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Counsel for Plaintiff United States Golf Association

UNITED STATES GOLF ASSOCIATION,

Plaintiff,

v.

ISaAC SCORING SYSTEMS, LLC

Defendant.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action No.: _____

COMPLAINT

Plaintiff United States Golf Association ("USGA") for its complaint against Defendant ISaAC Scoring Systems, LLC ("ISaAC"), alleges as follows:

Parties

1. The USGA is a Delaware corporation having its principal place of business in Somerset County at Golf House, Far Hills, New Jersey, 07931.

2. On information and belief, ISaAC is a Texas limited liability company with its principal place of business at 525 N. Sam Houston Parkway, Houston, Texas 77060. ISaAC purports to offer golfers "USGA Handicaps" on multiple Internet websites, including but not limited to <rangeace.com>, <linksace.com>, and <ushandicap.com>.

These websites are accessible in New Jersey, and upon information and belief, ISaAC has offered, and is offering, its services in New Jersey.

Nature of the Action

3. This is an action by plaintiff USGA for service mark infringement, false advertising, false designation of origin, common law and state statutory unfair competition, common law misappropriation, and tortious interference related to the purported offer and sale of a USGA Handicap Index[®] by defendant ISaAC. The USGA has not authorized ISaAC to utilize the USGA's registered service marks or to offer a USGA Handicap Index[®] to golfers. ISaAC's service mark infringement, unfair competition and related false advertising threaten the integrity of the USGA[®] Handicap System, which the USGA has developed and maintained over decades by investing and expending substantial time, money and effort. The USGA seeks an injunction against further infringement by ISaAC, damages, and an award of attorneys fees.

Jurisdiction and Venue

4. This is an action for service mark infringement, false designation of origin, and false advertising under the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a).

5. This Court has federal question jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a) because this case arises under the trademark laws of the United States. This Court also has jurisdiction under 28 U.S.C. § 1332(a), because the action is between citizens of different States and the matter in controversy exceeds the sum of \$75,000.

6. This Court has jurisdiction over the state law claims asserted herein under the provisions of 28 U.S.C. § 1332, 1338(b) and 1367. The state law claims are joined

with substantial and related claims under the trademark laws of the United States, 15 U.S.C. § 1051 *et seq.*

7. Venue is proper under 28 U.S.C. § 1391(b)(2). A substantial part of the events giving rise to the claims asserted herein occurred in this District.

Statement of the Claims

The USGA Handicap Index[®]

8. Since its formation in 1894, and as the governing body of golf, the USGA has dedicated itself to the task of preserving and improving the game of golf in the United States.

9. One of the USGA's most significant accomplishments has been the development and maintenance of its USGA[®] Handicap System through the investment of substantial research, time, money and skill.

10. The USGA[®] Handicap System is designed to allow golfers of differing abilities to compete with each other on an equitable basis, and thereby increase the enjoyment which they derive from playing golf. A golfer who has a USGA Handicap Index[®] can use that Handicap Index[®] to determine a Course Handicap[™] for use when playing at a particular golf course.

11. Essential elements of the USGA[®] Handicap System are a USGA[®] Course Rating and a Slope[®] for each golf course. The Slope[®] indicates the relative difficulty of a course.

12. The USGA[®] Handicap System requires, among other things, that only an authorized amateur golf association or golf club can issue a USGA Handicap Index[®]. The USGA[®] Handicap System does not allow, and the USGA has not authorized,

individuals to use the USGA[®] Handicap System to compute a USGA Handicap Index[®] for themselves or for others.

13. Pursuant to written license agreements, the USGA licenses golf associations and golf clubs to offer a Handicap Index[®] to their members. Licensee golf associations and golf clubs agree to comply with strict standards and requirements and subject themselves to periodic audits regarding their use of the USGA's service marks and their compliance with the USGA[®] Handicap System.

14. In addition, the USGA operates the Golf Handicap and Information Network[®] (GHIN[®]), which offers handicap computation services to golf associations. A golf association need not use GHIN[®] to be licensed to issue a Handicap Index[®].

15. The rules and formulae of the USGA[®] Handicap System are constantly being refined. The most recent edition of the USGA[®] Handicap System became effective on January 1, 2008. The next revision will become effective on January 1, 2012.

16. The USGA expends considerable time, effort, skill and money in maintaining and refining the USGA[®] Handicap System, and promoting its use among golfers. For example, the USGA offers both online and in-person USGA[®] Handicap System seminars. It also offers several publications regarding the USGA[®] Handicap System and the Handicap Index[®], including its Manual, the 37-page USGA[®] Handicap System Reference Guide, and numerous articles regarding handicaps, Slope[®], and the USGA[®] Course Rating System.

