

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
(702) 257-1483

1 **HOWARD & HOWARD ATTORNEYS PLLC**
2 Kimberly P. Stein, Esq.
3 (Nevada Bar No. 8675)
4 Wells Fargo Tower, Suite 1000
5 3800 Howard Hughes Parkway
6 Las Vegas, Nevada 89169-5980
7 Telephone: (702) 257-1483
8 Facsimile: (702) 567-1568
9 Email KStein@HowardandHoward.com

7 **HOWARD & HOWARD ATTORNEYS PLLC**
8 Patrick M. McCarthy (Michigan Bar No. P49100) (*pro hac vice admitted*)
9 One North Main Building, Suite 410
10 101 North Main Street
11 Ann Arbor, Michigan 48104-1475
12 Telephone: (734) 222-1483 | Fax: (734) 761-5957
13 Email: PMcCarthy@HowardandHoward.com

14 *Attorneys for Plaintiff Konami Gaming, Inc.*

15
16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18
19 KONAMI GAMING, INC., a Nevada
20 corporation,

21 Plaintiff,

22 v.

23 Marks Studios, LLC d/b/a Gimmie Games, a
24 Georgia limited liability company,

25 Defendant.

Case No.: 2:14-CV-01485- JAD-CWH

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

JURY DEMAND

26 Plaintiff, KONAMI GAMING, INC. (“Konami”), for its Complaint against
27 Marks Studios, LLC d/b/a Gimmie Games (hereinafter “Defendant”), alleges as follows:
28

NATURE OF THE ACTION

1
2 1. This is an action for patent infringement under 35 U.S.C. §§ 271,
3 283, 284 and 285.
4

THE PARTIES

5
6 2. Plaintiff Konami is a Nevada corporation having a principal place of business
7 at 585 Konami Circle, Las Vegas, Nevada 89119.
8

9 3. On information and belief, Defendant Marks Studios, LLC d/b/a Gimmie
10 Games is a Georgia limited liability company having a principal place of business at 160
11 Clairemont Avenue, Suite 340, Decatur, GA 30030.
12

JURISDICTION AND VENUE

13 4. This Court has subject matter jurisdiction over this matter pursuant to
14 28 U.S.C. §§ 1331 and 1338(a).
15

16 5. On information and belief, Defendant is subject to personal jurisdiction in the
17 District of Nevada (the “District”), consistent with the principles of due process and the Nevada
18 Long Arm Statute, because Defendant operates and offers their products for sale in this District
19 including at the G2E Gaming Conference in Las Vegas where Defendant displayed, used and
20 offered for sale to potential customers , manufacturers , and distributors, have transacted business
21 in this District with local distributors and manufacturers, have committed and/or induced acts of
22 patent infringement in this District, and/or have placed infringing products into the stream of
23 commerce through established distribution channels with the expectation that such products will
24 be purchased by residents of this District.
25

26 6. Venue over Defendant is proper in this judicial district under 28 U.S.C.
27 §§ 1391(d) and 1400(b).
28

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,096,869

1
2 7. Konami restates the allegations contained in paragraphs 1-6.

3 8. Konami is the owner by assignment of all right, title, and interest in U.S.
4 Patent No. 8,096,869 (the ‘869 patent), entitled “Gaming Machines with Runs of Consecutive
5 Identical Symbols,” duly and properly issued by the U.S. Patent and Trademark Office on
6 January 17, 2012. Copies of the ‘869 patent and the assignment document are attached as
7 **Exhibit A.**

8
9 9. Defendant has in the past, or is currently, directly infringing the claims of the
10 ‘869 patent under 35 U.S.C. § 271(a) by making, using, offering for sale, or selling without
11 Konami’s authority, games that embody one or more of the claims of the ‘869 patent.

12
13 10. At least upon the filing of this Complaint, Defendant is inducing and
14 contributing to the direct infringement of the ‘869 patent claims in violation of 35 U.S.C.
15 §§ 271(b) and (c), by making, using, offering for sale, or selling without Konami’s authority,
16 games with knowledge of the ‘869 patent and its claims; knowing that others will use their
17 games in their own games and as such will use the games in an infringing manner; knowing
18 that their games are a material part of the invention claimed in the ‘869 patent; knowing that
19 their games are especially made or especially adapted for use in an infringement of the ‘869
20 patent; and knowing that their games are not staple articles or commodities of commerce that
21 are suitable for substantial non-infringing use.

