

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CHRISTINE DANDEL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GROUPON, INC., a Delaware Corporation,

Defendant.

Case No.

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Class Action

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Christine Dancel (“Plaintiff” or “Dancel”) brings this class action complaint against Defendant Groupon, Inc. (“Groupon”) to put an end its unlawful practice of using the photographs and likenesses of Illinois residents without their consent to promote and market its products. Plaintiff, on behalf of herself and all others similarly situated, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE ACTION

1. Groupon is a public company that generates over one billion dollars of revenue each quarter by selling vouchers known as “Deals.” Groupon’s Deals are redeemable for discounts at participating businesses likes restaurants and stores. Groupon sells its Deals exclusively through its website, www.Groupon.com.

2. Like many e-commerce websites, Groupon creates unique landing webpages for each Deal currently for sale. On these landing pages, Groupon advertises and promotes the Deal by, among other things, showing photographs of individuals who are seemingly endorsing it.

3. The individuals displayed on Defendant's Deal pages, though, have no idea that their pictures and likenesses are being used to promote and endorse Defendant's products.

4. Indeed, the photographs that Groupon parades on its Deal pages are actually personal pictures belonging to users of Instagram (an un-related third-party social network) have uploaded to their personal accounts. The only connection that these personal pictures have to Groupon is that the individuals "tagged" their photographs on Instagram with the name of the restaurant or store featured in the Deal being offered.

5. Nonetheless, Groupon "scraped" (*i.e.*, secretly collected) the tagged personal photographs from Instagram and used them to promote Deals on its website.

6. By using these individual's photographs and likenesses without their written consent for its own commercial gain (*i.e.*, to promote and sell its Deals), Groupon has violated and continues to violate the Illinois Right of Publicity Act ("IRPA"), 765 ILCS 1075/1 *et seq.*

PARTIES

7. Plaintiff Christine Dancel is a natural person and a citizen of the State of Illinois.

8. Defendant Groupon, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 600 West Chicago Avenue, Chicago, Illinois 60654. Groupon does business through the State of Illinois, Cook County, and throughout the United States.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Groupon conducts business transactions in Illinois, has committed tortious acts in Illinois, is registered to conduct business in Illinois, and is headquartered in Illinois.

10. Venue is proper in Cook County because Defendant maintains its headquarters in

Cook County, conducts business transactions in Cook County, and the cause of action arose, in substantial part, in Cook County.

COMMON FACTUAL ALLEGATIONS

The Illinois Right of Publicity Act

11. In 1999, the Illinois Legislature recognized that every individual has the “right to control and to choose whether and how [his or her] identity [is used] for commercial purposes,” 735 ILCS 1075/10, and as a result, passed the IRPA to both protect individual privacy rights and prevent the exploitation of individuals’ images for another’s commercial gain.

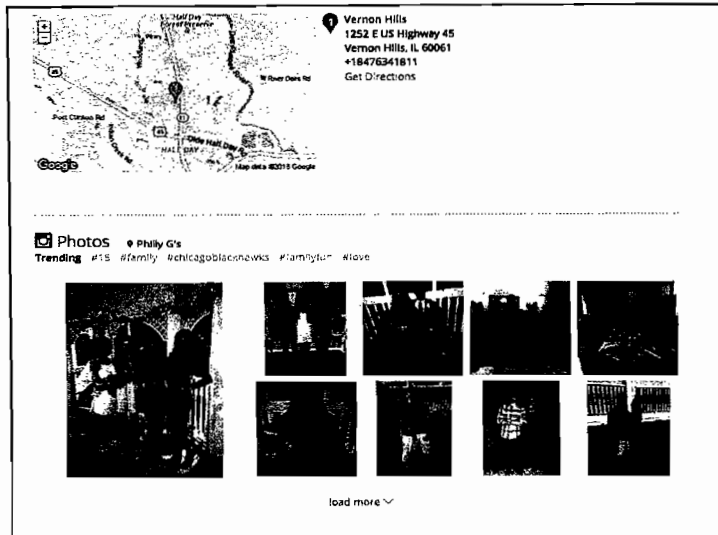
12. The Act protects consumers from the unauthorized use of their name, signature, photograph, image, likeness, or voice for commercial purposes.

