

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE NCAA STUDENT-ATHLETE Case No. 4:09-cv-1967 CW  
NAME & LIKENESS LICENSING  
LITIGATION

\_\_\_\_\_ /

CONFIDENTIAL - ATTORNEYS' EYES ONLY  
VIDEOTAPED DEPOSITION OF PAT BATTLE

June 19, 2012

9:06 a.m.

Kilpatrick Townsend & Stockton, LLP  
1100 Peachtree Street, NE  
Suite 2800  
Atlanta, Georgia

Kristine A. Bokelmann, RDR, CRR, CCR-B-2148

Designation Color Key  
Blue = NCAA Affirm Designs.  
Orange = Pls' Counter Designs.  
Fuchsia = NCAA Rebuttal Designs

1 THE VIDEOGRAPHER: We're now on the record.  
2 Please note that the microphones are sensitive and may  
3 pick up whispering and private conversations. Please  
4 turn off all cell phones and place them away from the  
5 microphones, as they can interfere with the  
6 deposition's audio. Recording will continue until all  
7 parties have agreed to go off the record.

8 My name is Harris Bitman  
9 representing Veritext. Today's date is June  
10 19th, 2012, and the time is approximately 9:06  
11 a.m.

12 This deposition is being held at  
13 Kilpatrick Townsend located at 1100 Peachtree  
14 Street, Atlanta, Georgia, and this is being  
15 taken by counsel on behalf of the plaintiffs.  
16 The caption of the case today is in Re: NCAA  
17 Student-Athlete Name and Likeness Licensing  
18 Litigation.

19 This is filed in the United States  
20 District Court for the Northern District of  
21 California, Oakland Division, Case No.

22 4:09-CV-1967 CW (NC). The name of the witness  
23 today is Pat Battle.

24 At this time the attorneys present  
25 in the room and attending remotely will

1 BY MR. PAYNTER:

2 Q Sorry. Can you just say that again. I  
3 didn't hear the answer.

4 A That's correct.

5 Q Okay. And since learning of this  
6 litigation, have you received any voice mails from  
7 anyone about this litigation other than your  
8 attorneys?

9 A No.

10 Q And other than your attorneys, did you speak  
11 with anyone to prepare for this deposition?

12 A No.

13 Q And did you review any documents to prepare  
14 for this deposition?

15 MR. BOYLE: You can answer that, but I'm  
16 going to caution you, don't disclose any substance  
17 about the communications we've had or disclose the  
18 documents that you were shown by counsel.

19 THE WITNESS: Yes, documents that I've  
20 discussed with counsel.

21 BY MR. PAYNTER:

22 Q Any other documents?

23 A No.

24 Q Let's talk a little bit about the Collegiate  
25 Licensing Company. This is an entity that your

1 father, Bill Battle, founded; is that correct?

2 A Yes.

3 Q And when did he found the CLC?

4 A 1981.

5 Q And when did you become employed at the CLC?

6 A 1983.

7 Q And what positions did you -- well, strike  
8 that. What position did you hold in 1983?

9 A I don't remember what the position  
10 was. There were three employees at the time.

11 Q Okay.

12 A So it was a lot of positions.

13 Q Right. And at the time did you receive any  
14 ownership interest in the Collegiate Licensing  
15 Company?

16 A I had ownership interest from day  
17 one from 1981.

18 Q And what was that ownership interest?

19 A I don't recall exactly. I think it  
20 was around six percent.

21 Q And did that change over time or did that  
22 stay consistent?

23 A It changed over time.

24 Q And so by the time -- well, strike that.

25 The CLC was purchased by IMG in 2007; is

1 that right?

2 A Yes.

3 Q And at the time of the purchase, what was  
4 your ownership interest in the CLC?

5 A I don't remember exactly. I think  
6 it was around -- there were stock options and  
7 other things that came into play, but it was  
8 around 17, 18 percent.

9 Q And after the purchase of the CLC by IMG, am  
10 I correct that you then became a senior vice president  
11 at IMG College?

