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ATTY

CAUSE NO. 09-10697

HAMBRIC SPORTS MANAGEMENT, LLC, §

Plaintiff, §

vs. §

TEAM AK, INC., IMG WORLDWIDE, INC., §
GAYLORD SPORTS MANAGEMENT, LLC, §
and §
STERLING C. BALL, §

Defendants. §

IN THE DISTRICT COURT

298th-M

JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FILED
AUG 21 AM 10:52
Yvonne Hampton
CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, Hambric Sports Management, LLC ("HSM" or "Plaintiff") appears herein to complain of Defendants, Team AK, Inc., IMG Worldwide, Inc., Gaylord Sports Management, L.L.C., and Sterling C. Ball, (collectively, "Defendants") and in support thereof, would respectfully show the Court the following:

DISCOVERY LEVEL

1. Pursuant to Texas Rules of Civil Procedure 190.1 and 190.4, discovery in this case is intended to be conducted under Level 3.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a Texas Limited Liability Company doing business in Dallas County, Texas.

3. Defendant, Sterling C. Ball ("Ball"), is an individual who resides in Riverside County, California. Defendant Ball is also a managing member of Magnet, L.L.C., a Texas Limited Liability Company, doing business in the State of Texas. Ball is also (or was) a person responsible for the formation and operation of Team AK, Inc., and worked for, was an officer of, or manager of

this Defendant in Texas. Ball may be served with process at 78230 San Timoteo Street, LaQuinta, California 92253, or wherever he may be found.

4. Defendant, Gaylord Sports Management, L.L.C. (“Gaylord”) is a Limited Liability Company organized under the laws of the State of Arizona and does business in Texas. It may be served with process by serving its registered agent, R. Steve Loy at 14646 N. Kierland Boulevard, #230, Scottsdale, Maricopa County, Arizona 85254.

5. Defendant, Team A.K., Inc. is a Texas corporation. It may be served with process by serving its registered agent, Anthony Kim at 5407 Morningside Avenue, Dallas, Texas 75206, or wherever he may be found.

6. Defendant, IMG Worldwide, Inc., (“IMG”) is an Ohio Corporation that does business in Texas. It may be served with process by serving its registered agent, CT Corporation at 350 North St. Paul St., Dallas, Texas 75201.

7. Jurisdiction and venue are appropriate in this Court because HSM’s damages are within the jurisdictional limits of this Court and because all or a portion of the events giving rise to this claim occurred in Dallas County, Texas.

BACKGROUND FACTS

8. HSM is in the business of representing professional golfers by assisting them in planning and managing their professional golf careers and related business affairs. HSM was started in November of 1999 by Roscoe O. Hambric, Jr. (“Hambric”) who is currently the President and Chief Executive Officer of HSM.

HSM Identifies Kim as a Golf Prospect at the University of Oklahoma

9. HSM first identified Kim as a professional golf prospect while he was enrolled as a collegiate golfer at the University of Oklahoma. While already known as a phenomenal talent,

rumors began circulating during Kim's junior year at the University of Oklahoma regarding his volatile personality, that he fought with the golf coach, and had been suspended from the golf team. As a result of these background issues, few, if any, agents and sponsors were interested in Kim in the event he should turn pro. However, HSM continued to monitor Kim and when he left college, HSM made its formal marketing and agency proposal to Kim and his mother. As a result, when Kim decided to turn professional, he signed an Exclusive Representation Agreement with HSM at a time when few, if any agents wanted to deal with him.

Kim Sign's Representation Agreement

10. The agreement, entitled "Management and Representation Agreement," was signed by Hambric, on behalf of HSM on the one hand, and Kim on the other ("Agreement"). Pursuant to the terms of the Agreement, HSM would represent Kim, *inter alia*, as Kim's exclusive representative world-wide in developing, negotiating and managing income-producing merchandising and endorsement opportunities for a term of August 24, 2006 through December 31, 2008.

HSM Understands its Financial Rewards Under the Agreement Come Later

11. HSM knew it would have to invest significant time and expense in Kim to hopefully reap financial rewards towards the end of the Agreement and thereafter. HSM knew and was willing to take the risks involved in signing and investing money and time in a prospect, not highly sought after coming out of college. In this regard, as compensation for the services HSM provided under the Agreement, HSM was to recover as commission, a percentage of all gross income Kim received from income-producing merchandising, endorsement, promotional, and marketing opportunities through December 31, 2008.

