

STATE OF INDIANA) IN THE MARION SUPERIOR/CIRCUIT COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49D06 11 12 MI 0 4 9 0 9 5

CHARLIE MOSBRUCKER,)
)
Plaintiff,)
)
v.)
)
USA TRACK & FIELD, INC.,)
)
Defendant.)
_____)

FILED
(202) DEC 30 2011
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

VERIFIED PETITION FOR INSPECTION OF CORPORATE RECORDS

Plaintiff Charlie Mosbrucker ("Plaintiff"), by counsel and pursuant to Ind. Code § 23-17-27-4, hereby petitions the Court for an order requiring Defendant USA Track & Field, Inc. ("USATF") to make available for inspection and copying its corporate records. In support of this petition, Plaintiff shows the Court as follows:

1. Plaintiff is an Indiana resident and a member of USATF.
2. USATF is a foreign nonprofit corporation governed by the Indiana Nonprofit Corporation Act enacted in 1991 (Ind. Code § 23-17 *et. seq.*) with a primary office in Marion County, Indiana.
3. USATF is the national governing body for the Olympic sport category of Athletics, including but not necessarily limited to track & field, long distance running, cross country running, and race walking.
4. USATF's general purposes include development of participation in the area of Athletics, promotion of and responsibility to persons and sports organizations active in Athletics, and generating public awareness for the sport.
5. USATF is comprised of 57 associations that cover the full geographic territory of the United States (the "Associations").

6. The Associations are local organizations that administer and implement the national rules and guidelines in a given geographical area.

7. The Associations are entities accredited by and reporting to the USATF and are bound not to exceed the authority granted to them by the USATF bylaws.

8. Pursuant to Ind. Code § 23-17-27-1(a), USATF is required to keep as permanent records the following documents:

- a. Minutes of meetings of the corporation's members and board of directors;
- b. A record of actions taken by the members or directors without a meeting; and
- c. A record of actions taken by committees of the board of directors as authorized under IC 23-17-15-6(d),

9. Pursuant to Ind. Code § 23-17-27-1(b), USATF is also required to maintain appropriate accounting records.

10. Pursuant to Ind. Code § 23-17-27-1(c), USATF or its agent is further required to maintain "a record of the [USATF's] members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast."

11. Pursuant to Ind. Code § 23-17-27-1(e), USATF is also required to keep a copy of the following records at USATF's principal office:

- a. USATF's articles of incorporation or restated articles of incorporation and all amendments to the articles of incorporation currently in effect;
- b. USATF's bylaws or restated bylaws and all amendments to the bylaws currently in effect;
- c. Resolutions adopted by USATF's board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or a class or category of members;
- d. The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

- e. Written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under Ind. Code § 23-17-27-6;
- f. A list of the names and business or home addresses of USATF's current directors and officers; and
- g. USATF's most recent annual report delivered to the secretary of state under Ind. Code § 23-17-27-8.

12. Pursuant to Ind. Code § 23-17-27-2(a), members of USATF are entitled to inspect and copy, at a reasonable time and location specified by USATF, the records identified in paragraph 6 *supra* upon the written demand or notice provided at least five (5) business days before the date on which the requesting member desires to inspect and copy such records.

13. In addition, pursuant to Ind. Code § 23-17-27-2(b), members of USATF are entitled to inspect and copy excerpts from USATF's records identified in paragraph 3 *supra* as well as USATF's accounting records and membership list, upon:

- a. A written demand or notice provided at least five (5) business days before the date on which the requesting member desires to inspect and copy;
- b. A description with "reasonable particularity" of both the member's purpose for the inspection and the records the member desires to inspect; and
- c. A showing that the demand is made in good faith, for a proper purpose and that the records requested are directly connected with that purpose.

14. On the 16th day of December, 2011, Plaintiff provided a written request to inspect and copy USATF's corporate records pursuant to Ind. Code § 23-17-27-2(a) and (b) ("Plaintiff's Request").

15. A true and accurate copy of Plaintiff's Request is attached hereto as Exhibit A.

16. Plaintiff has complied with all the statutory prerequisites entitling Plaintiff to inspect and copy the requested corporate records of USATF.

17. Plaintiff requested the USATF corporate records set forth in Exhibit A in good faith and for a proper purpose, specifically to assess a factual background of issues related to stewardship of USATF, including its related state-based associations.

18. Plaintiff described with reasonable particularity both the purpose and the USATF corporate records Plaintiff desired to inspect and copy.

19. The USATF corporate records requested by Plaintiff are directly connected to the purpose of Plaintiff's inspection.

20. As of the filing of this petition, USATF failed to make available for inspection and copying the USATF corporate records requested by Plaintiff.

21. USATF's failure and refusal to fully comply with Plaintiff's Request is wrongful and finds no justification under Indiana law.

22. Ind. Code § 23-17-27-4(a) and (b) empowers this Court to issue an order to permit the inspection and copying of the USATF's corporate records requested by Plaintiff. In addition, Ind. Code § 23-17-27-4(b) provides that this Court "shall dispose of an application under this subsection on an expedited basis."

23. Plaintiff request that the order permitting Plaintiff to inspect the USATF corporate records set forth in Plaintiff's Request also orders USATF to pay Plaintiff's costs, including reasonable attorneys fees, pursuant to Ind. Code § 23-17-27-4(c).

24. For the Court's convenience, a copy of Ind. Code § 23-17-27-1 through 8 is attached hereto as Exhibit B.

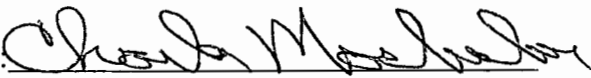
WHEREFORE, Plaintiff Charlie Mosbrucker, by counsel and pursuant to Ind. Code § 23-17 *et. seq.* respectfully requests this Court issue an order, on an expedited basis, as follows:

- A. To permit the inspection and copying of the Defendant USA Track & Field, Inc.'s corporate documents described in the December 16, 2011, correspondence attached hereto as Exhibit A;
- B. To award Plaintiff the costs, including reasonable attorneys' fees, incurred to obtain the order; and
- C. To award all other appropriate relief.

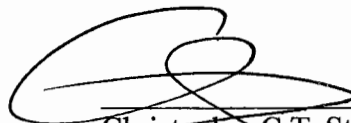
VERIFICATION

I SWEAR OR AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOLLOWING FACTUAL REPRESENTATIONS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Dated: 12-30-11

By: 
Charlie Mosbrucker

Respectfully submitted,



Christopher C.T. Stephen, Atty. No. 23160-49
Attorney for Plaintiff, Charlie Mosbrucker

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I hereby certify that the foregoing document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record by Administrative Rule 9(G).

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line extending to the right.

Christopher C.T. Stephen