

## Updates

August 31, 2021

“Hand Signals” Trade Secret Case Faces Motion to Dismiss

On May 11, 2021, former Toronto Blue Jays pitcher Michael Bolsinger filed suit in Harris County (Texas) District Court, alleging the Houston Astros violated the Texas Uniform Trade Secrets Act (TUTSA) when they stole the Blue Jays' catcher's hand signals. The catcher uses these closely guarded hand signals to relay to the pitcher the next desired throw. Bolsinger claims the theft cost him his major league baseball career and is seeking \$1 million in damages.

On July 12, 2021, the Astros filed a motion to dismiss, claiming the plaintiff's trade secret legal theory defied common sense, arguing that any spectator with the right seat and binoculars could easily steal the pitch signals. The court has not yet ruled on the motion.

### **Background**

Michael Bolsinger began his Major League Baseball (MLB) career in 2010 with the Arizona Diamondbacks, making his first pitching appearance in 2014. He was traded to the Los Angeles Dodgers in 2014, and then to Toronto in 2016, shuttling between the major and minor leagues numerous times.

The game in question was played on August 4, 2017, in Houston. The Blue Jays summoned Bolsinger from the bullpen in the third inning. He retired one of eight batters faced, and got the last out, but not before seven consecutive batters had reached base and four runs were given up. He was subsequently demoted to the Blue Jays minor league team, and ultimately released by the Blue Jays' organization.

Amidst allegations of sign stealing, MLB conducted an investigation into the Astros' 2017 season. In January 2020, MLB released its report, finding that in the Toronto game, the Astros placed a camera in the center field bleachers and transmitted the Blue Jays' catcher's signals to a monitor in the hallway behind the Astros' dugout. A confederate would then relay the pitch call to the batter by banging on a trash can a certain number of times. Bolsinger alleges that 41% of his pitches in the Houston game were preceded by trash can bangs.

### **Law**

TUTSA protects all forms and types of information, including "any... device, method, [or] technique...if: (A) the owner of the trade secret has taken reasonable measures...to keep the information secret; and (B) the information derives independent economic value...from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information."

### **Conclusion**

Hand signals may meet the definitional requirements under the broadly written TUTSA as a device, method, or technique. Bolsinger argues that if ballroom dance steps and simple cocktails can qualify for trade secret protection, then why not baseball hand signals? But can hand signals pass the two conditions?

TUTSA's first condition sets forth two elements that the hand signals must meet in order to claim trade secret protection: ownership and secrecy. First, Bolsinger must own the hand signals. The pitch calls are designed, determined, and delivered by the team's catcher, with some direction from management. Therefore, ownership would seem to rest with the Blue Jays organization, and not with Bolsinger personally.

The second element is secrecy: the owner must make reasonable efforts to keep the information undisclosed. Hand signals are displayed between the catcher's thighs so the batter, the opposing team's clubhouse, and most of the fans will not be able to observe them. However, a runner on second base and fans with binoculars seated in center field are able to read the sign, observe the subsequent pitch, and thereafter interpret the pitch signal.

The next condition TUTSA sets forth is that the information for which protection is being sought must provide economic value to the owner which, if unprotected, would result in an economic loss to the owner and an unjust windfall to the pilferer.

History may provide the proof to support Bolsinger's claim. He was sent down to the minor league after his Astros appearance and ultimately released by the Blue Jays. He has not secured a major league job since. The Astros, however, went on to win the World Series that year. Bolsinger certainly suffered a loss in prestige, reputation, and celebrity. What, if any, economic loss he suffered is undetermined. Conversely, the Astros brand was greatly enhanced by the World Series win, resulting in higher ticket and television revenues—for the short term.

These facts will probably not win the day for Bolsinger. His case's failure to meet the ownership and secrecy elements will, in all likelihood, prove fatal. Consequently, the umpire in this matter may very well deliver the call to Bolsinger in the parlance of the sport: "You're outta here!"

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