

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

In the Matter of the Petition of

**RELEVENT SPORTS, LLC,**

**Petitioner,**

For judgment pursuant to Article 78 of the Civil  
Practice Law and Rules

**- against -**

**UNITED STATES SOCCER FEDERATION, INC., a  
corporation existing under the laws of the State of  
New York and DAN FLYNN, in his capacity as  
Secretary General and Chief Executive Officer,**

**Respondents.**

Index No.

**VERIFIED PETITION**

**ORAL ARGUMENT  
REQUESTED**

Petitioner Relevent Sports, LLC (“Relevent”) by and through its attorneys, Wachtel Missry LLP, as and for its Verified Petition, alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a proceeding for a judgment pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) to annul a determination of the Respondents United States Soccer Federation, Inc. (“USSF”) and Dan Flynn (collectively, “Respondents”), pursuant to CPLR §7803(3), and to compel Respondents to perform their legal duty, pursuant to CPLR §7803(1).

2. Since 2013, Relevent has been in the business of promoting international soccer matches around the world, including in the United States, hosting dozens of high-profile games in that time period. Relevent is owned in principal part by Stephen M. Ross, who has an extraordinary reputation for philanthropy and support for both amateur and professional athletics.

The respondent USSF, which is organized under the laws of the State of New York, exercises exclusive authority to sanction international soccer matches played in the United States.

3. Under USSF's rules, it is required to sanction a match unless "the Federation decides by clear and convincing evidence that staging the match would be detrimental to the sport of soccer." USSF must render this decision within seven days of receiving an application to host a match or the match is deemed conditionally approved (pending submission of certain required paperwork closer to the match date).

4. USSF has exhibited a pattern and practice of violating its own policies and procedures, dissuading the staging of international competitions in the United States, and failing to further its stated principal purpose: "to promote, govern, coordinate, and administer the growth and development of soccer in all its recognized forms in the United States for all persons of all ages and abilities, including national teams and international games and tournaments."<sup>1</sup>

5. At the end of 2018, when fan violence prevented the finals of the Copa Libertadores from taking place in Argentina as scheduled, Relevent and Mr. Ross reached out to USSF and its President, Carlos Cordeiro, to offer to stage the final in Miami, Florida. USSF and Cordeiro effectively refused to engage. According to published reports, Cordeiro "made his opposition clear" to moving the final to Miami and, in part as a consequence, South America's governing soccer authority moved the final to Madrid, Spain.<sup>2</sup> Allowing this high-profile game to move to Europe, rather than to be played in Miami, was patently contrary to USSF's stated purpose of promoting soccer, *including international games*, in the U.S.

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<sup>1</sup> A true and correct copy of USSF's Bylaws are annexed hereto as Exhibit A; *see id* at 102(1).

<sup>2</sup> *See* Rory Smith, *A Final for All Time, Sacrificed on the Altar of the Modern Game*, N.Y. Times (Nov. 30, 2018), <https://www.nytimes.com/2018/11/30/sports/soccer/copa-libertadores-boca-river-madrid.html?searchResultPosition=9>. A true and correct copy of this article is annexed hereto as Exhibit B.

6. The only possible explanation for this blatant disregard of its own charter is that USSF is economically conflicted and is abusing its authority, in order to protect Major League Soccer (“MLS”), a for-profit entity with which USSF has extremely close financial and personal ties.

7. It is especially ironic that USSF is effectively closing the doors of the United States to international soccer while every other major U.S. sports league is actively marketing their sport internationally. For example, the National Football League and the National Basketball Association have all played games in London. Major League Baseball opened its 2019 season in Japan, where baseball is the country’s most popular sport, and the Boston Red Sox and New York Yankees will play a series in London this summer. The National Hockey League has played games in Finland and Sweden, both of which countries have thriving hockey leagues. And, of course, MLS plays games in Canada. Even the People’s Republic of China is more receptive to cross-border sport than USSF. The NBA will hold its 27th and 28th games in China in 2019 and 17 teams will have played in various Chinese cities by the end of the 2019-2020 season. In contrast, and inexplicably, USSF is damaging the reputation of the United States around the globe by fostering a perception of the U.S. as a nation willing to export our sports, yet not reciprocate.

