

08-2163-CD

Magna Card vs Magnum Magnetics Corp

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC.,
Plaintiff

vs.
MAGNUM MAGNETICS
CORPORATION,
Defendant

No. 08-2163-CD

Type of Pleading: Complaint

Filed on behalf of: Magna Card, Inc.,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

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Atty Hopkins
(M) Atty pd. \$95.00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC., :
Plaintiff :
: :
vs. : No.
: :
MAGNUM MAGNETICS :
CORPORATION, :
Defendant :
:

NOTICE

TO DEFENDANT:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC., :
Plaintiff :
: :
vs. : No.
: :
MAGNUM MAGNETICS :
CORPORATION, :
Defendant :
:

COMPLAINT

AND NOW COMES Plaintiff, Magna Card, Inc., by and through its attorneys, Hopkins Heltzel LLP, and files the within Complaint and in support says as follows:

1. Plaintiff is Magna Card, Inc., a Pennsylvania domesticated corporation whose principal business address is 190 West Park Avenue, Suite 7, DuBois, Pennsylvania 15801.
2. Defendant is Magnum Magnetics Corporation, an Ohio Corporation whose principal business address is 801 Masonic Park Road, Marietta, Ohio 45750.
3. Plaintiff is a designer and seller to retail merchants of magnet products.
4. Defendant is a manufacturer of magnet products.
5. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 8, 2007. A photocopy of same is attached hereto as Exhibit "A" and incorporated as if set forth at length.
6. In or about 2008, Defendant proposed to Plaintiff that Plaintiff become the exclusive retail distributor of Defendant's products and Defendant would become the exclusive manufacturer of Plaintiff's products (Defendant's proposal).

7. Representatives of Plaintiff and Defendant met in Pittsburgh to discuss the Defendant's proposal. The meeting ended with Plaintiff and Defendant agreeing to move forward with Defendant's proposal and further negotiate the terms and conditions under which the parties would operate.

8. Ultimately Plaintiff and Defendant could not agree on terms acceptable for Plaintiff to be the exclusive retail distributor of Defendant's products and/or Defendant to be the exclusive manufacturer of Plaintiff's products and the parties continued to operate their businesses as they had in the past.

9. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 20, 2008. A photocopy of same is attached hereto as Exhibit "B" and incorporated as if set forth at length.

10. The Agreement defines products, including products that Plaintiff sells to retail merchants, as information.

11. Section 2 of the Agreement states in pertinent part:

Non-Disclose and Non-Use of Information. Magna Card and Magnum each acknowledge and agree that the information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to:

(a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;

(b) Restrict access to and disclose the information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;

(d) Not use or disclose any of the Information of the other except pursuant to Paragraphs (a) through (c) above, or the fact that the information of the other has been made available to it, except with the written consent of the other;

(g) Immediately notify the other of any breach of this agreement or misuse or misappropriation of the information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the effect of such occurrence.

12. In violation of the Agreement, Defendant has copied Plaintiff's wallpaper magnet designs and offered to sell same to retail merchants.

13. The products Defendant copied are pink camouflage wallpaper magnets and geocentric circle wallpaper magnets.

14. Said products were displayed at the ECRM trade show in Marco Island, Florida in September 2008.

15. Three (3) days before the ECRM trade show, Defendant's President, Gary Murphy, telephoned Plaintiff offering to manufacturer magnet products for Plaintiff for 2009 products. Murphy proceeded to ask questions about product style, Plaintiff's top seller, how many units Plaintiff sold, who were major purchasers and similar sale questions. Murphy assured Plaintiff Defendant would not compete with Plaintiff and desired only to be Plaintiff's manufacturing supplier. Murphy offered his personal cell number.

16. Section 4 of the Agreement provides remedies upon breach of the contract. It states:

Remedies Upon a breach of this agreement by Magna Card or Magnum, the non breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses, and reasonable attorney's fees incurred in enforcing this agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any information in violation of the terms of this agreement shall cause immediate and irreparable injury, loss, and damage and that an adequate remedy at

law for such injury, loss, and damage may not exist. Therefore, Magna Card and Magnum agree that in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss, or damage.

17. The actions of Defendant constitute breach of the agreement.
18. As a result of Defendant's breach, Plaintiff has suffered damages in an amount not yet ascertained.
19. As a result of Defendant's breach of the Agreement, Plaintiff has and will continue to incur costs, expenses, and attorney's fees in enforcing this contract.
20. Plaintiff and Defendant agreed that in the event Defendant breached the contract, Plaintiff was entitled to institute and prosecute proceedings to obtain temporary and/or permanent injunctive relief to enforce the terms of the contract without the necessity of proof of actual injury, loss, or damage.
21. The actions of Defendant in breaching the contract were deliberate, wanton, and willful entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff requests this Honorable Court to enter judgment in favor of Plaintiff Magna Card, Inc. and against Defendant Magnum Magnetics Corporation for:

- a. Compensatory damages in excess of \$25,000.00;
- b. Punitive damages;
- c. Attorney's fees, costs and expenses in excess of \$25,000.00;
- d. A temporary and then permanent order prohibiting Defendant Magnum Magnetics Corporation from producing any product Plaintiff Magna Card, Inc. has revealed to the

Defendant including but not limited to pink camouflage wallpaper magnets and geocentric circle wallpaper magnets.

- e. Pre and post judgment interest; and
- f. Such other and further relief as the court deems fair, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned counsel, hereby demands a trial by jury.

Respectfully submitted,

HOPKINS HELTZEL LLP

By:


David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Magna Card, Inc.

By: 

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 8th day of May, 2007, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and MagnaCard, Inc., a(n) _____ corporation ("MagnaCard");

WITNESSETH:

WHEREAS, Magnum and MagnaCard desire to engage in discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates, which will likely necessitate the disclosure by MagnaCard and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, MagnaCard and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates (collectively, the "Work"), on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, MagnaCard and Magnum agree as follows, intending to be legally bound thereby.

1. Definition of Information.

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity, including, as to Magnum, Magnetic Specialty, LLC;
- (b) As used herein, the term "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by MagnaCard or Magnum to the other, or to which MagnaCard or Magnum obtains access from the other, or which is therefrom developed by MagnaCard or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either MagnaCard or Magnum establishes by competent evidence:

EXHIBIT

tables

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- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. MagnaCard and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and MagnaCard and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

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- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either MagnaCard or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either MagnaCard or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by MagnaCard or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, MagnaCard and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, MagnaCard and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Period of Confidentiality. Unless otherwise agreed in writing by Magnum and MagnaCard, this Agreement shall remain in effect for a period of three (3) years from the date hereof.

6. No Obligation to Negotiate and Execute a Definitive Agreement. Magnum and MagnaCard each reserve the right, in their sole discretion, to reject any and all proposals made by the other party with respect to any Work, including the possible acquisition of the business of MagnaCard by Magnum or one of its Affiliates (the "Transaction"), and to terminate discussions and negotiations with the other party with respect to any Work, including the Transaction, at any time. Without limiting the preceding sentence, nothing in this Agreement requires either Magnum or MagnaCard to enter into a definitive agreement with respect to any Work, including the Transaction, or to continue negotiations with respect to any Work, including the Transaction, for any specified period of time. Notwithstanding anything to the contrary in this Agreement, including, without limitation, the two preceding sentences, this Agreement shall survive the termination of any discussions and negotiations between Magnum and MagnaCard with respect to any Work, including the Transaction, and this Agreement shall not be effected by any such termination.

7. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in accordance with this Section 7, designate a new address for notices, requests, demands and other communications to such party.

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8. Duplicate Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

9. Delay and Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements between such parties in connection with the subject matter hereof. Nothing in this Agreement shall be construed as granting to one party any right or license under any patent, trademark or other proprietary right now or hereafter owned or controlled by the other party.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive as well as immediate successors and assigns) of the parties; provided, however, that neither party may assign or in any way voluntarily transfer this Agreement, the Information of the other party, or its obligations hereunder, without the prior written consent of the other party.

12. Modifications. This Agreement may be amended, changed and modified only in writing executed by both of the parties.

13. Severability. If any clause, provision or section of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision or section, or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into or taken thereunder or hereunder.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the local laws of the State of Ohio.

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IN WITNESS WHEREOF, MagnaCard and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: C. Allen Love

Printed Name: C. Allen Love

Title: PRESIDENT

Address:
Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn.: Allen
Fax: 740 568 3084

MAGNACARD, INC.
("MagnaCard")

By: R. T. Tuckel

Printed Name: R. T. Tuckel

Title: President/CEO

Address:
MagnaCard, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn.: R. T. Tuckel
Fax: 314-375-0320

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 30th day of July, 2008, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and Magna Card, Inc., a(n) Delaware corporation ("Magna Card");

WITNESSETH:

WHEREAS, Magnum and Magna Card desire to engage in discussions and information sharing to benefit their mutual business interests and relationship which will likely necessitate the disclosure by Magna Card and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

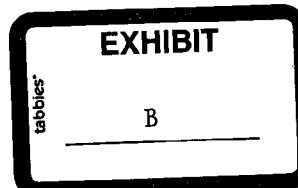
WHEREAS, Magna Card and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship (collectively, the "Work") on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, Magna Card and Magnum agree as follows, intending to be legally bound thereby.

1. Definitions.

For purposes of this Agreement,

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity.
- (b) "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by Magna Card or Magnum to the other, or to which Magna Card or Magnum obtains access from the other, or which is therefrom developed by Magna Card or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either Magna Card or Magnum establishes by competent evidence:



- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. Magna Card and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and Magna Card and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either Magna Card or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either Magna Card or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by Magna Card or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, Magna Card and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in

IN WITNESS WHEREOF, Magna Card and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: Allen Love

Printed Name: Allen Love

Title: President

Address:
Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn.: Thomas G. Love
Fax: (740) 373-2880

MAGNA CARD, INC.
("Magna Card")

By: R. Beck

Printed Name: R. Beck

Title: President/CEO

Address:
Magna Card, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn.: R. Beck
Fax: (410) 363-6108

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC.,
Plaintiff

vs.
MAGNUM MAGNETICS
CORPORATION,
Defendant

No. 08-2163-C

Type of Pleading: Petition for
Temporary Restraining Order

Filed on behalf of: Magna Card, Inc.,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

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019:50pm NOV 12 2008 Atty Hopkins
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC., :
Plaintiff :
: :
vs. : No.
: :
MAGNUM MAGNETICS :
CORPORATION, :
Defendant :
:

PETITION FOR TEMPORARY RESTRAINING ORDER

AND NOW COMES Plaintiff, Magna Card, Inc., by and through its attorneys, Hopkins Heltzel LLP, and files the within Petition for a temporary and then permanent restraining order and in support says as follows:

1. Plaintiff is Magna Card, Inc., a Pennsylvania domesticated corporation whose principal business address is 190 West Park Avenue, Suite 7, DuBois, Pennsylvania 15801.
2. Defendant is Magnum Magnetics Corporation, an Ohio Corporation whose principal business address is 801 Masonic Park Road, Marietta, Ohio 45750.
3. Plaintiff is a designer and seller to retail merchants of magnet products.
4. Defendant is a manufacturer of magnet products.
5. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 8, 2007. A photocopy of same is attached hereto as Exhibit "A" and incorporated as if set forth at length.
6. In or about 2008, Defendant proposed to Plaintiff that Plaintiff become the exclusive retail distributor of Defendant's products and Defendant would become the exclusive manufacturer of Plaintiff's products (Defendant's proposal).

7. Representatives of Plaintiff and Defendant met in Pittsburgh to discuss the Defendant's proposal. The meeting ended with Plaintiff and Defendant agreeing to move forward with Defendant's proposal and further negotiate the terms and conditions under which the parties would operate.

8. Ultimately Plaintiff and Defendant could not agree on terms acceptable for Plaintiff to be the exclusive retail distributor of Defendant's products and/or Defendant to be the exclusive manufacturer of Plaintiff's products and the parties continued to operate their businesses as they had in the past.

9. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 20, 2008. A photocopy of same is attached hereto as Exhibit "B" and incorporated as if set forth at length.

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11. Section 2 of the Agreement states in pertinent part:

Non-Disclose and Non-Use of Information. Magna Card and Magnum each acknowledge and agree that the information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to:

(a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;

(b) Restrict access to and disclose the information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;

(d) Not use or disclose any of the Information of the other except pursuant to Paragraphs (a) through (c) above, or the fact that the information of the other has been made available to it, except with the written consent of the other;

(g) Immediately notify the other of any breach of this agreement or misuse or misappropriation of the information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the effect of such occurrence.

12. In violation of the Agreement, Defendant has copied Plaintiff's wallpaper magnet designs and offered to sell same to retail merchants.

13. The products Defendant copied are pink camouflage wallpaper magnets and geocentric circle wallpaper magnets.

14. Said products were displayed at the ECRM trade show in Marco Island, Florida in September 2008.

15. Three (3) days before the ECRM trade show, Defendant's President, Gary Murphy, telephoned Plaintiff offering to manufacturer magnet products for Plaintiff for 2009 products. Murphy proceeded to ask questions about product style, Plaintiff's top seller, how many units Plaintiff sold, who were major purchasers and similar sale questions. Murphy assured Plaintiff Defendant would not compete with Plaintiff and desired only to be Plaintiff's manufacturing supplier. Murphy offered his personal cell number.

16. Section 4 of the Agreement provides remedies upon breach of the contract. It states:

Remedies Upon a breach of this agreement by Magna Card or Magnum, the non breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses, and reasonable attorney's fees incurred in enforcing this agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any information in violation of the terms of this agreement shall cause immediate and irreparable injury, loss, and damage and that an adequate remedy at

law for such injury, loss, and damage may not exist. Therefore, Magna Card and Magnum agree that in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss, or damage.

17. The actions of Defendant constitute breach of the agreement.
18. As a result of Defendant's breach, Plaintiff has suffered damages in an amount not yet ascertained.

19. As a result of Defendant's breach of the Agreement, Plaintiff has and will continue to incur costs, expenses, and attorney's fees in enforcing this contract.

20. Plaintiff and Defendant agreed that in the event Defendant breached the contract, Plaintiff was entitled to institute and prosecute proceedings to obtain temporary and/or permanent injunctive relief to enforce the terms of the contract without the necessity of proof of actual injury, loss, or damage.

