

RECENT CASES

Constitutionality of Ohio blind bidding statute is upheld by Federal District Court

A Federal District Court in Ohio has upheld the Constitutionality of that state's anti-blind bidding statute. The law, which was enacted in June of 1978, prohibits distributors from soliciting bids for their films in Ohio before Ohio exhibitors have had an opportunity to "trade screen" them; it prohibits minimum payment guarantees under certain circumstances; it prohibits distributors from requiring advances to be paid more than 14 days before films are actually available for exhibition; and it regulates the bidding procedure itself so as to provide Ohio exhibitors with liberal notice and inspection rights.

Shortly after the law was enacted, ten major motion picture distributors filed suit against the governor of Ohio (and certain other state officials) seeking a declaration that the law was unconstitutional. They contended the law was unconstitutional on the grounds that it denied them due process, infringed First Amendment free speech rights, conflicted with the Commerce Clause of the U.S. Constitution, and was preempted by the Federal Copyright and Antitrust Acts.

In an 85-page opinion, Federal District Judge Robert M. Duncan has rejected all of the distributors' contentions. The court rejected the distributors' due process claims, saying that the act was intended to protect "legitimate and substantial interests of the State of Ohio." These interests included maximizing the financial return to exhibitors in Ohio, discouraging distributor practices which have driven up the price of tickets, permitting theater owners to avoid films which may offend the

"sensibilities" of their patrons, putting independent distributors on a more equal footing with the majors, and balancing the bargaining power between Ohio exhibitors and the major distributors.

The court rejected the distributors' First Amendment claims on the grounds that the act is "clearly content-neutral." Although the act may result in some delay between the completion of a film and the time it may be exhibited in Ohio (because bidding may not take place until a film is completed), the court found that this delay would be unlikely to exceed four weeks and was outweighed by the state's interests. The act will not prevent motion pictures from being shown in Ohio, nor will it have a "chilling effect" on financial investment in films, the court found.

The court rejected the distributors' claim that the act conflicted with the Commerce Clause, saying that although conflicting state regulations could be an

unconstitutional burden on interstate commerce, the anti-blind bidding statutes of Ohio and several other states were 'quite similar" and thus were not such a burden. The court also held that the Ohio act does not discriminate against interstate commerce, because if a distributor were located in Ohio, it too would be subject to the same requirements as all other distributors.

The court rejected the distributors' contention that the Ohio act was preempted by the Federal Copyright Act. The court held that the two laws do not provide the same sort of protection, and that states may regulate the manner in which copyrighted articles are marketed even though a copyright is a federal license.

Finally, the court rejected the distributors' contention that the Ohio act was preempted by the Federal Antitrust Acts. It held that the Ohio act does not require or authorize any conduct which is prohibited by federal antitrust law.

The Motion Picture Association of America has announced that the distributors will appeal.

Allied Artists Pictures Corp. v. Rhodes, Case No. C-2-78-1031 (S.D. Ohio, July 9, 1980) [ELR 2:7:1]

Copyright Royalty Tribunal determines allocation of cable television royalties among groups of claimants

The Copyright Royalty Tribunal has completed Phase I of the first cable royalty distribution proceeding by determining the allocation of those royalties among the several groups of copyright owners who filed claims for royalty shares. The Tribunal has decided that the \$14,644,871.44 available for distribution at this time should be allocated as follows:

- 75% to the Motion Picture Association of America, the Christian Broadcasting Network, and other program syndicators,

- 12% to the Joint Sports Claimants and National Collegiate Athletic Association,

- 5% to the Public Broadcasting Service,

- 4.5% to the Music Performing Rights Societies,

- 3.25% to United States and Canadian Broadcasters, and

- 0.25% to National Public Radio.

The Tribunal expressly determined that no royalties should be allocated to:

- broadcasters for the cable transmission of their broadcast day as a compilation,

- broadcasters who have acquired exclusive rights to syndicated programming in particular markets, even when cable systems bring those programs from other markets back into the broadcasters' exclusive markets,

- copyright owners of cartoon characters, or
- commercial radio.

The Tribunal found that no mathematical formula or theory provided a satisfactory basis for distributing the royalties. Instead, it found that it had to consider a number of factors. The Tribunal reported that it found the most important factors to be,

- the harm caused to copyright owners by cable transmissions of their works,
- the benefit derived by cable systems from being able to transmit copyrighted works, and
- the market value of the works transmitted.