HSM Commits Significant Time and Money Marketing Kim

12. After executing the Agreement, HSM set out to rehabilitate Kim's reputation in the golf industry and turn his potential into reality. HSM invested significant time and money into Kim to improve his golfing abilities and enhance his reputation as a PGA Tour professional. HSM obtained an exclusive country club membership for Kim to hone his playing skills. In addition, HSM made interest free loans to Kim, arranged his travel and took action on Kim's behalf pursuant to the Agreement to ensure he could reach his playing potential. These actions included but were not limited to watching his dog, paying his parking tickets, securing a place for Kim to live, dealing with his mail, and ensuring his household bills were paid. HSM also supplied a full-time road assistant for Kim.

13. HSM devoted significant resources and funds, all for Kim's benefit. HSM had to invest significant sums of money and time (and lost the opportunity to sign other top young golf professionals), based on HSM's belief that by December 31, 2008, both Kim and HSM would reap significant financial rewards because of Kim's enhanced playing abilities and rehabilitated reputation.

After Signing the Agreement, HSM Secures Endorsements for Kim and Spots in Appearance Fee Events

14. At the time HSM and Kim signed the Agreement, Kim had a limited reputation in the golf industry. As a result, the endorsement market was limited. However, HSM relying on its vast experience, contacts, and knowledge within the golf industry, vouched for Kim to overcome common perception of him to secure an endorsement contract for Kim with NIKE Golf. Kim's contract with Nike was for a term from September 15, 2006 to December 31, 2008. Under the NIKE contract, Kim would exclusively use NIKE equipment, carry a NIKE golf bag and wear NIKE golf

apparel. At the time, it was the best deal out there for Kim and he could obtain significant performance bonuses.

15. A golfer's contract for equipment and apparel is typically for a four year term. However, based on Kim's limited and damaged reputation in the golf industry, HSM and Kim developed a plan where they would sign a two-year deal with NIKE to allow Kim time to improve his game and reputation in the golf industry. After Kim participated on the PGA Tour, HSM would open negotiations again with the equipment and apparel companies and seek additional endorsement opportunities during the summer and fall of 2008 to take full advantage of Kim's improved abilities and rehabilitated reputation. In sum, both HSM and Kim were banking and relying on his next endorsement deals that would be completed in 2008.

HSM Secures Exemptions and Enhances Kim's Reputation on the PGA Tour

16. In addition to securing the NIKE contract for Kim, HSM set out to develop Kim as a professional. Before obtaining his "Tour Card" which would allow Kim to participate in PGA Tour events, HSM secured exemptions for Kim in professional golf tournaments. The most important turned out to be the 2006 Valero Texas Open ("Texas Open") which is played in the fall of 2006.

17. Kim earned his Tour Card to play in events on the PGA Tour in 2007. However, he still required exemptions to be part of the tournament field. HSM again worked to secure spots for Kim in the 2007 Bob Hope, 2007 Phoenix Open, and the 2007 Nissan Open tournaments. In addition, HSM secured spots for Kim to participate with other PGA professionals in appearance fee events such as the Merrill Lynch Shark Shoot-Out, LG Skins Game Pro-Am, Calusa Pines Pro-Am, Korean Open, SK Telecom Open, and the Ballantines Tournament.

18. The purpose of obtaining spots in these appearance fee events, in addition to the lucrative compensation they provided Kim, was to enhance his visibility as a professional golfer both

in the United States and Asia. HSM positioned Kim to participate in lucrative Asian appearance fee events including the Korean Open and the Ballentines Tournament to expose Kim to potential endorsement deals from Asian companies after he succeeded on the PGA Tour.

Kim Wins His First PGA Tour Event and is Primed to Secure Lucrative Endorsements

19. As Kim continued to play on the PGA Tour, he finally began to show real promise and confirmed that HSM's marketing plan was working.

20. At twenty-two years of age on Sunday, May 4, 2008, Kim won the Wachovia Championship. Kim became the youngest winner on the PGA Tour in six years and won by six strokes, earning \$1,134,000. Kim was ascending to the point HSM predicted back in 2006 when others looked at him as an undesirable behavioral riddled collegiate golfer at the University of Oklahoma. Kim's stature on the PGA Tour would forever be changed along with his ability to demand even more lucrative income-producing merchandising, endorsement, promotional, and marketing opportunities.

