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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Blackhawk Network, Inc., an Arizona corporation, Plaintiff, vs. SL Card Company Inc. d/b/a Linq3, an Arizona corporation Defendant.	**Case No. _____** **COMPLAINT** **(Commercial Court Assignment Requested)** **Tier 2**

1. Plaintiff Blackhawk Network, Inc. ("Blackhawk"), files this Complaint to redress the breaches of contract leading to the theft of its Intellectual Property by Defendants SL Card Company Inc. ("SL Card") d/b/a Linq3 ("Linq3"), an Arizona corporation. Linq3 was owned by L3 Innovations LLC f/k/a Linq3 Technologies, LLC ("Linq3-DE").

THE PARTIES

2. Plaintiff Blackhawk Network, Inc. ("Blackhawk") is an Arizona corporation with its principal place of business located at 6220 Stoneridge Mall Rd., Pleasanton, CA 94588. Blackhawk also has an office at 16610 N. Black Canyon Hwy, Phoenix, AZ 85053.

BLACKHAWK EXHIBIT 2001.0001
Incomm v. Blackhawk, IPR2023-01235

3. Defendant SL Card Company Inc. ("SL Card") d/b/a Linq3 ("Linq3") is an Arizona corporation with its registered agent in Maricopa County, Arizona and principal place of business located at 3060 Peachtree Road NW, Suite 1500, Atlanta, GA 30305.

4. Linq3 was owned by Linq3-DE. Linq3-DE is a Delaware corporation with its principal place of business located at 3060 Peachtree Road NW, Suite 1500, Atlanta, GA 30305. On March 12, 2019, Interactive Communications International, Inc. ("InComm"), a Florida corporation with its principal place of business located at 250 Williams Street, Suite 5-2002, Atlanta, Georgia, 30303, announced the acquisition of Linq3-DE/Linq3. InComm purchased the assets of Linq3-DE, including Linq3, through a series of corporate vehicles including (but not limited to) Linq3 Technologies, LLC f/k/a Linq3 Acquisition, LLC ("Linq3-FL"), e2Interactive, Inc. ("e2Interactive"), and HI Technology Corp. f/k/a InComm Holdings, Inc. ("HI Technology"). Linq3-FL is a Florida corporation with its principal office at 250 Williams Street, Suite 5-2002, Atlanta, Georgia, 30303. Both e2Intervactive and HI Technology Corp. are Georgia corporations with their principal office address of 250 Williams Street, Suite 5-2002, Atlanta, Georgia, 30303. Linq3, Linq3-FL, e2Interactive, InComm, and HI Technology share common officers, directors, employees, attorneys, and resources; they are also entities that are in active concert with Linq3.

JURISDICTION AND VENUE

5. Personal jurisdiction is proper in Arizona because Linq3 is an Arizona corporation with its registered agent in Maricopa County.

6. Jurisdiction and venue are proper before this Court under A.R.S. § 12-123 and A.R.S. § 12-401, respectively, because Linq3 has a registered agent in Maricopa County.

FACTUAL ALLEGATIONS

7. In 2017-18, Blackhawk was working with its contractual partner, Linq3, to develop a ticketless, internet-based lottery product. Separate from and prior to this relationship, Blackhawk had acquired the intellectual property rights to an in-store lottery ticket product, known as "QuickTicket™." Blackhawk owns three United States patents and

a Canadian patent covering QuickTicket™. QuickTicket™ allows customers to purchase an actual lottery ticket in the form of a card that hangs on a display hook in a store, have the lottery ticket activated by a cashier and entered into the next lottery drawing.

8. Blackhawk's patents disclose an embodiment of QuickTicket™ (known as "QuickTicket™ V2"), which allows the lottery numbers to be pre-printed on the ticket and draw information is not on the point-of-sale receipt. Once activated by the cashier, the QuickTicket™ V2 lottery ticket would be entered into the next lottery drawing, and the customer could scratch off the ticket to reveal her lottery numbers.

9. Blackhawk's contract with Linq3, the Product Distribution Agreement ("Distribution Agreement"), included provisions that: (1) ensured Blackhawk's intellectual property remained with Blackhawk; and (2) prohibited Linq3 from disclosing Blackhawk's confidential information. Pursuant to the Distribution Agreement, Blackhawk shared proposed commercial embodiments of QuickTicket™ V2 with Linq3. A copy of the Distribution Agreement is attached as Exhibit A to this Complaint.

10. Unbeknownst to Blackhawk, Linq3-DE (SL Card's parent entity at that time) filed a patent application that included claims and descriptions of Blackhawk's QuickTicket™ V2 product. Linq3-DE also applied to register the trademark "QuickTicket" for its own use. Months later, Linq3-DE asked Blackhawk to acquire Linq3-DE or it would sell itself to a Blackhawk competitor. After rejecting Blackhawk's offer, the assets of Linq3-DE, including Linq3, were acquired by Blackhawk's chief competitor, who has since pitched state lotteries in Texas and Arizona (among others) with its pilfered version of QuickTicket™ V2.

