

E-Commerce Traffic Patent Invalid Under Alice, Judge Rules

By Michael Lipkin

Law360, San Diego (February 11, 2015, 7:58 PM ET) -- A California federal judge on Wednesday tossed two patent infringement suits asserted by Essociate Inc., ruling that the company's patent for directing Internet traffic to online vendors merely described the abstract idea, under the U.S. Supreme Court's Alice standard, of recording customers.

In two separate suits, Essociate had accused Clickbooth.com and Crakmedia of infringing its e-commerce patent that allowed online merchants to track user traffic from sites that weren't part of the seller's affiliate system. Those systems allow sellers to determine advertisement rates based on how much traffic those ads generate when users follow links to the vendor's own site.

But that patent simply covered the abstract idea of keeping track of which customers come from various referrers, U.S. District Judge James V. Selna ruled in a decision granting the defendants' motions for judgment on the pleadings.

"Regardless of whether a merchant is seeking customers on or off the Internet, it is a fundamental economic practice to keep track of who is directing customers to one's business, and compensate or provide incentives to that referring source to ensure the continuing flow of customers from that source," Judge Selna wrote.

Essociate's claims didn't add any inventive concept to the idea, despite its claims that the system assigned codes to websites that it correlated to unique links in order to track traffic. That was merely "electronic bookkeeping," the judge found, and routine activity between computers on the Internet.

"Although more elaborate, this is akin to issuing customers at a butcher shop unique numbers which are then called, or tallied, to service the customer uniquely and independently of other customers," Judge Selna wrote.

The court rejected Essociate's attempt to narrow what qualified as an abstract idea under the precedential Alice Corp. decision, arguing that it should only apply to "fundamental truths," among other criteria. Although the Alice decision didn't explicitly define abstract ideas, Judge Selna held, it explicitly said that it was not limited to "pre-existing, fundamental truths." Basic economic and business practices, such as risk hedging, also qualified, according to the Supreme Court.

Ben M. Davidson of Davidson Law Group LC, representing Crakmedia, told Law360 that the ruling represented the "promise" of the Alice decision.

"You don't have to suffer through summary judgment, expert discovery and trial to get out of a frivolous case," he said. "The Alice decision allowed the court make a decision on the merits at the pleadings stage."

But an attorney for Essociate maintained the patent wasn't based on an abstract concept and allowed website owners to avoid maintaining thousands of direct relationships with merchants by creating a single program to automatically send traffic to vendors without individually monitoring performance. Essociate will appeal the decision, Derek A. Newman and of Newman Du Wors LLP said.

"Judge Selna is one of our nation's best judges," Newman said. "But the Alice decision does not provide a standard for applying the rule. Courts around the country have applied Alice inconsistently because there's no clear standard...We're confident the Federal Circuit will both set forth a clear rule for applying Alice, and find that Essociate's patent is eligible for protection."

Richard B. Newman of Hinch Newman LLP, representing Clickbooth, said that the company was pleased with the decision.

The patent-at-issue is U.S. Patent Number 6,804,660.

Essociate is represented by Derek A. Newman and John du Wors of Newman Du Wors LLP.

Clickbooth is represented by Richard B. Newman of Hinch Newman LLP and Darren M. Franklin of Sheppard Mullin Richter & Hampton LLP. Crakmedia is represented by Ben M. Davidson of Davidson Law Group LC.

The cases are Essociate Inc. v. Clickbooth.com LLC, case number 8:13-cv-01886, and Essociate Inc. v. 4355768 Canada Inc., case number 8:14-cv-00679, both in the U.S. District Court for the Central District of California.

--Editing by Stephen Berg.