57. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '784 patent.

58. District and elsewhere in the United States by, among other things, making, using, offering for sale, or selling target content delivery products or services.

59. By making, using, offering for sale, or selling target content delivery products or services infringing the claims of the '784 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '784 Patent pursuant to 35 U.S.C. § 271(a).

60. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-4, which is incorporated herein by reference in its entirety.

61. As a result of Defendant's infringement of the '784 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with

interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

62. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the claims of the '784 Patent, Mantis will be greatly and irreparably harmed.

COUNT V

INFRINGEMENT OF U.S. PATENT NO. 8,761,732

63. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

64. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '732 Patent.

65. Defendant has directly infringed and continues to infringe the '732 Patent in this District and elsewhere in the United States by, among other things, making, using, offering for sale, or selling target content delivery products or services.

66. By making, using, offering for sale, or selling targeted content delivery products or services infringing the claims of the '732 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '732 Patent pursuant to 35 U.S.C. § 271(a).

67. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-5, which is incorporated herein by reference in its entirety.

68. As a result of Defendant's infringement of the '732 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

69. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert

therewith from infringing the claims of the '732 Patent, Mantis will be greatly and irreparably harmed.

COUNT VI

INFRINGEMENT OF U.S. PATENT NO. 8,938,215

70. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

71. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '215 Patent.

72. Defendant has directly infringed and continues to infringe the '215 Patent in this District and elsewhere in the United States by, among other things, making, using, offering for sale, or selling target content delivery products or services.

73. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-6, which is incorporated herein by reference in its entirety.

74. By making, using, offering for sale, or selling targeted content delivery products or services infringing the claims of the '215 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '215 Patent pursuant to 35 U.S.C. § 271(a).

75. As a result of Defendant's infringement of the '215 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

76. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the claims of the '215 Patent, Mantis will be greatly and irreparably harmed.

COUNT VII

INFRINGEMENT OF U.S. PATENT NO. 9,092,803

77. Mantis incorporates by reference the foregoing paragraphs of this Complaint.

78. Defendant makes, uses, sells, or offers for sale in this District and elsewhere in the United States products or services for targeted content delivery on a mobile device. Defendant's targeted content delivery products or services provide or support enabling targeted content delivery to a mobile device as described and claimed in the '803 Patent.

79. Defendant has directly infringed and continues to infringe the '803 Patent in this District and elsewhere in the United States by, among other things, making, using, offering for sale, or selling targeted content delivery products or services.

80. A representative claim chart showing Defendant's infringement of the '788 patent is attached hereto as Exhibit A-7, which is incorporated herein by reference in its entirety.

81. By making, using, offering for sale, or selling target content delivery products or services infringing the claims of the '803 Patent, Defendant has injured Mantis and is liable to Mantis for direct infringement of the claims of the '803 Patent pursuant to 35 U.S.C. § 271(a).

82. As a result of Defendant's infringement of the '803 Patent, Mantis has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Mantis will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

83. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the claims of the '803 Patent, Mantis will be greatly and irreparably harmed.

PRAYER FOR RELIEF

Plaintiff respectfully requests the following relief from this Court:

A. That Defendant has directly infringed the '788, '518, '262, '784, '732, '215, and '803 patents;

B. That Defendant and any of its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for any of them or on

any of their behalf, or acting in concert with any of them directly or indirectly, be enjoined from infringing the '788, '518, '262, '784, '732, '215, and '803 patents;

C. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with Defendant, from infringing the '788, '518, '262, '784, '732, '215, and '803 patents;

D. That Defendant be ordered to pay damages to Mantis, together with costs, expenses, pre-judgment interest and post-judgment interest as allowed by law;

E. That Defendant be ordered to provide an accounting;

F. That Defendant be ordered to pay supplemental damages to Mantis, including without limitation interest;

G. That Defendant's infringement be adjudged willful;

H. That the damages for Defendant be increased under 35 U.S.C. § 284 to three times the amount found or assessed;

I. That the Court enter judgment against Defendant, and in favor of Mantis in all respects;

J. That the Court determine this is an exceptional case under 35 U.S.C. § 285 and an award of attorneys' fees and costs to Mantis is warranted in this action; and

K. For any such other and further relief as the Court deems just and equitable.

JURY TRIAL DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Mantis requests a trial by jury of any issues so triable by right.

Dated: April 17, 2017

Respectfully submitted,

By: /s/ Ryan E. Hatch

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