11. These actions are in violation of the parties' Distribution Agreement and have irreparably harmed Blackhawk, who was second to market with its own product and does not even has primary ownership of the intellectual property for its own product. Therefore, Blackhawk seeks injunctive relief (and not damages) to redress Blackhawk's injuries.

A. <u>Blackhawk Network</u>

12. Founded in 2001, Blackhawk is a leading prepaid payment network utilizing

proprietary technology to offer a broad range of branded gift cards, electronic gift cards, reloadable debits cards and other prepaid phone cards and financial service products across a global network of distribution partners.

13. In simplest terms, Blackhawk is a distributor of third-party branded gift cards. Blackhawk distributes branded gift cards (*e.g.*, Apple iTunes, Barnes & Noble, Gap, Lowes, Panera Bread, and many others) on behalf those clients for sale at retail partner stores across the country (*e.g.*, Ahold, Albertsons, Food Lion, Kroger, Office Depot, Safeway, and Whole Foods Market).

14. For Blackhawk's gift card clients, Blackhawk provides the largest distribution network of gift cards in the United States and in Canada. For Blackhawk's retail partners, Blackhawk provides a broad and diverse portfolio of third-party branded gift cards, an important product category for their stores that can drive traffic and customer loyalty. When a gift card is purchased at the point-of-sale at a retail partner, an activation request is sent to Blackhawk. Blackhawk serves as a central hub, receiving those activation requests from thousands of retail partner stores and routing those transactions to card processors, who maintain the accounts associated with each gift card. Those card processors than send a confirmation transaction back to Blackhawk, and Blackhawk routes those confirmation transactions back to the point of sale. Prior to activation, the related account associated with each gift card is not yet active or available for use.

15. For consumers, Blackhawk provides convenience by offering a wide variety of third-party branded gift cards at the consumers' favorite retail locations, such as grocery and convenience stores, where customers are provided a one-stop shop for gift card needs. For example, a consumer can go to a single local grocery store to buy gift cards from hundreds of different companies, while the consumer is shopping for groceries. Moreover, grocery stores typically offer a multi-lane environment, meaning they have multiple checkout lanes. And Blackhawk's technology allows for these gift cards to be purchased and activated from any checkout lane.

16. Relevant to this action is Blackhawk's use of its network to help sell lottery products. Lottery products have been sold traditionally at specialized kiosks in retail stores with a lottery terminal, where consumers would have to wait in line to purchase lottery tickets and wait for their lottery ticket to be printed. By mid-2018, Blackhawk launched a first version of QuickTicket™ lottery products, where consumers could buy a pre-printed lottery ticket in a checkout lane in a multi-lane environment and have the lottery ticket activated at the "point-of-sale" and entered into a lottery drawing. Doing so would remove the lottery's reliance on the use of specialized lottery terminals to sell their lottery tickets. Instead, lottery tickets could be sold throughout the store and activated at any checkout counter, just like a gift card.

B. <u>Blackhawk's QuickTicket™ Patents</u>

17. QuickTicket™ is a physical, pre-printed lottery ticket that would allow it to be placed on a display hook in a retail outlet. The clerk scans the bar code on the ticket at the point-of-sale to "activate" the ticket through the use of Blackhawk's existing network. The transaction would then be routed to a lottery computer, which would verify the transaction, and activate the ticket for the next drawing. QuickTicket™ is the customer's actual lottery ticket, rather than any printed receipt.

18. Blackhawk's QuickTicket™ was first commercialized in Canada for the Ontario Lottery and Gaming Corporation ("OLG"). Blackhawk, through its Canadian subsidiary, has been providing activation services for OLG's implementation of QuickTicket™ since June 1, 2017. Examples of the first embodiment of QuickTicket™ product sold by OLG are the "Lotto 6/49" product and the "Lotto MAX" product:

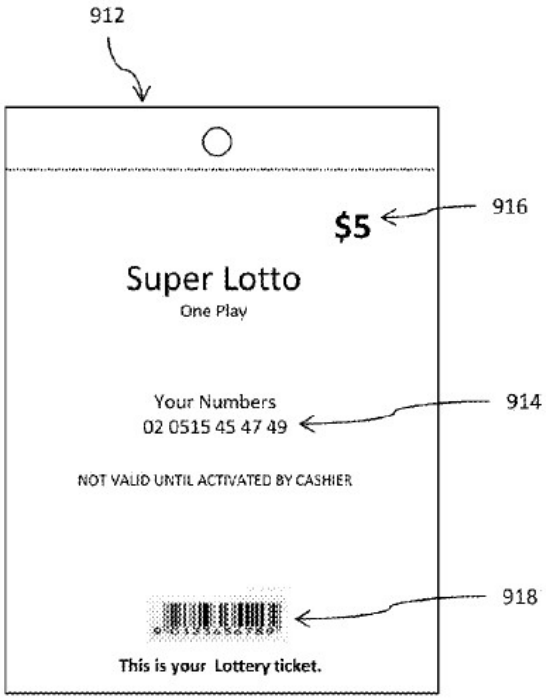
19. A U.S. patent application for QuickTicket™ was filed on April 6, 2015. Blackhawk acquired all rights to the QuickTicket™ patent application and all continuations, continuations-in-part, and foreign equivalents on September 21, 2016. The patent application was granted as U.S. Patent No. 9,865,135 ("the '135 patent") on January 9, 2018. Blackhawk owns another QuickTicket™ Patent, U.S. Patent 10,769,894 ("the '894 patent"). The '894 patent was issued by the United States Patent and Trademark Office on September 8, 2020.

20. The '135 patent and the '894 patent are each entitled "Methods for selling pre-printed online lottery tickets," and each includes a description of a first embodiment of QuickTicket™. The '135 patent and the '894 patent each further provide an example of the first embodiment of QuickTicket™ in Figure 1:

The '135 patents also has claims directed to the first embodiment of QuickTicket™.

21. The '135 patent and the '894 patent each also provide a second embodiment, in pertinent part, describing QuickTicket™ V2. The '135 patent and the '894 patent each further provide in Figure 9 an example of QuickTicket™ V2, with the lottery number pre-printed on the lottery ticket:

/ / /



The ’135 patent and the ’894 patent each describe an example of a QuickTicket™ V2, with the lottery number pre-printed on the lottery ticket.

22. The ’894 patent has claims directed to QuickTicket™ V2, including claims 33 and 44.

C. <u>Blackhawk’s Distribution Agreement with Linq3</u>

23. Blackhawk and Linq3 executed the Distribution Agreement effective January 1, 2017, to develop a new product called the “Play Now Product” that would allow certain lottery players in the United States to play lottery games through a real-time, “ticketless” transaction. *See* Ex. A. The “Play Now Product” is defined in the Distribution Agreement as “a consumer solution for real-time, ticketless lottery transactions,” that the “Play Now Product card” is sold in a store, the Play Now Product card is activated via a transaction at the point of sale, that the “holder of such Play Now Product card requests to Play the Lottery Products represented by the Play Value of such Play Now Product card by sending the applicable text message instruction to Linq3 in accordance with the terms and conditions of such Play Now Product card.”

24. "Intellectual Property" is defined in the Distribution Agreement as "any patents, patent rights, copyrights, trade secrets, trademarks, trade names, service marks, rights in software, and all other intellectual property, and all applications and rights to apply for registration or protection rights pertaining thereto."

25. "Preexisting Intellectual Property" is defined in the Distribution Agreement as "all Intellectual Property that a Party owned or had the exclusive right to use as of immediately prior to the Effective Date." The Effective Date of the Distribution Agreement is January 1, 2017.

26. "Linq3" is defined in the Distribution Agreement as "SL Card Company Inc., an Arizona corporation."

27. "Linq3 Technologies" is defined in the Distribution Agreement as "Linq3 Technologies LLC, a Delaware limited liability company and the owner of all of the issued and outstanding capital stock of Linq3," *i.e.*, Linq3-DE.

28. Section 10 of the Distribution Agreement addresses Intellectual Property Rights. Section 10.1, entitled "Retention of Respective Rights," provides, in pertinent part that:

> As between Blackhawk and Linq3, Blackhawk owns (i) Blackhawk's Preexisting Intellectual Property and any modifications, derivatives, or improvements made thereto; and (ii) any new Intellectual Property it creates both independent of, and in connection with, its performing Services or delivering Deliverables pursuant to this Agreement that does not contain Linq3 Preexisting Intellectual Property or Linq3 Intellectual Property or any derivative works thereof. For the avoidance of doubt, all Intellectual Property rights in the Play Now Product, including in the specifications, features, and functionality of the Play Now Product (and any enhancements to the Play Now Product made under this Agreement), and any and all rights to the "PLAY NOW" name (or any successor brand or product name to be used on or in connection with the Play Now Product) shall be owned exclusively by Linq3.

29. Pursuant to the Distribution Agreement, the '135 patent, the '894 patent, the QuickTicket™ products, and the QUICKTICKET™ mark all qualify as Blackhawk's

Preexisting Intellectual Property and any modifications, derivatives, or improvements made thereto.

