

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GROUPON, INC.,

Plaintiff,

v.

MOBGOB, LLC

Defendant.

Case No. 1:10-CV-07456

Hon. William J. Hibbler

DEMAND FOR JURY TRIAL

**MOBGOB, LLC'S ANSWER TO GROUPON, INC.'S
COMPLAINT FOR PATENT INFRINGEMENT AND DAMAGES
AND COUNTERCLAIMS**

Subject to its Motion to Dismiss Plaintiff Groupon, Inc.'s ("Groupon") Claims of Induced Infringement, Contributory Infringement, and Willful Infringement filed concurrently herewith, and pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure and the Local Rules of this Court, MobGob, LLC ("MobGob") hereby answers Groupon's Complaint for Patent Infringement and Damages ("Complaint") as follows:

PARTIES

1. Admitted.
2. MobGob is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the Complaint, and therefore denies them.
3. MobGob admits that it is a limited liability corporation organized under the laws of the State of California and having a place of business at 12100 Wilshire Blvd., Los Angeles, CA 90025.
4. MobGob denies each and every allegation contained in paragraph 4 of the Complaint.

NATURE OF THE ACTION, JURISDICTION AND VENUE

5. MobGob admits that the Complaint purports to allege a civil action for patent infringement arising under the Patent Laws of the United States, and more specifically, under Title 35, United States Code § 1, *et seq.*

6. MobGob admits that the Complaint purports to allege that this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, and 35 U.S.C. §§ 271, 281, 283, 284, and 285. MobGob admits that the Complaint purports to allege that venue is proper in the District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

THE PATENT-IN-SUIT

7. MobGob admits that the Complaint attaches a copy of United States Patent No. 6,269,343 (the “‘343 Patent” or “Patent-In-Suit”) as Exhibit A and that the ‘343 Patent states on its cover page that it is entitled “On-Line Marketing System And Method.” MobGob denies each and every remaining allegation contained in paragraph 7 of the Complaint.

8. MobGob is without knowledge or information sufficient to form a belief as to the truth or falsity of whether the ‘343 Patent is owned by Groupon, and therefore denies the allegation. MobGob denies each and every remaining allegation contained in paragraph 8 of the Complaint.

COUNT I: PATENT INFRINGEMENT

9. MobGob incorporates by reference its responses to paragraphs 1 through 8 as if set forth fully herein.

10. MobGob denies each and every allegation contained in paragraph 10 of the Complaint.

11. MobGob is not required to respond to Groupon’s allegation in paragraph 11 of the Complaint that it contributorily infringed and induced infringement of the ‘343 Patent because it has filed concurrently herewith a Motion to Dismiss Groupon’s Claims of Induced Infringement, Contributory Infringement, and Willful Infringement. MobGob denies each and every remaining allegation contained in paragraph 11 of the Complaint.

12. MobGob is not required to respond to Groupon's allegation in paragraph 12 of the Complaint that it willfully infringed the '343 Patent because it has filed concurrently herewith a Motion to Dismiss Groupon's Claims of Induced Infringement, Contributory Infringement, and Willful Infringement. MobGob denies each and every remaining allegation contained in paragraph 12 of the Complaint.

13. MobGob denies each and every allegation contained in paragraph 13 of the Complaint.

AFFIRMATIVE DEFENSES

MobGob asserts the following affirmative defenses. MobGob reserves the right to add defenses that may be supported by the facts upon completion of discovery. MobGob expressly reserves the right to assert additional affirmative defenses after the Court has ruled on its Motion to Dismiss Groupon's Claims of Induced Infringement, Contributory Infringement, and Willful Infringement, including that it has not induced infringement of, contributorily infringed, or willfully infringed any claims of the '343 Patent.

FIRST AFFIRMATIVE DEFENSE

14. The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

15. The '343 Patent is invalid for failing to comply with one or more provisions of Title 35 of the United States Code, including without limitation, 35 U.S.C. §§ 101-103, 112, and 116, and is also unenforceable.

THIRD AFFIRMATIVE DEFENSE

16. MobGob has not infringed and does not infringe, either directly or indirectly, any of the claims of the '343 Patent, either literally or under the doctrine of equivalents.

FOURTH AFFIRMATIVE DEFENSE

17. Groupon is estopped, by virtue of cancellations, amendments, representations, and concessions made to the United States Patent and Trademark Office (the "USPTO") during the prosecution of the '343 Patent or the prosecution of any applications or patents from which it

claims priority, from construing any claims of the '343 Patent to have been infringed by MobGob.

