

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SEMANTIC COMPACTION SYSTEMS,)	
INC., a Pennsylvania corporation and)	
PRENTKE ROMICH COMPANY, an Ohio)	
corporation,)	
)	CIVIL ACTION NO. 12-248
Plaintiffs,)	
)	CHIEF JUDGE GARY L. LANCASTER
v.)	
)	
SPEAK FOR YOURSELF LLC; RENEE)	
COLLENDER, an individual; and HEIDI)	
LOSTRACCO, an individual,)	JURY TRIAL DEMANDED
)	
Defendants.)	

**SECOND AMENDED COMPLAINT FOR PATENT AND
COPYRIGHT INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,
AND UNFAIR COMPETITION**

Semantic Compaction Systems, Inc. (“Semantic”) and Prentke Romich Company (“PRC”) (collectively “Plaintiffs”), by their undersigned counsel, respectfully set forth their Second Amended Complaint against Defendants Speak for Yourself LLC (“SFY”), Renee Collender (“Collender”) and Heidi LoStracco (“LoStracco”) (collectively “Defendants”), stating as follows:

INTRODUCTION

1. This case arises from Defendants’ wrongful and knowing efforts to usurp and infringe upon the rights and interests of Plaintiffs in Semantic’s valuable copyrights and patented technology for dynamic keyboards and methods for dynamically redefining keys on a keyboard in the context of Augmentative and Alternative Communication (“AAC”) systems.

2. Defendants learned of Plaintiffs' product and patents while, *inter alia*, attending various seminars hosted by Semantic and PRC.

3. At least by August 2011, Defendants determined to deliberately and directly compete with Plaintiffs in an attempt to profit from Plaintiffs' valuable intellectual property and hard-earned reputation and began to develop a software application titled "Speak for Yourself" (the "SFY App") that, when used on an iPad® or other similar device and/or software platform,¹ infringes on the Plaintiffs' patented technology, as well as the expressive elements of the Minspeak®, Words Strategy™ and Unity® language and communication systems ("Words Strategy™" or the "Words Strategy™ System," and "Unity®" or the "Unity® System"), including, without limitation, elements protected by copyright and as trade dress.

4. Defendants' wrongful actions are evidenced, in part, by their own actions and words, including, without limitation:

a. After the initial Complaint was filed in this matter, Defendants revised the SFY App to delete certain icons or symbols from the second page or screen shot that appears after an icon or symbol is selected from the home page. Upon information and belief, this deletion was made in an effort to avoid the claims of patent infringement in this action. The deletion does not, however, obviate those claims; the SFY App continues to use multi-meaning or polysemous icons, and the SFY App continues to infringe upon the Plaintiffs' patents, copyrights and trade dress.

¹ As will be discussed *infra*, Defendants recently developed a version of the SFY App for the Android platform that, when used on a tablet device running the Android operating system, infringes upon Plaintiffs' intellectual property.

b. Defendants, in the Preliminary Statement to their original and amended Answer and Counterclaims, tout “core vocabulary” categories in the SFY App. As reflected in Semantic’s copyright registration for the Words Strategy™ System (the predecessor of the Unity® System), Plaintiffs have based their proprietary language and communication system on “core vocabulary” since at least 1988.

c. The Defendants’ vocabulary system also directly utilizes language paradigms or patterns that have been recognized as the “greatest strength” of Words Strategy™ and Unity® Systems. The page and screenshot changes in the SFY App are based on semantic associations – similar to the Words Strategy™ and Unity® Systems – rather than single word classes or categories.

d. As demonstrated by their assertion in their SFY App that the SFY App is protected by copyrights and a pending patent application, Defendants recognize and understand the importance of intellectual property rights.

5. Defendants’ wrongful actions have included (a) contributory and/or induced patent infringement; (b) direct patent infringement by Collender and/or LoStracco; (c) direct copyright infringement under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*; (d) contributory copyright infringement; and (e) false designation of origin, false endorsement, and unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

6. As a result of Defendants’ wrongful acts, Plaintiffs have suffered and will continue to suffer irreparable harm and, in addition to any calculable damages, are therefore entitled to injunctive relief to prevent Defendants from further benefiting from their wanton misconduct.

