

COPY

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

UNITED STATES OF AMERICA CHESS)
FEDERATION, INC., an Illinois not for profit)
Corporation,)

Plaintiff,)

v.)

SUSAN POLGAR, an individual, and)
HOAINHAN TRUONG, a/k/a)
PAUL TRUONG, an individual,)

Defendants.)

2008MR000751

Case No.

FILED

DEC 29 2008 CIV-3

Anthony P. ... Clerk of the Circuit Court

COMPLAINT

NOW COMES Plaintiff, United States of America Chess Federation, Inc. (Plaintiff or "USCF"), by and through its attorneys, Giffin, Winning, Cohen & Bodewes P.C., and hereby files its Complaint against Susan Polgar ("Polgar") and Hoainhan Truong aka Paul Truong ("Truong") (collectively, "Defendants"), and alleges as follows:

1. Plaintiff USCF is an Illinois not-for-profit corporation in good standing, with its principal place of business in Crossville, Tennessee.
2. The USCF is the official, not-for-profit United States membership organization for chess players and chess supporters of all ages and strengths, from beginners to Grandmasters.
3. The USCF is governed by a Board of Delegates, composed of a seven-member Executive Board, Delegates at Large, and 125 Delegates apportioned among U.S. states.
4. The seven-member Executive Board functions as a "board of directors," tasked with managing the affairs of the USCF ("Executive Board").

5. Defendants Polgar and Truong are individuals residing as husband and wife in Lubbock, Texas. Defendants resided in the State of New York prior to their move to Lubbock, Texas in 2007.

6. Defendant Truong and Defendant Polgar are members of the USCF Executive Board, elected in June, 2007, and seated on or about August 5, 2007.

7. This Court has personal jurisdiction over Defendants because Defendants have performed duties as directors of a corporation organized under the laws of Illinois. 735 ILCS 5/2-209(a)(12).

8. None of the Defendants reside in Illinois, and therefore venue is proper in this county pursuant to 735 ILCS 5/2-101.

COUNT I
DEFENDANT TRUONG
805 ILCS 105/108.35(d)

1-8. Plaintiff repeats, realleges and incorporates Paragraphs 1-8 as if fully set forth herein.

9. New York resident Sam Sloan was elected to the Executive Board in July 2006.¹

10. During and after the 2007 Executive Board election, Defendant Truong impersonated Sam Sloan and others in over 2,500 separate Internet postings (hereinafter, "Fake Sam Sloan" postings).²

11. The Fake Sam Sloan postings disparaged not only the purported authors, but also present and former USCF presidents, officers, committee members, employees, volunteers and sponsors, who were all falsely depicted.

¹ In the 2007 election, Sam Sloan was not re-elected to the Executive Board.

² Starting on approximately June 28, 2005 and continuing until approximately September 26, 2007, an individual posted over 2,500 messages into the Internet USENET service (accessible via <http://groups.google.com> and many other providers of access to Internet newsgroups) purporting to be Sam Sloan and several other individuals in the chess community.

12. As a result of the 2,500 Fake Sam Sloan postings, Sam Sloan filed an action in District Court for the Southern District of New York, against, among others, Truong, Polgar and USCF (hereinafter the “New York Litigation”). A copy of the New York Litigation is attached hereto as **Exhibit A**.

13. A small sample of the Fake Sam Sloan postings is attached hereto as **Exhibit B**.

14. While the author of the Fake Sam Sloan postings never revealed his true identity online, Defendant Truong left digital footprints that conclusively show that Truong was the author of such postings.

15. Truong continued authoring the Fake Same Sloan postings after Truong was seated on the Executive Board on or about August 5, 2007.

16. For the thirty sample Fake Sam Sloan postings in **Exhibit B**, each posting was made at a certain Internet access point (i.e. an Internet protocol address, or IP address)³.

17. The IP addresses for posts in **Exhibit B** are all owned by one entity, XO Communications, Inc., located in Nashville, Tennessee.

18. XO Communications has stated that an account holder at United Online, Inc., with the username, “chessspammer@netzero.net,” used its IP addresses at the particular dates and times of the Fake Sam Sloan postings. A copy of XO Communications’ statement is attached as **Exhibit C**.

