

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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NEW YORK ISLANDERS HOCKEY CLUB, L.P. :
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 Plaintiff, : **VERIFIED COMPLAINT**
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 -against- : Index No.
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 SPONGETECH DELIVERY SYSTEMS, INC. :
 :
 :
 Defendant. :
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New York Islanders Hockey Club, L.P., by its attorneys, Guararra & Zaitz, alleges as its complaint as follows:

PARTIES

1. Plaintiff New York Islanders Hockey Club, L.P. (the “Islanders”) is a limited partnership formed under the laws of the State of New York, whose principal place of business is located at 1255 Hempstead Turnpike, Uniondale, New York 11553.

2. Upon information and belief, defendant Spongetech Delivery Systems, Inc. (“Spongetech”) is a corporation organized under the laws of the State of New York, with an office located at 43 West 33rd Street, Suite 600, New York, New York 10001, and has at all relevant times transacted business in the State of New York.

FACTUAL ALLEGATIONS

3. The Islanders own and operate a National Hockey League franchise whose team (the “Team”) plays its home games at the Nassau Veterans Memorial Coliseum (the “Coliseum”).

4. Upon information and belief, Spongetech is in the business of producing and selling sponge-based products.

5. On or about October 8, 2009 the Islanders and Spongetech entered into an agreement (the "Sponsorship Agreement") pursuant to which the Islanders granted Spongetech certain advertising and sponsorship rights to promote itself and its products (the "Acquired Rights").

6. The term of the Sponsorship Agreement covered the Team's 2009-2010 and 2010-2011 National Hockey League seasons (the "Term").

7. The Acquired Rights included, but were not limited to:

- the placement by the Team of Spongetech's advertising copy on the dasher boards behind the goal at the Team's home games at the Coliseum during the Term, including any playoff games played by the Team during the Term;
- the use by Spongetech of one concourse kiosk ("Kiosk") at the Team's home games at the Coliseum during the Term to sell its products, including such use during any playoff games played by the Team during the Term;
- the Team's operation of a contest during the Term for the purpose of promoting Spongetech's sale of products at the Kiosk;
- the right on the part of Spongetech to sponsor one giveaway during two of the Team's home games at the Coliseum during the each of the two NHL seasons covered by the Term;
- four lower level tickets to each of the Team's home games at the Coliseum during the Term and the option to purchase playoff tickets during that time; and
- one designated VIP parking spot for the Team's home games at the Coliseum during the Term.

8. Pursuant to the Sponsorship Agreement, in consideration for the granting of the Acquired Rights to Spongetech by the Islanders for the Term, Spongetech agreed to pay \$405,000.00 to the Islanders (“Base Sponsorship Fees”), plus an additional \$3,000.00 for each first or second round home playoff game to be played by the Team during the Term, plus an additional \$3,500.00 for each third or fourth round home playoff game to be played by the Team during the Term, plus any costs incurred by the Islanders in their producing advertising copy used by Spongetech in connection with the Sponsorship Agreement.

9. The Base Sponsorship Fees were due to be paid by Spongetech to the Islanders, as set forth in the Sponsorship Agreement, as follows:

October 1, 2009	\$ 30,000.00
November 1, 2009	\$ 30,000.00
December 1, 2009	\$ 30,000.00
January 1, 2010	\$ 30,000.00
February 1, 2010	\$ 30,000.00
March 1, 2010	\$ 30,000.00
October 1, 2010	\$ 37,500.00
November 1, 2010	\$ 37,500.00
December 1, 2010	\$ 37,500.00
January 1, 2011	\$ 37,500.00
February 1, 2011	\$ 37,500.00
March 1, 2011	<u>\$ 37,500.00</u>
TOTAL	\$405,000.00

10. In accordance with its obligations under the Sponsorship Agreement, the Islanders, from the beginning of the Team’s 2009-2010 regular season to date, afforded Spongetech substantially all of Spongetech’s Acquired Rights under the Sponsorship Agreement by, among other things:

- placing Spongetech’s advertising copy on the dasher boards behind the goal at the Team’s home games at the Coliseum;
- allotting Spongetech the Kiosk;

- allotting Spongetech four lower level tickets to each of the Team's home games at the Coliseum for the 2009-2010 season
- allotting Spongetech the VIP parking space at the Coliseum

11. As of January 2010 Spongetech had failed to make any of the payments required by the Sponsorship Agreement.

12. During January 2010, Chris Dey, President of the Islanders, and Chris Lombardo, Director of Corporate Partnerships of the Islanders, both had several communications with Stephen Y. Moskowitz, Chief Operating Officer and Chief Financial Officer of Spongetech, regarding Spongetech's unpaid \$90,000.00 balance under the Sponsorship Agreement, wherein Mr. Moskowitz stated he would forward a check to the Islanders in payment of said balance.