THE PARTIES

7. Plaintiff Semantic is a corporation incorporated under the laws of Pennsylvania, with its principal place of business at 1000 Killarney Drive, Pittsburgh, Pennsylvania 15234.

8. Plaintiff PRC is a corporation incorporated under the laws of Ohio, with its principal place of business at 1022 Heyl Road, Wooster, Ohio 44691.

9. Defendant SFY is a limited liability company duly existing and organized under the laws of New Jersey, with its principal place of business at 37 Heron Pointe Court, Marlton, New Jersey 08053.

10. Defendant Collender is an adult individual residing at 37 Heron Pointe Court, Marlton, New Jersey 08053, and is a member of SFY.

11. Defendant LoStracco is an adult individual residing at 3270 Claridge Road, Bensalem, Pennsylvania 19020, and is a member of SFY.²

JURISDICTION AND VENUE

12. This court has original jurisdiction over this action based upon 28 U.S.C. § 1338 and 15 U.S.C. § 1121.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs' claim occurred in this District.

FACTUAL ALLEGATIONS

14. As set forth more fully herein, Plaintiffs seek to recover damages from Defendants and injunctive relief for indirect and direct patent infringement under the Patent Act,

² Upon information and belief, Collender and LoStracco are the only members of SFY.

35 U.S.C. §§ 281, *et seq.*, as well as direct copyright infringement under 17 U.S.C. §§ 101 *et seq.*, contributory copyright infringement, and false designation of origin, false endorsement, and unfair competition under 15 U.S.C. § 1125(a)(1)(A).

PLAINTIFFS' PROTECTION OF THEIR INTELLECTUAL PROPERTY

15. Semantic is in the business of, among other things, developing AAC programs that code vocabulary using multi-meaning icons in short sequences with rule-driven patterns to aid individuals who have difficulty communicating with speech or hand signs.

16. PRC is in the business of, among other things, helping individuals with disabilities achieve their full potential by providing quality language and assistive technology products and services to people with disabilities, their families and professionals.

17. Semantic is the owner of United States Patent No. 5,748,177 (the "'177 Patent"), issued on June 7, 1995. A true and correct copy of the '177 Patent is attached hereto as Exhibit "A."

18. A divisional application of the '177 Patent was filed on December 15, 1997, which eventually issued into United States Patent No. 5,920,303, which is also owned by Semantic (the "'303 Patent") (the '177 Patent and '303 Patent are collectively referred to as the "Semantic Patents"). A true and correct copy of the '303 Patent is attached hereto as Exhibit "B."

19. The abstract of the Semantic Patents generally describes the patented technology at issue as follows:

A dynamic keyboard includes a plurality of keys, each with an associated symbol, which are dynamically redefinable to provide access to higher level keyboards. Based on sequenced symbols of keys sequentially activated, certain dynamic categories and

subcategories can be accessed and keys corresponding thereto dynamically redefined. Dynamically redefined keys can include embellished symbols and/or newly displayed symbols. These dynamically redefined keys can then provide the user with the ability to easily access both core and fringe vocabulary words in a speech synthesis system.

(See Exs. A and B at 1.)

20. In addition, Semantic is the owner of several registered trademarks, including but not limited to Minspeak®, Unity® and Pixon®, as well as copyrights relating to the technology associated with the Semantic Patents.

