

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

BLUE CALYPSO, INC., and BLUE CALYPSO LLC v. GROUPON, INC.	Civil Action No. 6:12-cv-486 (LEAD CASE)
IZEA, INC.	Civil Action No. 6:12-cv-786
YELP, INC.	Civil Action No. 6:12-cv-788
FOURSQUARE LABS, INC.	Civil Action No. 6:12-cv-837

**BLUE CALYPSO'S THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiffs Blue Calypso, Inc. and Blue Calypso LLC (collectively "Blue Calypso") file this Third Amended Complaint and demand for jury trial seeking relief for patent infringement by Groupon, Inc. ("Groupon"), IZEA, Inc. ("IZEA"), Yelp, Inc. ("Yelp"), and Foursquare Labs, Inc. ("Foursquare") (collectively "Defendants"). Blue Calypso alleges the following:

THE PARTIES

1. Plaintiff Blue Calypso, Inc. is a Delaware corporation, with its principal place of business located in this District at 19111 North Dallas Parkway, Suite 200, Dallas, Texas 75287. Blue Calypso, Inc. is the sole owner and managing member of Blue Calypso, LLC.

2. Plaintiff Blue Calypso LLC is a Delaware corporation with its principal place of business located in this District at 19111 North Dallas Parkway, Suite 200, Dallas, Texas 75287.

3. On information and belief, Defendant Groupon is a Delaware corporation, with its principal place of business at 600 West Chicago Avenue, Chicago, Illinois 60654. Defendant Groupon may be served with summons by serving its registered agent for the service process, The Corporation Trust Company at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 198010

4. On information and belief, Defendant IZEA is a Nevada corporation, with its principal place of business at 150 North Orange Avenue, Suite 412, Orlando, FL 32801. IZEA may be served with summons by serving its registered agent for the service of process, VCorp Services, LLC, 1645 Village Center Circle, Suite 170, Las Vegas, Nevada 89134.

5. On information and belief, Defendant Yelp is a Delaware corporation, with its principal place of business at 706 Missouri Street, 7th Floor, San Francisco, CA 94103. Yelp may be served with summons by serving its registered agent for the service of process, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

6. On information and belief Foursquare is a Delaware corporation, with its principal place of business at 568 Broadway, 10th Floor, New York, New York 10012. Foursquare may be served with summons by serving its registered agent for the service of process, Business Filings Incorporated, 108 West 13th Street, Wilmington, Delaware 19801.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1330 and 1338(a).

8. This Court has personal jurisdiction over Defendants because Defendants have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this judicial district and because Defendants have committed acts of patent infringement within the State of Texas and within this judicial district.

9. Venue is proper in the judicial district pursuant to 28 U.S.C. §§ 139(b) and (c) and 1400(b).

PATENTS

10. On February 16, 2010, United States Patent No. 7,664, 516 (the "'516 patent") entitled "Method and System for Peer-to-Peer Advertising Between Mobile Communication Devices" was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso LLC owns title to the '516 patent. On March 24, 2010, Blue Calypso LLC entered into a License Agreement with Blue Calypso Holdings, Inc., which later became Blue Calypso, Inc. In that Agreement, Blue Calypso LLC granted an exclusive license to the '516 patent, including all substantial rights. A true and correct copy of the '516 patent is attached as Exhibit A.

11. On April 20, 2012, United States Patent No. 8,155,679 (the "'679 patent") entitled "System and Method for Peer-to-Peer Advertising Between Mobile

Communications Devices” was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso LLC owns title to the ’679 patent. On March 24, 2010, Blue Calypso LLC entered into a License Agreement with Blue Calypso Holdings, Inc., which later became Blue Calypso, Inc. In that Agreement, Blue Calypso LLC granted an exclusive license to the ’679 patent, including all substantial rights. A true and correct copy of the ’679 patent is attached as Exhibit B.

12. On May 7, 2013, United States Patent No. 8,438,055 (the “’055 patent”) entitled “System and Method for Providing Endorsed Advertisements and Testimonials Between Communication Devices” was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso LLC owns title to the ’055 patent. On March 24, 2010, Blue Calypso LLC entered into a License Agreement with Blue Calypso Holdings, Inc., which later became Blue Calypso, Inc. In that Agreement, Blue Calypso LLC granted an exclusive license to the ’055 patent, including all substantial rights. A true and correct copy of the ’055 patent is attached as Exhibit C.

13. On May 28, 2013, United States Patent No. 8,452,646 (the “’646 patent”) entitled “System and Method for Providing Endorsed Offers Between Communication Devices” was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso LLC owns title to the ’646 patent. On March 24, 2010, Blue Calypso LLC entered into a License Agreement with Blue Calypso Holdings, Inc., which later became Blue Calypso, Inc. In that Agreement, Blue Calypso LLC granted an exclusive license to the ’646 patent, including all substantial rights. A true and correct copy of the ’646 patent is attached as Exhibit D.

14. On June 4, 2013, United States Patent No. 8,457,670 (the "'670 patent") entitled "System and Method for Peer-to-Peer Advertising Between Mobile Communication Devices" was duly and legally issued by the United States Patent and Trademark Office. Blue Calypso LLC owns title to the '670 patent. On March 24, 2010, Blue Calypso LLC entered into a License Agreement with Blue Calypso Holdings, Inc., which later became Blue Calypso, Inc. In that Agreement, Blue Calypso LLC granted an exclusive license to the '670 patent, including all substantial rights. A true and correct copy of the '670 patent is attached as Exhibit E.

