

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

SKYHOOK WIRELESS, INC., a Delaware corporation,

Plaintiff,

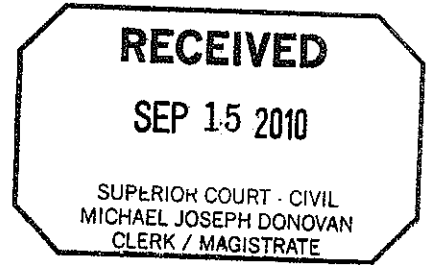
v.

GOOGLE INC., a Delaware corporation,

Defendant.

10-3652

Civil Action No. _____-BLS



COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This is an action for intentional interference with contractual relations; intentional interference with advantageous business relations; and violations of Massachusetts law prohibiting unfair and deceptive trade acts and practices stemming from Google's anticompetitive conduct and Google's bad faith, knowing and intentional interference with plaintiff Skyhook's contractual and business relations with Motorola, Inc. and other current and potential customers. As a direct result of Google's actions, Skyhook has suffered actual damages that exceed tens of millions of dollars. Further, in order to prevent serious and irreparable harm to Skyhook, defendant Google must be enjoined from persisting in these wrongful acts.

2. Skyhook Wireless is an innovator of location positioning technology. As the use of mobile computing devices such as smartphones and laptops has increased, so too has demand for mobile applications that utilize and share with others the current location of users' mobile computing devices. Skyhook's technology was designed to meet this growing demand, and consistently provide accurate user location information.

3. Skyhook and Google are competitors in the location positioning space. There was a time when Google tried to compete fairly with Skyhook. But once Google realized its positioning technology was not competitive, it chose other means to undermine Skyhook and



damage and attempt to destroy its position in the marketplace for location positioning technology. In complete disregard of its common-law and statutory obligations, and in direct opposition to its public messaging encouraging open innovation, Google wielded its control over the Android operating system, as well as other Google mobile applications such as Google Maps, to force device manufacturers to use its technology rather than that of Skyhook, to terminate contractual obligations with Skyhook, and to otherwise force device manufacturers to sacrifice superior end user experience with Skyhook by threatening directly or indirectly to deny timely and equal access to evolving versions of the Android operating system and other Google mobile applications.

THE PARTIES

4. Plaintiff Skyhook Wireless, Inc. ("Skyhook") is a corporation organized and existing under the laws of Delaware with a principal place of business in Boston, Massachusetts.

5. Skyhook is informed and believes, and on that basis alleges, that Defendant Google Inc. ("Google") is a Delaware corporation with a principal place of business in Mountain View, California. Google conducts business within the Commonwealth of Massachusetts, and has claimed that over the past year alone it generated \$2.2 billion worth of economic activity in Massachusetts.

JURISDICTION AND VENUE

6. Jurisdiction is proper in the Commonwealth of Massachusetts pursuant to Mass. Gen. L. c. 223A, § 3 because Google "transacts business" in the Commonwealth.

7. Venue is proper in Suffolk County pursuant to Mass. Gen. L. c. 223, § 8(4) and c. 93, § 42A because Skyhook's principal place of business is in Boston, Suffolk County..

FACTUAL ALLEGATIONS

Skyhook's Wi-Fi Positioning and XPS Technology Outperform All Competitors

8. Despite its size, Skyhook is an industry leader in location positioning, context, and intelligence. Founded in 2003, Skyhook pioneered the Wi-Fi Positioning System and today

provides location information to tens of millions of mobile devices. Skyhook currently employs 32 people in Boston, Massachusetts and worldwide.

9. Early location technologies – Global Positioning System (GPS) and cellular tower triangulation – suffer shortcomings that result in mobile consumers receiving slow and inaccurate location information. For example, GPS systems can take a very long time to acquire a location fix and they do not work well indoors or in dense, populated areas (if at all). Cellular tower triangulation is notoriously inaccurate, usually placing the end-user over 200 meters - and up to 5,000 meters - from their actual location. As a result, location-based applications and services were niche products used by very few consumers and only in very specific use cases.

10. To help combat the drawbacks of these early location technologies, Skyhook pioneered locating, tracking, and using the hundreds of millions of Wi-Fi access points located throughout populated areas to provide fast and accurate location information. Skyhook invested tens of millions of dollars and hundreds of thousands of hours of labor to research, develop, and perfect its innovative technology.

