

CAUSE NO. DC-18-17902

LOUIS PAPA,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	44th JUDICIAL DISTRICT
	§	
PANINI AMERICA, INC. and	§	
BECKETT COLLECTIBLES, INC.	§	
D/B/A BECKETT GRADING SERVICES	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**DEFENDANT PANINI AMERICA, INC.’S ORIGINAL ANSWER TO
PLAINTIFF’S ORIGINAL PETITION, AND COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Panini America, Inc. (“Panini”) hereby files this Original Answer to Plaintiff’s Original Petition (the “Petition”) filed by Louis Papa (“Plaintiff” or “Papa”).

I. GENERAL DENIAL

In accordance with Rule 92 of the Texas Rules of Civil Procedure, Panini denies each and every, all and singular, the material allegations and claims contained in the Petition in and demands strict proof thereof.

II. AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses:

1. Plaintiff’s claims are barred, in whole or in part, under the doctrine of estoppel in all its forms.
2. Any loss or damage allegedly suffered by Plaintiff was caused, in whole or in part, by his own conduct, acts, and/or omissions.

3. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate his damages, if any.

4. Plaintiffs' claims are barred, in whole or in part, by notification of reliance on information under § 17.506 of the Texas Business & Commerce Code.

5. Defendant reserves the right to plead such other and/or affirmative defenses which cannot be anticipated at this time, but which may become apparent and applicable during the pendency of this lawsuit, by reason of future discovery.

III. COUNTERCLAIM FOR DECLARATORY JUDGMENT

6. Panini requests a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code.

7. Section 37.004 of that Chapter provides that “[a] person ... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise ... may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” As defined in Section 37.001, “ ‘person’ means an individual, partnership, joint-stock company, unincorporated association or society, or municipal or other corporation of any character;” and thus, includes Panini.

8. An actual controversy exists between Panini and Papa regarding the 2000 Playoff Contenders Tom Brady Rookie Ticket Autograph at issue (the “Card”).

9. Panini is not the manufacturer of the Card. Playoff Corporation printed and released the Card sixteen (16) years *before* Panini acquired the Card, which Panini re-released in its 2016 Honors Football set. In 2001, the Playoff Corporation became Donruss Playoff, L.P.

(“Donruss”). Panini acquired certain assets from Donruss in 2009. Panini purchased the Card from a third-party, on the secondary market (eBay), in 2016.

10. When Panini acquired the Card, it had already been graded, sealed, and slabbed by Beckett Grading Services (“Beckett”). Panini reasonably relied on Beckett’s representations, and its grade, when Panini (1) acquired the Card; and (2) reissued the Card in its 2016 Honors Football set.

11. To Panini’s knowledge, the Card had not been removed from its slab since being graded by Beckett; and therefore, Panini had no reason to re-grade the card (nor was it under any obligation to do so). Nevertheless, Beckett again represented to Panini that the Card was both authentic and unaltered, *before* the Card was re-released by Beckett.

12. At the time of its reissue, in 2016, the Card complied with all representations made by Panini. Specifically, the Card—unlike other reissued cards included in Panini 2016 Honors Football—was not hand numbered, and thus, was “unaltered.”—*i.e.*, the Card was reissued in the same, original condition in which it was acquired by Panini.

13. Mr. Papa—who purchased the Card from a third-party on the secondary market—did not acquire or receive the Card *directly* from Panini; nor did Panini make any representations to Mr. Papa in the context of that transaction, two years *after* Panini released its 2016 Honors Football set.

14. Thus, Mr. Papa is not Panini’s immediate successor in title, and Panini does not owe Mr. Papa any duty. Regardless, Panini has not made any misrepresentation to Mr. Papa.

15. In short, Mr. Papa is not in privity with Panini, and he certainly has not been damaged or harmed by Panini.

16. Prior to Mr. Papa requesting that Panini review and resubmit the Card to Beckett in 2018, the Card had not been in Panini’s possession since being reissued in the Panini 2016 Honors Football set.

17. Furthermore, although Mr. Papa did not acquire the Card directly from Panini, the Card was still in its Honors one-touch when Mr. Papa purchased it. Mr. Papa voluntarily removed the Card from that sleeve. Absent the Honors one-touch, the Card—which again, was not manufactured by Panini—ceases to be a part of any Panini set, and Panini simply becomes a “prior holder” in its chain-of title, along with numerous other intermediaries between (i) the Playoff Corporation, which printed and released the card in 2000, and (ii) Mr. Papa, its current holder, who purchased the Card from a third-party on the secondary market in 2018. Thus, Panini has no legal obligation to Mr. Papa.

18. Panini had (and has) nothing to do with any underlying grading issue. Panini is simply an unwitting purchaser on the secondary market (*i.e.*, a “pass through”), who reasonably relied on the representations of others, and who subsequently re-issued the Card at random (selling it in a pack that retailed for far *less* than Panini’s cost to acquire the Card). Moreover, Mr. Papa did not acquire the Card from Panini, by chance, in such pack. Rather, he purchased the Card from a third-party on the secondary market. Of course, had Mr. Papa purchased the Card from eBay in 2016—and not after Panini passed through its chain-of-title—he would not have any recourse against Panini. But the *material* facts are no different now, and Panini cannot be held liable for any pre-existing/underlying issue in the Card’s chain-of-title. Panini’s “pass through” status is insufficient to support any claim against it.

19. Therefore, Panini seeks a declaration under the Texas Uniform Declaratory Judgment Act declaring that: (a) Panini is not in privity with Mr. Papa; (b) Panini owed no duty

to Mr. Papa in the context of his 2018 acquisition of the Card from a third-party, two years after Panini released its 2016 Honors Football set; and (c) Panini did not (and could not, as a matter of law) make any representation to Mr. Papa—and did not commit any “false, misleading, or deceptive acts”—in the context of his 2018 acquisition of the Card from a third-party.

IV. ATTORNEYS’ FEES AND COSTS

20. Plaintiff’s lawsuit forced Panini to retain legal counsel to defend itself, and to seek a declaration to establish that it owes no duty or obligation to Plaintiff. Panini therefore requests costs and reasonable and necessary attorneys’ fees pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

V. REQUEST FOR DISCLOSURE

21. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff is requested to disclose, within thirty (30) days of the service of this request, the information or material described in Rule 194.2.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Panini America, Inc. prays that the Court, upon final trial or hearing, orders that Louis Papa takes nothing by this action, enters a declaratory judgment as requested in Paragraph 19, and awards Panini its costs, reasonable attorneys’ fees, and such other and further relief at law or in equity to which Panini may show itself justly entitled.

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