30. Section 10.2 provides each party a license to use the other party's Intellectual Property only in connection with delivery of the "Play Now Product:"

> In the event Blackhawk's Intellectual Property and/or Preexisting Intellectual Property is incorporated into the Deliverables that it delivers under this Agreement or is necessary for Linq3 to utilize the Deliverables, Blackhawk hereby grants to Linq3 a royalty-free, worldwide, non-exclusive license (with rights of sub-license and assignment upon Blackhawk's prior written consent) to market and use Blackhawk's Intellectual Property and/or Preexisting Intellectual Property solely to the extent such are incorporated into the Deliverables solely during the Term and solely in connection with the Play Now Product and in accordance with the terns of this Agreement.

31. Section 10.3 states that Linq3 has no rights to any of Blackhawk Preexisting Intellectual Property or Blackhawk Intellectual Property and that Linq3 is restricted from making or selling any derivative works of such intellectual property: "Linq3 understands and agrees that no license, right, title or interest in any Blackhawk Preexisting Intellectual Property or Blackhawk Intellectual Property is granted hereunder and Linq3 will not gain by virtue of this Agreement any rights of ownership in any Intellectual Property or Preexisting Intellectual Property owned by Blackhawk. Linq3 shall not make, have made, sell, offer to sell, use, disclose, reproduce, distribute, perform, display, modify, copy or create derivative works of any Blackhawk Preexisting Intellectual Property or Blackhawk Intellectual Property in any form or forum without Blackhawk's prior written consent."

32. Section 8 of the Distribution Agreement addresses Confidential Information, which is defined in Section 8.1:

> For purposes hereof, "Confidential Information" of a disclosing Party shall mean all confidential and/or proprietary information or material which (i) gives such disclosing Party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of such disclosing Party; and/or (ii) which is either (A) marked "Confidential," "Restricted," or "Proprietary Information" or with other similar marking, (B) known by the Parties to be considered confidential and proprietary, or (C) from all the relevant circumstances should reasonably be

> assumed to be confidential and proprietary. Notwithstanding anything to the contrary contained herein, Confidential Information of a disclosing Party shall not include information which the receiving Party can demonstrate: (i) is or becomes generally available to the public by any means other than a breach of the obligations of the receiving Party under this Agreement; (ii) was previously known to the receiving Party or rightly received by the receiving Party from a third party not subject to an obligation of confidentiality; or (iii) is independently developed by the receiving Party without reference to information derived from the disclosing Party.

33. Section 8.2 generally limits the disclosure of the disclosing Party's Confidential Information except for implementation of the agreement or sharing with certain enumerated third parties that agree to be bound by similar confidentiality treatment to the Confidential Information.

34. Section 8.4 confirms that "Blackhawk's Confidential Information shall remain the sole and exclusive property of Blackhawk."

35. Similar obligations exist in Section 17, entitled "Publicity Restrictions." That section states that "Neither Party shall acquire any right to use, and shall not use, without the other Party's prior written consent any artwork, designs, trade names, copyrighted materials, trademarks or service marks of the other Party: (a) in any advertising. publicity, press release, client list, presentation or promotion; (b) to express or to imply any endorsement of a Party or such Party's services; or (c) in any manner other than expressly in accordance with this Agreement."

36. Section 14.2 addresses termination for cause events, and defines a breach of Confidentiality and Intellectual Property Rights to be a material breach of the Distribution Agreement:

> If either Party materially breaches or defaults in the performance of any of its obligations under this Agreement, which breach or default (a) if of a nonmonetary nature, is not cured within thirty (30) days after written notice is given to the defaulting Party specifying the breach or default…then the Party not in default may, by giving written notice thereof to the defaulting Party, terminate this Agreement or the applicable SOW with respect to which there is a default, as of a date specified in such notice of termination and shall have no obligation to provide Transition Services following such termination. For the

purpose of this Section 14.2, a material breach or default of this Agreement shall include but not be limited to, a monetary default, a material breach of Section 8 (Confidentiality), breach of Section 10 (Intellectual Property Rights), or breach of Section 15 (Exclusivity).

37. Section 13 provides "that a breach of any term of the Sections entitled 'Confidentiality,' 'Intellectual Property Rights,' or 'Exclusivity' will cause irreparable harm to the other Party for which monetary damages will not be an adequate remedy, and, therefore, each Party shall be entitled to injunctive relief in addition to any remedies it may have hereunder or in law."

38. Section 16 provides for arbitration "[e]xcept for actions seeking specific performance or injunctive relief."

39. Pursuant to Section 21.2 of the Distribution Agreement, the Distribution Agreement "shall bind and inure to the benefit of each Party's permitted successors and assigns." As a result, InComm is also bound by the Distribution Agreement.