WHEREFORE, Plaintiff Magna Card, Inc. respectfully requests this Honorable Court to enter an order restraining Defendant Magnum Magnetics Corporation from producing, selling, manufacturing, any product Plaintiff has revealed to Defendant including but not limited to pink camouflage wallpaper magnets and geocentric circle wallpaper magnets; Award an interim attorney fee and costs in the amount of \$10,000.00.

Respectfully submitted,

HOPKINS HELTZEL LLP

By:


David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Magna Card, Inc.

By: 

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 8th day of May, 2007, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and MagnaCard, Inc., a(n) _____ corporation ("MagnaCard");

WITNESSETH:

WHEREAS, Magnum and MagnaCard desire to engage in discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates, which will likely necessitate the disclosure by MagnaCard and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, MagnaCard and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates (collectively, the "Work"), on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, MagnaCard and Magnum agree as follows, intending to be legally bound thereby.

1. Definition of Information.

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity, including, as to Magnum, Magnetic Specialty, LLC;
- (b) As used herein, the term "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by MagnaCard or Magnum to the other, or to which MagnaCard or Magnum obtains access from the other, or which is therefrom developed by MagnaCard or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either MagnaCard or Magnum establishes by competent evidence;

EXHIBIT

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11/06/2008 15:27 FAX 002/006

- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. MagnaCard and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and MagnaCard and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either MagnaCard or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either MagnaCard or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by MagnaCard or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, MagnaCard and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, MagnaCard and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Period of Confidentiality. Unless otherwise agreed in writing by Magnum and MagnaCard, this Agreement shall remain in effect for a period of three (3) years from the date hereof.

6. No Obligation to Negotiate and Execute a Definitive Agreement. Magnum and MagnaCard each reserve the right, in their sole discretion, to reject any and all proposals made by the other party with respect to any Work, including the possible acquisition of the business of MagnaCard by Magnum or one of its Affiliates (the "Transaction"), and to terminate discussions and negotiations with the other party with respect to any Work, including the Transaction, at any time. Without limiting the preceding sentence, nothing in this Agreement requires either Magnum or MagnaCard to enter into a definitive agreement with respect to any Work, including the Transaction, or to continue negotiations with respect to any Work, including the Transaction, for any specified period of time. Notwithstanding anything to the contrary in this Agreement, including, without limitation, the two preceding sentences, this Agreement shall survive the termination of any discussions and negotiations between Magnum and MagnaCard with respect to any Work, including the Transaction, and this Agreement shall not be effected by any such termination.

7. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in accordance with this Section 7, designate a new address for notices, requests, demands and other communications to such party.

8. Duplicate Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

9. Delay and Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements between such parties in connection with the subject matter hereof. Nothing in this Agreement shall be construed as granting to one party any right or license under any patent, trademark or other proprietary right now or hereafter owned or controlled by the other party.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive as well as immediate successors and assigns) of the parties; provided, however, that neither party may assign or in any way voluntarily transfer this Agreement, the Information of the other party, or its obligations hereunder, without the prior written consent of the other party.

12. Modifications. This Agreement may be amended, changed and modified only in writing executed by both of the parties.

IN WITNESS WHEREOF, MagnaCard and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: C. Allen Love

Printed Name: C. Allen Love

Title: PRESIDENT

Address:
Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn.: Allen
Fax: 740 568 3084

MAGNACARD, INC.
("MagnaCard")

By: Pat Tuckel

Printed Name: Pat Tuckel

Title: President/CEO

Address:
MagnaCard, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn.: Pat Tuckel
Fax: 814-375-0770

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 30th day of Sept, 2008, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and Magna Card, Inc., a(n) Player corporation ("Magna Card");

WITNESSETH:

WHEREAS, Magnum and Magna Card desire to engage in discussions and information sharing to benefit their mutual business interests and relationship which will likely necessitate the disclosure by Magna Card and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, Magna Card and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship (collectively, the "Work") on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, Magna Card and Magnum agree as follows, intending to be legally bound thereby.

1. Definitions.

For purposes of this Agreement,

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity.
- (b) "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by Magna Card or Magnum to the other, or to which Magna Card or Magnum obtains access from the other, or which is therefrom developed by Magna Card or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either Magna Card or Magnum establishes by competent evidence;

EXHIBIT

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- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. Magna Card and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and Magna Card and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either Magna Card or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either Magna Card or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by Magna Card or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, Magna Card and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in

IN WITNESS WHEREOF, Magna Card and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: Allen Love

Printed Name: Allen Love

Title: President

Address:

Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn.: Thomas G. Love
Fax: (740) 373-2880

MAGNA CARD, INC.
("Magna Card")

By: R. T. Beck

Printed Name: R. T. Beck

Title: President/CEO

Address:

Magna Card, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn.: R. T. Beck
Fax: (410) 363-6108

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)MAGNA CARD, INC.,
Plaintiff

vs. : No. 08-2163-CD

MAGNUM MAGNETICS
CORPORATION,
Defendant**SCHEDULING ORDER**

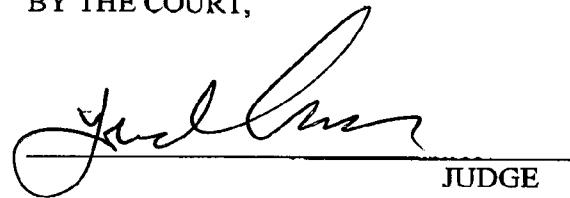
AND NOW, this 13 day of November, 2008 upon consideration of the Petition for a Temporary Restraining Order it is hereby ORDERED that:

1. A Rule is issued upon Respondent to show cause why the moving party is not entitled to the relief requested.
2. The Respondent shall file an Answer to the Petition within 20 days of this date;
3. The Petition shall be decided under Pa.R.C.P. §206.7;
4. Depositions and all other discovery shall be completed within _____ days of this date;
5. An Evidentiary Hearing on disputed issues of material fact shall be held on the _____ day of _____, 2008, at _____ o'clock _____.M., in Courtroom No. _____ of the Clearfield County Courthouse, Clearfield, Pennsylvania;
6. Argument shall be held on the 19th day of December, 2008 at 2:00 o'clock PM, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania; and

5
FILED 3rd
014:00 PM
NOV 14 2008 Atty Hopkins
(60)
William A. Shaw
Prothonotary/Clerk of Courts

7. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT,



A handwritten signature in black ink, appearing to read "Hopkins Heltzel", is written over a horizontal line. To the right of the signature, the word "JUDGE" is printed in capital letters.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC.

Plaintiff

vs.

MAGNUM MAGNETICS CORPORATION,

Defendant

No. 08-2163-CD

FILED

DEC 09 2008

m112.50/

William A. Shaw

Prothonotary/Clerk of Courts

No. 410

**NOTICE OF FILING PURSUANT TO 28 U.S.C. §1446 FILED ON BEHALF OF
DEFENDANT, MAGNUM MAGNETICS CORPORATION**

You are hereby notified that on Monday, December 8, 2008, Defendant, Magnum Magnetics Corporation, filed a Notice of Removal of this action from the Court of Common Pleas of Clearfield County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania, Johnstown Division. A copy of that Notice of Removal is attached hereto.

