

CAUSE NO. 09-07282

FILED
09 JUN -8 PM 5:01
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

SHAWN C. HELMS,

Plaintiff,

v.

FASTER THAN MONKEYS, and

BRETT C. LAW

Defendants.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

160th
JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

For his Original Petition against defendants FasterThanMonkeys and Brett C. Law (each a "Defendant" and collectively the "Defendants") arising from Defendants' misappropriation and theft of trade secrets, ideas and other confidential and proprietary information, plaintiff Shawn C. Helms ("Helms") states as follows:

DISCOVERY CONTROL PLAN - LEVEL 2

1. Level 2 discovery in this case should be conducted in accordance with Tex. R. Civ. P. 190.3.

THE PARTIES

2. Plaintiff Shawn C. Helms ("Helms") is an individual who resides in Rockwall County, Texas, with a residential address of 713 Starlight Pass, Heath, Texas 75032. The last three digits of Helms's Social Security number are 729. The last three digits of Helms's drivers license number are 680.

3. On information and belief, Defendant FasterThanMonkeys is a company with its principal place of business at 3962 Marion Ave., Los Alamitos, California 90720-2241. On information and belief, Defendant FasterThanMonkeys does not maintain a place of regular business in Texas and does not maintain a designated agent upon whom service may be made.

4. On information and belief, Defendant Brett C. Law is an individual who resides in the State of California and may be served with process at his residence, 3962 Marion Ave., Los Alamitos, California 90720-2241. On information and belief, Law is the owner of Defendant FasterThanMonkeys. On information and belief, Defendant Law does not maintain a place of regular business in Texas and does not maintain a designated agent upon whom service may be made.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this litigation because the amount at issue exceeds the minimum jurisdictional limits of this Court.

6. This Court has personal jurisdiction over Defendants because Defendants have committed tortious acts within the State of Texas and within Dallas County, including using and selling to Texas residents products containing trade secrets, ideas, and other confidential and proprietary information acquired by Defendants through improper means from a Texas resident. Defendants maintain an interactive website through which Defendants advertise to Texas residents the sale of products containing trade secrets misappropriated from Helms. Through this website, Defendants also solicit monetary contributions from Texas residents to support the sale and further development of these same products. On information and belief, Defendants have made extensive sales to Texas residents of products containing trade secrets misappropriated from Helms.

7. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because a substantial part of the events giving rise to this action occurred in Dallas County, Texas.

NATURE OF THE CASE AND FACTUAL BACKGROUND

8. This is an action for misappropriation and theft of trade secrets, ideas and other confidential and proprietary information under Texas common law and Tex. Civ. Prac. & Rem. Code § 134.001 *et seq.*

9. Helms brings this case as a result of Defendants' misappropriation of Helms's valuable trade secrets and confidential and proprietary information relating to mobile device software. Helms holds a degree in computer information systems and has been involved in developing computer software applications, including two applications for use on the Apple iPhone and/or iPod touch mobile device platforms ("iPhone Platform").

10. In October 2008, Helms began developing a sophisticated and complex baseball scorekeeping application, which Helms temporarily named "iScore," for use on the iPhone Platform. In light of existing baseball scorekeeping applications for other handheld devices, Helms believed that the growing popularity of the iPhone Platform would generate demand for a baseball scorekeeping application for the iPhone Platform. On information and belief, at the time Helms began developing iScore, no such scorekeeping application existed for the iPhone Platform.

11. In addition to being the first baseball scorekeeping application for the iPhone Platform, on information and belief, Helms's application was the only scorekeeping application to use a separate-screen, large-button-based scorekeeping interface ("Separate-Screen Large-Button-Based Interface") to implement the main scorekeeping functionality of the application. Helms's Separate-Screen Large-Button-Based Interface was novel and was designed to facilitate a user's ability to quickly identify and manipulate statistical categories while keeping score at a baseball game. Such an interface allows a user to track statistics (e.g., balls, strikes, and outs) during an at-bat on a screen separate from the screen in which a user tracks after-bat statistics

(e.g., whether the at-bat resulted in a single, a triple, or a walk). The large button concept, together with the separate screen concept, allows users to navigate easily through a host of scorekeeping options and statistical categories. Given the small size of mobile devices, Helms's Separate-Screen Large-Button-Based scorekeeping design significantly improves a user's ability to quickly identify and manipulate statistical categories while keeping score at a baseball game.

