

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

FILED _____
ENTERED _____
2011 JUL 20 P 3:48
DEBORAH SEYLER
CIRCUIT COURT CLERK
KANE COUNTY, IL

ADAM DREMAK, on Behalf of Himself and All Others Similarly Situated,)	
)	
Plaintiff,)	Case No. 11 CH 876
)	
vs.)	
)	
GROUPON, INC.,)	Honorable Judge: Thomas Mueller
)	
Defendant.)	
)	
_____)	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to 735 ILCS 5/11-101 *et seq.*, of the Illinois Rules of Civil Procedure, Plaintiff Adam Dremak ("Dremak"), on behalf of himself and all others similarly situated, moves for a Preliminary Injunction against Defendant Groupon, Inc. ("Groupon"), to immediately enjoin Defendant from advertising, selling and issuing "groupon" gift certificates in Illinois with illegal expiration dates of less than five years.

I. PRELIMINARY STATEMENT

In 2007, the Illinois Legislature amended the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA") to prohibit the imposition of expiration dates on gift certificates of less than five years. *See* 815 ILCS 505/2SS. The Legislature undoubtedly recognized that consumers who purchase gift certificates should receive the full benefit of their purchase and not have the gift certificates expire within a short period of time.

However, beginning in 2008, Groupon introduced a business model based in large part on the flagrant violation of the ICFA's five-year expiration requirement. Through time-sensitive "Daily Deal" offerings and aggressive marketing efforts, Groupon creates a shopping frenzy that

pressures consumers to click “Buy” and purchase “groupon” gift certificates with short-term expiration periods of six months to a year – significantly less than the five-year period mandated by the ICFA. Consequently, consumers frequently are unable to redeem their “groupon” gift certificates before they expire. Importantly, Groupon and its retail partners are fully aware that many consumers will not be able to redeem their “groupon” gift certificate prior to the expiration dates, leaving them with nothing, while Groupon and its retail partners pocket the money. Groupon’s ongoing use of illegal expiration terms helped generate \$760 million in revenue for the company in 2010 alone, and potentially billions this year. *See* Exhibit A, Groupon’s Form S-1 Registration Statement, p. 6.

Plaintiff Dremak was one of the millions of consumers who purchased a gift certificate for Groupon with an onerous, short-term expiration date. Dremak bought a “groupon” gift certificate redeemable at Nordstrom Rack that expired only five weeks from the date he purchased it. (Complaint ¶¶ 25, 27). *See* Exhibits B & E. Dremak understandably was not able to redeem his “groupon” gift certificate for its full value within that short time period. (Complaint ¶ 32).

Accordingly, Dremak has brought this class action lawsuit against Groupon to address its ongoing and systematic practice of imposing illegal expiration dates and other deceptive and unlawful terms on each of the “groupon” gift certificates it sold and issued in Illinois. Because Groupon continues to reap massive profits from its illegal practices at consumers’ expense, Plaintiff brings this preliminary injunction to enjoin Groupon from maintaining a stranglehold on consumers’ ability to redeem “groupon” gift certificates in accordance with the law.

A preliminary injunction is appropriate here because Plaintiff and putative class members (“Plaintiffs”) meet all of the prerequisites necessary for injunctive relief. The ICFA specifically

provides for “injunctive relief where appropriate” in addition to damages, attorney’s fees and costs. 815 ILCS 505/10a(c). Further, harm to the public at large may be presumed from Groupon’s ongoing systematic violation of the ICFA, making an injunction an appropriate remedy

In addition to meeting the requirements for injunctive relief under the ICFA, the traditional prerequisites for equitable injunctive relief are also satisfied. Plaintiffs have an ascertainable right in need of protection and can establish a likelihood of success on the merits. Furthermore, Plaintiffs will suffer irreparable harm, and the balance of hardships tips in Plaintiffs’ favor. Plaintiffs have an inadequate remedy at law, and an injunction is in the public interest. For all these reasons, Plaintiffs respectfully urge the Court to grant their motion for preliminary injunctive relief.

II. STATEMENT OF FACTS

Since the company’s launch in 2008, Groupon has promoted “Daily Deals” through its website, promising consumers discounted deals on “the best stuff to do, see, eat and buy,” in over 300 markets and 35 countries, purportedly through the power of “collective buying” and social media. *See* Exhibit A. To take advantage of the deals offered by Groupon, consumers must sign up and provide their e-mail address and other information to Groupon. Through this business model, Groupon now boasts over 83 million subscribers and hopes to increase that number to 150 million by the end of 2011. *Id.*, p. 1. As of March 2011, Groupon had 1.5 million subscribers in Chicago alone. *Id.*, p. 74.

Every weekday, Groupon sends its subscribers a “Daily Deal” e-mail, promoting the particular products or services of its retail businesses partners. (Complaint ¶ 16). To trigger the “Daily Deal,” consumers must purchase a specified number of “groupon” gift certificates for the particular product or service offered that day. (Complaint ¶ 16). Groupon sends targeted “Daily

Deal” e-mails to close to 90 cities throughout the United States, including Chicago and Rockford. (Complaint ¶ 16). Groupon’s “Daily Deal” discounts are offered for a limited time, usually 24 hours, in order to create a sense of urgency among consumers to purchase “groupon” gift certificates within that limited timeframe. (Complaint ¶ 17). Consumers purchase “groupon” gift certificates directly through Groupon’s website or via their mobile device using their credit or debit cards. (Complaint ¶ 17). Once purchased, consumers may download and print their “groupon” gift certificates or redeem them using their mobile devices in exchange for the products and services offered by Groupon’s partners. (Complaint ¶ 19).

However, Groupon imposes very limited expiration periods on each “groupon” gift certificate it sells and issues. (Complaint ¶ 21). The expiration periods on “groupon” gift certificates range from just a few months to a year from the date of purchase. (Complaint ¶ 21). Hundreds of thousands of consumers ultimately will be unable to redeem the gift certificates before they expire. (Complaint ¶ 21).

Groupon readily admits that the “groupons” it markets and sells to consumers are gift certificates subject to gift certificate laws. Groupon representatives have communicated to consumers that “Groupons act as a gift certificate.” *See* Exhibit C. The “FAQs” and “Terms of Sale” on Groupon’s website also clearly acknowledge that “groupon” expiration dates are governed by gift certificate laws. *See* Exhibit D. Moreover, Groupon recently acknowledged to the Securities and Exchanges Commission that its “groupons” are gift certificates on in its S-1 filings in support of its planned IPO. *See* Exhibit A, p. 82.

Groupon’s placement of short expiration terms on its “groupon” gift certificates is a plain and direct violation of the ICFA. *See*, e.g., Exhibit B. Groupon imposes these illegal expiration dates, knowing full well that a significant number of consumers will be unable to redeem their

gift certificates within the limited time. Once the expiration dates have passed, Groupon consumers logically forgo using their “groupon” gift certificates, believing that their “groupo ns” have expired. Groupon therefore drives consumers to purchase “groupon” gift certificates as quickly as possible, but consumers often cannot take advantage of and use the product or service for which they paid before the expiration date passes – leaving a substantial windfall for Groupon and its retail partners.

Groupon has unduly profited from this illegal and deceptive business practice. Groupon typically takes for itself half of the price of each “groupon” gift certificate sold and made over \$750 million from “groupon” sales in 2010 alone. *See* Exhibit A, p. 6. Groupon partners with both local businesses and nationwide companies, such as Nordstrom. In late November 2010, Groupon partnered with Nordstrom to promote its Nordstrom Rack chain, offering a “Daily Deal” good for \$50 in merchandise for a purchase price of \$25. The promotion was wildly successful, as hundreds of thousands of consumers nationwide purchased the Nordstrom Rack “groupo ns.” Dremak, an Illinois resident, was one of those consumers. Mr. Dremak purchased a “groupon” gift certificate for Nordstrom Rack through Groupon’s website on or about November 24, 2010. (Complaint, ¶¶ 27-32.) The gift certificate contained a December 31, 2010 expiration date. *Id.* After the “groupon” expired, Mr. Dremak believed that his “groupon” was no longer valid and could not be redeemed. (Complaint ¶ 32).

