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9 Attorneys for Plaintiff
 10 Opus One Corporation d/b/a Contest Factory

11
 12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14
 15 OPUS ONE CORPORATION D/B/A
 CONTEST FACTORY,

16 Plaintiff,

17 v.

18
 19 WISHPOND TECHNOLOGIES LTD.,

20 Defendant.

Case No. 8:24-cv-1311

**COMPLAINT FOR PATENT
 INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff Opus One Corporation d/b/a Contest Factory (“Plaintiff” or “Contest
2 Factory”) hereby files this complaint against Wishpond Technologies Ltd.
3 (“Defendant” or “Wishpond”) for patent infringement, alleging as follows:

4 **NATURE OF THE SUIT**

5 1. This is a claim for patent infringement arising under the patent laws of
6 the United States, 35 U.S. Code Title 35, involving infringement of United States
7 Patent No. 10,891,642 (“the ’642 patent”).

8 **THE PARTIES**

9 2. Plaintiff Contest Factory is a California corporation with its principal
10 place of business at 18231 Irvine Blvd., Suite 100, Tustin, CA 92780.

11 3. Contest Factory is in the business of generating and operating online
12 contests that are covered by the asserted patent. Contest Factory began offering its
13 online contests in the United States in or about 2001. Contest Factory directly
14 competes with the Accused Products and Services (described below) offered by
15 Wishpond. Upon information and belief, Contest Factory has lost substantial
16 business to the Accused Products and Services offered by Wishpond.

17 4. On information and belief, Wishpond is a Canadian corporation having
18 its principal place of business at 422 Richards Street, Suite 170, Vancouver, British
19 Columbia V6B 2Z4.

20 **JURISDICTION AND VENUE**

21 5. This Court has jurisdiction over the subject matter of this action
22 pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this District under 28
23 U.S.C. §§ 1391(c) and 1400(b), as Wishpond has committed acts of infringement in
24 this District and, as a foreign corporation, may be sued in this District.

25 6. Defendant Wishpond maintains continuous and systematic contacts
26 within this District by selling and offering for sale products and services to
27 customers within this District, and by offering for sale products and services that are
28 used within this District.

1 7. This Court has specific personal jurisdiction over Wishpond because
2 Wishpond, directly and/or through intermediaries, has conducted and continues to
3 conduct substantial business within this District including, but not limited to: (i)
4 engaging in at least part of the infringing acts alleged herein; (ii) purposefully and
5 voluntarily placing one or more infringing products or services into the stream of
6 commerce with the expectation that they will be purchased and/or used by
7 consumers in this District; and/or (iii) regularly soliciting and/or doing business in
8 this District, and/or engaging in other persistent courses of conduct in this District,
9 and/or or deriving substantial revenue from goods and services provided to
10 individuals in this District. According to Wishpond’s publicly available financial
11 statements, over seventy percent of its geographic sales are generated from
12 customers located in the United States. Moreover, according to the “Privacy Policy”
13 on Wishpond’s website, Wishpond advises customers that it hosts servers in the
14 United States, stating specifically that its “Services are hosted in Canada and the
15 United States,” and further advises customers to “be aware that your information
16 may be transferred to, stored and processed in [the] United States”

17 **THE TECHNOLOGY AND THE PATENT IN SUIT**

18 8. The patent-in-suit generally discloses and claims systems and methods
19 to obtain, host, and provide content for review, distribution, and ranking, as well as
20 access to, automated creation of, and performance of contests among sets of content-
21 based contestants. The systems and methods provide customizable interactive,
22 ongoing, multi-level, multi-round contests with expert review of and filtered
23 submission of content-based contestants. Among other advantages, entities desiring
24 to hold a contest (a/k/a third-party providers or contest sponsors) may use the
25 systems and methods to obtain expert and consumer review and ranking of their
26 particular content.

27 9. The ’642 patent, entitled “System and Method for Interactive Contests,”
28 was duly and legally issued by the United States Patent and Trademark Office on

1 January 12, 2021. A copy of the '642 patent is attached hereto as Exhibit A.

2 10. The foregoing patent-in-suit is valid and enforceable.

3 11. Contest Factory is the exclusive owner of all rights, title, and interest in
4 the patent-in-suit. Contest Factory has the right to bring this action to recover
5 damages for any current or past infringement of this patent.

6 12. Contest Factory has never granted Wishpond a license to practice any of
7 the inventions claimed in the patent-in-suit.

8 **CONTEST FACTORY'S INTERACTIVE CONTEST PATENT**

9 13. The invention claimed in the '642 patent provides a novel system to
10 generate automated contests, rankings, and expert reviews in a system accessible to
11 producers of content, industry experts, and/or consumer end-users over a network
12 such as the Internet. '642 Patent at 1:40-44.

13 14. Online contest / voting technology prior to the invention in the patent-
14 in-suit, such as web-polls, did not simultaneously allow for flexible media content,
15 such as videos, audio, or virtually any playable content, did not allow for adjustable
16 scoring mechanisms, did not allow for registered end-users, did not allow for
17 multiple round contests such as elimination contests, did not allow for scorekeeping
18 among end-users, did not allow for demographic correlation and marketing data
19 interpolation, did not allow for concurrent sweepstakes based on web poll voting,
20 and did not allow for complete customization of the interactive operation elements to
21 be provided by the contest generator to the third party provider / contest sponsor
22 desiring to hold a contest. *Id.* at 2:28-39.

23 15. The claimed invention provides multiple multi-level contests for any
24 number of end-users and any number of content providers, allowing, among other
25 features, a content producer to submit content for the contest, industry experts to
26 review content and seek out top content, and end-users to rank, vote for, and seek out
27 the content. *Id.* at 3:25-31.

THE ASSERTED CLAIMS ARE PATENT ELIGIBLE

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2 16. The asserted claims in the patent-in-suit are directed to patent eligible
3 subject matter.

4 17. The asserted claims in the patent-in-suit do not recite an abstract idea,
5 law of nature, or natural phenomenon.

6 18. The patent-in-suit discloses and claims a computer system that facilitates
7 generating and operating an online contest for third-party providers / contest sponsors
8 using a specifically generated URL and one or more webpages generated using such
9 URL, among other features.

10 19. The asserted claims in the patent-in-suit recite elements that are
11 integrated into a highly practical and concrete application for online contests,
12 including specific improvements to the functioning of computers and computer
13 networks used for online contests.

14 20. The system and methods disclosed and claimed in the asserted patent-in-
15 suit specifies how interactions with and through the Internet are manipulated to yield
16 a desired result. Specifically, the claimed systems generate a URL and direct
17 contestants or voters to the above-described URL-generated web page that presents
18 contest information from the contest generator that has visual “look and feel”
19 elements from the third-party / contest sponsor website. As such, the contest
20 generator company undertakes management and storage of contest information,
21 contestant content and data, and voter data and relieves the third-party contest
22 sponsor of the burden of such data management and storage while users experience
23 the “look and feel” of the third-party contest sponsor website. In this way, the claims
24 provide a solution to a problem that is necessarily rooted in computer technology to
25 overcome problems specifically arising in the realm of online contests over computer
26 networks.

27 21. The asserted claims in the patent-in-suit are not directed to any “method
28 of organizing human activity,” “fundamental economic practice long prevalent in our

1 system of commerce,” nor are the claims “a building block of the modern economy.”

2 22. The asserted claims in the patent-in-suit do not take a well-known or
3 established business method or process and apply it to a general-purpose computer.
4 Instead, the specific systems and processes described in the asserted claims show a
5 non-conventional and non-generic arrangement of technology components for the
6 efficient generation and improved operation of online contests.

7 23. The asserted patent claims are directed toward a solution rooted in
8 computer technology and uses technology, unique to computers and networks, to
9 overcome problems specifically arising in the realm of computerized online contests.

10 24. The asserted patent claims are not directed at a mere mathematical
11 relationship or formula.

12 25. The asserted patent claims cannot be performed by a human, in the
13 human mind, or by pen and paper.

14 26. The asserted patent claims, both as a whole and with respect to
15 individual elements, are not merely well-understood, routine, conventional activities
16 previously known to the industry. Sponsoring multi-level, interactive, online
17 contests for third-party provider contest sponsors over computer networks, such as
18 the Internet, including the uploading, cross-correlation, sorting by genre, review, and
19 ranking of media content as claimed in the patent-in-suit was not known in 2000.

20 27. In allowing the claims of the ‘642 Patent, the U.S. Patent & Trademark
21 Office states that the closest prior art does not teach or suggest “generating a URL in
22 response to receiving the request; generating one or more webpages using the
23 generated URL, transmitting to the third-party provider the generated URL; . . .
24 generating links for each of the second content data, the third content data and the
25 retrieved first content data” as found in the independent claims.

26 28. Accordingly, the claims of the patent-in-suit recite a combination of
27 elements sufficient to ensure that the claims, in practice, amount to significantly more
28 than a claim to a patent-ineligible concept.

