

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EWINWIN, INC., a Delaware corporation,

Plaintiff,

vs.

GROUPON, INC., a Delaware corporation,

Defendant.

CASE NO. 8:10-cv-02678-SCB-AEP

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

**(U.S. PATENT NUMBERS 7,181,419;
7,689,469; and 7,899,707)**

DEMAND FOR JURY TRIAL

INJUNCTIVE RELIEF SOUGHT

Plaintiff eWinWin, Inc. (“EWINWIN”) hereby alleges for its complaint against Defendant Groupon, Inc. (“GROUPON”) as follows:

JURISDICTION AND VENUE

1. The United States District Court for the Middle District of Florida (the “Court”) has subject matter jurisdiction over the present matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this matter is an action for infringement arising under the United States Patent Act (35 U.S.C. § 1 *et seq.*).

2. GROUPON is subject to personal jurisdiction in the Middle District of Florida (the “District”) because GROUPON has caused tortious injury to EWINWIN in this District by acts committed both inside and outside the District. GROUPON is further subject to personal jurisdiction in the District because GROUPON regularly solicits business in the District and derives substantial revenue from the sales of goods and services in the District,

the means by which said sales are made constituting an infringement of the Patents-In-Suit, which are further defined herein. GROUPON has engaged in a persistent course of conduct in the District.

3. Venue for this action is proper in the District pursuant to 28 U.S.C. §§ 1391 and 1400 because a significant portion of GROUPON's infringing activities have occurred in the District.

GENERAL ALLEGATIONS

eWinWin, Inc.

4. EWINWIN is a Delaware corporation that has its principal place of business at 5334 Primrose Lake Circle, Tampa, Florida, 33647.

5. EWINWIN was founded in 1999 in Westlake, Ohio, by Gregory J. Mesaros. Mr. Mesaros is considered by many to be the definitive expert on the applied theories of demand aggregation, group buying, and dynamic pricing. *Purchasing* magazine has named Mr. Mesaros as one of the top 40 e-procurement visionaries. Mr. Mesaros is a successful entrepreneur and businessman that generated millions in revenue for shareholders, including his time as Vice President for GED Integrated Solutions, a capital equipment and software company, where his innovations contributed to GED's ultimate acquisition by a private equity fund.

6. Mr. Mesaros also founded EWINWIN based on the then-radical idea of grouping buyers, even competitors, together to achieve economies of scale thereby benefitting everyone in the supply chain. While his ideas on group buying were initially criticized, the EWINWIN social buying platform was successfully commercialized in 2000. In addition to validating Mr. Mesaros' ideas on group buying, the EWINWIN social buying platform also represented the first seller-based social buying technology on the market. Since then, the group buying concept—including the EWINWIN social buying platform —

has been successfully applied across a number of vertical markets and has proven to be a viable business model for businesses and buyers alike.

7. Users of the EWINWIN social buying platform can promote deals using Facebook, Twitter, and other social networking sites. As a particular promotion 'goes viral,' and more buyers order the promoted good or service, the discounted price drops for the entire group of customers. At the conclusion of the promotional deal, the entire group of buyers obtains the lowest possible deal regardless of when in the purchasing cycle an individual purchase was made. All the while, the participating business generates new fans and customers. The result is a "win-win" for everyone involved.

8. The EWINWIN social buying platform is delivered on-demand via an Application Service Provider (ASP) model. As a result, businesses have the flexibility to create group offers every month, every week, or even every day. Businesses can experiment with different group deals with the EWINWIN social buying platform by adjusting them over time to meet sales and profit goals.

9. Mr. Mesaros and EWINWIN sought patent protection for various EWINWIN group purchasing inventions beginning in 1999. As a result of these endeavors, EWINWIN has—to date—received eleven patents: U.S. patent numbers 7,181,419; 7,364,086; 7,593,871; 7,689,469; 7,689,463; 7,693,748; 7,124,099; 7,747,473; 7,818,212; 7,815,114; and 7,899,707. Of these eleven patents, three are the subject of the present dispute—U.S. patent numbers 7,181,419; 7,689,469; and 7,899,707 (the Patents-in-Suit). In addition to its portfolio of eleven granted patents, EWINWIN has a number of applications pending before the United States Patent and Trademark Office.

