

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-cv-1364-JLK

SCOT HOLLONBECK,  
JOSE ANTONIO INIGUEZ,  
JACOB WALTER JUNG HO HEILVEIL, and  
VIE SPORTS MARKETING, INC., a Georgia corporation,

Plaintiffs,

v.

UNITED STATES OLYMPIC COMMITTEE, a federally-chartered corporation, and  
U.S. PARALYMPICS, INC., f/k/a UNITED STATES PARALYMPIC CORPORATION, a  
Colorado non-profit corporation,

Defendants.

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**PLAINTIFF / COUNTERCLAIM DEFENDANT VIE SPORTS  
MARKETING, INC.'S REPLY AND DEFENSES  
TO THE COUNTERCLAIM OF DEFENDANT U.S. PARALYMPICS, INC.**

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Plaintiff / Counterclaim Defendant Vie Sports Marketing, Inc. ("Vie"), by and through its  
counsel, hereby submits its Reply and Defenses to the Counterclaim of Defendant U.S.

Paralympics, Inc.

ALLEGATION NO. 1. In this action, USP seeks enforcement of the parties' contract  
and its rights thereunder to arbitrate the dispute between the parties and to recover all of its costs  
and expenses, including its reasonable attorneys' fees incurred in defending against  
Counter-defendant, Vie Sports Marketing, Inc.'s ("Vie"), claims and in asserting this  
Counterclaim.

REPLY: Denied.

**Jurisdiction and Venue**

ALLEGATION NO. 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1367.

REPLY: Admitted.

ALLEGATION NO. 3. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

REPLY: Admitted.

**Parties**

ALLEGATION NO. 4. USP is a Colorado non-profit corporation with its principal place of business in Colorado Springs, Colorado. Prior to December 2001, USP was known as the United States Paralympic Corporation ("USPC").

REPLY: Vie admits that USP is a Colorado non-profit corporation with its principal place of business in Colorado Springs, Colorado, and that it was formerly known as the United States Paralympic Corporation. Vie denies all remaining allegations in this paragraph.

ALLEGATION NO. 5. Vie is a Georgia corporation, with its principal place of business in Atlanta, Georgia.

REPLY: Admitted.

Facts

ALLEGATION NO. 6. Congress granted the United States Olympic Committee ("USOC") the exclusive right to use, market and sell rights to the Olympic and Paralympic names, emblems and symbols. 36 U.S.C. § 220506(a).

REPLY: Admitted.

ALLEGATION NO. 7. In August 2000, the USPC was incorporated with the stated purpose of working with the USOC to ensure that the USOC's responsibilities to Paralympic and disabled athletes under the Ted Stevens Olympic and Amateur Sports Act (36 U.S.C. § 220501 et seq.) were met.

REPLY: Vie admits that the USPC was incorporated in August 2000 and that the articles of incorporation speak for themselves.

ALLEGATION NO. 8. Thereafter, the USOC considered transferring its right to use, market, and sell rights to the Paralympic names, emblems, and symbols to the USPC n/k/a USP.

REPLY: Vie is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and therefore denies the same.

ALLEGATION NO. 9. On or about April 18, 2001, representatives of Vie made a presentation to the USPC concerning services they alleged Vie could provide in marketing and selling rights to the Paralympic trademark to sponsors.

REPLY: Vie admits that on or about April 18, 2001, its representatives made a presentation concerning services they could provide in marketing and selling rights to the U.S. Paralympic trademark. Vie denies all remaining allegations in this paragraph.

ALLEGATION NO. 10. In the Spring of 2001, the USPC issued a "Reason for Proposal" ("RFP"). The RFP requested the submission of proposals for an external marketing agency for the Paralympic trademark.

REPLY: Admitted.

ALLEGATION NO. 11. In early June 2001, Vie submitted a written proposal to become a marketing agency for the Paralympic trademark in response to the RFP. Representatives of Vie made a presentation of their proposal to the USPC in late June 2001.

REPLY: Vie admits that in June 2001, it submitted a bid to become the exclusive marketing agency for the U.S. Paralympic trademark. Vie denies all remaining allegations in this paragraph.

