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Attorneys for Plaintiffs
ODS TECHNOLOGIES, L.P., d/b/a TVG
NETWORK and ODS PROPERTIES, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ODS TECHNOLOGIES, L.P., d/b/a TVG
NETWORK, a Delaware limited
partnership, and ODS PROPERTIES,
INC., a Delaware corporation,

Plaintiff,

vs.

MAGNA ENTERTAINMENT
CORPORATION, a Delaware corporation;
and HRTV, LLC, a Delaware limited
liability company; XPRESSBET, INC., a
Delaware corporation,

Defendants.

AND RELATED COUNTERCLAIMS

BY:

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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FILED

Case No.: CV 07-03265 DDP (RCx)

**SECOND AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

AND

DEMAND FOR JURY TRIAL

1 Plaintiffs ODS Technologies, L.P. and ODS Properties, Inc. allege for their
2 Second Amended Complaint the following:

3 **THE PARTIES**

4 1. Plaintiff ODS Technologies, L.P. (“ODS”) is a Delaware limited
5 partnership that does business as the TVG Network, with its principal place of
6 business at 6701 Center Drive West, Suite 160, Los Angeles, California 90045.

7 2. Plaintiff ODS Properties, Inc. (also “ODS”) is a Delaware corporation
8 with its principal place of business at 6701 Center Drive West, Suite 160, Los
9 Angeles, California 90045.

10 3. Defendant Magna Entertainment Corporation (“MEC”) is a Delaware
11 corporation with its principal place of business in Ontario, Canada.

12 4. Defendant HRTV, LLC (“HRTV”) is a Delaware limited liability
13 corporation with a place of business in Arcadia, California. On information and
14 belief, MEC owns 50% of HRTV.

15 5. Defendant XpressBet, Inc. (“XpressBet”) is a Delaware corporation
16 with its principal place of business in Washington, Pennsylvania. On information
17 and belief, XpressBet is a wholly-owned subsidiary of MEC.

18 **JURISDICTION AND VENUE**

19 6. This is an action for patent infringement arising under 35 U.S.C. § 1, *et*
20 *seq.* This Court has subject matter jurisdiction over this matter based on 28 U.S.C.
21 §§ 1338(a) and 1331.

22 7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
23 and 1400(b).

24 8. This Court has personal jurisdiction over Defendants by virtue of their
25 systematic, continuous, and routine contact with California. For example, MEC
26 owns and operates Santa Anita Park, in Arcadia, California, and Golden Gate
27 Fields, in Albany, California. HRTV has its principal place of business in
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1 Valencia, California. XpressBet is licensed by the State of California's California
2 Horseracing Board to simulcast horse races and accept wagers from California
3 residents. In 2006, California residents transacted \$50 million in wagers through
4 XpressBet.

5 **PATENTS-IN-SUIT**

6 9. United States Patent No. 6,089,981 ("the '981 patent"), entitled
7 "Interactive Wagering Systems and Processes," was issued July 18, 2000 to
8 Brenner et al., and is owned by ODS Technologies, L.P. A copy of the '981 patent
9 is attached as Exhibit A.

10 10. United States Patent No. 6,554,709 ("the '709 patent"), entitled
11 "Interactive Wagering Systems and Processes," was issued April 29, 2003 to
12 Brenner et al., and is owned by ODS Technologies, L.P. A copy of the '709 patent
13 is attached as Exhibit B.

14 11. United States Patent No. 5,830,068 ("the '068 patent"), entitled
15 "Interactive Wagering Systems and Processes," was issued November 3, 1998 to
16 Brenner et al., and is owned by ODS Technologies, L.P. A copy of the '068 patent
17 is attached as Exhibit C.

18 12. United States Patent No. 6,004,211 ("the '211 patent"), entitled
19 "Interactive Wagering Systems and Processes," was issued December 21, 1999 to
20 Brenner et al., and is owned by ODS Technologies, L.P. A copy of the '211 patent
21 is attached as Exhibit D.