10. Since its founding in 1999, EWINWIN has remained a going concern. The same cannot be said of other social buying companies founded shortly after EWINWIN and that failed notwithstanding the backing of significant sums of venture capital. For example, Mercata Inc. received significant backing from Vulcan Ventures and ceased operations in

January 2001. Similarly, Mobshop Inc., funded by the Mayfield Fund, eliminated its consumer business in January 2001.

11. In 2007, EWINWIN relocated from Ohio to Tampa, Florida, to expand the usage of its technology for group buying by seeking partnership opportunities with the University of South Florida. Through its move to Tampa, EWINWIN also sought to access the research, faculty, and students at the University of South Florida to expand the EWINWIN social buying platform.

12. Since relocating to Tampa in 2007, EWINWIN has been an active and contributing member to the Tampa and Central Florida economy. EWINWIN has hired more than 30 employees, contractors, and interns from the Tampa area since its 2007 relocation. EWINWIN has funded a matching Florida high-technology grant program with the intent to bring high paying technology jobs to Tampa, including a program to commercialize group buying. EWINWIN has employed or mentored more than a dozen University of South Florida graduates and undergraduates. EWINWIN is a member of the Tampa Bay Technology Forum where EWINWIN helps grow and promote Tampa's technology ecosystem through events, education, networking, advocacy, and philanthropy. EWINWIN is also a member of the North Tampa Chamber of Commerce.

13. EWINWIN employs the services of a number of Tampa companies, including accountants, consultants, legal counsel, advertising and public relations firms, banks, and other service providers. EWINWIN has featured over 30 Tampa and Florida businesses, which chose to utilize the EWINWIN social buying platform, and serviced numerous buyers in Tampa and throughout Central Florida.

14. EWINWIN has remained at the cutting edge of group purchasing, leveraging its latest technologies across multiple platforms that apply to both services and products, and creating value for businesses and consumers. EWINWIN has been profiled by numerous

press outlets, including MSN, *Inc. Magazine*, *Social Commerce Today*, *Newsweek-Japan*, CIO, PC World magazine, and the St. Petersburg Times.

Groupon, Inc.

15. GROUPON is a Delaware corporation that has its principal place of business at 600 West Chicago Avenue, Chicago, Illinois, 60654. GROUPON was launched in November 2008 as a side project of a collective action website known as The Point. GROUPON operates a website over the Internet at the address: <http://www.groupon.com> (the GROUPON Website).

16. The GROUPON Website features coupons, price-comparison information, product reviews, links to the retail websites of other entities, and discount information. The GROUPON Website features what it refers to as “a daily deal . . . in a variety of cities across the U.S., Canada, [and] Europe” (a Daily Deal). A GROUPON Daily Deal is available in Tampa, by way of the Internet, at the address: <http://www.groupon.com/tampa-bay-area/>. The GROUPON Daily Deal for Tampa is available on a persistent and daily basis. GROUPON and the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, utilizes an assurance contract model for the GROUPON Daily Deal. Through this model, if a certain number of people sign up for a particular offer, then the offer becomes available to all. If the predetermined minimum is not met, then no one receives the benefits of the offer.

17. GROUPON contends that its social buying model is subject to pending patent protection. Notwithstanding the fact that EWINWIN was founded almost a decade prior to GROUPON—and continues to operate today—and has developed a portfolio of eleven patents, GROUPON contends that “[w]e came up with the patent-pending idea for Groupon.” Unlike EWINWIN, GROUPON has not procured any patents as a result of GROUPON’s

own internal research, development, or innovation. GROUPON has acquired patents that were conceived of by third-parties not affiliated with GROUPON. An example of such an acquisition is U.S. patent number 6,269,343, which was originally owned by Mobshop, Inc.—a failed group buying enterprise referenced above. U.S. patent number 6,269,343 was considered by the United States Patent and Trademark Office during the prosecution of numerous EWINWIN patents, which issued notwithstanding the same.

