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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

Case No. 1:18-cv-3807

INSPIRE COMMERCE, INC.,

Plaintiff,

vs.

ENVISTA, LLC, ENVISTA INTERACTIVE  
SOLUTIONS, LLC d/b/a ENSPIRE  
COMMERCE, and RETAILPOINT II, LLC  
d/b/a RETAILPOINT,

Defendants.

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Inspire Commerce, Inc. (“Inspire” or “Plaintiff”) sues Defendants, enVista, LLC (“enVista”), enVista Interactive Solutions, LLC d/b/a Enspire Commerce (“Interactive Solutions”), and RetailPoint II, LLC d/b/a/ RetailPoint (“RetailPoint”) (collectively, “Defendants”), and alleges:

**INTRODUCTION**

1. Plaintiff brings this lawsuit to protect the substantial goodwill that it has developed over the past decade in its distinctive INSPIRE COMMERCE service mark. Plaintiff’s federally-registered service mark has gained a reputation as being a source of reliable and high-quality services related to insurance and financial and monetary affairs.

2. The goodwill and reputation for quality that Plaintiff has worked so hard to cultivate has been damaged by Defendants actions. Defendants have used, and may continue to use, the ENSPIRE COMMERCE service mark, confusingly similar to Plaintiff’s INSPIRE COMMERCE service mark, to sell competing and similar goods and services to many of the

same customers served by and potential customers targeted by Plaintiff. Resultantly, Defendants have profited and Plaintiff has suffered substantial monetary damages. Unless Defendants are permanently enjoined from using the ENSPIRE COMMERCE service mark, such use will cause consumer confusion and will irreparably harm Plaintiff.

3. This action seeks damages, injunctive relief, and other appropriate relief arising from Defendants' trademark infringement and unfair competition.

### **PARTIES**

#### **A. Plaintiff, Inspire Commerce, Inc.**

4. Inspire is a beneficial corporation formed and existing under Colorado law, with its principal office located in Boulder County, Colorado.

5. Inspire donates a percentage of its profits to charity to support its corporate social responsibility efforts.

#### **B. Defendant, enVista, LLC**

6. enVista is a limited liability company organized and existing under Indiana law, with its principal office located at 11555 North Meridian Street, Suite 300, Carmel, Indiana 46032.

7. enVista's articles of organization were filed with the Indiana Department of State and became effective on July 2, 2012.

8. enVista has held itself out to the public as the parent company of Interactive Solutions.

9. enVista describes itself as “a leading global consulting and software solutions firm enabling enterprise commerce for the world’s leading manufacturers, distributors and omni-channel retailers.”<sup>1</sup>

**C. Defendant, enVista Interactive Solutions, LLC**

10. Interactive Solutions is a limited liability company organized and existing under Indiana law, with its principal office located at 11555 North Meridian Street, Suite 300, Carmel, Indiana 46032.

11. Interactive Solutions’ articles of organization were filed with the Indiana Department of State with and became effective on October 29, 2012.

12. Since May 23, 2014, Interactive Solutions has maintained an active registration with the Indiana Department of State of the assumed name ENSPIRE COMMERCE.

13. Interactive Solutions has held itself out to the public as a subsidiary of or related entity to enVista.

14. Upon information and belief, Interactive Solutions and enVista are related entities; specifically, Interactive Solution is likely a subsidiary of and/or otherwise owned and/or controlled by enVista.

15. Interactive Solutions has held itself out to the public as the parent company of or related entity to RetailPoint.

**D. Defendant, RetailPoint II, LLC**

16. RetailPoint is a limited liability company organized and existing under Indiana law, with its principal office located at 11555 North Meridian Street, Suite 300, Carmel, Indiana 46032.

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<sup>1</sup> *About enVista*, enVista, <https://www.envistacorp.com/about/> (last visited Dec. 4, 2018).

17. RetailPoint's articles of organization were filed with the Indiana Department of State and became effective on July 15, 2014.

18. Since February 24, 2015, RetailPoint has maintained an active registration with the Indiana Department of State of the assumed name "RetailPoint."

19. RetailPoint has held itself out to the public, at least by implication, as a subsidiary or related entity to enVista and/or Interactive Solutions.

20. Upon information and belief, Defendants are related entities; specifically RetailPoint is likely a subsidiary of and/or otherwise owned and/or controlled by enVista and/or Interactive Solutions.

#### **JURISDICTION AND VENUE**

21. This is an action for: infringement of a federally-registered trademark in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1141(1) (Counts I-III); unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (Counts IV-VI); contributory trademark infringement and unfair competition (Count VII); and cancellation of the ENSPIRE COMMERCE service mark's registration with the United States Patent and Trademark Office ("USPTO") under Sections 2(d) and 37 of the Lanham Act, 15 U.S.C. §§ 1052 and 1119 (Count VIII).

22. This Court has subject matter jurisdiction over this action in accordance with 28 U.S.C. §§ 1331 (federal question) and 1338 (intellectual property).

23. This Court has personal jurisdiction over enVista because it is a for-profit company organized and existing under Indiana law and maintains its principal place of business in Indiana and this judicial district.

24. enVista is also subject to the Court's personal jurisdiction because it: (a) engages in substantial and not isolated business activities in Indiana and this judicial district; and (b) committed the tortious acts at issue in Indiana and this judicial district.

25. This Court has personal jurisdiction over Interactive Solutions because it is a for-profit company organized and existing under Indiana law and maintains its principal place of business in Indiana and this judicial district.

26. Interactive Solutions is also subject to the Court's personal jurisdiction because it: (a) engages in substantial and not isolated business activities in Indiana and this judicial district; and (b) committed the tortious acts at issue in Indiana and this judicial district.

27. This is Court has personal jurisdiction over RetailPoint because it is a for-profit company organized and existing under Indiana law and maintains its principal place of business in Indiana and this judicial district.

28. RetailPoint is also subject to the Court's personal jurisdiction because it: (a) engages in substantial and not isolated business activities in Indiana and this judicial district; and (b) committed the tortious acts at issue in Indiana and this judicial district.

29. In accordance with 28 U.S.C. § 1391, this Court is the proper venue for this action because: (a) one or more Defendants reside in this judicial district, and all Defendants are Indiana residents; (b) a substantial part of the events or omissions giving rise to the claims at issue occurred in this judicial district; and/or (c) Defendants are subject to the Court's personal jurisdiction within this judicial district.

**FACTS**

**A. Inspire's Uses and Owns the INSPIRE COMMERCE Service Mark, Registration No. 4,344,942**

30. Since 2008, Inspire has been providing merchants and proprietors with technological business services and products associated with transaction processing and payments.

31. Inspire offers and provides financial transaction services and/or products related to: eCommerce/internet payment transactions, storefront and retail payment systems and service, and business consulting services.

32. Inspire offers and provides eCommerce payment solutions, allowing online businesses to process all major credit cards and eChecks through the businesses' websites.

33. Inspire offers and provides storefront and retail payment solutions, including, but not necessarily limited to: (a) a full range of POS terminals, peripherals, and supplies; (b) software solutions that fully integrate with the POS terminals and peripherals and allow for on-site payment processing; and (c) iOS and Android solutions, allowing all business to process electronic payments through secure applications on their favorite smart phone or tablet.

34. Inspire offers and sells consulting services in the field of financial transaction technology, including, but not necessarily limited to: sales systems architecture and automation, inventory management, customer relationship management automation, omni-channel product management, e-commerce strategy and implementation, marketing and SEO, and cyber security in financial transactions.

35. At least as early as April 24, 2008, Inspire began using the INSPIRE COMMERCE mark in to identify and distinguish its service in interstate commerce, including

those related to eCommerce/internet payment transactions, storefront and retail payment systems and service, and business consulting services.

36. Unambiguously, at least as early as April 24, 2008, Inspire began using the INSPIRE COMMERCE mark in connection with services rendered in financial and monetary affairs, specifically: (a) credit and debit card services; (b) credit card and debit card services; (c) credit card and payment card services; (d) credit card authorization services; (e) credit card payment processing services; (f) credit card services; (g) credit card transaction processing services; (h) credit card verification; (i) debit card services; (j) electronic credit card transactions; (k) issuing stored value cards; (l) payment processing services, namely, credit card and debit card transaction processing services; (m) pre-paid purchase card services, namely, processing electronic payments made through prepaid cards; (n) pre-paid purchase card services, namely, processing electronic payments through pre-paid cards; (o) processing electronic payments made through prepaid cards; (p) providing electronic processing of ACH and credit card transactions and electronic payments via a global computer network; (q) providing electronic processing of credit card transactions and electronic payments via a global computer network; (r) providing electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments; (s) stored value card services; and (t) arranging and provision of insurance.

37. Beginning at least as early as April 2008, Inspire has invested significant resources developing, marketing, and using the INSPIRE COMMERCE mark in connection with its services.

38. Since April 2008, Inspire has developed a valuable business reputation and goodwill associated with its use of the INSPIRE COMMERCE mark in connection with its services.

39. On October 27, 2010, Inspire filed its application (serial no. 85-162,449) to register its use of the INSPIRE COMMERCE mark with the USPTO.

40. On June 4, 2013, the USPTO issued Certificate of Registration No. 4,344,942 (the “942 Registration”), a true and correct copy of which is attached as Exhibit A and incorporated by reference, to Inspire for the use of the INSPIRE COMMERCE service mark in connection with its services.

41. Inspire is the owner of all rights in and to the INSPIRE COMMERCE service mark, which is valid and registered on the USPTO’s Principal Register.

42. Inspire established statutory notice of the ’942 Registration under Section 29 of the Lanham Act, 15 U.S.C. § 1111, by displaying the INSPIRE COMMERCE mark with the letter R enclosed within a circle – the ® symbol – in connection with its services approximately as early as June 2013.

43. On July 27, 2018, Inspire filed a Combined Declaration of Use and Incontestability (“Combined Declaration”), a true and correct copy of which is attached as Exhibit B and incorporated by reference, under Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065.

44. The Combined Declaration was accepted and acknowledged by the USPTO on August 4, 2018. A true and correct copy of the USPTO’s Notice of Acceptance & Acknowledgment is attached as Exhibit C and incorporated by reference.



45. Under 15 U.S.C. § 1065, Inspire's rights to the INSPIRE COMMERCE service mark are incontestable. As such, under Section 33 of the Lanham Act, 15 U.S.C. § 1115(b), the '942 Registration is conclusive evidence of: (a) the validity of the INSPIRE COMMERCE mark; (b) the registration of the INSPIRE COMMERCE mark; (c) Inspire's ownership of the INSPIRE COMMERCE mark; and (d) Inspire's exclusive right to use the INSPIRE COMMERCE mark in commerce on or in connection with the services specified in the Combined Declaration.

46. Inspires' filing the application to register the INSPIRE COMMERCE mark on the USPTO's principal register on October 27, 2010 (which resulted in the issuance of the '942 Registration) constitutes its constructive use of the INSPIRE COMMERCE, conferring a right of priority, nationwide in effect, on or in connection with its associated goods and/or services under Section 7(c) of the Lanham Act, 15 U.S.C. § 1057(c).

**B. Defendants' Wrongful Acts**

**i. Defendants Used the ENSPIRE COMMERCE Mark in Interstate Commerce After the Issuance of Plaintiff's '942 Registration**

47. On or approximately October 30, 2013, after the issuance of the '942 Registration, Interactive Solutions began to engage with members of the trade and/or public under the assumed name ENSPIRE COMMERCE and engaged in interstate commerce using the ENSPIRE COMMERCE mark in connection with its products and/or services.

48. On or about May 23, 2014, Interactive Solutions' filed for and was issued a Certificate of Assumed Business Name for ENSPIRE COMMERCE by the Indiana Secretary of State, a true and correct copy of which is attached as Exhibit D and incorporated by reference.

49. Upon information and belief, enVista induced, caused, materially encouraged, enabled, and/or contributed to Interactive Solutions' decision to do business under the assumed business name ENSPIRE COMMERCE.

50. After the issuance of Plaintiff's '942 Registration, Defendants began the ENSPIRE COMMERCE mark in interstate commerce in connection with various goods and/or services.

51. Defendants used the ENSPIRE COMMERCE mark in interstate commerce in commerce to sell, license, offer for sale or license, distribute, and/or advertise products and/or services comprising a unified system for managing transactions, processing, and payments for omni-channel merchants and retailers (the "Unified Transaction System").

52. In connection with and/or independently from the Unified Transaction System, Interactive Solutions and/or enVista:

a. Used the ENSPIRE COMMERCE mark in interstate commerce to sell, license, offer for sell or license, distribute, and/or advertise products and/or services related to eCommerce, merchant, and/or retail financial transactions, payment processing, management, and/or analytics; and/or

b. Applied the ENSPIRE COMMERCE mark to labels, signs, prints, packages, wrappers, receptacles, and/or advertisements (including, but not limited to, online or digital versions of the same) intended to be used in interstate commerce in connection with the sale, license, offering for sale or license, distribution, and/or advertising of products and/or services related to eCommerce, merchant, and/or retail financial transactions, payment processing, management, and/or analytics.

53. In connection with and/or independently from the Unified Transaction System, RetailPoint:

a. Used the ENSPIRE COMMERCE mark in interstate commerce to sell, license, offer for sell or license, distribute, and/or advertise products and/or services related to financial

transactions, specifically eCommerce/internet payment transactions and storefront and retail payment systems; and/or

b. Applied the ENSPIRE COMMERCE mark to labels, signs, prints, packages, wrappers, receptacles, and/or advertisements (including, but not limited to, online or digital versions of the same) intended to be used in interstate commerce in connection with the sale, license, offering for sale or license, distribution, and/or advertising of products and/or services related to financial transactions, specifically eCommerce/internet payment transactions and storefront and retail payment systems.

54. Defendants applied the ENSPIRE COMMERCE mark to labels, signs, prints, packages, wrappers, receptacles, and/or advertisements (including, but not limited to, online or digital versions of the same) intended to be used in interstate commerce in connection with the sale, license, offer for sale or license, distribution, and/or advertising of products and/or services associated with the Unified Transaction System.

**ii. Defendants' Online Use of the ENSPIRE COMMERCE Mark in Interstate Commerce**

55. Defendants frequently used the ENSPIRE COMMERCE in connection with their goods and/or services, as averred throughout this Complaint, though, using, or in connection with their websites and social media pages.