THE ACCUSED PRODUCTS AND SERVICES

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2 29. Wishpond makes, uses, sells, offers for sale, and/or imports products
3 and services that infringe the patent-in-suit.

4 30. Through its website www.wishpond.com, Wishpond offers a variety of
5 products and services that are used to, *inter alia*, upload and store content, and
6 facilitate access, distribution, voting, and other features used in interactive, ongoing,
7 multi-level, multi-round online contests that infringe the patent-in-suit (the “Accused
8 Products and Services”).

9 31. Wishpond uses and offers the Accused Products and Services using
10 computer systems comprising hardware computer processors, computer memory,
11 one or more non-transitory computer readable storage medium storing computer
12 executable instructions that generate online contests for third-party provider contest
13 sponsors to generate an online contest, as claimed by the patent-in-suit.

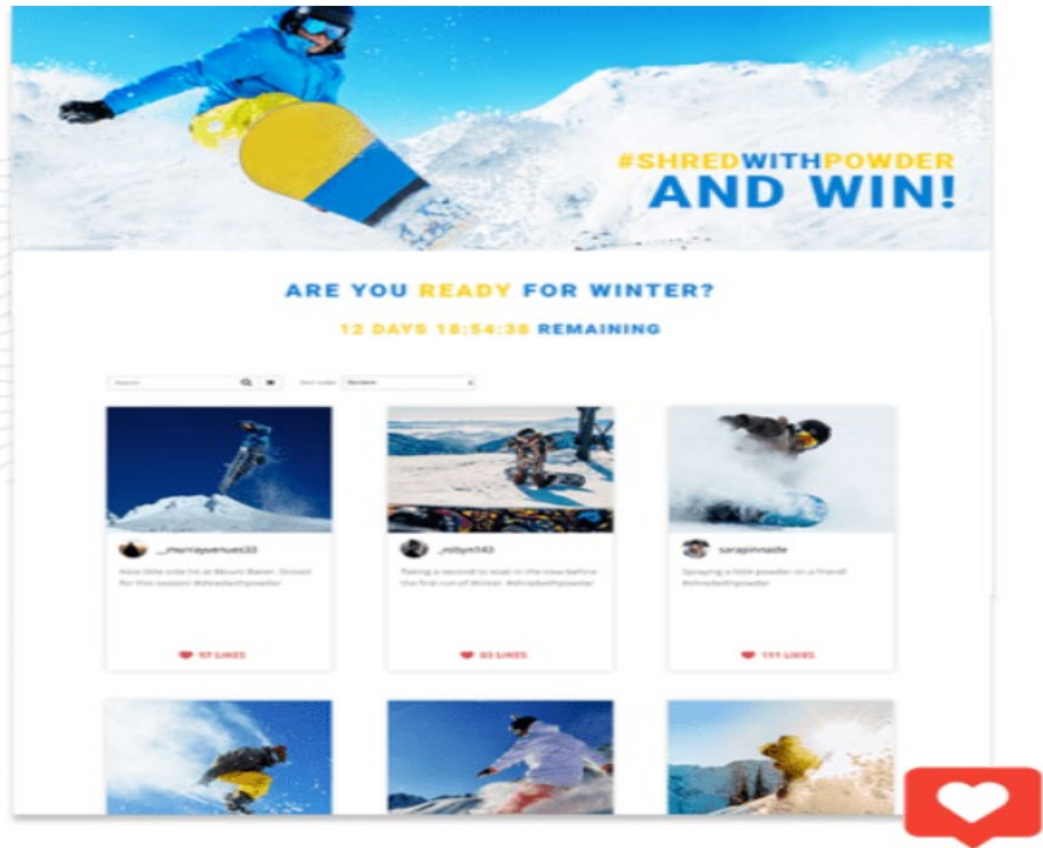
14 32. Among other products and services, Wishpond offers online “contests
15 and competitions such as Instagram hashtag giveaways, photo contests, sweepstakes,
16 and more!” *See generally* www.wishpond.com.

17 33. On the Wishpond website, Wishpond advertises the features of its
18 voting contest products to, among other things, use photo contests to “create and
19 manage your next photo contest to get more followers and boost your engagement”
20 and states that “Wishpond’s video contest tool makes it easy to create and run video
21 contests on your website, YouTube, and across social media. Video is a great way to
22 engage fans and followers.”

