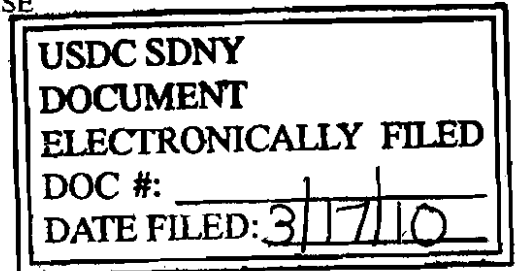


Sweet, J

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAJOR LEAGUE BASEBALL)
PROPERTIES, INC.)
)
Plaintiff,)
)
vs.)
)
THE UPPER DECK COMPANY, LLC)
)
Defendant)

Civil Action No. 10 Civ. 732 (RWS)
ECF CASE



CONSENT JUDGMENT

WHEREAS, Plaintiff Major League Baseball Properties, Inc. ("MLBP") is a licensee of and acts as licensing agent for each of the Major League Baseball Clubs, the Office of the Commissioner of Baseball (the "BOC") and their respective affiliated and related entities (collectively, the "MLB Entities"). The Major League Baseball Clubs currently consist of the Baltimore Orioles, Boston Red Sox, Chicago White Sox, Cleveland Indians, Detroit Tigers, Kansas City Royals, Los Angeles Angels of Anaheim, Minnesota Twins, New York Yankees, Oakland Athletics, Seattle Mariners, Tampa Bay Rays, Texas Rangers, Toronto Blue Jays, Arizona Diamondbacks, Atlanta Braves, Chicago Cubs, Cincinnati Reds, Colorado Rockies, Florida Marlins, Houston Astros, Los Angeles Dodgers, Milwaukee Brewers, New York Mets, Philadelphia Phillies, Pittsburgh Pirates, St. Louis Cardinals, San Diego Padres, San Francisco Giants and Washington Nationals. It is understood that references to the "MLB Clubs" or, individually, a "MLB Club," as the case may be, shall include each MLB Club's respective predecessors-in-interest, predecessors, successors and assigns; and

WHEREAS, included among the intellectual property licensed and enforced by MLBP on behalf of itself and the other MLB Entities are the MLB Entities' trademarks, service

marks and trade names and the trademark names owned and used by the MLB Entities and/or under which each of the MLB Clubs competes, along with a variety of other names, trademarks, service marks, logos, designs and trade dresses owned and used by the MLB Clubs (all referred to collectively herein as the "MLB Marks"), including, without limitation, the unique and inherently distinctive colors, color combinations, striping, uniform designs and/or positioning of the MLB Club names, logos and other elements (such as geographic designations) used on the MLB Clubs' uniforms, or components thereof (the "MLB Uniform Trade Dress"; it is understood that all references herein to MLB Marks includes MLB Uniform Trade Dress); and

WHEREAS, the MLB Entities, their predecessors, affiliates and licensees have long used and are using the MLB Marks, and own numerous registrations and applications for said MLB Marks throughout the world; and

WHEREAS, as a result of the substantial use, marketing and promotion of the MLB Marks for many years in connection with baseball-related services and as part of an extensive licensing program on a wide variety of goods and services relating to and promoting the MLB Clubs, the MLB Marks have become associated by fans, consumers and the trade, press, media and public with the MLB Entities and have developed considerable and valuable goodwill of great value to the MLB Entities; and

WHEREAS, through years of creating, among other trading card products, baseball trading cards, UDC has established considerable goodwill in its trademark Upper Deck;

WHEREAS, the Upper Deck Company, LLC and/or its predecessors or predecessors-in-interest ("UDC") were previously party to several license agreements with MLB (the "UDC License Agreements") pursuant to which MLB granted UDC the right to produce, among other things, baseball trading card sets bearing the MLB Marks and featuring

Major League Baseball players in the MLB Uniform Trade Dress during a term that expired in 2009; and