13. Indeed, the Act states that “a person may not use an individual’s identity for commercial purposes during the individual’s lifetime without having obtained previous written consent from the appropriate person. . . .” 735 ILCS 1075/30. And notably, the IRPA does not require the person seeking relief under the Act to be a public figure.

Groupon Uses Consumers’ Instagram Photos To Promote Deals

Groupon’s Deal Offer Pages

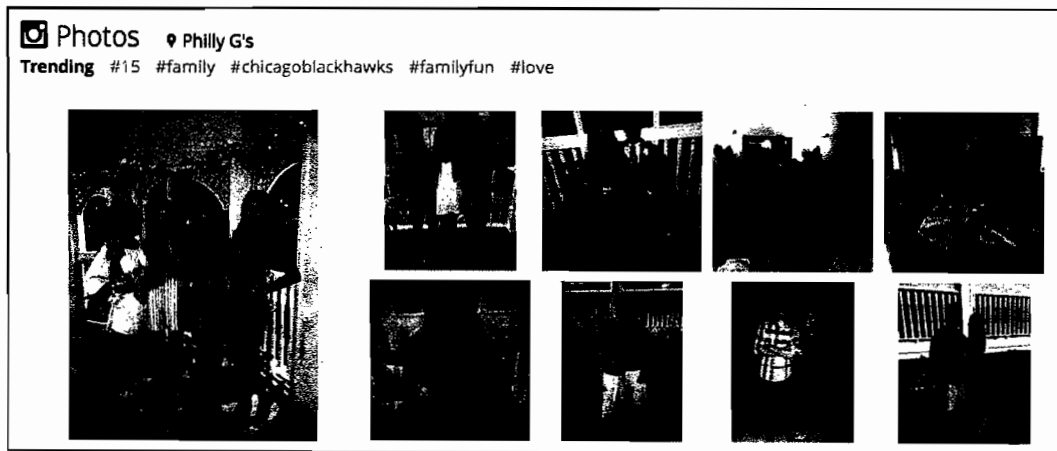
14. Groupon advertises and sells thousands of Deals in the State of Illinois. When a consumer seeks out a new Deal, they are guided to a Deal-specific offer page on the Groupon website. These offer pages include information such as the name, location, and description of the business being promoted, the terms of the offer, and photographs provided by the business (e.g., photos of food). *See Figures 1 and 3.*



(Figure 3, showing location and photos on Defendant’s Philly G’s Deal page.)

The “Photos” Component on the Offer Page

15. One of the primary components of each of Defendant’s Deal offer pages is the “Photos” section. Here, Defendant inserts many photographs of consumers that were purportedly taken at the location of the offered business. Figure 4, below, shows a group of photographs displayed by Defendant on its Philly G’s Deal page that appear to be taken at Philly G’s. See Figure 4.



(Figure 4.)

16. Groupon draws these photos from Instagram through Instagram’s “API” (application programming interface)—a computer protocol that allows for the interconnection of

different services. Groupon makes an Instagram API request for photographs corresponding with the location of the business featured in the Groupon Deal (i.e., Philly G's) and Instagram returns with a batch of photos matching the criteria.

17. The consumers who own and appear in the Instagram photos used by Groupon have previously posted them (through their own personal accounts) to the Instagram social network. Consumers post these photos for the purpose displaying them to the "followers" of their personal Instagram profiles. The photos are not tagged with "Groupon" or marked in any other way to convey that the people appearing in the picture utilized the Groupon Deal.

18. In fact, the individuals appearing in the Instagram photos did not provide consent for their pictures to appear on Groupon's website for commercial purposes. And, they did not give consent to Instagram to share their photos with Groupon for use third-party advertisements for commercial purposes.

