

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

DIETGOAL INNOVATIONS LLC,

Plaintiff,

v.

ARBY'S RESTAURANT GROUP, INC.

et al.

Defendants.

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Civil Action No. 2:11-cv-00418-MHS-CMC

Jury Trial Demanded

**PLAINTIFF'S THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiff DietGoal Innovations LLC files this Complaint against Arby's Restaurant Group, Inc.; Bon Appétit Management Company; Chick-Fil-A, Inc.; CKE Restaurants, Inc. d/b/a Hardee's; Culver Franchising System, Inc.; Darden Restaurants, Inc. d/b/a Red Lobster; International Dairy Queen, Inc.; Daily Burn, Inc.; Doctor's Associates, Inc. d/b/a Subway; DineWise Inc.; Dunkin' Brands Group, Inc.; EPL Intermediate, Inc. d/b/a El Pollo Loco; Google Inc.; InterActiveCorp; Hearst Communications, Inc. d/b/a Seventeen Magazine; Jack in the Box Inc.; Jimmy John's Franchise, LLC; Accord, Inc. d/b/a Taco Time Northwest; Kraft Foods Inc.; McDonald's Corporation; QIP Holder LLC d/b/a Quiznos; Red Robin International, Inc.; Moe's Franchisor LLC; Rodale, Inc.; Sonic Corp.; Taco Bell Corp.; The Television Food Network, G.P., d/b/a Food Network; Tim Hortons Inc. and Tim Hortons USA, Inc.; Wawa, Inc.; Wegmans Food Markets, Inc.; Weight Watchers International, Inc.; Wendy's International, Inc.; Whole Foods Market Inc.; Rubio's Restaurants, Inc.; Sweetgreen, Inc.; Domino's Pizza, Inc.; and Starbucks Corporation, Allrecipes.com, Inc., Bravo Media LLC (Division of NBC Universal), CalorieKing Wellness Solutions, Inc., ConAgra Foods, Inc., Food.com (Scripps Networks,

LLC), General Mills, Meredith Corporation, Nestle USA, Inc. Nutrisystem, Inc., SparkPeople, Inc., Taco Mayo Franchise Systems, Inc., Time Inc., Tyson Foods, Inc., WebMD, LLC, and Whataburger Restaurants LLC (collectively the “Defendants”) and alleges as follows.

PARTIES

1. Plaintiff DietGoal Innovations LLC (“DietGoal Innovations”) is a Texas Limited Liability Company based in Austin, Texas.

2. Upon information and belief, Defendant Arby’s Restaurant Group, Inc. (“Arby’s”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 1155 Perimeter Center West, Suite 1200, Atlanta, Georgia 30338. Arby’s has been served with process.

3. Upon information and belief, Defendant Bon Appétit Management Company (“Bon Appétit”) is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business located at 2400 Yorkmont Rd., Charlotte, North Carolina 28217-4511. Bon Appétit has been served with process.

4. Upon information and belief, Defendant Chick-Fil-A, Inc. (“Chick-Fil-A”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 5200 Buffington Road, Atlanta, Georgia 30349. Chick-Fil-A has been served with process.

5. Upon information and belief, Defendant Culver Franchising System, Inc. (“Culver”) is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business located at 1240 Water Street, Prairie du Sac, Wisconsin 53578. Culver has been served with process.

6. Upon information and belief, Defendant InterActiveCorp and Daily Burn, Inc. (collectively “IAC”) are corporations organized and existing under the laws of the State of New York, with their principal place of business located at 555 West 18th Street, New York, New York 10011. IAC has been served with process.

7. Upon information and belief, Defendant International Dairy Queen, Inc. (“Dairy Queen”) is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 7505 Metro Boulevard, Minneapolis, Minnesota 55439. Dairy Queen has been served with process.

8. Upon information and belief, Defendant DineWise Inc. (“DineWise”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 500 Bi County Boulevard, Suite 400, Farmingdale, New York 11735. DineWise has been served with process.

9. Upon information and belief, Defendant Dunkin’ Brands Group, Inc. (“Dunkin’ Brands”) is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 130 Royall Street, Canton, Massachusetts 02021. Dunkin’ Brands has been served with process.

10. Upon information and belief, Defendant Rodale, Inc. (“Rodale”) is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 400 South 10th Street, Emmaus, Pennsylvania 18098-0099. Rodale has been served with process.

