

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALAN WEISS,)
)
 Plaintiff,)
)
 -against-) Civil Action File
) No. 1 99-CV-0928-TWT
 NATIONAL FOOTBALL LEAGUE)
 PROPERTIES, INC. and LOGO)
 ATHLETICS, INC.,)
)
 Defendants.)

**DEFENDANTS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS TO PLAINTIFF ALAN WEISS**

Defendants National Football League Properties, Inc. ("NFL Properties") and Logo Athletic, Inc. ("Logo"), by their counsel, Kilpatrick Stockton LLP and Debevoise & Plimpton, hereby request that plaintiff Alan Weiss produce the following documents for inspection and copying, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the definitions and instructions prescribed herein, by delivering such documents or copies thereof to the offices of Debevoise & Plimpton, 875 Third Avenue, New York, New York 10022, Attention: Bruce P. Keller, Esq., on or before August 11, 1999:

DEFINITIONS

1. "Weiss" shall mean plaintiff Alan Weiss and his licensees, attorneys, investigators, representatives, researchers, consultants, surveyors, employees and agents.

2. "NFL Properties" shall mean defendant National Football League Properties, Inc., all parents, subsidiaries and affiliates thereof, and all of each of their present and former officers, directors, employees and agents.

3. "Logo" shall mean defendant Logo Athletic, Inc., all parents subsidiaries and affiliates thereof, and all of each of their present and former officers, directors, employees and agents.

4. "Dirtybird" shall mean plaintiff's purported mark DIRTYBIRD, as that term is used in the Complaint.

5. "Concerning" shall mean relating to, referring to, describing, evidencing or constituting.

6. "Communication" shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

7. "Person" shall mean any natural person or any business, legal or governmental entity or association.

8. The terms "all" and "each" shall be construed as all and each.

9. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope.

INSTRUCTIONS

1. In producing documents pursuant to these requests, Weiss is required to furnish all documents in his possession, custody or control that are known or available to him, regardless of whether those documents are possessed by Weiss or by any licensee, attorney, investigator, representative, researcher, consultant, surveyor, employee or agent of Weiss. Weiss must make a diligent search of his records (including but not limited to paper records, computerized records, electronic mail records, voice-mail records, and World Wide Web or hypertext markup language pages) and of other papers and materials in his possession or available to him or his licensees, attorneys, investigators, representatives, researchers, consultants, surveyors, employees or agents.

2. Documents attached to each other, including but not limited to by staple, clip, tape or "Post-It" note, should not be separated.

3. For each document or part thereof called for by this demand that is withheld under a claim of privilege or work product, Weiss shall furnish a list setting forth as to each such document or redacted portion thereof, if any, the following information: (a) the nature of the document, e.g., letter, invoice, e-mail, memorandum, telegram, etc.; (b) the name, address, occupation, title and business affiliation of each person who prepared, received, viewed and has or has had possession, custody or control of the document; (c) the date of the document; (d) a description of the subject matter of the document; (e) a statement of the basis upon which the privilege or work product claim is made; and (f) the paragraph(s) of this request that call for the production of the document.

4. If any document or part thereof called for by this demand has been destroyed, discarded or otherwise disposed of, Weiss shall furnish a list setting forth, as to each document or part thereof, the following information: (a) the nature of the document, e.g., letter, e-mail, memorandum, telegram, etc.; (b) the name, address, occupation, title and business affiliation of each person who prepared, received, viewed and has or has had possession, custody or control of the document; (c) the date of the document; (d) a description of the subject matter of the document; (e) the date of destruction or other disposition; (f) a statement of the reasons for

destruction or other disposition; (g) the name, address, occupation, title and business affiliation of each person who authorized destruction or other disposition; (h) the name, address, occupation, title and business affiliation of each person who destroyed or disposed of the document; and (i) the paragraph(s) of this request that call for the production of the document.

5. Weiss shall produce the responsive documents as they have been kept in the usual course of business or shall organize and label them to correspond with the enumerated requests in this demand. Weiss is requested to number each page of the responsive documents. In the event Weiss produces copies of the responsive documents, Weiss is requested to retain the originals of all such documents for inspection by defendants' counsel. If with respect to any category there are no responsive documents, Weiss shall so state in writing.

6. Each request for production of documents herein shall be deemed continuing so as to require prompt supplemental responses, in accordance with Rule 26(e) of the Federal Rules of Civil Procedure, if Weiss obtains or discovers further documents called for herein between the time of responding to this request and the time of trial.

7. Unless otherwise stated or obvious from the context, the document requests herein cover the period from the

time that Weiss first used or considered using the term "Dirtybird" or any similar term through the date of the response or supplemental response.

REQUESTS

1. Any and all documents concerning or reflecting the creation, selection, adoption or use by Weiss of the term "Dirtybird."
2. Any and all documents concerning or reflecting any federal, state or foreign trademark registrations or applications for such registrations by Weiss or any others, including but not limited to Douglas Patterson, concerning the term "Dirtybird" or any similar term.
3. Any and all documents concerning or reflecting any communications between Weiss and any others, including but not limited to Douglas Patterson, relating to the DIRTY BIRD® mark or the term "Dirtybird" or any similar term, including but not limited to cease and desist letters.
4. Any and all documents concerning or reflecting any license agreements, assignments or other granting or acceptance of rights considered or entered into by Weiss relating to the term "Dirtybird" or any similar term.
5. Any and all documents concerning or reflecting advertisements or promotions by or authorized by Weiss incorporating the term "Dirtybird," including but not limited to

specimens of each advertisement with the date and place of publication.

6. Any and all documents concerning or reflecting Weiss' budget for advertising or promotions, including but not limited to funds relating to advertisements containing the term "Dirtybird."