11. Skyhook's Wi-Fi Positioning System determines the location of a Wi-Fi enabled device using a database of known Wi-Fi access points. Skyhook has compiled a massive reference database of the known locations of over 250 million Wi-Fi access points. To build this database, Skyhook deployed drivers painstakingly to survey streets in tens of thousands of cities, towns and populated areas worldwide, identifying Wi-Fi access points and plotting their geographic locations. In addition, Skyhook's database is continually improved with data that is gathered in the process of location queries. Skyhook's extensive coverage area includes most populated areas in North America, Europe, Australia and in certain major Asian countries.

12. Skyhook integrates its Wi-Fi Positioning System into its proprietary XPS positioning system ("XPS"). XPS is a hybrid positioning system that uses XPS client software running on a user's device to integrate and synthesize Skyhook's Wi-Fi Positioning System, GPS satellite data, and cellular tower triangulation to provide faster and more accurate location information than any other location technology.

Google Pushes Google Location Service To Tap Into Location Data Collection Market

13. Google is an information services management company that derives ninety-nine percent of its revenue from advertising. Google collects massive amounts of information about its end users from its search, Gmail, and other applications to enable it to more effectively target advertising to individual users. Google is currently the dominant player in terms of such data collection.

14. Google's ability to charge advertisers increases with the amount, quality, and uniqueness of the data Google obtains. Google has now recognized the immense value of location information to support advanced advertising and monetization models that are core to Google's business. To catch up to Skyhook and others in the field, Google therefore developed and now gives away for free its own location platform, Google Location Service.

15. In 2005, Google expressed interest in licensing Skyhook's XPS technology. In 2007, after the expiration of an evaluation license between the parties, Google asked Skyhook to provide Google with data from Skyhook's confidential and proprietary database of known Wi-Fi access points. Growing skeptical of Google's motives, Skyhook declined to provide this highly confidential information to Google. Ultimately, Google elected not to license Skyhook's technology for commercial use. Instead, shortly thereafter Google began offering Google Location Service in competition with Skyhook's XPS positioning system.

16. Google's business strategy and goals differ from Skyhook's. Skyhook develops premium location determination technology for which mobile device manufacturers are willing to pay a fee because Skyhook's technology attracts application developers and enhances the end users' experience. In addition to Skyhook's primary focus on improved technology to deliver better end user experiences, Skyhook's technology has also generated a valuable database of aggregate and anonymous location transaction information that Skyhook currently licenses to phone manufacturers, carriers, application developers, analytics firms, advertising service providers and others.

17. On information and belief, Google, on the other hand, focuses on collecting end-user location information and related location data with the goal of monetizing it as advertising revenue. To advance that objective, Google gives away its inferior location determination technology and bundles that inferior technology with its Android operating system and various Google applications. Unlike Skyhook, Google tracks phones when the user is unaware and in a way and to an extent that is never clearly disclosed to the end consumer. Google knows that the more devices that include Google Location Service, the more data Google can collect about users' locations. This data, in turn, is worth billions of dollars to Google.

Google Publicly Represents Android As Open Source And Pro-Innovation, Then Unfairly Uses Its Exclusive Oversight Of The Platform To Force OEMs To Use Google Location Service

18. Android is Google's open source operating system for mobile devices, and a corresponding open-source project led by Google. Given Google's success in search and other endeavors, there were high expectations for Android. Since the launch of Android, the popularity, among end users, of phones running Android has rapidly increased. This trend has continued through the date of this filing.

19. On information and belief, when Google launched Android, its stated goal was to create an open platform that carriers, original equipment manufacturers (OEMs), and developers can use to make their innovative ideas a reality and to ensure that "no industry player can restrict or control the innovations of any other." Indeed, it was generally understood that part of the impetus behind Google's desire to launch Android was to ensure that Google itself would not be locked out of mobile devices by other parties, such as cell carriers or manufacturers. Google adds that the goal of the Android Open Source Project is "to create a successful real-world product that improves the mobile experience for end users." Google continues to publicly represent that it still manages Android pursuant to these principles of openness.