18. GROUPON claims to have saved its users over \$1,438,473,842 through purchases of more than 34 million ‘Daily Deals.’ GROUPON receives a portion of the savings recognized through each GROUPON Daily Deal or other sale consummated through the GROUPON Website. For every Daily Deal or other sale sponsored or hosted by GROUPON, including through the GROUPON Website, EWINWIN suffers a further competitive disadvantage in that GROUPON receives a substantial portion of said sale, and illicitly builds customer loyalty and brand recognition notwithstanding the fact that EWINWIN entered the group buying market ten years prior to GROUPON. GROUPON’s ongoing activities pose a threat to the continued viability of EWINWIN on a national and local level, including within the District (*i.e.*, Tampa). GROUPON’s activities are, with respect to the present action, infringing multiple claims of the Patents-in-Suit.

COUNT I

Direct Infringement of U.S. Patent Number 7,181,419

19. EWINWIN repeats and re-alleges each of the allegations set forth in paragraphs 1 through 18, as though fully set forth herein.

20. The United States Patent and Trademark Office granted U.S. patent number 7,181,419 (the ‘419 Patent) entitled “Demand Aggregation System” on February 20, 2007. The ‘419 Patent was filed on September 13, 2002, and claims the priority benefit of U.S.

provisional application number 60/318,789 filed September 13, 2001. A true and correct copy of the '419 Patent is attached hereto as Exhibit A.

21. The '419 Patent describes, for example, a business transaction method where customized price schedules are derived for a product, whereby the schedule varies in accordance with a quantity of product ordered. The product is offered for sale in a deal room. The products are offered in accordance with a search for certain product criteria.

22. During the course of the prosecution of the application that matured into the '419 Patent, the application was thoroughly examined and received multiple rejections before ultimately being allowed to issue. The application that matured into the '419 Patent received a first examination on October 31, 2005 in the form of a non-final office action. The application that matured into the '419 Patent received a second examination on May 22, 2006 in the form of a final office action. Following further discussions with the United States Patent and Trademark Office on July 28, 2006, the application that matured into the '419 Patent was allowed. The '419 Patent issued on February 20, 2007.

23. A patent granted by the United States Patent and Trademark Office is entitled to a presumption of validity under 35 U.S.C. § 282. The '419 Patent is entitled to a presumption of validity in light of it having been granted by the United States Patent and Trademark Office. This presumption of validity is only furthered by the nearly four and ½ years of examination received by the application that matured into the '419 Patent.

24. EWINWIN is the owner of the entire right, title, and interest in the '419 Patent. An assignment by and between the inventor of the application that matured into the '419 Patent—Greg Mesaros—and EWINWIN is recorded at Reel 013606 and Frame 0191 of the United States Patent and Trademark Office's assignment division. As the owner of the entire right, title, and interest in the '419 Patent, EWINWIN has remedy by civil action for infringement of the '419 Patent under 35 U.S.C. § 281. GROUPON directly infringes at

least claim 1 of the ‘419 Patent in violation of 35 U.S.C. § 271(a) by way of GROUPON practicing the subject matter recited in each of the aforementioned claims.

25. For example, and with respect to exemplary claim 1 of the ‘419 Patent, GROUPON offers a business transaction method by negotiating discounts on popular local goods, services, and cultural events.

26. EWINWIN is informed and believes, and thereon alleges, that GROUPON maintains buyer profiles in data storage in order to let buyers personalize Daily Deal offerings. GROUPON specifically requests information such as a user’s zip code, gender, and age in order to deliver “deals most relevant to [the user].” Examples of information sought by GROUPON in maintaining a buyer profile is illustrated below:

My Profile
Update your profile to help us send deals that better suit you.

About Me

My gender is:
 Male Female

Show me deals near ZIP/postal code:

I was born on:
 Month Day Year

My Favorite Deals

Health and Beauty
 Dental, vision, and medical
 Salon services
 Spa services, massage, and skin care

Food and Drink
 Bars and clubs
 Cafes, dessert, and bakeries
 Casual restaurants
 Fine dining
 Meal preparation and delivery

Retail and Services
 Automobile
 Clothing, fashion, and accessories
 Groceries
 Home and garden
 Pets

Activities
 Arts, crafts, and cooking classes
 Fitness
 Museums
 Sports, leisure, and adventure
 Tours and sightseeing
 Travel, hotels, and vacations