Groupon’s business model, particularly its ability to establish partnerships with retail businesses nationwide, such as Nordstrom, depends in large part on its systematic use of illegal expiration dates. (Complaint ¶¶ 23-26, 29). Groupon knows that its retail partners, with whom it shares a portion of the revenues from the sale of “groupon” gift certificates, are not willing to offer their products and services at a discount through the sale of “groupon” gift certificates

without an agreement to limit the time period for which consumers can redeem the gift certificates. (Complaint ¶¶ 23-26, 29). Groupon's retail partners therefore consent to Groupon's use of illegal expiration terms because they also receive a windfall when consumers cannot redeem their groupons. (Complaint ¶¶ 23-26, 29). Indeed, reportedly 40% or more of all consumers do not redeem their "Daily Deal" vouchers such as "groupons," in great part due to their short expiration dates. See Exhibit F, "10 Things Daily Deal Sites Won't Say."

III. ARGUMENT

A. **Plaintiffs Are Entitled to Injunctive Relief Under the ICFA.**

Under the ICFA, the Court may grant injunctive relief and award reasonable attorney's fees and costs to the prevailing party. 815 ILCS 505/10a(c). The 1991 amendment to the ICFA expressly permits a private cause of action for injunctive relief (815 ILCS 505/10a(c)). *Recreation Servs., Inc. v. Odyssey Fun World, Inc.*, 952 F.Supp. 594 (N.D. Ill.1997), *Cobb v. Monarch Fin. Corp.*, 913 F.Supp. 1164 (N.D. Ill.1995).

When an injunction is sought pursuant to a statute (such as the ICFA), the traditional requirements for equitable injunctive relief are dispensed with and the requirements of the statute control. *People ex rel. Edgar v. Miller*, 110 Ill.App.3d 264, 269, 65 Ill.Dec. 814, 441 N.E.2d 1328 (1982), *leave to appeal denied*; *People ex rel. Carpentier v. Goers*, 20 Ill.2d 272, 276, 170 N.E.2d 159 (1960); *People v. Keeven*, 68 Ill.Ap.3d 91, 96-97, 24 Ill.Dec. 663, 385 N.E.2d 804 (1979); *City of Highland Park v. County of Cook*, 37 Ill.App.3d 15, 20, 344 N.E.2d 665 (1975). Thus, "where a statute expressly authorizes injunctive relief to enforce the provisions of the statute, the general rules of equity requiring a showing of a lack of an adequate remedy at law and irreparable injury need not be shown." *People v. Fiorini*, 143 Ill.2d 318, 346, 158 Ill.Dec. 499, 574 N.E.2d 612 (1991). Courts find that an injunction is appropriate to restrain violations of

a statute because harm to the public at large can be presumed from the statutory violation alone. *People v. Keeven*, 68 Ill.App.3d 91, 96, 24 Ill.Dec. 663, 385 N.E.2d 804 (1979); *Sadat v. American Motors Corp.*, 114 Ill.App.3d 376, 380, 70 Ill.Dec. 22, 448 N.E.2d 900 (1983), *aff'd*, 104 Ill.2d 105, 83 Ill.Dec. 577, 470 N.E.2d 997 (1984). In the enforcement of any statute or ordinance, there is a presumption that the public is harmed when the statute or ordinance is violated. *County of Kendall v. Rosenwinkel*, 353 Ill.App.3d at 539, 288 Ill.Dec. 737, 818 N.E.2d 425 (2004), citing *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill.App.3d 494, 504, 191 Ill.Dec. 725, 624 N.E.2d 913 (1993).

Here, the public policy at stake is the protection of consumers from unfair methods of competition. See *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 812, 863 N.E.2d 800, 817 (Ill. App. Ct. 2007) (the object of the ICFA “is the protection of the public interest.”). The court in *Scott v. Association for Childbirth at Home, International*, 88 Ill.2d 279, 288, 58 Ill.Dec. 761, 430 N.E.2d 1012 (1981), explained that the purpose of the ICFA is to protect consumers against fraud and other unfair and deceptive practices:

The Act is a regulatory and remedial enactment intended to curb a variety of fraudulent abuses and to provide a remedy to individuals injured by them. Its stated purpose, set forth in its preamble, is to protect Illinois Consumers, borrowers and businessmen against fraud, unfair methods of competition, and other unfair and deceptive practices. The Act is clearly within the class of remedial statutes which are designed to grant remedies for the protection of rights, introduce regulations conducive to the public good, or cure public evils.

Accordingly, because the ICFA provides for statutory injunctive relief, the movant is not required to demonstrate the traditional equitable requirements of irreparable harm or an inadequate remedy at law. *People v. Keeven*, 68 Ill.App.3d 91, 96, 24 Ill.Dec. 663, 385 N.E.2d 804 (1979). Thus, to obtain an injunction under the ICFA, the movant is only required to show that the defendant engaged in unfair or deceptive acts or practices in the conduct of trade or

commerce. *People ex rel. Fahner v. Hedrich*, 108 Ill.App.3d 83, 87, 63 Ill.Dec. 782, 438 N.E.2d 924 (1982); *People ex rel. Hartigan v. Maclean Hunter Publishing Corp.*, 119 Ill.App.3d 1049, 1056, 75 Ill.Dec. 486, 457 N.E.2d 480 (1983); *People ex rel. Fahner v. Walsh*, 122 Ill.App.3d 481, 484, 77 Ill.Dec. 691, 461 N.E.2d 78 (1984). Because the ICFA's purpose is to protect the public from unfair and deceptive practices, the harm to the public can be presumed from the statutory violation itself. *See Scott*, 88 Ill. 2d at 761; *Keeven*, 68 Ill. App. 3d at 96.

Importantly, injunctive relief under the ICFA is not limited to actions brought by the Attorney General. Indeed, the 1991 amendment to the ICFA broadened the protections against unlawful deceptive business conduct by allowing consumers themselves to bring private rights of actions and seek injunctive relief. 815 ILCS 505/10a(c). Therefore, Plaintiffs are entitled to seek an injunction against Groupon under the ICFA for its continuing violations of Illinois' gift certificate law. *See Sadat*, 104 Ill. 2d at 114-15 (recognizing that certain statutory provisions may provide for injunctive relief to private party plaintiffs without a showing of traditional equitable pleading requirements where, for example, express authorization for injunctive relief is provided within the act and the underlying theory of the act "seems to recognize irreparable injury" to the public).

Here, it is abundantly clear that Groupon violates the gift certificate provisions of the ICFA, 815 ILCS 505/2SS. (Complaint, ¶¶ 17-21, 25-27.) Plaintiffs have conclusively demonstrated that Groupon engaged in ongoing fraudulent, unfair and deceptive business conduct by marketing, selling and issuing "groupon" gift certificates with short-term expiration periods less than the 5-year period allowed by law. 815 ILCS 505/2SS. By the company's own admission, the groupons sold to consumers are unequivocally gift certificates, which are subject to gift certificate laws. *See* discussion at Section B.2.a. Injunctive relief pursuant to the ICFA is

therefore appropriate to remedy the blatant violations of the ICFA and stop the ongoing harm to consumers in Illinois.

B. Plaintiffs Are Also Entitled to Injunctive Relief Under Traditional Equitable Standards.

Even if the court were inclined to consider the traditional standards for injunctive relief, such relief is warranted. An injunction is traditionally a matter of equitable discretion. *Cannon v. Whitman Corp.*, 212 Ill.App.3d 79, 81-82, 155 Ill.Dec. 503, 569 N.E.2d 1114 (1991). Courts routinely grant motions for preliminary injunctions where plaintiff shows: (1) a clearly ascertainable right that needs protection; (2) the likelihood of irreparable harm without the protection; (3) no adequate remedy at law; (4) the likelihood of success; and, (5) that plaintiff will suffer greater harm without the injunction than defendant will suffer if it is issued. *Illinois Consol. Tel. Co. v. Aircall Communications, Inc.*, 101 Ill.App.3d 767, 771, 57 Ill.Dec. 197, 428 N.E.2d 747 (1981).

1. The Legislature Has Recognized Plaintiffs' Ascertainable Rights that Need Protection.

As discussed above, Plaintiffs seek statutory injunctive relief under the ICFA and therefore need not demonstrate the traditional requirements of equitable injunctive relief. Nonetheless, by enacting the five-year expiration standard, the Legislature has already determined that individuals such as Dremak have an ascertainable right in need of protection. Plaintiffs meet the other elements to support a preliminary injunction as well.