17. The Handicap Index[®] is more than a mere formula. In addition to utilizing a computation service that employs the USGA's formula for the Handicap Index[®], a

licensee golf association or golf club must also comply with other requirements in order to offer a USGA Handicap Index[®] to a member. In short, these requirements are intended to preserve and protect the integrity of the Handicap Index[®] and the USGA[®] Handicap System. For example, a golf club must have a Handicap Committee comprised mostly of members. Also, scores must be posted for rounds of golf played at members' home clubs and elsewhere.

18. The USGA's licensing program plays a vital role. In particular, that licensing program provides golf associations with an important marketing tool, because the availability of a Handicap Index[®] is one reason why golfers join golf associations. The state and regional golf associations depend on membership fees to support their operations, and those associations are important to the USGA's mission of preserving and promoting the best interests and the spirit of the game of golf.

19. The USGA owns more than fifty federal trademark and service mark registrations, including service mark registrations for USGA[®] (Registration No. 1,140,104), Handicap Index[®] (Registration No. 2,317,584) and GHIN[®] (Registration No. 1,215,320). Copies of the foregoing registrations are attached hereto as Exhibit A.

20. The USGA's registration for USGA[®], which was registered on September 30, 1980, covers "educational and entertainment services, namely, the conducting of golf tournaments, establishing rules and regulations in connection with the game of golf and instructing the public therein, and promoting public interest in the game of golf" in International Class 41. It claims a first use date of at least as early as 1927. This registration has been renewed since its registration date, and it became incontestable on February 13, 1987.

21. Through decades of use, the USGA also has accrued substantial common law rights in the trademark USGA in connection with handicapping and related services.

22. The USGA's registration for Handicap Index[®], which was registered on February 15, 2000, covers "handicapping for sporting events, namely, golf" in International Class 41. It claims a first use date of at least as early as January 1, 1987. This registration has been maintained since its registration date, and it became incontestable on May 09, 2006.

23. The USGA's registration for GHIN[®], which was registered on November 2, 1982, covers "providing handicap services to golf associations" in International Class 41. It claims a first use date of at least as early as March 1, 1981. This registration has been renewed since its registration date, and it became incontestable on April 7, 1989.

Actions of ISaAC

24. Defendant ISaAC competes with GHIN[®] in offering handicap computation services. Indeed, ISaAC's website homepage title describes itself as a "GHIN Replacement."

25. By its own admission, ISaAC uses the same formula that the USGA has published for calculating a Handicap Index[®]. Indeed, ISaAC emphasizes its use of this widely-recognized formula for calculating golf handicaps in the marketing of its products and services.

26. Through its <ushandicap.com> website (attached hereto as Exhibit B), ISaAC asserts that it is "your resource for acquiring and maintaining your USGA Handicap Index." The website offers memberships for as little as \$14.95 per year, and

features a testimonial from a PGA Tour Player stating that <ushandicap.com> will provide "the most accurate USGA Handicap available."

27. The website <ushandicap.com> further purports to allow users to print a "USGA Handicap Index Card" and notes that users receive—without being a member of a golf club or golf association licensed by the USGA—"all the benefits of obtaining a USGA Handicap index with handicap certificate." (See Ex. B.) Thus it is ISaAC's expressed intent to interfere with a golfer's relationship with golf associations, which threatens the economic structure of the USGA's Handicap Index[®] licensing program.

28. A computer program that utilizes the formula of the Handicap Index[®] is not a substitute for a Handicap Index[®] that is subject to the USGA's rigorous licensing program, which is designed to maintain the integrity of golf handicaps. By using the USGA's registered service marks, including USGA[®], Handicap Index[®], and GHIN[®], ISaAC is creating the false impression among golfers that ISaAC can properly offer a Handicap Index[®]. It cannot. A handicap from ISaAC, even if calculated pursuant to the USGA[®] Handicap System formula, is not backed by the integrity and safeguards of the USGA[®] Handicap System.

29. The USGA has never authorized ISaAC to use any of its service marks, to make the false and misleading statements noted herein, or to offer a Handicap Index[®] to the public.

30. ISaAC's use of service marks that are identical or confusingly similar to the USGA's marks will cause confusion, deception, or mistake, because consumers are likely to assume that the USGA has sponsored, authorized, or approved such use.

31. ISaAC's acts of infringement have been committed willfully with the intent to cause confusion and mistake, and to deceive.

32. ISaAC has been on notice of the USGA's claims since at least as early as 2007, and on March 5, 2009, the USGA sent ISaAC a letter detailing ISaAC's infringing uses of the USGA's service marks, its false advertising, and its lack of authorization to offer a USGA Handicap Index[®] to golfers.

COUNT I

False Advertising

33. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 32 of this Complaint.

