

**You Make the Call. . .**



Volume 10, Number 2

{Fall/Winter 2008}

## ***ALTERNATIVE DISPUTE RESOLUTION***

### **American Court Cases**

*Championsworld LLC v. U.S. Soccer Fed'n, Inc., No. 06 C 5724, 2008 WL 4861522 (N.D. Ill. Nov. 7, 2008)*. Championsworld brought suit against the U.S. Soccer Federation and Major League Soccer concerning the arrangement and promotion of international professional men's soccer matches played in the United States. A clause contained in a Match Agreement entered into by the Plaintiff's CEO compelled Championsworld to submit to arbitration, and the Defendant's brought a motion to stay court proceedings pending arbitration. The Plaintiff brought a motion to lift the stay, but the court denied the motion and granted another sixty days for FIFA (soccer's international governing body) to determine which issues it will hear.

### **Court of Arbitration for Sport Decisions**

*Australian Sports Anti-Doping Authority v. Wyper, CAS A4/2007*. The Australian Sports Anti-Doping Authority alleged that Andrew Wyper, an Australian cyclist, violated the Anti-Doping Policy of Cycling Australia in two ways: constructive possession and attempted use of prohibited substances. Wyper ordered hGH and EPO online, but his order was seized by the Department of Customs in Sydney. Wyper pled guilty to the criminal charge of importing prohibited imports, but did not believe that admission established the two ASADA violations. Constructive possession requires that an athlete had exclusive control over the substance or knew about the presence of the prohibited substance and intended to exercise control over it. Here, Wyper never had exclusive control over the hGH and EPO because they were confiscated before he received his order. Wyper did intend to exercise control over the substances, but CAS held that there was no constructive possession because he never knew about the presence of the prohibited substances. Although he knew he ordered the drugs from a man in Indonesia, no evidence

established that Wyper had knowledge of the presence of the drugs. CAS did find attempted use because Wyper's research about and ordering of the drugs was enough to show that he was purposely engaging in conduct constituting a substantial step in a course of conduct planned to culminate in the commission of an Anti-Doping Rule Violation.

*Moldova National Olympic Committee (MNOC) v. International Olympic Committee (IOC), CAS arbitration N° CAS OG 08/006.* Octavian Gutu was born and educated in Moldova. He participated in the 2004 Olympics representing Moldova, but then went on to represent Romania in the Swimming World Championships of 2007. Gutu wanted to represent Moldova in the 2008 Olympics but the IOC said he was not eligible. Gutu claimed to be a dual citizen of both Moldova and Romania. Rule 42 of the Olympic Charter allows a dual citizen to represent either country. However, because Gutu represented Romania at the Swimming World Championships, per Rule 42 he must wait for a period of three years before he is allowed to represent Moldova. Three years had not passed since he swam for Romania, and therefore, Gutu was not eligible to represent Moldova in the 2008 Olympics.

*Joan Christel Simms v. Federation Internationale de Natation (FINA), CAS arbitration N° CAS OG 08/02.* Joan Christel Simms is a Philippine national who was born in Hawaii, and holds dual citizenship. Simms represented the United States in January 2007 and was accepted as a member of the Philippine Amateur Swimming Association (PASA) in February 2007. She began working toward qualifying for the 2008 Olympics, and PASA requested that FINA grant Simms a change of sport nationality. FINA denied the application; however, it was not clear to PASA that the application had been denied and Simms went on to represent the Philippines at the World Championships in Manchester, a FINA competition, in April 2008. Rule 42 of the Olympic Charter requires a three year period since a dual citizen last represented his or her former country before he or she can represent the new country. However, this rule can be waived if both of the applicable National Olympic Committees and the International Federation agree. Here, both the USOC and POC agree to change Simms' sport nationality, but FINA does not. However, FINA did not make that clear and allowed Simms to represent the Philippines at the World Championships in Manchester, thereby inducing PASA to prepare and train Simms for the 2008 Olympics. CAS, relying on an estoppel doctrine, found that Simms was eligible to represent the Philippines at the 2008 Olympics.

*Rainer Schuettler v. The International Tennis Federation (ITF), CAS arbitration N° CAS OG 08/003.* The German National Olympic Committee chose Rainer Schuettler to represent them at the 2008 Olympics. However, the ITF declined to enter him in the men's singles tennis competition at the 2008 Olympics even though he met the basic eligibility requirements. Each country may have a maximum of four men compete in men's singles. The ITF has a ranking system, and when the list was published in June 2008, Schuettler was ranked eighty-ninth. Germany had two other players ranked above Schuettler, but nominated him instead. The ITF prefers that NOCs nominate their highest ranking players, but because that is a suggestion, and not a rule, CAS found that the ITF must allow Schuettler to represent Germany.

*Iraqi Football Association (IFA) v. Federation Internationale de Football Association (FIFA) and Qatar Football Association (QFA), CAS 2008/A/1621* The national football teams of Iraq and Qatar played a match in March 2008 in order to qualify for the 2010 World Cup. Qatar's team

won 2-0, but one of their players, Marcio Passos de Albuquerque Emerson, was ineligible. IFA objected to FIFA, and in June 2008, FIFA found that Emerson was ineligible to play for Qatar's team, but that the match between the two teams would stand. IFA tried to appeal the decision, but did not pay the application fee in time, so in July 2008 FIFA denied the appeal. Article 130 of the FIFA Disciplinary Code explicitly states that if the appeal fee is not paid within the seven day limit, the appeal is not admitted. IFA was aware of this requirement, and FIFA did nothing that would lead IFA to think the time period had been extended or did not need to be complied with. Therefore, CAS confirmed FIFA's decision not to allow the appeal.

## WEBFIND

*Serge Despres v. Canadian Centre for Ethics and Sport (CCES), CAS 2008/A/1489, and World Anti-Doping Agency (WADA) v. Despres, Canadian Centre for Ethics and Sport (CCES), and Bobsleigh Canada Skeleton (BCS), CAS 2008/A/1510.* Serge Despres was drug tested by the CCES in August 2007. His sample contained a heightened level of nandrolone, which was a doping violation, causing BCS to suspend him for two years. Despres claims that he did not take the nandrolone intentionally. Despres began using Kaizen HMB supplements following hip surgery in 2007. The supplements were contaminated with nandrolone, which caused him to test positive for prohibited levels of nandrolone. Because they found Despres had no significant fault or negligence that caused the violation, the Sport Dispute resolution Centre of Canada reduced his suspension to twenty months. WADA and CCES both believed the two year suspension should be reinstated because the circumstances in this case were not truly exceptional. CAS noted that Despres did not contact the manufacturer directly to get a guarantee that the supplements were not contaminated, did not check with his doctor, did very limited research prior to taking the supplement, and did not exercise due care when taking other supplements. Therefore, CAS found that there was no reason to reduce Despres' two year suspension, which they ruled should begin on August 9, 2007, the date of his first sample collection.

*Italian Olympic Committee and Spanish Olympic Committee v. International Sailing Federation, CAS arbitration N° CAS OG 08/008 & 009.* When sailing to the start line of the Medal Race at the 2008 Olympics, the Danish team broke their mast. Because they did not have time to fix their boat, the Danish team borrowed the boat of the Croatian team, who did not qualify for the Medal Race. The Danish team finished in seventh place in the race, and won the gold medal overall. The Italian and Spanish teams protested, but the ISAF International Jury determined that no penalty should be imposed on the Danish team. The Danish team did violate rules when replacing more than just the damaged part of their boat, by using a boat that did not identify it on the hull and the sail, was not quarantined before the event, and did not have the proper on-board camera equipment. Nonetheless, the ISAF International Jury determined that the Danish team did not obtain an advantage and, under the circumstances, it was acceptable for them to use the Croatian team's boat. CAS determined that the Jury applied its own guidelines correctly and did not abuse its discretion when deciding not to disqualify the Danish team.

*Justin Gatlin v. United States Anti-Doping Agency (USADA), CAS 2008/A/1461 and International Association of Athletics Federations (IAAF) v. USA Track and Field and Gatlin, CAS 2008/A/1462.* Justin Gatlin was diagnosed with ADD as a child and was prescribed Adderall, which contains amphetamine, to treat the condition. In 2001 Gatlin was suspended for

two years after testing positive for amphetamines. However, the IAAF Council allowed Gatlin to be reinstated early because they believed he had a genuine medical reason that explained the positive test. In 2006 Gatlin tested positive for exogenous testosterone, and an AAA panel suspended him for four years as this was his second offense. Gatlin argued that this offense should be considered his first offense because the fact that he was reinstated nullified the 2001 offense. However, the IAAF had made it clear to Gatlin that his positive test was a violation and that any second offense would lead to a lifetime suspension. The IAAF wanted Gatlin's suspension to be increased to eight years, which is the equivalent of a lifetime suspension, while Gatlin wanted it reduced to two years. CAS determined that regardless of whether Gatlin was at fault for the first doping offense, he did commit it. Therefore this was his second offense, and a four year suspension was appropriate.

### WEBFIND

*World Anti-Doping Agency (WADA) and International Association of Athletics Federations (IAAF) v. United States Anti-Doping Agency (USADA) and Lindsey Scherf, CAS 2007/A/1416.* Lindsey Scherf was diagnosed with exercise induced asthma in 2003. She applied for, and was given, an Abbreviated Therapeutic Use Exemption (ATUE) from the IAAF for her asthma medication, Flovent, in 2005 and from USADA in 2006 and 2007. Scherf wanted to participate in the Gold Coast Marathon in July 2007 in Australia. Prior to the race USADA informed her that she would need an ATUE from the IAAF, and that they would forward her application. Scherf did not hear whether her application was granted, and she was not in a position to stop using her medication, therefore, she attempted to find out if there would be drug testing at the marathon. She was told that there likely would not be any drug testing, as there had not been the past three years, so Scherf participated in the marathon. After the race she was selected for drug testing, but she refused to take the test knowing she would test positively. The next day Scherf requested to be tested, but it was too late. As it turned out, Scherf did not need this separate ATUE that USADA had informed her she needed. USADA offered Scherf a reduced one year suspension but WADA and the IAAF felt the full two year suspension was more appropriate. Because of the mistakes made by USADA and the IAAF, CAS determined that exceptional circumstances did exist in this case and thus Scherf bears no significant fault or negligence. Therefore, the one year suspension was sufficient.

*Swedish National Olympic Committee (SNOC) and Ara Abrahamian v. Federational Internationale des Luttes Associees (FILA), Guillermo Orestes Molina Gonzales, Jean-Marc Petoud and Lee Ronald Mackay, CAS arbitration N° CAS OG 08/007.* In a wrestling match between Ara Abrahamian and Andrea Minguizzi, Minguizzi won the first period. Abrahamian received a point and would have won the second period, forcing a third period to determine who won the match; however, following the period Abrahamian was assessed a warning, which took away his point and gave a point to Minguizzi. Therefore, Minguizzi won the match. Abrahamian's coach asked for a video check to determine if the warning was justified, but FILA denied his request. The Swedish coach then attempted to file a formal protest, but FILA refused to consider the protest. By the time CAS ruled on this case it was too late for Abrahamian to challenge the decision to give him a warning following the match, or to disqualify the officials involved, as originally requested. However, CAS did rule that going forward FILA was required, by the Olympic Charter and its own internal rules, to provide a procedure for an appeal jury to

promptly hear an athlete's claim that in a competition the relevant officials did not comply with FILA rules and procedures.

### WEBFIND

*FC Schalke 04 v. Federation Internationale de Football Association (FIFA), CAS 2008/A/1622, SV Werder Bremen v. Federation Internationale de Football Association (FIFA), CAS 2008/A/1623, and FC Barcelona v. Federation Internationale de Football Association (FIFA), CAS 2008/A/1624.* The Brazilian Football Federation (CBF) and the Argentinean Football Association (AFA) wanted FC Schalke 04, SV Werder Bremen, and FC Barcelona to release players so they could play for the CBF and AFA teams in the 2008 Olympics. However, all three teams refused to release the players. FIFA required that any player under the age of 23 had to be released to play in the Olympics. Article 1 of Annexe 1 of the Transfer Regulations requires that players be released for matches on dates listed in the coordinated international match calendar, but the Olympics were not listed on this calendar and CAS stated that the specific and unique nature of the Olympics did not constitute a legal basis to obligate teams to release their players. FIFA relied on customary law to require the release of the players. Under Swiss association law, customary law can create such an obligation but only if there is a loophole which may be supplemented by customary law, there is a constantly and consistently applied practice of FIFA, and the members are convinced that such a practice is legally binding. CAS found that none of the three requirements were met here, and therefore the three teams were not under any legal obligation to release their players.

### WEBFIND

*Nicholas D'Arcy v. Australian Olympic Committee Inc, CAS 2008/A/1574.* When Nicholas D'Arcy was selected as a member of the 2008 Australian Olympic Team he signed an agreement that stated, among other things, he would not engage in conduct that would be likely to bring him disgrace. In March 2008, D'Arcy struck a man in the face while out at a bar, leading the Australian Olympic Committee to terminate his membership with the team. D'Arcy appealed that decision to CAS, and a hearing was conducted by The First Panel in May 2008. The First Panel held that D'Arcy did violate his agreement with the AOC, but that the AOC did not follow the proper procedure when terminating him. Therefore, CAS set aside his termination and ordered the matter to be remitted to the AOC. The AOC then gave D'Arcy the chance to present his case, but ultimately the AOC again decided to terminate his team membership and this appeal to CAS followed. CAS dismissed D'Arcy's appeal, determining that the AOC was within its power to terminate D'Arcy's membership based on his serious misconduct.

### WEBFIND

*The Azerbaijan National Olympic Committee (ANOC) and the Azerbaijan Field Hockey Federation (AFHF) v. the Federation Internationale de Hockey (FIH), CAS arbitration N° CAS OG 08/01.* Following a Women's World Hockey Qualifier Competition, two members of the winning team, the team representing the Real Federacion Espanola de Hockey (RFEH), had A and B samples that showed abnormal levels. Article 11.1 of the FIH Anti-Doping Policy states that if more than one member of a team sport commits an Anti-Doping violation, the team may

be subject to disqualification. One of the athletes committed an anti-doping violation, but was found to have no fault or negligence by the Judicial Commission, while the other athlete was not found to have committed an anti-doping violation. The AFHF, who finished second at the competition, requested documentation and a copy of the decision regarding the athletes' violations, but their request was denied by the FIH. The AFHF wanted CAS to review the case de novo, and determine that the two players had committed anti-doping violations, the RFEH team should be disqualified, and the AFHF team should be declared the winner of the event and replace the RFEH at the 2008 Olympics. However, CAS found that AFHF had no right of appeal under the FIH Anti-Doping Policy and therefore lacked standing to bring the appeal.

*The Azerbaijan National Olympic Committee (ANOC) and the Azerbaijan Field Hockey Federation (AFHF) v. the Federation Internationale de Hockey (FIH), CAS arbitration N° CAS OG 08/004.* Because they were found to lack standing in the previous case, AFHF went back to CAS seeking an order requiring FIH to bring the appeal. AFHF claimed that FIH abused its discretion because its decision not to appeal the case: was contrary to the position it originally argued to the Judicial Commission, discriminates against AFHF, and denies AFHF the opportunity to present its case. However, CAS said FIH did not abuse its discretion. CAS found that a federation must have the discretion to adopt the reasoning of its Judicial Commission and decide not to appeal. Further, CAS stated that although AFHF was affected by FIH's decision not to appeal, that does not amount to discrimination. Lastly, CAS reiterated that AFHF did not have standing to bring an appeal; therefore, FIH was not abusing its discretion when not creating a situation for AFHF to present its case.

*The Azerbaijan Field Hockey Federation (AFHF) and the Azerbaijan National Olympic Committee (ANOC) v. the Federation Internationale de Hockey (FIH), CAS arbitration N° CAS OG 08/05.* AFHF appealed to CAS a third time over the same facts described in CAS arbitration N° CAS OG 08/01. AFHF was presented a copy of the decision that determined that one of the RFEH athletes did not commit an anti-doping violation, while the other athlete had no significant fault or negligence for her violation. AFHF claims the decision shows that they were blamed for committing sabotage of the RFEH team by the Judicial Commission. AFHF now allege that the Judicial Commission's findings against them were made in a circumstance where they should have had a right to be heard and were not given one. CAS found that there were no adverse findings against AFHF in the decision, and therefore this case was no different than the first one. In essence, AFHF was appealing the first decision by CAS and that is precluded by Article 21 of the CAS ad hoc Rules. Further, CAS agreed that the first award was correct, and therefore confirmed that AFHF had no standing to bring the appeal.

## ***AMERICANS WITH DISABILITIES ACT CASES***

*Miller v. Cal. Speedway Corp.*, 536 F.3d 1020 (9th Cir. 2008). Miller, who is confined to a wheelchair, brought an ADA claim against a race track operator stemming from his inability to see car race over heads and bodies of spectators who stood during exciting parts of car races. Title III of the ADA and a Department of Justice (DOJ) regulation require that wheelchair areas provide people with physical disabilities ... lines of sight comparable to those for members of the general public. In 1993, the DOJ's original Technical Assistance Manual (TAM) on this subject did not address the question of lines of sight over standing spectators. However, the DOJ released a supplement to TAM in 1994, which stated that in assembly areas where spectators can be expected to stand during the event or show being viewed, the wheelchair locations must provide lines of sight over spectators who stand. The district court granted Defendant's motion for summary judgment because the DOJ regulation did not address the question of lines of sight over standing spectators. However, the appellate court reversed, finding that the line of sight language was ambiguous, and it was entitled to substantial deference because the DOJ's interpretation in the 1994 supplement was reasonable.

### **WEBFIND**

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## ***ANTITRUST LAW***

*Am. Needle Inc. v. Nat'l Football League*, 538 F.3d 736 (7th Cir. 2008). American Needle brought an antitrust claim against the NFL based on the NFL's exclusive licensing deal. The district court granted summary judgment in favor of the NFL, finding that the NFL's teams acted as a single entity in licensing intellectual property, and therefore did not violate the Sherman Act. The Third Circuit affirmed the district court's decision.

### **WEBFIND**

*Major League Baseball Props., Inc. v. Salvino, Inc.*, 542 F.3d 290 (2d Cir. 2008). Salvino brought an antitrust claim against Major League Baseball Properties (MLBP) as the exclusive licensing agent of Major League Baseball teams' intellectual property. The district court granted MLBP's motion for summary judgment dismissing the claim, holding that MLBP's operations should be analyzed under the rule of reason, and Salvino failed to adduce evidence to show that the challenged organization and activities had an actual adverse effect on competition or that MLBP has sufficient market power to inhibit competition market-wide. Salvino appealed, contending that the court should not have required evidence with regard to market power or actual adverse effect on competition but should instead have held MLBP's activities either illegal per se or illegal under a "quick-look". The appellate court affirmed the district court's holding.

### **WEBFIND**

*Nat'l Athletic Trainers' Ass'n, Inc. v. Am. Physical Therapy Ass'n, No. 3:08-CV-0158-G, 2008 WL 4146022 (N.D. Tex. Sept. 9, 2008).* The National Athletic Trainers' Association (NATA) brought an antitrust suit on behalf of certified athletic trainers against the American Physical Therapy Association (APTA) and the Orthopedic Section of the APTA. NATA claimed that APTA acted in concert and caused substantial harm to NATA by engaging in conduct designed to acquire and maintain monopoly power over certain areas of what NATA has designated the manual therapy market. NATA argued that the Defendants improperly claimed that the manual therapy techniques at issue are exclusively within the purview of physical therapists. The court dismissed NATA's claim against the Orthopedic Section for lack of personal jurisdiction but denied APTA's motion to dismiss the antitrust claim. The court found that NATA had sufficiently alleged the relevant product and geographic market and therefore demonstrated that APTA had sufficient market power to produce anticompetitive effects.

### WEBFIND

*Windage, LLC v. U.S. Golf Ass'n, No. 07-4897, 2008 WL 2622965 (D. Minn. July 2, 2008).* Windage brought suit against the USGA after the Defendant found that one of Windage's products did not conform to USGA rules. Windage alleged that the USGA arbitrarily applied the Rules of Golf to the Windage device to harm competition and stifle innovation in the markets for golf products that determine wind direction and for products that assist golfers with disabilities. The court granted the USGA's motion to dismiss the lawsuit because Windage failed to prove an illegal agreement that restrained trade.

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### **CONSTITUTIONAL LAW**

*Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, No. 3:97-1249, 2008 WL 2811307 (M.D. Tenn. July 18, 2008).* Brentwood Academy continued its lawsuit against the TSSAA, claiming that the TSSAA's recruiting rule violated the Equal Protection Clause and violated antitrust laws. The court applied rational basis scrutiny to the claim because it did not involve a fundamental right or suspect class, finding that the challenged actions were related to the achievement of its legitimate purposes and were rational. The court also denied Brentwood Academy's motion for summary judgment on the antitrust claim and granted the TSSAA's motion for summary judgment because neither the recruiting rule, nor the punishment exacted against Brentwood Academy for violation of the recruiting rule, involves trade or commerce as required for proving violation of the antitrust laws.

*Sanchez v. Dubois, 291 F. App'x 187 (10th Cir. 2008).* Sanchez brought suit against his former employer asserting he was deprived of a liberty interest without due process when he was discharged from his job as head cross country coach at University of Wyoming. His liberty claim was based on damage to his reputation due to allegedly stigmatizing statements made in the University of Wyoming's secondary violation report to the NCAA. The court held for the

defendants, finding that, even assuming the secondary violation contained false statements impugning Sanchez's good name and reputation, it was never published, and thus could not form the basis of a § 1983 claim.

## WEBFIND

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### **CONTRACT LAW**

*Allen v. Thom*, No. A07-2088, 2008 WL 2732218 (Minn. Ct. App. July 15, 2008). Allen sold his ownership in a minor league baseball team to Varistar for which Thom served as CEO. The deal entitled Allen to twenty-five percent of the franchise's sale price if the sale price exceeded \$2.5 million. The franchise was later sold to Thom for \$1.7 million, although Allen believed the franchise's fair market value was \$4.5 million. Allen brought suit for breach of contract and breach of the implied covenant of good faith and fair dealing. The district court dismissed his claims, and the appellate court affirmed the decision because Allen's settlement agreement with Varistar did not require a fair market value to be assigned and Allen could not prove that there were potential buyers who would pay more than \$2.5 million. Therefore, there was no breach of contract or breach of implied covenant of good faith.

## WEBFIND

*Cheers Sports Bar & Grill v. DIRECTV, Inc.*, 563 F. Supp. 2d 812 (N.D. Ohio 2008). A sports bar brought action against DirecTV, a satellite television provider, for breach of contract, breach of implied covenant of good faith and fair dealing, and unjust enrichment. Cheers paid an additional fee to receive the NFL Network, which was to be the only network to carry the matchup between the New England Patriots and the New York Giants in which the Patriots completed an undefeated regular season. However, the NFL decided to simulcast the game on NBC and CBS, which is available for free. The court dismissed all of the Plaintiff's claims because the agreement between the parties provided that programming was subject to change and included an opt-out provision that the Plaintiff could have exercised.

*Deoria v. State Athletic Com'n*, 962 A.2d 697 (Pa. Commw. Ct. 2008). Deoria entered into a three-year contract to serve as manager for Harry Joe Yorgey, a professional boxer. Deoria and Yorgey disputed over opponents for Yorgey, so they brought their complaints before the Executive Director of the State Athletic Commission, who upheld the contract between Deoria and Yorgey. Yorgey appealed to the full Commission, which affirmed the contract in part, but modified the terms to allow Yorgey to exercise his talent without Deoria's approval as long as fifteen percent of all fight purses were paid to Deoria. Following this decision, both parties petitioned for review. The court vacated the full Commission's decision because the Commission was not authorized by law to serve as the arbitrator in a dispute such as this one.

*Kaiser v. Bowlen*, No. 07CA0746, 2008 WL 4426955 (Colo. Ct. App. Oct. 2, 2008). In 1984, Kaiser sold a majority interest in the Denver Broncos to Bowlen. In 1999, Kaiser brought suit against Bowlen for violating the warranty provisions and right of first refusal provision in the contract. A federal jury found for Bowlen on the first claim but for Kaiser on the second. Kaiser later brought suit in state court before the federal case went to trial, and the trial court stayed proceedings pending the outcome of the federal case. After the court's decision, Bowlen successfully moved for summary judgment on the state claims based on issue preclusion. Kaiser appealed the decision, but the appellate court affirmed because the issue had been fully litigated in the federal case.

## **WEBFIND**

*Kante v. Nike, Inc.*, No. CV 07-1407-HU, 2008 WL 5246090 (D. Ore. Dec. 16, 2008). Kante brought suit for breach of implied in law contract and conversion based on drawings of athletic shoes he submitted in 1992. Kante claimed that Nike did not return seven of the ten drawings, including those with words Spring Jump, and Boing, and showing four springs in the heel. In 2000, Nike released the SHOX line of shoes, which contained springs in the heels and the word boing appeared in advertisements for the shoes. Kante admitted to seeing advertisements for the shoes beginning in 1999 and concluded that Nike used her idea in production of the SHOX line. The court granted Nike's motion for summary judgment because the claims were time-barred by a statute of limitation.

*Welsh v. Big Ten Conference*, No. 08 C 1342, 2008 WL 5070321 (N.D. Ill. Nov. 21, 2008). In 1997, Welsh developed a business plan for the Big Ten Networks, a satellite/cable television station providing in-depth coverage of sports and the culture of the Big Ten Conference. He presented his plan to Big Ten Conference officials and annotated confidential on the business plan he submitted to them. The Big Ten Conference declined to enter into a business relationship with Welsh but a decade later introduced the Big Ten Network, which included several programming ideas that resembled those proposed by Welsh. Welsh filed suit for breach of contract and violations of the Lanham Act and Illinois Trade Secrets Act. The court dismissed all of Welsh's claims. It dismissed the Lanham Act claim because Welsh could not assert a trademark right in his idea for the name, or content, of Big Ten Network under the Lanham Act. It dismissed the two state law claims for lack of subject matter jurisdiction.

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## **DISCRIMINATION LAW**

*Tavares v. Nike, Inc.*, No. 05-CV-4107, 2008 WL 4865972 (E.D.N.Y. Nov. 11, 2008). Tavares, manager of Foot Soldiers Apparel, Inc., brought suit against Nike alleging that Nike engaged in racial discrimination by refusing to enter into an agreement with Plaintiff that would allow it to

sell Nike products. Tavares, who is Hispanic, requested a business account with Nike but was denied because Nike claimed he had little athletic shoe retail experience, the store's location was not advantageous to Nike, the store was not an athletic shoe store, and other stores with established Nike accounts were geographically close to Tavares' store. To establish a valid discrimination claim, Tavares could demonstrate a prima facie case by establishing that (1) he was a member of a protected class; (2) he sought to enter into a contractual relationship with the defendant; (3) he met the defendant's ordinary requirements to pay for and to receive goods or services ordinarily provided by the defendant; and (4) he was denied the opportunity to contract for goods or services otherwise afforded to white customers. The court granted Nike's motion for summary judgment on the discrimination claim because Tavares did not establish that he met Nike's ordinary requirements for acquiring a business account.

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## **EDUCATION LAW**

*Bryant v. Gardner*, No. 07 C 5909, 587 F. Supp. 2d 951 (N.D. Ill. Nov. 21, 2008). Bryant brought a suit against Gardner, an interim principal; Gaters, the school's athletic director; and the school board after he was fired as the boys' basketball coach. Bryant alleged (1) Gaters and Gardner retaliated against him in violation of the First Amendment based on his complaints about open gym and Gaters' alleged mismanagement of the MLK Foundation; (2) the Board violated Title IX by retaliating against him based on his complaints of unequal treatment of male and female athletes, (3) Gaters violated Bryant's Fourteenth Amendment due process right to occupational liberty by publicly and falsely accusing him of misconduct; (4) breach of contract against Gardner and the Board based on their alleged violation of the agreement permitting him to serve as coach for one final year; (5) promissory estoppel claim against Gardner and the Board based on the same conduct; (6) a claim against Gaters for tortious interference with contract based on her alleged interference with his agreement with Gardner and the Board; and (7) a state law defamation claim against Gaters based on her public statements accusing him of misconduct. The district court granted summary judgment on counts 1 and 6 and dismissed counts 3 and 5 with prejudice. The court granted summary judgment on the First Amendment retaliation claim because public employees who make statements pursuant to their official duties and are not speaking as citizens for First Amendment purposes do not enjoy Constitutional protection from employer discipline. Further, it granted summary judgment on the tortious interference with a contract claim because Gaters was Bryant's supervisor, and by virtue of this position, she was in effect a party to the agreement, and thus could not tortuously interfere with that contract. The remaining claims will proceed to trial.

*Dankoff v. Ohio High Sch. Athletic Ass'n*, No. 24076, 2008 WL 4150285 (Ohio Ct. App. Sept. 10, 2008). A father of a private high school student brought a suit on behalf of his son seeking injunctive relief to prevent the Ohio High School Athletic Association (OHSAA) from prohibiting his son from participating in the high school bowling program. The student attended a private school from middle school through the eleventh grade, attended a public school for a

single semester, and then returned to the private school. He had participated on the private school's bowling team for three years and wished to return to the team after transferring back to the school, but an OHSAA rule governing transfers prohibited him from doing so. The trial court issued an injunction allowing the student to participate on the bowling team because it found the OSHAA's ruling to be arbitrary. The OSHAA appealed, but the appellate court denied the appeal because the issue was moot since the student had graduated from high school and ordered OSHAA to pay costs.

### [WEBFIND](#)

*Mayo v. W. Va. Secondary Sch. Activities Comm'n, No. 33838, 2008 WL 4901084 (W. Va. Nov. 17, 2008)*. Mayo, a high school basketball player, was ejected from a basketball game after receiving two technical fouls, which would require a two game suspension under West Virginia Secondary School Activities Commission (WVSSAC) rules. Mayo filed for an injunction to prevent the suspension from being enforced. Although the parties reached a settlement agreement, the trial court proceeded to address the constitutionality of the WVSSAC rules. The trial court held that the WVSSAC's rules were unconstitutional because they lacked an administrative review process before imposing a suspension. However, the West Virginia Supreme Court reversed because the due process protections the trial court found lacking was inapplicable because no constitutionally protected interest attached to participation in interscholastic sports.

### [WEBFIND](#)

*Newsome v. Miss. High Sch. Activities Ass'n, No. 1:07CV293-D-D, 2008 WL 2686579 (N.D. Miss. July 8, 2008)*. Newsome, who had a diagnosed learning disability, filed suit against the Mississippi High School Activities Association after it ruled Newsome ineligible to play high school basketball because it found that his transfer to a new school was not bona fide and was for athletic reasons. Newsome later moved back to his old high school and was allowed to play basketball. He requested damages for mental distress arising out of the Individuals with Disabilities Education Act (IDEA), but the court dismissed his suit because Newsome failed to exhaust all administrative remedies under IDEA.

### [WEBFIND](#)

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## **EMPLOYMENT LAW**

*Ragone v. Atlantic Video at Manhattan Center, No. 07 Civ. 6084, 2008 WL 4058480 (S.D.N.Y. Aug. 29, 2008)*. Ragone filed suit for sexual harassment and retaliation under Title VII of the Civil Rights Act of 1964. The Defendants moved to compel arbitration based on an agreement that Ragone allegedly signed. Ragone opposed arbitration, claiming that the arbitration agreement was not genuine because the signature on the document compelling arbitration was a forgery, arbitration would be unconscionable, and because ESPN, one of the defendants, did not

sign the arbitration agreement. The trial court dismissed the complaint, finding that Ragone did sign the arbitration agreement, compelling arbitration would not be unconscionable, and that ESPN could be a party to arbitration because the doctrine of equitable estoppels applied due to the intertwined relationship between ESPN and defendant Atlantic Video.

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### ***GENDER EQUITY LAW***

*Equity in Athletics, Inc. v. U.S. Dep't of Educ.*, 291 F. App'x 517 (4th Cir. 2008). Equity in Athletics (EIA) sought an injunction to prevent James Madison University from cutting seven men's and three women's sports teams. EIA claimed that the University intentionally discriminated against male student-athletes in violation of the United States Constitution and Title IX. The district court denied the injunction because the EIA could not prove a likelihood of success in its claims against the University because courts have consistently held that equal opportunity under Title IX should be tied to expressed interest rather than actual participation. The appellate court affirmed, finding that the district court did not abuse its discretion by denying the injunction.

#### **[WEBFIND](#)**

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### ***INTELLECTUAL PROPERTY LAW***

#### **American Court Cases**

*Auburn Univ. v. Moody*, No. 3:08cv796-CSC, 2008 WL 4877542 (M.D. Ala. Nov. 4, 2008). Auburn University sought a preliminary injunction to prohibit Moody from selling unlicensed goods bearing Auburn's trademarks and service marks. The court found that Auburn satisfied all four elements required for a preliminary injunction by showing a substantial likelihood of success on the merits, the threat of irreparable injury, Auburn would suffer more harm than Moody, and it is in the best interest of the public not to be deceived or confused by any unauthorized use of Auburn's trademarks and service marks by the Defendants.

#### **[WEBFIND](#)**

*Bd. of Supervisors of the La. State Univ. Agricultural & Mechanical College v. Smack Apparel Co.*, 550 F.3d 465 (5th Cir. 2008). Multiple universities and their licensing agent brought suit against an apparel company for trademark infringement. The district court granted summary judgment to the Plaintiffs, finding that the universities' color schemes combined with other identifying indicia had acquired secondary meaning and the manufacturer's use of universities' color schemes and other identifying elements created a likelihood of confusion. The appellate court affirmed the district court's decision.

## WEBFIND

*ESPN, Inc. v. Quiksilver, Inc.*, 586 F.Supp.2d 219 (S.D.N.Y. Nov. 14, 2008). ESPN, which owns the trademark for the X Games, which was created in the mid-1990s, brought a trademark infringement claim against Quiksilver. Quiksilver is a manufacturer of surfer goods and claimed to have used a stylized X on its products since 1986. Quiksilver counterclaimed, raising issues of trademark infringement, federal and state trademark dilution, unfair competition, and cancellation of ESPN's registered X Games marks. ESPN moved to dismiss all counterclaims, but the district court denied the motion in its entirety.

*The Boxing Match Broadcast Cases* (e.g. *J & J Sports Prods., Inc. v. Rodriguez*, No. 1:08-CV-1350, 2008 WL 5083149 (N.D. Ohio Nov. 25, 2008)). Between July 2008 and December 2008, multiple plaintiffs brought claims against multiple defendants for illegal interception of pay-per-view boxing telecasts. In these cases, the plaintiffs were allowed to select either statutory or actual damages for unauthorized use of communications in violation of 47 U.S.C. § 605, enhanced damages for willful violations of 47 U.S.C. § 605, and attorney's fees. In a number of these cases, the court entered default judgments against the defendants.

**See also:** *Garden City Boxing Club, Inc. v. Extasis Corp.*, No. 07-CV-3853, 2008 WL 3049905 (E.D.N.Y. Aug. 1, 2008); *J & J Sports Prods., Inc. v. Gonzalez*, No. 08 CV 885(CBA)(JMA), 2008 WL 5050052 (E.D.N.Y. Nov. 26, 2008); *J & J Sports Prods., Inc. v. Cubides*, No. H-08-608, 2008 WL 2756401 (S.D. Tex. July 15, 2008); *J & J Sports Prods., Inc. v. Doan*, No. C-08-00324, 2008 WL 4911223 (N.D. Cal. Nov. 13, 2008); *J & J Sports Prods., Inc. v. Esquivel*, No. 1:08-cv-00392, 2008 WL 4911846 (E.D. Cal. Nov. 14, 2008); *J & J Sports Prods., Inc. v. Ferreya*, No. CIV S-08-128, 2008 WL 4104315 (E.D.Cal. Aug. 28, 2008); *J & J Sports Prods., Inc. v. Gallegos*, No. 08-201, 2008 WL 3193157 (D.N.J. Aug. 5, 2008); *J & J Sports Prods., Inc. v. Guzman*, No. 1:08-CV-00091-AWI-DLB, 2008 WL 3905972 (E.D. Cal. Aug. 20, 2008); *J & J Sports Prods., Inc. v. Guzman*, No. CV-F-08-0091 AWI DLB, 2008 WL 4826131 (E.D. Cal. Nov. 6, 2008); *J & J Sports Prods., Inc. v. Kamal*, No. 06 Civ. 13022, 2008 WL 4921353 (S.D.N.Y. Nov. 18, 2008); *J & J Sports Prods., Inc. v. Lang*, No. 07-CV-468-JTC, 2008 WL 2917165 (W.D.N.Y. July 24, 2008); *J & J Sports Prods., Inc. v. Lopez*, No. 1:08-cv-00388-OWW-TAG, 2008 WL 3889749 (E.D. Cal. Aug. 20, 2008); *J & J Sports Prods., Inc. v. Lynn*, No. 3:07CV439, 2008 WL 3200626 (W.D.N.C. Aug. 5, 2008); *J & J Sports Prods., Inc. v. Munoz*, No. CV-F-08-0090, 2008 WL 5046051 (E.D. Cal. Nov. 21, 2008); *J & J Sports Prods., Inc. v. Tsoulouhaus*, No. C08-695Z, 2008 WL 5390936 (W.D. Wash. Dec. 23, 2008); *J & J Sports Prods., Inc. v. Forbes*, No. 07-cv-4394-ENV-JMA, 2008 WL 5263732 (E.D.N.Y. Dec. 17, 2008); *Joe Hand Promotions, Inc. v. 143-08 94th Corp.*, No. 07-CV-02339, 2008 WL 3243886 (E.D.N.Y. Aug. 7, 2008); *Joe Hand Promotions, Inc. v. Mills*, 567 F. Supp. 2d 719 (D.N.J. 2008).

*Geary v. Town Sports Int'l Holding, Inc.*, 870 N.Y.S.2d 846 (N.Y. Sup. Ct. 2008). Geary brought a right of publicity claim for Defendant's use of an image of Geary playing football. The photograph was first used in one of Defendant's sports clubs, but was later used on its website. Defendant moved to dismiss the claim as being time barred, but the court denied the motion, finding that use on the website constituted a republication of the photo, which triggered a new statute of limitations.

## WEBFIND

*U.S. Olympic Comm. v. Xclusive Leisure & Hospitality Ltd.*, No. C 08-03514, 2008 WL 3971120 (N.D. Cal. Aug. 25, 2008). The United States Olympic Committee (USOC) moved for a preliminary injunction to prohibit Defendant from using the USOC's trademarks on its websites. Defendant's websites sold tickets to the 2008 Summer Olympics in Beijing, although the sales appeared to be fraudulent as many purchasers claimed to have never received their tickets. The court granted the injunction, finding that the USOC was likely to succeed on the merits of all claims against the Defendant, it would be irreparably harmed without the injunction, the balance of hardships tilted in favor of the USOC, and it would be in the public interest to grant the injunction.

*Univ. of Kan. v. Sinks*, No. 06-2341-JAR, 2008 WL 5110513 (D. Kan. Dec. 1, 2008). The University of Kansas brought trademark infringement and trademark dilution claims against an apparel manufacturer. The University moved for summary judgment claiming that the school's color scheme had acquired secondary meaning but the court denied its motion because it believed a reasonable jury could reach the opposite conclusion. The University also moved for renewed judgment as a matter of law on claims arising out of several allegedly infringing products. The court granted the motion in part and denied it in part. It upheld the decision that summary judgment was not appropriate on two-sided t-shirts with non-infringing language on the back because there was no likelihood of confusion. It also affirmed the decision that t-shirts bearing the word Hawk(s) were not infringing unless they were used in conjunction with certain other marks affiliated with the University. Finally, it found that summary judgment was not appropriate on products containing the school's color scheme because the court believed a reasonable jury could reach the opposite conclusion.

## WEBFIND

### **World Intellectual Property Organization Decisions**

*Arsenal Football Club Public Ltd. Co. v. Official Tickets Ltd.*, Case No. D2008-0842 (July 22, 2008). Arsenal Football Club (Arsenal Football) owns a London-based football club, Arsenal, and holds multiple international registrations for the mark ARSENAL. Arsenal Football also holds a registration for an ARSENAL device mark, which has the word Arsenal on a shield device, and owns a number of domain names, including the principal website www.arsenal.com, which allows consumers to purchase tickets to Arsenal football matches online. Official Tickets Ltd. (Official Tickets) holds the domain name official-arsenal-tickets.com, which features the ARSENAL word and shield device marks and contains the language Welcome to Official Arsenal Tickets. Book your official tickets online through our secure system. All tickets booked

are confirmed and guaranteed. This website allows consumers to purchase tickets to various sporting events, concerts, and make hotel reservations. Arsenal Football maintains that Official Tickets is not authorized to use the ARSENAL device and shield marks and that there is no disclaimer on the website stating that the site is not affiliated with or endorsed by the club. Arsenal Football filed a complaint with the Arbitration and Mediation Center (AMC) of the World Intellectual Property Organization (WIPO) claiming that Official Tickets had no rights or legitimate interest in the domain name official-arsenal-tickets.com. The Panel determined that Arsenal Football did establish its rights to the ARSENAL mark, and that because official-arsenal-tickets.com incorporates the ARSENAL mark, it is confusingly similar to the mark. The Panel further determined that the domain name was being used in bad faith and for commercial gain based on the fame of the Arsenal Football and its marks. Therefore, the Panel ordered that the domain name be transferred to the club.

### WEBFIND

*Campagnolo S.r.l. v. Marzena Zytka, Case No. D2008-1037 (Aug. 20, 2008).* Campagnolo, a company, owns world-wide trademark registrations for the CAMPAGNOLO mark; the earliest registration for the mark dates back to 1986. This mark is well-known in bicycle circles and is associated with the company. Marzena registered the disputed domain name campagnoloshop.com in 2005 and listed Danuta Badziag from Raddiscount as a contact. Badziag had already registered and sold the domain name campagnolo.pl to Campagnolo. The domain name goes to a web site that offers Campagnolo's products for sale. Campagnolo argues that the disputed domain name campagnoloshop.com is confusingly similar to the CAMPAGNOLO mark and that Marzena registered the domain name in bad faith, with no rights or legitimate interests in the domain name. Marzena argues that campagnolo is a common Italian word for rural or farm worker and that when combined with shop means a shop with rural products. Marzena claims to have bought this domain name from Badziag in order to sell rural products. The Panel determined that the Italian word for rural is campagnuolo with a u, and that the CAMPAGNOLO mark does not have the u in the domain name. The Panel also said that it is not inclined to second guess a trademark authority which had found that the CAMPAGNOLO mark was entitled to be registered. According to the Panel, the addition of the word shop does not make the domain name any more distinctive and therefore, the domain name is confusingly similar to the CAMPAGNOLO mark. Marzena's claim to intend to sell rural products under this domain name was found not sufficient to satisfy the required rights and legitimate interests. Based on the sale of the previous domain name to Campagnolo and the fact that Marzena had no rights or legitimate interests in the domain name at issue, the Panel determined that there was bad faith in the use of the domain name and ordered that the disputed domain name be transferred to Campagnolo.

### WEBFIND

*l Adakim - Eurl v. Linea Networks, Case No. D2008-0945 (Sept. 5, 2008).* Adakim - Eurl (Adakim) is a French company that owns the registered mark FOOT MERCATO and the registered domain name footmercato.net as of July 9, 2004. The company's main activity is the operation of the Internet web site providing football and player transfer news. The disputed domain name is footmercato.com, which was registered on August 21, 2003 by Linea Networks

(Linea), and placed on sale in 2008 for 10,000 euros. Adakim claims that the disputed domain name is identical or confusingly similar to its French trademark, that Linea has no rights or legitimate interests in the domain name, and that the domain name was registered in bad faith, because it is being used in a similar activity and trying to get commercial gain from the web site traffic. Linea contends that Adakim's domain name was registered after the disputed domain name and that the FOOT MERCATO mark was registered more than three years after the disputed domain name's registration. Linea also filed a trademark application in Bosnia Herzegovina for the mark FOOTBALL MERCATO and contends that foot, football, and mercato are all well-known, common words world-wide. Linea also contends that it has rights and legitimate interests in the disputed domain name and denies that the disputed domain name creates unfair competition, claiming rather that it is a form of market competition. Linea requests that the Panel find a case of reverse domain name hijacking and claims that Adakim is harassing it in an effort to unfairly deprive the company of a domain name that it has owned for years. The Panel determined that the disputed domain name is identical or confusingly similar to Adakim's trademark. However, the Panel determined that Linea has been using the disputed domain name for five years in connection with a bona fide offering of goods or services. This demonstrates that Linea has rights and a legitimate interest in the domain name and furthermore, did not register the domain name in bad faith. Reverse domain name hijacking is defined as using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name. Here, the Panel determined that Adakim did not demonstrate that Linea registered the domain name in bad faith, but finds it surprising that Linea placed the domain name on sale eight days prior to the filing of the Complaint without any explanation for the act. The Panel therefore finds against the claim of reverse domain name hijacking and dismissed the Complaint.

### WEBFIND

*Kabushiki Kaisha ASICS v. SC Gaticonstruct, Case No. DRO2008-0010 (Sept. 10, 2008).* Kabushiki Kaisha ASICS (ASICS) is a Japanese corporation that is a worldwide manufacturer of sportswear apparel and equipment. ASICS owns the ASICS trademark which is registered worldwide, including in Romania, where the registration dates back to 1981. SC Gaticonstruct, a Romanian company which, among other things, manufactures and sells leather apparel and footwear, registered the domain name asics.ro on January 23, 2007. In filing a complaint with the AMC of the WIPO, ASICS contended that the domain name is identical to the registered ASICS trademark and that Gaticonstruct has no right or legitimate interest in the domain name, and furthermore, that the domain name was registered in bad faith. Gaticonstruct failed to respond to the claims. The Panel determined that the domain name is confusingly similar to the registered ASICS trademark and that the addition of .ro had no legal significance. Furthermore, it found that Gaticonstruct had no interest in the domain name because it was not using it for a bona fide offering of any products or services. According to the Panel, Gaticonstruct should have used reasonable due diligence to research the domain name and possible infringements. Instead, it offered the sale of the domain name for 10,000 euros, which was found to be in excess of any out-of-pocket costs related to the domain name. Therefore, the Panel found that the domain name was registered in bad faith and ordered it transferred to ASICS.

### WEBFIND

*Connor Sport Court Int'l, Inc. v. Bizzy Signals Entm't/Presto Productions, Case No. D2008-1157 (Sept. 16, 2008).* Connor Sport Court International, Inc. (Connor Sport) manufactures and markets athletic flooring products. It owns several trademark registrations, in the United States and in foreign countries, for SPORT COURT. Connor Sport contends that the disputed domain name, sportscourt.com, registered by Bizzy Signals, is confusingly similar to the SPORT COURT mark. It argues that Bizzy Signals has no right or legitimate interest in the domain name and registered it in bad faith. Bizzy Signals did not respond to the Complaint. The Panel found that Connor Sport's SPORT COURT registrations are valid and that the domain name is confusingly similar to the registrations. According to the Panel, the addition of the s and extension of .com does not distinguish the domain name. Furthermore, it found that Bizzy Signals failed to demonstrate that it has any rights or legitimate interests in the domain name and that the web site was merely used to provide links to advertised goods and services, which does not constitute a bona fide offering of goods and services. The Panel also determined that Bizzy Signals was using the domain name in bad faith, in an attempt to attract internet users to the website by creating confusion as to the source. Therefore, the Panel ordered that the domain name be transferred to Connor Sport.

#### WEBFIND

*Sports Warehouse, Inc. v. Laksh Internet Solutions Private Ltd., Case No. D2008-1112 (Sept. 18, 2008).* Sports Warehouse sells tennis related clothing and equipment online and registered the TENNIS WAREHOUSE mark in the United States in 2006. Sports Warehouse also owns the domain names tenniswarehouse.com and tennis-warehouse.com. Laksh Internet Solutions (Laksh), an Indian company, registered the disputed domain name teniswarehouse.com in 2004. The web site appears to have been generated by a domain name parking service. It offers a series of links related to various tennis items that, when clicked, go to a page of sponsored results. Sports Warehouse contends that it has a valid mark, that the domain name is confusingly similar to that mark, that Laksh has no rights or legitimate interests in the domain name, and that the domain name was registered in bad faith. Laksh did not respond to the Complaint. The Panel determined that Sports Warehouse does possess a valid trademark, and that even with the misspelling, the domain name is confusingly similar to that mark. The Panel also determined that Laksh was not authorized to use the TENNIS WAREHOUSE mark and that it had no rights or legitimate interests in the domain name other than to generate click-through revenue. It found that Laksh registered the domain name with the TENNIS WAREHOUSE mark in mind and was using it to take advantage of the mark's reputation. Furthermore, the Panel determined that the domain name was registered in bad faith, with the TENNIS WAREHOUSE mark in mind, because the combination of the words tennis and warehouse suggest a business with a large stock of tennis related products and because of the misspelling of the word tennis. Therefore, the Panel found that Laksh registered the domain name with the TENNIS WAREHOUSE mark in mind, and that Laksh had used a Whois privacy service, which has been previously held to be an indicator of bad faith. The Panel ordered that the disputed domain name be transferred to Sports Warehouse.

#### WEBFIND

*Allen Stanford v. Krishna Mohunlal, individual, Case No. D2008-1188 (Sept. 25, 2008).* Allen Stanford, a well-known former cricket player, is still known as a cricket sponsor and innovator and enjoys success in the business world. Krishna Mohunlal registered the disputed domain name, allenstanfordcricket.com, and maintains a website using that domain name to collect information about cricket world-wide. The website also has a number of click-through links that lead to other websites related to the game. Although Stanford never registered his name as a trademark, he argued at the AMC of the WIPO that he has common law rights in his name and that he has never authorized Mohunlal to use his name. Mohunlal countered that he registered the domain name legally, because the domain name was available on register.com, and that Stanford is only making a claim because he failed to register the domain name. The Panel determined that Mohunlal was not authorized to use the name Allen Stanford and that the use of the name in the domain name was undeniably for commercial gain. According to the Panel, the facts further established that the name was used in bad faith because it was used to attract cricket lovers and fans of Allen Stanford for commercial gain; therefore, the domain name was ordered to be transferred to Allen Stanford.

### WEBFIND

*Adidas AG v. Paolo Luppi, Case No. D2008-1334 (Oct. 17, 2008).* Adidas is the owner of several international trademarks for the word mark ADIDAS, the earliest registration dates back to 1969. Adidas is also the registrant of domain names using the mark, including adidas.com and adidas-group.com. Adidas claims that Paolo Luppi's domain name adidasfootballshop.com is confusingly similar to the ADIDAS mark, because it uses the mark and the generic words football and shop. According to Adidas, these words do not make the domain name any less confusingly similar. Adidas further states that Luppi does not have any rights or legitimate interests in the domain name and that it is not an authorized reseller or distributor, which the web site falsely suggests. Adidas also states that its mark is known world-wide and that Luppi is using the mark in bad faith and is not making a legitimate, non commercial or fair use of the domain name. Rather, according to Adidas, Luppi is using the domain name for commercial gain by selling Adidas and its competitors' products through a link with other web sites. Luppi contends that because the site sells original Adidas products it is entitled to use the Adidas mark to describe its business. Luppi also states that neither a consent nor license are required if the domain name is used on a site with a bona fide offering of goods. According to Luppi, the web site does not state that it is official and, instead, states that it is owned by Paolo Luppi aka Mr. Football. Furthermore, Luppi states that this is nominative fair use because he is unable to sell ADIDAS products without using the ADIDAS mark. Also, he said that to prevent future confusion he did remove all ADIDAS device trademarks. The Panel determined that evidence shows that Adidas owns the ADIDAS mark and that the words football and shop do not exclude the likelihood of confusion between the domain name and the ADIDAS mark. Therefore, the domain name was found to be confusingly similar. The Panel also determined that Luppi is offering ADIDAS products on a website which has links to other web sites, and that such conduct is not consistent with a bona fide offering of goods or services. Lastly, the Panel found that Luppi has no rights or legitimate interests in the disputed domain name and registered the domain name in bad faith. As evidence of bad faith, the Panel said that it is likely that Luppi was aware of the ADIDAS mark and its fame, and that Luppi registered other domain names formed

with sport and clothing brands connected to the word shop. Therefore, the Panel ordered that the domain name be transferred to Adidas.

### WEBFIND

*Chuck Liddell v. Comdot Internet Services Private Ltd., Case No. D2008-1284 (Nov. 3, 2008).* Chuck Liddell, a well-known athlete with the Ultimate Fighting Championship, has appeared in movies and on television programs. When the disputed domain name, chuckliddell.com, was registered by Comdot Internet Services in 2004, Liddell was already well-known. The domain name is for a website that has links to other sites that are associated with Liddell. Since CHUCK LIDDELL is an unregistered mark, Liddell had to prove that prior to filing the Complaint the public associated it with goods or services and that, therefore he has a right to bring the Complaint. Based on Liddell's assertions, the ADC Panel of WIPO determined that the name CHUCK LIDDELL has acquired a secondary meaning such that Liddell has the common law rights in the trademark CHUCK LIDDELL. The Panel further determined that the domain name is identical to the CHUCK LIDDELL mark and that the domain name was used to attract Internet users to the website for commercial gain. Therefore, the domain name was being used in bad faith and was ordered transferred to Liddell.

### WEBFIND

*DECATHLON v. Decat, Case No. D2008-1523 (Dec. 1, 2008).* Decathlon specializes in the sale of sports and leisure goods and has a network of over four hundred stores world-wide. It owns multiple trademarks for the DECATHLON mark and the DECAT mark. The disputed domain name, decat.com, was registered on January 26, 2007 and the web site contains commercial links related to sports, including the DECAT and DECATHLON trademarks. Decathlon objects to the disputed domain name claiming that it is confusingly similar to its registered trademark, the web site has no rights or legitimate interests in the domain name, and that the domain name was registered in bad faith. Decat did not respond to the Complaint. The Panel determined that the disputed domain name uses the DECAT trademark and is therefore, confusingly similar to the registered trademark. The Panel also found no evidence showing that Decat had any rights or legitimate interests in the domain name and that, instead it used the web site for commercial gain because the site is paid each time an Internet user clicks on the commercial link on the web site. According to the Panel, it is likely that Decat had prior knowledge of Decathlon's trademarks because it is a widely known brand. Also, because Decat was making money for each click on the commercial web site www.decat.com, there was evidence that the domain name was used in bad faith. Therefore, the Panel ordered that the disputed domain name be transferred to Decathlon.

### WEBFIND

*Arizona Board of Regents on behalf of the University of Arizona v. DNS, Admin, Nevis Domains / Gee Whiz Domains Privacy Service, Case No. D2008-1543 (Dec. 9, 2008).* The University of Arizona is a public research university that has used the ARIZONA WILDCATS mark since 1950 and has two federal trademark registrations for the mark. The disputed domain name, arizonawildcats.com, was registered in 1999 by Gee Whiz Domains and is a click-through site

that displays advertising from which Internet users can click-through to various sports sites (for example the NFL and NBA sites). The University of Arizona argued before the Panel that the ARIZONA WILDCATS mark has led to substantial goodwill and that it has registered the mark. Furthermore, it argued that Gee Whiz Domains has no legitimate interest in the disputed domain name and is intentionally using the mark to attract Internet users to its web site and thereby creating a likelihood of confusion with the ARIZONA WILDCATS mark. The Panel determined that the disputed domain name is identical to the registered ARIZONA WILDCATS mark and that the website is using the mark to attract traffic in order to generate revenue. Furthermore, it found that the website had not been known as, or conducted business under, the name ARIZONA WILDCATS and that it is not authorized to do so, therefore, the Panel ordered that the disputed domain name be transferred to the University of Arizona.

### WEBFIND

*Formula One Licensing B.V. v. Holding Theunisse, Case No. D2008-1631 and Formula One Licensing B.V. v. Louis Theunisse, Case No. D2008-1633 (Dec. 17, 2008).* Formula One Licensing B.V. (Formula One) is the world-wide owner of trademarks that include the "F1" mark, with the registration dating back to 1999. Formula One is internationally known for motor racing and the trademarks are used to extensively promote its racing events. The disputed domain names, owned by Theunisse, are flenergydrinks.com and fldrinks.com. Formula One contends that these domain names are confusingly similar and that the addition of energydrinks and drinks to "f1" does not prevent the confusing similarity. Formula One also contends that Theunisse knew of its trademarks because it makes very aggressive reference to the F1 motor sport themes on the website. The Panel decided to consolidate the two domain name disputes in accordance with its rules and policies. Theunisse did not respond to the Complaint. The Panel determined that because the entire F1 mark is incorporated in the domain names, the disputed domain names are confusingly similar to the trademarks. The Panel also determined that Theunisse does not have any rights or legitimate interests in the domain names and that the domain names are used to promote Theunisse's own products by referring to Formula One, which is not considered to be a bona fide offering of goods and services. Lastly, the Panel found that Theunisse has registered and is using the domain names in bad faith, because it is likely that Theunisse was aware of Formula One and its trademarks, since its web site makes references to F1 motor racing. Therefore, the Panel ordered that the disputed domain names be transferred to Formula One.

### WEBFIND

*Chelsea Football Club Ltd. v. Official Tickets Ltd., Case No. D2008-1574 (Dec. 23, 2008).* The Chelsea Football Club Ltd. (Chelsea) owns trademark rights to the CHELSEA mark and owns domain names using the mark, such as chelseafc.com. Official Tickets operates a web site under the disputed domain name official-chelsea-tickets.com, which offers Chelsea fixtures and provides click-on links to web sites which offer tickets for other football leagues. Chelsea claims that the disputed domain name is confusingly similar to the CHELSEA mark, that Official Tickets has no rights or legitimate interests in the disputed domain name because the company is not known as Chelsea and has no trademarks rights to the term, and that Official Tickets is using the domain name in bad faith by intentionally trying to attract users by creating a likelihood of

confusion between the domain name and CHELSEA. It also pointed out a pattern of conduct, since Official Tickets has registered other domain names incorporating other registered trademarks. Official Tickets did not reply to the Complaint. The Panel determined that Chelsea does have a valid trademark in the CHELSEA mark and that the disputed domain name is confusingly similar to that mark. The words official and tickets were found to be merely the addition of generic terms that are not sufficient to distinguish the domain name. The Panel also found that Official Tickets has no rights or legitimate interests in the disputed domain name and that it is operating the web site to offer and sell tickets which compete with Chelsea's business. Furthermore, the Panel noted the similarities between this case and the case of *The Arsenal Football Club Public Limited Company v. Official Tickets, Ltd.*, WIPO Case No. D2008-0842. The two cases involve almost identical domain names. The Panel determined that Official Tickets has engaged in bad faith conduct by preventing multiple trademark owners from using their trademarks in a corresponding domain name. Therefore, the Panel ruled that Official Tickets intentionally attempted to attract Internet users to the web site by creating a likelihood of confusion and ordered that the domain name be transferred to Chelsea.

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### **LABOR LAW**

*Liger v. New Orleans Hornets NBA Ltd.*, 565 F. Supp. 2d 680 (E.D. La. 2008). Plaintiff sought compensation for unpaid overtime under the Fair Labor Standards Act (FLSA). Defendant argued that the wages sought were exempt under FLSA's overtime requirements under the seasonal amusement and recreation exemption or the retail or service establishment exemption. The court held that a NBA franchise operates year-round, regardless of the actual length of the basketball season. The Hornets also failed to show that it was an exempt retail or service establishment because the franchise "manufactured" the product it sold, sports entertainment, and was not at the end of the stream of distribution. Therefore, the court granted Liger's motion for summary judgment.

*Nat'l Football League Players Ass'n v. Nat'l Football League*, Nos. 08-6254 & 08-6255, 2008 WL 5191442 (D. Minn. Dec. 11, 2008). Several NFL players were suspended for violating the league's banned substance policy after testing positive for the diuretic bumetanide and were suspended after appearing before an arbitrator. The league's policy imposes strict liability on the players, but bumetanide was not listed on the ingredients in the product that all the players took. The court granted the National Football League Players Association's (NFLPA) motion for a preliminary injunction, and the NFL moved to dissolve the injunction. The court upheld the decision because the four preliminary injunction factors all weighed in favor of the NFLPA. It found that the NFLPA had a likelihood of success on the merits due to a question of the arbitrator's impartiality and the NFL having a fiduciary duty to communicate information about banned substances to the players. Second, it found the players would suffer irreparable harm if

they were suspended without pay for testing positive for a banned substance when there are substantial questions about the facts and circumstances surrounding the specific supplement. Third, it found that the balance of harms weighed in favor of the NFLPA since it demonstrated it would suffer irreparable harm and the NFL could not establish it would suffer any harm if the injunction was issued. Finally, the NFLPA established that the public interest weighed in favor of a preliminary injunction because of the issue as to whether the NFL owed a fiduciary duty to the players to inform them of knowledge about banned substances.

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### ***PROPERTY LAW***

*Deerfield Twp. v. Deerfield Raceway, LLC, No. 2007-P-0060, 2008 WL 3270951 (Ohio Ct. App. Aug. 8, 2008).* An Ohio township filed an action for declaratory relief against the operator of an automobile raceway located in a residential district. Deerfield Raceway is located on two parcels of property and has been used for racing since the early 1970's. In 1979, Deerfield Township passed a zoning resolution classifying the property on which the raceway is located as part of a residential district. In 1990, the Township filed for an injunction to prohibit the defendant from holding races but the trial court dismissed the complaint with prejudice because the raceway was a valid non-conforming use of the property. Deerfield appealed the judgment to this court, claiming that Deerfield Speedway is being operated as a valid non-conforming use. In 2007, the trial court adopted a magistrate judge's decision that all forms of four-wheel car racing was permitted at the raceway after previous decisions had limited the type of racing allowed. The appellate court affirmed the decision that the raceway was a valid non-conforming use of the property.

### **[WEBFIND](#)**

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### ***TORT LAW***

*Allred v. Capital Area Soccer League, Inc., 669 S.E.2d 777 (N.C. Ct. App. Dec. 16, 2008).* Allred brought a negligence suit after she was injured at a professional soccer match when she was struck in the head by a soccer ball. The trial court dismissed the complaint and Allred subsequently appealed. The appellate court reversed and remanded, finding that Allred's complaint did not contain evidence of actual or constructive knowledge of the risk of a soccer ball striking her in the head.

### **[WEBFIND](#)**

*Bellinger v. Ballston Spa Central Sch. Dist.*, 871 N.Y.S.2d 432 (N.Y. App. Div. 2008). Bellinger's daughter was injured while playing one-hand touch football at school and brought suit for negligent supervision against the school district. The Defendants moved for summary judgment, claiming that Bellinger had failed to establish a prima facie case, but the trial court denied the motion. However, the appellate court reversed and granted the defendant's motion for summary judgment. It found that, even if Bellinger could demonstrate that supervision was inadequate at the time of the injury, the Plaintiff would have to prove that such lack of supervision was the proximate cause of the injury, which Bellinger could not prove.

### [WEBFIND](#)

*Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist.*, No. L-0236-98, 2008 WL 3890499 (N.J. Super. Ct. App. Div. Aug. 25 2008). A former high school student-athlete filed tort claims against her former coach, the board of education, and other defendants. Besler alleged that she suffered emotional distress from an eating disorder and amenorrhea resulting from the actions of the coach. Additionally, Besler's father filed a § 1983 claim, alleging that the board of education violated his free speech rights at a Board of Education meeting. The jury returned verdicts for Besler on her amenorrhea claim and for her father on his free speech claim, but the Superior Court granted the defendants' motion for a direct verdict on Besler's claim and denied the defendants' JNOV motion and increased the father's damages and prejudgment interest awards. Besler and the defendants appealed. The New Jersey Superior Court affirmed the trial court's decision on Besler and her father's claims, but reversed and remanded the enhanced damage award because there was no statutory basis for an enhanced award for negative tax consequences of non-economic damages.

### [WEBFIND](#)

*Brokaw v. Winfield-Mt. Union Cmty. Sch. Dist.*, No. 07-1328, 2008 WL 4724739 (Iowa Ct. App. Oct. 29, 2008). During a basketball game, Andrew McSorley, an opponent struck Brokaw's son in the head with an elbow. The Brokaw's brought a tort battery claim against the Winfield-Mt. Union Community School District (WMU) and McSorley. Brokaw alleged that WMU knew McSorley was an aggressive player and failed to take adequate steps to prevent such physically aggressive behavior. WMU appealed the trial court's denial of summary judgment. The appellate court affirmed because a cause of action for negligent supervision is cognizable under Iowa law.

### [WEBFIND](#)

*Gilday v. Fegan*, No. D051112, 2008 WL 2811200 (Cal. Ct. App. July 22, 2008). Gilday was injured while competing in a boat race and brought suit for negligence. Fegan moved for summary judgment, alleging that Gilday waived and released liability by signing a waiver, and Gilday could not recover because of assumption of risk. The jury awarded Gilday \$1.9 million, finding that Fegan was negligent. Fegan appealed on the same issues he raised in his motion for summary judgment, but the appellate court affirmed the decision.

*Lincoln v. Canastota Cent. Sch. Dist.*, 861 N.Y.S.2d 488 (N.Y. App. Div. 2008). Lincoln, who was injured while playing basketball outside an elementary school, sued the school district for

negligence for failing to properly maintain the basketball court. The Defendant moved for summary judgment, claiming that it was not negligent and that the Plaintiff could not recover because he assumed the risk of playing on the court. The trial court denied the motion, but the appellate court reversed, finding that the school district's motion for summary judgment could have been granted. The court found that the risks of playing upon an irregular surface are inherent in outdoor basketball activities, so Lincoln assumed the risks of playing on the basketball court.

### [WEBFIND](#)

*Miulli v. Florida High School Athletic Ass'n, Inc., No. 2D07-4613, 2008 WL 4891108 (Fla. Dist. Ct. App. Nov. 14, 2008).* The estate of a high school student-athlete who died during a baseball practice brought a wrongful death suit against the Florida High School Athletic Association (FHSAA), claiming strict liability, negligence per se, and simple negligence. Miulli alleged that the FHSAA was required to adopt bylaws that required all students to pass a medical evaluation prior to participating in interscholastic athletic competition. The FHSAA moved to dismiss the complaint on the ground that a claim regarding any statutory violation must be remedied through administrative proceedings and is not subject to a private right of enforcement against the FHSAA in court. The Florida appellate court affirmed.

### [WEBFIND](#)

*Perry v. N.J. Sports & Exposition Auth., No. L-13703-04, 2008 WL 3287203 (N.J. Super. Ct. App. Div. Aug. 12, 2008).* Perry brought a negligence suit after he was injured when he slipped and fell on ice at the Meadowlands Sports Complex. The jury awarded him \$1.7 million in damages. The New Jersey Superior Court affirmed, finding that Perry presented sufficient evidence from which a reasonable jury could have found that the area on which he slipped was in a dangerous condition and that the Defendant negligently maintained the complex.

### [WEBFIND](#)

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*"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, [email](#). This publication is distributed via email to individuals in the sports field upon request.*

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