

RECENT CASES

Harlem Globetrotters obtain preliminary injunction prohibiting Meadowlark Lemon from using "Globetrotter" name, "Sweet Georgia Brown" song, and "Magic Circle" routine, but not from using other routines or phrase "Clown Prince of Basketball"

In 1978, after 22 years as a member of the Harlem Globetrotters basketball team, Meadowlark Lemon left the Trotters and began organizing a comic basketball team of his own. His team is named "The Bucketees," and it played its first game in December of 1979. At the time Lemon left the Globetrotters, they entered into an agreement concerning the termination of his employment which clearly contemplated that Lemon would be forming his own competitive team thereafter.

However, in a recently filed lawsuit, the Globetrotters have alleged that Lemon and his Bucketees not only compete with the Globetrotters, but also "steal virtually every ingredient from the formula which has made the Harlem Globetrotters an international institution of immeasurable and invaluable dimensions." According to pleadings filed in the California Superior Court last April, Bucketee spectators see a warmup routine, during which the players perform a variety of trick passes to the accompaniment of a rhythmic song, which is "a direct steal" of the Globetrotters' "Magic Circle" warmup routine. The Globetrotters further contended that following the Bucketees' warmup, they begin their exhibition "with the exact same stunt used to commence Globetrotter games" and that the "Bucketees proceed from that point forward with a line-by-line copy of a typical Globetrotters performance."

The Globetrotters' lawsuit seeks an injunction prohibiting Lemon and his Bucketees from performing a confusingly similar imitation of the Globetrotters' performances, including more than twenty comedy basketball routines which the Globetrotters contend were developed by them. The suit also seeks to enjoin Lemon from referring to himself as the "Clown Prince of Basketball," from using the song "Sweet Georgia Brown and from referring to the Globetrotters in any way in advertising or publicity for his Bucketees.

In support of the injunction they seek, the Globetrotters have argued that Lemon's actions violated specific provisions of their termination agreement. The Globetrotters also have argued that Lemon and the Bucketees have engaged in acts of unfair competition by copying the Globetrotters' performances and routines, by referring to the Globetrotters in Bucketee advertising, and by describing Lemon as the "Clown Prince of

Basketball" and as the creative genius of the Globetrotters.

Lemon and the Bucketees responded to those contentions by arguing that Lemon's termination agreement did not prohibit the use of any routines except the "Magic Circle" warmup (which they denied they use) and did not prohibit Lemon's use of the "Clown Prince of Basketball" phrase. Thus, they argued that the Globetrotters should not be permitted to enjoin, under the doctrine of unfair competition, any activities that were not prohibited by the termination agreement. Furthermore, Lemon and the Bucketees argued that they either had not committed, or were no longer committing, any of the acts of which the Globetrotters complained, or that such acts were not acts of unfair competition prohibited by law.

On April 14, 1980, a hearing was held before Judge Jerry Pacht of the California Superior Court on the Globetrotters' application for a preliminary injunction.

One week later, Judge Pacht issued a preliminary injunction granting the Globetrotters some, but not all, of the relief they sought. The injunction prohibits Lemon and his Bucketeers from using the "Magic Circle" routine and the song "Sweet Georgia Brown," and from referring to the Globetrotters in any way.

However, the injunction does not prohibit the Bucketeers from imitating the Globetrotters' performances, nor does it prohibit Lemon from referring to himself as the "Clown Prince of Basketball." The preliminary injunction was not accompanied by a written opinion, and thus Judge Pacht's analysis of the legal issues is not known.

This case is similar, however, to one filed back in 1949 by the Globetrotters' original owner, Abe Saperstein, against another former Globetrotter who had split off from Saperstein and formed his own team which he called the "Famous Globetrotters." *Saperstein v. Grund*, 85 F.Supp. 647 (S.D.Iowa 1949). According to the

judge who tried that case, the use of the name "Famous Globetrotters" caused confusion among sports writers and basketball fans, and for this reason, Saperstein sued to enjoin the alleged "piracy" of the "Harlem Globetrotter" name.

In that case, the defendant argued that Saperstein was not entitled to an injunction, because the words "Harlem Globetrotters" had not acquired a secondary meaning. The court disagreed, however. It held that although "Globetrotters" is a generic word that is not subject to trade name protection in and of itself, its use by Saperstein's team did give it a secondary meaning such that the public believed that it was the name of the team owned and managed by Saperstein. Insofar as the Meadowlark Lemon lawsuit is concerned, the key paragraph of that former Globetrotters case seems to be this:

"The defendant had a right to use all of his resources in developing a team similar to that of the Globetrotters.