22
23
24 11. By way of example and not limitation, Defendant has in the past, or is
25 currently, making, using, offering for sale, or selling games that include a “Max Stacks/Max
26 Stacks Plus” feature that directly infringe at least claims 1 and 19 of the ‘869 patent.
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28

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1 12. By way of example and not limitation, Defendant has in the past, or is
2 currently, making, using, offering for sale, or selling games that include the “Max Stacks/Max
3 Stacks Plus” feature that their customers use to directly infringe at least claims 1 and 19 of the
4 ‘869 patent.
5

6 13. By way of example and not limitation, Defendant has in the past, or is
7 currently, making, using, offering for sale, or selling or providing games to manufacturers or
8 distributors who are making, using, offering for sale, or selling at least the following games
9 that include the “Max Stacks/Max Stacks Plus” feature that directly infringe at least claims 1
10 and 19 of the ‘869 patent: Sky Rider: Golden Amulet, Sky Rider: Silver Treasure, Temple of
11 the Tiger: Tiger King, Temple of the Tiger: Tiger Queen, Storm Queens: Thunder Queen,
12 Storm Queens: Frost Queen, Storm Queens: Flame Queen, Storm Queens: Sand Queen, Moon
13 Maidens: Selene, Moon Maidens: Mona, Pearl Warriors: Golden South Sea, and Pearl
14 Warriors: Ayoka’s Treasure.
15

16 14. By way of example and not limitation, Defendant has in the past, or is
17 currently, making, using, offering for sale, or selling Sky Rider: Golden Amulet, Sky Rider:
18 Silver Treasure, Temple of the Tiger: Tiger King, Temple of the Tiger: Tiger Queen, Storm
19 Queens: Thunder Queen, Storm Queens: Frost Queen, Storm Queens: Flame Queen, and
20 Storm Queens: Sand Queen games that directly infringe at least claims 1 and 19 of the ‘869
21 patent.
22

23 15. By way of example and not limitation, Defendant has in the past, or is
24 currently, making, using, offering for sale, or selling or providing games to manufacturers or
25 distributors who are making, using, offering for sale, or selling Sky Rider: Golden Amulet,
26 Sky Rider: Silver Treasure, Temple of the Tiger: Tiger King, Temple of the Tiger: Tiger
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28

1 Queen, Storm Queens: Thunder Queen, Storm Queens: Frost Queen, Storm Queens: Flame
2 Queen, and Storm Queens: Sand Queen games that their customers use to directly infringe at
3 least claims 1 and 19 of the '869 patent and operate at such properties in Clark County,
4 Nevada as the Sunset Station Hotel & Casino and Aria Resort and Casino.
5

6 16. Defendant's infringing activities are directly and proximately causing
7 immediate and irreparable injury to Konami for which Konami has no adequate remedy at
8 law.

9 17. Defendant will continue their infringing activities unless enjoined from doing
10 so by the Court.
11

12 18. Defendant's infringing activities have and continue to directly and proximately
13 cause damages to Konami.

14 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,366,540**

15 19. Konami restates the allegations contained in paragraphs 1-6.

16 20. Konami is the owner of all right, title, and interest in U.S. Patent No.
17 8,366,540 (the '540 patent), entitled "Gaming Machines with Runs of Consecutive Identical
18 Symbols," duly and properly issued by the U.S. Patent and Trademark Office on February 5,
19 2013. A copy of the '540 patent is attached as **Exhibit B**.
20

21 21. Defendant has in the past, or is currently, directly infringing the claims of the
22 '540 patent under 35 U.S.C. § 271(a) by making, using, offering for sale, or selling without
23 Konami's authority, games that embody one or more of the claims of the '540 patent.
24

25 22. At least upon the filing of this Complaint, Defendant is inducing and
26 contributing to the direct infringement of the '540 patent claims in violation of 35 U.S.C.
27 §§ 271(b) and (c), by making, using, offering for sale, or selling without Konami's authority,
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1 games with knowledge of the '540 patent and its claims; knowing that others will use their
2 games in their own games and as such will use the games in an infringing manner; knowing
3 that their games are a material part of the invention claimed in the '540 patent; knowing that
4 their games are especially made or especially adapted for use in an infringement of the '540
5 patent; and knowing that their games are not staple articles or commodities of commerce that
6 are suitable for substantial non-infringing use.
7

8 23. By way of example and not limitation, Defendant has in the past, or is
9 currently, making, using, offering for sale, or selling games that include a "Max Stacks/Max
10 Stacks Plus" feature that directly infringe at least claims 1 and 21 of the '540 patent.
11

12 24. By way of example and not limitation, Defendant has in the past, or is
13 currently, making, using, offering for sale, or selling games that include a "Max Stacks/Max
14 Stacks Plus" feature that their customers use to directly infringe at least claims 1 and 21 of the
15 '540 patent.
16