8. On March 29, 2019, Relevent submitted an application to host an official league match between two professional Ecuadorian soccer teams that play in the LigaPro Serie A—*i.e.* the top flight of Ecuadorian professional soccer—on May 5, 2019 (the “Match”). The Match would be an historic event: the first foreign league soccer match played on U.S. soil.

9. Without issuing any formal denial, USSF has refused, on plainly false and pretextual grounds, to sanction the Match, without making any finding that the Match would be detrimental to the sport of soccer, much less a finding by clear and convincing evidence.

10. Relevent seeks judgment and an order pursuant to CPLR §7803(3) annulling USSF's failure to grant approval of the application, because it was made in violation of lawful procedure, was affected by an error of law and was arbitrary, capricious and an abuse of discretion, or, in the alternative, an order pursuant to CPLR §7803(1) requiring USSF to perform its legal duty to sanction the Match and any future applications by Relevent which comply with USSF's published rules.

### **PARTIES**

11. Petitioner Relevent Sports, LLC is a limited liability company organized under the laws of the State of Delaware with a principal place of business in New York, New York.

12. Respondent United States Soccer Federation is a not-for-profit corporation organized under the laws of the State of New York with a principal place of business in Chicago, Illinois.

13. Respondent Dan Flynn is the Secretary General and Chief Executive Officer of USSF, and is, under USSF's Bylaws, the individual responsible for ultimately approving Relevent's application.

### **JURISDICTION AND VENUE**

14. USSF, because it is a "corporation," is a "body or officer" within the meaning of CPLR §7802(a).

15. Pursuant to CPLR §301, this Court has jurisdiction over USSF, which is organized under the laws of the State of New York, and over Flynn, who is sued only in his corporate capacity as USSF's Secretary General.

16. Pursuant to CPLR §506, venue lies in New York County, because Relevent is headquartered in New York County and because USSF communicated to Relevent the determination under review in New York County.

### FACTUAL BACKGROUND

#### *Relevent's Business*

17. Soccer is the most popular sport in the world. In 2018 the FIFA World Cup final had an estimated 1.1 billion viewers worldwide – more than one in every nine people on the planet.

18. Relevent is principally in the business of organizing and promoting international soccer matches around the world. Relevent has successfully organized and promoted more than 100 soccer events in the United States, including the International Champions Cup, which premiered in 2013 and has featured historic rivalries such as El Clásico (Barcelona vs. Real Madrid), the Manchester Derby (Manchester City vs. Manchester United), and a match between Manchester United and Real Madrid that set an attendance record for soccer in the United States, with more than 109,000 fans in attendance. In a mere six-year period, Relevent has contributed approximately \$19.5 million to the coffers of USSF to use in furtherance of its mission.

#### *USSF's Sanctioning Authority Over Professional Soccer*

19. USSF's authority to sanction soccer matches in the United States originates with the Ted Stevens Olympic and Amateur Sports Act (the "Stevens Act"), 36 U.S.C. § 220501 *et seq.*

20. Pursuant to the Stevens Act, the United States Olympic Committee ("USOC") is charged with designating a National Governing Body ("NGB") for each Olympic sport. Soccer – both men's and women's – is an Olympic sport.

21. The USOC has designated USSF as the NGB for soccer in the United States.

22. By virtue of its status as the USOC-designated NGB under the Stevens Act, USSF is eligible to serve as the U.S. representative to soccer's international governing body, the Federation International de Football Association ("FIFA").

23. As the Member Association for the United States at FIFA, USSF exercises sanctioning authority over all professional soccer matches that are held in the United States—including the Match at issue here.

24. Pursuant to requirements set forth in the Stevens Act and the USOC Bylaws, as well as under FIFA regulations, USSF has adopted Bylaws and Policies for the sanctioning of international games played in the United States.<sup>3</sup>

25. USSF engages in a two-step sanctioning process. First, an applicant submits (i) a half-page application form stating the date, venue and participants in the match and providing contact information for the promoter and FIFA Match Agent, (ii) an application fee, and (iii) a letter from the stadium confirming that the facility is "on hold" for the date of the event. As set forth in USSF's official "Application Process to Organize International Matches,"<sup>4</sup> unless USSF affirmatively denies the application within seven days, it is deemed conditionally approved. Thereafter, the applicant must submit various other materials including an insurance certificate, a performance bond, and a letter from the teams confirming participation. Once the applicant has submitted these additional materials and electronically signed a form match agreement transmitted to it by USSF, the games are deemed finally approved.