21. Semantic owns the following copyright registrations in Unity®: Words Strategy; Reg. No. TX0003138499.

22. Semantic owns the following copyright applications in Unity® Overlays, Icon Word Sequences, Vocabulary Sorts, Manuals, Tourguides and Dictionaries: Unity® 45 1-Hit Front Page Overlay/Screenshot and Icon Word Sequences (Application No. 1-777883721); Unity® 45 Sequenced Front Page Overlay/Screenshot and Icon Word Sequences (Application No. 1-777883756); Unity® 60 1-Hit Front Page Overlay/Screenshot and Icon Word Sequences (Application No. 1-777883970); Unity® 60 Sequenced Front Page Overlay/Screenshot and Icon Word Sequences (Application No. 1-777884034); Unity® 84 1-hit Vocabulary Sort and Front Page Overlay/Screenshot (Application No. 1-777884058); Unity® 84 Sequenced Vocabulary Sort and Front Page Overlay/Screenshot (Application No. 1-777884092); Unity® 128 Version Pathfinder, Liberator and Delta Talker Tourguide and Front Page Overlay/Screenshot (Application No. 1-777884116); Unity® 128 and 32 Version Delta Talker, Liberator and Pathfinder Vocabulary Sorts and Front Page Overlay/Screenshot (Application No. 1-777884140); ECO Unity® 144 (Application No. 1-779647171); Vantage Lite Unity®

(Application No. 1-779647206); Unity® for Vantage and Vanguard Manual, Tourguide and Dictionary (Application No. 1-779647230); Unity® 45 Sequenced Screenshots – Adjective Pattern (Application No. 1-781093971); Unity® 60 Sequenced Screenshots – Adjective Pattern (Application No. 1-781094069); Unity® 84 Sequenced Screenshots – Adjective Pattern (Application No. 1-781094091); Unity® 144 Sequenced Screenshots – Adjective Pattern (Application No. 1-781094113); Unity® 45 Sequenced Screenshots – Adverb Pattern (Application No. 1-781345892); Unity® 60 Sequenced Screenshots – Adverb Pattern (Application No. 1-781345915); Unity® 84 Sequenced Screenshots – Adverb Pattern (Application No. 1-781345937); Unity® 144 Sequenced Screenshots – Adverb Pattern (Application No. 1-781345959); Unity® 45 Sequenced Screenshots – Conjunction Pattern (Application No. 1-781345981); Unity® 60 Sequenced Screenshots – Conjunction Pattern (Application No. 1-781346003); Unity® 84 Sequenced Screenshots – Conjunction Pattern (Application No. 1-781346025); Unity® 144 Sequenced Screenshots – Conjunction Pattern (Application No. 1-781346047); Unity® 45 Sequenced Screenshots – Determiner Pattern (Application No. 1-781346069); Unity® 60 Sequenced Screenshots – Determiner Pattern (Application No. 1-781346101); Unity® 84 Sequenced Screenshots – Determiner Pattern (Application No. 1-781346123); Unity® 144 Sequenced Screenshots – Determiner Pattern (Application No. 1-781346145); Unity® 45 Sequenced Screenshots – Indefinite Pronoun Pattern (Application No. 1-781346167); Unity® 60 Sequenced Screenshots – Indefinite Pronoun Pattern (Application No. 1-781346231); Unity® 84 Sequenced Screenshots – Indefinite Pronoun Pattern (Application No. 1-781346231); Unity® 144 Sequenced Screenshots – Indefinite Pronoun Pattern (Application No. 1-781346253); Unity® 45 Sequenced Screenshots – Interjection Pattern (Application No. 1-781346275); Unity® 60 Sequenced Screenshots – Interjection Pattern

(Application No. 1-781346297); Unity® 84 Sequenced Screenshots – Interjection Pattern
(Application No. 1-781522319); Unity® 144 Sequenced Screenshots – Interjection Pattern
(Application No. 1-781522341); Unity® 45 Sequenced Screenshots – Negation Pattern
(Application No. 1-781522363); Unity® 60 Sequenced Screenshots – Negation Pattern
(Application No. 1-781522385); Unity® 84 Sequenced Screenshots – Negation Pattern
(Application No. 1-781522407); Unity® 144 Sequenced Screenshots – Negation Pattern
(Application No. 1-781522429); Unity® 45 Sequenced Screenshots – Preposition Pattern
(Application No. 1-781522451); Unity® 60 Sequenced Screenshots – Preposition Pattern
(Application No. 1-781522473); Unity® 84 Sequenced Screenshots – Preposition Pattern
(Application No. 1-781522495); Unity® 144 Sequenced Screenshots – Preposition Pattern
(Application No. 1-781522517); Unity® 45 Sequenced Screenshots – Pronoun Pattern
(Application No. 1-781522539); Unity® 60 Sequenced Screenshots – Pronoun Pattern
(Application No. 1-781522571); Unity® 84 Sequenced Screenshots – Pronoun Pattern
(Application No. 1-781522593); Unity® 144 Sequenced Screenshots – Pronoun Pattern
(Application No. 1-781522615); Unity® 45 Sequenced Screenshots – Question Words Pattern
(Application No. 1-781522637); Unity® 60 Sequenced Screenshots – Question Words Pattern
(Application No. 1-781522659); Unity® 84 Sequenced Screenshots – Question Words Pattern
(Application No. 1-781522681); Unity® 144 Sequenced Screenshots – Question Words Pattern
(Application No. 1-781522703); Unity® 45 Sequenced Screenshots – Semantic Network Pattern
(Application No. 1-781522725); Unity® 60 Sequenced Screenshots – Semantic Network Pattern
(Application No. 1-781522747); Unity® 84 Sequenced Screenshots – Semantic Network Pattern
(Application No. 1-781522769); Unity® 144 Sequenced Screenshots – Semantic Network
Pattern (Application No. 1-781522811); Unity® 45 Sequenced Screenshots – Verb Pattern

