

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

NEXUSCARD, INC.,

Plaintiff,

v.

THE KROGER 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 The Kroger 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 The Kroger Co. (“Kroger” or “Defendant”) is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202. Kroger may be served with process by serving their registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620 Austin, Texas 78701.

**JURISDICTION AND VENUE**

3. This action arises under the Patent Laws of the United States, 35 U.S.C. §

1 et seq., including 35 U.S.C. §§ 271, 281-285.

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

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

contain an identification code that can access Kroger's 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.) Kroger 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 Kroger store. Additionally, within the Kroger store, Kroger indicates to consumers what discounts will be applied to certain merchandise at the point of sale for Plus 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 Kroger stores, Kroger 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, Kroger 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 Plus 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 Kroger store. The consumer's membership in the Plus 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.) Kroger performs these same steps to facilitate each Plus 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 Plus 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 Kroger provides through the Plus Program, using the Kroger provider database as a clearinghouse for discounts to be applied to certain merchandise selected by Plus Program members.

**PRAYER FOR RELIEF**

WHEREFORE, NexusCard prays for the following relief against Kroger:

- (a) Judgment that Kroger 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  
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