FIFTH AFFIRMATIVE DEFENSE

18. To the extent Groupon does not own all the rights to the '343 Patent, the Complaint must be dismissed for lack of standing.

SIXTH AFFIRMATIVE DEFENSE

19. Groupon's claims for relief are barred by the doctrines of acquiescence, estoppel, laches, waiver, prosecution laches or other applicable equitable doctrines.

SEVENTH AFFIRMATIVE DEFENSE

20. 35 U.S.C. § 286 bars Groupon from recovering any damages for alleged infringements, if any, that occurred more than six years prior to the commencement of this action.

EIGHTH AFFIRMATIVE DEFENSE

21. Groupon is not entitled to injunctive relief, because any injury to Groupon is not immediate or irreparable, Groupon has an adequate remedy at law, the balance of hardships favors no injunction, and the public interest is best served by no injunction.

PRAYER FOR RELIEF ON GROUPON'S COMPLAINT

22. WHEREFORE, MobGob prays for judgment against Groupon on Groupon's Complaint, as follows:

- a. That Groupon take nothing by its claims for relief;
- b. That Groupon's claims for relief be dismissed with prejudice;
- c. That the Court enter judgment against Groupon and in favor of MobGob in all respects;
- d. For a determination in MobGob's favor that this is an exceptional case under 35 U.S.C. § 285, and an award of attorneys' fees and costs to MobGob in this action; and
- e. For such other and further relief as the Court deems just and equitable.

MOBGOB'S COUNTERCLAIMS

23. MobGob brings these Counterclaims against Groupon pursuant to Rule 13 of the Federal Rules of Civil Procedure, and alleges as follows. All preceding paragraphs of this Answer are incorporated in full.

24. MobGob is a limited liability corporation organized under the laws of the State of California and having a place of business at 12100 Wilshire Blvd., Los Angeles, CA 90025.

25. Upon information and belief, Groupon is a corporation organized under the laws of the State of Delaware and having a place of business at 600 West Chicago Ave., Chicago, IL 60654.

26. These are claims for a declaratory judgment of non-infringement and invalidity with respect to the '343 Patent.

27. The Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202 because an actual, justiciable controversy exists between MobGob and Groupon. In particular, Groupon has filed a Complaint alleging that MobGob is infringing the '343 Patent, and MobGob denies Groupon's material allegations.

28. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(c) because, among other things, Groupon has filed a Complaint against MobGob in this judicial district.

29. This Court has personal jurisdiction over Groupon.

FIRST COUNTERCLAIM

DECLARATORY JUDGMENT (NON-INFRINGEMENT)

30. MobGob incorporates by reference all preceding paragraphs of its Answer and Counterclaims as if set forth fully herein.

31. Groupon alleges that it is the owner of the '343 Patent.

32. MobGob has not infringed, either directly or indirectly, any of the claims of the '343 Patent, either literally or under the doctrine of equivalents.

SECOND COUNTERCLAIM

DECLARATORY JUDGMENT (INVALIDITY)

33. MobGob incorporates by reference all preceding paragraphs of its Answer and Counterclaims as if set forth fully herein.

34. The '343 Patent is invalid for failing to comply with one or more provisions of Title 35 of the United States Code, including without limitation, 35 U.S.C. §§ 101-103, 112, and 116.

JURY DEMAND

35. MobGob hereby demands trial by jury of all issues triable by jury.

PRAYER FOR RELIEF

36. WHEREFORE, MobGob prays for judgment on MobGob's Counterclaims, as follows:

- a. For dismissal of Groupon's Complaint with prejudice;
- b. For a declaration that MobGob has not infringed, either directly or indirectly, any of the claims of the '343 Patent, either literally or under the doctrine of equivalents;
- c. For a declaration that the '343 Patent is invalid;
- d. For judgment against Groupon and in favor of MobGob in all respects;
- e. For a determination in MobGob's favor that this is an exceptional case under 35 U.S.C. § 285, and an award of attorneys' fees and costs to MobGob in this action; and
- f. For such other and further relief as the Court deems just and equitable.

Dated: February 2, 2011

Respectfully submitted,

RUSS AUGUST & KABAT

By: /s/Alexander C.D. Giza

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MobGob, LLC

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on February 2, 2011 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: February 2, 2011

By: /s/ Alexander C.D. Giza
Alexander C.D. Giza