

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

LYDIA HUTSON, L.L.C.

Plaintiff,

VERSUS

NATIONAL FOOTBALL LEAGUE

Defendant.

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* CIVIL ACTION
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* NO.
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* SECTION " "
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* JUDGE
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* MAGISTRATE JUDGE
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NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendant National Football League ("NFL"), through undersigned counsel and with full reservation of all exceptions, objections, rights, and defenses, hereby gives notice of the removal of the above-captioned action from the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, to the United States District Court for the Western District of Louisiana, pursuant to 28 U.S.C. Sections 1332 and 1441, and represents as follows:

1. On or about December 9, 2010, plaintiff Lydia Hutson L.L.C. commenced this action by filing a pleading entitled "Petition for Damages & For Injunctive Relief" (hereinafter the "Petition") against the NFL in the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, Docket Number 240,313.

2. Plaintiff alleges that it is the owner of the trademark "BELIEVE DAT" and seeks damages and injunctive relief relating to the NFL's purported unauthorized use of the trademark. *See* Pet. at ¶¶ 3, 10-11.

3. As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. Section 1441 because the NFL has satisfied the procedural requirements for removal, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1332.

I. THE NFL HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL.

4. The Petition was filed on December 9, 2010.

5. Plaintiffs purportedly served the petition on the NFL, through its Agent National Football League, 230 Park Avenue, New York, New York, 70017, on December 13, 2010.

6. This Notice of Removal has been filed within thirty days of the NFL's first receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which this action is based, and is therefore timely under 28 U.S.C. Section 1446(b).

7. The NFL, defendant herein, files this Notice of Removal. There are no other defendants. Thus, all defendants have joined in filing this Notice of Removal.

8. The Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, is located within the Western District of Louisiana. *See* 28 U.S.C. § 98(c).

Therefore, venue is proper pursuant to 28 U.S.C. Section 1441(a) because the Western District of Louisiana is the "district and division embracing the place where such action is pending."

9. No previous application has been made for the relief requested herein.

10. As required by 28 U.S.C. Section 1446(a), copies of all process, pleadings and orders served upon the NFL, which papers include the Petition, are attached *in globo* as Exhibit A.

11. As required by 28 U.S.C. Section 1446(d), promptly after the filing of this Notice of Removal, the NFL will give written notice of this Notice of Removal to opposing counsel and will file a copy of the Notice of Removal with the Clerk of Court of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, which shall effect the removal.

II. THIS COURT HAS ORIGINAL JURISDICTION UNDER 28 U.S.C. SECTION 1332 BECAUSE COMPLETE DIVERSITY EXISTS AND THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000, EXCLUSIVE OF INTEREST AND COSTS.

12. This lawsuit is removable because complete diversity exists and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

A. Complete Diversity Exists.

13. The district courts of the United States have original subject matter jurisdiction over civil actions between citizens of different states in which the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

14. For purposes of determining whether diversity jurisdiction exists, limited liability companies and unincorporated associations are deemed to be a citizen of each state of which any of the company's members is a citizen. *See Harvey v. Grey Wolf Drilling Co.*, 542

F.3d 1077, 1080 (5th Cir. 2008). Individuals are citizens of the state where they are domiciled. *Coury v. Prot*, 85 F.3d 244, 249-50 (5th Cir. 1996).

15. The citizenship of Plaintiff is not described in the Petition; however, Lydia Hutson, L.L.C. is a Louisiana limited liability company and a "resident and domiciliary of the City of Pineville, Parish of Rapides, State of Louisiana." *see* Pet. at Preamble. Based on information and belief, Lydia Hutson, L.L.C. has a single member, Lydia Hutson, who is a citizen of Louisiana.

16. The NFL is an unincorporated association of 32 football teams organized and existing under the laws of the State of New York with its principal place of business at 280 Park Avenue, New York, New York 10017. None of the members of the NFL, including the New Orleans Louisiana Saints, L.L.C., are Louisiana citizens. Because the plaintiff is a citizen of Louisiana, and neither the defendant nor any of the NFL members are citizens of Louisiana, this action is between citizens of different states and complete diversity exists.

B. The Jurisdictional Amount Is Satisfied.

17. The amount in controversy must exceed \$75,000, exclusive of interest and costs, in order for diversity jurisdiction to exist. *See* 28 U.S.C. § 1332.

18. The Fifth Circuit, in *Grant v. Chevron Phillips Chemical Co. L.P.*, 309 F.3d 864 (5th Cir. 2002), held that the amount in controversy requirement is satisfied either by demonstrating that it is "facially apparent" from the petition that the claim likely exceeds \$75,000, exclusive of interest and costs, or "by setting forth *the facts* in controversy — preferably in the removal petition . . . that support a finding of the requisite amount." *Id.* at 868 (emphasis in original).

19. In the petition, Plaintiff seeks an award of "all damages under Louisiana law *including the right to recover all profits* derived from and/or all damages suffered" as a result of the NFL's purported infringing use of the BELIEVE DAT mark. *See* Pet. ¶ 12 (emphasis added). Further, the Plaintiff furnished a security in the amount of \$25,000 in relation to a temporary restraining order. *See* Temporary Restraining Order and Rule for Preliminary Injunction at p.1, Exh. A herein.

20. The NFL denies Plaintiff's allegations of Defendant's liability, but regardless of that denial, the amount put in controversy by Plaintiff's claim exceeds \$75,000, exclusive of interest and costs.

21. The preceding facts demonstrate that the amount in controversy arising from Plaintiff's claim for relief exceeds \$75,000, exclusive of interest and costs.

22. Once a defendant shows in the removal petition that the amount in controversy exceeds the jurisdictional amount, the "plaintiff can defeat diversity jurisdiction only by showing to a 'legal certainty' that the amount in controversy does not exceed \$75,000." *See Grant v. Chevron Phillips Chemical Co.*, 309 F.3d at 869 (quoting *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir. 1995)).

WHEREFORE, defendant the National Football League hereby removes this action from the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, to the United States District Court for the Western District of Louisiana.

Respectfully submitted,

Dated: December 17, 2010

/s/ Agnieszka A. McPeak

Phillip A. Wittmann, 13625 (T.A.)

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Attorneys for Defendant,

The National Football League

CERTIFICATE

I hereby certify that a copy of the above and foregoing Notice of Removal has been served upon the following counsel of record and parties by placing same in the United States mail, postage prepaid, this 17th day of December, 2010.

Thomas D. Davenport, Jr., Esq.
1628 Metro Drive
Alexandria, LA 71301

/s/ Agnieszka A. McPeak