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Filing date: **07/27/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Groupon, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	600 West Chicago Avenue Chicago, IL 60654 UNITED STATES		

Correspondence information	Charles E. Phipps, Esq. Partner Locke Lord LLP 2200 Ross Avenue, Suite 2200 Dallas, TX 75201 UNITED STATES cphipp@lockelord.com, RNail@lockelord.com, plein@lockelord.com, dadocket@lockelord.com Phone:214-740-8441
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Registration Subject to Cancellation

Registration No	3895290	Registration date	12/21/2010
Registrant	SEIZE THE DEAL, LLC 1851 North Greenville Ave., Suite 100 Richardson, TX 75081 UNITED STATES		

Goods/Services Subject to Cancellation

Class 016. First Use: 2009/09/00 First Use In Commerce: 2009/09/00 All goods and services in the class are cancelled, namely: Coupons; Gift cards; Printed certificates
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Grounds for Cancellation

Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Related Proceedings	Civil Action Cause No. 3:15-cv-1870-P before the U.S. District Court for the Northern District of Texas, Dallas Division
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Attachments	Pet re 3,895,290.PDF(187912 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Charles E. Phipps/
Name	Charles E. Phipps, Esq.
Date	07/27/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GROUPON, INC., Petitioner, v. SEIZE THE DEAL, LLC, Registrant.	§ § § § § § § § § §	Registration Number: 3,895,290 Mark: SEIZE THE DEAL Registered: December 21, 2010 Cancellation No.: _____
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TO: THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS

PETITION FOR CANCELLATION

Petitioner, Groupon, Inc., a corporation organized under the laws of the state of Delaware, having its principal place of business at 600 West Chicago Avenue, Chicago, Illinois 60654 (hereinafter, "Petitioner" or "Groupon"), believes that it will be damaged by continued registration of the mark SEIZE THE DEAL in International Class 16 for “coupons, gift cards, printed certificates” (hereinafter, "Registrant's Goods"), as per U.S. Trademark Registration No. 3,895,290, and hereby seeks cancellation of same under the provisions of the Trademark Act of 1946, § 1064 of Title 15 of the United States Code, as amended.

This Petition for Cancellation is timely filed, given the December 21, 2010 registration date of Registrant's identified U.S. registration.

The grounds for cancellation are as follows:

1. Petitioner Groupon provides a variety of consumer discount services and products nationwide, including without limitation, the promoting goods and services of others via electronic communications featuring coupons, rebates, price-comparison information, product reviews, links to the retail websites of others, and discount information; marketing, advertising,

along with providing of online retail store services featuring a wide variety of consumer goods and services. ("Groupon's Services").

2. Registrant, Seize The Deal, LLC, a limited liability company organized under the laws of the state of Delaware, having its principal place of business at 1851 North Greenville Ave., Suite 100, Richardson, Texas 75081 (hereinafter, "Registrant"), obtained U.S. Trademark Registration No. 3,895,290 on the Principal Register of the U.S. Patent and Trademark Office ("USPTO") for the phrase "SEIZE THE DEAL" on December 21, 2010, based upon an application filed on January 7, 2010 ("the '290 Registration"). The '290 Registration alleges a first use date by Registrant of September, 2009.

3. Upon information and belief, Groupon submits that the phrase "SEIZE THE DEAL" (whether the elements thereof are used separately or in combination) has long been actively used as a generic or, at the most, a highly descriptive designation within the consumer discounts industry, for purposes of identifying discounted deals for a wide variety of consumer services and products.

4. Upon information and belief, Groupon further submits that long prior to issuance of Registrant's '290 Registration, numerous third-parties within the consumer discounts industry had already used the phrase "SEIZE THE DEAL" and/or substantially identical variants thereof as generic or highly descriptive identifiers for discount services and goods.

5. Groupon and Groupon's business, by virtue of Groupon's advertising, marketing, and sales of Groupon's Services in connection with the generic or merely descriptive phrase "seize the deal" or substantially identical variants thereof, would be irreparably damaged and injured by Registrant's continued registration of "SEIZE THE DEAL" on the USPTO Principal Register.

6. Groupon submits that "SEIZE THE DEAL," as applied and used by Registrant in connection with Registrant's Goods pursuant to Registrant's '290 Registration, is generic under the provisions of TMEP § 1209.01(c) and Section 23 of the Trademark Act and therefore incapable of functioning as a registrable trademark denoting the source of such goods (and that Registrant's mark should therefore have been ineligible for registration on either the USPTO Principal Register or Supplemental Register). In this regard, the Federal Circuit has routinely held that registration is properly refused if the word or mark is the generic name of any of the goods or services for which registration is sought. *See, In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988). *See also, In re Gould Paper Corp.*, 834 F.2d 1017 (Fed. Cir. 1987)(a compound term formed by the union of generic terms is generic if the compound term has the same meaning common usage would ascribe to the individual words).

7. Alternately, Groupon submits that "SEIZE THE DEAL," as applied and used by Registrant in connection with Registrant's Goods pursuant to Registrant's '290 Registration, is at best merely descriptive under § 2(e) of the Trademark Act as applied to such goods and is therefore not entitled to registration, and should never have been granted registration, on the USPTO Principal Register. A mark is merely descriptive if it immediately conveys information concerning a quality or characteristic of a product or service. *See, In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (a mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service).

8. Groupon further submits that Registrant's '290 Registration for "SEIZE THE DEAL" is merely an attempt by Registrant to unduly and egregiously deprive not only Groupon, but also numerous legitimate third-party competitors in the consumer discount industry, of

common words or phrases for identifying in a generic or descriptive manner discount deals to consumers for a wide array of services and goods, and thereby causing irreparable damage and injury to Groupon, to Groupon's current business operations, and to the industry generally.

9. Groupon has a reasonable basis for its belief that it will be damaged by the continued existence of the '290 Registration in as much as the Groupon's current business plans involve proposed use of the generic or merely descriptive phrase "seize the deal" in connection with Groupon's Services.

WHEREFORE, and for all of the foregoing reasons, Petitioner respectfully prays that Registration No. 3,895,290, issued on December 21, 2010, be cancelled and that this Petition for Cancellation be sustained in favor of Groupon.

The filing fee required in §2.6(a)(16) for this Petition for Cancellation has been paid by Petitioner concurrently with electronic filing of this Petition with the Board. Authorization is hereby given to charge Deposit Account No. 12-1781 for any deficiency of fees.

Respectfully submitted,

/Charles E. Phipps/
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Dated: July 27, 2015

**ATTORNEYS FOR PETITIONER
GROUPON, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Petition for Cancellation was mailed via U.S. Certified mail, return receipt requested, to the following counsel of record for Registrant this 27th day of July, 2015:

Stewart N. Mesher
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Austin, TX 78738

/Robert E. Nail/
Robert E. Nail