

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

MGT GAMING, INC.

Plaintiff

v.

WMS GAMING, INC., CAESARS ENTERTAINMENT CORPORATION, MGM RESORTS INTERNATIONAL, Inc., ARUZE GAMING AMERICA, INC., and PENN NATIONAL GAMING INC.

Defendants

Civil Action No. 3:12CV741CWR-FKB

JURY TRIAL DEMANDED

**First Amended Complaint for Patent Infringement**

Plaintiff, MGT GAMING, INC. ("MGT") alleges as follows:

**The parties**

1. MGT is a Delaware corporation with its principal place of business at 500 Mamaroneck Avenue, Suite 204, Harrison, NY 10528.
2. Upon information and belief, defendant WMS GAMING, INC. ("WMS"), is a Delaware corporation with places of business in Waukegan, Illinois and Gulfport, Mississippi, and a registered agent in Jackson, Mississippi.
3. Upon information and belief, defendant CAESARS ENTERTAINMENT CORPORATION ("Caesars") is a Delaware corporation with places of business in Las Vegas, Nevada and Biloxi and Tunica, Mississippi and a registered agent in Jackson, Mississippi.

4. Upon information and belief, defendant MGM RESORTS INTERNATIONAL ("MGM"), is a Delaware corporation with places of business in Las Vegas, Nevada and Biloxi, Mississippi and a registered agent in Jackson, Mississippi.

5. Upon information and belief, defendant ARUZE GAMING AMERICA, INC. ("Aruze") is a Nevada corporation with an office in Las Vegas and a registered agent in Flowood, Mississippi.

6. Upon information and belief, PENN NATIONAL GAMING, INC. ("Penn") is a Pennsylvania corporation with its principal office in Wyomissing, Pennsylvania. Penn owns casinos at Biloxi, Mississippi and Bay St. Louis, Mississippi and has a registered agent in Flowood, Mississippi.

### **Overview and nature of the action**

7. MGT is the owner of United States Patent No. 7,892,088 ("the '088 patent") directed to a gaming system in which a second game played on an interactive sign is triggered once a specific event occurs in a first game, *e.g.*, a slot machine. The defendants either manufacture and sell gaming systems in violation of plaintiff's patent rights or operate casinos that offer such gaming systems.

### **Jurisdiction and venue**

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

9. This Court has personal jurisdiction over Defendants in this state and district under, 28 U.S.C. §§ 1391(b) and (c), FED.R.CIV.P. Rule 4(k)(1), the long-arm statutes of the State of

Mississippi, and the Due Process Clause of the Constitution since the Defendants regularly conduct business in this state and district, "reside" in this jurisdiction, and have committed acts of patent infringement in this jurisdiction and a substantial part of the events giving rise to this case occurred in this jurisdiction.

10. Venue is proper in this judicial district under Title 28, United States Code, §1391(b)(1) and (2) and (c), and 28 United States Code §1400(b) because, *inter alia*, the Defendants are subject to personal jurisdiction in this state and district and therefore "reside" in this state and district, a substantial part of the events giving rise to the claims asserted herein arose in this state and district. Defendants WMS, Caesars and MGM also have a regular and established business in this district.

11. WMS conducts business in this judicial district, including distributing and/or selling gaming products, including those covered by the '088 patent, and by providing technical assistance, instructions and other information regarding the use of such products, all in violation of plaintiff's patent rights. WMS is registered to do business in Mississippi, has a registered agent for service of process in Jackson, Mississippi, and has a sales and distribution office in Gulfport, Mississippi. WMS files corporate annual reports with the Mississippi Secretary of State, including as recently as April 3, 2012. WMS' infringing "Pirate Battle" game is located and played at the Grand Casino Biloxi, the Beau Rivage in Biloxi, Mississippi and at the Ameristar Casino in Vicksburg, as well as the Gold Strike Casino and Resorts Tunica in Tunica. Other WMS games are played at the Beau Rivage in Biloxi and the Gold Strike and Horseshoe Casinos in Tunica. WMS' "Clue" game is located and played at the Grand Casino Biloxi, as well as at multiple casinos in Tunica. On information and belief, WMS' "Wizard of Oz Journey to Oz" may be found at the Grand Casino Biloxi and Beau Rivage in Biloxi, the Gold Strike and

Resorts Tunica, the Treasure Bay Casino & Hotel in Biloxi and the Hard Rock Hotel & Casino in Biloxi. WMS also exhibited its various games at the Southern Gaming Summit in Biloxi on May 8-10, 2012.

