

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

SCVNGR, Inc. d/b/a LevelUp

Plaintiff,

v.

DailyGobble, Inc. d/b/a Relevant

Defendant.

Civil Action No. 6:15-cv-493

**Jury Trial Demanded**

**COMPLAINT FOR PATENT INFRINGEMENT**

**INTRODUCTION**

1. Plaintiff SCVNGR, Inc. d/b/a LevelUp (“LevelUp”) is a Boston-based technology startup that created a platform for one-touch, secure mobile payments with integrated consumer rewards and loyalty redemption. The LevelUp platform and the mobile applications that integrate to the platform enable consumers to initiate payment for goods and services securely, and to earn and redeem merchant-offered rewards automatically, simply by presenting a code, such as a bar code or quick-response code (“QR Code”) on a smartphone display, to a merchant’s retail point of sale terminal. LevelUp’s platform employs proprietary methods and technology conceived, created and developed by LevelUp, including the methods claimed in U.S. Patent No. 8,639,619 (“the ’619 patent”), invented by LevelUp’s founder, Seth Priebatsch.

2. Defendant DailyGobble, Inc. d/b/a Relevant (“Relevant”) develops branded mobile applications for merchants that enable consumers to earn and redeem merchant-offered rewards in connection with traditional point of sale purchases, including by displaying a bar code on a smartphone. Relevant competes directly with LevelUp for merchant business. Until about early

2015, none of Relevant's mobile applications integrated mobile payments functionality together with merchant rewards redemption. Beginning in 2015, however, Relevant began copying LevelUp's proprietary technology to offer, sell, and support mobile applications that also include one-touch, secure payment and automatic rewards redemption, including by infringing the patented methods and systems claimed in LevelUp's '619 patent. Relevant is now willfully infringing LevelUp's '619 patent by continuing to provide, offer, sell, and support mobile applications and related services that embody and practice the '619 patent claims.

3. LevelUp brings this Complaint for Patent Infringement against Relevant in order to enjoin, preliminarily and permanently, the use, sale, and offer for sale by Relevant of any applications, services, systems, or products that employ or practice the methods or systems claimed in LevelUp's '619 patent, and to recover damages to LevelUp's business including lost sales and other damages, but in any event no less than a reasonable royalty. LevelUp also seeks an award of enhanced damages for Relevant's willful infringement of the '619 patent.

#### **THE PARTIES**

4. SCVNGR, Inc., d/b/a LevelUp ("LevelUp"), is a Delaware corporation with its principal place of business at 101 Arch Street, Suite 401, Boston, MA 02110.

5. DailyGobble, Inc. d/b/a Relevant ("Relevant") is a Delaware corporation having its principal place of business at 31 E. 32nd Street, Suite 502, New York, NY 10017.

#### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

7. This Court has subject matter jurisdiction over LevelUp's claim for Patent Infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper in the Eastern District of Texas, Tyler Division, pursuant to 28 U.S.C. §§ 1391(b) and (c).

9. Both parties, LevelUp and Relevant, market their products and services, including Relevant's infringing products and services, actively to merchants within this judicial district.

10. The products and services of both parties, LevelUp and Relevant, including Relevant's infringing products and services, are used by merchants within this judicial district.

11. This Court has personal jurisdiction over Relevant.

12. Relevant developed, distributes, and supports a mobile application branded for Fuzzy's Taco Opportunities, LLC, d/b/a Fuzzy's Taco Shop, headquartered in Fort Worth, Texas, with more than fifty (50) retail locations within the state, and approximately twenty (20) locations within the Eastern District of Texas, that accept the Relevant mobile application for merchant-offered rewards accrual and redemption.

13. Relevant developed, distributes, and supports a mobile application branded for CBC Restaurant Corp. d/b/a Corner Bakery Café, headquartered in Dallas, Texas, with more than thirty-five (35) retail locations within the state, and approximately ten (10) locations within the Eastern District of Texas, that accept the Relevant mobile application for merchant-offered rewards accrual and redemption.

