

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNIVERSITY OF PITTSBURGH–OF THE)	
COMMONWEALTH SYSTEM OF HIGHER)	CIVIL ACTION NO. _____
EDUCATION,)	
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
IMG COLLEGE, LLC,)	
)	
Defendant.)	

COMPLAINT

Plaintiff, University of Pittsburgh–Of the Commonwealth System of Higher Education (“Pitt”), by and through its undersigned counsel, Buchanan Ingersoll & Rooney PC, alleges as follows for its Complaint against Defendant, IMG College, LLC (“IMG”):

INTRODUCTION

1. This lawsuit arises from IMG’s intentional breach of its contractual obligations to Pitt under a License Agreement, in retaliation for Pitt exercising its contractual right by allowing the License Agreement to expire on its own terms. Rather than pay Pitt monies that are undisputedly owed under the License Agreement, IMG has improperly withheld in excess of \$3.6 million and has refused to cure following a demand for payment by Pitt. Pitt has fully performed its obligations under the License Agreement and seeks judicial intervention in order to obtain IMG’s compliance and Pitt’s benefit of the bargain.

PARTIES

2. Founded in 1787, Pitt is one of the oldest universities in the United States. Pitt is a state-related institution of higher learning and a Pennsylvania non-profit corporation with its principal place of business in Pittsburgh, Pennsylvania,

3. Pitt operates an intercollegiate varsity athletic program on its Pittsburgh campus through a Department of Athletics (the “Athletic Program”). Pitt’s successful Athletic Program is a NCAA Division I member, and Pitt is a member of the Atlantic Coast Conference (“ACC”).

4. IMG is a Delaware limited liability company with its principal place of business in Winston-Salem, North Carolina. IMG’s two members are residents of the States of Ohio (International Merchandising Company, LLC) and Georgia or North Carolina (Ashely Page).

5. IMG touts itself as the nation’s leading collegiate sports marketing company with exclusive marketing rights to nearly 90 universities and colleges.

6. In November 2013, Pitt and IMG (collectively, the “Parties”) entered into a written License Agreement, effective as of July 1, 2012, as amended effective June 1, 2015 (collectively, the “License Agreement”).¹

¹ The License Agreement and all invoices referenced herein are not currently attached hereto because of their confidential nature. IMG is in possession of all documents referenced in the Complaint.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a) because there is diversity of citizenship among the Parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §1391(b) as a district in which IMG resides and/or conducts business, and in which a substantial part of the events giving rise to the claim occurred.

9. In the License Agreement at issue in this action, the Parties agreed that any dispute arising out of the License Agreement “shall be adjudicated in, and only in, a federal or state court of appropriate jurisdiction located in Allegheny County, PA.” IMG further expressly agreed and consented to personal jurisdiction and venue in this Court.

THE LICENSE AGREEMENT

10. Under the License Agreement, IMG received an exclusive license to Pitt’s “inventory” of marketing rights with respect to Pitt’s Athletic Program, which included: the right to arrange for certain radio broadcasts of Pitt athletic events not subject to other network commitments; to produce, and, if requested, to distribute and sell certain Athletic Department publications and materials; to obtain and directly contract with third-party sponsors; and, with certain enumerated exceptions, to exploit other marketing, promotional and commercial rights associated with Pitt’s Athletic Program (the “License”).

11. The License Agreement had a term of seven years and unless extended, expired on its own terms on June 30, 2019. Pitt did not elect to extend the License Agreement following the end of the term. As a consequence, the License Agreement expired on June 30, 2019.

IMG's Financial Obligations under Article IX

12. IMG's financial obligations are largely contained in Article IX of the License Agreement.

13. In exchange for the grant of the License, IMG agreed to make certain payments to Pitt, including a "Guaranteed Royalty," which was due annually on June 1 of each year that the License Agreement was in effect.

14. Under Section 9.2 of Article IX of the License Agreement, IMG agreed to pay Pitt the following on June 1, 2019:

- (a) a broadcast rights royalty (§ 9.2[A]);
- (b) a publication rights royalty (§ 9.2[B]);
- (c) compensation for game tickets and parking passes provided to IMG by Pitt (§ 9.2[C]); and
- (d) an additional amount for 2019 (§ 9.2[D]).

15. In addition to the foregoing amounts, under Section 9.4 of Article IX of the License Agreement, IMG also agreed to pay Pitt additional consideration for “exceptional performance” (§ 9.4[A][4]).²

16. IMG did not make any of the aforementioned payments to Pitt which were due on June 1, 2019.

17. On June 6, 2019, Pitt, through its counsel, demanded payment.

18. To date, IMG has not paid, and has intentionally withheld, \$3,535,000 owed to Pitt under Article IX of the License Agreement.

IMG’s Financial Obligations Under Article VII

19. Under Sections 7.5 and 7.6 of Article VII of the License Agreement, IMG agreed to reimburse Pitt, within 30 days after delivery of an invoice from Pitt, for travel costs incurred by Pitt on behalf of IMG staff and sponsors. These costs included, all non-charter air transportation and all travel-costs associated with post-season games.