2. There Is A Substantial Likelihood That Plaintiffs Will Prevail On Their Claims.

The party seeking a preliminary injunction must raise a "fair question" as to each element of injunctive relief. See *People ex rel. Klaeren v. Village of Lisle*, 202 Ill.2d 164, 177, 269 Ill.Dec. 426, 781 N.E.2d 223, 230 (2002). Plaintiffs must first establish that they are likely to

succeed on the merits. *See, e.g., Illinois Consol. Tel.*, 101 Ill.App.3d at 771. At a very minimum, Plaintiffs raise “fair questions” as to whether Groupon violated the ICFA by placing restrictive expiration terms on the gift certificates sold to consumers.

a. “Groupons” Are Gift Certificates.

First, there is no question that “groupons” qualify as “gift certificates” under the ICFA.

The ICFA defines “gift certificates” as:

(i) a record evidencing a promise; (ii) made for consideration; (iii) by the seller or issuer of the record that goods or services will be provided to the holder of the record for the value shown in the record and includes, but is not limited to, a record that contains a microprocessor chip, magnetic stripe or other means for the storage of information that is prefunded and for which the value is decremented upon each use, a gift card, an electronic gift card, stored-value card or certificate, a store card or a similar record or card.

815 ILCS 505/2SS.

Here, Groupon sold and issued “groupons,” which are plainly “gift certificates,” as defined under 815 ILCS 505/2SS. First, “groupons” constitute electronic promises for consideration as Groupon accepts only electronic payments from Plaintiffs through its website. (Complaint, ¶¶ 19, 49.) Second, “groupons” are purchased on a prefunded basis in exchange for payment. *Id.* Consumers simply click the “Buy” link on Groupon’s website using their computer, tablet or mobile device and their credit or debit cards are charged in advance in exchange for a “groupon” gift certificate that is redeemable at the featured merchant. Nordstrom Rack Offer, (Complaint, ¶¶ 17-21.) Finally, groupons can only be redeemed with a single merchant partner, or affiliated group of merchants, for the goods or services that Groupon promoted through its “Daily Deal.” (Complaint, ¶¶ 19, 49.) Plaintiffs may print-out or bring their “groupon” gift certificate stored on their mobile device to merchants like Nordstrom in

exchange for goods or services.¹ (Complaint, ¶¶ 19, 30.)

In fact, Groupon readily admits that its “groupons” are gift certificates that must comply with gift certificate expiration date laws. *See* Exhibit E, Merchant Terms. The “FAQs” and “Terms of Sale” on Groupon’s website also clearly acknowledge that “groupon” expiration dates are governed by gift certificate laws. *Id.* Groupon representatives have also communicated to consumers on Groupon’s internet forums that “Groupons act as a gift certificate.” *Id.* Indeed, Groupon recently acknowledged to the Securities and Exchanges Commission that its “groupons” are gift certificates on in its S-1 filings in support of its planned IPO. *See* Exhibit A, p. 82.

Therefore, under the definition set forth in ICFA, and by Groupon’s own admission, “groupons” are gift certificates.

b. “Groupons” Contain Illegal Expiration Dates.

Having established that “groupons” are gift certificates under Illinois law, Defendant clearly violates the ICFA by selling and issuing “groupon” gift certificates with expiration dates of less than five years, which is *per se* prohibited under 815 ILCS 505/2SS(b). Dremak’s “groupon” expired a little over a month after he purchased it. (Complaint ¶¶ 27, 29). All “groupons” sold since the launch of the company in 2008 apparently feature expiration periods of a few months to a year – much shorter than the five-year period allowed by law. (Complaint, ¶¶ 6, 21, 52.)

Groupon places its expiration dates prominently on the “groupon” gift certificate under a boldface heading entitled “Expires On” to deceive Plaintiffs into believing that they are not

¹ Groupon’s S-1 states: “Each day we email our subscribers discounted offers for goods and services that are targeted by location and personal preferences. A typical deal might offer a \$20 Groupon that can be redeemed for \$40 in value at a restaurant, spa, yoga studio, car wash or other local merchants. Customers purchase Groupons from us and redeem them with our merchants.” *See* Exhibit A, p. 1.

entitled to redeem their “groupon” gift certificates after the stated date. *See* Exhibit E. While Defendants reap large profits from this practice, Plaintiffs are left with prepaid, expired “groupon” gift certificates apparently worth nothing. This is a clear violation of the ICFA and exactly the type of practice that the Legislature sought to eradicate by passing the expiration date amendments to ICFA.

3. **Plaintiffs Will Be Irreparably Injured Absent An Injunction.**

Plaintiffs also can demonstrate irreparable injury. Irreparable injury does not mean that the harm is beyond the possibility of repair or beyond compensation in damages; nor does it mean that the injury must be great. *Prentice Med. Corp. v. Todd*, 145 Ill.App.3d 69299 Ill.Dec. 309 (1st Dist. 1986). Indeed, to show irreparable injury, plaintiffs “need not show injury that is beyond repair or compensation in damages, but rather, need only show transgressions of a continuing nature.” *Greenspan v. Mesirov*, 138 Ill.App.3d 294, 300, 92 Ill.Dec. 953, 485 N.E.2d 1196 (1985); *Sports Unlimited, Inc. v. Scotch & Sirloin of Woodfield, Inc.*, 58 Ill.App.3d 579, 583, 16 Ill.Dec. 141, 374 N.E.2d 916 (1978).

Plaintiffs will suffer irreparable injury if the Court does not grant injunctive relief. Collectively, Plaintiffs will suffer continuous harm should Defendants continue their ongoing transgression of bilking millions of consumers of the benefit of their bargain by imposing illegal expiration dates on “groupon” gift certificates. Groupon lures more than a million consumers in Illinois to purchase its gift certificates based on the promise of “Daily Deal” discounts. *See* Exhibit A, p. 74. Plaintiffs purchase these “groupoos” under the reasonable belief that they can redeem them for their full value with Groupon’s retail partners. (*See, e.g.,* Complaint, ¶ 28.) Plaintiffs are injured financially each time they cannot redeem a “groupon” gift certificate for its full value. Dremak himself will suffer irreparable injury, as Groupon continues to deny him the

right to redeem the “groupon” he purchased for its full face value. (Complaint, ¶¶ 28, 30, 32.) Such injury will systematically generate millions of dollars for Groupon and its merchant partners. (Complaint, ¶ 26.)

Unless the practice is enjoined, millions of Groupon consumers will continue to purchase and forfeit the value of their “groupon” gift certificates under the false impression that they expire before they actually do expire under Illinois law. This litigation may take years before it is resolved – it is a complex class action, involving numerous parties and possibly countless witnesses and millions of pages of documents produced through discovery.

Moreover, allowing Groupon and its merchant partners to reap millions of dollars while clearly violating the ICFA on a continuous and ongoing basis would effectively sanction an illegal and unlawful business practice injuring thousands of consumers every day. These injuries that Plaintiffs have and will continue to suffer absent immediate injunctive relief constitute irreparable harm. (Complaint ¶¶ 21, 22, 53.) A monetary award several years down the road will not adequately remedy Groupon’s continuing transgressions. *See Greenspan*, 1381 Ill. App. 3d at 300.

4. The Balance of Hardships Weighs Heavily in Favor of Granting An Injunction.

The balance of hardships to the parties also supports granting a preliminary injunction here. *Joseph J. Henderson & Son, Inc. v. City of Crystal Lake*, 318 Ill.App.3d at 883, 252 Ill.Dec. 845, 743 N.E.2d at 716 (2001). Courts employ an equitable balancing test to determine whether injunctive relief is properly tailored to the facts. *ABC Trans Nat’l Transport, Inc. v. Aeronautics Forwarders, Inc.*, 62 Ill.App.3d 671, 682, 20 Ill.Dec. 160, 379 N.E.2d 1228 (1978). Any harm an injunction would impose on the defendant is weighed against the benefit that it would provide the plaintiff. *ABC*, 62 Ill.App.3d at 682, 20 Ill.Dec. 160, 379 N.E.2d 1228.

