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8 a Delaware corporation

9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 TICKETMASTER LLC, a Virginia  
13 limited liability company,

14 Plaintiffs,

15 vs.

16 RMG TECHNOLOGIES, INC., a  
17 Delaware corporation, and DOES 1  
18 through 10, inclusive,

19 Defendants.

20 RMG TECHNOLOGIES, INC., a  
21 Delaware corporation,

22 Counterclaim- Plaintiff,

23 vs.

24 TICKETMASTER LLC, a Virginia  
25 limited liability company,  
26 IAC/INTERACTIVE CORP., a  
27 Delaware corporation and ROES 1  
28 through 10, inclusive

Counterclaim-Defendants

CASE NO.: CV07-2534 ABC (JCx)  
Honorable Audrey B. Collins

**DEFENDANT RMG  
TECHNOLOGIES, INC.'S  
SECOND AMENDED  
COUNTERCLAIMS.**

**JURY DEMAND**

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1 Counterclaim-Plaintiff RMG TECHNOLOGIES, INC. ("RMG"), a  
2 Delaware corporation as and for its Counterclaims against TICKETMASTER,  
3 LLC, a Virginia limited liability company ("Ticketmaster") and  
4 IAC/INTERACTIVE CORP, a Delaware corporation ("IAC") and ROES 1  
5 through 10, states as follows:

6 ~~Case 2:07-cv-02534-ABC-JC~~ **THE PARTIES** Document 113 Filed 04/09/2008 Page 2 of 2

7 1. RMG is a corporation, organized and existing under the laws of the  
8 State of Delaware.

9 2. Counterclaim-Plaintiff is informed and believes and thereon alleges  
10 that IAC is a corporation duly organized and existing under the laws of the State  
11 of Delaware, with its principal place of business located in the County of New  
12 York, State of New York. Counterclaim-Plaintiff is informed and believes and  
13 thereon alleges that IAC is duly registered to do business in the State of California.  
14 Upon information and belief, IAC is the parent corporation of Ticketmaster, and  
15 Ticketmaster is a wholly owned subsidiary of IAC.

16 3. Counterclaim-Plaintiff is informed and believes and thereon alleges  
17 that Ticketmaster is a limited liability corporation organized and existing under the  
18 laws of the State of Virginia, with its principal place of business located within the  
19 City of West Hollywood, State of California.

20 4. RMG is informed and believes, and thereon alleges, that at all times  
21 material hereto, each of the Counterclaim-Defendants, including those named  
22 herein as ROES, are the agents, representatives, servants and employees of the  
23 remaining Counterclaim-Defendants, and that all of the acts herein alleged were  
24 done in the course and scope of such agency and employment. Counterclaim -  
25 Plaintiff is further informed and believes, and thereon alleges, that each of the  
26 Defendants is legally responsible for the events that happened referred to herein,  
27 and have proximately caused Counterclaim-Plaintiff's damages hereinafter  
28 alleged.

1 **JURISDICTION AND VENUE**

2 5. The Court has subject matter jurisdiction over the subject matter of  
3 this action under: 28 U.S.C. §§ 1331, 1337, 1338 and 1367(a); the Sherman Anti-  
4 Trust Act 15 U.S.C. § 2, *et seq.*, and; The Clayton Act 15 U.S.C. §§ 15 and 26.

5 6. Venue in this action is properly within the Central District of  
6 California pursuant to 28 U.S.C. §§ 1391(a) (b) (c) and 1400 (a) because  
7 Ticketmaster and IAC transact business in this district.

8 **RELEVANT MARKET**

9 7. These counterclaims arise out of Ticketmaster and IAC's attempted  
10 monopolization of the "secondary ticket distribution services" market (hereinafter  
11 the "secondary market"). The participants in the secondary market are: 1) ticket  
12 brokers; 2) software manufacturers who provide software to ticket brokers which  
13 enable them to purchase their inventory of tickets at wholesale and retail; and 3)  
14 companies which host websites which enable ticket brokers to distribute their  
15 inventory of tickets to their customers. The services which are provided on the  
16 secondary market are the distribution of tickets which have previously been sold  
17 by primary ticket distribution providers such as Ticketmaster, Tickets.com and  
18 evenue.net, and acquired by ticket brokers.

19 8. Due to the fact that most of the inventory of tickets which are sold on  
20 the secondary market are acquired on the internet, and said tickets are sold by  
21 ticket brokers to customers throughout the United States and Canada, the  
22 geographic region where the secondary market is located is the entire United  
23 States (with the exception of the states Arkansas, Kentucky, Louisiana, Michigan,  
24 Minnesota, and the city of Denver) and Canada.

