

Complaint: NPSL Refusal to Allow San Francisco City FC to Compete in 2015 Season

Statement of Relevant Facts:

1. On 3/5/2014 San Francisco City FC ("SF City FC") submitted a formal application packet and required materials, including an operations plan, financial pro forma, application sheet, and a letter from San Francisco Parks and Rec regarding a proposed home stadium to National Premier Soccer League ("NPSL") Commissioner Michael Hitchcock.
2. On 3/10/2014, SF City FC member Jacques Pelham met with San Francisco Stompers President Terry Forte. During that meeting, Mr. Forte represented that the Stompers had unilateral authority to reject the SF City FC application under the NPSL bylaws. Mr. Forte explained that this was a "business decision" to protect the Stompers from competing with another team based in San Francisco.
3. On 4/5/2014, a group of SF City FC members met with Michael Hitchcock to discuss the SF City FC application. Commissioner Hitchcock explained that he would be meeting with the existing Golden Gate Conference Owners to discuss our application over the course of that weekend.
4. On 4/22/2014 Mr. Pelham spoke with Mr. Hitchcock via telephone to discuss the SF City FC application. During this call, Mr. Hitchcock indicated that a majority of the owners were opposed to the application and, as such, SF City FC would be blocked from entering as a competitor for the 2015 NPSL season.
5. During the 4/22/2014 phone call, Mr. Pelham asked Mr. Hitchcock if NPSL administered an appeals process for SF City FC to appeal to Golden Gate Conference Owners' decision. Mr. Hitchcock indicated that there was no such procedure in place.
6. On 4/29/2014 Mr. Pelham contacted Mr. Hitchcock to confirm that there was no appeal procedure in place and indicate SF City FC's decision to appeal the application rejection. Mr. Hitchcock once again indicated that there was no appeal or complaint procedure administered by NPSL.
7. On 5/2/2014 Mr. Pelham, on behalf of SF City FC, submitted an Appeal to USASA with regards to this matter.
8. On 6/4/2014 USASA advised SF City FC that they would not hear the Appeal and advised SF City FC to pursue this matter with USSF.

Relevant Documents:

- A. United States Soccer Federation (“USSF”) 2013-2014 Bylaws 202 and 213
- B. USSF 2013-2014 Policy 212-1
- C. United States Adult Soccer Association (“USASA”) 2013 Bylaws Section 202 and 631
- D. National Premier Soccer League (“NPSL”) 2013 Bylaws 10.01 and 10.02
- E. San Francisco City FC NPSL Application
- F. E-mail from Jacques Pelham sent to NPSL Commissioner Michael Hitchcock on 4/29/2014
- G. E-mail from Michael Hitchcock in response to Mr. Pelham’s 4/29/2014 e-mail
- H. E-mail from USASA Executive Director Duncan Riddle re USASA’s decision not to hear the SF City FC appeal

Relief Sought:

NPSL Compliance with USSF Bylaws 212 and 213 and USSF Policy 212-1 Section 4 to allow San Francisco City FC, as an amateur Participant in an Affiliated Organization to USASA and NPSL, access to competition in the 2015 NPSL league program.

Grounds for Appeal:

I. NPSL/Golden Gate Conference’s decision block the SF City FC application violates USSF Bylaw 213 and USSF Policy 212-1 Section 4.

USSF Bylaw 213 Section 1(a)(1) States:

“Except with respect to a Professional League, the membership of the Organization Member and its member organizations shall be open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport of soccer who is not subject to suspension under Section 4 of Bylaw 241 or pursuant to the disciplinary action of any amateur soccer organization in its territory.”

Further clarifying the responsibilities of Organizational Members, USSF Policy 212-1 Section 4 states:

“An Organization Member must allow Participants from any Affiliated Organization to participate in its programs if those Participants register and comply with all of the reasonable policies, rules, regulations, and requirements of the Organization Member . . . (c) For purposes of this Section 4, an Organization Member must apply its requirements consistently.”

Policy 212-1 Section 1 defines the relevant terms as follows:

- (a) “Affiliated Organization” means any Organization that is a member or identifiable subset of any USSF Organization Member.
- (b) “Organization” means a club, league, team, association, or other group of Participants.
- (c) “Organization Member” shall have the meaning set forth in USSF Bylaw 109 [which refers to the categories described in Bylaw 202].
- (d) “Participant” means any player, coach, trainer, manager, administrator or official that is sponsored, financed, coached, organized, or administered by an Organization.