20. Google maintains the Android Compatibility Program, which describes what it means to be "Android Compatible" and what is required of developers and device builders to achieve compatibility with the Android Operating System. Google states that in order to

distribute Android devices, and to leverage all of the benefits of the Android ecosystem, which includes access to all the third party applications and services available in the Android Market, device builders must participate in the Compatibility Program and must be deemed Android Compatible.

21. According to Google, "compatibility is a prerequisite to participate in the Android apps ecosystem." Google also states that "[a]nyone is welcome to use the Android source code, but if the device isn't compatible, it's not considered part of the Android ecosystem."

Furthermore, Google has explained that: "Devices that are Android compatible may seek to license the Android Market client software. This allows them to become part of the Android app ecosystem, by allowing users to download developers' apps from a catalog shared by all compatible devices. This option isn't available to devices that aren't compatible."

22. Google's established practice in determining Android compliance consists of two steps. The first step requires each Android-enabled device, and its embedded software, to be run against the Compatibility Test Suite (CTS), a software-based test platform that objectively evaluates whether the device and software are compatible with the published Android specifications. The second step involves a review of the device and software based on an amorphous outline of additional, non-standardized requirements known as the Compliance Definition Document (CDD). This entirely subjective review, conducted solely by Google employees with ultimate authority to interpret the scope and meaning of the CDD as they see fit, effectively gives Google the ability to arbitrarily deem any software, feature or function "non-compatible" with the CDD.

23. On information and belief, Google has notified OEMs that they will need to use Google Location Service, either as a condition of the Android OS-OEM contract or as a condition of the Google Apps contract between Google and each OEM. Though Google claims the Android OS is open source, by requiring OEMs to use Google Location Service, an application that is inextricably bundled with the OS level framework, Google is effectively creating a closed system with respect to location positioning. Google's manipulation suggests

that the true purpose of Android is, or has become, to ensure that "no industry player can restrict or control the innovations of any other," unless it is Google.

Skyhook Replaces Google As The Exclusive Location Services Provider On Motorola's Android Mobile Devices

24. For nearly four years, Skyhook and Motorola, Inc. ("Motorola") worked to develop their business partnership. After a first suite of Skyhook-enabled Motorola products failed to launch as planned under an initial agreement due to a Motorola corporate and product restructuring, Skyhook and Motorola concluded extensive negotiations in September 2009 and entered into a licensing agreement (the "Motorola Contract"). In exchange for Motorola's commitment to use XPS on Motorola's Android wireless devices, Skyhook made significant concessions. Under the Motorola Contract, Skyhook is contractually prohibited from disclosing the substance of the terms of the agreement in a public filing without Motorola's express consent.

25. Throughout the negotiations, Motorola repeatedly expressed its intent to offer end users a "differentiated Android platform," in accordance with the purported public message of Google. Motorola indicated that Skyhook would be an essential part of Motorola's plan to differentiate the Android wireless devices and provide a better end user experience than other Android mobile devices. Prior to final execution of the contract, Motorola notified Skyhook that it had reviewed the Android compliance documents as well as Motorola's own specific contractual agreements with Google, and determined that no restrictions would prevent execution of the Motorola-Skyhook agreement. Skyhook expressed its commitment to Motorola. All told, Skyhook invested over \$1.5M into its relationship with Motorola, hoping for a fruitful return on its investment.

26. After entering into the Motorola Contract, the parties engaged in several months of intense integration and optimization product development along with exhaustive product and field testing. Among other things, Skyhook's XPS software was tested for Android compliance using Google's own CTS. Motorola confirmed that XPS met the requirements for Android compliance, and the parties worked to roll out XPS on Motorola's next Android device, slated for release mid-July 2010.

Google Intentionally Interferes with the Skyhook-Motorola Contract

27. On April 27, 2010, Skyhook issued a press release announcing its partnership with Motorola to deploy Skyhook's XPS positioning system across much of Motorola's portfolio of Android-based mobile devices.

28. On information and belief, shortly thereafter, Andy Rubin (Google's Vice President of Engineering overseeing development of Android) called Sanjay Jha (Co-Chief Executive Officer of Motorola, Inc. and Chief Executive Officer of Motorola's Mobile Devices business) multiple times to impose a "stop ship" order on Motorola preventing Motorola from shipping Android wireless devices featuring Skyhook's XPS client software.