The Tribunal said it also considered the quality of copyrighted programs and time-related considerations.

These determinations were announced by the Tribunal in what it referred to as a "summary statement" or "notice" which it expressly stated was not its "final determination" or "final decision." Phase II of the proceedings,

which were scheduled to commence August 18, 1980, will be for the purpose of allocating cable royalties to individual claimants within each group. The Tribunal's final decision will be rendered at the conclusion of Phase II. That decision will contain - as its summary statement concerning Phase I did not - the Tribunal's detailed discussion of the factors it applied in making its allocations, as well as the relative weights accorded to those factors.

Cable Royalty Distribution Proceeding, Copyright Royalty Tribunal, 45 Federal Register 50621 (dated July 25, 1980; published July 30, 1980) [ELR 2:7:2]

Arbitration award is confirmed in favor of Muhammad Ali against ABC for legal expenses incurred by

Ali in defense of libel lawsuit arising out of broadcast of interview by Howard Cosell

In March of 1975, Muhammad Ali was interviewed on video-tape by ABC's Howard Cosell concerning the Ali-Wepner heavyweight championship fight held a few days earlier. The fight had been a controversial one, and Ali had been critical of Anthony Perez, the referee. During the interview, Cosell had pursued this subject vigorously and provocatively.

Broadcast of the interview the following day triggered a libel lawsuit by Perez against Ali. A jury trial resulted in a victory for Ali, and the judgment was affirmed on appeal. The successful defense of Perez' suit cost Ali \$193,352 in legal expenses.

Ali was a member in good standing of AFTRA. The AFTRA Code, which ABC had signed, provided that the Producer of a program would indemnify a performer

against "any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees)" arising out of "acts done or words spoken by Performer at Producer's request." Ali had been paid \$5,000 for the interview, and claimed that his statements about Perez had been made at Cosell's request. Therefore, Ali asked ABC to reimburse him for the legal costs he incurred in defending Perez' suit.

When ABC refused to pay, Ali instituted arbitration proceedings under the AFTRA collective bargaining agreement. (ABC's attempt to enjoin arbitration failed. 434 F.Supp. 1108 (S.D.N.Y. 1977), aff'd, 573 F.2d 1287 (2d Cir. 1977).) The three member arbitration panel, by a divided vote (ABC'S selectee dissenting), found ABC liable to Ali. ABC then sought to set aside the award, and Ali crosspetitioned for its confirmation. Ali has won again, and a judgment in his favor has been entered against ABC for the full \$193,352.

ABC challenged the arbitration award as unsupported by factual evidence; as reached on faulty legal conclusions; and as unsupported by the AFTRA Code.

The United States Supreme Court has held that courts should not review the merits of arbitration decisions, because decisions of arbitrators appointed pursuant to collective bargaining agreements are to be final and binding on the parties. Nevertheless, the Federal District Court to which ABC presented its contentions made "a careful scrutiny of the arbitration record," and that scrutiny, the court said, established that the decision of the arbitrators was rational. The court noted the following points in particular.

ABC claimed it was not responsible for Ali's legal expenses, because the AFTRA Code did not obligate producers to indemnify performers for legal actions resulting from "ad libs." ABC contended that Ali's remarks about Perez had been ad libs. The arbitrators,

however, found that Ali's statements about Perez "were induced, expected and planned by purposeful inquiry by Cosell." The court agreed that this was a "permissible view of the evidence."

Furthermore, both the arbitrators and the court emphasized that the interview was not actually broadcast until the next day, after ABC reviewed the tape and had edited out some portions. The court held that the arbitrators could rationally conclude, as they did, that when ABC broadcast the interview with full knowledge of its contents and with full power and opportunity to delete parts of it, ABC abandoned any logical claim that Ali's statements about Perez had been unauthorized.

American Broadcasting Companies, Inc. v. Ali, 489 F.Supp. 123 (S.D.N.Y. 1980) [ELR 2:7:2]

FCC rules that network broadcasts of United Way public service announcements during National Football League games did not violate the Fairness Doctrine

During telecasts of National Football League games, the ABC, CBS and NBC television networks often present 60-second public service announcements depicting football players visiting various programs and agencies funded by the United Way. The "tag" line on many announcements states that the United Way "works for all of us."

