



5. In addition, this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 as the parties are citizens of different states and the amount in controversy is in excess of \$75,000.

6. This Court has personal jurisdiction over defendant Sportingbet because the defendant, *inter alia*, transacts business in the Commonwealth of Pennsylvania, engages in a persistent course of conduct in the Commonwealth of Pennsylvania and expects, or reasonably should expect, its acts to have legal consequences in the Commonwealth of Pennsylvania.

7. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in the Eastern District of Pennsylvania, and Defendant expects, or reasonably should expect, its acts to have legal consequences in the District.

### **FACTUAL BACKGROUND**

8. Plaintiff owns and operates the website [www.rotoplay.com](http://www.rotoplay.com), which offers online fantasy sports contests. In 2001, Rotoplay debuted two contests on [www.rotoplay.com](http://www.rotoplay.com) – Baseball Lottery and Football Lottery – which were unique in the marketplace.

9. Rotoplay's Football Lottery contest allows a contestant to pick six NFL players from a list of 54 NFL players randomly selected each week by Rotoplay. Rotoplay then utilizes its unique point value scoring system to determine weekly rankings for each NFL player based on that week's actual performance. The contestant with the highest ranking set of players wins. (See screen shot from [www.rotoplay.com](http://www.rotoplay.com), attached hereto as Exhibit A).

10. Rotoplay owns six United States copyright registrations that relate to these two contests: Registration TX 6-146-719 entitled Baseball Lottery (attached hereto as Exhibit

B); Registration TX 6-146-715 entitled Baseball Lottery Rules (attached hereto as Exhibit C); Registration TX 6-146-716 entitled Baseball Lottery Scoring System (attached hereto as Exhibit D); Registration TX 6-146-720 entitled Football Lottery (attached hereto as Exhibit E); Registration TX 6-146-717 entitled Football Lottery Rules (attached hereto as Exhibit F); and Registration TX 6-146-718 entitled Football Lottery Scoring System (attached hereto as Exhibit G).

11. Upon information and belief, Sportingbet owns and operates more than two dozen websites, including the websites [www.sportingbetUSA.com](http://www.sportingbetUSA.com); [www.sportsbook.com](http://www.sportsbook.com), [www.sports.com](http://www.sports.com) [www.playersonly.com](http://www.playersonly.com), [www.aces.com](http://www.aces.com), and [www.megasports.com](http://www.megasports.com).

12. On September 24, 2001, Rotoplay president Korey Gardner communicated via email with Jeff G. (last name unknown) ("Mr. G.") of Sportingbet to introduce him to Rotoplay's sports lottery contests.

13. On April 7, 2002, Mr. G. responded to Rotoplay via email and requested more information.

14. Korey Gardner and Mr. G. thereafter exchanged several additional emails between April 7, 2002, and May 2, 2002.

15. In those emails, Mr. G. indicated that he would like to see and test Rotoplay's sports lottery contests.

16. Mr. Gardner supplied Mr. G. with a special account that would allow Mr. G. to test Rotoplay's products. Mr. G., in fact, used the special account to view and test the products.

17. On April 27, 2002, Mr. G. sent an email to Mr. Gardner stating that he liked Rotoplay's products and would like to see a business proposal.

18. On May 1, 2002, Mr. Gardner and Mr. G. spoke by telephone. In a follow-up email to Mr. Gardner dated May 1, 2002, Mr. G. summarized that telephone conversation as follows: (1) Sportingbet was primarily interested in the Football Lottery game; (2) Sportingbet would prefer to buy a copy of the product so that it could host and operate its own contests; and (3) Sportingbet would make its "free" copy different from the copy offered on the Rotoplay web site, with prizes valued lower than the prizes offered by Rotoplay.

19. On May 1, 2002, Mr. Gardner also sent a follow-up email to Mr. G. confirming the telephone conversation.

20. The May 1, 2002 emails were the final communications between the two companies regarding Sportingbet's interest in the sale or license of the Rotoplay lottery contests.

21. In late 2003, a customer alerted Rotoplay to the fact that identical contests were being offered on multiple websites owned and operated by Sportingbet.

22. Mr. Gardner conducted an investigation and learned that Sportingbet had copied Rotoplay's HTML computer code and was offering identical contests, with identical rules and scoring systems. The HTML code, rules and scoring systems are the subject of Rotoplay's U.S. copyright registrations.

23. A screenshot from Sportingbet's website at [www.sportsbook.com](http://www.sportsbook.com) (attached hereto as Exhibit H) shows rules that are identical to those covered by Rotoplay's Football Lottery Rules, set forth in Registration TX 6-146-717 (see Exhibit F).