11. Upon information and belief, Defendant EPL Intermediate, Inc. d/b/a El Pollo Loco (“El Pollo Loco”) is a corporation organized and existing under the laws of the State of

California, with its principal place of business located at 3535 Harbor Blvd. Suite 100, Costa Mesa, California 92626-1494. El Pollo Loco has been served with process.

12. Upon information and belief, Defendant The Television Food Network, G.P., d/b/a Food Network (“Food Network”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 75 Ninth Avenue, New York, New York 10011. Food Network has been served with process.

13. Upon information and belief, Defendant Google Inc. (“Google”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google has been served with process.

14. Upon information and belief, Defendant CKE Restaurants, Inc. d/b/a Hardee’s (“Hardee’s”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 6307 Carpinteria Ave., Suite A, Carpinteria, California 93013. Hardee’s has been served with process.

15. Upon information and belief, Defendant Jack in the Box Inc. (“Jack in the Box”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 9330 Balboa Avenue, San Diego, California 92123. Jack in the Box has been served with process.

16. Upon information and belief, Defendant Jimmy John’s Franchise LLC (“Jimmy John’s”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 2212 Fox Drive, Champaign, Illinois 61820. Jimmy John’s has been served with process.

17. Upon information and belief, Defendant Kraft Foods Inc. (“Kraft”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 3 Lakes Drive, Northfield, Illinois 60093-2753. Kraft has been served with process.

18. Upon information and belief, Defendant McDonald’s Corporation (“McDonald’s”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 1 McDonald’s Plaza, Oak Brooks, Illinois 60523. McDonald’s has been served with process.

19. Upon information and belief, Defendant Moe’s Franchisor LLC (“Moe’s”) is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 200 Glenridge Point Parkway, Atlanta, Georgia 30342. Moe’s has been served with process.

20. Upon information and belief, Defendant QIP Holder LLC d/b/a Quiznos (“Quiznos”) is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business located at 1001 17th Street, Suite 200, Denver, Colorado 80202. Quiznos has been served with process.

21. Upon information and belief, Defendant Darden Corporation, a wholly owned subsidiary of Darden Restaurants, Inc., d/b/a Red Lobster (“Red Lobster”) is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 1000 Darden Center Drive, Orlando, Florida 32837. Red Lobster has been served with process.

22. Upon information and belief, Defendant Red Robin International, Inc. (“Red Robin”) is a corporation organized and existing under the laws of the State of Colorado, with its

principal place of business located at 6312 South Fiddlers Green Circle, Number 200N, Greenwood Village, Colorado 80111. Red Robin has been served with process.

23. Upon information and belief, Defendant Hearst Communications, Inc. d/b/a Seventeen Magazine (“Seventeen”) is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business located at 214 North Tryon Street, Charlotte, North Carolina 28202-1078. Seventeen has been served with process.

24. Upon information and belief, Defendant Sonic Corp. (“Sonic”) is a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business located at 300 Johnny Bench Drive, Oklahoma City, Oklahoma 73104. Sonic has been served with process.

25. Upon information and belief, Defendant Doctor’s Associates, Inc. d/b/a Subway (“Subway”) is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business located at 325 Bic Dr., Milford, Connecticut 06461-3072. Subway has been served with process.

26. Upon information and belief, Defendant Taco Bell Corp. (“Taco Bell”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1 Glen Bell Way, Irvine, California 92618. Taco Bell has been served with process.

27. Upon information and belief, Defendant Accord, Inc. d/b/a Taco Time Northwest (“Accord”) is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at 3300 Maple Valley Highway, Renton, WA 98058. Accord has been served with process.

28. Upon information and belief, Defendant Tim Hortons Inc. and Tim Hortons USA Inc. (collectively, “Tim Hortons”) are foreign corporations organized and existing under the laws of Ontario, Canada, with their principal place of business located at 874 Sinclair Road, Oakville, Ontario L6K2Y1, Canada. Tim Hortons has been served with process.

29. Upon information and belief, Defendant Wawa, Inc. (“Wawa”) is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at Red Rood, Baltimore Pike, Wawa, Pennsylvania 19063. Wawa has been served with process.