56. Upon information and belief, Defendants acquired, owned, maintained, operated, developed, and/or otherwise possesses control over the internet domains, websites, and social media pages/accounts as set forth in the Schedule of Defendants' Domains, Websites, and Social Media Pages, attached as Exhibit E and incorporated by reference.

57. Defendants used their respective websites to sell, license, offer for sale or license, distribute, and/or advertise products and/or services under the ENSPIRE COMMERCE mark.

58. Upon information and belief, Defendants used their respective social media pages to sell, license, offer for sale or license, distribute, and/or advertise products and/or services under the ENSPIRE COMMERCE mark.

59. Upon information and belief, Defendants' respective websites provided links to other one or more Defendant's website and/or associated content related to one or more of the Defendants' respective use of the ENSPIRE COMMERCE mark in connection with the sale, license, offer for sale or license, distribution, and/or advertisement of products and/or services.

60. The enVista Website asserted that enVista, through Interactive Solutions using the ENSPIRE COMMERCE mark, provides technology services and solutions connected with POS software.

61. The enVista Website provided information about and links to the Interactive Solutions Website and/or RetailPoint Website and/or associated content in connection with ENSPIRE COMMERCE branded goods and/or services that were competitive or similar to those specified in Inspire's Combined Declaration.

62. Specifically, the Interactive Solutions Website asserted that:

a. "Enspire Commerce retail engagement management software and service combines: Point of Sale software and hardware; merchant processing; mobile card payments; and e-Commerce websites to give [merchants] total control of [their] retail business;"

b. "Enspire Commerce give you total control of your retail business via advanced Point of Sale software and hardware; merchant processing; mobile card payments; and e-commerce websites, to deliver exceptional customer service and create and intimate customer-focused relationship that drives loyalty;"

c. Enspire Commerce products and services allow merchants to “[p]rovide an enhanced payment processing experience by offering the methods [their] customers prefer most;” and

d. Enspire Commerce products and services enable merchants and/or their customers to “[p]rocess sales, returns, coupons, discounts and gift card transactions quickly and easily with simple interface.”

63. Specifically, the RetailPoint Website asserted that:

a. “RetailPoint is part of the Enspire Commerce portfolio of cloud-based, single platform solutions that deliver a unified customer experience – from shopping to fulfillment – for retailers, distributors, manufacturers and 3<sup>rd</sup> Party Logistics (3PL) providers;”

b. “As an Enspire Commerce company, we based our software on a strong foundation in retail, supply chain and technology, as well as a culture of accountability, in everything we do;” and

c. “Enspire Commerce Launches Next Generation Point of Sale (POS) Software.”

64. Sometime after approximately April 19, 2018, the Interactive Solutions Website was taken offline, and the domain name [www.enspirecommerce.com](http://www.enspirecommerce.com) began forwarding to the domain [www.envistacorp.com/commerce/](http://www.envistacorp.com/commerce/) displaying a page from the enVista Website; this change, upon information and belief, was intentionally caused by enVista and/or Interactive Solutions.

65. Upon information and belief, sometime after approximately April 19, 2018, some or all of the Interactive Solutions Social Media Pages became inaccessible to the public and/or removed from the internet, which, upon information and belief, was intentionally caused by enVista and/or Interactive Solutions.

66. Upon information and belief, that the Interactive Solutions Website and Interactive Solutions Social Media Pages contained admissible evidence and/or information relevant to Plaintiff's claims.

67. Sometime between approximately April 21, 2018 and August 5, 2018, the RetailPoint Website was taken offline, and the domain name [www.retailpoint.com](http://www.retailpoint.com) began forwarding to the domain [www.envistacorp.com/commerce/mobile-pos-solution](http://www.envistacorp.com/commerce/mobile-pos-solution) displaying a page from the enVista Website; this change, upon information and belief, was intentionally caused by RetailPoint and/or enVista.

68. Upon information and belief, sometime between April 21, 2018 and August 5, 2018, some or all of the RetailPoint Social Media Pages became inaccessible to the public and/or removed from the internet, which, upon information and belief, was intentionally caused by RetailPoint and/or enVista.

69. Upon information and belief, that the RetailPoint Website and RetailPoint Social Media Pages contained admissible evidence and/or information relevant to Plaintiff's claims.

**iii. Inspire Never Consented to Defendants' Use of the ENSPIRE COMMERCE Mark**

70. Inspire did not license, authorize, permit, or consent to Defendants' use of the ENSPIRE COMMERCE mark, or any other marks that would be substantially and confusingly similar to Plaintiff's INSPIRE COMMERCE mark in appearance, sound, meaning, and/or commercial impression.

71. At all times relevant to this action, Defendants should have known that Inspire had not licensed, authorized, permitted, or consented to Defendants' use of the ENSPIRE COMMERCE mark, or any other marks that would be substantially and confusingly similar to

Plaintiff's INSPIRE COMMERCE mark in appearance, sound, meaning, and/or commercial impression.

**iv. Defendants' Uses of the ENSPIRE COMMERCE Mark were Likely to Cause Confusion with Relation to Plaintiff's INSPIRE COMMERCE Mark**

72. Defendants' uses of the ENSPIRE COMMERCE mark as alleged in this Complaint were substantially and confusingly similar to Plaintiff's use of and rights to the INSPIRE COMMERCE mark.

73. The ENSPIRE COMMERCE and INSPIRE COMMERCE marks are substantially and confusingly similar in appearance, sound, meaning, and commercial impression.

74. The ENSPIRE COMMERCE mark is a "reproduction," "copy," and/or "colorable imitation" of Plaintiff's federally registered INSPIRE COMMERCE mark, as those terms are contemplated in 15 U.S.C. § 1114(1).

75. The USPTO issued the Notice of Pseudo Mark, a true and correct copy of which is attached as Exhibit F and incorporated by reference, in response to the ENSPIRE COMMERCE Application because "enspire" is an alternative spelling, has the meaning, and/or is an acronym of "inspire."

76. The mere substitution of a single letter is the only difference in the marks' appearance.

77. The words "enspire" and "inspire" are near or actual phonetic equivalents.

78. Upon information and belief, the word "inspire" originated from the Middle English word "enspire" with the same meaning.<sup>2</sup>

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<sup>2</sup> Definition of Inspire, Oxford University Press, <https://en.oxforddictionaries.com/definition/inspire> (last accessed Dec. 4, 2018).

79. Defendants' use of the ENSPIRE COMMERCE mark is substantially and confusingly similar in commercial impression to Plaintiff's use of the INSPIRE COMMERCE mark.

80. Defendants are Inspire's competitor in the business of software and services connected with credit cards, transaction and payment processing, and/or merchant and retail transaction and payment services.

81. Defendants used the ENSPIRE COMMERCE mark in connection with goods and/or services that are closely related to those with which Plaintiff uses the INSPIRE COMMERCE mark.

82. Defendants used the ENSPIRE COMMERCE mark in connection with goods and/or services, that made or was likely to make members of the trade and/or general and/or consuming public reasonably, but mistakenly, think them to be affiliated with, connected with, or sponsored by the same source as Plaintiff's goods and/or services branded with the INSPIRE COMMERCE mark.

83. Indeed, multiple consumers expressed actual confusion as to the source, sponsorship or affiliation between Plaintiff's INSPIRE COMMERCE brand and the ENSPIRE COMMERCE mark as a result from Defendants' actions. Some specific examples of such instances of actual confusion are set forth in Exhibit G, which is incorporated by reference.

84. Through Defendants' actions and use of the ENSPIRE COMMERCE mark, members of the trade and/or general and/or consuming public were/are likely to have been confused, mistaken, and/or deceived with respect to the origin of goods and/or services provided by Plaintiff.



85. Through Defendants' actions and use of the ENSPIRE COMMERCE mark, members of the trade and/or general and/or consuming public were/are likely to have been confused, mistaken, and/or deceived with respect to the origin of goods and/or services provided by Defendants.

86. Through Defendants' actions and use of the ENSPIRE COMMERCE mark, Defendants improperly traded on and benefited from Plaintiff's business reputation and goodwill associated with the INSPIRE COMMERCE service mark.

**v. Interactive Solutions' Registration No. 4,677,814 for the ENSPIRE COMMERCE Mark is Invalid and Should be Cancelled**

87. On April 2, 2014, Interactive Solutions filed an application to register the ENSPIRE COMMERCE mark (Serial No. 86-240,702) with the USPTO in connection with "computer services, namely, computer software development in the field of order management and electronic data interchange," alleging its first use of the ENSPIRE COMMERCE mark in interstate commerce occurred on October 30, 2013.

88. In its application and subsequent communications with the USPTO, Interactive Solutions omitted the material fact that the computer services it branded with the ENSPIRE COMMERCE mark were related to financial and/or monetary affairs, specifically eCommerce/internet payment transactions and storefront and retail payment systems.

89. Upon information and belief, Interactive Solutions intentionally omitted this material fact in order to avoid the USPTO from refusing to register the ENSPIRE COMMERCE mark under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) because of a likelihood of confusion with the '942 Registration for Plaintiff's INSPIRE COMMERCE service mark. *See supra* ¶¶ 73-87.

90. On April 17, 2014, the USPTO issued a Notice of Pseudo Mark, a true and correct copy of which is attached hereto as Exhibit F and incorporated by reference, assigning the ENSPIRE COMMERCE Application the pseudo mark: INSPIRE COMMERCE.

91. The Notice explains that pseudo marks are “assigned to marks that include words, numbers, compound words, symbols, or acronyms that can have alternative spellings or meanings.”

92. Upon information and belief, the USPTO failed to consider Interactive Solutions’ application in light of the ’942 Registration because of Interactive Commerce’s omission of this material fact.

93. The USPTO should have refused to register the ENSPIRE COMMERCE mark under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) because of a likelihood of confusion with the ’942 Registration for Plaintiff’s INSPIRE COMMERCE service mark.

94. Upon information and belief, the USPTO would have refused to register the ENSPIRE COMMERCE mark under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) because of a likelihood of confusion with the ’942 Registration for Plaintiff’s INSPIRE COMMERCE service mark.

95. On January 27, 2015, the USPTO incorrectly issued Certificate of Registration No. 4,677,814 (the “’814 Registration”), a true and correct copy of which is attached as Exhibit H and incorporated by reference, to Interactive Solutions for the use of the ENSPIRE COMMERCE service mark in connection with “computer services, namely, computer software development in the field of order management and electronic data interchange.”

96. The ’814 Registration is invalid and should be cancelled because the ENSPIRE COMMERCE mark under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) because of a

likelihood of confusion with the '942 Registration for Plaintiff's INSPIRE COMMERCE service mark.

**vi. Defendants' Knowledge of Plaintiff's INSPIRE COMMERCE Mark and the '942 Registration**

97. Defendants had constructive notice of Inspire's claim to ownership of the INSPIRE COMMERCE mark as of October 27, 2010, the date of Inspire's constructive use of the INSPIRE COMMERCE mark established, under to Section 7(c) of the Lanham Act, 15 U.S.C. § 1057(c).

98. Alternatively, Defendants had constructive notice of Inspire's claim to ownership of the INSPIRE COMMERCE mark as of June 4, 2013 upon the USPTO's issuance of the '942 Registration under Section 22 of the Lanham Act, 15 U.S.C. § 1072.

99. Defendants had actual knowledge of Inspire's claim to ownership of the INSPIRE COMMERCE mark, the '942 Registration, and/or that Defendants' conduct infringed Inspire's exclusive rights to the INSPIRE COMMERCE mark since at least:

a. April 2, 2014, when Interactive Solutions filed its application to register the ENSPIRE COMMERCE mark with the USPTO, *see* Exhibit H;

b. November 2015, which is, upon information and belief, when Defendants learned that correspondence intended for Defendants' employees and/or agents had been incorrectly directed to an Inspire email address;

c. September 16, 2016, when Plaintiff sent Interactive Solutions a letter regarding the same;

d. November 27, 2017, when Interactive Solutions was served with process in related litigation, *see Inspire Commerce, Inc. v. enVista Interactive Solutions LLC*, Summons

Returned Executed on Interactive Solutions, 1:17-cv-02461-CMA-STV (D. Colo. Dec. 6, 2017), attached as Exhibit I; and/or

e. January 9, 2018, when RetailPoint was served with process in related litigation, *see Inspire Commerce, Inc. v. enVista Interactive Solutions LLC*, Summons Returned Executed on RetailPoint [CM/ECF 28], 1:17-cv-02461-CMA-STV (D. Colo. Jan. 18, 2018), attached as Exhibit J.

### **MISCELLANEOUS**

100. All conditions precedent to bringing this action have occurred or been waived.

101. Inspire has retained counsel for the purpose of this litigation and is obligated to pay said counsel a reasonable fee for its services.

### **COUNT I**

#### **Federal Trademark Infringement – Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) Against Defendant, enVista, LLC**

102. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

103. As its first ground for relief, Plaintiff alleges federal trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) against enVista.

104. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See* Exhibits A-C.

105. Notwithstanding Plaintiff's established rights in the INSPIRE COMMERCE service mark, enVista adopted and used the confusingly similar mark ENSPIRE COMMERCE in commerce in connection with goods and/or services competitive or similar to those specified in Inspire's Combined Declaration, since approximately October 30, 2013.

106. The ENSPIRE COMMERCE mark, as used by enVista, is a “reproduction,” “copy,” and/or “colorable imitation” of Plaintiff’s federally registered INSPIRE COMMERCE service mark, as those terms are contemplated in 15 U.S.C. § 1114(1).

107. Without Plaintiff’s consent, enVista used the ENSPIRE COMMERCE mark in commerce in connection with the sale, offering for sale, distribution, and/or advertising of goods and/or services competitive or similar to those specified in Inspire’s Combined Declaration.

108. Without Plaintiff’s consent, enVista applied the ENSPIRE COMMERCE mark to signs, prints, packages, wrappers, receptacles, and/or advertisements intended to be used in commerce up on or in connection with the sale, offering for sale, distribution, and/or advertising of goods and/or services competitive or similar to those specified in Inspire’s Combined Declaration.

109. enVista’s wrongful conduct, specified in the preceding paragraph was committed with knowledge that such imitation was intended to be used to cause confusion, or to cause mistake, or to deceive members of the trade and/or general public.

110. enVista’s wrongful conduct, specified in preceding three paragraphs and described throughout this Count, was likely to cause confusion, or to cause mistake, or to deceive members of the trade and/or general public.

111. enVista’s wrongful conduct, specified in the preceding four paragraphs and described throughout this Count, constitutes infringement of Plaintiff’s exclusive rights to the INSPIRE COMMERCE service mark in violation of Sections 32(1)(a)-(b) of the Lanham Act, 15 U.S.C. § 1114(1)(a)-(b).

112. enVista engaged in its infringing activity in violation of 15 U.S.C. § 1114(1) despite having constructive knowledge of Plaintiff's use of the INSPIRE COMMERCE service mark and ownership of the '942 Registration.

113. Upon information and belief, enVista engaged in its infringing activity in violation of 15 U.S.C. § 1114(1) despite having actual knowledge of Plaintiff's use of the INSPIRE COMMERCE service mark and ownership of the '942 Registration.

114. As a direct and proximate result of enVista's infringing activities, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

115. As a direct and proximate result of enVista infringing activities, it has unfairly acquired income and profits, along with goodwill and business reputation.

116. If not restrained by this Court from further violation of Plaintiff's rights, enVista's continued and/or renewed infringing activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

117. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against enVista on Count I of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining enVista, its members, managers, executives, employees, servants, representatives, agents, and all those acting in concert or participation therewith from: (i) using ENSPIRE COMMERCE in connection with the sale, offering for sale, distribution, and advertising of goods and services; (ii) applying ENSPIRE COMMERCE to signs, prints, packages, wrappers, receptacles, and advertisements intended to be used in commerce upon or in

connection with the sale, offering for sale, distribution, or advertising of goods and services; and (iii) otherwise continuing to, resuming, and further infringing Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

b. Entry of an Order awarding Plaintiff its actual damages and enVista's profits connected with its infringement, and exercising its discretion to triple such an award, in accordance with 15 U.S.C. § 1117(a);

c. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);

d. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);

e. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and

f. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

## **COUNT II**

### **Federal Trademark Infringement – Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) Against Defendant, enVista Interactive Solutions, LLC**

118. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

119. As its second ground for relief, Plaintiff alleges federal trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) against Interactive Solutions.

120. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See* Exhibits A-C.

121. Notwithstanding Plaintiff's established rights in the INSPIRE COMMERCE service mark, Interactive Solutions adopted and used the confusingly similar mark ENSPIRE COMMERCE in commerce in connection with goods and/or services competitive or similar to those specified in Inspire's Combined Declaration, since approximately October 30, 2013.

122. Interactive Solutions' ENSPIRE COMMERCE service mark is a "reproduction," "copy," and/or "colorable imitation" of Plaintiff's federally registered INSPIRE COMMERCE service mark, as those terms are contemplated in 15 U.S.C. § 1114(1).

123. Without Plaintiff's consent, Interactive Solutions used the ENSPIRE COMMERCE service mark in commerce in connection with the sale, offering for sale, distribution, and/or advertising of goods and/or services competitive or similar to those specified in Inspire's Combined Declaration.

124. Without Plaintiff's consent, Interactive Solutions applied the ENSPIRE COMMERCE mark to signs, prints, packages, wrappers, receptacles, and/or advertisements intended to be used in commerce up on or in connection with the sale, offering for sale, distribution, and/or advertising of goods and/or services competitive or similar to those specified in Inspire's Combined Declaration.

125. Interactive Solutions' wrongful conduct, specified in the preceding paragraph was committed with knowledge that such imitation was intended to be used to cause confusion, or to cause mistake, or to deceive members of the trade and/or general public.

126. Interactive Solutions' conduct, specified in preceding three paragraphs and described throughout this Count, was likely to cause confusion, or to cause mistake, or to deceive members of the trade and/or general public.



127. Interactive Solutions' wrongful conduct, specified in the preceding four paragraphs and described throughout this Count, constitutes infringement of Plaintiff's exclusive rights to the INSPIRE COMMERCE service mark in violation of Sections 32(1)(a)-(b) of the Lanham Act, 15 U.S.C. § 1114(1)(a)-(b).

128. Interactive Solutions engaged in its infringing activity in violation of 15 U.S.C. § 1114(1) despite having constructive knowledge of Plaintiff's use of the INSPIRE COMMERCE service mark and ownership of the '942 Registration.

129. Upon information and belief, Interactive Solutions engaged in its infringing activity in violation of 15 U.S.C. § 1114(1) despite having actual knowledge of Plaintiff's use of the INSPIRE COMMERCE service mark and ownership of the '942 Registration.

130. As a direct and proximate result of Interactive Solutions' infringing activities, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

131. As a direct and proximate result of Interactive Solutions' infringing activities, it has unfairly acquired income and profits, along with goodwill and business reputation.

132. If not restrained by this Court from further violation of Plaintiff's rights, Interactive Solutions' continued and/or renewed infringing activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

133. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against Interactive Solutions on Count II of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining Interactive Solutions, its members, managers, executives, employees,

servants, representatives, agents, and all those acting in concert or participation therewith from: (i) using ENSPIRE COMMERCE in connection with the sale, offering for sale, distribution, and advertising of goods and services; (ii) applying ENSPIRE COMMERCE to signs, prints, packages, wrappers, receptacles, and advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods and services; and (iii) otherwise continuing to, resuming, and further infringing Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

b. Entry of an Order awarding Plaintiff its actual damages and Inspire Commerce's profits connected with its infringement, and exercising its discretion to triple such an award, in accordance with 15 U.S.C. § 1117(a);

c. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);

d. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);

e. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and

f. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

### **Count III**

#### **Federal Trademark Infringement – Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) Against Defendant, RetailPoint II, LLC**

134. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

135. As its third ground for relief, Plaintiff alleges federal trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) against RetailPoint.

136. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See Exhibits A-C*

137. Notwithstanding Plaintiff's established rights in the INSPIRE COMMERCE service mark, RetailPoint adopted and used the confusingly similar mark ENSPIRE COMMERCE in commerce in connection with goods and/or services competitive or similar to those specified in Inspire's Combined Declaration, since approximately October 30, 2013.

138. The ENSPIRE COMMERCE mark, as used by RetailPoint, is a "reproduction," "copy," and/or "colorable imitation" of Plaintiff's federally registered INSPIRE COMMERCE service mark, as those terms are contemplated in 15 U.S.C. § 1114(1).

139. Without Plaintiff's consent, RetailPoint used the ENSPIRE COMMERCE service mark in commerce in connection with the sale, offering for sale, distribution, and/or advertising of goods and/or services competitive or similar to those specified in Inspire's Combined Declaration.

140. Without Plaintiff's consent, RetailPoint applied the ENSPIRE COMMERCE mark to signs, prints, packages, wrappers, receptacles, and/or advertisements intended to be used in commerce up on or in connection with the sale, offering for sale, distribution, and/or advertising of goods and/or services competitive or similar to those specified in Inspire's Combined Declaration.

141. RetailPoint's wrongful conduct, specified in the preceding paragraph was committed with knowledge that such imitation was intended to be used to cause confusion, or to cause mistake, or to deceive members of the trade and/or general public.

142. RetailPoint's wrongful conduct, specified in preceding three paragraphs and described throughout this Count, was likely to cause confusion, or to cause mistake, or to deceive members of the trade and/or general public.

143. RetailPoint's wrongful conduct, specified in the preceding four paragraphs and described throughout this Count, constitutes infringement of Plaintiff's exclusive rights to the INSPIRE COMMERCE service mark in violation of Sections 32(1)(a)-(b) of the Lanham Act, 15 U.S.C. § 1114(1)(a)-(b).

144. RetailPoint engaged in its infringing activity in violation of 15 U.S.C. § 1114(1) despite having constructive knowledge of Plaintiff's use of the INSPIRE COMMERCE service mark and ownership of the '942 Registration.

145. Upon information and belief, RetailPoint engaged in its infringing activity in violation of 15 U.S.C. § 1114(1) despite having actual knowledge of Plaintiff's use of the INSPIRE COMMERCE service mark and ownership of the '942 Registration.

146. As a direct and proximate result of RetailPoint's infringing activities, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

147. As a direct and proximate result of RetailPoint's infringing activities, it has unfairly acquired income and profits, along with goodwill and business reputation.

148. If not restrained by this Court from further violation of Plaintiff's rights, RetailPoint's continued and/or renewed infringing activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

149. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against RetailPoint on Count III of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining RetailPoint, its members, managers, executives, employees, servants, representatives, agents, and all those acting in concert or participation therewith from: (i) using ENSPIRE COMMERCE in connection with the sale, offering for sale, distribution, and advertising of goods and services; (ii) applying ENSPIRE COMMERCE to signs, prints, packages, wrappers, receptacles, and advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods and services; and (iii) otherwise continuing to, resuming, and further infringing Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

b. Entry of an Order awarding Plaintiff its actual damages and RetailPoint's profits connected with its infringement, and exercising its discretion to triple such an award, in accordance with 15 U.S.C. § 1117(a);

c. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);

d. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);

e. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and

f. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

**Count IV**  
**Federal Unfair Competition – Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)**  
**Against Defendant, enVista, LLC**

150. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

151. As its fourth ground for relief, Plaintiff alleges federal unfair competition against enVista under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

152. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See* Exhibit A-C.

153. Notwithstanding Plaintiff's established rights in the INSPIRE COMMERCE service mark, enVista adopted and used the confusingly similar mark ENSPIRE COMMERCE in commerce in connection with goods and/or services competitive or similar to those connected with Plaintiff's use of the INSPIRE COMMERCE mark, including those specified in Inspire's Combined Declaration, since approximately October 30, 2013.

154. Without Plaintiff's consent, enVista used the ENSPIRE COMMERCE mark in commerce in connection with its goods, services, and/or containers for its goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof.

155. enVista's unauthorized use in commerce of the ENSPIRE COMMERCE mark in connection with its goods, services, and/or containers for its goods constitutes the use of a false designation of origin and/or false or misleading description or representation of fact.

156. Specifically, such use wrongfully and falsely designates or represents: (a) enVista as being affiliated, connected, or associated with Plaintiff, or *vis versa*; and/or (b) enVista's

goods, services, and/or commercial activities as originating from or being sponsored or approved by Plaintiff, or *vis versa*.

157. Additionally, such use wrongfully likely causes confusion, or causes mistake, or deceives members of the trade and/or general public as to: (a) enVista being affiliated, connected, or associated with Plaintiff, or *vis versa*; and/or (b) enVista's goods, services, and/or commercial activities as originating from or being sponsored or approved by Plaintiff, or *vis versa*.

158. enVista's wrongful conduct alleged in this this this cause of action constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

159. enVista engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) despite having constructive notice of Plaintiff's '942 Registration of the INSPIRE COMMERCE service mark under 15 U.S.C. § 1072.

160. Upon information and belief, enVista engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) despite having actual knowledge: (a) of Plaintiff's use of the INSPIRE COMMERCE service mark; and/or (b) of Plaintiff's ownership of the '942 Registration.

161. Upon information and belief, enVista engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) with knowledge and intent that such wrongful actions would be likely to cause confusion, or cause mistake, or to deceive members of the trade and/or general public.

162. As a direct and proximate result of enVista's unfair competition, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

163. As a direct and proximate result of enVista's unfair competition, it has unfairly acquired income and profits, along with goodwill and business reputation.

164. If not restrained by this Court from further unfair competition, enVista's continued and/or renewed wrongful activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

165. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against enVista on Count IV of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining enVista, its members, managers, executives, employees, servants, representatives, agents, and all those acting in concert or participation therewith from: (i) using the ENSPIRE COMMERCE mark in commerce in connection with its goods, services, and/or containers for its goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof; and (ii) otherwise continuing to, resuming, and further unfairly competing with Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

b. Entry of an Order awarding Plaintiff its actual damages and enVista's profits connected with its unfair competition, and exercising its discretion to triple such an award, in accordance with 15 U.S.C. § 1117(a);

c. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);

d. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);

e. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and



f. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

**Count V**  
**Federal Unfair Competition – Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)**  
**Against Defendant, enVista Interactive Solutions, LLC**

166. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

167. As its fifth ground for relief, Plaintiff alleges federal unfair competition against Interactive Solutions under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

168. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See* Exhibits A-C.

169. Notwithstanding Plaintiff's established rights in the INSPIRE COMMERCE service mark, Interactive Solutions adopted and used the confusingly similar mark ENSPIRE COMMERCE in commerce in connection with goods and/or services competitive or similar to those connected with Plaintiff's use of the INSPIRE COMMERCE mark, including those specified in Inspire's Combined Declaration, since approximately October 30, 2013.

170. Without Plaintiff's consent, Interactive Solutions used the ENSPIRE COMMERCE mark in commerce in connection with its goods, services, and/or containers for its goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof.

171. Interactive Solutions' unauthorized use in commerce of the ENSPIRE COMMERCE mark in connection with its goods, services, and/or containers for its goods

constitutes the use of a false designation of origin and/or false or misleading description or representation of fact.

172. Specifically, such use wrongfully and falsely designates or represents: (a) Interactive Solutions as being affiliated, connected, or associated with Plaintiff, or *vis versa*; and/or (b) Interactive Solutions' goods, services, and/or commercial activities as originating from or being sponsored or approved by Plaintiff, or *vis versa*.

173. Additionally, such use wrongfully likely causes confusion, or causes mistake, or deceives members of the trade and/or general public as to: (a) Interactive Solutions being affiliated, connected, or associated with Plaintiff, or *vis versa*; and/or (b) Interactive Solutions' goods, services, and/or commercial activities as originating from or being sponsored or approved by Plaintiff, or *vis versa*.

174. Interactive Solutions' wrongful conduct alleged in this this this cause of action constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

175. Interactive Solutions engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) despite having constructive notice of Plaintiff's '942 Registration of the INSPIRE COMMERCE service mark under 15 U.S.C. § 1072.

176. Upon information and belief, Interactive Solutions engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) despite having actual knowledge: (a) of Plaintiff's use of the INSPIRE COMMERCE service mark; and/or (b) of Plaintiff's ownership of the '942 Registration.

177. Upon information and belief, Interactive Solutions engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) with knowledge and intent that such wrongful

actions would be likely to cause confusion, or cause mistake, or to deceive members of the trade and/or general public.

