

**DEAL OF THE DAY?**  
**CONSUMER PROTECTION IN ONLINE GROUP BUYING DEALS**



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DEAL OF THE DAY? CONSUMER PROTECTION IN ONLINE GROUP BUYING DEALS

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## Executive Summary

The group buying industry, now labeled the deal site industry, has flourished in Canada over the past 5 years, as consumers seek out new ways to cut costs and increase savings. The evidence gathered for this report suggests the Canadian deal site industry is more responsive to the needs of consumers than it was just a few short years ago. The industry model consists of three participants: Canadian consumers who engage in the deal site industry to save money in a convenient manner while being exposed to innovative deals in their community; retailers who participate in deal site offers to expand their customer base or increase their visibility; and the deal site industry which positions itself to retailers as an alternative to traditional marketing and distribution channels.

In the current market, consumers primarily receive electronic messages from deal site providers, informing them of deals available on their websites. Due to the volume of competition in the Canadian deal site industry, the challenge for deal sites is creating tactics to remain relevant in an effort to retain their client base. While evidence suggests there is room for the Canadian deal site industry to grow, innovative techniques employed in other jurisdictions to engage consumers are struggling to enter the Canadian market.

A growing number of Canadians are now using their wireless device to view and respond to deal site offers. However, text message-based and wireless applications such as Rogers Alerts and Samy are just beginning to impact the Canadian deal site market. Meanwhile, tactics such as text messaging, location-based advertising, deal site loyalty programs and deal site-branded credit cards are used by deal sites in the United States and elsewhere to engage consumers. Moreover, a number of banks in the United States have entered the deal site market on their own using a technique known as "card-linking". This technique allows consumers to avoid printing off deal site coupons and presenting them at participating retailers, potentially removing any irritants relating to the physical redemption of deal site offers.

Canadian consumers appear to place a limited amount of trust in deal site providers. Canadian consumers generally spend between \$25 and \$40 on a deal site offer, and we contend this limited spending is a result of previous negative redemption experiences. Recent efforts undertaken by deal site providers to respond to consumer concerns have done a great deal to alleviate previous frustrations relating to redemption. However, Canadian consumers continue to expect a comprehensive refund policy, want clearly understood terms and conditions for each offer, and want a complaint resolution process to assist them if they encounter redemption issues.

Consumers surveyed for this study expressed concerns regarding wait times encountered during the redemption of deal site offers. In the minds of consumers, the retailer and the deal site share responsibility for ensuring consumers are able to redeem any deal site offer in a timely fashion. For the benefit of consumers, it was suggested deal site providers continue to undertake due diligence when negotiating a deal site offer with a retailer. If necessary, deal sites should limit the number of deal vouchers offered under any given deal, and consider as well limiting the number of offers issued by a single retailer.

Consumers view expiry dates of deal site offers as a necessary evil, although most agreed they should remain valid for at least 6 months, preferably a year. An area of deeper concern was the consumer perception that deal site vouchers retained their face value, even after expiry. However, a review of the policies of a number of deal sites, as well as provincial consumer protection laws, reveals this is not the case throughout Canada. Thus, a universal rule amongst major Canadian deal sites should be introduced allowing redemption of deal site vouchers for their face value once they have expired. Another area where Canadian deal sites could collaborate to benefit consumers is a universal approach to refunds. These industry-led agreements would alleviate consumer confusion, and generate greater consumer confidence in the Canadian deal site industry.

It was also recommended that Canadian deal sites consider collecting and displaying cumulative consumer feedback ratings for the retailer and deal site involved in each deal site offer. Under this model, consumers could use these feedback metrics to assist them in determining the viability of future offers. Retailers could use the same information in consideration of future offers to increase effectiveness and ensure greater consumer satisfaction. Deal sites would be quickly armed with consumer satisfaction data they could employ in the solicitation of future offers from retailers.

It is unclear if any laws or regulations specifically apply to deal site offers in Canada. Terms and conditions under deal site contracts leave no room for negotiation on the part of the consumer. While it is possible that provincial consumer protection laws or laws relating to gift cards may apply, the lack of a judicial decision or case law regarding the activity of a Canadian deal site creates uncertainty. Moreover, it is possible under existing gift card regulations that consumers in some provinces have more consumer protection than others.

Governments in the United States, the United Kingdom, Australia and New Zealand also rely to a large degree on existing consumer protection laws to guard against misrepresentations and poor practices in the deal site industry. However, in Australia the deal site industry collaborated to create a voluntary code of practice, complete with a separate complaint resolution process for the benefit of consumers. With that in mind,

perhaps leaders of the Canadian deal site industry will take notice and collaborate to create an industry body to address issues of commonality when required.

## Section 1 – Introduction

The phenomenon of group buying online platforms has seen an apparent explosion over the past 5 years in Canada, developing into an estimated \$415 Million industry.<sup>1</sup> Group buying, previously confined to predominantly business to business activities, especially in the manufacturing and government procurement sectors, has expanded in scope to be widely recognizable at a business to customer level using an online platform. The activity may be differentiated from other e-commerce activities by looking at how the business model operates, where it operates, what it sells or offers, and its relationship with the consumer.

In the broadest of terms a deal website may be said to offer a consumer products or services at significantly reduced prices. These reductions may be reliant on a pre-determined level of purchase, or be time-limited. Initially, these on-line platforms featured a daily deal, with the deal becoming available once a set number of consumers agree to buy the product or service. The purchaser then prints off a voucher to claim their discount upon presentation to the retailer or vendor, or online. More recently, online group buying websites have established a series of deals, where the number of consumers willing to purchase is no longer a determining factor. Thus, on a vast majority of occasions, if consumers see a deal on an online group buying website, they can purchase it immediately. As a result of this transition, the industry refers to these sites as “deal sites” as opposed to online group buying websites. We will undertake to refer to these business entities as deal sites throughout this investigation.

This examination will outline consumer protection issues with deal sites in Canada. The study will detail how the industry works, examining all of the industry players, the business model and the value chain. PIAC will examine how deal sites advertise deals to Canadian consumers and the terms disclosed to consumers.

This study is both timely and of considerable importance, seeing that the deal site industry is a burgeoning and unprecedented trend among consumers worldwide. The issue is particularly pressing in the current economic climate, as more and more consumers are seeking out new ways to cut costs and increase savings. Canadians have contributed to this trend, taking advantage of an estimated \$350 Million in deals in 2012 alone, not including revenue generated through the use of “flash sales.”<sup>2</sup> Evidence

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<sup>1</sup> Group Buying Canada, Top Daily Deal Sites in Canada 2012, May 21, 2011, p.7. Last accessed November 22, 2013 at [http://www.slideshare.net/GroupBuyingCanada?utm\\_campaign=profiletracking&utm\\_medium=sss&utm\\_source=ssslideview](http://www.slideshare.net/GroupBuyingCanada?utm_campaign=profiletracking&utm_medium=sss&utm_source=ssslideview)

<sup>2</sup> Flash sales are a time-limited offer, usually a one day sale, with high discounts. Under this model, consumers are able to purchase until a finite level of available product or gift card/voucher for a service has been reached.

suggests there is currently a consolidation process occurring within the Canadian deal site industry. According to the Canadian Deals Association, at the beginning of 2012 there were 140 deal sites. By December 2012 there were 60, and the Association anticipates that by the end of 2013 there will only be 30 or so worth mentioning, with the top 10 accounting for 90% of sales volume in Canada.<sup>3</sup>

A 2011 study found that one in four Canadians use online group discount websites, and of the Canadians who are not currently using group couponing, 40% are likely to join in the near future.<sup>4</sup>

The unique nature of the product offered, that is, pre-paid vouchers that are a coupon/gift-certificate hybrid, has raised important compliance questions regarding existing consumer protection laws. A recent study from the United States highlighted questions relating to expiration dates, tax treatment, and voucher service liabilities among others, as pressing issues to be studied further.<sup>5</sup> In addition to this, the Consumer Federation of America has reported a surge of complaints related to group-couponing and predicts that such complaints will continue to increase.<sup>6</sup> Media reports have suggested similar experiences by Canadians.<sup>7</sup> Service Alberta has launched an investigation and a class action has been commenced against Groupon in Ontario alleging violations of Ontario's Consumer Protection Act.<sup>8</sup>

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<sup>3</sup> Canadian Deals Association, *Top Daily Deal Sites in Canada 2013*, January 24, 2013, p. 8

<sup>4</sup> Bensimon Byrne, *Over Half of Canadians Using Coupons More Now than Before the Recession*, News Release, May 16, 2011.

<sup>5</sup> Benjamin Edelman and Paul Kominers, Consumer Protection in Online Discount Voucher Sales, June 14, 2011. Last accessed August 7, 2013, at <http://www.benedelman.org/voucher-consumer-protection/>

<sup>6</sup> Consumer Federation of America, National Association of Consumer Agency Administrators, North American Consumer Protection Investigators, *2010 Consumer Complaint Survey Report*, July 27, 2011, p. 26.

<sup>7</sup> Wong, Tony, "Are deal site sites a good deal?," *Toronto Star*, April 12, 2013. Last accessed August 7, 2013, at [http://www.thestar.com/entertainment/television/2013/04/12/are\\_groupbuying\\_websites\\_a\\_good\\_deal.html](http://www.thestar.com/entertainment/television/2013/04/12/are_groupbuying_websites_a_good_deal.html), and CBC News, "Deal site website comes up short," May 17, 2011. Last accessed August 7, 2013, at [http://www.cbc.ca/news/canada/story/2011/05/16/deal55-deal\\_site-websites.html](http://www.cbc.ca/news/canada/story/2011/05/16/deal55-deal_site-websites.html)

<sup>8</sup> Dormer, Dave, "Alberta launches Groupon probe," August 13, 2011. Last accessed August 7, 2013, at <http://cnews.canoe.ca/CNEWS/Canada/2011/08/13/18550176.html>

## 1.1 Methodology

PIAC attempted to consult with the largest deal sites operating in Canada to learn about their business model, the value chain, and how they deal with consumer complaints. PIAC consulted with small business groups to understand how online group buying affects merchants' relationships with consumers. Secondary sources and academic articles were also relied on to explain the industry.

PIAC consulted with provincial ministries tasked with consumer protection regarding the number of consumer complaints they receive about online group buying voucher sites, the trends they have observed with respect to the nature of consumer complaints, dispute resolution available to consumer, and their views on how consumer protection legislation protects consumers with respect to online group buying sites. PIAC also consulted other consumer groups regarding complaints about these types of services. PIAC also consulted the Competition Bureau for their views on misleading advertising and unfair practices that may occur with online group buying services.

PIAC reviewed the applicability of consumer protection legislation to online group buying sites with a view to exploring issues that consumers may encounter with these services.

Focus groups informed the recommendations, as they explored consumer expectations and attitudes to consumer protection for online group buying sites. Three focus groups were conducted in December 2012. Two focus groups were conducted in Edmonton, and one in Toronto. Consumer focus groups were with consumers who have had positive and negative experiences with online group buying and focused on liability and dispute resolution.

PIAC also reviewed and analyzed international approaches to consumer protection with online group buying sites and consulted with foreign regulators and consumer groups regarding the efficacy of their approach.

## Section 2 - How the Deal Site Industry Works

Deal site buying is a relatively new phenomenon in North America, where a group buying service offers consumer products or services at significantly reduced prices. When this method of buying was introduced in North America, purchasing depended on whether enough consumers wished to take advantage of the offer. If the promotional deal proceeded, consumers were given vouchers or coupons to be used when visiting the retailer either in person or online. The price reductions may have also relied upon a time-limit. As was noted in the introduction, initially, these on-line platforms typically featured a daily deal, with the deal becoming available once a set number of consumers agree to buy the product or service. While daily deals are still presented to consumers, a number of online group buying websites have evolved into deal sites, complete with dozens of deals available to consumers at any time, without waiting for a certain number of consumers to purchase. As a result, these “deal sites” have become a shopping avenue all on their own. For instance, the top 5 deal sites operating in Canada – Groupon, TeamBuy/Dealfind, Wagjag, Tuango and LivingSocial – operate in this manner. This section intends to discuss the online deal site business model, an examination of the industry players and the value chain.

A consequence of the increasing popularity of deal sites has been the development of deal site aggregate websites. These aggregate websites allow consumers to review every deal being offered in a particular city, all at once. Deal site platforms and aggregators require certain preconditions to be met if they are to be viable. These include:

- Retailers and vendors have a need for their services
- Consumers are willing to shop on-line for services and products
- The market-place is dense enough to support their activities
- There are significant numbers of key demographics within those market places looking for specific products and services

Deal sites and Deal site aggregators can offer a service to retailers and vendors who are motivated to, for example, expand their customer base and loyalty, increase visibility and promote discussion of their product or service. Other potential motivations may include the need to increase sales, clear inventory, access different demographics, and access more mainstream markets. The fees incurred by the retailer/vendor can often be substantially less than a traditional advertizing campaign and offer a one-stop solution to consumers, regardless of their familiarity with e-commerce. The notion of using a

deal website service as an alternative to traditional advertising was also raised by focus group participants, and they noted this would be particularly true for smaller retailers.<sup>9</sup>

### *Why Are Consumers Buying?*

Focus group participants also confirmed a willingness to shop on-line using deal site and deal website platforms because of the savings offered.<sup>10</sup> However, this was not the sole reason consumers gave for participating in the group buying experience. Many pointed out the convenience of using such a service, given that consumers can shop on deal sites 24 hours a day.<sup>11</sup> As well, a number viewed a deal site offer as an opportunity to experience a new product or service, at a reduced price.<sup>12</sup> A 2012 survey reinforced this view, noting that more than eight out of 10 Canadians have interacted with a business for the first time or used a product or service for the first time because of a deal site voucher.<sup>13</sup> Therefore, it appears that the lower the price, the more inclined consumers are to experiment, when it comes to group buying.

In 2011, survey data revealed 40% of Canadians specifically liked deal sites because it allowed them to buy or try something they normally wouldn't at regular price.<sup>14</sup> The report also noted that respondents cited various factors when asked what they personally like about group buying:

- Consumers like the convenience of getting deals online (35%).
- They like being introduced to new local deals in their city (34%).
- It allows them to find only the deals they are interested in (33%).
- It lets them buy more because they save money (26%).
- It lets them give a more substantial gift for their budget (20%).

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<sup>9</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 49, 51-54

<sup>10</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 10, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 10-11, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 14-15.

<sup>11</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 10, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 10-11.

<sup>12</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 4, 9-10, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 7, 9, 11, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 10-11, 16.

<sup>13</sup> Ipsos-Reid, *Ipsos Canadian Inter@ctive Reid Report: 2012 Fact Guide*, February 7, 2012, p. 5

<sup>14</sup> OneSpout.com, "Spontaneity and Selfishness: The Inside Scoop on group Buying in Canada," News Release, May 10, 2011. Last accessed August 22, 2013, at <http://www.marketwire.com/press-release/spontaneity-and-selfishness-the-inside-scoop-on-deal-site-in-canada-1512232.htm>

- It allows them to easily share deals with their friends, colleagues and family (17%).<sup>15</sup>

In the U.S., a 2011 survey question posed to over 26,000 consumers revealed that 65% would prefer to receive online deals weekly rather than on a daily basis, while more than 6 in 10 will search up to 10 different coupon sources weekly.<sup>16</sup> This suggests many consumers prefer to shop around amongst deal sites available to them. It may also be evidence that, given the volume of deals faced by consumers, they are prepared to disregard deal sites they signed up for if they feel the service is no longer offering deals they feel are relevant to them. A 2011 study reveals that of those Canadians who regularly use deal sites, seventy per cent will wait for a deal before they make a purchase.<sup>17</sup>

### *What Are Consumers Buying?*

According to Albert Bitton, President of the Canadian Deals Association (CDA), the top deals requested by consumers are offers from restaurants and opportunities to travel.<sup>18</sup> Mr. Bitton also pointed out the largest volume of deals purchased by Canadian consumers occur in the restaurant industry, followed by spa/health services, consumer goods and travel.<sup>19</sup> A 2012 report from Ipsos Reid supports these findings, noting the most popular purchased deals are for restaurants (51%), personal services (27%), and grocery items (25%).<sup>20</sup> Focus group analysis also reflects these results, while highlighting the popularity of hiring cleaning services.<sup>21</sup> In general, it was discovered consumers prefer purchasing services through deal sites in comparison to products.<sup>22</sup>

<sup>15</sup> OneSpout.com, "Spontaneity and Selfishness: The Inside Scoop on group Buying in Canada," News Release, May 10, 2011. Last accessed August 22, 2013, at <http://www.marketwire.com/press-release/spontaneity-and-selfishness-the-inside-scoop-on-deal-site-in-canada-1512232.htm>

<sup>16</sup> Canadian Deals Association, Deal Industry Stats by Borell. Last accessed September 12, 2013, at <http://www.canadiandealsassociation.com/deal-industry-stats-by-borell/>, from Borrell Associates, *Borrell Associates/Presslaff Interactive Deals and Coupons Survey*, October 2011

<sup>17</sup> Bensimon Byrne, *Consumerology Report: Economic trends and Consumer Behaviour*, May 2011, P. 55.

<sup>18</sup> Bitton, Albert. *Personal Interview*, August 27, 2013.

<sup>19</sup> Bitton, Albert. *Personal Interview*, August 27, 2013.

<sup>20</sup> Ipsos Reid, *The Ipsos Inter@ctive Reid Report: 2012 Fact Guide*, February 9, 2012, page 5

<sup>21</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 4-8, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 13-15, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 2-5, 8.

<sup>22</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 4-8, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 3-9, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 5-14.

## *Who Are Taking Advantage of Online Group Buying Opportunities?*

While focus group analysis and survey research has determined why deal site buying is appealing, just who are taking advantage of these daily deals? In March 2013, Leger Marketing conducted a survey for the Canadian Broadcasting Corporation (CBC), and found that 71% of all Anglophone Canadians over 18 years of age who responded, indicated that they had heard of a group buying website.<sup>23</sup> Moreover, 54% of those surveyed indicated that they have currently signed up to receive offers via email from a group buying website.<sup>24</sup> It is interesting to note that while those aged 35 to 44 (61%) were the most likely to have signed up for group buying offers, a 2011 study showed those aged 18-34 (25%) were more-than-twice as likely as Canadians aged 55-plus (10%) to have made a purchase from a group buying site.<sup>25</sup> A 2011 study noted that 60% of Canadian deal site followers search their favorite deal sites more than once per week.<sup>26</sup>

## *Location, Location, Location*

Given the nature of the deal site buying model, deal site platforms rely on sufficient population and merchant density in order to maximize revenue stream. In Canada, therefore, it is no surprise that the city of Toronto was home to over 60 deal sites websites in 2011, and continues to be home to over half of the group buying websites launched in Canada.<sup>27</sup> While there is no empirical evidence publicly available, we would contend deal sites are not as an effective shopping option for many rural Canadians.

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<sup>23</sup> CBC Research, "Marketplace: Group Buying Websites," March, 2013, p.3. Last accessed August 22, 2013, at [http://www.cbc.ca/marketplace/media/episodes/2012-2013/whatsthedeal/documents/group\\_buying\\_survey.pdf](http://www.cbc.ca/marketplace/media/episodes/2012-2013/whatsthedeal/documents/group_buying_survey.pdf)

<sup>24</sup> CBC Research, "Marketplace: Group Buying Websites," March, 2013, p.3. Last accessed August 22, 2013, at [http://www.cbc.ca/marketplace/media/episodes/2012-2013/whatsthedeal/documents/group\\_buying\\_survey.pdf](http://www.cbc.ca/marketplace/media/episodes/2012-2013/whatsthedeal/documents/group_buying_survey.pdf)

<sup>25</sup> OneSpout.com, "Spontaneity and Selfishness: The Inside Scoop on group Buying in Canada," News Release, May 10, 2011. Last accessed August 22, 2013, at <http://www.marketwire.com/press-release/spontaneity-and-selfishness-the-inside-scoop-on-deal-site-in-canada-1512232.htm>, and CBC Research, "Marketplace: Group Buying Websites," March, 2013, p.3. Last accessed August 22, 2013, at [http://www.cbc.ca/marketplace/media/episodes/2012-2013/whatsthedeal/documents/group\\_buying\\_survey.pdf](http://www.cbc.ca/marketplace/media/episodes/2012-2013/whatsthedeal/documents/group_buying_survey.pdf)

<sup>26</sup> Bensimon Byrne, *Consumerology Report: Economic trends and Consumer Behaviour*, May 2011, P. 56.

<sup>27</sup> 'Deal site website comes up short,' *CBC News*, May 17, 2011. Last accessed August 21, 2013, at [http://www.cbc.ca/news/canada/story/2011/05/16/deal55-deal\\_site-websites.html](http://www.cbc.ca/news/canada/story/2011/05/16/deal55-deal_site-websites.html), and the Canadian Deals Association, *Top Daily Deal Providers in Canada 2013*, January 28, 2013, p. 9.

