

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

INNOVATIVE GAMING CONCEPTS LLC,
a Florida Limited Liability Company,

CASE NO.: 0:24cv61148

Plaintiff,

v.

JACKPOT DIGITAL INC.,
a Canadian Corporation,

Defendant.

COMPLAINT

Plaintiff, INNOVATIVE GAMING CONCEPTS LLC, a Florida Limited Liability Company (hereinafter “Innovative Gaming” or “Plaintiff”), by and through the undersigned counsel, hereby files this Complaint against Defendant, JACKPOT DIGITAL INC., a Canadian Corporation (hereinafter “Jackpot Digital” or “Defendant”) and, in so doing, states as follows:

JURISDICTION, VENUE, AND THE PARTIES

1. This is a civil action which is, *in part*, brought pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*

2. The Court has original jurisdiction pursuant to 28 U.S.C. § 1331, as this case involves a federal question arising under the Constitution, laws, or treaties of the United States.

3. The Court also has original jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is diversity of citizenship between Innovative Gaming, which is incorporated in and a citizen of the State of Florida, and Jackpot Digital, which is incorporated in and a citizen of a foreign state, namely, British Columbia, and the amount in controversy exceeds the sum or value of \$75,000.

4. Innovative Gaming is a Florida Limited Liability Company with its principal address located in Lake Worth, Florida and regularly transacts business within this district.

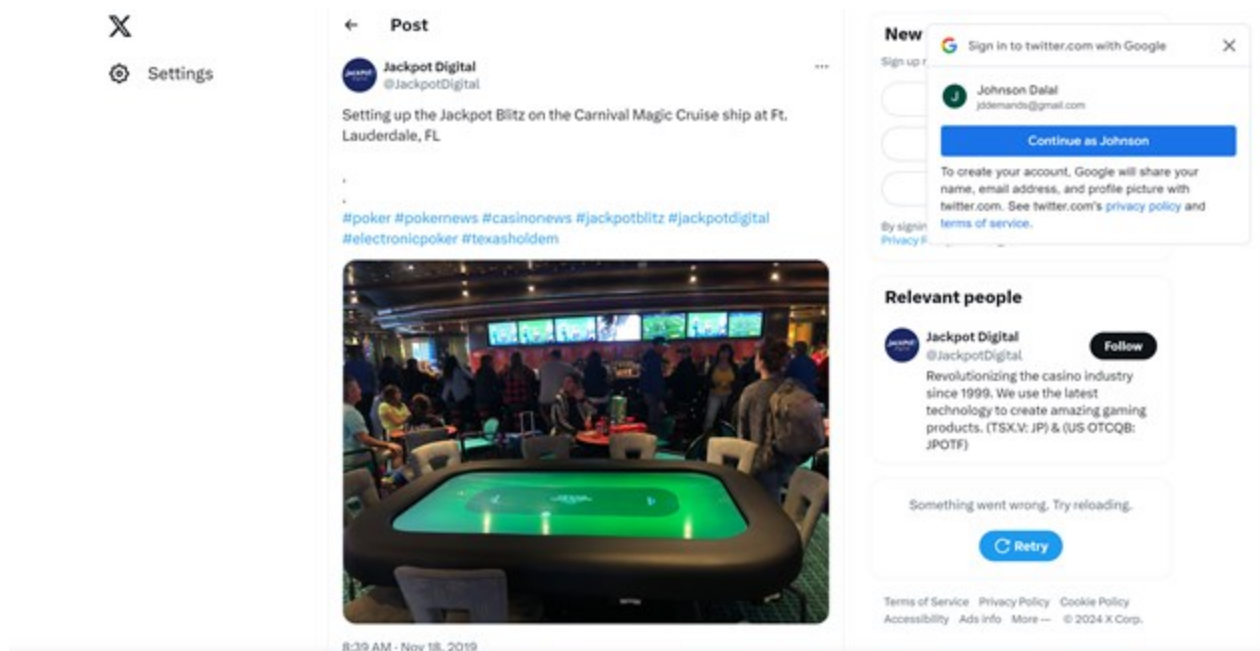
5. Brian P. Birkenmeyer (“Mr. Birkenmeyer”) is the managing member and owner of Innovative Gaming.