34. ISaAC's false and misleading representations that it is affiliated with the USGA and that it provides a Handicap Index[®] or an official substitute therefor constitute false advertising in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

35. ISaAC is using these and other false or misleading descriptions or representations of fact in interstate commerce and in connection with goods and services in commercial advertising or promotion.

36. ISaAC's false or misleading descriptions or representations of fact misrepresent the nature and qualities of its goods, services and commercial activities, and are likely to deceive a substantial portion of the intended audience.

37. ISaAC's false or misleading descriptions or representations of fact are material, because they are likely to influence consumers' purchasing decisions.

38. ISaAC's actions are causing irreparable injury to the USGA's business, reputation and goodwill, and unless restrained and enjoined, will continue to do so.

39. The USGA has suffered damages in an amount to be proved at trial.

COUNT II

Service Mark Infringement

40. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 39 of this Complaint.

41. The USGA owns, among others, federal registrations for USGA[®] (Registration No. 1,140,104), Handicap Index[®] (Registration No. 2,317,584) and GHIN[®] (Registration No. 1,215,320). (See Ex. A.)

42. These marks are valid and legally protectable, and are incontestable under 15 U.S.C. §§ 1065 and 1115(b).

43. ISaAC is using the USGA's registered marks, without the USGA's authorization, in interstate commerce in connection with the sale, offering for sale, distribution and advertising of goods and services which compete with the USGA's services offered in connection with the USGA's registered marks.

44. ISaAC's unauthorized use of the USGA's registered marks in connection with goods and services that compete with the USGA's goods and services has caused, and will continue to cause, confusion, mistake and deceit such that it constitutes service mark infringement in violation of § 32(a) of the Lanham Act, 15 U.S.C. § 1114(1)(A).

45. ISaAC's acts described herein infringe the USGA's registered marks, and irreparably injure the USGA's business, reputation, and good will, and unless restrained and enjoined, will continue to do so. ISaAC's service mark infringement has been willful.

46. The USGA has suffered damages in an amount to be proved at trial.

COUNT III

False Designation of Origin

47. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 46 of this Complaint.

48. The USGA has common law trademark rights in the marks USGA[®] and USGA[®] Handicap System, among others. These marks are valid and legally protectable, because they have become well and favorably known throughout the United States, including New Jersey, as indicators of services and goods emanating from or authorized by a single source—the USGA.

49. ISaAC has caused goods and services to enter into interstate commerce bearing the USGA's common law trademarks and service marks. Said use of the USGA's marks is a false designation of origin which is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of ISaAC with the USGA and as to the origin, sponsorship, or approval of such goods and services by ISaAC in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

50. ISaAC's acts described herein irreparably injure the USGA's business, reputation, and good will, and unless restrained and enjoined, will continue to do so.

51. The USGA has suffered damages in an amount to be proved at trial.

COUNT IV

Common Law Unfair Competition

52. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 51 of this Complaint.

53. ISaAC's actions described herein constitute unfair competition under New Jersey common law because (1) ISaAC is passing off its services as being affiliated with or approved by the USGA; and (2) ISaAC's intentional imitation of the USGA's nonfunctional, distinctive services has caused, and will continue to cause, consumer confusion and mistake.

54. ISaAC's actions permit it to profit unfairly, at little or no cost to itself, from its use of the USGA's substantial investment of time, effort, and money, and further permit ISaAC to pass off its goods and services as those of the USGA.

55. ISaAC's actions have caused, and will continue to cause, confusion and deceit.

56. ISaAC's actions have caused, and will continue to cause, irreparable injury to the USGA's business, reputation and goodwill, and will continue to do so unless restrained and enjoined.

57. The USGA has suffered damages in an amount to be proved at trial.

COUNT V

Unfair Competition Under New Jersey Fair Trade Act

58. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 57 of this Complaint.

59. The USGA has substantial trademark rights in the marks USGA[®], Handicap Index[®], and GHIN[®], among others. These marks are valid and legally protectable because they are incontestable and have become well and favorably known throughout the United States, including New Jersey, as indicators of services and goods emanating from or authorized by a single source—the USGA.

60. ISaAC has caused goods and services to enter into interstate commerce bearing the USGA's trademarks and service marks. This appropriation of the USGA's service marks for ISaAC's own use is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of ISaAC with the USGA and as to the origin, sponsorship, or approval of such goods and services by the USGA in violation of the New Jersey Fair Trade Act, N.J. Stat. Ann. § 56:4-1.

61. ISaAC's acts described herein irreparably injure the USGA's business, reputation, and good will, and unless restrained and enjoined, will continue to do so. ISaAC's unfair competition has been willful.

62. The USGA has suffered damages in an amount to be proved at trial.

COUNT VI

Misappropriation

63. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 62 of this Complaint.

64. The USGA has made a substantial investment of time, effort and money in creating the USGA[®] Handicap System, such that the USGA[®] Handicap System is a valuable property right.