14. Relevant has purposefully directed its business activities into Texas and this judicial district, including by selling, distributing, and supporting mobile applications and services to merchants within the district, and by offering products and services within the district that infringe LevelUp's '619 patent. Relevant elected to do business in Texas, and in this judicial district, and thereby purposefully availed itself of the privilege of conducting its business activities within Texas. LevelUp's claims for patent infringement arise out of and relate directly

to Relevant's transacting business in Texas, which business activities have caused LevelUp injury. On information and belief, Relevant's business operations in Texas constitute a substantial portion of the business operations of the company. It therefore would not offend traditional notions of fair play and justice for this Texas court to exercise personal jurisdiction over Relevant.

**COUNT I - INFRINGEMENT OF U.S. PATENT NO. 8,639,619**

15. LevelUp incorporates all prior paragraphs of this complaint.

16. The '619 patent, entitled "*Secure Payment Method and System*," was issued to Seth Priebatsch by the Patent Office on January 28, 2014. The patent issued from application no. 13/718,466, filed on December 18, 2012, which claimed priority to the filing date of U.S. Provisional Application No. 61/671,381, filed on July 13, 2012. LevelUp is the owner by assignment of all right, title, and interest to and in the '619 patent. A copy of the '619 patent is attached hereto as Exhibit 1.

17. Relevant infringes claims 1-2, 4-10, and 12-14 of the '619 patent pursuant to one or more of 35 U.S.C. § 271 (a)-(c), directly and/or indirectly by inducing and/or contributing to infringement, literally and/or under the doctrine of equivalents, including through the production, distribution, use, offer for sale, and sale of branded merchant mobile applications and related services that enable consumers to initiate secure payments at a merchant's point of sale and to automatically redeem and earn merchant-offered rewards.

18. For example, and by way of example only, Relevant distributes, through the Apple iTunes and Google Play online stores, a mobile application branded for Le Pain Quotidien, Inc. ("LPQ"), that enables customers of LPQ to initiate a secure payment at a LPQ location, and redeem and accrue merchant-offered rewards automatically, through a single scan of a bar code

displayed on the customer's mobile device screen. The application can be used to initiate secure payments at several LPQ locations in New York City. The payments are facilitated by Relevant for LPQ. Relevant infringes the '619 patent each time a transaction is initiated by a consumer or person using the Relevant-LPQ application.

19. On information and belief, Relevant has offered to create similar branded mobile applications for, and provide similar services to, other entities, including at least Fuzzy's Taco Opportunities, LLC, d/b/a Fuzzy's Taco Shop and CBC Restaurant Corp. d/b/a Corner Bakery Café.

20. On information and belief, Relevant plans to begin offering and distributing mobile applications and related services that infringe LevelUp's '619 patent for other entities, including at least Fuzzy's Taco Shop and Corner Bakery Café, in the immediate future.

21. LevelUp has been damaged and continues to be damaged directly by Relevant's infringement of the '619 patent.

22. As a consequence of the infringement set forth herein, LevelUp has been and continues to be irreparably harmed, and will continue to be immediately and irreparably harmed unless this Court enjoins Relevant from further acts of infringement.

23. On information and belief, Relevant is aware of the existence of the '619 patent, and Relevant's infringement of the '619 patent is willful.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff LevelUp requests that this Court:

- a) Enjoin preliminarily Relevant from making, using, selling, or offering to sell products and services that infringe the '619 patent;
- b) Grant judgment in favor of LevelUp that the '619 patent has been and is infringed

by Relevant;

- c) Enjoin permanently Relevant from making, using, selling, or offering to sell products and services that infringe the '619 patent;
- d) Award LevelUp damages in an amount to be determined at trial, together with pre- and post-judgment interest;
- e) Award LevelUp enhanced damages pursuant to 35 U.S.C. §§ 284 and 285;
- f) Award LevelUp its attorney fees and the costs of this action; and
- g) Award such other relief as the Court deems proper;

**DEMAND FOR JURY TRIAL**

LevelUp demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: May 26, 2015

/s/ Eric H. Findlay

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