

JS 44 (Rev. 12/07)

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

PLANET GOALIE, INC.

(b) County of Residence of First Listed Plaintiff Dauphin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gary S. Auerbach, Esquire
2070 Butler Pike
Plymouth Meeting, PA 19462 (610) 940-9510

DEFENDANTS
MONKEYSPORTS, INC.

County of Residence of First Listed Defendant State of California
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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 <i>or</i> Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" 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. 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 <input type="checkbox"/> 196 Franchise	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"/> 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 type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <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
REAL PROPERTY <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	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <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	LABOR <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"/> 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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. 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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C sections 1332(a) and (c); 28 U.S.C section 1391(a).

Brief description of cause:

Tortious interference with existing and prospective contractual relations

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

12/23/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

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

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

_____	:	
PLANET GOALIE, INC.	:	
3989 Sunneycrest Drive	:	
Harrisburg, PA 17109,	:	
	:	JURY TRIAL DEMANDED
Plaintiff	:	
v.	:	NO.
MONKEYSPORTS, INC.	:	
1550 Magnolia Avenue	:	
Suite 101	:	
Corona, CA 92879,	:	
	:	
Defendant	:	
_____	:	

COMPLAINT

I. PARTIES

1. The plaintiff is Planet Goalie, Inc, a Nevada corporation with its principal place of business as captioned above.

2. The defendant is Monkeysports, Inc., a California corporation with its principal place of business as captioned above.

II. JURISDICTION AND VENUE

3. The plaintiff incorporates herein all of the preceding paragraphs as if set forth more fully at length.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C.A. §§ 1332(a) and (c), because the plaintiff is a citizen of both the State of Nevada (place of incorporation) as well as the Commonwealth of Pennsylvania (principal place of business), and

because the defendant is a citizen of the State of California. This Court has personal jurisdiction over the defendant pursuant to 42 Pa.C.S.A. § 5322(a)(i)-(iv) and (2)-(4). Venue is proper in this district pursuant to 28 U.S.C.A. § 1391(a), because at all material times, the defendant was, and is, a "resident" of the United States District Court for the Middle District of Pennsylvania, as this term is defined by § 1391(c).

III. FACTS

5. The plaintiff incorporates herein by reference all of the preceding paragraphs as if set forth more fully at length.

6. The plaintiff was incorporated for the purpose of selling, at the retail level, ice hockey goalie equipment and related supplies.

7. Two of the largest manufacturers in North America of ice hockey goalie equipment and related supplies are Vaughn Custom Sports (hereinafter "Vaughn") and Reebok/CCM (hereinafter "Reebok").

8. The defendant is and was at all material times one of the largest retailers of, inter alia, ice hockey goalie equipment and supplies in the United States, and two of its largest suppliers of this equipment are Vaughn and Reebok.

A. Vaughn Timeline

9. In January, 2010, the two individuals who own plaintiff, Michael Sherman and Derek Prue, met with Michael Vaughn (part owner of Vaughn) and Dennis Doll (then the National Sales Manager for Vaughn USA) at the Let's Play Hockey Show, which was held in Las Vegas, Nevada. At that time, they discussed the possibility of engaging in a business relationship wherein the plaintiff would sell, on a retail basis, Vaughn goalie equipment.

10. During this meeting, they agreed that the retail sales of Vaughn's goalie equipment by the plaintiff would include online sales. To this end, Mr. Doll provided Mr. Sherman at that time with Vaughn image disk, which disk is provided by Vaughn to its e-commerce dealers so that they can download these images onto their respective web sites.

11. At that meeting, therefore, the parties had agreed that the plaintiff would begin to sell Vaughn products on a retail basis, and that this would include e-commerce.

12. Soon thereafter, the plaintiff placed with Vaughn, via e-mail to Mr. Doll, a booking order for approximately \$140,000 of retail product, based in part upon the agreement between the plaintiff and Vaughn that the plaintiff was going to engage in the online sales of Vaughn products.

13. During the first week of February 2010, Mr. Sherman requested that Vaughn provide him with an additional Vaughn image disk, so that both he and the plaintiff's web designer would have one.

14. In furtherance of the agreement between plaintiff and Vaughn that the plaintiff would be engaging in e-commerce for the purpose of selling Vaughn's products, Mr. Doll immediately produced another disk to the plaintiff via Federal Express.

15. On or about February 10, 2010, Mr. Doll advised Mr. Sherman during their telephone conversation that John Naaman, the owner of defendant, had been calling Vaughn and had been "holding a gun" to their heads.

