

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

ELECTRONIC RECEIPTS DELIVERY
SYSTEMS, LLC,

Plaintiff,

vs.

GNC HOLDINGS, INC.

Defendant.

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Case No:

PATENT CASE

COMPLAINT

Plaintiff Electronic Receipts Delivery Systems, LLC (“Plaintiff” or “ERDS”) files this Complaint against GNC Holdings, Inc. (“Defendant” or “GNC”) for infringement of United States Patent No. 8,534,551 (hereinafter “the ‘551 Patent”).

PARTIES AND JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff is a Texas limited liability company with an office located at 1400 Preston Rd., Suite 400, Plano, TX 75093.

4. Upon information and belief, Defendant is a Delaware corporation with a principal place of business at 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222. This Court has personal jurisdiction over Defendant because Defendant has committed, and continues to

commit, acts of infringement in this District, has conducted business in this District, and/or has engaged in continuous and systematic activities in this District.

5. Upon information and belief, Defendant's instrumentalities that are alleged herein to infringe were and continue to be used, imported, offered for sale, and/or sold in this District.

VENUE

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1400(b) because acts of infringement are occurring in this District and because Defendant has a regular and established place of business in this District. For example, on information and belief, Defendant has a place of business located at 1711 E End Blvd N, Marshall, Texas 75670. On information and belief, Defendant has other regular and established places of business in this District.

COUNT I **(INFRINGEMENT OF UNITED STATES PATENT NO. 8,534,551)**

7. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States and, in particular, under 35 U.S.C. §§ 271, *et seq.*

9. Plaintiff is the owner by assignment of the '551 Patent with sole rights to enforce the '551 Patent and sue infringers.

10. A copy of the '551 Patent, titled "System and Method for Issuing Digital Receipts for Purchase Transactions Over a Network," is attached hereto as Exhibit A.

11. The '551 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

12. Upon information and belief, Defendant has infringed and continues to infringe

one or more claims, including at least claim 11, of the '551 patent by using payment systems that issue digital receipts to customers upon completion of a payment transaction in a manner covered by one or more claims of the '551 Patent. Specifically, Defendant uses point of sale terminals (e.g., Verifone payment device MX915) that incorporate flexReceipts software and/or hardware (the "System"), which issue digital receipts. Defendant has infringed and continues to infringe the '551 patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

13. Regarding Claim 11, the System includes a communication mechanism configured to receive, from a point of sale terminal via a network, information identifying a first credit card account of a customer and information about a transaction. For example, publicly available information indicates that the System (POS and software) receives a first credit card account (e.g., credit card number) and information about a transaction (e.g., amount due). These elements are illustrated below:



Downtown-based GNC Holdings Inc. has started using digital receipts, using a program by a firm called flexReceipts that are sent out as emails to customers, according to Retail Info Systems News.

<http://www.bizjournals.com/pittsburgh/news/2014/06/03/gnc-establishes-new-digital-receipt-program.html>

Simple POS Integration

Our digital receipt technology is easy to embed. It works with any retailer or POS company.

<http://www.flexreceipts.com/>

What is a flexReceipt?

A flexReceipt is a digital version of a receipt. It serves all of the same needs of a paper receipt (returns/exchanges, business expense reporting, taxes, etc). You never have to worry about storing or carrying your receipts again.

<http://www.flexreceipts.com/consumer/faq/>

GNC Selects Verifone for Consumer Engagement at the Point of Sale

Leading health, wellness and sports nutrition retailer future-proofs and upgrades payment infrastructure with Verifone

JANUARY 16, 2014 | SAN JOSE, CA



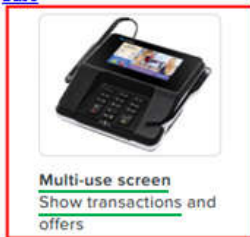
Verifone Systems, Inc. (NYSE: PAY) today announced that it has been selected by GNC Holdings, Inc. (NYSE: GNC), the nation's largest specialty retailer of health, wellness and sports nutrition products, as a partner in their ongoing effort to upgrade their payment network.



GNC will deploy Verifone's newest NFC-enabled multimedia payment device, at more than 3100 of its U.S. retail locations. The payment device will position GNC for potential future endeavors such as EMV payments and point of sale customer marketing.

