

MCKOOL SMITH HENNIGAN, P.C.  
LOS ANGELES, CA

Kirk Dillman (SBN 110486)  
kdillman@mckoolsmithhennigan.com  
M. Storm Byrd (SBN 319387)  
sbyrd@mckoolsmithhennigan.com  
MCKOOL SMITH HENNIGAN, P.C.  
300 South Grand Avenue, Suite 2900  
Los Angeles, California 90071  
Telephone: (213) 694-1200  
Facsimile: (213) 694-1234

Nicholas T. Matich (to be admitted *pro hac vice*)  
nmatich@mckoolsmith.com  
MCKOOL SMITH P.C.  
1999 K Street, NW, Suite 600  
Washington, DC 20006

Mark Lanier (to be admitted *pro hac vice*)  
wml@lanierlawfirm.com  
Alex J. Brown (to be admitted *pro hac vice*)  
alex.brown@lanierlawfirm.com  
Zeke DeRose III (to be admitted *pro hac vice*)  
THE LANIER LAW FIRM  
6810 FM 1960 West  
Houston, TX 77069

*Attorneys for Plaintiff  
The Real USFL, LLC*

*Additional counsel on the inside page*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

THE REAL USFL, LLC, a New York  
limited liability company,

Plaintiff,

v.

FOX SPORTS, INC, a Delaware  
corporation; THE SPRING LEAGUE,  
LLC, a Delaware limited liability  
company; USFL ENTERPRISES,  
LLC, a Delaware limited liability  
company,

Defendants.

Case No. 2:22-cv-1350

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

COMPLAINT

McKool Smith Hennigan, P.C.  
Los Angeles, CA

1 Joseph O. Slovacek (to be admitted *pro hac vice*)  
2 slovacek@hooverslovacek.com  
3 Hoover Slovacek LLP  
4 Galleria Tower II  
5 5051 Westheimer, Suite 1200  
6 Houston, TX 77056

7 Eric B. Halper (to be admitted *pro hac vice*)  
8 ehalper@mckoolsmith.com  
9 John C. Briody (to be admitted *pro hac vice*)  
10 jrbriody@mckoolsmith.com  
11 Radu A. Lelutiu (to be admitted *pro hac vice*)  
12 rlelutiu@mckoolsmith.com  
13 Laura Baron (to be admitted *pro hac vice*)  
14 lbaron@mckoolsmith.com  
15 MCKOOL SMITH P.C.  
16 395 Ninth Avenue  
17 New York, NY 10001

18 Thomas J. Eisweirth (to be admitted *pro hac vice*)  
19 teisweirth@mckoolsmith.com  
20 MCKOOL SMITH P.C.  
21 600 Travis Street  
22 Suite 7000  
23 Houston, TX 77002  
24  
25  
26  
27  
28

1 Plaintiff The Real USFL LLC (the “Real USFL”) brings this action against  
2 Defendants for injunctive relief and damages. The allegations herein are made based  
3 on personal knowledge of the Real USFL and its members as to their own actions and  
4 interactions, and upon information and belief as to all other matters.

### 5 **NATURE OF THE ACTION**

6 1. Last year, Defendants Fox Sports, Inc., The Spring League, LLC, and  
7 USFL Enterprises, LLC (collectively “Fox”) announced the creation of a purportedly  
8 new professional football league named the “USFL” or the “United States Football  
9 League” (hereafter, “Fox’s League”). Three months ago, Fox further announced that  
10 the new league’s 2022 season would begin on April 22, 2022, with eight teams: the  
11 Michigan Panthers, the New Jersey Generals, the Philadelphia Stars, the Pittsburgh  
12 Maulers, the Birmingham Stallions, the Houston Gamblers, the New Orleans  
13 Breakers, and the Tampa Bay Bandits.

14 2. But Fox’s USFL franchise is an unabashed counterfeit. The original  
15 USFL (the “USFL” or the “League”)—with which Fox has no association—was a  
16 professional football league that played in the 1980s and was serious competition to  
17 the National Football League (“NFL”). Indeed, the USFL once fielded teams with  
18 now-legendary players like Jim Kelley, Reggie White, Doug Flutie, Steve Young,  
19 Herschel Walker, Kelvin Bryant, and many others. Hundreds of millions of dollars  
20 were invested into the development of the USFL, which was launched with the  
21 support of legendary executives such as the Hall of Fame fullback and former  
22 President and General Manager of the Jacksonville Bulls, Larry Csonka, and the  
23 President, General Manager, and part owner of the original Philadelphia/Baltimore  
24 Stars, Carl Peterson.

25 3. The League was the subject of one of ESPN’s first “30-for-30” sports  
26 documentaries and has been detailed in multiple books. It also had—and continues  
27 to have—a mass following with enduring demand for USFL merchandise. Fox has  
28 no claim to this legacy and no right to capitalize on the goodwill of the league. Much

1 less does Fox have a right to deceive the public into believing that it is the USFL—or  
2 that Fox’s League’s teams were the USFL teams.

3 4. Yet, that is precisely what Fox has done. It has taken the name and logo  
4 of the original league, its team names, and team logos to which it has no right. And,  
5 to make matters worse, it has traded on the false narrative that Fox’s League and  
6 USFL teams are the offspring of the originals. They are not. Plaintiff brings this  
7 action to recover the legacy and marks of the USFL and its original teams that Fox so  
8 brazenly seeks to misappropriate for itself.

### 9 **THE PARTIES**

10 5. Plaintiff the Real USFL is a New York limited liability company with a  
11 principal place of business at One Manhattan West, 395 9th Avenue, 50th Floor, New  
12 York, NY. The Real USFL is a holding company possessing all rights and interest  
13 the Real USFL Marks (as that term is defined below).

14 6. Defendant Fox Sports, Inc. is a Delaware corporation with a principal  
15 place of business at 10201 West Pico Boulevard Los Angeles, CA.

16 7. Defendant The Spring League, LLC is a Delaware limited liability  
17 company with a principal place of business at 3524 Silverside Road, Suite 35B  
18 Wilmington, Delaware 19810.

19 8. Defendant USFL Enterprises, LLC is a Delaware limited liability  
20 company with a principal place of business at 10201 West Pico Boulevard Los  
21 Angeles, CA. Upon information and belief, USFL Enterprises, LLC is a wholly-  
22 owned subsidiary of Fox Sports, Inc.

### 23 **JURISDICTION AND VENUE**

24 9. This action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*  
25 Accordingly, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331  
26 (federal question) and 28 U.S.C. § 1338(a) (action arising under an Act of Congress  
27 relating to trademark and copyright).  
28

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(a) as Defendants Fox Sports, Inc. and USFL Enterprises, LLC themselves claim to have their principal place of business in this district.

### A. The USFL: 1982 – 1986

13. As detailed in an ESPN 30 for 30 documentary, countless articles, and multiple books, the USFL ceased play in 1986 following an ill-advised attempt to move its season to fall to compete head-to-head with the NFL and a pyrrhic antitrust suit against its larger rival.

3

1           14. During its run, the USFL obtained registration in nearly 400 trademarks  
2 for the USFL name and logo, as well as the names and logos for 18 different teams.  
3 Plaintiff, the Real USFL, is a company created by former USFL team owners and  
4 devisees to hold their interests in the USFL's intellectual property (the "Real USFL  
5 IP") and preserve the league's legacy.

6       **B. The USFL: 1986 – Present**

7           15. The legacy of the USFL lives on today, in part, due to Steve Ehrhart's  
8 contributions of on behalf of the League's original owners. Mr. Ehrhart is currently  
9 Executive Director of the AutoZone Liberty Bowl, a respected college football bowl  
10 game that has been played annually for more than sixty years at Liberty Bowl  
11 Memorial Stadium in Memphis, Tennessee. Mr. Ehrhart's storied career in sports  
12 also includes roles as president of Major League Baseball's Colorado Rockies, and  
13 more recently, he was a minority owner of the National Basketball League's Memphis  
14 Grizzlies. Before all of that, however, Mr. Ehrhart served in the USFL League Office  
15 as Executive Director and later became President, General Manager, and part owner  
16 of the Memphis Showboats, one of the League's teams.

17           16. In 1986, the USFL's owners elected Mr. Ehrhart to serve as the League's  
18 Chairman of the Executive Committee. In this capacity, Mr. Ehrhart has collected  
19 the USFL's damages and attorneys' fee awards from the NFL and disbursed the  
20 attorneys' fee award as determined by the USFL owners. Over the years, Mr. Ehrhart  
21 has also worked to preserve the USFL's legacy by, among other things, organizing  
22 league and team reunions, and authorizing and appearing in the 30 for 30  
23 documentary. Relevant here, Mr. Ehrhart has also entered into certain media  
24 licensing arrangements on behalf of the USFL for apparel, books, and other media.

## 1. *Apparel Licensing*

17. For over 30 years, American Classics, Inc. (“American Classics”) has established itself as a leading wholesaler of licensed entertainment apparel. The company produces officially licensed t-shirts for household brand names like Warner Brothers, Sony, Universal Studios, and Disney. Retailers can purchase American Classics’ merchandise on the company’s website [www.americanclassicsonline.com](http://www.americanclassicsonline.com), and consumers can find the company’s t-shirts on the racks of big-box retailers such as Kohl’s and Old Navy, among a number of other smaller retailers.

18. In July 2011, Mr. Ehrhart, acting on behalf of the USFL, entered into a world-wide licensing agreement with American Classics to produce throwback t-shirts bearing the names and logos the USFL’s teams (the “Apparel License”). The Apparel License provided that in exchange for a 12% royalty, American Classics would make its “best efforts to offer for sale” by September 30, 2011, apparel using the “names, logos, [and] images of the USFL and its member teams from 1983, 1984, and 1985” (the “USFL Apparel”).

19. On August 11, 2011, David Brown, American Classics’ President, presented to Mr. Ehrhart for approval the proposed designs of 26 t-shirts bearing the USFL logo and/or the marks of each of the 18 USFL teams. Mr. Ehrhart approved these designs, and by no later than October 24, 2011, American Classics listed the USFL among the brands it licensed on its website.<sup>2</sup> USFL Apparel was available to retailers on American Classics’ website by no later than November 19, 2011.<sup>3</sup>

20. The USFL Apparel was marketed to consumers no later than November 4, 2011:<sup>4</sup>

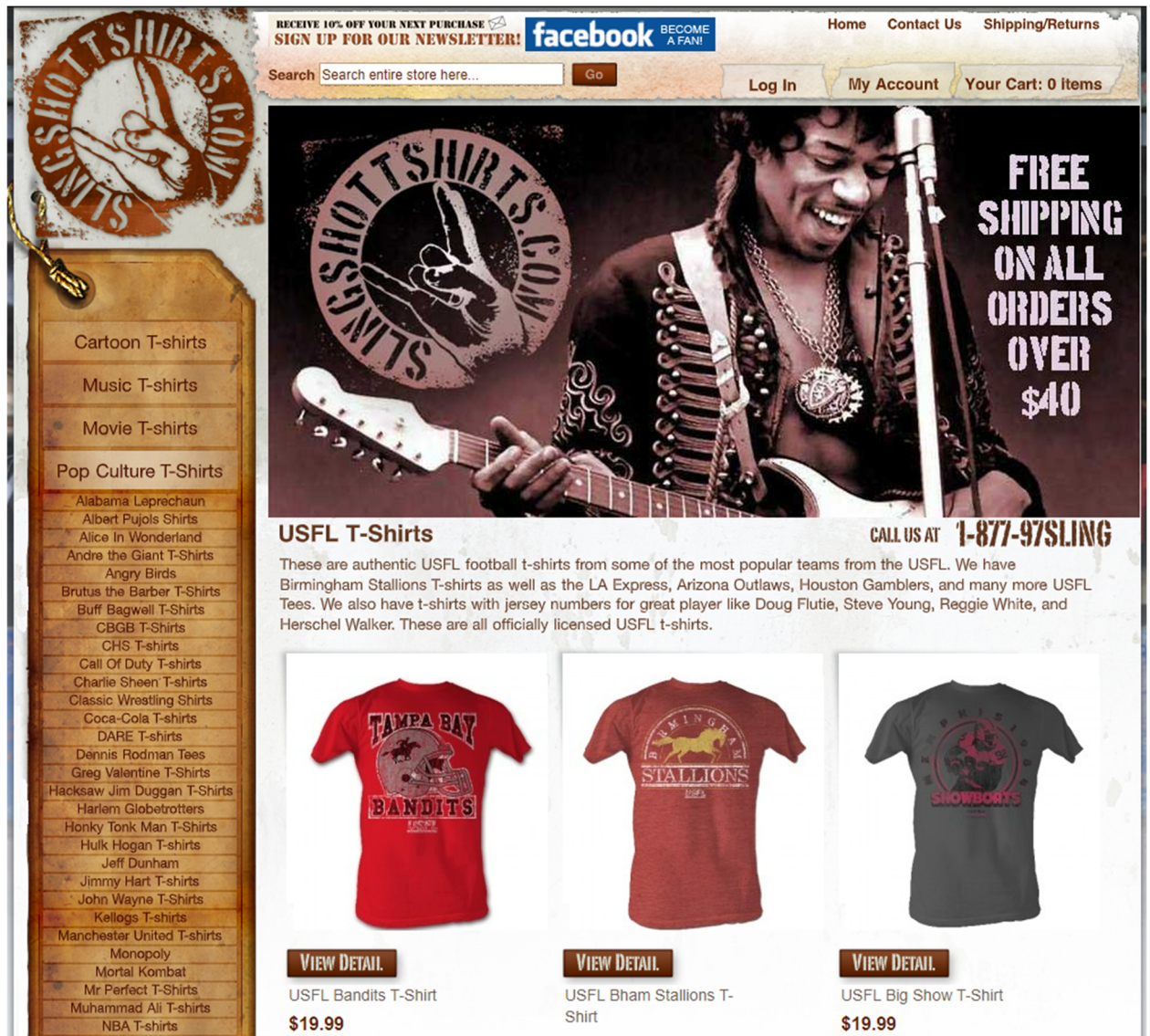
<sup>2</sup> <https://web.archive.org/web/20111024180854/http://americanclassicsonline.com:80/>

<sup>3</sup> <https://web.archive.org/web/20111119150938/http://americanclassicsonline.com/home.php? Cat=154>

<sup>4</sup> <https://web.archive.org/web/20111104072343/http://slingshotshirts.com/pop-culture-t-shirts/usfl-t-shirts.html#expand>. Slingshot T-Shirts was once a retail partner of American Classics.



McKool Smith Hennigan, P.C.  
Los Angeles, CA



21. Royalty statements issued by American Classics indicate that in the fourth quarter of 2011, American Classics sold more than 75 units of the USFL Apparel. Demand for the USFL Apparel has remained steady since and American Classics has made regular quarterly royalty payments to “the United States Football League c/o Steve Ehrhart” every quarter through fourth quarter 2021. Mr. Ehrhart has deposited each and every check and has not made a single withdrawal from the account.

## 2. Book Licensing

Paul Reeths, an author, avid USFL fan, and sports historian,<sup>5</sup> first contacted Mr. Ehrhart in July 2009 to discuss an anticipated book providing a definitive history

<sup>5</sup> Mr. Reeths is the founder of OurSports Central (<https://www.oursportscentral.com/>), the internet’s



of the USFL. Over the ensuing years, Mr. Reeths and Mr. Ehrhart held several discussions on the contents of the book, each chapter of which was sent to Mr. Ehrhart for approval. On July 6, 2016, prior to publication, Mr. Ehrhart provided to Mr. Reeths a written release to use the USFL league and team logo. Mr. Reeth's book, *The United States Football League, 1982-1986*, was published by McFarland & Company on April 3, 2017.

### 3. *Film Licensing*

22. Mr. Ehrhart has also licensed the USFL marks for use in two separate films documenting the history of the League and its most successful team, two-time USFL Champion Philadelphia and Baltimore Stars.

23. Ken Dunek played all three USFL seasons with the Stars as a starting tight end. His accomplishments in the League are recognized today in the Pro Football Hall of Fame where his jersey hangs next to the USFL Championship Trophy.



24. Today, Mr. Dunek is both a successful businessman and filmmaker. In late 2006, Mr. Dunek contacted the Stars' former owner and then-Kansas City Chiefs President, Carl Peterson, regarding a planned film named "Field Mouse," a documentary detailing the life and career of Mr. Dunek's former Stars teammate, Hall

largest resource of minor league sports news, along with the original USFL website <https://www.usflsite.com/>.

1 of Fame Linebacker Sam Mills. Mr. Peterson suggested to Mr. Dunek that prior to  
2 pursuing the film, he should request the rights to use the USFL league and team marks  
3 from Mr. Ehrhart.

4 25. Mr. Dunek made initial contact with Mr. Ehrhart in October 2006  
5 regarding his plans for the film and a potential license for the USFL marks. The two  
6 stayed in contact regarding the status of the project, and on April 21, 2008, Mr.  
7 Ehrhart executed a written release granting Mr. Dunek “the rights to use the USFL  
8 name, logo, likeness, and game footage video” for the film.

9 26. Mr. Dunek and his team continue to pursue the project today and have  
10 made substantial progress to those ends, including securing name and likeness rights  
11 for Mr. Mills, obtaining substantial financing, finalizing the screenplay, and  
12 marketing the film to production studios across the country. On March 7, 2011, The  
13 Philadelphia Inquirer published an article detailing Mr. Dunek’s plans for Field  
14 Mouse.<sup>6</sup>

15 27. In July 2010, Mr. Dunek again contacted Mr. Ehrhart regarding a separate  
16 film project involving the Stars. This project, named “The Team that Time Forgot,”  
17 once had a website for the film, and an archive version of which shows that the  
18 website contained links to multiple relevant articles and blog posts, including a July  
19 22, 2010, article in The Philadelphia Inquirer discussing the film.<sup>7</sup> The website also  
20 contained the film’s trailer, a copy of which can still be found on the video hosting  
21 service, Vimeo.<sup>8</sup> The film also has Facebook fan page with more than 400 followers  
22 and hundreds of posts between July 2010 and January 2014. Mr. Dunek and his team  
23 have secured significant financing for the film, and have marketed it to major studios  
24 including Sony, DreamWorks, and ESPN. Plans to produce the film are ongoing.

25  
26 <sup>6</sup> [https://www.inquirer.com/philly/sports/eagles/20110307\\_Stan\\_Hochman\\_Dunek\\_wants\\_to](https://www.inquirer.com/philly/sports/eagles/20110307_Stan_Hochman_Dunek_wants_to_make_stars_of_the_Stars.html)  
27 [make\\_stars\\_of\\_the\\_Stars.html](https://www.inquirer.com/philly/sports/eagles/20110307_Stan_Hochman_Dunek_wants_to_make_stars_of_the_Stars.html).

28 <sup>7</sup> [https://www.inquirer.com/philly/blogs/inq-phillydeals/Philadelphias\\_football\\_Stars\\_in\\_movie](https://www.inquirer.com/philly/blogs/inq-phillydeals/Philadelphias_football_Stars_in_movie_project.html)  
[project.html](https://www.inquirer.com/philly/blogs/inq-phillydeals/Philadelphias_football_Stars_in_movie_project.html).

<sup>8</sup> <https://vimeo.com/14377648>; <https://vimeo.com/20390950>.

**C. Fox's Claimed USFL Marks**

28. On March 24, 2011, an entity named United States Football League, LLC (the "2011-USFL")<sup>9</sup> filed an application with the United States Patent and Trademark Office ("USPTO") for a standard character trademark registration of the term "USFL." The USPTO registered this mark on June 26, 2012, as Reg. No. 4165542, which states that the "2011-USFL" first used the mark in commerce on December 31, 2011.

29. From September 2011 to August 2014, the "2011-USFL" filed registration applications for more "USFL" marks, some of which the USPTO granted. The specimens for some of these marks show that they were always intended to capture the good will of the USFL. For example, the specimen for Reg. No. 4808689 details the "2011-USFL's" plans to "utilize [the USFL's] historical legacy to bring quick brand identity to football fans,"<sup>10</sup> even though the "2011-USFL" had no right to use the Real USFL's IP and no connection to the League's original owners.

30. On January 31, 2021, the "2011-USFL" assigned its entire interest and "goodwill" in its registrations to World Record Headquarters, Inc. ("WRH"). The assignment to WRH was recorded with the USPTO on February 2, 2021.

31. Starting in January 2021, WRH itself filed several standard character trademark applications requesting registration for marks in "United States Football League" and thirteen of the USFL's original team names.

32. On April 1, 2021, WRH assigned its entire interest in its marks (including those acquired from the "2011-USFL") to The Spring League, LLC ("TSL"). The assignment to TSL was recorded with the USPTO on April 12, 2021.

33. From March 2019 through January 2021, TSL submitted a number of additional applications seeking registration for, among other things, marks identical (or nearly identical) to the Real USFL IP. The USPTO has yet to grant registration

<sup>9</sup> The "2011-USFL" has no connection to the USFL or the Real USFL.

<sup>10</sup> Reg. No. 4808689, Response to Office Action, May 16, 2012 at 13.

1 to any of TSL's applications.

2 34. Beginning in October 2021, another entity named NSFL Enterprises Co.,  
3 LLC ("NSFL") submitted several registration applications seeking for marks identical  
4 (or nearly identical) to the Real USFL IP. The USPTO has yet to grant registration  
5 to any of NSFL's applications.

6 35. On December 6, 2021, NSFL assigned its entire interest in its marks to  
7 Defendant USFL Enterprises, LLC. The assignment to USFL Enterprises, LLC was  
8 recorded with the USPTO on January 4, 2022.

9 36. Through the TSL and USFL Enterprises, LLC registrations (including the  
10 "2011-USFL" and WRH registrations), Fox purports to be the owner of 175 federal  
11 trademark registrations that are identical or confusingly similar to the Real USFL IP.

12 **D. Fox Uses TSL's Marks to Launch the Fox League**

13 37. On June 3, 2021, in a transparent attempt to benefit from decades worth  
14 of brand and public perception, Fox issued a press release (the "Press Release")  
15 announcing Fox's plans "to bring back" "the United States Football League" (the  
16 "Fox League").<sup>11</sup>

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 <sup>11</sup> <https://web.archive.org/web/20210603133652/https://www.foxsports.com/presspass/latest-news/2021/06/03/united-states-football-league-returns-2022> (highlighting added).

McKool Smith Hennigan, P.C.  
Los Angeles, CA

Thursday, June 3, 2021

# The United States Football League Returns in 2022

## FOX Sports to Serve as Official Broadcast Partner for the USFL

**Los Angeles** – Today, the United States Football League (USFL) announced that the league will officially return in the spring of 2022.

Initially launched in 1983, the USFL originally was an upstart spring football league consisting of 12 teams which featured some of the most exciting and recognizable young football stars in the country. When relaunched next year, the new USFL retains rights to key original team names.

The league will target a minimum of eight teams and deliver high-quality, innovative professional football to fans throughout the spring season.

"I'm extremely passionate about football and the opportunity to work with FOX Sports and to bring back the USFL in 2022 was an endeavor worth pursuing," said **Brian Woods**, co-founder of the new USFL and founder and CEO of The Spring League (TSL). "We look forward to providing players a new opportunity to compete in a professional football league and giving fans everywhere the best football viewing product possible during what is typically a period devoid of professional football."

FOX Sports will serve as the official broadcast partner for the USFL. FOX Sports also owns a minority equity stake in the company that owns the USFL.

"The relaunch of the USFL is a landmark day for football fans and FOX Sports," said **Eric Shanks**, CEO and Executive Producer, FOX Sports. "Football is in our DNA and the return of this innovative and iconic league is a fantastic addition to our robust slate of football programming."

At least 600 separate news outlets circulated the Press Release across the country.

38. The Press Release was not Fox's only June 3, 2021, promotion of the counterfeit league. In a tweet posted on two verified Fox Sports Twitter pages, Fox announced that "The USFL is back! Catch all the action next year on FOX Sports."<sup>12</sup> Embedded in the tweet is a video of "@USFLOfficial legendary QB @DougFlutie,"

<sup>12</sup> <https://twitter.com/FOXSports/status/1400436507559620610?s=20&t=Go6oxmS9n7lu1wmt6Rwzlw>; <https://twitter.com/FOXSportsPR/status/1400437750688456720?s=20&t=6k6Vgco03z3jbnQWwYM-tg>.



a former Heisman Trophy winner who played his professional rookie season with the USFL's New Jersey Generals.



39. Mr. Flutie—who can be seen wearing a hat bearing the USFL Generals logo—opens the video stating “the USFL is back! See you in 2022!” He continues on to reminisce about “our days back in the USFL,” naming Reggie White, Jim Kelly, Steve Young, and Herschel Walker among former players in the league. As Mr. Flutie names each of these individuals, the video displays photographs of the players wearing Real USFL jerseys and/or playing in USFL games:



40. The promotional video posted to Twitter also features Fox's League's "redesigned" USFL logo, displayed below next to the logo of the authentic USFL:



Notwithstanding this new logo, on October 21, 2021, Fox filed an application for registration of the original USFL mark. *See* Serial No. 97071284.

41. Several months after its initial announcements, on November 22, 2021, Fox announced that Fox's League would in fact be using eight of the USFL's team names team logos that were either essentially identical or confusingly similar to the original USFL logos.

42. The similarity between Fox USFL's team logos and the original USFL team logos is also unquestionable, displayed side-by-side below for comparison:



#### E. The Original USFL Owners Push Back.

43. The same day Fox announced its new league, Mr. Ehrhart sought to set the record straight. In an article published in The Philadelphia Inquirer, Mr. Ehrhart is quoted as stating:<sup>14</sup>

I was surprised when I heard about it this morning. . . . I want to dig into it and see who they're claiming they acquired these rights [to the name] from. Because it didn't come from any legitimate source. . . . My guess is there's some knucklehead out there who claimed he had registered the name and had the rights to it. We're not being antagonistic. But if they want to do this, they should do it the right way and talk to the actual people, not some guy who sent in an internet registration or something like that.

Mr. Ehrhart also makes clear that the USFL marks had "been in continuous use for nearly 40 years."

44. When pressed for comment, Fox spokesperson Anne Pennington confidently stated "We stand by what was in the [P]ress [R]elease."

45. Within a few days of the Fox announcement, Mr. Ehrhart called

<sup>13</sup> <https://twitter.com/USFL/status/1464285878839222272>.

<sup>14</sup> <https://www.inquirer.com/eagles/usfl-fox-philadelphia-stars-spring-20210603.html>.

1 Larry Jones, Executive Vice President of Fox Sports, to inform him that the USFL  
2 was still operating and that the League had been selling merchandise and receiving  
3 royalties every quarter for over a decade. In July 2021, Mr. Ehrhart and Mr. Jones  
4 discussed the issue in person in Dallas, Texas. Despite Mr. Ehrhart's efforts to reach  
5 a resolution at this meeting, Mr. Jones informed Mr. Ehrhart that Fox had no intention  
6 of discussing the issue further.

7 46. Fox's failure to act led Bert Deixler, former attorney for the USFL, to  
8 send a letter on behalf of a group of the USFL's owners, executives, and leaders to  
9 Brian Woods notifying him that Fox's League was misappropriating the name,  
10 tradenames, and trademarks of the USFL and its constituent teams. Mr. Deixler  
11 requested that Mr. Woods promptly provide the basis for claiming that he was  
12 authorized to "relaunch" the League.

13 47. On September 21, 2021, lawyers for Mr. Woods responded that the  
14 original USFL had been defunct for over thirty years and had abandoned its  
15 trademarks. It also requested information regarding the team owners' rights in any  
16 teams and intellectual property rights. Mr. Deixler later emailed the lawyers for Mr.  
17 Woods and indicated he would like to discuss Fox's purported re-launch of the USFL.

18 48. At some point following Mr. Deixler's email to Mr. Woods—but no  
19 sooner than October 20, 2021—Fox Sports altered the Press Release to remove  
20 references to a "relaunch" of the USFL and the League's history.  
21  
22  
23  
24  
25  
26  
27  
28



# The New United States Football League Kicks Off in 2022

## FOX Sports to Serve as Official Broadcast Partner for the USFL

**Los Angeles** – Today, the new United States Football League (USFL) announced that the league will officially kick off in the spring of 2022.

The league will target a minimum of eight teams and deliver high-quality, innovative professional football to fans throughout the spring season.

"I'm extremely passionate about football and the opportunity to work with FOX Sports and to launch the new USFL in 2022," said **Brian Woods**, co-founder of the new USFL and founder and CEO of The Spring League (TSL). "We look forward to providing players a new opportunity to compete in a professional football league and giving fans everywhere the best football viewing product possible during what is typically a period devoid of professional football."

FOX Sports will serve as the official broadcast partner for the USFL. FOX Sports also owns a equity stake in the company that owns the USFL.

Although the new USFL owns the USFL trademark and various team names, including the team names that were abandoned after the 1980s USFL league shut down, the new USFL is not associated or affiliated with that league or its owners.

49. Despite Fox Sports efforts to alter the Press Release, Fox Sports failed to update the URL, which continues to indicate a planned "return[]" of the USFL.

### F. Fox Sports Intimidates American Classics

50. Just two days before Christmas 2021, outside counsel for Fox—David Bernstein of Debevoise & Plimpton—sent a cease and desist letter to American Classics demanding that it "immediately discontinue all sale of" the USFL Apparel and "recall all products that have been distributed to retailers." Mr. Bernstein set a deadline for American Classics to fully comply with the demands of 8-days—*i.e., the week between the Christmas and New Year's holidays and in the midst of the Omicron COVID surge*—and threatened "to take all necessary action to prevent" American Classics' so-called "unlawful conduct." American Classics informed Fox's attorney of the licenses signed by Mr. Ehrhart and provided him records of its royalty payments, but agreed to stop selling the USFL Apparel to avoid litigation. Despite



1 agreeing to stop selling the merchandise, Mr. Brown expressly reserved all of his legal  
2 rights.

3 **G. Fox's and NBC's Repeated Misrepresentations Cause Actual Confusion in**  
4 **the Media and Among Consumers**

5 51. Notwithstanding Fox's covert changes to the Press Release, both Fox and  
6 its broadcast partner, NBC, have continued to misrepresent that Fox's League and its  
7 teams have any association with the USFL or its teams:

8 ***November 18, 2021, Ryan Gaydos, Fox News:***<sup>15</sup>

9 "The reboot of the league was initially announced in June. The original  
10 USFL launched in 1983 as a spring league and ran until 1985. The league  
11 was shut down before the 1986 season started, and some of its biggest stars  
12 – Herschel Walker, Doug Flutie, Steve Young, Reggie White, Jim Kelly  
13 and Gary Zimmerman – left for the NFL. This time around, the FOX  
14 Sports-owned league vows to deliver high-quality professional football  
15 when the NFL heads into its offseason."

16 ***November 22, 2021, Fox 29 Philadelphia:***<sup>16</sup>

17 "The most successful franchise in USFL history is returning to  
18 Philadelphia!"

19 ***November 22, 2021, Steve Crocker and Drew Dover, Fox 6 Birmingham:***<sup>17</sup>

20 "Birmingham, Tampa and Philadelphia are the only cities in the new  
21 version of the USFL that were represented at the birth of the original league  
22 that played from 1983 to 1985, folding under hundreds of millions of  
23 dollars in losses. The Stallions had strong fan support and fielded a team  
24 that included running back Joe Cribbs, quarterback Cliff Stoudt, and kicker  
25  
26

27 <sup>15</sup> <https://www.foxnews.com/sports/usfl-what-you-need-to-know>.

28 <sup>16</sup> <https://www.fox29.com/sports/philadelphia-stars-returning-as-usfl-launches-in-april-2022>.

<sup>17</sup> <https://www.wtvy.com/2021/11/22/birmingham-stallions-usfl-return-april-2022/>.

1 Scott Norwood, all of whom would move on to the NFL after the league's  
2 demise."

3 ***January 6, 2022, Martin Rogers, Fox Sports:***<sup>18</sup>

4 "The USFL, which operated on a spring/summer schedule between 1983  
5 and '85, will try to do a few things upon its reincarnation. While the  
6 majority of the rules will come from the NFL model, there will  
7 undoubtedly be innovation, essentially a prerequisite for spring football  
8 upstart operations that hope to make an impact. But more than anything  
9 else, the best thing about the USFL is that it will provide football at a time  
10 when there is perhaps more hunger for it than ever before."

11 ***January 19, 2022, Mike Florio, NBC Sports:***<sup>19</sup>

12 "The eight teams of the rebooted USFL will carry the names of the original  
13 octet of franchises from 1983. Only one of them will be geographically  
14 accurate."

15 ***January 25, 2022, Chris Williams, Fox 13 Tampa Bay:***<sup>20</sup>

16 "The reborn United States Football League announced Birmingham,  
17 Alabama, will host all games during its inaugural season this year."

18 ***February 18, 2022, Reuben Frank, NBC Sports Philadelphia:***<sup>21</sup>

19 "The new USFL has no formal connection with the old USFL. The new  
20 league's press releases make that clear: 'The United States Football  
21 League is a new, independent football league . . . and it is not associated  
22 or affiliated with the USFL of the 1980s or its owners.' Still . . . when you  
23 call your league the USFL and you name a team the Philadelphia Stars, it  
24 immediately conjures up memories of spring-time football at the Vet in the  
25

26 <sup>18</sup> <https://www.foxsports.com/stories/usfl/usfl-will-be-welcome-addition-to-spring-sports-calendar>.

27 <sup>19</sup> <https://profootballtalk.nbcsports.com/2022/01/19/usfl-will-play-all-2022-games-in-birmingham>.

28 <sup>20</sup> <https://www.fox13news.com/sports/usfl-2022-birmingham-to-host-all-football-games-in-inaugural-season>.

<sup>21</sup> <https://www.yahoo.com/video/9-memories-original-usfl-philadelphia-140018130.html>.

1 1980s. The original USFL only existed for three seasons – 1983 through  
 2 1985 – but for Eagles fans starving for competitive football during a  
 3 miserable period for the Eagles, it was a fun alternative. The Stars were  
 4 really good.”

5 ***February 18, 2022, Dan Roche, NBC Sports Philadelphia:***<sup>22</sup>

6 “In case you hadn’t heard, a new-old football league is getting a re-boot in  
 7 2022. The USFL, which back in the 1980s tried unsuccessfully to compete  
 8 with the NFL and lasted just three seasons, is now back. While there’s no  
 9 legal connection between USFL-then and USFL-now, the eight teams in  
 10 the current version have identical names and locations to eight of the teams  
 11 that played nearly 40 years ago, including the Philadelphia Stars. . . . These  
 12 [Fox USFL Stars] uniforms harken back memories of the short-lived  
 13 original Stars. Chuck Fusina, Scott Fitzkee, Brad and Bart Oates, Kelvin  
 14 Bryant, and Pro Football Hall of Fame linebacker Sam Mills. And I can’t  
 15 wait.”

16 52. Fox’s (and perhaps NBC’s) misstatements and misrepresentations have  
 17 caused nearly uniform confusion among major third-party media outlets. For  
 18 instance:

19 ***June 7, 2021, Ben Kercheval, CBS Sports:***<sup>23</sup>

20 “The United States Football League announced on June 3 that it would  
 21 revive the once-popular competitor to the NFL in the spring of 2022, nearly  
 22 40 years after its initial launch in 1983 and 36 years after it folded in  
 23 1986.”

24  
 25  
 26  
 27 <sup>22</sup> <https://www.nbcphiladelphia.com/news/sports/nbcports/usfl-philly-stars-unveil-their-2022-uniforms/3150746/>.

28 <sup>23</sup> <https://www.cbssports.com/nfl/news/usfl-2022-can-the-revived-league-avoid-the-mistakes-the-xfl-and-aaf-both-made/>.

1 ***November 22, 2021, Jeff Kerr, CBS Sports:***<sup>24</sup>

2 “The United States Football League is prepared to give spring football  
3 another try, and on Monday the eight teams that will open its first season  
4 in the spring of 2022 were revealed on Fox Sports. The league chose eight  
5 franchises that were also in the original USFL, which ran from 1983 to  
6 1986, and retained rights to key original team names.”

7 ***January 25, 2022, Coach Duggs, Barstool Sports:***<sup>25</sup>

8 “This first season will feature 8 teams, all reclaiming the identities of  
9 former USFL teams. Until the Jacksonville Bulls return, I'll be cheering on  
10 the New Jersey Generals. Who are you rooting for?”

11 ***January 25, 2022, Brian Steinberg, Variety:***<sup>26</sup>

12 “Longtime sports fans may recall an era when teams like the Generals,  
13 Memphis Showboats and Houston Gamblers took to the field for three  
14 seasons between 1983 and 1985. Herschel Walker and Doug Flutie were  
15 among some of the USFL’s standouts and Donald Trump was a part owner  
16 of the New York team. . . . The USFL will launch with eight teams split  
17 into two divisions playing in one location. In addition to the Stallions,  
18 Houston Gamblers, New Orleans Breakers, and Tampa Bay Bandits in the  
19 South Division, the North Division features the Michigan Panthers,  
20 Pittsburgh Maulers, Generals, and Philadelphia Stars.”

21 ***January 28, 2022, Mike Organ, Nashville Tennessean, Yahoo! News:***<sup>27</sup>

22 “The USFL was founded in 1982 as a spring league and the Michigan  
23 Panthers were one of the top teams in the league. The USFL ceased  
24

25  
26 <sup>24</sup> <https://www.cbssports.com/nfl/news/usfl-reveals-its-eight-franchises-for-2022-reboot-ranking-nicknames-from-best-to-worst/>.

27 <sup>25</sup> <https://www.barstoolsports.com/blog/3403329/the-usfl-will-play-its-first-season-in-alabama>.

28 <sup>26</sup> <https://variety.com/2022/tv/news/usfl-fox-nbc-sports-simulcast-1235162907/>.

<sup>27</sup> <https://news.yahoo.com/former-tennessee-titans-coach-jeff-191906394.html>.

1 operations in 1986. In November the USFL announced it would return in  
2 April.”

3 ***February 10, 2022, Kevin Lewis, ABC Action News Tampa Bay:***<sup>28</sup>

4 “The first version of the USFL played three seasons from 1983 through  
5 1985. It was an exciting spring alternative to the NFL, and it included some  
6 of the best talent in football history. . . . But, this year, the USFL is making  
7 a comeback. The new version is not affiliated with the original except for  
8 branding and mascot rights.”

9 ***February 17, 2022, Bryan DeArdo, CBS Sports:***<sup>29</sup>

10 “The USFL is back after playing three seasons from 1983-85. Financial  
11 challenges and an unsuccessful attempt to move the league from the spring  
12 to the fall largely contributed to the league's short existence. Along with  
13 implementing several innovations (such as instant replay and two-point  
14 conversions), the USFL produced several future prominent NFL figures  
15 that included future Bills coach Marv Levy, quarterbacks Steve Young and  
16 Jim Kelly, running back Herschel Walker, pass rusher Reggie White,  
17 linebacker Sam Mills, and offensive lineman Gary Zimmerman, among  
18 others.”

19 ***February 19, 2022, Joe Hoefling, Deadspin:***<sup>30</sup>

20 “If you’re like me, looking for anything football-related to fill the void that  
21 the end of the NFL season left in your soul, then you were probably  
22 jumping for joy when the USFL revealed their uniforms for their first  
23 season since 1985.”

24  
25  
26  
27 <sup>28</sup> <https://www.abcactionnews.com/sports/tampa-bay-bandits-return-with-new-usfl>.

28 <sup>29</sup> <https://www.cbssports.com/nfl/news/usfl-reveals-official-order-for-inaugural-player-draft-former-nfl-coach-jeff-fishers-team-has-first-pick/>.

<sup>30</sup> <https://deadspin.com/style-over-substance-ranking-every-usfl-team-based-on-1848568129>.





**Michael Wallman** · February 5 at 1:05 PM · 🌐

My Jim Kelly Houston gamblers autograph collection jersey, mini helmet and 8x10! Looking forward to the new season starting up!

82

**Ed** @WFTHistoryPhoto · Dec 23, 2021

So pumped for the USFL coming back. Still have my Michigan Panthers shirt. Best uniforms of any pro football team. USFL was a better product than the NFL. They just got greedy. Hope they have set player contracts. NFL players are too soft. You can beat them with your product.

**JD Houston** @jdhoustan2000 · Jun 9, 2021

Replying to @FOXSports @USFLofficial and @DougFlutie

If you guys bring back the Houston Gamblers, this city will be SO IN! Houston loved and tremendously supported the Gamblers! #Excited

**Aaron** @Chickenspuh · Nov 22, 2021

As the owner of a football signed by the 83 Tampa Bay bandits I'm gonna have to take mv talents to @USFLBandits

**Cub Buenning** @cubbuenning · Jan 25

Kinda rad that they are going old school with mascots/logos. I used to support the Michigan Panthers. Anthony Carter. Bobby Hebert

**tu madre** @JosephGodoy15 · Nov 22, 2021

Replying to @USFL @USFLPanthers and 7 others

My childhood team were the Stallions, My high school team were the Mustangs, our colors were Red and white. I know who ill be rooting for.

Lets go @USFLStallions

**McCrearyBroadcasting** @mccrearyradio · Nov 22, 2021

Let's Go!!!! I loved watching the ole @USFLBandits when I was a kid! Coach Steve Sourrier!

**donworhpy** I love the Panthers. Let's win the first championship of the new USFL! USFL Bowl IV!!!

**norm.7.7.7** Wow, my family were Philly Stars Season ticket holders in 1984!

**Andrew Stockey** @astockeyWTAE · Nov 22

The Pittsburgh Maulers are reborn! @USFL

**Ed Kengerski** @EdUofM · Nov 22, 2021

This makes my heart sing! And I love the slight tweak to the Panthers logo.

54. In yet another attempt to improperly profit off the legacy USFL, on December 17, 2021, Fox announced—*less than 30 days after the team names were announced*—that its “league and team accounts have already accumulated 100,000 fans across social media.”



#### H. Fox Executives Continue to Promote the Fox USFL as a “Relaunch”

55. Notwithstanding Fox’s PR team’s clandestine corrections to the Press Release, Fox executives continue to gush over the prospect of relaunching the nostalgic USFL brand. For example, on February 8, 2022, Edward Hartman, Fox’s Senior Vice President of Digital Partnerships and Wagering and is now also serving as Executive Vice President of Fox USFL made an appearance on Fox video podcast OutKick 360. When asked about the importance of connecting the team to their

1 intended local market despite the fact that the all of Fox's League's 2022 games will  
2 be played in Birmingham, Alabama,<sup>31</sup> Mr. Hartman responded:<sup>32</sup>

3 That's a great question, Paul. It's something that we're laser-focused on. I  
4 think, part of the brilliance of Eric Shanks [(Fox Sports' CEO and  
5 Executive Producer)] and Brian Woods acquiring the USFL IP was that  
6 there is incredible nostalgic equity value in those marks. You know the  
7 amount of folks to come of the woodwork on social and elsewhere who  
8 went to USFL games 30 years ago and now want to take their kids 30 years  
9 later has been quite incredible. You're seeing it in the massive social  
10 following we've been able to amass in a short period of time. And so we  
11 think we've got, you know, a big tailwind given that IP has so much equity  
12 value in it.

13 56. Fox's League President, Brian Woods, has likewise made a number of  
14 comments to the media in recent weeks attributing the anticipated success of the Fox  
15 USFL to the legacy brand:

16 ***February 7, 2022, Interview with Detroit News.***<sup>33</sup>

17 "What we found after we made our initial announcement and as we continue to  
18 make announcements, there is a fan base out there. Fans are pulling out their old  
19 memorabilia, whether it be game programs or ticket stubs. . . . These teams were  
20 once in those markets. There's certainly a connection. . . . [It's like] we're  
21 starting on second base. This is a known brand."

22 ***February 10, 2022, Interview with CBS 2 Pittsburgh.***<sup>34</sup>

23 "Pittsburgh is definitely an area that country that is has always shown to be  
24 supportive of professional football, the Maulers were very unique and important  
25

26 <sup>31</sup> <https://www.foxsports.com/stories/usfl/usfl-everything-you-need-to-know>

27 <sup>32</sup> <https://youtu.be/rh-ah2S58EQ?t=2068>.

28 <sup>33</sup> <https://www.detroitnews.com/story/sports/other/2022/02/07/michigan-panthers-nostalgia-among-keys-usfl-survival/6691921001/>.

<sup>34</sup> <https://pittsburgh.cbslocal.com/2022/02/10/interview-with-usfl-president-brian-woods/>.

1 brand of the USFL. . . . I think you can make a strong argument that had the  
2 USFL stayed in the spring, just the first iteration of the USFL I speak of back in  
3 the 1980s. Had they continued to operate in the spring, they might still be here  
4 today.”

### 5 **I. The Real USFL Steps In**

6 57. After being contacted numerous times by members of the public confused  
7 by Fox’s actions, and fearing that Fox’s deception would damage their personal  
8 reputation and the legacy of the USFL that they created, numerous former owners and  
9 executives of the League formed the Real USFL to hold and enforce their rights.  
10 These individuals have each assigned all relevant rights to the Real USFL. Assignors  
11 include the former owners or their heirs of the Birmingham Stallions,  
12 Philadelphia/Baltimore Stars, Michigan Panthers, Houston Gamblers, New Orleans  
13 Breakers, Jacksonville Bulls, Oklahoma/Arizona Outlaws, Tampa Bay Bandits,  
14 Oakland Invaders, and Memphis Showboats.

### 15 **J. Fox Moves Ahead with Its Counterfeit League**

16 58. In spite of its full knowledge of at least 11 years’ continuous use of the  
17 USFL marks, Fox has continued marketing its counterfeit league as a “relaunch” of  
18 the USFL. Fox has announced that it will open training camps on March 21, 2022  
19 and Fox League’s inaugural game is scheduled for April 16, 2022.

## 20 **FIRST CLAIM FOR RELIEF**

### 21 **(Lanham Act § 1125(a)(1)(A)—Trademark Infringement)**

22 59. The Real USFL incorporates and realleges by reference each and every  
23 paragraph herein as if set forth in full in this count.

24 60. The Real USFL holds valid and legally protectable marks in the Real  
25 USFL IP associated with the USFL teams (*e.g.*, the team names and team logos). The  
26 Real USFL’s interest in the team marks are indisputably senior to Defendants as  
27 TSL’s earliest claim to any team marks is 2019, the date on which TSL began  
28 applying for trademark registration.

61. The Real USFL also holds valid and legally protectable marks in the Real USFL IP associated with the league (*e.g.* “USFL,” the USFL logo, and “United States Football League”). The Real USFL’s interest in the league marks are senior to Defendants as TSL’s earliest claim to the marks is December 31, 2011, TSL’s stated first use in Reg. No. 4165542.

62. Defendants have infringed upon the Real USFL IP by, among other things, knowingly and willfully (i) adopting nearly identical league and team marks and logos of an existing and well-known brand, (ii) producing and selling fan apparel bearing the infringed USFL marks, (iii) intentionally misleading consumers to believe the USFL was returning, and (iv) by using the domain name “theusfl.com.”

63. As a result of Defendants’ conduct, the public and potential consumers of the types of products and services Defendants offer are highly likely to be confused and deceived. Indeed, as explained by Fox’s own executives, consumers have been overwhelmingly confused by Fox’s intentionally misleading statements and have expressly chosen to follow the counterfeit league as a result of Fox’s deception.

64. As a direct and proximate result of Defendants’ conduct, the Real USFL has suffered irreparable harm and will continue to suffer such harm unless Defendants are enjoined from such further conduct.

## **SECOND CLAIM FOR RELIEF**

### **(Lanham Act § 1125(a)(1)(B)—False Advertising)**

65. The Real USFL incorporates and realleges by reference each and every paragraph herein as if set forth in full in this count.

66. In the months following the Fox USFL’s announcement, Defendants have published several intentionally false or misleading statements claiming to have a connection with the USFL’s historical origins. Such false statements include, but are not limited to, (i) the Press Release that was disseminated and reported on by hundreds of news outlets across the country, (ii) Fox’s Twitter post promoting the league with former star USFL quarterback Doug Flutie; (iii) Fox USFL’s president, Brian Woods



1 public statements on February 7 and 10, 2022; and (iv) Fox USFL's executive vice  
2 president, Ed Hartman's public statements on February 8, 2022.

3 67. Fox statements were false, because Fox had no connection with the  
4 original USFL, as it now admits in its updated Press Release: "[T]he new USFL is  
5 not associated or affiliated with th[e] [original] league or its owners."

6 68. Fox also put these statements in interstate commerce by publishing them  
7 on its website and using them to sell its merchandise nationwide. Fox's marketing  
8 and communications continues to suggest association with the old league.

9 69. As a result of Defendants' conduct, the public and potential consumers of  
10 the types of products and services Defendants offer are likely to be confused and  
11 deceived. Indeed, as explained by Fox's own executives, consumers have been  
12 overwhelmingly confused by Fox's intentionally misleading statements and have  
13 expressly chosen to follow the counterfeit league as a result of Fox's deception.

14 70. Defendants' actions have been and continue to be knowing and willful.

15 71. As a direct and proximate result of Defendants' conduct, the Real USFL  
16 has suffered irreparable harm and will continue to suffer such harm unless Defendants  
17 are enjoined from such further conduct.

### 18 **THIRD CLAIM FOR RELIEF**

#### 19 **(Lanham Act § 1125(a)(1)(a)—False Association)**

20 72. The Real USFL incorporates and realleges by reference each and every  
21 paragraph herein as if set forth in full in this count.

22 73. Defendants have violated federal trademark law by passing themselves  
23 off as the USFL and leveraging the league's "incredible nostalgic equity value" to  
24 create interest in their own league. Specifically, Defendants have falsely associated  
25 themselves with the original USFL, by, among other things, knowingly and willfully  
26 (i) making express and intentional misstatements in the Press Release and subsequent  
27 in public statements, (ii) by using of confusing similar logos and team names, (iii) by  
28 calling the Fox USFL the "United States Football League," and (iv) by using the

domain name “theusfl.com.” In doing so, Defendants falsely designate the origin of their league and falsely convey an association and affiliation with, as well as a sponsorship by, the USFL.

74. Defendants’ actions have been and continue to be knowing and willful.

75. As a direct and proximate result of Defendants’ conduct, the Real USFL has suffered irreparable harm and will continue to suffer such harm unless Defendants are enjoined from such further conduct.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*—Unfair Competition)**

76. The Real USFL incorporates and realleges by reference each and every paragraph herein as if set forth in full in this count.

77. As described herein, Defendants have engaged in fraudulent, unfair and unlawful conduct in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* Specifically, Defendants have competed unfairly by, among other things, knowingly and willfully (i) making express and intentional misstatements in the Press Release and subsequent in public statements, (ii) by using of confusing similar logos and team names, (iii) by calling the Fox USFL the “United States Football League,” and (iv) by using the domain name “theusfl.com.” In doing so, Defendants falsely designate the origin of their league and falsely convey an association and affiliation with, as well as a sponsorship by, the USFL.

78. Defendants’ actions have been and continue to be knowing and willful.

79. As a direct and proximate result of Defendants’ conduct, the Real USFL has suffered injury and irreparable harm and will continue to suffer such injury and irreparable harm unless Defendants are enjoined from such further conduct.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Cal. Bus. & Prof. Code §§ 17500—False Advertising)**

80. The Real USFL incorporates and realleges by reference each and every paragraph herein as if set forth in full in this count.

81. In the months following the Fox USFL's announcement, Defendants have published several intentionally false or misleading statements claiming to have a connection with the USFL's historical origins. Such false statements include, but are not limited to, (i) the Press Release that was disseminated and reported on by hundreds of news outlets across the country, (ii) Fox's Twitter post promoting the league with former star USFL quarterback Doug Flutie; (iii) Fox USFL's president, Brian Woods public statements on February 7 and 10, 2022; and (iv) Fox USFL's executive vice president, Ed Hartman's public statements on February 8, 2022.

82. Fox statements were false, because Fox had no connection with the original USFL, as it now admits in its updated Press Release: "[T]he new USFL is not associated or affiliated with th[e] [original] league or its owners."

83. Fox also put these statements in interstate commerce by publishing them on its website and using them to sell its merchandise nationwide. Fox's marketing and communications continues to suggest association with the old league.

84. As a result of Defendants' conduct, the public and potential consumers of the types of products and services Defendants offer are likely to be confused and deceived. Indeed, as explained by Fox's own executives, consumers have been overwhelmingly confused by Fox's intentionally misleading statements and have expressly chosen to follow the counterfeit league as a result of Fox's deception.

85. Defendants' actions have been and continue to be knowing and willful.

86. As a direct and proximate result of Defendants' conduct, the Real USFL has suffered irreparable harm and will continue to suffer such harm unless Defendants are enjoined from such further conduct.

### **SIXTH CLAIM FOR RELIEF**

#### **(California Common Law—Trademark Infringement)**

87. The Real USFL incorporates and realleges by reference each and every paragraph herein as if set forth in full in this count.

88. The Real USFL holds valid and legally protectable marks in the Real

USFL IP associated with the USFL teams (e.g. the team names and team logos). The Real USFL's interest in the team marks are indisputably senior to Defendants as TSL's earliest claim to any team marks is 2019, the date on which TSL began applying for trademark registration.

89. The Real USFL also holds valid and legally protectable marks in the Real USFL IP associated with the league (e.g. "USFL," the USFL logo, and "United States Football League"). The Real USFL's interest in the league marks are senior to Defendants as TSL's earliest claim to the marks is December 31, 2011, TSL's stated first use in Reg. No. 4165542.

90. Defendants have infringed upon the Real USFL IP by, among other things, knowingly and willfully (i) adopting nearly identical league and team marks and logos of an existing and well-known brand, (ii) producing and selling fan apparel bearing the infringed USFL marks, (iii) intentionally misleading consumers to believe the USFL was returning, and (iv) by using the domain name "theusfl.com."