19. United Online, Inc. owns the “dial-up” Internet service provider, Netzero.

20. USCF requested information from United Online, Inc. about the “dial-up” account that uses the “chessspammer” username, and United Online, Inc. responded by providing

³ An Internet access point, such as a desktop computer or a laptop, allows access to the Internet using a unique numeric address called an Internet Protocol (IP) address. An IP address used to access the Internet must be unique, by definition and by function, or else data – like information on web page – could not be delivered to the particular computer requesting the information.

Defendant Truong's name and contact information as its customer who uses this username (*aka*, "Member ID"). Information provided by United Online, Inc. is attached hereto as **Exhibit D**.

21. The account holder of the American Express card associated with this United Online, Inc. account is, on information and belief, Defendant Polgar, Defendant Truong's wife.

22. Further, independent of the Netzero evidence, an analysis of all of the Fake Sam Sloan postings and all of Truong's logins and posts to the USCF member Internet forum supports the conclusion that Truong is the Fake Sam Sloan.

23. Specifically, Truong logged in to the USCF member Internet forum numerous times, under his own name, freely commenting to the USCF membership in his own name, and leaving behind a great number of digital footprints in the form of the IP addresses he used.

24. These IP addresses provide reliable data with which to compare all of the data (IP addresses, dates and times) related to the Fake Sam Sloan posts.

25. Due to the reliability of IP address logs as evidence of identity, one can use a "Matching Procedure" to determine the identity of someone posting content to the Internet.

26. Using this IP Matching Procedure, the USCF was able to compare all of the IP addresses, dates and times of all of Truong's logins and postings to the USCF private forum, to all of the IP addresses, dates and times of the Fake Sam Sloan posts.

27. This comparison revealed three IP addresses that match: an IP address (24.90.223.35) associated with Truong's Roadrunner ISP account in his former New York home, an IP address (75.111.199.177) associated with Truong's Suddenlink ISP account in Texas, and another IP address (75.111.194.9) associated with Truong's Suddenlink ISP account in Texas.

28. Attached as **Exhibit E** is a report compiled by a technical vendor to the USCF, Brian Mottershead (the "Mottershead Report"), explaining in great detail all of the evidence proving that Defendant Truong is the author of the Fake Sam Sloan postings.

29. Furthermore, attached as **Exhibit F** is an expert report by Robert Jones, author of the book, "*Internet Forensics*," O'Reilly Series 2005, confirming the methodology of the Mottershead Report (concluding, on p. 11, "that user chesspromotion [Truong] is responsible for a subset of the Usenet messages detailed here.")

30. Attached as **Exhibit G** is an expert report by Internet security expert David Ulevitch, which has been relied upon by the New York Times and supports the methodology of the Mottershead Report (Ulevitch's report, at p. 2, states, "It's my belief that this [Mottershead] report has been compiled in an accurate way that deserves recognition for its comprehensive depth and detail.")

31. Because these Fake Sam Sloan allegations involved members of the Executive Board, and because the allegations, if true, involved conduct not conforming to the values of the USCF, the USCF launched an investigation into the allegations against Truong and his wife, Defendant Polgar.

32. As a result of the Fake Sam Sloan allegations and the New York Litigation, counsel for the USCF sent a letter to Truong on November 29, 2007 (attached hereto as **Exhibit H**), demanding that Truong:

- a. Formally admit or deny, in writing, whether he was involved in the "Fake Sam Sloan" postings, or had knowledge of who made such postings;
- b. Provide the IP address of all of his home and work Internet connections since 2005, or provide consent for the Board to obtain and cooperate in the Board obtaining such IP addresses from ISP's and other entities;

- c. Provide all information that would support his argument that he was not located at his computer(s) at the time of alleged Fake Sam Sloan postings, to include information relating to his travel;
- d. Comply with the forgoing on or before December 7, 2007.

33. Truong refused to comply with the demands of USCF counsel, except for faxing three pages to USCF's counsel, containing two of Truong's pay stubs and a receipt for a Southwest Airlines ticket, all of which are attached as **Exhibit I**.

34. Following the 2007 Executive Board election, USCF discovered that Truong made numerous dishonest and misleading representations during his Executive Board campaign, including that he had earned a PhD and MBA and that he had held multiple high level marketing positions with billion-dollar companies. See **Exhibit J**. All of these representations are false.

35. Further, Truong failed to reveal that he was married to Defendant Polgar, who was also running for the USCF Executive Board, after being questioned about it by Brian Lafferty on the USCF Issues Forum prior to the 2007 Executive Board election.

36. On information and belief, Truong engaged in bankruptcy fraud in the State of New York, by swearing, under penalty of perjury, in his bankruptcy petition that he was unemployed at the time of his filing in June 21, 2007, when, in fact, he was employed by Texas Tech University. See **Exhibit K, Schedule I** (compare to Exhibit I pay stubs).

37. The actions of Truong, as detailed in this complaint, are inconsistent with the values and the mission statement of the USCF, which states, among other things, that the USCF shall promote the study and knowledge of the game of chess "as a means for the improvement of society."

38. The actions of Truong have had significant adverse consequences on the ability of the USCF to operate efficiently and achieve its corporate objectives.

39. Defendant Truong, a member of the USCF Executive Board, has engaged in fraudulent conduct.

40. Defendant Truong, a member of the USCF Executive Board, has engaged in dishonest conduct.

41. Removal of Defendant Truong from the USCF Executive Board is in the best interest of the USCF.

42. Defendant Truong has refused to resign as member of the Executive Board.

43. As a result, the USCF is forced to bring this removal action in Illinois Circuit Court, as permitted by Illinois law, 805 ILCS 105/108.35(d).

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor on the claims set forth above and award Plaintiff relief including, but not limited to, the following:

- a. A finding the Defendant Truong engaged in fraudulent conduct;
- b. A finding the Defendant Truong engaged in dishonest conduct;
- c. A finding that the removal of the Defendant Truong from the Executive Board of the USCF is in the best interest of the USCF;
- d. An Order removing Defendant Truong from the Executive Board of the USCF;
- e. An Order prohibiting Defendant Truong from running for reelection to the Executive Board of the USCF;
- f. An award of reasonable costs incurred by Plaintiff in connection with this action; and
- g. Such other further relief to which Plaintiff may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

COUNT II
DEFENDANT POLGAR
805 ILCS 105/108.35(d)

1-43. Plaintiff repeats, realleges and incorporates each and every allegation set forth in

Paragraphs 1-43 as if fully set forth herein.

44. Due to the allegations surrounding the Fake Sam Sloan postings, and because the allegations, if true, involved conduct not conforming to the values of the USCF, the USCF launched an investigation into the allegations against Truong and his wife, Defendant Polgar.

45. To effect this investigation, the Executive Board designated a "Litigation Committee," which excluded Polgar and Truong, to permit confidential communications about the investigation and about USCF's legal options.

46. As part of the USCF's investigation, the USCF hired the law firm of Kronenberger Burgoyne, LLP ("Kronenberger") to review and investigate the allegations against Polgar and Truong.

47. From November 2007 through June 2008, Kronenberger performed a significant review of the facts and law regarding the controversy, and during this period, Kronenberger sent a significant number of e-mails to the Litigation Committee, which included Executive Board member Hough, providing the initial results of Kronenberger's investigation, confidential summaries of the USCF's legal position vis-à-vis Polgar and Truong, and outlines of the legal options available to the USCF regarding Polgar and Truong.

48. All of the emails from Kronenberger to the Litigation Committee were clearly marked as from Kronenberger and contained the following notice:

NOTICE: This email may contain material that is privileged, confidential, and/or attorney-client work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express written permission is strictly prohibited. If you are not the intended recipient, please contact the sender at the above number and delete all copies. Inadvertent waiver shall waive no privileges.

49. Polgar was aware at the time that the USCF had engaged Kronenberger as counsel.

50. Between November 26, 2007 and June 24, 2008, with full knowledge that Polgar and her husband were under investigation by the USCF, Polgar and an accomplice unlawfully accessed the e-mail account of Executive Board member Randall Hough (hereinafter "Hough") at least 111 times.

51. Defendant Polgar read and unlawfully copied numerous confidential communications regarding the investigation of her and her husband, including highly sensitive attorney-client privileged communications.

52. Thereafter, Defendant Polgar and her accomplice distributed these confidential and privileged communications to the public.

53. In hacking into Hough's e-mail account, Defendant Polgar violated the federal Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, in addition to violating California computer crimes laws.

54. These allegations are the subject of a pending federal action by the USCF against Polgar in the United States District Court for the Northern District of California, originally filed in June 2008 (hereinafter, the "California Litigation"). A copy of the California Litigation is attached hereto as **Exhibit L**.