21. HSM's strategy to only lock-in Kim for two years with income-producing merchandising, endorsement, promotional, and marketing opportunities while his reputation and status could be rehabilitated was realized. As of May 4, 2008, HSM would have almost eight months to secure major income-producing merchandising, endorsement, promotional, and marketing opportunities for Kim that would last at least over the next four years. HSM would have had eight months to obtain endorsement opportunities for Kim leveraging him as the "hottest young golfer" on the PGA Tour. Pursuant to the Agreement, HSM would be entitled to commission on the deals that were completed or substantially completed prior to December 31, 2008. The standard in the golf industry is to complete endorsement deals for 2009 during the summer and early fall of 2008 when

the companies have their full budgets to spend. Kim's NIKE contract was designed by NIKE to lock Kim into a long-term deal by the fall of 2008.

22. HSM's efforts to develop Kim into a PGA Tour player were realized. During the 2008 PGA Tour season, Kim earned over \$9,000,000 in tour earnings and endorsement/appearance money.

Ball, Gaylord, and IMG Want to Capitalize on HSM's Work and Tortiously Interfere with the HSM-Kim Agreement

23. During the 2007 PGA Tour golf season, Ball snuggled up to Kim to try and gain a piece of Kim's \$9,000,000 in earnings. From mid 2007 through May 6, 2008, Ball attempted to control all aspects of Kim's relationship with HSM. Upon information and belief, in January of 2008, Ball or David Aggers (an attorney based in Cleveland, Ohio who previously has represented Gaylord, and perhaps still does, and is currently representing Kim), delivered the HSM-Kim Agreement along with Kim's NIKE endorsement contract to Gaylord for review. Accordingly, both Ball and Gaylord emphatically knew that the HSM-Kim Agreement was exclusive through December 31, 2008.

24. After Ball and Gaylord received the HSM-Kim Agreement, Aggers sent Ball correspondence discussing the law on tortious interference in Texas. More incredibly, Aggers or Ball or both were sending Kim's notice and termination letters to HSM. By late January and early February of 2008, Ball was regularly communicating with Gaylord employees and personnel, including its President, David Yates, discussing Gaylord replacing HSM as Kim's exclusive agent. Ball and Gaylord conducted at least thirty telephone calls during the spring of 2008 discussing Gaylord's representation of Kim. Further, during April of 2008, Gaylord had conversations with potential endorsement companies as to whether they would work with Gaylord when they secured

Kim's services. Ball and Gaylord's attempts to secure Kim's services were clearly within the term of the HSM-Kim Agreement and moving toward the peak period of Kim's marketability. Such actions would further hinder HSM's ability to market and secure additional endorsement deals for Kim and constituted an intentional and unjustifiable interference with the HSM-Kim Agreement.

25. As the feeding frenzy was building between Ball and Gaylord to sign Kim away from HSM during the Spring of 2008, IMG was developing its own strategy to take a run at interfering with the HSM-Kim Agreement and HSM's potential endorsement deals for Kim. IMG intentionally and unjustifiably interfered with the HSM-Kim Agreement and encouraged and convinced Kim to wrongfully terminate and breach the Agreement so he could retain IMG in HSM's place to represent him in, among other things, developing, negotiating and managing income-producing merchandising and endorsement activities.¹

Kim Terminates the Agreement and Signs a New Management Agreement with IMG

26. Despite HSM's efforts in positioning Kim as the "hottest young golfer" on the PGA Tour and fully performing under the Agreement, based on Ball, IMG, and Gaylord's interference, Kim outright terminated his Agreement with HSM on May 6, 2008. Kim, through his attorney, David Aggers, sent correspondence to HSM's counsel advising HSM that Kim was **immediately terminating** the Agreement. This notice prematurely terminated the Agreement almost eight months before it was set to expire, and at a time when additional and substantial endorsement contracts were looming for Kim in both the United States and Asia.

27. On June 10, 2008, Kim signs a new Agency Agreement with IMG. Kim signed his IMG Agreement when he was still contractually bound to HSM through December 31, 2008.

Defendants' Tortiously Interfere with HSM's Prospective Endorsement Deals

28. HSM was Kim's exclusive agent through December 31, 2008. Consequently, the HSM-KIM Agreement had a clause that required Kim to pay HSM on any endorsement deal that was done, or that was **substantially completed** (whether by HSM or someone else) during the term of the Agreement (up through December 31, 2008). Throughout 2008, upon information and belief, Gaylord, Ball, IMG, and Team AK were actively engaged in interfering with prospective and lucrative endorsement deals and other business opportunities that HSM would have secured for Kim during the term of the HSM-Kim Agreement but for the active undermining engaged in by the Defendants.

