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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10 SIPPHONE, INC.) Case No.
11)
12 Plaintiff,)
13 vs.) COMPLAINT FOR VIOLATION OF THE
14 VONAGE HOLDINGS CORP., FRY'S) UNFAIR COMPETITION LAW, BUS. &
ELECTRONICS, INC., and DOES 1 through) PROF. CODE § 17200, *et. seq.* AND FALSE
10,) ADVERTISING LAW, BUS & PROF. CODE
15) § 17500, *et. seq.*
16 Defendants.)

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18 Plaintiff, by its attorneys, brings this action on behalf of consumers who have fallen, or will
19 fall, victim to certain false and misleading advertisements described herein and alleges upon
20 personal knowledge as to itself and its acts stated herein, and as to all other matters upon information
21 and belief based upon, *inter alia*, the investigation made by its attorneys, as follows:

22 **I.**
NATURE OF ACTION

23 1. This action seeks injunctive relief for persons and entities (“consumers”) who have been
24 or are being misled by advertisements published by Vonage Holdings Corp. and Fry’s Electronics
25 regarding the Linksys/Vonage PAP2 adapter. Plaintiff’s claims are premised on violations of
26 California’s Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et. seq.* and False Advertising
27 Law, Bus. & Prof. Code §§ 17500, *et. seq.* Plaintiff brings this action in a representative capacity
28 pursuant to Bus. & Prof. Code §§ 17204 and 17535 on behalf of the consumers.

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II.
JURISDICTION AND VENUE

2. Defendants have offered and sold, and continue to offer and sell, the Linksys/Vonage, Inc. product/service at issue in the action to persons residing in San Diego county. The unfair business practices and false advertising alleged herein have occurred in San Diego county.

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III.
PARTIES

3. Plaintiff, SipPhone, Inc. is a Delaware corporation with its principal place of business in San Diego, California.

4. Defendant, Vonage Holdings Corp. is a Delaware corporation with its principal place of business in Edison, New Jersey.

5. Defendant Fry's Electronics, Inc. is a California corporation with its principal place of business in San Jose, California. Fry's operates a website at outpost.com

6. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of said fictitiously-named defendants is in some manner responsible for the acts, omissions, injuries and/or damages alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of said fictitiously-named defendants when the same have been ascertained.

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IV.
SUBSTANTIVE ALLEGATIONS

7. Voice Over Internet Protocol ("VoIP") is an internet technology that allows people to make phone calls with a computer and an internet connection. "SIP" is the most popular VoIP standard. The VoIP industry is in its infancy. The industry includes 1) companies that provide service on networks upon which the calls are transmitted and 2) manufacturers of adapters that allow consumers to plug in a standard telephone into the computer to place the calls. Both SipPhone and Vonage provide service on VoIP networks.

8. As with traditional telephones, most SIP adapters can be used with any VoIP service. This fact is generally known to the public. Some services, like the one offered by SipPhone, allow

1 persons using SIP adapters to connect to other persons with SIP adapters at no charge.

2 9. Vonage charges its customers fees for using the service ranging from \$14.99 to \$49.99
3 per month. On its web site, it offers to customers who sign up for its service, a free adapter which
4 it claims is “nothing less than the best equipment on the market.” Most SIP adapters retail for
5 approximately \$80 dollars.

6 10. Linksys, a division of Cisco Systems, Inc., is one of the leading manufacturers of
7 networking devices such as modems, routers, hubs, and network cards. It also manufacturers a SIP
8 adapter called the PAP2.

9 11. At an unknown time, Linksys and Vonage formed a joint venture to market and sell the
10 PAP2 adapter together with Vonage’s VoIP service in a single package. Unlike most adapters, the
11 Linksys adapter has been purposefully locked to prevent it from working with any service other than
12 Vonage’s service.

13 12. The box Linksys and Vonage uses to market and sells the PAP2 adapter and Vonage
14 service does not disclose that the adapter is locked to prevent it from working with any other service.
15 In fact, the package is highly misleading in that it states: “With an *appropriate* internet telephone
16 service provider, you’ll get clear telephone reception and reliable fax connections . . .” (Italics
17 added.) This implies that the adapter can be used with other VoIP services.

18 13. This box is displayed at retail stores in San Diego county and throughout California.
19 The box constitutes an advertisement and is unfair, unlawful, false, and misleading because
20 consumers believe that the adapter they are purchasing is a generic adapter compatible with any
21 service they desire (some of which are free), and instead, are being forced to subscribe to and pay
22 for the Vonage service to activate their adapter.

23 14. According to Vonage’s web site, “electronic retail is the primary sales channel for
24 Vonage Digital Voice.” (Vonage’s service). Thus, Vonage depends heavily on electronic retailers,
25 such as outpost.com, who offer products over the internet to sell its service, including the
26 Linksys/Vonage package.

27 15. Vonage is aware that electronic retailers commonly paraphrase and directly cite product
28 specifications from product packages when advertising products.

1 acts or practices. Such conduct is ongoing and continues to this date.

2 24. Defendants have also engaged in a “fraudulent” business act or practice in that the
3 representations and omissions described herein are false and/or likely to deceive potential and
4 current customers.

5 25. Defendants have also engaged in “unfair” business acts or practices in that the harm
6 caused by defendants’ conduct outweighs any utility of such conduct and such conduct offends
7 public policy, is immoral, unscrupulous, unethical, deceitful and offensive, and causes substantial
8 injury to consumers.

9 26. The aforementioned unlawful, fraudulent, and unfair business acts or practices
10 conducted by defendant still continue to this day. Defendants has failed to publicly acknowledge
11 the wrongful nature of its actions and have not corrected the advertisements.

12 27. As a direct and proximate result of these acts, consumers have been and are being
13 harmed. Plaintiff brings this action pursuant to Sections 17203 and 17204 for injunctive relief to
14 enjoin the practices described herein.

15 **VI.**
16 **SECOND CAUSE OF ACTION**
17 **Untrue and Misleading Advertising**
18 **Bus. & Prof. Code §§ 17500 *et seq.***
19 **(Against all Defendants)**

20 28. Plaintiff hereby incorporates by reference each of the preceding allegations as though
21 fully set forth herein.

22 29. California’s False Advertising law (Bus. & Prof. Code §§ 17500, *et seq.*) makes it
23 unlawful for any person to make or disseminate or cause to be made or disseminated before the
24 public in this state, . . . in any advertising device . . . or in any other manner or means whatever,
25 including over the Internet, any statement, concerning . . . personal property or services, professional
26 or otherwise, or performance or disposition thereof, which is untrue or misleading and which is
27 known, or which by the exercise of reasonable care should be known, to be untrue or misleading .
28 . .

29 30. Defendants disseminated to members of the public in this state, statements concerning
the PAP2, in its advertisements and/or packaging, including advertisements made over the Internet.

