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6 Attorneys for Plaintiff  
UPPER DECK INTERNATIONAL B.V.

7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 UPPER DECK INTERNATIONAL B.V., a  
Netherlands corporation,

12 Plaintiff,

13 v.

14 THE UPPER DECK COMPANY, a California  
15 corporation; THE UPPER DECK COMPANY, a  
Nevada Corporation; RICHARD McWILLIAM,  
16 an Individual; and Does 1-10

17 Defendants.

Case No. **'11CV1741 LAB CAB**

COMPLAINT FOR BREACH OF  
CONTRACT, INTENTIONAL  
INTERFERENCE WITH CONTRACTUAL  
RELATIONS, INTENTIONAL  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE, NEGLIGENT  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE, BREACH OF  
FIDUCIARY DUTY, AND AIDING AND  
ABETTING BREACH OF FIDUCIARY  
DUTY

JURY TRIAL DEMANDED

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21 Plaintiff Upper Deck International, B.V. ("UDI"), for its complaint against defendants The  
22 Upper Deck Company, a California corporation, The Upper Deck Company, a Nevada corporation  
23 and Richard McWilliam ("McWilliam"), an individual and Does 1-10 (collectively, "Defendants")  
24 complains and alleges as follows:

25 THE PARTIES

26 1. Plaintiff Upper Deck International, B.V. ("UDI") is a corporation organized under  
27 the laws of the Netherlands, with its principal place of business at Flevolaan 15, 1382 JX Weesp,  
28 The Netherlands.



1 each of the defendants, and because the amount in controversy in this action exceeds \$75,000,  
2 exclusive of interest and costs.

3 8. Venue is proper in this judicial district under 28 U.S.C. § 1391(a).

4 FACTS COMMON TO ALL CLAIMS FOR RELIEF

5 9. In or about September 2006, Konami Digital Entertainment, B.V. ("KDE") and  
6 Upper Deck Panoceanic, C.V. ("UD Panoceanic") entered into an agreement under which UD  
7 Panoceanic was appointed as KDE's exclusive distributor of KDE's "Yu-Gi-Oh!" Trading Card  
8 Game in the United Kingdom, Ireland, France, Spain, Portugal, Germany, Austria, Italy, Belgium,  
9 The Netherlands, Luxembourg, Greece, Denmark, Finland, Sweden, Norway, Switzerland, Cyprus,  
10 Hungary, Poland, Slovakia, Latvia, Estonia, Lithuania, Czech Republic, Malta, Slovenia and South  
11 Africa (hereinafter referred to as the "Yu-Gi-Oh! Europe Contract").

12 10. At or around the same time, UDC became Konami Digital Entertainment, Inc.'s  
13 exclusive distributor of the "Yu-Gi-Oh!" Trading Card Game in the United States, Canada, Mexico,  
14 Guam, Oceania and Central and South America (hereinafter referred to as the "Yu-Gi-Oh! America  
15 Contract").

16 11. The Yu-Gi-Oh! Europe Contract contained a provision that allowed UD Panoceanic  
17 to appoint Plaintiff (formerly known as Upper Deck Europe B.V.) as UD Panoceanic's exclusive  
18 sub-distributor of the "Yu-Gi-Oh!" Trading Card Game in the relevant territories.

19 12. Contemporaneously upon entering into the Yu-Gi-Oh! Europe Contract, UD  
20 Panoceanic entered into a separate contract with Plaintiff whereby Plaintiff was appointed as UD  
21 Panoceanic's exclusive sub-distributor of the "Yu-Gi-Oh!" Trading Card Game in the relevant  
22 territories (hereinafter referred to as the "Sub-distributor Contract").

23 13. The Yu-Gi-Oh! Europe Contract also contained a provision that allowed KDE to  
24 terminate that contract immediately if the Yu-Gi-Oh! America Contract was "rightfully terminated  
25 pursuant to the termination clause(s) of such agreement (hereinafter referred to as the "Domino  
26 Clause").

27 14. As a director on Plaintiff's board, McWilliam was aware of the Domino Clause in  
28 the Yu-Gi-Oh! Europe Contract. McWilliam was also aware that, as allowed under the Yu-Gi-Oh!

1 Europe Contract, Plaintiff had been contractually appointed under the Sub-distributor Contract as  
2 the exclusive sub-distributor of the "Yu-Gi-Oh!" Trading Card Game in the relevant territories.