[Saperstein] did not have a monopoly on professional basketball teams or on comic antics of the players. The error of the defendant was in continuing the use of a similar name after the clubs came into competition and in permitting the use of advertising that tended to mislead the public in believing that his team was that belonging to [Saperstein's] organization."

Harlem Globetrotters, Inc. v. Meadowlark Lemon, California Superior Court, L.A. No. C315587 (April 21, 1980) [ELR 2:1:1]

Injunction obtained by radio station prohibiting former employee from appearing "in any chicken suit whatsoever" invalidly restricted his right to earn a living and express himself as an artist

The California Court of Appeal has rendered a decision in a case which "poses the simple issue of whether a local radio station may prevent its ex-employee/mascot from wearing a chicken suit." "Silly though the issues appear at first glance," said the court, "the underlying principles are serious. We deal with a conflict between an employer's asserted contract rights and the fundamental rights of an employee to earn a living, even in possible violation of the employer's bargain with him."

The parties to the case are KGB, Inc., a San Diego radio station, and Ted Giannoulas, a former communications student who while employed by KGB made public appearances as a character known as the "KGB Chicken," a costumed chicken performing comic routines. Some time in 1979, Giannoulas stopped working for KGB but continued to make public appearances dressed in a chicken suit. KGB responded by suing him

for alleged breach of his employment contract, unfair competition, servicemark infringement and other causes. Early in the case, KGB sought and obtained a preliminary injunction prohibiting Giannoulas from appearing anywhere in the "KGB Chicken Ensemble" or any 'substantially similar" chicken costume, and prohibiting him from appearing in "any chicken ensemble or suit whatsoever" in San Diego County or any adjacent county or at any public event where a sports team from San Diego appears.

The Court of Appeal has permitted to stand that portion of the preliminary injunction which prohibits Giannoulas from appearing anywhere in the "KGB Chicken Ensemble." However, it has stayed the balance of the injunction, because it has held that an injunction prohibiting Giannoulas from appearing anywhere in any "substantially similar" costume or in certain areas in "any chicken suit whatsoever" invalidly restricted

Giannoulas' rights "to earn a living and to express himself as an artist."

The court noted that it found no precedent defining the respective rights in fictional characters of the artist who plays the role, the employer who finances and assists him, and members of the general public who may choose to imitate aspects of the character in question. "The rights vary from case to case depending on such facts as the contracts in effect and the relief sought," the court observed. In this case, the court reasoned as follows.

Public policy disfavors injunctions restraining the right to pursue a calling. In fact, in California, Business and Professions Code section 16600 provides that contracts which restrain a person from engaging in a lawful profession, trade, or business are void. The court noted that although an employee may be enjoined from breaching an employment contract during the term of the contract,

it and other courts had "grave doubts" about whether such an injunction would be legal beyond the term of the employment contract. In this case, Giannoulas' contract had either expired or been terminated prior to the issuance of the preliminary injunction at issue.

Furthermore, said the court, an injunction restraining the breach of an employment contract may be issued only where the employer will suffer irreparable injury from the breach. In this case, KGB had suffered no injury from Giannoulas' appearances, according to the court. It had not shown, for example, that it had lost listeners.

In addition, KGB had not shown that Giannoulas had misappropriated any of KGB's labor. Said the court, "We are not in a position to determine the relative inputs of KGB and Giannoulas to the KGB chicken concept, but we note the inevitable significance of the performer's contribution to a fluid, changing, clownish role of the

type here considered. It is created spontaneously through gestures, movements and responses to changing situations. KGB cannot be said to own such a routine."

Giannoulas' employment contract did give KGB an exclusive right to the specific KGB Chicken, an antic chicken bearing the KGB insignia, colored in a definite manner, and appearing on behalf of the station. The contract did not, however, give KGB a monopoly of all appearances by Giannoulas in any chicken costume, the court held.

In response to KGB's servicemark claim, the court held that a person appearing in a chicken costume cannot be a service mark.

