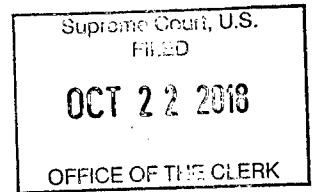


Case No. 17-8352



**IN THE
SUPREME COURT OF THE UNITED STATES**

JOHANNES T. MARTIN – PETITIONER

vs.

LIVING ESSENTIALS, LLC – RESPONDENT

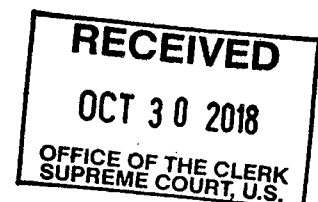
PETITION FOR REHEARING

TED MARTIN

359 WOODBRIDGE

DES PLAINES, IL 60016

Phone # (847) 824-6528



GROUND FOR GRANTING PETITION FOR REHEARING

The District Court's judgment was obtained by the Defendant's blatant undeniable fraud as to the material fact in the case.

The lower courts have repeatedly ignored all evidence of fraud committed by the Defendant and thus denied this *Pro Se* plaintiff the opportunity to present my case in a court of law in violation of my constitutional right to due process under the Fourteenth Amendment.

The Defendant's fraud has been documented in every single brief submitted by this *Pro Se* plaintiff and is documented here again in the following three page PETITION FOR REHEARING.

My name is Ted Martin. I hold the world record for most consecutive footbag kicks. (a.k.a. Hacky Sack) My 63,326 kick record is universally recognized as “the record for Hacky Sack” by every authority.

In a nationally televised commercial that can be viewed if you Google “The Last Five Hours: Bigfoot”, the Defendant’s spokesman states, “I mastered origami, while beating the record for Hacky Sack.” and “How do I do all this? 5-hour ENERGY.”

The mere use of “the record for Hacky Sack” in the Defendant’s television commercial is a violation of my rights under the IL Right of Publicity Act. (765 ILCS 1075/) How the Defendant used “the record for Hacky Sack” is a violation of my rights under both the false endorsement and false advertising arms of the Lanham Act. (15 U.S.C. § 1125)

In defense, the Defendant asserted that “the record for Hacky Sack” is a “vague” and “ambiguous” term that could be referring to any record using a Hacky Sack. **The Defendant’s assertion is false.**

The record for Hacky Sack is the record for most consecutive kicks. The objective of the game of Hacky Sack is to see how many consecutive kicks you can achieve without a miss. This is common knowledge for anyone who has ever seen, played, or even heard of Hacky Sack. The public has referred to the consecutive kicks record as “the record for Hacky Sack” ever since John Stalberger and Mike Marshall invented the game in 1972.

APPENDIX G of the PETITION FOR WRIT OF CERTIORARI contains letters from seven Hacky Sack experts including letters from John Stalberger, the co-inventor of Hacky Sack, and Bruce Guettich, the founder and president of the World Footbag Association. (The World Footbag Association is the governing and sanctioning body of the sport.)

All of these experts clearly state that “the record for Hacky Sack” is a specific reference to my particular record.

John Stalberger, the co-inventor of Hacky Sack, concludes his letter with the following statement:

“Ted Martin’s record of 63,326 kicks is recognized the world over as “the record for of Hacky Sack”.”

No reasonable person can argue with John Stalberger about the meaning of “the record for Hacky Sack”.

On page #6 of the MEMORANDUM OPINION AND ORDER in the original case, the District Court states,

“Martin contends that “the record for Hacky Sack” is a phrase that identifies him particularly, but the phrase is far too ambiguous to do so. The language and graphic of the Commercial depict vague generalities regarding “the record for Hacky Sack” and do not clearly indicate that someone has broken the specific record that Martin set (or any other particular hacky sack record). Living Essentials points to the diverse array of hacky sack records (at least 14 different records, Mem. in Supp. 8 n.7), arguing that Martin’s assertion that he holds *the* record is a mischaracterization. *Id.* 7-8. The Commercial, moreover, depicts a man kicking two footbags, not one. *Id.* Ex. A.”

- (1) The District Court acknowledges my factual allegation that “the record for Hacky Sack” is a specific reference to my particular record and then rejects my factual allegation as true.
- (2) The District Court directly attributes the Court’s rejection of my factual allegation to the false and misleading representations made by the Defendant.

The District Court is required to accept as true all of the well-pleaded facts alleged by the plaintiff and all reasonable inferences that can be drawn therefrom. *See Barns v. Briley*, 420 F.3d 673, 677 (7th Cir. 2005).

The District Court inexplicably accepted the Defendant’s unsupported assertions about the meaning of “the record for Hacky Sack” over the supported assertions of a documented world record holder.

All of my claims are based on the fact that “the record for Hacky Sack” is a specific reference to my particular record. **This entire case is about the meaning of “the record for Hacky Sack”.**

On page #9 of the original MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS, the Defendant states,

“The Commercial is, at minimum, ambiguous. At no time did the Commercial indicate that anyone had beaten Plaintiff’s *particular* record. It depicts only vague (and clearly fictional) generalities regarding “the record for Hacky Sack,” subject to a myriad of interpretations and meanings. Even if the Commercial could be understood to refer to a record involving only *one* Hacky Sack, given the diverse array of Hacky Sack records, the Commercial could just as well have been referring to “the record” for “Open five-minute Timed Consecutive” (held by Andy Linder; see Exhibit C).”

APPENDIX G of the PETITION FOR WRIT OF CERTIORARI contains a letter from Andy Linder. In his letter Andy Linder states:

“The public typically refers to the Open Singles Footbag Consecutives record as “the record for Hacky Sack.” Currently, that record is 63,326 kicks and is held by Ted Martin.”

So there you have it. A direct rebuttal of the Defendant’s purported “evidence” from the person whose record the Defendant claims “the record for Hacky Sack” could be referring to.

The Defendant’s fraud is blatant, documented, and undeniably material.

The Defendant’s assertion that “the record for Hacky Sack” is a “vague” and “ambiguous” term that could be referring to any record using a Hacky Sack is a violation of the signing requirements under both FRCP Rule 11(b)(3) and 11(b)(4) and a fraud upon the Court.

“Fraud” is defined at <https://legaldictionary.net/res-judicata/> as follows:

“Fraud – A false representation of fact, whether by words, conduct, or concealment, intended to deceive another.”

The Defendant clearly “intended to deceive” the Court into believing that “the record for Hacky Sack” was not a specific reference to my particular record.

Fraud is an expressed ground for relief from a judgment under FRCP Rule 60.

On page #4 of FRCP Rule 60, the Advisory Committee on Rules states,

“Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are expressed grounds for relief by motion under subdivision (b). There is no sound reason for their exclusion.”

If a Defendant is allowed to escape justice by blatantly violating the Federal Rules of Civil Procedure, we cease to be a nation of laws.

This United States Supreme Court should grant this *Pro Se* plaintiff’s PETITION FOR REHEARING to preserve the integrity of the federal judicial system.

October 22, 2018

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ted Martin", written in a cursive style.

Ted Martin

359 Woodbridge

Des Plaines, IL 60016

Phone # (847) 824-6528

Fax # (847) 824-6533

CERTIFICATION OF UNREPRESENTED PARTY

I, Ted Martin, do declare under penalty of perjury that this PETITION FOR REHEARING is being presented in good faith and not for delay.

October 22, 2018

Signed: Ted Martin

Ted Martin

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