(Application No. 1-781522947); Unity® 60 Sequenced Screenshots – Verb Pattern (Application No. 1-781523070); Unity® 84 Sequenced Screenshots – Verb Pattern (Application No. 1-781523092); Unity® 144 Sequenced Screenshots – Verb Pattern (Application No. 1-781523114).

23. Semantic’s copyrights, as well as the distinctive trade dress of the Words Strategy™ and Unity® Systems, are comprised of distinctive visual elements that appear on the screen when the Words Strategy™ and Unity® Systems were and/or are used, and include, but are not limited to, the input tray and icon sequence display; the visual screen layout/orientation and sequence patterns for parts of speech, including adjectives, adverbs, conjunctions, determiners, indefinite pronouns, interjections, negation, prepositions, pronouns, question words, semantic networks, and verbs; symbol conventions as rationales for sequences, including homophones and plays on words; and the vocabulary builder.

24. PRC is the exclusive licensee of the Semantic Patents and other Semantic intellectual property in respect to products and services relating to, *inter alia*, AAC communication, pursuant to an exclusive license agreement dated October 1, 2006 (the “License Agreement”). A true and correct copy of the License Agreement is attached hereto as Exhibit “C.”

25. The License Agreement relates to “products (including hardware, software, printed materials, and related items) designed to facilitate the communications of non-speaking persons and to aid other disabled persons whose communications and/or day-to-day functioning may be aided by products based upon [systems utilizing the licensed intellectual property, products and services], and ... customer support services directly related to such products.”

26. On January 11, 2012, Plaintiffs entered into, *inter alia*, an extension agreement (the “Extension Agreement”) which extended the terms and conditions of the License Agreement to September 30, 2016. A true and correct copy of the Extension Agreement is attached hereto as Exhibit “D.”

27. Plaintiffs have invested significant amounts of money and time in developing and protecting their intellectual property.

INFRINGEMENT ON PLAINTIFFS’ INTELLECTUAL PROPERTY

28. At least by August 2011, Defendants began developing for global distribution the SFY App, an iPad® application that fundamentally infringes upon on one or more claims in the Semantic Patents and brazenly copies Unity’s copyrighted expression and misappropriates Semantic’s distinctive Unity® trade dress.

29. Prior to that time, Defendants had knowledge of the Semantic Patents, copyrights and other of Semantic’s and PRC’s intellectual property rights relating to AAC communications.

30. The SFY App was initially developed and formatted for distribution through the iTunes® online store (the “App Store”) owned by Apple Inc. (“Apple”) and for use on Apple’s iPad® tablet products.

31. In or around December 2011, Defendants began offering the SFY App for sale on the App Store.

32. On January 13, 2012, counsel for Plaintiffs delivered a cease and desist letter (the “Infringement Letter”), to Defendants. The Infringement Letter informed Defendants of the Semantic Patents and that Defendants’ ongoing and continuous offering for sale of the SFY App

was facilitating infringement of the various claims in those patents. A true and correct copy of the Infringement Letter is attached hereto as Exhibit “E.”

