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19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 EDWARD C. O'BANNON, JR., on behalf of
 23 himself and all others similarly situated,

24 Plaintiff,

25 v.

26 NATIONAL COLLEGIATE ATHLETIC
 27 ASSOCIATION (a/k/a the "NCAA"), and
 28 COLLEGIATE LICENSING COMPANY,
 (a/k/a "CLC").

Defendants.

Case No. 4:09-cv-03329 CW

**DECLARATION OF PETER M. BOYLE
 IN SUPPORT OF DEFENDANT
 COLLEGIATE LICENSING COMPANY'S
 MOTION TO DISMISS THE COMPLAINT
 PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Hearing Date: November 17, 2009
 Time: 2:00 p.m.
 Dept: Courtroom 2, 4th Floor
 Judge: Hon. Claudia Wilken

Date Complaint filed: July 21, 2009

I, Peter M. Boyle, make the following declaration pursuant to 28 U.S.C. § 1746.

1. I make this declaration upon personal knowledge and am competent to testify to the facts set forth herein.

**BOYLE DECLARATION IN SUPPORT OF DEFENDANT COLLEGIATE LICENSING COMPANY'S
 MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Case No. 4:09-cv-03329-CW

1 2. I am a partner with the law firm of Kilpatrick Stockton LLP, counsel for Defendant
2 Collegiate Licensing Company (“CLC”), in the action captioned *Edward C. O’Bannon, Jr. v.*
3 *National Collegiate Athletic Association, et al.*, Case No. CV:09-3329 (CW), filed on July 21,
4 2009, assigned to the Honorable Claudia Wilken (“O’Bannon”). I submit this Declaration in
5 support of CLC’s Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b)(6) filed herewith.

6
7 3. Attached hereto as Exhibit A are true and correct copies of webpages from Collegiate
8 Licensing Company’s website, found at <http://www.clc.com>. These web pages were printed
9 on or about September 23, 2009 to October 13, 2009. For the convenience of the Court and
10 ease of reference, page numbers were added at the bottom of each page, which do not appear
11 on the original webpages.

12
13 4. Attached hereto as Exhibit B are true and correct copies of webpages from the National
14 Collegiate Athletic Association’s (hereinafter “NCAA”) websites found at
15 <http://www.ncaa.org>. These webpages were printed on or about September 23, 2009. For the
16 convenience of the Court and ease of reference, page numbers were added at the bottom of
17 each page, which do not appear on the original webpages found on NCAA’s website.

18
19 5. As stated in the attached webpages from CLC’s website, CLC “is the nation’s leading
20 collegiate trademark licensing and marketing company” and it “assist[s] collegiate institutions
21 in protecting, managing and developing their brands.” Ex. A at 1. As evident from the
22 following passages from CLC’s website, CLC is the trademark licensing representative for the
23 NCAA and various NCAA member schools and CLC’s business is to license and protect its
24 clients’ trademark rights:

- 1 a. CLC’s “partnership with [its] clients will remain focused on the goal of protecting,
2 preserving, and maintaining both the integrity and long-term brand value of our
3 clients’ trademarks” *Id.* at 2.
- 4 b. CLC offers services relating to “Brand Protection,” “Brand Management,” and
5 “Brand Development” *Id.* at 3.
- 6 c. With regard to brand protection, CLC’s website states that “[t]he cornerstone of
7 any effective trademark licensing program is brand protection” and that “CLC is
8 the only agency with an in-house legal team that works to resolve compliance and
9 infringement issues involving clients’ trademarks.” *Id.* at 3.
- 10 d. CLC promotes its “Trademark Enforcement” capabilities, indicating that “CLC
11 successfully resolves many trademark infringements through its in-house cease
12 and desist program.” *Id.* at 4.
- 13 e. Regarding “Brand Management,” CLC’s website notes “Today, trademark
14 licensing has evolved into a more strategic component of many institution’s
15 external marketing efforts, providing valuable consumer exposure across a wide
16 range of retail distribution channels.” *Id.* at 5.
- 17 f. Under “Brand Control Systems,” CLC identifies various services that licensees can
18 use to more easily and accurately reproduce clients’ logos. *Id.* at 7.
- 19 g. There “are special licenses that are available to companies that wish to obtain
20 rights to use the trademarks of the NCAA, bowl games, or athletic conferences for
21 use . . . either alone or in conjunction with an institution’s trademarks.” *Id.* at 8.
- 22 h. CLC offers “creative services,” which are “design services to ensure that clients’
23 trademarks meet industry-standard production guidelines.” *Id.* at 9.
- 24
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- 1 i. “CLC routinely works with client institutions to develop exciting new primary
2 logos, secondary marks, youth marks, and specialty marks for events,
3 anniversaries, and theme programs in order to enhance their licensing programs.”
4 *Id.* at 10.
- 5
6 j. With regard to “Licensing Information,” CLC states, “Licensing is the granting of
7 rights to a third party that desires to associate itself commercially (for profit and
8 not for profit) with an institution through the use of trademarks, names, logos,
9 symbols and slogans.” *Id.* at 11.
- 10 k. “An Authorized Manufacturer’s Agreement (‘AMA’) allows a third-party
11 manufacturer/factory to manufacture, print and/or embroider product incorporating
12 the marks of CLC represented collegiate institutions specifically for orders placed
13 by a licensee.” *Id.* at 12.
- 14
15 l. CLC asks consumers to report any “infringing use of a college trademark or logo”
16 in an effort “to protect the collegiate institutions involved and the integrity of the
17 trademarks that has been established over time.” *Id.* at 13.
- 18 m. In CLC’s “Website Terms of Use Agreement,” CLC identifies itself as “the
19 trademark licensing representative for nearly 200 colleges, universities, bowl
20 games, athletic conferences, the Heisman Trophy and the NCAA.” *Id.* at 14.
- 21
22 6. The NCAA’s website contains a “Frequently Asked Questions” (“FAQ”) section
23 regarding the “NCAA Licensing Program.” Ex. B at 1.
- 24 a. This FAQ section instructs “[a]nyone who wishes to obtain a license to produce
25 merchandise containing NCAA trademarks may contact” CLC. *Id.* at 7 (FAQ No.
26 16). The NCAA website refers to CLC as “the licensing representative for the
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1 NCAA[,]” “responsible for administering the licensing program, including
2 processing applications, collecting royalties, enforcing trademarks and pursuing
3 new market opportunities.” *Id.* (FAQ No. 15)

- 4
5 b. In describing its licensing program, the NCAA’s website states, “The NCAA
6 licensing program consists of a limited number of companies that are committed to
7 producing quality products with NCAA registered trademarks and registered
8 trademarks of member institutions that compete in NCAA Championships.” *Id.* at
9 6 (FAQ No. 14).
- 10 c. In this FAQ, Section fourteen of seventeen responses to FAQs specifically address
11 NCAA’s trademark rights or the use of the NCAA’s trademarks, service marks, or
12 logos. FAQs Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 specifically address
13 the NCAA’s trademarks. *Id.* at 1-8.
14

15 I declare under penalty of perjury that the foregoing is true and correct.

16 EXECUTED this 13th day of October, 2009, in Washington, DC.

17
18 /s/ Peter M. Boyle

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