29. The tortious interference with the HSM-Kim Agreement and the prospective endorsement opportunities severely damaged HSM and caused HSM to incur significant damages. HSM has brought this lawsuit to recover all compensation HSM expected to recover had the Defendants not deliberately interfered with the HSM-Kim Agreement and prospective endorsement deals. This specifically includes but is not limited to all deals that were completed, were substantially done, or should have been finalized prior to December 31, 2008 whose terms and payments would have extended past December 31, 2008, as contemplated pursuant to the Agreement. The Defendants actions were tortious, without legal justification, and have significantly damaged HSM.

CAUSES OF ACTION

Count 1-Tortious Interference with Existing Contract-Ball, IMG, and Gaylord

30. All preceding paragraphs are incorporated by reference as if fully set forth herein.

31. The Agreement between HSM and Anthony Kim was a valid contract.

¹ Incredible details of IMG's intentional interference will be further discussed when issues surrounding a Protective Order are resolved.

32. Ball, IMG, and Gaylord knew of HSM's contract with Kim, and of HSM's interest in the contract.

33. Ball, IMG, and Gaylord willfully and intentionally interfered with HSM's contract with Anthony Kim.

34. The interference of Ball, IMG, and Gaylord proximately caused injury to HSM which caused actual losses and damages in an amount within the jurisdictional limits of this Court for which it now sues Ball, Gaylord, and IMG, jointly and severally.

35. HSM's injury resulted from malice, gross negligence or actual fraud on the part of Ball, IMG, and Gaylord, which entitles HSM to exemplary damages independently against each of them pursuant to Texas Civil Practice & Remedies Code Section 41.003(a). Accordingly, HSM sues Ball, IMG, and Gaylord for exemplary damages in an amount not less than \$5,000,000.

Count 2-Tortious Interference with Prospective Relations-All Defendants

36. All preceding paragraphs are incorporated by reference as if fully set forth herein.

37. HSM had an ongoing business relationship with Kim and was prepared to enter into a new contract with him.

38. As of May 6, 2008, HSM had eight months to secure new endorsement deals for Kim, at a time when it is usually and customary in the market for these deals to be finalized.

39. The Defendants knew of HSM's ongoing business relationship with Kim, knew of HSM's prospective contract with Kim and knew of HSM's prospective contracts with golf equipment companies and other sponsors and intentionally interfered with them.

40. The Defendants' actions were independently tortious, regardless of the effect those actions had on HSM's business relationship and prospective contracts with Kim, the golf equipment companies, and the other sponsors.

41. HSM suffered actual losses and damages because the Defendants' interference prevented HSM from entering into new prospective contracts with Kim, golf equipment companies, and other sponsors and/or interfered with HSM continuing its business relationship with Kim.

42. The Defendants' interference proximately caused injury to HSM which resulted in specific loss of profits and other damages in an amount within the jurisdictional limits of this Court, for which it now sues each of the Defendants.

43. HSM's injury resulted from malice, gross negligence or actual fraud on the part of each of the Defendants which entitles HSM to exemplary damages independently against each of them pursuant to Texas Civil Practice & Remedies Code Section 41.003(a). Accordingly, HSM sues each Defendant for exemplary damages in an amount not less than \$5,000,000.

REQUEST FOR DISCLOSURE

44. In accordance with the *Texas Rules of Civil Procedure*, HSM requests that the Defendants disclose the information sought by Rule 194.2(a) - (i) of the *Texas Rules of Civil Procedure* within fifty (50) days from the date of service of this petition.

WHEREFORE, Hambric Sports Management, LLC respectfully prays for the following relief:

- A. An award of actual damages;
- B. HSM's costs and expenses herein expended including the attorneys' fees HSM incurs in bringing this action, and any and all pre-judgment and post-judgment interest as permitted by law;
- C. Exemplary Damages of at least **\$5,000,000.00** for the Defendants' unconscionable conduct;
- D. A trial by jury; and

E. Any and all other relief, whether general or specific, either at law or in equity to which HSM may appear entitled.

Respectfully submitted,

DAVID, GOODMAN & MADOLE
A Professional Corporation

By 

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