22 13. United States Patent No. 7,229,354 ("the '354 patent"), entitled
23 "Interactive Wagering Systems and Methods for Restricting Wagering Access,"
24 was issued June 12, 2007 to McNutt et al., and is owned by ODS Properties, Inc. A
25 copy of the '354 patent is attached as Exhibit E. The '981, '709, '068, '211 and
26 '354 patents are referred to collectively herein as the "Asserted Patents."

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1 **DEFENDANTS' INFRINGING XPRESSBET AND HRTV SYSTEMS**

2 14. On information and belief, on or about January of 2002, Defendants
3 began marketing and selling racetrack audiovisual and wagering services under the
4 brand names "XpressBet" and "HRTV" to customers in this District and other parts
5 of the United States. Defendants offer these services through at least one
6 interactive wagering system that practices one or more claims of each of the
7 Asserted Patents.

8 **First Claim for Relief**

9 **INFRINGEMENT OF U.S. PATENT NO. 6,089,981**

10 15. Plaintiffs incorporate by reference paragraphs 1 through 14 above, as
11 though fully set forth herein.

12 16. Defendants have directly infringed, contributorily infringed, and/or
13 actively induced infringement of the '981 patent by making, using, importing,
14 offering for sale, and/or selling in the United States an interactive wagering system
15 incorporating technology that practices one or more claims of the '981 patent.

16 17. Defendants' infringement of the '981 patent is without the consent of,
17 authority of, or license from ODS.

18 18. On information and belief, Defendants have been given actual notice
19 of their infringement of the '981 Patent.

20 19. On information and belief, Defendants' infringement of the '981
21 patent has been and continues to be deliberate and willful, and such infringement
22 will continue unless Defendants are preliminarily and permanently enjoined by this
23 Court.

24 20. As a consequence of Defendants' infringement complained of herein,
25 ODS has been damaged and will continue to sustain damages by such acts in an
26 amount to be determined at trial and will continue to suffer irreparable loss and
27 injury.

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Second Claim for Relief

INFRINGEMENT OF U.S. PATENT NO. 6,554,709

21. Plaintiffs incorporate by reference paragraphs 1 through 20 above, as though fully set forth herein.

22. Defendants have directly infringed, contributorily infringed, and/or actively induced infringement of the '709 patent by making, using, importing, offering for sale, and/or selling in the United States an interactive wagering system incorporating technology that practices one or more claims of the '709 patent.

23. On information and belief, Defendants' infringement of the '709 patent is without the consent of, authority of, or license from ODS.

24. On information and belief, Defendants have been given actual notice of their infringement of the '709 Patent.

25. On information and belief, Defendants' infringement of the '709 patent has been and continues to be deliberate and willful, and such infringement will continue unless Defendants are preliminarily and permanently enjoined by this Court.

26. As a consequence of Defendants' infringement complained of herein, ODS has been damaged and will continue to sustain damages by such acts in an amount to be determined at trial and will continue to suffer irreparable loss and injury.

Third Claim for Relief

INFRINGEMENT OF U.S. PATENT NO. 5,830,068

27. Plaintiffs incorporate by reference paragraphs 1 through 26 above, as though fully set forth herein.

28. Defendants have directly infringed, contributorily infringed, and/or actively induced infringement of the '068 patent by making, using, importing, offering for sale, and/or selling in the United States an interactive wagering system

1 incorporating technology that practices one or more claims of the '068 patent.

2 29. Defendants' infringement of the '068 patent is without the consent of,
3 authority of, or license from ODS.

4 30. On information and belief, Defendants have been given actual notice
5 of their infringement of the '068 Patent.

6 31. On information and belief, Defendants' infringement of the '068
7 patent has been and continues to be deliberate and willful, and such infringement
8 will continue unless Defendants are preliminarily and permanently enjoined by this
9 Court.

10 32. As a consequence of Defendants' infringement complained of herein,
11 ODS has been damaged and will continue to sustain damages by such acts in an
12 amount to be determined at trial and will continue to suffer irreparable loss and
13 injury.

14 **Fourth Claim for Relief**

15 **INFRINGEMENT OF U.S. PATENT NO. 6,004,211**

16 33. Plaintiffs incorporate by reference paragraphs 1 through 32 above, as
17 though fully set forth herein.