The Media Access Project, on behalf of the National Committee for Responsive Philanthropy, filed a complaint with the FCC alleging that the networks violated the Fairness Doctrine by broadcasting the announcements. The NCRP's position is that the announcements endorse the United Way and present only one side of a

"controversial issue of public importance, namely 'whether the United Way of America's system of collecting and distributing funds serves all elements of society.'" NCRP contended that there is considerable controversy over United Way's alleged monopoly of workplace donations via payroll deductions, its allocation of funds, and its alleged avoidance of controversial charities. It therefore sought to require the networks to balance their programming in this area by presenting opposing viewpoints.

The FCC has concluded that ABC, CBS and NBC had not been unreasonable in their determination that the challenged announcements did not discuss in any direct or meaningful way the possibly controversial procedures of the United Way. Characterizing the announcements as "institutional advertising" presenting a favorable image of the United Way, the FCC denied the NCRP's complaint.

In re Complaint of National Committee for Responsive Philanthropy v. ABC, CBS and NBC, FCC 80-381 (June 25, 1980) [ELR 2:7:3]

Cable television operators are not immune from inquiries into possible antitrust violations

A Federal Court of Appeals has reversed the dismissal of an antitrust action against a cable system brought by a Texas television station and has remanded the case for trial.

The suit stems from a cable television company's refusal to carry the signal of a UHF television station owned by the Midland Telecasting Company. In 1967, the city of Odessa, Texas granted Community Cablevision Company (CCC) the exclusive right to maintain a

cable franchise in the Odessa area. Among CCC's owners were the operators of two VHF television stations located in or near Odessa.

CCC carried the signals of the three VHF stations in the market, but repeatedly refused to carry Midland's UHF station. Midland was forced to halt broadcasting for two years beginning in 1971, and once again in 1974.

Midland then filed suit in Federal District Court, claiming that CCC's refusal to carry its signal prevented the station from attracting advertisers and obtaining a network affiliation and thus, made it financially impracticable to continue operations. Midland alleged that CCC's actions were a calculated effort to eliminate its station from the Odessa market, and amounted to an unlawful combination and conspiracy to restrain competition in violation of the Sherman Antitrust Act.

In granting a motion by CCC for summary judgment, the District Court found that CCC was immune from antitrust scrutiny as a result of federal regulations governing cable television.

The Court of Appeals has disagreed, however. A key factor in the Court's decision is the judiciary's traditional reluctance to permit exemptions from antitrust investigations in the absence of an explicit provision granting immunity. It is crucial, the Court reasoned, that antitrust immunity be implied only when it is necessary to "permit the regulatory scheme to function."

Such is not the case here. The mere existence of federal regulations governing cable television is not sufficient to afford CCC antitrust immunity, the Court ruled. Citing the case of *United States v. RCA*, 358 U.S. 334 (1959), the Court stated that the Federal Communications Commission had not "intended to prevent enforcement of the antitrust laws" when it issued rules

governing broadcasting. Ultimately, the Court found no reason to believe that cable television regulations and antitrust scrutiny cannot coexist.

The Court also found that the District Court erred in denying Midland standing to sue. Midland had alleged that its economic injury was the direct result of CCC's improper refusal to deal. Since such harm is precisely the type that antitrust laws are intended to prevent, Midland should have been permitted to sue for damages, the Court held.

Midland Television Company v. Midessa Telecasting Company, Inc., 617 F.2d 1141 (5th Cir. 1980) [ELR 2:7:3]

California Court of Appeal rules that owners of the La Costa resort are entitled to a trial in their libel suit against Penthouse magazine

In March 1975, Penthouse magazine published an article accusing the owners of Rancho La Costa, a plush resort near San Diego, of being members of organized crime. Among other things, the article charged the hotel's owners with involvement in the Watergate scandal, securities frauds amounting to \$50 billion and illegal use of Teamster loans.