3 15. In or about the first half of 2008, Defendants orchestrated a scheme to produce and  
4 distribute counterfeit Yu-Gi-Oh! Trading Cards that UDC was not authorized to produce or  
5 distribute under the Yu-Gi-Oh! America Contract.

6 16. Plaintiff (including its officers, employees and board members other than  
7 McWilliam) was wholly unaware of and in no way complicit in Defendants' scheme.

8 17. Upon discovery of Defendants' counterfeiting scheme, Konami Digital  
9 Entertainment, Inc. promptly terminated the Yu-Gi-Oh! America Contract. Konami Digital  
10 Entertainment, Inc. also initiated legal proceedings against UDC (and others) in the Central District  
11 of California (hereinafter, the "U.S. KDE Legal Action"). At or around the same time, invoking the  
12 Domino Clause, KDE informed Plaintiff that KDE was also terminating the Yu-Gi-Oh! Europe  
13 Contract, putting UDI's rights and revenues as sub-distributor under the Sub-distribution Contract  
14 directly and gravely at risk.

15 18. As such, when confronted with KDE's attempts to terminate the Yu-Gi-Oh! Europe  
16 Contract under the Domino Clause, Plaintiff's Chief Executive Officer Nico Blauw promptly  
17 contacted McWilliam, who assured Mr. Blauw and UDI that none of the Defendants had engaged in  
18 any unlawful counterfeiting scheme or otherwise done anything unlawful that would justify Konami  
19 Digital Entertainment, Inc's termination of the Yu-Gi-Oh! America Contract and KDE's attempted  
20 termination of the Yu-Gi-Oh! Europe Contract.

21 19. Having received such assurances from McWilliam (who also made such assurances  
22 as the express or implied agent of the other Defendants) and in reliance on those assurances, UDI  
23 took legal actions in Europe against KDE, at significant expense to UDI, to forestall KDE's  
24 attempted termination of the Yu-Gi-Oh! Europe Contract and thereby protect UDI's rights under the  
25 Sub-distribution Contract. (hereinafter, "the Europe KDE Legal Action"). As a result of those  
26 efforts, KDE's termination of the Yu-Gi-Oh! Europe Contract was temporarily halted, and the Yu-  
27 Gi-Oh! Europe Contract remained in effect. Further, KDE continued to accept additional orders  
28 from UDI under the Yu-Gi-Oh! Europe Contract, for which UDI was required to pay KDE millions

1 of dollars to secure.

2           20. In or about April 2009, McWilliams admitted that his prior assurances were false,  
3 and that Defendants had in fact had engaged in an unauthorized counterfeiting scheme of Yu-Gi-  
4 Oh! Trading Cards. McWilliams made this admission well after UDI—in reliance on McWilliam’s  
5 and Defendants’ assurances that none of the Defendants had engaged in any unlawful counterfeiting  
6 scheme or otherwise done anything unlawful that would justify termination of the Yu-Gi-Oh!  
7 Europe Contract and UDI’s rights under the Sub-distribution Contract—had invested millions of  
8 dollars in its legal efforts to stop KDE’s termination efforts and in the subsequent orders that it  
9 placed with KDE. Later, Defendants also admitted their counterfeiting scheme to Konami Digital  
10 Entertainment, Inc., and its European affiliate KDE thereafter refused to fulfill millions of dollars in  
11 orders placed by UDI or to return the funds advanced by UDI to secure those orders.

12           21. Thereafter, in or around the time that the U.S. KDE Legal Action was set to begin  
13 trial, Defendants and Konami Digital Entertainment, Inc. were in discussions to settle that action.  
14 Defendants, however, were unable to fund the settlement amount demanded by KDE to settle the  
15 U.S. KDE Legal Action without additional funds. As such, Defendants requested that UDI loan  
16 UDC \$1 million dollars to help fund the settlement. UDI, at all times having been led to believe by  
17 Defendants and reasonably believing that any settlement of the U.S. KDE Legal Action would also  
18 include a settlement of the Europe KDE Legal Action, agreed to loan UDC \$1 million to help fund a  
19 settlement.

20           22. Accordingly, in or about January 2010, UDI and UDC entered into a contract  
21 whereby UDI agreed to loan, and UDC agreed to repay by no later than April 2010, the sum of \$1  
22 million.

23           23. Unbeknownst to UDI, however, the settlement that Defendants negotiated and  
24 agreed to did not resolve the Europe KDE Legal Action. Instead, McWilliam and UDC disregarded  
25 and misrepresented UDI’s interests in negotiating settlement of the U.S KDE Legal Action. Indeed,  
26 at one point during those negotiations, again unbeknownst to UDI, Defendants falsely  
27 misrepresented during negotiations that UDI was not interested in resolving the Europe KDE Legal  
28 Action as part of settlement of the U.S. KDE Legal Action. At or around the same time, Defendants

1 represented to UDI that Konami was not interested in a worldwide settlement. UDI only discovered  
2 that the settlement did not resolve the Europe KDE Legal Action and learned of Defendants'  
3 misrepresentations regarding UDI's supposed lack of interest in resolving the Europe KDE Legal  
4 Action after Defendants convinced UDI to loan Upper Deck California and Upper Deck Nevada \$1  
5 million, and after Defendants executed the settlement agreements with Konami Digital Electronics,  
6 Inc. Despite the disappointing outcome of the settlement, UDC begged UDI to still loan UDC the  
7 \$1 million so UDC could make the down payment on the settlement. UDI went through with the \$1  
8 million loan, believing in good faith that UDC would make good on its commitment to timely repay  
9 the loan in April 2010.

10 24. Since the settlement of the U.S. KDE Legal Action did not also settle the Europe  
11 KDE Legal Action, KDE was left free to continue to take aggressive legal action against UDI in  
12 Europe. KDE did exactly that: it continued to pursue significant monetary relief, including a claim  
13 for \$64 million in damages against UDI and its CEO Nico Blauw for KDE's alleged damages it  
14 claimed to have suffered as a result of the discovery of Defendants' unlawful counterfeiting scheme  
15 and testimonies. KDE also levied and encumbered significant assets of UDI and UDI's CEO.

16 25. As a result of Defendants' unlawful counterfeiting scheme and their later disregard  
17 and misrepresentation of UDI's interests during settlement negotiations that led to settlement of the  
18 U.S. KDE Legal Action, UDI's business has been significantly and severely damaged. For example  
19 (and without limitation), UDI lost millions of dollars of revenues from lost sales of Yu-Gi-Oh!  
20 Trading Cards, which UDI had reasonably forecasted and reasonably expected to secure and receive  
21 under the Sub-distribution Contract during 2009 and 2010 (what would have been the last two years  
22 left under the Yu-Gi-Oh! Europe Contract, absent any renewal of that contract). Additionally, UDI  
23 lost millions of dollars in orders placed with KDE that ultimately went unfulfilled. And UDI's  
24 reputation among its other suppliers or prospective suppliers of toys or games in Europe has been  
25 seriously tarnished and negatively impacted by UDI's association with Defendants and Defendants'  
26 counterfeiting scheme. Once-existing suppliers have decided not to expand relationships with UDI.  
27 And UDI has lost significant prospective business with other suppliers. UDI was therefore forced to  
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1 let over 100 of its employees go and close offices in the UK, France, Spain, Italy and Australia.  
2 Currently, UDI only employs 22 people.

3 26. Additionally, neither Upper Deck California nor Upper Deck Nevada have repaid  
4 any of the \$1 million loan made by UDI in January 2010. Their failure to repay this loan has only  
5 put further pressure on UDI's cash position and ability to conduct business. And interest of over  
6 \$70,000 has already accrued on the past due loan amount.

7 FIRST CLAIM FOR RELIEF

8 Breach of Contract

9 (Against Upper Deck California and Upper Deck Nevada)

10 27. Plaintiff realleges, adopts and incorporates by reference the allegations included in  
11 the paragraphs herein as if they were fully set forth herein.

12 28. Plaintiff and UDC entered into a valid and enforceable contract through which  
13 Plaintiff agreed to lend \$1 million to UDC to help UDC fund the U.S. Settlement with Konami and  
14 UDC agreed to repay the \$1 million by on or about April 2010 ("the Loan Contract").

15 29. Plaintiff has performed all of its obligations under the Loan Contract, and any further  
16 unperformed obligations (if any) are excused.

17 30. UDC materially breached the Loan Contract by failing to repay the \$1 million loan  
18 amount to Plaintiff by April 2010. Indeed, UDC has refused to repay the \$1 million loan at all.

19 31. As a result of UDC's material breach of the Loan Contract, Plaintiff has suffered  
20 direct and consequential damages in an amount to be proven at trial, but at a minimum in the  
21 amount of \$1 million plus interest incurred on this amount since the amount became due in or about  
22 April 2010.

23 SECOND CLAIM FOR RELIEF

24 Intentional Interference with Contractual Relations

25 (Against All Defendants)

26 32. Plaintiff realleges, adopts and incorporates by reference the allegations included in  
27 the paragraphs herein as if they were fully set forth herein.

28

1           33. Defendants have intentionally interfered with the economic and contractual  
2 relationship between Plaintiff and certain of its clients.

3           34. In particular, UD Panoceanic entered into a valid contract with KDE in the form of  
4 the Yu-Gi-Oh! Europe Contract, benefits and rights under which specifically inured to Plaintiff  
5 under the Sub-distribution Contract between UD Panoceanic and UDI.

6           35. Defendants were aware of the Yu-Gi-Oh! Europe Contract's existence, were aware  
7 of the Sub-distribution Contract's existence, and were also aware that, through the Sub-Distribution  
8 Contract, Plaintiff was the direct and principal beneficiary of significant rights under the Yu-Gi-Oh!  
9 Europe Contract.

10           36. Upon information and belief, when Defendants intentionally engaged in the  
11 counterfeiting activity regarding Yu-Gi-Oh trading cards in the United States, Defendants knew that  
12 such activity would interfere with the Yu-Gi-Oh! Europe Contract and/or the Sub-distribution  
13 Contract, and/or knew that their intentional actions were substantially certain to interfere with the  
14 Yu-Gi-Oh! Europe Contract and/or the Sub-distribution Contract.

15           37. As a direct and proximate result of Defendants' actions, KDE terminated the Yu-Gi-  
16 Oh! Europe Contract, which interfered with the Sub-distribution Contract and with Plaintiff's  
17 significant rights under the Yu-Gi-Oh! Europe Contract as the sub-distributor appointed under that  
18 contract.

19           38. As a result of Defendants' unlawful actions, Plaintiff has been damaged in an  
20 amount to be proven at trial, but which exceeds \$75,000 (exclusive of interest and costs), and  
21 which, at a minimum, includes millions of dollars of lost revenues to UDI resulting from UDI's loss  
22 of the last two years of sales it reasonably expected as sub-distributor under the Yu-Gi-Oh! Europe  
23 Contract.

24           39. The aforementioned acts of Defendants were willful, oppressive, and/or malicious.  
25 Plaintiff is therefore entitled to punitive damages in an amount to be proven at trial, in addition to  
26 all other damages and other relief.

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1 THIRD CLAIM FOR RELIEF

2 Intentional Interference with Prospective Economic Advantage

3 (Against all Defendants)

4 40. Plaintiff realleges, adopts and incorporates by reference the allegations included in  
5 the paragraphs herein as if they were fully set forth herein.

6 41. Under the Yu-Gi-Oh! Europe Contract, Plaintiff as a third party beneficiary to that  
7 contract, enjoyed a successful economic relationship with KDE. Defendants knew that Plaintiff had  
8 an existing economic relationship with KDE and that relationship included a future economic  
9 benefit for Plaintiff. Were it not for Defendants' unlawful counterfeiting scheme of Yu-Gi-Oh!  
10 Trading Cards, Plaintiff's economic relationship with KDE would have continued forward for at  
11 least the duration of the Yu-Gi-Oh! Europe Contract and likely beyond.

12 42. Defendants intentionally interfered with Plaintiff's economic relationship with KDE  
13 by intentionally engaging in the counterfeiting activity regarding Yu-Gi-Oh trading cards in the  
14 United States, when Defendants knew that such activity would interfere with Plaintiff's economic  
15 relationship with KDE, and/or knew that their intentional actions were substantially certain to  
16 interfere with Plaintiff's economic relationship with KDE.

17 43. Defendants' actions in interfering with Plaintiff's economic relationship with KDE  
18 were independently wrongful, at a minimum because Defendants' counterfeiting scheme was  
19 unlawful under U.S. laws, constituted a breach of the Yu-Gi-Oh! America Contract, and constituted  
20 a breach of McWilliam's duties owed to UDI as a then-board member.

