

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

Klever Marketing, Inc.,	)	
	)	
Plaintiff,	)	C.A. No: 6:13-cv-582-MHS-KNM
	)	
v.	)	
	)	
7-Eleven, Inc.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	
	)	
	)	
	)	

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**AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Klever Marketing, Inc. ("Klever Marketing"), by and through its undersigned counsel, for its amended complaint for Patent Infringement against Defendant 7-Eleven, Inc. ("7-Eleven"), hereby states:

**THE PARTIES**

1. Plaintiff Klever Marketing is a corporation organized and existing under the laws of Delaware, with its principal place of business in 1100 E. 6600 South, Suite 305, Salt Lake City, Utah 82121.

2. Defendant 7-Eleven is a Texas corporation with its principal place of business at One Arts Plaza, 1722 Routh St., Suite 1000, Dallas, TX 75201.

### **JURISDICTION AND VENUE**

3. This is a civil action for the infringement of United State Patent Number 5,420,606 ("the '606 Patent" or "the Patent-in-Suit"), under the Patent Laws of the United States 35 U.S.C. § 1 *et seq.*

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

5. This Court has specific and general personal jurisdiction over 7-Eleven, which has conducted and continues to conduct business in the State of Texas and in this Judicial District. 7-Eleven directly sells, offers for sale, and/or advertises products and services in the State of Texas and in this Judicial District. 7-Eleven has committed acts of infringement in the State of Texas and in this Judicial District, and elsewhere in the United States. 7-Eleven also derives substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **THE PATENT-IN-SUIT**

7. On May 30, 1995, the '606 Patent entitled "Instant Electronic Coupon Verification System," was duly and lawfully issued by the United States Patent and Trademark Office ("USPTO"). The '606 Patent relates to, among other things, the delivery and use of graphical coupons to an electronic communications device. Klever Marketing is the owner of the '606

Patent and has all rights to enforce the '606 Patent. A copy of the '606 Patent is attached as Exhibit A to this Complaint.

**COUNT ONE**

8. Klever Marketing incorporates by references each of the foregoing paragraphs of this Complaint as though fully set forth herein.

9. Upon information and belief, 7-Eleven makes and uses the 7-Eleven App, an electronic application distributed for use on smartphones and similar devices.

10. The Defendant has directly infringed, and continues to directly infringe, at least claim 1 of the '606 Patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents.

Defendant's infringing acts include, but are not limited to: making, using, selling, offering to sell, or distributing its 7-Eleven App. The accused product is the 7-Eleven App, which distributes electronic coupons. These electronic coupons are distributed directly to consumers through the 7-Eleven App available for download and use on smartphone hardware. Consumers may then use these coupons at 7-Eleven retail locations. 7-Eleven has directly infringed the '606 Patent by, among other acts, making and using the 7-Eleven App during its development. 7-Eleven has also directly infringed the '606 Patent through joint direct infringement by contracting directly with smartphone companies to direct and control the distribution and use of the 7-Eleven App on smartphones and tablets.

11. The Defendant has indirectly infringed at least claim 1 of the '606 Patent, through induced infringement under 35 U.S.C. § 271. The Defendant was notified by Klever Marketing of its infringement of the '606 Patent on June 18, 2013. Nevertheless, the Defendant continues its acts of indirect infringement as of the filing of this Complaint by continuing to actively induce consumers to make and use the 7-Eleven App. The Defendant induces consumers to download

electronic coupons onto smartphones and use them at its retail stores, within the scope of the '606 Patent.

12. With knowledge of the '606 Patent, the Defendant has indirectly infringed, and upon service of the complaint, continues to indirectly infringe the '606 Patent by inducing the direct infringement by consumers, by enabling, instructing, and encouraging consumers to make and use the infringing apparatus described in at least claim 1 of the '606 Patent, while aware that their use is infringing. Among other acts, 7-Eleven actively induces customers via its website , "[t]o get exclusive coupons for your local 7-Eleven stores . . . download our app today." At the download and installation site for the 7-Eleven App, the application instructions direct users to, "[e]xplore exclusive coupons right on your phone and redeem in-store." These directions, among other acts, induce 7-Eleven customers to use the 7-Eleven App in an infringing manner with respect to the '606 Patent.

13. The Defendant's use of the technology claimed in the '606 Patent is without license or authorization from Klever Marketing.

14. Klever Marketing has been, and continues to be, damaged by the Defendant's infringement of the '606 Patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Klever Marketing prays for entry of judgment as follows:

- a) adjudging that the Defendant has infringed one or more of the claims of the Patent-in-Suit, either literally or under the doctrine of equivalents;
- b) awarding Klever Marketing all damages to which it is entitled under 35 U.S.C. § 284 for Defendant's past infringement and continuing infringement, and ordering a full accounting of same;

- c) awarding Klever Marketing pre-judgment and post-judgment interest on its damages;
- d) awarding costs and attorney's fees to Klever Marketing, pursuant to 35 U.S.C. § 285; and
- e) awarding Klever Marketing such further and additional relief as the Court deem as just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Klever Marketing hereby demands a trial by jury on all claims and issues so triable.

Dated: October 18, 2013

Respectfully submitted,

/s/ Frank M. Washko

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*Counsel for Plaintiff Klever Marketing, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on October 18, 2013. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Frank M. Washko

Frank M. Washko