However, courts do not “balance the harms” where the defendant acted despite knowledge of the plaintiff’s rights and understood the possible consequences. *Id.*

Here, the facts show that Groupon acted, and continues to act, in a manner that violates Illinois law, despite its knowledge of the ICFA, and Groupon clearly understood the possible consequences of its actions, therefore, no balancing of the harms is needed. Groupon told its retail partners that state and federal gift certificate laws applied and put the onus on them to ensure compliance, even though Groupon is in control of the “groupon” terms and conditions. Indeed, in Groupon’s S-1 filing, it advised potential investors:

Groupons may be considered gift cards, gift certificates, stored value cards or prepaid cards and therefore governed by, among other laws, the CARD ACT, and state laws governing gift cards, stored value cards and coupons. Many of these laws contain provisions governing the use of gift cards, gift certificates, stored value cards or prepaid cards, including specific disclosure requirements and prohibitions or limitations on the use of expiration dates and the impositions of certain fees. *See Exhibit A, p. 82.* Yet Groupon nonetheless continues to issue its “groupon” with illegal expiration dates. Thus, it is unnecessary for the Court to balance the hardships.

Even if the Court did balance the hardships, Plaintiffs would prevail. The resulting injury to Plaintiffs from the denial of relief far outweighs any possible injury to Groupon resulting from the grant of the requested injunctive relief. Here, if Plaintiffs are denied an injunction, they will continue to pay for “groupon” gift certificates under the false belief that the illegal expiration dates apply.² Moreover, Plaintiffs will continue to be denied their ability to redeem “groupon” gift certificates for their full value in accordance with the law.

² Economic harm may indeed be a factor in considering the balance of equitable interests. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010).

On the other hand, any potential burden or hardship to Defendant of an injunction would be minimal. Plaintiff simply requests that Groupon make the adequate disclosures on their “groupon” gift certificates in accordance with the law. This includes complying with the ICFA’s requirement that no gift certificate contain an expiration date of less than five years from the date of issuance. The amount of labor and expense involved in changing the expiration date disclosures on the “groupon” gift certificates will be negligible. Because Defendant’s business is conducted through the internet, email and via mobile devices, the process of removing references to expiration dates is even easier than if the process involved hardcopy literature or physical gift cards. All Groupon will need to do is remove or alter language regarding “groupon” expiration dates in their advertisements, offers and on the web-based “groupo ns” themselves. Because the hardship that Groupon faces in complying with the requested injunctive relief pales in comparison to the injury to Plaintiffs, the balance of the hardships tips sharply in favor of Plaintiffs.

“In balancing the equities, the court should also consider the effect of the injunction on the public.” *Kalbfleisch v. Columbia Community Unit School District Unit No. 4*, 396 Ill.App.3d 1105, 1119, 336 Ill.Dec. 442, 920 N.E.2d 651, 664 (2009); *see also Roland Machinery Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 388 (7th Cir.1984) (when a preliminary injunction has consequences beyond the immediate parties, the “public interest” must be included in the weighing process).

As aforementioned, the object of the ICFA “is the protection of the public interest.” *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 802 n.2, 863 N.E.2d 800, 817 (Ill. App. Ct. 2007); *see also Martis v. Pekin Mem’l Hosp. Inc.*, 395 Ill. App. 3d 943, 949, 917 N.E.2d 598, 603 (Ill. App. Ct. 2009) (“The Consumer Fraud Act is intended to protect consumers against unfair and

deceptive business practices.”). Specifically, the public has a substantial interest in making sure that millions of consumers are not misled to believe that “groupon” gift certificates are worthless just months after they are issued. With each passing illegally imposed expiration date, Groupon forces thousands of consumers to forfeit money they thought would bring them great deals. Such practices pad Groupon’s balance sheet with ill-gotten gains at the public’s expense.

Moreover, Groupon cannot assert any public interest opposing an injunction. At best, Defendant can argue that it might be financially injured to a certain extent by removal the windfall profits that it and its retail partners receive due to the illegal expiration dates on its “groupon” gift certificates. But such illegal earnings run contrary to, and are not consistent with, the public policy embodied in the ICFA. Further, any interest that Defendant might assert, such as financial injury due to the removal of illegal profits, does not come close to outweighing the strong public interest that would be served by requiring Groupon to obey the law and remove illegal expiration dates from “groupon” gift certificates.

In summary, the public interest will be advanced by requiring Groupon to eliminate the use of expiration dates on their “groupon” gift certificates and related advertising.

5. Plaintiffs Have an Inadequate Remedy at Law.

Finally, Plaintiffs have an inadequate remedy at law. Because the ICFA’s purpose is to protect the public from unfair and deceptive practices, and harm to the public can be presumed from the statutory violation itself. See *Scott*, 88 Ill. 2D at 761; *Keeven*, 68 Ill. App. 3D at 96. The application of the rule that an injunction is improper if there is an adequate remedy at law depends upon the circumstances of each case. *Paul v. City of Rockford*, 283 Ill. App. 310,319 (1936). “A remedy at law is adequate if it is “clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.” *Cont’l Cablevision of*

Cook County, Inc. v. Miller, 238 Ill. App. 3d 774, 778, 606 N.E.2d 587, 596 (Ill. App. Ct. 1992) (quoting *American Tel. & Telegraph v. Arlington Heights*, 174 Ill. App. 3d 381, 528 N.E.2d 1000 (1988)).

A remedy at law is adequate only if it is “clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.” (*American Tel. & Telegraph v. Arlington Heights*, 174 Ill. App. 3d. at 388 (citing *K.F.K. Corp. v. American Continental Homes, Inc.* (1975), 31 Ill. App. 3d 1017, 335 N.E.2d 156). Importantly, if the circumstances of the case make an equitable remedy more appropriate, it can be granted despite the existence of a remedy at law. *Board of Educ. of Park Forest-Chicago Heights School Dist. No. 163 v. Houlihan*, 382 Ill. App. 3d, 604, 610, 321 Ill. Dec. 100, 888 NE. 2d. 619 (2008).

Here, while Plaintiffs may conceivably receive a monetary award several years down the road, that possibility does not give rise to an adequate remedy at law barring injunctive relief. Indeed, Illinois courts have long held that where the defendant engages in ongoing business practices that have been deemed illegal and harmful to the public, the fact that the defendant faces monetary penalties or damages for engaging in such practices does not constitute an adequate legal remedy. *Riverdale v. Allied Waste Transp.*, 334 Ill. App. 3d 224, 233-234; see also *County of Lake v. Spare Things*, 27 Ill. App. 3d 179, 326 N.E.2d 186 (1975) (argument that monetary penalty constituted adequate legal remedy for failure to obtain use permit under zoning codes was rejected). Here, the threat of monetary penalties and damages, which loom far off in the horizon, serves as no immediate deterrent to Groupon’s ongoing practice of selling gift certificates with onerous and illegal expiration periods. A preliminary injunction is needed to stop this systemic fraudulent and deceptive business practice. Under these circumstances, even if the Court finds that a remedy at law may exist at some point in the indeterminate future, it may

grant Plaintiffs preliminary injunctive relief. *Board of Educ. of Park Forest-Chicago Heights School Dist. No. 163*, 382 Ill. App. 3d. at 610.

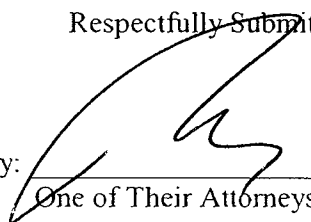
V. **CONCLUSION**

For all the foregoing reasons, Plaintiffs respectfully request that the Court enter a preliminary injunction ordering Groupon to provide the relief requested herein, and grant such other and further relief as the Court deems just and proper.