12. Caesars is registered to do business in Mississippi, has a registered agent for service of process in Jackson, Mississippi, owns the Grand Casino Biloxi in Biloxi and the Horseshoe Tunica Casino and Hotel, Harrah's Tunica Casino and Hotel, and the Tunica Roadhouse Hotel & Casino in Tunica, Mississippi. The games "Clue" and "Pirate Battle" are played at the Grand Casino Biloxi. Caesars files corporate annual reports with the Mississippi Secretary of State, including as recently as April 13, 2012.

13. MGM is registered to do business in Mississippi, has a registered agent for service of process in Jackson, Mississippi, and owns the Beau Rivage Resort and Grand Casino Hotel Biloxi, as well as the Gold Strike Tunica Resort, Casino and Hotel in Tunica. The infringing game "Pirate Battle" is played at both Biloxi casinos. "The Great and Powerful Oz" is played at the Beau Rivage in Biloxi. MGM files corporate annual reports with the Mississippi Secretary of State, including as recently as February 8, 2012.

14. Aruze is registered to do business in Mississippi, has a registered agent for service of process in Flowood, Mississippi, and is the manufacturer and/or distributor of the "Paradise Fishing" game, which is played at the Beau Rivage, Boomtown, Margaretville, and Hard Rock Hotel and Casino in Biloxi, as well as the Hollywood casino in Bay St. Louis, Mississippi. Aruze also exhibited its games at the Southern Gaming Summit in Biloxi on May 8-10, 2012.

15. Penn owns the Boomtown and Hard Rock Casinos in Biloxi at which the "Paradise Fishing" game is played. Penn also has a registered agent in Flowood, Mississippi.

**Claim for relief – infringement of the '088 patent**

16. On February 22, 2011, the '088 patent, entitled "Gaming Device Having a Second Separate Bonusing Event," was duly and legally issued by the United States Patent and Trademark Office. The entire right, title and interest in the '088 patent has been assigned to MGT, including the right to recover for past damages for any infringement of the patent. A true copy of the '088 patent is attached as Exhibit A.

17. The defendants have infringed and continue to infringe at least claims 1-3 and 6 of the '088 patent, either literally or under the doctrine of equivalents. Defendants WMS and, on information and belief, Aruze directly infringe by manufacturing, selling and offering for sale the products described and claimed in the '088 patent. Defendants MGM and Caesars and, on information and belief, Penn, directly infringe the '088 patent by using the claimed invention and offering it to their customers. Defendants WMS and, on information and belief, Aruze, have also induced and contributed to the direct infringement of the other defendants. The infringing products manufactured, distributed, used, sold and/or offered for sale by defendants in this district include at least those identified under the trade names: PIRATE BATTLE and BATTLESHIP and, on information and belief, one or more of the games identified by the following names: CLUE, MONOPOLY, RICH LIFE, PARADISE FISHING, AMAZON FISHING COMPETITION, GOOD CATCH COMPETITION, MASSIVE FISHING COMPETITION, BIG GAME COMPETITION and JACKPOT BATTLE ROYAL. Each Defendant is therefore liable, either directly and/or indirectly, for infringing the '088 patent, either literally or by equivalents, under 35 U.S.C. § 271(a), (b) and (c).

18. Defendants' acts of infringement have caused significant damage to MGT, which is entitled to recover damages adequate to compensate for the infringement in an amount to be

proven at trial and to recover, in any event, a reasonable royalty from each defendant for its infringement, trebled, plus interest and costs as fixed by the court.

**Prayer for judgment and relief**

WHEREFORE, MGT prays for judgment and seeks relief against defendants as follows:

- A. Preliminary and permanent injunctions against all defendants, their officers, agents, employees, subsidiaries, related individuals and entities, customers, representatives, dealers and distributors, and persons acting in concert therewith, enjoining them from any continued acts of patent infringement;
- B. An award of damages sustained by MGT as a result of defendants' patent infringement including, at a minimum, a reasonable royalty, trebled;
- C. An award of Plaintiff's attorneys fees and the costs of suit;
- D. Pre- and post-judgment interest; and
- E. Such other and further relief as the Court deems just and proper.

**Jury demand**

Plaintiff demands a trial by jury under FED.R.CIV.P. 38(b) and the Seventh Amendment to the U.S. Constitution of all issues triable as of right by jury in this action.

December 17, 2012

Respectfully submitted,

/s/David w. Clark

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**CERTIFICATE OF SERVICE**

I, David Clark, attorney for MGT Gaming, Inc. certify that I have this date filed with the CM/ECF system, which will send notification of such filing to all counsel:

Dated: THIS the 17th day of December, 2012.

/s/ David W. Clark

David W. Clark