RECENT CASES

Summary judgment in favor of ABC and Charles Fries Productions in suit triggered by their movie "The Trial of Lee Harvey Oswald" is reversed; claims of producer of earlier movie with same title require jury trial, appellate court decides

"The Trial of Lee Harvey Oswald" is the common title of two movies based on legal proceedings that might have occurred had Oswald not been murdered. It is also the subject of a suit by Capital Films Corp., owner of one of the films, against Charles Fries Productions and ABC who produced and televised the other Film.

Capital's film, originally produced and distributed by Falcon International in 1964, was not a commercial success and was indefinitely withdrawn from distribution a

few weeks after its premier. In 1977, after it became clear that ABC planned to televise a new version bearing the same title, Capital filed suit to enjoin the ABC telecast. An injunction was denied, and the ABC-Fries film was televised in two parts in September and October of 1977.

Initially, Capital's suit charged Fries and ABC with unfair competition and alleged that the title and concepts of its 1964 film had been "plagiarized" by the ABC-Fries film. Later, Capital also charged ABC and Fries with interference with contractual relations, misappropriation of an idea, and breach of implied contract.

The trial court rendered summary judgment against Capital on all of its claims and dismissed the case. A Federal Court of Appeals has vacated the summary judgment, however, and has sent the case back to the trial court for both substantive and procedural reasons.

The trial court had found that it would be impossible for a "jury to conclude that ABC intended to pass off its movie as [Capital's] movie," and therefore dismissed Capital's unfair competition claim. The Court of Appeals reversed on the authority of Big O Tire Dealers, Inc. v. Goodyear Tire and Rubber Co., 561 F.2d 1365 (10th Cir. 1977), which it cites for what the court termed the "Doctrine of Reverse Confusion."

The Big O case concerned a small tire company which introduced two lines of "Big O Big Foot" tires in 1973. Almost a year later, Goodyear decided to use the term "Big Foot" in a nationwide advertising campaign to promote the sale of its new radial tire. Big O Tire Dealers brought suit against Goodyear for unfair competition, contending that Goodyear's use of Big O's trademark created a likelihood of confusion concerning the source of Big O's "Big Foot" tires. The Big O decision noted that "the usual trademark infringement case involves a

claim by a plaintiff with a substantial investment in a well established trademark. The plaintiff would seek recovery for the loss of income resulting from a second user attempting to trade on the goodwill associated with that established mark by suggesting to the consuming public that his product comes from the same origin as the plaintiff's product. The instant case, however, involves reverse confusion wherein the infringer's use of plaintiff s mark results in confusion as to the origin of plaintiff's product." The court determined that in this kind of case liability may be imposed without showing an intent to trade on the goodwill associated with an established mark or "passing off." Otherwise, the court reasoned, a company with the economic power to advertise extensively for a product name taken from a competitor would be immunized from unfair competition liability.

Applying this "doctrine of reverse confusion," the Court of Appeals found that it is sufficient for Capital to show in a trial that the subsequent use by ABCFries of the identical title confused the public as to the source of Capital's 1964 movie. For this reason, the appellate court reversed the trial court's dismissal of Capital's unfair competition claim.

For procedural reasons the appellate court also held that the trial court incorrectly dismissed Capital's claims for interference with contractual relations, misappropriation of an idea and breach of implied contract. These counts were added after ABC and Fries filed their summary judgment motion. In the Court of Appeal's view, a trial court may not dismiss a claim without a motion for summary judgment having been made, particularly where, as it did here, the court fails to observe the notice and hearing requirements applied to summary judgment motions.

As to Capital's claim for misappropriation of an idea, the trial court had required Capital to prove that (1) its idea was novel, (2) the disclosure of the idea was made in confidence, and (3) the idea was adopted and made use of by ABC-Fries. The trial court concluded, as a matter of law, that the title "The Trial of Lee Harvey Oswald" did "not constitute a sufficiently novel idea to deserve protection as a property right." The Court of Appeals has disagreed however. It has held that the novelty question is one more properly left to a jury.