25 **FACTS COMMON TO ALL COUNTERCLAIMS**

26 9. Counterclaim-Plaintiff RMG is engaged in the business of software  
27 development. In or about 2004, RMG developed a software application called a  
28 Ticket Broker Acquisition Tool ("TBAT"). TBAT was created in order to assist

1 Ticket Brokers in purchasing tickets from a variety of ticket selling websites,  
2 including, but not limited to ticketmaster.com, tickets.com, evenue.net and other  
3 websites, so that tickets can be distributed on the secondary market. RMG is a  
4 participant on the secondary market.

5 10. Counterclaim-Plaintiff is informed and believes and thereon alleges  
6 that prior to 2004, Ticketmaster was exclusively a participant on the “primary  
7 ticket distribution services” market (hereinafter “primary market”), located in the  
8 geographic region of the entire United States and Canada, and was not a  
9 participant on the secondary market. The primary market provides retail and ticket  
10 distribution services on behalf of venues, sports franchises, artists and promoters.  
11 The distribution of each ticket which occurs on the primary market is the first sale  
12 of said ticket at the retail price, often called the face price.

13 11. Ticketmaster is still a participant on the primary market. Upon  
14 information and belief, Ticketmaster is the exclusive provider of ticket distribution  
15 services on the primary market for the vast majority of major venues and  
16 professional sports franchises, including, for example, 26 of 30 NBA teams, 31 of  
17 32 National Football League Teams, 26 of 30 National Hockey League Teams,  
18 their associated arenas, and their associated stadiums, as well as artists and  
19 promoters.

20 12. Upon information and belief, Ticketmaster's share of this primary  
21 market in the United States is at least 60 percent and more likely closer to 70  
22 percent. Ticketmaster, according to published industry data, controls the  
23 distribution for approximately 88 percent of available seats in top arenas, 91  
24 percent of the available seats in top amphitheaters, 72 percent of the seats in top  
25 theaters, and 80 percent or more of the seats available in top clubs.

26 13. Upon information and belief, there are significant barriers to entry  
27 into the primary market throughout the United States, including the need to  
28 develop, maintain and efficiently operate the required ticketing software and

1 hardware computer systems, the ability to provide substantial up-front payments to  
2 customers, the ability to demonstrate the reliability of its computer systems, and  
3 Ticketmaster's own anticompetitive practices including tying agreements,  
4 long-term exclusive contracts and the threat of unfounded litigation.

5 14. Upon information and belief, many of the country's top concert  
6 venues have entered into long-term exclusive deals with Ticketmaster under which  
7 Ticketmaster is granted the exclusive right to all non-box office sales of tickets for  
8 all the events held at that venue. Ticketmaster is reported to have such exclusive  
9 dealing agreements with approximately 89 percent of the arenas in the top-50  
10 Pollstar list, approximately 88 percent of the top amphitheaters which made that  
11 list; more than 70% of the top theaters on the list and more than 75% of the top  
12 clubs in the United States on that list. In short, Ticketmaster has exclusive deals  
13 with most of the arenas which have contracted to give Ticketmaster the right to  
14 distribute their non-box office seats through the primary market.

15 15. In addition, upon information and belief, Ticketmaster has entered  
16 into exclusive dealing arrangements with many concert promoters who contract  
17 with the artists scheduled to perform at the concert to undertake responsibility for  
18 arranging for the use of the venue, advertising and otherwise promoting the event  
19 and paying the artists.

20 16. Upon information and belief, these exclusive dealing arrangements  
21 with venues and promoters have terms that range from three to ten or more years  
22 in length. The average term is five to seven years.

23 17. Upon information and belief, in order to induce venues and promoters  
24 to enter into these long-term agreements, Ticketmaster pays any of them up-front  
25 payments which often consist of more than \$1,000,000. Ticketmaster also offers  
26 venues and promoters rebates or kickbacks out of the various service and other  
27 fees it charges consumers who purchase tickets through the Ticketmaster system.