12. By mid-November of 2008, after extensive research and development, Helms had developed and documented the logic, screen designs, functionality, and other technical information necessary to implement iScore on the iPhone Platform. By November 16, 2008, Helms finalized the technical specification (the "Helms iScore Specification") which captured the logic, screen designs, and functionality necessary to implement iScore.

13. The Helms iScore Specification set forth the core functionality of iScore and defined the logic necessary to enable a user to (a) enter players; (b) establish a lineup; (c) start a new game; (d) track in-game scoring (e.g., hits, outs, errors); and (d) track base running. The Helms iScore Specification also contained references to additional functionality to be included in the final design, such as spray chart, statistics, history, and substitution functionality.

14. The name "iScore" was printed on the cover of the Helms iScore Specification. Inside the specification, Helms included several hand-drawn screenshot examples in which Helms used his son's baseball team's name, the "Colts." Helms used the team name "Colts" as the default team name throughout the Helms iScore Specification.

15. After substantially developing iScore's functionality, Helms began looking for a software programmer to program iScore. On November 8, 2008, Helms posted a project on www.elance.com ("Elance") seeking a programmer for his iScore application. Elance is a website where individuals and companies seeking professional services (like software

programming) can find providers of such services. Helms's Elance posting did not contain the iScore name or any details regarding the functionality found in the Helms iScore Specification.

16. Over the following week, Helms received several bids to program iScore, including bids from Allerin Technologies (located in Mumbai, India), Teckfusion Systems Pvt. Ltd. (located in Bath, UK), iPhone Guru (Anjana Pothan located in Bangalore, India), and GoGoalSoft Limited (Gordon Ho located in Tai Po, Hong Kong SAR, PRC) (collectively "the Elance Companies"). Helms also entertained inquiries to develop his iScore application from Tudor Cojan ("Cojan") and Jerry Nixon ("Nixon"), both individuals with whom Helms had worked with in the past.

17. Because the iScore application and the Helms iScore Specification were novel and constituted Helms's valuable confidential and proprietary information, ideas, and trade secrets, Helms maintained the confidentiality of his iScore application and the Helms iScore Specification. Between November 12, 2008 and November 17, 2008, Helms discussed potential iScore programming arrangements with each of the Elance Companies as well as with Nixon and Cojan. Helms also disclosed the Helms iScore Specification to Nixon and Cojan during this time period. During his discussions with each of these companies and/or persons, Helms stressed the confidential nature of his iScore application.

18. On or around November 17, 2008, after initial contacts with the Elance Companies, Helms confidentially shared the Helms iScore Specification via e-mail with the Elance Companies.

19. Less than five months later, Defendant FasterThanMonkeys began selling a *nearly identical* baseball scorekeeping application for use on the iPhone Platform.¹ On

¹ See <http://iscore.fasterthanmonkeys.com/screenshots.jsp> ("Defendants' Scorekeeping Application Screenshots") (Ex. A).

information and belief, Defendants have been involved in developing and marketing games and applications for the iPhone Platform since January 2009. On information and belief, Defendants began testing a beta-version of their baseball scorekeeping application in February 2009.

20. Defendants' baseball scorekeeping application bears a striking resemblance to the Helms iScore Specification. Defendants' baseball scorekeeping application uses the exact same name, a nearly identical layout, and the same Separate-Screen Large-Button-Based Interface described in the Helms iScore Specification to implement scorekeeping functionality. By way of illustration, both applications:

(a) Use the exact same name: "iScore";

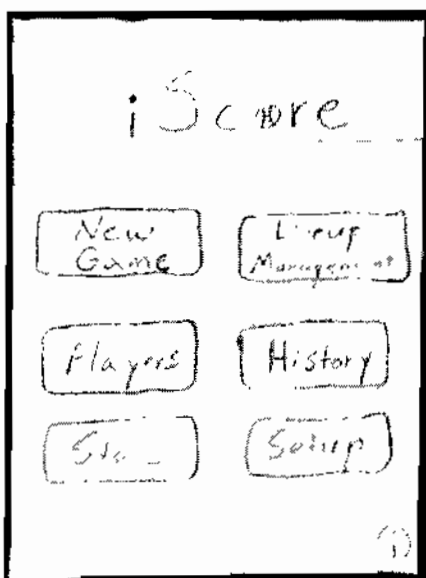


Figure 1: Helms iScore Specification

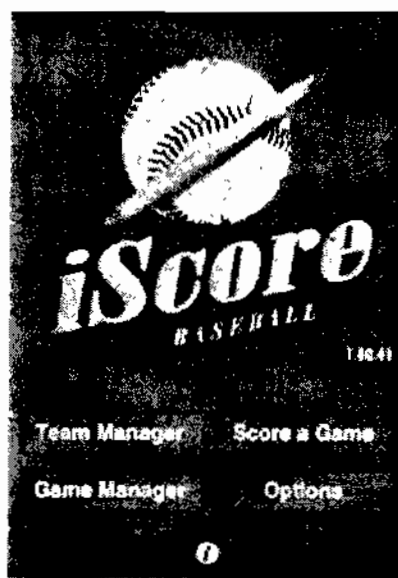


Figure 2: Defendants' Application

(b) Use the same interface to set the player lineup:

