

**IN THE TWENTY-FIRST JUDICIAL CIRCUIT, STATE OF MISSOURI  
CIRCUIT JUDGE DIVISION**

STATE OF MISSOURI, ex rel. )  
CHRIS KOSTER, )

Plaintiff, )

v. )

GRIDIRON FANTASY SPORTS, LLC, )  
d/b/a WORLD CHAMPIONSHIP OF )  
FANTASY FOOTBALL, )  
d/b/a WORLD CHAMPIONSHIP OF )  
FANTASY BASEBALL, )

Serve at: )  
Jessie James Herron, Agent )  
170 Triple Crown Court )  
Alparetta, GA 30004 )

and )

DUSTIN ASHBY, )  
Serve at: )  
623 Timber Creek Trail )  
O'Fallon, MO 63368 )

Defendants. )

Case No:

Division:

**42**

11SL-CC04862

RECEIVED  
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COUNTY  
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**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,  
RESTITUTION, CIVIL PENALTIES AND OTHER COURT ORDERS**

The State of Missouri, by Attorney General Chris Koster and through Assistant Attorney General Cheryl Ann Schuetze, for its Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties, and

Other Court Orders against Gridiron Fantasy Sports, LLC, states as follows:

**PARTIES**

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brought this action in his official capacity pursuant to Chapter 407, RSMo 2010.<sup>1</sup>

2. Defendant Gridiron Fantasy Sports, LLC, (“Gridiron”) d/b/a World Championship of Fantasy Football (“WCOFF”) and d/b/a World Championship of Fantasy Baseball (“WCOFB”), is a Georgia corporation with its principal place of business at 170 Triple Crown Ct., Alapartta, Georgia, 30004.

3. Gridiron transacted business in St. Louis County, throughout Missouri, and nationwide, and operated out of an office at 17736 Edison Avenue, Chesterfield, Missouri 63005.

4. Defendant Dustin Ashby (“Ashby”) is an individual, and upon information and belief, is the Owner/President of Gridiron. Ashby’s residential address is 623 Timber Creek Trail, O’Fallon, Missouri 63368.

5. Gridiron, as WCOFF and WCOFB, owned and operated fantasy football and baseball contests for which participants paid various entrance fees for a chance at pre-set cash prizes.

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<sup>1</sup> All references are to Missouri Revised Statutes 2010 Cumulative Supplement, unless otherwise noted.

6. The Defendants have done business within the State of Missouri and nationwide by operating, marketing, offering, selling, or administering fantasy sports contests from its offices in St. Louis County to citizens of the State of Missouri as well as nationwide.

7. Any acts, practices, methods, uses, solicitations, or conduct of Defendants' fantasy sports contests alleged in this Petition include the acts, practices, methods, uses, solicitations, or conduct of Defendants' employees, agents, or other representatives acting under their direction, control, or authority.

### **JURISDICTION**

8. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

9. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

10. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020.

### **VENUE**

11. Venue is proper in this Court pursuant to § 407.100.7, which provides that "[a]ny action under this section may be brought in the county in

which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

12. Defendants have advertised, marketed, solicited, sold, or administered their fantasy sports contests in St. Louis County, Missouri, and have engaged in the acts, practices, methods, uses, solicitation and conduct described below that violate § 407.020 in St. Louis County, Missouri, among other places.

### **MERCHANDISING PRACTICES ACT**

13. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

14. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation,

whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

15. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

16. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms ‘trade’ and ‘commerce’ include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

17. Defendants have advertised, marketed, or sold merchandise in trade or commerce within the meaning of § 407.010.

18. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in Sections 407.010 to 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

## **ALLEGATIONS OF FACT RELEVANT TO ALL COUNTS**

19. Beginning in at least 2007 and continuing to August 19, 2011, when it cancelled its football season, Defendants administered, sold, offered, solicited, or negotiated fantasy football and baseball contests with Missouri consumers and out-of-state consumers from the State of Missouri.

20. Defendants purchased WCOFF before the 2007 football season and began operating the contest from its offices in Chesterfield, Missouri, with co-owners Dustin Ashby and Jessie James Herron as the managers. They purchased or started WCOFB about the same time.

21. Defendants contracted out the day-to-day operation of the live drafts and the weekly contests to RealTime Sports.

22. Upon information and belief, at some point around the start of the 2010 football season, Dustin Ashby fully took over the operation and management of Gridiron as well as the WCOFF and WCOFB.