28 18. Upon information and belief, Ticketmaster, because of its monopoly

1 position on the primary market and market power, charges consumers  
2 supracompetitive prices for service fees, handling fees, processing fees and  
3 shipping fees (“fees”). Often these fees collectively increase the price of a ticket  
4 to the consumer by more than 50% over the ticket's face value. There are no  
5 effective constraints on Ticketmaster's ability to charge consumers these  
6 supracompetitive fees because box office sales for most concerts and other events  
7 are minimal and are continuing to decrease as consumers realize they have a better  
8 chance of obtaining a better seat online or over the telephone from Ticketmaster.  
9 Internet sales now account for the majority of Ticketmaster's annual revenues.  
10 These fees are tantamount to Ticketmaster’s commission for the sale of each  
11 ticket.

12 19. Counterclaim-Plaintiff is informed and believes and thereon alleges  
13 that Ticketmaster sells tickets to live events at prices set by its clients.

14 20. Upon information and belief, Ticketmaster maintains a monopoly in  
15 the primary market. Counterclaim-Plaintiff is informed and believes and thereon  
16 alleges that many of Ticketmaster’s long term contracts with its clients are  
17 expiring, and many of those clients are threatening not to renew with  
18 Ticketmaster.

19 21. Upon information and belief, Ticketmaster’s largest client is currently  
20 the company Live Nation. Sales from shows put on by Live Nation have been  
21 reported in various publications to represent approximately 15% to 20% of  
22 Ticketmaster’s approximately one billion dollars in yearly revenue. Upon  
23 information and belief, Live Nation decided to terminate its relationship with  
24 Ticketmaster and to sell tickets for its events “in house.” Additionally, upon  
25 information and belief, in the past, artists such as Pearl Jam have boycotted  
26 Ticketmaster in order to protest Ticketmaster’s monopoly in the retail ticketing  
27 industry. Upon information and belief, Pearl Jam requested that the U.S.  
28 Department of Justice examine Ticketmaster’s monopolistic tendencies.

1           22. Most recently, upon information and belief, Ticketmaster has sued the  
2 Cleveland Cavaliers basketball franchise for, *inter alia*, breach of contract, in an  
3 apparent attempt to expand its contractual rights with the Cavaliers for the retail  
4 sale of the team's tickets, to ticket distribution services on the secondary market  
5 for the resale of Cavaliers' season ticket holders tickets. Upon information and  
6 belief, in response to this lawsuit, the Cavaliers have filed claims against  
7 Ticketmaster under the Sherman Antitrust Act alleging that Ticketmaster is a  
8 monopoly which is illegally and unlawfully seeking to force the Cavaliers to use  
9 its TeamExchange website for ticket distribution services on the secondary  
10 market. Upon information and belief, the Cavaliers instead wish to use their own  
11 ticket distribution services.

12           23. Upon information and belief, activities engaged in by sports leagues,  
13 venues, promoters and resale websites, such as the agreement between Major  
14 League Baseball and Stubhub for ticket distribution services of baseball tickets on  
15 the secondary market, and between Live Nation and Ebay, Inc. for the auction  
16 sales of Police concert tickets, coupled with the fact no state in the U.S. prohibits  
17 the resale of tickets, have demonstrated to Ticketmaster and IAC that the  
18 secondary market is legitimate, thriving, and vibrant in this country. Upon  
19 information and belief, Ticketmaster actually has lobbied legislatures throughout  
20 the country to do away with laws that restrict the resale of tickets so that its own  
21 TicketExchange and TeamExchange websites are not deemed illegal or restricted.

22           24. Upon information and belief, Ticketmaster and IAC have been aware  
23 that there would come a time when their monopoly in the primary market would  
24 end, and their best opportunities to make money for their ticket distribution  
25 services would be through the monopolization of the secondary market.  
26 Ticketmaster and IAC have been bracing for this reality for quite some time, and  
27 accordingly, have developed a scheme to obtain a monopoly in the secondary  
28 market.



1           25. Upon information and belief, in an attempt to obtain a monopoly in  
2 the secondary market:

3           (1) Upon information and belief, Ticketmaster and IAC have actively  
4 engaged in negotiations to purchase some of the largest ticket brokers  
5 in the country who are participants on the secondary market.