Events
 Concerts
 Food and drink events
 Sporting events
 Theater and comedy

My Background

Education:

Employment status:

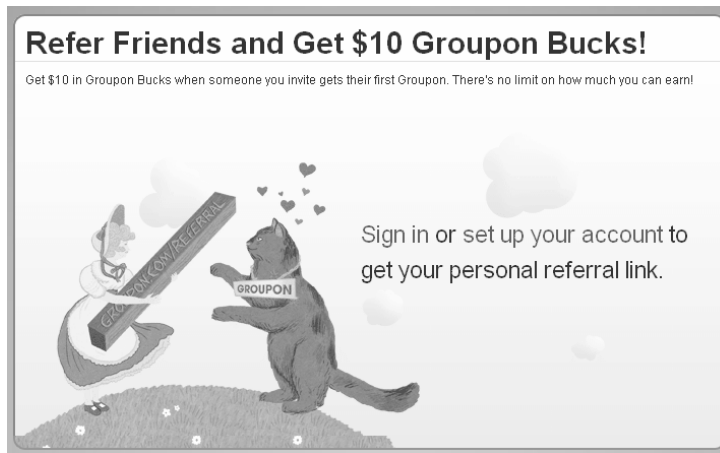
Income range:

Own a home?
 Yes No

Relationship status:

Have children?
 Yes No

27. EWINWIN is informed and believes, and thereon alleges, that GROUPON derives customized price schedules for a product, including through the use of information in a buyer profile. Profiles for prospective buyer may reflect account information related to Groupon Bucks and ‘Gs’. Through the use of Groupon Bucks and Gs, the pricing of a Daily Deal or other offering on the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, will differ for that particular buyer versus a prospective buyer not enjoying the use of Groupon Bucks and ‘Gs’. Examples of Groupon Bucks and Gs are illustrated below:



Earn G's and Watch Your Prices Drop.

Groupon Rewards members gain access to the very best stuff to do in their neighborhood. Earn G's (rewards points) to get your Groupon for free.

How Do I Earn More G's?

When I do this...	I'll get this...
Viewing Today's Deal ?	+1G
Buying Today's Deal After It Tips ?	+50G's
Buying Today's Deal Before It Tips ?	+150G's
	100G's = \$1

Still not clear? See the G's FAQ below >



These customized price schedules further vary in accordance with a quantity of product ordered from any given deal room on the GROUPON Website. For example, in the deal room illustrated below, the Daily Deal concerns a service normally valued at \$90, which may be purchased at \$35 subject to the requisite number of buyers purchasing the service. The price schedule for this particular service may therefore vary as a result of an overall quantity of purchases in addition to adjustments made to the price as a result of the application of Groupon Bucks or Gs for a particular buyer.



28. Daily Deals are made available to prospective buyers on the GROUPON Website through a variety of deal rooms as illustrated above.

29. A particular Daily Deal or other product or service available for sale may be offered to a prospective buyer as the result of the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, to access a buyer's "profile to help [GROUPON] send deals that better suit [the buyer]." GROUPON, therefore, provides these

'best suited deals' by matching criteria corresponding to the product with various criteria from the buyer profile.

30. GROUPON's actions in operating the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, and possibly other products, directly infringes at least claim 1 of the '419 Patent. EWINWIN believes, and thereon alleges, that GROUPON will continue to do so unless enjoined by the Court.

31. EWINWIN has been damaged by GROUPON's infringing conduct and GROUPON is therefore liable to EWINWIN for actual damages suffered and any profits realized by operating of the GROUPON website, but in no event less than a reasonable royalty, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, and possibly other infringing products or services, which are not taken into account in the computation of actual damages, as well as any statutory damages, such as treble damages. Moreover, such conduct will cause substantial harm to EWINWIN, unless the Court enjoins the infringing conduct.

WHEREFORE, EWINWIN prays for relief as set forth below.

COUNT II

Direct Infringement of U.S. Patent Number 7,689,469

32. EWINWIN repeats and re-alleges each of the allegations set forth in paragraphs 1 through 18, as though fully set forth herein.