Of potential significance to the entertainment industry generally was the court's conclusion that actors have protected rights in roles which they play and develop. On this issue the court said,

"There is precedent ... establishing an actor has a strong claim to exclusive monopoly of a fictional role he has created. The employer may also have rights in such role, particularly when he seeks to assert them against infringing third parties rather than against the employee/actor. However the employer has a weak case against his employee when he seeks to prevent future performances, unless he can point to a specific contract conferring such rights. His naked claim of having assisted the development of the role is not enough; presumably he has been compensated for that assistance by the revenues from performances while the employee still worked for him. Should he desire more, in the nature of continuing royalties or control of the character, then he must bargain for that control. Further, in California [Business and Professions Code] section 16600 limits his available remedies."

KGB, Inc. v. Giannoulas, Cal.Ct.App., 4 Civ. 22129
(April 21, 1980) [ELR 2:1:2]

**Lanham Act may protect entertainment characters,
though actual confusion necessary to recover dam-
ages, Federal District Court holds in case alleging in-
fringement of DC Comics' "Aquaman" and "Plastic
Man"**

In a decision that appears to be one of first impression, a Federal District Court in New York City has held that the Lanham Act may protect entertainment characters. The decision was rendered in a case filed by DC Comics, the owner of the cartoon characters "Aquaman" and "Plastic Man," against Filmation Associates, the television production company.

For several years, Filmation produced "Aquaman" and "Plastic Man" television series pursuant to a contract with DC Comics. In 1978, however, Filmation commenced production of two animated series of its own titled "Manta and Moray" and "Superstretch." DC Comics contended that the "Manta and Moray" characters were substantially similar to the characters in "Aquaman" and that "Superstretch" was substantially similar to "Plastic Man." As a result, DC Comics filed suit against Filmation Associates alleging trademark infringement under the Lanham Act, unfair competition under New York state law, breach of contract, and breach of confidential relationship. A jury returned a verdict in favor of DC Comics for \$389,091.75 on its "Aquaman" claims and \$817,765.50 on its "Plastic Man" claims.

In a post-trial motion addressed to the trial court judge, Filmation sought judgment in its favor notwithstanding

the jury's verdict, or alternatively, a new trial. In support of its motion, Filmtation argued that neither the Lanham Act nor state unfair competition law protects characters. The court agreed that although DC Comics' remedy was more properly under the Copyright Act, the Lanham Act may protect characters as well. The court reasoned that where the product being sold is entertainment, characters in that entertainment product can amount to trademarks, because those characters can come to symbolize the entertainment or its producer in the public mind. In such cases, the Lanham Act would protect the names, physical appearances and costumes of the characters, but not their physical abilities or personality traits. The court also held that state unfair competition law was not preempted by the Copyright Act, because unlike the Copyright Act, New York law requires a showing of misappropriation of economic value and public

confusion, and thus it protects a right which is not equivalent to any right protected by copyright.

Nevertheless, the court did grant Filmation's motion for judgment notwithstanding the verdict on DC Comics' "Aquaman" claims. It did so because it held that there had been insufficient evidence to establish that Filmation had used anything it had acquired from DC Comics in confidence in the production of Filmation's own "Manta and Mora" series. The court also ruled that the evidence had not supported an award of damages on DC Comics' "Aquaman" claims, because there had been no showing of actual public confusion between that character and the characters in "Manta and Mora" as required by the Lanham Act and unfair competition law. In addition, the court ruled that there had been no evidence that Filmation had caused DC Comics any damages at all in connection with "Aquaman," because DC Comics had not proved that it lost any television or licensing

opportunities for "Aquaman" as a result of the existence of "Manta and Mora."

The court also held that the evidence did not support an award of damages on Lanham Act or unfair competition theories in connection with DC Comics' "Plastic Man," because there had been no showing of actual confusion between that character and Filmation's "Superstretch."

On the other hand, the court ruled that there had been evidence of actual damages caused by Filmation's "Superstretch" which were supportable on DC Comics' breach of contract and breach of confidential relationship theories. The \$817,765.50 awarded by the jury was excessive, however, the court ruled. Although there was evidence that DC Comics had lost television and licensing revenues on account of Filmation's actions, the court held that television losses could not have exceeded \$200,000 for the one season involved, and licensing

losses could not have exceeded \$21,339. Accordingly, the court ordered that Filmation be given a new trial limited to the issue of damages, unless DC Comics agreed to a reduction in its recovery to \$221,339.

The court also held that DC Comics was entitled to an injunction, though not attorneys' fees, an accounting, or destruction of Filmation's materials.

DC Comics v. Filmation Associates, CCH Copyright Law Reports, Para. 25,144 (S.D.N.Y. 1980) [ELR 2:1:3]

Copyright to song "I Love New York" was not infringed by performance of parody on NBC's "Saturday Night Live"

"In the dark days of 1977, when the City of New York teetered on the brink of bankruptcy and its name had become synonymous with sin," the New York Department of Commerce commissioned a television advertising campaign designed to bring the nation assurances from the stars of Broadway that all was well with the city, and that they loved it. The campaign featured a "brief but exhilarating musical theme" written by Steve Karmen which included the phrase "I-I-I-I-I Love New Yo-o-o-o-rk!"

In 1978, a comedy sketch was performed on NBC's "Saturday Night Live" in which the cast portrayed the mayor and members of the Chamber of Commerce of the biblical city of Sodom. In the sketch, the characters were seen discussing Sodom's poor public image and the effect this was having on the tourist trade. A new advertising campaign was then unveiled to combat Sodom's

poor image, the highlight of which was the song "I Love Sodom" sung to the tune of "I Love New York."

The owner of the copyright to "I Love New York" "did not see the humor of the sketch" and sued for copyright infringement. The original song "I Love New York" consisted of a 45-word lyric and 100 measures. "I Love Sodom" only made use of four notes from the original and the words "I Love." Nevertheless, a Federal District Court in New York City has held that the portion of the original song copied was the heart of the song so that "I Love Sodom" was easily recognizable as having been taken from the original song, and that therefore the amount copied was capable of rising to the level of copyright infringement.

On the other hand, the court also held that Saturday Night Live's sketch was clearly an attempt to satirize the way in which New York City had attempted to improve its somewhat tarnished image through the use of a slick

advertising campaign, and as such fell within the definition of a parody. The court found that the sketch did not compete with or interfere with the marketability of "I Love New York."

Accordingly, the court held that the Saturday Night Live sketch was a "fair use" of "I Love New York," and thus did not infringe its copyright.

Elsmere Music, Inc. v. National Broadcasting Company, 482 F.Supp. 741, CCH Copyright Law Reports, Para. 25,140 (S.D.N.Y. 1980) [ELR 2:1:4]

Johnny Carson is granted summary judgment in libel action against tabloid

Entertainer Johnny Carson and his second wife, Joanna Holland Carson, have been granted summary judgment

by a Federal District Court in Illinois in their action claiming that an article published in the April 9, 1972 issue of the National Insider was libelous.

The article purportedly was based on facts contained in a previously published newspaper article about Carson. But both articles were erroneous in several respects. First, it was suggested that Carson had moved his television show from New York to Los Angeles in order to be closer to Ms. Holland, although she did not live in California at that time. The court pointed out that the National Insider had not investigated the truth of this statement. The statement that Ms. Holland had "broken up" Carson's prior marriage was also shown to be incorrect. And alleged conversations between Carson and NBC executives about the move to Hollywood apparently were fabricated. The court, citing *St. Amant v. Thompson*, 390 U.S. 727 (1968), ruled that "[q]uotes

that are the product of the writer's imagination are written in reckless disregard for the truth."

The court concluded that the tabloid had acted with reckless disregard for whether the inaccurate matters published were false or not, that the actual malice standard required for public figures had been met, and that special damages did not have to be proved. Summary judgment was therefore granted to Carson and Holland on the issue of liability.

Carson v. Allied News Co., 482 F.Supp. 406 (E.D.Ill. 1979) [ELR 2:1:4]

California Supreme Court rules that Vincent Bugliosi did not defame or invade privacy of man mentioned in Bugliosi's book "Helter Skelter"

Former deputy district attorney Vincent Bugliosi has won the third and final round in a libel and invasion of privacy lawsuit filed against him and the publishers of his book, "Helter Skelter," which is about the Charles Manson family and the Tate-Labianca murders. The suit was filed by James Forsher, a young community health worker mentioned in connection with the book's account of the disappearance of Ronald Hughes, a Manson case defense attorney who was later found dead.

It was Forsher's contention that the "cumulative impact" of the book implied that he was involved in the murder of Hughes, and that his identity was disclosed in the book with reckless disregard of the fact that its publication would be offensive to him. The trial court dismissed the suit, ruling that Forsher's complaint failed to state claims for libel or invasion of privacy. A California Court of Appeal reversed the dismissal (ELR 1:11:4). The California Supreme Court granted a hearing,

thereby vacating the Court of Appeal decision. And the Supreme Court has now affirmed the trial court's dismissal of the case.

In connection with Forsher's libel claim, the Supreme Court quoted at length the sections of "Helter Skelter" in which Forsher was mentioned. The court then ruled that "the book neither expressly nor by fair implication charges [Forsher] with killing or aiding or abetting the killing of Hughes." As a matter of law, the court explained, it does not matter that some person might, "with extrasensitive perception," understand a defamatory meaning. "Rather," said the court, "the test ... is whether by reasonable implication a defamatory meaning may be found in the communication." In this case, it could not.

The court also pointed out that Forsher had failed to plead any special damages such as injury to his property, business, trade, profession or occupation. Without such special damages, Forsher failed to plead a cause of

action for libel, because the complained of passages of Bugliosi's book were not libelous on their face. Even if Forsher's explanatory pleading had cast a libelous meaning on those passages, without special damages he had not stated a claim.

The Supreme Court also ruled that "Helter Skelter" did not invade Forsher's privacy. Forsher admitted that Hughes' disappearance was newsworthy. In addition, the court held that the book's mention of Forsher was not offensive, and the depth of the intrusion into his life, if any, was "miniscule." The book did not treat Forsher in any great detail or exaggerate the importance of his role in the events reported. Furthermore, the court ruled that the disclosure of Forsher's identity did not affront any significant state interest." Indeed, the court said that publication of the book "could have elicited leads which might have explained Hughes' death in a more certain manner."

Forsher v. Bugliosi, 26 Cal.3d 792 (1980) [ELR 2:1:5]

Basketball team owner remains liable for deferred compensation owed to Zelmo Beaty, despite sale of club and assignment of Beaty's contract to another team

A contractual obligation to pay deferred compensation to a basketball player may be enforced against a team owner despite his sale of the club and the subsequent assignment of the player's contract to another team, a California Court of Appeal has held.

Zelmo Beaty's 1969 contract with James Kirst, the owner of the Los Angeles franchise of the American Basketball Association, provided that Beaty would receive deferred compensation of \$300,000 payable in 10 annual installments of \$30,000 beginning in January of

1975. (General Insurance Company of America was the surety on a bond executed to assure payment.) Kirst sold the team in 1970 and Bill Daniels, the new owner, assumed Kirst's obligations to Beaty. Daniels moved the franchise to Utah and then assigned all of his interests to Mountain State Sports, Inc. (the Stars).

The Stars and the Spirits of St. Louis Basketball Club subsequently agreed to combine certain assets and liabilities. The Spirits and Ozzie Silna (allegedly a general partner of the Spirits) agreed to pay the compensation due Beaty in January of 1976, and the Spirits agreed to pay all subsequent installments of Beaty's deferred compensation. When Beaty failed to receive any payments after the 1976 payment, he brought an action for breach of contract against the various teams and owners involved. Kirst and General Insurance then cross-complained against Silna.

The trial court dismissed Kirst's and General's cross-complaint against Silna, and that dismissal has been upheld on appeal. Kirst had contended, among other things, that he was a third-party beneficiary of the contract combining the assets of the Stars and the Spirits and was therefore entitled to enforce Silna's obligation to Beaty. But the court found that Silna had not assumed this obligation and that even if he had, Kirst would not qualify as a third-party beneficiary because the contract was designed to protect only Daniels and the Stars from liability to Beaty but did not give Kirst any legal right to enforce its terms for his own benefit.

The court noted that Daniels may be liable to Kirst and General for the amounts they owed to Beaty, but ruled that insofar as Beaty is concerned, Kirst and General were the primary obligors to Beaty and that "[a]bsent a novation Kirst's and General's liability to pay deferred

compensation to Beaty has not and cannot be transferred or assigned to others."

Kirst v. Silna, 103 Cal.App.3d 759 (1980) [ELR 2:1:5]

Horse racing regulations upheld in decisions in three different states

In 1977, a thoroughbred race horse was involved in a "ringer" scandal. The horse, a champion from South America, was entered in a race in New York under the name of a lesser thoroughbred, thereby affecting the betting odds on the race and enabling the scheme's perpetrators to benefit substantially. The horse's owner subsequently sought to race the horse at racetracks in the State of New York. But the New York Racing Association and the New York State Racing and Wagering

Board rejected the owner's application on the ground that the horse was not properly registered with the Jockey Club, a private nonprofit corporation in the business of registering the pedigrees of all thoroughbred horses in the United States, Canada and Cuba.