Respectfully submitted,

BARBERA, CLAPPER, BEENER, RULLO
& MELVIN, LLP

Date: 12/8/08

By: Vincent J. Barbera

Vincent J. Barbera, Esq.
Court Adm. Cert. No.: 34441

146 West Main Street
P.O. Box 775
Somerset, Pennsylvania 15501-0775
Tel: (814) 443-4681
Attorneys for the Defendant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Magna Card, Inc.		DEFENDANTS Magnum Magnetics Corporation	
(b) County of Residence of First Listed Clearfield (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant Ohio (IN U.S. PLAINTIFF CASES ONLY)	
(c) Attorneys David J. Hopkins, Hopkins Heltzel LLP, 100 Meadow Lane, Suite 5 DuBois, PA 15801 (814) 375-0300 (Firm Name, Address, and Telephone Number)		Attorneys Vincent J. Barbera, Esq., Barbera, Clapper, Beener, Rullo & Melvin, LLP 146 West Main St., Somerset, PA 15501 (814) 443-4681 Attorneys (If Known)	

II. BASIS OF JURISDICTION		(Place an "X" in One Box Only)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	III. CITIZENSHIP OF PRINCIPAL PARTIES			
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	(Place an "X" in One Box for Plaintiff and One Box for Defendant)			
		PTF	DEF		
		<input checked="" type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
		<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
		<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

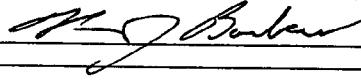
IV. NATURE OF SUIT		(Place an "X" in One Box Only)	
CONTRACT		TORTS	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	
REAL PROPERTY		PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	
CIVIL RIGHTS		FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 PROPERTY RIGHTS <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	
		BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
		OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN		(Place an "X" in One Box Only)	
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
		<input type="checkbox"/> 5 Transferred from another district (specify) _____	
		<input type="checkbox"/> 6 Multidistrict Litigation	
		<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332	
		Brief description of cause: Breach of Contract	

VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ in excess of \$25,000	CHECK YES only if demanded in complaint: JURY DEMAND:
				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

VIII. RELATED CASE(S) IF ANY		(See instructions): JUDGE n/a		DOCKET NUMBER _____
------------------------------	--	-------------------------------	--	---------------------

DATE December 8, 2008	SIGNATURE OF ATTORNEY OF RECORD 	
-----------------------	--	--

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venango or Warren, OR any plaintiff or defendant resides in one of said counties.**

2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and
that the _____ resides in _____ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in _____ Clearfield County
and that the Plaintiff _____ resides in Clearfield _____ County.

PART B (You are to check ONE of the following)

1. This case is related to Number _____ Judge _____
2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeas Corpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

DATE December 8, 2008 ATTORNEY ATTORNEY AT LAW R. J. Barlow

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE
PROCESSED.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA – JOHNSTOWN DIVISION

MAGNA CARD, INC. :
Plaintiff, : CIVIL DIVISION
: :
vs. : No.
: :
MAGNUM MAGNETICS CORPORATION, :
Defendant. :
:

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court
For the Western District of Pennsylvania, Johnstown Division

NOW, comes the Defendant, Magnum Magnetics Corporation, by its attorney Vincent J. Barbera, Esq., of the law firm of Barbera, Clapper, Beener, Rullo & Melvin, LLP, and files this Notice of Removal and in support thereof states as follows:

1. Defendant, Magnum Magnetics Corporation, is an Ohio corporation with a principal business address of 801 Masonic Park Road, Marietta, Ohio 45750. Magnum Magnetics is neither incorporated in the Commonwealth of Pennsylvania nor does it have a principal place of business in the Commonwealth of Pennsylvania.

2. The above captioned action was commenced in the Court of Common Pleas of Clearfield County, Pennsylvania, and is now pending in that Court. A copy of Plaintiff's initial pleading, Plaintiff's Complaint, setting forth the claim for relief upon which the action is based was served upon the Defendant on November 17, 2008. A true and correct copy of the Plaintiff's Complaint is attached hereto and made a part hereof as Exhibit A. The Complaint was served upon the Defendant by certified mail, and a true and correct copy of the cover letter dated November 14, 2008, is attached hereto and made a part hereof as Exhibit B. In the state court action the Plaintiff also filed a Motion for Temporary Restraining Order, a true and correct copy of which is attached hereto as Exhibit C. Also, attached hereto is the state court Scheduling Order, a true and correct copy of which is attached hereto as Exhibit D.

3. The Plaintiff, Magna Card, Inc., is alleged in paragraph 1 of the Complaint to be "a Pennsylvania domesticated corporation whose principal business address is 190 West Park Avenue, Suite 7, DuBois, Pennsylvania 15801." To the best of the Defendant's knowledge the Plaintiff's principal place of business is at the aforementioned address in DuBois, Pennsylvania.

4. The United States District Court for the Western District of Pennsylvania, Johnstown Division, is by law given jurisdiction of the suit.

5. The amount in controversy exceeds \$75,000.00.

6. Since the Plaintiff and the Defendant to the action are diverse and the sum in controversy exceeds \$75,000.00, this Court has original jurisdiction under the provisions of 28 U.S.C. §1332 and this case may be removed to this Court by this Defendant pursuant to the provisions of 28 U.S.C. §1441 and §1446.

7. A Notice of Filing will be sent to the Court of Common Pleas of Clearfield County, Pennsylvania, and to counsel for Plaintiff as reflected in the Notice of Filing attached hereto as Exhibit E.

8. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant requests that this action proceed in this Court as an action properly removed to it.

Respectfully submitted,
BARBERA, CLAPPER, BEENER, RULLO
& MELVIN, LLP

Date: December 8, 2008

By: /s/ Vincent J. Barbera
Vincent J. Barbera, Esq.
Court Adm. Cert. No.: 34441
146 West Main Street
P.O. Box 775
Somerset, Pennsylvania 15501-0775
Tel: (814) 443-4681
Attorneys for the Defendant

Exhibit A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC.,

Plaintiff

vs.

No. 08-2163-CD

MAGNUM MAGNETICS
CORPORATION,

Defendant

Type of Pleading: Complaint

Filed on behalf of: Magna Card, Inc.,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 12 2008

Attest.

William L. Lutz
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC., :
Plaintiff :
:
vs. : No.
:
MAGNUM MAGNETICS :
CORPORATION, :
Defendant :
:

NOTICE

TO DEFENDANT:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC., :
Plaintiff :
: :
vs. : No.
: :
MAGNUM MAGNETICS :
CORPORATION, :
Defendant :
:

COMPLAINT

AND NOW COMES Plaintiff, Magna Card, Inc., by and through its attorneys, Hopkins Heltzel LLP, and files the within Complaint and in support says as follows:

1. Plaintiff is Magna Card, Inc., a Pennsylvania domesticated corporation whose principal business address is 190 West Park Avenue, Suite 7, DuBois, Pennsylvania 15801.
2. Defendant is Magnum Magnetics Corporation, an Ohio Corporation whose principal business address is 801 Masonic Park Road, Marietta, Ohio 45750.
3. Plaintiff is a designer and seller to retail merchants of magnet products.
4. Defendant is a manufacturer of magnet products.
5. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 8, 2007. A photocopy of same is attached hereto as Exhibit "A" and incorporated as if set forth at length.
6. In or about 2008, Defendant proposed to Plaintiff that Plaintiff become the exclusive retail distributor of Defendant's products and Defendant would become the exclusive manufacturer of Plaintiff's products (Defendant's proposal).

