

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ELECTRONIC RECEIPTS DELIVERY  
SYSTEMS, LLC,

Plaintiff,

vs.

THE FRESH MARKET, INC.

Defendants.

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Case No:

**PATENT CASE**

**COMPLAINT**

Plaintiff Electronic Receipts Delivery Systems, LLC (“Plaintiff” or “ERDS”) files this Complaint against The Fresh Market, Inc. (“Defendant” or “TFMI”) for infringement of United States Patent No. 8,534,551 (hereinafter “the ‘551 Patent”).

**PARTIES AND JURISDICTION**

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff is a Texas limited liability company with a virtual office located at 1400 Preston Rd., Suite 400, Plano, TX 75093.

4. On information and belief, Defendant is a Delaware corporation with principle place of business at 628 Green Valley Road, Suite 500, Greensboro, NC 27408. This Court has personal jurisdiction over Defendant because Defendant has committed, and continues to

commit, acts of infringement in this District, has conducted business in this District, and/or has engaged in continuous and systematic activities in this District.

5. Upon information and belief, Defendant's instrumentalities that are alleged herein to infringe were and continue to be used, imported, offered for sale, and/or sold in this District.

### VENUE

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1400(b) because Defendant is deemed to reside in this District. In addition, or in the alternative, acts of infringement are occurring in this District and Defendant has a regular and established place of business in this District. For example, on information and belief, Defendant has a place of business located at 30098 Veterans Way, Rehoboth Beach, DE 19971. On information and belief, Defendant has other regular and established places of business in this District.

### COUNT I (INFRINGEMENT OF UNITED STATES PATENT NO. 8,534,551)

7. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States and, in particular, under 35 U.S.C. §§ 271, *et seq.*

9. Plaintiff is the owner by assignment of the '551 Patent with sole rights to enforce the '551 Patent and sue infringers.

10. A copy of the '551 Patent, titled "System and Method for Issuing Digital Receipts for Purchase Transactions Over a Network," is attached hereto as Exhibit A.

11. The '551 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

12. Upon information and belief, Defendant has infringed and continues to infringe

one or more claims, including at least Claim 1, of the '551 patent by using payment systems that issue digital receipts to customers upon completion of a payment transaction in a manner covered by one or more claims of the '551 Patent. Specifically, Defendant uses point of sale ("POS") terminals, which issue digital receipts ("System"). Defendant has infringed and continues to infringe the '551 patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

13. Regarding Claim 1, the System performs a method of issuing digital receipts over an electronic network and receives, by at least one server in communication with the network, a registration request to receive digital receipts in association with a first credit card account. For example, the System includes a server (e.g., Index cloud based server) in communication with a network. The server receives a registration request to receive digital receipts in associated with a first credit card account (e.g., customer signs up for The Fresh Market E-receipts in the store at a point-of-sale terminal connected to a server). The digital receipts are associated with a first credit card account (e.g., the customer's credit card account). Certain aspects of this element are illustrated in the screen shots below and/or in screen shots provided in connection with other allegations herein.



## Start Enjoying E-Receipts Today

Keep all your receipts from The Fresh Market in one convenient location. When you go paperless, you will also receive personalized recommendations and special offers. Next time you visit your local store, be sure to sign up!

### How It Works

#### 1 Swipe

At checkout, swipe your credit or debit card. You'll be asked to enter your email address to begin receiving e-receipts. Multiple cards can also be attached to this same email address.

#### 3 Receipts

That's all there is to it. You will now automatically receive your receipts via email when this same card is used. We'll also send you product recommendations, information about weekly specials and personalized offers.

<https://www.thefreshmarket.com/your-market/e-receipts>

## **The Fresh Market unpacks mobile-optimized ereceipts, further tailoring coupons**

Grocery chain The Fresh Market is leveraging a new ereceipt program that enables customers to enjoy a more streamlined, paperless experience at in-store checkouts and opens wider opportunities for customized offers on mobile.

The Fresh Market has teamed up with retail software company Index to power the new ereceipt platform and further digitize the state of its bricks-and-mortar stores. The program automatically remembers customers' preferences based on items they have already purchased, enabling The Fresh Market to follow up with those individuals via mobile and serve them relevant, personalized deals to incite future sales.

<http://www.retaildive.com/ex/mobilecommercedaily/the-fresh-market-unpacks-mobile-optimized-ereceipts-further-tailoring-personalized-coupons>

"With unique data insights and analysis, Index's cloud-based platform is enabling us to create truly personalized and engaging customer experiences," said Michelle Lantow, CAO of New Seasons Market. "Index has uncovered important trends, from customer preferences and shopping frequency to store performance. This has been incredibly valuable as we expand our business to new locations, since our customers are always our top priority."

