



The Houston Astros Stole Bases and Signs—But Did They Also Steal Trade Secrets?

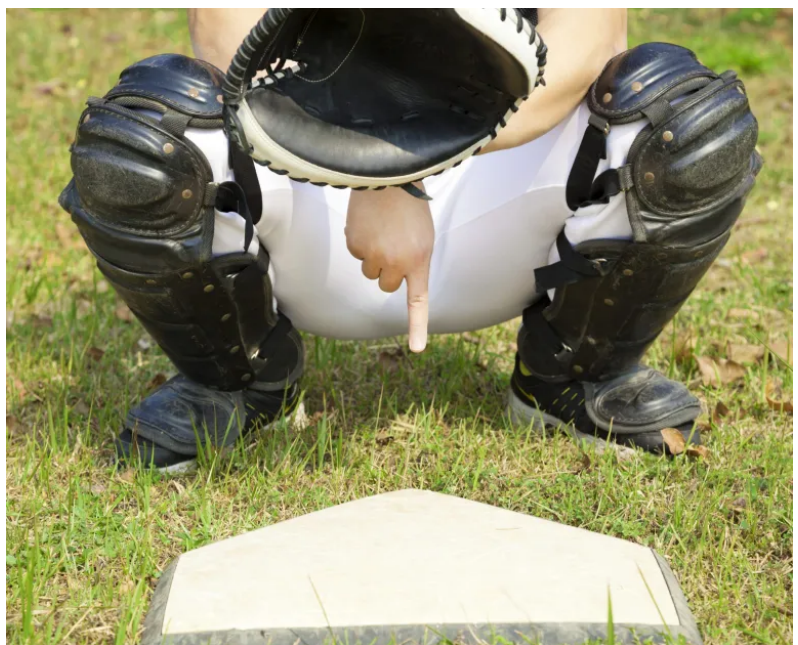


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“Bolsinger alleges that the catcher’s signs were trade secrets under the Texas Uniform Trade Secrets Act, and by relaying them to the batter, the Astros committed trade-secrets theft.... If he prevails, will other pitchers who pitched poorly against the Astros in 2017 and 2018 have a claim?”

The category of “trade secrets” is broad and encompasses information that people may not ordinarily associate with the term. Easy, iconic examples of trade secrets include the [secret recipe for Coke](#) or the secret formula for creating the nooks and crannies in [Thomas’ English Muffins](#). Others, such as the algorithms that determine what appears in our social media feeds, or how much an office supply store charges a particular client for a box of paper clips, may not be so apparent.



In reality, a “trade secret” is any secret, commercially valuable piece of information to which its owner restricts access and takes reasonable steps to protect. But even if you knew how wide-ranging the category is, you may not have considered “catcher’s signs” a trade secret. That is exactly what a former Major League Baseball (MLB) pitcher is contending in a recent lawsuit filed in Texas state court. This case is generating much debate in the legal and baseball communities. Time will tell whether this suit is a dribbler that does not get past the pitcher or a line drive into the gap for extra bases, so let’s step up to the plate and take a good look at this recent case.

Secrets of the Game

First, some pre-game warm up to identify the players. If you are a baseball fan, you probably know that a catcher tells the pitcher which pitch to throw by holding up different numbers of fingers: one for fastball, two for curveball, etc. The catcher codes these signals when the opposing team has a runner on second base, but the basic concept, which likely dates back to when pitchers learned how to throw pitches other than fastballs, remains largely the same for all pitchers in all of MLB.

The batter may attempt to look at the number of fingers the catcher holds up, and the runner on second base may attempt to crack the catcher’s code. If either of these occur, the batter has a temporary advantage that can be overcome by hiding the signs better or changing the code. These fleeting advantages are an accepted part of the game, but sometimes a team can cross the line of accepted behavior, like the defendant in the *Bimbo Bakeries case*. See *Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102 (3d Cir. 2010).

Take, for example, Houston Astros and the team’s sign-stealing scandal. In 2017, the Astros won the franchise’s only World Series title, defeating the Los Angeles Dodgers in seven games. That year the Astros won 101 games during the regular season, an improvement of 17 games over their 2016 season, going from third to first in the American League West.