Groupon Misappropriates Consumers' Photos For Its Own Commercial Gain

19. Groupon's incorporation of Instagram user photos into Deal advertisements serves a fundamental part of its business model. Indeed, a core part of Groupon's advertising strategy is to convince consumers to make the purchase *because other consumers have already done the same*. Groupon is well aware of the impact social influence has on consumers and seeks to capitalize on that marketing theory by using the conduct of other consumers to convert new customers.¹

20. As such, Groupon publishes consumers' Instagram photographs for the sole

¹ See *Group-Buying Deal Popularity*, Xueming Luo, *et al.*, American Marketing Association Journal of Marketing (2013) (noting the "bandwagon" effect that group-buying merchants, like Groupon, exploit and stating that "consumers seem to be influenced by deal popularity at both the purchase and redemption phases . . . merchants should encourage social interactions among consumers, since social influence-related referral intensity and group consumption can amplify the effects of deal popularity on consumer purchase and redemption decisions . . . the social influence literature [citation omitted] suggests that . . . [t]he more desirable and popular a deal appears, the more likely a consumer may purchase it.") (emphasis added).

purpose of promoting and advertising their Deals. Defendant placed the photos on the Deal page, proximate to the details of the Deal offer and the “Tips” section (which contain potentially useful facts by *actual* Groupon users), to cause its potential customers to think that people in the photos are satisfied Groupon customers even though they are not.

21. By designing the offer page and using Instagram photos in this way, Groupon intentionally creates the false impression that the consumers appearing in the photos are endorsing, or have at least purchased, the Deal itself. Beyond simply having consumers’ pictures appear on the Groupon advertisement without notice or permission, the pictures themselves contain a hyperlink to each individual’s personal Instagram account and social network profile.

22. Therefore, Groupon has, and continues to, misappropriate the photographs of thousands of individuals for its own commercial gain.

Groupon Violates Instagram’s Policies

23. Not surprisingly, Groupon’s conduct of utilizing individual’s Instagram photos as part of its advertisement violate Instagram’s own terms of service. Specifically, Instagram states in its API Platform Terms and Conditions, FAQs, and other information guides:

13. Obtain a person's consent before including their User Content in any ad.

(Figure 5.)²

8. Licensed Uses and Restrictions: The Instagram APIs are owned by Instagram and are licensed to you on a worldwide (except as limited below), non-exclusive, non-sublicenseable basis in accordance with these terms. Your license to the Instagram APIs continues until it is terminated by either party. Please note that User Content is owned by users and not by Instagram. All rights not expressly granted to you are reserved by Instagram.

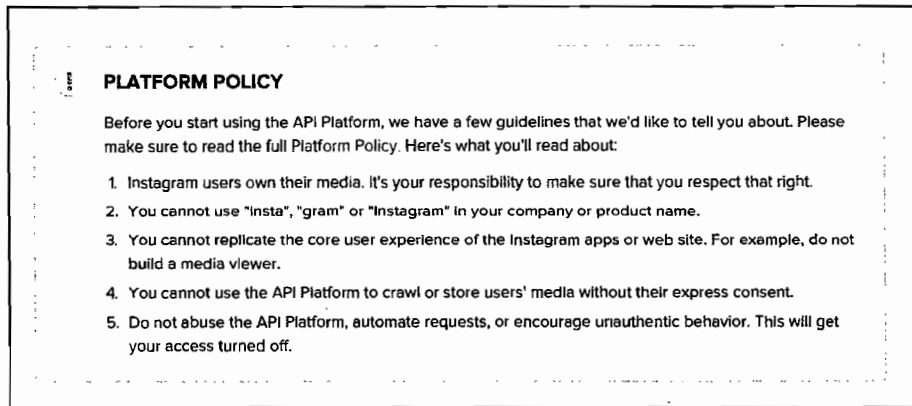
(Figure 6.)³

Does Instagram let advertisers use my photos or videos?

No. You own your own photos and videos. Advertising on Instagram doesn't change this.

(Figure 7.)⁴

² Platform Policy • Instagram, <https://www.instagram.com/about/legal/terms/api/> (last visited Feb. 5, 2016).
³ *Id.*



(Figure 8.)⁵

24. As a result Plaintiff, on behalf of herself and a Class of similarly situated Illinois residents, seeks relief for Groupon's past and continuing violations of the IRPA, including (1) an injunction requiring Groupon to cease using Instagram user's photographs and likenesses to advertise and sell Groupon Deals without consent, (2) the greater of an award of actual damages, including profits derived from the unauthorized use of same, or statutory damages to the members of the Class, (3) an award of punitive damages, and (4) an award of costs and reasonable attorneys' fees.