40. Section 21.4 provides that the Distribution Agreement is governed by Delaware state law.

41. Daniel Cage signed the agreement on behalf of Linq3, and identified himself as Director/President.

42. Linq3-DE is also a signatory to the Distribution Agreement, solely for purposes of Section 15.1 and 21.12 of the Distribution Agreement.

43. Daniel Cage signed the agreement on behalf of Linq3-DE, and identified himself as President, Founder of Linq3-DE.

D. <u>Blackhawk Introduces QuickTicket™ to Linq3</u>

44. The Play Now Product/Lottery Card did not succeed. Among other reasons, Blackhawk and Linq3 had approached the Texas State Lottery Commission regarding the Play Now Product but the Texas lottery did not want that product.

45. However, Blackhawk was already providing a point of sale activated pre-printed lottery ticket solution—QuickTicket™—for OLG that did not require use of a mobile

device. Therefore, Blackhawk believed it would be a viable solution in Texas and in other states.

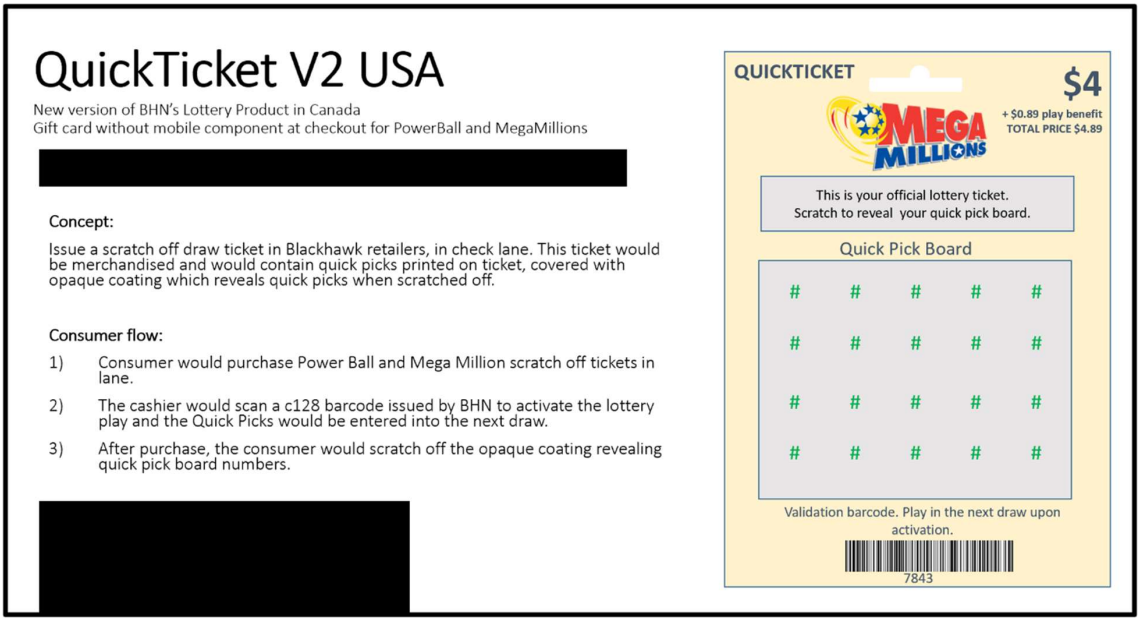
46. On December 13, 2017, Blackhawk gave to Linq3, including Daniel Cage, a PowerPoint presentation marked "Confidential" entitled "QUICKTICKET." The presentation disclosed that Blackhawk was providing activation services to OLG under the QUICKTICKET™ mark. QUICKTICKET™ leveraged the use of existing gift card technologies to sell and market lottery products without requiring an additional point-of-service integration at retailers, such as a kiosk dedicated to lottery products. The presentation described QUICKTICKET™, its unique features, and purchase flow to Linq3.

47. The slide deck also disclosed a proposed commercial version of QuickTicket™ V2:

48. At the bottom of this slide, Blackhawk illustrated QuickTicket™ V2 (enlarged below), which showed QuickTicket™ with pre-printed lottery numbers covered by a protective coating that would be scratched off after purchase:

© 2017 Blackhawk Network. Confidential and not for replication or distribution.

49. On May 11, 2018, Blackhawk had a telephonic meeting with Linq3, which included Linq3's Daniel Cage and John Houseal, to discuss potential new products. In conjunction with this meeting, Blackhawk provided another PowerPoint where it proposed a commercial version of "QuickTicket V2 USA":



50. Daniel Cage was Linq3's Director/President and John Houseal was Linq3's Chief Product Officer.

51. On information and belief, Travis Smith, Linq3's Chief Technology Officer, received the same information regarding the proposed commercialization of Blackhawk's QuickTicket™ V2.