USASA is classified as a National Association under USSF Bylaw 109/202. NPSL is sanctioned is classified as a National League Member Organization under USASA Bylaw 202 1(c). California Soccer Association-North is classified as a State Association Member Organization under USASA Bylaw 202 1(e).

San Francisco City FC has been a registered member of the San Francisco Soccer Football League (“SFSFL”) since 2002 and is a current registrant for the 2013-2014 season. SFSFL is recognized and affiliated with USASA as a member league of the California Soccer Association-North region of the USASA governing structure. USASA also recognizes SFSFL as having achieved “Elite Amateur League” status.

Because SF City FC is registered in good standing with SFSFL, California Soccer Association-North, USASA and USSF, the provisions of USSF Policy 212-1 apply. Thus, as a Participant Organization that is registered with a recognized Affiliated Organization as defined under Section 212-1, SF City FC must be permitted to participate in all programs of all USASA Organizational Members, including NPSL, provided SF City FC follows all reasonable policies, rules, regulations, and requirements promulgated by USASA and NPSL.

To date, SF City FC has provided all requested materials and agreed to all reasonable NPSL policies, rules, regulations, and requirements and, by submission of a good faith application to join NPSL, has shown intent to follow all such requirements in the future.

The intent of USSF Bylaw 213 and Policy 212-1 seems to require fair and open access to competition as applied to Organizational Members within USSF and USASA. Current NPSL policy to deny such access violates these Bylaws and Policies.

II. Territory exclusivity agreements are likely illegal under State and Federal antitrust law and should not be considered a “reasonable” policy under USSF Policy 212-1 Section 4.

Territory and market exclusivity agreements and arbitrary admission practices by NPSL owners are unreasonable and likely illegal under United States antitrust laws.

Any contention that territory/market exclusivity agreements between existing NPSL owners would be considered a “reasonable” rule or policy under USSF Policy 212-1 Section 4 would be in direct conflict with established legal precedent prohibiting territory/market exclusivity arrangements.

The Sherman Antitrust Act (15 U.S.C. Section 1) and the California Cartwright Act (California Business and Professions Code Section 16600) prohibit every agreement, conspiracy, or other concerted activity in restraint of trade.

Because of their deleterious effects on consumer access and market competition, territorial exclusivity agreements between separate entities are generally a “per se” violation of antitrust laws. *United States v. Topco Assocs., Inc.* 405 U.S. 596 (1972).

The most applicable court case concerning the antitrust law implications of territory exclusivity agreements with regards to sports teams and leagues was decided by the Ninth Circuit Court of Appeals in relation to the Oakland Raiders move to Los Angeles. In 1981, The NFL blocked the Raiders move to Los Angeles on grounds that the existing Los Angeles Team, the Rams, were granted exclusive territory rights to the Los Angeles Market defined by a distance radius from their home stadium.

In ruling in favor of the Raiders and against the Rams and other NFL owners, the Ninth Circuit held that consumer interest and trade competition were harmed by the Rams/NFL territory exclusivity agreement. The Court stated:

“The competitive harms of Rule 4.3 [the NFL Territory Exclusivity Rule] are plain. Exclusive territories insulate each team from competition within the NFL market, in essence allowing them to set monopoly prices to the detriment of the consuming public. The rule also effectively foreclosed free competition among stadia such as the Los Angeles Coliseum that wish to secure NFL tenants . . . The harm from Rule 4.3 is especially acute in this case because it prevents a move by a team into another existing team's market. If the transfer is upheld, direct competition between the Rams and Raiders would presumably ensue to the benefit of all who consume the NFL product in the Los Angeles area.”

L.A. Memorial Coliseum v. NFL 726 F.2d 1381 (1984).

Other courts have come to similar rulings outside the Ninth Circuit and with respect to amateur sporting competition:

-*Tondas v. Amateur Hockey Ass'n of U.S.* 438 F.Supp. 310 (1977): The District Court for the Western District of New York found that a decision by the Amateur Hockey

Association of the United States to exclude an amateur hockey team from competition in a geographic market was subject to Section 1 antitrust scrutiny.