6. At all times material hereto, Jackpot Digital was and is a Canadian corporation headquartered in Vancouver, British Columbia that is believed to be operating in the state of Florida and engaged in the conduct of interstate commerce within the United States, including in this judicial district, and is otherwise *sui juris*.

7. Jackpot Digital is an electronic table games manufacturer and mobile gaming provider for the cruise ship industry and regulated casino industry, specializing in multiplayer gaming products, including poker and casino games.

8. Since at least September of 2019, Jackpot Digital has been engaged in federal interstate commerce, i.e., purposefully and intentionally using, manufacturing, importing, marketing and selling electronic table games and mobile games directed to consumers around the world, including consumers within the Southern District of Florida, wherein said products include the electronic table game “Jackpot Blitz” featuring a “Bet the Flop” side bet (the “Accused Products”) and a Bad Beat Progressive Jackpot side bet which infringe on the ‘289 Patent (defined herein).

9. More specifically, on or around November 18, 2019, Jackpot Digital installed the Accused Products on the Carnival Magic cruise ship in Fort Lauderdale, Florida, and promoted the same on its X (formerly Twitter) page. See **Exhibit A** (true and accurate screen capture) and below.



10. On or around January 22, 2020, Jackpot Digital installed the Accused Products on the Carnival Liberty cruise ship in Orlando, Florida, and promoted the same on its Facebook page. See **Exhibit B** and below.



11. Publicly available import and export records also indicate that Jackpot Digital continues to manufacture and import what, on information and belief, are the Accused Products throughout Florida including in Tampa and Port Canaveral. See Exhibit C and below.

Shipments available for JACKPOT DIGITAL, refreshed daily

Customs US Trade Data Records

Shipments available for JACKPOT DIGITAL, US import data refreshed daily and available back to 2008 with advanced search and filtering

Date	Supplier	Buyer	Details	Origin	Destination	HS Codes	BOL
2024-03-07	MV SKY PRINCESS C O	JACKPOT DIGITAL	BATTERIES	41374 Southhampton, United Kingdom	5201 Charlotte Amalie, Virgin Islands	Unavailable	CMDULPL1307290
2023-10-01	PAXTON SHREVE HAYS INC	JACKPOT DIGITAL	52 GAMING MONITOR	12493 Gooch Island, BC, Canada	2501 San Diego, California	Unavailable	HAWIV08401002001
2023-09-21	CARNIVAL CRUISE LINES	JACKPOT DIGITAL	ELECTRIC KIOSK, MADE IN CANADA VALUE \$ 1,000.00 CF 7512, 1 PCS ON 1 PALLET	99900 High Seas, Outside U.S. Territorial Waters,	1816 Port Canaveral, Florida	Unavailable	CRNV27M092100004
2023-04-09	KONINGS DAM	JACKPOT DIGITAL	ELECTRONIC POKER TABLE	64191 Marquesas Islands, French Polynesia	2904 Portland, Oregon	Unavailable	HAWIKO2480409015
2023-01-28	CARNIVAL CRUISE LINES	JACKPOT DIGITAL	GAMING KIOSK, VALUE \$1,000.00, MADE IN USA CF7512, TOTAL 1 PCS ON 1 PALLET	99900 High Seas, Outside U.S. Territorial Waters,	1816 Port Canaveral, Florida	Unavailable	CRNV30M012800003

