

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

C.B.C. DISTRIBUTION AND)
MARKETING, INCORPORATED,)
)
Plaintiff,)
)
v.)
)
MAJOR LEAGUE BASEBALL)
ADVANCED MEDIA, L.P.,)
)
Defendant.)
)
_____)

Case No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY
JUDGMENT

COMPLAINT

COMES NOW Plaintiff, C.B.C. Distribution And Marketing, Inc. (“CBC”), and for its complaint against Defendant, Major League Baseball Advanced Media, L.P. (“Major League Baseball”), states:

INTRODUCTION

1. CBC is a St. Louis, Missouri based company that is a leader in providing fantasy sports games to sports enthusiasts throughout the country. Major League Baseball has threatened that CBC’s continued use of baseball statistics is a violation of its “intellectual property” rights in the baseball statistics.

2. This is an action for a declaratory judgment that CBC has not, through the operation of its sports fantasy games, violated or infringed any intellectual property or other right of Major League Baseball, including but not limited to any alleged copyright, trademark right, or publicity right allegedly owned or controlled by Major League Baseball, and that CBC has not

taken any action that constitutes false and/or deceptive advertising or trade practices under state or federal law. This complaint arises out of Major League Baseball's declared intentions to force CBC to discontinue using the sports statistics in its fantasy sports games.

THE PARTIES

3. CBC is a Missouri corporation and is authorized to do business within the State of Missouri. Its primary offices are located at 11756 Borman Drive, Suite 220, St. Louis, MO 63146.

4. CBC is one of the leading providers of fantasy sports products and services in North America. CBC has operated sports fantasy games since 1992 under its own brand name, CDM Fantasy Sports ("CDM"), and has also provided services for various other sports media, including USA TODAY, Sports Weekly, The Hockey News, The Golf Channel, The Sporting News, MSNBC, and Snap. The company currently offers baseball, football, basketball, hockey, golf and auto racing games that can be played via a variety of methods, including phone, mail, email, fax and the Internet.

5. On information and belief, Major League Baseball is a Delaware limited partnership with its principal place of business at 75 Ninth Avenue, Fifth Floor, New York, New York, 10011.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 1367, 2201, and 2202, as well as 15 U.S.C. §§ 1051 *et seq.* and 17 U.S.C. §§ 101 *et seq.*

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

8. The amount in controversy between the parties exceeds Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interest, attorneys' fees, and costs.

FACTUAL BACKGROUND

9. To date, participation in fantasy sports games is a multimillion dollar industry in the United States. The typical model for a fantasy sports game is one in which each participant becomes the "owner" of his/her own fantasy franchise. A mock draft occurs prior to the beginning of the professional season associated with each game. For example, prior to the start of the professional baseball season, a participant will form his team by "drafting" players from various major league baseball teams. Players are drafted onto the participant's team based on the participant's notion that the player will perform well during the course of the baseball season.

10. Typically, each participant or "owner" is competing against other fantasy owners who have drafted their own teams. The success of one's fantasy team over the course of the baseball season is dependent on his chosen players' actual performances on their respective actual teams. Usually, the publicly available statistics relating to each player and team are tracked and posted to determine which fantasy team is winning, as well as to aid participants in choosing who to play on a given day, who to trade, etc. Success is based not on the popularity of players chosen; rather, it is obtained by attempting to choose players that are likely to yield the best stats, which, often times, is not the most notable players but some up-and-coming player that is producing well. In short, it is a statistics driven game.

11. Participants typically pay an original fee to join any fantasy "league," and some games require fees per transaction throughout the course of the game. Participants typically are playing for a cash prize. The companies, such as CDM, that offer such services do

so by creating sophisticated software programs that enable the game and the use of statistics to rank a team's performance.

12. CBC has owned and operated a fantasy sports games business since 1992. CBC offers these sports games under its own brand name, CDM, which participants can access via the website www.CDMsports.com, amongst other means.

13. CBC also works with numerous affiliates, providing those affiliates with the content and games allowing the affiliates to offer their own sports fantasy games. Such past and current affiliates include USA TODAY, Sports Weekly, The Hockey News, The Golf Channel and The Sporting News, MSNBC, and Snap.