23 34. Wishpond advertises on its website that it is “DELIVERING RESULTS
24 FOR SMALL BUSINESSES TO THE FORTUNE 500,” and its representative list of
25 clients include many well-known names like Walmart, ESPN, Lululemon, the
26 Weather Channel, and CBS. Wishpond advertises its services for a wide-range of
27 industries, including eCommerce, finance, education, non-profits,
28 fitness/trainer/gyms, marketing agencies, restaurants, and beauty and wellness

1 businesses.

2 35. Wishpond touts its online contests as a way to “[i]ncentivize users to
3 follow you on social media, share content, and submit user-generated content.” It
4 advertises that it can help customers get their business “going viral on social media
5 through impactful contests” which allow a business to “[g]ain more followers [and]
6 reach more customers” Wishpond’s website further states that Wishpond can
7 “create and run viral contests and giveaways that boost your popularity, social media
8 engagement, and sales.” It highlights on its website representative voting contests,
9 such as the following examples:





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36. Contest Factory alleges, on information and belief, that Wishpond makes, uses, sells, or offers for sale products and services that infringe at least one claim of the patent-in-suit, as explained in more detail below.

37. Wishpond has actual prior knowledge of the patent-in-suit and of Contest Factory’s belief that Defendant infringes the patent-in-suit, by virtue of its prior communications with Contest Factory beginning on or about June 2, 2023.

COUNT I – INFRINGEMENT OF THE '642 PATENT

38. Plaintiff Contest Factory incorporates paragraphs 1 through 37 herein by reference.

39. Defendant Wishpond, either alone or jointly in conjunction with its customers, has directly infringed and continues to directly infringe under 35 U.S.C. § 271(a), one or more claims of the '642 patent, either literally and/or under the doctrine of equivalents, by making, using, importing, selling, and/or offering for sale in the United States, the Accused Products and Services.

40. Specifically, claim 1 of the '642 patent claims:

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A computer system for generating and operating an online contest for a third-party provider, the computer system comprising:

- one or more hardware computer processors;
- one or more hardware computer memory; and
- one or more non-transitory computer readable storage medium storing computer executable instructions that when executed by the one or more hardware computer processors cause the one or more hardware computer processors to perform the steps of:
 - receiving a request from a third-party provider to generate an online contest;
 - generating a URL in response to receiving the request;
 - generating one or more webpages using the generated URL;
 - transmitting to the third-party provider the generated URL;
 - receiving, from a first content producer via the one or more generated webpages, a content URL associated with a first content data;
 - receiving, from a second content producer and third content producer, a second content data and a third content data;
 - storing the second content data and the third content data in the memory;
 - retrieving the first content data from a database over a computer network using the content URL;
 - generating links for each of the second content data, the third content data, and the retrieved first content data;
 - generating the online contest, wherein the online contest comprises the generated links;
 - transmitting the generated online contest to a plurality of user computers;
 - receiving, from the plurality of user computers, responses via the generated links; and

1 determining a result of the online contest using the received
2 responses.

3 41. For its online contests, on information and belief, Wishpond has a
4 computer system for generating and operating the online contest for the contest
5 sponsor/third-party provider.

6 42. On information and belief, the computer system for Wishpond's online
7 contests are comprised of one or more hardware computer processors, one or more
8 hardware computer memory, and one or more non-transitory computer readable
9 storage medium storing computer executable instructions. On information and
10 belief, the executable instructions include instructions that when executed by the
11 hardware computer processors cause the processors to receive a request from the
12 contest sponsor/third-party provider to generate an online contest; to generate a URL
13 in response to receiving the request; to generate one or more webpages using the
14 generated URL; to transmit to the contest sponsor/third-party provider the generated
15 URL. On information and belief, the executable instructions further include
16 instructions that when executed by the hardware computer processors cause the
17 processors to receive a contestant photo URL associated with the first content data
18 from a first content producer via one or more generated webpages comprising
19 Wishpond's uploader. On information and belief, the executable instructions further
20 include instructions that when executed by the hardware computer processors cause
21 the processors to receive a contestant photo URL associated with the second content
22 data from a second content producer and a contestant photo URL associated with a
23 third content data from a third content producer.

24 43. On information and belief, the Accused Products and Services are
25 implemented through one or more non-transitory computer readable storage medium
26 storing computer executable instructions that when executed implement the online
27 contest.

28 44. On information and belief, the executable instructions for Wishpond's

1 online contests, when executed by the one or more hardware computer processors,
2 cause one or more hardware computer processors to receive from a first content
3 producer via the one or more generated webpages, a content URL associated with a
4 first content data.