The trial court also found that, as a matter of law, Capital had not revealed the title to ABC-Fries in a "confidential relationship." The Court of Appeals found that in the context of the custom of the movie industry, screenings to potential film distributors is common practice and could support a jury finding that a confidential relationship existed between the parties. Capital argued that various agents for ABC viewed the Capital film at

such screenings and that Capital could have produced ample evidence demonstrating these facts, if it had been given proper notice that this cause of action was to be tested by summary judgment.

Capital Films Corp. v. Charles Fries Productions, 628 F.2d 387 (5th Cir. 1980) [ELR 2:17:1]

Virginia exhibitor's claim that product split arrangement among film distributors and exhibitor circuits violated antitrust laws requires jury trial

A Federal Court of Appeals in Virginia has ruled that a jury must determine whether three exhibitor circuits and six film distributors - Columbia Pictures, Paramount, Twentieth Century Fox, United Artists, Universal, and

Warner Brothers - participated in a product split arrangement in violation of the Sherman Act.

Beginning in 1971, Wilder Enterprises, Inc., an independent film exhibitor operating two theaters in the Norfolk-Virginia Beach market, was no longer successful in its 'attempt to acquire first-run films from the defendant distributors for exhibition in its theaters. Wilder eventually ceased to respond to distributor solicitations to bid for exhibition rights, believing that any response would be futile. Wilder showed X-rated films on occasion until the company closed its theaters in 1975.

In its action, Wilder alleged that its competitors had agreed to allocate among themselves the right to bid or negotiate for first-run films offered by the distributors and to exclude Wilder from this agreement. The exhibitors stipulated to the existence of a "split" by which only one of the three would bid for specified films. It was

contended, however, that Wilder had failed to establish that the distributors participated in the split.

The Court of Appeals noted that "an exhibitor does not have a claim against other film exhibitors who, without distributor involvement, 'split' the films they will bid on." It is the participation of a distributor in a split denying one exhibitor access to films that creates a type of group boycott that violates the antitrust laws.

In this case, the court found sufficient evidence of distributor participation in the split, in the following activities: an independent exhibitor who was allowed to participate in the split was permitted to do so only on a "day and date" basis and the distributors' bid solicitations reflected this arrangement; and exhibitors called distributor representatives during split meetings to verify the release dates of films as well as play-dates, percentages and holdovers. Apparently, this information was provided to split participants before the distributors sent

their bid solicitations to all of the other exhibitors in the market, Since it also appeared that the distributors' bids conformed with arrangements previously made by the exhibitors involved in the split, the court concluded that a jury could Find that a conspiracy had existed among the distributors and the exhibitors to restrain trade and monopolize commerce in violation of the Sherman Act.

Therefore, the District Court judgment in favor of the distributors and the exhibitors was vacated, except in the case of four of the distributors originally charged with participation in the split - Allied Artists, American International, Avco Embassy and Buena Vista. There was no evidence that these four companies had participated in the split arrangement.

Wilder Enterprises, Inc. v. Allied Artists Pictures Corporation, Case No. 79-1175 (4th Cir., October 3, 1980) [ELR 2:17:2]

Suit against television networks by independent documentary producers, challenging networks' in-house production of all documentaries, is dismissed

Twenty-six independent producers and directors of news and documentary films brought a multifaceted antitrust, First Amendment and civil rights suit against the three major television networks and their affiliated stations. A Federal District Court in New York has dismissed almost the entire case with the exception of one of the producer-directors' antitrust claims which, if amended to state a proper claim, will be stayed pending the outcome of parallel proceedings on the matter by the Federal Communications Commission.

In their suit, the producer-directors have taken exception to the networks' policies of using and offering to

their affiliated stations only those news and documentary programs which have been produced inhouse. It is charged that this policy of in-house production was the result of an agreement among the networks and their affiliates which was calculated to freeze the independent producer-directors out of the documentary film market and thereby monopolize this lucrative market for themselves.

In what the court described as a "hopeless jungle of claims and theories of recovery," the producer-directors alleged numerous other antitrust violations resulting from the networks' in-house production policies and have "inextricably woven" in charges that the networks have unconstitutionally abridged the producer-directors' First Amendment rights and denied them Equal Protection of the laws.

With regard to the First Amendment claims, the producer-directors charged that the networks have

denied them "access" to their national broadcasting systems. The networks responded that their conduct is itself protected by the First Amendment. Recognizing that competing First Amendment rights are involved in the case, the court questioned whether a court, absent action by the FCC, should compel the purchase of independently produced documentary programs by the national networks. "I think this question demands a negative response," the court concluded. "To be sure, a contrary result would indeed twist the First Amendment beyond recognition."

Technically, the court dismissed the producerdirectors' First Amendment claim on the ground that the networks' conduct did not constitute "state action." The producer-directors had also charged the networks with violating the federal civil rights law by conspiring to deprive the producer-directors of Equal Protection of the laws. Since this claim rests on the same factual underpinning

as the First Amendment claim, it too was dismissed for lack of "state action."

The producer-directors charged that the networks' policies constitute violations of section 2 of the Sherman antitrust law in that they monopolize or attempt to monopolize the relevant news and documentary market. "The television industry," said the court, "operates in such a way as to defy traditional section 2 analysis." Nevertheless, the court, after a lengthy discussion of the issues, concluded that .'when [the producer-directors'] claims of monopolization are tested against the proper relevant market, they fall woefully short of stating a claim upon which relief may be granted." In this regard the court found that the news and documentary programs presented by the three networks are "interchangeable commodities." "Indeed, all the viewer need do is tune to the documentary program of his choice," said the court. Moreover, affiliation agreements employed by the

networks do not require that the affiliated stations purchase any of the news and documentary programs produced and transmitted by the networks. In fact, any other arrangement is expressly prohibited by several FCC regulations, noted the court. "Given the number of alternative sources for the programs in issue, it cannot be said that any of the network defendants has such a percentage of the market as to be able to either control prices or exclude competition," said the court. "To be sure, the network defendants, as well as the local affiliated and unaffiliated stations, are fiercely competitive with each other. This is especially true in the area of news productions," added the court.

The producer-directors also charged that the networks imposed an impermissible tying arrangement on their affiliates in violation of both the Sherman and Clayton antitrust laws. They argued that the networks have tied their affiliates' purchase of daily news reports which are

not used by the networks on their nightly news programs, to those news reports which are used on these programs. However, the court held that the producer-directors do not have standing to challenge this alleged tying arrangement because although they may compete in the market for documentary films, they do not compete with the networks in the market for syndicated news services, which is the subject of the alleged tying arrangement.

Finally, the producer-directors alleged both intranetwork and inter-network conspiracies in restraint of trade in violation of section 1 of the Sherman Act. Dismissing the intranetwork conspiracy claims, the court found that since under the affiliation agreements, the affiliates are free to accept or reject inhouse productions of documentaries, "there is not the slightest hint of coercion concerning the market for these productions." "In short, the allegations reveal only a unilateral decision on the part

of the network defendants, vis-a-vis the affiliates, to produce their documentaries in-house," stated the court.

Turning to the charge of inter-network conspiracy, the court found that the mere injection of the word "interdependent" in the complaint, absent other facts or circumstances, does not sufficiently allege "conscious parallelism" or the inference of a tacit agreement between the networks. Thus, the court dismissed this final claim.

However, in light of facts found in the producer-directors' court brief which would, "if only barely," state a claim, the court permitted the producer-directors to amend their complaint a second time to properly allege an inter-network conspiracy. That court brief stated in part, "Plaintiffs will prove that the independent documentary producers produce documentaries at less than one-half the cost which the [networks') own staff can produce them. These documentaries are of at least as

high a quality as those produced by the networks and have won a significant number of awards. It would be clearly in the immediate interest of any one of the networks to buy such documentaries and can only be of benefit to any network to refuse to buy independent documentaries if all of them do so jointly."

In the event the producer-directors amend their complaint to include these alleged facts, the court stated it would stay further proceedings on the issue pending an investigation the FCC is presently conducting on the matter. The court commented that the producer-directors "seek nothing short of a wholesale restructuring of the broadcasting industry" and that "it would appear that [they) do not seek access to the airwaves, but rather seek to have [the networks] act as their selling agents in the marketing of their documentary productions ... [The producer-directors] want to tap into three well established, albeit independent, distribution chains without

incurring any of the expenses which attend the establishment and maintenance of such a nationwide distribution chain." The court added that the producer-directors seek a risk free method of distributing their productions. "It is one thing for a company to bear the risk of the marketability of its own production. It is quite different to compel that company to bear the risk of the marketability of another's production. This is precisely what is at issue in the case at bar," stated the court.