6           Counterclaim Plaintiff is informed and believes and thereon alleges  
7 that some of said ticket brokers currently utilize automated devices to  
8 purchase tickets off Ticketmaster's website;

9           (2) Upon information and belief, on January 15, 2008, Ticketmaster  
10 acquired TicketsNow.com, a ticket brokerage and bulletin board,  
11 which is also a participant on the secondary market. By doing so,  
12 Ticketmaster became the second largest seller of tickets on the  
13 secondary market. As Ticketmaster President and CEO Sean  
14 Moriarity explained in a public statement: "the combination of  
15 Ticketmaster and TicketsNow will redefine the event ticket resale  
16 category. We are going to provide fans more options and the most  
17 secure, reliable and convenient way to buy tickets to the events they  
18 want to attend at a price they are willing to pay";

19           (3) Upon information and belief, Ticketmaster has entered the  
20 secondary market and resold tickets on its own website in the  
21 TicketExchange and TeamExchange portions of its website, where  
22 "fans" can resell their tickets at prices above face value, and buyers  
23 can pay Ticketmaster further charges ranging from approximately  
24 \$6.00 to \$29.95 for their ticket distribution services;

25           (4) Upon information and belief, Ticketmaster has commenced  
26 providing ticket distribution services for tickets on the auction  
27 portion of its website where Ticketmaster resells tickets on behalf of  
28 itself, often times for prices which are several times higher than face



1 value of the ticket;

2 (5) Upon information and belief, Ticketmaster and IAC have

3 attempted to purchase software companies who develop ticket

4 distribution services software, including, but not limited to Paciolan;

5 (6) Ticketmaster has used predatory litigation against software

6 companies who participate on the secondary market by manufacturing  
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7 and marketing software which allow their ticket broker customers to

8 quickly and efficiently purchase tickets on websites of ticket

9 distribution service companies on the primary market, including, but

10 not limited to ticketmaster.com, as well as their ticket broker

11 customers who use said software, in order to drive those entities and

12 persons out of the secondary market, even though said software

13 companies and brokers are engaging in the exact same activities as

14 Ticketmaster and the brokers and software companies which

15 Ticketmaster and IAC are actively attempting to acquire; and

16 (7) Ticketmaster has created contract provisions on it the “terms of

17 use” portion of its website which are intended to, and when enforced,

18 as here, do produce a direct and immediate effect on competition

19 between competitive ticket sellers (RMG’s customers) and

20 Ticketmaster. These contract provisions, which are direct restraint on

21 alienation, are devices employed by Ticketmaster to further its

22 attempt to obtain a monopoly in the secondary market, by reducing

23 the number of tickets which ticket brokers (other than Ticketmaster)

24 in the secondary market may obtain in order to distribute, driving

25 legitimate ticket brokers out of the secondary market because of lack

26 of available inventory and for fear of being sued by Ticketmaster for

27 using its website for commercial purposes, thereby, reducing the

28 number of available and actual customers of RMG.

1           26. Upon information and belief, Ticketmaster's "terms of use" of its  
2 website have been created to obtain a monopoly in the secondary market. These  
3 "terms of use" are both invalid and unenforceable. The "terms of use" allegedly:  
4 1) prohibit users from using its web site for commercial purposes (even though  
5 Ticketmaster's website TicketExchange and TeamExchange allow its customers to  
6 resell their tickets for commercial purposes on Ticketmaster's website); 2) prohibit  
7 users from using automated devices, spiders, robots or bots while surfing the  
8 website; 3) prohibit users from viewing more than 1,000 web pages from the site  
9 in any twenty four (24) hour period; 4) purport to contain a punitive liquidated  
10 damages clause which requires any user who accesses more than 1,000 pages of  
11 the site in any twenty four (24) hour period to pay liquidated damages of \$10.00  
12 per page after the first 1,000 pages; 5) prohibit users from exceeding ticket limits  
13 which are arbitrarily set by Ticketmaster; and 6) contain a provision whereby the  
14 user agrees that any violation of the "terms of use" causes damage to  
15 Ticketmaster's goodwill, even though Ticketmaster's goodwill is unaffected by  
16 same.

17           27. Counterclaim-Plaintiff is informed and believes and thereon alleges  
18 that the "terms of use" are monopolistic and do not serve any business purpose,  
19 other than to assist Ticketmaster in building a monopoly in the secondary market.  
20 The reason for this is that the "terms of use" do not have any effect whatsoever on  
21 the amount of remuneration generated by Ticketmaster for its ticket distribution  
22 services in the primary market. In fact, the "terms of use" serve to reduce the  
23 amount which it earns for its ticket distribution services in the primary market for  
24 live events, as they only limit ticket resale brokers (and not the average ticket  
25 buyer) from purchasing tickets by severely reducing the amount of times that a  
26 broker can access Ticketmaster's website in order to purchase their inventory of  
27 tickets. Counterclaim-Plaintiff is informed and believes and thereon alleges that  
28 the "terms of use" drive down Ticketmaster's earnings for its ticket distribution