The Appellate Division of the New York Supreme Court has affirmed a lower court judgment which ordered The Jockey Club to hold a hearing on the horse owner's request to reregister the horse under its true name and pedigree and has dismissed his claims against the Board and the Association as premature. The court pointed out that "[i]t has long been held that where a private organization has procedures for internal review of its decisions ... those procedures must be exhausted before seeking redress from a court." The Jockey Club did provide such review procedures. Further, requiring the registration of horses with The Jockey Club in order to determine eligibility for racing was not found to be an

unconstitutional delegation of authority by the Board and the Association.

A Texas Court of Appeals has held that The American Quarter Horse Association's refusal to register a horse whose markings did not conform to the Association's rules did not deny due process to, or unfairly discriminate against, the co-owners of the horse. A lower court judgment finding that the Association had acted in accordance with its rules and had provided the plaintiffs with notice of a hearing and an opportunity to contest the decision was therefore affirmed.

A Florida Court of Appeals has upheld the right of Tropical Park, Inc. to exclude a patron from its premises allegedly because of known underworld connections. The court dismissed the plaintiffs action and reversed a temporary injunction requiring the defendant to admit the patron. In doing so, the court held that "[a] commercial establishment, particularly one of such a sensitive

nature as a parimutuel operation, continues to possess the common law right to absolutely exclude a patron in this State." The court noted that this common law right to exclude a patron had not been abrogated by any Florida statute.

Morgan v. New York Racing Association, 421 N.Y.S.2d 249 (N.Y.App. 1979); Adams v. American Quarter Horse Association, 583 S.W.2d 828 (Tex.App. 1979); Tropical Park, Inc. v. Jock, 374 S.2d 639 (Fla.App. 1979) [ELR 2:1:6]

Briefly Noted:

Copyright and Trademark.

A Federal District Court in Atlanta has held that the sale of fewer than 2% of the issues of a particular edition of the newspaper *Screw* in the state of Georgia "represents a significant portion of the . . . total circulation of *Screw*," and that therefore the courts of Georgia do have personal jurisdiction over the paper's publishers. The decision was rendered in a copyright and trademark infringement lawsuit filed by Pillsbury in response to a mock advertisement published in *Screw* which featured Pillsbury's "Poppin' Fresh" and "Poppy Fresh" trade characters engaged in a variety of sexual activities. The court also denied the publishers' motion for a change of venue to New York City.

The Pillsbury Company v. Milkey Way Productions, Inc., CCH Copyright Law Reports, Para. 25,139 (N.D.Ga. 1978) [ELR 2:1:6]

Fairness Doctrine.

A Federal Communications Commission decision that the American Security Council Education Foundation had not presented prima facie evidence that CBS violated the fairness doctrine has been upheld by a Federal Court of Appeals in the District of Columbia. ASCEF contended that CBS gave imbalanced coverage to national security issues in its news programming. The FCC ruled, however, that the complaint was not based on a particular, well-defined issue and consequently there was no basis for determining "whether the public received a reasonable balance of conflicting views." The lack of specificity of the issue raised also would have presented a substantial burden to CBS if the broadcaster had been required to respond to the Foundation's complaint.

American Security Council Education Foundation v. Federal Communications Commission, 607 F.2d 438 (D.C.Cir. 1979) [ELR 2:1:6]

Television Advertising.

An advertising salesman for WBZ-TV in Boston allegedly represented to a marketing company that if it advertised with WBZ, the station would assist in the promotion of the company's "Miracle Painter" and "Miracle Slicer." Advertisements for these products were aired in the spring of 1977. On a news broadcast presented during that time, WBZ's consumer affairs reporter commented unfavorably about the "Miracle Painter." The marketing company refused to make

further payments under its contract and WBZ sued to recover the payments due.

A lower court order granting summary judgment to the station has been reversed by the Supreme Court of Rhode Island and the case has been remanded for further proceedings. The court found that the meaning of the statements made by WBZ's salesman in negotiating the advertising contract was a genuine issue of material fact and that a determination of whether the salesman's representation was a basis of the bargain was beyond the trial judge's authority in ruling on a motion for summary judgment.

Westinghouse Broadcasting Co., Inc. v. Dial Media, Inc., 410 A.2d 986 (R.I. 1980) [ELR 2:1:7]

Film Distribution.

