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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-6980 PA (FMOx)	Date	January 7, 2008
Title	Revenue Science, Inc. v. ValueClick, Inc.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
C. Kevin Reddick	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is defendant ValueClick, Inc.'s ("Defendant") Motion to Dismiss (Docket No. 22). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for January 7, 2008, is vacated, and the matter taken off calendar.

Defendant challenges the sufficiency of the allegations contained in plaintiff Revenue Science, Inc.'s ("Plaintiff") Complaint. In its Complaint, Plaintiff alleges that Defendant has infringed its United States Patent No. 6,871,196 (the "'196 Patent") which discloses a process "for classifying visitors to Internet web sites into segments." Claim 1 of the '196 Patent, which is attached as an exhibit to the Complaint, claims:

> A method in a computing system for classifying groups of users of a subject Web site, comprising:
> retrieving information identifying, for each of a plurality of groups, users that are members of the group;
> for each group, analyzing properties of the member of the group to identify properties that distinguish users that are members of the group from users that are not members of the group, the analyzed properties relating to interactions with the subject Web site undertaken by users;
> for at least one selected group:
> displaying the properties identified as distinguishing members of the selected group from users that are not members of the selected group;
> receiving user input specifying a name to classify the selected group; and
> persistently storing the specified name in a manner that associates the specified name with the selected group, enabling the specified name displayed in conjunction with the selected group at a future time, wherein one or more properties are identified that reflect whether the users viewed a particular Web page.

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Complaint, Ex. 1, Col. 10, l. 52 to Col. 11, l. 7. According to Plaintiff, Defendant infringes the '196 Patent by:

> [O]rganiz[ing] a network of web sites and . . . aggregat[ing] some of the web sites in the network into "channels," based in part on the content of the web sites and the attributes of the visitors to those web sites. ValueClick holds out each channel as appealing to a certain segment of visitors and therefore suitable to advertisers interested in advertising to that segment of visitors. The visitors in a given segment possess attributes that distinguish them from visitors in another segment, and ValueClick visually displays these distinguishing attributes. On information and belief, by these acts ValueClick has been and is infringing, literally and/or under the doctrine of equivalents, contributing to the infringement of, and/or inducing the infringement of one or more claims of the '196 Patent pursuant to 35 U.S.C. § 271.

Complaint, ¶ 9.

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do substantial justice." Fed. R. Civ. P. 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1964, __ L. Ed. 2d __ (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact) . . . ." Id. at __, 127 S. Ct. at 1965, __ L. Ed. 2d __ (citations omitted); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). For a complaint to survive a motion to dismiss, it must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at __, 127 S. Ct. at 1974, __ L. Ed. 2d __. The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp. , 108 F.3d 246, 248-49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

In its Motion to Dismiss, Defendant argues that by alleging that Defendant categorizes users of a "network" of web sites rather than the categorization of users of "a subject Web site" as disclosed by the '196 Patent, the Complaint actually pleads sufficient facts to foreclose infringement. Specifically, according to the Complaint, Defendant aggregates visitors of multiple web sites into groups, yet the '196 Patent discloses a method for grouping users of a single web site. While the Court is not prepared, at least yet, to rule that Plaintiff has alleged facts which establish the absence of infringement, the Court

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does conclude that the Complaint does not contain factual allegations sufficient to "raise a right to relief above the speculative level." Bell Atlantic Corp., __ U.S. at __, 127 S. Ct. at 1965, __ L. Ed. 2d __. Moreover, and contrary to Plaintiff's assertion, the Complaint's conclusory allegation that Defendant's categorization method infringes, "literally and/or under the doctrine of equivalents," the '196 Patent, does not cure the Complaint's factual deficiencies. Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944, 92 L. Ed. 2d 209 (1986) (holding that a court is not "bound to accept as true a legal conclusion couched as a factual allegation").

The Court therefore dismisses the Complaint with leave to amend. Plaintiff's Amended Complaint, if any, shall be filed by January 28, 2008.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer _____

cc: