

GLR/byk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNIVERSITY OF KANSAS and
KANSAS ATHLETICS, INC.,

Plaintiffs,

CIVIL ACTION

v.

No. 06-2341-KHV-GLR

LARRY SINKS, VICTORY
SPORTSWEAR, LLC, and
LARRY SINKS ENTERPRISES,
INC. (COLLECTIVELY D/B/A
JOE-COLLEGE.COM),

Defendants.

ORDER

Pending before the Court is Defendants' Motion to Join Collegiate Licensing Company (doc. 24). Defendants seek to join third party Collegiate Licensing Company as a party pursuant to Fed. R. Civ. P. 19. For the reasons set forth below, the motion is denied without prejudice to refiling.

Plaintiffs bring this action for trademark infringement, dilution, and unfair competition arising from Defendants' alleged sale of unlicensed products bearing identical or confusingly similar imitation of Plaintiffs' trademarks. In their Answer and Counterclaim (doc. 15), Defendants assert three counterclaims: one each for conversion, tortious interference, and violation of constitutional rights under 42 U.S.C. § 1983. The counterclaim for conversion alleges the unauthorized seizure of defendant Larry Sinks' personal property by Plaintiffs.

Since filing their Answer and Counterclaim, Defendants have learned that the person or persons who acted to seize the property were employed by Collegiate Licensing Company.

Defendants assert that their counterclaim for conversion thus lies against both Plaintiffs and Collegiate Licensing Company. The instant motion asks to join Collegiate Licensing Company as a party.

The Court finds the motion premature. Defendants have not filed a pleading to allege a claim against Collegiate Licensing Company. If that be their intent, they should seek leave to file an amended counterclaim to include such a claim. District of Kansas Rule 15.1 requires that the proposed pleading be attached to the motion.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Join Collegiate Licensing Company (doc. 24) is denied without prejudice to filing a similar motion for the filing of an amended counterclaim.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 12th day of January, 2007.

s/ Gerald L. Rushfelt

Gerald L. Rushfelt
United States Magistrate Judge

cc: All counsel