26. In the absence of extraordinary circumstances, USSF's sanctioning role is functionally ministerial: it is not charged with making a discretionary decision about what matches

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<sup>3</sup> See Exhibit A [Bylaws]. Additionally, a true and correct copy of USSF's Policy Manual, that is incorporated by reference into the Bylaws, is annexed hereto as Exhibit C.

<sup>4</sup> A true and correct copy of the Application Polies are annexed hereto as Exhibit D; a true and correct copy of USSF's application instructions are annexed hereto as Exhibit E.

should or should not be sanctioned. Rather, if the applicant submits the required paperwork, the application must be approved.

27. Thus, with respect to applications such as those at issue herein, USSF Policy 521-1 - “International Games”<sup>5</sup> states:

The Secretary General<sup>6</sup> shall grant such sanction unless it is decided by clear and convincing evidence that holding or sponsoring the international soccer competition would be detrimental to the best interest of the sport.

That policy is echoed in USSF’s online instructions for applications to host international matches. Those instructions state that “[t]he Federation shall grant such sanction unless it determines that holding or sponsoring that international soccer competition would be detrimental to the best interest of the sport.”<sup>7</sup>

***Relevant Applies for Sanction***

28. On March 29, 2019, Relevant submitted an application<sup>8</sup> seeking USSF’s sanction to host the Match in the United States between two of Ecuador’s top professional soccer league teams: Barcelona Sporting Club—a fifteen-time champion in the LigaPro Series A—and Guayaquil City FC. The teams are hometown rivals, as both are based in Guayaquil, Ecuador; the match was slated to be the Ecuadorian equivalent of the Mets versus the Yankees.

29. The Match is scheduled for May 5, 2019 at the Hard Rock Stadium in Miami, Florida.

30. As a part of its application, Relevant sought and obtained approval from the LigaPro Ecuador, the Ecuadorian Football Federation—Ecuador’s FIFA Member Association—

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<sup>5</sup> See Exhibit C at 521-1.

<sup>6</sup> The Secretary General of USSF is its CEO, Dan Flynn.

<sup>7</sup> A true and correct copy of USSF’s online instructions for hosting international matches is annexed hereto as Exhibit F.

<sup>8</sup> A true and correct copy of the application, including all supporting documentation, is annexed hereto as Exhibit G.

and the Confederación Sudamericana de Fútbol (“CONMEBOL”)—FIFA’s continental confederation covering most of South America.<sup>9</sup>

31. On April 5, 2019, Relevent submitted its application fee and transmitted a performance bond to USSF, totaling \$9,700. At that point, the application was complete. Per USSF’s application policies and instructions, the application either should have been expressly approved or conditionally approved by April 12, 2019.

32. Accordingly, on April 5, 2019, Relevent’s SVP of Operations, Tim Kassel, emailed USSF’s Director of Competitions, Adrian Garibay, to confirm receipt of Relevent’s completed application. To Relevent’s surprise, Mr. Garibay responded on April 8, 2019, claiming that Relevent’s application was incomplete because Charlie Stillitano, the FIFA Match Agent who signed Relevent’s application, was allegedly in the process of renewing his Match Agent insurance and was not listed on the FIFA list of Match Agents.<sup>10</sup>

33. This was untrue in all material aspects. Mr. Stillitano’s Match Agent insurance was valid through June 10, 2019—more than one month after the Match is scheduled to take place. To clarify this issue, Relevent’s attorneys sent USSF a letter with Mr. Stillitano’s policy enclosed, and assured USSF that Mr. Stillitano was, in fact, a licensed Match Agent, which satisfied all USSF’s requirements, despite his failure to be listed on FIFA’s website.<sup>11</sup>

34. Additionally, Relevent’s insurer reached out to FIFA to advise it both of Mr. Stillitano’s active policy and his status as a licensed Match Agent. FIFA then responded confirming that it was updating its Match Agent System to correct this oversight. Shortly

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<sup>9</sup> *See id.*

<sup>10</sup> A true and correct of this email is annexed hereto as Exhibit H.