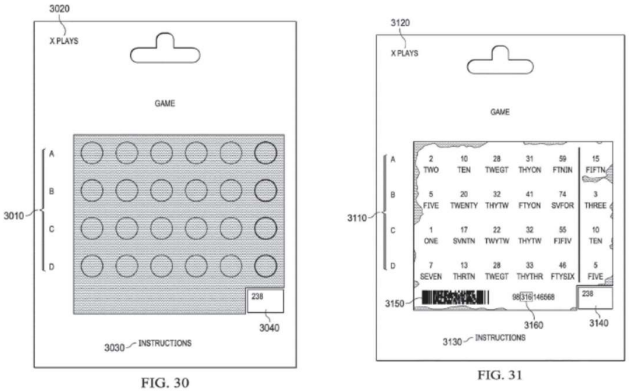
52. Blackhawk and Linq3 later agreed that QuickTicket™ V2 was one of the top product ideas that should be considered to sell to the state lotteries, including the Texas and Arizona lotteries.

E. <u>Without Authorization, Linq3-DE Files for Patents and a Trademark on QuickTicket™</u>

53. On November 20, 2017, Linq3's parent, Linq3-DE, filed U.S. Patent Application No. 15/818,569. The '569 application was directed towards the unsuccessful "Play Now" mobile solution. Daniel Cage, John Houseal, and Travis Smith are named inventors in the application. This was before Blackhawk met with Linq3 and provided PowerPoint presentations detailing the QuickTicket™ products. Unsurprisingly, the patent application contained no information regarding physical lottery ticket that could be purchased at retail stores.

54. On June 18, 2018—the same day Blackhawk and Linq3 met with Texas Lottery officials to pitch Blackhawk's QuickTicket™ V2 product—Linq3-DE filed a continuation-in-part of its '569 application, Application No. 16/010,398 ("the '398 application"). This'398 application added nearly 10 new drawings, and approximately six additional columns of information, and disclosed new embodiments including a physical lottery ticket—none of which had been disclosed in the '569 application or any other application in the family history of the '398 application. This application lists Daniel Cage, John Houseal, and Travis Smith as named inventors, all who were recipients of Blackhawk's intellectual property.

55. Several figures in Linq3-DE's '398 application looked extremely similar to the information Blackhawk provided to Linq3, including Daniel Cage, John Houseal, and Travis Smith, in the earlier presentations, including:

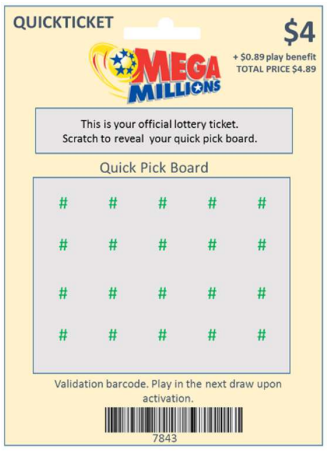
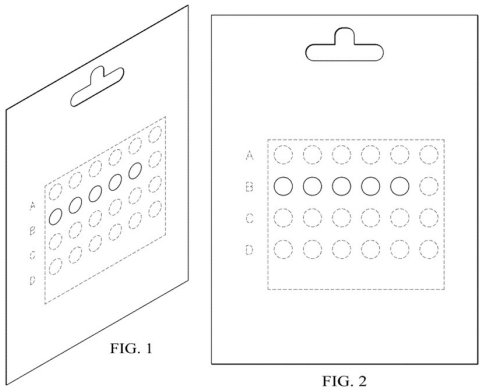
EXAMPLES OF BLACKHAWK QUICKTICKET™ V2 PRESENTED TO LINQ3	FIGURES LINQ3-DE ADDED TO ITS PATENT APPLCIATION IN JUNE 2018
	 '398 application, Figs. 30, 31
	 '398 application, Fig. 32

56. The text supporting these figures describes specifically that these were physical gaming cards, "with a structure or shape of the card [that] may be similar to that of a gift card…. The numbers may be covered and not visible and may become visible in response to

user interaction with one or more portions of the card (e.g., scratching off the surface of the card . . .)."

57. Blackhawk did not provide permission for the '398 application, which contained Blackhawk's intellectual property, to be filed. On March 12, 2019, the '398 application was granted as U.S. Patent No. 10,229,561. Blackhawk's QuickTicket™ V2 product is included in claims 59-85 of the '561 patent.