21 44. As a direct result of Defendants' intentional interference with Plaintiff's prospective  
22 economic advantage and business relationship with KDE, Plaintiff has been damaged in an amount  
23 to be proven at trial, but which exceeds \$75,000 (exclusive of interest and costs), and which, at a  
24 minimum, includes millions of dollars of lost revenues to UDI resulting from UDI's loss of the last  
25 two years of sales it reasonably expected under its business relationship with KDE.

26 45. The aforementioned acts of Defendants were willful, oppressive, and/or malicious.  
27 Plaintiff is therefore entitled to punitive damages in an amount to be proven at trial, in addition to  
28 all other damages and other relief.

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FOURTH CLAIM FOR RELIEF

Negligent Interference with Prospective Economic Advantage

(Against All Defendants)

46. Plaintiff realleges, adopts and incorporates by reference the allegations included in the paragraphs herein as if they were fully set forth herein.

47. Under the Yu-Gi-Oh! Europe Contract, Plaintiff as a third party beneficiary to that contract, enjoyed a successful economic relationship with KDE. Defendants knew that Plaintiff had an existing economic relationship with KDE and that relationship included a future economic benefit for Plaintiff. Were it not for Defendants' unlawful counterfeiting scheme of Yu-Gi-Oh! Trading Cards, Plaintiff's economic relationship with KDE would have continued forward for at least the duration of the Yu-Gi-Oh! Europe Contract and likely beyond.

48. McWilliam, who was then a board member of UDI, and UDC, as entities controlled and managed by McWilliam, owed a duty of care to the Plaintiff not to unreasonably interfere with Plaintiff's business relationships and affairs.

49. Defendants breached their duty of care owed to Plaintiff and thereby at least negligently interfered with Plaintiff's economic relationship with KDE when Defendants intentionally engaged in counterfeiting activity regarding Yu-Gi-Oh trading cards in the United States, when Defendants knew or reasonably should have known that such activity would interfere with Plaintiff's economic relationship with KDE, and/or knew or reasonably should have known that their intentional actions were substantially certain to interfere with Plaintiff's economic relationship with KDE.

50. Defendants' actions in interfering with Plaintiff's economic relationship with KDE were independently wrongful and at a minimum those actions were negligent, because Defendants' counterfeiting scheme was unlawful under U.S. laws, constituted a breach of the Yu-Gi-Oh! America Contract, and constituted a breach of McWilliam's duties owed to UDI as a then-board member.

51. As a direct result of Defendants' negligent interference with Plaintiff's prospective economic advantage and business relationship with KDE, Plaintiff has been damaged in an amount

1 to be proven at trial, but which exceeds \$75,000 (exclusive of interest and costs), and which, at a  
2 minimum, includes millions of dollars of lost revenues to UDI resulting from UDI's loss of the last  
3 two years of sales it reasonably expected under its business relationship with KDE.

4 52. The aforementioned acts of Defendants were willful, oppressive, and/or malicious.  
5 Plaintiff is therefore entitled to punitive damages in an amount to be proven at trial, in addition to  
6 all other damages and other relief.

7 FIFTH CLAIM FOR RELIEF

8 Breach of Fiduciary Duty

9 (Against McWilliam)

10 53. Plaintiff realleges, adopts and incorporates by reference the allegations included in  
11 the paragraphs herein as if they were fully set forth herein.

12 54. During all relevant times alleged herein, McWilliam was a board member and/or  
13 director of Plaintiff.

14 55. Under both the provisions of UDI's Articles of Association and under generally  
15 controlling law, McWilliam owed a fiduciary duty to Plaintiff.

16 56. McWilliam breached his fiduciary duty owed to Plaintiff, including but not limited to  
17 by (1) engaging in a counterfeiting scheme through UDC and attempting to cover up that scheme  
18 and (2) by disregarding and/or misrepresenting Plaintiff's interests in negotiating and reaching a  
19 U.S. settlement between UDC and Konami. When McWilliam orchestrated and later attempted to  
20 cover up the UDC counterfeiting scheme, he knew that if such scheme were discovered and  
21 exposed, it would substantially injure Plaintiff and Plaintiff's reputation. Further, McWilliam knew  
22 when he disregarded and/or misrepresented Plaintiff's interests in negotiating and reaching the U.S.  
23 Settlement between UDC and Konami that his actions would substantially injure Plaintiff, including  
24 but not limited to by leaving Plaintiff exposed to further legal action by Konami.