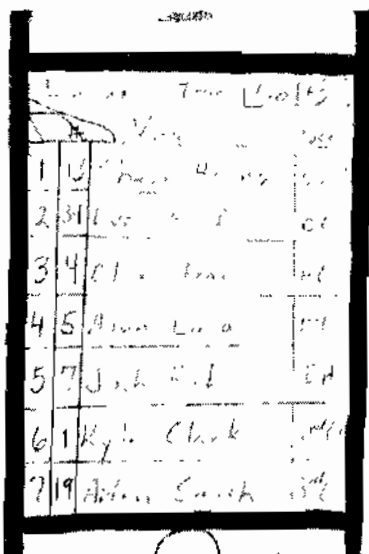


Figure 3: Lineup Screen from the Helms iScore Specification



Figure 4: Lineup Screen from Defendants' Application

(c) Use a Separate-Screen Large-Button-Based "After-Bat" Screen to track after-bat statistics (e.g., whether the at-bat resulted in a single, a triple, or a walk, etc.); and

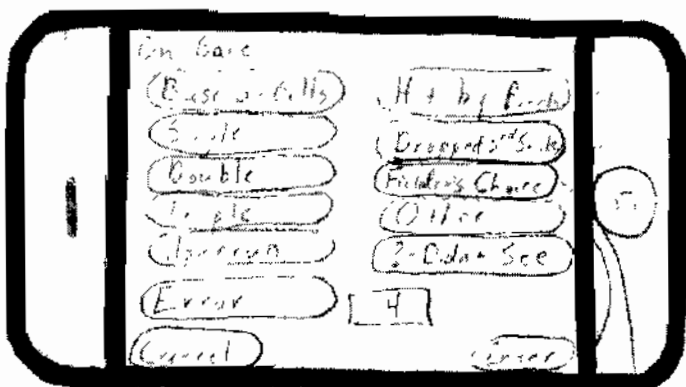


Figure 5: After-Bat Tracking Screen from the Helms iScore Specification

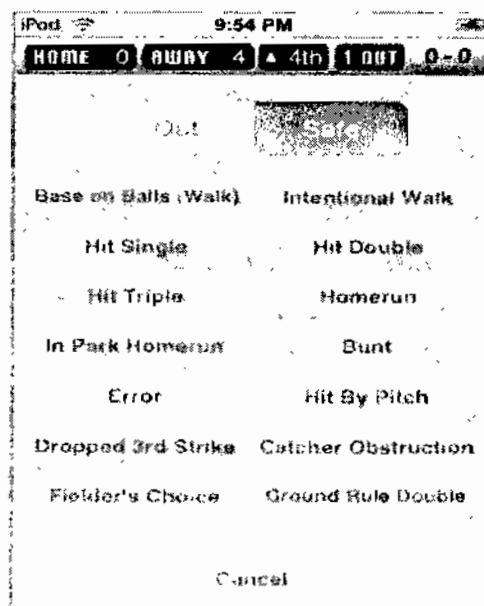


Figure 6: After-Bat Tracking Screen from Defendants' Application

- (d) Use a Separate-Screen Large-Button-Based "In-Bat" Screen which (i) contains a baseball diamond; (ii) contains large buttons for tracking in-bat statistics (e.g., balls, strikes, and outs); and (iii) displays the current score, inning, batter, and player on deck.

