

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

DIETGOAL INNOVATIONS LLC,  <i>Plaintiff,</i>  v.  KELLAN RESTAURANT MANAGEMENT CORP. D/B/A 54 <sup>TH</sup> STREET GRILL & BAR,  <i>Defendant.</i>	§ § § § § § § § § § § §	Civil Action No. 2:12-cv-00761-JRG-RSP  <b>LEAD CASE</b>  <b>CONSOLIDATED</b>  Jury Trial Demanded
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DIETGOAL INNOVATIONS LLC,  <i>Plaintiff,</i>  v.  DELI MANAGEMENT, INC. D/B/A JASON’S DELI,  <i>Defendant.</i>	§ § § § § § § § § § § §	Civil Action No. 2:12-cv-00773-JRG-RSP  Jury Trial Demanded
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**PLAINTIFF’S CORRECTED AMENDED AND SUPPLEMENTAL  
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff DietGoal Innovations LLC files this Corrected Amended and Supplemental Complaint against Deli Management, Inc. d/b/a Jason’s Deli (“Defendant”) and alleges as follows:

**PARTIES**

1. Plaintiff DietGoal Innovations LLC (“DietGoal”) is a Texas Limited Liability Company based in Austin, Texas.

2. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 2400 Broadway Street, Beaumont, Texas 77702.

### **JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant has answered and appeared in this case.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has a regular and established place of business in this district, and/or has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

### **THE `516 PATENT-IN-SUIT**

7. On July 1, 2003, the United States Patent and Trademark Office issued United States Patent No. 6,585,516 (the “`516 Patent”) entitled “Method and System for Computerized Visual Behavior Analysis, Training, and Planning,” a true copy of which is attached as Exhibit A.

8. DietGoal is the exclusive licensee of the `516 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the `516 Patent.

### **CLAIM 1 INFRINGEMENT OF U.S. PATENT NO. 6,585,516**

9. Defendant has been and now is directly infringing one or more claims of the `516 Patent, in violation of 35 U.S.C. § 271(a), by making and/or using in the United States the

computer implemented website [www.jasonsdeli.com](http://www.jasonsdeli.com), which has a computerized meal planning interface at <http://www.jasonsdeli.com/nutrition> and its related webpages (“Meal Builder”).

10. In addition and/or in the alternative, the Defendant has been and/or is now indirectly infringing one or more claims of the `516 Patent, in violation of 35 U.S.C. § 271(b), by inducing visitors to its website and its Meal Builder (“End Users”) to directly infringe the `516 Patent through their use of the infringing instrumentality. The Defendant has been aware of the `516 Patent since at least the date it was served with the Original Complaint in this case. In addition, the Defendant has been aware of DietGoal’s infringement contentions detailing how the Defendant and End Users have infringed the `516 Patent since at least the date the Defendant was served with DietGoal’s infringement contentions. The Defendant, with knowledge of the `516 Patent and subsequent knowledge of DietGoal’s infringement contentions, has induced and continues to induce such infringement by at least making its website available to End Users and providing links and/or other directions on its website and/or through the internet for End Users to visit and use its Meal Builder. The Defendant has engaged and continues to engage in such activities knowingly and, at least from the time of receipt of the Original Complaint, has done so with the knowledge that such activity encourages End Users to directly infringe the `516 Patent. Alternatively, the Defendant has been willfully blind to the possibility that its inducing acts would cause infringement. Defendant specifically intended for End Users to infringe the `516 Patent and knew that the End User’s acts constituted infringement of the `516 Patent.

11. As alleged above, the Defendant has been aware of the `516 Patent at least by the date it was served with the Original Complaint in this case, and has been aware of DietGoal’s detailed infringement contentions by the date DietGoal served Defendant with its infringement contentions. The Defendant, with knowledge of the `516 Patent and its conduct constituting infringement of the `516 Patent, has knowingly and intentionally continued to directly infringe

the `516 Patent and has knowingly and intentionally induced End Users to infringe the `516 Patent. The Defendant has engaged in these acts of infringement with knowledge of the `516 Patent and DietGoal's infringement contentions despite an objectively high likelihood that its actions constituted infringement of the `516 Patent. This objectively-defined risk was either known by the Defendant or was so obvious that it should have been known to the Defendant.