33. Despite Defendants’ acknowledged receipt of the Infringement Letter and understanding of the Semantic Patents, they continued to facilitate the proliferation of the SFY App on a global scale.

34. The SFY App is substantially similar to the AAC methods and processes patented by Plaintiffs and, when implemented and used by a customer on an iPad®, or other similar software platform and device/tablet infringes on Plaintiffs’ patents because it implements one or more of the apparatus and method claims in the Semantic Patents.

35. Despite their knowledge of the Semantic Patents and the specific apparatus and method claims in those patents, Defendants have sold hundreds of units of the SFY App to customers or end-users throughout the United States by way of the App Store, and Defendants have instructed these customers and end-users on how to use the SFY App in a manner that directly infringes the Semantic Patents, infringes on the Words Strategy™ and Unity® Copyrights and related trade dress, and creates a false designation of origin.

36. On July 31, 2012, Defendants informed the Court and Plaintiffs that, contrary to statements they made in connection with their Motion for Injunctive Relief, they had launched a new version of the SFY App on July 29, 2012, specifically developed for use on the Android platform.

37. At that time, Plaintiffs confirmed that the Android- based SFY App was available for purchase through at least the Google Play app store (“Google Play”). (See

38. Defendants have regularly promoted and marketed the SFY App on their website, www.speakforyourself.org (last visited Aug. 2, 2012), where they have (1) provided a direct links to the App Store and Google Play where customers have purchased the SFY App; (2) explain how to use the SFY App on the iPad® or other similar device/tablet and/or software platforms; (3) supply answers to frequently asked questions; (4) provide commentary, reviews and testimonials of customers who have purchased the SFY App; and (5) demonstrate the functions of the SFY App on detailed YouTube® videos.

39. Apple removed the SFY App from the App Store on June 4, 2012. However, previous downloads of the SFY App continue to function. In addition, a “lite” version of the SFY App is still available for sale on the App Store, and the “lite” SFY App continues to infringe on Plaintiffs’ intellectual property.

40. The SFY App, when used on a device and/or software platform similar to the iPad®, including, without limitation, the Android software platform, other tablets, smart pads/phones and laptops/desktop computers also infringes on Plaintiffs’ intellectual property.

41. Collender and/or LoStracco used the SFY App on an iPad® between December 2011 and January 2012.

42. Collender and/or LoStracco appears on one or more YouTube videos wherein they demonstrate to viewers, customers and end-users how to use the Application on an iPad® tablet. (See, e.g., Posting of SpeakforYourselfAAC to <http://www.youtube.com/watch?v=VpafqM1kiNo&feature=email> (Dec. 22, 2011) (11,391 views) (last visited Aug. 2, 2012); Posting of speakforyourselfapp to <http://www.youtube.com/watch?v=cwvAnhYHO3c> (Jan. 9, 2012) (943 views) (last visited Aug. 2, 2012).)

43. Defendants make several statements on their website regarding the functionality of the App, including the following: “The main screen of *Speak for Yourself* is comprised of 119 ... core words. Each of the main screen buttons links to additional related core words and personalized, programmable vocabulary.”

44. Defendants also maintain an extensive Facebook page, <http://www.facebook.com/pages/Speak-for-Yourself/306312252737397> (last visited Aug. 2, 2012) (1,342 likes), that contains (1) direct links to the App Store and Google Play; (2) wall posts of customer reviews and commentary regarding their use of the SFY App; (3) photographs and video recordings depicting customers using the SFY App; and (4) posts by Defendants promoting and marketing the SFY App.

45. Defendants include a description of the SFY App on their Facebook page, stating that the “[SFY App] has the capability to begin with one word, but contains Pixon® symbols and almost 11,000 Smarty Symbols® and allows the user the potential to access over 13,000 words, with no more than two touches to say a word.”

46. Defendants maintain a Twitter® account, <http://twitter.com/speak4AAC> (last visited Aug. 2, 2012) (162 followers), where they post numerous messages to consumers touting, *inter alia*, the Application’s “119 core words” on the initial keyboard display and the SFY App’s success with purchasers.