16. Mr. Doll further explained that, during this previous conversation, Mr. Naaman threatened that if Vaughn made plaintiff an e-commerce dealer, then the defendant would cancel one half (50%) of the defendant's booking orders with Vaughn.

17. On or about February 12, 2010, during a telephone conversation, Mr. Vaughn informed Mr. Sherman that the plaintiff could no longer be an e-commerce dealer for Vaughn, based upon the fact that Mr. Naaman was "holding a gun to his head." Mr. Vaughn further stated to Mr. Sherman that, if the defendant cancelled its booking orders, it could destroy Vaughn.

18. At that time, Mr. Vaughn also stated that the defendant, which is a member of "The Hockey Group" (a buying group of several dealers of sports equipment), had persuaded certain other members of this group to threaten to withdraw or reduce its orders from Vaughn if the plaintiff were permitted to be an e-commerce dealer for Vaughn.

19. The defendant had also reached an agreement with Vaughn that, if the latter refused e-commerce status to the plaintiff, the defendant would keep their buying/purchasing at 2009 levels.

20. As a result of this intentional, malicious and improper conduct by the defendant, as described above, the plaintiff was forced to reduce its booking order from \$140,000 to \$57,000.

21. Thereafter, when the defendant discovered that the plaintiff, on its web site, had merely referenced the fact that it was an authorized Vaughn dealer, Mr. Naaman made numerous calls to Vaughn, complaining about the format of the plaintiff's web site, and demanding that the plaintiff's web site be immediately changed to clearly indicate that the plaintiff is not an e-commerce dealer for Vaughn.

22. These calls by Mr. Naaman resulted in an e-mail from Vaughn that so instructed Mr. Sherman to make the appropriate changes to the plaintiff's web site.

23. Notwithstanding the defendant's strident opposition to the possibility of the plaintiff becoming an e-commerce dealer for Vaughn, it is believed and averred that, since the above events transpired, Vaughn has allowed other retailers, one of which is also in Pennsylvania, to engage in e-commerce on its behalf.

24. It is believed and averred that the animus manifested by Mr. Naaman toward the plaintiff is really animus by Mr. Naaman toward Mr. Sherman, who had been an employee of the defendant.

25. When Mr. Sherman left the employ of the defendant (prior to creating the plaintiff), Mr. Naaman threatened to Mr. Sherman that he (Mr. Naaman) would make sure that, if Mr. Sherman attempted to earn a living in the sale of hockey equipment, Mr. Sherman and his family would starve to death.

26. On or about October 25, 2010, Vaughn advised the plaintiff that the latter was on "credit hold," even though Mr. Sherman demonstrated to Vaughn, via e-mail, that the plaintiff did not have a past due balance with Vaughn.

27. On or about October 27, 2010, Mr. Vaughn advised Mr. Sherman that Vaughn was shutting the plaintiff down (i.e., terminating their business relationship in its entirety). When asked why this decision had been made, Mr. Vaughn stated that he had promised other retailers that the plaintiff would not ship anything. The "shipping" to which Mr. Vaughn made reference consisted of a few instances, in April and July of 2010, in which the plaintiff, with the knowledge and consent of either Mr. Doll and/or one of the Vaughn reps, shipped merchandise to Vaughn customers.

28. It is believed and averred that Vaughn terminated its business relationship with the plaintiff as a direct result of the demands placed upon Vaughn by the defendant.

29. As a result of the defendant's actions, the plaintiff has suffered, and will continue to sustain, substantial financial harm in the form of lost revenues that would have otherwise resulted from the agreement that had been reached by the plaintiff and Vaughn in January 2010.

B. Reebok Timeline

30. Messrs. Sherman and Prue also met with representatives of Reebok at the Let's Play Hockey Show in Las Vegas, in January 2010. Specifically, Messrs. Sherman and Prue met with John Bissert (Reebok Sales Manager) and Jamie Cogland (Vice President of Reebok Hockey) about the possibility of the plaintiff becoming a retailer for Reebok.

31. During their discussions, Messrs. Sherman and Prue explained their desire that the plaintiff's retail activity on behalf of Reebok include e-commerce, and also included selling Reebok's pro goalie lines of equipment.

32. As a result of these discussions, Messrs. Sherman and Prue reasonably believed that, at some point, they would have the opportunity to begin selling Reebok equipment online, and that this would include pro goalie lines.