14. CBC currently offers baseball, football, basketball, hockey, golf and auto racing fantasy sports games. For each sport, CBC provides participants with profiles and statistics for each player and team so that participants can make informed decisions regarding their fantasy teams.

15. CBC had formerly entered into a licensing agreement with the Major League Baseball Players Association, covering, *inter alia*, rights to names, nicknames, numbers, likenesses, signatures, pictures, playing records and biographical data. This agreement was executed in or around July/August 2002 and expired on December 31, 2004.

16. In an e-mail dated January 19, 2005 (Attached as Exhibit A), George Kliavkoff, a senior vice president for Major League Baseball, wrote to Charles Wiegert, the Vice President of CBC, stating:

[t]his morning, MLB Advanced Media ("Major League Baseball" or "MLB.com") and the Major League Baseball Players Association ("MLBPA") announced that they have agreed to a relationship whereby Major League Baseball will be the exclusive licensee and sublicensor of the MLB player's [sic] rights with respect to interactive media Fantasy Baseball Games....

Please also be aware that Major League Baseball has not yet issued any applicable licenses for the MLB Rights and other related fan activities for the 2005 season and, except for certain licenses in the wireless Licensed Media, the MLBPA has not issued any applicable licenses for the PA Rights for 2005. Please be advised that if your Company is using the above-described rights without a license, all such uses must cease immediately (emphasis added).

17. Major League Baseball has also written at least one letter asserting its legal position against companies with which CBC has done business. Attached as Exhibit B is a letter to USA Today expressing “surprise” that USAToday.com was allegedly offering Internet fantasy baseball games. In the letter, Major League Baseball expressly states its allegation that USA Today’s actions “constitute false and/or deceptive advertising and trade practices in violation of Section 43(a) of the Lanham Act and applicable state law.”

18. Moreover, Major League Baseball sent to CBC the aforementioned letter to USA Today when it canceled a previously scheduled meeting between the parties (see Exhibit C).

19. The aforementioned correspondences from Major League Baseball created a reasonable apprehension that CBC, and/or business partners, will be sued by Major League Baseball if it continued to operate its fantasy baseball games. Specifically, Major League Baseball has maintained that it has exclusive ownership rights in the basic information comprising public statistics associated with the players’ names and that it can therefore preclude all fantasy sports league providers from using this basic public statistical information to provide these games to the consuming public and sports enthusiasts.

COUNT I

DECLARATORY JUDGMENT THAT CBC'S ACTIONS DO NOT VIOLATE OF THE LANHAM ACT

20. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

21. CBC brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relevant rights, liabilities, and obligations of CBC and Major League Baseball with respect to the federal Lanham Act, 15 U.S.C. §§ 1051 *et. seq.*.

22. CBC has not violated the Lanham Act because, among other reasons, CBC has not, in connection with any goods or services, or any container for goods, used in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

WHEREFORE, CBC respectfully requests this Court to enter its judgment declaring that CBC does not violate any section of the Lanham Act.

COUNT II

DECLARATORY JUDGMENT THAT CBC DOES NOT INFRINGE ANY COPYRIGHT ALLEGEDLY OWNED OR CONTROLLED BY MAJOR LEAGUE BASEBALL

23. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

24. CBC brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relevant rights, liabilities, and obligations of CBC and Major League Baseball with respect to any copyrights allegedly owned or controlled by Major League Baseball.

25. CBC's actions in operating a sports fantasy league business do not infringe any enforceable copyrights allegedly owned or controlled by Major League Baseball in the sports statistics or related information.

WHEREFORE, CBC respectfully requests this Court to enter its judgment declaring that CBC does not infringe any copyright owned or controlled by Major League Baseball.

COUNT III

DECLARATORY JUDGMENT THAT CBC DOES NOT VIOLATE ANY RIGHT OF PUBLICITY OWNED OR CONTROLLED BY MAJOR LEAGUE BASEBALL

26. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

27. CBC brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relevant rights, liabilities, and obligations of CBC and Major League Baseball with respect to any alleged right of publicity owned or controlled by Major League Baseball.