GNC is familiar with the complexities brought on by the global migration towards EMV. It selected the Verifone payment device as part of its solution roadmap to accept new forms of payment.

<http://www.businesswire.com/news/home/20140116005262/en/GNC-Selects-VeriFone-Consumer-Engagement-Point-Sale>



Multi-use screen
Show transactions and offers

GNC Holdings, the nation's largest specialty retailer of health, wellness and sports nutrition products, will be deploying the MX 915 at more than 3,100 of its U.S. retail locations. The device helps merchants increase in-store sales by delivering powerful multimedia content — such as

<http://www.flexreceipts.com/>



https://revelsystems.com/wp-content/uploads/2015/11/Revel_Verifone-MX915-.pdf

<https://risnews.com/deckers-outdoor-jones-group-and-gnc-select-verifone-pos>

Verifone MX 900 Series



VeriFone's MX 915 delivers a rich media experience with a brilliant, 4.3" color display, powerful processor and generous memory.

- VeriFone HQ software simplifies device management and reduces overall support costs, all while easily integrating into your current environment. It offers device management, diagnostics and content management capabilities
- Web Development Environment (WDE) provides a unique combination of web technology and a secure payment framework for powerful and flexible application development platforms
- Supports end-to-end security with VeriShield total Protect, secured by RSA, which eliminates sensitive cardholder data from the payment device and merchant infrastructure through tokenization

<https://www.aciworldwide.com/-/media/files/collateral/other/verifone-mx915.pdf>

Connectivity

Connect I/O with Ethernet 10/100BaseT, USB host/device, serial interfaces; RS-232, RS-485, IBM Tailgate, WiFi, Bluetooth optional, compatible with existing MX 800 Series cabling solutions

Card Readers

Triple track bi-directional MSR, landed smart card

https://www.verifone.com/sites/default/files/2017-03/mx9_series-ltr-o816.pdf

Use of Electronic Communications

We may communicate with you regarding the Service by means of electronic communications, including (a) sending electronic mail to the email address you provided during registration, or (b) posting notices or communications on the flexReceipts.com website. You agree that we may communicate with you by means of electronic communications the following: these Terms and Conditions (and revisions or amendments), notices or disclosures regarding the Service, receipts, and any other matter relating to your use of the Service. You should maintain copies of electronic communications by printing a paper copy or

<http://www.flexreceipts.com/consumer/terms/>

How it works

- 1 Create a flexReceipts Account**
 - ✓ Register for an account.
 - ✓ Add your Loyalty Cards so that it is easier to identify yourself at the store.
- 2 Request a Digital Receipt**
 - ✓ Ask for a digital receipt when making your purchase at a store that offers flexReceipts.
 - ✓ Provide your registered email address, phone number, loyalty card, or credit card to identify yourself.
- 3 Say Goodbye to the Paper**
 - ✓ Your digital receipt is instantly transferred to flexReceipts.
 - ✓ Log in to your flexReceipts account to easily manage your receipts.

<http://www.flexreceipts.com/consumer/>

Verifone MX 915

- Simple and secure processing of credit, PIN-based debit, EMV-based chip cards and alternative transactions - including NFC/Contactless payments.

<https://www.posim.com/wp-content/uploads/2015/09/Pricing-Sheet-for-email-email.pdf>



<https://www.flexreceipts.com/receipt/showMyAccountCards.htm?disablebar=true>

14. The System also includes at least one database configured to store at least one first credit card account record (e.g., payment information such as credit card number) and at least one associated customer record (e.g., customer flexReceipts account information).

15. The customer record includes an indication of a destination for digital receipts (e.g., email address) wherein the destination is associated with the customer (e.g., the email address is the customer's email address). These elements are illustrated below:



<https://www.flexreceipts.com/receipt/showMyAccountCards.htm?disablebar=true>

How do I receive a flexReceipt?

It requires two steps: (1) First, register yourself in flexReceipts. (2) Second, when asked if you would like a flexReceipt, simply say "Yes" and identify yourself with an email address, phone number, credit card, or loyalty card.