29. As one means of cloaking its improper "stop ship" order with an air of legitimacy, Google unreasonably and without justification claimed that embedding Skyhook's XPS client software in the Android wireless devices would render the devices no longer Android compatible. Google's claim of non-compliance is unfounded, and intended to single out Skyhook. Skyhook is informed and believes that at least one other company, a location technology hardware and software provider which also uses a hybrid/terrestrial based approach to determine location, has been allowed by Google to continue to run on Android despite also failing to meet Google's own interpretation of the CDD.

30. As further evidence of Google's improper motive, Google placed demands on Motorola and Skyhook wholly unrelated to Android compliance. For example, Google insisted that Motorola modify the platform to notify its users that Skyhook collects certain data from the devices - and to do so in a way that inaccurately implied that Skyhook was collecting personally identifiable data. Google also insisted that Motorola run Google Location Service and Skyhook's XPS "side-by-side" and simultaneously at all times on all Android wireless devices. Google's insistence on these issues had no bearing on supposed Skyhook compliance issues. Also, such a "side-by-side" approach would require a substantial technical overhaul, and would ultimately harm the end user experience, creating power management issues and negatively impacting device performance. But, on information and belief, Google knew that if its Google Location

Service is collecting location data on the same device at the same time as XPS, that will enable Google to collect more and better location data because of Skyhook's accuracy and precision.

31. Skyhook is informed and believes that Google knew that if Skyhook did not accede to the demands, it could and would force Motorola to ship its Android wireless devices without XPS but with Google Location Service as the platform supplier of location data. Google knew or should have known that this was a breach of the Motorola Contract.

32. Skyhook refused to accept Google's demands. As a result, Google persisted with its "stop ship" order and Motorola shipped its mid-July device without XPS. Instead, the device was rolled out in mid-July with only Google Location Service, in direct breach of the Motorola Contract. As none of these devices was preloaded with XPS software, as would have occurred but for Google's interference, Skyhook lost millions of dollars in royalties provided under the Motorola Contract. Google's interference also harmed Skyhook by preventing enhancements to Skyhook's database that would have occurred but for the deprivation of data from these phones.

Google Intentionally Interferes With Another Skyhook Business Partner

33. After several years of negotiations, on or about April 1, 2010, Skyhook entered into a licensing agreement with Company X, a mobile OEM with substantial global market share in the Android market (the "Company X Contract"). Like the Motorola Contract, under the Company X Contract, Skyhook is contractually prohibited from disclosing the substance of the terms of the agreement in a public filing without Company X's express consent. Company X, prior to the final execution of its contract with Skyhook, notified Skyhook that Company X had reviewed the Android compliance documents as well as its own specific contractual agreements with Google, and determined that no restrictions would prevent execution of the Company X Contract.

34. On information and belief, Company X was committed to providing its users with the best performance, and, to that end, chose Skyhook rather than Google as its location provider. Company X was committed to rolling out its next line of Android phones preloaded with Skyhook's XPS technology. The phones, with the XPS technology, were deemed Android

compliant after passing the CTS. As such, Company X began to roll out its latest Android phone to various distributors.

35. Shortly thereafter, Motorola learned that Company X was planning on shipping Skyhook-enabled Android devices. Motorola complained to Google requesting a waiver to ship its Android wireless devices with Skyhook. On information and belief, Google refused to provide such a waiver to Motorola. Google then informed Company X that it was issuing a "stop ship" order to Motorola on all Android devices embedded with Skyhook technology. On June 15, 2010, Company X informed Skyhook of Google's communication.

36. Subsequently, Company X started shipping its new Android device, with Skyhook technology, to retail channels and end users in two major European countries. On July 2, 2010, Skyhook publicly announced its partnership with Company X. On information and belief, in response to the press release, Google issued a direct "stop ship" order to Company X, demanding that no additional Android devices be shipped with Skyhook technology. Google raised the same, pretextual non-compliance issue it cited to Motorola. Company X was surprised by Google's declaration given that Google had raised no compliance issues prior to and through the product's initial launch. Google further demanded that Company X use Google Location Service instead of XPS.