28. CBC's actions in operating a sports fantasy league business do not infringe any right of publicity allegedly owned or controlled by Major League Baseball.

WHEREFORE, CBC respectfully requests this Court to enter its judgment declaring that CBC does not violate any right to publicity possessed or controlled by Major League Baseball.

COUNT IV

**DECLARATORY JUDGMENT THAT CBC DOES NOT VIOLATE ANY
STATE UNFAIR COMPETITION OR FALSE ADVERTISING LAWS**

29. Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

30. CBC brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relevant rights, liabilities, and obligations of CBC and Major League Baseball with respect any alleged violation of state unfair competition or false advertising laws.

31. CBC's actions in operating a sports fantasy league business do not violate any state unfair competition or false advertising laws.

WHEREFORE, CBC respectfully requests this Court to enter its judgment declaring that CBC does not violate any state unfair competition or false advertising laws.

PRAYER FOR RELIEF

WHEREFORE, CBC respectfully requests this Court to enter a judgment:

1. Declaring that Plaintiff CBC's actions related to its business of providing and running sports fantasy teams do not violate the federal Lanham Act;
2. Declaring that Plaintiff CBC's actions related to its business of providing and running sports fantasy teams do not infringe any copyright owned or controlled by Major League Baseball or any business associated with Major League Baseball;
3. Declaring that Plaintiff CBC's actions related to its business of providing and running sports fantasy teams do not violate any right to publicity allegedly possessed or controlled by Major League Baseball or any business associated with Major League Baseball;
4. Declaring that Plaintiff CBC's actions related to its business of providing and running sports fantasy teams do not violate any state unfair competition or false advertising laws;

5. Declaring that Plaintiff CBC's actions related to its business of providing and running sports fantasy teams do not violate any rights possessed or controlled by Major League Baseball and are not in violation of any state or federal statute;

6. Enjoining Major League Baseball, their agents, servants, employees, attorneys, and affiliates, and those persons or entities in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from interfering with CBC's business related to sports fantasy teams, either directly through action against CBC or indirectly through actions against businesses who contract with CBC for sports fantasy team related products, or from threatening litigation or otherwise making statements that CBC and/or CBC's customers have infringed or are infringing any rights of Major League Baseball.

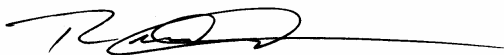
7. Awarding Plaintiff its costs and attorneys' fees incurred in conjunction with this suit; and

8. Awarding Plaintiff any other relief that this Court deems just and proper.

Dated: February 7, 2005

HARNESSE, DICKEY & PIERCE, P.L.C.

By:

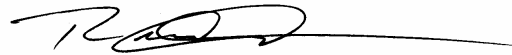


Rudolph A. Telscher, Jr., #8578
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7700 Bonhomme, Suite 400
St. Louis, MO 63105
(314) 726-7500
FAX: (314) 726-7501

*Attorneys for Plaintiff,
C.B.C. Distribution And Marketing, Inc.*

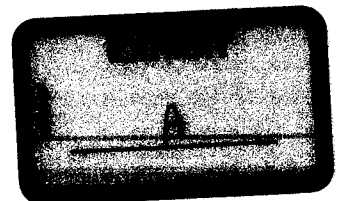
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Court's electronic filing system, this 7th day of February, 2005, on the following:

A handwritten signature in black ink, consisting of a stylized 'R' followed by a series of loops and a long horizontal line extending to the right.

