

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

NEXUSCARD, INC.,

Plaintiff,

v.

WALGREEN CO.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff NexusCard, Inc., (“NexusCard”), by and through its undersigned counsel, files this Original Complaint for patent infringement against Defendant Walgreen Co. 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. Defendant Walgreen Co. (“Walgreens” or “Defendant”) is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at 108 Wilmot Road, Deerfield, IL 60015. Walgreen may be served via its registered agent: Illinois Corporation Service C, 801 Adlai Stevenson Dr., Springfield, IL 62703.

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 Walgreens, for Walgreens conducts continuous and systematic business in Texas and this District. This patent-infringement case arises directly from Walgreens' continuous and systematic activity in this District. In short, this Court's exercise of jurisdiction over Walgreens 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)(2) 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. Walgreens is infringing at least one of the claims of the '080 patent through the provision of the "balance rewards" program (hereinafter, "Balance 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 Balance 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.) Walgreens performs such a method through the Balance 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.) Walgreens provides this “computer membership system” when it offers consumers the Balance Program, having computers at the point of purchase, a database that collects a consumer’s Balance 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 Walgreens 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 Balance Program member, Walgreens issues her either a Balance Program card, a tag that may be attached to a key

chain, or both. The Balance Program card and tag include memory storage means that contain an identification code that can access Walgreens' 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.) Walgreens 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 Walgreens store. Additionally, within the Walgreens store, Walgreens indicates to consumers what discounts will be applied to certain merchandise at the point of sale for Balance 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 Walgreens stores, Walgreens 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, Walgreens 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 Balance 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 Walgreens store. The consumer's membership in the Balance 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.) Walgreens performs these same steps to facilitate each Balance 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 Balance 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 Walgreens provides through the Balance Program, using the Walgreens provider database as a clearinghouse for discounts to be applied to certain merchandise selected by Balance Program members.

PRAYER FOR RELIEF

WHEREFORE, NexusCard prays for the following relief against Walgreens:

- (a) Judgment that Walgreens 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,

/s/ Andrew W. Spangler
Andrew Spangler
Texas Bar No. 24041960
Spangler Law P.C.
208 N. Green St., Suite 300
Longview, Texas 75601
Phone: (903) 753-9300
Fax: (903) 553-0403
spangler@spanglerlawpc.com

Matthew M. Wawrzyn (*pro hac vice* pending)

mwawrzyn@siprut.com

Stephen C. Jarvis (*pro hac vice* pending)

sjarvis@siprut.com

SIPRUT PC

17 N. State St., Suite 1600

Chicago, Illinois 60602

312.236.0000

Fax: 312.300.4905

www.siprut.com

Attorneys for Plaintiff

NexusCard, Inc.