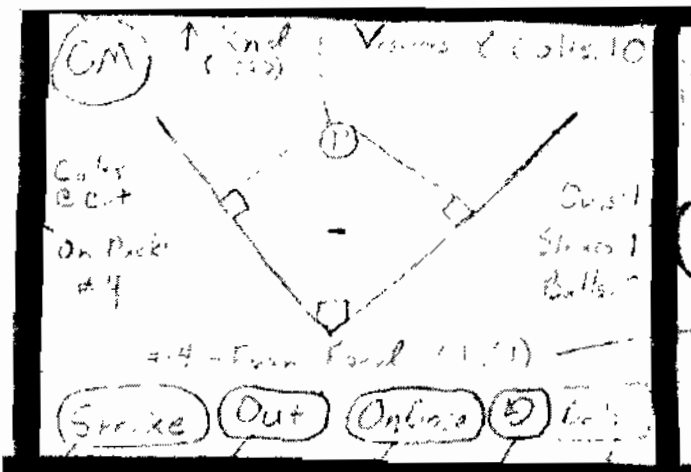


Figure 7: In-Bat Tracking Screen from the Helms iScore Specification

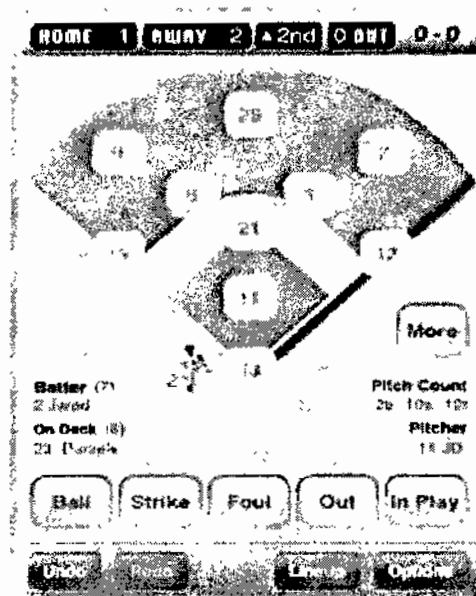


Figure 8: In-Bat Tracking Screen from Defendants' Application

21. On information and belief, Defendants' scorekeeping application also handles baserunning in the same manner described by the Helms iScore Specification. For example, like Helms's proposed iScore application, Defendants' application uses a separate baserunner screen to track the baserunners' progress. In addition, Defendants' application uses a "closest-to-home" popup order to track multiple baserunners. According to the Helms iScore Specification, if "baserunners are on base when a batter gets [o]n [b]ase, then a different Baserunner Screen pops up for each baserunner in order starting from the person closest to home and ending with the batter." On information and belief, this is exactly how Defendants implemented their application's baserunner tracking functionality.

22. On information and belief, as illustrated above, Defendants' application employs the same interface screens, logic, and implementation of scorekeeping functionality described in

the Helms iScore Specification. The information and functionality found in Defendants' screens are *nearly identical* to the screens set forth in the Helms iScore Specification.

23. On information and belief, Defendants' scorekeeping application is the only baseball scorekeeping application to use the novel Separate-Screen Large-Button-Based Interface which is documented in the Helms iScore Specification.

24. On information and belief, no other baseball scorekeeping application available *on any handheld device*, including but not limited to the iPhone Platform, uses a similar interface to track hits and outs. To the contrary, the three other baseball scorekeeping applications for the iPhone Platform (ScoreKeeper, Pointstreak K-ForCE and Baseball Scorecard) (collectively the "Other iPhone Scorekeeping Applications"), for example, use a "same-screen" interface whereby the user enters the outcome of an at bat (after-bat statistics) on the same screen as the user tracks balls and strikes (in-bat statistics). In addition, on information and belief, no other baseball scorekeeping application uses a Separate-Screen Large-Button-Based Interface to receive statistics input by the user. The Other iPhone Scorekeeping Applications use interfaces that are notably different than Helms's Separate-Screen Large-Button-Based Interface. ScoreKeeper uses a drag-and-drop interface; Pointstreak K-ForCE uses a check-box interface; and Baseball Scorecard uses a wheel-selection interface.

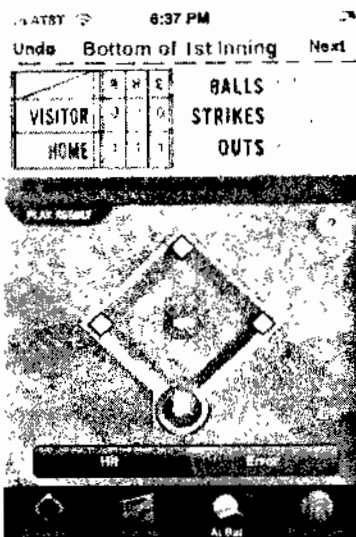


Figure 9: ScoreKeeper (drag-and-drop interface)

