

From this week's In Other News

# Groupon files lawsuits against some former employees who leave for competitors

By: John Pletz November 28, 2011

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As its bankers on Wall Street were preparing last month to take the company public, Groupon Inc.'s lawyers were filing lawsuits in Cook County against former employees who it says joined rivals Google Inc. and Gannett Co., as well as another former worker who started her own deal site.

The litigation, the first for Groupon against employees who left for competitors, is opening a new front in the battle for daily-deal supremacy and is serving as a warning shot to employees and competitors alike that the Chicago company intends to play hardball to protect its turf.

It may be necessary. After all, it's not proprietary technology that gives Groupon its advantage, CEO Andrew Mason recently told investors. It's the 4,800 sales reps worldwide, searching for everything from restaurants to nail salons willing to do deals, who make the cash register ring. Almost since Groupon started three years ago, the company has been under assault by copycats, and the lawsuits underscore the vulnerability of its business model, which is easily replicated.

"Filing these suits is an executive-level decision: a concerted, orchestrated strategy of protection, similar to what people do with (intellectual property)," says Kevin O'Hagan, a partner at Chicago-based law firm O'Hagan Spencer LLC, which represents executives and companies in employment cases. "Groupon doesn't have a lot of technology to protect."

Groupon declines to comment on the litigation.

Other companies, such as Schaumburg-based Motorola Inc. and Chicago insurance brokerage Aon Corp., have sued former employees to enforce non-compete agreements. But the suits often involved executives overseeing product lines or large chunks of business rather than lower-level sales representatives.

"If you're 25, you don't have the resources to fight. You get hit with a lawsuit, you're going to be scared," says Kristen Prinz, a Chicago employment lawyer who advises employees on negotiating employment agreements.

## RESULTS VARY

Groupon's strategy is showing mixed results.

It won an emergency injunction Nov. 2 from Cook County Circuit Judge Rita Novak that shut down the Memphis Smart Deals website, which was launched in June by fired employee Tris Hnedak.

But Groupon may have been too quick to pull the trigger on another suit, filed Nov. 7 against Nancy Wylie, a former employee in Cincinnati. It claims she left the company Oct. 22 for DealChicken, the daily-deal offering by Gannett-owned newspaper the *Cincinnati Enquirer*, and poached customers such as Ohio Door Guys, a garage-door service company.



Andrew Mason

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Ms. Wylie says she never went to work for Deal Chicken, knowing she had signed a non-compete contract with Groupon. She says she took a job with ThomasNet, a New York-based online directory of industrial companies such as manufacturers and suppliers. And Ohio Door Guys contacted DealChicken about doing a deal, not the other way around, owner Martine Mijares says.

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— Kristen Prinz, employment lawyer

Ms. Wylie's attorney did not return calls. Gannett declines to comment.

Groupon filed suit Oct. 21 against former sales reps Brian Hanna, Michael Nolan and Nikki Dorough, who it says joined Google to help it launch a competing business, Google Offers, in Chicago. The service began Nov. 9.

Groupon claims that employees are violating non-compete agreements by taking jobs with any other company in the deals business and that their disclosure of confidential information is inevitable. The suit further claims that before Mr. Hanna left, he sent himself an email with details about deals and customers he worked with while at Groupon.

Attempts to reach Messrs. Hanna and Nolan and Ms. Dorough were unsuccessful, and Google declines to comment.

Groupon so far is suing only the employees, not the companies that hired them. It's asking for unspecified damages and attorneys' fees.

The employees signed lengthy agreements saying they would not disclose confidential information, work for competitors or solicit former customers for two years. Such agreements are common, says Sean Crotty, a partner at Chicago-based Coleman Law Firm, who has represented employees in such suits.

"It doesn't matter how low on the totem pole you happen to be," he says. "Employees just sign them. Companies have gotten very aggressive about invoking these agreements."

In Cincinnati, Ms. Wylie says she spent \$1,000 on an attorney to fight the case.

The suits "can make you look weak. You don't want to look that worried about Google taking over the market," Ms. Prinz says. "The benefit is warning employees that you will enforce those agreements."