47. By their actions, Defendants have directly and/or contributorily infringed, and/or actively induced infringement of, the Semantic Patents in the United States by making, using, offering to sell, or selling the SFY App to third-party end users, with actual knowledge of the Semantic Patents, and with the specific intent to induce end users to directly infringe the Semantic Patents.

48. Defendants also have intentionally and willfully copied and/or induced the copying of the Unity® System and sold and distributed downloadable copies of the infringing SFY App on the App Store and Google Play in order to profit from the success and popularity of the Unity® System.

COUNT I

CONTRIBUTORY PATENT INFRINGEMENT

ALL DEFENDANTS

49. The preceding paragraphs of the Amended Complaint are hereby incorporated by reference as though the same were fully set forth herein.

50. The Semantic Patents disclose and claim innovative and valuable inventions relating generally to a dynamic keyboard and a method for dynamically redefining keys on a keyboard.

51. SFY, as well as Collender and LoStracco acting in their individual capacities, have contributorily infringed, and are contributorily infringing the Semantic Patents in the United States by at least making, using, offering to sell, selling, causing to be made, causing to be used, causing to be offered for sale, and/or causing to be sold, the SFY App via Apple's App Store for use on Apple's suite of iPad® tablets, as well as on the Android software platform and related tablets via Google Play.

52. The keyboards and overlays of the SFY App constitute a material part of the inventions outlined in the Semantic Patents and, when implemented and used by a customer or end-user on an iPad®, Android-based software platform and related devices/tablets, or other

similar device and/or software platform, directly infringe one or more of the claims of the Semantic Patents.

53. Defendants' product has been used to commit acts of direct infringement because numerous customers and end-users have purchased and used the SFY App, as evidenced by postings of written or video-recorded testimonials on Defendants' website and Facebook page regarding their experience using the SFY App after purchasing the product through Apple's App Store and/or Google Play.

54. Defendants' contributory infringement of the Semantic Patents has taken place with full knowledge of the Semantic Patents, and has been intentional, deliberate and willful, making this an exceptional case entitling Plaintiffs to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

55. Upon information and belief, Defendants knew the SFY App was especially made or especially adapted for use in an infringement of the Semantic Patents, based upon their acknowledged receipt of the Infringement Letter and their copious statements via multiple electronic mediums touting, at a minimum, the SFY App's core vocabulary, dynamic keyboard and method for dynamically redefining keys on the keyboard.

56. Further, Defendants are liable for contributory infringement because the SFY App is not a staple article or commodity of commerce suitable for substantial noninfringing use, based upon the fact that, when the keyboards and overlays of the SFY App are implemented by the end user in such a manner, they materially and directly infringe the Semantic Patents.

57. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged by, among other items, loss of revenue, and have suffered and will continue to suffer irreparable loss and harm.

COUNT II
INDUCED PATENT INFRINGEMENT
ALL DEFENDANTS

58. The preceding paragraphs of the Amended Complaint are hereby incorporated by reference as though the same were fully set forth herein.

59. SFY, as well as Collender and LoStracco acting in their individual capacities, have actively induced infringement, and are actively inducing infringement of the Semantic Patents in the United States by at least making, using, offering to sell, selling, causing to be made, causing to be used, causing to be offered for sale, and/or causing to be sold, the SFY App via Apple's App Store for use on Apple's suite of iPad® tablets, as well as the Android-based software platform and related tablets via Google Play.

60. The keyboards and overlays of the SFY App, when implemented and used by a customer or end-user on an iPad®, the Android-based software platform and devices/tablets, or other similar device and/or software platform, directly infringe one or more of the claims of the Semantic Patents.

61. Actual direct infringement has occurred because numerous customers and end-users have purchased and used the SFY App, as evidenced by postings of written or video-recorded testimonials on Defendants' website and Facebook page regarding their experience using the SFY App after purchasing the product through Apple's App Store and/or Google Play.