Shipments available for JACKPOT DIGITAL INC, refreshed daily

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Date	Supplier	Buyer	Details	Origin	Destination	HS Codes	BOL
2024-03-08	CARNIVAL CRUISE LINES	JACKPOT DIGITAL INC	CPU VALUE \$250.00 MADE IN CHINA CF:7512 1 BOX ON 1 PLT	99900 High Seas, Outside U.S. Territorial Waters,	5201 Charlotte Amalie, Virgin Islands	Unavailable	CRNV22N030800003
2023-10-02	CARNIVAL CRUISE LINES	JACKPOT DIGITAL INC	JACKPOT BLITZ GAMING KIOSK, VALUE: \$500.00 MADE IN USA, CF 7512, 1 PCS ON 1 PALLET	99900 High Seas, Outside U.S. Territorial Waters,	2709 Long Beach, California	Unavailable	CRNV18M100200008
2023-09-11	JACKPOT DIGITAL INC	JIANGSHAN CITY SANDU TRADING CO	JACKPOT BLITZ ELECTRONIC GAME TABLE SERIALLB-022-0081 CERS AD5216202308242849382 HS CODE 950430	12493 Gooch Island, BC, Canada	3002 Tacoma, Washington	HS CODE 950430	HLCUMTR230725230
2023-08-17	CARNIVAL CRUISE LINES	JACKPOT DIGITAL INC	GAMING KIOSK, MADE IN CANADA, VALUE \$500.00 CF 7512, 1 PCS IN 1 PALLET	99900 High Seas, Outside U.S. Territorial Waters,	1801 Tampa, Florida	Unavailable	CRNV16M08170012
2023-05-04	CARNIVAL CRUISE LINES	JACKPOT DIGITAL INC	POKER TABLE AND KIOSK, VALUE 5,342.86 MADE IN CANADA, CF7512, 2 PCS ON 2 PALLET	99900 High Seas, Outside U.S. Territorial Waters,	3001 Seattle, Washington	Unavailable	CRNV38M05040018

12. In view of the foregoing, at all times material hereto, Jackpot Digital was and is engaged in the conduct of interstate commerce of the Accused Products within the United States, including directly or indirectly regularly conducting business in this judicial district.

13. The Accused Products are being used, marketed, and sold to Florida consumers through third parties like Carnival Cruise Lines who have installed the Jackpot Blitz tables on their cruise ships and are believed to market, advertise, use, and/or offer for sale the Accused Products to consumers within this judicial district.

14. Upon information and belief, at least a portion of the funds received by Jackpot Digital through the Accused Products are from consumers/users within the state of Florida.

15. On July 16, 2019, Mr. Birkenmeyer emailed Jackpot Digital's President and Chief Executive Officer ("CEO"), Jake H. Kalpakian ("Mr. Kalpakian"), placing him on notice of Innovative Gaming's patent, trademark, and copyright protected side bets—namely, Hold'em + 3 and Next Step Blackjack, side bets for Texas Hold'em and Blackjack, respectively. **Exhibit D.** Mr. Birkenmeyer invited Mr. Kalpakian to a discussion of a possible licensing arrangement between the two companies, but no response from Jackpot Digital was received.

16. Exactly two months later, on September 16, 2019, Jackpot Digital released a news release announcing the offering of two major new gameplay features—a Bad Beat Progressive Jackpot and a house-banked side bet called "Bet the Flop", i.e., the Accused Products—on Jackpot Digital's "Jackpot Blitz" electronic table game platform. **Exhibit E.**

17. The two new features were touted as "hav[ing] increased product revenue per table by more than 10% year over year through two (2) months of operation." *Id.*

18. On or around December 17, 2019, a cease-and-desist correspondence from the undersigned firm was sent to Jackpot Digital alleging, among other things, that the Accused Products infringed U.S. Patent No. 10,475,289 ("the '289 Patent"), entitled "Method, System, and Device for Conducting a Side Bet for a Poker Game", owned by Innovation Gaming and

issued on November 12, 2019. **Exhibit F** (first cease-and-desist correspondence); **Exhibit G** (true and correct copy of the '289 Patent).

19. A second cease-and-desist correspondence was remitted to Jackpot Digital on or around February 24, 2023. **Exhibit H** (second cease-and-desist correspondence).

20. Over the next six months, Mr. Birkenmeyer and Mr. Kalpakian (and their respective attorneys, agents, and representatives) engaged in extensive settlement discussions and negotiations involving Jackpot Digital's prospective licensing of the '289 Patent.

21. However, Mr. Kalpakian subsequently became non-responsive and any continued settlement and licensing discussions ceased.

22. Jackpot Digital did not cease using, importing, manufacturing, offering, and/or selling the Accused Products after the Parties' settlement and licensing discussions fell through, and has used (and continues to use) the Accused Products without Innovative Gaming's permission, consent, or authorization as of the undersigned date.

23. In fact, on or around October 11, 2023, released a press release announcing that it had received multiple certifications from Gaming Labs International ("GLI") for Jackpot Digital's Next Generation Jackpot Blitz® dealer-less electronic multiplayer poker tables, paving the way for "land-based installations or orders for 36 tables in 11 states and territories in the U.S. and growing, including California, Kansas, Louisiana, Minnesota, Mississippi, Montana, Nevada, Oregon, South Dakota, U.S. Virgin Islands, Washington as well as several international jurisdictions." **Exhibit I.**

24. Said differently, Jackpot Digital is actively and aggressively expanding its use and sale of the Accused Products without Innovative Gaming's permission, consent, authorization, or duly issued license.

25. Venue is proper in this judicial district under 28 U.S.C. § 1400 because Jackpot Digital has committed acts of infringement in this judicial district and has a regular and established place of business in this judicial district, as demonstrated by its continued use, marketing, manufacturing, importing, offering for sale, and/or sale of the Accused Products to consumers located in Florida and, more specifically, in this judicial district. Jackpot Digital intentionally made a decision to transact business in the state of Florida and is subject to the Court's personal jurisdiction.

26. All conditions precedent have been met, waived, or satisfied to bring this lawsuit.

GENERAL ALLEGATIONS

27. Innovative Gaming specializes in designing, developing, and manufacturing proprietary casino table games and side bets which are designed to not only provide a fun and exciting user experience for players but to also increase profitability per hand for casino operators. *See, e.g.,* <https://igamingconcepts.com/>.

28. Innovative Gaming's table games and side bets are patent- and copyright-protected while the paytables and mathematics of the products are certified by BMM Testlabs.

29. Innovative Gaming licenses and distributes its proprietary games to online casinos, land-based casinos, and cruise ships worldwide.

30. Innovative Gaming has invested significant resources, e.g., time and money, in commercially developing, marketing, selling, and licensing its proprietary products.

31. Jackpot Digital and Innovative Gaming are direct competitors in the casino industry.

32. The '289 Patent was assigned to Innovative Gaming before the filing of this lawsuit.

33. The invention described in at least independent claims 1 and 5 of the '289 Patent is specifically directed toward a device and method for displaying a side game associated with a base game to a player, the method being facilitated by a game controller including processing devices, servers and data storage devices, and configured to communicate with a remote user device. **Exhibit G**, at 5-6.

34. Claim 1 of the '289 Patent, by way of example, is recited below:

1. An electronic device for displaying a side game associated with a base game to a player, comprising: a display device; a user input device configured to generate a signal indicative of a player's selection input; a wager input device configured to receive information relating to a monetary value enabled for wagering in the game; and at least one gaming controller in communication with a source of randomly generated game data for providing random game outcomes used in a base game, the display device and the user input device, said at least one gaming controller being operative to:

detect wagering input via the wager input device, the wagering input relating to one or both of a wager in the base game and wager in the side game;

the game controller in communication with the source of randomly generated game data causing the display of standard playing cards of varying rank to form hands and a group of community playing cards in the base game on the display device;

the game controller determining the outcome of the side game, wherein the outcome of the side game is determined by comparing the first three community playing cards with one or more preset combinations of playing cards;

awarding a payout to the players from which a side bet is received responsive to the payout triggering event being triggered by the comparison;

maintaining the side bets received in a pot to be made available for the next side game responsive to the group of community playing cards receiving less than a preset number of playing cards in the base game; and

assigning a portion of the side bets received to a progressive jackpot and/or collecting the remainder as a loss responsive to the payout triggering event not being triggered.

35. Claim 5 of the '289 Patent, by way of example, is recited below:

5. A method for displaying a side game associated with a base game to a player, the method being facilitated by a game controller including processing devices, servers and data storage devices, configured to communicate with a remote user device, such as a mobile phone, personal computer or tablet, over a global communication network, such as the Internet, the method comprising the steps of:

the game controller being configured to receive and detect signals indicative of players' selections input entered into through the remote user device, detecting a wager being input by the player, wherein the wager may be for real money or virtual currency;

the game controller, in communication with a source of randomly generated game data for providing random game outcomes used in a base game, causing the display of standard playing cards of varying rank to form hands and a group of community playing cards in the base game on the remote user device;

the game controller determining the outcome of the side game, wherein the outcome of the side game is determined by comparing the first three community playing cards with one or more preset combinations of playing cards;

the game controller awarding a payout to the players from which a side bet is received responsive to the payout triggering event being triggered by the comparison, wherein the payout may be added to the players' respective virtual currency;

the game controller maintaining the side bets received in a pot to be made available for the next side game responsive to the group of community playing cards receiving less than a preset number of playing cards in the base game; and

the game controller assigning a portion of the side bets received to a progressive jackpot and/or collecting the remainder as a loss responsive to the payout triggering event not being triggered.

36. On December 17, 2019, the cease-and-desist letter was sent to and received by Jackpot Digital, wherein said letter described how and why the Accused Products infringed the '289 Patent. *See Exhibit F.*

37. More specifically, below are true and accurate marketing materials and images relating to the Accused Products that are annotated with claim terms for the purposes of illustrating infringement of the '289 Patent. *See Exhibit J.*



An electronic device for displaying a side game associated with a base game to a player, comprising a display device, a user input device, a wager input device, and at least one gaming controller

Monetize downtime with exciting poker side bets

Exciting poker side bets monetize downtime, providing players with more action and more entertainment.



100% player engagement

- Bet The Flop
- Bet The Color
- More side bets coming soon

Monetize Downtime with Exciting Side Bets and Mini Games

Poker is a skill game with significant player downtime during and between hands. Our suite of house banked mini games and side bets are available for simultaneous play, meaning players are engaged 100% of their time at the table. Anyone with a seat at a Jackpot Blitz® table can play blackjack, baccarat, video poker, and place side bets on Texas Hold'em and Omaha poker games.



Player Benefits

- 75" 4K ultra-sensitive playing surface
- Play multiple games simultaneously
- Excitement and authenticity of live poker
- Responsive to authentic hand gestures
- Fast, efficient error free game play
- Intuitive and fun to play

Operator Benefits

- Automated Dealer
- Modern and stylish design
- Easy table and tournament management via back-end system
- Ticket-In-Ticket-Out Payments
- Isolated server mitigates security threats
- SAS for integration with most casino management systems

Processing devices, servers and data storage devices, configured to communicate with a remote user device

38. Despite having actual knowledge of the '289 Patent and infringement of the same, including after knowledge of this lawsuit, Jackpot Digital has continued to sell, offer, manufacture, use, import, and market the Accused Products in a willfully infringing manner.

39. As a direct result of Jackpot Digital's actions, Innovative Gaming has retained the services of counsel, and is obligated to pay its counsel all attorneys' fees and costs associated with the investigation, preparation, and prosecution of the instant lawsuit.

40. Innovative Gaming has complied with and met all conditions precedent and concurrent to the bringing of this action, or all conditions precedent and concurrent to the bringing of this action have been waived or excused by Jackpot Digital's conduct.

COUNT I - WILLFUL DIRECT INFRINGEMENT OF U.S. PATENT NO. 10,475,289

41. Innovative Gaming realleges and revers paragraphs one (1) through forty (40) as if fully set forth herein.

42. This is an action for direct patent infringement pursuant to 35 U.S.C. § 271(a).

43. Defendant has directly infringed, and continues to infringe, at least claims 1 and 5 of the '289 Patent, by, *at least*, selling, offering, manufacturing, using, importing, and marketing the Accused Products.

44. Specifically, Defendant has infringed, literally and under the doctrine of equivalents, claims 1 and 5 of the '289 Patent by selling, offering, manufacturing, using, importing, and marketing the Accused Products that include all elements recited within claims 1 and 5 of the '289 Patent and/or that include a structure and methodology that has the same function or purposes of the structure and methodology recited in claims 1 and 5 of the '289 Patent.

45. As set forth above, Defendant had knowledge of the '289 Patent, the products that infringed the '289 Patent, how the Accused Products infringed the '289 Patent, and the consequences of infringement; yet, Defendant continued to sell, offer, manufacture, use, import, and market the Accused Products and/or has instructed its consumers to utilize the Accused Products in an infringing manner, thereby indirectly infringing the '289 Patent.

46. All such infringing conduct of the '289 Patent by Defendant has occurred and was committed in a willful manner.

47. Defendant has caused, and continues to cause, irreparable harm to Innovative Gaming and its owner for which there is no adequate remedy at law.