24. A screenshot from Sportingbet's website at [www.sportsbook.com](http://www.sportsbook.com) (see Exhibit H) shows a scoring system that is identical to that covered by Rotoplay's Football Lottery Scoring System, set forth in Registration TX 6-146-718 (see Exhibit G).

25. The HTML code on Defendant's [www.sportsbook.com](http://www.sportsbook.com) site (see HTML code from [www.sportsbook.com](http://www.sportsbook.com), attached hereto as Exhibit I) is identical to that covered by Rotoplay's Football Lottery, set forth in Registration TX 6-146-720 (see HTML code from [www.rotoplay.com](http://www.rotoplay.com), attached hereto as Exhibit E).

26. Upon information and belief, Sportingbet also offered a baseball game that had rules and scoring system that were identical to Rotoplay's Baseball Lottery Rules and Baseball Lottery Scoring system, which are covered by Rotoplay's Copyright Registrations TX 6-146-715 and TX 6-146-716 (see Exhibits C & D respectively).

27. In late 2003, Mr. Gardner emailed Mark Blanford, the vice president of Sportingbet to alert him to the fact that Sportingbet's football and baseball games were identical to Rotoplay's Baseball Lottery and Football Lottery.

28. On December 3, 2003, Mr. Gardner received a return email from Kathy Cena of the Sportingbet legal department indicating that she would investigate Mr. Gardner's claims.

29. Although Mr. Gardner sent a follow-up email, Sportingbet never responded.

## **COUNT I**

### **COPYRIGHT INFRINGEMENT**

30. Plaintiff re-alleges and incorporates by reference the averments of Paragraphs 1 through 29 as if fully set out herein.

31. This count is for copyright infringement and arises under the Copyright Act of 1976, 17 U.S.C. § 501, et. seq.

32. Plaintiff is the owner of duly registered copyrights in works of art consisting of online fantasy sports contests and lotteries as described above. Plaintiff owns the exclusive right to copy, reproduce, and distribute these works.

33. Defendant Sportingbet is not authorized by Plaintiff to copy, reproduce or distribute Plaintiff's copyrighted works. Any such copying, reproduction or distribution is unlawful under Title 17 of the United States Code.

34. Defendant has copied, reproduced and distributed Plaintiff's copyrighted works.

35. As a result of Defendant's unlawful acts, Plaintiff has suffered, and continues to suffer, substantial damages and irreparable injury, in an amount not yet calculated.

36. Plaintiff has no adequate remedy at law.

## **COUNT II**

### **COMMON LAW UNFAIR COMPETITION**

37. Plaintiff realleges and incorporates by reference the averments of Paragraphs 1 through 36 as if fully set out herein.

38. Defendant's above-described acts constitute unfair competition. Defendant's passing off of Plaintiff's products and services as its own is likely to cause confusion, mistake or deception in violation of the common law of the Commonwealth of Pennsylvania.

39. By reason of Defendant's willful acts, Plaintiff has suffered injury to its business, reputation and goodwill and has sustained damages, loss of revenues and profits in an amount not yet calculated.

**COUNT III**

**CONVERSION**

40. Plaintiff realleges and incorporates by reference the averments of Paragraphs 1 through 39 as if fully set forth herein.

41. This count is for common law conversion.

42. At all times relevant hereto, Plaintiff was the rightful owner of property consisting of its online fantasy sports contests.

43. Without Plaintiff's authorization or consent, and without other lawful justification, Defendant unlawfully acquired Plaintiff's online fantasy sports contests and thereby interfered with Plaintiff's exclusive right to own or possess the online fantasy sports contests.

44. Defendant thereafter copied, reproduced and distributed the online fantasy sports contests and thus deprived Plaintiff of its right to exclusively own and possess the works.

45. Plaintiff has suffered damages from Defendant's conversion in an amount not yet determined.

**COUNT IV**

**INJUNCTIVE RELIEF**

46. Plaintiff realleges and incorporates by reference the averments of Paragraphs 1 through 45 as if fully set out herein.

47. This count is for injunctive relief.

48. As set forth above, Plaintiff is the owner of certain copyrighted works pursuant to the Copyright Act of 1976, as amended. 17 U.S.C. § 101, *et. seq.* As the owner of copyrighted works, Plaintiff has the exclusive right to reproduce the copyrighted work, prepare distinctive works based upon the copyrighted work, and to distribute copies of

the copyrighted work to the public by sale or other transfer of ownership. 17 U.S.C. § 106.