INFRINGEMENT

15. Groupon infringes by operating a computer-based system typified by the screen shots attached as Exhibits F and G. Groupon enrolls both consumers and advertisers in the program and offers deals to consumers, as shown in Exhibit F, based on at least a geographic match between the consumer and the advertiser's deal. In offering the deal to the matched consumer, Groupon encourages the consumer to refer the deal to other consumers, and provides the referring consumer with content to carry out the referral as shown in Exhibit G.

16. On information and belief, Groupon has infringed and is infringing one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of the equivalents, directly and indirectly. Groupon induces infringement by encouraging use of the system by consumers and advertisers. Groupon contributorily infringes by, *inter alia*, providing content to consumers for use in referring deals to other consumers (e.g., as shown on Exhibit F).

17. On information and belief, IZEA operates at least three platforms that infringe one or more claims of the '516, '679, '055, '646, and '670 patents, including Sponsored Tweets, Social Sparks and WeRewards.

18. Sponsored Tweets operates a system typified by the screen shots attached as Exhibits H and I. In doing so Sponsored Tweets infringes one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of equivalents. Sponsored Tweets directly infringes by using the system and making it available to advertisers and consumers. Sponsored Tweets induces infringement by consumers and advertisers by encouraging them to use its system. Sponsored Tweets contributorily infringes by providing content to consumers for use in the system.

19. Social Sparks operates a system described by the screen shot of the Social Sparks "How It Works" webpage attached as Exhibit J. In doing so Social Sparks infringes one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of equivalents. Social Sparks directly infringes by using the system and making it available to advertisers and consumers. Social Sparks induces infringement by consumers and advertisers by encouraging them to use its system. Social Sparks contributorily infringes by providing content to consumers for use in the system.

20. WeRewards operates a system described by the screen shots of IZEA's promotional video attached as Exhibits K and L. WeRewards infringes one or more claims of the '516 and '679 patents, literally or under the doctrine of equivalents. WeRewards directly infringes by using the system and making it available to advertisers and consumers. WeRewards induces infringement by consumers and advertisers by

encouraging them to use its system. WeRewards contributorily infringes by providing content to consumers for use in the system.

21. Yelp operates a system typified by the screen shots attached as Exhibits M and N. In doing so, Yelp infringes one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of equivalents. Yelp directly infringes by using the system and making it available to advertisers and consumers. Yelp induces infringement by consumers and advertisers by encouraging them to use its system. Yelp contributorily infringes by providing content to consumers for use in the system.

22. Foursquare operates a system typified by the screen shots attached as Exhibits O and P. In doing so, Foursquare infringes one or more claims of the '516, '679, '055, '646, and '670 patents, literally or under the doctrine of equivalents. Foursquare directly infringes by using the system and making it available to advertisers and consumers. Foursquare induces infringement by consumers and advertisers by encouraging them to use its system. Foursquare contributorily infringes by providing content to consumers for use in the system.

23. On information and belief, Defendants will continue to infringe the '516, '679, '055, '646, and '670 patents unless and until they are enjoined by this Court.

24. Defendants have caused and will continue to cause Blue Calypso irreparable injury and damage by infringing the '516, '679, '055, '646, and '670 patents. Blue Calypso will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendants are enjoined from infringing the '516, '679, '055, '646, and '670 patents.

PRAYER FOR RELIEF

WHEREFORE, Blue Calypso respectfully requests this Court:

- A. Enter judgment that Defendants have infringed the '516, '679, '055, '646, and '670 patents;
- B. Enter an order permanently enjoining Defendants and their officers, agents, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '516, '679, '055, '646, and '670 patents;
- C. Award Blue Calypso damages in an amount sufficient to compensate it for Defendants infringement of the '516, '679, '055, '646, and '670 patents, together with prejudgment and post-judgment interests and costs under 35 U.S.C. § 284;
- D. Award Blue Calypso an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- E. Declare this case to be "exceptional" under 35 U.S.C. § 285 and award Blue Calypso its attorney fees, expenses, and costs incurred in this action; and
- F. Award Blue Calypso such other and further relief as this Court deems just and proper.

JURY DEMAND

Blue Calypso hereby requests a trial by jury on issues so triable by right.

Dated: April 22, 2015

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Carl E. Bruce

Thomas M. Melsheimer
Texas Bar No. 13922550
txm@fr.com
Carl E. Bruce
Texas Bar No. 24036278
ceb@fr.com
David B. Conrad
Texas. Bar. No. 24049042
conrad@fr.com
Andrew T. Gorham
Texas Bar No. 24012715
gorham@fr.com
Matthew A. Colvin
Texas Bar No. 24087331
colvin@fr.com
1717 Main Street, Suite 5000
Dallas, Texas 75201
Telephone (214) 747-5071
Facsimile (214) 747-2091

Robert E. Hillman
Massachusetts BBO No. 234,820
Hillman@fr.com
One Marina Park Drive
Boston, MA 02210

Jack Wesley Hill
Texas Bar No. 24032294
wh@wsfirm.com
WARD & SMITH LAW FIRM
1127 Judson Road, Suite 220
Longview, Texas 75601
Telephone (903) 757-6400
Facsimile (903) 757-2323

**COUNSEL FOR BLUE CALYPSO, INC. and
BLUE CALYPSO LLC**

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 22, 2015 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Carl E. Bruce

Carl E. Bruce