7. Any and all documents concerning or reflecting any services or products bearing or incorporating the term "Dirtybird" offered or sold by Weiss.

8. Any and all documents concerning or reflecting any payment or other compensation received by Weiss in connection with the sale or offering of services or products bearing or incorporating the term "Dirtybird."

9. Any and all documents concerning or reflecting any consumer perception surveys or research conducted by or on behalf of Weiss concerning or reflecting (a) Weiss' use of the term "Dirtybird," (b) any goods or services offered or sold by Weiss in connection with the term "Dirtybird," or (c) defendants' use of the mark DIRTY BIRD®.

10. Any and all documents concerning or reflecting statements, inquiries, comments or other communications, whether written or oral, by or from any person evidencing any confusion, suspicion, belief or doubt, or lack thereof, as to any relationship between Weiss and NFL Properties, the National

Football League or the Atlanta Falcons football club, or any relationship between services or products offered or sold by Weiss and services or products offered or sold by NFL Properties, the National Football League or the Atlanta Falcons football club.

11. Any and all documents concerning or reflecting the following allegations of the Complaint: "Plaintiff's banner and products and merchandise have been prominently displayed at the Georgia Dome at all home Atlanta Falcons' games, have appeared in pictures in the local daily newspapers, including the Atlanta Journal and Constitution, and have appeared on numerous telecasts, including ESPN." (Complaint ¶ 15)

12. Any and all documents concerning or reflecting the following allegations of the Complaint: "Through plaintiff's significant advertising, marketing and promotion efforts, and the quality of plaintiff's products and merchandise, the plaintiff's DIRTYBIRD™ trademark has gained widespread and favorable acceptance and recognition from his customers, and has become an asset of substantial value by association in the minds of plaintiff's customers as a symbol of plaintiff, his goodwill and the quality of plaintiff's products." (Complaint ¶ 16)

13. Any and all documents concerning or reflecting the following allegations of the Complaint: "During this very successful 1998-99 NFL season, the Atlanta Falcons were often

referred to by the media, the fans, and its players as the DIRTYBIRD™. This association was the sole result of plaintiff's exploitation of his trademark DIRTYBIRD™." (Complaint ¶ 18)

14. Any and all documents concerning or reflecting the following allegations of the Complaint: "With the success of the Atlanta Falcons and the association by the fans of plaintiff's trademark DIRTYBIRD™ with the Atlanta Falcons, sales of plaintiff's products and merchandise increased substantially." (Complaint ¶ 19)

15. Any and all documents concerning or reflecting the following allegations of the Complaint: "Plaintiff has and continues to expend substantial amounts of money in resources for marketing and otherwise promoting plaintiff's products under and in association with plaintiff's DIRTYBIRD™ trademark in interstate commerce throughout the United States of America, including this district in the State of Georgia. Plaintiff has thus invested substantially in the DIRTYBIRD™ trademark so that his customers associate plaintiff's DIRTYBIRD™ trademark with plaintiff's quality products and merchandise." (Complaint ¶ 22)

16. Any and all documents concerning or reflecting the following allegations of the Complaint: "By reason of plaintiff's long, continuous and widespread exclusive use, advertising and promotion of his goods and services under plaintiff's trademark DIRTYBIRD™ throughout the United States,

plaintiff's DIRTYBIRD™ trademark has come to mean, identify and distinguish plaintiff and his goods and products to the industry and the purchasing public and has thus acquired secondary meaning." (Complaint ¶ 24)

17. Any and all documents concerning or reflecting the following allegations of the Complaint: "Following the purported purchase of the federally registered trademark 'DIRTY BIRD' from Mr. Patterson, a representative of The National Football League and defendant National Football League Properties contacted several of plaintiff's retailers and distributors and informed them that the National Football League and/or National Football League Properties and their licensee, Logo Athletics, Inc., were now the owners of the 'DIRTY BIRD' trademark, that plaintiff was not the rightful owner of the mark, and that all 'DIRTY BIRD' merchandise should be purchased from National Football League, National Football League Properties or Logo Athletics. Defendant NFL Properties also threatened to seize property that the Plaintiff had sold to the various retailers and distributors." (Complaint ¶ 33)

18. Any and all documents concerning or reflecting the following allegations of the Complaint: "Defendants have contacted large numbers of retailers that plaintiff had contractual agreements with to sell plaintiff's DIRTYBIRD™ and/or 'DIRTY BIRD' products and merchandise and have threatened

and prevented these retailers from selling or ordering more DIRTYBIRD™ merchandise from plaintiff by asserting that Plaintiff has no legal rights to be producing, marketing, and selling such goods and products." (Complaint ¶ 43)

19. Any and all documents concerning or reflecting the following allegations of the Complaint: "Through plaintiff's extensive and continued use of plaintiff's DIRTYBIRD™ trademark, this trademark has become distinctive of plaintiff's merchandise and products and is associated by the public with plaintiff."

(Complaint ¶ 50)

20. Any and all documents concerning any use in commerce of which Weiss is aware by persons other than Weiss, NFL Properties, Logo, or the NFL of the term "Dirtybird" or the mark DIRTY BIRD®, including but not limited to communications between Weiss and such persons.

21. Any and all documents identified in Weiss' response to Defendants' First Set of Interrogatories to Plaintiff Alan Weiss.

22. One specimen of each product offered or sold by
or on behalf of Weiss bearing or incorporating the term
"Dirtybird."

Dated: July 12, 1999

Respectfully submitted,



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Defendants.)

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy
of the foregoing DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS TO PLAINTIFF ALAN WEISS by hand upon:

Roger S. Sumrall, Esq.
HALL, BOOTH, SMITH & SLOVER, P.C.
230 Peachtree Street, N.W., Suite 2500
Atlanta, Georgia 30303.

This 12th day of July, 1999.



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