The court said that the FCC is better able to "walk the tightrope between regulation and censorship and fashion a remedy" and "must be afforded an opportunity to accomplish this concededly difficult task."

Levitch v. Columbia Broadcasting System, Inc., 495 F.Supp. 649 (S.D.N.Y. 1980) [ELR 2:17:3]

Los Angeles Lakers cannot be sued in Georgia by a sports agent who alleges that team interfered with his agency contract with Magic Johnson

In a recent lawsuit, it is alleged that basketball star Ervin "Magic" Johnson entered into an agency contract with John P. Manton, a Georgia attorney who is in the business of acting as agent for professional athletes. The suit in question was filed in Georgia by Manton against the Los Angeles Lakers basketball team for alleged tortious interference with that agency contract. However, a Federal District Court has determined that personal jurisdiction over California Sports, Inc., the owner of the Lakers, does not exist in Georgia, and thus the case has been dismissed.

Manton claims that on April 25, 1979 he entered into a contract with Magic who at that time was in college and was expected to be the first player selected in the NBA

player draft. Under the contract, Manton was to negotiate a contract on Magic's behalf with the NBA team that chose Magic in the draft. Manton was to receive 2 1/2% of the total contract amount negotiated, plus 10% of all money Magic would earn in product endorsements.

Manton alleged that prior to the draft, he contacted Jack Kent Cooke who was then president of California Sports to negotiate a contract for Magic's services. According to Manton, California Sports induced Magic to breach his agency contract in order to get Magic to sign for less money; and California Sports then negotiated an employment agreement for Magic's services directly with Magic for an amount considerably less than Manton would have obtained for him.

The contract between California Sports and Magic Johnson was executed in New York City and all payments under the contract are made in California. All

negotiations between Magic and California Sports took place in California; none occurred in Georgia.

The court noted that the Lakers do occasionally play basketball in Georgia. During the 1978-79 season, the Lakers played two games in Georgia; during the 1979-80 season, the Lakers played one game in Georgia. The Lakers receive no share of the gate receipts from games played in Georgia, but it does receive some revenue from Georgia by way of the Lakers' broadcasts of games played in Georgia to the Los Angeles area. It was also noted that California Sports owns and operates a team in the National Hockey League, the Los Angeles Kings. The court found that the contacts the Kings had with Georgia were roughly similar to the Lakers' contacts with Georgia. The court added that the Georgia team in the NHL, the Atlanta Flames, has since moved to Canada, and thus no future visits by the Kings to Georgia are currently anticipated.

Applying the Georgia "long-arm" statute, the court characterized California Sports' contact with Georgia as "purposeful, very infrequent, and moderate in extent" and found that California Sports did not regularly engage in business in Georgia nor did it derive substantial revenue from services in Georgia. The court said that the exercise of jurisdiction in this case would offend traditional notions of fairness and substantial justice. "To hold otherwise," stated the court, "would subject professional sports [teams] to actions in any state where they participate, no matter how infrequently, based on an alleged tort committed elsewhere."

Manton v. California Sports, Inc., 493 F.Supp. 496 (N.D.Ga. 1980) [ELR 2:17:4]

Preliminary injunction restraining enforcement of National Football League team transfer rule is reversed, because Los Angeles Coliseum Commission failed to show irreparable injury

Another - and largely academic - chapter has been written in the saga of what has been called the "Super Bowl of litigation." As football fans and readers of these pages are aware, the decision of the Los Angeles Rams to move to Anaheim as of the 1980 football season touched off a flurry of lawsuits in state and federal courts in both northern and southern California. Thus far, the case that has generated the most written opinions is the one that was filed by the Los Angeles Coliseum Commission. In it, the Coliseum Commission alleges that two provisions of the NFL Constitution and By-Laws violate federal antitrust laws: the provision requiring a 75% vote of the league's members to authorize

an existing team to move from one city to another; and the provision requiring a similar vote to authorize expansion of the league, According to the Coliseum Commission, the first of these provisions has impeded its efforts to have the Oakland Raiders move to Los Angeles, and the second of these provisions shall impede the Commission s efforts to obtain an expansion franchise as a tenant.

Early in the case, the Coliseum Commission's suit was dismissed on the grounds that it had not properly alleged facts giving it standing to sue the NFL. (ELR 1:9:6) However, in the course of his decision dismissing the case, Federal District Judge Harry Pregerson outlined the sorts of facts that would give the Coliseum Commission standing. The Commission promptly amended its complaint to allege the necessary facts.

Not long thereafter, and prior to the start of the 1980 season, the Coliseum Commission made a motion for a

preliminary injunction barring the NFL from enforcing the rule requiring 75% approval for the move of a team from one city to another. Judge Pregerson granted the motion and did enjoin the league from enforcing that rule. The NFL immediately appealed. And the Court of Appeals has reversed the injunction.

The opinion of the Court of Appeals is largely academic at this time for three reasons. First, when the NFL appealed, the Court of Appeals immediately issued a stay of the injunction. As a result, the Raiders did not move to Los Angeles for the 1980 season after all. Second, trial of the case has been scheduled for February 1981, so a decision on the merits is possible before the 1981 season begins. Third, in its decision, the Court of Appeals expressly declined to consider the merits of the Coliseum Commission's antitrust claims, even though it acknowledged that the parties had "strenuously urged" it to do so. Thus, the opinion does not provide any insight

into the appellate court's thinking about the antitrust issues involved in the controversy. The Court of Appeals' decision reversing the injunction limits itself entirely to a discussion of the standards that are applied by trial courts in determining whether or not to issue preliminary injunctions prior to trials. In this case, the appellate court concluded that Judge Pregerson had incorrectly applied those standards, because it found that the Coliseum Commission had failed to prove that it would suffer irreparable injury if the preliminary injunction were denied. Irreparable injury, or at least the possibility of it, must be shown in order to obtain a preliminary injunction.

In this case, the Coliseum Commission showed that unless the Raiders were permitted to move to Los Angeles - as they had said they would, if the NFL's 75% vote requirement were enjoined - the Commission would lose substantial revenues. The Court of Appeals pointed out,

however, that lost revenues were monetary damage, and monetary damage is not usually considered "irreparable." In this very case, the appellate court observed, the Coliseum's lost revenues can be recovered by it from the NFL, if the Coliseum Commission wins the case.

In some cases, courts will issue preliminary injunctions if a serious question is raised by the case and the balance of hardships tips sharply in favor of the party seeking the injunction. Here, Judge Pregerson specifically noted that the hardship that would be suffered by the Los Angeles Coliseum if the injunction were not issued was the same as the hardship that would be suffered by the Oakland Coliseum if the injunction were issued and the Raiders left Oakland. According to the Court of Appeals, Judge Pregerson did not give any consideration to the hardships that might be suffered by the NFL and its other members by the issuance of a preliminary injunction. Thus, the appellate court ruled that Judge

Pregerson could not have found that the balance of hardships tipped in favor of the Los Angeles Coliseum.

One of the ironies of this case is that after Judge Pregerson issued the preliminary injunction, he was himself appointed to the very Court of Appeals that has just reversed his injunction.

Los Angeles Memorial Coliseum Commission v. National Football League, Case No. 80-5156 (9th Cir., December 12, 1980) [ELR 2:17:5]

Light-heavyweight champion "Flame" Gregory fails in bid to rescind management contracts entered into with his boxing manager Joseph Scorcia

Eddie "Flame" Gregory, the light-heavyweight champion of the World Boxing Association, brought suit in

Federal District Court to rescind three management contracts he made with his manager Joseph Scorcia. The District Court has dismissed the case however, and has refused to rescind any of the contracts.

On September 3, 1976, Gregory entered into a four year contract with Flame Gregory Boxing Enterprises, Ltd. ("Enterprises"), one of Scorcia's firms, under which Gregory agreed to render his boxing services solely for Enterprises in return for Enterprises' promise to exert its best efforts to secure remunerative boxing contests for Gregory. On September 10, 1976, a second contract was entered into which was consistent with the September 3rd contract, except that it was executed in compliance with the regulations of the New York State Athletic Commission. Pursuant to these regulations, the September 10th contract was executed on printed forms supplied by the Commission. It named both Enterprises and Scorcia individually, and it was approved by the

Commission on October 7, 1976. On March 16, 1977 Gregory and Enterprises entered into a third management contract under which Enterprises alone was to act as manager for Gregory on the expiration of the September 3rd contract, or August 27, 1980.