<http://www.prnswire.com/news-releases/index-launches-semi-integrated-payments-and-hosted-gateway-to-bring-flexibility-reliability-and-security-to-in-store-retail-300166129.html>

"The Fresh Market has received a lot of positive feedback from customers who love the new checkout experience powered by Index," Mr. Wall said. "Customers have been thrilled that after a one-time sign-up for ereceipts, The Fresh Market remembers their preferences and automatically sends an ereceipt every time they come back to shop.

<http://www.retaildive.com/ex/mobilecommercedaily/the-fresh-market-unpacks-mobile-optimized-ereceipts-further-tailoring-personalized-coupons>

## One-Time Sign-Up

The moment a customer signs up, Index software links their email address to their payment card, and they'll automatically receive an e-receipt upon their next visit. It's fast, convenient and personalized—customers get a great experience and you unlock a valuable channel to reach your best shoppers.



<http://www.index.com/payments-and-security/e-receipts/>

14. The System stores, by the at least one server, at least one first customer record (e.g., name, phone, email, etc.) in a database (e.g., Index database), the at least one first customer record associating the first credit card account with a destination associated with a first customer. For example, a customer's information is stored in a database in a customer record which is associated with the customer's credit card account as well as the customer's email address. Certain aspects of this element are illustrated in the screen shots below and/or in screen shots provided in connection with other allegations herein.



## How It Works

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<https://www.thefreshmarket.com/your-market/e-receipts>

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Index's full platform allows companies to offer secure in-store payments, build a customer database and customize shopping experiences.

<http://www.retaildive.com/ex/mobilecommercedaily/the-fresh-market-unpacks-mobile-optimized-ereceipts-further-tailoring-personalized-coupons>

MERCHANT

The Fresh Market

LOCATIONS

178 Stores in 24 States

INDEX SOLUTIONS

Customer Database, E-Receipts,  
Automated Marketing

<http://www.index.com/grocery/the-fresh-market/>

# Your Customer Database

Recognize Every Shopper & Reach More Customers

Online, every customer has an account, and each account has perfect contact data — name, email, phone, billing address and shipping address. Every search, click, browse and sale can be linked to a unique person and customer marketing can be targeted and measured.



## Customer Accounts to Recognize Every Shopper

When a customer shops for the first time, Index generates a secure, retailer-specific identity token that uniquely identifies the shopper based on their payment card. Index captures their shopping behavior and evolving preferences to build a real-time, unified customer account, giving you a deep level of customer insight — with no operational / customer-facing impact.



At checkout, customers can easily sign up for e-receipts, loyalty and digital marketing by entering their email once, right on the PIN pad. Index connects email with payment card so that customers are automatically recognized the next time they shop. If you don't have a loyalty program, no problem. E-receipts are all you need for customers to enjoy fast, personalized checkout while you build and grow your customer contact database. With more contact data, you can reach and engage more customers. And with Index's unique POS integration, you'll always know the real-time impact of every marketing campaign so you can optimize ROI.

<http://www.index.com/customer-database/>

The moment a customer signs up, Index software links their email address to their payment card, and they'll automatically receive an e-receipt upon their next visit. It's fast, convenient and personalized —customers get a great experience and you unlock a valuable channel to reach your best shoppers.



### +12M Customer IDs

With an account for every payment card, The Fresh Market can see how many new and returning customers visit each day, understand customer behavior (sales, basket size, frequency), and measure same-customer-sales — not just same-store sales, sales by department, or changes in inventory.



### +1M Customer Email Addresses

With seamless email capture on the PIN pad, The Fresh Market tripled its customer contact database in just eight months.

<http://www.index.com/grocery/the-fresh-market/>

15. The System receives at the at least one server (e.g., Index server) from a point-of-sale terminal, information identifying the first credit card account and information about a transaction. For example, at the time of purchase, the customer swipes their credit card in a

credit card reader at the Point-of-Sale system, which transmits, to the server, the credit card information identifying the credit card account along with purchase information such as items purchased. The received information identifies the first credit card account (e.g., recognizes customer using a transaction token which reflects customer credit card number) and information about a transaction (e.g. payment amounts) from a point-of-sale terminal (e.g. Verifone PIN pads). Certain aspects of this element are illustrated in the screen shots below and/or in screen shots provided in connection with other allegations herein.

### Customer Database: Contact Data for More Shoppers

At checkout, customers can easily sign up for e-receipts and digital marketing by entering their email once, right on The Fresh Market's Verifone PIN pads. Index connects email with payment card so customers are automatically recognized the next time they shop.