La Costa responded to the story by filing a libel suit in Los Angeles Superior Court. At issue was whether the resort owners were public figures or private citizens. To state a cause of action for libel, a private individual need only show that a defamatory falsehood was potentially damaging. A public figure bears a much greater burden. He must show that a defamatory statement was

published with knowledge of its falsity or with reckless disregard for whether it was false or not. The court issued a summary judgment declaring that La Costa's owners were public figures and that the Penthouse article was therefore privileged under the First Amendment's guarantee of freedom of the press.

The California Court of Appeal has ordered the judgment vacated, however. It determined that the evidence did not support the finding that La Costa's owners were public figures. The fact that one attracts publicity or attention does not alone alter one's status as a private individual. The key factor is whether an individual "voluntarily and actively" seeks to influence the public's opinion on certain issues. Furthermore, the court rejected the claim that the La Costa corporation is a "public figure" merely because it sells "services" to the public, and because it advertises those services. This does not give a business such as La Costa a greater

power to influence the public on issues of interest, the court reasoned.

In addition, the court found that the "evidence" tending to show that La Costa's owners were "gangsters" was conclusionary and mostly third and fourth-hand hearsay. Nearly all of the material was nothing more than negative publicity. There was no first-hand evidence of criminal conduct to support Penthouse's accusations.

Rancho La Costa Inc. v. The Superior Court of Los Angeles County, 106 Cal.App.3d 646 (1980) [ELR 2:7:4]

Paperback edition of the book "Helter Skelter" created new cause of action for libel by Manson attorney

A judgment dismissing a defamation action against Vincent Bugliosi, the author of "Helter Skelter" has been reversed by a California Court of Appeal, which has ruled that the action was not barred by the Uniform Single Publications Act.

Irving Kanarek, an attorney for Charles Manson, brought an action for libel against Bugliosi in 1975 alleging that references to him in the hardcover edition of "Helter Skelter" were defamatory. This action was ordered dismissed by the trial court in July of 1976. In September of 1976, Kanarek brought another action, this time alleging that he had been defamed by the paperback edition of the book.

The Court of Appeal observed that the Uniform Single Publication Act (California Civil Code Section 3425) provides "No person shall have more than one cause of action for damages for libel ... founded upon any single publication or exhibition or utterance, such as any one

issue of a newspaper or book or magazine." Although noting the lack of any California case directly on point, the court determined that, based on the history and purpose of the statute, a republication of a book in paperback was a new "issue" and that a new action for damages could be maintained. A similar conclusion has been reached recently by a New York court in *Rinaldi v. Viking Penguin, Inc.*, 425 N.Y.S. 2d 101 (1980) (see ELR 2:3:4).

The California Court of Appeal also found that the judgment of dismissal of the first action was not a bar to the filing of the second action since the merits of Kanarek's case had not been heard and decided previously. Therefore, the trial court was directed to enter an order overruling Bugliosi's demurrer.

Kanarek v. Bugliosi, Cal.Ct.App., 2 Civ. 56558 (July 17, 1980) [ELR 2:7:4]

New Jersey Supreme Court rules that art gallery need not relinquish possession of long-lost Georgia O'Keeffe paintings unless the artist establishes grounds for avoiding the applicable statute of limitations

In 1976, Georgia O'Keeffe brought an action against Barry Snyder (doing business as the Princeton Gallery of Fine Arts) to recover possession of three of her paintings which had been missing, and presumed stolen, for 30 years. The paintings in question, "Cliff," "Seaweed," and "Fragments," had disappeared from a gallery operated by O'Keeffe's late husband Alfred Steiglitz. The loss of the paintings was not reported at the time, apparently because of O'Keeffe's doubts as to the likelihood of success of any recovery efforts. The loss was

eventually reported to the Art Dealers Association of America in 1972 when the Association set up a registry of stolen paintings. In early 1976, O'Keeffe learned that Ulrich Frank (a third party defendant) recently had sold the paintings to Snyder; Frank traced his possession of the paintings to his father, claiming a family relationship with Steiglitz.

O'Keeffe's action was dismissed by a New Jersey trial court on the ground that the six-year statute of limitations for replevin actions had expired. New Jersey law requires that an action for replevin of goods must be commenced no later than six years after the accrual of the cause of action. The trial court concluded that O'Keeffe's cause of action had accrued on the date of the alleged theft in 1946, and therefore was barred.