In a suit by Sunn Classic Pictures, a motion picture distributor, against Budco, a movie theater chain, for rental fees allegedly due, the distributor joined Ray Hackie, Inc., a California corporation in the business of preparing film prints for shipping and delivery, for allegedly failing to deliver a complete print of the film "The Lincoln Conspiracy" to one of Budco's theaters in Pennsylvania. A Federal District Court in Pennsylvania held Hackie to be subject to in personam jurisdiction under the Pennsylvania long-arm statute, even though Hackie's only contact with that state was a letter it received from Sunn notifying Hackie that prints of the film were to be sent to various distribution services, including the Pittsburgh Film Service of McKees Rock, Pennsylvania. The court found this contact to be sufficient, even though Hackie was employed to deliver the prints to Comet

Freight Systems, an agent of Sunn, in California, and Hackie did not duplicate or ship a print of "The Lincoln Conspiracy" to the Pennsylvania theater or do any other business in Pennsylvania.

Sunn Classic Pictures, Inc. v. Budco, Inc., 481 F.Supp. 382 (E.D.Penn. 1979) [ELR 2:1:7]

Copyright.

Tams-Witmark Music Library and its president have been held subject to in personam jurisdiction in Pennsylvania in a suit by a licensee of the "dramatico-musical" work Porgy and Bess for copyright infringement, unfair competition, and breach of contract by reason of defendant's alleged consent to performances of musical

selections of the Gershwin opera by the Philadelphia Orchestra during the term of the plaintiffs license.

Donner v. Tams-Witmark Music Library, Inc., 480 F.Supp. 1229 (E.D.Penn. 1979) [ELR 2:1:7]

Copyright.

A nightclub owner was held to have infringed the copyrighted musical compositions "Daydreams About Night Things" and "Whole Lot-ta Shakin' Goin' On" by allowing public performances of the songs at his nightclub without permission. A Federal District Court in Nebraska granted summary judgment in favor of the copyright owners and ordered defendant restrained from further infringement.

Chess Music, Inc. v. Bowman, 474 F.Supp. 184
(D.Neb. 1979) [ELR 2:1:7]

Constitutional Law.

A municipal ordinance which prohibited the establishment of any adult motion picture theater within 1,000 feet of any building containing a residential, dwelling or rooming unit and which provided for waiver of such prohibition upon the filing of a petition indicating the approval of 51% of the persons owning, residing or doing business within a radius of 1,000 feet of the theater, was held to violate the Equal Protection Clause by a Michigan Court of Appeals. The court, in distinguishing *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), found that the ordinance "had the effect of

suppressing, or greatly restricting access to, lawful speech" and, therefore, could not stand.

City of Ferndale v. Ealand, 286 N.W.2d 688
(Mich.App. 1979) [ELR 2:1:7]

Constitutional Law.

Newspaper reporters are entitled to the same access and, within reasonable limits, access with equal convenience to the official news sources in a district attorney's office as are accorded to representatives of other news organizations, a Court of Civil Appeals in Texas has held. Such access had been denied to the publisher of a newspaper and its reporters by an Amarillo district attorney who required them to make appointments which were not required of representatives of other news

organizations. The Texas court found the district attorney's action to violate the First Amendment and reversed a judgment denying a temporary injunction.

Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362 (Tex.Civ.App. 1979) [ELR 2:1:7]

Previously Reported:

Greenberg v. CBS (ELR 1:15:4) was settled on April 24, 1980, in the midst of trial. Dr. Greenberg dismissed his libel lawsuit in exchange for a written statement from CBS which read, in part, "If CBS' broadcast of 'Over the Speed Limit' has led to any assumptions and conclusions by any members of the viewing audience which were not intended, it is unfortunate. Dr. Greenberg was not a focus of the segment and the mention of Dr. Greenberg's

name by an interviewee was incidental to the purpose of the report and as is the case in any such interview did not represent the views of the correspondent, producer or editors with respect to his medical practice. CBS made the broadcast in good faith and without any intention to impugn the character of Dr. Greenberg. CBS regrets any embarrassment that Dr. Greenberg feels he sustained as a result of that broadcast." The settlement did not require the payment of any money by CBS to Dr. Greenberg.

The following case, reported in a prior issue, has been published: *Metromedia v. San Diego*, 26 Cal.3d 848 (ELR 1:24:7).

DEPARTMENTS

In the Law Reviews:

Are the Compulsory License Provisions of the Copyright Law Unconstitutional? by Bruce Schaffer, 2 Communications and the Law 1-24 (1980)

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