7. Representatives of Plaintiff and Defendant met in Pittsburgh to discuss the Defendant's proposal. The meeting ended with Plaintiff and Defendant agreeing to move forward with Defendant's proposal and further negotiate the terms and conditions under which the parties would operate.

8. Ultimately Plaintiff and Defendant could not agree on terms acceptable for Plaintiff to be the exclusive retail distributor of Defendant's products and/or Defendant to be the exclusive manufacturer of Plaintiff's products and the parties continued to operate their businesses as they had in the past.

9. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 20, 2008. A photocopy of same is attached hereto as Exhibit "B" and incorporated as if set forth at length.

10. The Agreement defines products, including products that Plaintiff sells to retail merchants, as information.

11. Section 2 of the Agreement states in pertinent part:

Non-Disclose and Non-Use of Information. Magna Card and Magnum each acknowledge and agree that the information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to:

(a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;

(b) Restrict access to and disclose the information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;

(d) Not use or disclose any of the Information of the other except pursuant to Paragraphs (a) through (c) above, or the fact that the information of the other has been made available to it, except with the written consent of the other;

(g) Immediately notify the other of any breach of this agreement or misuse or misappropriation of the information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the effect of such occurrence.

12. In violation of the Agreement, Defendant has copied Plaintiff's wallpaper magnet designs and offered to sell same to retail merchants.

13. The products Defendant copied are pink camouflage wallpaper magnets and geocentric circle wallpaper magnets.

14. Said products were displayed at the ECRM trade show in Marco Island, Florida in September 2008.

15. Three (3) days before the ECRM trade show, Defendant's President, Gary Murphy, telephoned Plaintiff offering to manufacturer magnet products for Plaintiff for 2009 products. Murphy proceeded to ask questions about product style, Plaintiff's top seller, how many units Plaintiff sold, who were major purchasers and similar sale questions. Murphy assured Plaintiff Defendant would not compete with Plaintiff and desired only to be Plaintiff's manufacturing supplier. Murphy offered his personal cell number.

16. Section 4 of the Agreement provides remedies upon breach of the contract. It states:

Remedies Upon a breach of this agreement by Magna Card or Magnum, the non breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses, and reasonable attorney's fees incurred in enforcing this agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any information in violation of the terms of this agreement shall cause immediate and irreparable injury, loss, and damage and that an adequate remedy at

law for such injury, loss, and damage may not exist. Therefore, Magna Card and Magnum agree that in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss, or damage.

17. The actions of Defendant constitute breach of the agreement.
18. As a result of Defendant's breach, Plaintiff has suffered damages in an amount not yet ascertained.
19. As a result of Defendant's breach of the Agreement, Plaintiff has and will continue to incur costs, expenses, and attorney's fees in enforcing this contract.
20. Plaintiff and Defendant agreed that in the event Defendant breached the contract, Plaintiff was entitled to institute and prosecute proceedings to obtain temporary and/or permanent injunctive relief to enforce the terms of the contract without the necessity of proof of actual injury, loss, or damage.
21. The actions of Defendant in breaching the contract were deliberate, wanton, and willful entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff requests this Honorable Court to enter judgment in favor of Plaintiff Magna Card, Inc. and against Defendant Magnum Magnetics Corporation for:

- a. Compensatory damages in excess of \$25,000.00;
- b. Punitive damages;
- c. Attorney's fees, costs and expenses in excess of \$25,000.00;
- d. A temporary and then permanent order prohibiting Defendant Magnum Magnetics Corporation from producing any product Plaintiff Magna Card, Inc. has revealed to the

Defendant including but not limited to pink camouflage wallpaper magnets and geocentric circle wallpaper magnets.

- e. Pre and post judgment interest; and
- f. Such other and further relief as the court deems fair, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, by its undersigned counsel, hereby demands a trial by jury.

Respectfully submitted,

HOPKINS HELTZEL LLP

By: 
David J. Hopkins, Esquire
Attorney for Plaintiff
100 Meadow Lane, Suite 5
DuBois, PA 15801

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Magna Card, Inc.

By: 

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 31 day of May, 2007, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and MagnaCard, Inc., a(n) _____ corporation ("MagnaCard");

WITNESSETH:

WHEREAS, Magnum and MagnaCard desire to engage in discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates, which will likely necessitate the disclosure by MagnaCard and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, MagnaCard and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates (collectively, the "Work"), on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, MagnaCard and Magnum agree as follows, intending to be legally bound thereby.

1. Definition of Information.

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity, including, as to Magnum, Magnetic Specialty, LLC;
- (b) As used herein, the term "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by MagnaCard or Magnum to the other, or to which MagnaCard or Magnum obtains access from the other, or which is therefrom developed by MagnaCard or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either MagnaCard or Magnum establishes by competent evidence;

EXHIBIT

A

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- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. MagnaCard and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and MagnaCard and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

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- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either MagnaCard or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either MagnaCard or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by MagnaCard or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, MagnaCard and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, MagnaCard and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Period of Confidentiality. Unless otherwise agreed in writing by Magnum and MagnaCard, this Agreement shall remain in effect for a period of three (3) years from the date hereof.

6. No Obligation to Negotiate and Execute a Definitive Agreement. Magnum and MagnaCard each reserve the right, in their sole discretion, to reject any and all proposals made by the other party with respect to any Work, including the possible acquisition of the business of MagnaCard by Magnum or one of its Affiliates (the "Transaction"), and to terminate discussions and negotiations with the other party with respect to any Work, including the Transaction, at any time. Without limiting the preceding sentence, nothing in this Agreement requires either Magnum or MagnaCard to enter into a definitive agreement with respect to any Work, including the Transaction, or to continue negotiations with respect to any Work, including the Transaction, for any specified period of time. Notwithstanding anything to the contrary in this Agreement, including, without limitation, the two preceding sentences, this Agreement shall survive the termination of any discussions and negotiations between Magnum and MagnaCard with respect to any Work, including the Transaction, and this Agreement shall not be effected by any such termination.

7. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in accordance with this Section 7, designate a new address for notices, requests, demands and other communications to such party.

8. Duplicate Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

9. Delay and Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements between such parties in connection with the subject matter hereof. Nothing in this Agreement shall be construed as granting to one party any right or license under any patent, trademark or other proprietary right now or hereafter owned or controlled by the other party.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive as well as immediate successors and assigns) of the parties; provided, however, that neither party may assign or in any way voluntarily transfer this Agreement, the information of the other party, or its obligations hereunder, without the prior written consent of the other party.

12. Modifications. This Agreement may be amended, changed and modified only in writing executed by both of the parties.

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13. Severability. If any clause, provision or section of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision or section, or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into or taken thereunder or hereunder.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the local laws of the State of Ohio.