33. The United States Patent and Trademark Office granted U.S. patent number 7,689,469 (the '469 Patent) entitled "E-Commerce Volume Pricing" on March 30, 2010. The '469 Patent was filed on August 14, 2006, and claims the priority benefit of U.S. patent application number 10/370,237, which was filed February 20, 2003. U.S. patent application

number 10/370,237, in turn, claims the priority benefit of U.S. patent application number 09/234,391, which was filed on June 3, 1999. U.S. patent application number 09/234,391, in turn, claims the priority benefit of U.S. provisional application number 60/133,769 filed May 12, 1999. A true and correct copy of the '469 Patent is attached hereto as Exhibit B.

34. The '469 Patent describes, for example, a method for facilitating volume pricing. An offer for an item is displayed at a specified price in an electronic forum. Potential buyers (*i.e.*, participants) must satisfy terms and conditions for a particular forum. An order for the item is received from a participant. The price for that item is then reduced when an amount of the item ordered exceeds a threshold. All orders for that item are then fulfilled at the lowest specified price.

35. During the course of the prosecution of the application that matured into the '469 Patent, the application underwent extensive examination and consideration by the United States Patent and Trademark Office. The application that matured into the '469 Patent received a first examination on May 2, 2008 in the form of a non-final office action. The application that matured into the '469 Patent received a second examination on October 14, 2008 in the form of a final office action. The application that matured into the '469 Patent received a third examination on January 14, 2009 in the form of an advisory action. The ongoing rejection of the application that matured into the '469 Patent was ultimately appealed to the Board of Patent Appeals and Interferences on January 27, 2009. Further consideration and examination of the application that matured into the '469 Patent took place in the form of a second advisory action on March 4, 2009. Following submission of an appeal brief by EWINWIN, the United States Patent and Trademark Office ultimately allowed the application that matured into the '469 Patent on June 18, 2009. Notwithstanding this indication of allowance, EWINWIN elected to subject the application that matured into the '469 Patent to further examination to allow for the consideration of other potential prior art references on September 18, 2009. The United States Patent and Trademark Office *again*

elected to allow the application that matured into the '469 Patent on November 4, 2009. The '469 Patent issued on March 30, 2010.

36. A patent granted by the United States Patent and Trademark Office is entitled to a presumption of validity under 35 U.S.C. § 282. The '469 Patent is entitled to a presumption of validity in light of it having been granted by the United States Patent and Trademark Office. This presumption of validity is only furthered by the nearly three and ½ years of extensive and thorough examination received by the application that matured into the '469 Patent, including the examination received by certain predecessor applications, including U.S. patent application number 10/370,237, which was filed in February 2003, and U.S. patent application number 09/234,391, which was filed in June 1999.

37. EWINWIN is the owner of the entire right, title, and interest in the '469 Patent. An assignment by and between the inventor of the application that matured into the '469 Patent—Greg Mesaros—and EWINWIN is recorded at Reel 018522 and Frame 0217 of the United States Patent and Trademark Office's assignment division. As the owner of the entire right, title, and interest in the '469 Patent, EWINWIN has remedy by civil action for infringement of the '469 Patent under 35 U.S.C. § 281. GROUPON directly infringes at least claim 1 of the '469 Patent in violation of 35 U.S.C. § 271(a) by way of GROUPON practicing the subject matter recited in each of the aforementioned claims.

38. For example, and with respect to exemplary claim 1 of the '469 Patent, the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, facilitates volume pricing by offering goods and services for sale at a discounted price. In the illustration below, a volume discount of \$55 for a service normally valued at \$90 is being offered via the GROUPON Website upon 20 instances of the service being purchased (*i.e.*, the service may be purchased for \$35 if 20 instances of the service are purchased).

39. Groupon displays a deal, like that initially illustrated above, for purchase in a private deal room, which may correspond to a portion of the Groupon Website like that illustrated below:

The screenshot shows a web browser window with the URL <https://www.groupon.com/deals/physio-fit-physical-therapy-and-wellness/confirmation/ledge>. The page title is "Your Purchase - Mozilla Firefox". The Groupon logo is at the top left, with "Daily Deals on the Best in San Jose" to its right. Below the logo are links for "Today's Deal", "Recent Deals", and "How Groupons Work". There are "Connect" and "Sign in" buttons in the top right.