5 45. On information and belief, the executable instructions for the contests
6 further include instructions that when executed by the hardware computer processors
7 cause the processors to store the second content data and the third content data in the
8 memory. On information and belief, the executable instructions further include
9 instructions that when executed by the hardware computer processors cause the
10 processors to retrieve the first content data from a database over a computer network
11 using the content URL and to generate links for each of the second content data, the
12 third content data, and the retrieved first content data. Further, on information and
13 belief, each entry is associated with a unique URL.

14 46. As such, as demonstrated by the Accused Products and Services
15 described above, Wishpond, either alone or jointly in conjunction with its customers,
16 infringes at least claim 1 of the '642 patent. To the extent any of the limitations set
17 forth above for the asserted claims are not met literally by Wishpond's Accused
18 Products and Services, those limitations are met under the Doctrine of Equivalents
19 because such differences would be insubstantial from the claimed limitations, and
20 any such differences would function in a substantially similar way to reach
21 substantially the same result as the claimed invention. By way of example, any of
22 the claimed data content may be stored, accessed, or processed in an insubstantially
23 different manner than claimed, but the resultant online contest would still function in
24 substantially the same manner as claimed, and would result in a substantially same
25 online contest as claimed.

26 47. On information and belief, Wishpond has induced infringement and
27 continues to induce infringement under 35 U.S.C. § 271(b). Wishpond has actively,
28 knowingly, and intentionally induced, and continues to actively, knowingly, and

1 intentionally induce, infringement of the '642 patent by selling or otherwise
2 supplying the Accused Products and Services in the United States with the
3 knowledge and intent that third parties will use, sell, and/or offer for sale in the
4 United States the Accused Product and Services, for their intended purpose to
5 infringe the '642 patent, with instructions as to the use of those products and services
6 and guidance as to cause users to perform the specific steps to utilize those products
7 and services, including the provision of interactive data fields, all with the
8 knowledge and intent to encourage and facilitate infringement through the
9 dissemination of the Accused Products and Services and/or the creation and
10 dissemination of documentation and technical information to customers and
11 prospective customers related to those products and services.

12 48. On information and belief, Wishpond has contributed to, and continues
13 to contribute to, the infringement by third parties, including its customers, of one or
14 more claims of the '642 patent under 35 U.S.C. § 271(c) by, as demonstrated by the
15 Accused Products and Services, selling and/or offering for sale in the United States
16 the Accused Products and Services knowing that those products and services
17 constitute a material part of the invention or inventions of the '642 patent, knowing
18 that those products and services are especially made or adapted to infringe the '642
19 patent, and knowing that those products and services are not staple articles of
20 commerce suitable for substantial non-infringing use.

21 49. Contest Factory has been and continues to be damaged by Wishpond's
22 infringement of the '642 patent. Contest Factory has no adequate remedy at law.

23 50. Having knowledge of the '642 patent, Defendant knows, or should
24 know, that without taking a license to the patent-in-suit, its actions continued to
25 infringe one or more claims of the '642 patent.

26 51. Wishpond has willfully infringed the '642 patent and continues to do so.

27 52. The conduct by Wishpond in infringing the '642 patent renders this case
28 exceptional within the meaning of 35 U.S.C. § 285.

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PRAYER OF RELIEF

WHEREFORE, Contest Factory prays for judgment as follows:

- A. A finding that Wishpond has directly and indirectly infringed the patent-in-suit;
- B. That Contest Factory be awarded all damages adequate to compensate it for Defendant Wishpond’s infringement of the patent-in-suit, such damages to be determined by a jury with pre-judgment and post-judgment interest;
- C. A judgment that the infringement was willful and that such damages be trebled pursuant to 35 U.S.C. § 284;
- D. An order permanently enjoining Defendant Wishpond and its officers, agents, servants and employees, privies, and all persons in concert or participation with it, from further infringement of the patent-in-suit;
- E. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Contest Factory be awarded attorneys’ fees, costs, and expenses incurred relating to this action; and
- F. That Contest Factory be awarded such other and further relief as this Court deems just and proper.

Dated: June 17, 2024

UMBERG ZIPSER LLP

Mark A. Finkelstein
Attorneys for Plaintiff
Opus One Corporation d/b/a Contest Factory

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DEMAND FOR JURY TRIAL

Contest Factory hereby demands a trial by jury on all issues so triable.

Dated: June 17, 2024

UMBERG ZIPSER LLP



Mark A. Finkelstein
Attorneys for Plaintiff
Opus One Corporation d/b/a Contest Factory