23. On or before May 1, 2010, Defendants released the official rules and regulations governing the 2010 WCOFF ("Rules," attached as Exhibit A).

24. Participants were able to purchase fantasy football teams from Gridiron for \$1950 for a live draft event or \$300 for an online team. Each team then had an equal chance at pre-determined cash and other prizes.

25. Prior to the start of the 2010 season, Defendants promised consumers they would pay cash awards to up to 331 participants based on

their teams' performance. The promised prizes totaled at least \$389,500 in cash plus travel awards and 2011 WCOFF entrance fees. For example, some of the prizes Defendants promised included:<sup>2</sup>

A. \$300,000 plus air travel and accommodations for two people to Dallas, Texas on the weekend of Super Bowl XLV for the Championship Playoff Bracket winner;

B. \$50,000 plus entries into the 2011 Main Event (including 3 nights' stay at the host hotel and airfare to Las Vegas, NV), a 2011 \$1K Auction, a \$5,000 Event of choice, a 2011 Super Satellite entry, a 2011 Draft Masters entry, and \$1,000 spending money for the Championship Playoff Bracket second place finisher;

C. \$5,000 for the team with the most total regular season fantasy points;

D. \$5,500 in cash or prizes for up to 100 League Championship game winners;

E. \$1,500 for up to 100 League Championship game losers;

F. \$1,250 for the team with the most points during the regular season in each league; and

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<sup>2</sup> See Rules at § II, ¶20 for complete list of prizes promised.

G. \$1,250 for the team with the best record during the regular season in each league.

26. Defendants' promised awards were based solely on the performance of individual fantasy teams and not on the number of participants in the 2010 WCOFF.

27. Defendants guaranteed that all award money to the top fifteen over-all winners, as well as to the league winners in each full league, would be paid in U.S. dollars by February 15, 2011. Gridiron further promised it "will distribute 100% of all WCOFF awards directly to each winning principal participant..." Rules, Section I, ¶24.

28. On September 9 – 12, 2010, Gridiron held a live WCOFF draft simultaneously in Atlantic City, New Jersey; Las Vegas, Nevada; Orlando, Florida; and Chicago, Illinois. Ashby attended the live draft event in Las Vegas, Nevada. Drafts were also held online.

29. From September, 2010 to January, 2011, Defendants conducted the 2010 WCOFF contest with up to 100 leagues made up of up to 1,200 teams.

30. At the end of the 2010 WCOFF season, Defendants notified all the winners how much they had won and reiterated their promises to pay winners by February 15, 2011.



31. From on or about March, 2010 through October, 2010, Defendants operated their annual WCOFB contest by charging participants entrance fees to purchase fantasy baseball teams and promising pre-determined cash awards, in a similar manner to the operation of the WCOFF. Upon information and belief, Defendants used entrance fees from the 2010 WCOFF to pay the winners of the 2010 WCOFB contest.

32. Upon information and belief, Defendants used participants' 2010 WCOFF entrance fees for other non-contest purposes, including paying off loans.

33. Defendants did not pay all of the WCOFF winners the prizes as they had promised by February 15, 2011. Instead, Gridiron, through Ashby, offered winners a variety of excuses including that the checks were in the mail.

34. As of November 10, 2011, Defendants have failed to pay participants at least \$151,261 of the promised prize money.

#### Consumer Examples

35. The following is a sampling of just some of the consumers that did not receive the prizes Gridiron promised them:

A. John Backus entered at least one Gridiron fantasy football league for the 2010 football season. He won a promised cash prize of \$2,000 at the end of the season, which he never received.

B. Alan Baldwin entered at least one Gridiron fantasy football league for the 2010 football season and attended Gridiron's live fantasy football draft in Las Vegas, Nevada, in September, 2010. He won a promised cash prize of \$1,000 at the end of the season, which he never received.

C. Kevin Borg entered at least one Gridiron fantasy football league for the 2010 football season and attended Gridiron's live fantasy football draft in Las Vegas, Nevada, in September, 2010. He won combined promised cash prizes of \$6,750 at the end of the season, which he never received.

D. From the beginning of July to the beginning of September, 2010, Christopher Carlson entered eleven different Gridiron fantasy football leagues for the 2010 football season. He won combined promised cash prizes of \$5,500 at the end of the season, which he never received.

