



The Houston Astros Stole Signs, But Did They Also Steal Trade Secrets?

Client Advisories

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We [recently wrote about](#) how the definition of “trade secret” could cover more than what we might normally associate with the term. From secret recipes to information about customers’ online searches, a “trade secret” can cover many different things and ideas that give businesses and individuals a competitive advantage. One potential trade secret you may not have considered: catchers’ signs. Since baseball and the Fourth of July are synonymous, we wanted to share with you an interesting case filed in Texas by a former major league pitcher who is arguing he has suffered damages because of stolen signs. Here’s the background to ponder while enjoying some barbecue and fireworks this holiday weekend.

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. When the opposing team has a runner on second base, the catcher uses a code to prevent the runner from being able to determine the pitch and alerting the batter, but the basic concept, which likely dates back to when pitchers learned how to throw pitches other than fastballs, remains largely the same.

The batter may attempt to look at the number of fingers the catcher holds up, 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 part of the game, but sometimes a team can cross a line.

Sports fans have also probably heard of the Houston Astros’ 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 spoke with former Astros pitcher Mike Fiers and published an article describing the Astros’ system for alerting their hitters as to what pitch was on the way. Using a camera in center field, a member of the Astros organization saw the number of fingers held by the opposing catcher. The

camera operator relayed that information to someone in the Astros' dugout, who banged on a trashcan in a pattern to alert the batter of the pitch. After publication of the article, Major League Baseball 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 beyond the advantage a batter can enjoy if the catcher is not careful in giving the signs. In fact, it 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 the catcher's signs trade secrets? According to a lawsuit recently filed in Texas state court, the answer is yes.

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 major-league team to his final appearance against the Astros and their sign-stealing system. He alleges that the catcher's signs were trade secrets under Texas law, and by relaying them to the batter, the Astros committed trade-secrets theft.

If Bolsinger is successful with his case, the Astros could be on the hook for a large amount of damages. Since he was only in the majors for parts of four seasons, Bolsinger 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. He seeks lost career earning, which, if he can prove them, could result in a high number.

The Astros filed an answer denying the allegations, and we will follow this case as it progresses, as it raises several interesting questions. 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 everyone watching the game on television can see the signals and therefore know the upcoming pitch? Will the Astros' bad behavior, which indisputably violated MLB rules, weigh into the court's analysis of Bolsinger's claims? Our thought is that Bolsinger is going to have to pitch a perfect game to win, but we'll have to wait to find out.

If you have any questions about what may qualify as a trade secret, or the steps you need to take to protect your trade secrets, feel free to contact **Tom Muccifori**, Chair of Archer's **Trade Secret Protection and Non-Compete Group** at 856-354-3056 or tmuccifori@archerlaw.com, or any member of the Group in: Haddonfield, NJ at 856-



795-2121, Princeton, NJ at 609-580-3700, Hackensack, NJ at 201-342-6000, Philadelphia, PA at 215-963-3300, or Wilmington, DE at 302-777-4350.

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Thomas A. Muccifori

Partner

✉ tmuccifori@archerlaw.com

☎ 856.354.3056

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