1 services on the primary services, and the revenue generated by its clients through  
2 the sale of tickets to live events, because ticket brokers often times purchase  
3 tickets for events that otherwise would not have been sold, and which ticket  
4 brokers later cannot distribute, or can only distribute at prices below face value.  
5 Thus, the ticket brokers actually bear the risk of loss for events where the supply  
6 exceeds the demand. Any damage claimed to be incurred by Ticketmaster from  
7 brokers acquiring the retail ticket inventory of tickets for distribution services on  
8 the secondary market is illusory, as Ticketmaster and its clients are paid for each  
9 of those sales and distribution services regardless of whether a broker or a non-  
10 broker purchases same, and Ticketmaster and its clients receive the benefit of  
11 passing off of the risk of loss to the brokers.

12 28. Upon information and belief, from February 2007 through April 17,  
13 2007, Ticketmaster filed predatory lawsuits, including the instant lawsuit, in an  
14 attempt to chill the purchasing activities of ticket resale brokers throughout the  
15 country, to encourage select ticket brokers and ticketing software developers to  
16 sell their businesses to Ticketmaster to avoid being sued, and to control  
17 competition in the secondary market. In the instant predatory lawsuit,  
18 Ticketmaster alleged claims for Violation of the Computer Fraud and Abuse Act,  
19 Violation of California Penal Code § 502, Violation of the RICO statutes, Breach  
20 of Contract, Inducing Breach of Contract, Intentional Interference with  
21 Contractual Relations, Fraud and Aiding and Abetting Fraud against RMG. After  
22 RMG filed its motion to dismiss the Complaint, Ticketmaster added claims of  
23 Copyright Infringement and Violation of the Digital Millennium Copyright Act.  
24 All of these claims asserted by Ticketmaster arise from what it alleges was RMG's  
25 actual or contributory breach of the invalid and unenforceable "terms of use."

26 29. The claims for Copyright Infringement and Violation of the Digital  
27 Millennium Copyright Act arose out of allegations that the use of RMG's alleged  
28 software in and of itself constitutes the copying of copyrighted pages and the

1 circumvention of technological measures, called a CAPTCHA system, to enter  
2 Ticketmaster's website. However, these allegations are false. All of the material  
3 on the Ticketmaster website contains information which is purely factual, such as  
4 the name of an event, the dates that the event is scheduled, how to purchase  
5 tickets, the number of tickets that may be purchased, seating maps of venues, etc.  
6 None of that information is protected by the Copyright Act. Moreover, the layout  
7 of the Ticketmaster.com website, whereby the factual information is arranged, is  
8 not original, and therefore, is not protected by the Copyright Act. Finally, the  
9 alleged software of RMG is not alleged by Ticketmaster to circumvent any  
10 technological measures to protect copyright, but rather to permit its user entry onto  
11 the Ticketmaster website through the CAPTCHA system- not around it.  
12 Moreover, upon information and belief, said technological measures are not  
13 intended to protect copyright, but to tell human users and computer programs apart  
14 and slow purchasers in the purchase of tickets.

15 30. This egregious and unfounded lawsuit by Ticketmaster constitutes  
16 nothing more than a tactic to scare participants in the secondary market into  
17 vacating the secondary market which Ticketmaster seeks to monopolize and to  
18 unlawfully and illegally control competition.

### 19 **FIRST COUNTERCLAIM**

#### 20 **(Attempted Monopolization of the Secondary Market**

#### 21 **Violation of 15 U.S.C. § 2 by RMG Against All Counterclaim-Defendants)**

22 31. RMG repeats and re-alleges all of the allegations set forth in  
23 paragraphs 1 through 30 of its Counterclaims.

24 32. Ticketmaster and IAC have illegally acted with the specific intent to  
25 monopolize the secondary market.

26 33. There was, and is, a dangerous probability that Ticketmaster and IAC  
27 will succeed in their attempt to monopolize the ticket resale market because, upon  
28 information and belief:

- 1 (1) Ticketmaster competes with other participants to provide ticket  
2 distribution services on the secondary market through the  
3 TicketExchange, TeamExchange and Auction portions of its website;
- 4 (2) Ticketmaster and IAC purchased TicketsNow.com and is now  
5 the second largest participant on the secondary market;.
- 6 (3) Ticketmaster and IAC are attempting to purchase some of the  
7 largest ticket brokers who are participants on the secondary market in  
8 order to monopolize same;
- 9 (4) Ticketmaster controls the distribution of tickets on the primary  
10 market which provides all of the inventory for the secondary market;
- 11 (5) Ticketmaster has specifically sought to exclude, and has excluded,  
12 participants on the secondary market from utilizing its primary ticket  
13 distribution services through blocking their access to Ticketmaster's  
14 website, and preventing said participants from acquiring sufficient  
15 inventory of tickets to compete with Ticketmaster on the secondary  
16 market;
- 17 (6) Ticketmaster has specifically sought to exclude, and has excluded  
18 participants in the secondary market from utilizing its primary ticket  
19 distribution services whom it alleges use "spiders, bots, robots or  
20 automated devices" which Ticketmaster alleges violates its "terms of  
21 use" by commencing predatory lawsuits against them in Federal  
22 Court for monetary damages and injunctive relief; and
- 23 (7) Ticketmaster has specifically sought to exclude, and has excluded  
24 ticket broker participants in the secondary market from utilizing its  
25 primary ticket distribution services, thereby preventing said  
26 participants from acquiring a sufficient inventory of tickets to  
27 distribute on the secondary market, by threatening to sue them in  
28 Federal Court and seeking monetary damages and injunctive relief.

1 Further success in excluding competitors in the secondary market from utilizing its  
2 primary ticket distribution services, coupled with the expansion of Ticketmaster  
3 and IAC's ticket distribution services as participants in the secondary market, will  
4 allow Ticketmaster and IAC to obtain an illegal monopoly over the secondary  
5 market.

6 34. This conduct has harmed competition in the secondary market,  
7 making the supply and selection of tickets on the secondary market to both brokers  
8 and consumers lower than it would be in a competitive market. Ticketmaster and  
9 IAC's unlawful attempted monopolization has also reduced the number and  
10 effectiveness of competitors in the secondary market which in turn has forced  
11 consumers to turn to Ticketmaster for ticket distribution services on the secondary  
12 market for higher prices and fees than they would have to pay in a competitive  
13 market. If Ticketmaster and IAC are permitted to continue with this conduct,  
14 ticket distribution prices on the secondary market will continue to increase, and  
15 only Ticketmaster and IAC will benefit.

16 35. There is no appropriate or legitimate business justification for the  
17 actions and conduct which has facilitated Ticketmaster and IAC's attempted  
18 monopolization of the secondary market.

19 36. The anticompetitive conduct described herein has caused antitrust  
20 injury to RMG because: 1) a large percentage of RMG's customers have ceased  
21 doing business with RMG for fears of being the target of a predatory lawsuit  
22 instituted by Ticketmaster, causing it actual loss of revenue, profit and goodwill;  
23 2) it is currently not permitted to sell or license legitimate software which can be  
24 used to purchase tickets on ticketmaster.com to its customers who are participants  
25 in the secondary market, causing it loss of revenue, profit and goodwill; 3) it is not  
26 permitted to license the use of legitimate servers or IP addresses to its customers,  
27 who are participants in the secondary market, for the purposes of making  
28 purchases on Ticketmaster.com, which has caused it the loss of revenue, profits

1 and goodwill; 4) its customers, who are participants in the secondary market, have  
2 had their access to ticketmaster.com blocked by Ticketmaster, which has resulted  
3 in RMG's loss of customers, and in turn, loss of revenue, profits and goodwill.

4 37. If these activities are not halted and abated, Ticketmaster and IAC  
5 will continue to damage and further damage Counterclaim-Plaintiff. These actions  
6 constitute violations of Sherman Antitrust Act 15 U.S.C. § 2. Thus, RMG requests  
7 injunctive relief against Ticketmaster pursuant to the Clayton Act 15 U.S.C. § 26.  
8

9 38. As proximate result of the wrongful acts herein alleged,  
10 Counterclaim-Plaintiff has been damaged in an amount to be determined at trial,  
11 and is also entitled to recover treble damages, costs of suit and attorneys' fees,  
12 pursuant to the Clayton Act 15 U.S.C. § 15.

13 39. RMG has standing to assert this claim as 15 U.S.C. 15 states "any  
14 person who shall be injured in his business or property by reason of anything  
15 forbidden in the antitrust laws may sue therefor in any district court of the United  
16 States in the district in which the defendant resides or is found or has an agent,  
17 without respect to the amount in controversy, and shall recover threefold the  
18 damages by him sustained, and the cost of suit, including reasonable attorney's  
19 fees."