The main content area is titled "Your Purchase" and contains a table with the following data:

Description	Quantity	Price	Total
PhysioFit Physical Therapy and Wellness	1	\$35	\$35.00
My Price:			\$35.00

Below the table is a "Select Payment Method" section with "Personal Information" and "Billing Information" fields. The "Personal Information" section includes fields for Full Name, Email (pre-filled with "jmg@domain.com"), Password, and Password (confirm). The "Billing Information" section includes fields for Cardholder Name, Card Number, Security Code, Expiration Date (pre-filled with "1" and "2010"), Billing Address, City, State/Province, and Postal Code. There is a "Sign In" button for users with existing accounts and a "Complete My Order" button at the bottom.

On the right side of the page, there are sections for "Have a gift card?", "Payment FAQ", "The Groupon Promise", and "TRUSTe CERTIFIED SECURITY".

A private deal room may also correspond to a portion of the Groupon Website associated with the account of a participating buyer after that buyer has provided certain user credentials such as a user name, password, and/or bank account or credit card information.

40. Access to a particular portion of the Groupon Website that constitutes a private deal room may be subject to acceptance of terms and conditions of the seller. For example, a seller may limit the offer to one order per person, new clients, scheduling restrictions, or not being valid with any other offer. An example of terms and conditions is illustrated below with respect to "The Fine Print" for the given deal:



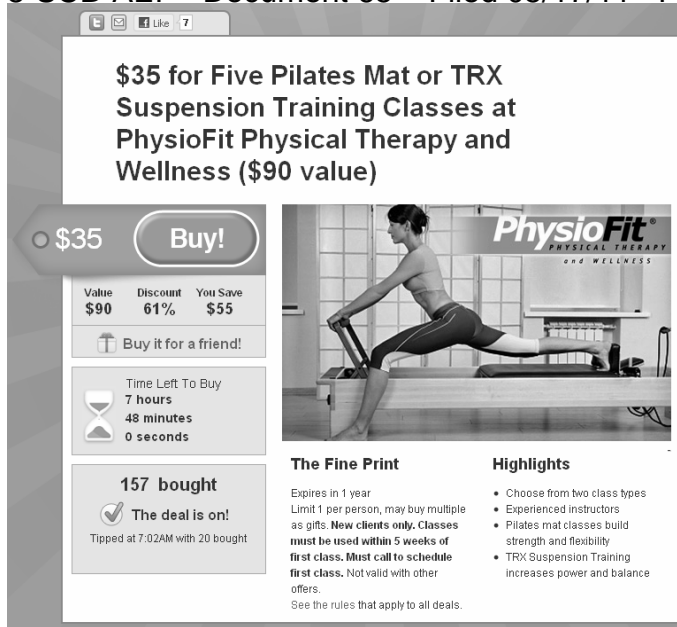
The Fine Print

Expires in 1 year
Limit 1 per person, may buy multiple as gifts. **New clients only. Classes must be used within 5 weeks of first class. Must call to schedule first class.** Not valid with other offers.
See the rules that apply to all deals.

Highlights

- Choose from two class types
- Experienced instructors
- Pilates mat classes build strength and flexibility
- TRX Suspension Training increases power and balance

41. The Groupon Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the Groupon Website, determines the lowest price for a promoted item upon determining that the deal is 'on' or has 'tipped.' For example, the Groupon Website reduces the offer from a valued price to a deal price once the 'tipping point' is reached. Specifically, as shown here, the Groupon Website reduces a \$90 valued service to \$35 upon 20 instances of the service being purchased as illustrated below.



42. GROUPON’s actions in operating the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, and possibly other products, directly infringes at least claim 1 of the ‘469 Patent. EWINWIN believes, and thereon alleges, that GROUPON will continue to do so unless enjoined by the Court.

43. EWINWIN has been damaged by GROUPON’s infringing conduct and GROUPON is therefore liable to EWINWIN for actual damages suffered and any profits realized by operating of the GROUPON website, but in no event less than a reasonable royalty, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, and possibly other infringing products or services, which are not taken into account in the computation of actual damages, as well as any statutory damages, such as treble damages. Moreover, such conduct will cause substantial harm to EWINWIN, unless the Court enjoins the infringing conduct.