Dated: July 20, 2011

Respectfully Submitted,

By:



One of Their Attorneys

Robert M. Foote, Esq. (#03124325)
Craig S. Mielke, Esq. (#03127485)
Matthew J. Herman, Esq. (#06237297)
Foote, Meyers, Mielke & Flowers LLC
3 North Second Street
Suite 300
St. Charles, IL 60174
Tel. No.: (630) 232-6333

Kathleen C. Chavez, Esq. (#6255735)
Chavez Law Firm, P.C.
3 North Second Street
Suite 300
St. Charles, IL 60174
Tel. No.: (630) 232-4480
Facsimile: (630) 232-6597

Timothy G. Blood, Esq. (*Pro Hac Vice*)
Thomas J. O'Reardon II, Esq. (*Pro Hac Vice*)
Blood Hurst & O'Reardon, LLP
600 B Street, Suite 1550
San Diego, CA 92101

Attorneys for Plaintiff

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ADAM DREMAK, on Behalf of Himself)
and All Others Similarly Situated,)
)
Plaintiff,) Case No. 11 CH 876
)
vs.)
)
GROUPON, INC.,) Honorable Judge: Thomas Mueller
)
Defendant.)
)
_____)

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT A

S-1 1 a2203913zs-1.htm S-1

Use these links to rapidly review the document

TABLE OF CONTENTS

Table of Contents

Table of Contents

As filed with the Securities and Exchange Commission on June 2, 2011

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Groupon, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7379
(Primary Standard Industrial
Classification Code Number)

27-0903295
(I.R.S. Employer
Identification Number)

600 West Chicago Avenue, Suite 620
Chicago, Illinois 60654
312-676-5773

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Andrew D. Mason
Chief Executive Officer
Groupon, Inc.
600 West Chicago Avenue, Suite 620
Chicago, Illinois 60654
312-676-5773

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Steven J. Gavin, Esq.
Matthew F. Bergmann, Esq.
Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
312-558-5600

Peter M. Astiz, Esq.
Gregory M. Gallo, Esq.
Jason C. Hanmon, Esq.
DLA Piper LLP (US)
2000 University Avenue
East Palo Alto, California 94303
650-833-2036

Table of Contents

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus and does not contain all of the information you should consider in making your investment decision. Before investing in our Class A common stock, you should carefully read this entire prospectus, including our consolidated financial statements and the related notes and the information set forth under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," in each case included elsewhere in this prospectus. Except where the context requires otherwise, in this prospectus the terms "Company," "Groupon," "we," "us" and "our" refer to Groupon, Inc., a Delaware corporation, and where appropriate, its direct and indirect subsidiaries.

GROUPON, INC.

Groupon is a local e-commerce marketplace that connects merchants to consumers by offering goods and services at a discount. Traditionally, local merchants have tried to reach consumers and generate sales through a variety of methods, including the yellow pages, direct mail, newspaper, radio, television and online advertisements, promotions and the occasional guy dancing on a street corner in a gorilla suit. By bringing the brick and mortar world of local commerce onto the internet, Groupon is creating a new way for local merchants to attract customers and sell goods and services. We provide consumers with savings and help them discover what to do, eat, see and buy in the places where they live and work.

We started Groupon in November 2008 and believe the growth of our business demonstrates the power of our solution and the size of our market opportunity:

- We increased our revenue from \$3.3 million in the second quarter of 2009 to \$644.7 million in the first quarter of 2011.
- We expanded from five North American markets as of June 30, 2009 to 175 North American markets and 43 countries as of March 31, 2011.
- We increased our subscriber base from 152,203 as of June 30, 2009 to 83.1 million as of March 31, 2011.
- We increased the number of merchants featured in our marketplace from 212 in the second quarter of 2009 to 56,781 in the first quarter of 2011.
- We sold 116,231 Groupons in the second quarter of 2009 compared to 28.1 million Groupons in the first quarter of 2011.
- We grew from 37 employees as of June 30, 2009 to 7,107 employees as of March 31, 2011.

Each day we email our subscribers discounted offers for goods and services that are targeted by location and personal preferences. Consumers also access our deals directly through our websites and mobile applications. A typical deal might offer a \$20 Groupon that can be redeemed for \$40 in value at a restaurant, spa, yoga studio, car wash or other local merchant. Customers purchase Groupons from us and redeem them with our merchants. Our revenue is the purchase price paid by the customer for the Groupon. Our gross profit is the amount of revenue we retain after paying an agreed upon percentage of the purchase price to the featured merchant.

Our Advantage

Customer experience and relevance of deals. We are committed to providing a great customer experience and maintaining the trust of our customers. We use our technology and scale to target relevant deals based on individual subscriber preferences. As we increase the volume of transactions through our marketplace, we increase the amount of data that we have about deal performance and customer interests.

Table of Contents

common stock that will be sold in this offering. See "Related Party Transactions—Recapitalization." Except as otherwise indicated, all information in this prospectus (other than historical financial statements) assumes:

- the amendment and restatement of our certificate of incorporation upon the closing of this offering;
- the consummation of the recapitalization prior to the closing of this offering; and
- no exercise of the underwriters' over-allotment option.

Table of Contents

markets we entered through the CityDeal acquisition. The performance of these markets is not necessarily indicative of our current or future performance in other markets.

Case Study: Chicago

Chicago is the first market we entered, and we offered our first daily deal there in November 2008. Chicago is also our largest market. Due to our history in Chicago and the fact that we are headquartered there, we have tested new features and strategies in Chicago. As of June 30, 2009, we had 36,891 subscribers, and, for the second quarter of 2009, we generated \$1.6 million in revenue from 46,909 Groupons sold. As of March 31, 2011, we had 1.5 million subscribers, and, for the first quarter of 2011, we generated \$21.5 million in revenue from 950,689 Groupons sold. The following table shows subscribers and cumulative customers as of the end of each quarter and featured merchants, revenue and Groupons sold in each quarter beginning with the second quarter of 2009:

Chicago	Three Months Ended.							
	Jun. 30. 2009	Sept. 30. 2009	Dec. 31. 2009	Mar. 31. 2010	Jun. 30. 2010	Sept. 30. 2010	Dec. 31. 2010	Mar. 31. 2011
Subscribers	36,891	62,038	147,882	268,056	492,826	750,118	1,102,146	1,504,978
Cumulative customers	19,003	43,023	74,237	125,403	184,074	285,987	409,746	552,712
Featured merchants	67	92	131	144	157	233	470	759
Revenue (in millions) \$	1.6 \$	3.0 \$	3.9 \$	6.3 \$	9.3 \$	13.1 \$	16.9 \$	21.5
Groupons sold	46,909	84,373	149,371	263,304	350,928	541,084	678,933	950,689

Case Study: Boston

Boston is the second market we entered, and we offered our first daily deal there in April 2009. As of June 30, 2009, we had 17,069 subscribers, and, for the second quarter of 2009, we generated \$0.7 million in revenue from 26,032 Groupons sold. As of March 31, 2011, we had 778,936 subscribers, and, for the first quarter of 2011, we generated \$9.3 million in revenue from 388,178 Groupons sold. The following table shows subscribers and cumulative customers as of the end of each quarter and featured merchants, revenue and Groupons sold in each quarter beginning with the second quarter of 2009:

Boston	Three Months Ended.							
	Jun. 30. 2009	Sept. 30. 2009	Dec. 31. 2009	Mar. 31. 2010	Jun. 30. 2010	Sept. 30. 2010	Dec. 31. 2010	Mar. 31. 2011
Subscribers	17,069	56,904	122,375	194,615	285,615	412,467	561,064	778,936
Cumulative customers	8,545	20,953	36,634	62,610	94,617	142,930	197,961	272,548
Featured merchants	66	75	87	110	116	145	286	456
Revenue (in millions) \$	0.7 \$	1.4 \$	1.8 \$	2.9 \$	4.6 \$	5.9 \$	7.1 \$	9.3
Groupons sold	26,032	39,996	56,457	95,755	152,675	223,469	284,157	388,178

Table of Contents

Competition

Since our inception, a substantial number of competing group buying sites have emerged around the world attempting to replicate our business model. These competitors offer substantially the same or similar product offerings as us. We also compete with businesses that focus on particular merchant categories or markets. We increasingly compete against other large internet and technology-based businesses, such as Facebook, Google and Microsoft, each of which have launched initiatives which are competitive to our business. We also compete with traditional offline coupon and discount services, as well as newspapers, magazines and other traditional media companies that provide coupons and discounts on products and services. We believe the principal competitive factors in our market include the following:

- breadth of subscriber base and merchants featured;
- local presence and understanding of local business trends;
- ability to deliver a high volume of relevant deals to consumers;
- ability to produce high purchase rates for deals among subscribers;
- ability to generate positive return on investment for merchants; and
- strength and recognition of our brand.

We believe we compete favorably on the factors described above. However, we anticipate that larger, more established companies may directly compete with us as we continue to demonstrate the viability of a local e-commerce business model. Many of our current and potential competitors have longer operating histories, significantly greater financial, technical, marketing and other resources and larger customer bases than we do. These factors may allow our competitors to benefit from their existing customer or subscriber base with lower acquisition costs or to respond more quickly than we can to new or emerging technologies and changes in customer requirements. These competitors may engage in more extensive research and development efforts, undertake more far-reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to build a larger subscriber base or to monetize that subscriber base more effectively than us. Our competitors may develop products or services that are similar to our products and services or that achieve greater market acceptance than our products and services.