30. Upon information and belief, Defendant Wegmans Food Markets, Inc. (“Wegmans”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 1500 Brooks Avenue, P.O. Box 30844, Rochester, New York 14603-0844. Wegmans has been served with process.

31. Upon information and belief, Defendant Weight Watchers International, Inc. (“Weight Watchers”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 300 Jericho Quadrangle, Suite 350, Jericho, New York 11753-2723. Weight Watchers has been served with process.

32. Upon information and belief, Defendant Wendy’s International, Inc. (“Wendy’s”) is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 1 Dave Thomas Boulevard, Dublin, Ohio 43017. Wendy’s has been served with process.

33. Upon information and belief, Defendant Whole Foods, Market Inc. (“Whole Foods”) is a corporation organized and existing under the laws of the State of Texas, with its

principal place of business located at 550 Bowie Street, Austin, Texas 78703. Whole Foods has been served with process.

34. Upon information and belief, Defendant Davanni's Inc. ("Davanni's") is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 1100 Xenium Ln. N., Plymouth, Minnesota 55441-5200. Davanni's has been served with process.

35. Upon information and belief, Defendant Rubio's Restaurants, Inc. ("Rubio's") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1902 Wright Place, Suite 300, Carlsbad, California 92008. Rubio's has been served with process.

36. Upon information and belief, Defendant Sweetgreen, Inc. ("Sweetgreen") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1512 Connecticut Avenue NW, Washington, DC 20036-1104. Sweetgreen has been served with process.

37. Upon information and belief, Defendant Domino's Pizza, Inc. ("Domino's") is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located at 30 Frank Lloyd Wright Drive, Ann Arbor Charter, Township, Michigan 48106. Domino's has been served with process.

38. Upon information and belief, Defendant Starbucks Corporation ("Starbucks") is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at 2401 Utah Avenue, South Seattle, Washington 98134. Starbucks has been served with process.

39. Upon information and belief, Defendant Allrecipes.com, Inc. (“Allrecipes.com”) is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at 3317 3rd Avenue South, Suite D, Seattle, Washington 98134. Allrecipes.com may be served with process through its registered agent National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062.

40. Upon information and belief, Defendant Bravo Media LLC (Division of NBCUniversal Media, LLC) (“Bravo Media”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 30 Rockefeller Plaza, 8th Floor East, New York, New York 10112. Bravo Media may be served with process through its registered agent The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

41. Upon information and belief, Defendant CalorieKing Wellness Solutions, Inc. (“CalorieKing”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1001 West 17th Street, Suite M, Costa Mesa, California 92627. CalorieKing may be served with process through its registered agent Keith P. McGuiness, 5480 Baltimore Drive, Suite 211, La Mesa, California 91942.

42. Upon information and belief, Defendant ConAgra Foods, Inc. (“ConAgra Foods”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1 Conagra Drive, Omaha, Nebraska 68102. ConAgra Foods may be served with process through its registered agent Prentice Hall Corp., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

43. Upon information and belief, Defendant Scripps Network, LLC d/b/a Food.com (“Food.com”) is a limited liability company organized and existing under the laws of the State of

Delaware, with its principal place of business located at P.O. Box 51850, Knoxville, Tennessee 37950. Food.com may be served with process through its registered agent CT Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201.

44. Upon information and belief, Defendant General Mills Sales, Inc. (“General Mills”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at One General Mills Boulevard, Minneapolis, Minnesota 55440. General Mills may be served with process through its registered agent National Registered Agents, Inc., 16055 Space Center Boulevard, Suite 235, Houston, Texas 77062.

45. Upon information and belief, Defendant Meredith Corporation (“Meredith”) is a corporation organized and existing under the laws of the State of Iowa, with its principal place of business located at 1716 Locust Street, Des Moines, Iowa 50309. Meredith may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

46. Upon information and belief, Defendant Nestle USA, Inc. (“Nestle USA”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 800 N. Brand Boulevard, Glendale, California 91203. Nestle USA may be served with process through its registered agent CT Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201.

47. Upon information and belief, Defendant Nutrisystem, Inc. (“Nutrisystem”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 600 Office Center Drive, Fort Washington, Pennsylvania 19034. Nutrisystem may be served with process through its registered agent CT Corporation System, 350 North St. Paul Street, Suite 2900, Dallas Texas 75201.

48. Upon information and belief, Defendant SparkPeople, Inc. (“SparkPeople”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 4392 Marburg Avenue, Cincinnati, Ohio 45209. SparkPeople may be served with process through its registered agent The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

49. Upon information and belief, Defendant Taco Mayo Franchise Systems, Inc. (“Taco Mayo”) is a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business located at 10405 Greenbriar Place, Suite B, Oklahoma City, Oklahoma 73159. Taco Mayo may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

50. Upon information and belief, Defendant Time Inc. (“Time”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1271 Avenue of the Americas, New York, New York 10020. Time may be served with process through its registered agent CT Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201.

51. Upon information and belief, Defendant Tyson Foods, Inc. (“Tyson Foods”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2200 Don Tyson Parkway, Springdale, Arkansas 72762. Tyson Foods may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

52. Upon information and belief, Defendant WebMD, LLC (“WebMD”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 111 8th Avenue Floor 7, New York, New York 10011.

WebMD may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

53. Upon information and belief, Defendant Whataburger Restaurants LLC (“Whataburger”) is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 300 Concord Plaza Drive, San Antonio, Texas 78216. Whataburger may be served with process through its registered agent Corporation Service Company dba CSC-Lawyers Incorporated, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

54. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

55. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

56. Upon information and belief, each of the Defendants is subject to this Court’s general and/or specific personal jurisdiction because it (a) is a resident of the State of Texas; and/or (b) has designated an agent for service of process in the State of Texas; and/or (c) has committed acts of infringement in the State of Texas as alleged below; and/or (d) is engaged in continuous and systematic activities in the State of Texas. Therefore, this Court has personal jurisdiction over each of the Defendants under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

57. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has a regular and established place of business in this

district, and/or has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

THE PATENT-IN-SUIT

58. On July 1, 2003, the United States Patent and Trademark Office issued United States Patent No. 6,585,516 (the “‘516 patent”) entitled “Method and System for Computerized Visual Behavior Analysis, Training, and Planning,” a true copy of which is attached as Exhibit A.

59. DietGoal Innovations is the exclusive licensee of the ‘516 patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the ‘516 patent.

CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 6,585,516

60. Defendant Arby’s has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.arbys.com, which has a computerized meal planning interface at <http://www.arbys.com/food/build-a-meal-calculator.html>.

61. Defendant Bon Appétit has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.eatlowcarbon.org, which has a computerized meal planning interface at <http://www.eatlowcarbon.org/Carbon-Calculator.html>.

62. Defendant Chick-Fil-A has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.chick-fil-a.com, which has a computerized meal planning interface at <http://www.chick-fil-a.com/Food/Meal>.

63. Defendant Culver has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.culvers.com, which has a computerized meal planning interface at http://www.culvers.com/menu/nutrition_facts.aspx.

64. Defendant IAC has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.dailyburn.com, which has a computerized meal planning interface at <http://dailyburn.com/nutrition>.

65. Defendant Dairy Queen has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.dairyqueen.com, which has a computerized meal planning interface at <http://www.dairyqueen.com/us-en/eats-and-treats/nutrition-calculator/>.

66. Defendant DineWise has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.dinewise.com, which has a computerized meal planning interface at http://www.dinewise.com/nutritional_mix_and_match_meals.php.

67. Defendant Dunkin' Brands has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.dunkinonuts.com, which has a computerized meal planning interface at <http://www.dunkinonuts.com/content/dunkinonuts/en/menu/nutrition.html>.

68. Defendant Rodale has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States a

computer implemented software application that has a computerized meal planning interface. The software application is downloadable and/or made available at <http://itunes.apple.com/us/app/eat-this-not-that!-restaurants/id409344432?mt=8>.

69. Defendant El Pollo Loco has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.elpolloloco.com, which has a computerized meal planning interface at <http://www.elpolloloco.com/nutrition.aspx>.

70. Defendant Food Network has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.foodnetwork.com, which has a computerized meal planning interface at <http://www.foodnetwork.com/search/delegate.do?fnMealType=dinner&fnIngredient=chicken&fnTime=&fnChef=&fnSearchType=mealPlanner>.

71. Defendant Google has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.google.com, which has a computerized meal planning interface at <http://www.google.com/landing/recipes/>.

72. Defendant Hardee's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.hardees.com, which has a computerized meal planning interface at <http://www.hardees.com/menu/alt-options>.

73. Defendant Jack in the Box has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United

States the computer implemented website www.jackinthebox.com, which has a computerized meal planning interface at <http://www.jackinthebox.com/nutrition/build-a-meal.php>.

74. Defendant Jimmy John's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.jimmyjohns.com, which has a computerized meal planning interface at <http://www.jimmyjohns.com/menu/nutrition.aspx>.

75. Defendant Kraft has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.kraftrecipes.com, which has a computerized meal planning interface at <http://www.kraftrecipes.com/recipes/main.aspx>, allowing a user to select one or more meals on different interfaces, for example

<http://www.kraftrecipes.com/recipes/search/SearchResults.aspx?course=main+dishes&searchtype=min&ingredient=vegetables|cheese|chicken&healthyliving=low+calorie&>.

76. Defendant McDonald's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.mcdonalds.com, which has a computerized meal planning interface at http://www.mcdonalds.com/content/us/en/meal_builder.html.

77. Defendant Moe's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.moes.com, which has a computerized meal planning interface at <http://www.moes.com/Food.php?ii=1>.

78. Defendant Quiznos has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the

computer implemented website www.quiznos.com, which has a computerized meal planning interface at <http://www.quiznos.com/Menu/All-Subs.aspx>.

79. Defendant Red Lobster has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.redlobster.com, which has a computerized meal planning interface at http://www.redlobster.com/health/smart_meal/.

80. Defendant Red Robin has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.redrobin.com, which has a computerized meal planning interface at <http://www.redrobin.com/customizer/>.

81. Defendant Seventeen has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.seventeen.com, which has a computerized meal planning interface at <http://www.seventeen.com/health-sex-fitness-old/meal-maker/>.

82. Defendant Sonic has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.sonicdrivein.com, which has a computerized meal planning interface at <http://www.sonicdrivein.com/nutrition/>.

83. Defendant Subway has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.subway.com, which has a computerized meal planning interface at <http://www.subway.com/menu/MealBuilder/MealBuilder.aspx>.

84. Defendant Taco Bell has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.tacobell.com, which has a computerized meal planning interface at <http://www.tacobell.com/nutrition/calculator>.

85. Defendant Accord has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.tacotimenw.com, which has a computerized meal planning interface at <http://www.tacotimenw.com/tacotimemenu.aspx>.

86. Defendant Tim Hortons has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.timhortons.com, which has a computerized meal planning interface at <http://www.timhortons.com/ca/en/menu/nutrition-calculator.html>.

87. Defendant Wawa has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.wawa.com, which has a computerized meal planning interface at <http://www.wawa.com/wawaweb/Nutrition/Default.aspx>.

88. Defendant Wegmans has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.wegmans.com, which has a computerized meal planning interface at <http://www.wegmans.com/webapp/wcs/stores/servlet/MealBuilderView?storeId=10052&catalogId=&langId=-1>.

89. Defendant Weight Watchers has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.weightwatchers.com, which has a computerized meal planning interface at

http://www.weightwatchers.com/util/art/index_art.aspx?tabnum=1&art_id=108511&sc=4371.

90. Defendant Wendy's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.wendys.com, which has a computerized meal planning interface at <http://www.wendys.com/food/Nutrition.jsp>.

91. Defendant Whole Foods has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.wholefoodsmarket.com, which has a computerized meal planning interface at <http://www.wholefoodsmarket.com/recipes/advanced-search.php>.

92. Defendant Rubio's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.rubios.com, which has a computerized meal planning interface at <http://www.rubios.com/nutrition/calculator>.

93. Defendant Sweetgreen has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.sweetgreen.com, which has a computerized meal planning interface at <http://www.sweetgreen.com/menu/mixyourown.php>.

94. Defendant Domino's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.dominos.com, which has a computerized meal planning interface at <http://express.dominos.com/order/olo.jsp#storeMenu-entrees-BuildPizza> and <http://express.dominos.com/pages/calculator.jsp>.

95. Defendant Starbucks has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented websites www.starbucks.com and www.mystarbucks.com and mobile applications, which have a computerized meal and drink planning interface. An exemplar website based computerized meal and drink planning interface is at http://www.starbucks.com/menu/catalog/nutrition?food=all#view_control=nutrition. Exemplar screen shots of Starbuck's iPhone mobile application are below:



96. Defendant Allrecipes.com has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.allrecipes.com, which has a computerized meal planning interface at <http://allrecipes.com/my/menus/planner.aspx>.

