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HLT&T SPORTS
Plaintiff,

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IN THE DISTRICT COURT

V.

_____ **JUDICIAL DISTRICT**

MAJOR LEAGUE BASEBALL
PROPERTIES, INC.
Defendant.

OF HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

HLT&T Sports ("HLT&T") files this its Original Petition complaining Major League Baseball Properties, Inc. ("MLBP") and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. HLT&T requests that the Court enter a Docket Control Order and that discovery be conducted under Discovery Level 3.

PARTIES AND SERVICE

2. HLT&T is a Texas partnership whose address is 9718-A Hillcroft, Houston, TX 77096.

3. MLBP is a foreign corporation, organized and existing under the laws of the State of New York, and does not maintain a regular place of business or a designated agent for service of process in Texas. It has sufficient contacts with Texas that, under the Texas Long-Arm Statute, it can be served with process by serving the Texas Secretary of State. MLBP's home office address is 245 Park Avenue, 31st Floor, New York, NY 10167.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. This court has jurisdiction over MLBP because it purposefully availed itself of the privilege of conducting activities in the State of Texas and established minimum contacts sufficient to confer jurisdiction. The assumption of jurisdiction over MLBP will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

6. HLT&T would show that MLBP had continuous and systematic contacts with the State of Texas sufficient to establish general jurisdiction.

7. HLT&T would also show that the cause of action arose from or relates to the contacts of MLBP to the State of Texas, thereby conferring specific jurisdiction.

8. Furthermore, HLT&T would show that MLBP engaged in activities constituting business in the State of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that it committed a tort in whole or in part in Texas.

9. Venue in Harris County is proper in this cause pursuant to Section 17.56 of the Texas Business and Commerce Code.

FACTS

10. HLT&T is a family partnership which was founded in 1978. It began operations in a flea market here in Houston Texas selling baseball cards and other sports memorabilia. In 1983 it opened its first retail location and in 1994 began a working relationship with the Houston Astros to operate a baseball card concession within the Astrodome.

11. In 1996 HLT&T began to repackage Astros players cards and resell them in the Astros gift shop. This process of reselling previously sold baseball cards in team packets was expanded commencing in 2000 to include other MLB teams through their concession vendors.

When the business was expanded to include other major league baseball teams and organizations, HLT&T inquired of MLB as to whether the repackaging of previously sold baseball cards for resale in team packets in any way violated any trademark or copyright protection afforded to MLBP or to its individual clubs.

12. In response to that inquiry, on August 2, 2000 MLBP wrote HLT&T and indicated:

"Major League Baseball Properties is aware of HLT&T's initiative of repackaging licensed trading cards in order to supply team sets. There is no issue with this as long as there is no use of Major League Baseball marks on the packaging."

A true and correct copy of this letter is attached and incorporated as Exhibit "A."

13. Relying upon this letter HLT&T expanded its business which now includes approximately 25 MLB teams through sales to their concession vendors. This business has grown to annual sales of \$350,000.00.

14. The product sells quite well and sales have increased each year. Even in today's economic circumstances sales were increasing. However, HLT&T recently experienced a dramatic drop in sales. In trying to determine the cause, it became aware of actions being taken by MLBP in an effort to destroy its business.

15. On March 18, 2009 HLT&T received an e-mail from the buyer for MLB Clubhouse Shops indicating "MLB visited our Yankee stores on Monday. They sent a couple of e-mails to the VP of our company and they won't allow us to buy anymore of your packs since they aren't "officially licensed product" through MLB."

16. In June of 2009 the coordinator for Jay's Shop Direct (the vendor for the Toronto Blue Jays) e-mailed to HLT&T indicating "MLB is really starting to get stricter on making sure that clubs are purchasing from official MLB licensees."

17. On June 12, 2009 the buyer for MLB Clubhouse Shops d/b/a Sports Avenue e-mailed HLT&T indicating "I understand that MLB requiring us to take your product out of our stores has hurt your business...."

18. HLT&T is also aware that in April of this year Bill Kahan of MLBP circulated what was referred to as a Club Retail Update which contained the following language:

**"Licensed Baseball Cards:
Please keep in mind that C&I Collectibles and HLT&T are not licensed vendors of baseball cards. Topps and Upper Deck are the only two licensed baseball card manufactures, and our marketing materials are fully funded by each of them."**

19. These actions by MLBP are particularly surprising given the fact that it reviewed this product and approved it for resale in August of 2000. HLT& T relied upon that acknowledgment that the product did not violate any copyright or trademark and exerted tremendous energy and expenditure in developing and marketing the product.