ALLEGATION NO. 12. In July 2001, the USPC communicated to Vie that it had selected Vie to become a marketing agency for the Paralympic trademark.

REPLY: Vie admits that in July 2001, it was selected to be the exclusive marketing agency for the U.S. Paralympic trademark. Vie denies all remaining allegations in this paragraph.

ALLEGATION NO. 13. In July and August 2001, the parties discussed the terms of their relationship. The parties agreed to enter a short-term consulting agreement so that Vie could begin work for the USPC; they agreed to continue negotiating the terms of a longer-term sales agency and fulfillment agreement.

REPLY: Denied.

ALLEGATION NO. 14. Effective September 1, 2001, the USPC and Vie executed a Sponsorship Development Consulting Agreement (“Consulting Agreement”).

REPLY: Admitted.

ALLEGATION NO. 15. The Consulting Agreement generally obligated Vie to provide Paralympic sponsorship development consulting services to the USPC.

REPLY: The Consulting Agreement speaks for itself. Vie denies the allegations contained in this paragraph.

ALLEGATION NO. 16. In return, the USPC was to pay Vie an escalating monthly fee: \$20,000 for September 2001; \$25,000 for October 2001; \$30,000 for November 2001; \$35,000 for December 2001; and \$40,000 for January 2002. The USPC also agreed to pay Vie for its direct out-of-pocket expenses incurred in connection with Vie's performance of the Consulting Agreement.

REPLY: The Consulting Agreement speaks for itself. Vie denies the allegations contained in this paragraph.

ALLEGATION NO. 17. The Consulting Agreement further provided, in part, that any dispute between the parties relating to the Consulting Agreement was to be resolved by binding arbitration in Denver, Colorado, and that the prevailing party in any proceeding to enforce the agreement was entitled to its costs and expenses, including but not limited to its reasonable attorneys' fees, court costs and expert witness fees.

REPLY: The Consulting Agreement speaks for itself. Vie denies the allegations contained in this paragraph.

ALLEGATION NO. 18. The Consulting Agreement initially was to terminate on February 1, 2002.

REPLY: The Consulting Agreement speaks for itself. Vie denies the allegations contained in this paragraph.

ALLEGATION NO. 19. Vie performed some work pursuant to the Consulting Agreement and the USPC fully performed its obligations under the Consulting Agreement.

REPLY: Denied.

ALLEGATION NO. 20. In December 2001, because the parties were still negotiating a longer-term sales agency and fulfillment agreement, the parties agreed to modify the payment and term provisions of the Consulting Agreement. By this time, the USPC was operating under the USP name. Effective January 1, 2002, Vie agreed to perform its obligations under the Consulting Agreement for a flat fee of \$20,000 per month. The parties also agreed to extend the term of the Consulting Agreement beyond February 1, 2002.

REPLY: Denied.

ALLEGATION NO. 21. Vie performed additional work pursuant to the modified Consulting Agreement and USP fully performed its obligations under the modified Consulting Agreement.

REPLY: Denied.

ALLEGATION NO. 22. In early 2002, the USOC ultimately decided that it would not transfer to USP the right to use, market, and sell rights to the Paralympic names, emblems, and symbols. Instead, a division of the USOC called U.S. Paralympics ("the Division") would manage

for the USOC all rights pertaining to Paralympic marks, logos and sponsorships. As a result, USP ceased, and the USOC began, negotiating the longer-term sales agency and fulfillment agreement with Vie.

REPLY: Vie is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of this paragraph, and therefore denies the same. Vie denies all other allegations in this paragraph.

ALLEGATION NO. 23. USP and Vie nonetheless continued to operate pursuant to the modified Consulting Agreement. In March 2002, Vie and USP again agreed to modify the Consulting Agreement, by changing the expenses provision to provide that USP would pay Vie a flat \$5,000 per month for its expenses incurred in connection with its performance of the Consulting Agreement.

REPLY: Denied.