62. Upon information and belief, Defendants' active inducement of others' infringement of the Semantic Patents has taken place with full knowledge of the Semantic Patents, and has been intentional, deliberate and willful, making this an exceptional case entitling

Plaintiffs to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

63. Defendants have acted and continue to act with the specific intent to induce infringement, i.e., with the intent to accomplish third-party customers' and end-users' infringement of the Semantic Patents. Defendants' knowledge of the Semantic Patents and their claims, combined with their continuous and systematic marketing and dissemination of information to customers and end-users regarding the SFY App's functionality, have resulted in Defendants' intent to accomplish induced infringement of the Semantic Patents.

64. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged by, among other items, loss of revenue, and have suffered and will continue to suffer irreparable loss and harm.

COUNT III

DIRECT PATENT INFRINGEMENT

DEFENDANTS COLLENDER and LOSTRACCO

65. The preceding paragraphs of the Amended Complaint are hereby incorporated by reference as though the same were fully set forth herein.

66. Collender and/or LoStracco, acting in their individual capacities, have directly infringed the Semantic Patents in the United States by at least using and/or causing to be used, the SFY App via Apple's App Store for use on Apple's suite of iPad® tablets, as well as the Android-based software platform and related tablets via Google Play.

67. The keyboards and overlays of the App, when implemented and used by Collender and LoStracco on an iPad®, Android-based software platform and related

devices/tablets, or other similar device and/or software platform, directly infringe one or more of the claims of the Semantic Patents.

68. Actual direct infringement has occurred because between December 2011 and January 2012, Collender and/or LoStracco used the SFY App on an iPad®, as evidenced by their postings of recorded instructional videos on YouTube wherein they demonstrate to third-party viewers, customers, and end-users how to use the SFY App on an iPad®.

69. Upon information and belief, Defendants' direct infringement of the Semantic Patents has taken place with full knowledge of the Semantic Patents, and has been intentional, deliberate and willful, making this an exceptional case entitling Plaintiffs to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

70. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged by, among other items, loss of revenue, and have suffered and will continue to suffer irreparable loss and harm.

COUNT IV

DIRECT COPYRIGHT INFRINGEMENT

ALL DEFENDANTS

71. The preceding paragraphs of the Amended Complaint are hereby incorporated by reference as though the same were fully set forth herein.

72. Prior to instituting this lawsuit, Plaintiffs properly filed copyright applications, copies of the applicable works, and the requisite filing fees and/or otherwise obtained registered copyrights for the Words Strategy™ and Unity® Systems.

73. By their actions alleged above, Defendants have infringed and will continue to infringe Plaintiffs' copyrights in the Words Strategy™ and Unity® Systems by, *inter alia*, copying, publicly displaying, and distributing the SFY App, which is substantially similar to and derived from Words Strategy™ and Unity®, without authorization or other permission from Plaintiffs.

74. Defendants' infringement of the copyrights in the Words Strategy™ and Unity® Systems has been deliberate, willful and in utter disregard of Plaintiffs' rights.

75. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged by, among other items, loss of revenue, and have suffered and will continue to suffer irreparable loss and harm.

COUNT V

CONTRIBUTORY COPYRIGHT INFRINGEMENT

ALL DEFENDANTS

76. The preceding paragraphs of the Amended Complaint are hereby incorporated by reference as though the same were fully set forth herein.

77. By their actions alleged above, Defendants have contributorily infringed, and are contributorily infringing the copyrights in the Words Strategy™ and Unity® Systems by, *inter alia*, inducing, causing, or materially contributing to others' copying, publicly displaying, and distributing the SFY App, which is substantially similar to and derived from Words Strategy™ and Unity®, without authorization or other permission from Plaintiffs.

78. Defendants' contributory infringement of the copyrights in the Words Strategy™ and Unity® Systems has been done with knowledge of the infringing activity, and has been deliberate, willful and in utter disregard of Plaintiffs' rights.

79. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged by, among other items, loss of revenue, and have suffered and will continue to suffer irreparable loss and harm.

COUNT VI

UNFAIR COMPETITION, FALSE ENDORSEMENT, AND FALSE DESIGNATION OF ORIGIN

ALL DEFENDANTS

80. The preceding paragraphs of the Amended Complaint are hereby incorporated by reference as though the same were fully set forth herein.

