

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

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JON H. HAMMER,

Plaintiff,

Index No. 600029/2000

-against-

AMENDED VERIFIED  
COMPLAINT

THE AMERICAN KENNEL CLUB,  
BRITTANY CLUB OF AMERICA a/k/a  
THE AMERICAN BRITTANY CLUB, INC.,

Defendants.

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Plaintiff, Jon H. Hammer, as and for his Amended Complaint herein against the Defendants above named, respectfully alleges as follows:

1. Jon H. Hammer (hereinafter "Hammer" or "Plaintiff") resides in the County of Westchester, State of New York.
2. The American Kennel Club (hereinafter "AKC") is a non-profit corporation organized and existing under the laws of the State of New York. AKC maintains executive and/or administrative offices in the City and County of New York and in Raleigh, North Carolina.
3. AKC, although operating as a purported non-profit entity, on information and belief, realizes annual profits substantially in excess of \$1,000,000; and it operates as a *de*

*facto* monopoly in the registration,<sup>1</sup> showing, and judging of purebred dogs throughout the United States.

4. On information and belief, AKC maintains a substantial payroll for a multitude of officers and employees, who are paid large salaries and receive substantial pension benefits, which revenues are realized from its monopolistic control of the purebred dog industry and business throughout the United States.

5. The American Brittany Club, Inc. (a/k/a The Brittany Club of America, hereinafter the "ABC") is, on information and belief, a not-for-profit corporation organized and existing under the laws of the State of Illinois, with its principal executive offices situated in Carterville, Illinois.

6. The ABC regularly derives substantial fees from its activities or functions in the State of New York, and by and through its local affiliated clubs situated within the State of New York is subject to the jurisdiction of this Court and of the State of New York

7. AKC maintains breed registry for all purebred dogs of AKC approved breeds in the United States, and, *inter alia*, adopts and enforces rules, regulations, and breed standards for all purebred dogs for dog shows, specialty breed shows, including The Westminster All-Breed Kennel Club show held annually in the City of New York.

8. ABC, in all respects, is required to and does maintains its own standards, rules and regulations for its own Brittany breed, and utilizes such AKC approved rules and standards for its own breed and specialty shows.

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<sup>1</sup> AKC annually registers approximately 1,250,000 pure-bred dogs. In 1999, 8,640 Brittany pure-breeds were AKC registered. AKC maintains records for over 40,000,000 dogs registered since 1878.

9. AKC periodically publishes and updates a volume entitled "The Complete Dog Book," wherein, *inter alia*, it sets forth and establishes standards for the several AKC recognized breeds, which standards are the official standards used and enforced by AKC approved judges at various specialty and all-breed dog shows sponsored by AKC, including those for the Brittany breed.

10. The standards for each AKC breed are initially adopted and proposed by a National Parent Club for each breed, if one exists, and thereafter submitted for required final approval or disapproval, as the case may be, by the AKC Board of Directors, the ABC being the subject parent club in the instant action.

11. The AKC approved standards are mandated by AKC for use by AKC judges at all the various AKC specialty and all-breed shows, including those for the Brittany. AKC, under Article IV, Section 5 of its Constitution, retains ultimate and supreme control of national pure-bred breed standards, including that for the Brittany.

12. In approving the standards proposed, *ab initio*, by the parent breed club, and in implementing, applying, and enforcing same at specialty and all-breed shows, AKC, in this regard and for this purpose is acting as sole arbiter and policing power and *de facto* agent for all purebred breeds in the United States, including the Brittany.

13. The standards, initially promulgated by the parent breed club for an AKC recognized breed, i.e., the Brittany (heretofore and in some jurisdictions known as the "Brittany Spaniel"), contain, *inter alia*, the following provision, which provision is mandated by AKC for AKC shows and AKC judges, as above alluded to:

"Any tail substantially more than four inches shall be severely penalized."

The foregoing severe penalty sanction in the Brittany standard (hereinafter the "standard"), unique among the numerous AKC sporting breeds, was initially adopted by the Parent National Brittany Club ("ABC") and thereafter approved and sanctioned by AKC in accordance with its Constitution. The ABC represents and holds itself out as being a member of AKC and presumably operating in compliance with AKC rules, regulations, constitutional mandates and standards for the Brittany breed.

14. The subject standard is contained in the aforesaid AKC publication (Par "9" *supra.*) and in the current Brittany standard published by AKC, approved April 10, 1990 and effective May 31, 1990, and as heretofore adopted by AKC and ABC and currently in force and effect.

15. The essence and clear intendment of the foregoing Brittany standard and practical effect thereof (Par "13", *supra.*) is to preclude a Brittany with a so-called undocked tail from qualifying or effectively competing in Brittany specialty shows and in the Brittany showing of all-breed shows. In promulgating, utilizing and enforcing the subject standard, AKC and ABC are acting in an arbitrary, capricious and unlawful manner and have thereby pursued a course of action which is inherently discriminatory and harmful to Plaintiff and others similarly situated, the precise number of which dogs and breeds affected thereby being presently unknown to Plaintiff.

16. Upon information and belief, Brittany dogs are generally, customarily and frequently whelped in a state where they have long tails, and that the custom and practice, as mandated by the foregoing AKC and ABC Brittany breed standard pertaining to tails, has been

to dock, cut or amputate the natural long tail, leaving only a stub or short tail, and the promulgation adoption and enforcement of the subject foregoing standard is arbitrary, capricious, discriminatory and believed to be contrary to law and acceptable veterinary practice.

17. Plaintiff is the owner of a purebred Brittany (AKC #SN 663733/07) with its tail in a natural undocked state, approximately ten inches in length; by reason of the foregoing arbitrary and discriminatory standard, and the application and enforcement thereof by AKC and ABC, the practical effect, thereof is the *de facto* exclusion of Plaintiff's Brittany from AKC or ABC breed competition.

18. Upon information and belief, there is no valid basis or *bona fide* reason or purpose for the practice of tail docking in the Brittany breed; and indeed such practice is inhumane, arcane, cruel and violative of law in such case made and applicable (§353 N.Y. Agriculture and Markets Law); and further the foregoing standard discriminates against Plaintiff and others similarly situated, by reason of its arbitrary and capricious nature and discriminatory effect thereof.

19. Upon information and belief, the practice of tail docking is routinely and customarily effected on Brittany dogs and other breeds without the use of anesthesia, solely for cosmetic reasons or purposes and with no beneficial physical or health benefit of any nature whatsoever and unlawfully inflicts mutilation and cruelty upon the animal in question.

20. Upon information and belief, veterinary medical experts have found and determined that the tail docking practice and standard here complained of is neither medically warranted nor of any discernible benefit to the canine patient, that such procedure causes unnecessary and extreme physical pain and injury and by reason of the customary absence of

anesthesia, is carried out in a patently cruel and sadistic manner, and such procedure needlessly subjects the canine patient to further consequential harm, all in violation of law and practice above cited.

21. Plaintiff has requested and demanded the defendants AKC and ABC to obviate and delete the foregoing standard (Par "13" *supra.*), but both Defendants have wrongfully failed and refused to take any action to modify or delete the subject inhumane, arcane and discriminatory standard adopted for arbitrary, capricious and unlawful purposes.

22. By reason of the foregoing, Plaintiff, and others similarly situated, are effectively and for all practical purposes barred and precluded from competing a Brittany in AKC shows and are discriminated against solely by reason of the fact that they refuse to cruelly, unlawfully, and needlessly inflict pain on a companion canine animal, but rather seek to comply with law, with modern standards and to act with due regard for proper veterinary medical criteria.

23. In refusing to modify the foregoing standard for the Brittany (Par "13"), AKC has abused its monopolistic position in the purebred dog business and has further, by reason of the foregoing, misused, abused and acted in derogation of its ~~fiduciary~~ public obligations as a so-called non-profit corporation; and AKC and ABC have further ~~acted in~~ an arbitrary, capricious and discriminatory manner in enforcing the subject standard and in ~~refusing~~ to modify same so as to be in compliance with law and modern veterinary standards.

24. The foregoing Brittany standard (Par "13") is further reflective of a discriminatory, arbitrary and capricious action of the Defendants in their (a) promulgation thereof; (b) maintenance and enforcement thereof; (c) arbitrary ~~refusal to modify same so as to~~

preclude wanton animal mutilation; and (d) discriminatory, illogical and irrational application of tail docking practice between similar or like breeds, as set forth below and which will be further demonstrated in this action.

25. The AKC's "Complete Dog Book" (Par "9" *supra.*) sets forth AKC commentary and standards for various breeds. The so-called "Sporting Group" includes the Plaintiff's Brittany; and the function of dogs in said group are substantially in *pari materia*, in that hunting and field work are in large part one of the principal purposes for which the dog is bred. Accordingly, the disparate, inconsistent and patently illogical manner in which AKC has treated tail docking, even within the "Sporting" Group, clearly demonstrates the arbitrary, capricious and discriminatory actions of defendant AKC. A representative culling therefrom and from one in the "hound" group confirms the foregoing:

#### SPORTING BREEDS

	Breed	Tail Standard	AKC Approved
1.	English Pointer	Docked tail must be penalized	11/11/75
2.	German Shorthaired Pointer	Tail must be docked	8/11/92
3.	German Wirehaired Pointer	Tail docked to approximately 2/5 of original length	7/9/85
4.	Curly Coated Retriever	Tail never docked	10/12/93
5.	Labrador Retriever	Disqualification for docking tail	2/12/94
6.	Clumber Spaniel	The tails should be docked in keeping with the overall proportion of the adult dog	8/10/89

	Breed	Tail Standard	AKC Approved
7.	Cocker Spaniel	Docked tail	5/12/92
8.	English Cocker Spaniel	Docked tail	10/11/88
9.	Field Spaniel	Tail should be docked to balance the overall dog	8/14/90
10.	Springer Spaniel	Docked tail	2/12/94
11.	Sussex Spaniel	Tail is docked from five to seven inches	4/7/92
12.	Welsh Springer Spaniel <sup>2</sup>	"The tail is generally docked"	6/13/89
13.	Weimaraner	Tail docked	12/14/71
14.	Wire Haired Pointing Griffon	Tail docked by one-third to one-half length	10/8/91
15.	Vizsla	Tail docked by one-third	12/11/95

The severe penalty in the Brittany standard stands alone. (See Pars "13" & "14", *supra*.)

#### HOUND GROUP

	Breed	Tail Standard	AKC Approved
16.	Basset Hound	The tail is not to be docked	1/14/64

26. The foregoing extrapolation (Par "25") further is a clear indicia and confirmation of the discriminatory, arbitrary and capricious actions of AKC, which mandate judicial intervention and relief here prayed for.

<sup>2</sup> By virtue of the *de facto* option, i.e., to dock or not to dock, Welsh Springer Spaniels have been exhibited at the Westminster Kennel Club show, presumably in accordance with AKC standards, with undocked full length tail.



27. Plaintiff is, moreover, placed on the horns of a legal dilemma by virtue of the wrongful, discriminatory arbitrary and capricious actions above stated of the Defendants: Plaintiff, in order to enable his dog effectively to compete on a fair and equal lawful basis is *de facto* mandated by the AKC and ABC standards to amputate his dog's tail and thereby place himself in violation of applicable New York law to which allusion is made. *Supra.* (Par "18" *supra.*) The AKC Complete Dog Book , moreover, contains a disqualification for "all breeds", as follows:

"Any dog whose ears have been cropped or cut in any way shall be ineligible to compete at any show in any state where the laws prohibit the same, except subject to the provisions of such laws."  
[emphasis supplied]

Tail docking is in like manner subject to said prohibition, and the foregoing further confirms the arbitrary, capricious and discriminatory actions of AKC and ABC here complained of.

28. Plaintiff seeks declaratory and injunctive relief declaring that the AKC and ABC standard is illegal and discriminatory and should be declared null and void, and that the AKC and ABC be enjoined in New York and elsewhere from applying or enforcing the Brittany standard, insofar as it is applicable to tail length and which standard has the practical effect of mandating tail docking and unlawful, cruel, maiming and mutilation.

29. As a result of the aforesaid dispute, a judicial determination is both necessary and desirable at this time.

30. There has been no prior application for the relief herein requested in any court of competent jurisdiction, except the prior Complaint, which is herewith amended by leave of this Court.

31. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests:

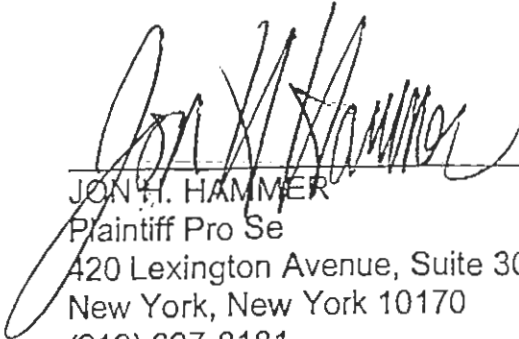
(a) a declaratory judgment in order to determine the legal manner in which the parties may hereafter act in fulfilling their obligations under law and with due concern for the rights of the parties; and so that the parties may be lawfully protected in their rights and obligations, it is essential that this Court issue a declaratory judgment adjudicating the rights and legal relations of the parties, as above prayed for;

(b) that the AKC and ABC Brittany standard pertaining to tails be declared null and void and in derogation of law;

(c) that AKC and ABC be enjoined permanently, and *pendente lite*, from applying, enforcing or utilizing said standard pertaining to Brittany tails;

(d) that the Court grant such other and further relief as it may deem just and proper, including costs and disbursements.

Dated: New York, New York  
January 24, 2001



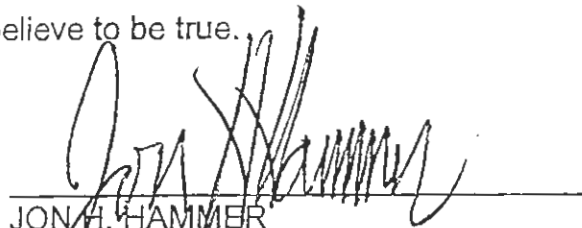
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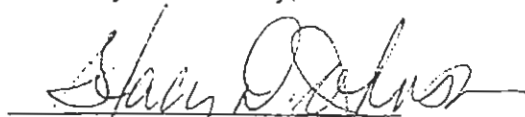
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STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

JON H. HAMMER, being duly sworn, deposes and says that I am the Plaintiff in the within action, that I have read the Amended Complaint herein and know the contents thereof, that I know them to be true of my own knowledge, except those matters stated upon information and belief, which matters I believe to be true.

  
\_\_\_\_\_  
JON H. HAMMER

Sworn to before me this  
24<sup>th</sup> day of January, 2001.

  
\_\_\_\_\_  
Notary Public

STACY B. JOHNSON  
Notary Public, State of New York  
No. 01JO6004762  
Qualified in New York County  
Commission Expires March 30, 2002