However, the Appellate Division ruled that O'Keeffe was entitled to proceed with her action because Snyder had not shown that he had acquired title to the art works

under the doctrine of adverse possession. Due to Snyder's lack of title, the court found that the statute of limitations did not serve to bar the action. (*O'Keeffe v. Snyder*, 170 N.J. Super. 75 (1979).)

Most recently, the Supreme Court of New Jersey, in an effort to protect both artists and good faith purchasers of art works, has determined that the running of the limitations period will not commence until the injured party first knows, or reasonably should have known, through the exercise of due diligence, of the facts forming the basis of a cause of action - the "discovery rule." According to the court, the discovery rule will focus on the efforts of an owner in pursuing personal property. The rule replaces prior case law which had applied the doctrine of adverse possession to matters involving the recovery of such property. Adverse possession requires proof of "hostile, actual, visible, exclusive and continuous" possession to establish ownership. But in the case of highly

mobile art works, open and visible possession might not be sufficient to put an original owner on actual or constructive notice of the identity of the possessor. The court was satisfied that under the discovery rule, an artist who makes reasonable efforts to recover his or her work will preserve all rights of title and possession, and therefore it overruled prior cases in which the doctrine of adverse possession was found determinative of title to personal property.

In practice, under the discovery rule the burden will be on an owner to establish facts justifying deferring the commencement of the limitations period. Transfers of possession of the property will be relevant in applying the rule to the extent that such transfers might increase the difficulty of an owner's efforts to recover the property. The court rejected the alternative of treating subsequent transfers of property as separate acts of conversion for which the statute of limitations would

begin anew. Rather, consecutive periods of possession by different owners would be cumulative (i.e., "tacked").

The Supreme Court therefore remanded the matter to the trial court, which was requested to consider the following issues: (1) whether O'Keeffe used due diligence to recover the paintings at the time of the alleged theft and thereafter; (2) whether at the time of the alleged theft there was an effective method, other than talking to her colleagues, for O'Keeffe to alert the art world; and (3) whether registering paintings with the Art Dealers Association of America, Inc. or any other organization would put a reasonably prudent purchaser of art on constructive notice that someone other than the possessor was the true owner.

The court also considered the applicability of the Uniform Commercial Code to transfers of art works. According to the court, the general principle is that "if the

paintings were stolen, the thief acquired no title and could not transfer good title to others regardless of their good faith and ignorance of the theft." However, under UCC Section 2:403-6, a person with 'voidable' title (possibly Frank or his father) may transfer good title to a good faith purchaser for value in certain situations, particularly if the goods are entrusted to a merchant who deals in the kind of goods transferred. This gives the merchant "the power to transfer all the rights of the entruster to a buyer in the ordinary course of business." The buyer will then hold title as against the original owner.

By applying the discovery rule and the UCC, the court hoped to "encourage good faith purchases from legitimate art dealers and discourage trafficking in stolen art without frustrating an artist's ability to recover stolen art works" and to contribute to more careful practices concerning the purchase of art.

In concluding, the court noted that questions of common law and statutory copyright and infringement had not been raised by the parties and intimated that evidence at trial might indicate the existence of such claims.

In his lengthy dissenting opinion, Judge Handler took the majority to task for requiring an artist to prove "due diligence" in making efforts to retrieve stolen works of art in order to avoid being barred by the statute of limitations, while not requiring a similar duty of diligence on the part of the subsequent receiver or possessor. Judge Handler found that the court's opinion would do little to discourage art thievery and indeed would make it easier for the possessor to gain title. Looking to the merits of the claims, instead of the right to bring suit, would lead to the conclusion, according to Judge Handler, that Snyder's alleged acts of conversion - purchasing the paintings from Frank and refusing to return them to O'Keeffe

upon demand - were "independent tortious acts occurring within six years of the commencement of O'Keeffe's lawsuit."

Judge Handler also declared that the majority's seeming emphasis on stability of possession and title will serve in many cases to legitimate art theft rather than the return of stolen unique, artistic creations to their creator or true owner when this is justified by equitable considerations.

Judge Sullivan also dissented on the ground that O'Keeffe had brought suit to recover the paintings as soon as she located their possessor; that the sixyear statute of limitations for an action in replevin was tolled; and that O'Keeffe therefore was entitled to judgment.