## *Terms Being Disclosed to the Consumer*

The feedback from consumers who participated in focus groups for this investigation indicated they routinely looked for any limitations included with the offer proposed on a deal site.<sup>28</sup> On many occasions, the underlying reason was based on a previous negative redemption experience as a result of not seeking out the limitations before making a deal site purchase.<sup>29</sup> This could very well reflect the experience of many Canadian consumers with the deal site industry. In one case, a respondent felt compelled to consult an external deal site internet forum as part of the decision making process, in an effort to determine the practical limitations to a deal site offer.<sup>30</sup> The tactic of undertaking shopping research online before purchasing is popular among Canadians. In fact, a Canadian Consumer Shopping Behaviour Report released in March 2013 by Nielsen indicated 47% of grocery shoppers surveyed conduct online research.<sup>31</sup> Accordingly, the following reflection appears to be a sentiment shared by many Canadian consumers regarding the disclosure of a deal site offer's terms and conditions:

“But you shouldn't have to do research elsewhere other than the group buy site, like there should be fine print there, and I'm totally okay if you have to click somewhere else to see the fine print, but you shouldn't have to go off to the restaurant website or something.”<sup>32</sup>

(Focus Group, December 17, 2012, Edmonton)

It can be argued that in response to consumer frustration, the deal providers have evolved to a point where most, if not all, of the pertinent details or limitations regarding a deal are easily available to the consumer before a purchase decision is required. For example, a typical deal site offer for a product now includes details about the item itself, its packaging, an offer expiry date (if any), the shipping cost, expected delivery period, any geographic limitation on shipping, a link to a return policy, a link to frequently asked questions regarding the deal site purchase process, as well as a link to any policies

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<sup>28</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 31-39, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 34-36, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 32-41.

<sup>29</sup> Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 34, 36, 37, 41, and Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 32.

<sup>30</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 36.

<sup>31</sup> Metro Inc., Metro unveils its digital ecosystem (mobile and web), a new step in its personalization strategy, New Release, September 9, 2013, from Nielsen, Canadian Consumer Shopping Behaviour Report, March 2013. Last accessed on September 11, 2013, at <http://www.newswire.ca/en/story/1221207/metro-unveils-its-digital-ecosystem-mobile-and-web-a-new-step-in-its-personalization-strategy>

<sup>32</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 35.

regarding the pricing of all deals offered by that provider. For the most part, focus group participants noted appreciation when a deal site provider provided a resolution to their redemption difficulties.<sup>33</sup> Whether the presence of an industry-wide guideline is required relating to the provision of terms and conditions on a deal site to assist consumers is a subject worth of further scrutiny.

### *The Group Buying Service-Retailer Relationship*

While the business model can differ with the relationship, at the most fundamental level the deal site platform relies on a relationship with the retailer. The retailer enters into a contract with the deal site's platform, with the retailer usually agreeing to provide a certain percentage of profits resulting from the promotion of a good or service. The retailer may also choose to provide a payment or a combination of payment and percentage of profits. In return the group buying vehicle uses its platform as a medium to advertise and act as an e-commerce site to consumers.

From the perspective of the retailer, the benefits of participating in deal sites include generating the perception among potential customers that your business is willing to try new things, while being aware of consumer trends.<sup>34</sup> Moreover, deal site offers can produce a large amount of sales in a short amount of time. This is useful to businesses with small marketing budgets.

As noted by focus group participants and recent survey research, group buying discounts get first-time customers to check out a business, with the opportunity to convert new customers into return customers. Moreover, even if customers don't buy the deal, the company name is seen by thousands of eyes, and results in increased word-of-mouth advertising after the deal site promotion has concluded.<sup>35</sup> This is also beneficial even if the minimum number of orders is not reached.

However, the price paid by retailers to reach consumers by partnering with a deal site platform is considerable. Depending on the deal site platform, retailers share up to 50%

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<sup>33</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 38, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 37-38, Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 41.

<sup>34</sup> Crowe, K., Fishing for a group deal: What you should know about deal site websites. McClatchy-Tribune News Service, November 19, 2010. Retrieved from <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20101205/BIZ/12050340>

<sup>35</sup> Crowe, K., Fishing for a group deal: What you should know about deal site websites. McClatchy-Tribune News Service, November 19, 2010. Retrieved from <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20101205/BIZ/12050340>

of revenue earned from a deal site offer with the deal site provider.<sup>36</sup> Some consumers believe that the level of competition present in the deal site market serves as a natural barrier to exorbitant revenue rates for deal site providers.<sup>37</sup> Moreover, they were not very concerned about placing a limit on the percentage of revenue earned from a deal site on any given deal, citing this to be an issue between the retailer and the deal site.<sup>38</sup>

There are a number of factors involved in determining what percentage of revenue is given to the deal site. One is the name brand recognition of the deal site itself – the more prominent the deal site, the more likely it is that the percentage given to the deal site will be higher. Another is the brand appeal of the retailer. On some occasions, deal sites are willing to lower their take in exchange for having a prominent retailer or brand on their site. During this investigation, it was suggested that 45% is the average rate of revenue per deal collected by the top deal sites in Canada, while 35% was approximately the average for the industry.<sup>39</sup> These figures were comparable to those found in the United States, where 43.8% is the average rate of revenue collected by deal sites.<sup>40</sup>

It was also noted that focus groups participants were for the most part unaware of how their purchase price was divided between the deal site provider and the retailer.<sup>41</sup> While surprised, focus group participants generally assumed that the arrangement must provide value to retailers and did not express the need for a cap on the deal sites' percentage.<sup>42</sup> In addition, focus group participants felt that, while promotions may generate limited financial profits, in a number of cases retailers are given the opportunity to up-sell to them when the promotions were redeemed. On these occasions, participants noted this was especially true for restaurant offers, where they may decide to purchase wine or additional food.<sup>43</sup> While some focus group participants

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<sup>36</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 20, and Crowe, K., Fishing for a group deal: What you should know about deal site websites. McClatchy-Tribune News Service, November 19, 2010. Retrieved from <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20101205/BIZ/12050340>

<sup>37</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 67-68, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 69-70.

<sup>38</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 66-67, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 69-70, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 75-76

<sup>39</sup> Bitton, Albert. *Personal Interview*, August 27, 2013.

<sup>40</sup> Dholakia, U., *How Businesses Fare With Daily Deals As They Gain Experience: A Multi-Time Period Study of Daily Deal Performance*, June 25, 2012, p. 22. Last accessed August 28, 2013 at <http://news.rice.edu/wp-content/uploads/2012/07/2012-07-05-DailyDeals.pdf>

<sup>41</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 20-21, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 24-27.

<sup>42</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 67-68, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 69-70.

<sup>43</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 42-44, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 44-46

were mildly irritated by this tactic, they were not inclined to stop using group buying sites as a result.<sup>44</sup>

For retailers, other considerations before entering the deal site market include:

- Some customers are simply drawn-in by the deal, and regardless of the experience, never intend to return;
- Possible diluting of your brand if deals are done too often; and,
- Competition for deals and advertising: Dozens of deal sites exist now, so there is more competition for deals.<sup>45</sup>

Meanwhile, for the deal site platform, the most successful model employed in Canada is one where the deal site provider focuses its efforts almost solely on the retailer. The success of deal sites arguably depends on their ability to convince retailers they can assist in providing more customers, and attract customers who will want to come back to the retail outlet. Meanwhile, the consumers interact with the deal site for purchasing and with retailers during the redemption process.

From the perspective of deal site providers, they see their service as an alternative promotional and marketing vehicle for local retailers and online stores to promote their products or services. The challenge facing deal site providers when approaching retailers is moving the conversation away from the costs associated with running a “deal” to the marketing benefits of the service they offer. Evidence found in the United States suggests, while less than half of the businesses running their first daily deal report profitable promotions, more than three quarters of those running seven or more deals do so.<sup>46</sup> Moreover, the study, using survey data from 641 small and medium-sized businesses obtained during in April and May 2011, October 2011, and May 2012, noted about 20% of customers using a daily deal become repeat customers, about one-third spend beyond the value of the deal purchased, while 21-23% of deals are never redeemed.<sup>47</sup> The study concluded that daily deals appear to be sustainable programs

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<sup>44</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 42-44, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 44-46

<sup>45</sup> Crowe, K., Fishing for a group deal: What you should know about deal site websites. McClatchy-Tribune News Service, November 19, 2010. Retrieved from <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20101205/BIZ/12050340>

<sup>46</sup> Dholakia, U., *How Businesses Fare With Daily Deals As They Gain Experience: A Multi-Time Period Study of Daily Deal Performance*, September 25, 2013, p. 1. Last accessed August 28, 2013 at <http://news.rice.edu/wp-content/uploads/2012/07/2012-07-05-DailyDeals.pdf>

<sup>47</sup> Dholakia, U., *How Businesses Fare With Daily Deals As They Gain Experience: A Multi-Time Period Study of Daily Deal Performance*, September 25, 2013, p. 22-23. Last accessed August 28, 2013 at <http://news.rice.edu/wp-content/uploads/2012/07/2012-07-05-DailyDeals.pdf>

for approximately 30% of businesses; and that newer and relatively smaller businesses have even higher sustainability rates of close to 40%.<sup>48</sup>

After taking these factors into consideration, it can be argued retailers view daily deals as a very effective technology tool in attracting new customers. To support this claim, in March, 2013, Constant Contact released the second segment of a multi-part study about the state of small businesses in the United States and the ways they connect with and grow their audiences. Over 1,300 small businesses and non profits were asked which technology tools they see as most effective in attracting new customers:

- 53% said daily deals.
- 51% said Internet ads.
- 38% said web listing sites.
- 37% said social media ads.
- 29% said online coupons.<sup>49</sup>

Even though retailers in the United States may continue to have misgivings about working with deal sites, they continue to hold the view that there is value in offering daily deals, when compared to other technology tools. Further evidence of this sentiment is provided by the CEO of Groupon, Andrew Mason, with *Forbes* magazine in 2010. Mr. Mason claimed at that time Groupon had 35,000 companies clamoring to be on its roster, while only one in eight applicants made the cut.<sup>50</sup> For Canadian consumers, the ongoing use of deal sites suggests that Canadian retailers may hold similar views regarding the use of the technology tools listed above.

While deal site providers do not provide retailers with their distribution lists, there are measures that can be taken by retailers to procure some of the information held by deal sites services. For example, for those retailers and online stores selling products, once a consumer commits to a deal, the retailer will have shipping information for that client. For some online stores, they will run a promotional deal using a deal site primarily to obtain consumer data to expand their own marketing distribution list.<sup>51</sup> The importance of collecting consumers' purchasing data to retailers cannot be understated. It is the

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<sup>48</sup> Dholakia, U., *How Businesses Fare With Daily Deals As They Gain Experience: A Multi-Time Period Study of Daily Deal Performance*, September 25, 2013, p. 1, 27-28. Last accessed August 28, 2013 at <http://news.rice.edu/wp-content/uploads/2012/07/2012-07-05-DailyDeals.pdf>. The Ipsos Inter@ctive Reid Report: 2012 Fact Guide reports that in Canada, 57% of those who redeemed a coupon say they would return to the same company without a coupon or gift certificate.

<sup>49</sup> Constant Contact, *Customer Engagement a Major Focus of Small Business Technology According to Constant Contact Technology Pulse Survey*, News Release, March 5, 2013. Last accessed September 19, 2013 at <http://www.businesswire.com/news/home/20130305005304/en/Customer-Engagement-Major-Focus-Small-Business-Technology>

<sup>50</sup> Steiner, Christopher, "Meet the Fastest Growing Company Ever," *Forbes*, August 30, 2010.

<sup>51</sup> Bitton, Albert. *Personal Interview*, August 27, 2013.

catalyst from which all other elements related to brand marketing flow. It can be argued the effective collection and analysis of this information has a direct correlation to increased profits for Canadian retailers, as well as greater consumer satisfaction.<sup>52</sup>

In the example of the restaurant industry, once the consumer has committed to a deal, the restaurant has multiple opportunities to obtain further data on the customer – during the reservation process and the meal itself. This data can be used a number of ways in an effort to retain individual customers and entice them to revisit the restaurant following the completion of the daily deal redemption. In some instances the deal industry has been used by restaurants as a form of short-term loan. A daily deal is used in an effort to raise capital for renovations, and other needs, in the absence of available financing from financial institutions.<sup>53</sup>

### *The Value Chain*

Total internet value chain revenues were estimated at US\$1,930 billion in 2008, growing on average by 10% per year, according to A.T. Kearney, a United States-based consulting company.

When first introduced, online group buying depended on a number of consumers taking advantage of an offer for a product or service, or within a time limit. Over time, these practices have been discontinued to the point where the term “online group buying sites” have evolved into “deal sites,” with dozens of deals available to consumers at any time. As an off-shoot of deal sites, deal aggregators allow consumers to review deals offered in a particular city simultaneously. Deal sites require certain market conditions in order to achieve success, including willing online consumers and retailers that have a need for their services. Reasons given why retailers are inclined to try deal sites include efforts to expand their customer base or promote discussion of their product or service.

When compared to a traditional advertizing campaign the fees incurred by retailers conducting a group deal promotion can often be substantially less. However, the fees charged to retailers are substantial. Depending on the deal site, retailers could share up to 50% of revenue earned from a group buying deal with the group buying site, although the industry average in Canada is estimated at 35%, compared to 43.8% in the United States. The introduction of deal sites in Canada represents an additional layer in a traditional value chain between the layers of retailer and consumer. The value of this kind of deal site marketing is that, while expensive from a percentage of the sale perspective, the cost is directly linked to sales. The retailer only pays when there is a

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<sup>52</sup> Public Interest Advocacy Centre, *Customer loyalty Programs: Are Rules Needed?*, September 2013, p. 11-12.

<sup>53</sup> Bitton, Albert. *Personal Interview*, August 27, 2013.

coupon transaction. As a result, there is more certainty in the deal site advertising guaranteeing a financial return versus other forms of advertising.

Focus group participants, as well as consumers in general, noted deal websites are convenient and offer considerable savings. In addition, survey research and focus group analysis revealed consumers appreciate the opportunity to experience a new product or service, such as a restaurant or spa service.

## Section 3 – The Art of the Deal: How deal sites advertise deals to Canadian consumers

As noted in the introduction, deal sites predominantly employ electronic mail as their preferred distribution channel. For consumers, receiving deals by e-mail is convenient for a number of reasons. Consumers can view the messages at their leisure, as well as by accessing them on their mobile device. Consumers can also act on their instinct to impulse buy, since they need to be online to receive the message, as well as to purchase the deal offered.

By the same token, for deal sites the method of delivery also poses a potential challenge. Since offers are delivered as an email message, they can be filtered out by consumers quickly, if they choose not to view deals at the time a message is received. Moreover, deal sites are relatively easy and inexpensive to create and maintain requiring willing merchants that want to gain new customers, an email newsletter to notify readers of new daily deals, and a website for the customer to purchase the group coupon vouchers.<sup>54</sup> Therefore, the challenge for deal sites is to create incentives that will keep those on their distribution lists intrigued, rather than have consumers simply tune out or move to a competitor. This section intends to look at how deal sites and deal aggregators communicate with consumers. It also will observe trends in other jurisdictions to provide insight on what marketing initiatives may be coming to Canada, courtesy of deal site providers or their competition.

During the introduction of this report, we noted a decline in the number of deal sites operating in Canada since the beginning of 2012. On its face, this may indicate the deal industry in Canada has reached a saturation point with consumers. However, survey research appears to indicate there is still plenty of room for the deal site industry to grow in Canada. In August 2013, [www.retailmenot.ca](http://www.retailmenot.ca), a digital coupon site, released the result of an 11 nation study examining issues related to online and mobile shopping. The study revealed:

- 15% of Canadians never look for deals and offers on products and are the least likely out of all 11 countries surveyed to visit a price comparison website (6%).

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<sup>54</sup> Eklund, Kevin, *Can Groupon Compete With Local Publishers, Alternative Group Buying Business Models?*, Blog post. Last accessed September 10, 2013, at <http://tomuse.com/deal-site-business-model-groupon-local-publisher/#ixzz2dl67wOT6>

- Only 4% of Canadians surveyed look for deals and offers primarily via social media.<sup>55</sup>
- Meanwhile, 28% Canadians mainly look for coupons and vouchers in the newspaper or mail.

A second recent survey, looking specifically at household grocery shopping activities, indicates that many Canadians are routinely using online tools in an effort to shop more effectively.

- 51% of consumers consult the online or paper flyer.
- 47% perform research online (prices and recommendations).
- 42% look for discounts online.
- 31% compare the prices of products online.<sup>56</sup>

Meanwhile, *The Ipsos Inter@ctive Reid Report: 2012 Fact Guide* estimates that 65% of Canadians have heard of online group coupon sites, and awareness among online Canadians is dominated by Groupon (54%).<sup>57</sup> Among those aware, 61% subscribe to receive notification alerts, while 17% purchase online group coupons at least monthly.<sup>58</sup> As well, according to Statistics Canada, E-Commerce sales in Canada are 1% of total retail sales.<sup>59</sup> In the U.S., the Department of Commerce estimates they are about 4.6%, while Wendy Cukier, Vice-President of Research and Innovation at Ryerson University, publicly stated this figure is 8% of total retail sales.<sup>60</sup>

Taken together, the statistics indicate that while many consumers undertake research online before shopping, there are many who remain in the habit of looking at traditional retail flyers and have yet to participate fully in online deal site-related activities such as signing up for a distribution list or making a voucher or coupon purchase through a deal

<sup>55</sup> Retailmenot. Ca, *Canada Lags Behind in Online and Mobile Shopping*, August 21, 2013. Last accessed September 10, 2013, at <http://retailmenot.mediaroom.com/index.php?s=33993&item=125246>

<sup>56</sup> Metro, Inc., Metro unveils its digital ecosystem (mobile and web), a new step in its personalization strategy, New Release, September 9, 2013, from Nielsen, *Canadian Consumer Shopping Behaviour Report*, March 2013. Last accessed on September 11, 2013, at <http://www.newswire.ca/en/story/1221207/metro-unveils-its-digital-ecosystem-mobile-and-web-a-new-step-in-its-personalization-strategy>

<sup>57</sup> Ipsos-Reid, *Ipsos Canadian Inter@ctive Reid Report: 2012 Fact Guide*, February 7, 2012, p. 5

<sup>58</sup> Ipsos-Reid, *Ipsos Canadian Inter@ctive Reid Report: 2012 Fact Guide*, February 7, 2012, p. 5

<sup>59</sup> Ward, Susan, *Canadian Ecommerce Lagging Badly*, Blog Post, May 19, 2012. Last accessed September 13, 2013, at <http://sbinfoCanada.about.com/b/2012/05/19/canadian-ecommerce-lagging-badly.htm>

<sup>60</sup> Enright, Allison, "E-commerce sales jump 16% in 2011," *Internet Retailer*, February 16, 2012. Last accessed September 13, 2013, at <http://www.internetretailer.com/2012/02/16/e-commerce-sales-jump-16-2011>, and House of Commons Standing Committee on Industry, Science and Technology, *E-Commerce in Canada: Pursuing the Promise*, Committee Report, May 2012, p. 12.

site. Industry representatives believe that as the availability of deal sites and online coupons increases, so will their use by Canadian consumers.

To get consumers from merely looking at flyers and price shopping online, to actually purchasing deals, deal sites employ a variety of tactics. Groupon, for example, traditionally buys ad space through Google, as well as through social media applications such as Facebook.<sup>61</sup> It also heavily depends on word of mouth of its members. In 2010, a feature in *Forbes* magazine stated “more than half of visitors drop in on the page because they've heard about it from friends.”<sup>62</sup>

In an effort to relieve themselves of their dependency on e-mail distribution, deal sites have attempting to evolve into destination portals. These are websites where consumers can visit and shop for local services and online offers whenever they want. While the “daily deal” is still on, the top 5 Canadian deal sites each have a plethora of shopping opportunities to choose from. Meanwhile, other deal site aggregators, such as Yipit.com, are dependent upon the notion that email fatigue has already set in among deal site consumers, and dedicate themselves to providing their clients with deals from as many sources as possible in each of their messages.

### *Distribution and Redemption of Coupons*

While the use of coupons is admittedly outside the scope of this investigation, recent data has been released detailing how coupons are being distributed and redeemed in Canada. One could argue that these two sets of data, when taken together, may provide some insight to retailers regarding how their coupons should be distributed during future campaigns. There are those who may even suggest that using a deal site is a form of online coupon buying. The Canadian Deals Association, for example, considers the terms “deals” to be “businesses engaged in deals, offers, rebates, special pricing, coupons or incentives. It includes the Daily Deal & Group Buying Industry, the flash sales industry, the Retail Couponing industry, Grocery coupons industry, Mobile offers & coupons, Coupon Books, Local offers, Online coupons, Affiliate offers, Savings Cards and other “Deal” industries.”<sup>63</sup>

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<sup>61</sup> Steiner, Christopher, “Meet the Fastest Growing Company Ever,” *Forbes*, August 30, 2010.

<sup>62</sup> Steiner, Christopher, “Meet the Fastest Growing Company Ever,” *Forbes*, August 30, 2010.

<sup>63</sup> Canadian Deals Association Website, Last accessed October 31, 2013 at <http://www.canadiandealsassociation.com/about/>

**Figure 3-1 Percentage of Coupon Distributed by Media**

**% of Coupons Distributed by Media**

Media Type	2010	2011	2012
Free Standing Insert	80%	83%	86%
In/On Package	3%	4%	4%
In Store	5%	4%	3%
Direct Mail	3%	2%	2%
Magazine	4%	2%	2%
Calendar	1%	1%	1%
Internet	1%	1%	1%
Other	3%	3%	1%

**Figure 3-2 Percentage of Coupon Redeemed by Media<sup>64</sup>**

**% of Coupons Redeemed by Media**

Media Type	2010	2011	2012
Free Standing Insert	16%	17%	20%
In/On Package	24%	26%	27%
In Store	40%	31%	25%
Direct Mail	8%	9%	8%
Magazine	3%	2%	2%
Calendar	1%	1%	1%
Internet	4%	8%	11%
Other	4%	6%	6%

For our purposes, it is very interesting to note that 11% of coupons found online (the Internet category) were redeemed, according to Figure 3-2, even though only 1% of all coupons were distributed using this method. If Canadian consumers are redeeming coupons found online, there is a strong indication they are looking for them online as well. It appears Canadian consumers are searching for these coupons during the research phase of their shopping. In 2012, Deloitte noted that 60% of Canadians surveyed planned to use the internet while holiday shopping.<sup>65</sup> A separate survey, conducted in September 2013 by Angus Reid, suggested a similar percentage will

<sup>64</sup> Canadian Deals Association, *Consumers are redeeming coupons in totally different ways to how brands are distributing them*, Blog Post, May 28, 2013. Last accessed September 13, 2013, at <http://www.canadiandealsassociation.com/consumers-are-redeeming-coupons-in-totally-different-ways-that-brands-are-distributing-them/>

<sup>65</sup> Deloitte, *2012 Holiday Outlook Survey: Retailers responding to changing shopping patterns*, October 31, 2012, p 5.

actually do their shopping online for the 2013 holiday season.<sup>66</sup> While consumers used to research products online, and then travel to a retail location to purchase the product, now a growing number are staying home and “clicking” items off their holiday shopping lists. Moreover, the evidence suggests that Canadian consumers are more and more willing to view and redeem coupons found while researching and shopping online.