12 A Yes.

13 Q And how long did you remain in that  
14 position?

15 A Approximately three years.

16 Q And do you remember when your, I guess,  
17 official last day was?

18 MR. BOYLE: Objection to form.

19 THE WITNESS: Official last day was June  
20 30th of 2011.

21 BY MR. PAYNTER:

22 Q And following the purchase of the CLC by  
23 IMG, did you have any ownership interest in IMG?

24 A As part of the acquisition, yes,  
25 there was a percentage of the acquisition

1 (Marked Exhibit 332.)

2 MR. PAYNTER: This is double-sided, just so  
3 everyone knows.

4 Why don't I just go ahead, while  
5 we're at it, and we'll mark this one as 333.  
6 This one, Bob, technically it's from your  
7 production. It's for counsel only. I'm  
8 assuming you don't have any objection to me  
9 showing it to this witness.

10 MR. WIERENGA: No, that's fine.

11 (Marked Exhibit 333.)

12 BY MR. PAYNTER:

13 Q So let me just, while we have these both in  
14 front of you, do you recognize what was marked as  
15 Exhibit 332 as a copy of the licensing agreement for  
16 Electronic Arts' NCAA Football game that was executed  
17 by the CLC in December of 2008? And if you flip  
18 through, I think, just FYI, the CLC's signature page I  
19 think is page 23.

20 A Yes.

21 Q And do you recognize what was marked as  
22 Exhibit No. 333 as a copy of a licensing agreement for  
23 Electronic Arts' baseball video game that was also  
24 executed by the CLC in December 2008?

25 A Yes.

1 the licensing agreement with Electronic Arts  
2 separate from CLC directly with the licensee.

3 Q So CLC didn't represent those institutions  
4 as an agent then?

5 A Correct.

6 Q Now, as part of this agreement the CLC and  
7 the institutions agreed to work in good faith with  
8 Electronic Arts to secure name and likeness rights to  
9 coaches and other relevant personnel associated with  
10 the football teams of the institutions, correct?

11 MR. BOYLE: Objection.

12 BY MR. PAYNTER:

13 Q Sorry. And if you need to refresh your  
14 memory, I direct you to paragraph 2(b), which is on  
15 page four.

16 MR. BOYLE: Objection to form, the document  
17 speaks for itself and it calls for a legal conclusion.

18 THE WITNESS: I'm sorry. Where is it?

19 BY MR. PAYNTER:

20 Q Well, I'm specifically looking at the second  
21 sentence of 2(b).

22 A And the question was?

23 Q The question is, as part of this agreement  
24 the CLC and the institutions agreed to work in good  
25 faith with Electronic Arts to secure name and likeness



1 rights to coaches and other relevant personnel  
2 associated with the football teams of the  
3 institutions, correct?

4 MR. BOYLE: Objection to form, calls for a  
5 legal conclusion.

6 THE WITNESS: Yes.

7 BY MR. PAYNTER:

8 Q And why did Electronic Arts want the name  
9 and likeness rights to coaches?

10 MR. BOYLE: Objection to form, calls for  
11 speculation.

12 THE WITNESS: Well, I think that EA would  
13 have to answer that, but I think that we worked  
14 together to try to make the game, to make the product  
15 as realistic as possible and having the coaches help  
16 to make that happen.

17 BY MR. PAYNTER:

18 Q And the sentence that we were just looking  
19 at refers to "other relevant personnel associated with  
20 football teams of the Institutions." Do you see that?

21 A Yes.

22 Q And who are those other relevant personnel  
23 that are being referenced?

24 MR. BOYLE: Objection to form.

25 THE WITNESS: I don't know who they were. I

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1 mean, there were announcers in the game and there were  
2 other people that Electronic Arts ultimately worked  
3 out an agreement with to include in the game. Could  
4 have been mascots, could have been announcers, could  
5 have been coaches, obviously. So it would refer to  
6 that, I would assume.

7 BY MR. PAYNTER:

8 Q Other than announcers and mascots, can you  
9 think of any other personnel associated with the  
10 football teams that that clause might refer to?