178. As a direct and proximate result of Interactive Solutions' unfair competition, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

179. As a direct and proximate result of Interactive Solutions' unfair competition, it has unfairly acquired income and profits, along with goodwill and business reputation.

180. If not restrained by this Court from further unfair competition, Interactive Solutions' continued and/or renewed wrongful activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

181. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against Interactive Solutions on Count V of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining Interactive Solutions, its members, managers, executives, employees, servants, representatives, agents, and all those acting in concert or participation therewith from: (i) using the ENSPIRE COMMERCE mark in commerce in connection with its goods, services, and/or containers for its goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof; and (ii) otherwise continuing to, resuming, and further unfairly competing with Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

- b. Entry of an Order awarding Plaintiff its actual damages and Interactive Solutions' profits connected with its unfair competition, and exercising its discretion to triple such an award, in accordance with 15 U.S.C. § 1117(a);
- c. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);
- d. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);
- e. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and
- f. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

**Count VI**

**Federal Unfair Competition – Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)  
Against Defendant, RetailPoint II, LLC**

182. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

183. As its sixth ground for relief, Plaintiff alleges federal unfair competition against RetailPoint under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

184. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See* Exhibits A-C.

185. Notwithstanding Plaintiff's established rights in the INSPIRE COMMERCE service mark, RetailPoint adopted and used the confusingly similar mark ENSPIRE COMMERCE in commerce in connection with goods and/or services competitive or similar to

those connected with Plaintiff's use of the INSPIRE COMMERCE mark, including those specified in Inspire's Combined Declaration, since approximately October 30, 2013.

186. Without Plaintiff's consent, RetailPoint used the ENSPIRE COMMERCE mark in commerce in connection with its goods, services, and/or containers for its goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof.

187. RetailPoint's unauthorized use in commerce of the ENSPIRE COMMERCE mark in connection with its goods, services, and/or containers for its goods constitutes the use of a false designation of origin and/or false or misleading description or representation of fact.

188. Specifically, such use wrongfully and falsely designates or represents: (a) RetailPoint as being affiliated, connected, or associated with Plaintiff, or *vis versa*; and/or (b) RetailPoint's goods, services, and/or commercial activities as originating from or being sponsored or approved by Plaintiff, or *vis versa*.

189. Additionally, such use wrongfully likely causes confusion, or causes mistake, or deceives members of the trade and/or general public as to: (a) RetailPoint being affiliated, connected, or associated with Plaintiff, or *vis versa*; and/or (b) RetailPoint's goods, services, and/or commercial activities as originating from or being sponsored or approved by Plaintiff, or *vis versa*.

190. RetailPoint's wrongful conduct alleged in this this this cause of action constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

191. RetailPoint engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) despite having constructive notice of Plaintiff's '942 Registration of the INSPIRE COMMERCE service mark under 15 U.S.C. § 1072.

192. Upon information and belief, RetailPoint engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) despite having actual knowledge: (a) of Plaintiff's use of the INSPIRE COMMERCE service mark; and/or (b) of Plaintiff's ownership of the '942 Registration.

193. Upon information and belief, RetailPoint engaged in this unfair competition in violation of 15 U.S.C. § 1125(a) with knowledge and intent that such wrongful actions would be likely to cause confusion, or cause mistake, or to deceive members of the trade and/or general public.

194. As a direct and proximate result of RetailPoint's unfair competition, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

195. As a direct and proximate result of RetailPoint's unfair competition, it has unfairly acquired income and profits, along with goodwill and business reputation.

196. If not restrained by this Court from further unfair competition, RetailPoint's continued and/or renewed wrongful activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

197. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against RetailPoint on Count VI of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining RetailPoint, its members, managers, executives, employees, servants, representatives, agents, and all those acting in concert or participation therewith from: (i) using the ENSPIRE COMMERCE mark in commerce in connection with its goods, services, and/or

containers for its goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof; and (ii) otherwise continuing to, resuming, and further unfairly competing with Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

b. Entry of an Order awarding Plaintiff its actual damages and RetailPoint's profits connected with its unfair competition, and exercising its discretion to triple such an award, in accordance with 15 U.S.C. § 1117(a);

c. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);

d. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);

e. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and

f. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

**Count VII**  
**Contributory Trademark Infringement**  
**Against Defendant, enVista, LLC**

198. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

199. As its seventh ground for relief, Plaintiff alleges contributory liability against enVista for federal trademark infringement under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a).

200. Plaintiff owns all rights in and to the INSPIRE COMMERCE service mark, which is valid and the subject of the '942 Registration on the USPTO's Principal Register. *See Exhibits A-C.*

201. Interactive Solutions directly infringed Plaintiff's exclusive rights to the INSPIRE COMMERCE service mark in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. § 1114(1) and 1125(a). Count II, *supra* ¶¶ 118-133.

202. RetailPoint directly infringed Plaintiff's exclusive rights to the INSPIRE COMMERCE service mark in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. § 1114(1) and 1125(a). Count III, *supra* ¶¶ 134-149.

203. enVista had constructive knowledge of Interactive Solutions' and RetailPoint's infringing activities.

204. Upon information and belief, enVista had actual knowledge of Interactive Solutions' and RetailPoint's infringing activities.

205. Upon information and belief, enVista knowingly and/or intentionally induced, caused, and/or materially encouraged, enabled, and/or contributed to Interactive Solutions' and/or RetailPoint's infringement of Plaintiff's exclusive rights to the INSPIRE COMMERCE service mark

206. Upon information and belief, enVista induced, caused, and/or materially encouraged, enabled, and/or contributed to Interactive Solutions' and/or RetailPoint's infringement, including through, in connection with, and/or as it related to:

a. The [www.envista.com](http://www.envista.com) domain, enVista Website, and/or enVista Social Media Pages;

b. Interactive Solutions' decision to do business under the assumed business name ENSPIRE COMMERCE;

c. Interactive Solutions' decision to seek and obtain the '814 Registration for the ENSPIRE COMMERCE;



d. The [www.enspirecommerce.com](http://www.enspirecommerce.com) domain, Interactive Solutions Website, and/or Interactive Solutions Social Media Pages;

e. Interactive Solutions' decision to use the ENSPIRE COMMERCE mark in commerce connection with goods and/or services that were competitive or similar to those specified in Inspire's Combined Declaration and/or connected with Plaintiff's use of the INSPIRE COMMERCE mark in commerce;

f. enVista's promotion of Interactive Solutions' goods and/or services that were competitive or similar to those specified in Inspire's Combined Declaration and/or connected with Plaintiff's use of the INSPIRE COMMERCE mark in commerce;

g. The [www.retailpoint.com](http://www.retailpoint.com) domain, RetailPoint Website, and/or RetailPoint Social Media Pages;

h. RetailPoint's decision to use the ENSPIRE COMMERCE mark in commerce connection with goods and/or services that were competitive or similar to those specified in Inspire's Combined Declaration and/or connected with Plaintiff's use of the INSPIRE COMMERCE mark in commerce; and/or

i. enVista's promotion of RetailPoint's goods and/or services that were competitive or similar to those specified in Inspire's Combined Declaration and/or connected with Plaintiff's use of the INSPIRE COMMERCE mark in commerce.

