

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

B.E. TECHNOLOGY, L.L.C.,

Plaintiff,

v.

GROUPON, INC.,

Defendant.

No. 12-cv-02781-JPM-cgc

Hon. Jon Phipps McCalla

**DEFENDANT GROUPON, INC.'S UNOPPOSED MOTION FOR LEAVE TO FILE
REPLY IN SUPPORT OF MOTION TO TRANSFER AND
MEMORANDUM IN SUPPORT THEREOF**

Defendant, Groupon, Inc. ("Groupon"), respectfully submits this Memorandum in support of its Unopposed Motion for Leave to File Reply in Support of Motion to Transfer pursuant to Local Rule 7.2(c). Groupon requests leave to file a Reply brief not to exceed 10 pages in length. In support thereof, Groupon respectfully submits the following:

1. On September 10, 2012 B.E. Technology, L.L.C. ("B.E. Tech.") filed a Complaint for Patent Infringement against Groupon. (Dkt. 1.) On December 31, 2012 Groupon filed an Answer to the Complaint. (Dkt. 19.) On January 10, 2013 Groupon filed its Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) ("Motion"). (DkT. 21.) On January 31, 2013 B.E. Technology, L.L.C. ("B.E. Tech") filed its Opposition to Groupon's Motion ("Opposition"). (Dkt. 27.)

2. Plaintiffs have indicated that they will not oppose this Motion for leave to file a Reply on condition that Groupon agree not to raise new arguments or evidence that reasonably could have been anticipated before the original motion was filed. Groupon does not intend to

raise new arguments or evidence that reasonably could have been anticipated and raised in its original motion.

3. The determination as to which venue is clearly more convenient under 28 U.S.C. § 1404(a) is of paramount importance to this case, and will have a substantial and significant impact on this Court, the parties, and witnesses. The determination will affect the Court's expenditure of resources with regards to this case as well as the other related cases in which similar motions to transfer are pending. The determination will also determine whether certain witnesses will be within the jurisdiction of the Court in which this case proceeds. As such, this issue merits a thorough and thoughtful consideration of all relevant facts, argument and authority.

4. While Groupon bears the burden on its motion, providing an opportunity for rebuttal would comport with a fair and just application of that burden.

5. B.E. Tech's Opposition includes arguments and facts that were not reasonably anticipated or known to Groupon at the time Groupon filed its Motion. This is not surprising considering the early stage of this case and Groupon's limited knowledge with regards to B.E. Tech. Furthermore, B.E. Tech's Opposition contains contradictory arguments that merit analysis with input from Groupon. As one example, B.E. Tech asserts as grounds against transfer that the currently pending 18 other lawsuits filed by B.E. Tech against defendants, who are located all throughout the United States, should be consolidated with this action. However, B.E. Tech also discusses how the inquiry at hand is one that is specific to Groupon and B.E. Tech's circumstances and convenience. The Court should have the benefit of full argument on this critical issue, which would include a Reply brief by Groupon.

6. This case is in its infancy. No Scheduling Order has yet been entered, and the proposed order on this motion would provide that Groupon file its reply within just 7 days from the grant of leave to do so.

7. The inquiry under 28 U.S.C. § 1404(a) is a fact intensive one, and requires weighing a number of factors which should be properly addressed in the briefing. While Groupon endeavors to be as concise as possible in addressing the issues in its Reply brief, a proper Reply will likely require more than the 5 pages provided by Local Rule 7.2(e). Therefore, Groupon further requests leave to file a Reply brief of up to 10 pages.

WHEREFORE, Groupon respectfully request permission to file a reply brief, not to exceed 10 pages, in support of its Motion to Transfer.

Respectfully submitted,

/s/ John S. Golwen
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CERTIFICATE OF CONSULTATION

The undersigned attorney hereby certifies that prior to filing of this motion, a consultation with opposing counsel was held via e-mail with Dan Weinberg, attorney for plaintiff, to determine whether plaintiff would agree to the relief sought; Mr. Weinberg informed counsel for Groupon that Plaintiffs would not oppose this Motion, on condition that Groupon agree not to raise new arguments or evidence that reasonably could have been anticipated before the original motion was filed.

/s/ Jason J. Keener

Jason J. Keener

CERTIFICATE OF SERVICE

The foregoing document was filed under the Court's CM/ECF system, automatically effecting service on counsel of record for all other parties who have appeared in this action on the date of such service.

/s/ John S. Golwen