11 MR. SLAUGHTER: Objection, calls for  
12 speculation.

13 THE WITNESS: No.

14 BY MR. PAYNTER:

15 Q So it doesn't refer to players?

16 MR. BOYLE: Objection to form.

17 THE WITNESS: No.

18 BY MR. PAYNTER:

19 Q And how do you know that?

20 A How do I know what?

21 Q That it doesn't refer to players.

22 A I don't know. I mean, it just -- it

23 wouldn't refer to players because the

24 licensees were prohibited from using players.

25 It could refer to former players.

1 (Recess 9:53-10:05 a.m.)

2 (Marked Exhibit 336.)

3 THE VIDEOGRAPHER: Back on the video record  
4 with videotape number two. The time is 10:05 a.m.

5 BY MR. PAYNTER:

6 Q I think when we took a break we were about  
7 to -- we had just marked as Exhibit 336 a document  
8 which I'm going to hand you now. And the usual  
9 questions to begin with. Do you recognize this as an  
10 e-mail that you sent Mr. Todd Sitrin of Electronic  
11 Arts on December 19th, 2006?

12 A I'd like to review it, please.

13 Q Sure.

14 A Question?

15 Q So my question was just do you recognize  
16 this as an e-mail that you sent Mr. Todd Sitrin of  
17 Electronic Arts on December 19th, 2006?

18 A Yes.

19 Q And do you recognize the other e-mails in  
20 the string as e-mails that you either sent or  
21 received, starting with a December 15th, 2006 e-mail  
22 from Mr. David Knopp at the NCAA?

23 MR. BOYLE: Objection to form.

24 THE WITNESS: Yes.

25

1 BY MR. PAYNTER:

2 Q And you sent or received all these e-mails  
3 in the ordinary course of business, correct?

4 A Yes.

5 Q In the released version, in other words,  
6 publicly released version of EA's NCAA brand football  
7 and basketball video games, Electronic Arts uses the  
8 likenesses of then current NCAA student-athletes,  
9 correct?

10 MR. BOYLE: Objection to form.

11 THE WITNESS: I didn't understand the  
12 question.

13 BY MR. PAYNTER:

14 Q What didn't you understand?

15 A Just ask the question.

16 MR. PAYNTER: Oh, sure. Can you just read  
17 the question back.

18 (Court reporter read the requested  
19 portion.)

20 MR. BOYLE: Objection to form and  
21 foundation.

22 MR. SLAUGHTER: Objection, overbroad, as  
23 well.

24 THE WITNESS: A licensee is not allowed to  
25 use names or likenesses of student-athletes on the

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1 products.

2 BY MR. PAYNTER:

3 Q But does it anyway?

4 MR. BOYLE: Objection to form and  
5 foundation.

6 THE WITNESS: No.

7 BY MR. PAYNTER:

8 Q Sorry. I just couldn't hear.

9 A No.

10 Q But EA does, for each position, the avatar  
11 in EA's game has the same jersey game as the real-life  
12 player, correct?

13 MR. BOYLE: Objection to form.

14 MR. SLAUGHTER: Objection, also foundation.

15 THE WITNESS: I don't know about in all  
16 cases, but, yes, I think in some cases they are.

17 BY MR. PAYNTER:

18 Q In most cases?

19 MR. BOYLE: Objection to form.

20 THE WITNESS: I think in most cases.

21 BY MR. PAYNTER:

22 Q And EA replicates the body type of the  
23 actual NCAA student-athletes in its game, correct?

24 MR. BOYLE: Objection to form and  
25 foundation.

1 THE WITNESS: I don't know.

2 BY MR. PAYNTER:

3 Q Well, if you look at the e-mail that you  
4 sent to Mr. Sitrin, do you see the second paragraph  
5 where it says: "I don't think we want to even raise  
6 the issue of body type, skin color, and number (which  
7 are all used now) as referring to 'likeness' in any  
8 way." Do you see that?

9 A Yes.

10 Q Does that refresh your recollection that EA  
11 uses the body types of actual student-athletes --  
12 strike that.