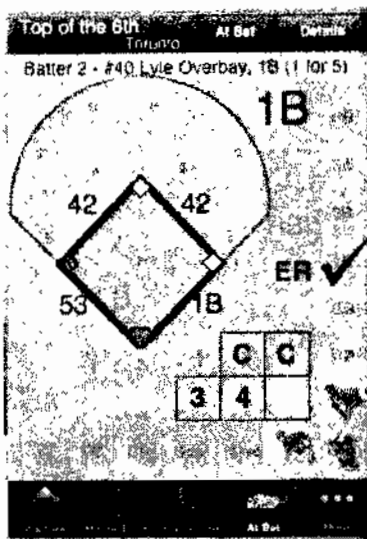


Figure 10: Pointstreak K-ForCE (check-box interface)

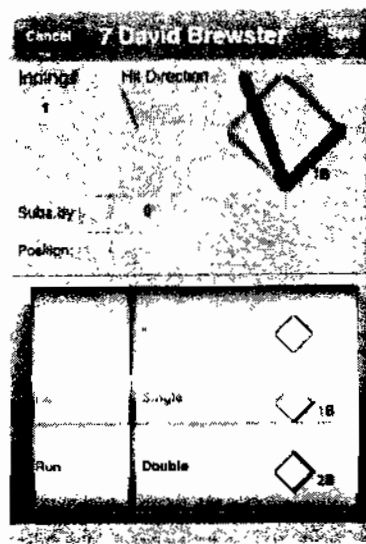


Figure 11: Baseball Scorecard (wheel-selection interface)

25. Based on the user feedback given through the Apple iTunes application and the iPhone Platform (collectively, the “Apple Store”), users greatly prefer the Separate-Screen Large-Button-Based Interface described by the Helms iScore Specification. Accordingly, Defendants’ iScore application has a feedback rating of 4 out of 5 stars – higher than the Other iPhone Scorekeeping Applications.

26. In addition to using the same product name, tracking logic, and interface concepts found in the Helms iScore Specification, Defendants’ application also uses a unique baseball team name (“*Colt*”) which is found in the Helms iScore Specification. In screenshots on its website illustrating the functionality of Defendants’ application, Defendants use “Colt 1” and “Colt 2” several times.² Notably, the team name “Colt” is not the name of any well-known baseball team. Rather, the name Colts is the name of Helms’s son’s baseball team and was the *default* team name used throughout the Helms iScore Specification.

² See Defendants’ Scorekeeping Application Screenshots at 2 (Ex. A).

