

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ASA ACCUGRADE, INC.,
a Florida Corporation
P.O. Box 915103
Longwood, Florida 32791

Plaintiff,

CASE NO.: 1:04-cv-02213-RWR

v.

Judge Richard W. Rogers

AMERICAN NUMISMATIC ASSOCIATION,
a Federally Chartered Non-Profit Association,
HERITAGE CAPITAL CORPORATION, a
foreign corporation, COLLECTOR'S UNIVERSE, INC.,
a foreign corporation d/b/a Professional Coin
Grading Service, PROFESSIONAL
NUMISMATISTS GUILD, INDUSTRY COUNCIL
FOR TANGIBLE ASSETS, BARRY STUPLER & CO., INC.
a foreign corporation, NU GRADE, LLC, a foreign limited
liability company f/k/a TRU GRADE SERVICES,
and REC.COLLECTING.COINS a/k/a RCC,

Defendants.

_____/

AMENDED COMPLAINT

COMES NOW Plaintiff, ASA ACCUGRADE, INC., a Florida corporation, by and through its undersigned counsel, and sues Defendants, AMERICAN NUMISMATIC ASSOCIATION, a Federally Chartered Non-Profit Association, HERITAGE CAPITAL CORPORATION, a foreign corporation, COLLECTOR'S UNIVERSE, INC., a foreign corporation d/b/a Professional Coin Grading Service, PROFESSIONAL NUMISMATISTS GUILD, INDUSTRY COUNCIL FOR TANGIBLE ASSETS, BARRY STUPLER & CO., INC., a foreign corporation, NU GRADE, LLC, a foreign limited

liability company f/k/a TRU GRADE SERVICES, and REC.COLLECTING.COINS a/k/a RCC, and alleges as follows:

NATURE OF ACTION

1. This is an action for damages and injunctive relief brought pursuant to the provisions of the Clayton Act (15 U.S.C. §§ 15 and 26) based on Defendants' violations of the Sherman Act (15 U.S.C. §§ 1 and 2) that have and continue to harm competition in the rare coin grading and authentication industry and to cause grave and irreparable injury to Plaintiff.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, ASA ACCUGRADE, INC. ("ACG") is a Florida corporation organized and operating under the laws of the State of Florida with its principal place of business located in Longwood, Florida. ACG has been incorporated and engaged in the rare coin grading and authentication business in the State of Florida since 1995 and before that in the State of Connecticut since 1984.

3. Defendant, AMERICAN NUMISMATIC ASSOCIATION ("ANA") is a federally chartered not-for-profit Internal Revenue Code § 501(c)(3) entity that acts as a quasi-governmental body over numismatic collectors and dealers and wields great influence in the industry. In addition, the ANA provides a forum for resolving complaints against its members and disputes between its members. The President of ACG was a life member of the ANA in good standing until she resigned in April 2003 as a result of Defendants' antitrust activities. The ANA is headquartered in Colorado Springs, Colorado but does business throughout the United States, including in the District of Columbia. The President of the ANA is Gary E. Lewis and its Executive Director is

Christopher Cippoletti. During all times material hereto, Barry Stuppler and Michael S. Fey were members of the ANA's Board of Governors and in March 2003 Stuppler was Chairman of the ANA's Consumer Protection Committee.

4. Defendant, HERITAGE CAPITAL CORPORATION ("HERITAGE") is a Texas corporation that does business throughout the United States, including in the District of Columbia, as a rare coin dealer and auctioneer. The founders and principals of HERITAGE are R. Steven Ivey and James L. Halperin. In March 2003, Gregory Rohan represented himself publicly as President of HERITAGE.

5. COLLECTOR'S UNIVERSE, INC. d/b/a Professional Coin Grading Service ("PCGS") is a Delaware corporation with its headquarters located in the State of California that is in the business of grading rare domestic and international coins throughout the United States, including in the District of Columbia. PCGS is a competitor of ACG. David Hall is the founder and President of PCGS and the President of COLLECTOR'S UNIVERSE, INC. PCGS has hundreds of "featured dealers" and "authorized dealers" throughout the country, including HERITAGE and BARRY STUPPLER & CO. INC. which are both "featured" and "authorized".

6. PROFESSIONAL NUMISMATISTS GUILD ("PNG") is an Internal Revenue Code § 501(c)(3) organization of rare coin dealers that consists primarily of PCGS "featured and/or authorized dealers". R. Steven Ivey, President of HERITAGE, is a member of the Board of Directors of PNG. The Executive Director of PNG is Robert Brueggeman. PNG operates throughout the United States, including in the District of Columbia.

7. INDUSTRY COUNCIL FOR TANGIBLE ASSETS (“ICTA”) is an Internal Revenue Code § 501(c)(3) organization that holds itself out as being the “National Trade Association” for the rare coin industry. R. Steven Ivey, President of HERITAGE, Christopher Cippoletti, Executive Director of the ANA, and Barry Stuppler of BARRY STUPPLER & CO., INC. are members of the Board of Directors of ICTA. The Executive Director of ICTA is Eloise Ullman. ICTA operates throughout the United States, including in the District of Columbia.

8. BARRY STUPPLER & CO., INC. (“STUPPLER & CO.”) is a California corporation that does business throughout the United States, including in the District of Columbia. STUPPLER is a competitor of ACG as it specializes in coin appraisal and grading services. Barry Stuppler is the owner and operator of STUPPLER and was one of the founders of PCGS.

9. NU GRADE, LLC (“NU GRADE”), is a Pennsylvania limited liability company formerly known as TRU GRADE SERVICES that does business throughout the United States, including in the District of Columbia. NU GRADE is a competitor of ACG as it specializes in coin grading and authentication services. John Callandrello is the owner and operator of NU GRADE.

10. REC.COLLECTING.COINS a/k/a RCC is an ANA sanctioned coin club and Internet users newsgroup consisting of coin dealers and collectors headed up by GARY E. LEWIS, MARK GREENE, BRUCE HICKMOTT, IRA STEIN and ERIC TILLERY. RCC is broadcast over the Internet internationally, including in the District of Columbia. The other documented members of RCC are JOHN BAUMGART, JOHN P. CARNEY, JASON S. CRATON, PETER T. DAVIS, TOM DeLOREY, PHILLIP

DEMAYO, JR., MICHAEL S. FEY, ROBERT A. FLAMINIO, REID GOLDSBOROUGH, ALAN HERBERT, WILLIAM A. KRUMMEL, EDWARD KUSZMAR, BARRY KUTNER, HARVEY R. LASER, GREG MARGULIES, SAMUEL L. MORGAN, STUART J. MILLER, FRED A. MURPHY, DAVID W. PARRISH, DONN PEARLMAN, TOM REA, BYRON L. REED, PAUL J. ROBERTS, JONATHAN ROSENTHAL, WILL ROSSMAN, STUART SEGAN, JEFFREY SALTZMAN, SCOTT STEVENSON, JOHN STONE, BARRY STUPLER, ALAN WILLIAMS, CHYRSTA WILSON, DOUGLAS A. WINTER, PETER ZIMMERMAN, and DAVID M. ZUTS.

FACTUAL ALLEGATIONS

11. Beginning in 1995, ACG incorporated in the State of Florida and has provided superior coin grading and authentication services to rare coin dealers and collectors throughout the United States and Canada, including in the District of Columbia. ACG has never had any major complaints since its inception.

12. From in or about 1999 until in or about 2001, ACG gradually increased its share in the marketplace of entities that provided rare coin grading and authentication services to rare coin dealers and collectors throughout North America. By in or about June 2001, ACG enjoyed an approximate eight (8%) percent share in the overall relevant market pertaining to rare coin grading and authentication services in the United States. The eight (8%) percent share was comprised of a twelve (12%) percent share of the E-Bay coin market and a fifty (50%) percent share of the major coin trade show market.

13. ACG's gradual increase in market share and corresponding profitability came at the expense of PCGS, HERITAGE, PNG, ICTA, and STUPLER inasmuch as

its increase in market share was the result of its superior pricing and efficiency in providing rare coin grading and authentication services to dealers and collectors throughout the marketplace. This was particularly true in the major coin trade show market as ACG began to focus on that market in 2000 and ultimately obtained one-half of the market share pertaining to major coin trade shows.

14. Commencing in or about 2001, Defendants, ANA, PCGS, HERITAGE, PNG, ICTA, STUPPLER, and RCC, in an effort to drive ACG out of business for the primary purpose of destroying competition in the marketplace, entered into an agreement to defame ACG and tortiously interfere with its advantageous business relationships with its dealers and customers (hereinafter referred to as the antitrust conspiracy).

15. Subsequent to entering into the antitrust conspiracy, the Defendants committed a myriad of illicit and overt acts in an effort to further the primary purpose of the antitrust conspiracy (i.e., anti-competition) including, but not limited to:

- a. RCC and PCGS published Internet websites and engaged in various forms of Internet communications that contained false and disparaging statements about ACG, its President, and its head grader;
- b. RCC and STUPPLER proposed, organized, and carried out a group boycott of ACG products and services;
- c. RCC created a "legal defense fund" to respond to correspondence from ACG's attorney urging Defendants to cease and desist their anticompetitive conduct;

- d. ANA attempted to disallow ACG from bringing its coin slabbing equipment to ANA coin shows, attempted to bar ACG's head grader from attending trade shows, and located ACG's table in the least advantageous locations at the trade shows;
- e. RCC and STUPPLER, with the assistance and complicity of DAVID KREAMER and ROBERT K. BRUCE, knowingly submitted counterfeit coin(s) to ACG for the purpose of attempting to deceive it into violating the law and causing an unwarranted complaint to be submitted to the ANA;
- f. ANA and STUPPLER made unwarranted complaints against ACG and its head grader to the ANA resulting in the ANA attempting to deny ACG "bourse" space at ANA coin shows;
- g. PNG, ITCA, PCGS, HERITAGE, ANA and STUPPLER concocted "bogus" PNG/ICTA coin grading surveys in 2002 and 2004 and publicized the illegitimate results of the "survey";
- h. PNG, PCGS, HERITAGE, and STUPPLER formed a PNG "Internet Rules Committee" made up of R. Steven Ivy, Douglas A. Winter and Barry Stuppler, among others, in direct response to the immense popularity of the ACG sponsored coin grading Internet website and catalogue known as "I 2 Collect.Com" which fostered true competition among the various coin grading services;
- i. RCC and ANA caused RCC to become an official ANA member coin club and ANA President Gary E. Lewis paid its ANA dues;

- j. RCC, STUPPLER, and PNG published ACG dealers' network on the Internet and thereafter attacked ACG dealers systematically until they ceased doing business with ACG; and
- k. NU GRADE, through its principal, John Callandrello, made false and disparaging statements about ACG before the ANA.

16. Beginning in 2001 and continuing thereafter through the present date, in furtherance of the antitrust conspiracy, Defendants RCC and PCGS began a campaign of defamation against ACG, its President, Diane Hager, and its head grader, Alan Hager. The campaign consisted of the publication of false and disparaging statements made by RCC members, via its Internet user newsgroup, and PCGS, through its message board, about ACG and the Hagers that are far too numerous to list. However, such statements include, but are not limited to:

- a. IRA STEIN'S statement that ACG "knowingly grades 'counterfeit' coins, and 'fakes'";
- b. MARK GREENE'S statement that ALAN HAGER is a "blatant crook";
- c. BYRON L. REED'S statement that DIANE HAGER is a "whore" and those who deal with ACG are her "johns";
- d. IRA STEIN'S statement that ACG was sued for committing "fraud" against an elderly 80+ year old woman by selling her over-graded coins;
- e. BRUCE HICKMOTT'S and FRED MURPHY'S statement that DIANE HAGER is a "screaming fishwife";

- f. BYRON L. REED'S statement that ALAN HAGER has been "found liable for misrepresenting coins";
- g. ERIC TILLERY'S statement that ALAN HAGER was "proven to be a fraud -- once a fraud, always a fraud";
- h. REID GOLDSBOROUGH'S statement that "many people get cheated by ACG every day";
- i. REID GOLDSBOROUGH'S statement that there is a "huge repository of evidence...that [ACG'S] very business model is based on deception and cheating";
- j. BRUCE HICKMOTT'S statement that "ACG is knowingly providing a tool that others are using with intent to defraud";
- k. GREGORY ROHAN'S statement that ACG is "basically a fraud;"
- l. GREGORY ROHAN'S statement that " I have lost track of the number of counterfeit coins I have seen in ACG holders";
- m. BARRY STUPLER'S statement that " coins in ACG holders can be 2 to 6 grades lower" and "have no liquidity";
- n. JOHN a/k/a dog_xx, Dog97, Dog (ME)'s statement that ACG's President was arrested in Longwood, Florida for same-sex prostitution; and
- o. BARRY STUPLER and MICHAEL S. FEY'S statement that ACG's head grader is a convicted felon and has spent time in jail.