13 Does that refresh your recollection that EA  
14 replicates the body types of actual student-athletes  
15 in its games?

16 MR. BOYLE: Objection to form.

17 MR. WIERENGA: And foundation.

18 THE WITNESS: My understanding is that EA  
19 uses certain generic body types. How many body types  
20 they incorporate into the game, I don't know the  
21 answer to that.

22 But there are body types that  
23 would -- a lineman's body type or a center's  
24 body type might be different than a point  
25 guard or a quarterback's body type, and so my

1 understanding is that those body types typical  
2 to that position would be incorporated into  
3 the avatars.

4 BY MR. PAYNTER:

5 Q Does Electronic Arts attempt to match those  
6 body types to the real-life players?

7 MR. BOYLE: Objection to form, calls for  
8 speculation, lacks foundation.

9 MR. WIERENGA: Also foundation.

10 THE WITNESS: I don't know.

11 BY MR. PAYNTER:

12 Q Does -- well, Electronic Arts matches the  
13 skin color of actual NCAA players in its game,  
14 correct?

15 MR. BOYLE: Objection to form and  
16 foundation.

17 THE WITNESS: I don't know that either  
18 specifically. Generally, yes, I think that they do.

19 BY MR. PAYNTER:

20 Q And Electronic Arts replicates in its game  
21 whether a player is right-handed or left handed,  
22 correct?

23 A I don't know.

24 Q Can you flip to the second page of this and  
25 do you see an e-mail from Mr. Linzner to you dated

1 December 18th, 2006?

2 A Yes.

3 Q And do you see where Mr. Linzner says: "One  
4 question I have about likeness: We already match race  
5 and left/right handedness, as well as body type."

6 Do you see that sentence?

7 MR. SLAUGHTER: I'm sorry, Stuart. Where  
8 are you reading?

9 MR. PAYNTER: I'm just on the second page of  
10 this, and it's the paragraph that begins "Thanks Pat.  
11 Great outline."

12 MR. SLAUGHTER: On the bottom.

13 MR. WIERENGA: Oh, sorry.

14 BY MR. PAYNTER:

15 Q Do you see that sentence?

16 A Yes.

17 Q Does that refresh your recollection that  
18 Electronic Arts matches the -- whether a player is  
19 right or left-handed in its game?

20 MR. BOYLE: Objection to form.

21 THE WITNESS: I didn't recall that.

22 BY MR. PAYNTER:

23 Q How about hair color? Electronic Arts  
24 attempts to match the hair color of real-life players  
25 in its video game, correct?



1           A     Yes.

2           Q     And do you see where you state: "I think we  
3     should argue that the definition of likeness is facial  
4     recognition ...not body type or skin color."

5                 Do you see that?

6           A     Yes.

7           Q     What did you mean by "facial recognition"?

8           A     Well, what I personally meant by  
9     "facial recognition" is that in the context of  
10    this discussion we were comparing the NCA  
11    football and NCA basketball video games to  
12    their pro counterparts, to the NFL Madden game  
13    and the NBA Live game, both of which  
14    Electronic Arts was the licensee.

15                 And the major differences in those two games  
16    was the fact that the names of the players appeared on  
17    the avatars of the Madden and the NBA Live games, but  
18    they didn't, because of NCA regulations, in the NCA  
19    games.

20                 And the facial features that identified, and  
21    again, in my mind, what -- how you identified a player  
22    and using their likeness was through replication of  
23    their picture, their photograph, or their facial  
24    features, and so in context of this, that's what I was  
25    referring to.

1 THE WITNESS: Not that I recall.

2 BY MR. PAYNTER:

3 Q And turning back to the exhibits that we  
4 marked at the beginning of this deposition as 332 and  
5 332 -- I'm sorry -- 332 and 333, do either of these  
6 contracts permit Electronic Arts to utilize current  
7 NCAA student-athlete names in its video games?

8 MR. BOYLE: Objection to form, calls for a  
9 legal conclusion, and it's severely overbroad, unless  
10 you want him to read through both of these contracts.

