

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:13-cv-97**

COMPUFILL, LLC,

Plaintiff,

v.

HARRIS TEETER, INC.,

Defendant.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which CompuFill, LLC (“CompuFill” or “Plaintiff”) makes the following allegations against Harris Teeter, Inc. (“Harris Teeter” or “Defendant”).

PARTIES

1. Plaintiff CompuFill is a California limited liability company with its principal place of business at 547 South Marengo Ave., Ste. 104, Pasadena, CA 91101.

2. On information and belief, Harris Teeter is a North Carolina corporation with its principal place of business at 701 Crestdale Rd., Matthews, NC 28105. On information and belief, Delhaize may be served with process by serving its registered agent CT Corporation System, 150 Fayetteville St., Ste. 1011, Raleigh, NC 27601.

JURISDICTION AND VENUE

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

4. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Harris Teeter has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

5. Further, on information and belief, Harris Teeter maintains documents and witnesses related to this action within the subpoena power of this Court. Harris Teeter states in its About Us page that it “is headquartered in Matthews, NC.” See the screenshot for Harris Teeter’s About Us page retrieved from http://www.harristeeter.com/about_us, a true and correct copy of which is attached hereto as Exhibit A.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 6,728,684

6. Plaintiff is the owner by assignment of United States Patent No. 6,728,684 (“the ‘684 Patent”) entitled “On-Line Pharmacy Automated Refill System” – including all rights to recover for past and future acts of infringement. The ‘684 Patent issued on April 27, 2004. A true and correct copy of the ‘684 Patent is attached hereto as Exhibit B.

7. On information and belief, Harris Teeter has been and now is infringing the ‘684 Patent in this judicial district, and elsewhere in the United States through its use of at least an automated system for requesting prescription refills. Acts of infringement by Harris Teeter include, without limitation, utilizing methods for processing requests for prescription refills that include every step of at least one method claim of the ‘648 Patent within the United States (“Accused Methods”), and using within the United States at least one computer program for effecting such methods (“Accused Programs”), which is also covered by at least one claim of the ‘684 Patent. Such infringing Accused Methods and Accused Programs include, for example, those used by Harris Teeter in the operation of its automated system for requesting prescription refills. Harris Teeter is thus liable for infringement of the ‘684 Patent under 35 U.S.C. § 271.

8. Harris Teeter infringes at least Claims 1 and 8 of the '684 Patent, by way of example only, and without limitation on CompuFill's assertion of infringement by Harris Teeter of other claims of the '684 Patent. Claim 1 of the '684 Patent reads as follows:

1. A method for processing requests for prescription refills between one or more client computers and a host computer, comprising the steps of: receiving a request for a prescription refill from a caller, said receiving of said request being facilitated by a client computer; storing said request until on-line communications with a host computer are established, said storing of said request being facilitated by a first client computer storage means; establishing a communication link between said client computer and said host computer, said establishing of said communication link being facilitated by a communication network; and processing said request between said client computer and said host computer, said processing of said request being facilitated first client computer code segment and a first host code segment.

Claim 8 of the '684 Patent reads as follows:

8. A computer program embodied on computer-readable medium having a computer readable program code embodied in said medium for effecting a method of processing requests for prescription refills between at least one client computer and a host computer, comprising: a code segment for receiving a request for a prescription refill from a caller; a code segment for storing said request until on-line communications with a host computer is established; a code segment for establishing a communication link between said client computer and said host computer; and a code segment for processing said request between said client computer and said host computer.

9. Harris Teeter practices through its Accused Methods at least “a method for processing requests for prescription refills between one or more client computers and a host computer.” This is made clear by Harris Teeter's automated voice recording which recites “If you know your prescription number press 1.” (Harris Teeter's Accused Methods and Accused Programs use the exact same automated voice recording for all pharmacies investigated, except a different voice stated the address at the appropriate place for each. The Accused Methods and Accused Programs investigated include those hosted at 704-366-5684 and 704-364-9043. All quotes were confirmed as of February 4, 2013.) For the reasons explained above, Harris Teeter's Accused Programs also comprise at least “a computer program embodied on computer-readable

medium having a computer readable program code embodied in said medium for effecting a method of processing requests for prescription refills between at least one client computer and a host computer.”

