

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
*Houston Division***

CODEPRO INNOVATIONS LLC

Plaintiff,

v.

SHELL OIL COMPANY,
THE KROGER COMPANY,
THE STOP & SHOP SUPERMARKET
COMPANY LLC,
GIANT FOOD LLC,
SAVE MART SUPERMARKETS, and
WINN-DIXIE STORES INC.,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff CodePro Innovations LLC (“CodePro” or “Plaintiff”), for its Complaint against defendants the above-named defendants (collectively “Defendants”), alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*

THE PARTIES

2. Plaintiff CodePro is a limited liability company organized under the laws of the State of Texas with its principal place of business at 8416 Old McGregor Road, Waco, Texas 76712.

3. Defendant Shell Oil Company and its affiliates (“Shell”) is a corporation organized under the laws of the State of Delaware with its principal place of business at One Shell Plaza, 910 Louisiana Street, Houston, Texas 77002. Shell’s registered agent for service of process is C T Corporation System, 350 N. St. Paul St. Suite 2900, Dallas, Texas 75201-4234. On information and belief, Shell is the United States subsidiary of Royal Dutch Shell plc, a corporation organized under the laws of England and Wales and having its principal place of business at 30, Carel van Bylandtlaan, 2596 HR The Hague, The Netherlands.

4. Defendant The Kroger Company and its affiliates (“Kroger”) is a corporation organized under the laws of the State of Ohio with its principal place of business at 1014 Vine St., Cincinnati, Ohio 45201. Kroger conducts retail operations under multiple brands including Kroger, Ralphs, King Soopers, City Market, Dillons, Smith’s, Fry’s, QFC, Jay C, Gerbes, Scott’s and Fred Meyer. Kroger’s registered agent for service of process is Corporation Service Company d/b/a CSC-Lawyers Incorporating Service, 211 East 7th St. Suite 620, Austin, Texas 78701.

5. Defendant The Stop & Shop Supermarket Company LLC and its affiliates (“Stop & Shop”) is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 1385 Hancock St., Quincy, Massachusetts 02169. Stop & Shop’s registered agent for service of process is Corporation Service Company, 84 State Street, Boston, Massachusetts 02109. On information and belief, Stop & Shop is a subsidiary of Koninklijke Ahold N.V. (“Ahold”), a corporation organized under the laws of The Netherlands with its principal place of business at Zaandam, The Netherlands.

6. Defendant Giant Food LLC and its affiliates (“Giant”) is a limited liability company organized under the laws of the State of Maryland with its principal place of business

at 8301 Professional Place Suite 115, Landover, Maryland 20785. Giant's registered agent for service of process is CSC-Lawyers Incorporating Service, 7 St. Paul St. Suite 1660, Baltimore, Maryland 21202. On information and belief, Giant is a subsidiary of Ahold.

7. Defendant Save Mart Supermarkets and its affiliates ("Save Mart") is a corporation organized under the laws of the State of California with its principal place of business at 1800 Standiford Ave., Modesto, California 95350. Save Mart conducts retail operations under brands including Save Mart and Lucky. Save Mart's registered agent for service of process is James M. Cipolla at the same address.

8. Defendant Winn-Dixie Stores Inc. and its affiliates ("Winn-Dixie") is a corporation organized under the laws of the State of Florida with its principal place of business at 5050 Edgewood Court, Jacksonville, Florida 32254. Winn-Dixie's registered agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road #221E, Palm Beach Gardens, Florida 33410. On information and belief, Winn-Dixie Stores Inc.'s affiliates include Bi-Lo LLC.

9. Defendants Kroger, Stop & Shop, Giant, Save Mart and Winn-Dixie shall be collectively referred to herein as the Grocery Defendants.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

12. Each Defendant is subject to the jurisdiction of this Court by virtue of its regularly conducted and systematic business contacts in this State, including acts of direct and indirect patent infringement which have been committed in this Judicial District. Defendant Shell is a resident of this State and this Judicial District; maintains its United States headquarters in this

State and District; has multiple retail places of business in this State and District at which it conducts infringing operations as described herein; and advertises its retail operations, including the infringing products and services identified herein, to residents of this State and District. As detailed herein, each of the Grocery Defendants has entered into agreements with and conducts business with Shell, located in this State and this Judicial District, for the purpose of participating in Shell's Grocery Rewards program to provide products and services that infringe CodePro's patents. On information and belief, each Grocery Defendant derives substantial revenue from these infringing activities resulting from its purposeful business activities with Shell. Defendant Kroger also has multiple retail places of business in this State and District at which it conducts infringing operations as described herein; and advertises its retail operations, including the infringing products and services identified herein, to residents of this State and District. As a result, each Defendant has purposefully availed itself of the privilege of conducting business within this State and District; has directed its business activities at residents, including corporate residents, of this State and District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being haled into court here; and at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

JOINDER

14. Joinder is proper under 35 U.S.C. § 299. As detailed herein, Shell and each of the Grocery Defendants have combined through Shell's Grocery Rewards program to carry out infringing acts giving rise to the present Complaint. These infringing acts thus arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, selling or causing Shell to use the same accused products or processes, including, but not

limited to, hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions, including Shell gasoline transactions, in response to grocery store loyalty card account information. As such, questions of fact common to all Defendants relating to the infringement and validity of the CodePro patents arise in the action.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,924,078

15. The allegations set forth in the foregoing paragraphs 1 through 14 are hereby realleged and incorporated herein by reference.