58. On August 22, 2018, Linq3-DE filed U.S. Patent Application No. 29/660,720 ("the '720 application"), which claims the benefit of the '398 application. The '720 application issued as U.S. Patent No. D877,812 on March 10, 2020 ("the '812 patent"). Daniel Cage, John Houseal, and Travis Smith are the only named inventors of the '812 patent, all who were recipients of Blackhawk's intellectual property. The '812 patent is entitled "Quick Ticket for Lottery" and is a design patent. The figures in the '812 patent look extremely similar to information Blackhawk provided Linq3 in the earlier presentations:

EXAMPLE OF BLACKHAWK QUICKTICKET™ V2 PRESENTED TO LINQ3	FIGURES LINQ3-DE INCLUDED IN ITS '812 PATENT
	 '812 Patent, Figs. 1 & 2

59. Blackhawk did not provide permission for filing of the application for the '812 patent, which contained Blackhawk's intellectual property.

60. On June 7, 2018, Linq3-DE filed a U.S. trademark application for QUICKTICKET. Blackhawk did not give permission for the filing of this U.S. Trademark application. The validity of this application has been challenged in a separate action in the United States Patent and Trademark Office.

F. <u>Subsequent Events</u>

61. Linq3-DE asked Blackhawk to buy it, including the intellectual property that Linq3-DE had obtained through Linq3's breaches of the Distribution Agreement. Ultimately, the relationship between Blackhawk and Linq3 fell apart. On March 12, 2019, InComm announced the acquisition of Linq3-DE/Linq3. In March 2019, e2Interactive filed a number of other patent applications that claim the benefit of other applications derived from the material Linq3 took wrongly from Blackhawk.

62. e2Interactive filed U.S. Patent Application No. 16/298,871 ("the '871 application") on March 11, 2019, which is a continuation of the '398 application. The '871 application contains the same specification as the '398 application, and as a result, contains Blackhawk's intellectual property. The '871 application issued as U.S. Patent No. 10,943,438 ("the '438 patent") on March 9, 2021. Daniel Cage, John Houseal, and Travis Smith are listed as inventors, all who were recipients of Blackhawk's intellectual property.

63. e2Interactive filed U.S. Patent Application No. 16/351,275 ("the '275 application") on March 12, 2019, which is also a continuation of the '398 application. The '275 application contains the same specification as the '398 application, and as a result, contains Blackhawk's intellectual property. The '275 application issued as U.S. Patent No. 10,943,432 ("the '432 patent") on March 9, 2021. Daniel Cage, John Houseal, and Travis Smith are listed as inventors, all who were recipients of Blackhawk's intellectual property.

64. e2Interactive filed U.S. Patent Application No. 17/196,196 ("the '196 application") on March 9, 2021, which is a continuation of the '871 application, which is a continuation of the '398 application. The '196 application contains the same specification as the '871 application and the '398 application, and as a result, contains Blackhawk's

intellectual property. The ’196 application is currently pending at the United States Patent and Trademark Office. Daniel Cage, John Houseal, and Travis Smith are listed as inventors, all who were recipients of Blackhawk’s intellectual property.

65. e2Interactive filed U.S. Patent Application No. 17/196,211 (“the ’211 application”) on March 9, 2011, which is a continuation of the ’275 application, which is a continuation of the ’398 application. The ’211 application contains the same specification as the ’275 application and the ’398 application, and as a result, contains Blackhawk’s intellectual property. The ’211 application is currently pending at the United States Patent and Trademark Office. Daniel Cage, John Houseal, and Travis Smith are listed as inventors, all who were recipients of Blackhawk’s intellectual property.

66. Blackhawk did not authorize or give permission for the ’871 application, ’275 application, ’196 application, and ’211 application to be filed.

67. The Texas Lottery Commission held hearings on August 7, 2019, where it explained that Defendant’s version of QuickTicket—*i.e.*, QuickTicket™ V2, would soon be released in Texas and sourced from InComm. Texas has since posted on its website images of sample “QuickTicket” products that look just like QuickTicket™ that Blackhawk disclosed to Linq3.

68. On August 14, 2019, Blackhawk notified Linq3 that it was in material breach of the Distribution Agreement.

69. The Texas Lottery launched QuickTicket the week of November 11, 2019. The Texas Lottery stated in its press release that the “Texas Lottery players have the first-in-the-nation chance to get their Powerball and Mega Millions tickets while in the checkout lane at participating Texas Dollar General Stores by purchasing a QUICKTICKET.” The same press release acknowledged that the Ontario Lottery Gaming Corporation had previously launched “the lottery industry’s first QUICKTICKET,” which is a direct reference to Blackhawk’s QuickTicket™ intellectual property. The same press release included a quote from InComm’s Senior Vice President Tim Richardson stating, “We’re revolutionizing the lottery experience

for players, retailers and lotteries alike." The Texas Lottery QuickTicket is sold at Dollar General stores in Texas, which are InComm retailers.