49. Defendant's unlawful publication, distribution and sale of Plaintiff's online fantasy sports contests containing Plaintiff's unique fantasy sports contests and lotteries, including the copyrighted works, constitutes an immediate threat of irreparable injury to Plaintiff and its intellectual property rights.

50. In recognition of the irreparable harm that may result if an owner's copyrights are infringed, the United States Congress expressly provided for the granting of preliminary and final injunctions to prevent or restrain infringement of a copyright. 17 U.S.C. § 502.

51. Congress also provided the additional remedy of impounding infringing articles where such action is reasonably necessary to protect against infringement of a copyrighted work. 17 U.S.C. § 503.

52. Plaintiff's right to exclusive use of its online fantasy sports contests and lotteries will be destroyed unless Defendant is immediately enjoined and the infringing materials immediately impounded.

53. Plaintiff can demonstrate a likelihood of success on the merits of its copyright and other claims based on Defendant's unauthorized and unlawful use of the subject works.

54. The harm, if any, to Defendant by the grant of a preliminary injunction is outweighed by the harm to Plaintiff if the requested relief is denied and Defendant is permitted to continue to unlawfully use the subject works.

55. The public will be benefited by the grant of an injunction in this case because the Copyright Act expressly forbids the unlawful conduct of Defendant as described herein.

56. Plaintiff has no adequate remedy at law.



**WHEREFORE**, Plaintiff prays this Court enter its order and judgment that:

(i) Judgment be entered in its favor and against Defendant as to each of the above counts;

(ii) Defendant has infringed Plaintiff's copyrights and other common law rights as set forth in this Verified Complaint;

(iii) The Court issue preliminary and permanent injunctions preventing Defendant, its officers, servants, employees, agents and all persons acting by, through or under them, from:

(a) selling, offering to sell or accepting orders for any online fantasy sports contests or lotteries containing any materials that infringe Plaintiff's copyrights;

(b) making any further copies or derivative works of, or distributing, selling, or utilizing or supplying any infringing online fantasy sports contests or lotteries;

(c) making, using, selling or offering to sell online fantasy sports contests or lotteries that infringe Plaintiff's intellectual property, and inducing others to do so;

(d) otherwise engaging in acts that violate Plaintiff's copyrights, as well as the related common law rights, as set forth in this Verified Complaint.

(iv) Plaintiff be awarded its actual damages, as well as Defendant's profits attributable to infringement of Plaintiff's copyrights or other common law rights, as set forth in this Verified Complaint;

(v) Plaintiff be awarded statutory damages based on Defendant's acts of infringement, as authorized by the Copyright Act of 1976;

(vi) Plaintiff be awarded such further damages as Plaintiff may have suffered as a result of Defendant's acts of infringement and unfair competition;

(vii) Defendant be held to be a willful infringer and Plaintiff be awarded such further damages as Plaintiff may have suffered as a result of Defendant's willful infringement under 17 U.S.C. § 504(c)(2);

(viii) Defendant be required to account for all gains, profits, and advantages derived from Defendant's acts of infringement and unfair competition;

(ix) Defendant pay Plaintiff prejudgment and post-judgment interest as allowed by law;

(x) Plaintiff be awarded punitive and exemplary damages against Defendant;

(xi) Plaintiff be awarded its costs associated with this action, including costs and attorneys' fees incurred by Plaintiff in connection with Defendant's acts of infringement and unfair competition; and

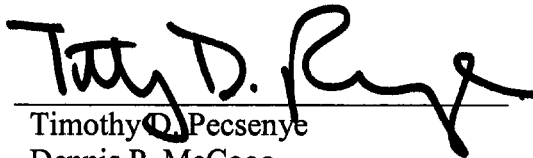
(xii) Such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims that may be tried by a jury.

Respectfully submitted,

Dated: 6-9-05

By: 

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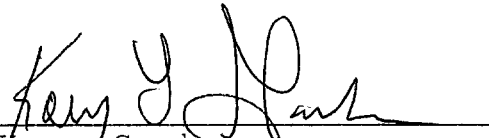
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**VERIFICATION**

I, Korey Gardner, verify pursuant to 28 U.S.C. § 1746 that I am an officer of Rotoplay, Inc. and that I have read the foregoing Verified Complaint and know the contents thereof to be true based upon my own knowledge, information and belief, except as to such matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on this 7 day of June, 2005.

By:

  
Korey Gardner