E. Daniel Hendrickson entered multiple Gridiron fantasy football leagues for the 2010 football season and attended Gridiron's live fantasy football draft in Las Vegas, Nevada, in September, 2010. He won combined promised cash prizes of \$31,720 at the end of the season, which he never received.

F. David Hughes entered multiple Gridiron fantasy football leagues for the 2010 football season and attended Gridiron's live fantasy football draft in Chicago, Illinois, in September, 2010. He won combined promised cash prizes of \$3,875 at the end of the season, which he never received.

G. Brian Lapidus entered at least one Gridiron fantasy football league for the 2010 football season. He won a promised cash prize of \$2,000 at the end of the season, which he never received.

H. Todd Ullman entered multiple Gridiron fantasy football leagues for the 2010 football season and attended Gridiron's live fantasy football draft in Las Vegas, Nevada, in September, 2010. He won combined promised cash prizes of \$4,900 at the end of the season, which he never received.

**COUNT I**  
**§ 407.020 – False Promises**

36. Plaintiff incorporates herein all of the allegations contained in paragraphs 1-35.

37. Defendants violated § 407.020 by falsely promising participants that in exchange for advance entrance fees, and if their teams performed up to certain pre-defined standards, they would receive a guaranteed cash or

other prize. (For example, the person whose team scored the most fantasy points during the regular season was guaranteed a cash prize of \$5,000).

38. These promises of payment were false or misleading as to the Defendants' intention or ability to perform, or the likelihood the promise would be performed.

39. Defendants did not keep their promise to pay at least 32 participants.

**COUNT II**  
**§ 407.020 – Material Omissions**

40. Plaintiff incorporates herein all of the allegations contained in paragraphs 1-39.

41. Defendants violated § 407.020 by concealing, suppressing or omitting any one of the following material facts when communicating with participants:

- A. That entrance fees to the 2010 WCOFF could be used to pay prize winners of the 2010 WCOFB contest, which would likely result in Defendants having insufficient funds to pay the promised prizes to 2010 WCOFF winners;
- B. That 2010 WCOFF prizes were not guaranteed, but were instead dependant on the amount of participants in 2010 WCOFB; or

C. That 2010 WCOFF prizes were not guaranteed, but were instead dependant on the amount of participants in 2010 WCOFF.

42. These material facts were known to Defendants when they advertized to or communicated about prizes with potential participants of the 2010 WCOFF contest in an effort to obtain their entrance fees.

### **COUNT III**

#### **§ 407.020 – Misrepresentations**

43. Plaintiff incorporates herein all of the allegations contained in paragraphs 1-42.

44. Defendants violated § 407.020 by misrepresenting prior to the 2010 football season that they guaranteed the payment of specific cash and/or other prizes to all winners on or before February 15, 2011, when they did not, at the time they made the statements, have a guaranteed source of funding for prizes to be awarded in February, 2011.

### **RELIEF**

WHEREFORE, Plaintiff prays this Court enter judgment:

- A. Finding that Defendants have violated the provisions of § 407.020.
- B. Issuing preliminary and permanent injunctions pursuant to § 407.100 prohibiting and enjoining Ashby, Gridiron and its owners, officers, directors, agents, servants, employees, representatives and

other individuals acting at its direction or on its behalf from violating § 407.020 through the use of any of the unlawful, unfair or deceptive acts, practices, methods, uses or conduct alleged herein.

- C. Requiring Defendants or their owners and officers pursuant to § 407.100 to provide full restitution to all consumers from whom Defendants have received monies who have been aggrieved by the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.
- D. Requiring Defendants or their owners and officers pursuant to § 407.100 to pay the State of Missouri a civil penalty in such amounts as allowed by law per violation of § 407.020 that the Court finds to have occurred.
- E. Requiring Defendants or their owners and officers pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendants under § 407.100, or such other amount as the Court deems fair and equitable.
- F. Requiring Defendants pursuant to § 407.130 to pay all court, investigative, and prosecution costs of this case.
- G. Granting any further relief that is just and proper.

Respectfully submitted,

**CHRIS KOSTER**

Attorney General

A handwritten signature in black ink, appearing to read "Cheryl Ann Schuetze", written over the printed name below.

**CHERYL ANN SCHUETZE**

Assistant Attorney General

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