From: Klavkoff, George
Sent: Wednesday, January 19, 2005 5:00 PM

2/4/2005



To: 'charlie@cdmsports.com'
Cc: Klayman, Gregg
Subject: CDM/MLBAM - MLB Fantasy Game RFP

Charlie:

This morning, MLB Advanced Media ("MLBAM" or "MLB.com") and the Major League Baseball Players Association ("MLBPA") announced that they have agreed to a relationship whereby MLBAM will be the exclusive licensee and sublicensor of the MLB player's rights with respect to interactive media Fantasy Baseball Games. The press release can be found at: http://mlb.mlb.com/NASApp/mlb/mlb/news/mlb_press_release.jsp?ymd=20050119&content_id=932415&vkey=pr_mlb&fext=.jsp

MLBAM, working with the MLBPA, is in the process of determining its Fantasy Baseball Games licensing program for 2005. Attached is a request for proposal ("RFP") that is being sent to your company to solicit your proposal to become a licensee under this program. This RFP is not an offer to conduct business with MLBAM, but rather an opportunity for MLBAM to obtain the information it will need in order to evaluate which companies are best suited to participate in the licensing program.

In the RFP we describe the items MLBAM will consider in order for it to make a sound business decision. If your company is interested in being a licensee of the Fantasy Baseball Game rights, please try to answer each question and respond to each request for information as soon as possible. We expect to launch Fantasy Baseball Games by mid-February 2005. Please send your Company's submission and an executed copy of the RFP to me at the address listed below and please send a copy via Email.

If your company would prefer to discuss the RFP in person rather than providing a written response, we will be hosting meetings at our offices in Manhattan next week (the week of 1/24/05).

Please call me or Gregg Klayman (212-485-3189) if you have any questions regarding this RFP.

Please also be aware that MLBAM has not yet issued any applicable licenses for the MLB Rights and other related fan activities for the 2005 season and, except for certain licenses in the wireless Licensed Media, the MLBPA has not issued any applicable licenses for the PA Rights for 2005. Please be advised that if your Company is using the above-described rights without a license, all such uses must cease immediately.

George

George T. Kliavkoff
SVP, Business Development
Major League Baseball Advanced Media, L.P.
75 Ninth Avenue, New York, NY 10011
Phone: (206) 390-7492
Email: georgek@mlb.com

MLB.com: Where Baseball is Always On
<<http://www.mlb.com>>

2/4/2005



January 24, 2005

By Fax to 703-854-2046 and UPS Overnight

Thomas L. Chapple, Esq.
 Senior Vice President,
 Chief Administrative Officer and General Counsel
 Gannett Co., Inc.
 7950 Jones Branch Drive
 McLean, VA 22107

Dear Mr. Chapple:

Please be advised that on January 19, 2005, MLB Advanced Media and the Major League Baseball Players Association issued a press release, which reads in pertinent part as follows:

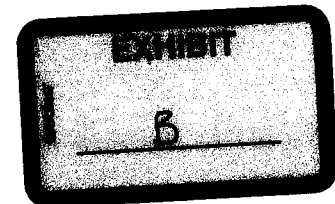
Major League Baseball Advanced Media, L.P. ("MLBAM"), and the Major League Baseball Players Association ("MLBPA") today announced that they have agreed to an exclusive relationship combining the personal attributes and marketing power of Major League baseball players as a group with the trademarks, symbols and logos of Major League Baseball and its teams for exploitation through interactive media. The historic agreement is expected to aggressively grow the presence and penetration of Major League Baseball and its players on the Internet and provide more robust tools and experiences for baseball fans around the world.

The five-year agreement, valued in excess of \$50 million, extends beyond the expiration of the current collective bargaining agreement between Major League Baseball and the MLBPA. It provides MLBAM the exclusive rights to use, and to sublicense to others, Major League baseball player group rights for the development and creation of on-line games, all other online content, including fantasy baseball and interactive games, as well as all wireless applications including cell-phone enabled games.

(A copy of the press release is available at MLB.com.)

Following that announcement, on January 20, MLBAM sent USA Today a Request For Proposal in connection with MLBAM's 2005 fantasy baseball licensing program. In response to our RFP, Bill Carey from USA Today asked to meet with us to discuss the possibility of participating in our licensing program. We agreed, and scheduled a meeting to occur in our offices on January 28. Bill Carey and Adriaan Bouten from USA Today were scheduled to attend.