[The balance of this page is blank]

CLP
5-8-07

IN WITNESS WHEREOF, MagnaCard and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: C. Allen Love

Printed Name: C. Allen Love

Title: PRESIDENT

Address:
Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn.: Allen
Fax: 740 568 3084

MAGNACARD, INC.
("MagnaCard")

By: Bill Rockel

Printed Name: Bill Rockel

Title: President/CEO

Address:
MagnaCard, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn.: Bill
Fax: 814-575-0720

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 20th day of Sept, 2008, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and Magna Card, Inc., a(n) Ohio corporation ("Magna Card");

WITNESSETH:

WHEREAS, Magnum and Magna Card desire to engage in discussions and information sharing to benefit their mutual business interests and relationship which will likely necessitate the disclosure by Magna Card and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, Magna Card and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship (collectively, the "Work") on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, Magna Card and Magnum agree as follows, intending to be legally bound thereby.

1. Definitions.

For purposes of this Agreement,

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity.
- (b) "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by Magna Card or Magnum to the other, or to which Magna Card or Magnum obtains access from the other, or which is therefrom developed by Magna Card or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either Magna Card or Magnum establishes by competent evidence:

EXHIBIT

- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. Magna Card and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and Magna Card and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either Magna Card or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either Magna Card or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by Magna Card or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, Magna Card and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in

IN WITNESS WHEREOF, Magna Card and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: Allen Love

Printed Name: Allen Love

Title: PRESIDENT

Address:

Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn: Thomas G. Love
Fax: (740) 373-2880

MAGNA CARD, INC.
("Magna Card")

By: Patricia T. Bell

Printed Name: Patricia T. Bell

Title: President/CEO

Address:

Magna Card, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn: Patricia T. Bell
Fax: (410) 363-6108

Exhibit B

HOPKINS HELTZEL LLP

100 Meadow Lane, Suite 5 • DuBois, PA 15801

David J. Hopkins
Licensed in PA & NJ
Masters in Taxation

- Voice: (814) 375 - 0300
- Fax: (814) 375 - 5035
- Email: hblaw@comcast.net

Lea Ann Heltzel
Licensed in PA

November 14, 2008

Certified Mail - Return Receipt Requested

Magnum Magnetics Corporation
801 Masonic Park Road
Marietta, OH 45750

Re: Magna Card, Inc. Magnum Magnetics Corporation

Dear Sir or Madam:

Kindly be advised this law firm represents the interest of Magna Card, Inc. Enclosed herewith please find Complaint filed in the Court of Common Pleas of Clearfield County, Pennsylvania naming Magnum Magnetics Corporation as a Defendant. Please be advised that under the Rules of Civil Procedure you have twenty (20) days after receipt of this Complaint to file an Answer.

Also enclosed herewith please find Petition for Temporary Restraining Order that has been filed with the Court. The Court has not yet set forth a Scheduling Order, however, when a Scheduling Order is set, I will forward same to you.

Please guide yourself accordingly.

Very truly yours,


David J. Hopkins
Attorney at Law

DJH/bjr

Enclosure

cc: Magna Card, Inc.

Exhibit C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC.,
Plaintiff

vs.

No. 08-2163-CD

MAGNUM MAGNETICS
CORPORATION,
Defendant

Type of Pleading: Petition for
Temporary Restraining Order

Filed on behalf of: Magna Card, Inc.,
Plaintiff

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 12 2008

Attest.

William L. Haze
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC., :
Plaintiff :
: :
vs. : No.
: :
MAGNUM MAGNETICS :
CORPORATION, :
Defendant :
:

PETITION FOR TEMPORARY RESTRAINING ORDER

AND NOW COMES Plaintiff, Magna Card, Inc., by and through its attorneys, Hopkins Heltzel LLP, and files the within Petition for a temporary and then permanent restraining order and in support says as follows:

1. Plaintiff is Magna Card, Inc., a Pennsylvania domesticated corporation whose principal business address is 190 West Park Avenue, Suite 7, DuBois, Pennsylvania 15801.
2. Defendant is Magnum Magnetics Corporation, an Ohio Corporation whose principal business address is 801 Masonic Park Road, Marietta, Ohio 45750.
3. Plaintiff is a designer and seller to retail merchants of magnet products.
4. Defendant is a manufacturer of magnet products.
5. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 8, 2007. A photocopy of same is attached hereto as Exhibit "A" and incorporated as if set forth at length.
6. In or about 2008, Defendant proposed to Plaintiff that Plaintiff become the exclusive retail distributor of Defendant's products and Defendant would become the exclusive manufacturer of Plaintiff's products (Defendant's proposal).

7. Representatives of Plaintiff and Defendant met in Pittsburgh to discuss the Defendant's proposal. The meeting ended with Plaintiff and Defendant agreeing to move forward with Defendant's proposal and further negotiate the terms and conditions under which the parties would operate.

8. Ultimately Plaintiff and Defendant could not agree on terms acceptable for Plaintiff to be the exclusive retail distributor of Defendant's products and/or Defendant to be the exclusive manufacturer of Plaintiff's products and the parties continued to operate their businesses as they had in the past.

9. Plaintiff and Defendant entered into a Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") dated May 20, 2008. A photocopy of same is attached hereto as Exhibit "B" and incorporated as if set forth at length.

10. The Agreement defines products, including products that Plaintiff sells to retail merchants, as information.

11. Section 2 of the Agreement states in pertinent part:

Non-Disclose and Non-Use of Information. Magna Card and Magnum each acknowledge and agree that the information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to:

(a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;

(b) Restrict access to and disclose the information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;

(d) Not use or disclose any of the Information of the other except pursuant to Paragraphs (a) through (c) above, or the fact that the information of the other has been made available to it, except with the written consent of the other;

(g) Immediately notify the other of any breach of this agreement or misuse or misappropriation of the information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the effect of such occurrence.

12. In violation of the Agreement, Defendant has copied Plaintiff's wallpaper magnet designs and offered to sell same to retail merchants.

13. The products Defendant copied are pink camouflage wallpaper magnets and geocentric circle wallpaper magnets.

14. Said products were displayed at the ECRM trade show in Marco Island, Florida in September 2008.

15. Three (3) days before the ECRM trade show, Defendant's President, Gary Murphy, telephoned Plaintiff offering to manufacturer magnet products for Plaintiff for 2009 products. Murphy proceeded to ask questions about product style, Plaintiff's top seller, how many units Plaintiff sold, who were major purchasers and similar sale questions. Murphy assured Plaintiff Defendant would not compete with Plaintiff and desired only to be Plaintiff's manufacturing supplier. Murphy offered his personal cell number.

16. Section 4 of the Agreement provides remedies upon breach of the contract. It states:

Remedies Upon a breach of this agreement by Magna Card or Magnum, the non breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses, and reasonable attorney's fees incurred in enforcing this agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any information in violation of the terms of this agreement shall cause immediate and irreparable injury, loss, and damage and that an adequate remedy at

law for such injury, loss, and damage may not exist. Therefore, Magna Card and Magnum agree that in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss, or damage.

17. The actions of Defendant constitute breach of the agreement.
18. As a result of Defendant's breach, Plaintiff has suffered damages in an amount not yet ascertained.
19. As a result of Defendant's breach of the Agreement, Plaintiff has and will continue to incur costs, expenses, and attorney's fees in enforcing this contract.
20. Plaintiff and Defendant agreed that in the event Defendant breached the contract, Plaintiff was entitled to institute and prosecute proceedings to obtain temporary and/or permanent injunctive relief to enforce the terms of the contract without the necessity of proof of actual injury, loss, or damage.