<sup>11</sup> A true and correct copy of this letter is annexed hereto as Exhibit I.

thereafter, Relevent's attorneys sent another letter to USSF with a copy of the FIFA email enclosed.<sup>12</sup>

35. At that point, all issues regarding Mr. Stillitano's status as a Match Agent should have been deemed resolved, and the application should have been deemed submitted as of no later than April 5, 2019.

36. Nonetheless, on April 12, 2019, Relevent's counsel received a letter from USSF's chief legal officer indicating that the Match Agent issue would only be resolved when Mr. Stillitano's name appeared on FIFA's online list of Match Agents.<sup>13</sup> Relevent was perplexed by this letter because USSF confirmed receiving a copy of an email from "match.agent@fifa.org" acknowledging that Mr. Stillitano was a licensed Match Agent. More importantly, USSF's rules require only that Mr. Stillitano *be* licensed as a Match Agent, not that he be listed as such on FIFA's website.

37. Further, the letter inexplicably references the absence of "exceptional circumstances" from Relevent's application. That phrase is not used in USSF's bylaws, policy manual, application polies, or application instructions. No exceptional circumstances are required to promote the Match, or any other international match. Indeed, the Match falls squarely within the principal purpose of USSF's corporate existence according to its own bylaws: "to promote, govern, coordinate, and administer the growth and development of soccer in all its recognized forms in the United States for all persons of all ages and abilities, including national teams and international games and tournaments".<sup>14</sup>

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<sup>12</sup> A true and correct copy of this letter is annexed hereto as Exhibit J.

<sup>13</sup> A true and correct copy of this letter is annexed hereto as Exhibit K.

<sup>14</sup> See Exhibit A at Bylaw 102.

38. Last, USSF indicated that it would “reach out to each of Ecuador and CONMEBOL for additional information before proceeding.” This was especially confusing to Relevent because the written approval of both the Ecuadorian Football Federation and CONMEBOL had been appended to Relevent’s initial application.

39. In short, USSF’s April 12 letter is nothing more than a delay tactic—an excuse to kick the can down road and thereby avoid rendering a formal decision on Relevent’s application. And Relevent indicated as much in follow-up later sent the same day.<sup>15</sup> That letter also contained a supplemental correspondence from FIFA confirming that “Mr [sic] Stillitano’s match agents [sic] license is still properly in place.” In the same email, FIFA also indicated that it was having technical difficulties updating the licensed match agents list on their website.

40. To date, USSF has failed to respond to Relevent’s April 12 letter.

41. In its April 12 letter, USSF threatened to penalize Relevent if it were to advertise the Match without formal USSF sanction, with penalties including fines, withholding of approval of matches, and “any other penalty or combination of penalties that the Federation deems appropriate in its sole discretion.”

42. If Relevent is unable to promote the Match, despite having already obtained the approval of the teams involved, the governing South American soccer authorities, and the stadium, its professional reputation as a promoter of international soccer matches will be harmed, and its goodwill and future revenues will be damaged in a manner impossible to calculate.

43. Furthermore, unless it is determined that USSF may not decline Relevent’s applications arbitrarily or in violation of USSF’s own published rules, Relevent’s entire business will be jeopardized. As made clear by USSF’s bylaws, rules and procedures, USSF may only deny

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<sup>15</sup> A true and correct copy of this letter is annexed hereto as Exhibit L.

an application if it finds by clear and convincing evidence that the match would not be in the best interest of soccer.<sup>16</sup>

### *USSF's Conflicting Economic Interests*

44. International soccer has far from a sterling reputation. In the spring of 2015, criminal investigations in the United States and Switzerland (where FIFA is based) exposed the rotten core of corruption in international soccer. Notably, much of the leadership of the Confederation of North, Central American and Caribbean Association Football (“CONCACAF”) was indicted, and it was revealed that corrupt funds had passed through CONCACAF accounts.

45. USSF and MLS operations are closely intertwined. For example, Don Garber, MLS’s Commissioner, sits on USSF Board of Directors with Carlos Bocanegra, the Vice President of Atlanta United (an MLS team based in Atlanta). Garber also serves as CEO of Soccer United Marketing (“SUM”), a for profit entity owned by MLS owners, which advertises itself as offering exclusive access to MLS and USSF. Indeed, according to Sports Illustrated, “Describing the relationship between Major League Soccer and the United States Soccer Federation, MLS Commissioner and Soccer United Marketing CEO Don Garber [said], ‘ [USSF’s former president] and Dan (Flynn) had this view that as the governing body of the sport they would make commitments on the commercial side and on the competitive side to have MLS be the leader of the sport.’ He continued to say, ‘That’s not something that exists in other parts of the world... Because we are joined at the hip.’”<sup>17</sup>

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<sup>16</sup> See Exhibit A [Bylaws] at 102.