11 THE WITNESS: Do you want to point out a  
12 provision in the agreement that you're referring to?

13 BY MR. PAYNTER:

14 Q Well, I'm actually asking you whether --  
15 well, yeah. You can look at page --

16 A Are you on 332 or 333?

17 Q 332. It's page seven. And again, it's  
18 paragraph seven. And my question is, if you look at  
19 that paragraph, is it your understanding that this  
20 paragraph permits Electronic Arts to utilize actual  
21 NCAA student-athlete names on the jerseys in the game?

22 MR. BOYLE: Objection to form, calls for a  
23 legal conclusion.

24 THE WITNESS: What I read here is that  
25 nothing can happen without the express written

1 permission of the institution.

2 BY MR. PAYNTER:

3 Q And so my question is then, do you have any  
4 opinion on whether this paragraph permits Electronic  
5 Arts to use player -- actual NCAA player names on the  
6 jerseys?

7 MR. BOYLE: Objection to form, calls for a  
8 legal conclusion and mischaracterizes the document.

9 THE WITNESS: It would not permit them --  
10 the approval process would not permit them and the  
11 agreement would not permit them to use the names or  
12 the likenesses.

13 BY MR. PAYNTER:

14 Q Okay. To your knowledge, has Electronic  
15 Arts agreed to indemnify the CLC for any damages that  
16 the CLC incurs as a result of this lawsuit?

17 MR. BOYLE: Objection to form, calls for a  
18 legal conclusion.

19 MR. SLAUGHTER: Lacks foundation.

20 THE WITNESS: There's an indemnification  
21 provision. It's a standard part of every licensing  
22 agreement that we sign on behalf of the institutions  
23 that CLC represents.

24 BY MR. PAYNTER:

25 Q And has the CLC invoked that clause in this

1 their names or likenesses?

2 A I'm sorry. Repeat the question.

3 Q Sure. I'll say it again. Are you aware of  
4 any agreement between or among EA, CLC, and NCAA in  
5 which those three parties came together, two or three  
6 together to not -- and say we're not going to pay  
7 student -- former student-athletes --

8 A No.

9 Q -- for the use --

10 MR. KING: Object to form.

11 BY MR. SLAUGHTER:

12 Q Are you aware of any agreement or  
13 understanding between or among the CLC, the NCAA, and  
14 EA that restricts EA's ability to compensate former  
15 student-athletes in any way?

16 A No.

17 Q Are you aware of any agreement or  
18 understanding between or among CLC, the NCAA, and EA  
19 to fix at zero dollars the price paid to former  
20 student-athletes for the use of their names and  
21 licenses?

22 A No.

23 Q Do you know -- I'm sorry. One more. Are  
24 you aware of any agreement or understanding between or  
25 among CLC, NCAA, and EA to refuse to deal with former

1 student-athletes with respect to their licensing of  
2 their names or likenesses?

3 A No.

4 Q Do you know if former student-athletes are  
5 in fact able to license their names and likenesses?

6 MR. PAYNTER: Object to form.

7 THE WITNESS: Former student-athletes?

8 BY MR. SLAUGHTER:

9 Q Yes.

10 A If it's their trademark, they can do  
11 what they want to do with it.

12 Q Or their right -- any of their name or  
13 likeness rights, as well, correct?

14 A Yes.

15 Q From time to time did you discuss with EA  
16 and the NCAA whether EA could use names and likenesses  
17 in its college football and basketball video games?

18 MR. PAYNTER: Object to form.

19 THE WITNESS: Yes.

20 BY MR. SLAUGHTER:

21 Q With whom at EA did you primarily discuss  
22 that issue?

23 A Primarily with Joel.

24 Q Okay. That's Joel Linzner?

25 A Joel Linzner.

1           Q     And with whom at NCAA did you primarily  
2 discuss the issue of whether EA might be able to in  
3 the future use names and likenesses in its video  
4 games?

5           A     Primarily with Greg Shaheen.

6           Q     And if you could, please, just describe the  
7 nature of those discussions.   What was it that EA  
8 generally wanted and what was it that CLC or NCAA, how  
9 they responded to that request.