WHEREFORE, Plaintiff Magna Card, Inc. respectfully requests this Honorable Court to enter an order restraining Defendant Magnum Magnetics Corporation from producing, selling, manufacturing, any product Plaintiff has revealed to Defendant including but not limited to pink camouflage wallpaper magnets and geocentric circle wallpaper magnets; Award an interim attorney fee and costs in the amount of \$10,000.00.

Respectfully submitted,

HOPKINS HELTZEL LLP

By:


David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Magna Card, Inc.

By: 

000/011

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 31st day of May, 2007, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and MagnaCard, Inc., a(n) _____ corporation ("MagnaCard");

WITNESSETH:

WHEREAS, Magnum and MagnaCard desire to engage in discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates, which will likely necessitate the disclosure by MagnaCard and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, MagnaCard and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship, including a possible acquisition of the business of MagnaCard by Magnum or one of its affiliates (collectively, the "Work"), on the condition that such information be kept confidential and not be used except as provided hereby;

CCW
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NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, MagnaCard and Magnum agree as follows, intending to be legally bound thereby.

1. Definition of Information.

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity, including, as to Magnum, Magnetic Specialty, LLC;
- (b) As used herein, the term "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by MagnaCard or Magnum to the other, or to which MagnaCard or Magnum obtains access from the other, or which is therefrom developed by MagnaCard or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either MagnaCard or Magnum establishes by competent evidence:

EXHIBIT

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- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. MagnaCard and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and MagnaCard and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

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- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either MagnaCard or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either MagnaCard or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by MagnaCard or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, MagnaCard and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, MagnaCard and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Period of Confidentiality. Unless otherwise agreed in writing by Magnum and MagnaCard, this Agreement shall remain in effect for a period of three (3) years from the date hereof.

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CRA

6. No Obligation to Negotiate and Execute a Definitive Agreement. Magnum and MagnaCard each reserve the right, in their sole discretion, to reject any and all proposals made by the other party with respect to any Work, including the possible acquisition of the business of MagnaCard by Magnum or one of its Affiliates (the "Transaction"), and to terminate discussions and negotiations with the other party with respect to any Work, including the Transaction, at any time. Without limiting the preceding sentence, nothing in this Agreement requires either Magnum or MagnaCard to enter into a definitive agreement with respect to any Work, including the Transaction, or to continue negotiations with respect to any Work, including the Transaction, for any specified period of time. Notwithstanding anything to the contrary in this Agreement, including, without limitation, the two preceding sentences, this Agreement shall survive the termination of any discussions and negotiations between Magnum and MagnaCard with respect to any Work, including the Transaction, and this Agreement shall not be effected by any such termination.

7. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in accordance with this Section 7, designate a new address for notices, requests, demands and other communications to such party.

8. Duplicate Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

9. Delay and Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements between such parties in connection with the subject matter hereof. Nothing in this Agreement shall be construed as granting to one party any right or license under any patent, trademark or other proprietary right now or hereafter owned or controlled by the other party.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive as well as immediate successors and assigns) of the parties; provided, however, that neither party may assign or in any way voluntarily transfer this Agreement, the information of the other party, or its obligations hereunder, without the prior written consent of the other party.

12. Modifications. This Agreement may be amended, changed and modified only in writing executed by both of the parties.

13. Severability. If any clause, provision or section of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision or section, or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into or taken thereunder or hereunder.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the local laws of the State of Ohio.

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5-8-07

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IN WITNESS WHEREOF, MagnaCard and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: C. Allen Love

Printed Name: C. Allen Love

Title: PRESIDENT

Address:
Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn.: Allen
Fax: 740 568 3084

MAGNACARD, INC.
("MagnaCard")

By: Phil Zwick

Printed Name: Phil Zwick

Title: President / CEO

Address:
MagnaCard, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn.: Phil
Fax: 814-375-0720

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made and entered into to be effective as of the 26th day of Sept, 2008, by and between Magnum Magnetics Corporation, an Ohio corporation ("Magnum"), and Magna Card, Inc., a(n) Michigan corporation ("Magna Card");

WITNESSETH:

WHEREAS, Magnum and Magna Card desire to engage in discussions and information sharing to benefit their mutual business interests and relationship which will likely necessitate the disclosure by Magna Card and Magnum to each other of certain of their and/or their affiliates' proprietary, confidential and trade secret information and technology; and

WHEREAS, Magna Card and Magnum are willing to disclose such proprietary, confidential and trade secret information and technology solely for the purpose of enabling each other to freely engage in such discussions and information sharing to benefit their mutual business interests and relationship (collectively, the "Work") on the condition that such information be kept confidential and not be used except as provided hereby;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and such other further consideration, the receipt and sufficiency of which is hereby acknowledged, Magna Card and Magnum agree as follows, intending to be legally bound thereby.

1. Definitions.

For purposes of this Agreement,

- (a) "Affiliate" means, with respect to any particular person or entity, any other person or entity controlling, controlled by or under common control with such person or entity.
- (b) "Information" means all or any portion of any confidential or proprietary business, financial, marketing, computer, pricing, operations, technical, customer, prospect, product (including formulas), trade secret or other information, technology, data and materials, disclosed verbally or in writing by Magna Card or Magnum to the other, or to which Magna Card or Magnum obtains access from the other, or which is therefrom developed by Magna Card or Magnum, including, without limitation, the existence and terms of this Agreement. Notwithstanding the immediately preceding sentence, the term "Information" does not include Information that either Magna Card or Magnum establishes by competent evidence;

EXHIBIT

B

- (i) was generally available to the public at the time of receipt thereof from the other or subsequently became generally available to the public, other than by disclosure by it;
- (ii) was in its possession on a non-confidential basis from any source other than the other party prior to the time of receipt by it from the other party, provided that such Information is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement between such source and the other party;
- (iii) becomes available to it on a non-confidential basis from a source other than the other party, which source is not known by it, after reasonable inquiry, to be subject to a confidentiality agreement with the other party; or
- (iv) was, or in the future is, developed independently by it without reference to the Information of the other party.

(c) "Representatives" means Affiliates, shareholders, members, partners, directors, officers, employees, agents, representatives, consultants, principals and agents.

2. Non-Disclosure and Non-Use of Information. Magna Card and Magnum each acknowledges and agrees that the Information of the other is and shall remain the sole and exclusive property of the other, is valuable, special and unique to the other, and is the subject of and subject to measures designed to prevent it, in the ordinary course of business, from being available to persons other than those selected by the other party to have access thereto, and each agrees to

- (a) Use the Information of the other solely for the purpose of performing the Work, and in no event for any other purpose whatsoever;
- (b) Restrict access to and disclose the Information of the other only to those of its Representatives, directly involved in the performance of the Work with a need to know such Information to perform the Work;
- (c) Fully inform its Representatives of the contents of this Agreement prior to disclosing any of the Information of the other to such Representatives, and require that they agree not to use and to maintain the confidentiality of the Information pursuant to the provisions hereof as fully as if they were parties hereto, and Magna Card and Magnum each agrees to be responsible for ensuring that its Representatives in fact maintain such confidentiality;
- (d) Not use or disclose any of the Information of the other except pursuant to paragraphs (a) through (c) above, or the fact that the Information of the other has been made available to it, except with the prior written consent of the other;

- (e) Immediately return or destroy, at the discretion and upon the request of the other, all of the Information of the other, in whatever form, including all copies, summaries, analyses, compilations, extracts, notes, reports and other materials related thereto, whether or not prepared by or for it, and upon request of the other, such return or destruction shall be certified in writing by an authorized Representative supervising such return or destruction;
- (f) Treat, hold and maintain the Information of the other with the highest degree of care, which shall be at least the same degree of care as it exercises in regard to its own Information, to prevent the disclosure of such Information other than in accordance herewith; and
- (g) Immediately notify the other of any breach of this Agreement or misuse or misappropriation of the Information of the other which may come to its attention and provide all reasonable assistance necessary to minimize the affect of such occurrence.