MLB Advanced Media, L.P.
 75 Ninth Avenue • New York, NY 10011



In light of the foregoing, we were surprised to learn that USAToday.com is soliciting and accepting subscriptions for five Internet fantasy baseball games for the 2005 Major League Baseball season as follows: Draft and Play; Diamond Challenge; Fantasy Baseball 2005; and Budget Baseball. In advertisements for these games, the trademarks of the Chicago White Sox and St. Louis Cardinals are used, as are the likenesses of Major League Baseball players Roger Clemens, Mark Buehrle and Ivan Rodriguez.

As the exclusive rightsholder with respect to uses of Major League Baseball trademarks on the Internet, and the personal attributes of the Major League Baseball players as a group in connection with Internet-based fantasy baseball games, we believe that USA Today's marketing of its 2005 fantasy baseball game services in the above-described manner, and solicitations to consumers to subscribe and pay for the services in advance of any agreement about an appropriate license for 2005 constitute false and/or deceptive advertising and trade practices in violation of Section 43(a) of the Lanham Act and applicable state law.

Section V of our RFP requires that prospective licensees be in good standing with MLBAM. Since USA Today is not in good standing, and will not be until the matters raised in this letter are addressed, we must adjourn the January 28 that had been previously scheduled.

Finally, the MLBPA is equally as surprised about the unauthorized uses of the personal attributes of the players described above. It fully supports our position with respect to the matters raised in the letter.

This letter does not purport to be a complete statement of the relevant facts or law, and is submitted without prejudice to the rights and remedies available to MLBAM.

Very truly yours,



Michael J. Mellis
Senior Vice President
and General Counsel

cc: Robert A. Bowman
Evie Goldstein - MLBPA
Judy Heeter - MLBPA
Greg Klaymann
George Kliavkoff
Richard White - MLBPA



January 25, 2005

By Hand Delivery

Mr. Charles Wiegert
CDM Fantasy Sports
11756 Borman Drive Suite 220
St. Louis, MO 63146

Dear Mr. Wiegert:

Enclosed please find a letter that we sent last night to USA Today concerning its five fantasy baseball games.

Since the USA Today games are provided by CDM, we must adjourn today's meeting that had been previously scheduled until the matters raised in that letter are addressed.

This letter does not purport to be a complete statement of the relevant facts or law, and is submitted without prejudice to the rights and remedies available to MLBAM.

Very truly yours,

Michael J. Mellis
Senior Vice President
and General Counsel

Enclosure

cc: Robert A. Bowman *head of mlb.com*
Evie Goldstein - MLBPA *atg PA*
Judy Heeter - MLBPA *" "*
Gregg Klayman *mlb.com*
George Kliavkoff
Richard White - MLBPA

CDM-Ltr. 1.25

MLB Advanced Media, L.P.
75 Ninth Avenue • New York, NY 10011





January 24, 2005

By Fax to 703-854-2046 and UPS Overnight

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Senior Vice President,
Chief Administrative Officer and General Counsel
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MLB Advanced Media, L.P.
75 Ninth Avenue • New York, NY 10011

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Very truly yours,



Michael J. Mellis
Senior Vice President
and General Counsel

cc: Robert A. Bowman
Evie Goldstein - MLBPA
Judy Heeter - MLBPA
Greg Klaymann
George Kliavkoff
Richard White - MLBPA

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

C.B.C. Distribution and Marketing, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF St. Louis
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Rudolph A. Telscher, Jr., Bryan K. Wheelock,
Michael J. Thomas, Matthew L. Cutler, Douglas R. Wilner
Harness, Dickey & Pierce, PLC
7700 Bonhomme Ave., Ste. 400
St. Louis, MO 63105 314-726-7500

DEFENDANTS

Major League Baseball
Advanced Media, L.P.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<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 type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <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 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"/> 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	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <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	<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 checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/KC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <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 <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. §§ 2201 and 2202, 15 U.S.C. §§ 1051, et seq. and 17 U.S.C. §§ 101 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
February 7, 2005

SIGNATURE OF ATTORNEY OF RECORD
/s/ Rudolph A. Telscher, Jr.

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replace nor supplements the filings and service of pleading 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. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs – Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfer or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.