10          A     Well, the discussions took place  
11 over a long period of time.   EA's interest, as  
12 I understand it as it was communicated to me  
13 is they wanted the game to be as realistic as  
14 possible.

15               As licensing representative for the schools  
16 and all of the entities that were part of the  
17 agreement, we had the same objective.   We wanted the  
18 game to be as realistic as possible, and the game was  
19 clearly not as realistic as possible because names and  
20 likenesses were not used, were not able to be used,  
21 and so the discussions were generally about how do we  
22 make the game more realistic.

23               There were a lot of features that were  
24 added, you know, every year there were new features  
25 that were added by EA to make the game more realistic,

1 whether it was the fight songs or the mascots or the  
2 announcers or, you know, any number of things to make  
3 the game more realistic, but the lack of ability to  
4 use the names and the likenesses was a glaring  
5 omission in terms of the realism of the game and it  
6 reflected in terms of the -- it was reflected in terms  
7 of the sales.

8 And so that's what EA wanted to do. We had  
9 the same objectives, and so our discussions with the  
10 NCAA and with others generally were around that.

11 Q Okay. And whose decision would it have been  
12 to allow EA to use names and likenesses in its video  
13 games?

14 MR. PAYNTER: Object to form.

15 BY MR. SLAUGHTER:

16 Q Well, let me strike that and ask a better  
17 question.

18 Was it your -- were your discussions with  
19 the NCAA revolved around whether NCAA could change  
20 some of its rules that would then allow a  
21 student-athlete to have his name be -- name and image  
22 be in a -- name and likeness be in a video game  
23 without him losing eligibility?

24 MR. PAYNTER: Object to form, and I'm just  
25 going to have the standing objection to the use of the

1 term "likeness" unless it's defined, but go ahead.

2 THE WITNESS: Yes.

3 BY MR. SLAUGHTER:

4 Q And was it your understanding that it wasn't  
5 Mr. Shaheen personally who could make that decision  
6 about whether the NCAA would change its rules,  
7 eligibility rules?

8 A That is correct.

9 Q Who, as to your understanding's, decision  
10 would it be to change the NCAA's eligibility rules?

11 A I don't know whose decision. I  
12 don't know what subcommittee or committee  
13 within the NCAA would be responsible for  
14 making that change.

15 Q But it wasn't up simply to the executive  
16 leadership, the NCAA just to do that by a stroke of  
17 their pen?

18 A That was my understanding.

19 Q During your time at CLC, and is it fair to  
20 say that this was a theme that existed throughout the  
21 period of time that you were dealing with EA and the  
22 NCAA, that is, the desire to be able to use names and  
23 likenesses but not being able to do so?

24 MR. PAYNTER: Object to form.

25 THE WITNESS: Well, I would say that the



1 theme that was carried through was how to constantly  
2 improve the game and to make it more realistic, and as  
3 part of that at a certain point in time, you know,  
4 using the names and using the likenesses, you know,  
5 that became an issue that we constantly tried to  
6 address, never to any successful conclusion, but we  
7 did try to address their time.

8 BY MR. SLAUGHTER:

9 Q And that last part was going to be my next  
10 question is during your time at CLC, were you ever  
11 successful in -- or strike that.

12 During your time at CLC, did the NCAA  
13 eligibility rules ever change so that EA could use  
14 names and likenesses in its games without risking the  
15 eligibility of any of the current student-athletes?

16 MR. PAYNTER: Object to form.

17 THE WITNESS: No.

18 BY MR. SLAUGHTER:

19 Q I'm sorry. Could you --

20 A No.

21 Q And we've been focusing on EA. I want to  
22 direct your attention now to other CLC licensees of --  
23 and ask you, did other licensees occasionally make  
24 requests or participate in discussions about whether  
25 the NCAA eligibility rules would be changed to allow

C E R T I F I C A T E

-oOo-

STATE OF GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This, the 22nd day of June, 2012.

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Kristine A. Bokelmann, CCR B-2148