## 20 **SECOND COUNTERCLAIM**

### 21 **(For Violation of California Unfair Competition Law, Bus. & Prof. Code §§ 22 17200, et. seq. by RMG Against All Counterclaim-Defendants)**

23 40. RMG repeats and re-alleges the allegations set forth in paragraphs 1  
24 through 30, 32 through 39 of these Counterclaims.

25 41. The conduct alleged in these Counterclaims constitute unlawful and  
26 unfair business acts and practices within the meaning of the California Unfair  
27 Competition Law, §§ 17200, et seq. of the California Business and Professions  
28 Code. Counterclaim-Plaintiff has suffered injury in fact and lost money and  
property as a result of Ticketmaster and IAC's violations of law and wrongful



1 conduct.

2 42. Ticketmaster and IAC's actions are unlawful and unfair because they  
3 have violated, *inter alia*, the Sherman Antitrust Act.

4 43. Ticketmaster and IAC's actions are unfair because in their pursuit of  
5 a monopoly over the secondary market, they have attempted to eliminate their  
6 competition, and they have eliminated some of their competition, as well as those  
7 who provide goods and services to their competition to make them competitive.  
8 Moreover, there is no legitimate business justification for Ticketmaster and IAC's  
9 conduct, and any business justification is further outweighed by the harm  
10 Ticketmaster and IAC's conduct has caused to consumers and competitors, and  
11 participants in the secondary market, including Counterclaim-Plaintiff.

12 44. Accordingly, Ticketmaster and IAC have violated the Unfair  
13 Competition Law proscription against engaging in unlawful and unfair business  
14 practices.

15 45. As a result of this unlawful and unfair conduct, Ticketmaster and IAC  
16 have been unjustly enriched at the expense of Counterclaim-Plaintiff, its  
17 customers, the general public, competitors and participants in the secondary  
18 market.

19 46. Ticketmaster and IAC's conduct is continuing and unless equitable  
20 relief is granted, they will drive participants in the secondary market out of  
21 business.

22 47. As proximate result of the wrongful acts herein alleged,  
23 Counterclaim-Plaintiff has been damaged in an amount to be determined at trial,  
24 and therefore requests costs of suit and attorneys' fees.

### 25 **THIRD COUNTERCLAIM**

#### 26 **(Declaratory Relief by RMG Against Ticketmaster and Roes 1 through 10)**

27 48. RMG repeats and re-alleges the allegations set forth in paragraphs 1  
28 through 30, 32 through 39, 31 through 46 of these Counterclaims.

1 49. Actual controversies have arisen and now exist between RMG on the  
2 one hand and Ticketmaster on the other hand. RMG claims that Ticketmaster's  
3 "terms of use" are a vehicle to promote its illegal and illegitimate attempt to  
4 monopolize the secondary market, and are therefore invalid and unenforceable.  
5 Upon information and belief, Ticketmaster claims that its "terms of use" of its  
6 website are legitimate.

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7 50. A decree from this Court is necessary to resolve the above  
8 controversy and to declare the respective rights and duties of RMG on the one  
9 hand and Ticketmaster on the other hand. Such declaration is necessary and  
10 appropriate at this time in order that the parties may resolve their disputes in  
11 connection with the First Amended Complaint in this matter and the  
12 Counterclaims.

13 51. RMG seeks a Declaratory Judgment deeming the "terms of use" on  
14 Ticketmaster's website invalid and unenforceable and an injunction thereon.

15 52. Without such injunction, RMG will be irreparably harmed.

16 53. RMG has no adequate remedy at law.

17 54. The injury RMG will receive absent an injunction is greater than any  
18 foreseeable harm to Ticketmaster or others.

19 **FOURTH COUNTERCLAIM**

20 **(Violation of Computer Fraud and Abuse Act- 18 U.S.C. 1030 Against**  
21 **Ticketmaster and Roes 1 through 10)**

22 55. RMG repeats and re-alleges the allegations set forth in paragraphs 1  
23 through 10, of these Counterclaims.

24 56. RMG is informed and believes and based thereon alleges that  
25 Ticketmaster has used the information contained on the hard drive of Chris  
26 Kovach to reverse engineer and decompile source code and other information  
27 which is proprietary to RMG, and has used that information to intentionally access  
28 RMG's computers and non-public websites without authorization, and, through

1 interstate or foreign communication, obtained information from those computers,  
2 in violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)©.  
3 Upon information and belief, Ticketmaster is using this information to monitor the  
4 computer access of RMG and some of its customers. RMG is informed and  
5 believes, and based thereon alleges, that as a result of this conduct, RMG  
6 sustained economic damages of at least \$5,000.00 over a one year period.