3. Permitted Disclosure. Notwithstanding anything to the contrary contained or implied in this Agreement, it is understood and agreed that, if either Magna Card or Magnum is requested or required to disclose all or any portion of the Information of the other party other than in accordance with this Agreement, it will provide the other party with prompt notice thereof so that such party may seek appropriate protection or by mutual agreement waive compliance with the terms of this Agreement. It is further understood that, if in the absence of appropriate protection or the receipt of a waiver from the other party, either Magna Card or Magnum is, in the opinion of its counsel, unconditionally compelled to disclose the Information of the other to any tribunal or else stand liable for contempt or suffer other material censure or penalty, it may disclose the same to such tribunal without liability hereunder.

4. Remedies. Upon a breach of this Agreement by Magna Card or Magnum, the non-breaching party may pursue all legal and equitable remedies available to it and will be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in enforcing this Agreement. In furtherance of the foregoing, Magna Card and Magnum agree that the disclosure of any Information in violation of the terms of this Agreement shall cause immediate and irreparable injury, loss and damage and that an adequate remedy at law for such injury, loss and damage may not exist. Therefore, Magna Card and Magnum agree that, in the event of such disclosure or threatened disclosure through any means whatsoever, and in addition to any other remedy to which either may be entitled, each shall be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage.

5. Notices. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been given if delivered by hand, certified mail, postage prepaid, recognized overnight courier or confirmed facsimile transmission, effective upon the receipt thereof, if given to the party to receive such notices, requests, demands or other communications at the address stated for such party below the signature area hereof. Either party to this Agreement may, by notice given in

accordance with this Section 5, designate a new address for notices, requests, demands and other communications to such party.

6. Duplicate Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

7. Delay and Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements between such parties in connection with the subject matter hereof. Nothing in this Agreement shall be construed as granting to one party any right or license under any patent, trademark or other proprietary right now or hereafter owned or controlled by the other party.

9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive as well as immediate successors and assigns) of the parties; provided, however, that neither party may assign or in any way voluntarily transfer this Agreement, the Information of the other party, or its obligations hereunder, without the prior written consent of the other party.

10. Modifications. This Agreement may be amended, changed and modified only in writing executed by both of the parties.

11. Severability. If any clause, provision or section of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision or section, or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into or taken thereunder or hereunder.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the local laws of the State of Ohio.

[Signature page to immediately follow]

IN WITNESS WHEREOF, Magna Card and Magnum have caused this Agreement to be executed by their respective duly authorized representatives to be effective as of the date first set forth above.

MAGNUM MAGNETICS CORPORATION
("Magnum")

By: Allen Love

Printed Name: Allen Love

Title: President

Address:

Magnum Magnetics Corporation
801 Masonic Road
Marietta, Ohio 45750
Attn: Thomas G. Love
Fax: (740) 373-2880

MAGNA CARD, INC.
("Magna Card")

By: Pat Beck

Printed Name: Pat Beck

Title: President/CEO

Address:

Magna Card, Inc.
35 New Plant Ct.
Owings Mills, Maryland 21117
Attn: Pat Beck
Fax: (410) 363-6108

Exhibit D

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC.,
Plaintiff

vs. : No. 08-2163-CJ

MAGNUM MAGNETICS
CORPORATION,
Defendant

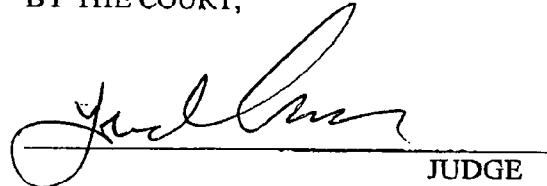
SCHEDULING ORDER

AND NOW, this 13 day of November, 2008 upon consideration of the Petition for a Temporary Restraining Order it is hereby ORDERED that:

1. A Rule is issued upon Respondent to show cause why the moving party is not entitled to the relief requested.
2. The Respondent shall file an Answer to the Petition within 20 days of this date;
3. The Petition shall be decided under Pa.R.C.P. §206.7;
4. Depositions and all other discovery shall be completed within _____ days of this date;
5. An Evidentiary Hearing on disputed issues of material fact shall be held on the _____ day of _____ 2008, at _____ o'clock _____.M., in Courtroom No. _____ of the Clearfield County Courthouse, Clearfield, Pennsylvania;
6. Argument shall be held on the 19th day of December, 2008 at 2:00 o'clock 9.M., in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania; and

7. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT,

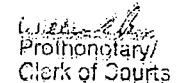


JUDGE

I hereby certify this to be a true and accurate copy of the original statement filed in this case.

NOV 14 2008

Attest,



Prothonotary
Clerk of Courts

Exhibit E

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MAGNA CARD, INC. :
Plaintiff, :
vs. : No. 08-2163-CD
MAGNUM MAGNETICS CORPORATION, :
Defendant. :
:

**NOTICE OF FILING PURSUANT TO 28 U.S.C. §1446 FILED ON BEHALF OF
DEFENDANT, MAGNUM MAGNETICS CORPORATION**

You are hereby notified that on Monday, December 8, 2008, Defendant, Magnum Magnetics Corporation, filed a Notice of Removal of this action from the Court of Common Pleas of Clearfield County, Pennsylvania, to the United States District Court for the Western District of Pennsylvania, Johnstown Division. A copy of that Notice of Removal is attached hereto.

Respectfully submitted,
BARBERA, CLAPPER, BEENER, RULLO
& MELVIN, LLP

Date: 10/8/08

By: Vincent J. Barbera
Vincent J. Barbera, Esq.
Court Adm. Cert. No.: 34441
146 West Main Street
P.O. Box 775
Somerset, Pennsylvania 15501-0775
Tel: (814) 443-4681
Attorneys for the Defendant

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Notice of Filing was served upon the following, on the date indicated below, by first-class United States Mail, postage prepaid, addressed as follows:

David J. Hopkins, Esq.
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801

BARBERA, CLAPPER, BEENER, RULLO
& MELVIN, LLP

Date: 12/8/08

By: Vincent J. Barbera
Vincent J. Barbera, Esq.
Court Adm. Cert. No.: 34441

146 West Main Street
P.O. Box 775
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Attorneys for the Defendant

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BARBERA, CLAPPER, BEENER, RULLO
& MELVIN, LLP

Date: December 8, 2008

By: /s/ Vincent J. Barbera

Vincent J. Barbera, Esq.
Court Adm. Cert. No.: 34441

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Date: 12/8/08

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P.O. Box 775
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Tel: (814) 443-4681

Attorneys for the Defendant