81. The visual appearance of the Words Strategy™ and Unity® Systems have a unique look and feel comprised of distinctive characteristics, including, but not limited to, the input tray and icon sequence display; the visual screen layout/orientation and sequence patterns for parts of speech, including adjectives, adverbs, conjunctions, determiners, indefinite pronouns, interjections, negation, prepositions, pronouns, question words, semantic networks, and verbs; symbol conventions as rationales for sequences, including homophones and plays on words; and the vocabulary builder.

82. These characteristics of Words Strategy™ and Unity® have come to identify Words Strategy™ and Unity® and their source and thus serve as protectable trade dress.

83. The trade dress of the Words Strategy™ and Unity® Systems is non-functional and is inherently distinctive or has acquired distinction within the meaning of the Lanham Act.

84. Though their use of the misleading design and look-and-feel of the SFY App, Defendants are knowingly and intentionally misrepresenting and falsely designating to the general public the affiliation, connection, association, origin, source, endorsement, sponsorship and approval of the SFY App, and intend to misrepresent and falsely designate to the general public the affiliation, connection, association, origin, source, endorsement, sponsorship and approval of the SFY App, so as to create a likelihood of confusion by the general public as to the affiliation, connection, association, origin, source, endorsement, sponsorship and approval of the SFY App.

85. Defendants' conduct has been intentional and willful, and is calculated specifically to trade off the goodwill that Plaintiffs have developed in their successful Words Strategy™ and Unity® Systems, making this an exceptional case under 15 U.S.C. § 1117.

86. The aforesaid acts of Defendants constitute false designation of origin, false endorsement, and unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

87. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged by, among other items, loss of revenue, and have suffered and will continue to suffer irreparable loss and harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this court grant it equitable and other relief, and enter judgment that:

a. Defendants are preliminarily and permanently enjoined from directly infringing, contributorily infringing and/or inducing infringement of the Semantic Patents, pursuant to 35 U.S.C. § 283, by sale and use of the SFY App on any software platform or device;

b. Defendants are preliminarily and permanently enjoined from directly and/or contributorily infringing the copyrights in the Words Strategy™ and Unity® Systems and from directly and/or contributorily infringing the Words Strategy™ and Unity® trade dress and otherwise seeking to cause a false association with Words Strategy™ and Unity, including, but not limited to, continuing to display, sell, distribute, offer, market, advertise, promote, or accept customers for the SFY App (or any other application that is substantially similar to the Words Strategy™ and Unity® Systems or likely to cause confusion with the Words Strategy™ and Unity® trade dress), and from participating or assisting in any such activity;

c. Defendants are liable to Plaintiffs for their direct infringement, contributing to and/or inducing acts of infringement and be ordered to pay damages pursuant to 35 U.S.C. § 284 as a result of infringement of Plaintiffs' Semantic Patents, and all damages suffered by Plaintiffs as a result of the infringement;

d. Defendants are liable to Plaintiffs for their direct and contributory copyright infringement and Plaintiffs are awarded monetary relief including actual damages, statutory damages, Defendants' profits, attorneys' fees and the costs of this action pursuant to 17 U.S.C. §§ 101, *et seq.*;

e. Defendants are liable to Plaintiffs for their trade dress infringement, false designation of origin and unfair competition and Plaintiffs are awarded damages under the appropriate provisions of the Lanham Act and federal statutory law for trade dress infringement, false designation of origin and unfair competition;

f. This case is exceptional under 35 U.S.C. § 285 and 15 U.S.C. § 1117(b) and, as such, that Defendants must pay treble damages and the expenses and costs incurred by Plaintiffs;

g. Plaintiffs are awarded their attorneys' fees, costs and prejudgment interest on all damages pursuant to 35 U.S.C. § 284, 17 U.S.C. § 505 and 15 U.S.C. § 1117; and

h. Plaintiffs are awarded such further relief as the court may deem appropriate.

Date: August 20, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 20, 2012, a true and correct copy of the within **SECOND AMENDED COMPLAINT FOR PATENT AND COPYRIGHT INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION** was served upon counsel for Defendants via the Court's electronic filing system as follows:

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