WHEREAS, in provisions surviving the expiration of the term of the UDC License Agreements, UDC acknowledged the proprietary nature and the MLB Entities' ownership of the MLB Marks, that a license from the MLB Entities is required in order to use any MLB Marks or create derivatives thereof, that the prohibition on use of the MLB Marks extended to trademark, fair, incidental, descriptive or functional uses, that UDC would not use the primary colors of the MLB Clubs in combination with baseball indicia or the MLB Clubs' geographic designations, that UDC would not directly or indirectly attack the validity of the licenses granted, and that UDC agreed not to make any use of the MLB Marks or derivatives thereof without the prior written consent of MLBP; and

WHEREAS, MLBP has claimed that UDC has created and commenced distributing multiple trading card sets containing images of current and former Major League Baseball players depicted in uniform in such a way that MLB Marks are clearly visible and readily identifiable by consumers, and UDC has represented that, beginning in 2010, without MLBP's consent, it manufactured, sold, advertised, promoted or distributed baseball trading cards depicting and/or bearing baseball players in game action photographs in Major League Baseball uniforms and otherwise made no use of MLB Marks and disclaimed affiliation with MLB in sets or series having the following names: 2009 Ultimate Collection; 2009 Signature Stars; and 2010 Series 1; and

WHEREAS, on February 1, 2010, MLBP brought a lawsuit against The Upper Deck Company, LLC in this Court, Case No. 10-Civ. 732 (RWS), entitled *Major League Baseball Properties, Inc. v. The Upper Deck Company, LLC* ("MLB Lawsuit") alleging claims for breach of contract, trademark infringement under the Lanham Trademark Act, 15 U.S.C.

§ 1114, false designation of origin, false or misleading descriptions of fact or false and misleading representations of fact under the Lanham Trademark Act, 15 U.S. § 1125(a), trademark dilution under the Lanham Trademark Act, 15 U.S.C. § 1125(c), unfair competition, common law trademark infringement, and violations of New York General Business Law § 360-1; and

WHEREAS, the parties have entered into a settlement agreement (“Settlement Agreement”) and have consented to the entry of this Consent Judgment on MLBP’s claims against UDC, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the subject matter herein and over the parties who have consented to entry of this Consent Judgment.

2. Any units or quantities of the following sets or series of baseball trading cards manufactured, produced and packaged on or prior to February 1, 2010 may be sold, offered for sale and distributed by UDC: 2009 Signature Stars, 2009 Ultimate Collection and 2010 Series 1.

3. Except as otherwise provided in Paragraph 2, UDC, its past, current, and/or future directors, shareholders, owners, employees, officers, agents, representatives, members, related and/or affiliated entities and other individual and entities under their control, all those in active participation and concert with each of the foregoing, and all individuals or entities that in the future may be owned in whole or part or directly or indirectly by any of them (collectively, the “UDC Entities”) are hereby permanently enjoined from:

a. making use (including but not limited to trademark, fair, incidental, descriptive, or functional uses) in connection with the manufacture, sale, offering for sale distribution, advertising or promoting of trading cards, novelties, collectibles, clothing or

other apparel or any other product or service, including but not limited to use on the products themselves, and/or on the labels, packaging for the products and/or advertising or promotional materials for such products or services of:

i. any MLB Marks or any other trademarks, service marks, names, trade names, trade dresses, logos, designs, distinctive colors, color combinations, striping, uniform designs, the positioning of such elements on uniforms, that are confusingly similar to the MLB Marks;

ii. any images, pictures, posters, photographs, caricatures, depictions or likenesses in a still or moving form (collectively, "Images") in whole or in part of current or former players, coaches or managers wearing any item resembling a Major League Baseball uniform or a component of such uniform on or in any products or materials including, without limitation, on any product, advertising, or promotional materials, without first obtaining the express written permission of the applicable MLB Entities. For purposes of this Agreement, jerseys, pants, jackets, caps, helmets, and catchers' equipment are considered components of a Major League Baseball uniform. For the avoidance of doubt, the foregoing shall preclude the UDC Entities from, among other things, using any Images that feature a component of a Major League Baseball uniform that is airbrushed, intentionally blocks or covers, or otherwise alters, any of the MLB Marks; or

iii. a uniform number and/or a baseball player name or Image, and/or a geographical designation, initials, abbreviation, or other geographical reference to the location of a MLB Club together with any of the MLB Marks or other names, marks, trade dress, colors, or designs similar thereto or which

identify or are associated with or suggest a connection with any of the MLB Entities ;

b. doing any other act or thing calculated or likely to cause confusion with the MLB Marks or to suggest that any of the UDC Entities, or their licensors, licensees, manufacturers, distributors and/or their respective goods or services, are in any way associated or affiliated with, endorsed or sponsored by, or are sponsors of, any of the MLB Entities, including as prohibited by the UDC License Agreements.

