

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

NexusCard, Inc.,

Plaintiff,

v.

Winn-Dixie Stores, Inc.,

Defendant.

Case No. 4:15-cv-138 (CDL)

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 Winn-Dixie Stores, Inc. 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. Winn-Dixie Stores, Inc. (“Winn-Dixie” or “Defendant”) is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 5050 Edgewood Court, Jacksonville, Florida 32254-3601.

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 Winn-Dixie, for Winn-Dixie is owns and operates several grocery stores in Columbus, Georgia and conducts continuous and systematic business in Georgia and this District. This patent-infringement case arises directly from Winn-Dixie's continuous and systematic activity in this District. In short, this Court's exercise of jurisdiction over Winn-Dixie would be consistent with the Georgia 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).

Count I -- 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. Winn-Dixie is infringing at least one of the claims of the '080 patent through the provision of the "Reward" card program (hereinafter, "Reward 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 Reward Program infringes claims, 1-4, 7-9, and 11 of the '080 patent. Claim 1 is a "method of processing and applying merchandise discounts to a

consumer's purchases" (Ex. A , 10:2-8.) Winn-Dixie performs such a method through the Reward Program.

10. The method of claim 1 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, 10:2-8.) Winn-Dixie provides this "computer membership system" when it offers consumers the Reward Program, having computers at the point of purchase, a database that collects a consumer's Reward 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 1 method comprises 17 steps, which can be broken down as follows:

- a. To perform the method, an infringer like Winn-Dixie 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, 10:9-16.) When a consumer becomes a Reward Program member, Winn-Dixie issues her either a Reward Program card, a tag that may be attached to a key chain, or both. The Reward Program card and tag include memory storage means that contain an identification code that can access Winn-Dixie's provider database.

- b. In the claim 1 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, 10:31-33.) Additionally, at the point of sale, the merchant identifies merchandise that is subject to a discount at the point of sale. (*Id.*, 12:33-36.) Winn-Dixie 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 Winn-Dixie store. Additionally, within the Winn-Dixie store, Winn-Dixie indicates to consumers what discounts will be applied to certain merchandise at the point of sale for Reward Program members.
- c. The merchandise is then transported to the point of sale, where the merchandise code is scanned. (Ex. A, 10:39-44.) In claim 10, the consumer ID is also scanned at the point of sale. (*Id.*, 10:48.) In Winn-Dixie stores, Winn-Dixie 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, Winn-Dixie 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 Reward Program card or tag is scanned.
- d. Once the consumer ID and merchandise codes are scanned in claim 1, the consumer ID is uploaded to the provider database and the consumer is verified as a member. (Ex. A, 10:52-55.) The merchandise ID codes

are also uploaded to the merchant computer and a comparison is performed to determine the merchandise that is discounted. (*Id.*, 10:49-51.) All of these steps are performed when a consumer checks out of a Winn-Dixie store. The consumer's membership in the Reward 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 1 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, 10:65-67.) At the point of sale, the merchant computer then prints a sales slip that includes the discounts. (*Id.*, 11:1-3.) Winn-Dixie performs these same steps to facilitate each Reward 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 Reward Program member.
- f. Finally, in claim 1, 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, 11:4 - 6.) 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.*, 11:9-14.) This is what Winn-Dixie provides through the Reward Program, using the Winn-Dixie provider

database as a clearinghouse for discounts to be applied to certain merchandise selected by Reward Program members.

12. For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Reward Program infringes claim 2 of the '080 patent. Claim 2 is dependent on claim 1 further where the consumer purchase data is compiled in a demographics database, thus providing demographic reports regarding consumer purchasing trends. (Ex. A. 11:15-18.) Winn-Dixie collects purchase data of the Reward Program members. Said data is organized and reports are generated on sales data including demographic data, sales trends. According to Winn-Dixie's Privacy Policy (Ex. B), Winn-Dixie collects, personally identifiable information ("PII"), non-personably identifiable information ("non-PII") (together "Customer Information"). Winn-Dixie uses Customer Information to conduct research and analysis.

13. For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Reward Program infringes claim 3 of the '080 patent. Claim 3 is dependent on claim 1 wherein the indicia provides customers with discount related information through at least one form of media advertisement. (Ex. A. 11:19-21) Winn-Dixie provides advertisement circulars that include Reward Program discount information.

14. For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Reward Program infringes claim 4 of the '080 patent. Claim 4 is dependent on claim 1 where said indicia is displayed in proximity of the merchandise subject to a discount. (Ex. A. 11:22-23). Winn-Dixie displays Reward Program indicia near merchandise. The actual discount is displayed on the pricing information identifying

the merchandise on the location where the merchandise is located. Further, Winn-Dixie displays the amount of money saved for the Reward Program member on said merchandise.

15. For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Reward Program infringes claim 7 of the '080 patent. Claim 7 depends on claim 1 and identifies that the provider is a centralized computer networked in real time communication to at least one merchant member. (Ex. A 11:29-31). Winn-Dixie utilizes a centralized computer networked in real time communication with multiple merchant terminals, thus allowing a Reward Program member to use their Reward card at more than one Winn-Dixie merchant store.

16. For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Reward Program infringes claim 8 of the '080 patent. Claim 8 depends on claim 1 and identifies that the communication means is a cash register. (Ex. A 11:32-33). Winn-Dixie utilizes cash registers with communication means to practice the method of claim 1 and claim 8 of the '080 patent.

17. For example, and without limiting the claims of the '080 patent that will be asserted in this action, the Reward 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.) Winn-Dixie performs such a method through the Reward Program.

18. 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.) Winn-Dixie provides this “computer membership system” when it offers consumers the Reward Program, having computers at the point of purchase, a database that collects a consumer’s Reward 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”).

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

- a. To perform the method, an infringer like Winn-Dixie 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 Reward Program member, Winn-Dixie issues her either a Reward Program card, a tag that may be attached to a key chain, or both. The Reward Program card and tag include memory storage means that contain an identification code that can access Winn-Dixie’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.) Winn-Dixie 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

Winn-Dixie store. Additionally, within the Winn-Dixie store, Winn-Dixie indicates to consumers what discounts will be applied to certain merchandise at the point of sale for Reward 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 Winn-Dixie stores, Winn-Dixie 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, Winn-Dixie 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 Reward 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 Winn-Dixie store. The consumer's membership in the Reward 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.) Winn-Dixie performs these same steps to facilitate each Reward 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 Reward 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 Winn-Dixie provides through the Reward Program, using the Winn-Dixie provider database as a clearinghouse for discounts to be applied to certain merchandise selected by Reward Program members.
20. Plaintiff has been damaged, is being presently damaged, and will continue to be damaged in the future by the infringement described herein.

Prayer for Relief

WHEREFORE, NexusCard prays for the following relief against Winn-Dixie:

- (a) Judgment that Winn-Dixie 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.

Date: August 18, 2015

Respectfully Submitted,

/s/ Steven G. Hill

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