<http://www.flexreceipts.com/consumer/faq/>

(b) PI data is encrypted before being stored in the database

(f) Only partial Credit Card information is received and stored

<http://www.flexreceipts.com/retail/security/>

16. The System also includes one or more computing devices (e.g., server and/or processor onboard the POS) configured to verify the first credit card account for an amount of the transaction (e.g., customer authentication via SSL and identification using credit card).

17. The computing devices also retrieve a first customer record from the at least one database based on the information identifying the first credit card account, and determine the destination associated with the customer. For example, a first customer record (e.g., customer

information such as a phone number) is retrieved from the database based on the account identifying information (e.g., credit card information). Then the computing devices determine the digital receipt destination associated with the customer (e.g., the customer email to which a digital receipt is sent). These elements are illustrated below:

How do I receive a flexReceipt?

It requires two steps: (1) First, register yourself in flexReceipts. (2) Second, when asked if you would like a flexReceipt, simply say "Yes" and identify yourself with an email address, phone number, credit card, or loyalty card.

<http://www.flexreceipts.com/consumer/faq/>

How it works

1 Create a flexReceipts Account

- ✓ Register for an account.
- ✓ Add your Loyalty Cards so that it is easier to identify yourself at the store.

2 Request a Digital Receipt

- ✓ Ask for a digital receipt when making your purchase at a store that offers flexReceipts.
- ✓ Provide your registered email address, phone number, loyalty card, or credit card to identify yourself.

3 Say Goodbye to the Paper

- ✓ Your digital receipt is instantly transferred to flexReceipts.
- ✓ Log in to your flexReceipts account to easily manage your receipts.

<http://www.flexreceipts.com/consumer/>

flexReceipts
Lose The Paper

SIGN OUT MY FLEXACCOUNT

My Receipts
User Settings
Card Registration

Card Registration

Want more flexReceipts?
The more cards you register, the easier it is to receive flexReceipts!

- 1. Grab your loyalty cards.**
These will only be used to identify you.
- 2. Enter Your Card Info**
Select "Loyalty Cards" from the top right, enter your info, and click Save. We'll automatically register credit/debit cards for you. Don't worry, they can't be used for payment.
- 3. Sit back and relax**
When using these registered cards, your receipts will automatically be sent to your flexReceipts account.

We will NEVER spam you or share your personal info. We only store a portion of your credit card info.

Credit or Debit Cards **DONE**

Credit or Debit Card Registration

First Name Last Name

First 6 Digits Last 4 Digits Exp. Date (mm/yy)

Business Name (as it appears on card - if applicable)

DELETE

Registered Cards (click to view details)

VISA 7788 VISA 3304 AMERICAN EXPRESS 2004 AMERICAN EXPRESS 3004

<https://www.flexreceipts.com/receipt/showMyAccountCards.htm?disablebar=true>

FlexReceipts

flexReceipts enables retailers to provide digital receipts.

flexReceipts enables retailers to provide digital receipts. Through its digital receipts database, flexReceipts also offers retailers superior data analytics and a new way marketing medium (i.e. couponing/promoting on the digital receipt).

flexReceipts works with Point-of-Sale (POS) software companies to deploy its technology to retailers. Currently flexReceipts enjoys many relationships with the nation's largest POS companies.