17 25. By way of example and not limitation, Defendant has in the past, or is
18 currently, making, using, offering for sale, or selling or providing games to manufacturers or
19 distributors who are making, using, offering for sale, or selling at least the following games
20 that include the "Max Stacks/Max Stacks Plus" feature that directly infringe at least claims 1
21 and 21 of the '540 patent: Sky Rider: Golden Amulet, Sky Rider: Silver Treasure, Temple of
22 the Tiger: Tiger King, Temple of the Tiger: Tiger Queen, Storm Queens: Thunder Queen,
23 Storm Queens: Frost Queen, Storm Queens: Flame Queen, Storm Queens: Sand Queen, Moon
24 Maidens: Selene, Moon Maidens: Mona, Pearl Warriors: Golden South Sea, and Pearl
25 Warriors: Ayoka's Treasure.
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1 26. By way of example and not limitation, Defendant has in the past, or is
2 currently, making, using, offering for sale, or selling Sky Rider: Golden Amulet, Sky Rider:
3 Silver Treasure, Temple of the Tiger: Tiger King, Temple of the Tiger: Tiger Queen, Storm
4 Queens: Thunder Queen, Storm Queens: Frost Queen, Storm Queens: Flame Queen, and
5 Storm Queens: Sand Queen games that directly infringe at least claims 1 and 21 of the '540
6 patent.

7
8 27. By way of example and not limitation, Defendant has in the past, or is
9 currently, making, using, offering for sale, or selling or providing games to manufacturers or
10 distributors who are making, using, offering for sale, or selling Sky Rider: Golden Amulet,
11 Sky Rider: Silver Treasure, Temple of the Tiger: Tiger King, Temple of the Tiger: Tiger
12 Queen, Storm Queens: Thunder Queen, Storm Queens: Frost Queen, Storm Queens: Flame
13 Queen, and Storm Queens: Sand Queen games that their customers use to directly infringe at
14 least claims 1 and 21 of the '540 patent and operate at such properties in Clark County,
15 Nevada as the Sunset Station Hotel & Casino and Aria Resort and Casino.

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18 28. Defendant's infringing activities are directly and proximately causing
19 immediate and irreparable injury to Konami for which Konami has no adequate remedy at
20 law.

21
22 29. Defendant will continue their infringing activities unless enjoined from doing
23 so by the Court.

24 30. Defendant's infringing activities have and continue to directly and proximately
25 cause damages to Konami.

26 **COUNT III – INFRINGEMENT OF U.S. PATENT NO. 8,622,810**

27 31. Konami restates the allegations contained in paragraphs 1-6.
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1 32. Konami is the owner of all right, title, and interest in U.S. Patent No.
2 8,622,810 (the ‘810 patent), entitled “Gaming Machines with Replacement of Runs of
3 Symbols Containing Identical Symbols with New Identical Symbols,” duly and properly
4 issued by the U.S. Patent and Trademark Office on January 7, 2014. A copy of the ‘810 patent
5 is attached as **Exhibit C**.

7 33. Defendant has in the past, or is currently, directly infringing the claims of the
8 ‘810 patent under 35 U.S.C. § 271(a) by making, using, offering for sale, or selling without
9 Konami’s authority, games that embody one or more of the claims of the ‘810 patent.
10

11 34. At least upon the filing of this Complaint, Defendant is inducing and
12 contributing to the direct infringement of the ‘810 patent claims in violation of 35 U.S.C.
13 §§ 271(b) and (c), by making, using, offering for sale, or selling without Konami’s authority,
14 games with knowledge of the ‘810 patent and its claims; knowing that others will use their
15 games in their own games and as such will use the games in an infringing manner; knowing
16 that their games are a material part of the invention claimed in the ‘810 patent; knowing that
17 their games are especially made or especially adapted for use in an infringement of the ‘810
18 patent; and knowing that their games are not staple articles or commodities of commerce that
19 are suitable for substantial non-infringing use.
20

21 35. By way of example and not limitation, Defendant has in the past, or is
22 currently, making, using, offering for sale, or selling games that include a “Max Stacks/Max
23 Stacks Plus” feature that directly infringe at least claims 1, 8, and 15 of the ‘810 patent.
24

25 36. By way of example and not limitation, Defendant has in the past, or is
26 currently, making, using, offering for sale, or selling games that include a “Max Stacks/Max
27
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1 Stacks Plus” feature that their customers use to directly infringe at least claims 1, 8, and 15 of
2 the ‘810 patent.