O'Keeffe v. Snyder, Case A-125/126 (N.J. Supreme Court, July 17, 1980) [ELR 2:7:5]

Briefly Noted:

Contract Law.

Greybark, an advertising agency which specializes in marketing goods through "direct response" television commercials, brought an action for breach of contract, among other things, against Amba Marketing, which sells products directly to consumers primarily by means of mail order catalogs. The complaint alleged that the parties orally agreed at a trade convention that Greybark would develop and test a marketing and promotional program for selected products of Amba, and if successful, Greybark would market the products nationwide for a commission of 15% of the amount of advertising placed; that the market tests proved successful; and that Amba placed the advertising with National Media Group, another advertising agency. In denying Amba's

motion for summary judgment, the court held that the agreement did not fall within the Statute of Frauds since nothing in its terms barred performance within one year and it is irrelevant that the actual performance of the agreement took longer than a year.

Greybark Advertising, Inc. v. Amba Marketing Systems, Inc., 473 F.Supp. 285 (S.D.N.Y. 1979) [ELR 2:7:6]

Trade Regulation.

Times Mirror brought suit in a Federal District Court in California to enjoin the Federal Trade Commission from pursuing any future proceedings in which it is charged that Times Mirror's practice of offering volume discounts to purchasers of advertising space in its Los Angeles Times violates federal price discrimination laws.

The Commission had refused to follow two recent district court decisions which had held that newspaper advertising space does not fall within the scope of the term "commodities" under the Clayton Act as amended by the Robinson-Patman Act. Therefore, Times Mirror argued, the FTC lacks subject matter jurisdiction over the matter. Nevertheless, the District Court determined that it could not be said that the jurisdictional conclusion was frivolous. The court therefore held that the newspaper must exhaust its administrative remedies, because the FTC's special expertise in the area of federal antitrust law may prove helpful to a reviewing court.

The Times Mirror Co. v. Federal Trade Commission, CCH Trade Regulation Reports, Para. 62,756 (C.D.Cal. 1979) [ELR 2:7:6]

Libel.

A New Times Magazine article reporting that Vincent Cianci, the Mayor of Providence, Rhode Island, had once been accused of rape and had paid \$3,000 to the alleged victim, was not defamatory, according to a Federal District Court in New York City. In dismissing the complaint, the court noted that the article did not state or imply as a matter of fact that Cianci was charged with, or guilty of, any crime, but rather presented the author's constitutionally protected opinion that Cianci was guilty of rape or of making an improper payoff to avoid prosecution.

Cianci v. New Times Publishing Company, 486 F.Supp. 368 (S.D.N.Y. 1979) [ELR 2:7:6]

Unfair Competition.

A Federal District Court in Massachusetts has refused to issue a temporary restraining order barring AMF Incorporated, an alpine ski binding distributor, from advertising its bindings as the "Official Alpine Ski Binding" selected for use by the Lake Placid Olympic Organizing Committee. AMF had entered into a licensing agreement with the Committee whereby AMF paid \$50,000 for the right to use the official emblem of the 1980 Winter Olympic Games in its advertising. Salomon/North America, Inc., the exclusive supplier of ski bindings to the U.S. Alpine Ski Team, contended that AMF's advertisement was confusing to the public because it created the impression that AMF bindings had been selected by the Committee for use by all alpine ski events competitors. The court found that AMF had not passed off its product as that of a competitor and had not disparaged

Salomon's product. It further determined in denying the injunction, that Salomon had not shown a likelihood of success on the merits of its unfair competition claim or that it would suffer irreparable harm outweighing any harm to AMF.

Salomon/North America, Inc. v. AMF Incorporated, 484 F.Supp. 846 (D.Mass. 1980) [ELR 2:7:6]

Cable Television.

Clear-Vu Cable, Inc., a cable franchise in Georgia, has been enjoined from reducing the number of channels offered to its subscribers. Clear-Vu discontinued 3 of the 12 channels it had been carrying when the town council requested additional financial information in connection with the system's request for a rate increase. The

Georgia Supreme Court upheld a trial court ruling restraining Clear-Vu from blocking out channels in the town, noting that there was no showing that damages for the loss of the three channels could be adequately measured.

Clear-Vu Cable, Inc. v. Town of Trion, 262 S.E.2d 72 (Ga. 1979) [ELR 2:7:7]

Antitrust.

