

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

BLACKSTONE RIVER, LLC,

Plaintiff,

v.

EHARMONY, INC., HUMOR RAINBOW,
INC., MATCH.COM, LLC, MATRIMA,
INC., PLENTYOFFISH MEDIA, INC.,
TRUE BEGINNINGS, LLC,

Defendants.

Civil Action No. 2:10-cv-519

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Blackstone River, LLC ("Plaintiff"), by and through its undersigned counsel, files this First Amended Complaint against Eharmony, Inc., Humor Rainbow, Inc., Match.com LLC, and Plentyoffish Media, Inc. (collectively "Defendants") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendants' infringement of Plaintiff's United States Patent No. 7,184,968 entitled "*System and Method for Facilitating Bilateral and Multilateral Decision Making*" (the "'968 patent"; a copy of which is attached hereto as Exhibit A) and United States Patent No. 7,725,347 entitled "*System and Method for Facilitating Bilateral and Multilateral Decision Making*" (the "'347 patent"; a copy of which is attached hereto as Exhibit B) (collectively, "the patents-in-suit"). Plaintiff is the exclusive licensee of the '968 patent and '347 patent with respect to the Defendants. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff maintains its principal place of business at 101 East Park Boulevard, Suite 600, Plano, TX 75074. Plaintiff is the exclusive licensee of the patents-in-suit with respect to the Defendants, and possesses the right to sue for infringement and recover past damages.

3. Upon information and belief, Eharmony, Inc. (“Eharmony”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 888 East Walnut Avenue, Pasadena, California 91101.

4. Upon information and belief, Humor Rainbow, Inc. (“Humor Rainbow”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 39 West 14th Street, #502A, New York, New York 10011.

5. Upon information and belief, Match.com, LLC (“Match”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 8300 Douglas Avenue, Suite 800, Dallas, Texas 75225.

6. Upon information and belief, Plentyoffish Media, Inc. (“POF”) is a corporation organized and existing under the laws of British Columbia, with its principal place of business located at 1529 Pender Street W, Vancouver, British Columbia V6G 3J3, Canada.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

8. The Court has personal jurisdiction over each Defendant because: each Defendant is present within or has minimum contacts with the State of Texas and the Eastern District of Texas; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff’s causes of action arise

directly from Defendants' business contacts and other activities in the State of Texas and in the Eastern District of Texas.

9. More specifically, each Defendant, directly and/or through authorized intermediaries, ships, distributes, offers for sale, sells, uses and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, each Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use each of the respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

10. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

11. The '968 patent was duly and legally issued by the United States Patent and Trademark Office on February 27, 2007, after full and fair examination, for systems and methods for facilitating bilateral and multilateral decision making. Plaintiff is the exclusive licensee of the '968 patent with respect to the Defendants, and possesses all rights of recovery under the '968 patent with respect to the Defendants, including the right to sue for infringement and recover past damages.

12. The '347 patent was duly and legally issued by the United States Patent and Trademark Office on May 25, 2010, after full and fair examination, for systems and methods for facilitating bilateral and multilateral decision making. Plaintiff is the exclusive licensee of the '347 patent with respect to the Defendants, and possesses all rights of recovery under the '347 patent with respect to the Defendants, including the right to sue for infringement and recover past damages.

13. Eharmony owns, operates, advertises, controls, sells, uses and otherwise provides hardware and software for “facilitating bilateral and multilateral decision making,” including via the Eharmony website (“the Eharmony system”), available through www.eharmony.com. Eharmony has infringed and continues to infringe one or more claims of the ’968 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. Eharmony has also infringed, and continues to infringe, one or more claims of the ’347 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. More particularly, Eharmony provides, sells access to, and/or requires and/or directs users to access and/or use a software system that presents questions to, and receives question responses from, users to develop a profile for each user and that analyzes the resulting user profiles by conjoint analysis to generate a list of corresponding matched users for dating purposes in a manner claimed in the patents-in-suit.

14. Humor Rainbow owns, operates, advertises, controls, sells, uses and otherwise provides hardware and software for “facilitating bilateral and multilateral decision making,” including via the Humor Rainbow website (“the Humor Rainbow system”), available through www.okcupid.com. Humor Rainbow has infringed and continues to infringe one or more claims of the ’968 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. Humor Rainbow has also infringed, and continues to infringe, one or more claims of the ’347 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. More particularly, Humor Rainbow provides, sells access to, and/or requires and/or directs users to access and/or use a software

system that presents questions to, and receives question responses from, users to develop a profile for each user and that analyzes the resulting user profiles by conjoint analysis to generate a list of corresponding matched users for dating purposes in a manner claimed in the patents-in-suit.

15. Match owns, operates, advertises, controls, sells, uses and otherwise provides hardware and software for “facilitating bilateral and multilateral decision making,” including via the Match website (“the Match system”), available through www.chemistry.com. Match has infringed and continues to infringe one or more claims of the '968 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. Match has also infringed, and continues to infringe, one or more claims of the '347 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. More particularly, Match provides, sells access to, and/or requires and/or directs users to access and/or use a software system that presents questions to, and receives question responses from, users to develop a profile for each user and that analyzes the resulting user profiles by conjoint analysis to generate a list of corresponding matched users for dating purposes in a manner claimed in the patents-in-suit.

16. POF owns, operates, advertises, controls, sells, uses and otherwise provides hardware and software for “facilitating bilateral and multilateral decision making,” including via the POF website (“the POF system”), available through www.plentyoffish.com. POF has infringed and continues to infringe one or more claims of the '968 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. POF has also infringed, and continues to infringe, one or more claims of the '347 patent by making, using, providing, offering to sell, and

selling (directly or through intermediaries), in this district and elsewhere in the United States, systems and methods for developing user profiles and using profile analysis to match users for dating purposes. More particularly, POF provides, sells access to, and/or requires and/or directs users to access and/or use a software system that presents questions to, and receives question responses from, users to develop a profile for each user and that analyzes the resulting user profiles by conjoint analysis to generate a list of corresponding matched users for dating purposes in a manner claimed in the patents-in-suit..

17. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

18. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of the Defendants' wrongful acts 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.

19. Defendants' infringement of Plaintiff's exclusive rights under the '968 patent and '347 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

20. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '968 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants;

- B. An adjudication that one or more claims of the '347 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants;
- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendants' acts of infringement together with pre-judgment and post-judgment interest;
- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further or additional acts of (1) infringement, (2) contributory infringement, (3) actively inducing infringement with respect to the claims of the '968 patent, and (4) actively inducing infringement with respect to the claims of the '347 patent;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and
- F. Any further relief that this Court deems just and proper.

Respectfully submitted,

Dated: June 10, 2011

/s/Melissa Richards Smith
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 10th day of June, 2011, the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/Melissa Richards Smith
Melissa Richards Smith