Regulation

We are subject to a number of foreign and domestic laws and regulations that affect companies conducting business on the internet, many of which are still evolving and could be interpreted in ways that could harm our business. In the United States and abroad, laws relating to the liability of providers of online services for activities of their users and other third parties are currently being tested by a number of claims. These regulations and laws may involve taxation, tariffs, subscriber privacy, data protection, content, copyrights, distribution, electronic contracts and other communications, consumer protection, the provision of online payment services and the characteristics and quality of services. It is not clear how existing laws governing issues such as property ownership, sales and other taxes, libel and personal privacy apply to the internet as the vast majority of these laws were adopted prior to the advent of the internet and do not contemplate or address the unique issues raised by the internet or e-commerce. In addition, it is possible that governments of one or more countries may seek to censor content available on our websites or may even attempt to completely block access to our websites. Accordingly, adverse legal or regulatory developments could substantially harm our business.

Groupons may be considered gift cards, gift certificates, stored value cards or prepaid cards and therefore governed by, among other laws, the CARD Act and state laws governing gift cards, stored value cards and coupons. Many of these laws contain provisions governing the use of gift cards, gift certificates, stored value cards or prepaid cards, including specific disclosure requirements and prohibitions or limitations on the use of expiration dates and the imposition of certain fees. If Groupons are subject to the

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ADAM DREMAK, on Behalf of Himself)
and All Others Similarly Situated,)
)
Plaintiff,) Case No. 11 CH 876
)
vs.)
)
GROUPON, INC.,) Honorable Judge: Thomas Mueller
)
Defendant.)
)
)
_____)

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT B

Hi Adam,

Your Groupon is ready!

Everything went smoothly and your Groupon for "\$50 Groupon to Nordstrom Rack" is ready to print.

Your credit card (****-9309) was charged \$25.

When you're ready to use your Groupon, you can print it here:

<http://www.groupon.com/mygroupons>

Thanks for getting your Groupon!

The Groupon Team
www.groupon.com

Need help? Have feedback? Feel free to [Contact Us](#)

Delivered by [Groupon](#) 600 W Chicago Ave., Suite 620, Chicago, IL 60654

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

ADAM DREMAK, on Behalf of Himself)	
and All Others Similarly Situated,)	
)	
Plaintiff,)	Case No. 11 CH 876
)	
vs.)	
)	
GROUPON, INC.,)	Honorable Judge: Thomas Mueller
)	
Defendant.)	
)	
_____)	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT C

All Topics

Deal Talk

San Diego Talk

Groupon Global

What's a groupon? gift card, coupon, gift cert., voucher?



Stephanie F. commented 6 months, 6 days, 22 hours, and 11 minutes ago

I say, "It's like a discount voucher. I may buy a Groupon for Restaurant X for \$20, and can order \$40 worth of food with it." Everyone seems to understand that pretty clearly.



Meg M. commented 6 months, 6 days, 19 hours, and 27 minutes ago

Do you mean legally or in common parlance? Legally, state laws apply and may mean that an expired groupon still has value. Common talk - say it's a discount coupon, or a discounted stored value product. What does it really matter? Groupon is very easy to explain.



Josh at Groupon commented 6 months, 6 days, 10 hours, and 24 minutes ago

Hey Joe

Groupons act as a gift certificate

Nevada expiration date laws will apply to Vegas Groupons and California expiration date laws will apply to California Groupons.

We are not in a place to give out legal counsel, so you'll want to investigate the specific laws on your own or talk to a vendor about them.

You are welcome to trade or sell them on the Vegas board.

Or the California board.

You're welcome to use them as parrot cage paper as well.

Josh

Forum Moderator

Sign in to post a comment!



Groupon Mobile

The Groupon Mobile family is like having a digital wallet for your Groupons. [Go mobile](#)



Groupon Affiliates

Get paid by spreading the Groupon word with the [Groupon Affiliate Program](#)



Groupon for Your Business

Learn how to get your business featured on Groupon and enjoy the benefits. [Learn more](#)



Give the Gift of Groupon

Show your love by giving Today's Deal or a Groupon Gift Card. [Start giving](#)

Follow Us:    

Total dollars saved

\$1,156,000,396

Total Groupons bought

26,980,316

Company

- [Home](#)
- [Contact Us](#)
- [About Groupon](#)
- [Jobs at Groupon](#)
- [Press](#)

Learn More

- [FAQ](#)
- [Developers - API](#)
- [Affiliate Program](#)
- [Affiliate Widget Builder](#)
- [Suggest a Business](#)

Extra

- [GroupLOGram](#)
- [Live Off Groupon](#)
- [Groupon Mobile](#)
- [Groupon Referral Widget](#)
- [Groupon Referral Ads](#)

Unbeatable Deals for Local Adventures

Groupon is an easy way to get huge discounts while discovering fun activities in your city. Our daily deals consist of **restaurants, spas, massages, theaters, hotels**, and so much more, in dozens of cities across the country.

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

ADAM DREMAK, on Behalf of Himself)	
and All Others Similarly Situated,)	
)	
Plaintiff,)	Case No. 11 CH 876
)	
vs.)	
)	
GROUPON, INC.,)	Honorable Judge: Thomas Mueller
)	
Defendant.)	
)	
_____)	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT D

[hide](#)

Get the Daily Deal for:

- San Diego
Enter your email address
-

Groupon: Collective Buying Power

- [Featured Deal](#)
- [How It Works](#)
- [Sign In](#)
- [Sign Up](#)

FAQ

What is Groupon?

Each day, Groupon features an unbeatable deal on the best stuff to do, see, eat, and buy in your city. By promising businesses a minimum number of customers, we get discounts you won't find anywhere else. We call it "collective buying power!"

Do I have to sign up a group of people I know to get the deal?

Nope - our millions of members make up a big enough group. You'll probably want to invite people anyway, though — Groupons are fun to use with friends, grandparents, and men who wear monocles.

I like today's deal - how do I get it?

Just click "BUY" before the offer ends at midnight. If the minimum number of people sign up, we'll charge your card and send you a link to print your Groupon. If not enough people join, no one gets it (and you won't be charged), so invite your friends to make sure you get the deal!

What happens if the Groupon doesn't reach its required minimum number of purchasers?

If not enough people sign up, then the deal is canceled, and you won't be charged. Better luck next time! So if you really want the Groupon, be sure to either beg or threaten your friends.

Do I need to use my Groupon the same day I buy it?

No. Many Groupons have an expiration date, but you never have to use them on the date of purchase.

I bought a Groupon - how do I use it?

Once you're charged, you'll receive an email with a link to sign in and print your Groupon. The Groupon has redemption instructions and a map right on it!

Can I buy a Groupon as a gift for someone else?

Yes. We communicate with all the businesses that we work with that Groupons can be gifted, and unless the Fine Print specifically states otherwise, gift away! To have us send them the gift, select the gift option at checkout.

Wait, my name is on the Groupon. Are you sure I can use this as a gift?

Yes!

If I don't use the full value of the Groupon in one visit, can I use the remainder later?

No. Unless otherwise stated you do not receive store credit or cash back for whatever you don't use. Bring a friend - share a little!

Can I combine my Groupon with other offers or specials?

No... not unless the Groupon specifically states otherwise.

Am I billed as soon as I join a Groupon?

No - you are only charged if the Groupon reaches the required minimum.

Is Groupon safe?

Extremely. Your credit card number is transmitted by SSL directly to a secure electronic vault. At no time is your credit card information stored on our servers.

Can I return a Groupon?

[Read this](#), and then if you want, give us a call: (877) 788-7858.

What happens if my Groupon expires?

All is not lost! Once a Groupon reaches its expiration date, it loses its promotional value, but you can still redeem it at the price you paid for the length of time stated by gift certificate laws in your state.

Do you ever remove comments from the discussion board?

Generally, no. We only remove comments when someone is making personal attacks or engaging in other conventional forms of trolling.

What if the business for my Groupon closes down?

If anything happens that makes it impossible for you to redeem your Groupon, we'll make sure you get your money back.

How can I get my business on Groupon?

Check out [GrouponWorks](#) for more information.

I just sent a referral to my friend - now what?

If your friend makes their first Groupon purchase within 72 hours from the time they click on the referral link you send them, we'll send you an email to tell you that we've put \$10 worth of credits in your account.

What if the person I refer subscribes to the site - any love for that?