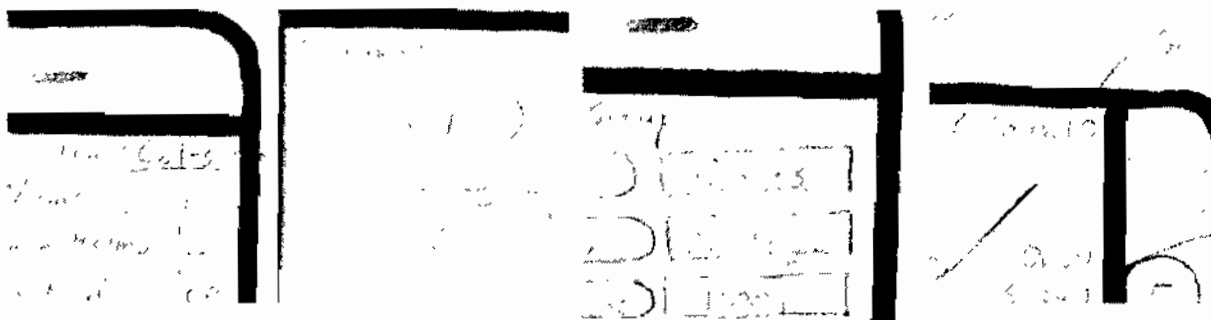


Figure 12: Use of “Colts” in the Helms iScore Specification

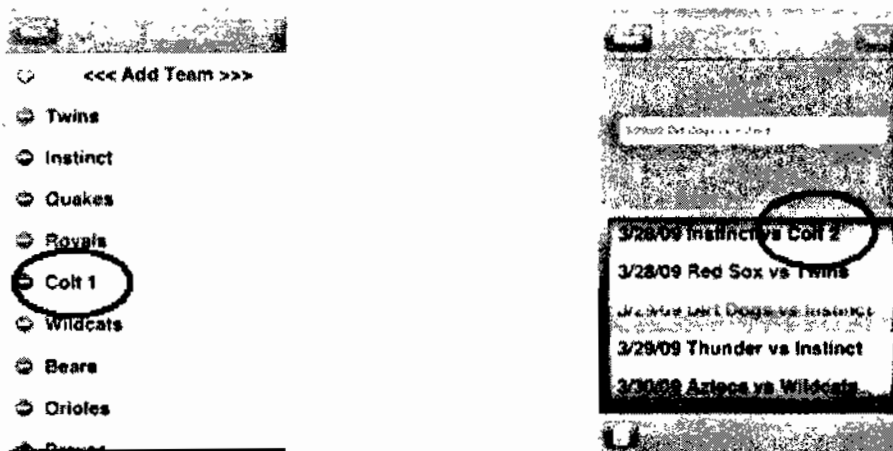


Figure 13: Use of “Colt” in Screenshots of Defendants’ Application³

27. On information and belief, as of May 1, 2009, Defendants had only two other iPhone Platform applications available in the market - “Bug Squash” and “Simon Has Gas.” In contrast to the sophisticated baseball scoring application which Defendants now market, Bug Squash is a game that allows players to “squish wave after wave of charging bugs.”⁴ Simon Has Gas is a game in which “Simon expels round after round of flatulent fun. Your job is to repeat the sequence of gaseous eruptions. How long can you last during this noxious onslaught?”⁵

³ See Defendants’ Scorekeeping Application Screenshots at 2 (Ex. A).

⁴ See <http://www.fasterthanmonkeys.com/>.

⁵ See *id.*



Figure 14: Defendants' Simon Has Gas (left) and Bug Squash (right) Applications

28. As Helms expected, there has been high demand for an iPhone Platform baseball scorekeeping application using a Separate-Screen Large-Button-Based Interface. Accordingly, Defendants' scorekeeping application has experienced much success. Defendants' scorekeeping application has been available via the Apple Store for several months and has been a top 5 paid application in the "Sports" category of the Apple Store for several weeks. By comparison, none of the Other iPhone Scorekeeping Applications are in the top 100 paid applications in the "Sports" category of the Apple Store.

COUNT ONE

Misappropriation of Trade Secrets

29. Helms restates and incorporates the allegations in paragraphs 1 through 28 as if set forth fully herein.

30. Helms has been involved in developing sophisticated software applications for use on the mobile iPhone Platform, including the iScore scorekeeping application. Helms's iScore application and design, which was contained in the Helms iScore Specification, was a trade secret that gave Helms a competitive advantage over other mobile application developers because the iScore design and concepts, including Helms's novel Separate-Screen Large-Button-Based Interface, were neither available to nor known by his competitors or by the general public. As discussed above, on information and belief, no other baseball scorekeeping application uses a similar interface to track hits and outs.

31. Helms took reasonable measures to guard the secrecy of his trade secrets and to prevent his trade secrets and other confidential and proprietary information from being available to persons other than those selected by Helms to have access to such information for the limited purpose of programming iScore. Each time Helms discussed his iScore application with potential programmers, Helms stressed the confidential nature of his disclosure and shared the Helms iScore Specification only on a confidential basis.

32. On information and belief, Defendants nonetheless acquired knowledge of Helms's trade secrets and other confidential and proprietary information by improper means. On information and belief, Defendants knew or should have known that disclosure of Helms's trade secrets to Defendants was improper and in violation of a duty of confidence.

33. On information and belief, after wrongfully acquiring Helms's trade secrets and other confidential and proprietary information, Defendants, without Helms's authorization, used Helms's trade secrets to market a baseball scorekeeping application to compete with Helms's proposed iScore application.

34. Defendants' use of Helms's trade secrets and other confidential and proprietary information caused injury to Helms, and has commercially damaged Helms. Helms has been prevented from viably marketing his proposed iScore application for use on the iPhone Platform.

35. Helms seeks damages within the jurisdictional limits of this court.

COUNT TWO

Misappropriation of Ideas

36. Helms restates and incorporates the allegations in paragraphs 1 through 35 as if set forth fully herein.

37. The product designs and other confidential and proprietary information contained in the Helms iScore Specification, including Helms's Separate-Screen Large-Button-Based Interface concept, were novel, particularly to Defendants.

38. Helms shared his ideas only with those persons necessary for the programming of software related to the iScore application. Each time Helms discussed his iScore application with potential programmers, Helms stressed the confidential nature of his disclosure and shared the Helms iScore Specification only on a confidential basis.

39. On information and belief, Defendants nonetheless adopted and used Helms's novel design ideas and other confidential and proprietary information to develop and market a baseball scorekeeping application nearly identical to Helms's proposed iScore application.