20. On June 6, 2019, Pitt delivered to IMG an itemized invoice of travel costs totaling \$26,364.65.

21. Despite Pitt’s submission of the June 6, 2019 invoice, IMG has not paid, and has intentionally withheld, \$26,364.65 owed to Pitt under Article VII of the License Agreement.

² In 2018, Pitt’s football team appeared in the ACC championship game, entitling Pitt to an exceptional performance payment.

IMG's Other Financial Obligations Under the License Agreement

22. Pursuant to the rights granted under the License Agreement, IMG directly contracted with UPMC to be a Sponsor of Pitt's Athletic Program.

23. To assist IMG in meeting its obligations to UPMC under that contract, Pitt, and not IMG, generated the content displayed on Pitt's "UPMC Pitt LiveWire" platform.

24. Therefore, in each year that the "UPMC Pitt LiveWire" platform was in place, IMG was obligated to pay Pitt \$25,000 for Pitt's contribution to IMG's marketing efforts regarding the "UPMC Pitt LiveWire" platform.

25. On June 6, 2019, Pitt delivered to IMG an invoice for \$25,000 with respect to the "UPMC Pitt Live Wire" sponsorship.

26. Despite Pitt's submission of the June 6, 2019 invoice, IMG has not paid, and has intentionally withheld, \$25,000 owed to Pitt.

27. Additionally, under the License Agreement, IMG agreed to facilitate Pitt's online auctions and was obligated to pay Pitt 80% of all revenue generated in 2019 by the online auctions.

28. IMG has not paid, and has intentionally withheld, \$23,534.86 of online auction revenue owed to Pitt.

29. In total, IMG has not paid, and has intentionally withheld, \$3,609,899.51 owed to Pitt pursuant to and in connection with License Agreement in retaliation for Pitt's decision not to extend the term of the License Agreement.

Pitt's Contractual Right To Not Extend the License Agreement

30. Before the expiration of the License Agreement on June 30, 2019, the Parties negotiated in good faith regarding whether to extend the term of the License Agreement.

31. On March 13, 2019, Pitt, through its Director of Athletics, Heather Lyke, notified IMG in writing of its decision not to extend the License Agreement beyond its stated June 30, 2019 expiration date. Pitt subsequently decided to license its Athletic Program marketing rights to another marketing company following expiration of the License Agreement.

32. Therefore, the Parties did not agree to extend the term of the License Agreement beyond June 30, 2019.

COUNT I
BREACH OF CONTRACT

33. Pitt incorporates Paragraphs 1 through 32 of the Complaint as if set forth herein in their entirety.

34. Under the License Agreement, IMG agreed to pay Pitt royalties, reimbursement for travel costs, online auction revenue and other fees when due.

35. By intentionally failing to pay monies when due, IMG breached the License Agreement.

36. Pitt notified IMG of its breach as required pursuant to the notice provisions in the License Agreement.

37. IMG has not cured its failure to pay monies owed to Pitt.

38. Pitt has fully performed all of its obligations under the License Agreement.

39. As a result of IMG's breach of the License Agreement, IMG has caused Pitt damage.

WHEREFORE, Plaintiff Pitt respectfully demands judgment in its favor and against Defendant IMG for breaches of the License Agreement, awarding compensatory damages in an amount to be proved at trial, which amount exceeds \$75,000, exclusive of interest and costs, and such other relief as the Court deems just and proper.

A TRIAL BY JURY IS DEMANDED.

Dated: July 15, 2019

BUCHANAN INGERSOLL & ROONEY

By: s/ Gretchen L. Jankowski
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One Oxford Centre
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Pittsburgh, PA 15219-1410
Fax: 412-562-1041

Counsel for Plaintiff University of Pittsburgh-
Of the Commonwealth System of Higher
Education

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>University of Pittsburgh—Of the Commonwealth System of Higher Education</p> <p>(b) County of Residence of First Listed Plaintiff <u>Allegheny County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Gretchen L. Jankowski, Esquire, Buchanan Ingersoll & Rooney PC One Oxford Centre, 301 Grant St 20th Floor, Pittsburgh, PA 15219 412-562-8800</p>	<p>DEFENDANTS</p> <p>IMG College, LLC</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	PROPERTY RIGHTS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS---Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) _____ 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1332(a)

Brief description of cause:
Breach of License Agreement

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** In excess of \$75,000 CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 07/15/2019 SIGNATURE OF ATTORNEY OF RECORD: /s/ Gretchen L. Jankowski

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44A REVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. This case is related to Number _____ . Short Caption _____
2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Select the applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeas corpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

/s/ Gretchen L. Jankowski

Date: 07/15/2019

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

University of Pittsburgh—Of the Commonwealth System of Higher Education

Plaintiff(s)

v.

IMG College, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) IMG College, LLC
540 North Trade Street
Winston Salem, NC 27101-2915

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Gretchen L. Jankowski, Esq. Sydney Rochelle Normil, Esq. Buchanan Ingersoll & Rooney PC One Oxford Centre 301 Grant St, 20th Floor Pittsburgh, PA 15219

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk