Volume 4, Number 1

{Spring 2002}

NCAA BYLAW AND DECISION THAT FOREIGN STUDENT IS INELIGIBLE TO PARTICIPATE IN NCAA ATHLETICS UPHELD

***NCAA v. LaSege*, 53 S.W.3d 77 (S.C. Kentucky June 14, 2001)**

Lasege, a Nigerian citizen, enrolled at the University of Louisville during the 1999-2000 academic year to play basketball. In accordance with NCAA rules, before he could participate the University declared him ineligible because he had previously entered into a professional basketball contract and received benefits for playing basketball in Russia. The University asked the NCAA to reinstate Lasege due to his unfamiliarity with NCAA rules and other mitigating factors. The NCAA's Subcommittee on Student-Athlete Reinstatement denied this request, mainly because Lasege had clearly signed a contract with an agent and professional team prior to enrolling at Louisville.

Following the Subcommittee's ruling, Lasege sued the NCAA seeking an injunction requiring the NCAA to reverse its decision and reinstate him. The trial court found that there was sufficient evidence to show that the NCAA had acted in an arbitrary and capricious manner and entered a temporary injunction ordering the NCAA to reinstate Lasege.

The trial court also addressed the University's concern that the NCAA could potentially impose sanctions on it under NCAA bylaw 19.8 if the injunction was subsequently vacated. This bylaw allows the NCAA to seek restitution from member institutions who permit ineligible athletes to participate pursuant to a court order that is eventually vacated. After finding that the bylaw was invalid because it prevented parties from availing themselves of the protections of the court system, the trial court enjoined the NCAA from future action under the bylaw.

The NCAA appealed to the court of appeals, which found the trial court's findings to be supported by substantial evidence and denied the NCAA's motion. The NCAA then appealed to the Supreme Court of Kentucky.

The supreme court focused its review on two main issues; (1) the trial court's decision that Lasege should be reinstated, and (2) the trial court's prohibition of the NCAA taking any action under bylaw 19.8.

The supreme court quickly found that in deciding that the NCAA had acted arbitrarily and capriciously, the trial court had "wrongfully substituted its judgment for that of the NCAA" (p. 85). As the court explained, the NCAA demonstrated that no individual had ever been reinstated after committing a combination of rules violations akin to those committed by Lasege, and "[t]he NCAA's eligibility determinations are entitled to a presumption of correctness - particularly when they stem from conceded violations of NCAA rules" (Id.). Therefore, because the trial court abused its discretion and improperly balanced the evidence in Lasege's favor, the supreme court vacated that portion of the injunction reinstating him.

The supreme court also found that the trial court had abused its discretion by prohibiting the NCAA from seeking restitution under bylaw 19.8. The court noted that by joining the NCAA the University had "voluntarily contract[ed] to abide by the rules of the organization in exchange for membership in the association" and that contracting parties often agree to allocate the risks of unfavorable litigation results. According to the supreme court, the trial court had erred by substituting its own opinion that the rule was improper for a rule that NCAA member schools had contractually agreed to.

Thus, the supreme court found extraordinary cause to vacate the temporary restraining order in its entirety.

NCAA IS A PLACE OF PUBLIC ACCOMMODATION UNDER THE ADA

***Matthews v. NCAA*, 179 F. Supp.2d 1209 (E.D. Wash., October 23, 2001).**

Anthony Matthews, a learning disabled student-athlete, was granted two waivers from the NCAA's "75/25 Rule" (the rule provides that all student-athletes must earn at least 75% of the minimum number of credit hours required to maintain full-time student status and that student-athletes cannot earn more than 25% of these credit hours during the summer session). The waivers allowed him to participate on Washington State University's football team in 1997 and to be red-shirted for the 1998 season. After only completing 64% of the required credit hours in the 1998-1999 academic year, Matthews sought another waiver from the rule but was denied. Matthews then sued the NCAA, claiming that the denial had been a violation of the Americans with Disabilities Act (ADA). Matthews requested that the court enjoin the NCAA from enforcing the rule.

The initial decision in the *Matthews* case was discussed in Volume 2, Issue 4 of *You Make the Call. . .* (Matthews v. NCAA, 79 F.Supp.2d 1199 (E.D. Wash., Dec. 1, 1999). The United States District Court for the Eastern District of Washington held that the NCAA is not an operator of a place of public accommodation regulated by the ADA, and even if it was the NCAA had made "reasonable accommodations" to Matthews' disability by granting him two waivers from the rule. Therefore, the court denied Matthews request for an injunction.

The case returned to the Eastern District in October 2001. In response to the significant amount of ADA cases that had come down after the initial decision, the court revisited its analysis of whether the NCAA is a "place of public accommodation" regulated by the ADA. The NCAA argued that its member institutions, and not the NCAA itself, control facilities, admission prices, ticket sales, and public access to these facilities, all actions that would make it an operator of a place of public accommodation for purposes of the ADA. In opposition to this though, the court followed the reasoning used by the Ninth Circuit and Supreme Court in Martin, which held "explicitly that the ADA governs access to the playing field as well as the spectator areas of a sports arena" (p. 1222). Therefore, the court held that "Title III of the ADA does apply to the NCAA, based upon the large degree of control the NCAA exerts over which students may access the arena of competitive college football" (p. 1223).

After finding that Title III applies to the NCAA the court moved to an analysis of whether the plaintiff's proposed modification of the NCAA's rules would fundamentally alter the nature of NCAA athletics. After again pointing to the Supreme Court's decision in *Martin* the court noted that it must undertake an individualized analysis of whether a modification of a particular rule for the individual involved would cause a fundamental alteration in the athletic program itself. Such modifications can become fundamental alterations if they result in an alteration of an essential aspect of the NCAA's policies and programs, or if there is only a minor change but this change provides the individual with an advantage. The court found that granting another waiver for Matthews would not fundamentally alter the NCAA's policies because a waiver of the rule for Matthews would not compromise the NCAA's purpose of promoting academics and athletics (especially when he had already received two waivers), nor would it give him an unfair advantage over other student athletes.

MAJOR LEAGUE BASEBALL'S USE OF NAMES AND PHOTOGRAPHS OF FORMER PLAYERS DOES NOT VIOLATE PLAYER'S RIGHT OF PUBLICITY

***Gionfriddo v. Major League Baseball*, 94 Cal. App. 4th 400 (Ct. App, 1st App. Dist., December 10, 2001).**

The plaintiffs, four former Major League Baseball players who played between 1932 and 1948, sued Major League Baseball (MLB) contending that its use of their names and photographs violated their rights of publicity. MLB had included the plaintiffs' names and statistics on websites, programs, written historical accounts, video depictions of their play, and video histories.

The trial court granted MLB's motion for summary judgment finding that its uses of the players' names, images, and likenesses were in connection with news accounts constituting publication of matters in the public interest. As such, the court concluded that the plaintiffs' publicity rights had not been violated.

On appeal, the appellate court began by noting that the First Amendment requires that the right to be protected from unauthorized publicity "be balanced against the public interest in the dissemination of news and information. . .under the constitutional guaranties of freedom of speech and of the press" (p. 409).

The first part of this balancing test is an assessment of the actual nature of the information itself. In this case, the information at issue was factual data concerning the players historical careers which could be characterized as news. As such, this information served a substantial public interest and "is a form of expression due substantial constitutional protection" by the court (p. 411).

The players argued that the information was not actually presented for its newsworthiness but rather was presented in a commercial context entitled to a reduced level of constitutional protection. The court disagreed noting that the information was presented as mere historical information within programs and videos, and not as part of any type of advertisement to sell a product.

Thus, if the plaintiff's wished to prevail they would be required to demonstrate some competing interest which would outweigh the public interest in unfettered access to the statistical information. Instead of demonstrating such a competing interest, the court noted that the plaintiff's marketability may actually be enhanced by MLB's inclusion of information about them in its current products.

As a result, the court concluded that the "public interest favoring dissemination of information regarding baseball's history far outweighs any proprietary interests at stake" (p. 415), and the decision of the trial court was affirmed.

COURT HOLDS THAT MAJOR LEAGUE BASEBALL'S DECISION TO CONTRACT IS EXEMPT FROM ANTITRUST SCRUTINY

***Major League Baseball v. Butterworth*, 181 F. Supp.2d 1316 (December 27, 2001).**

On November 6, 2001, Major League Baseball (MLB) voted in favor of contracting from 30 to 28 teams for the 2002 season. On December 31, 2001, MLB announced that negotiations with the Players Association had failed, and thus they would be moving forward with contraction. In response to this decision and pursuant to his statutory authority to investigate possible violations of federal and state antitrust laws, the Attorney General of the State of Florida issued civil investigative demands to baseball, its Commissioner, the Florida Marlins and Tampa Bay Devil Rays (collectively the plaintiffs). The plaintiffs then sought declaratory and injunctive relief against the Attorney General, claiming that the decision to contract was exempt from federal and state antitrust laws.

The district court began its analysis of the dispute by noting that "the business of baseball is, as it is sometimes phrased, exempt from antitrust laws" (p. 1322). The Attorney General argued that the exemption only applied to the reserve clause, but the court disagreed. In explaining its disagreement with the Attorney General's contention, the court first discussed the long line of United States Supreme Court cases upholding MLB's exemption including *Federal Baseball Club v. National League*, 259 U.S. 200 (1922) and *Flood v. Kuhn*, 407 U.S. 258 (1972). The court noted that according to these cases the business of baseball, and not merely the reserve clause, has been exempt from the antitrust laws since 1922, and the Supreme Court has repeatedly stated that it is up to Congress to overrule this exemption and not the courts.

The court then analyzed the treatment of the exemption in the United States Court of Appeals for the Eleventh Circuit. In the one case in which the Eleventh Circuit addressed the exemption (*Professional Baseball Schools and Clubs, Inc. v. Kuhn*, 693 F.2d 1085 (1982)), it too concluded that the business of baseball, and not just the reserve clause, was exempt from the antitrust laws.

Additionally, the Attorney General argued that regardless of whether the business of baseball was exempt from antitrust scrutiny, contraction may not be part of the business of baseball. The court disagreed with this contention as well noting that "[t]he basic league structure, including the number of teams, remains an essential feature of the business of baseball, exempt from the antitrust laws" (p. 1332).

The court also noted that because the Florida Antitrust Act explicitly exempts the same subjects as are exempt under federal antitrust laws, the decision to contract was exempt from all antitrust laws, federal or state.

Finally, the Attorney General argued that the court should be bound by the Florida Supreme Court's decision in *Butterworth v. National League* (644 So.2d 1021, 1994), which held that the exemption did not apply to the proposed sale and relocation of a sports franchise. Therefore, under Florida law, the doctrine of collateral estoppel should have barred the district court from finding that contraction was protected from antitrust scrutiny. However, the court noted that collateral estoppel will only apply when the identical issue has been litigated between the same parties. In this case, different parties were involved in a dispute over a different issue, therefore the doctrine did not force the court to follow the earlier case.

Ultimately, the court granted the plaintiff's motion for a preliminary injunction barring the Attorney General from issuing any civil investigative demands.

MINNESOTA TWINS MUST FULFILL THEIR OBLIGATIONS UNDER THEIR LEASE AND CANNOT BE CONTRACTED FOR THE 2002 SEASON

***Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214 (Ct. App. Minn., January 22, 2002).**

In this case, the plaintiff, the Metropolitan Sports Facilities Commission (a Minnesota governmental entity which operates the Hubert H. Humphrey Metrodome, home to the Minnesota Twins), brought suit against the defendant, the Minnesota Twins Major League

Baseball Club, seeking a declaratory judgment requiring the defendant to fulfill its one-year use agreement with the Commission. Specifically, the Commission alleged "that the Twins sought to circumvent their contractual obligations by selling their franchise to Major League Baseball for $250 million and that the league would then terminate the franchise" (p. 220).

In September of 2001, the Twins exercised their lease option with the Commission through the 2002 season. Under the terms of the lease, the Twins were not charged any rent for their use of the Metrodome. Instead, the Twins paid only minor amounts of money for "utility, upkeep, and maintenance costs" on the Metrodome, and shared a portion of the concession and advertising revenues generated at home games with the Commission, a total estimated at $500,000 annually.

According to their lease with the Commission, the Twins could opt out of their lease "only if the force majeure clause applie[d] and they [were] unable to play a home game 'for a reason beyond the Team's and the Commission's control, including strikes, an act of God, a natural casualty, or a court order'" (p. 219).

In late 2001, rumors began to circulate that Major League Baseball was considering the possibility of contracting at least two franchises prior to the 2002 season. The two teams most heavily rumored to be the subject of these contraction plans were the Minnesota Twins and the Montreal Expos. Thus, the commission became fearful that a decision to contract the Twins from Major League Baseball would cause them to break their one year lease agreement. Thus, on November 6, 2001, the Commission filed a declaratory judgment action seeking "specific performance of the use agreement and an injunction preventing Major League Baseball from interfering with the commission's contractual relationship with the Twins" (p. 219-220). On November 16, 2001, the district court granted the commission's motion for a temporary injunction. The Twins and Major League Baseball immediately appealed, arguing that the district court had abused its discretion by granting the temporary injunction.

On appeal, the Minnesota Court of Appeals affirmed the district courts decision to grant the temporary injunction while making several specific findings. First, the court found that the temporary injunction did not create a new legal relationship, it merely maintained the status quo by requiring the team to fulfill its contractual obligations. Second, the court concluded that the lease agreement between the two parties specifically authorized the use of remedies available at law or in equity, including injunctive relief. Third, the court determined that it was unlikely that monetary damages would fully compensate the commission should the Twins breach the lease agreement because there are a number of intangible benefits that communities receive by hosting professional sports franchises (i.e. community goodwill, a source of family entertainment, etc.). Fourth, the court found that the commission had established a likelihood of success on the merits by demonstrating that; (1) "the Twins exercised their option to lease the Metrodome for the 2002 baseball season, obligating themselves to play 2002 home games at the Metrodome" (p. 226); (2) "the schedule has been published and the Twins are selling season tickets for the games" (Id.); (3) "for contraction of the Twins to occur, the owner must voluntarily agree to sell the team"(Id.); and (4) "elimination of the Twins franchise would result in a breach of the use agreement" (Id.). Fifth, the court believed that the administrative burden on the district court was minimal because the two parties have had a close, long-term business relationship, meaning that little judicial intervention would be required to insure that both parties continued to comply with the terms of the lease agreement. Finally, the court concluded that public policy supported issuance of the temporary injunction because "local professional sports franchises are an important community asset and should fulfill their contractual obligations" (p. 228).

Therefore, the court of appeals affirmed the decision of the district court.

NATIONAL HOCKEY LEAGUE AND PENGUINS RIGHTS IN "NHLPENGUINS" DOMAIN NAME AFFIRMED

***National Hockey League and Lemieux Group Lp. v. Domain for Sale*, Case No. D2001-1185 (WIPO Arbitration and Mediation Center, December 6, 2001).**

In June of 2001, the defendant corporation registered the domain name nhlpenguins.com without authorization from the National Hockey League (NHL) or the Lemieux Group, owners of the Pittsburgh Penguins NHL franchise (collectively the plaintiffs). The defendants bought domain names likely to attract visitors, like "nhlpenguins.com," and linked them to pornographic adult material. Additionally, the defendants attempted to sell these domain names for their own profit.

Upon learning of the defendants purchase of the domain name nhlpenguins.com, the plaintiffs sent several cease and desist letters to the defendant reiterating that its use of the domain name violated the plaintiff's exclusive rights in the NHL and Penguin marks and requesting that the defendants transfer the name back to the plaintiffs. The plaintiffs then filed a complaint with the World Intellectual Property and Mediation Center.

The administrative panel began its analysis by stating that in order to qualify for a remedy, the plaintiffs would be required to prove three elements of Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy.

First, the plaintiffs needed to demonstrate that the domain name was identical or confusingly similar to one of the plaintiff's trade or service marks. The panel found that this element was easily met as the "contested domain name is confusingly similar to the NHL and Penguins marks because it incorporates those marks in their entirety."

Second, the plaintiffs needed to show that the defendant had no rights or legitimate interests in the domain name. This element was also met as the defendant provided no evidence of any kind that it was making a legitimate noncommercial or fair use of the domain name.

Finally, the plaintiffs had to show that the domain names were registered and being used in bad faith. The court determined that use of a complainant's marks to route users to a pornographic website, and attempts to sell a domain name that is only valuable due to its use of another's valuable trade marks, constitute sufficient evidence of bad faith.

Therefore, because each element was met, the panel ordered that the domain name be transferred to the plaintiffs.

*"**You Make The Call...**" is a newsletter published twice a year (spring, fall) by the National Sports Law Institute of Marquette University Law School, PO Box 1881, Milwaukee, Wisconsin, 53201-1881. (414) 288-5815, fax (414) 288-5818, munsli@marquette.edu. This publication is distributed via fax and email to individuals in the sports field upon request.*

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