

2. I have reviewed the affidavit of Heather McManus, Esq. filed herein. At paragraph 4 of her affidavit Ms. McManus provides the Court with what she implies to be two representative files of those ordered for production.
3. Ms. McManus' suggestion that these two files are representative of the files ordered produced and their use to "demonstrate convincingly the burdensomeness of the demand and the lack of any relation to any issue in this case" is disingenuous.
4. The two files, Wilamowski and Pape¹, are files of hotly contested Trial Board litigation comprised of, no doubt, hundreds of pages of transcripts of Trial Proceedings and all of the other documents a Court would expect to find in a fully litigated case file.
5. To compare those two files to the vast majority of investigative files required to be produced by the Court's Order is like comparing the file of a full criminal proceeding tried to verdict with a traffic ticket docket.
6. As the affidavit of Rona J. Myers Farley and its Exhibits, filed herewith, amply demonstrate, the vast majority of the files Ordered for production on Schedule A are no more than 10 or 20 pages thick, consisting of standardized reports for which AKC maintains a tight system of control.
7. Ms. McManus' Affidavit and her presentation to the Court of the

¹Wilamowski and Pape are not even suspensions for failure to keep records or failure to identify dogs as are most if not all others on Schedule A. Rather they are suspensions for intentionally falsifying documents. They are listed on Schedule A only because the infractions are reported by AKC in its monthly Secretary's Page as having occurred under the same Rules Section of Chapter 4.

Wilamowski and Pape files is designed to mislead the Court as to the "burden" of complying with the discovery ordered. Such response is typical of AKC, as evidenced by its past conduct. Attached as Exhibit A please find a copy of a letter dated Sept. 13, 1988 from Assistant United States Attorney For The Eastern District of Arkansas Brent Bumpers to Mark Hyland, Esq. of Seward & Kissel expressing his concern about his belief that AKC had failed to fully comply with a subpoena served upon it.²

8. AKC's assertions that it is unable to produce with out extreme expense and burden the computerized information required by the May 17, Order is belied by the facts. AKC is a registry of data base information. Its very business is data base management, which it has computerized to a very high degree of sophistication. As a simple example AKC offers to the public the availability of ordering three, four or five generation pedigree printouts of any dog in its registry, for a fee, all by computerized telephone service. Attached as Exhibit B please find AKC's solicitation and instructions for its computerized service. Much if not all of the computer database information required to be produced by the Court's Order is represented in the certified pedigree routinely sold to the public.
9. AKC's files as requested by Counterclaim Plaintiff are essential in proving the existence of an intentional fraud in the registration of alleged pure bred dogs by AKC, and thus in

²On June 8, 1995 your affiant spoke with Assistant U.S. Attorney Bumpers and learned that Mr. Bumpers recollection of the matter was that AKC had a reputation for not responding to subpoenas and for being "a pretty sleazy outfit".

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establishing one of the motives of AKC in acting as it did towards Counterclaim Plaintiff.

10. One file, that concerning Donna Huffman, already produced in part by Robert Hufford and Michael Frazer in response to Subpoenas Duces Tecum served upon them by AKC in this case, is useful in demonstrating the basis for the allegations of intentional fraud in registrations by AKC, and the need for additional case files.
11. Donna and Dale Huffman operated a huge breeding and brokering kennel in Willow Springs, Mo.
12. According to AKC files, on Sept 16, 1990 AKC Executive Field Agents Robert Nejd1 and Peter Haerle initiated an inspection of the Huffman's kennels. On the day of the inspection they found approximately 516 dogs on the premises. The agents found that some of the dogs had only freshly been tattooed, that on Sept 7, 1990 the USDA inspection reported that no dogs were then identified, and that the Huffmans had no knowledge of which dogs went with which papers. A copy of the report of Executive Field Agent Nejd1 to his supervisor Paul Firling, his Inspection Summary and his preliminary report of 25 Sept 90 are attached hereto as Exhibit C.
13. Nejd1's report included statements from Huffman and witnesses clearly indicating that the Huffmans had no suitable records of the breedings and whelpings which had taken place over the last five years, had no identification on the dogs, had no system of identification for the dogs, regularly switched bitches in season from pen to pen with different stud dogs for breeding (to assure pregnancy), had no records of the dogs she placed outside of her

kennel for breeding with co-owners, oversubscribed litters, combined litters, co-mingled dogs and litters and otherwise violated, in possibly every conceivable manner, AKC rules designed to assure the validity of the genealogy of the dogs registered by AKC. These statements are attached here as Exhibit D.

14. Firling, by memo dated Nov. 1, 1990 to his supervisor, Executive Secretary Roy H. Carlberg requested a Show Cause Hearing citing the numerous violations of AKC rules and the huge quantities of dogs involved. He advised Carlberg that "in the last five years the Huffmans have registered a total of 907 litters"³. Firling's memo to Carlberg is attached as Exhibit E.
15. On Jan. 29, 1991 AKC filed charges against the Huffmans under its Rules. A copy of the Charges is attached as Exhibit F.
16. By letter dated Jan 29, 1991 AKC's (Exhibit G) AKC Secretary Dearinger advised the Huffmans that the Charges had been filed and that a hearing had been scheduled. Most importantly AKC advised the Huffmans that:

at the hearing the AKC will ask the Trial Board to recommend (i) the indefinite suspension of all your AKC privileges and (ii) the cancellation of all litters and registrations made by you since September 16, 1985.⁴

17. No Hearing was ever commenced. Rather the Huffmans "retired"

³When AKC wanted to, it was not "overly burdensome" for Firling to determine that Huffman had registered 907 litters in the preceding five years. That is exactly the same information Counterclaim Plaintiff seeks in discovery Ordered by the Court and complained of now by AKC's McManus.

⁴5 years, to the day, preceding Nejd's inspection.

from the pet industry, and advised their customers, including perhaps the then largest retailer of AKC registerable pure bred dogs in the nation, Docktor Pet Centers, that they were out of business. A copy of that Notice is attached as Exhibit H.

18. AKC refused to register dogs from Huffmans' kennel after Sept 25, 1990, and on Jan. 4, 1991 Docktor Pet Centers issued a communique to its retail outlets (Exhibit I) advising that the retailer attempt to negotiate with the many complaining customers who could not get the promised AKC registrations for the dogs they had purchased.⁵
19. During the spring of 1991 AKC wrote to each person who attempted to register a Huffman dog (probably purchased through one of the numerous Docktor Pet Centers Huffman had supplied throughout the South and Mid-West) advising that an investigation was pending and that it would hold the registration application "in abeyance" pending resolution. A sample of the hundreds of such form letters is attached as Exhibit J.
20. No Hearing against Huffman seeking cancellation of her registrations for the 5 years preceding the inspection, as promised by AKC in its charges against Huffman was ever held. Rather, Donna Huffman was suspended from AKC privileges indefinitely. A copy of a part of AKC's April 21, 1993 Suspension list is attached as Exhibit K.⁶

⁵This is the third part of the AKC's registration fraud. AKC knows that a dog without AKC papers is nearly valueless while the same dog sold as AKC registerable may be worth \$400-500 or more.

⁶Only Donna Huffman, not her husband Dale, is listed as being suspended notwithstanding the Charges brought against both.

21. To the best of your affiants knowledge, after investigation, none of the 907 litters bred by Huffman from Sept 16, 1985 through Sept 16, 1990 were cancelled by AKC.
22. Rather, in August of 1991, obviously after some kind of a deal had been struck between AKC and Docktor Pet Centers, AKC began registering the dogs which it earlier in the spring had advised the retail purchasers of that the applications for registration they had submitted were being held "in abeyance" pending investigation.
23. As but one example⁷, on Aug 7, 1991 Patricia E, Fiore, the administrative assistant of the AKC's Investigation and Inspections Department wrote to one such applicant for registration of a Huffman dog purchased at the Docktor Pet Center in Texas. A copy of the correspondence from Fiore to Marie E. Carmen is attached as Exhibit L.
24. A copy of the receipt for the dog, is attached as Exhibit M.
25. In her Aug. 7, 1991 correspondence Fiore advised Mrs. Carmen that the investigation was complete and that she, Mrs. Carmen should forward her fee for registration of the dog.
26. AKC knew, on Aug. 7, 1991 that the dog it was willing to register and for which it had solicited money through the United States mail for that registration fee, was not an AKC registerable pure bred dog and not eligible for registration by virtue of Huffman's admissions to AKC inspector Nejd1.
27. Indeed, AKC had recognized that Mrs. Carmen's dog was not

⁷The requested discovery here will provide, no doubt, numerous other examples.

eligible for registration due to Huffman's practices when it advised the Huffmans of its intent to cancel all of their registrations and litters in its Notice of Charges six months previously.

28. Mrs. Carmen sent her money to AKC (A copy of her money order is attached hereto as Exhibit N) and received in return an AKC Registration Certificate for her alleged Chihuahua Renny Todd Carmen, TM501741/01, born Nov. 30 1989. A copy is attached as Exhibit O.
29. AKC Executive Secretary Roy Carlberg testified on June 25, 1990 in a matter then before the Municipal Court for Santa Clara County Judicial District titled People of Cal v. Hershey. Therein he testified in response to the question "What do the AKC registration papers represent?:"

They represent two things; Number One, that the breed identified by those papers are, or applications is of a registerable breed of purebred dog, and secondly, that its genealogy, at least the first generation of the genealogy is as represented on the application or certificate. It also indicates the complete genealogy of that dog by the respective numbers of sires and dams going back into our files.