91. As a result of Defendants' conduct, the public and potential consumers of the types of products and services Defendants offer are highly likely to be confused and deceived. Indeed, as explained by Fox's own executives, consumers have been overwhelmingly confused by Fox's intentionally misleading statements and have expressly chosen to follow the counterfeit league as a result of Fox's deception.

92. As a direct and proximate result of Defendants' conduct, the Real USFL has suffered irreparable harm and will continue to suffer such harm unless Defendants are enjoined from such further conduct.

### **SEVENTH CLAIM FOR RELIEF**

#### **(Petition for Cancellation of Trademark Registration)**

93. The Real USFL incorporates and realleges by reference each and every paragraph herein as if set forth in full in this count.

94. The Real USFL holds valid and legally protectable marks in the Real USFL IP associated with the USFL teams (e.g. the team names and team logos). The

1 Real USFL's interest in the team marks are indisputably senior to Defendants as  
2 TSL's earliest claim to any team marks is 2019, the date on which TSL began  
3 applying for trademark registration.

4 95. The Real USFL also holds valid and legally protectable marks in the Real  
5 USFL IP associated with the league (e.g. "USFL," the USFL logo, and "United States  
6 Football League"). The Real USFL's interest in the league marks are senior to  
7 Defendants as TSL's earliest claim to the marks is December 31, 2011, TSL's stated  
8 first use in Reg. No. 4165542.

9 96. Defendants' actions as alleged herein violate 15 U.S.C. § 1064(3) because  
10 they have misrepresented the Fox USFL as an heir to the original USFL. Such false  
11 statements include, but are not limited to, (i) the Press Release that was disseminated  
12 and reported on by hundreds of news outlets across the country, (ii) Fox's Twitter  
13 post promoting the league with former star USFL quarterback Doug Flutie; (iii) Fox  
14 USFL's president, Brian Woods public statements on February 7 and 10, 2022; and  
15 (iv) Fox USFL's executive vice president, Ed Hartman's public statements on  
16 February 8, 2022. Indeed, the prosecution history of the "2011-USFL" marks shows  
17 that Fox's marks were *always* intended "utilize [the USFL's] historical legacy to bring  
18 quick brand identity to football fans."

19 97. The Real USFL is being irreparably harmed and damaged by Defendants'  
20 registration of the USFL mark, and therefore requests that the registrations listed in  
21 Appendix A be canceled.

## 22 **EIGHTH CLAIM FOR RELIEF**

### 23 **(Declaratory Judgment)**

24 98. The Real USFL incorporates and realleges by reference each and every  
25 paragraph herein as if set forth in full in this count.

26 99. The Real USFL holds valid and legally protectable marks in the Real  
27 USFL IP associated with the USFL teams (e.g. the team names and team logos). The  
28 Real USFL's interest in the team marks are indisputably senior to Defendants as

1 TSL's earliest claim to any team marks is 2019, the date on which TSL began  
2 applying for trademark registration.

3 100. The Real USFL also holds valid and legally protectable marks in the Real  
4 USFL IP associated with the league (e.g. "USFL," the USFL logo, and "United States  
5 Football League"). The Real USFL's interest in the league marks are senior to  
6 Defendants as TSL's earliest claim to the marks is December 31, 2011, TSL's stated  
7 first use in Reg. No. 4165542.

8 101. Defendants' unauthorized activities as alleged herein have created  
9 confusion among the consuming public, are likely to deceive customers of the source  
10 or sponsorship of such goods and services, and will otherwise mislead the consuming  
11 public as to the origin of the goods and services sold by or on behalf of Defendants.  
12 Specifically, Defendants have misrepresented the Fox USFL as an heir to the original  
13 USFL. Such false statements include, but are not limited to, (i) the Press Release that  
14 was disseminated and reported on by hundreds of news outlets across the country, (ii)  
15 Fox's Twitter post promoting the league with former star USFL quarterback Doug  
16 Flutie; (iii) Fox USFL's president, Brian Woods public statements on February 7 and  
17 10, 2022; and (iv) Fox USFL's executive vice president, Ed Hartman's public  
18 statements on February 8, 2022. Indeed, the prosecution history of the "2011-USFL"  
19 marks shows that Fox's marks were *always* intended "utilize [the USFL's] historical  
20 legacy to bring quick brand identity to football fans."

21 102. The Real USFL therefore seeks and is entitled to a Declaratory Judgment  
22 declaring that: (a) the Real USFL's common law trademarks are valid; (b)  
23 Defendants' infringing use are violative of the Real USFL's rights; (c) Defendants'  
24 common law trademarks, if any, are invalid and unenforceable; and (d) Defendants  
25 must immediately cease and desist use of USFL team and league marks.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff the Real USFL prays that this Court provide relief by:

1. Preliminarily and permanently enjoining and restraining each of the Defendants, and each of their officers, directors, agents, employees and all other individuals, firms, corporations, associations and partnerships affiliated, associated or acting in concert with them, from using the Real USFL IP, including “USFL,” “United States Football League,” any of the original 18 USFL team names and logos, or any other mark, symbol, name, domain name or logo that is likely to cause confusion or to cause mistake or to deceive people into believing that Defendants or any services or goods that Defendants entered into the stream of commerce originate from the Fox USFL is in any way sponsored, endorsed, licensed by the original USFL or the Real USFL, or are affiliated with the original USFL or the Real USFL;

2. Preliminarily and permanently enjoining and restraining each of the Defendants, and each of their officers, directors, agents, employees and all other individuals, firms, corporations, associations and partnerships affiliated, associated or acting in concert with them, from falsely stating that they are the original USFL or any related entity, or that they are associated in any way with the original USFL or the Real USFL or their projects;

3. Ordering Defendants to provide the Real USFL an accounting of their profits and advantages received from improperly using the Real USFL IP and the original USFL’s logos and team names;

4. Ordering that the domain name [www.theusfl.com](http://www.theusfl.com) be transferred to the control of the Real USFL;

5. Ordering that Defendants take all available steps to retract and correct statements made in other media or to actual or potential customers and business partners concerning their relationship with the original USFL or the Real USFL and their accomplishments;

6. Awarding the Real USFL its reasonable attorneys’ fees and costs pursuant

1 to 15 U.S.C. § 1117 or as allowed by any other statute or legal doctrine, including  
2 California Code of Civil Procedure § 1021.5;

3 7. Awarding the Real USFL such other and further relief or remedy that the  
4 Court may deem just and proper.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

McKool Smith Hennigan, P.C.  
Los Angeles, CA

MCKOOL SMITH HENNIGAN, P.C.  
LOS ANGELES, CA

1 DATED: February 28, 2022

**MCKOOL SMITH HENNIGAN, P.C.**

2 By: /s/ Kirk D. Dillman

3 Kirk D. Dillman  
4 M. Storm Byrd  
5 MCKOOL SMITH HENNIGAN, P.C.  
6 300 South Grand Avenue, Suite 2900  
7 Los Angeles, California 90071

8 Nicholas T. Matich  
9 MCKOOL SMITH P.C.  
10 1999 K Street, NW, Suite 600  
11 Washington, DC 20006

12 Mark Lanier  
13 Alex J. Brown  
14 Zeke DeRose III  
15 THE LANIER LAW FIRM  
16 6810 FM 1960 West  
17 Houston, TX 77069

18 Joseph O. Slovacek  
19 Hoover Slovacek LLP  
20 Galleria Tower II  
21 5051 Westheimer, Suite 1200  
22 Houston, TX 77056

23 Eric B. Halper  
24 John C. Briody  
25 Radu A. Lelutiu  
26 Laura Baron  
27 MCKOOL SMITH P.C.  
28 395 Ninth Avenue  
New York, NY 10001

Thomas J. Eisweirth  
MCKOOL SMITH P.C.  
600 Travis Street  
Suite 7000  
Houston, TX 77002  
*Attorneys for Plaintiff*