This evidence can be seen in a number of ways by Canadian deal site providers. If retailers heed the message and distribute a greater percentage of coupons online, this has the potential to siphon away business from deal sites. On the other hand, if more online coupons produce more online consumers, this bodes well for Canadian deal site providers, since these new coupon chasers may also be inclined to participate as members of deal sites.

### *Deal or No Deal? Will these Deal Site Tactics come to Canada?*

In other jurisdictions, there are tactics employed by deal sites to attract potential buyers to their services that have yet to be introduced in Canada. Moreover, there are some tactics employed in other sectors of E-Commerce that may eventually be adopted by deal sites operating in Canada as the industry continues to evolve. This section will review a few of these activities that may be coming to a Canadian deal site in the near future.

### *Text Messaging*

In other jurisdictions, the use of text messaging by group buying and deal sites to distribute messages to consumers is a common practice. And why not, since the average consumer checks their mobile phone an average of 150 times per day, 92% use their mobile device for text messaging, and view a text message within four minutes of receiving it.<sup>67</sup> In China, for example, a deal site client receives a text message with links to deals that are routinely available for between one and three days.<sup>68</sup> Moreover, once consumers agree to purchase a deal, they receive a text message containing a

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<sup>66</sup> FedEx, *2013 Holiday Season: 60 Percent of Canadians Will Shop Online*, News Release, November 14, 2013. Last accessed November 14, 2013, at <http://www.marketwired.com/press-release/2013-holiday-season-60-percent-of-canadians-will-shop-online-nyse-fdx-1852172.htm>

<sup>67</sup> Meeker, Mary and Liang Wu, *Internet Trends D11 Conference*, Kleiner, Perkins, Caufield, Byers (May 29, 2013), Page 52. Last accessed September 13, 2013, at <http://www.slideshare.net/kleinerperkins/kpcb-internet-trends-2013>, European Travel Commission, *New Media Trend Watch*, Brussels, last accessed September 13, 2013 at <http://www.newmediatrendwatch.com/markets-by-country/17-usa/855-mobile-devices>, and Adam Mazmanian, “SMS is mobile’s secret weapon,” SmartBlogs.com (June 6, 2011). Last accessed September 13, 2013, at <http://smartblogs.com/social-media/2011/06/06/sms-is-still-mobiles-secret-weapon/>

<sup>68</sup> McDougall, Mathew, *Group Site Buying: Tuangou – Group Buying in China*, Sinotech Group (January, 2011) p. 10. Last accessed September 13, 2013, at <http://www.slideshare.net/Jarrahbear/tuangou-deal-site-in-china>

code and have a certain period of time to redeem their purchase for services, such as a karaoke session.<sup>69</sup>

Advising consumers of deal site offerings via text messaging is also popular in Croatia, where the estimated €56 Million deal site industry has been operating since 2009.<sup>70</sup> Closer to home, consumers in the United States are offered text messages on deals through services such as Hip2Save Text Messaging. Hip2Save, started in 2008, is described as a “coupon and savings blog,” distributing daily deals, and has a promotional partnership with NBC’s *Today* show website.

There are a number of marketing services in the U.S. that offer deal sites and retailers the opportunity to distribute text messages as a follow-up or second-chance offer on a deal already unveiled by a deal site. They contend the target audience will be supportive of such a service, since people who subscribe to deal sites are already interested and committed to being updated with bargains and special offers.<sup>71</sup> These services view the use of text messaging as a way of differentiating one deal site from another.

With the wide spread adoption of text messaging among mobile device users in Canada, coupled with the popularity of deal sites, it may only be a matter of time before a service is introduced offering deals through SMS text messages. Under this model, businesses would communicate directly with customers, while consumers can sign up for the online service and select which businesses they want to hear from on the company's website. This would also allow retailers to set up a deal and distribute it in real time. The Canadian Deals Association noted that although SMS deals are a good idea for some, they are still not being used all that often because it is difficult and costly to build a large database of consumer cell phone numbers.<sup>72</sup>

It seems only fitting then that a wireless service provider be the first company in Canada to venture into the deal industry via text messaging. In October 2013, Rogers

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<sup>69</sup> “Virtual market: Bargain-minded Chinese embrace deal site craze,” *The Express Tribune* (March 28, 2011). Last accessed September 13, 2013, at <http://tribune.com.pk/story/138606/virtual-market-bargain-minded-chinese-embrace-deal-site-craze/>

<sup>70</sup> Stulec, Ivana and Kristina Petljak, *Development of Group Buying in Croatia*, Krakowska Konferencja Młodych Uczonych (Kraków Conference of Young Scientists), (Kraków 2012), p. 951. Last accessed September 13, 2013, at <http://web.efzg.hr/dok/TRG/Stulec.pdf>

<sup>71</sup> JA Interactive, *Add a Text Message Marketing Component to Your Groupon Campaign to Boost Its Impact*, Blog Post, Pittsburgh. Last accessed September 13, 2013, <http://www.jatxt.com/add-a-text-message-marketing-component-to-your-groupon-campaign-to-boost-its-impact/>, and Top Ten Reviews, *Text Messaging Marketing Review*, Blog Post. Last accessed September 13, 2013, at <http://text-message-marketing-review.toptenreviews.com/>

<sup>72</sup> Personal Interview with Albert Bitton, Canadian Deals Association, September 26, 2013.

Communications launched Rogers Alerts, a new location-based offers service.<sup>73</sup> After registering for Rogers Alerts, Rogers wireless customers will receive exclusive and targeted offers via SMS text message when a mobile device is on the Rogers wireless network, and within a specific distance from a participating retailer.<sup>74</sup> Sears Canada, Future Shop, Pizza Hut Canada, A&W and Second Cup are listed as participating Rogers Alerts retailers.<sup>75</sup>

### **Mobile Advertising**

In a recent PIAC study concerning customer loyalty programs, it was found that Canada's smartphone penetration rate increased to 62% from 45% of all wireless subscribers between December 2011 and December 2012.<sup>76</sup> Since a majority of subscribers now pay for smartphones, it appears natural that from 2010 to 2011, Canadian Mobile Ad Placement revenue grew from \$46.6 Million to \$62 Million, and in May, 2013, was projected to exceed \$700 Million in 2015.<sup>77</sup> Moreover, recent research suggests that wireless devices account for 10.3% of total internet traffic in Canada in 2013.<sup>78</sup> In addition, during the first quarter of 2013, it was found that 46.8% of Canadians accessing the internet did so via a wireless device.<sup>79</sup> A separate study released in May 2013 notes that two-thirds of Canadian smartphone users access the internet daily.<sup>80</sup> As a further indication of the impact wireless devices are having on the

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<sup>73</sup> Rogers Communications, *Another Rogers Canadian First Delivers Savvy Shoppers Personalized Offers on Their Smartphones*, News Release, October 2, 2013. Last Accessed October 31, 2013 at <http://www.newswire.ca/en/story/1235279/another-rogers-canadian-first-delivers-savvy-shoppers-personalized-offers-on-their-smartphone#>

<sup>74</sup> Rogers Communications, *Another Rogers Canadian First Delivers Savvy Shoppers Personalized Offers on Their Smartphones*, News Release, October 2, 2013. Last Accessed October 31, 2013 at <http://www.newswire.ca/en/story/1235279/another-rogers-canadian-first-delivers-savvy-shoppers-personalized-offers-on-their-smartphone#>

<sup>75</sup> Rogers Communications, *Another Rogers Canadian First Delivers Savvy Shoppers Personalized Offers on Their Smartphones*, News Release, October 2, 2013. Last Accessed October 31, 2013 at <http://www.newswire.ca/en/story/1235279/another-rogers-canadian-first-delivers-savvy-shoppers-personalized-offers-on-their-smartphone#>

<sup>76</sup> Trichur, Rita, 'Canadians would be willing to pay more for cellular services, study says,' *Globe and Mail*, June 2, 2013. Last accessed June 2, 2013 at <http://www.theglobeandmail.com/report-on-business/canadians-would-be-willing-to-pay-more-for-cellular-services-study-says/article12304459/>

<sup>77</sup> E-Marketer, *Mobile Ad Spending Still Lags in Canada*, May 21, 2013. Last accessed June 19, 2013 at <http://www.emarketer.com/Article/Mobile-Ad-Spending-Still-Lags-Canada/1009905>

<sup>78</sup> Webcertain Group Ltd., *Webcertain Global Mobile Report 2013: The Import and Role of Mobile in 28 Global Markets*, 2013 p. 19. Last accessed September 24, 2013 at <http://internationaldigitalhub.com/en/publications/the-webcertain-global-mobile-report-2013?gclid=CJSRh5KA57kCFRRk7AodVVIA0g>

<sup>79</sup> Webcertain Group Ltd., *Webcertain Global Mobile Report 2013: The Import and Role of Mobile in 28 Global Markets*, 2013 p. 19. Last accessed September 24, 2013 at <http://internationaldigitalhub.com/en/publications/the-webcertain-global-mobile-report-2013?gclid=CJSRh5KA57kCFRRk7AodVVIA0g>

<sup>80</sup> Google, *Our Mobile Planet: Canada*, May, 2013, p. 2. Last accessed September 24, 2013 at <http://services.google.com/fh/files/misc/omp-2013-ca-en.pdf>

Canadian consumer experience, Google recently released the following figures regarding use of wireless devices by Canadians:

- 55% of smartphone users search on their phone daily.
- 77% of Canadian smartphone owners research products and services on their phones.
- 51% have performed a mobile search after seeing an ad.
- 87% of smartphone users notice mobile ads.<sup>81</sup>

The message here to retailers, and particularly deal site providers is clear – Canadians are increasingly shopping and browsing with their wireless device. To support this, the same study noted that almost one-third of respondents felt they spent more time on their smartphone during the past 6 months.<sup>82</sup> Moreover, more than one in five said they have changed their minds about a purchasing decision either in the store or online, based on information provided on their smartphone.<sup>83</sup> Therefore, if you are not prepared to make the necessary investment to ensure your mobile web presence is as useful to consumers as your traditional internet presence, you do so at your own risk. While mobile ads are being noticed, PIAC's loyalty programs study found that Canadian consumers are also undertaking a number of activities conducive to purchasing products and services through deal sites. The following chart indicates a few of these actions:

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<sup>81</sup> Google, *Our Mobile Planet: Canada*, May, 2013, p. 2, 13. Last accessed September 24, 2013 at <http://services.google.com/fh/files/misc/omp-2013-ca-en.pdf>

<sup>82</sup> Google, *Our Mobile Planet: Canada*, May, 2013, p. 10. Last accessed September 24, 2013 at <http://services.google.com/fh/files/misc/omp-2013-ca-en.pdf>

<sup>83</sup> Google, *Our Mobile Planet: Canada*, May, 2013, p. 27. Last accessed September 24, 2013 at <http://services.google.com/fh/files/misc/omp-2013-ca-en.pdf>

Figure 3-3 The Uses of Mobile Devices by Consumers<sup>84</sup>

Activity	Canadians Aged 19-29 (%)	Others (%)
Use-branded mobile applications	48	44
Respond to daily deals	35	17
Make in-app purchases	37	24
Respond to location-based offers	18	9
Use phone as a rewards card*	48	18
Download coupons or reward certificates	68	58
Redeem points for rewards through the app	60	59
Receive exclusive offers	51	61

While most mobile device users have been using applications to search for local weather, news and maps for some time now, Figure 3-3 shows evidence that consumers are increasingly using mobile-branded applications, making in-app purchases, responding to location-based offers, as well as responding to daily deals. Figure 3-3 also suggests that the adoption of these trends is occurring more rapidly among younger consumers.

According to the Canadian Deals Association, there are 3 top reasons why consumers engage with mobile advertisements:

- Locally relevant content/ad/information. Mobile consumers are more likely to buy from a business that is within a short distance from their location.
- Deals, promotions and digital coupons. Yes, consumers want deals and the redemption/conversion rates are far better when consumers receive a deal from a local ad.
- Features a known/popular brand. Consumers are more comfortable clicking and engaging with a mobile ad if it comes from a known national or local brand that they like, respect or are familiar with.<sup>85</sup>

<sup>84</sup> Ferguson, Rick, *Born This Way: The Canadian Millennial Loyalty Survey*, Aimia, June 13, 2012, p. 13.

\* indicates customers that indicated a 'high interest' or 'some interest' in using their wireless device in this manner.

<sup>85</sup> Canadian Deals Association, *Top 3 reasons why consumer engage with mobile ads*, Blog Post, July 2, 2013. Last accessed September 13, 2013, at <http://www.canadiandealsassociation.com/top-3-reasons-why-consumers-engage-with-mobile-ads/>

The Canadian Deals Association reasons that campaigns integrating these three elements typically produce far better conversion rates.<sup>86</sup>

The use of mobile device applications is a unique form of mobile advertising because people actually choose to place them onto their phones, whether by downloading free applets or in many cases even paying for them. Consumers can easily download the more than 500,000 apps available from their favourite brands and interact with them to make purchases, discover new information, and share with their friends.<sup>87</sup> Unlike passive advertising and promotion, mobile marketing allows brands to engage consumers in unique, personalized, 'always on' and location-based relationships. Mobile advertising is largely new to consumers often delivering new forms of engagement that other media cannot offer, such as coupons that they can instantaneously redeem in stores.<sup>88</sup>

However, one can contend that Canadians have just begun to scratch the surface in their relationship with their mobile device. According to a September, 2013 survey commissioned by the Bank of Montreal, each Canadian has an average of 14 apps on their mobile device and use them on a weekly or daily basis.<sup>89</sup> In fact, the same Bank of Montreal survey indicated that two-thirds of consumers using their mobile device for banking purposes downloaded a financial application within the past year.<sup>90</sup> In May 2013, Google found that Canadian Smartphone users have paid for an average of 8 apps installed on their devices.<sup>91</sup> Moreover, a 2012 Ipsos Reid study revealed over 80%

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<sup>86</sup> Canadian Deals Association, *Top 3 reasons why consumer engage with mobile ads*, Blog Post, July 2, 2013. Last accessed September 13, 2013, at <http://www.canadiandealsassociation.com/top-3-reasons-why-consumers-engage-with-mobile-ads/>

<sup>87</sup> Osak, Mitchell, "Mastering mobile marketing means starting with the basics," *Financial Post*, January 30, 2013. Last accessed September 18, 2013, at <http://business.financialpost.com/2013/01/30/mastering-mobile-marketing-means-starting-with-the-basics/>

<sup>88</sup> Osak, Mitchell, "Mastering mobile marketing means starting with the basics," *Financial Post*, January 30, 2013. Last accessed September 18, 2013, at <http://business.financialpost.com/2013/01/30/mastering-mobile-marketing-means-starting-with-the-basics/>

<sup>89</sup> BMO Financial Group, *BMO Mobile Banking Survey: 70 per cent of Canadian Smartphone Owners Using Financial Apps*, News Release, September 17, 2013. Last accessed September 18, 2013, at <http://newsroom.bmo.com/press-releases/bmo-mobile-banking-survey-70-per-cent-of-canadian-tsx-bmo-201309170898511001>

<sup>90</sup> BMO Financial Group, *BMO Mobile Banking Survey: 70 per cent of Canadian Smartphone Owners Using Financial Apps*, News Release, September 17, 2013. Last accessed September 18, 2013, at <http://newsroom.bmo.com/press-releases/bmo-mobile-banking-survey-70-per-cent-of-canadian-tsx-bmo-201309170898511001>

<sup>91</sup> Google, *Our Mobile Planet: Canada*, May, 2013, p. 16. Last accessed September 24, 2013 at <http://services.google.com/fh/files/misc/omp-2013-ca-en.pdf>

of mobile device users feel they do not take advantage of the full functionality of their smartphones.<sup>92</sup>

Waiting to assist consumers in getting the most from their mobile device is the deal site industry. The top five deal sites operating in Canada have rolled out mobile applications offering deals that allow consumers to search on their phones for nearby businesses offering discounts.<sup>93</sup> Canadian deal industry representative Albert Bitton recently described the benefit of deal site mobile apps as follows:

“They're fantastic for merchants. No other time in history has a merchant, especially a restaurant, been able to communicate the need for customers immediately, based on either the weather, the time of day, or construction.”

“I just don't believe local merchants understand how to use it in the most effective way just yet, because it's so new, but that will improve over time.”<sup>94</sup>

While exact figures on the Canadian deal site industry are not available, it is estimated about 30% of Canadian deal site sales are now completed from wireless phones.<sup>95</sup> A further indication of the increasing importance of mobile business can be found in Groupon's fourth quarter results from 2012. The report states, “In January 2013, nearly 40% of North American transactions were completed on mobile devices, an increase of 44% compared with January 2012. This compares with about one third of transactions completed on mobile devices in October 2012.”<sup>96</sup> The value of these transactions is estimated to be about \$608 million in mobile commerce in fourth quarter 2012, the busiest shopping period, in North America.<sup>97</sup> A survey of British Columbians, released in

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<sup>92</sup> Ipsos Reid, *The Ipsos Inter@ctive Reid Report: 2012 Fact Guide*, February 9, 2012, p. 3

<sup>93</sup> Oliveira, Michael, “Canada loves daily deal sites more than the U.S.: survey,” *Globe and Mail*, March 21, 2012. Last accessed September 19, 2013, at <http://www.theglobeandmail.com/technology/tech-news/canada-loves-daily-deal-sites-even-more-than-us-survey/article535060/>

<sup>94</sup> Oliveira, Michael, “Canada loves daily deal sites more than the U.S.: survey,” *Globe and Mail*, March 21, 2012. Last accessed September 19, 2013, at <http://www.theglobeandmail.com/technology/tech-news/canada-loves-daily-deal-sites-even-more-than-us-survey/article535060/>

<sup>95</sup> Personal Interview with Albert Bitton, Canadian Deals Association, September 26, 2013.