40. Defendants' use of Helms's trade secrets and other confidential and proprietary ideas caused injury to Helms, and has commercially damaged Helms. Helms has been prevented from viably marketing his proposed iScore application for use on the iPhone Platform.

41. Helms seeks damages within the jurisdictional limits of this court.

COUNT THREE

Common-Law Misappropriation

42. Helms restates and incorporates the allegations in paragraphs 1 through 41 as if set forth fully herein.

43. Helms's proposed iScore application, including the associated trade secrets and other confidential and proprietary product designs, were created through extensive time, labor, skill and money.

44. On information and belief, Defendants have used Helms's trade secrets and confidential information to compete with Helms, thereby gaining a special advantage in that

competition because defendant bore little or no expense in developing initial designs and functionality for the iScore application.

45. Defendants' use of Helms's trade secrets and other confidential and proprietary information caused injury to Helms, and has commercially damaged Helms. Helms has been prevented from viably marketing his proposed iScore application for use on the iPhone Platform.

46. Helms seeks damages within the jurisdictional limits of this court.

COUNT FOUR

Theft Of Trade Secrets In Violation Of The Texas Theft Liability Act

47. Helms restates and incorporates the allegations in paragraphs 1 through 46 as if set forth fully herein.

48. Under the Texas Theft Liability Act, Tex. Civ. Prac. & Rem. Code §§ 134.001 *et seq.*, Defendants are liable for damages resulting from Defendants' theft of Helms's trade secrets and other confidential and proprietary information in violation of the Texas Penal Code §§ 31.05(b)(1) and (b)(3).

49. Helms owned valuable trade secrets and other confidential and proprietary information, which consisted of technical information providing for the development of a baseball scorekeeping application known as iScore. The Helms iScore Specification included detailed screen designs, logic, and functionality descriptions for all of the major functionality behind the iScore application.

50. Helms took reasonable measures to guard the secrecy of his trade secrets and to prevent his trade secrets and other confidential and proprietary information from being available to persons other than those selected by Helms to have access to such information for the limited purpose of programming iScore. Each time Helms discussed his iScore application with

potential programmers, Helms stressed the confidential nature of his disclosure and shared the Helms iScore Specification only on a confidential basis.

51. On information and belief, Defendants nonetheless knowingly and unlawfully appropriated Helms's trade secrets with the intent to deprive Helms of his trade secrets in violation of Tex. Penal Code § 31.05(b)(1).

52. On information and belief, Defendants also knowingly communicated and/or transmitted Helms's trade secrets in violation of Tex. Penal Code § 31.05(b)(3).

53. On information and belief, Defendants unlawfully appropriated, communicated, and/or transmitted Helms's trade secrets without Helms's effective consent. As discussed above, Helms shared his ideas only with those persons necessary for programming software related to iScore. Each time Helms discussed his iScore application with potential programmers, Helms stressed the confidential nature of his disclosure and shared the Helms iScore Specification only on a confidential basis.

54. Defendants' wrongful conduct caused injury to Helms, and has commercially damaged Helms. Helms has been prevented from viably marketing his proposed iScore application for use on the iPhone Platform.

55. Helms seeks damages within the jurisdictional limits of this court together with additional statutory damages of \$1,000 from Defendants under Tex. Civ. Prac. & Rem. Code § 134.005(a)(1).

COUNT FIVE

Attorneys Fees and Costs

56. Helms restates and incorporates the allegations in paragraphs 1 through 55 as if set forth fully herein.

57. Helms is entitled to an award of his court costs and reasonable and necessary attorneys' fees as provided under Tex. Civ. Prac. & Rem. Code § 134.005.

CONDITIONS PRECEDENT

58. All conditions precedent to Helms's claim for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

59. Under Tex. R. Civ. P. 194, Helms requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER FOR RELIEF

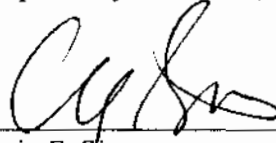
WHEREFORE, Helms requests the following relief against Defendant FasterThanMonkeys and Defendant Law, jointly and severally, as follows:

- (a) Judgment against Defendants for actual damages in an amount to be determined by the trier of fact;
- (b) Judgment against Defendants for Helms's attorneys' fees, court costs, and prejudgment and post-judgment interest as allowed by law; and
- (c) Such additional relief, at law or equity, as may be just.