10. Harris Teeter practices through its Accused Methods the first step of Claim 1, “receiving a request for a prescription refill from a caller, said receiving of said request being facilitated by a client computer.” Harris Teeter practices this step by directing callers to press one if they wish to refill a prescription, as prompted by the automated voice recording. Following this, the automated voice recording directs the customer “Please enter your prescription number followed by the pound key.” On information and belief the Accused Methods receive a request for a prescription refill from a caller due to the fact that they function as an automated call processing system. Further, on information and belief, said request is facilitated by a client computer as the Accused Methods require a client computer to function as an automated call processing system. For the reasons explained above, Harris Teeter’s Accused Programs also comprise the first element of Claim 8, “a code segment for receiving a request for a prescription refill from a caller.”

11. On information and belief, Harris Teeter practices through its Accused Methods the next step of Claim 1, “storing said request until on-line communications with a host computer are established, said storing of said request being facilitated by a first client computer storage means.” By the nature of the Accused Methods utilized in a client computer-enabled automated call processing system, Harris Teeter must store a request for a prescription refill at least temporarily. After the request is stored, an on-line communication can be established with the host computer(s) which enable the prescription to be filled. For the reasons explained above,

Harris Teeter's Accused Programs also comprise the next element of Claim 8, "a code segment for storing said request until on-line communications with a host computer is established."

12. On information and belief, Harris Teeter practices through its Accused Methods the next step of Claim 1, "establishing a communication link between said client computer and said host computer, said establishing of said communication link being facilitated by a communication network." By the nature of the Accused Methods utilized in a client computer-enabled automated call processing system, Harris Teeter must establish a communication link with the host computer(s) and any other systems which enable the prescription to be filled. This communication link can be through any communication network which enables this communication. For the reasons explained above, Harris Teeter's Accused Programs also comprise the next element of Claim 8, "a code segment for establishing a communication link between said client computer and said host computer."

13. On information and belief, Harris Teeter practices through its Accused Methods the last step of Claim 1, "processing said request between said client computer and said host computer, said processing of said request being facilitated first client computer code segment and a first host code segment." Due to the nature of the client computer and host computer utilizing the Accused Methods, they must enable and facilitate all processing and functions through code segments. Such code segments would be required to enable Harris Teeter to use the Accused Methods to allow its customers to receive prescription refills. For the reasons explained above, Harris Teeter's Accused Programs also comprise the last element of Claim 8, "a code segment for processing said request between said client computer and said host computer."

14. Harris Teeter's Accused Methods and Accused Programs are utilized in its fully automated system which enables callers to order prescription refills without requiring any human

interaction. The caller must actively select to speak to a pharmacy team member in order to speak to a human. “To speak to a member of our pharmacy team press zero or remain on the line.” After making the selection or remaining on the line, the caller is instructed “please hold on the line while your call is being transferred” before transferring the call from the fully automated system utilizing the Accused Methods and Accused Programs.

15. As a result of Harris Teeter’s infringement of the ’684 Patent, CompuFill has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made by Harris Teeter of the invention, together with interest and costs as fixed by the court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

1. In favor of Plaintiff that Defendant has infringed the ’684 Patent;
2. Requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant’s infringement of the ’684 Patent as provided under 35 U.S.C. § 284; and
3. Granting Plaintiff any and all other relief to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

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

February 14, 2013

/s/ Susan Freya Olive

Susan Freya Olive

OF COUNSEL:

Scott E. Stevens
Gregory P. Love
Darrell G. Dotson
Todd Y. Brandt

STEVENS LOVE
222 N. Fredonia St.
Longview, Texas 75601
(903) 753-6760
scott@stevenslove.com
greg@stevenslove.com
darrell@stevenslove.com
todd@stevenslove.com

OLIVE & OLIVE, P.A.
500 Memorial Street
P.O. Box 2049
Durham, NC 27702-2049
Phone: (919) 683-5514
Fax: (919) 688-3781
emailboxWDNC@oliveandolive.com

Counsel for Plaintiff CompuFill, LLC