4. UDC represents and warrants that all merchandise, signs, point of purchase displays and materials, boxes, packaging, wrappings, catalogs, decals, flyers, brochures, or other goods or printed matter or advertising or promotional materials bearing the MLB Marks, or any derivative or confusingly similar versions or colorable imitations of the MLB Marks, previously has been sold or disposed of to entities that are not UDC Entities and cannot be retrieved by UDC.

5. UDC represents and warrants that (i) except as otherwise provided in Paragraph 2, the UDC Entities have ceased all use of the MLB Marks; (ii) except as otherwise provided in Paragraph 2, the UDC Entities do not have in their possession, custody or control any more items including, without limitation, cards or other products, labels, advertising or promotional materials bearing the MLB Marks; and (iii) any and all use the UDC Entities made of any MLB Marks has not established or conferred to any of them any ownership or other rights in the MLB Marks and that all such use inures to the benefit of the MLB Entities.

6. UDC agrees that the use of the MLB Marks on and in connection with baseball trading cards and advertisements, if any, will constitute trademark use.

7. UDC agrees that none of the UDC Entities will oppose, attempt to oppose, cancel, attempt to cancel, object to or otherwise interfere with, contest, or assist others in

contesting, the MLB Entities' use and/or registration of the MLB Marks or any other names, marks, trade dress, designs or domain names of the MLB Entities for any and all goods or services or challenge the validity of the MLB Entities' rights in such MLB Marks or any other names, marks, trade dress, designs or domain names.

8. MLBP shall have the right to reinstate any claims originally raised in the MLB Lawsuit if UDC fails to comply with the terms of this Consent Judgment.

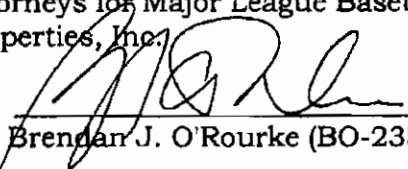
9. This Court shall retain continuing jurisdiction over the parties to this Consent Judgment and over the subject matter of this action for the purposes of interpreting and enforcing the terms of the Settlement Agreement and this Consent Judgment.

10. All of the parties hereto consent to the issuance and entry of this Consent Judgment and waive the right to appeal from or otherwise contest this Consent Judgment, which may be entered in the form and content as set forth above without further notice to any party.

11. Nothing in this Consent Judgment shall relieve either party of any further obligations set forth in the Settlement Agreement.

PROSKAUER ROSE LLP

Attorneys for Major League Baseball
Properties, Inc.

By: 
Brendan J. O'Rourke (BO-2351)

1585 Broadway
New York, NY 10036
212 969-3000
borourke@proskauer.com

**QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP**

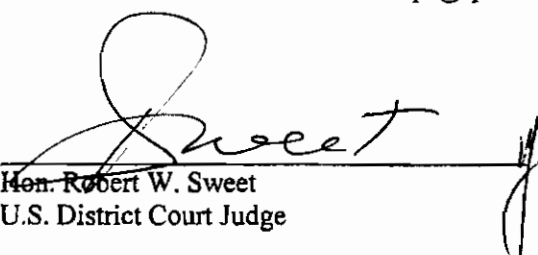
Attorneys for The Upper Deck
Company, Inc.

By: 
Robert L. Raskopf (RR-5022)

51 Madison Avenue
New York, NY 10010
(212) 849-7000
robertraskopf@quinnemanuel.com

SO ORDERED:

Dated: March 11, 2010


Hon. Robert W. Sweet
U.S. District Court Judge