207. enVista bears contributory liability for Interactive Solutions' infringement of Plaintiff's INSPIRE COMMERCE mark in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. § 1114(1) and 1125(a).

208. enVista bears contributory liability for RetailPoint's infringement of Plaintiff's INSPIRE COMMERCE mark in violation of Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. § 1114(1) and 1125(a).

209. enVista and Interactive Solutions are jointly and severally liable to Plaintiff for the substantial damages it suffered as a direct and proximate result of Interactive Solutions' direct infringement and unfair competition, including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

210. enVista and Interactive Solutions are jointly and severally liable to Plaintiff for Interactive Solutions' income and profits that were unfairly acquired as a direct and proximate result of its direct infringement and unfair competition.

211. enVista and RetailPoint are jointly and severally liable to Plaintiff for the substantial damages it suffered as a direct and proximate result of Interactive Solutions' direct infringement and unfair competition, including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

212. enVista and RetailPoint are jointly and severally liable to Plaintiff for Interactive Solutions' income and profits that were unfairly acquired as a direct and proximate result of its direct infringement and unfair competition.

213. As a direct and proximate result of enVista's contributory infringement and unfair competition, Plaintiff has suffered substantial damages including loss of income and profits, along with damage to its business reputation and goodwill, for which it lacks adequate remedy at law.

214. If not restrained by this Court from further contributory infringement and unfair competition, enVista's continued and/or renewed wrongful activities will/would cause Plaintiff further irreparable harm for which it lacks adequate remedy at law.

215. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Inspire against enVista on Count VII of this Complaint, and provide Plaintiff the following equitable and monetary relief:

a. Entry of a permanent injunction, in accordance with 15 U.S.C. § 1116 and Fed.R.Civ.P. 65, enjoining enVista, its members, managers, executives, employees, servants, representatives, agents, and all those acting in concert or participation therewith from: (i) contributing to the use of ENSPIRE COMMERCE in connection with the sale, offering for sale, distribution, and advertising of goods and services; (ii) contributing to the application of ENSPIRE COMMERCE to signs, prints, packages, wrappers, receptacles, and advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods and services; (iii) contributing to the use ENSPIRE COMMERCE mark in commerce in connection with goods, services, and/or containers for goods, including, but not limited to connection with the sale, offering for sale, distribution, and/or advertising thereof; and (iv) otherwise continuing to, resuming, and further contributing to the infringement of or unfairly competing with Plaintiff's exclusive rights to the INSPIRE COMMERCE trademark;

b. Entry of an Order finding enVista and Interactive Solutions jointly and severally liable to Plaintiff for the damages connected with Interactive Solutions' infringement and unfair competition;

c. Entry of an Order finding enVista and RetailPoint jointly and severally liable to Plaintiff for the damages connected with RetailPoint's infringement and unfair competition;

d. Entry of an Order awarding Plaintiff its actual damages and enVista's profits connected with its contributory infringement and unfair competition, and exercising its discretion to triple such an award.

e. Entry of an Order awarding Plaintiff its costs incurred in bringing this action, in accordance with 15 U.S.C. § 1117(a);

f. Entry of an Order finding the case to be exceptional and awarding Plaintiff its reasonable attorneys' fees, in accordance with 15 U.S.C. § 1117(a);

g. Entry of an Order awarding Plaintiff prejudgment and post-judgment interest; and

h. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

**Count VIII**

**Cancellation of U.S. Trademark Registration No. 4,677,814 -  
Sections 2(d) & 37 of the Lanham Act, 15 U.S.C. §§ 1052(d) & 1119  
Against Defendant, enVista Interactive Solutions, LLC**

216. Plaintiff re-alleges and incorporates by reference the allegation of paragraphs 1-101, inclusive, as though fully set forth.

217. As its eighth ground for relief, Plaintiff alleges that the Court should exercise its power under Section 37 of the Lanham Act, 15 U.S.C. § 1119, to cancel Interactive Solutions' '814 Registration of the ENSPIRE COMMERCE mark for failure to satisfy Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

218. Plaintiff began using the INSPIRE COMMERCE service mark in interstate commerce in connection with the services specified in its Combined Declaration, since at least as early as April 24, 2008, and has since continued such use without material interruption.

219. Based on such use, Plaintiff applied to register the INSPIRE COMMERCE service mark with the USPTO on October 27, 2010, and Plaintiff's '942 Registration for the INSPIRE COMMERCE service mark was issued by the USPTO on June 4, 2013.

220. Upon information and belief, Interactive Solutions did not begin using the ENSPIRE COMMERCE mark in commerce in connection with SERVICES or other commercial activities until at least October 30, 2013.

221. Interactive Solutions did not apply to register the ENSPIRE COMMERCE mark with the USPTO until April 2, 2014.

222. Interactive Solutions' '814 Registration of the ENSPIRE COMMERCE mark was not issued by the USPTO until January 27, 2015.

223. Plaintiff began using the INSPIRE COMMERCE service mark in interstate commerce and was issued the '942 Registration the INSPIRE COMMERCE service mark prior to Interactive Solutions' first use of the ENSPIRE COMMERCE mark in interstate commerce and applying for registration of the ENSPIRE COMMERCE mark with the USPTO.

224. Interactive Solutions' ENSPIRE COMMERCE mark closely resembles Plaintiff's INSPIRE COMMERCE service mark in sight, sound, and meaning.

225. Interactive Solutions uses the ENSPIRE COMMERCE mark in connection with goods and/or services that are similar, connected, and/or reasonably related to the services in connection with which Plaintiff uses the INSPIRE COMMERCE service mark.

226. Interactive Solutions' ENSPIRE COMMERCE mark so resembles Plaintiff's INSPIRE COMMERCE service mark that it is likely to result in confusion, mistake, and/or deception when used in interstate commerce in by Interactive Solutions or any person in connection with the services specified in the '814 Registration.

227. The USPTO erred in not rejecting Interactive Solutions' application to register ENSPIRE COMMERCE on the basis of 15 U.S.C. § 1052(d).

228. As a direct and proximate result of the USPTO's improper issuance of the '814 Registration for ENSPIRE COMMERCE to Interactive Solutions, Plaintiff has suffered substantial damages to its business reputation and goodwill, for which it lacks adequate remedy at law.

229. The Court should exercise its power under 15 U.S.C. § 1119 to terminate Interactive Solutions' right to and order the cancelation of the '814 Registration.

230. If the Court declines to exercise its power under 15 U.S.C. § 1119 to terminate Interactive Solutions' right to and order the cancelation of the '814 Registration, Plaintiff will suffer irreparable harm for which it lacks adequate remedy at law.

231. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment for Plaintiff against Interactive Solutions on Count VIII of this Complaint, and provide Plaintiff the following equitable relief:

a. Entry of an Order terminating Interactive Solutions' rights to the ENSPIRE COMMERCE mark, as may be presumed by the '814 Registration, and instructing the Under Secretary of Commerce for Intellectual Property and Director of the USPTO to cancel the '814 Registration; and

b. Entry of an Order awarding Plaintiff all further relief, in law and equity, as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: December 4, 2018.

Respectfully submitted,

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*Attorneys for Plaintiff, Inspire Commerce, Inc.*

*/s/ David Tamaroff*

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