12. As a direct and proximate consequence of the acts and practices of the Defendant in infringing, directly and/or indirectly, one or more claims of the `516 Patent, DietGoal has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

**CLAIM 2**  
**INFRINGEMENT OF REEXAMINATION CERTIFICATE**  
**RELATING TO U.S. PATENT NO. 6,585,516**

13. On October 2, 2013, the United States Patent and Trademark Office issued an *Inter Partes* Reexamination Certificate relating to the `516 Patent (the “`516 Patent Reexamination Certificate”), a true copy of which is attached as Exhibit B. The `516 Patent Reexamination Certificate confirmed the patentability of claims 1-18 in the `516 Patent and added new claims 19-61 to the `516 Patent.

14. DietGoal is the exclusive licensee of the `516 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the `516 Patent.

15. Defendant has been and now is directly infringing one or more claims of the new claims added to the `516 Patent in the `516 Patent Reexamination Certificate, in violation of 35 U.S.C. § 271(a), by making and/or using in the United States the computer implemented website computer implemented website [www.jasonsdeli.com](http://www.jasonsdeli.com), which has a computerized meal planning interface at <http://www.jasonsdeli.com/nutrition> and its related webpages (“Meal Builder”).

16. In addition and/or in the alternative, the Defendant has been and/or is now indirectly infringing one or more claims of the new claims added to the `516 Patent in the `516 Patent Reexamination Certificate, in violation of 35 U.S.C. § 271(b), by inducing visitors to its website and its Meal Builder (“End Users”) to directly infringe the `516 Patent Reexamination Certificate through their use of the infringing instrumentality. The Defendant has been aware of the `516 Patent Reexamination Certificate since shortly after it was issued and before the filing of this Corrected Amended and Supplemental Complaint. In addition, the Defendant has been aware of DietGoal’s infringement contentions detailing how the Defendant and End Users have infringed the `516 Patent since at least the date the Defendant was served with DietGoal’s infringement contentions. The Defendant, with knowledge of the `516 Patent Reexamination Certificate and knowledge of DietGoal’s infringement contentions, has induced and continues to induce such infringement by at least making its website available to End Users and providing links and/or other directions on its website and/or through the internet for End Users to visit and use its Meal Builder. The Defendant has engaged and continues to engage in such activities knowingly and, at least from the date it became aware of time of the `516 Patent Reexamination Certificate, has done so with the knowledge that such activity encourages End Users to directly infringe the `516 Patent. Alternatively, the Defendant has been willfully blind to the possibility that its inducing acts would cause infringement. Defendant specifically intended for End Users to infringe the `516 Patent and knew that the End User’s acts constituted infringement of the `516 Patent.

17. As alleged above, the Defendant has been aware of the `516 Patent Reexamination Certificate shortly after it was issued and before the filing of this Corrected Amended and Supplemental Complaint, and has been aware of DietGoal’s detailed infringement contentions by the date DietGoal served Defendant with its infringement contentions. The

Defendant, with knowledge of the `516 Patent Reexamination Certificate and its conduct constituting infringement of the `516 Patent, has knowingly and intentionally continued to directly infringe the `516 Patent Reexamination Certificate and has knowingly and intentionally induced End Users to infringe the `516 Patent Reexamination Certificate. The Defendant has engaged in these acts of infringement with knowledge of the `516 Patent Reexamination Certificate and DietGoal's infringement contentions despite an objectively high likelihood that its actions constituted infringement of the `516 Patent Reexamination Certificate. This objectively-defined risk was either known by the Defendant or was so obvious that it should have been known to the Defendant.

#### **GENERAL ALLEGATIONS**

18. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to DietGoal.

19. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and DietGoal is thus entitled to an award of its reasonable attorneys' fees.

#### **DEMAND FOR JURY TRIAL**

20. DietGoal, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, DietGoal requests entry of judgment that:

1. Defendant has infringed and willfully infringed the `516 Patent and the `516 Patent Reexamination Certificate (the "patents-in-suit");

2. Defendant accounts for and pays to Plaintiff all damages caused by its respective infringement of the patents-in-suit; and

3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendant's patent infringement;
4. Plaintiff be awarded enhanced damages in accordance with 35 U.S.C. § 284;
5. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
6. Costs be awarded to Plaintiff; and
7. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: November 5, 2013

Respectfully submitted,

**BUETHER JOE & CARPENTER, LLC**

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**ATTORNEYS FOR PLAINTIFF  
DIETGOAL INNOVATIONS LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on this 5th day of November, 2013. Any other counsel of record will be served by facsimile transmission.

/s/ Eric W. Buether  
Eric W. Buether