65. The USGA and ISaAC are direct competitors in the provision of handicap computation services.

66. The USGA's licensee golf clubs and golf associations compete with ISaAC, and ISaAC's purported offer of a Handicap Index[®] to golfers is in direct competition with the licensed activities of golf clubs and golf associations.

67. ISaAC has appropriated the USGA Handicap System at little or no cost, so that it profits unfairly from such misappropriation.

68. ISaAC's actions irreparably injure the USGA's business, reputation and goodwill, and will continue to do so unless restrained and enjoined.

69. The USGA has suffered damages in an amount to be proved at trial.

COUNT VII

Tortious Interference with Business Relationships

70. The USGA incorporates by reference and hereby re-alleges, as if fully set forth herein, paragraphs 1 through 69 of this Complaint.

71. The USGA has continuing and prospective relationships and reasonable expectations of economic advantage by virtue of its license agreements with golf associations and golf clubs. The USGA's license agreements with golf associations provide an economic foundation for those associations' work in furtherance of the USGA's mission.

72. ISaAC knew of these relationships and expectancies.

73. ISaAC wrongfully and intentionally interfered with these relationships and expectancies without justification or excuse.

74. But for ISaAC's wrongful interference, it was reasonably probable that the USGA would have executed additional license agreements with golf associations and golf clubs, and that golf associations and golf clubs in turn would have more members.

75. ISaAC's actions are causing irreparable injury to the USGA's business, reputation and goodwill, and will continue to do so unless restrained and enjoined.

76. The USGA has suffered damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff USGA respectfully prays that this Court enter judgment in its favor, and against ISaAC, as follows:

A. That this Court grant a permanent injunction enjoining ISaAC and each of its partners, associates, agents, servants, and employees, and all others acting in concert therewith or having knowledge thereof, from directly or indirectly issuing a USGA Handicap Index[®], or using any part of the USGA Handicap System.

B. That this Court grant a permanent injunction prohibiting ISaAC and each of its partners, associates, agents, servants, and employees, and all others acting in concert therewith from infringing the USGA's service marks, from engaging in unfair competition with the USGA, and from the unauthorized misappropriation of the USGA's property.

C. That this Court grant a permanent injunction prohibiting ISaAC and each of its partners, associates, agents, servants, and employees, and all others acting in concert therewith from making any false or misleading references to the USGA, the Handicap Index[®], or the USGA Handicap System and from disseminating false or misleading statements about ISaAC's services, including but not limited to stating that ISaAC and its affiliates provide a USGA Handicap Index[®] or use the USGA Handicap System, and from implying that ISaAC is affiliated in any way with, or is licensed by, the USGA.

D. That this Court grant a permanent mandatory injunction requiring ISaAC to notify all actual or potential customers that its advertisements have been false and

misleading and that by Order of this Court, ISaAC is required to refund all payments obtained from those who received any of the false and misleading statements.

E. That this Court order ISaAC, pursuant to 15 U.S.C. § 1116(a), to file with the Court, within thirty (30) days after the entry of the injunctions, a report in writing and under oath, setting forth in detail the manner and form in which ISaAC has complied with the injunction.

F. That ISaAC and its affiliates be required to account to the USGA for any and all profits which they have derived from the sale of goods and services bearing or referring to USGA's service marks or confusingly similar marks and for all damages which the USGA has sustained by reason of the acts complained of herein.

G. That this Court award USGA:

- i. all of ISaAC's profits derived from ISaAC's unlawful conduct, such damages to be trebled pursuant to 15 U.S.C. § 1117;
- ii. all damages sustained by the USGA by reason of ISaAC's unlawful conduct, such damages to be trebled pursuant to 15 U.S.C. § 1117;
- iii. exemplary and punitive damages as the Court deems just; and
- iv. interest on the foregoing sums.

H. That this Court award USGA the cost of this action and reasonable attorneys fees.

I. That this Court grant such other and further relief as it should deem just.

<p>Steven P. Goodell, Esq. Herbert, Van Ness, Cayci & Goodell 22 Chambers Street Princeton, NJ 08542 (609) 924-2495 (609) 924-8732</p> <p>Lee N. Abrams, Esq. Richard M. Assmus, Esq. Christopher C. Mackey, Esq. Mayer Brown LLP 71 South Wacker Drive Chicago, Illinois 60606 (312) 701-7083 (312) 701-7711</p> <p>DATED: April 17, 2009</p>	<p>HERBERT, VAN NESS, CAYCI & GOODELL</p> <p>By: <u>s/STEVEN GOODELL</u> Steven P. Goodell</p>
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CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

s/STEVEN GOODELL
Steven P. Goodell,
Counsel for Plaintiff United States Golf Association