Of course! If someone you refers subscribes within 72 hours, you'll receive a \$10 credit whenever they make their first purchase.

Can I refer as many people as I want?

Yes!

I received referral codes from three people - do they all get rewarded?

No, only the last code you click on before making your first purchase will generate a reward for the person who sent it to you. Which friend do you like best?

Why do you only feature one deal a day? I want more Groupons!

When you're looking for stuff to do, choice can be overwhelming. We focus on one great thing each day and offer it at an unbeatable price to make things simple for you. Hang out with Groupon for a week, and you'll find something that's impossible to refuse.

One of your write-ups stated that "hummingbirds come from cocoons"... I'm not sure that's correct.

Thank you for your suggestion, but it is correct.

Where did you get the name "Groupon?"

Groupon is a city in Switzerland where Goodyear tires are sold at heavily discounted rates.

When will Groupon be in my city?

Hopefully soon - we're growing fast. If you'd like to help us launch Groupon in your city, feel free to [email us](#).

Who are you guys?

Groupon evolved out of [The Point](#), a platform for organizing not only group discounts, but all forms of collective action. You can [learn more about Groupon](#), and [learn more about The Point](#).

Where is Groupon based?

Groupon is headquartered in Chicago. We also have employees in cities across the U.S.

[View the Rewards FAQ](#)

- [Groupon Mobile](#)
The Groupon Mobile family is like having a digital wallet for your Groupons. [Go mobile](#)
- [Groupon Affiliates](#)
Get paid by spreading the Groupon word with the [Groupon Affiliate Program](#)
- [Groupon for Your Business](#)
Learn how to get your business featured on Groupon and enjoy the benefits. [Learn more](#)
- [Give the Gift of Groupon](#)
Show your love by giving Today's Deal or a Groupon Gift Card. [Start giving](#)
- Follow Us:
 - [Follow Groupon on Twitter](#)
 - [Follow Groupon on Facebook](#)
 - [Follow Groupon RSS](#)
 - [Sign Up for Groupon](#)

Total dollars saved

\$1,113,923,034

Total Groupons bought

25,806,238

- Company
 - [Home](#)
 - [Contact Us](#)
 - [About Groupon](#)
 - [Jobs at Groupon](#)
 - [Press](#)
 - [Legal](#)
 - [Privacy Policy](#)
- Learn More
 - [FAQ](#)
 - [Developers / API](#)
 - [Affiliate Program](#)
 - [Affiliate Widget Builder](#)
 - [Suggest a Business](#)

[Run A Deal](#)

• Extra

[GrouBLOGpon](#)[Live Off Groupon](#)[Groupon Mobile](#)[Groupon Referral Widget](#)[Groupon Referral Ads](#)[Groupon Meetups](#)[Groupon Gear](#)[Groupon Flickr](#)**Unbeatable Deals for Local Adventures!**

Groupon is an easy way to get huge discounts while discovering fun activities in your city. Our daily deals consist of restaurants, spas, massages, theaters, hotels, and a whole lot more, in dozens of cities across the country.

© 2011 Groupon, Inc. All Rights Reserved.

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ADAM DREMAK, on Behalf of Himself)
and All Others Similarly Situated,)
)
Plaintiff,) Case No. 11 CH 876
)
vs.)
)
GROUPON, INC.,) Honorable Judge: Thomas Mueller
)
Defendant.)
)
)
_____)

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT E

Nordstrom Rack Complete Terms and Conditions

TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS

- Limit 1 per person
- Good for \$50 value of merchandise (\$25 customer Paid For value plus \$25 Add-On Offer value)
- Add-On Offer Value EXPIRES ON* December 31, 2010. (\$25 customer Paid For value never expires)
- Add-On Offer Value is valid from November 19, 2010-December 31, 2010
- May not be redeemed for cash except as required by law.
- Valid only at Nordstrom Rack locations
- Offer may not be used as payment on account
- Will not be replaced if lost or stolen
- Must be used in a single transaction and surrendered in store at time of merchandise purchase
- May not be used to purchase Nordstrom Gift Cards
- Value of merchandise purchased must be at least \$50, or remaining balance will be forfeited
- Offer cannot be combined with any other offers, discounts, promotions or with a Nordstrom employee discount
- Offer not valid in Nordstrom Stores, Last Chance, nordstrom.com or b. phone
- No adjustments on previous purchases
- Not reloadable
- To verify balance call 1.877.283.4045

For Nordstrom Rack Groupons purchased from the states of Kentucky, Massachusetts, Maine, New Hampshire and Connecticut, Add-On Offer value will not expire

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

ADAM DREMAK, on Behalf of Himself)	
and All Others Similarly Situated,)	
)	
Plaintiff,)	Case No. 11 CH 876
)	
vs.)	
)	
GROUPON, INC.,)	Honorable Judge: Thomas Mueller
)	
Defendant.)	
)	
_____)	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT F

Dow Jones Reprints: This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers, use the Order Reprints tool at the bottom of any article or visit www.djreprints.com

SEE A SAMPLE REPRINT IN PDF FORMAT ORDER A REPRINT OF THIS ARTICLE NOW

SMARTMONEY.COM

10 THINGS MAY 11, 2011, 4:12 P.M. ET

10 Things Daily Deal Sites Won't Say

By KELLI B. GRANT

) "50%
off?
Not
really."

Steep



1 discounts are the cornerstone of the pitch for daily deal web sites such as Groupon and LivingSocial, which promise 50% off or better at a local restaurant, spa, fitness center or other shop if enough people sign up (and pre-pay) before the limited-time offer expires. But the discount may be much less once you factor in taxes, tip and any un-covered portion of the bill.

In February, more than 3,000 Groupon users paid \$10 for a \$20 FTD voucher before Valentine's Day, only to find prices at the special voucher-redemption page \$5 to \$10 more expensive than what other visitors to the site saw. Groupon spokeswoman Julie Mossler says the price discrepancy was unintentional, and that customers got refunds.

But critics say these kinds of price discrepancies may be an unintended consequence of the business model. Because businesses recoup so little -- often just 25% of the voucher

price after fees there may be an incentive to price deals to the merchant's advantage. "We're starting to see some price manipulation going on, so the discount doesn't hurt their margins as much," says Greg Sterling, a senior analyst with Opus Research.

To avoid bill shock, check the voucher restrictions for excluded dates and any extra charges the voucher doesn't cover, and the business's site to calculate the total tab. Then ask yourself if it's still a deal, even at a higher price (or smaller discount), suggests social and behavior psychologist Matt Wallaert of digital strategy firm Churnless.

2) "Good luck cashing in."

After selling nearly 700 vouchers for fire-dancing classes, Isa Isaacs of Temple of Poi in San Francisco knows the pattern: most customers wait until a week or two before the voucher expires to redeem it. "I cap my classes at eight people -- what do you do when all the spots have already been filled?" says Isaacs, who decided to use the expiration date as the last date to schedule instead of attend. Even so, people who had trouble redeeming slammed her with negative Yelp reviews.

Problems also crop up when deals oversell, as in the case of Salon 505 in Austin, which made local headlines after it sold 5,000 half-day spa packages on LivingSocial -- more than enough to book every open appointment for the yearlong redemption period. "Sometimes a deal is so extremely popular that scheduling can be difficult," says a LivingSocial spokeswoman. The site is working with Salon 505 to accommodate buyers by extending the expiration date. Spa owner Sharon Baldeschwiler did not respond to requests for comment, but said in a statement to local media that the spa is committed to honoring the deal. ("Legal counsel has advised no further comment at this time," she wrote.)

If scheduling early doesn't help, check the refund policy. Zozi chief executive TJ Sassani says the site hasn't heard about any redemption problems from its customers, but that the broad money-back guarantee covers refunds if they are unable to cash in on a deal.

3) "We're in legal limbo."

It's unclear whether deal site offers are more coupon or gift card, says Gonzalo Mon, a partner at Kelley Dye & Warren, a Washington, D.C.-based law firm specializing in advertising law. And that leaves them in a legal netherworld. If you buy a \$15 gift card, federal law requires that it can't expire for at least five years. But pay \$15 for a \$30

voucher, and at least part of that can disappear in as few as six months, according to deal sites' terms and conditions. The difference has led to three class-action lawsuits this year - two against Groupon, in California and in Illinois, and another in Washington against LivingSocial -- that allege the companies' policies run afoul of federal and state gift card laws. The LivingSocial suit also alleges that the site does not adhere to Washington state law requiring cash refunds for cards valued at \$5 or less. LivingSocial and Groupon say they ask merchants to honor the price paid for up to five years, in accordance with the law. All three suits are pending.