37. Company X complained to Skyhook that Google was preventing it from choosing the superior location service provide and hurting the end users. Company X was forced to drop XPS, and continued the launch of its Android device with Google Location Service. As a result, Skyhook has lost millions in expected royalties under the Company X Contract. In addition, Google's interference harmed Skyhook by preventing enhancements to Skyhook's database that would have occurred but for the deprivation of the data expected from these phones.

COUNT I

Intentional Interference With Contractual Relations

38. Skyhook hereby realleges and incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein.

39. At all material times, Google knew of the existence of the Motorola Contract.

40. Google knowingly induced Motorola to breach the Motorola Contract. Among other things, Google (i) instructed Motorola to stop shipping phones with Skyhook's XPS embedded therein; and (ii) forcing Motorola to ship their Android wireless devices with Google Location Service, in violation of the Motorola Contract.

41. Google's interference, in addition to being intentional, was improper in motive and/or means.

42. Skyhook is without an adequate remedy at law, because Google's continued interference will irreparably harm Skyhook unless Google is enjoined by the Court from the actions complained of herein.

43. Skyhook has suffered substantial damages, in an amount to be determined at trial, as a result of Google's improper and unlawful actions.

COUNT II

Intentional Interference With Advantageous Business Relations

44. Skyhook hereby realleges and incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein.

45. Skyhook had an existing business relationship with Motorola, Company X and potential business relationships with others interested in licensing Skyhook's XPS positioning system for use with and in Android Compatible Devices.

46. Google had knowledge of Skyhook's existing business relationship with Motorola, Company X and Skyhook's potential business relationships with others interested in licensing Skyhook's XPS positioning system for use with and in Android Compatible Devices.

47. Google knowingly, intentionally, wrongfully, and maliciously interfered with Skyhook's advantageous relationships.

48. Google's actions have harmed Skyhook's business relationships with Motorola, Company X and other current and potential customers. Skyhook's loss of these advantageous business relations resulted directly from Google's improper and unlawful actions.

49. Skyhook is without an adequate remedy at law, because Google's continued interference will irreparably harm Skyhook unless Google is enjoined by the Court from the actions complained of herein.

50. Skyhook has suffered substantial damages, in an amount to be determined at trial, as a result of Google's improper and unlawful actions.

COUNT III

Unfair And Deceptive Trade Practices; M.G.L. c. 93A

51. Skyhook hereby realleges and incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein.

52. At all relevant times, Skyhook engaged in the conduct of trade or commerce within the meaning of Mass. Gen. Laws c. 93A, §§ 1 and 11.

53. Skyhook is informed and believes that at all relevant times Google was engaged in trade or commerce within the meaning of Mass. Gen. Laws c. 93A, §§ 1 and 11.

54. Skyhook is informed and believes that Google's unfair acts and/or deceptive practices include, without limitation, interfering with Skyhook's contractual and advantageous business relationships; unfairly and improperly excluding Skyhook's XPS positioning system from the market for Android devices; controlling the Android Compatibility Program in such a way so as to unfairly exclude competitors chosen by Google from the market for Android devices; and instructing Motorola and Company X that they were under a "stop ship" order and were prohibited from shipping phones with Skyhook's XPS embedded. These acts and practices occurred primarily and substantially within the Commonwealth within the meaning of Mass. Gen. Laws c. 93A, §§ 1 and 11.

55. Google's wrongful actions described herein were willful and knowing.

56. As a direct and proximate result of the foregoing knowing and/or willful unfair acts and practices of Google, Skyhook has suffered and will continue to suffer significant harm in the form of loss of money and property, including but not limited to loss of royalties associated with its existing and prospective relationships.

57. Skyhook is without an adequate remedy at law, because Google's continued interference will irreparably harm Skyhook unless Google is enjoined by the Court from the actions complained of herein.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court grant the following relief:

- A. A temporary restraining order, preliminary injunction, and permanent injunction enjoining Google and its officers, directors, employees, attorneys, agents, representatives, and servants, and all persons acting under, in concert with or for them, from taking any action that interferes with Skyhook's current or potential customers;
- B. Money damages against Google, plus interest, for Counts I and II;
- C. Trebled money damages against Google, with any interest if appropriate, for Counts III;
- D. Skyhook's costs and attorneys' fees; and
- E. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Skyhook hereby demands a trial by jury on all issues triable to a jury

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