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7 57. Under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g),  
8 RMG is entitled to an injunction, damages, and other legal and equitable relief as  
9 prayed for in these Counterclaims.

### 10 **FIFTH COUNTERCLAIM**

#### 11 **(Violation of California Penal Code § 502 Against Ticketmaster and Roes 1** 12 **through 10)**

13 58. RMG repeats and re-alleges the allegations set forth in paragraphs 1  
14 through 10 and 56 of these Counterclaims.

15 59. RMG is informed and believes, and based thereon alleges, that  
16 Ticketmaster has knowingly used and caused to be used RMG's computer services  
17 without permission, in violation of California Penal Code § 502(c)(3).

18 60. RMG is informed and believes, and based thereon alleges, that  
19 Ticketmaster has knowingly and without permission accessed or caused to be  
20 accessed RMG's computers, computer system and computer network in violation  
21 of California Penal Code § 502(c)(7).

22 61. As a result of said actions, RMG has sustained damage and loss in an  
23 amount which has yet to be ascertained, but is believed to be in excess of  
24 \$5,000.00 over a one year period for such activities, among other things, as  
25 verifying that RMG's computer system, computer network, computer programs, or  
26 data was or was not altered, damaged, or deleted by the access.

27 62. Pursuant to California Penal Section 502(e), RMG is entitled to an  
28 injunction, compensatory and punitive damages, attorney's fees and other legal

1 and equitable relief as prayed for in these Counterclaims.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays that the Court declare, adjudge and decree  
4 the following:

- 5 1. That the conduct alleged herein constitutes unlawful attempted  
6 monopolization in violation of Section 2 of the Sherman Antitrust  
7 Act;  
8 2. That the conduct alleged herein is in violation of the California  
9 Unfair Competition Law and appropriate restitutionary and other  
10 injunctive relief be granted pursuant to this law;  
11 3. For an order permanently restraining and enjoining Ticketmaster from  
12 continuing their unfair and anticompetitive activities as alleged  
13 herein;  
14 4. That Counterclaim-Plaintiff be awarded damages, compensatory  
15 damages, penalties and other monetary relief as provided by  
16 applicable law, including treble damages;  
17 5. That Counterclaim-Plaintiff recover its costs of suit, including  
18 reasonable attorneys' fees and pre and post-judgment interest;  
19 6. For an order requiring full restitution of all funds acquired from  
20 Ticketmaster's unfair business practices, including disgorgement of  
21 revenues and profits;  
22 7. Declaratory judgment deeming Ticketmaster's "terms of use" of its  
23 website invalid and unenforceable.  
24 8. A permanent injunction enjoining Ticketmaster and anyone acting on  
25 its behalf or at its request from accessing RMG's computers,  
26 computer networks, computer systems or websites; and  
27 9. Whatever further and different relief as the nature of the case may  
28 require or may be determined to be just, equitable, and proper by this

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Court.

DATED: April 9, 2008 Respectfully submitted,

COGGAN & TARLOW



By: DAVID N. TARLOW  
Attorneys for RMG Technologies, Inc.

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**JURY DEMAND**

RMG demands a jury trial in this action.

DATED: April 9, 2008 Respectfully submitted,

COGGAN & TARLOW



By: DAVID N. TARLOW  
Attorneys for RMG Technologies, Inc.

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA** )

) ss:

**COUNTY OF LOS ANGELES** )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **1925 Century Park East, #2320, Los Angeles, California 90067**

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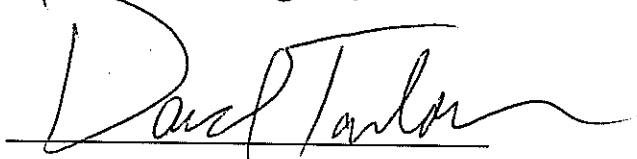
On April 9, **2008**, I served the foregoing document described as: **DEFENDANT RMG TECHNOLOGIES, INC.'S SECOND AMENDED COUNTERCLAIMS** on all interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, and addressed as follows:

Robert Platt, Esq.  
Mark Lee, Esq.  
Donald Brown, Esq.  
Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064

**(X) BY MAIL.** I caused such envelopes to be deposited in the mail. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon, fully prepaid, at Los Angeles, California in the ordinary course of business.

I declare under penalty of perjury that I am a member of the bar of this court and this service was made at my direction.

Executed on this 9<sup>th</sup> day of **April, 2008**, at Los Angeles, California.

  
David N. Tarlow