In 1978 Meredith purchased WPGH-TV in Pittsburgh at which time it promised to assume the obligations of the prior owner under its sales representation agreement with Bolton Broadcasting. Bolton filed suit alleging that Meredith wilfully breached this agreement by granting to MMT Sales, a competitor of Bolton, the exclusive

right that Bolton had previously enjoyed. A Federal District Court in New York has held that while claims for breach of contract and tortious interference with contract were adequately pled, the plaintiff failed to state federal antitrust claims. Therefore, the court granted the defendant's motion to dismiss without prejudice, but noted that "Unless Bolton has good reason to believe that its repleaded antitrust claims are meritorious, it would be well advised to address its contract claims to the state courts."

Bolton Broadcasting Ltd. v. Meredith Corp. and MMT Sales, Inc., CCH Trade Regulation Reports, Para. 62,769 (S.D.N.Y. 1979) [ELR 2:7:7]

Previously Reported:

The following cases, previously reported in the Entertainment Law Reporter, have been published. (References are to Volume, Issue and Page numbers, in that order.) Association of National Advertisers v. Federal Trade Commission, 617 F.2d 611 (1:16:6); Hoehling v. Universal City Studios, 618 F.2d 972 (1:24:4); Reese v. Hampton, 620 F.2d 7 (2:5:8); Testa v. Janssen, 482 F.Supp. 1195 (2:6:2); DC Comics v. Crazy Eddie, 205 USPQ 1177 (1:19:2). [ELR 2:7:7]

DEPARTMENTS

New Book:

**"Representing Professional Athletes and Teams
1980"**

This is a course handbook prepared for distribution in connection with a Practising Law Institute program held in New York City in July. Like most PLI course handbooks, it is a collection of materials intended to supplement the speakers' talks. In this case, however, course Cochairmen Martin E. Blackman and Philip R. Hochberg have compiled an especially valuable volume of documents which, though technically not confidential, are frequently difficult to come by, even for those with a real "need to know." Foremost in this category is a complete set of league player contract forms: NFL, Major League Baseball, NBA, NHL, NASL, Major Indoor Soccer League, and even a sample European basketball player contract.

The volume also contains a form of personal service contract between individual sport athletes, such as tennis players and golfers, and sponsors, and several product endorsement agreements.

Also included are an employment agreement between a professional team and a "front office" type, such as a coach or general manager, and a stadium lease.

Significant judicial decisions are reproduced in the book, as are materials concerning Copyright Royalty Tribunal proceedings for the distribution of cable television royalties. In this latter category are the briefs filed jointly by Major League Baseball, the NBA, NHL and NASL with the CRT; they provide interesting insight into the cable royalty distribution process, especially because the briefs turned out to be successful. (See ELR 1:20:2, and page 2 of this issue.)

An article on Financial and Tax Considerations written especially for the program provides a good overview of those subjects, and includes a table demonstrating the potential tax savings that may result from the incorporation of an individual athlete or entertainer at three levels of income, \$50,000, \$100,000 and \$150,000.

The book is available from the Practising Law Institute, 8 10 Seventh Avenue, New York, New York 10019; (212) 765-5700. [ELR 2:7:8]

In the Law Reviews:

Publicity Invasion of Privacy: Constitutional and Doctrinal Difficulties with a Developing Tort by Peter N. Swan, 58 Oregon Law Review 483 (1980)

Symposium: Law and Literature, 32 Rutgers Law Review 603-739 (1979)

Recent Developments in Ninth Circuit Patent & Copyright Law by Richard D. Harmon, 10 Golden Gate University Law Review 453-468 (1980)

Political Broadcasting After the Aspen Ruling: Legislative Reform of Section 315(a) of the Communications Act of 1934 by Stuart N. Brotman, 13 University of Michigan Journal of Law Reform 53-68 (1979)

A Constitutional Revolution in the Law of Libel, 11 Texas Tech Law Review 611-627 (1980)

The Applicability of the Constitutional Privilege to Defame: Question of Law or Question of Fact?, 55 Indiana Law Journal 389-406 (1979-1980)

Favored Tax Treatment of Purchasers of Art by William M. Speiller, 80 Columbia Law Review 214-266 (1980)
[ELR 2:7:8]