-Amateur Softball Association v. United States 467 F.2d 312 (1972). The Tenth Circuit Court of Appeals held that amateur sports are subject to Section 1 antitrust scrutiny.

NPSL and the Golden Gate Conference Owners' agreement to deny the SF City FC application harms competition and denies additional soccer opportunities for fans, players, and stakeholders in the San Francisco soccer community and marketplace. These agreements run counter to the spirit and letter of USSF and USASA policy and established antitrust law precedent.

III. NPSL Admission policies are arbitrary, inconsistent, and opaque.

NPSL Market exclusivity agreements and league entry procedures create arbitrary and capricious rules for competitive entry across the NPSL. NPSL Bylaw Section 10.01(A) provides that new teams will be admitted to the league by a majority vote of the League or Conference regions where a team is domiciled. Section 10.01(A) is augmented by Section 10.02, which provides territory exclusivity for teams within a thirty-mile radius and/or a 500,000 person population limit. Under Section 10.02, existing owners have discretion of whether to allow additional teams to compete within the described geographic and/or population limits.

These provisions create an opaque, unpredictable, and disparate patchwork of admissions policies throughout the various NPSL regions. This is evidenced by the various geographic distribution of conference roster throughout the United States and in the Golden Gate Conference itself.

In the Golden Gate Conference, CD Aguiluchos (based in Oakland) and Bay Area Ambassadors (Formerly Based in Oakland) both played within 30 miles of the San Francisco Stompers "home territory" during the last three seasons.

In addition, from the current and recent NPSL roster of teams, at least 5 additional metro areas have had multiple teams within 30 miles, and several within the same City:

Dallas Metro Area: Dallas City FC, Liverpool Warriors

New York City: New York Athletic Club, New York Red Bulls U-23, Brooklyn Italians

Minneapolis Metro Area: Minnesota United Reserves, Minnesota Twin Stars

Detroit Metro Area: Detroit City FC, Michigan Stars

San Diego: San Diego Flash, San Diego Boca (former)

Multiple times NPSL Commissioner Hitchcock conveyed that competitive entry decisions for the Golden Gate Conference are made by the five existing Conference

owners. However, San Francisco Stompers President Terry Forte indicated that the Stompers were granted unilateral authority to block or accept applications for teams within 30 miles of San Francisco (which appears to be the case under the NPSL Bylaws). Under either scenario (unilateral decision or majority vote) the admissions process for the SF City FC application has lacked transparent and consistent determining factors for admission.

At no point during the admissions process did Commissioner Hitchcock or any of the Golden Gate Conference owners indicate the SF City FC application failed to meet NPSL standards or requirements. Yet, the SF City FC application was rejected without any opportunity to cure or an explanation other than Conference owners not wishing there to be a second NPSL team in San Francisco.

Given the existence of current and former NPSL teams located in the San Francisco “territory” as defined by NPSL Bylaws, and the fact that the population of San Francisco exceeds 500,000 (837,442 as of 2013) it appears there is no consistent adjudication of NPSL bylaws and admissions procedures with respect to Golden Gate Conference admissions.

Further, the appearance that each Conference operates under non-standardized admissions criteria and the fact that different conferences appear to have applied “territory rules” differently creates an inconsistent set of admissions criteria that appears to run counter to the spirit and letter of USSF and USASA law and policy, including USSF Policy 212-1 Section 4.

IV. NPSL does not administer procedures for complaint resolution as required by USASA Bylaw 631.

USASA Bylaw 631 Section 1 states:

“Each Organization Member shall have provisions for the resolution and determination of grievances, disputes, and appeals provisions in its governing documents, whether Bylaws, rules, or other document, which clearly state the procedures under which adjudication of grievances, appeals, and other disciplinary matters occur.”

USASA Bylaw 631 Section 2 provides complaint procedures to be followed in the event that an Organization Member does not administer the provisions required by Bylaw 631 Section 1.

On multiple occasions, NPSL Commissioner Hitchcock conveyed to SF City FC members that NPSL had no such appeals process in place. SF City FC sought to resolve this appeal under procedures required by USASA Bylaw 631. With no such procedures in place, SF City FC filed this appeal/grievance to the USASA Appeals Committee for

resolution of the issues described herein. USASA has advised SF City FC to pursue this matter with USSF, due to the majority of this matter relating to USSF Bylaws.