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1           57.     The aforementioned acts of McWilliam were willful, oppressive and/or malicious.  
2 Plaintiff is therefore entitled to punitive damages in an amount to be proven at trial, in addition to  
3 all other damages and injunctive and other relief.

4           58.     As a direct and proximate cause of the breaches of duty referenced above, Plaintiff  
5 has been damaged in an amount to be proven at trial, but which exceeds \$75,000 (exclusive of  
6 interest and costs).

7   SIXTH CLAIM FOR RELIEF

8   Aiding and Abetting Breach of Fiduciary Duty

9   (Against Upper Deck California and Upper Deck Nevada)

10           59.     Plaintiff realleges, adopts and incorporates by reference the allegations included in  
11 the paragraphs herein as if they were fully set forth herein.

12           60.     Each of the Defendants knew that the conduct of McWilliam constituted breaches of  
13 his fiduciary duties owed to UDI and Defendants nevertheless gave McWilliam substantial  
14 assistance or encouragement in engaging in such conduct, and/or each of the Defendants gave such  
15 substantial assistance while McWilliam’s own conduct, separately considered, constituted a breach  
16 of his duties to Plaintiff.

17           61.     As a direct and proximate cause of the wrongful conduct of Defendants as alleged  
18 above, Plaintiff has been damaged in an amount to be proven at trial, but which exceeds \$75,000  
19 (exclusive of interest and costs).

20           62.     The aforementioned acts of Defendants were willful, oppressive and/or malicious.  
21 Plaintiff is therefore entitled to punitive damages in an amount to be proven at trial, in addition to  
22 all other damages and injunctive and other relief.

23   PRAYER FOR RELIEF

24           WHEREFORE, Plaintiff requests that it be awarded judgment against Defendants in this  
25 action, as follows:

26           a.     For general, compensatory and/or special damages in an amount according to proof  
27 at trial (but which, as alleged, exceeds the jurisdictional minimum of this Court, and includes, at a  
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1 minimum, the \$1 million owed by UDC, as well as millions of dollars in lost profits to Plaintiff  
2 and/or damages suffered by Plaintiff resulting from Defendants' unlawful conduct);

- 3 b. For punitive and/or exemplary damages in an amount according to proof;  
4 c. For interest at the appropriate rate on the sums awarded;  
5 d. For costs of suit and attorneys' fees; and  
6 e. For any and all such other and further relief as the Court may deem appropriate.

7 DEMAND FOR JURY TRIAL

8 Plaintiff hereby demands a trial by jury on all claims and issues so triable.

9  
10 Dated: August 4, 2011

MINTZ LEVIN COHN FERRIS GLOVSKY AND  
POPEO PC

11  
12 By /s/ Andrew D. Skale, Esq.

Andrew D. Skale, Esq.  
Nathan R. Hamler, Esq.

13  
14 Attorneys for Plaintiff  
UPPER DECK INTERNATIONAL B.V.

15  
16 Email: askale@mintz.com  
nhamler@mintz.com

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JS 44 (Rev. 12/07)

**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 THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Upper Deck International B.V., a Netherlands corporation

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Andrew D. Skale, Mintz Levin Cohn Ferris Glovsky & Popeo PC  
3580 Carmel Mtn. Rd., Ste. 300, SD, CA 92130; (858) 314-1500

**DEFENDANTS**

The Upper Deck Company, a California corporation

County of Residence of First Listed Defendant San Diego, CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**'11CV1741 LAB CAB**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | 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 type="checkbox"/> 4 | <input checked="" 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 type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

GENERAL	PERSONAL INJURY	PERSONAL INJURY	AGRICULTURE/FOOD & DRUG	BANKING/INVESTMENT	PROPERTY RIGHTS	OTHER
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Label & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal			<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities-Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities-Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 950 Constitutionality of State Statutes

**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
  - 7 Appeal to District Judge from Magistrate Judgment

**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. Section 1331  
Breach of Contract; Tortious Interference; Breach of Fiduciary Duty

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$ Greater than \$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: 08/04/2011 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_