55. When Polgar realized that her misconduct was about to be discovered, she peremptorily sued the USCF, including all of its remaining Executive Board members and several USCF members critical of her misconduct, in the State of Texas for defamation and a variety of other torts in August 2008 (hereinafter, the "Texas Litigation"). A copy of the Texas Litigation is attached hereto as **Exhibit M**.

56. Polgar and her accomplice engaged in the following specific misconduct to effect their overall plan of accessing, copying, and publishing the USCF's confidential communications:

- a. On information and belief, Polgar and her accomplice gained unlawful access to the password for Hough's Yahoo! e-mail account. Hough never provided his password to Polgar or her accomplice, and Hough never consented to the use of his password by any third party.
- b. Between November 26, 2007 and June 24, 2008, Polgar and her accomplice used Hough's password to log into Hough's email account at least 111 times.
- c. During Polgar's and her accomplice's unauthorized access to Hough's e-mail account, on information and belief, Polgar and her accomplice viewed hundreds of emails sent by and between the Litigation Committee, as they were received by Hough.
- d. Polgar has proffered a variety of "cover stories" to the Executive Board to explain how she came into possession of these confidential communications. For example, after Polgar provided the Executive Board members excerpts from the confidential communications, Polgar claimed to have obtained these excerpts as a result of a "leak" by one of the Executive Board members. However, the truth is that Polgar and her accomplice obtained these confidential communications by unlawfully using Hough's email password and accessing Hough's email account.
- e. After viewing and copying USCF's confidential communications, Polgar and her accomplice created a blog with the Google-owned service, Blogspot.com, entitled, USCF-Said.Blogspot.com (the "Blog"). Polgar and her accomplice published some of the confidential communications taken from Hough's e-mail account –including USCF attorney-client privileged communications– on this Blog for third parties to view. At various times, Polgar has described the Blog as her source of the confidential e-mails in an effort to hide the fact that Polgar and her accomplice themselves stole and distributed these e-mails.
- f. Additionally, Polgar and her accomplice published some of the confidential communications on a website entitled chessdiscussion.com, which is owned by Polgar.
- g. At no time did Polgar and her accomplice have any permission or privilege to access Hough's e-mail account, to view any e-mails to or from Hough, to copy any e-mails to or from Hough, or to distribute any e-mails to or from Hough.
- h. On information and belief, all of the e-mail communications that were viewed, copied and distributed by Polgar and her accomplice were e-mails that were sent

or received by Hough in his capacity as an Executive Board member for the USCF.

57. The actions of Polgar as detailed in this complaint are inconsistent with the values and the mission statement of the USCF, which states, among other things, that the USCF shall promote the study and knowledge of the game of chess “as a means for the improvement of society.”

58. The actions of Polgar have had significant adverse consequences on the ability of the USCF to operate efficiently and achieve its corporate objectives.

59. Defendant Polgar, a member of the Executive Board, has engaged in fraudulent conduct.

60. Defendant Polgar, a member of the Executive Board, has engaged in dishonest conduct.

61. Removal of Defendant Polgar from the Executive Board is in the best interest of the USCF.

62. Defendant Polgar has refused to resign as member of the Executive Board.

63. As a result, the USCF is forced to bring this removal action in Illinois Circuit Court, as permitted under Illinois law, 805 ILCS 105/108.35(d).

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor on the claims set forth above and award Plaintiff relief including, but not limited to, the following:

- a. A finding the Defendant Polgar engaged in fraudulent conduct;
- b. A finding the Defendant Polgar engaged in dishonest conduct;
- c. A finding that the removal of the Defendant Polgar from the Executive Board of the USCF is in the best interest of the USCF;
- d. An Order removing Defendant Polgar from the Executive Board of the USCF;

- e. An Order prohibiting Defendant Polgar from running for reelection to the Executive Board of the USCF;
- f. An award of reasonable costs incurred by Plaintiff in connection with this action; and
- g. Such other further relief to which Plaintiff may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

RESPECTFULLY SUBMITTED,

UNITED STATES OF AMERICA CHESS
FEDERATION, INC., Plaintiff

By: 

One of its Attorneys

David A. Herman (Reg. No. 6211060)
Carolyn T. Grosboll (Reg. No. 6197530)
Melissa G. Steward (Reg. No. 6290847)
GIFFIN, WINNING, COHEN & BODEWES, P.C.
One West Old State Capitol Plaza
Myers Building – Suite 600
Springfield, IL 62701
Phone: (217) 525-1571
Fax: (217) 525-1710