16. On July 13, 1999, U.S. Patent No. 5,924,078 (“the ’078 patent”), entitled “Consumer-Provided Promotional Code Actuable Point-of-Sale Discounting System,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’078 Patent is attached as Exhibit A to this Complaint.

17. CodePro is the assignee and owner of the right, title and interest in and to the ’078 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

18. In violation of 35 U.S.C. § 271, each Defendant has infringed and continues to infringe, both literally and under the doctrine of equivalents, the ’078 Patent by making, using, and causing others to make and use in the United States, including in this Judicial District, systems and methods that practice the subject matter claimed in one or more claims of the ’078 Patent (“the ’078 Accused Services and Products”), without the authority of CodePro. The ’078 Accused Services and Products include, without limitation: Shell’s Grocery Rewards program; Kroger’s loyalty card discount and fuel discount programs; Stop & Shop’s loyalty card discount and fuel discount programs; Giant’s loyalty card discount and fuel discount programs; Save Mart’s loyalty card discount and fuel discount programs; Winn-Dixie’s loyalty card discount and fuel discount programs; and hardware and software for implementing each of the aforementioned

programs, including hardware and software for accepting loyalty card account information entered by consumers and providing discounts in response to said information.

19. Without limitation, Shell directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '078 patent by, alone and in combination with each of the Grocery Defendants, making, using, and causing the Grocery Defendants to make and use hardware and software used in conjunction with Shell's retail gasoline point-of-sale systems to provide discounts on Shell gasoline point-of-sale transactions in response to grocery store loyalty card account information or other discount codes. Shell conducts such infringing activities through its Grocery Rewards programs.

20. Without limitation, Kroger directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '078 patent by, alone and in combination with Shell, making, using, and causing others including Shell to make and use hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Kroger loyalty card account information or other discount codes. Kroger's infringing fuel discount programs include Shell Grocery Rewards as well as Kroger and affiliated brand fuel centers. Kroger's infringing loyalty card discount programs include Kroger Plus, Ralphs Rewards, Sooper Card, Value Card, V.I.P. Card, Smith's Rewards, Advantage Card, JayC Plus, Gerbes Plus and Fred Meyer Rewards.

21. Without limitation, Stop & Shop directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '078 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Stop & Shop Card account information or

other discount codes. Stop & Shop's infringing fuel discount programs include Shell Grocery Rewards and Stop & Shop fuel stations. Stop & Shop's infringing loyalty card discount programs include Stop & Shop Card.

22. Without limitation, Giant directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '078 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Giant Card account information or other discount codes. Giant's infringing fuel discount programs Shell Grocery Rewards and Giant fuel stations. Giant's infringing loyalty card discount programs include Giant Card.

23. Without limitation, Save Mart directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '078 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Lucky or Save Mart Rewards Card account information or other discount codes. Save Mart's infringing fuel discount programs include Shell Grocery Rewards operated under the name Fuel Rewards Network. Save Mart's infringing loyalty card discount programs include Lucky Rewards Card and Save Mart Rewards Card.

24. Without limitation, Winn-Dixie directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '078 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Winn-Dixie loyalty card account

information or other discount codes. Winn-Dixie's infringing fuel discount programs include Shell Grocery Rewards operated under the name fuelperks! Winn-Dixie's infringing loyalty card discount programs include Winn-Dixie Reward Card and My BI-LO BONUSCARD.

25. CodePro provided actual notice to each Defendant of its infringement of the '078 Patent in a letter sent by certified mail on May 21, 2012.

26. Each Defendant has had actual knowledge of the '078 Patent and its infringement of that patent since at least the date that it received the May 21, 2012 letter.

27. CodePro has been harmed by each Defendant's infringing activities.

28. CodePro provided notice of infringement of the '078 Patent to Defendants, but Defendants thereafter continued to infringe the patent. On information and belief, each Defendant's infringement has been and continues to be willful.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,717,866

29. The allegations set forth in the foregoing paragraphs 1-28 are hereby realleged and incorporated herein by reference.

30. On February 10, 1998, U.S. Patent No. 5,717,866 ("the '866 patent"), entitled "Method for Comparative Analysis of Consumer Response to Product Promotions," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '866 Patent is attached as Exhibit B to this Complaint.