13. On or about January 13, 2010, Mr. Lombardo personally visited Mr. Moskowitz in New York City and was personally handed by Mr. Moskowitz a check in the amount of \$90,000.00. The check was signed by Mr. Moskowitz and was drawn on the account of RM Enterprises International Ltd., which upon information and belief is a Delaware corporation and an affiliate of Spongetech.

14. Upon information and belief, Mr. Moskowitz is an officer of RM Enterprises International Ltd.

15. However, when the Islanders presented said \$90,000.00 check for payment, that check was dishonored due to the account on which the check was drawn having been closed.

16. Accordingly, as of January 13, 2010, Spongetech had failed to make any payments to the Islanders as required by the Sponsorship Agreement and was in default as of that time.

17. The Sponsorship Agreement provides that in the event that Spongetech fails to

make any payment required thereunder, the Islanders have the right to terminate the Sponsorship Agreement, if, after five days from the Islanders' sending written notice to Spongetech of such failure to pay, and demanding same, Spongetech still failed to make such payment.

18. In accordance with the Sponsorship Agreement, by letter dated January 25, 2010, of Jaimie Wolf, Director of Legal Affairs for the Islanders, sent via facsimile and certified mail to Spongetech, the Islanders demanded that Spongetech make all payments due the Islanders under the Sponsorship Agreement within five days of the date of that letter and notified Spongetech that if it failed to do so, among other things, the Sponsorship Agreement would be terminated.

19. Spongetech failed to make any payments to the Islanders subsequent to that letter.

20. The Islanders terminated the Sponsorship Agreement by letter dated April 9, 2010 of Stacey Sabo, Deputy General Counsel of the Islanders, sent via certified mail and facsimile to Spongetech.

21. The Sponsorship Agreement provides that in the event of a breach of the Sponsorship Agreement by Spongetech, the Islanders would be entitled to all unpaid Base Sponsorship Fees for the entire Term without regard to any revenue received by the Islanders as a result of any mitigation efforts made by the Islanders.

22. The Sponsorship Agreement further provides that the prevailing party in any litigation is entitled to reasonable attorney's fees and costs related to such proceedings.

23. Pursuant to the Sponsorship Agreement, each of the parties consented to the jurisdiction and venue of the state and federal courts located in Nassau and Suffolk Counties in the State of New York.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

24. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 23 as if each were more fully set forth herein.

25. The Sponsorship Agreement is a valid and binding contract between Spongetech and the Islanders.

26. Spongetech's failure to pay the Base Sponsorship Fees required by the Sponsorship Agreement, despite due demand by the Islanders to Spongetech for it to do so, constitutes a breach of the Sponsorship Agreement by Spongetech.

27. The Islanders have been damaged as a result of such breach.

28. The Islanders accordingly demand judgment as a result of such breach in an amount to be determined at trial, but which amount includes, at least, all the unpaid Base Sponsorship Fees required by the Sponsorship Agreement, in the amount of \$405,000.00, plus pre-judgment interest at the rate set forth in the Sponsorship Agreement, and reasonable attorneys' fees and costs.

29. The Islanders also demand judgment declaring that all of Spongetech's rights under the Sponsorship Agreement are terminated.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

30. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 29 as if each were more fully set forth herein.

31. Spongetech was afforded substantially all of the Acquired Rights under the Sponsorship Agreement by the Islanders prior to the termination of such agreement.

32. Spongetech accordingly had a benefit conferred upon it by the Islanders.

33. Spongetech failed to pay the Islanders for such benefit.

34. Spongetech has been unjustly enriched as a result.

35. The Islanders accordingly demand judgment in an amount to be determined at trial sufficient to compensate the Islanders for such conferred benefit, plus pre-judgment interest and reasonable attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
(Account Stated)

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 35 as if each were more fully set forth herein.

37. At various times during the Term, the Islanders furnished Spongetech a statement of account setting forth the amounts due the Islanders under the Sponsorship Agreement, to which statement of account Spongetech did not object.

38. Said statement of account accordingly constitutes an account stated, the amount of which Spongetech is liable to the Islanders.

39. The Islanders accordingly demand judgment in the amount of such account stated, to be determined at trial, plus pre-judgment interest and reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff demands judgment against the defendant as follows:

- 1) on the First Claim for Relief:
 - a) in an amount to be determined at trial, but which amount is at least \$405,000.00, plus pre-judgment interest at the rate set forth in the Sponsorship Agreement, and reasonable attorneys' fees and costs; and
 - b) a declaration that Spongetech's rights under the Sponsorship Agreement are terminated;
- 2) on the Second Claim for Relief, in an amount to be determined at trial, plus pre-judgment interest and reasonable attorneys' fees and costs;
- 3) on the Third Claim for Relief, in an amount to be determined at trial, plus pre-judgment interest and reasonable attorneys' fees and costs;
- 4) and for such other and further relief as this Court deems proper, including costs and disbursements.

Dated: New York, NY
April 15, 2010

Respectfully submitted,

GUARARRA & ZAITZ



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