17. In or about 2004, ACG initiated legal action in Circuit Court for the Eighteenth Judicial Circuit of the State of Florida against several individual RCC

members for defamation and tortious interference based on, among other things, statements published as part of the aforementioned internet users newsgroup. Once this action was commenced and as part of and in furtherance of the antitrust conspiracy, the ANA created an unprecedented legal defense fund for the individual defendants in order to obstruct ACG from vindicating its rights and restoring true competition to the rare coin grading industry.

18. Thereafter, Defendants ANA and STUPPLER agreed, as part of and in furtherance of the antitrust conspiracy, to publish a patently false and damaging “advertisement” in the July and August, 2004 issues of ANA’s monthly magazine, “The Numismatist” that further severely disparaged ACG and insured that it would continue to be unable to provide rare coin dealers and collectors with economical, fair, and competitive coin grading and authentication services or to restore its market share in the coin grading and authentication industry.

19. The natural and proximate effect of the illicit agreement and overt acts of the Defendants as set forth above was to diminish competition in the coin grading and authentication marketplace by removing ACG’s market share and allowing PCGS to increase its market share to the point where it exclusively controls prices in the market. Defendants, ANA, HERITAGE, PNG, ICTA, STUPPLER, and NU GRADE, have all benefited from the diminishment of ACG’s market share and the boycott of ACG that have resulted from the antitrust conspiracy and substantive antitrust violations engaged in by Defendants.

20. A secondary but equally devastating cause of the antitrust conspiracy and substantive antitrust violations is the grave economic injury suffered by ACG in that it

has literally lost millions of dollars in revenue and profits as the result of Defendants' anticompetitive conduct.

21. ACG has retained the undersigned attorneys and has agreed to pay them a reasonable fee for their services.

**COUNT ONE-CIVIL CONSPIRACY TO COMMIT SHERMAN
ACT VIOLATIONS (ANTITRUST CONSPIRACY)**
(ALL DEFENDANTS)

22. This is an action for civil conspiracy to commit violations of the Sherman Act on the part of the Defendants.

23. Plaintiff adopts and realleges paragraphs 1-21 above as though fully set forth herein.

24. Commencing in or about 2001, the Defendants combined, conspired, confederated, and agreed to engage in acts that constitute *per se* violations of the Sherman Act (15 U.S.C. §§ 1 and 2) as set forth in paragraphs 14-18, above. This conspiratorial agreement caused antitrust injury in that it harmed competition in the rare coin grading and authentication industry by destroying ACG's measurable market share, particularly in the "trade show" portion of the industry.

25. ACG has suffered severe economic damage as a direct and proximate result of the antitrust conspiracy.

WHEREFORE Plaintiff, ASA ACCUGRADE, INC., respectfully requests that the Court enter a judgment in its favor and against the Defendants, jointly and severally, that:

a. prohibits the Defendants from carrying out any additional acts in furtherance of the antitrust conspiracy;

- b. awards Plaintiff three times the amount of the pecuniary damages it has suffered;
- c. awards Plaintiff the reasonable attorneys' fees and costs it has incurred in initiating and prosecuting this action; and
- d. provides such other and further relief as the Court deems just and proper.

COUNT TWO-SUBSTANTIVE SHERMAN ACT VIOLATIONS
(ALL DEFENDANTS)

26. This is an action for violations of the Sherman Act on the part of the Defendants.

27. Plaintiff adopts and realleges paragraph 1-20, above as though fully set forth herein.

28. Commencing in or about 2001, the Defendants engaged in various acts and conduct that constitutes violations of the Sherman Act (15 U.S.C. §§ 1 and 2).

29. The Defendants' antitrust violations are set out in detail in paragraphs 14-18, above. These acts constitute *per se* antitrust violations and have resulted in the eradication of ACG's market share thereby significantly harming competition in the rare coin grading and authentication industry.

30. ACG has suffered severe economic injury as a direct and proximate result of Defendants' antitrust violations.

WHEREFORE Plaintiff, ASA ACCUGRADE, INC., respectfully requests that the Court enter a judgment in its favor and against the Defendants, jointly and severally, that:

- a. prohibits the Defendants from carrying out any additional antitrust acts;

- b. awards Plaintiff three times the amount of the pecuniary damages it has suffered;
- c. awards Plaintiff the reasonable attorneys' fees and costs it has incurred in initiating and prosecuting this action; and
- d. provides such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

In accordance with Rule 38, Fed.R.Civ.P., Plaintiff, ASA ACCUGRADE, INC. hereby demands a trial by jury of all issues so triable.

DATED this 10th day of February, 2005.

Respectfully Submitted,

/s/
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