ALLEGATION NO. 24. In early May 2002, the Division sent Vie a draft USOC/Vie Sports Sales Agency and Fulfillment Agreement (the "Draft Sales Agency Agreement") between the USOC and Vie. Vie returned the Draft Sales Agency Agreement to the Division with edits in late May 2002. Vie sent another Draft Sales Agency Agreement to the Division in early June 2002.

REPLY: Vie admits that, in or about May and June 2002, the parties exchanged drafts of a document entitled "Sales Agency and Fulfillment Agreement."

ALLEGATION NO. 25. Throughout the negotiation of the Draft Sales Agency Agreement in 2002, Vie performed some work pursuant to, and USP fully performed its obligations under, the Consulting Agreement as modified in March 2002.

REPLY: Denied.

ALLEGATION NO. 26. In January 2003, as part of continued negotiations of the Draft Sales Agency Agreement, the Division presented Vie with a proposed summary term sheet. In response, Vie indicated it would not agree to the proposed terms, and negotiations between the Division and Vie relating to a sales agency and fulfillment agreement ended at that time. In addition, Vie terminated the Consulting Agreement with USP.

REPLY: Denied.

ALLEGATION NO. 27. Prior to its termination of the Consulting Agreement, Vie had been paid at least \$438,233.76 pursuant to the Consulting Agreement with USP.

REPLY: Denied.

ALLEGATION NO. 28. Vie filed its lawsuit against the USOC and USP in July 2003 for breach of contract and promissory estoppel.

REPLY: Vie admits that in 2003, it filed suit against the USOC and USP, asserting, among other claims, breach of contract and promissory estoppel claims.

**Count I: Enforcement of the Consulting Agreement**  
(Against Vie Sports Marketing, Inc.)

ALLEGATION NO. 29. USP realleges and incorporates by reference the allegations set forth in this Counterclaim as if fully set forth herein.



REPLY: Vie incorporates by reference its replies to the allegations set forth in the Counterclaim as if fully set forth herein.

ALLEGATION NO. 30. From September 1, 2001 through the date of Vie's termination of the parties' relationship in January 2003, the parties operated pursuant to the Consulting Agreement. The Consulting Agreement was the only contract between the parties.

REPLY: Denied.

ALLEGATION NO. 31. USP fully performed all of its obligations under the Consulting Agreement.

REPLY: Denied.

ALLEGATION NO. 32. Pursuant to the Consulting Agreement, USP is entitled to the arbitration in Denver, Colorado, of Vie's breach of contract and promissory estoppel claims against it.

REPLY: Denied.

ALLEGATION NO. 33. USP has incurred reasonable attorneys' fees, costs and expenses in defending against Vie's lawsuit and in asserting this Counterclaim to enforce the contract between the parties.

REPLY: Denied.

ALLEGATION NO. 34. Pursuant to the Consulting Agreement, USP is entitled to recover all of its costs and expenses, including but not limited to reasonable attorneys' fees, court costs and expert witness fees, incurred in defending against Vie's breach of contract and promissory estoppel claims and in asserting this Counterclaim.

REPLY: Denied.

**Defenses**

1. USP's Counterclaim fails to state a claim for relief.
2. Any arbitration requirement in the consulting agreement is inapplicable to this case because that agreement did not cover the services provided by Vie that are the subject of its claims in this litigation.
3. USP failed to mitigate its damages, if any.
4. USP's claims are barred by the statute of limitations.
5. USP's claims are barred by its failure to demand arbitration.
6. To the extent that the consulting agreement provided USP with a right to arbitration concerning the services provided by Vie at issue in this litigation, the monetary relief sought by USP is not available in this forum.
7. To the extent that the consulting agreement provided USP with a right to arbitration concerning the services provided by Vie at issue in this litigation, USP waived such right by, inter alia, waiting more than three years after the complaint was filed to seek arbitration, and filing a counterclaim with this Court seeking monetary relief.

Respectfully submitted,

FOX & ROBERTSON, P.C.

/s Timothy P. Fox

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Dated: February 28, 2007

**Certificate of Service**

I hereby certify that on February 28, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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