<sup>96</sup> Groupon, *Groupon Announces Fourth Quarter and Fiscal Year 2012 Results*, News Release, February 27, 2013. Last accessed September 19, 2013, at <http://investor.groupon.com/releasedetail.cfm?ReleaseID=743818>

<sup>97</sup> Sterling, Greg, “Groupon Q4 Disappoints Some, but Take a Look at Mobile,” Blog Post, *Screenwerk.com*, February 27, 2013. Last accessed September 19, 2013, at <http://screenwerk.com/2013/02/27/groupon-q4-disappoints-some-but-take-a-look-at-mobile/>

July 2013, noted that 50% of wireless device users have made a purchase directly through their smartphone (up from 8% two years ago), most often (40%) using an app.<sup>98</sup>

Given the growing values involved, along with the open-source nature of the mobile applications industry, it is inevitable that an app will be created in an effort to undercut the deal industry. In Canada, this has taken the form of “Samy,” a mobile marketing and engagement network introduced in November 2012. Samy allows users to sign up with their favourite stores to get special offers on their phones, without subscribing to a daily email offer, like Groupon or LivingSocial.<sup>99</sup> It allows retailers to make offers directly to interested customers who have signed up for offers from their stores, or help customers find the nearest store location or phone number.<sup>100</sup> In September, 2013, Samy’s parent company, MobileBits, announced that the service grew 700% in Canada during the previous four months.<sup>101</sup> Brand names participating on Samy in Canada include Target, Starbucks Canada, Tim Hortons, Pizza Pizza, Baskin Robbins, Second Cup, Coffee Time Donuts, Global Pets Foods, 241 Pizza, Extreme Pita and others totaling nearly 20,000 retail locations.<sup>102</sup>

Location-based targeting and local search opportunities can help marketers reach customers at a moment of need and convenience.<sup>103</sup> For retailers, since a majority of Canadian consumers now possess GPS-capable wireless devices, local businesses increasingly feel the need to reach consumers when they are close to their locations. The goal of location-based advertising is to incorporate mobile advertising and location-based services in order to pinpoint consumer’s location and provide location-specific advertisements on their wireless devices.<sup>104</sup>

The most basic mobile marketing geo-location application is referred to as Designated Market Area (DMA) which is based on where a prospect lives or works. If the deal site

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<sup>98</sup> Insights West and Iamota, *Smartphone Insights*, July, 2013, p.8. Last accessed September 24, 2013, at [http://www.insightswest.com/wp-content/uploads/2013/07/InsightsWest\\_Iamota\\_Smartphones.pdf](http://www.insightswest.com/wp-content/uploads/2013/07/InsightsWest_Iamota_Smartphones.pdf)

<sup>99</sup> Kopun, Francine, “New app could replace Groupon,” *Toronto Star*, November 29, 2012. Last accessed September 19, 2013, at [http://www.thestar.com/life/technology/2012/11/29/new\\_app\\_could\\_replace\\_groupon.html](http://www.thestar.com/life/technology/2012/11/29/new_app_could_replace_groupon.html)

<sup>100</sup> Kopun, Francine, “New app could replace Groupon,” *Toronto Star*, November 29, 2012. Last accessed September 19, 2013, at

[http://www.thestar.com/life/technology/2012/11/29/new\\_app\\_could\\_replace\\_groupon.html](http://www.thestar.com/life/technology/2012/11/29/new_app_could_replace_groupon.html)

<sup>101</sup> MobileBits Corp., *Samy App Dominating Canadian Mobile Marketing Performance*, News Release, September 11, 2013. Last accessed September 19, 2013, at <http://www.prweb.com/releases/2013/9/prweb11111388.htm>

<sup>102</sup> MobileBits Corp., *Samy App Dominating Canadian Mobile Marketing Performance*, News Release, September 11, 2013. Last accessed September 19, 2013, at <http://www.prweb.com/releases/2013/9/prweb11111388.htm>, and Chris Powell, “MobileBits new shopping app arriving in Canada,” *Marketing Magazine*, November 28, 2012. Last accessed September 19, 2013, at <http://www.marketingmag.ca/news/marketer-news/mobilebits-new-shopping-app-arriving-in-canada-66943>

<sup>103</sup> eMarketer, “Mobile Users Expand Their Search Habits,” Blog Post, August 1, 2011. Last accessed September 20, 2013, at <http://www.emarketer.com/Article/Mobile-Users-Expand-Their-Search-Habits/1008521>

<sup>104</sup> Public Interest Advocacy Centre, *Customer Loyalty Programs: Are Rules Needed?*, Report (Ottawa), 2013, p. 44.

service can determine through previous purchasing activity, for example, how many mothers reside within 5 km of a pharmacy, then the deal site can send special offers to those people on their wireless device.<sup>105</sup>

An alternative method a deal site may employ to reach consumers for a client is geo-targeting. Through GPS location functionality in most smartphones, your phone knows exactly where you are at all times. As a result, deal sites, through their wireless applications, can send you relevant offers based on where you are, or where you're going to be!<sup>106</sup>

Two more potentially intrusive location-based tactics deal sites may choose to implement are geo-fencing and Geo-aware. Geo-fencing involves the marketer using applications based on Google Earth or similar programs to set up a "virtual barrier" around a particular geographic area.<sup>107</sup> Once established, any deal site member with the mobile app who crosses the barrier, for instance 5 blocks from a restaurant, receives an automated text alert proposing a lunch or dinner deal special. The Rogers Alerts service, for example, will use this technology, according to the media release launching the service.<sup>108</sup> Geo-aware takes this one step further and is the modern take on the classic circus barker. Using geo-awareness, deal sites can alert customers of a deal by text message as they approach their client business in question, and also reach them again with a further incentive, in the event the consumer walks by their client's retail location without stopping in.<sup>109</sup>

As an indication of the growing use of these tactics in the United States, Verve Mobile, a location-based mobile ad platform, studied over 2,500 US mobile ad campaigns served across its platform in 2012. Verve found that the percentage of campaigns using geofencing or geoaware targeting had more than doubled, from 17% in 2011 to 36% in

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<sup>105</sup> White, Mike, "Geotargeting Your Ads for Maximum Mobile Marketing Impact," Blog Post, *Urbanshuffle.com*, February 22, 2013. Last accessed September 20, 2013, at <http://www.urbanshuffle.com/geotargeting-your-ads-for-maximum-mobile-marketing-impact/>

<sup>106</sup> White, Mike, "Geotargeting Your Ads for Maximum Mobile Marketing Impact," Blog Post, *Urbanshuffle.com*, February 22, 2013. Last accessed September 20, 2013, at <http://www.urbanshuffle.com/geotargeting-your-ads-for-maximum-mobile-marketing-impact/>

<sup>107</sup> White, Mike, "Geotargeting Your Ads for Maximum Mobile Marketing Impact," Blog Post, *Urbanshuffle.com*, February 22, 2013. Last accessed September 20, 2013, at <http://www.urbanshuffle.com/geotargeting-your-ads-for-maximum-mobile-marketing-impact/>

<sup>108</sup> Rogers Communications, *Another Rogers Canadian First Delivers Savvy Shoppers Personalized Offers on Their Smartphones*, News Release, October 2, 2013. Last Accessed October 31, 2013 at <http://www.newswire.ca/en/story/1235279/another-rogers-canadian-first-delivers-savvy-shoppers-personalized-offers-on-their-smartphone#>

<sup>109</sup> White, Mike, "Geotargeting Your Ads for Maximum Mobile Marketing Impact," Blog Post, *Urbanshuffle.com*, February 22, 2013. Last accessed September 20, 2013, at <http://www.urbanshuffle.com/geotargeting-your-ads-for-maximum-mobile-marketing-impact/>

2012.<sup>110</sup> Designated Market Area (DMA) campaigns were used most often in 2012, consisting of 30% of all mobile ad campaigns.<sup>111</sup> Geofencing or geoaware campaigns were most popular among restaurants and retail outlets, while DMA was most widely used in political campaigns and in the automotive sector.<sup>112</sup>

### *Are Rewards Coming?*

In a number of other jurisdictions, the deal site industry has begun initiatives that look remarkably mainstream, such as introducing loyalty programs. What began as just a simple discount for referring a deal site service to your friends, has become as arguably legitimate as collecting airline reward miles. Undoubtedly, deal sites industry stakeholders have reviewed the figures revealing consumers participation in loyalty programs. It can be argued deal sites have introduced loyalty initiatives for the same reasons cited by other retailers - in an effort to retain marketshare, prompt customers to make additional purchases and attract new customers.

Groupon, for example, has a pair of loyalty initiatives for consumers located in the United States. On February 20, 2012, Groupon announced a "VIP Membership" program, giving members access to deals 12 hours earlier than non-members, as well as access to expired deals, in exchange for a \$30 annual fee.<sup>113</sup> In addition, Groupon introduced Groupon Rewards in May 2012, a loyalty program for merchants to reward repeat customers with a gift of their preference. Consumers earn Groupon Rewards by using any major credit card saved in their Groupon account when they visit their favorite local merchants.<sup>114</sup> When a customer spends an amount pre-determined by the merchant, the customer unlocks a Reward to use on a future visit.<sup>115</sup>

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<sup>110</sup> eMarketer, *Real-Time Location Data Gets a Bigger Slice of Mobile Targeting*, Blog Post, February 15, 2013. Last accessed September 24, 2013, at <http://www.emarketer.com/Article/Real-Time-Location-Data-Gets-Bigger-Slice-of-Mobile-Targeting/1009675>

<sup>111</sup> eMarketer, *Real-Time Location Data Gets a Bigger Slice of Mobile Targeting*, Blog Post, February 15, 2013. Last accessed September 24, 2013, at <http://www.emarketer.com/Article/Real-Time-Location-Data-Gets-Bigger-Slice-of-Mobile-Targeting/1009675>

<sup>112</sup> eMarketer, *Real-Time Location Data Gets a Bigger Slice of Mobile Targeting*, Blog Post, February 15, 2013. Last accessed September 24, 2013, at <http://www.emarketer.com/Article/Real-Time-Location-Data-Gets-Bigger-Slice-of-Mobile-Targeting/1009675>

<sup>113</sup> Tuttle, Brad, "Daily Deal Giant Groupon Tries Selling 'VIP' Membership for \$29.99", *Time*. February 20, 2012. Last accessed on September 26, 2013 at <http://moneyland.time.com/2012/02/20/groupon-is-selling-vip-memberships-for-29-99/>

<sup>114</sup> *BusinessWire*, "Groupon Announces Rewards Program to Drive Repeat Visits to Local Businesses", News Release, September 28, 2011. Last accessed on September 27, 2013 at <http://www.businesswire.com/news/home/20110928005375/en/Groupon-Announces-Rewards-Program-Drive-Repeat-Visits>

<sup>115</sup> *BusinessWire*, "Groupon Rewards Launches Nationwide, Driving Repeat Business for Local Merchants", News Release, May 10, 2012. Last accessed on September 27, 2013 at

Much like a contemporary reward programs, some deal site loyalty programs are better than others. Some offers, like Dealmates in Malaysia, offer a reward program where you get 3% credit rebate of the total cash value paid for your purchases.<sup>116</sup> Other examples are not as generous, such as You Swoop, a Chicago-based deal site, where you get 1 point for each dollar spent. However, you have to accumulate 40 You Swoop points to save \$1 on your next purchase.<sup>117</sup> Some services attempt to firmly place a proverbial foot in both the deal site and loyalty camps, such as MyPoints.com. MyPoints has daily deals for its members, but also markets itself as a rewards program for online shopping. MyPoints members can earn program points for activities other than shopping, such as playing games, completing surveys and listening to music.<sup>118</sup>

Another indication that loyalty programs and the deal site industry are beginning to compete for the same retail space has been the introduction of deal site-branded credit cards. Credit card issuers have noticed the explosive growth in the deal site industry and know that many consumers are already using their cards to obtain deal site vouchers. As a result, card issuers may be asking themselves, “why not obtain a larger slice of the revenue pie by associating with a deal site, just like a loyalty program?”

Loyalty program-branded credit cards are one of the most popular vehicles loyalty programs have used in order retain their members, as well as getting them to spend more.<sup>119</sup> Loyalty industry figures show a loyalty program associated with a credit card is the primary factor that makes a card a consumer’s preferred choice, and loyalty program-associated credit cards are a significant revenue generator for Canada’s banking institutions.<sup>120</sup>

In the United States, the LivingSocial Rewards Visa Card was introduced in association with Chase Card Services on May 1, 2012. The card provides LivingSocial users with

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<http://www.businesswire.com/news/home/20120510005377/en/Groupon-Rewards-Launches-Nationwide-Driving-Repeat-Business>

<sup>116</sup> 100webhosting.com, “Best group buying Sites in Malaysia,” Blog Post, April 15, 2013. Last accessed on September 27, 2013 at <http://www.100webhosting.com/best-deal-site-sites-in-malaysia/>

<sup>117</sup> YouSwoop.com, “YouSwoop Reward Points.” Last accessed on September 27, 2013 at <http://www.youswoop.com/Home/Content?pageName=Rewards>

<sup>118</sup> MyPoints.com, “Easy Ways to Earn Points from MyPoints.” Last accessed on September 27, 2013 at <http://www.mypoints.com/emp/u/easy-points.vw>

<sup>119</sup> Public Interest Advocacy Centre, *Customer Loyalty Programs: Are Rules Needed?*, Report (Ottawa), 2013, p. 3.

<sup>120</sup> Public Interest Advocacy Centre, *Customer Loyalty Programs: Are Rules Needed?*, Report (Ottawa), 2013, p. 3. See also Maritz Canada Inc., *Maritz Insights: The Loyalty Report*, Highlights Paper, February 7, 2012, p. 3, Greenwood, John, “Royal, TD, CIBC Kick out stellar profits,” *Financial Post*, August 29, 2013, and CIBC, *Report to Shareholders, Third Quarter 2013*, August 29, 2013, p. 11. A similar estimated can be found at Reuters, *TD Bank seeks to replace CIBC as Aeroplan credit card partner*, June 27, 2013. Last accessed on July 3, 2013, at <http://www.cybermarque.com/print-news/news-id-7378?counthit=no>

cardholder-only benefits and offers, and allows them to earn loyalty reward points in the following manner:

- Five points per \$1 spent on LivingSocial purchases
- Three points per \$1 spent on dining
- One point per \$1 spent on all other purchases<sup>121</sup>

There are no limits on the amount of points a cardholder can earn, with 100 points equaling one LivingSocial Deal Buck.<sup>122</sup>

While loyalty program-branded credit cards associated with deal sites have not appeared in Canada, Canadian credit card issuers have partnered with deal sites in campaigns to attract new customers. For instance, MBNA's Mastercard division ran a campaign with Buytopia in 2013, where a \$100 in retail gift cards or \$150 in Buytopia credit was offered to those who were approved for an MBNA Mastercard.<sup>123</sup> As a measure of its success, over 5,000 people signed up for this offer.<sup>124</sup> Scotiabank has also used a deal site, WagJag, to promote two of its no-fee credit cards to students. Under the promotion, approved applicants can choose between a \$50 gift card redeemable at select retailers, or a \$25 gift card and receiving free admission to four movies at Cineplex theatres.<sup>125</sup>

As an alternative to working in partnership with deal sites, a number of American banks and credit card companies have attempted to enter the deal site industry on their own. Examples of these services, known as "card-linking," include Capital One Deals, BankAmeriDeals, American Express My Offers, Chase My Offers and Ally Perks.<sup>126</sup> While Chase and Ally have discontinued their services, the remaining deal services all

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<sup>121</sup> *LivingSocial.com*, "Chase and LivingSocial Launch First Co-Branded Credit Card," News Release, May 2, 2012. Last accessed October 5, 2013 at <https://corporate.livingsocial.com/inthenews/articles/182>

<sup>122</sup> *LivingSocial.com*, "Chase and LivingSocial Launch First Co-Branded Credit Card," News Release, May 2, 2012. Last accessed October 5, 2013 at <https://corporate.livingsocial.com/inthenews/articles/182>

<sup>123</sup> Canadian Deals Association, *Credit Card Companies and Banks using the Power of Daily Deal Providers*, Blog Post, March 26, 2013. Last accessed October 31, 2013, at <http://www.canadiandealsassociation.com/credit-card-companies-and-banks-using-the-power-of-daily-deal-providers/>

<sup>124</sup> Canadian Deals Association, *Credit Card Companies and Banks using the Power of Daily Deal Providers*, Blog Post, March 26, 2013. Last accessed October 31, 2013, at <http://www.canadiandealsassociation.com/credit-card-companies-and-banks-using-the-power-of-daily-deal-providers/>

<sup>125</sup> WagJag, *Receive a Free \$50 Gift Card or a \$25 Gift Card plus 4 Free Movies Upon Approval of Select No-Fee Student Credit Cards*. Last accessed on October 31, 2013, at <http://www.wagjag.com/?w=103000&c=5>

<sup>126</sup> Warnick, Melody, "3 ways credit cards can get you better daily deals," [www.creditcards.com](http://www.creditcards.com), December 20, 2012. Last accessed on October 16, 2013, at <http://www.creditcards.com/credit-card-news/better-daily-deals-1277.php>. Microsoft has also began a cardlinking initiative through its Bing Offers deal site. For more information, see Bishop, Todd, "No Coupon? No Problem: Microsoft linking daily deals site to credit card." *GeekWire*, October 7, 2013. Last accessed on October 18, 2013, at <http://www.geekwire.com/2013/coupon-problem-microsoft-linking-daily-deals-credit-card/>

have one item in common – no need for consumers to print off a coupon or voucher. For example, under the BankAmeriDeals program, introduced by Bank of America, online customers are presented with a series of deals once the bank analyzes their purchase history. The customers then select the deals they prefer, then have a limited amount of time to take advantage of the selected offers. At the time of purchase, they pay regular price; however, the month following the purchase, they receive a credit on their account as a result of the deal offered.

The American Express My Offers program is operated through their wireless device application and promotes daily deals to consumers based on their purchase history and location. Users can sort through deal offers by relevance, location and expiration date.<sup>127</sup> After using their cards to make a payment, the savings are delivered within three to five days as a credit on their account.<sup>128</sup> Under the Capital One Deals program, selected U.S. credit cardholders are sent a weekly email and can access deals through their online banking account and the Capital One mobile banking application. Once the customer takes advantage of the deal, Capital One credits the account in about 10 days.<sup>129</sup>

In March 2013, Capital One announced a joint initiative with ShopSavvy, a mobile application best known for its barcode-scanning and price comparison features. ShopSavvy shows Capital One deals to any of the app's users, provided they first add their Capital One credit card to ShopSavvy's mobile wallet.<sup>130</sup> As an incentive, when consumers make their initial purchase using their card within ShopSavvy's application, they will also receive a \$20 credit on their Capital One bill in addition to the deal purchased.<sup>131</sup> This partnership allows Capital One to move into the mobile wallet industry and allows ShopSavvy to expand beyond price comparisons.

Taking this tactic one step further is Edo, a card linking platform based in Tennessee. Edo attaches coupons directly to your credit card number through your bank in order to

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<sup>127</sup> Wasserman, Todd, "American Express App to Blast Daily Deals Based on Your Payment History," [www.mashable.com](http://www.mashable.com), May 14, 2012. Last accessed on October 16, 2013, at <http://mashable.com/2012/05/14/american-express-app-to-blast-daily-deals-based-on-your-payment-history/>

<sup>128</sup> Wasserman, Todd, "American Express App to Blast Daily Deals Based on Your Payment History," [www.mashable.com](http://www.mashable.com), May 14, 2012. Last accessed on October 16, 2013, at <http://mashable.com/2012/05/14/american-express-app-to-blast-daily-deals-based-on-your-payment-history/>

<sup>129</sup> Capital One, "Capital One Deals," website. Last accessed on October 18, 2013, at <http://www.capitalone.com/lp/deals/>

<sup>130</sup> Perez, Sarah, "ShopSavvy Partners With Capital One, Turns Mobile Wallet into a Platform for Deals," *Tech Crunch*, March 4, 2013. Last accessed on October 18, 2013, at <http://techcrunch.com/2013/03/04/shopsavvy-partners-with-capital-one-turns-its-mobile-wallet-into-a-platform-for-deals/>

<sup>131</sup> Perez, Sarah, "ShopSavvy Partners With Capital One, Turns Mobile Wallet into a Platform for Deals," *Tech Crunch*, March 4, 2013. Last accessed on October 18, 2013, at <http://techcrunch.com/2013/03/04/shopsavvy-partners-with-capital-one-turns-its-mobile-wallet-into-a-platform-for-deals/>

provide its service. By September 2012, Edo's service was available for customers of American banks such as Fifth Third, Ally Financial, and Vantive Bank.<sup>132</sup> Upon sign up, a credit or debit card is automatically populated with coupons, and to redeem an offer, a consumer swipes their card at a participating retailer.<sup>133</sup> The money you save is instantly credited back to your account and the cashier doesn't have to do anything at all. Edo markets itself to retailers as a service replacing a deal site, allowing "merchants direct access to data-driven marketing tools to quickly research and setup card-linked offers on their own within minutes."<sup>134</sup> It appears that the advent of card-linking allows U.S.-based retailers to retake a measure of control by selectively targeting consumers for promotions based on purchase history. In short, it provides retailers with many benefits attributed to a customer loyalty program without having to build the required infrastructure to operate such a program.

With all of this innovation in the United States, one would suspect card-linking services would begin to appear to serve Canadian consumers and retailers. This is not the case, according to the Local Commerce Association of Canada (LCAC).<sup>135</sup> The LCAC believes that Canadian consumers, retailers and the deal site industry are missing a valuable opportunity because the business relationships required for card-linking to work are too immature compared to the USA.<sup>136</sup> The Local Commerce Association recommended in June 2013 that "banking and retail associations in Canada and the credit and debit card associations in Canada should have discussion revolving around how best to deliver this technology in this country. It is a matter of process, operational and regulatory issues."<sup>137</sup> The LCAC also recommended that a Canadian bank partner

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<sup>132</sup> Mitroff, Sarah, "Credit Card-Linked Coupons Cut Daily Deal Mess," *Wired*, September 14, 2012. Last accessed October 18, 2013, at <http://www.wired.com/business/2012/09/edo/>

<sup>133</sup> Mitroff, Sarah, "Credit Card-Linked Coupons Cut Daily Deal Mess," *Wired*, September 14, 2012. Last accessed October 18, 2013, at <http://www.wired.com/business/2012/09/edo/>

<sup>134</sup> Edo Interactive, "edo Marketplace Arms Local Businesses With a Self-Serve Card-Linked Offers Platform," News Release, September 17, 2013. Last accessed October 18, 2013, at <http://www.marketwired.com/press-release/edo-marketplace-arms-local-businesses-with-a-self-serve-card-linked-offers-platform-1831508.htm>

<sup>135</sup> The Local Commerce Association of Canada facilitates the discussion, marketing and awareness and the business of the Local Commerce industry specifically for Canada. They define Local Commerce as a service or technology, typically web or mobile, that enables, facilitates or instigates commerce between local merchants/retailers and local consumers.

<sup>136</sup> Local Commerce Association of Canada, *Where is Card-Linking in Canada? Nowhere!*, Blog Post, June 20, 2013. Last accessed October 18, 2013, at <http://www.localcommercecanada.com/where-is-cardlinking-in-canada-nowhere/>

<sup>137</sup> Local Commerce Association of Canada, *Where is Card-Linking in Canada? Nowhere!*, Blog Post, June 20, 2013. Last accessed October 18, 2013, at <http://www.localcommercecanada.com/where-is-cardlinking-in-canada-nowhere/>

with a leading deals provider such as Tuango, Teambuy or Wagjag in order to deliver a dedicated card linking program to consumers and retailers.<sup>138</sup>

It is clear that electronic mail remains the principal method of delivering deal site offering into the hands of consumers. However, there are a series of alternatives available to consumers in other jurisdictions. In addition, some of these alternatives, such as the proposed Rogers Alerts service, are slowly being introduced to Canadian consumers. In the meantime, Canadian deal site providers have grown from offering daily deals to providing a multitude of deals for consumers to choose from at any time. The evidence found here suggests Canadian consumers are increasingly redeeming coupons they find online. As more and more consumers take to their computers and wireless devices to make purchases and conduct shopping research, it is possible that Canadians' use of deal sites and online coupons will continue to grow in popularity.

An influential factor in the continuing growth, or even relevance, of the deal site industry in Canada going forward may be those innovations and tactics being implemented in other jurisdictions. The use of text messages and mobile advertising are developing elsewhere, but not as rapidly in Canada. We note an underlying reason for this underdevelopment is that Canadians feel they are just scratching the surface regarding the utility of their wireless device. We also heard evidence suggesting local merchants located in Canada do not currently have a full understanding of how to use mobile advertising in the most effective manner due to its recent introduction to the market. The evidence from the United States and elsewhere indicates that Canadian consumers will eventually be given a greater opportunity to engage in activities such as card-linking, geo-fencing and geo-aware. The experiences reviewed here imply that as the use of these techniques develops, deal site providers may find themselves with both more customers, as well as more competition. Financial institutions and customer loyalty programs, for instance, are both beginning to exert their influence on the deal site industry in the United States. For consumers, these developments may result in a greater number of deals from a greater number of sources, delivered in more convenient methods.

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<sup>138</sup> Local Commerce Association of Canada, *Where is Card-Linking in Canada? Nowhere!*, Blog Post, June 20, 2013. Last accessed October 18, 2013, at <http://www.localcommercecanada.com/where-is-cardlinking-in-canada-nowhere/>

## Section 4 - Consumers' expectations and attitudes toward online group buying sites

As noted in the introduction, online deal site purchasing by Canadian consumers is a relatively recent phenomenon. As a result, it is natural that Canadian consumers, while intrigued by the opportunity to try products and services at a significant discount, were somewhat hesitant to make major purchases through then existing deal sites. This hesitance appears to persist since focus group participants noted most of their purchases from deal sites were generally between \$25.00 and \$40.00, and rarely over \$125.00.<sup>139</sup> Is this persistent hesitance the result of valid consumer concerns, or have there been external factors at work? This section intends to investigate consumer expectations and attitudes towards deal site buying in Canada. As a result of this examination, it may become clear why Canadian consumers continue to express, by their actions, less than complete confidence in the deal site industry.

### *Reputation of Deal Site Providers in General*

In addition to discounted prices and the opportunity to try a new product or service with reduced risk, focus group participants noted other benefits for using deal sites. A number of participants noted the convenience factor of shopping online, as well as the wide range of products and services available.<sup>140</sup> Moreover, consumers commented on the ability deal sites provide smaller retailers to reach new and existing customers.<sup>141</sup>

Building a positive reputation in any economic sector takes time. Given the recent arrival of deal sites in Canada, as well as the initial difficulties experienced by consumers outlined below, it is clear that most deal site providers have yet to build a completely positive relationship with consumers. Groupon was singled out the most

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<sup>139</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 5-6, 9, 74 and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 2-7.

<sup>140</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 4-8, 10, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 6-14, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 4-9, 11.

<sup>141</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 10, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 14, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 11, 28.

often as a reputable deal provider by focus group participants.<sup>142</sup> This rested on good word-of-mouth experiences, the longevity of the site, and faith in their refund policy.

Trust in the refund policy is a critical factor in the building of a positive reputation of a deal site operating in Canada. Focus group analysis revealed that, if consumers were confident the deal site would provide a refund if the retailer was unable to deliver as promised, they would be more willing to purchase deals with unfamiliar retailers.<sup>143</sup> If that confidence in a deal site's return policy was lacking, focus group participants suggested they would be inclined to reduce their perceived risk by purchasing deals from familiar retailers.<sup>144</sup> On the whole, it was felt that if retailers offering a deal did not have their own website, there was hesitance towards purchasing the promotion being offered.<sup>145</sup>

### *Transparency is Key*

Our primary research revealed a few areas of consumer concern regarding their relationship with deal sites. For instance, while focus group participants acknowledged their interest in deal site promotions, a number noted that at the first sign of uncertainty about the terms and conditions listed on an offer, they simply declined to pursue the purchase.<sup>146</sup>

“Well, I find that whenever I've done it, it's usually something I typically get, so I'd be comfortable with the service anyways. Or I choose something that would be fairly straightforward. But it wouldn't be something that had a lot of fine print or potential for trouble.”  
(Focus Group, Edmonton, December 17, 2012)

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<sup>142</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 14, 24-26, 28, 56, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 9, 12, 23, 31-32, 57-58, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p.30, 41.

<sup>143</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 24-26, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 30, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p.30.

<sup>144</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 26

<sup>145</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 27

<sup>146</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 29, 32, 34-35, 54-55, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 17, 33, 35-36 and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 18, 33-37.

“I was actually looking into tickets to go to Vegas and they had a deal on Groupon...But I didn't purchase it because I read the fine print and there were so many limitations like you can't go on certain days. The limitations are crazy because it was pretty much every day you can't go and there are only specific dates you could go for.”

(Focus Group, Toronto, December 18, 2012)

Participants consistently noted a previous negative redemption experience as the reason for this decision.<sup>147</sup> While a number of these consumers admittedly did not look at the limitations in detail ahead of time, the deal site or the retailers in question did not always do themselves a favor when customers had subsequently experienced difficulties upon redemption.<sup>148</sup> It certainly appears that the resulting skepticism displayed by focus group participants to purchase larger priced items through deal site promotions is at least partially due to their initial engagements with deal site providers.

It can be argued that one of the benefits of the consolidation process within the Canadian deal site industry from 2011 to 2013 was the improved emphasis placed on resolving outstanding redemption concerns raised by consumers. The President of the Canadian Deals Association, Albert Bitton, has expressed the opinion that when deal sites were initially introduced to Canada, a number of providers were more concerned with growing their business compared to addressing consumer concerns.<sup>149</sup> However, focus group participants noted repeatedly that many deal sites are now much more responsive to consumers. They cited numerous examples where deal sites like Groupon, LivingSocial and TeamBuy would contact consumers who purchased a deal to let them know of any redemption issues and offering them their money back if they were unsatisfied with a proposed resolution.<sup>150</sup> This approach has resonated well with customers, who appreciated the honest and transparent approach taken by the deal site providers in question.

Mr. Bitton also estimates the majority of consumer concerns regarding the current Canadian deal site industry primarily involve small deal site providers.<sup>151</sup> He noted the top deal sites in Canada have placed greater emphasis on responding to customer

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<sup>147</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 11-14, 34, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 19, 47 and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 4-6, 14-16, 41, 57.

<sup>148</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 38, 50-51 and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 57.

<sup>149</sup> Personal Interview with Albert Bitton, Canadian Deals Association, September 26, 2013.

<sup>150</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 38, 40, 49, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 20, 22 and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 25, 48.

<sup>151</sup> Personal Interview with Albert Bitton, Canadian Deals Association, September 26, 2013.

concerns in an effort to improve customer retention and the public perception of the industry.<sup>152</sup> As a result, this may be a case where the early Canadian deal site providers have “poisoned the water hole” of consumer confidence until such time as the industry has proven to be consistently responsive to consumer concerns regarding redemption of deal vouchers.

While the evidence suggests a number of deal site providers struggled to reach the conclusion that a greater degree of transparency in their terms and conditions would result in greater customer retention, consumers began discussing the online deals being offered in online forums.<sup>153</sup> A number of savvy consumers were visiting websites such as smartcanucks.ca, flyerscoupons.ca and redflagdeals.com to review deals and learn more about the so-called “fine print” associated with offers. Using these tactics, consumers were able to circumvent certain offers where they felt uncertainty regarding the product or service being offered.

Why are online reviews important? Evidence collected by survey researchers such as Nielsen and Lightspeed Research suggest 70% of consumers trust online reviews, while 67% of consumers don’t buy after reading only one to three negative reviews.<sup>154</sup> Moreover, consider the following excerpt from PIAC’s 2013 report on customer loyalty programs:

“An October 2012 survey by Ipsos OTX and Ipsos Global Advisor supports Nielsen’s findings, stating 64% of Canadian Internet users considered ratings and reviews influential when making buying decisions. Bazaarvoice, whose clients include Procter & Gamble and Wal-Mart, noted during the third quarter of 2012, site visitors who interacted with user-generated content were 81% more likely to buy—and 27% more likely to return to the site again—than visitors who did not. As Henri Isenberg, the COO of ReviewInc, a software provider that helps businesses with reviews online, concluded, a lack of reputation is just as bad as a poor one. “That’s what social media has done. It’s moved us to a

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<sup>152</sup> Personal Interview with Albert Bitton, Canadian Deals Association, September 26, 2013.

<sup>153</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 21, 36.

<sup>154</sup> Public Interest Advocacy Centre, *Customer Loyalty Programs: Are Rules Needed?*, Report (Ottawa), 2013, p. 37, and Fuggetta, Rob, “Making the Most of Word-of-Mouth Advertising,” *Wired*, May 30, 2013. Last accessed June 6, 2013, at <http://insights.wired.com/profiles/blogs/making-the-most-of-word-of-mouth-marketing#axzz2UnJn6dwY>. Nielsen figure is the 2012 *Global Trust in Advertising report*, which surveyed more than 28,000 Internet respondents in 56 countries. The figure, attributed to Lightspeed Research, 67%, is from a study in the United Kingdom that was released in April, 2011.

realm where you expect to find someone's reputation online. You have to have reviews."<sup>155</sup>

It is apparent that consumers take the suggestions and opinions of their fellow consumers seriously when making the decision of whether to pursue a purchase, regardless of the method. The thing to keep in mind for deal site providers is that, in reference to the existence of web pages dedicated to customer reviews, "the conversation is happening whether you're with us or not."<sup>156</sup>

### *Retailer Actions Influence Deal Site Reputation*

As the evidence above suggests, when considering a deal site purchase, consumers look for signals to boost their confidence the transaction is worthwhile. They weigh the reputation of the buying site as well as that of the retailer in making their decision. However, it is possible for the retailer involved in the deal to have an influence on the future branding and reputation of the deal site provider. In the scenario of a deal site purchase, the actions of a retailer resulting in a negative customer experience can be a powerful deterrent for consumers. Frustrated consumers may choose to disregard the retailer, future offers from the deal site used, or in extreme cases, both the deal site provider and the retailer.

For instance, focus group participants noted they were occasionally treated differently by the staff employed by some retailers if they were using a deal site voucher. If it was for home services such as duct-cleaning, or housekeeping, this may mean not receiving the service for months following the purchase, if at all.<sup>157</sup> In the case of a health-related service, such as a spa, participants discussed receiving service at a level lower than if they were paying full price.<sup>158</sup>

Another tactic used by staff of a retailer that met with more success, but still wasn't always appreciated, were efforts to "up-sell" consumers with deal site vouchers. Focus

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<sup>155</sup> Public Interest Advocacy Centre, *Customer Loyalty Programs: Are Rules Needed?*, Report (Ottawa), 2013, p. 37-38. From Garcia, Krista, "Online User Reviews: Building Trust and Boosting Sales," *E-Marketer*, February, 2013, p. 4. Last accessed June 6, 2013, at <https://s3.amazonaws.com/readypulse/news/eMarketer-online-user-reviews-building-trust-and-boosting-sales.pdf>

<sup>156</sup> Public Interest Advocacy Centre, *Customer Loyalty Programs: Are Rules Needed?*, Report (Ottawa), 2013, p. 37, from Bryan Pearson, *The Loyalty Leap: Turning Customer Information into Customer Intimacy*, Penguin Group, Toronto, 2012, P. 24.

<sup>157</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 13-14, 17, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 22 and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 23-24, 50.

<sup>158</sup> Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 50.

group participants expected these offerings when taking advantage of dining offers, and routinely would purchase something extra due to the savings anticipated using the deal site voucher.<sup>159</sup> In other instances, however, attempts to up-sell were met with more hostility. This appeared to occur more often when a service was purchased such as car detailing or home carpet cleaning.<sup>160</sup> Finally, there were occasions where focus group participants expressed frustration when they purchased a voucher for a retailer that sold items priced far higher than the price they anticipated. For example, a consumer purchasing a \$40 off voucher, only to find the minimum price of a product at the retailer was \$70.<sup>161</sup>

## *Privacy*

Consumers who participated in focus groups for this investigation were asked if they had any privacy concerns regarding the use of deal sites.<sup>162</sup> It was found that participants believed deal sites they used had privacy policies, but they were not concerned enough about their content to review them, generally referring to them as part of “the small print.”<sup>163</sup> Moreover, participants considered deal sites to be secure enough to do business with them.<sup>164</sup> As expressed by one consumer:

“I do a lot of online shopping on a variety of sites, so I’m no more concerned about these group buying sites than I am others.”<sup>165</sup>  
(Focus Group, Edmonton, December 17, 2012)

That being said, participants were not so keen on any suggestion regarding the sharing of their personal financial data with retailers or any other interested parties, although they generally believe these activities were not taking place.<sup>166</sup> Anecdotal evidence

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<sup>159</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 43, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 40-41, 45-46.

<sup>160</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 17, 19, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 20-21.

<sup>161</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 16-17, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 19.

<sup>162</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 60-65, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 60-66, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 63-70.

<sup>163</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 62, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 64.

<sup>164</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 60, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 63-64.

<sup>165</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 61.

<sup>166</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 61, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 65.

provided by focus group participants suggests deal sites are sharing demographic and perhaps contact data with third parties. Participants noted subsequent attempts at communication by retailers offering services similar to what they had purchased through their deal site.<sup>167</sup> Participants also observed that after they purchased a specific good or service, their deal site would subsequently promote items of a similar nature.<sup>168</sup> While consumers were aware the deal site was contacting them as a result of an analysis of their purchasing behavior, many expressed the view that this often helped them identify promotions of interest in a more effective manner.<sup>169</sup>

### *As a Result...*

Focus Group analysis made it clear that Canadian consumers want to receive offers through deal sites. However, there is a lingering hesitation among many consumers that prevents them from fully trusting the deal site industry to purchase big ticket items. Instead, it was found the industry was successful in distributing deals for products and services largely priced between \$25 and \$40. To a large degree, this was due to challenges they encountered with a previous redemption of a deal voucher.

Focus group participants expressed their confidence in deal sites that offered a comprehensive refund policy. Under these circumstances, consumers are more willing to purchase offers in general, and from unfamiliar retailers in particular. In addition, if the terms and conditions of the deal were not clear, or if any element of a deal appeared suspect, some consumers were more than willing to investigate the deal, the deal site and the retailer online before making the final decision to purchase. As a result of these experiences, focus group participants expect the following from deal sites that continue to operate in Canada:

- a comprehensive refund policy;
- clearly understood terms and conditions for each offer, and;
- a complaint resolution process to assist consumers with any outstanding issues after a voucher is purchased.

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<sup>167</sup> Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 66.

<sup>168</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 61-62, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 63, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 66-67.

<sup>169</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 64, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 65, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 67-68.

The actions of retailers were also found to have an impact on the perception of deal site providers. If consumers encountered difficulty or were treated unfairly redeeming a deal site offer, they were often willing to place a portion of the blame at the feet of the deal site. As a result of these experiences, and to improve the reputation of deal sites, consumers expect deal sites to more rigorously analyze the credentials of the retailers who are offering the deals. To the credit of Canadian deal sites, focus group participants did not perceive deal sites to be a greater risk than other available online shopping venues in relation to privacy concerns.

## Section 5 - Consumer Complaints & Resolution

It can be argued that the deal site industry in Canada is an example where, as the industry developed, consumers absorbed the growing pains related to an initial lack of responsiveness by deal sites to address their concerns in an effective manner. As deal sites began to focus more on customer retention than growing their business, practices began to reflect the redemption concerns raised by consumers. This section intends to identify those consumer concerns, as well as the steps taken by deal providers to address them. Moreover, this investigation may reveal if there are ongoing issues that require further scrutiny by deal sites or policy makers. In a section to follow, we will review how a number of these issues have been dealt with from a legal perspective in other jurisdictions.

### *Expiry*

In the early days of the Canadian deal site industry, it was common for offers to expire, leaving consumers with little recourse. For deal sites, this concept was called “breakage” and accounts for an estimated 20% of all deal site offers in the United States.<sup>170</sup> However, over time, a number of deal sites realized this posed an irritant for their customers and a deal site's ability to retain them. Focus group analysis discussed in the previous section revealed that a number of consumers are now conditioned to be wary of all deal site offers due to their initial experience with them. For many, this included a lesson regarding the expiry of offers. When asked for their views regarding practices related to expiry, consumers held a number of views. For the most part, consumers view expiry dates as necessary evils. While they would prefer not to have their deal site offers expire, they understood it would be unreasonable for retailers to honour a deal site offer in perpetuity.<sup>171</sup>

For instance, several participants said they had let vouchers expire in the past. Reasons for this included that they had forgotten about the voucher, despite warnings from the

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<sup>170</sup> Tuttle, Brad, “The Backlash Against Online Daily Deals,” *TIME*, July 20, 2011. Last accessed November 23, 2013 at <http://business.time.com/2011/07/20/daily-deal-backlash/>, and Utpal Dholakia, *How Businesses Fare With Daily Deals As They Gain Experience: A Multi-Time Period Study of Daily Deal Performance*, June 25, 2012, p. 22. Last accessed August 28, 2013 at <http://news.rice.edu/wp-content/uploads/2012/07/2012-07-05-DailyDeals.pdf>

<sup>171</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 47, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 45-46, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 49.

deal site, or it was inconvenient to redeem.<sup>172</sup> In the current marketplace, consumers placed the blame for letting offers expire on themselves, and not the deal site.<sup>173</sup> In fact, a few noted that expiry dates encouraged them to redeem the offer in a timely manner.<sup>174</sup>

In exchange for having a reasonable outlook on the need for expiry dates, consumers have expectations from the retailer and the deal site issuing the offer. Consumers asked felt a deal offer should not be too short in duration. For many, a period of six months to a year from date of purchase was considered a fair amount of time for a deal offer to be redeemed.<sup>175</sup> Secondly, some participants expressed the view that deal site vouchers were viewed the same under the law as gift cards, therefore the face value of the offer was *always* honoured, regardless of the existence of an expiry date.<sup>176</sup> The face value being the amount of funds used to purchase the offer. A comparison was often cited between deal site offers and gift cards, since gift cards cannot lose their value because they represent cash (every province in Canada now has legislation prohibiting expiry dates on most types of gift cards). If deal site offers were universally treated like gift cards in this manner, it is argued that consumers would gain more confidence using deal sites, and be amenable to expiry dates of 6 months to a year from the date of purchase.

Figure 5-1 compares the policies of deal sites regarding the value of deal site vouchers after a deal purchased has expired. This was done in an effort to corroborate the views held by some consumers that the face value of a deal site offer is always honored, even after expiry.

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<sup>172</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 15, 41, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 39-40, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 42.

<sup>173</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 39-40, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 42, 48.

<sup>174</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 45.

<sup>175</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 46, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 46, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 49.

<sup>176</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 26, 45-46, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 43.

Figure 5-1 Canadian Deal Site Voucher Value After Expiry

Deal Site	Voucher Value After Expiry
Groupon	If your Groupon expires, the voucher is still good indefinitely at the business for the amount paid. <sup>177</sup>
DealFind/ TeamBuy	Upon expiry, the voucher is still good indefinitely at the business for the amount paid. <sup>178</sup>
WagJag	If the voucher is not redeemed by the expiry date, the voucher can be redeemed for an amount equal to the amount you paid for the voucher (that is, the purchase value), if required by applicable law. <sup>179</sup>
Tuango	For Quebec residents, the merchant is bound to honor the Tuango voucher (for the amount paid) after its expiry. For residents of Ontario and elsewhere in Canada, the provincial and federal laws apply. <sup>180</sup>
LivingSocial	You may still be able to use your voucher beyond its expiration date, but only for the amount that you paid for it. <sup>181</sup>
Buytopia	Buytopia does not have a policy. It is up to the merchants to honor the face value of the voucher after expiry. <sup>182</sup>

Figure 5-1 indicates that for customers of WagJag, Tuango and Buytopia, whether you receive any value for a deal site voucher that has expired depends on where you live or is at the discretion of the merchant. It appears Groupon, TeamBuy/DealFind and LivingSocial have gone that extra step to ensure the face value of the voucher is always honored by merchants, regardless of the applicable law. In an effort to prevent consumer confusion, as well as instill greater consumer confidence in the deal site

<sup>177</sup> Groupon, *What happens if my Groupon voucher's promotional value expires?*, webpage. Last accessed November 26, 2013 at [https://www.groupon.com/customer\\_support/?faq=true#faqs:history-YWN0aW9uPWNvbnRlbnQmY29udGVudElkPTQyJmXvZ0lkPTM2JTJDMtkyMjk0JmJyb3dzZXIINUJyYmY1JTVEPU5ldHnJyYXBjYmY3d3ZlIINUJjY2RlTmFtZSU1RD1Nb3ppbGxhJmJyb3dzZXIINUJ2ZXJzaW9uJTVEPTUuMCSov2luZG93cykmYnJvd3NlciU1QmNvb2tpZXMINUQ9dHJ1ZSZicm93c2VvYjVTVCdXNlckFnZW50JTVEPU1vemlsbGEIMkY1LjArKFdpbmRvd3MrTIQRNS4xJTNC3J2JTNBMjUuMCKrR2Vja28IMkYyMDEwMDEwMStGaXJlZm94JTJGMjUuMCZ1c2VyaW5mbyU1QmVtYWIsJTVEPWJpc2hvcC5tb29zZSU0MGdtYWIsLmNvbSZ1c2VyaW5mbyU1Qm5hbWUINUQ9Sm9uYXRoYW4rQmlzaG9wJnNlc3Npb25JZD1vdmwxdTBwOXZc2xiaGpyMzJ2a3NuZTd2NCZ1c2VvYUGVybWFSaW5rPWpvbmF0aGFuLWJpc2hvcC0xOCZkaXNwbGF5ZWRfY29udGVudF90aXR5ZT0IMEErKysrK1doYXQraGFwcGVucytpZitteStHcm91cG9uK3ZvdWNoZlNcytwcm9tb3Rpb25hbCt2YWx1ZStleHBpcmVzJTNlZlBBKysrKw==](https://www.groupon.com/customer_support/?faq=true#faqs:history-YWN0aW9uPWNvbnRlbnQmY29udGVudElkPTQyJmXvZ0lkPTM2JTJDMtkyMjk0JmJyb3dzZXIINUJyYmY1JTVEPU5ldHnJyYXBjYmY3d3ZlIINUJjY2RlTmFtZSU1RD1Nb3ppbGxhJmJyb3dzZXIINUJ2ZXJzaW9uJTVEPTUuMCSov2luZG93cykmYnJvd3NlciU1QmNvb2tpZXMINUQ9dHJ1ZSZicm93c2VvYjVTVCdXNlckFnZW50JTVEPU1vemlsbGEIMkY1LjArKFdpbmRvd3MrTIQRNS4xJTNC3J2JTNBMjUuMCKrR2Vja28IMkYyMDEwMDEwMStGaXJlZm94JTJGMjUuMCZ1c2VyaW5mbyU1QmVtYWIsJTVEPWJpc2hvcC5tb29zZSU0MGdtYWIsLmNvbSZ1c2VyaW5mbyU1Qm5hbWUINUQ9Sm9uYXRoYW4rQmlzaG9wJnNlc3Npb25JZD1vdmwxdTBwOXZc2xiaGpyMzJ2a3NuZTd2NCZ1c2VvYUGVybWFSaW5rPWpvbmF0aGFuLWJpc2hvcC0xOCZkaXNwbGF5ZWRfY29udGVudF90aXR5ZT0IMEErKysrK1doYXQraGFwcGVucytpZitteStHcm91cG9uK3ZvdWNoZlNcytwcm9tb3Rpb25hbCt2YWx1ZStleHBpcmVzJTNlZlBBKysrKw==)

<sup>178</sup> *Personal Interview*, Team Buy/DealFind Customer Service Representative, November 26, 2013.

<sup>179</sup> WagJag, *WagJag Terms and Conditions of Use*, webpage. Last accessed November 26, 2013 at <http://www.wagjag.com/terms>

<sup>180</sup> Tuango, *Tuango Refund Policy*, webpage. Last accessed November 26, 2013 at <http://www.tuango.ca/en/pages/politique-de-remboursement>

<sup>181</sup> LivingSocial, *LivingSocial What Happens if my Deal has Expired?*, webpage. Last accessed November 26, 2013 at <https://help.livingsocial.com/articles/what-happens-if-my-deal-is-expired>

<sup>182</sup> *Personal Interview*, Buytopia Customer Service Representative, November 26, 2013.

industry in general, it may be prudent for the major Canadian deal sites to find common ground on universal treatment of vouchers by merchants upon expiry.

### *Limitations and Conditions – The Fine Print*

Another constant source of irritation from consumers stems from the usage limitations placed on a deal site offer. Examples of this are blackout dates for travel offers and restricted redemption capacity at restaurants based on days of the week. Generally the sentiment expressed by focus group participants was, if there were too many restrictions listed with an offer, they simply tuned out of the deal altogether, regardless of the value being offered.<sup>183</sup> As noted earlier, the inclusion of limitations usually led to the difficulties experienced by consumers when attempting to redeem a deal site offer. This has resulted in many of them now paying additional scrutiny to any limitations associated with an offer.<sup>184</sup>

A number of focus group participants were generally understanding of the need for certain restrictions, such as restaurants making offers available for redemption during off-peak hours.<sup>185</sup> However, it is clear from the evidence gathered from focus group participants that any limitations placed on a deal site offer should be clear and transparent. They should be clearly stated within the offer to avoid any potentially negative customer experiences upon redemption.<sup>186</sup> Any deviation from this, in the minds of consumers, is misleading, and blame will be placed on both the retailer and the deal site as a result.

### *Excessive Wait Times*

Focus group participants expressed their displeasure regarding the length of time that transpired between date of purchase and the date the deal could be completed. This was largely a concern for deals regarding services such as cleaning for a home or vehicle. On a number of occasions, participants were disconcerted by the sheer volume of the offer being sold (that is, a large number of consumers could simultaneously

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<sup>183</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 34-35, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 37, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 34-35.

<sup>184</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 31-33, 35-36, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 35-36.

<sup>185</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 31.

<sup>186</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 77.

participate in it), and the resulting impact this had on redeeming the deal site offer for service.<sup>187</sup> Having the honour offered, but having the service performed after the expiry date was appreciated, but occasionally left the consumer wanting and unlikely to become a repeat customer.<sup>188</sup> A number of participants shared a similar view as those consumers who experience redemption difficulties due to limitations – placing blame jointly with the retailer and the deal site.<sup>189</sup> The deal site, given its experience in the provision of offers, should suggest a reasonable limit of offers available to the retailer in consideration for customer redemption. The retailer should also have the customers' best interests first, especially if the goal of the deal site initiative is to market themselves to gain repeat clients.

### *The Sale of Low Quality or Potentially Counterfeit Goods*

Some focus group participants expressed concern regarding the quality of the goods they purchased through deal sites.<sup>190</sup> While this can occur through any segment of e-commerce, it is of particular concern when dealing with the deal site industry. Given the steep discounts advertised by deal sites, it is only natural to raise questions about the potential quality of the merchandise being offered. At best, the products delivered to consumers through deal sites are originally manufactured equipment. At worst, deal sites are unknowingly distributing counterfeit materials. The views of focus group participants suggest the reality lies at some point between these two extremes.

Many focus group participants hold the view, “if it's too good to be true, it probably is,” concerning the combination of deal site offer price and the quality of goods being offered.<sup>191</sup> One participant noted the product he received worked on three occasions before breaking down.<sup>192</sup> Obviously, given the success of the Canadian deal site industry, the vast majority of products being offered by deal site are genuinely legitimate goods. However, the existence of a minority of products that may not be quality goods raises a series of concerns.

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<sup>187</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 39-40, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 31.

<sup>188</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 38-39, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 23-24, 30.

<sup>189</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p.52-53, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 52-54.

<sup>190</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 49, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 15-16.

<sup>191</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 50, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 33.

<sup>192</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 49.

Concerns immediately spring to mind about product safety and standards. What happens in a scenario where a product is purchased through a deal site which does not meet specific safety standards, such as Canadian Standards Association (CSA) certification for an electrical device, then damages a home? Does the deal site operator face a liability for promoting and distributing an unsafe device? Common sense dictates that deal site providers undertake a certain level of due diligence to ensure the safety of the products being offered on their websites. However, in other jurisdictions this does not always appear to be the case.

For instance, in December 2012, the Consumer Fraud Center issued a news release to warn consumers in the United States what they described as a fast-growing trend, “the sale of goods at bargain-basement prices through so-called “daily deal” sites, which can mask the sale of counterfeit or illicit goods.”<sup>193</sup> The release highlighted an example of a “daily deal” site shipping a counterfeit product as part of a client “test buy” even after being sent a “cease and desist” letter.<sup>194</sup> The Consumer Fraud Center is dedicated to uncovering the use of legitimate online portals and shopping destinations for the sale of counterfeit and fraudulent consumer goods and products. It relies on its network of activated consumers who submit reports on counterfeit goods sold on websites to create a national database of products searchable by consumers, media and law enforcement.<sup>195</sup>

It can be contended that the uncertainty regarding the quality of the goods being offered provides another reason for consumers who entertain deal sites offers to be wary of what they eventually decide to purchase. Under these circumstances, instinct and experience may have conditioned Canadian consumers to mitigate their risk by not investing large sums of their hard earned income on deal site purchases. The perceived quality of goods being offered marks another challenge that deal site providers will have to overcome if they wish to gain greater consumer confidence going forward.

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<sup>193</sup> *Consumer Fraud Centre*, “Consumer Fraud Centre Issues New Warning About “Deal of the Day” Sites Like Shnoop.com,” Media Release, December 6, 2012. Last accessed November 23, 2013 at <http://www.marketwired.com/press-release/consumer-fraud-center-issues-new-warning-about-deal-of-the-day-sites-like-shnoopcom-1734445.htm>

<sup>194</sup> *Consumer Fraud Centre*, “Consumer Fraud Centre Issues New Warning About “Deal of the Day” Sites Like Shnoop.com,” Media Release, December 6, 2012. Last accessed November 23, 2013 at <http://www.marketwired.com/press-release/consumer-fraud-center-issues-new-warning-about-deal-of-the-day-sites-like-shnoopcom-1734445.htm>

<sup>195</sup> *Consumer Fraud Centre*, “Consumer Fraud Centre Issues New Warning About “Deal of the Day” Sites Like Shnoop.com,” Media Release, December 6, 2012. Last accessed November 23, 2013 at <http://www.marketwired.com/press-release/consumer-fraud-center-issues-new-warning-about-deal-of-the-day-sites-like-shnoopcom-1734445.htm>

## Capacity to Fulfill Deal Site Offers

Another concern raised by the media, as well as focus group participants was the capacity of a retailer to fulfill a deal site offer. Again, this viewpoint was based on personal experience or by media coverage of consumer frustration due to the apparent overselling of a deal site offer. For retailers, reasons cited for these types of deals range from a misunderstanding of how the deal site industry worked to deliberate attempts to bring a greater number of customers through their doors.

For example, William Kaminski, the owner of Yaletown's Phat Deli, located in Vancouver, noted to CTV in British Columbia in 2012 that his business nearly went under because of a deal site offer:

"I sold 2,169 Groupons for a 1,050-square-foot delicatessen. It was a complete nightmare. We were completely overwhelmed -- we didn't understand how Groupon works."<sup>196</sup>

While Kaminski says the experience cost his business \$25,000, this pales in comparison to a series of offers made in 2011 by Toronto-based businessman Marlon Pather. Pather, then owner of The Butchers, a meat shop, entered into a series of deal site offers simultaneously in early 2011 that amounted to 22,000 outstanding coupons.<sup>197</sup> Unable to handle the resulting demand from one of the reportedly largest single-city deal site offers ever issued in North America, The Butchers first stopped honouring coupons on the weekends.<sup>198</sup> Then it was reported that the coupons weren't being honoured at all, before the business was closed for three months of renovations. When the business re-opened, it still was unable to keep up with demand.<sup>199</sup> While the

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<sup>196</sup> Wintonyk, Darcy, "New salon owner nailed by old daily deals, CTV British Columbia, June 20, 2012. Last accessed November 25, 2013 at <http://bc.ctvnews.ca/new-salon-owner-nailed-by-old-daily-deals-1.845810>

<sup>197</sup> Roseman, Ellen, "Marlon's Meat takes holiday as coupons expire," *Toronto Star*, August 28, 2012. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2012/08/28/marlons\\_meat\\_takes\\_holiday\\_as\\_coupons\\_expire.html](http://www.thestar.com/business/personal_finance/spending_saving/2012/08/28/marlons_meat_takes_holiday_as_coupons_expire.html)

<sup>198</sup> Roseman, Ellen, "Why you might be wary of internet coupons," *Toronto Star*, April 25, 2011. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2011/04/25/roseman\\_why\\_you\\_might\\_be\\_wary\\_of\\_internet\\_coupons.html](http://www.thestar.com/business/personal_finance/spending_saving/2011/04/25/roseman_why_you_might_be_wary_of_internet_coupons.html), and Tim Kiladze, "Ninety-nine bucks for \$400 worth of organic meat. Seriously?," *Globe and Mail*, April 15, 2011. Last accessed November 25, 2013 at <http://www.theglobeandmail.com/news/toronto/globe-to/ninety-nine-bucks-for-400-worth-of-organic-meat-seriously/article1987680/>

<sup>199</sup> Roseman, Ellen, "Marlon's Meat takes holiday as coupons expire," *Toronto Star*, August 28, 2012. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2012/08/28/marlons\\_meat\\_takes\\_holiday\\_as\\_coupons\\_expire.html](http://www.thestar.com/business/personal_finance/spending_saving/2012/08/28/marlons_meat_takes_holiday_as_coupons_expire.html)

business remains open, it is reportedly no longer honouring any deal site offers, which have now expired.<sup>200</sup> DealFind, which sold 11,500 coupons (about half the total amount issued), decided to give cash refunds to all buyers.<sup>201</sup> This deal site cautionary tale generated a great deal of consumer frustration and remained the subject of deal forum discussion over two years later.<sup>202</sup>

Ellen Roseman, personal finance columnist for the *Toronto Star*, who reported on this story in 2011 and 2012, made the following recommendations to her readers regarding deal site offers:

“Don’t pay in advance for coupons without trusting both the deal website and the retailer involved. Ask about the refund policy. Read reviews and complaints online to see how they treat people.

Memo to the Ontario government: Outlaw expiry dates on prepaid vouchers. Treat them the same way as gift certificates. And ensure that deal websites make amends to clients when retailers refuse to meet their obligations.”<sup>203</sup>

As a result of offers made by retailers and group sites where the demand created was not able to be satisfactorily met, focus group participants noted that the deal site has an obligation to act in a responsible manner to limit the number of offers being distributed.<sup>204</sup> Unfortunately for consumers, this may not prevent the scenario that unfolded in The Butchers case from re-occurring, since the retailer entered into deal site arrangements with a number of providers simultaneously. However, it is clear that the

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<sup>200</sup> Roseman, Ellen, “Marlon’s Meat takes holiday as coupons expire,” *Toronto Star*, August 28, 2012. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2012/08/28/marlons\\_meat\\_takes\\_holiday\\_as\\_coupons\\_expire.html](http://www.thestar.com/business/personal_finance/spending_saving/2012/08/28/marlons_meat_takes_holiday_as_coupons_expire.html)

<sup>201</sup> Roseman, Ellen, “Marlon’s Meat takes holiday as coupons expire,” *Toronto Star*, August 28, 2012. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2012/08/28/marlons\\_meat\\_takes\\_holiday\\_as\\_coupons\\_expire.html](http://www.thestar.com/business/personal_finance/spending_saving/2012/08/28/marlons_meat_takes_holiday_as_coupons_expire.html)

<sup>202</sup> *Red Flag Deals*, “The Butchers AKA Marlon Meats Organic Meat,” Discussion Forum, April 16, 2013. Last accessed November 25, 2013 at <http://forums.redflagdeals.com/merged-butchers-aka-marlon-meats-organic-meat-feedback-discussion-999078/124/>, and Chow, “Marlons Meats are back in the game,” Blog Post, October 15, 2013. Last accessed November 25, 2013 at <http://chowhound.chow.com/topics/920467>

<sup>203</sup> Roseman, Ellen, “Marlon’s Meat takes holiday as coupons expire,” *Toronto Star*, August 28, 2012. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2012/08/28/marlons\\_meat\\_takes\\_holiday\\_as\\_coupons\\_expire.html](http://www.thestar.com/business/personal_finance/spending_saving/2012/08/28/marlons_meat_takes_holiday_as_coupons_expire.html)

<sup>204</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 65-66, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 68, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 71-73.

vast majority of Canadian retailers do not engage in this practice and The Butchers case served as a learning experience for all of the stakeholders involved.

### *Complaint Resolution Services*

It is also interesting to note how deal site providers reacted to The Butchers deal site offers, in terms of resolving customer complaints. Some deal sites, such as DealFind, eventually provided cash refunds to buyers. Others, such as Webpiggy and Buytopia, offered a credit, with no expiry date, to buyers who asked about redeeming their coupons from The Butchers.<sup>205</sup> As these responses indicate, each deal site has its own policy of whether they have to refund a customer's money as the result of an unsatisfactory deal. Focus group participants were of the opinion that deal sites should give consumers back the face value of the coupon in the event that the deal cannot be completed.<sup>206</sup> Credit towards a future daily deal was not always viewed as an acceptable substitute for a cash refund.<sup>207</sup>

Most focus group participants believe that when they accept a deal site offer, they have accepted an agreement with both the deal site and the retailer.<sup>208</sup> Therefore, in the event there is difficulty with redemption, a number noted that both parties have a responsibility to step forward to resolve consumer difficulties. At the moment, it appears that if consumers have an issue with a retailer, they will turn to a deal site provider for assistance.<sup>209</sup> In cases where consumers feel the issues remain unresolved, it was uncertain what alternatives were available.<sup>210</sup> Some noted attempts to have the

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<sup>205</sup> Roseman, Ellen, "Marlon's Meat takes holiday as coupons expire," *Toronto Star*, August 28, 2012. Last accessed November 25, 2013 at [http://www.thestar.com/business/personal\\_finance/spending\\_saving/2012/08/28/marlons\\_meat\\_takes\\_holiday\\_as\\_coupons\\_expire.html](http://www.thestar.com/business/personal_finance/spending_saving/2012/08/28/marlons_meat_takes_holiday_as_coupons_expire.html)

<sup>206</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 54, 56-57, and Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 49, 57.

<sup>207</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 50-51.

<sup>208</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 52, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 51-52, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 52-54.

<sup>209</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 53, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 53, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 54-56.

<sup>210</sup> Group Buying Focus Group Transcript, December 17, 2012, 6:00 p.m., p. 54-56, Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 54-56, and Group Buying Focus Group Transcript, December 18, 2012, 6:00 p.m., p. 58.

charges removed from their credit cards in an effort to get their money back from an unused deal site offer.<sup>211</sup>

In order to shed light on the issue of deal site refund policies, Figure 5-2 below compares the refund policies of a number of deal sites operating in Canada. While a number of deal sites provide the opportunity for consumers to receive a refund, each deal site has a separate policy on the issue:

**Figure 5-2 Canadian Deal Site Refund Policies**

<b>Deal Site</b>	<b>Refund Policy</b>
Groupon	Any unredeemed voucher may be returned for a refund within the first seven days after purchase. After that, all sales are final. <sup>212</sup>
DealFind/ TeamBuy	Returns are handled on a case-by-case basis and will be reviewed by our customer service team. <sup>213</sup>
WagJag	Each issue will be investigated and handled on a case-by-case basis to determine the best resolution. <sup>214</sup>
Tuango	Up until 14 days after the date of purchase and as long as your Tuango voucher has not been used, you can get your money back without any questions asked unless stated otherwise in the details section of the offer.  For products requiring shipment, the refund policy will be described in the offer details. <sup>215</sup>
LivingSocial	Voucher purchased on or after November 21, 2013 - click "Ask for a Refund" on your My Vouchers page to apply for an automatic refund within seven (7) days of Your purchase.  After the seven day period, LivingSocial is happy to honor your request for a refund of the Paid Portion of any unredeemed Voucher by issuing Deal Bucks equivalent to the Paid Portion if your request is made at any time before the promotional period expires. <sup>216</sup>
DealTicker	On every deal you will have the option of receiving a full refund for your purchase if: (a) The voucher was not redeemed, and  (b) You are within the 10 business day refund period. Refund period begins at time of deal expiry on DealTicker.com and continues for the next 10 business days. <sup>217</sup>
Buytopia	We guarantee that if you have had any problems with a voucher you bought from our site we will give you a full refund within 10 days of purchasing the deal, and a full Buytopia credit within 30 days of the purchase. <sup>218</sup>

<sup>211</sup> Group Buying Focus Group Transcript, December 17, 2012, 8:00 p.m., p. 54.

<sup>212</sup> Groupon, *Groupon Promise*, webpage. Last accessed November 26, 2013 at <http://www.groupon.com/groupon-promise>

<sup>213</sup> DealFind, *DealFind FAQ*, webpage. Last accessed November 26, 2013 at <http://www.dealfind.com/faq>, and TeamBuy, *TeamBuy FAQ*, webpage. Last accessed November 26, 2013 at <http://www.teambuy.ca/faq>

<sup>214</sup> WagJag, *WagJag FAQ*, webpage. Last accessed November 26, 2013 at <http://www.wagjag.com/faq>

<sup>215</sup> Tuango, *Tuango Refund Policy*, webpage. Last accessed November 26, 2013 at <http://www.tuango.ca/en/pages/politique-de-remboursement>

<sup>216</sup> LivingSocial, *LivingSocial What is Your Refund Policy?*, webpage. Last accessed November 26, 2013 at <https://help.livingsocial.com/articles/what-is-your-refund-policy>

<sup>217</sup> DealTicker, *DealTicker Refund Policy*, webpage. Last accessed November 26, 2013 at [http://www.dealticker.com/refund\\_policy\\_en\\_265cms.htm](http://www.dealticker.com/refund_policy_en_265cms.htm)

<sup>218</sup> Buytopia, *Buytopia Refund Policy*, webpage. Last accessed November 26, 2013 at <https://m.buytopia.ca/page/refund-policy>

Another issue that emerged during focus group discussion that warrants further scrutiny is the notion that many consumers feel the face value of their deal site voucher will be honored even after the offer has expired. Figure 5-2 is the result of a search for such a policy for each of the Canadian Deal Sites listed below.

As we have seen here, consumers participating in the Canadian deal site industry are keen to take advantage of the variety of deals currently being offered. However, they are very aware of the challenges awaiting them if they do not conduct a thorough investigation before buying. Most consumers appear willing to examine the deal offers placed before them to ensure the benefits of an offer outweigh any terms and conditions that may restrict their redemption ability. However, in exchange for this, consumers expect any limitations regarding deal site offers to be clearly listed and easy to understand.

Consumers also understood the need for expiry dates for deal sites vouchers. Although they view an expiry as a necessity on the part of the deal site and retailers, consumers suggested that offers should not expire for either 6 months or a year. This was viewed as an adequate exchange by most consumers for the imposition of an expiry date.

This review revealed a perception among consumers that deal site vouchers retained their face value, even after expiry, regardless of location or which deal site was used to purchase the offer. Our comparison of how a number of Canadian deal sites treated the possible redemption of expired vouchers for their face value indicated that only a few deal sites treated vouchers in this manner. Others relied upon the law in the jurisdiction where the deal site voucher was purchased, leaving an uneven playing field for consumers. We contend that large Canadian deal sites should come together and form an agreement regarding the treatment of expired vouchers. A universal rule allowing redemption of deal site vouchers for their face value would alleviate consumer confusion, and generate greater consumer confidence in the Canadian deal site industry.