FACTS SPECIFIC TO PLAINTIFF DANDEL

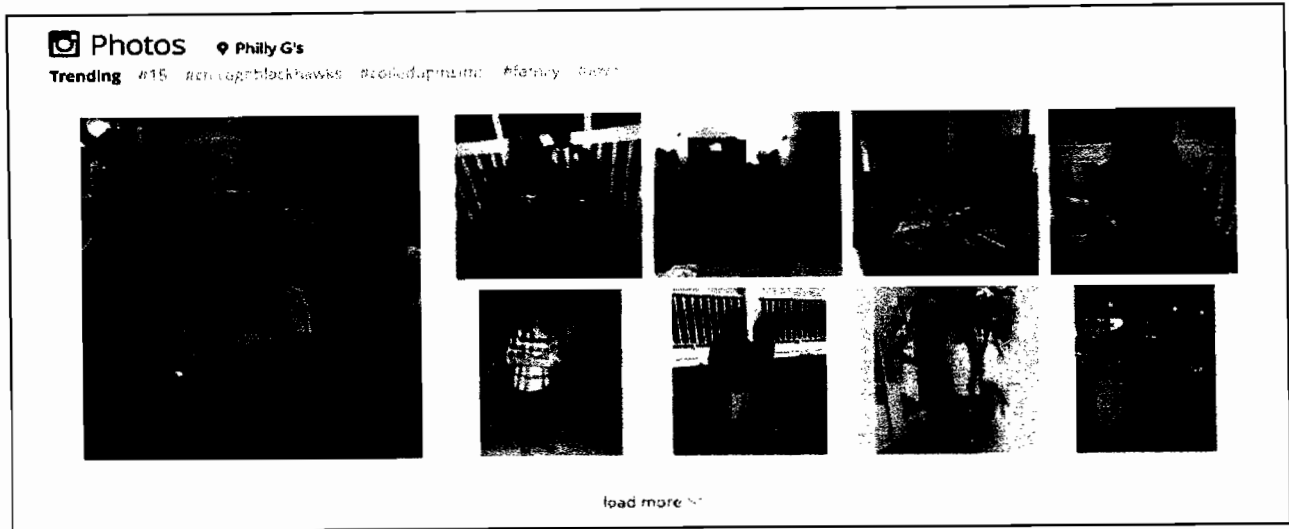
25. In or around August 2015, Plaintiff visited "Philly G's" restaurant. While there, Plaintiff took a photo of herself and uploaded it to her Instagram profile. Plaintiff Dancel tagged location data to her photograph that indicated she has taken the photograph at "Philly G's" restaurant in Vernon Hills, Illinois.

26. Plaintiff does not have a Groupon account and did not purchase or use a Groupon for Philly G's. Likewise, the caption and description of her photo did not mention Groupon in any way.

⁴ *Does Instagram let advertisers use my photos or videos? | Instagram Help Center*, <https://help.instagram.com/206875879493855> (last visited Feb. 5, 2016).

⁵ *Instagram Developer Documentation*, <https://www.instagram.com/developer/> (last visited Feb. 5, 2016).

27. Yet, unbeknownst to Plaintiff, after uploading the photograph to her personal Instagram account, Groupon requested her photograph from Instagram and displayed it on its Philly G's Deal offer page (the bottom right corner in Figure 9, below). The Groupon Deal offered a voucher: "\$35 for \$60 Worth of Generations-Old Italian Cuisine at Philly G's."



(Figure 9, showing a screenshot of Defendant's Deal for Philly G's using Plaintiff's photograph and likeness without her consent.)

28. Plaintiff never provided her consent to Groupon to use her photographs, images, and/or likeness on its website for any reason, let alone to advertise and sell its Deals.