3 37. By way of example and not limitation, Defendant has in the past, or is
4 currently, making, using, offering for sale, or selling or providing games to manufacturers or
5 distributors who are making, using, offering for sale, or selling at least the following games
6 that include the “Max Stacks/Max Stacks Plus” feature that directly infringe at least claims 1,
7 8, and 15 of the ‘810 patent: Sky Rider: Golden Amulet, Sky Rider: Silver Treasure, Temple
8 of the Tiger: Tiger King, Temple of the Tiger: Tiger Queen, Storm Queens: Thunder Queen,
9 Storm Queens: Frost Queen, Storm Queens: Flame Queen, Storm Queens: Sand Queen, Moon
10 Maidens: Selene, Moon Maidens: Mona, Pearl Warriors: Golden South Sea, and Pearl
11 Warriors: Ayoka’s Treasure.

12 38. Upon information and belief, and by way of example and not limitation,
13 Defendant has in the past, or is currently, making, using, offering for sale, or selling Sky
14 Rider: Golden Amulet, Sky Rider: Silver Treasure, Temple of the Tiger: Tiger King, Temple
15 of the Tiger: Tiger Queen, Storm Queens: Thunder Queen, Storm Queens: Frost Queen,
16 Storm Queens: Flame Queen, and Storm Queens: Sand Queen games that directly infringe at
17 least claims 1, 8, and 15 of the ‘810 patent.

18 39. By way of example and not limitation, Defendant has in the past, or is
19 currently, making, using, offering for sale, or selling or providing games to manufacturers or
20 distributors who are making, using, offering for sale, or selling Sky Rider: Golden Amulet,
21 Sky Rider: Silver Treasure, Temple of the Tiger: Tiger King, Temple of the Tiger: Tiger
22 Queen, Storm Queens: Thunder Queen, Storm Queens: Frost Queen, Storm Queens: Flame
23 Queen, and Storm Queens: Sand Queen games that their customers use to directly infringe at
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1 least claims 1, 8, and 15 of the '810 patent and operate at such properties in Clark County,
2 Nevada as the Sunset Station Hotel & Casino and Aria Resort and Casino.

3 40. Defendant's infringing activities are directly and proximately causing
4 immediate and irreparable injury to Konami for which Konami has no adequate remedy at
5 law.
6

7 41. Defendant will continue their infringing activities unless enjoined from doing
8 so by the Court.

9 42. Defendant's infringing activities have and continue to directly and proximately
10 cause damages to Konami.
11

12 **COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 8,616,955**

13 43. Konami restates the allegations contained in paragraphs 1-6.

14 44. Konami is the owner of all right, title, and interest in U.S. Patent No.
15 8,616,955 (the '955 patent), entitled "Gaming machine with runs of symbols populated with
16 identical symbols during spinning of reels," duly and properly issued by the U.S. Patent and
17 Trademark Office on December 31, 2013. A copy of the '955 patent is attached as **Exhibit D**.
18

19 45. Defendant has in the past, or is currently, directly infringing the claims of the
20 '955 patent under 35 U.S.C. § 271(a) by making, using, offering for sale, or selling without
21 Konami's authority, games that embody one or more of the claims of the '955 patent.
22

23 46. At least upon the filing of this Complaint, Defendant is inducing and
24 contributing to the direct infringement of the '955 patent claims in violation of 35 U.S.C.
25 §§ 271(b) and (c), by making, using, offering for sale, or selling without Konami's authority,
26 games with knowledge of the '955 patent and its claims; knowing that others will use their
27 games in their own games and as such will use the games in an infringing manner; knowing
28

1 that their games are a material part of the invention claimed in the ‘955 patent; knowing that
2 their games are especially made or especially adapted for use in an infringement of the ‘955
3 patent; and knowing that their games are not staple articles or commodities of commerce that
4 are suitable for substantial non-infringing use.
5

6 47. By way of example and not limitation, Defendant has in the past, or is
7 currently, making, using, offering for sale, or selling games that include a “Max Stacks/Max
8 Stacks Plus” feature that directly infringe at least claims 1, 10, and 19 of the ‘955 patent.
9

10 48. By way of example and not limitation, Defendant has in the past, or is
11 currently, making, using, offering for sale, or selling games that include a “Max Stacks/Max
12 Stacks Plus” feature that their customers use to directly infringe at least claims 1, 10, and 19
13 of the ‘955 patent.
14