70. Arizona has since marketed a competing QuickTicket product called "Quickcard," complete with (1) sample images that look just like the QuickTicket™ V2 that Blackhawk disclosed to Defendant and (2) a description of how the QuickTicket™ V2 that Blackhawk disclosed to Defendant. Quickcard is sold at CVS and Dollar General stores in Arizona, both of which are InComm retailers.

71. Blackhawk's QuickTicket™ V2, wrongfully taken by Linq3, has also been marketed to the Oklahoma Lottery.

72. InComm, who purchased Linq3, markets Blackhawk's QuickTicket™ V2 and the QuickTicket trademark through InComm's website.

73. Linq3 has not cured any of its material breaches and, instead, disputes that it had even committed a material breach of the Distribution Agreement.

COUNT I
(Breach of Contract against Linq3)

74. Blackhawk repeats and re-alleges each and every allegation of the Complaint as it set forth herein.

75. Blackhawk entered into the Distribution Agreement with Linq3 on January 1, 2017. Prior to the Distribution Agreement, Blackhawk acquired the patent rights to Blackhawk's QuickTicket™, an in-lane lottery ticket product and process invented and disclosed in Blackhawk's '135 patent, which was filed in the United States Patent and Trademark Office in 2015, years prior to the Distribution Agreement, and therefore meets the definition of Blackhawk's Preexisting Intellectual Property.

76. The QuickTicket™ V2, a second embodiment of QuickTicket™, is a product also disclosed in the '135 patent that pre-dates Linq3-DE's claim of inventorship.

77. The QuickTicket™ product and process was disclosed in Blackhawk's '135 also specifically claimed in Blackhawk's '894 patent, which is a continuation of the '135 patent.

78. Therefore, QuickTicket™ V2 qualifies as Blackhawk's Preexisting Intellectual Property under the Distribution Agreement.

79. A commercial version of QuickTicket™ V2 disclosed confidentially by Blackhawk to Linq3 in December 2017 and May 2018 PowerPoints, all of which pre-date Linq3-DE's '389 application filed in June 2018.

80. After these confidential disclosures, Linq3 took Blackhawk's QuickTicket™ invention without Blackhawk's consent. Linq3-DE then secretly filed Blackhawk's QuickTicket™ and QuickTicket™ V2 inventions in Linq3-DE's '398 application.

81. Linq3-DE further secretly filed a number of patent applications, all which included Blackhawk's QuickTicket™ and QuickTicket™ V2 inventions and all without Blackhawk's consent.

82. The companies that purchased Linq3 are now marketing QuickTicket™ V2 product, without Blackhawk's prior written consent.

83. These actions constitute breaches of the Distribution Agreement, including but not limited to Section 10 of the Distribution Agreement. Alternatively and/or in addition to the section 10 breaches, these actions constitute breaches of the Distribution Agreement, including but not limited to Section 8 of the Distribution Agreement.

84. Blackhawk has been harmed irreparably by these actions.

85. Therefore, Linq3 has breached the Distribution Agreement.

RELIEF SOUGHT

NOW, THEREFORE, Blackhawk demand judgement as follows:

A. An injunction prohibiting Linq3, its officers, agents, servants, employees, attorneys, and other persons or entities who are in active concert or participation with them, from making, have made, selling, offer to sell, using, disclosing, reproducing, distributing, performing, displaying, modifying, copying or creating the QuickTicket™ and/or QuickTicket™ V2 technology, including the QuickTicket™ and/or QuickTicket™ V2 technology contained in the '561 patent, and any subsequent patent application that claims

the benefit of the ’561 patent including but not limited to the ’812 patent;

B. An injunction prohibiting Linq3, its officers, agents, servants, employees, attorneys, and other persons or entities who are in active concert or participation with them, from further use and/or dissemination of Blackhawk’s confidential information relating to QuickTicket™ and the return and/or destruction of all property derived, created, made, or in any way reliant on Blackhawk’s confidential information relating to QuickTicket™;

C. Sole ownership of the ’561 patent,’812 patent, ’438 patent, ’432 patent, ’196 application, and ’211 application.

D. Sole ownership of any subsequent patent application that is a continuation or continuation-in-part of the ’561 patent and ’812 patent, and any subsequent patent application that claims the benefit of the ’561 patent or ’812 patent;

E. An injunction prohibiting Linq3, its officers, agents, servants, employees, attorneys, and other persons or entities who are in active concert or participation with them, from making, have made, selling, offer to sell, using, disclosing, reproducing, distributing, performing, displaying, modifying, copying or creating the QuickTicket™ mark;

F. Sole ownership of the QuickTicket™ mark;

G. Attorneys’ fees and costs as permitted by law.

DATED this 23rd day of May, 2022.

MESSNER REEVES LLP

By: */s/ David A. Selden*

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