WHEREFORE, EWINWIN prays for relief as set forth below.

COUNT III

Direct Infringement of U.S. Patent Number 7,899,707

44. EWINWIN repeats and re-alleges each of the allegations set forth in paragraphs 1 through 18, as though fully set forth herein.

45. The United States Patent and Trademark Office granted U.S. patent number 7,899,707 (the ‘707 Patent) entitled “DAS Predictive Modeling and Reporting Function” on March 1, 2011. The ‘707 Patent was filed on June 18, 2003, and claims the priority benefit of U.S. provisional application number 60/389,534 filed June 18, 2002. A true and correct copy of the ‘707 Patent is attached hereto as Exhibit C.

46. The ‘707 Patent describes, for example, facilitating the management of current and prospective customers and customer information. Current and prospective customer information may be managed to create customer profiles. Customer profiles may be used to determine the likelihood that a particular offering of a product or service may be purchased. Advertisements may also be generated for those products and services.

47. During the course of the prosecution of the application that matured into the ‘707 Patent, the application underwent extensive examination and consideration. Following the issuance of a restriction requirement in June 2008, the United States Patent and Trademark Office issued a non-final rejection in October 2008 followed by a final rejection in April 2009 and advisory action in July 2009. Following the submission of a request for continued examination, the United States Patent and Trademark Office issued a new non-final rejection in October 2009 followed by a final rejection in April 2010 and advisory actions in August, September, and November 2010. The United States Patent and Trademark Office proceeded to issue a Notice of Allowance on December 28, 2010. The ‘707 Patent issued—as mentioned above—on March 1, 2011.

48. A patent granted by the United States Patent and Trademark Office is entitled to a presumption of validity under 35 U.S.C. § 282. The '707 Patent is entitled to a presumption of validity in light of it having been granted by the United States Patent and Trademark Office. This presumption of validity is only furthered by the extensive and thorough examination received by the application that matured into the '707 Patent.

49. EWINWIN is the owner of the entire right, title, and interest in the '707 Patent. An assignment by and between the inventor of the application that matured into the '707 Patent—Greg Mesaros—and EWINWIN is recorded at Reel 014203 and Frame 0789 of the United States Patent and Trademark Office's assignment division. As the owner of the entire right, title, and interest in the '707 Patent, EWINWIN has remedy by civil action for infringement of the '707 Patent under 35 U.S.C. § 281. GROUPON directly infringes at least claims 1, 29, and 30 of the '707 Patent in violation of 35 U.S.C. § 271(a) by way of GROUPON practicing the subject matter recited in each of the aforementioned claims.

50. For example, and with respect to exemplary claim 1 of the '707 Patent, the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, offers an electronic business system by virtue of GROUPON offering Daily Deals to the public, each of these deals constituting a business transaction.

51. The GROUPON Website is powered by any number of computers and computer hardware, including processors, and computer executable instructions stored in memory. These computers and computer hardware are integrated with a demand aggregation system. Groupon's demand aggregation system determines whether a sufficient aggregate quantity of purchasers have indicated their desire to purchase a particular good or service such that a given deal is 'on!'

52. EWINWIN is informed and believes, and thereon alleges, that through the execution of instructions by a processor, Groupon manages a list of current and prospective

customers. EWINWIN is further informed and believes, that this list of current and prospective customers is represented, at the least, by the Groupon database of users that have purchased a Daily Deal or any other product or service offered through the Groupon Website (current customers) as well as those who have signed up with the Groupon Website, but have yet to purchase a Daily Deal or any other product or service offered through the Groupon Website (potential customers).

53. Through the execution of instructions by a processor, Groupon also creates and manages a customer profile for one or more current or prospective customers. For example, and as illustrated below, Groupon causes users of the Groupon Website to create a user profile. By creating a user profile, Groupon is able to “send deal that better suit [the customer].”

My Profile
Update your profile to help us send deals that better suit you.