A true copy of a portion of the transcript is attached as Exhibit P.

30. In a Bankruptcy case entitled In Re: John Rau Maike, et al, Debtors; J.R. Maike v AKC, Case No. 87-10376; Adversary Proceeding 87-0090, the Plaintiff, Maike, one of the nations then largest breeder/brokers in AKC dogs, sought injunctive relief requiring AKC to register his dogs after failing an inspection and Trial Board proceedings.

31. The AKC, by its attorneys, Seward & Kissel, Mark Hyland, Esq. appearing, and local Kansas counsel, filed a brief in opposition to the requested order requiring it to register the dogs. Portions of the brief (a complete copy of which has been provided counsel here) are attached as Exhibit Q.) The opening statement identified the issue:

Defendant AKC submits this brief in opposition to Plaintiffs-debtors' motion for a temporary restraining order and temporary injunction (1) mandating that the AKC immediately process all pending and future registration papers relating to dogs bred by plaintiffs and sold to the public nationwide despite the fact that the records for those dogs fail to meet AKC requirements ... Page 1.

32. Hyland continued for AKC:

The Plaintiffs' motion for a mandatory temporary restraining order and temporary injunction should be denied because:

(3) ... By contrast, the AKC, a purely private, not for profit organization, has a tangible interest in maintaining the integrity and effectiveness of its rules and procedures, and especially in protecting the integrity and coherence of its Stud book, which encompasses the entire registry maintained by the AKC for all purebred registered dogs and provides the complete genealogy of all dogs registered with the AKC. Page 2.

33. In the Maiké brief AKC recognized its obligations to the general public as to the expectations that accompany an AKC registration

certificate:

The Maikes simply have no right to misappropriate the AKC's reputation and reputation for strict registration standards by labeling such dogs as being AKC-registered when the dogs simply do not meet the AKC's standards for registration. Exhibit Page 10.

34. In arguing against being forced to register the Maike dogs, AKC wrote, at page 21 of its brief:

Further, a mandatory injunction would result in an immense and irreparable damage to the central document of the AKC, the Stud book, and would harm the AKC's reputation for probity and accuracy, which stands behind every pure bred dog.

35. AKC put the coup de gras to the Maike request for registration when it closed its argument, at page 23:

Finally, ordering the AKC to register these dogs of dubious lineage and origin would be tantamount to perpetrating a fraud on the dog-buying public. By ordering what the Maikes want here, the public would well end up purchasing dogs that are not what they are represented to be, causing irreparable damage to the AKC's stud book. This should not be permitted to happen.

36. Counterclaim Plaintiff, a lifelong devotee of AKC pure bred dogs and their competitions agrees. This should not be permitted to happen. But even though AKC knows better, they continue to register dogs of "dubious lineage", which have no records to support the AKC registerable claim. In so doing AKC and its lawyers know that it "perpetrates a fraud on the dog-buying

public". They simply do not care.⁸

37. AKC's acceptance of Mrs. Carmen's money for issuing its Registration Certificate for her dog is, in the opinion of your affiant, intentional consumer mail fraud for selling to Mrs. Carmen its Registration Certificate for a dog which AKC knew, by its own inspectors, managers, Executive Secretary's, and Board of Directors' actions, did not meet AKC standards, did not represent that which AKC holds out to the public, and had no basis for eligibility to be a registered AKC pure bred dog.
38. This one partial file is but an example of the operation and effect of AKC's policy of not cancelling registrations except upon "proof of fraud".
39. The files and documents requested by Counterclaim Plaintiff now the subject of reconsideration are similar in nature to the partial Huffman file and will prove beyond doubt, that the AKC is engaged in intentional consumer fraud as alleged by Counterclaim Plaintiff, thus forming the true ulterior motive for AKC's wrongful actions herein.


Steven D. Gladstone

Sworn to before me a notary public
this 13 day of June 1995


Notary Public

Notarial Seal
Stephanie E. Short, Notary Public
Buchkull Twp., Northampton County
My Commission Expires Sept. 18, 1995

⁸AKC's motives for registering dogs which it knows are not AKC registerable pure breeds is directly tied to the income produced by such registrations and AKC expenditures of that income. Its expenditures and motives will be addressed in the future as the Court has suggested in its May 17, 1995 Order, when AKC financial data is sought for production.