15 49. By way of example and not limitation, Defendant has in the past, or is
16 currently, making, using, offering for sale, or selling or providing games to manufacturers or
17 distributors who are making, using, offering for sale, or selling at least the following games
18 that include the “Max Stacks/Max Stacks Plus” feature that directly infringe at least claims 1,
19 10, and 19 of the ‘955 patent: Sky Rider: Golden Amulet, Sky Rider: Silver Treasure, Temple
20 of the Tiger: Tiger King, Temple of the Tiger: Tiger Queen, Storm Queens: Thunder Queen,
21 Storm Queens: Frost Queen, Storm Queens: Flame Queen, Storm Queens: Sand Queen, Moon
22 Maidens: Selene, Moon Maidens: Mona, Pearl Warriors: Golden South Sea, and Pearl
23 Warriors: Ayoka’s Treasure.
24

25 50. Upon information and belief, and by way of example and not limitation,
26 Defendant has in the past, or is currently, making, using, offering for sale, or selling Sky
27 Rider: Golden Amulet, Sky Rider: Silver Treasure, Temple of the Tiger: Tiger King, Temple
28

1 of the Tiger: Tiger Queen, Storm Queens: Thunder Queen, Storm Queens: Frost Queen,
2 Storm Queens: Flame Queen, and Storm Queens: Sand Queen games that directly infringe at
3 least claims 1, 10, and 19 of the '955 patent.

4
5 51. By way of example and not limitation, Defendant has in the past, or is
6 currently, making, using, offering for sale, or selling or providing games to manufacturers or
7 distributors who are making, using, offering for sale, or selling Sky Rider: Golden Amulet,
8 Sky Rider: Silver Treasure, Temple of the Tiger: Tiger King, Temple of the Tiger: Tiger
9 Queen, Storm Queens: Thunder Queen, Storm Queens: Frost Queen, Storm Queens: Flame
10 Queen, and Storm Queens: Sand Queen games that their customers use to directly infringe at
11 least claims 1, 10, and 19 of the '955 patent and operate at such properties in Clark County,
12 Nevada as the Sunset Station Hotel & Casino and Aria Resort and Casino.

13
14 52. Defendant's infringing activities are directly and proximately causing
15 immediate and irreparable injury to Konami for which Konami has no adequate remedy at
16 law.

17
18 53. Defendant will continue their infringing activities unless enjoined from doing
19 so by the Court.

20
21 54. Defendant's infringing activities have and continue to directly and proximately
22 cause damages to Konami.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Konami Gaming, Inc. prays that this Court:

25 A. Enter judgment for Konami against Defendant declaring that they have
26 infringed U.S. Patent Nos. 8,096,869, 8,366,540, 8,622,810, and 8,616,955;

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(702) 257-1483

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- B. Permanently enjoin and restrain Defendant, their agents, servants, employees, partners, attorneys, successors and assigns, and all those acting in concert with them from infringing, either directly, by inducement or contributorily, U.S. Patent Nos. 8,096,869, 8,366,540, 8,622,810, and 8,616,955;
- C. Enter an Order requiring Defendant to file with this Court and to serve upon Konami or Konami’s counsel, within thirty (30) days after the entry and service of any injunction issued, a report in writing and under oath setting forth in detail the manner and form in which they have complied with the injunction;
- D. Require Defendant post an appropriate bond and Order any other appropriate relief to assure compliance with any injunctive provision or other provision Ordered by the Court;
- E. Enter an Order directing Defendant and their agents, servants, employees, partners, attorneys, successors and assigns, and all those acting in concert with them, to deliver to this Court or to Konami for destruction, or show proof of said destruction, of all infringing products;
- F. Order an equitable accounting to determine the profits of and other sums Defendant derived from the complained of patent infringement and other wrongful acts, and that such amount be paid over to Konami as an equitable remedy;
- G. Award to Konami all damages they have sustained as a result of Defendant’s patent infringement in accordance with 35 U.S.C. § 284; and
- H. Enter judgment granting such other and further relief and damages to Konami as justice and equity may require.

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JURY DEMAND

Konami Gaming, Inc. hereby requests a trial by jury of all issues so triable.

Respectfully submitted,

Dated: February 6, 2015.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Kimberly P. Stein

Kimberly P. Stein (Nevada Bar No. 8675)

Wells Fargo Tower, Suite 1000

3800 Howard Hughes Parkway

Las Vegas, Nevada 89169-5980

Telephone: (702) 257-1483 | Fax: (702) 567-1568

Email: KStein@HowardandHoward.com

HOWARD & HOWARD ATTORNEYS PLLC

Patrick M. McCarthy (Michigan Bar No. P49100)

(pro hac vice admitted)

One North Main Building, Suite 410

101 North Main Street

Ann Arbor, Michigan 48104-1475

Telephone: (734) 222-1483 | Fax: (734) 761-5957

Email: PMcCarthy@HowardandHoward.com

Attorneys for Plaintiff Konami Gaming, Inc.

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
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