About Me

My gender is:
 Male Female

Show me deals near ZIP/postal code:

I was born on:
 Month Day Year

My Favorite Deals

<p>Health and Beauty</p> <input type="checkbox"/> Dental, vision, and medical <input type="checkbox"/> Salon services <input type="checkbox"/> Spa services, massage, and skin care	<p>Food and Drink</p> <input type="checkbox"/> Bars and clubs <input type="checkbox"/> Cafes, dessert, and bakeries <input type="checkbox"/> Casual restaurants <input type="checkbox"/> Fine dining <input type="checkbox"/> Meal preparation and delivery
<p>Retail and Services</p> <input type="checkbox"/> Automobile <input type="checkbox"/> Clothing, fashion, and accessories <input type="checkbox"/> Groceries <input type="checkbox"/> Home and garden <input type="checkbox"/> Pets	<p>Activities</p> <input type="checkbox"/> Arts, crafts, and cooking classes <input type="checkbox"/> Fitness <input type="checkbox"/> Museums <input type="checkbox"/> Sports, leisure, and adventure <input type="checkbox"/> Tours and sightseeing <input type="checkbox"/> Travel, hotels, and vacations

Events

 Concerts
 Food and drink events
 Sporting events
 Theater and comedy

My Background

Education:

Employment status:

Income range:

Own a home?
 Yes No

Relationship status:

Have children?
 Yes No

54. EWINWIN is informed and believes, and thereon alleges, that Groupon has also selected the Vertica Analytics Platform for analyzing subscriber behavior. Through use of the Vertica Analytics Platform, Groupon is in a position to analyze the relationships found among its extensive amounts of data, including the ability to associate revenue and other metrics to individual users. By analyzing user metrics and through use of a user profile, Groupon is better able to determine a probability to close on a particular product or service.

55. EWINWIN is informed and believes, and thereon alleges, that Groupon researches information and generates advertisements for a product or service in an effort to ensure that an offering for the product or services is consummated. For example, Groupon's Chief Data Officer, Dr. Mark Johnson, has stated that the Vertica Platform "provides an ideal platform for analyzing the massive amounts of usage data generated by [Groupon] subscribers, giving [Groupon] insight into the effectiveness of different campaigns and marketing promotions."

56. GROUPON's actions in operating the GROUPON Website, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, and possibly other products, directly infringe at least claims 1, 29, and 30 of the '707 Patent. EWINWIN believes, and thereon alleges, that GROUPON will continue to do so unless enjoined by the Court.

57. EWINWIN has been damaged by GROUPON's infringing conduct and GROUPON is therefore liable to EWINWIN for actual damages suffered and any profits realized by operating of the GROUPON website, but in no event less than a reasonable royalty, including any necessary computer hardware and computer executable instructions stored in memory and required to operate the GROUPON Website, and possibly other infringing products or services, which are not taken into account in the computation of actual damages, as well as any statutory damages, such as treble damages. Moreover, such conduct will cause substantial harm to EWINWIN, unless the Court enjoins the infringing conduct.

WHEREFORE, EWINWIN prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, EWINWIN requests entry of judgment in their favor and against GROUPON as follows:

A. On Counts I-III, declaring that Defendant GROUPON has directly infringed one or more claims of the Patents-in-Suit;

B. On Counts I-III, preliminarily and/or permanently enjoining Defendant GROUPON and its officers, agents, servants, employees, and attorneys, and all persons acting in active concert or participation with GROUPON, from further infringing, the Patents-in-Suit, in accordance with 35 U.S.C. § 283;

C. On Counts I-III, awarding EWINWIN a reasonable royalty in an amount adequate to compensate EWINWIN for GROUPON's infringement, in accordance with 35 U.S.C. § 284;

D. On Counts I-III, awarding EWINWIN damages in an amount adequate to compensate EWINWIN for GROUPON's infringement, in accordance with 35 U.S.C. § 284;

E. On all counts, for interest on all the foregoing amounts, at the legal rate, with effect from the due date for payment;

F. On all counts, awarding EWINWIN its costs of suit, including reasonable attorneys' fees; and

G. On all counts, granting such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable.

Dated May 17, 2011

s/ Robert J. Yorio

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Attorneys for Plaintiff EWINWIN, INC.

CERTIFICATE OF SERVICE

HEREBY CERTIFY that on May 17, 2011 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the counsel of record.

s/ Robert J. Yorio

Robert J. Yorio