48. Defendant's conduct in this instance is exceptional, and, as such, Innovative Gaming should be entitled to recover its attorneys' fees in this action pursuant to 35 U.S.C. § 285 which provides that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

COUNT II – INDIRECT INFRINGEMENT OF U.S. PATENT NO. 10,475,289

49. Innovative Gaming realleges and revers paragraphs one (1) through forty (40) as if fully set forth herein.

50. This is an action for indirect patent infringement pursuant to 35 U.S.C. § 271(b).

51. Defendant has indirectly infringed, and continues to infringe, at least claims 1 and 5 of the '289 Patent, by actively inducing third parties into purchasing, installing, and using the Accused Products and directly infringing at least claims 1 and 5 of the '289 Patent.

52. Specifically, Defendant has sold and installed the Accused Products on the Carnival Magic cruise ship in Fort Lauderdale, Florida, on the Carnival Liberty cruise ship in

Orlando, Florida, and, upon information and belief, on countless other cruise ships, hotels, and casinos throughout the United States and within this judicial district.

53. The use of the Accused Products by said cruise ships, hotels, and casinos directly infringes, literally and under the doctrine of equivalents, at least claims 1 and 5 of the '289 Patent.

54. As set forth above, Defendant had actual knowledge of the '289 Patent, the products that infringed the '289 Patent, how the Accused Products infringed the '289 Patent, and the consequences of infringement; yet, Defendant continued to sell, manufacture, use, import, and market the Accused Products and/or has instructed its consumers to purchase, install, and utilize the Accused Products in an infringing manner, thereby indirectly infringing the '289 Patent.

55. All such infringing conduct of the '289 Patent by Defendant has occurred and was committed in a willful manner.

56. Specifically, Defendant knowingly induced the infringement and possessed the specific intent to encourage said infringement, as demonstrated by the fact that Defendant was placed on actual notice of the infringing nature of the Accused Products on at least three occasions (including via the two cease-and-desist letters Defendant received) and engaged in extensive and protracted licensing discussions with Innovative Gaming after receiving said letters yet thereafter became unresponsive and continued to offer, sell, market, and install the Accused Products in various cruise ships, hotels, and casinos, and actively induce said establishments (and their patrons) into installing and/or using the Accused Products in a manner that directly infringes at least claims 1 and 5 of the '289 Patent.

57. Defendant has caused, and continues to cause, irreparable harm to Innovative Gaming and its owner for which there is no adequate remedy at law.

58. Defendant's conduct in this instance is exceptional, and, as such, Innovative Gaming should be entitled to recover its attorneys' fees in this action pursuant to 35 U.S.C. § 285 which provides that the "court in exceptional cases may award reasonable attorney fees to the prevailing party."

PRAYER FOR RELIEF

WHEREFORE, Innovative Gaming, by and through the undersigned, hereby respectfully demands judgment against the Defendant, wherein said judgment should include provisions:

- a) enjoining Defendant and all of those acting in concert with it, including, but not limited to, its agents, affiliates, subsidiaries, officers, directors, attorneys and employees from using, making, selling, marketing, importing, or offering to sell the Accused Products, and all colorable imitations thereof;
- b) issuing a declaration or order finding the Accused Products are infringing at least claims 1 and 5 of the '289 Patent;
- c) compensating Innovative Gaming for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the Patent Laws of the United States, 35 U.S.C. §§ 271, *et. seq.*, which include, but are not limited to a reasonable royalty award;
- d) declaring this case exceptional, trebling all damages awarded to Innovative Gaming, and awarding Innovative Gaming its attorneys' fees under 35 U.S.C. § 285;
- e) imposition of all pre and post judgment interest at the maximum allowable rate on the full compensatory and trebled amount awarded to Innovative Gaming;
- f) awarding remuneration of all attorneys' fees, costs and expenses for Innovative Gaming having to investigate, prepare and prosecute this action; and
- g) for such further and additional relief the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(d) of the Federal Rules of Civil Procedure, Innovative Gaming hereby demands trial by jury of all issues so triable as a matter of law.

Dated: July 1, 2024

Respectfully submitted,

By: /s/ Mark C. Johnson

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