18 34. Defendants have directly infringed, contributorily infringed, and/or
19 actively induced infringement of the '211 patent by making, using, importing,
20 offering for sale, and/or selling in the United States an interactive wagering system
21 incorporating technology that practices one or more claims of the '211 patent.

22 35. Defendants' infringement of the '211 patent is without the consent of,
23 authority of, or license from ODS.

24 36. On information and belief, Defendants have been given actual notice
25 of their infringement of the '211 Patent.

26 37. On information and belief, Defendants' infringement of the '211
27 patent has been and continues to be deliberate and willful, and such infringement
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1 will continue unless Defendants are preliminarily and permanently enjoined by this
2 Court.

3 38. As a consequence of Defendants' infringement complained of herein,
4 ODS has been damaged and will continue to sustain damages by such acts in an
5 amount to be determined at trial and will continue to suffer irreparable loss and
6 injury.

7 **Fifth Claim for Relief**

8 **INFRINGEMENT OF U.S. PATENT NO. 7,229,354**

9 39. Plaintiffs incorporate by reference paragraphs 1 through 38 above, as
10 though fully set forth herein.

11 40. Defendants Magna Entertainment Corporation and XpressBet, Inc.
12 have directly infringed, contributorily infringed, and/or actively induced
13 infringement of the '354 patent by making, using, importing, offering for sale,
14 and/or selling in the United States an interactive wagering system incorporating
15 technology that practices one or more claims of the '354 patent.

16 41. Defendants Magna Entertainment Corporation's and XpressBet, Inc.'s
17 infringement of the '354 patent is without the consent of, authority of, or license
18 from ODS.

19 42. As a consequence of Magna Entertainment Corporation's and
20 XpressBet, Inc.'s infringement complained of herein, ODS has been damaged and
21 will continue to sustain damages by such acts in an amount to be determined at trial
22 and will continue to suffer irreparable loss and injury.

23 **PRAYER FOR JUDGMENT AND RELIEF**

24 WHEREFORE, Plaintiffs demand a trial by jury and requests judgment
25 against Defendants as follows:

26 A. Pursuant to 35 U.S.C. § 271, a determination that Defendants have
27 directly infringed, contributorily infringed, and/or actively induced infringement of
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1 U.S. Patent Nos. 6,089,981; 6,554,709; 5,830,068; 6,004,211; and 7,229,354 by
2 making, using, importing, offering for sale, and/or selling in the United States, or
3 by inducing or contributing to the making, use, importation, offering for sale,
4 and/or sale of, infringing services;

5 B. Pursuant to 35 U.S.C. § 283, an order that Defendants be preliminarily
6 and permanently enjoined from infringing the Asserted Patents through the
7 manufacture, use, import, offer for sale, and/or sale of the infringing services, or
8 through inducing or contributing to the making, use, importation, offering for sale,
9 and/or sale of the infringing services;

10 C. Pursuant to 35 U.S.C. § 284, an award of damages adequate to
11 compensate Plaintiffs for infringement of the Asserted Patents, but in no event less
12 than a reasonable royalty, together with prejudgment interest, costs and
13 disbursements as fixed by the Court;

14 D. Pursuant to 35 U.S.C. § 284, an award increasing damages up to three
15 times the amount found or assessed for infringement of the Asserted Patents by
16 Defendants due to the willful and deliberate nature of the infringement;

17 E. Pursuant to 35 U.S.C. § 285, a determination that this is an exceptional
18 case and entry of judgment for Plaintiffs' costs with an assessment of interest and
19 reasonable attorney fees;

20 F. Award of pre-judgment interest; and

21 G. Such other and further relief as the Court deems equitable and just.

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Date: April 29, 2008

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GEMSTAR TV-GUIDE INTERNATIONAL, INC.
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By: 
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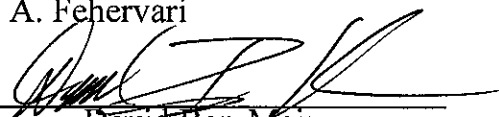
DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Civil Rule 38-1, Plaintiffs demand a trial by jury on all issues triable as of right by a jury.

Date: April 29, 2008

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