<sup>17</sup> See Grant Wahl, *Soccer United Marketing Fact/Fiction: Garber Opens Up on SUM’s Role in U.S. Soccer, MLS*, Sports Illustrated (Jan. 25, 2018), <https://www.si.com/soccer/2018/01/25/sum-soccer-united-marketing-garber-gulati-carter>. A true and correct copy of this article is annexed hereto as Exhibit M.

46. MLS and USSF also have intertwined economic interests. SUM is effectively USSF's sole marketing vendor, such that for the fiscal year ended March 31, 2017 alone USSF reported over \$26.25 million in revenue resulting from its relationship with SUM.<sup>18</sup>

47. USSF has refused to provide an explanation for its effective denial of the application. In light of USSF's conflicted position as described above, it appears that the most likely explanation for its otherwise inexplicable failure to further its mission and to follow its own rules is USSF's interest in preserving and protecting fan interest in the MLS, to the detriment of American interest in soccer generally. USSF and MLS may believe that high-quality international soccer matches played on US soil may have the potential to direct American viewership and American dollars away from the MLS and towards a different soccer product. But American interest in the sport of soccer—the very interest USSF is required to promote—could not possibly be diminished by the staging of a high-quality competition, like the Match, on U.S. soil.

48. In refusing to sanction Relevant's application, USSF has thus elevated the economic interest of a select group of its members over its statutorily-mandated purpose. The decision is as arbitrary (it cannot be supported by a rational factual basis) as it is capricious (it represents a willful disservice to American soccer in the name of profit). It also represents a failure to perform a duty enjoined on it by law. USSF's decision to ignore or deny Relevant's application must be annulled, and the Match must be allowed to proceed.

**FIRST CAUSE OF ACTION  
(Article 78 Relief)**

49. Paragraphs 1-48 are realleged as if fully set forth herein.

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<sup>18</sup> A true and correct copy of USSF's Audited Consolidating Financial Statements for fiscal years 2016 and 2017 are annexed hereto as Exhibit N.

50. USSF's effective denial of Relevant's application to promote the Match was made in violation of lawful procedures, including those set forth in USSF's own policies; was affected by an error of law, in that USSF did not even purport to find, nor could it possibly have found, by clear and convincing evidence or otherwise, that Relevant's application would have been detrimental to the sport of soccer; and was arbitrary, capricious and an abuse of discretion. It was further a failure to perform a duty enjoined upon it by law, because Relevant has satisfied all of the requirements of USSF's by-laws and procedures regarding hosting an international match.

51. Far from being properly denied, Relevant's Application must be deemed conditionally approved under USSF's own rules: more than seven days have elapsed since it was submitted and the Secretary General has failed in that time to make a finding by clear and convincing evidence that conducting the Match would be detrimental to the sport of soccer.

52. There is no procedure under USSF rules to appeal its determination and no mechanism, other than by this Article 78 proceeding, by which Relevant can obtain the required redress.

53. Even if this proceeding is not determined before the date of the Match, it will nonetheless not be moot, because the issues raised herein are novel and important; are capable of repetition, because Relevant will need to obtain USSF's sanction for all of its future matches; and will evade review because of the short time between the date a match application is typically presented to USSF and the date when a match must be publicized.

#### **No Prior Application**

54. No prior application for this relief has been made in this or any other Court.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioner Relevent Sports, LLC prays for judgment and an order for the following relief:

1. Annulling and vacating the Respondents' denial, or failure to grant approval of, Relevent's application as having been made in violation of lawful procedure and as affected by errors of law, as arbitrary and capricious and an abuse of discretion;
2. Directing Respondents to sanction the Match, because Relevent has met all requirements for such sanction, and USSF is failing to perform a duty enjoined upon them by law;
3. Directing Respondents not to deny other future applications by Relevent without any lawful basis; and
4. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
April 22, 2019

By: /s/ William B. Wachtel

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