97. Defendant Bravo Media has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.bravotv.com, which has a computerized meal planning interface at <http://www.bravotv.com/foodies/recipes>.

98. Defendant CalorieKing has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.calorieking.com, which has a computerized meal planning interface at <http://www.calorieking.com/tools/diary/>.

99. Defendant ConAgra Foods has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.conagrafoods.com, which has a computerized meal planning interface at <http://www.conagrafoods.com/consumer/brands/search/advanced.jsp>.

100. Defendant Food.com has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.food.com, which has a computerized meal planning interface at <http://www.food.com/recipe-finder/all>.

101. Defendant General Mills has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented websites www.bettycrocker.com and www.pillsbury.com, which have computerized meal planning interfaces at <http://www.bettycrocker.com/search/easymealsearchresults?sr=1&term=milk> and <http://www.pillsbury.com/search/?ingredient1=chicken> respectively.

102. Defendant Meredith Corporation has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.eatingwell.com, which has a computerized meal planning interface at http://www.eatingwell.com/eatingwell_menu_planner.

103. Defendant Nestle USA has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.leancuisine.com, which has a computerized meal planning interface at <http://www.leancuisine.com/Products/Search.aspx>.

104. Defendant Nutrisystem has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.nutrisystem.com, which has a computerized meal planning interface at http://www.nutrisystem.com/jsps_hmr/tools_community/index.jsp.

105. Defendant SparkPeople has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.sparkpeople.com, which has a computerized meal planning interface at http://www.sparkpeople.com/myspark/nutrition_edit.asp.

106. Defendant Taco Mayo has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.tacomayo.com, which has a computerized meal planning interface at <http://www.tacomayo.com/Nutrition.aspx>.

107. Defendant Time has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the

computer implemented website <http://browse.realsimple.com>, which has a computerized meal planning interface at <http://browse.realsimple.com/food-recipes/browse-all-recipes/index.html>.

108. Defendant Tyson Foods has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.tyson.com, which has a computerized meal planning interface at <http://www.tyson.com/Meal-Ideas-And-Recipes.aspx>.

109. Defendant WebMD has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.webmd.com, which has a computerized meal planning interface at <http://www.webmd.com/diet/food-fitness-planner/food-log>.

110. Defendant Whataburger has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website www.whataburger.com, which has a computerized meal planning interface at http://www.whataburger.com/browse_build_a_meal.php.

111. As a direct and proximate consequence of the acts and practices of the Defendants in infringing, directly and/or indirectly, one or more claims of the '516 patent, DietGoal Innovations has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

112. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to DietGoal Innovations.

113. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and DietGoal Innovations is thus entitled to an award of its reasonable attorneys' fees.

DEMAND FOR JURY TRIAL

114. DietGoal Innovations, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, DietGoal Innovations requests entry of judgment that:

1. Defendants have infringed the patent-in-suit;
2. Defendants account for and pay to Plaintiff all damages caused by their respective infringement of the patent-in-suit; and
3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendants' patent infringement;
4. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
5. Costs be awarded to Plaintiff; and
6. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: April 3, 2012

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

By: /s/ Niky Bukovcan
Christopher M. Joe (*Lead Counsel*)
State Bar No. 00787770
Chris.Joe@BJCIPLaw.com
Eric W. Buether
State Bar No. 03316880
Eric.Buether@BJCIPLaw.com
Brian A. Carpenter
State Bar No. 03840600
Brian.Carpenter@BJCIPLaw.com
Niky Bukovcan
Texas State Bar No. 24078287
Niky.Bukovcan@BJCIPLaw.com
Mark D. Perantie
State Bar No. 24053647
Mark.Perantie@BJCIPLaw.com

1700 Pacific Avenue
Suite 2390
Dallas, Texas 75201
Telephone: (214) 466-1278
Facsimile: (214) 635-1831

**ATTORNEYS FOR PLAINTIFF
DIETGOAL INNOVATIONS LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on this 3rd day of April, 2012. Any other counsel of record will be served by facsimile transmission and first class mail.

/s/ Niky Bukovcan
Niky Bukovcan