33. However, on or about April 14, 2010, Reebok advised the plaintiff of its guidelines for becoming an open account for the year 2010, the restrictions imposed by Reebok were exceedingly and unexpectedly restrictive.

34. These restrictions included the plaintiff's inability to sell Reebok's line of pro goalie gear, the plaintiff's inability to engage in e-commerce, a geographical limitation

outside of which the plaintiff would not be able to sell Reebok goalie equipment. Moreover, Reebok's e-commerce restrictions even prohibited the plaintiff from mentioning on its web site that it carried Reebok equipment.

35. In October 2010, the Reebok local reps had a meeting with Mr. Bissert about the possibility of the plaintiff becoming an e-commerce retailer, and about selling Reebok's pro goalie lines of equipment, all in the year 2011. Mr. Bissert would not even discuss at that time the possibility of the plaintiff becoming an e-commerce or pro line dealer on behalf of Reebok.

36. It is believed and averred that the reason why Reebok has refused and continues to refuse to impose these restrictions on the plaintiff is because of threats and coercive tactics by the defendant toward Reebok, similar to the defendant's threats and coercive tactics that the defendant used against Vaughn.

37. Not only did Reebok maintain the draconian and unjustified restrictions that it placed upon the plaintiff, Reebok also made its initial shipment of product to the plaintiff in July 2010, one of the worst months for a goalie dealer to sell gear, and despite the previous and repeated requests by Mr. Sherman to provide the plaintiff with Reebok equipment.

38. When Messrs. Sherman and Prue received their first statement from Reebok, they were surprised to discover that they were only given 90 days within which to pay any outstanding balances, only a 3% discount (as compared with a 25% to 30% discount enjoyed by the defendant), and were not permitted any extended payment dating (which is also provided to the defendant by Reebok).

39. It is believed and averred that the singularly unfavorable treatment experienced by the plaintiff by Reebok was due to the threats and coercive tactics used by the defendant in its dealings with Reebok.

**COUNT I
PLAINTIFF V. DEFENDANT
TORTIOUS INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS**

40. The plaintiff incorporates herein by reference all of the preceding paragraphs as if set forth more fully at length.

41. At all material times, the plaintiff had a contractual relationship with Vaughn, which at the outset provided that the plaintiff, as a retailer, would be permitted to engage in e-commerce.

42. The defendant's conduct, in employing the threatening and coercive tactics described above, manifested a clear and malicious intent on the part of Mr. Naaman, as owner of the defendant, to interfere with the contractual relationship between the plaintiff and Vaughn.

43. The defendant's conduct was without any privilege or justification, but rather was carried out with the specific intent to bring financial ruin to the plaintiff, and derivatively to Mr. Sherman.

44. As a direct and proximate result of the defendant's conduct, the plaintiff has been and continues to be substantially harmed financially.

45. The defendant's conduct has been intentional, wanton, malicious, and has manifested a reckless disregard for the plaintiff's rights, thereby justifying an award of punitive damages.

WHEREFORE, the plaintiff hereby demands judgment against the defendant for an amount in excess of one hundred and fifty thousand (\$150,000) dollars, together with punitive damages, costs, interest, and such other and further relief as this Court deems appropriate.

COUNT II
PLAINTIFF V. DEFENDANT
TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

46. The plaintiff incorporates herein by reference all of the preceding paragraphs as if set forth more fully at length.

47. At all material times, there existed a contractual relationship with Reebok that carried with it the prospect of the plaintiff engaging in e-commerce on behalf of Reebok, and also the prospect of selling Reebok's pro goalie lines of equipment.

48. The defendant's conduct, in employing the threatening and coercive tactics described above, manifested a clear and malicious intent on the part of Mr. Naaman, as owner of the defendant, to interfere with the contractual relationship between the plaintiff and Reebok.

49. The defendant's conduct was without any privilege or justification, but rather was carried out with the specific intent to bring financial ruin to the plaintiff, and derivatively to Mr. Sherman.

50. As a direct and proximate result of the defendant's conduct, the plaintiff has been and continues to be substantially harmed financially.

51. The defendant's conduct has been intentional, wanton, malicious, and has manifested a reckless disregard for the plaintiff's rights, thereby justifying an award of punitive damages.

WHEREFORE, the plaintiff hereby demands judgment against the defendant for an amount in excess of one hundred and fifty thousand (\$150,000) dollars, together with punitive damages, costs, interest, and such other and further relief as this Court deems appropriate.



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