

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Plaintiff,

v.

KIZZANG LLC and ROBERT
ALEXANDER,

Defendants.

Case No. 1:17-cv-712

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

I. PARTIES

1. Plaintiff, National Collegiate Athletic Association (“NCAA”), is a non-profit association with its principal place of business in Indianapolis, Indiana.

2. Defendant, Kizzang LLC (“Kizzang”), upon information and belief, is a Nevada corporation with its principal place of business in Las Vegas, Nevada.

3. Defendant, Robert Alexander, upon information and belief, is the founder and owner of Kizzang, and directed and controlled the complained-of activities by Kizzang.

II. JURISDICTION AND VENUE

4. Upon information and belief, Defendants have directed commercial activities related to its infringement of NCAA’s trademarks towards the State of Indiana, including by offering and promoting its services using infringements of NCAA’s trademarks in the ordinary course of trade in this District, and causing harm to NCAA’s intellectual property in this District.

5. This Court has subject matter jurisdiction because this is an action arising under the Trademark Laws of the United States joined with related state law claims, jurisdiction being conferred by 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). This Court has supplemental

jurisdiction over all related state and common law claims in accordance with 28 U.S.C.

§ 1338(b) and 28 U.S.C. §1367.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).

III. FACTUAL BACKGROUND

A. The NCAA and its Rights in the Famous FINAL FOUR and MARCH MADNESS Marks

7. The NCAA is a non-profit, member-led organization dedicated to fostering amateur collegiate sports and furthering the well-being and lifelong success of student-athletes. The NCAA's membership is comprised of more than a thousand academic institutions across the country. The NCAA is governed by rules proposed, considered, adopted, and enforced by these academic institutions, and such rules are designed to promote fairness, sportsmanship, amateurism, and the well-being of student-athletes. Among its other responsibilities, the NCAA organizes, administers, and promotes intercollegiate athletic championship competitions among its member institutions, including basketball games and tournaments.

8. Since long prior to any date on which Defendants commenced engaging in the wrongful conduct set forth below, the NCAA has continuously used in commerce the marks FINAL FOUR and MARCH MADNESS to identify basketball tournaments. The NCAA's FINAL FOUR and MARCH MADNESS basketball tournaments are among the nation's premiere sporting events. Their success has contributed to the NCAA's ability to fund athletic scholarships for more than 150,000 student-athletes, reward member institutions for their academic and athletic performance, provide student-athletes with additional financial assistance for essential needs that arise during their college tenure, and deliver valuable services to student-athletes (including catastrophic injury insurance, drug testing programs, student-athlete leadership training, and postgraduate scholarships).

9. The NCAA partners with a select group of businesses committed to supporting the mission and core values of the NCAA. That partnership affords those businesses the right to market goods and services in connection with its FINAL FOUR and MARCH MADNESS tournaments. Only authorized businesses are permitted to use the FINAL FOUR and MARCH MADNESS marks.

10. Among the ways in which NCAA and its authorized partners promote the FINAL FOUR and MARCH MADNESS tournaments is to offer contests designed around these famous sporting events.

11. Indeed, Mr. Alexander, like NCAA's authorized partners, understands well the value of being associated with and exploiting the NCAA's MARCH MADNESS and FINAL FOUR events. In trying to obtain a patent on a contest related to the NCAA MARCH MADNESS tournament, Alexander touted the fame of that event and the FINAL FOUR tournament in his filing:

...such as the National Colleg[ia]t]e Athletics Association's (NCAA) Division I men's basketball tournament. This well-known sporting event (which culminates each year in the "Final Four" teams facing off against one another in a pair of national semi-final games and one national final game) is among the most watched event of its kind.

12. The NCAA has expended substantial resources to advertise and promote its FINAL FOUR and MARCH MADNESS marks and has offered many millions of dollars' worth of services, including contests, under and in connection with its FINAL FOUR and MARCH MADNESS marks.

13. By virtue of the NCAA's long use, widespread advertising and substantial investment, the FINAL FOUR and MARCH MADNESS marks have become well-known as a symbol of the NCAA's goods and services, and the goods and services of those authorized by the

NCAA to use its FINAL FOUR and MARCH MADNESS marks, and therefore have come to represent a goodwill of great value to the NCAA.

14. The FINAL FOUR and MARCH MADNESS marks are distinctive and famous and have acquired such distinction and fame long prior to any date on which Defendants commenced engaging in the wrongful conduct set forth below.

15. The NCAA has registered its FINAL FOUR mark in the United States Patent and Trademark Office. The NCAA's registrations include, but are not limited to:

<u>MARK</u>	<u>GOODS AND SERVICES</u>	<u>REG. NO. AND DATE</u>
FINAL FOUR	Association services, namely, conducting annual basketball tournaments at the college level	1,488,836; May 17, 1988
FINAL FOUR	Promoting the goods and services of others by allowing sponsors to affiliate their goods and services with collegiate championship tournaments	2,377,720; Aug. 15, 2000
FINAL FOUR	Printed matter, namely, guides in the field of sports; Luggage, namely, portfolios, backpacks, duffle bags, rolling luggage, garment bags, briefcases, athletic bags and tote bags; and Entertainment services, namely, providing information in the field of college sports via the Internet	2,964,266; June 28, 2006

Each of the above registrations is incontestable pursuant to 15 U.S.C. §§ 1064 and 1115(b).

16. Likewise, the NCAA has registered its MARCH MADNESS marks in the United States Patent and Trademark Office. The NCAA's registrations include, but are not limited to:

<u>MARK</u>	<u>GOODS AND SERVICES</u>	<u>REG. NO. AND DATE</u>
MARCH MADNESS	Entertainment services, namely, presentation of athletic and entertainment personalities in a panel forum	1,571,340; Dec. 12, 1989
MARCH MADNESS	Entertainment in the nature of basketball tournaments between college teams	2,485,443; Sept. 4, 2001

<u>MARK</u>	<u>GOODS AND SERVICES</u>	<u>REG. NO. AND DATE</u>
MARCH MADNESS	Telecommunications services; namely the transmission of voice, data, images, audio, video and information via local and long distance telephone, satellite and global computer networks; leasing telecommunications equipment, components, systems and supplies; electronic mail services; telephone voice messaging services; providing multiple-user access to global computer networks to transmit, receive and otherwise access and use information of general interest to consumers; web casting of athletic games, tournaments, exhibitions, and events via the Internet	3,025,527; Dec. 13, 2005

Each of the above registrations is incontestable pursuant to 15 U.S.C. §§ 1064 and 1115(b).

17. These registrations constitute *prima facie* evidence of the validity of the registered marks, of NCAA's ownership of the FINAL FOUR and MARCH MADNESS marks (together, the "NCAA Marks"), and of NCAA's exclusive right to use the FINAL FOUR and MARCH MADNESS marks on or in connection with the goods or services specified in the registrations.

15 U.S.C. § 1115.

B. Defendants' Wrongful Actions

18. Defendants are in the business of marketing and providing nationwide Internet-based promotions that award prizes for predicting the results of sporting events, including the results of college basketball games played by and between NCAA member schools, and in particular games played during the NCAA's Division I Men's Basketball Championship.

19. Defendants have branded Kizzang's NCAA-based services using the mark FINAL 3, examples of which are shown below.



20. On or around April 1, 2015, the NCAA learned of Defendants' use of FINAL 3, in the same manner shown on the Facebook page (upon information belief) created and operated by Defendants, located at <http://www.facebook.com/kizzangames>.

21. On that same day, the NCAA submitted a complaint to Facebook's Intellectual Property Operations department regarding the above infringing uses of the NCAA's intellectual property on Defendants' Facebook page.

22. Within two days, Facebook's Intellectual Property Operations department had removed or disabled access to the infringing page. That Facebook page remains disabled.

23. Upon information and belief, despite the removal of Defendants' Facebook page, Defendants continue offering goods and services using the FINAL 3 and APRIL MADNESS marks via webpages and mobile-telephone applications ("apps").

24. Kizzang has adopted the mark APRIL MADNESS for the same services as FINAL 3, including the Division I Men's Basketball Championship (for which the final championship game occurs in early April). On information and belief, Defendants are planning to offer through their apps further infringing uses of FINAL 3 and APRIL MADNESS, including in connection with college basketball. Specifically, NCAA recently learned that Defendants plan to use FINAL 3 for a 2017 NCAA Division I Men's Basketball Championship FINAL FOUR based contest.

25. On information and belief, because NCAA objected to the infringing use of FINAL 3, Defendants have to-date delayed using APRIL MADNESS for a contest based upon NCAA's MARCH MADNESS tournament.

26. In furtherance of this unlawful conduct, Kizzang has applied for Federal trademark registrations for FINAL 3 (Application Nos. 86/072,601 and 85/883380) and APRIL MADNESS (Application No. 85/900,268) in the United States Patent and Trademark Office ("USPTO").

27. Upon information and belief, Defendants were aware at the time they adopted and commenced use of the FINAL 3 and APRIL MADNESS marks of the NCAA's trademark rights in the FINAL FOUR and MARCH MADNESS marks, including having knowledge of the services with which the NCAA used these marks.

28. Upon information and belief, Defendants adopted the names FINAL 3 and APRIL MADNESS because of their respective similarity to FINAL FOUR and MARCH MADNESS, and with the intention of exploiting the goodwill associated with the NCAA Marks.

29. Defendants' use of the marks FINAL 3 and APRIL MADNESS is without the permission, consent, or authority of the NCAA.

FIRST CAUSE OF ACTION
(Trademark Infringement Under 15 U.S.C. § 1114)

30. The NCAA realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

31. Defendants' acts are likely to cause confusion or mistake, or to deceive as to Defendants' affiliation, connection, or association with the NCAA, or as to the origin, sponsorship, or approval of Defendants' services.

32. Upon information and belief, Defendants adopted and used the FINAL 3 and APRIL MADNESS marks with full knowledge of, and in willful disregard of the NCAA's rights in those marks, and with the intent to obtain a commercial advantage that Defendants otherwise would not have had.

33. Defendants' acts constitute willful trademark infringement under 15 U.S.C. § 1114.

34. Defendants' acts are greatly and irreparably damaging to the NCAA and will continue to damage the NCAA unless enjoined by the Court such that the NCAA is without an adequate remedy at law.

SECOND CAUSE OF ACTION
(Trademark Infringement Under 15 U.S.C. § 1125(a))

35. The NCAA realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

36. Defendants' acts are likely to cause confusion or mistake, or to deceive as to Defendants' affiliation, connection, or association with the NCAA, or as to the origin, sponsorship, or approval of Defendants' services.

37. Upon information and belief, Defendants adopted and used the FINAL 3 and APRIL MADNESS marks with full knowledge of, and in willful disregard of the NCAA's rights in those marks, and with the intent to obtain a commercial advantage that Defendants otherwise would not have had.

38. Defendants' acts constitute willful trademark infringement under 15 U.S.C. § 1125(a).

39. Defendants' acts are greatly and irreparably damaging to the NCAA and will continue to damage the NCAA unless enjoined by the Court such that the NCAA is without an adequate remedy at law.

THIRD CAUSE OF ACTION
(Trademark Dilution Under 15 U.S.C. § 1125)

40. The NCAA realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

41. The NCAA Marks are inherently distinctive and famous under 15 U.S.C. § 1125(c).

42. Defendants' unlawful uses of the NCAA Marks in commerce began long after the NCAA Marks became famous.

43. Defendants' conduct causes, and will continue to cause dilution of the distinctive quality of the famous NCAA Marks.

44. Upon information and belief, Defendants adopted and used the FINAL 3 and APRIL MADNESS marks with full knowledge of, and in willful disregard of the NCAA's rights in those marks, and with the intent to obtain a commercial advantage that Defendants otherwise would not have had.

45. Defendants' acts constitute trademark dilution under 15 U.S.C. § 1125(d).

46. Defendants' acts are greatly and irreparably damaging to the NCAA and will continue to damage the NCAA unless enjoined by the Court such that the NCAA is without an adequate remedy at law.

FOURTH CAUSE OF ACTION
(Common Law Unfair Competition)

47. The NCAA realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

48. Defendants' acts are likely to cause confusion or mistake, or to deceive as to Defendants' affiliation, connection, or association with the NCAA, or as to the origin, sponsorship, or approval of Defendants' services.

49. Upon information and belief, Defendants adopted and used the FINAL 3 and APRIL MADNESS marks with full knowledge of, and in willful disregard of the NCAA's rights in those marks, and with the intent to obtain a commercial advantage that Defendants' otherwise would not have had.

50. Defendants' aforesaid acts constitute unjust enrichment and unfair competition in violation of the common law of the various States, including the State of Indiana.

51. Defendants' acts are greatly and irreparably damaging to the NCAA and will continue to damage the NCAA unless enjoined by the Court such that the NCAA is without an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, NCAA requests the following relief:

1. Enter judgment that Defendants have violated the Lanham Act, 15 U.S.C. §§ 1114, 1125; and Indiana common law, and that such violations were willful and intentional, making this an exceptional case.
2. Rectify the Register by ordering that the USPTO deny registration to Kizzang's applications to register FINAL 3 and APRIL MADNESS, pursuant to 15 U.S.C. § 1119.
3. Defendants, their respective officers, agents, servants, employees, attorneys, and all others in active concert or participation with any of them, be enjoined and restrained during the pendency of this action and permanently thereafter from:
 - a. using the NCAA's FINAL FOUR or MARCH MADNESS marks and any colorable imitation or simulation of it;
 - b. doing any act or thing likely to induce the belief that Defendants' products or services are in any way legitimately connected with, or sponsored or approved by, the NCAA; and
 - c. doing any act or thing that is likely to dilute the distinctiveness of the NCAA's FINAL FOUR or MARCH MADNESS marks or that is likely to tarnish the goodwill associated with those marks.
4. Defendants, their respective officers, agents, servants, employees, attorneys, and all others in active concert or participation with any of them, be required to:

- a. immediately recall from all distribution channels all products, services, advertising, and promotional materials bearing the NCAA Marks and any colorable imitations of them, including FINAL 3 and APRIL MADNESS.
 - b. pay to the NCAA its actual damages sustained as a result of Defendants' wrongful conduct in accordance with 15 U.S.C. § 1117 and the common law of Indiana;
 - c. account for and pay over to the NCAA all profits derived by Defendants from its complained of acts, in accordance with 15 U.S.C. § 1117 and the common law of Indiana;
 - d. pay to the NCAA the greater of three times the damages the NCAA has suffered as a result of the complained-of acts of Defendants or three times Defendants' profits, in accordance with 15 U.S.C. § 1117;
 - e. pay to the NCAA exemplary damages in a sum sufficient to deter Defendants from future acts complained of in this action;
 - f. pay to the NCAA the costs of this action together with the NCAA's reasonable attorneys' fees and disbursements, in accordance with 15 U.S.C. § 1117; and
 - g. file with this Court and serve on the NCAA a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the terms of any injunction entered by this Court, in accordance with 15 U.S.C. § 1116.
5. That NCAA shall have such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the NCAA respectfully demands a trial by jury of all issues so triable by a jury.

Respectfully Submitted,

Dated: March 8, 2017

By: /s/ Daniel E. Pulliam

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