<https://startupgenome.co/organizations/funding/flexreceipts>

Verifone MX 915



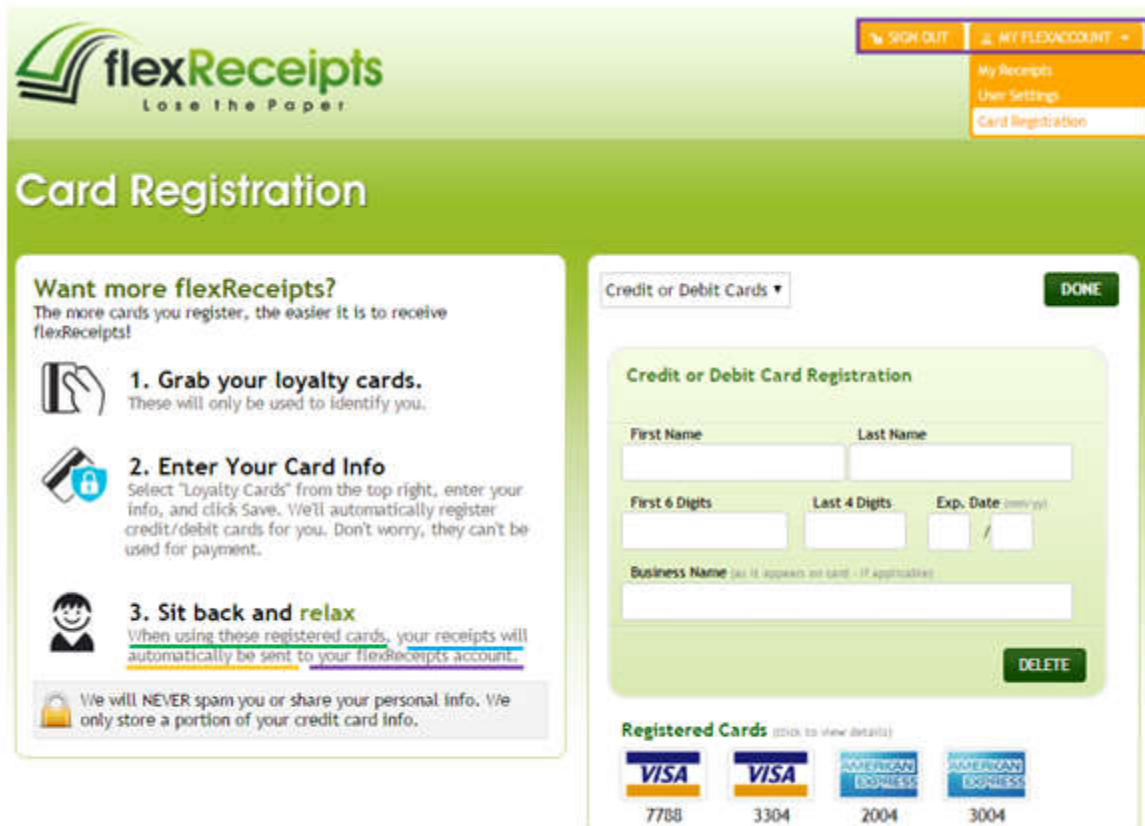
We know your privacy and security are important. Here's our commitment to you:

- (a) Data is securely transported via SSL
- (b) PI data is encrypted before being stored in the database
- (c) Firewalls are utilized to prevent unauthorized access to the system
- (d) Users are required to have unique IDs and passwords for authentication
- (e) Physical access to the data is restricted
- (f) Only partial Credit Card information is received and stored

<http://www.flexreceipts.com/retail/security/>

<https://www.posim.com/wp-content/uploads/2015/09/Pricing-Sheet-for-email-email.pdf>

18. The terminal (e.g., POS and software) is configured to automatically transmit a digital receipt for the transaction to the destination associated with the customer without input from the customer. For example, once a customer is “registered” for digital receipts, a digital receipt is sent to the customer on future transactions without additional customer input. These elements are illustrated below:



<https://www.flexreceipts.com/receipt/showMyAccountCards.htm?disablebar=true>



1. Digital Receipts

Paper just doesn't cut it anymore. These days, digital receipts make the checkout process quicker, help customers keep better track of their purchases, and, of course, they save trees. We at flexReceipts know an electronic receipt can be much more than an email with a total, as companies like Rooms to Go and GNC have discovered. With smart receipts, customers can instantly post

<http://retail.flexreceipts.com/blog/5-ways-retailers-use-tech-to-engage-customers/>

19. Defendant's actions complained of herein will continue unless Defendant is enjoined by this court.

20. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

21. Plaintiff is in compliance with 35 U.S.C. § 287.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

(a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;

(b) Enter an Order enjoining Defendant, its agents, officers, servants, employees, attorneys, and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 8,534,551 (or, in the alternative, awarding Plaintiff running royalties from the time of judgment going forward);

(c) Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;

(d) Award Plaintiff pre-judgment and post-judgment interest and costs; and

(e) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: September 6, 2017

Respectfully submitted,

/s/ Jay Johnson

JAY JOHNSON

State Bar No. 24067322

BRAD KIZZIA

State Bar No. 11547550

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A