In any event, that's good reason to scroll through your "expired deals" queue, Mon says. That money is still on the table for a purchase or possibly a refund. And expect to see more retailers getting more specific, too: A recent Groupon offered \$20 at **Barnes & Noble** (BKS: 13.76, -0.22, -1.57%) and expires mid-April, but the \$10 buy-in price never expires, says John Foley, Barnes & Noble's president of e-commerce.

4) "We may not stick around."

Largely unknown before 2010, group-buying sites now number more than 600 and counting. "Without exaggeration, we hear from at least one new site a day," says Dan Hess, the founder of DealRadar.com, which aggregates local deals. Sites have expanded to smaller cities and gone after narrower, more specific audiences, including new parents, dog owners and Jewish people. The technology behind deal sites makes them easy to start, but sustaining them requires a steady stream of interested businesses and consumers, says Opus Research's Sterling. And many sites don't survive. Since Hess began tracking the space last year, sites including PriceWave and FunDailyDeal have closed, he says, while big-name sites have gobbled up more than a dozen other small competitors. Currently, just 75% of the sites Hess monitors actually have a new deal every day.

Deal sites typically offer a refund or credit if you buy a voucher from a business that folds. But if it's the deal site itself that goes under, it's largely the business' choice to honor the voucher -- or not. Most will, Sterling says. Still, the churning market is good reason to check the background of the site as well as the business when buying a big-ticket deal, Sterling says. Paying with a credit card also gives you recourse if the site goes belly-up before you use the voucher.

5) "You won't use this coupon."

Businesses say about 40% of vouchers purchased don't get redeemed. Sometimes it's as simple as buyer's remorse, says Eran Davidov, a co-founder of Lifesta, a secondary market for deal vouchers. Or it's a bad gift idea, as in the case of a liposuction voucher made out to "my darling wife," currently up for sale on the site. Or busy schedules. Or forgetfulness. In any case, consumers' wasted money is actually a selling point for the deal sites, which pitch it as an incentive for the businesses they're wooing, says Chris Treadway of Lasso, which develops software to help companies offer coupons and deals online. "It's free money for the business," he says.

The silver lining for consumers: there's a growing secondary market on sites like Lifesta, CoupRecoup and DealsGoRound, where sellers unload their unwanted deals and buyers can grab them, often at a steeper discount than the deal site originally offered. (A \$300 NYC boot camp package that sold for \$59 on Groupon is now \$45 on CoupRecoup.) Site sellers typically pay a small fee (10% of the selling price on DealsGoRound, 99 cents plus 8% on Lifesta). But it's up to the buyer to verify that the deal is legit, and the price fair.

6) "The 'deals' may be dwindling."

Even with all those unredeemed vouchers floating around out there, running a Groupon promotion was unprofitable for a third of businesses in a 2010 study from Rice University, though Groupon says 95% of merchants who have worked with them once would do so again, or recommend it to another merchant. As companies get used to the daily deal model -- and get tired of losing money -- consumers may see more limits on the number of vouchers that can be purchased. Businesses did best when they sold between 600 and 1,000, says Utpal Dholakia, an associate professor of management at Rice University, who conducted the study. They might also restrict deals to new customers, target the promotion to push a specific product (say, a new spa service) or pull in business during slow times (weekday morning yoga classes instead of an all-access pass). Groupon's Mossler says the site lets merchants make such restrictions when necessary, but tries to limit them so that subscribers get "a great deal without 'gotchas.'" Both Groupon and the business must agree on a deal's terms for it to run.

With more fine print to trip you up, be sure to check exclusions and limitations, like first-time customers or Tuesday nights only, before you buy, Dholakia says. That extra fine print could make a deal decidedly less convenient.

7) "You're a cheapskate "

Each day, The Fresh Diet delivers three meals and two snacks to thousands of customers on monthly plans, says chief executive Zalmi Duchman. But company customer service reps spend a surprising amount of time coddling deal-site customers who have bought a one-day trial. "The customers are definitely more difficult to deal with," he says. "They don't listen to the rules." Consumers often buy a deal running in one city to redeem in another, or buy more than the three-voucher maximum, despite rules listed in the deal that prohibit doing either. Some call in to complain, trying to finagle an extra day or two of free food. And they rarely come back retention rates average 12%, compared with 40% or better on the company's more targeted promotions, Duchman says. (But the potential to gain new customers makes the hassle worthwhile, he says. The Fresh Diet has offered more than 60 city-specific offers on Groupon alone since 2009.)

Dholakia from Rice University says such gripes are common. "Price-sensitive people are going to gravitate to these promotions," he says. They are unlikely to spend more than the voucher amount if at all possible, and tend to be stingy on tips. They're also unlikely to come back, thwarting the business' goal of attracting repeat customers. Groupon, LivingSocial, Zozi and other sites say they remind users to tip on the full amount, but there's no requirement that they do so. In the future, deals may include a mandatory tip, Dholakia says. (The terms of every deal must be agreed to by the merchant and the deal site.) Corner Burger in Brooklyn, N.Y., added a 20% gratuity to the bills of consumers who took advantage of its recent Groupon charging \$8 for \$16 worth of food.

8) " but you're still overspending."

San Francisco magician Dan Chan leads a daredevil's life, piloting planes, taking glider lessons, skydiving indoors and out, and even spending time in a sensory deprivation tank. "It's a half-off economy right now, and they're irresistible offers," says Chan, who has spent more than \$500 on 40-odd deals in the past two years. That's exactly the problem for many consumers, who end up with a queue of expensive experiences and purchases made on impulse, says behavioral psychologist Wallaert. Single deals with a limited time frame force consumers to constantly assess whether they want to buy. They also introduce consumers to experiences they might not otherwise consider if they weren't deeply discounted. "There's a reason you haven't signed up for a pole-dancing class, and it's not usually cost," he says. "But when you make it about money, like these deal sites do, it makes you think you haven't done it because price was a factor." Consumers also tend to focus on the savings, which makes the purchase price seem more reasonable.

9) "Limited-time offer? Not really."

Miss out on the latest daily deal? "You can get a similar level of discounts if you dig for it," says Jack Vonder Heide, the president of Technology Briefing Centers, which tracks daily deal sites. Odds are good the exact same offer, or one like it, will soon turn up on a competing daily deal site or the secondary market, or both. Fire-dancer Isaacs, for example, took her introductory class deal (\$15 for a \$30 class) from Groupon to SocialBuy, Zozi, Savvy Avenue, LivingSocial, Joffer and a handful of other sites. Sites typically restrict how soon a business can offer a similar deal at one of their competitors, but the lag time can be as short as a few weeks -- and doesn't usually prevent them from offering a similar deal on their own site, Facebook page or Twitter feed immediately after.

10) "Our merchant checks aren't foolproof."

The \$65 price for a one-hour photo shoot and extras, valued at \$500, from Atlanta studio Dana Dawes Photography seemed like a steal -- until a handful of Groupon users, including other photographers, began alleging that the photographer was claiming others' photographs as her own. Groupon cancelled the deal, and issued refunds to all buyers. "It's not our place to determine whether she stole the images," says Groupon's Mossler. "What's important is that our customers didn't feel confident purchasing the deal and we felt it was necessary to cancel it." Dawes did not respond to requests for comment.

Businesses with a bad rep are a pitfall all deal sites face as their numbers grow and they hunt for companies to feature, says consultant Treadway. "There's a finite number of interesting businesses in any market," he says, leaving each site to weigh negative reviews or other problems against the need for a deal to run tomorrow. Deal sites say they put businesses through a rigorous check Groupon says it turns away seven for every one it accepts but it's still worth checking Yelp and the Better Business Bureau for reviews and complaints before buying. Sites may offer a refund if you had a bad experience.

Correction: This article and its headline have been updated. An earlier version incorrectly implied that the "10 things daily deal sites won't say" referred exclusively to Groupon. In addition, other details have been added and language has been changed in the article to clarify how certain deal sites operate. Also, a previous version of this story incorrectly reported the expiration date on a recent Groupon offered at Barnes & Noble.

5/16/2011

10 Things Daily Deal Sites Won't Say - ...

Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.