DEMAND FOR JURY TRIAL

Helms demands a trial by jury of any and all issues triable of right before a jury.

Respectfully submitted,



Craig F. Simon
Texas State Bar No. 00784968
Daniel Conrad
Texas State Bar No. 24026608
Chijioke E. Offor
Texas State Bar No. 24065840

JONES DAY
2727 North Harwood Street
Dallas, TX 75201-1515
Telephone: (214) 220-3939
Facsimile: (214) 969-5100

ATTORNEYS FOR PLAINTIFF
SHAWN C. HELMS

EXHIBIT A

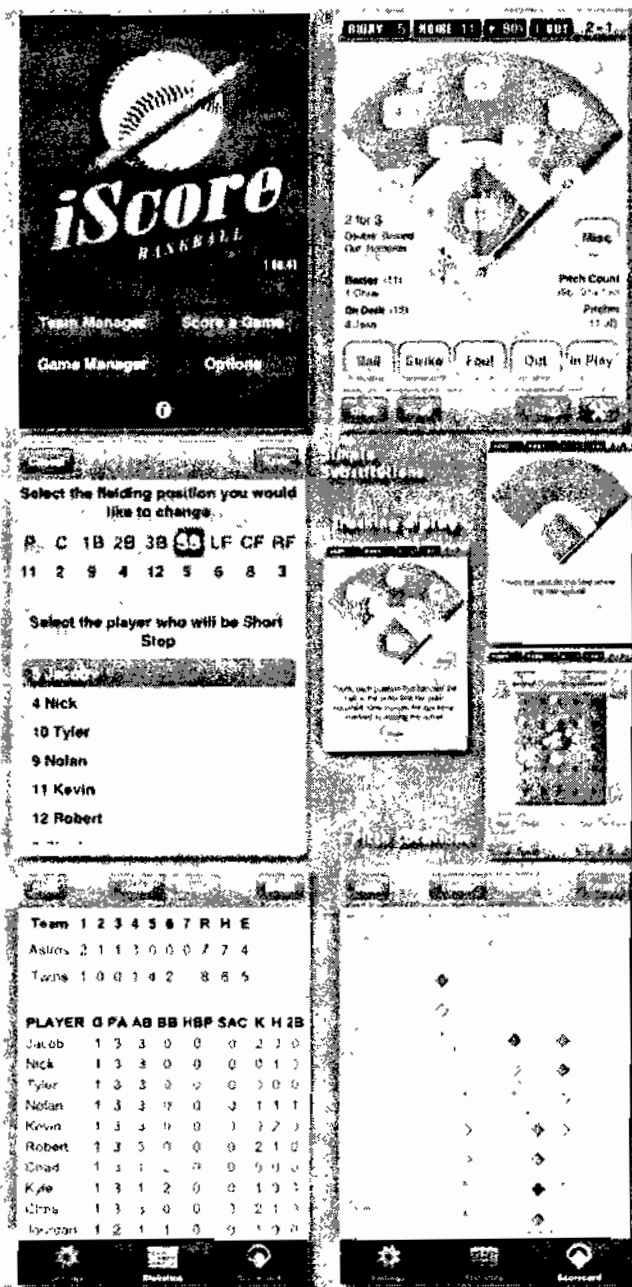


The #1 Scorekeeping application for the iPhone

- Download on the App Store
- Screenshots
- App Store
- App Store
- App Store

Screenshots

iScore Baseball is a complete scorekeeping solution, and has all the functionality you will need to keep score at games and track statistics about those games. These screenshots show just some of the depth of iScore Baseball:



The screenshots display various components of a scorekeeping application:

- Player Statistics Table:** A table with columns: G, PA, BB, HBP, SAC, K, H, 2B, 3B, HR, RBI, B.A., S. Rows include players like 'Lyle', 'Lyle', 'Michael', and 'Lyle'.
- Team Roster/Stats:** A section titled 'Team 1 2 3 4 5 6 7 8 9 H R E' with columns for G, PA, BB, HBP, SAC, K, H, 2B, 3B, HR, RBI, B.A., S.
- Game Log/Summary:** A section with columns: G, PA, BB, HBP, SAC, K, H, 2B, 3B, HR, RBI, B.A., S.
- Team Selection Menu:** A list of teams including Twins, Instinct, Quakes, Royale, Colt 1, Wildcats, Bears, Orioles, and others.
- Player Selection:** A list of player names like 'Add Player', 'Ty', 'J.R.', 'J.F.', 'J.', 'M.', 'C.', 'G.'.

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