Wait times for the redemption of deal site offers was raised as a significant consumer concern. In most cases, the offer was eventually redeemed, but not always to the complete satisfaction of consumers. In extreme cases, deal site offers were not fulfilled at all, or were fulfilled at considerable cost to the retailer. As a result of these experiences, we would argue that the retailer and the deal site share responsibility for ensuring consumers are able to redeem any deal site offer in a timely fashion. There is a need for balance here between consumer expectations, which admittedly can be unrealistic on occasion, and the reasonable capacity of a retailer to complete the terms of the deal site offer before expiry.

Under these circumstances, we hold the view it is up to the deal site to undertake due diligence when negotiating a deal site offer with a retailer. If necessary, deal sites should use their gatekeeper position to limit the number of deal vouchers offered under any given deal to ensure consumers who purchase the voucher will not experience avoidable inconvenience upon redemption. Moreover, deal sites should use due diligence to limit the number of offers issued by a single retailer if there are concerns the demand expected by a series of deal site offers cannot be adequately met.

It is understood these measures cannot eliminate the possibility of another scenario unfolding similar to The Butchers case. Thus, retailers who entertain offering a deal site voucher have to be cognizant of the potential demand this action will generate and act responsibly. Retailers who act irresponsibly or without some measure of guidance from the deal sites they engage with risk damage to their reputation and the wrath of consumers. It is clear from the experiences and perceptions of consumers outlined here that deal sites do not escape reputation damage when a irresponsible deal is offered. By having both retailers and deal sites act in a responsible manner, it will ensure greater confidence in the deal site industry is held by all stakeholders going forward.

If deal sites are concerned regarding the possible approach to ensuring every deal is responsible, it is suggested here they consider using an approach already proven effective in other avenues of ecommerce – the collection and display of consumer feedback ratings. If consumers were provided with the opportunity to provide feedback, such as a rating system employed by popular auction websites on each offer purchased by a deal site, we contend this will provide numerous benefits to all parties. Under the envisioned feedback ratings model, consumers will be invited to provide feedback measuring their satisfaction with the deal site on a few suggested factors, such as:

- clarity of the terms and conditions of an offer
- willingness to purchase a similar deal in the future.

In addition, consumers would be given the opportunity to provide feedback ratings regarding the retailer on the ease of redemption, as well as a willingness to participate in future offers. As a result, consumers could use the metrics generated by this feedback model to assist them in determining the viability of future offers from a retailer and the deal site. Retailers could use the feedback information to consider any changes they wish to make to future offers to increase effectiveness and ensure greater consumer satisfaction. The collection of this information would provide deal sites with insight regarding consumer satisfaction in general. Moreover, it will indicate deals that require further scrutiny regarding the number of vouchers offered. It would also assist in identifying which retailers require monitoring to ensure the reputation of the deal site is not being hindered by the retailers they partner with or the offers they choose to promote to consumers.

We found that each deal site has its own refund policy regarding the resolution of deals deemed unsatisfactory to the consumer. A comparison revealed two general trends – either the deal site issued a refund within 7-10 days of purchase, or the return was handled on a case by case basis and determined by the deal site. It is felt here that refund policies in extreme cases are dealt with on a case by case basis as well, with the deal site usually being open to refund consumers if the circumstances were unforeseen, such as a retailer going out of business. When they agree to the terms and conditions of a deal site offer, consumers feel they have entered into an agreement with both the retailer and the deal site. As a result, if consumers experience redemption difficulties, they typically hold both parties responsible to varying degrees. In consideration of the evidence presented, we contend this is another area where it would be beneficial for consumers if large Canadian deal sites formed an agreement on a universal refund policy.

## Section 6 – Current federal and provincial legislation applicable to deal sites

Despite the popularity of deal sites with Canadian consumers, there no specific consumer protection rules have been legislated to govern these websites. There are many laws or legal principles that could potentially apply to online deal sites in certain circumstances, but their level of applicability is not always clear. Thus, it is even more challenging for consumers to determine where they can find a remedy if they have a complaint or believe they have been wronged. Civil litigation is a lengthy and expensive means of obtaining compensation, and many consumers might choose to accept a problem with their deal site voucher rather than put themselves through an arduous legal process.

Given that most deal site buying involves terms and conditions between the website and the consumer, contract law could provide remedies for consumers. However, contract law has obvious limitations, given that deal site terms and conditions are standard-form contracts that offer on a "take it or leave it" basis with no room for negotiation. Another potential issue is identifying the correct parties to a contract. Where a consumer has purchased a voucher from a deal site, they might believe that they have a contractual relationship with that website. However, they might also believe that they have a relationship with the retailer merchant for which they have purchased the voucher. This only results in greater consumer confusion when consumers are trying to find a remedy.

### *Provincial Consumer Protection Legislation*

Perhaps the most directly applicable rules to deal sites are found in consumer protection legislation enacted by provinces to address inequities between consumers and merchants. These provinces include British Columbia<sup>219</sup>, Alberta<sup>220</sup>, Saskatchewan<sup>221</sup>, Ontario<sup>222</sup>, Prince Edward Island,<sup>223</sup> and Newfoundland and Labrador<sup>224</sup>. These rules prohibit merchants from engaging in any “unfair practices,” such as:

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<sup>219</sup> *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, ss. 4-10.

<sup>220</sup> *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 6.

<sup>221</sup> *The Consumer Protection Act*, S.S. 1996, c. C-30.1, ss. 5-8.

<sup>222</sup> *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Schedule A.

<sup>223</sup> *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, ss. 2-3.

<sup>224</sup> *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, ss. 7-9.

- Taking advantage of a consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;
- Doing or saying anything that might reasonably deceive or mislead a consumer;<sup>225</sup>
- Making representations that the goods or services will be available or can be delivered or performed by a specified time when the person making the representations knows or ought to know that they will not;
- Making an unconscionable representation. In determining whether a representation is unconscionable, the court would take into account whether the merchant would or should have known that: the consumer was not reasonably able to protect their interests because of an inability to understand the language of an agreement; the terms of a consumer transaction were so adverse to the consumer as to be inequitable; and/or whether the consumer transaction was excessively one-sided in favour of someone other than the consumer.<sup>226</sup>

At least two class action lawsuits have been launched against deal site websites operated by Groupon Inc., under these types of unfair practice consumer protection laws. In *Patel v. Groupon Inc.*, the plaintiff alleged that Groupon had engaged in “unfair practices” under the Ontario *Consumer Protection Act, 2002* through, among other things, its expiry date terms, its partial redemption provisions, and ambiguous, misleading, deceptive and unclear contractual terms.<sup>227</sup> In that case, the plaintiff had bought a Groupon voucher for The Gap, and was unable to redeem it for either its face value or purchase price shortly after the expiry date. A similar lawsuit was launched in Alberta, where the plaintiff encountered several challenges trying to redeem a Groupon voucher for fitness classes. She alleged that Groupon’s terms and conditions misled consumers about material terms such as expiration dates and partial redemption, and were thus “unfair practices” under the Alberta *Fair Trading Act* and illegal under the *Internet Sales Contract Regulation*<sup>228</sup> (for purchases greater than \$50).<sup>229</sup> Both class actions resulted in a settlement agreement where Groupon agreed to make a total

<sup>225</sup> *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 6(2)(b) and (4)(a).

<sup>226</sup> *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Schedule A, ss. 14-15.

<sup>227</sup> See: Statement of Claim, online: GrouponClassAction <<http://grouponclassaction.ca/statement-of-claim>>.

<sup>228</sup> Alta. Reg. 81/2001.

<sup>229</sup> See: *Amery v. Groupon, Inc.*, Statement of Claim, online: JSS Barristers <<http://www.jssbarristers.ca/files/pdf/groupon-statement-of-claim.pdf>>.

payment of \$535,000, of which approximately \$200,000 went directly to class members.<sup>230</sup>

## Gift Card Laws

Since 2005, many provincial consumer protection laws have also been reformed to restrict expiration dates and fees on gift cards. Generally, and with narrow exceptions, the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, New Brunswick, and Newfoundland and Labrador amended their consumer protection legislation so that gift cards cannot have expiry dates or dormancy fees, and must provide specific disclosure of terms and conditions that affect the use of the gift card.<sup>231</sup>

Some consumers might believe that deal site vouchers could be considered “gift cards.” Section 23 of the Ontario regulations, for instance, defines a “gift card” as

a voucher in any form, including an electronic credit or written certificate, that is issued by a supplier under a gift card agreement and that the holder is entitled to apply towards purchasing goods or services covered by the voucher.<sup>232</sup>

However, gift card laws do not always apply to deal site vouchers. For one, section 25.1(b) of the Ontario regulations states that the gift card legal provisions do not apply to “a gift card that covers only one specific good or service,”<sup>233</sup> which rules out many deal site vouchers. Moreover, deal site vouchers or coupons are usually considered

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<sup>230</sup> See: Settlement Agreement, online: GrouponClassAction <<http://grouponclassaction.ca/settlement>>; and *Patel v. Groupon Inc.*, 2013 ONSC 6679.

<sup>231</sup> British Columbia, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and *Prepaid Purchase Cards Regulation*, B.C. Reg. 292/2008 (effective November 1, 2008); Alberta, *Gift Card Regulation 146/2008* under *Fair Trading Act*, R.S.A. 2000, Ch. F-2 (in effect November 1, 2008); Saskatchewan, *Consumer Protection Act*, Ch. C-30.1, amended 2008, c.4 at Part IV.6 "Prepaid Purchase Cards" (effective November 10, 2008); Manitoba, *The Consumer Protection Act*, C.C.S.M. c. C200 and *Prepaid Purchase Cards Regulation*, 98/2007 (in effect November 1, 2007); Ontario, *Consumer Protection Act, 2002*, S.O. 2002, Ch. 30 and *Ontario Regulation 17/05* at ss. 25.1 to 25.5 (in effect October 1, 2007); Quebec, Bill 60, *Act Modifying the Consumer Protection Act* (effective June 30, 2010); Nova Scotia, *Gift Card Regulations*, N.S. Reg. 325/2009 under *Consumer Protection Act*, R.S.N.S. 1989, c. 92 (effective February 1, 2010); Prince Edward Island, *Gift Cards Act*, Ch. G-4.1 (effective September 1, 2010); New Brunswick, *Gift Cards Act*, R.S.N.B. c. 165 and *General Regulation*, NB Reg 2008-152 (effective September 1, 2011); Newfoundland and Labrador, *Gift Card Regulation* under the *Consumer Protection and Business Protection Act, Newfoundland and Labrador Regulation 14/11* (effective April 1, 2011).

<sup>232</sup> *Consumer Protection Act, 2002*, S.O. 2002, Ch. 30 and *Ontario Regulation 17/05*.

<sup>233</sup> *Consumer Protection Act, 2002*, S.O. 2002, Ch. 30 and *Ontario Regulation 17/05*. See also: *General Regulation*, N.B. Reg. 2008-152, s. 3(b).

promotional offers and are not subject to the provincial gift card rules.<sup>234</sup> This type of promotional offer exception is also found in the gift card legislation of British Columbia.<sup>235</sup> Quebec's gift card legislation, on the other hand, is so broad that it does not appear to exclude deal site vouchers,<sup>236</sup> nor does the legislation in Nova Scotia.<sup>237</sup> Therefore, the applicability of gift cards laws on deal site vouchers in provincial Acts is generally unclear. Both plaintiffs in *Patel v. Groupon Inc.* and *Amery v. Groupon, Inc.* had claimed that the deal site vouchers were gift cards, but the lawsuits were settled before a court could decide on the matter.

### Other Legislative Rules

Online deal sites must also comply with aspects of the *Competition Act* and provincial consumer protection laws that prohibit deceptive marketing practices and unfair practices such as false, misleading and deceptive representations.<sup>238</sup> Generally, an unfair or deceptive practice takes the form of a claim or representation that would likely mislead the average consumer.

Deal sites must also comply with privacy laws that regulate how organizations in the private sector collect, use and disclose personal information in the course of commercial activities. The federal *Personal Information Protection and Electronic Documents Act (PIPEDA)* applies to group buying websites.<sup>239</sup> Where a privacy practice does not appear to comply with *PIPEDA*, an individual can bring a complaint to the Privacy Commissioner, who must investigate the complaint and publish a finding on the complaint's merits. If the complaint is well-founded, the Privacy Commissioner can make recommendations to bring the company's practices into compliance, but these recommendations are not binding and are only enforceable by the Federal Court in a hearing *de novo*.<sup>240</sup>

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<sup>234</sup> See: Ontario Ministry of Consumer Services, *Group Deal Websites*, online: Government of Ontario <[http://www.sse.gov.on.ca/mcs/en/Pages/group\\_deal.aspx](http://www.sse.gov.on.ca/mcs/en/Pages/group_deal.aspx)>.

<sup>235</sup> *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and *Prepaid Purchase Cards Regulation*, B.C. Reg. 292/2008, s. 2(1)(c).

See also: Consumer Protection B.C., "Group Buying Daily Deals and BC's Gift Card Law" (5 October 2011), online: Consumer Protection BC <[http://www.consumerprotectionbc.ca/blog/item/71-dailydeal\\_gift\\_card\\_law](http://www.consumerprotectionbc.ca/blog/item/71-dailydeal_gift_card_law)>.

<sup>236</sup> *Consumer Protection Act*, R.S.Q., c. P-40.1, ss. 187.1-187.5.

<sup>237</sup> Nova Scotia, *Gift Card Regulations*, N.S. Reg. 325/2009, ss. 2(b), 4(1).

<sup>238</sup> *Competition Act*, R.S.C., 1985, c. C-34 at s. 74.01. See for example Ontario's *Consumer Protection Act, 2002*, S.O. 2002, Ch. 30 at Part III "Unfair Practices".

<sup>239</sup> *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

<sup>240</sup> A hearing *de novo* means the hearing is a fresh application to the Federal Court by the complainant under *PIPEDA*. The complainant bears the burden of demonstrating violations of *PIPEDA*, and the court does not review

Alberta, British Columbia and Quebec have substantially similar laws governing how organizations in the private sector can collect, use and disclose personal information in the course of commercial activities.<sup>241</sup> One notable difference in the provincial regimes is that the provincial Privacy Commissioners have the power to order companies to comply with the law and the laws contain penalties for non-compliance. Critics of *PIPEDA* have lamented the lack of order-making powers for the federal Privacy Commissioner, and the Privacy Commissioner of Canada recently issued a position paper arguing for modernization of *PIPEDA* to include stronger enforcement powers to better protect Canadians.<sup>242</sup>

This examination concludes it remains unclear what laws specifically apply to the Canadian deal site industry, save for federal and provincial privacy laws, as well as provisions of the *Competition Act*. The terms and conditions under deal site contracts leave no room for negotiation on the part of the consumer, thus limiting the effectiveness of applying contract law. There has yet to be a completed judicial case applying provincial consumer protection laws prohibiting “unfair” practices” against Canadian deal sites. Therefore, it remains unclear how provincial consumer legislation would apply to the practices of deal sites. The applicability of regulations regarding gift cards yielded uneven results when applied to deal site vouchers. We found consumers located in the provinces of Quebec and Nova Scotia may be better protected than other Canadians. Given this evidence, it is suggested that Canadian consumers may have to use alternatives to the law in order to seek effective remedies in disputes with deal sites.

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the Privacy Commissioner's report or recommendations. Notably, the Federal Court can award damages, however the Federal Court has only awarded damages in cases under *PIPEDA* sparingly.

<sup>241</sup> Alberta, *Personal Information Protection Act*, P-6.5; British Columbia, *Personal Information Protection Act*, S.B.C. 2003, ch. 63; Quebec, *An Act Respecting the Protection of Personal Information in the Private Sector*, ch. C-39.1.

<sup>242</sup> See Office of the Privacy Commissioner of Canada, "The Case for Reforming the *Personal Information Protection and Electronic Documents Act*" (May 2013), online: [http://www.priv.gc.ca/parl/2013/pipeda\\_r\\_201305\\_e.asp](http://www.priv.gc.ca/parl/2013/pipeda_r_201305_e.asp).

## Section 7 - International approaches to consumer protection with deal sites.

As companies such as Groupon expanded around the world to include a presence in 49 countries,<sup>243</sup> other jurisdictions faced challenges similar to those experienced in Canada. In some of these countries Groupon acquired already existing online deal sites,<sup>244</sup> or formed partnerships with third parties.<sup>245</sup> Still other jurisdictions have seen the rise of “home grown” deal sites, tailored to meet local needs and interests.<sup>246</sup> Regardless of the business strategy and ownership of the website, deal sites caused a rise in customer complaints and interest in regulatory or legal action to prevent misrepresentative practices by the internet sites and those traders with which they did business.<sup>247</sup>

Nevertheless governments and enforcement authorities have raced to respond to consumer complaints about practices by these web companies regardless of whether foreign or domestically owned. While most countries interested in investigating the practices of online deal sites have chosen to use existing laws and legal tools to prosecute parties, fewer have chosen the path of direct regulation over the industry.<sup>248</sup>

### United States

Like the majority of the countries discussed in this paper, U.S. states regulate many of the consumer practices associated with deal sites. In particular, legislation by U.S. states on gift cards and gift certificates seems to be the most common tool used to

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<sup>243</sup> Groupon, online: Groupon.com, < [www.groupon.com](http://www.groupon.com) >.

<sup>244</sup> For example in Europe, Groupon acquired MyCityDeal and operates under this name in the region.

<sup>245</sup> In China Groupon entered the market with Chinese internet company Tencent see: Loretta Chao (February 19, 2011). "[Groupon Appears to Be Gearing Up for China Market](#)". [Wall Street Journal](#).

<sup>246</sup> In Australia, other than Groupon, a number of sites exist including Scoopon, LivingSocial, Cudo and OurDeal. See: John Rolfe, “Deal site websites no longer discounting customer complaints,” online: News.com.au, 26 June, 2013, < <http://www.news.com.au/money/cost-of-living/deal-site-websites-no-longer-discounting-customer-complaints/story-fnagkbpv-1226670331371> >.

<sup>247</sup> A number of examples are detailed below including problems in China and Australia (noted above), UK, USA and South Africa. For details on issues in South Africa see: Wikus Engelbrecht, “Is there a solution to Groupon’s SA woes?” online: Ventureburn, 24 July 2012, <http://ventureburn.com/2012/07/is-there-a-solution-to-groupons-sa-woes/>

<sup>248</sup> The one exception found is China, see Cao Yin, “Online shoppers’ rights ‘must be protected,’” online: China Daily (USA), 15 March 2013, [http://usa.chinadaily.com.cn/epaper/2013-03/15/content\\_16311465.htm](http://usa.chinadaily.com.cn/epaper/2013-03/15/content_16311465.htm)

regulate online deal site practices.<sup>249</sup> While this legislation varies broadly by state, the *Credit Card Accountability Responsibility and Disclosure (CARD) Act* aimed to set out federal protection for consumer interests across the U.S.<sup>250</sup> Title IV of CARD outlines the prohibition of fees or charges for inactivity with regard to a gift certificate, gift card or general-use pre-paid card.<sup>251</sup> This prohibition is limited, however, where: there is 12-months dormancy, there is disclosure of these fees, only one fee is charged per month, and other issuers follow other allowable limits under the law.<sup>252</sup> CARD also generally bans the sale of gift cards with expiration dates.<sup>253</sup> Under the law, a “gift card” is defined as follows:

“an electronic promise, plastic card or other payment code or devise that is:

- (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;
- (ii) issued for a specified amount [...]
- (iii) purchased on a prepaid basis in exchange for payment; and
- (iv) honoured upon presentation [...].”<sup>254</sup>

Under this definition, it appears that deal site vouchers would likely be included in the definition of “gift card.”<sup>255</sup> However, while CARD aims to protect consumers from non-redemption of vouchers, the extent of the consumer protections outlined fail to consider issues related to the cash-value of vouchers as well as cooling-off periods or the inability of the merchant to fulfill the services the consumer has purchased through a deal site website.

Perhaps the most cited, and strongest examination, of deal site vouchers under U.S. federal and state law was undertaken by Benjamin Edelman, an associate professor at Harvard Business School and a lawyer, and Paul Kominers, Edelman’s research student: *Consumer Protection in Online Discount Voucher Sales*.<sup>256</sup> Edelman and

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<sup>249</sup> See both: Benjamin Edelman and Paul Kominers, *Consumer Protection in Online Discount Voucher Sales*, online: BenEdelman.org (blog), 14 June 2011, <<http://www.benedelman.org/voucher-consumer-protection/>>; and Rocky Agrawal, *Daily Deal Providers May Be Violating Consumer Protection Laws*, online: TechCrunch, 15 June 2011, <<http://techcrunch.com/2011/06/15/daily-deal-consumer-protection-laws/>>.

<sup>250</sup> See: “Gift Cards and Gift Certificates Statutes and Recent Legislation,” online: National Conference of State Legislatures, updated 15 March 2013, <<http://www.ncsl.org/research/financial-services-and-commerce/gift-cards-and-certificates-statutes-and-legis.aspx>>. This website lists comparable legislation among the 50 states.

<sup>251</sup> *Credit Card Accountability Responsibility and Disclosure Act 2009*, 111<sup>th</sup> Congress Public Law 24, Title IV, (b) (1).

<sup>252</sup> *Ibid*, Title IV, (b) (2).

<sup>253</sup> *Ibid*, Title IV, (c) (1).

<sup>254</sup> *Ibid*, Title IV, (a) (2)(C) (i)-(iv).