CLASS ALLEGATIONS

29. Plaintiff brings this action, pursuant to 735 ILCS 5/2-801 on behalf of herself and a Class of similarly situated individuals, defined as follows:

All Illinois residents (1) who maintain an Instagram account, and (2) whose photograph(s) from such Instagram account have appeared on a Groupon Deal offer page.

30. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its

parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons. Plaintiff reserves the right to revise the Class definition based on information learned through discovery.

31. **Numerosity:** Upon information and belief, there are over one thousand members in the Class such that joinder of all members is impracticable. Class members can be easily identified through Defendant's records.

32. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members. Among the questions of law and fact common to the Class are:

- a. Whether Groupon displayed Class members' photographs and likenesses on its Deal offer pages;
- b. Whether Class members provided their written consent to Groupon to display their photographs and likenesses on its Deal offer pages;
- c. Whether the conduct described herein constitutes a violation of the Illinois Right of Publicity Act 765 ILCS 1075/1 *et. seq.*; and
- d. Whether Plaintiff and the Class are entitled to injunctive relief.

33. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interest of the Class, and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interest antagonistic to that of the Class, and Defendant has no defenses unique to the Plaintiff.

34. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief for Defendant's misconduct. Even if each member of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expenses to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

FIRST CAUSE OF ACTION
Violation of the Illinois Right of Publicity Act 765 ILCS 1075/1, et seq.
(On behalf of Plaintiff and the Class)

35. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

36. The Illinois Right of Publicity Act (765 ILCS 1075/1 et. seq.) prohibits using a person's name, photograph, image, or likeness for the sale or advertisement of goods, merchandise, products, and services without written consent.

37. Groupon owns and operates a website that sells products, known as Deals. Defendant sells its Deals through unique offer pages at www.Groupon.com, and consumers can redeem Groupon Deals for additional products and services.

38. Groupon intentionally requested Plaintiff's and Class members' Instagram

photographs from their personal Instagram accounts and displayed them on its Deal offer pages. Groupon's placement of these photographs was meant to directly aid in the sale of its Deals and convey that the persons appearing in the photos were endorsing and/or had used the Deals.

39. A reasonable consumer viewing the Groupon offer page would be led to believe that the persons appearing in the Instagram photos had used a Groupon Deal at that location and/or were otherwise promoting the Deal.

40. Defendant did not obtain the written consent from Plaintiff and members of the Class before using their photographs, images, and likenesses. In fact, Groupon has not notified Plaintiff or the members of the Class that their photographs were and are being displayed on its website for commercial purposes.

41. Defendant has systematically and repeatedly used the photographs, images, and likenesses of Plaintiff and the members of the Class for the commercial purpose of promoting and selling Groupon Deals.

42. Given Groupon's flagrant violations of the IRPA, Plaintiff and the Class are entitled to (1) an injunction requiring Groupon to cease using Instagram user's photographs and likenesses to advertise and sell Groupon Deals, (2) the greater of an award of actual damages, including profits derived from the unauthorized use of same, or statutory damages of \$1,000 per violation to the members of the Class, (3) an award of punitive damages, and (4) an award of costs and reasonable attorneys' fees under 765 ILCS 1075/40-55.

PRAYER FOR RELIEF

43. WHEREFORE, Plaintiff, individually and on behalf of the Class, prays that the Court enter an Order:

- (a) Certifying this case as a class action on behalf of the Class defined above, appoint Christine Dancel as Class Representatives, and appoint her counsel as Class

Counsel;

- (b) Declaring that Groupon's actions described herein constitute a violation of the Illinois Right of Publicity Act;
- (c) Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an order prohibiting Groupon from engaging in the wrongful and unlawful acts described herein;
- (d) Awarding the greater of actual damages, including profits derived from the unauthorized use of same, or statutory damages in the amount of \$1,000 per violation to the members of the Class;
- (e) Awarding punitive damages where applicable;
- (f) Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;
- (g) Awarding Plaintiff and the Class pre- and post-judgment interest; and
- (h) Granting such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff requests trial by jury of all matters that can be so tried.

Dated: February 5, 2016

Respectfully Submitted,

CHRISTINE DANCEL, individually and
on behalf of all others similarly situated,

By: _____

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