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

NEXUSCARD, INC.,	
Plaintiff,	Civil Action No. _____
v.	
BROOKSHIRE GROCERY COMPANY,	**JURY TRIAL DEMANDED**
Defendant.	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff NexusCard, Inc., ("NexusCard"), by and through its undersigned counsel, files this Original Complaint for patent infringement against Defendant Brookshire Grocery Company as follows:

PARTIES

1.   Plaintiff NexusCard, Inc. is a California corporation with its principal place of business located at 22865 Willard Avenue, Lake Forest, CA 92630.

2.   Brookshire Grocery Company ("Brookshire" or "Defendant") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 1600 W SW Loop 323, Tyler, Texas 75701.

JURISDICTION AND VENUE

3.   This action arises under the patent laws of the United States, 35 U.S.C. §§ 101, including 35 U.S.C. §§ 271, 281-285.

4.   This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5.   This Court may exercise personal jurisdiction over Brookshire, for Brookshire is headquartered and conducts continuous and systematic business in Texas and this District. This patent-infringement case arises directly from Brookshire's continuous and systematic activity in this District. In short, this Court's exercise of jurisdiction over Brookshire would be consistent with the Texas long-arm statute and traditional notions of fair play and substantial justice.

6.   Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 5,924,080

7.   On July 13, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,924,080 (the "'080 patent") (attached hereto as Exhibit A) to the inventor Glen Douglas Johnson assigned all rights, title and interest in and to the '080 patent to NexusCard, Inc. including the right to exclude the Defendant from making, using, selling, offering to sell, advertising or importing the patented invention(s) of the '080 patent, and the right to sublicense the '080 patent, collect damages and initiate lawsuits against the Defendant. The '080 patent is in full force and effect.

8.   Brookshire is infringing at least one of the claims of the '080 patent through the provision of the "thank you" program (hereinafter, "Thank You Program") in this District and elsewhere in the United States.

9.   For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Thank You Program infringes claim 11 of the '080 patent. Claim 11 is a "method of processing and applying merchandise discounts to a consumer's

purchases . . . ." (Ex. A , 11:41-42.) Brookshire performs such a method through the Thank You Program.

10.   The method of claim 11 involves providing a "computer membership system," which includes the following components: (i) a computer at the point of purchase; (ii) a computer with the provider having a database that stores information collected at the time a consumer becomes a member and at the time and point of purchase; and (iii) a means allowing "real time" communication between the provider and the merchant. (Ex. A, 11:48-60.) Brookshire provides this "computer membership system" when it offers consumers the Thank You Program, having computers at the point of purchase, a database that collects a consumer's Thank You Program information and purchase information, and a means of communicating all of this information at the time and point of purchase (i.e., in "real time").

11.   The claim 11 method comprises 18 steps, which can be broken down as follows:

> a. To perform the method, an infringer like Brookshire provides the consumer with a membership identification that includes a memory storage means that contains an identification code that can access and is stored on the provider's database. (Ex. A, 11:62-12:6.) When a consumer becomes a Thank You Program member, Brookshire issues her either a Thank You Program card, a tag that may be attached to a key chain, or both. The Thank You Program card and tag include memory storage means that contain an identification code that can access Brookshire' provider database.

b. In the claim 11 method, the provider also stores in its database codes identifying merchandise as well as discounts that have been determined to be applied to certain merchandise. (Ex. A, 12:7-12.) Additionally, at the point of sale, the merchant identifies merchandise that is subject to a discount at the point of sale. (*Id.*, 12:12-14.) Brookshire uses a database to store codes that identify merchandise and to store discounts that are to be applied to certain merchandise at the point of sale in a Brookshire store. Additionally, within the Brookshire store, Brookshire indicates to consumers what discounts will be applied to certain merchandise at the point of sale for Thank You Program members.

c. The merchandise is then transported to the point of sale, where the merchandise code is scanned. (Ex. A, 12:16-24.) In claim 11, the consumer ID is also scanned at the point of sale. (*Id.*, 12:25.) In Brookshire stores, Brookshire sells merchandise to consumers by displaying merchandise throughout the store and providing means by which the consumer transports the desired merchandise to the point of sale. For example, Brookshire provides consumers with plastic baskets so that the consumer can easily transport the desired merchandise to the point of sale where the merchandise codes and consumer's Thank You Program card or tag is scanned.

d. Once the consumer ID and merchandise codes are scanned in claim 11, the consumer ID is uploaded to the provider database and the

consumer is verified as a member. (Ex. A, 12:26-28.) The merchandise

ID codes are also uploaded to the merchant computer and a

comparison is performed to determine the merchandise that is

discounted. (*Id.*, 12:29-41.) All of these steps are performed when a

consumer checks out of a Brookshire store. The consumer's

membership in the Thank You Program is verified, and then the

merchant computer determines what selected merchandise is

discounted.

e. After the discounted items are determined and calculated, then in

claim 11 the merchandise codes subject to a discount are uploaded to

the provider and the provider then downloads the discounts to the

merchant computer. (Ex. A, 12:42-47.) At the point of sale, the

merchant computer then prints a sales slip that includes the discounts.

(*Id.*, 12:48-51.) Brookshire performs these same steps to facilitate each

Thank You Program transaction, downloading the discount

information to the computer at the point of sale where the consumer

receives a sales slip reflecting the discounts obtained by being a Thank

You Program member.

f. Finally, in claim 11, the consumer information—what merchandise

was purchased and what discounts were applied—is sorted and stored

in the provider database and stored on the merchant computer. (Ex. A,

12:52-57.) In this way, discounts to merchandise can be provided to

consumers without the merchant having to process the discount or the

consumer having to present a coupon. (*Id.*, 12:57-63.) This is what Brookshire provides through the Thank You Program, using the Brookshire provider database as a clearinghouse for discounts to be applied to certain merchandise selected by Thank You Program members.

PRAYER FOR RELIEF

WHEREFORE, NexusCard prays for the following relief against Brookshire:

(a)   Judgment that Brookshire has directly infringed claims of the '080 patent;

(b)   For a reasonable royalty;

(c)   For pre-judgment interest and post-judgment interest at the maximum rate allowed by law; and

(d)   For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

NexusCard demands a trial by jury on all matters and issues triable by jury.

Dated: June 5, 2015   Respectfully Submitted,

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