<http://www.index.com/grocery/the-fresh-market/>



#### Index Privacy Policy

Whenever you interact with our Services, we collect certain information about you every time you use the Services, whether directly through us or through a Retailer. For instance, when you use our Services in connection with a payment to a Retailer, we collect Transaction Data, including information about when and where the transaction occurred, a description of the transactions, the payment amounts, and information about the payment methods used to complete the transaction. When one of our applications (including any application powered by Index) is open on your mobile device, we periodically receive information about the location of the device.

We also automatically collect Transaction Data every time you make a purchase with a Retailer. We convert the Transaction Data into a token ("Transaction Token") that allows our Services to recognize each time you engage in a transaction with a Retailer and helps us send you the correct receipt, among other things. We may create a Transaction Token for you before you sign up for an Index User ID, but the Transaction Token won't reflect your actual credit card number.

<http://www.index.com/privacy/thefreshmarket/>

### 1 Swipe

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<https://www.thefreshmarket.com/your-market/e-receipts>

When a customer shops for the first time, Index generates a secure, retailer-specific identity token that uniquely identifies the shopper based on their payment card. Index captures their shopping behavior and evolving preferences to build a real-time, unified customer account, giving you a deep level of **customer insight** — with no operational / customer-facing impact.

<http://www.index.com/customer-database/>

16. The System retrieves, by the at least one server, the at least one first customer record from the database based on the information identifying the first credit card account. For example, the accused product includes the at least one server (e.g. Index server) for retrieving the at least one first customer record (e.g., customer email address) from the database based on the information identifying the first credit card account (e.g. credit card information in

customer's credit card account record).

17. The System initiates a charge of an amount of the transaction to the first credit card account (e.g., the System, through the POS, charges the transaction amount to the customer's credit card). Certain aspects of this element are illustrated in the screen shots below and/or in screen shots provided in connection with other allegations herein.



Whenever you interact with our Services, we collect certain information about you every time you use the Services, whether directly through us or through a Retailer. For instance, when you use our Services in connection with a payment to a Retailer, we collect Transaction Data, including information about when and where the transaction occurred, a description of the transactions, the payment amounts and information about the payment methods used to complete the transaction. When one of our applications (including any application powered by Index) is open on your mobile device, we periodically receive information about the location of the device.

<http://www.index.com/privacy/thefreshmarket/>

**1 Swipe**

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<https://www.thefreshmarket.com/your-market/e-receipts>

## Solution

Index's solution for The Fresh Market — built upon Index's Semi-Integrated Payments and Hosted Gateway foundation — has enabled The Fresh Market to recognize every non-cash shopper, easily capture contact data at checkout, and engage more customers across in-store, online and mobile touchpoints.

<http://www.index.com/grocery/the-fresh-market/>

## What is the Index Hosted Gateway?

Our PCI Level 1 Gateway provides a robust link from your POS to your payment processor to enable processing flexibility and reliability. Index routes to any payment processor including First Data, Vantiv, Chase Paymentech and Worldpay, and supports a wide range of tender types— including credit, debit, gift cards, EBT, eWIC, Electronic Checking Processing and NFC (Apple Pay, Android Pay)—so you can easily accept new and diverse forms of payment.



<http://www.index.com/payments-and-security/index-hosted-gateway/>



<http://www.index.com/payments-and-security/e-receipts/>

18. The System automatically transmits a digital receipt for the transaction to the destination associated with the first customer without input from the first customer (e.g., when a customer who has opted to receive The Fresh Market E-receipts completes a transaction, a digital receipt is automatically emailed to them without further input). Certain aspects of this element are illustrated in the screen shots below and/or in screen shots provided in connection with other allegations herein.





## Start Enjoying E-Receipts Today

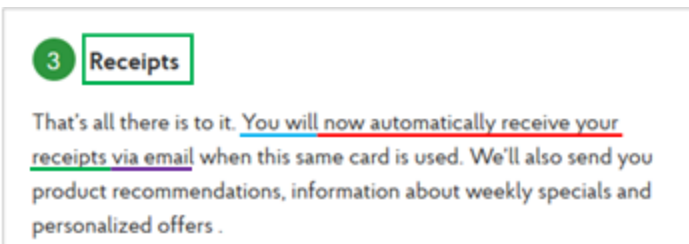
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<http://www.index.com/payments-and-security/e-receipts/>

19. Defendant's actions complained of herein will continue unless Defendant is enjoined by this court.

20. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

21. Plaintiff is in compliance with 35 U.S.C. § 287.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks the Court to:

(a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;

(b) Enter an Order enjoining Defendant, its agents, officers, servants, employees, attorneys, and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 8,534,551 (or, in the

alternative, awarding Plaintiff running royalties from the time of judgment going forward);

(c) Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;

(d) Award Plaintiff pre-judgment and post-judgment interest and costs; and

(e) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: May 10, 2018

Respectfully submitted,

*/s/Stamatios Stamoulis*

**STAMATIOS STAMOULIS**

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