

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

x 12 CV 1512  
: 12 Civ.

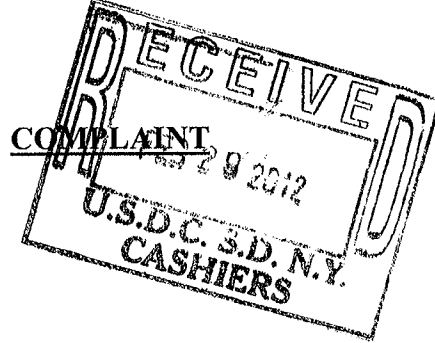
MAJOR LEAGUE BASEBALL PROPERTIES,  
INC.,

Plaintiff,

-against-

THE UPPER DECK COMPANY, LLC,

Defendant.



X

Plaintiff Major League Baseball Properties, Inc. ("MLBP"), by its attorneys Cowan, Liebowitz & Latman, P.C., as and for its Complaint against The Upper Deck Company, LLC ("UDC"), alleges as follows:

**THE PARTIES**

1. Plaintiff MLBP is a New York corporation with its principal place of business at 245 Park Avenue, New York, New York 10167.

2. Defendant UDC is a Delaware limited liability company with its principal place of business at 5909 Sea Otter Place, Carlsbad, CA 92010.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 inasmuch as there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. This Court has personal jurisdiction over UDC and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because Upper Deck is doing business in this district and

has consented to jurisdiction in this district with respect to any actions relating to the contract at issue in this case. Venue is also proper in this judicial district under 28 U.S.C. § 1391(c).

**FACTS**

5. MLB is indirectly owned by the 30 Major League Baseball clubs (the “MLB Clubs”), and is a licensee of and acts as licensing agent for the MLB Clubs, the Office of the Commissioner of Baseball, and their respective affiliated entities (collectively, the “MLB Entities”). MLB is responsible for, among other things, licensing the manufacture, production, distribution, offering for sale, sale, advertisement, and promotion of products bearing the intellectual property of the MLB Entities and for the protection and enforcement of rights in such intellectual property.

6. UDC is a former licensee of MLB that was licensed by MLB pursuant to a series of license agreements (the “License Agreements”) to use certain names, trademarks and trade dress of MLB and the MLB Entities in connection with the manufacture, distribution, offering for sale and sale of baseball trading cards.

7. On February 1, 2010, MLB filed an action against UDC in the United States District Court for the Southern District of New York, Case No. 10 Civ. 732 (RWS) (the “Lawsuit”) alleging various trademark claims and a claim for breach of the License Agreements.

8. MLB and UDC settled the Lawsuit by entering into a Settlement Agreement and Mutual Release (the “Agreement”) on March 3, 2010.

9. Pursuant to paragraph 4 of the Agreement, UDC agreed to pay MLB a total of \$3,065,824.92 (the “Settlement Amount”) in settlement of the claims brought by MLB against UDC in the Lawsuit.

10. Pursuant to paragraph 12 of the Agreement, UDC agreed to pay MLBP the Settlement Amount by paying (a) \$450,000 upon the later of March 5, 2010 or UDC's execution of the Agreement; (b) \$300,000 on or before the last day of each month from April through November of 2010; and (c) \$215,824.92 on or before December 23, 2010.

11. UDC made the required payments to MLBP pursuant to paragraph 12 of the Agreement in a timely fashion through September 2010 in the total amount of \$2,250,000.

12. UDC made five additional payments to MLBP, each in the amount of \$100,000, in October 2010, January 2011, February 2011, April 2011 and May 2011. UDC also made an additional payment to MLBP in the amount of \$50,000 in June 2011. Under the Agreement, \$450,000 of the foregoing payments made by UDC were untimely.

13. UDC has made no further payments of the Settlement Amount to MLBP since June 2011, and presently owes MLBP \$265,824.92 of the Settlement Amount, plus accruing interest on the unpaid portion of the Settlement Amount and interest accrued between the due date and date of payment on the \$450,000 in untimely payments referenced in paragraph 12 above.

**CLAIM FOR RELIEF  
(Breach of Contract)**

14. MLBP repeats and realleges the allegations set forth in paragraphs 1-13 above with the same force and effect as if set forth fully herein.

15. The Agreement is a valid, enforceable and binding contract.

16. MLBP has duly performed all of its obligations under the Agreement.

17. UDC has materially breached the Agreement by failing to make full and timely payments of the amounts due to MLBP under the Agreement beginning in October 2010.

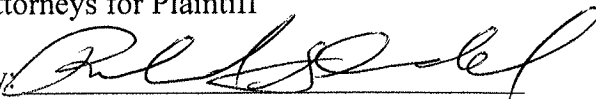
18. As a result of the foregoing breach, MLBP has been damaged in the amount of \$265,824.92 plus interest accruing on such unpaid amount as well as interest accrued between the due date and date of payment on the \$450,000 in untimely payments referenced in paragraph 12 above.

WHEREFORE, MLBP prays for a judgment awarding MLBP:

- (1) An amount to be determined at trial, but not less than \$265,824.92, plus interest on such amount and interest accrued between the due date and date of payment on the \$450,000 in untimely payments referenced in paragraph 12 of the Complaint;
- (2) Its costs and disbursements in connection with this action; and
- (3) Such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 29, 2012

COWAN, LIEBOWITZ & LATMAN, P.C.  
Attorneys for Plaintiff

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