20. MLBP has been fully aware of this product since 2000 and has taken no action to curtail it or made no objection to its sale. The product has been sold in over 15,000 major league baseball games since, it has been sold in over 40 World Series games and has been featured in several newspaper and TV articles. The product was included in the Atlanta Braves Christmas catalog and has been advertised on many stadium scoreboards.

21. The only conclusion that can be drawn given the long history of this product and MLB's knowledge and acceptance of it, is that the recent actions are motivated by a desire to eliminate HLT&T as a competing seller of a similar product.

22. The actions of MLB are without legal justification and have caused serious damage to my client's business. MLB's statements to HLT&T's customers are false. HLT&T in repackaging and selling old cards as team packs does not impinge on any trademark or copyright protection of that might be enjoyed by MLB.

23. The effort by MLB to destroy the business of HLT&T by falsely stating to its customers that it is violating any trademark or copyright protection that is enjoyed by MLB or its individual clubs has caused significant damage to HLT&T which increases with each day of business HLT&T loses as a result of MLB's unwarranted action. Currently HLT&T estimates that it has lost profits in the amount of \$175,000.00. It also has an inventory of cards in place that it cannot sell valued at \$50,000.00. Therefore, to the best of its knowledge, it has suffered economic damage to date in the amount of \$225,000.00. Also, HLT&T has incurred reasonable and necessary attorney's fees.

24. The actions of MLB are also designed to intentionally harm HLT&T's business and therefore would allow HLT&T to recover exemplary or punitive damages

COUNT ONE
TORTIOUS INTERFERENCE WITH PROSPECTIVE
BUSINESS RELATIONSHIP

25. There is a reasonable probability that the HLT&T would have continued to enter into business relationships with its customers but for the tortious or unlawful acts of MLB that have prevented the relationship from occurring.

26. MLBP has acted with a conscious desire to prevent the relationship from occurring or it knew the interference was certain or substantially certain to occur as a result of the conduct.

27. HLT&T has suffered actual harm or damages as a result of the MLBP's interference.

COUNT TWO
NEGLIGENT MISREPRESENTATION

28. HLT&T would show that MLBP supplied false information in the course of its business, profession or employment, or in the course of a transaction in which it has a pecuniary interest, and that such information was supplied for the guidance of HLT&T. MLBP failed to exercise reasonable care or competence in obtaining or communicating such information.

29. HLT&T has suffered pecuniary loss proximately caused by its justifiable reliance on such information.

30. HLT&T therefore asserts a cause of action for negligent misrepresentation against Defendant, as provided by Federal Land Bank Association of Tyler v. Sloane, 825 S.W.2d 439 (Tex. 1991).

ACTUAL DAMAGES

31. HLT&T sustained the following actual damages as a result of the actions and/or omissions of MLBP described hereinabove:

(a) Out-of-pocket expenses, including but not limited to expenditures for inventory that it cannot sell in the amount of \$50,000.00;

(b) Lost profits in the amount of \$175,000.00.

32. These damages increase each day that HLT&T loses business as a result of MLBP's actions.

EXEMPLARY DAMAGES

33. HLT&T would further show that the acts and omissions of MLBPA were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching MLBPA at the expense of HLT&T. In order to punish MLBPA for such unconscionable overreaching and to deter such actions and/or omissions in the future, HLT&T also seeks recovery for exemplary damages.

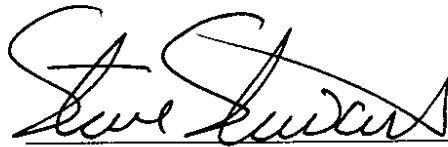
ATTORNEY'S FEES

34. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by: (a) Section 37.009 of the Texas Civil Practice and Remedies Code; and, (b) common law.

PRAAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, HLT&T Sports, respectfully prays that the Defendant Major League Baseball Properties, Inc. be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for its actual damages in an amount in excess of the minimum jurisdictional limits of the Court, exemplary damages, prejudgment and postjudgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Steven Stewart", written over a horizontal line.

J. Steven Stewart

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ATTORNEY FOR PLAINTIFF HLT&T SPORTS

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this _____

Certified Document Number: _____

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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