Two years later, Ken Rosenthal and Evan Drellich published a bombshell article describing the Astros’ system for relaying opposing catchers’ signs to Astros’ hitters. Using a camera in center field, a member of the Astros’ organization saw the sign, determined the pitch, and relayed it to someone in the Astros’ dugout, who banged on a trashcan in a pattern to alert the batter of the pitch. Hitting a baseball is an extremely difficult task, and having the benefit of knowing the incoming pitch helps greatly. After publication of the article, MLB investigated and determined that the Astros used this sign-stealing system for the 2017 season (including the postseason) and part of the 2018 season.

This system went well beyond the temporary advantage a batter can enjoy if the catcher is not careful in giving the signs. In fact, the system broke MLB's rules and (in the eyes of many) tainted the Astros' World Series victory. MLB went so far as to suspend members of the Astros' organization and strip the team of several draft picks.

The above is baseball history, and the story is big enough to write a book about. In fact, someone already has. For our purposes, the interesting question in this story is this: are catchers' signs trade secrets? According to a lawsuit recently filed in Texas state court, the answer is yes.

Bolsinger Hits Back

Mike Bolsinger made it to the big leagues in 2014 and split time in the majors and minors for the Arizona Diamondbacks, Los Angeles Dodgers, and Toronto Blue Jays, until 2017. His final major-league outing did not go well. In a 16-7 loss to the Astros, Bolsinger entered the game in the fourth inning and recorded one out. Before doing so, he gave up four runs, four hits (including a home run) and three walks. This outing caused his earned run average to jump from 5.49 to 6.31. After the game, Bolsinger was sent to the minors for the remainder of the season. The Blue Jays released him after the season ended, and he has not signed with a major-league team since.

In the lawsuit, Bolsinger attributes the end of his 2017 season in the majors and his subsequent inability to sign with another MLB team to his final appearance against the Astros and their sign-stealing system. He alleges that the catcher's signs were trade secrets under Section 134A.002(6) of the Texas Uniform Trade Secrets Act, and by relaying them to the batter, the Astros committed trade-secrets theft.

If Bolsinger is successful with his case, the Astros could have to pay actual damages, restitution, exemplary damages, and attorneys' fees. Since Bolsinger was only in the majors for parts of four seasons, he amassed only modest (by MLB standards) earnings and did not experience the usual increase that players receive after they accumulate over six years of service time and become free agents. If he is successful and can prove his damages (e.g., lost career earnings), that number can be as big as a Barry Bonds' homerun.

Will Bolsinger Pitch a Perfect Game or Strike Out?

The Astros filed an answer denying the allegations and have now moved to dismiss the case as nothing more than a baseless case brought by a middling pitcher attempting to cash in on a headlines-catching scandal. Time will tell how the court will answer the many interesting

questions the case raises. Can a hand signal from the catcher be a protectable trade secret? Does it matter that pitchers use the same signals for the same pitches, at least when there isn't a runner on second base? Can the hand signal be a trade secret if anyone sitting in the stands with binoculars or watching the game on television can see the signals and therefore knows the upcoming pitch? Will the Astros' bad behavior, which indisputably violated MLB rules, weigh into the court's analysis of Bolsinger's claims, as courts often do in inevitable disclosure cases dealing with illicit, clandestine conduct? If Bolsinger prevails, will other pitchers who pitched poorly against the Astros in 2017 and 2018 have a claim? Could the Boston Red Sox and New York Yankees, whom the Astros defeated in the 2017 playoffs, sue for damages as a result of being eliminated from the playoffs? Could the Dodgers sue for their World Series loss? If Bolsinger does not strike out, the causation ripples could someday land his case in law school text books right alongside the legendary Judge Cardozo proximate cause decision that every first-year law student studies. See Palsgraf v. Long Island Railroad Co. 248 N.Y. 339 (1928).

Perhaps we are getting ahead of ourselves. For now, our initial thought is that Bolsinger is going to have to pitch a perfect game to win. But hey, there have already been seven no-hitters in MLB so far this year (the season record, set in 1884, is eight), so you never know.

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