31. CodePro is the assignee and owner of the right, title and interest in and to the '866 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

32. In violation of 35 U.S.C. § 271, each Defendant has infringed and continues to infringe, both literally and under the doctrine of equivalents, the '866 Patent by making, using, and causing others to make and use in the United States, including in this Judicial District,

systems and methods that practice the subject matter claimed in one or more claims of the '866 Patent ("the '866 Accused Services and Products"), without the authority of CodePro. The '866 Accused Services and Products include, without limitation: Shell's Grocery Rewards program; Kroger's loyalty card discount and fuel discount programs; Stop & Shop's loyalty card discount and fuel discount programs; Giant's loyalty card discount and fuel discount programs; Save Mart's loyalty card discount and fuel discount programs; Winn Dixie's loyalty card discount and fuel discount programs; and hardware and software for implementing each of the aforementioned programs, including hardware and software for accepting loyalty card account information entered by consumers and providing discounts in response to said information.

33. Without limitation, Shell directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '866 patent by, alone and in combination with each of the Grocery Defendants, making, using, and causing the Grocery Defendants to make and use systems, methods and instrumentalities for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions, such as, without limitation, hardware and software used in conjunction with Shell's retail gasoline point-of-sale systems to provide discounts on Shell gasoline point-of-sale transactions in response to grocery store loyalty card account information or other discount codes. Shell conducts such infringing activities through its Grocery Rewards program.

34. Without limitation, Kroger directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '866 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use systems, methods and instrumentalities for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions, such as, without limitation,

hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Kroger loyalty card account information or other discount codes. Kroger's infringing fuel discount programs include Shell Grocery Rewards as well as Kroger and affiliated brand fuel centers. Kroger's infringing loyalty card discount programs include Kroger Plus, Ralphs Rewards, Sooper Card, Value Card, V.I.P. Card, Smith's Rewards, Advantage Card, JayC Plus, Gerbes Plus and Fred Meyer Reward.

35. Without limitation, Stop & Shop directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '866 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use systems, methods and instrumentalities for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions, such as, without limitation, hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Stop & Shop loyalty account information or other discount codes. Stop & Shop's infringing fuel discount programs include Shell Grocery Rewards and Stop & Shop fuel stations. Stop & Shop's infringing loyalty card discount programs include Stop & Shop Card.

36. Without limitation, Giant directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '866 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use systems, methods and instrumentalities for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions, such as, without limitation, hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Giant loyalty card account information or other

discount codes. Giant's infringing fuel discount programs include Shell Grocery Rewards and Giant fuel stations. Giant's infringing loyalty card discount programs include Giant Card.

37. Without limitation, Save Mart directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '866 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use systems, methods and instrumentalities for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions, such as, without limitation, hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Save Mart loyalty card account information or other discount codes. Save Mart's infringing fuel discount programs include Shell Grocery Rewards operated under the name Fuel Rewards Network. Save Mart's infringing loyalty card discount programs include Lucky Rewards Card and Save Mart Rewards Card.

38. Without limitation, Winn-Dixie directly and indirectly infringes and has infringed, both literally and under the doctrine of equivalents, one or more claims of the '866 patent by, alone and in combination with Shell, making, using, and causing Shell to make and use systems, methods and instrumentalities for comparative analysis of consumer response to product promotions that provide discounts during point-of-sale transactions, such as, without limitation, hardware and software used in conjunction with retail point-of-sale systems to provide discounts on point-of-sale transactions in response to Winn-Dixie loyalty card account information or other discount codes. Winn-Dixie's infringing fuel discount programs include Shell Grocery Rewards operated under the name fuelperks! Winn Dixie's infringing loyalty card discount programs include Winn-Dixie Reward Card and My BI-LO BONUSCARD.

39. CodePro provided actual notice to each Defendant of its infringement of the '866 Patent in a letter sent by certified mail on May 21, 2012.

40. Each Defendant has had actual knowledge of the '866 Patent and its infringement of that patent since at least the date that it received the May 21, 2012 letter.

41. CodePro has been harmed by each Defendant's infringing activities.

42. CodePro provided notice of infringement of the '866 Patent to Defendants, but Defendants thereafter continued to infringe the patent. On information and belief, each Defendant's infringement has been and continues to be willful.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Civil LR 38.1, CodePro demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, CodePro respectfully requests that this Court enter judgment for CodePro and against each Defendant as follows:

- A. An adjudication that each Defendant has infringed the '078 and '866 patents;
- B. An award of damages to be paid by each Defendant adequate to compensate CodePro for past infringement of the '078 and '866 patents and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. An injunction ordering each Defendant to pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;
- D. An award of treble damages under 35 U.S.C. § 284;
- E. A declaration finding this to be an exceptional case, and awarding CodePro attorney fees under 35 U.S.C. §285; and

F. For such further relief at law and in equity as the Court may deem just and proper.

Dated: August 6, 2012

Respectfully submitted,

/s/ Michael J. Yanochik

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