<sup>255</sup> Edelman and Kominers generally support this finding, noting only that the gift card provision does not include “promotional gift cards.” Such cards are defined as cards given for loyalty or other promotional purposes. Groupon and other deal site vouchers do not include these stated purposes in their terms and conditions, and are likely not, therefore, “promotional gift cards.”

<sup>256</sup> See Edelman above.

Kominers highlight several areas of potential legal violation by Groupon, in particular, and its partner merchants including:

- Restrictions on discounting alcoholic beverages through deal site websites (in Massachusetts, Texas and California)
- Prohibitions on short-term expirations of vouchers (in CARD, Massachusetts, California, Connecticut)
- Restrictions on “abandoned property” or the non-redemption of vouchers (in Illinois, New York)
- Cash back rights (in California, Colorado, Maine, Massachusetts, Montana, Rhode Island, Vermont, Washington)
- Sales tax provisions, which require purchasers to pay tax above and beyond the costs of the voucher (in Massachusetts, California, Florida, Illinois, Texas)
- Risks to consumers in the process of redemption including merchant practices for noting the use of a voucher
- Liability for merchant’s non-performance
- Special obligations related to travel purchases (noting California law in particular).<sup>257</sup>

As Edelman and Kominer’s article examines the extent of U.S. law on consumer rights and protections related to deal sites, they are able to show the patchwork of protections available to consumers in various states, with some nationwide consideration for consumers under CARD. They point out that this also creates difficulties for a nationwide online service such as Groupon to be compliant. Yet, the authors ultimately conclude: “In our view, voucher vendors err in ignoring applicable consumer protection law or attempting to disclaim their way out of compliance with legal requirements. With a multi-billion-dollar valuation and more than 7,000 employees, Groupon is particularly well-positioned to review applicable laws.”<sup>258</sup> As for US consumer protections, Edelman and Kominer conclude:

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<sup>257</sup> *Ibid.*

<sup>258</sup> *Ibid.*

[...] our sense is that additional rules are appropriate when consumers offer prepayment. Experience reveals that prepayments create substantial complexity and risk of dispute: When a consumer offers advance payment in anticipation of service to be provided later, the consumer has little practical recourse if a merchant ultimately falls short. By exploiting consumers' overly-optimistic aspirations for when they will redeem their prepayments, sellers can convince consumers to accept short expirations they will systematically fail to redeem in time.<sup>259</sup>

To date, no separate legislation at the national or state-level has been established to deal specifically with the issues raised by Edelman and Kominer.

## Australia

As in Canada and the US, states in Australia (as opposed to the national-federal government) have the constitutional power to regulate and legislate with regard to contractual and consumer issues. Because of this all of the major Australian states and territories made efforts to respond to consumer concerns about deal sites. However, unlike Canada and the US, in Australia the *Competition and Consumer Act* of 2010 provides that businesses may not accept money in exchange for goods or services that are not provided.<sup>260</sup> Under agreement with all of the states and territories in Australia, this single regime for general consumer protection guides the actions, investigations and prosecution of deal sites and merchants. It is this national regime that provides the basis for Australian state enforcement of law around deal site initiatives.<sup>261</sup>

Australian law also prevents businesses from producing misleading advertising about the types of goods, and the cost of goods,<sup>262</sup> which have been used to investigate online deal sites.<sup>263</sup> Yet, since oversight in this area is left to the Australian states, as

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<sup>259</sup> *Ibid.*

<sup>260</sup> *Competition and Consumer Act* 2010, Vol. 3, Ch. 3, Part 3-1, Div. 1, 36 (1). Effective as of January 1 2011. This law is available across the Australian states by agreement between the federal government and the states and territories in the *Intergovernmental Agreement for the Australian Consumer*, agreement between the Commonwealth of Australia, the State of New South Wales, State of Victoria, State of Queensland, State of Western Australia, State of South Australia, State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, 2 July 2009.

<sup>261</sup> For example, see the state of Victoria: "Deal site and daily deals," online: Consumer Affairs Victoria, <<http://www.consumer.vic.gov.au/shopping/daily-deals-and-gift-vouchers/deal-site-and-daily-deals>>; and "Deal site," online: Office of Fair Trading, Queensland Government, <<http://www.fairtrading.qld.gov.au/deal-site.htm>>.

<sup>262</sup> *Competition and Consumer Act* 2010, Vol. 3, Ch. 3, Part 3-1, Div. 1, 29 (1).

<sup>263</sup> "What's the deal with coupon websites?" online: Department of Commerce, Government of Western Australia, <[http://www.commerce.wa.gov.au/consumerprotection/content/consumers/Whats\\_the\\_deal\\_with\\_coupon\\_we.html](http://www.commerce.wa.gov.au/consumerprotection/content/consumers/Whats_the_deal_with_coupon_we.html)>.

well as complaints and some enforcement of the national regime, considerable confusion and misunderstanding among consumers about their rights may still occur.

In order to avoid consumer confusion and increase trust in deal sites across Australia, the Association for Data-driven Marketing and Advertising (ADMA) introduced the *Australian Group buying Code of Practice*.<sup>264</sup> This voluntary code of conduct includes signatories from Australia's largest deal site websites such as Groupon, Living Social, Scoopon, and Cudo. Among other things, the Deal site Code of Conduct mandates that deal site platforms:

- Must comply with all relevant Australian laws, including the *Competition and Consumer Act 2010*, the *Privacy Act 1988* and the *Spam Act 2003*;
- Should promote the offer in clear and easy-to-read language;
- Must provide consumers with accurate information about each offer;
- Must include specific information in their terms and conditions;
- Must take all reasonable steps to ensure that they do not knowingly sell vouchers for a quantity of a product which exceeds the number available from the merchant;
- Must have a refund policy that will state when a refund will be given and in what form, including specific examples. This refund policy must be easily accessed throughout the purchase process; and
- Must display details on the purchase confirmation email of how a consumer can contact the deal site platform to make a complaint, and must have adequate resources to handle the flow of complaints.<sup>265</sup>

The Code also includes a separate, consumer complaint-handling process managed by the ADMA Code Authority.

## *United Kingdom*

The United Kingdom (UK) stands out among those countries considered here as a jurisdiction where there has been strong interest in enforcing consumer protections relating the deal sites. Although a number of jurisdictions examined expressed interest, few actually undertook investigations or actions against deal sites. In the UK, different agencies have investigated deal sites either in response to complaints or on their own initiative.

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<sup>264</sup> ADMA, *Australian Group buying Code of Practice 2013*, online: ADMA <<http://www.adma.com.au/assets/Uploads/Comply-Documents/GroupBuyingCode.pdf>>.

<sup>265</sup> *Ibid*, ss. 3.1, 4.1.1, 4.1.3, 4.1.5, 4.1.9(a), 4.3.2, 4.3.5, 7.1, 7.2.

In 2010, the Office of Fair Trading (OFT) launched an investigation into whether deal site Groupola.com had engaged in bait advertising and unfair commercial practices when it advertised that it would be selling a limited number of SIM free Apple iPhone 4 handsets for £99 (normal retail price £499). In order to be eligible to purchase the handset, consumers had to be a Groupola subscriber and sign up to receive daily Groupola alerts. As a result, 14,561 consumers subscribed to be eligible for the sale.

During the sale, Groupola displayed a progress bar which showed that 202 iPhones had been bought and that there were still over half the amount available. Soon after the promotion concluded, Groupola's owner, Markco Media, confirmed that it had 200 handsets and that they had all sold out. In reality, when questioned by the OFT, Markco Media stated that it only had eight handsets in total available for purchase. In a finding released in 2011, the OFT alleged that Groupola had breached several provisions under the *Consumer Protection from Unfair Trading Regulations 2008*<sup>266</sup> by – among other things – publishing inaccurate information on the availability and quantity of the product, carrying out advertising and promotion of the sale that was very disproportionate to the actual number of iPhone 4 handsets available for purchase, and contravening professional diligence requirements, which was likely to distort the economic behaviour of the average consumer.<sup>267</sup> Markco Media signed undertakings agreeing to not continue or repeat the alleged conduct of concern.

A 2011 decision by the UK Advertising Standards Authority (ASA) also concluded that Groupon, operating as MyCityDeal, had engaged in misleading advertising, substantiation, and exaggeration with respect to a sales promotion for eyelash extensions. The promotion had offered to sell the eyelash extension treatment for £24 instead of £90. The ASA found that normal charges for the treatment only varied between £65 and £89 and Groupon did not have evidence to show that the salon normally charged £90 for the service. The ASA held that the Groupon offer had exaggerated the value of the treatment (and thus the savings created by the offer), and was consequently misleading.<sup>268</sup> The ASA ultimately referred Groupon to the OFT for further adjudication<sup>269</sup> due to suspected breaches against the *Consumer Protection from Unfair Trading Regulations*,<sup>270</sup> the *Unfair Terms in Consumer Contracts*

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<sup>266</sup> No. 1277.

<sup>267</sup> See: Office of Fair Trading, *Investigation into Bait Advertising and Unfair Commercial Practices in Relation to an Online Sale* (2011), online: OFT <<http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/bait-advertising/#.Uo4-UeK1ZGw>>.

<sup>268</sup> See: Advertising Standards Authority, *ASA Adjudication on MyCityDeal Ltd t/a Groupon UK* (2011), online: ASA <[http://www.asa.org.uk/Rulings/Adjudications/2011/6/MyCityDeal-Ltd/TF\\_ADJ\\_50627.aspx](http://www.asa.org.uk/Rulings/Adjudications/2011/6/MyCityDeal-Ltd/TF_ADJ_50627.aspx)>.

<sup>269</sup> Office of Fair Trading, *Investigation into the trading practices of MyCityDeal Limited (trading as Groupon UK)*, online: OFT, case reference number CRE-E-26964, June 2012, <<http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/groupon/#.Uo-qcsQ3tUp>>.

<sup>270</sup> See above (ftnt 23).

*Regulations*,<sup>271</sup> *Consumer Protection (Distance Selling) Regulations*<sup>272</sup> and the *Enterprise Act*.<sup>273</sup> OFT's investigation concluded in June 2012 with Groupon pledging to legal undertakings related to its practices, as well as compliance and consumer complaints monitoring undertaken by the ASA and Groupon.<sup>274</sup>

## **New Zealand**

In New Zealand the federal government maintains control over consumer interests including online deal sites. Like the other states discussed above, New Zealand has chosen to use existing legal frameworks to provide consumer protection when purchases occur online. Like many other countries, deal sites exploded in New Zealand by 2011 with one report noting over 80 websites offering daily deals that year.<sup>275</sup> This led to speculation and fears that many of these sites would not be able to continue into the future, leaving consumers unable to retrieve or use their purchases.<sup>276</sup>

Consumer Affairs, an office of the government of New Zealand, offers tips to consumers about "Daily deal group buying sites."<sup>277</sup> Citizens of New Zealand are protected under both the *Consumer Guarantees Act*<sup>278</sup> and the *Fair Trading Act*.<sup>279</sup> The *Consumer Guarantees Act* ensures that goods that consumers receive are of acceptable quality, while the *Fair Trading Act* protects consumers by ensuring businesses cannot mislead or deceive, as well as prohibiting the practice of selling goods and services without the intention of fulfilling a contract. Where any of these incidences occur, the Commerce Commission of New Zealand can investigate and prosecute offending businesses. Where a consumer generally remains unsatisfied with a transaction and neither the deal site nor the trader-business is providing a sufficient answer to a consumer dispute, citizens may also turn for assistance to the Commerce Commission and take disagreements to the Disputes Tribunal.<sup>280</sup>

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<sup>271</sup> *The Unfair Terms in Consumer Contracts Regulations* 1999 No. 2083.

<sup>272</sup> *The Consumer Protection (Distance Selling) Regulations* 2000 No. 2334.

<sup>273</sup> *Enterprise Act* 2002 c. 40.

<sup>274</sup> See OFT investigation (above).

<sup>275</sup> Karyn Scherer, "Have they got a deal for you," online: *The New Zealand Herald*, 29 April 2011, <

[http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10722221](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10722221)>.

<sup>276</sup> *Ibid.*

<sup>277</sup> "Daily deal deal site sites," online: Consumer Affairs (New Zealand), < <http://www.consumeraffairs.govt.nz/for-consumers/shopping/where-you-buy/daily-deal-deal-site-sites> >.

<sup>278</sup> *Consumer Guarantees Act*, 1993 No 91.

<sup>279</sup> *Fair Trading Act*, 1986 No 121.

<sup>280</sup> See the Consumer Affairs website above: "Daily deal deal site sites," online: Consumer Affairs (New Zealand), < <http://www.consumeraffairs.govt.nz/for-consumers/shopping/where-you-buy/daily-deal-deal-site-sites> >.

## *International perspectives on regulation & deal sites*

As outlined in the information above, concerns about deal sites, specifically compliance of vouchers with consumer protection laws, may be seen in countries around the world. Like Canada, jurisdiction over consumer protection laws is often split between the federal-national and state or provincial governments. This has the potential to create a patchwork of protections for consumers. In their efforts to coordinate consumer protections, Australia is unique and should be applauded for its agreement among the states, territories and Commonwealth government. However, Australia seems to be the exception.

Further, none of the states examined here have made efforts to directly legislate or regulate the actions of online deal sites or merchants engaging in these activities. Governments have generally relied on current consumer protection laws to guard against misrepresentations and poor practices among these sites. For these governments, this is possible through the breadth of legislation which is framed broadly enough to capture various types of activity, including that of online retailers such as Groupon. While the United States has created gift-card specific provisions within its legislation, these tend to exemplify the farthest reaching provisions to which most legislators are willing to provide legal oversight. This is despite the recommendations of academics, including Edelman and Kominers, that guidelines and legislation specific to the industry represent the best possible way to fully protect consumer interests.

## Section 8 – Conclusion & Recommendations

This review revealed a Canadian deal site industry that appears vibrant and evolving. As the industry continues a consolidation process, the evidence gathered suggests the Canadian deal site industry is more responsive to the needs of consumers than it was just a few short years ago. Canadian retailers are inclined to participate in the deal site industry for a number of reasons, including efforts to expand their customer base or increase their visibility. The deal site industry positions itself to retailers as an alternative to traditional marketing and distribution channels. Meanwhile, in addition to price and convenience, consumers cite exposure to new and local deals as reasons to engage in the deal site industry. The most popular items purchased through Canadian deal sites include restaurant deals, as well as spa and health packages.

Electronic message remain the primary distribution source for Canadian deal sites, which is convenient for consumers, for the moment. The current challenge for deal sites is creating tactics to remain relevant in an effort to retain their client base. This is due to the large number of competitors employing the same basic model within the Canadian deal site market. While the evidence provided suggests there is room for growth in the Canadian deal site industry, techniques employed in other jurisdictions to engage consumers are struggling to enter the Canadian market.

For instance, text messaging and location-based advertising are used by deal sites in the United States and elsewhere to engage consumers. While there is evidence a growing number of Canadians are using their wireless device to view and respond to deal site offers, text message-based and wireless applications such as Rogers Alerts and Samy are just beginning to impact the Canadian deal site market. Other incentives employed by deal sites in the United States to retain customers, yet to be introduced in Canada, include deal site loyalty programs and deal site-branded credit cards. For consumers, a number of these initiatives represent potential missed opportunities.

For Canadian deal sites, the interest of the banking and credit card industries presents both a partnership opportunity and a potential challenge. A number of banks in the United States have entered the deal market on their own using a technique labeled card-linking. This technique allows for consumers to avoid printing off deal coupons and presenting them at participating retailers, potentially removing any irritants relating to the physical redemption of deal site offers.

On the whole, Canadian consumers appear to trust deal site providers. However, that trust remains limited in nature, since focus group analysis reveals Canadian consumers generally spent between \$25 and \$40 on a deal site offer. We contend the growing

pains encountered during the introduction of deal sites into Canada has left a mark on the collective trust of consumers. For consumers, this mistrust was usually generated as a result of a negative redemption experience. While many consumers remain engaged in the deal site industry, their previous experience has made them wary of lengthy terms and other conditions associated with deal site offers. However, we believe recent efforts undertaken by deal site providers to respond to consumer concerns have done a great deal to alleviate hesitation. In exchange for their deal site patronage, Canadian consumers expect a comprehensive refund policy, clearly understood terms and conditions for each offer, and a complaint resolution process to assist them if they encounter redemption issues.

Consumers were also concerned about retailers participating in the deal site industry, noting they were occasionally mistreated in comparison to regular customers. Moreover, wait times for the redemption of deal site offers was also raised as a consumer concern during this investigation. While in most cases, the offer was eventually redeemed, it was not always to the satisfaction of consumers. Although the actions of a retailer have little to do with the conduct of the deal site, it's clear these actions can impact the reputation of a deal site.

We found that, in the minds of consumers, the retailer and the deal site share responsibility for ensuring consumers are able to redeem any deal site offer in a timely fashion. For their own benefit, as well as the benefit of consumers, we suggest deal site providers continue to undertake due diligence when negotiating a deal site offer with a retailer. If necessary, deal sites should limit the number of deal vouchers offered under any given deal so consumers will not experience avoidable redemption challenges. In addition, deal sites should consider limiting the number of offers issued by a single retailer to ensure the expected consumer demand generated by a series of deal site offers can be adequately met. By having both retailers and deal sites acting in a responsible manner, it will ensure greater confidence in the deal site industry is held by all stakeholders going forward.

While a number of consumers prefer not to have deal site vouchers expire, we contend that consumers view expiry dates as a necessary evil, as long as they remain valid for at least 6 months, preferably a year. An issue of potentially deeper concern unveiled by this examination was the consumer perception that deal site vouchers retained their face value, even after expiry, regardless of location or which deal site was used to purchase the offer. After comparing the policies of a number of deal sites, we conclude a universal rule amongst major Canadian deal sites should be introduced allowing redemption of deal site vouchers for their face value once they have expired. This industry-led agreement would alleviate consumer confusion, and generate greater consumer confidence in the Canadian deal site industry. The treatment of expired

vouchers is an area where major Canadian deal sites could collaborate for the benefit of consumers.

Another area where major Canadian deal sites could collaborate for consumers is a universal approach to refunds. When consumers experienced an unsatisfactory deal, we found each deal site has its own refund policy – revealing two general trends. Deal sites either issued a refund within 7-10 days of purchase, or the return was handled on a case-by-case basis and determined by the deal site. While deal sites are usually being open to refunding consumers due to unforeseen circumstances, an undertaking to produce a single shared approach by major Canadian deal sites would create consumer certainty.

We suggest that, in an effort to generate greater consumer confidence, Canadian deal sites consider collecting and displaying consumer feedback ratings for the retailer and deal site involved in each deal site offer. Providing consumers the opportunity to provide feedback ratings on each offer purchased will help ensure every deal site offer is responsible going forward. Under this model, consumers could use these feedback metrics to assist them in determining the viability of future offers. Retailers could use the same information in consideration of future offers to increase effectiveness and ensure greater consumer satisfaction. Deal sites would be quickly armed with consumer satisfaction data they could employ in the solicitation of future offers from retailers. In addition, the data could indicate deals that require further scrutiny. This analysis may include the number of vouchers offered as well as which retailers require monitoring. This would benefit consumers and ensure the reputation of the deal site is not being hindered by the retailers they partner with or the offers they choose to promote to consumers.

This examination concluded that it was unclear if any laws or regulations specifically applied to deal site offers in Canada. Contract law was considered, but ultimately dismissed since the terms and conditions under deal site contracts leave no room for negotiation on the part of the consumer. It is possible that certain provincial consumer protection laws prohibiting “unfair practices” could be applicable to Canadian deal sites. However, there has yet to be a judicial decision on case brought forward against a Canadian deal site, making it unclear how provincial consumer legislation would apply. Gift card laws were reviewed, given the perception by some consumers that deal site vouchers retained their face value even after expiry. However, we found the applicability of these regulations to deal site offers to be uneven. It is possible that consumers would be afforded protection in some provinces, such as Quebec and Nova Scotia, but not in others.

When faced with uncertainty regarding the applicability of laws to deal sites, Canadian consumers are not alone. None of the four international jurisdictions reviewed here have made efforts to federally legislate the actions of deal sites. Instead, the governments of these nations have relied on existing consumer protection laws to guard against misrepresentations and poor practices. In many instances, this has resulted in a patchwork of protections for consumers, similar to what exists in Canada. In this instance, Australia must be singled out for recognition. The Australian deal site industry took matters into their own hands and collaborated to create a voluntary code of practice, complete with a separate complaint resolution process.

## Recommendations

After consideration of the evidence gathered during this examination of the deal site industry, PIAC makes the following recommendations in an effort to provide greater certainty for Canadian consumers.

- That Canadian deal site industry leaders collaborate to create an industry body to address issues of commonality when required. If possible, this body should issue entry bonds for each member and new entrant to be held in a fund similar to Ontario's Travel Industry Compensation Fund, to be disbursed in the event a member unexpectedly withdraws from the Canadian deal site market.
- That leaders of the Canadian deal site industry collaborate to create a universal industry standard allowing the redemption of deal site vouchers for their face value once they have expired.
- That leaders of the Canadian deal site industry collaborate to create a universal industry standard regarding the period of validity for deal site offers. PIAC suggests this period be for one year after date of purchase.
- That leaders of the Canadian deal site industry collaborate to create a universal industry standard regarding the refund of a deal site offer.
- That Canadian deal site providers collect and display cumulative consumer ratings feedback for the retailer and deal site involved in each deal site offer. Under this model, consumers could use feedback metrics to assist them in determining whether to purchase future offers.
- That Canadian deal site providers continue to undertake due diligence when negotiating a deal site offer with a retailer. If necessary, deal sites should limit the number of deal vouchers offered under any given deal. In addition, deal sites should consider limiting the number of offers issued by a single retailer. Both of these recommendations are made to prevent consumers from incurring avoidable redemption challenges.