In December of 1979 Gregory was the number one ranked contender in his class in the WBA. This entitled him to a mandatory title fight with the reigning champion of that time, Marvin Johnson. Scorcia began negotiating with Bob Arum, the promoter who handles most WBA fights, for a title fight for Gregory. Scorcia presented Gregory with Arum's offer of $60,000 for the challenge and $130,000, $140,000, and $160,000 respectively for three title defenses which Arum would have options to promote in the event Gregory won the title. Gregory refused to accept and testified that his reason for not accepting was that he was not willing to sign any contract with options in it; he felt he could earn

more money promoting his own fights after he became champion. Faced with Greg ory's unwillingness to sign the contract as it had been negotiated, Scorcia had several mutual acquaintances of his and Gregory's phone Gregory and attempt to persuade him to sign. Each of these people testified that there was no mention of the option problem during their conversations with Gregory. Rather, Gregory intimated that it was his unhappiness with Scorcia and his desire to cast him off as his manager that was the root of his reluctance to sign.

Gregory claimed that Scorcia breached his duties as manager by trying to frustrate and by acting in contravention of Gregory's stated desire to fight Johnson on a one-fight basis in early 1980. Gregory testified that he had become generally and thoroughly dissatisfied with Scorcia and felt that Scorcia was not obtaining sufficiently profitable fights for him or accommodating him with suitably posh training quarters.

The court, however, found no evidence demonstrating any basis for these feelings. The court decided that "Scorcia acted at all times in good faith and in an effort to advance and protect Gregory's interests, under extremely difficult circumstances that Gregory had unjustifiably put him in." Consequently, the court held that Gregory was not entitled to have the September 3rd or September 10th contracts rescinded. Moreover, said the court, Gregory, having without justification or equivocation declared that he no longer considered Scorcia his manager, was the first party in breach; and a party who is in substantial default himself or who has committed the initial breach is not entitled to rescission.

The court also held that Gregory was not entitled to have the March 1977 contract rescinded. To the extent Gregory had raised a question concerning whether that contract complied with the regulations of the New York State Boxing Commission, the court chose not to

exercise its discretion to grant a declaratory judgment on the issue. The Commission itself should have the first opportunity to pass on the validity of the contract under its regulations, said the court.

Gregory v. Scorcia, 493 F.Supp. 984 (S.D.N.Y. 1980) [ELR 2:17:6]

Issue of Penthouse Magazine containing articles of "serious" value ruled not obscene

The guidelines for determining obscenity under Louisiana statutes and pursuant to the United States Supreme Court decision in Miller v. California, 413 U.S. 15 (1973), require a finding that the work "taken as a whole" lacks serious, literary, artistic, political or scientific value. Under this standard, the Supreme Court of

Louisiana has found that the June 1980 issue of Penthouse Magazine was not obscene.

The court observed that the issue did not lack serious value despite the fact that several articles did appeal to prurient interest and depicted or described in a patently offensive way, hard core sexual conduct. An analysis of the issue's contents revealed that of the total of 228 pages, there were 67 pages of articles with serious value, 96 pages of articles lacking serious value and 65 full page advertisements. Subjects covered in the articles included a significant study of the economy, an interview with a child evangelist, camera and car evaluations, entertainment reviews and an excerpt from a novel. The articles were not "sham," that is, an attempt to insulate obscene material with non-obscene material. The subject matter was "important and current. These articles convey ideas and purport to convey serious

information." Therefore, the District Court's finding that the issue was obscene was reversed.

In dissent, one judge stated that it was necessary to consider only the patently offensive section rather than the magazine as a whole in determining obscenity. He concluded that the section in question lacked serious literary, artistic, political or scientific value and was obscene. Another dissenting judge commented that the phrase "taken as a whole" when applied to a magazine containing unrelated articles meant that each article should have been examined in its entirety in considering obscenity and that the majority decision had approved a sham procedure.

State v. Walden Book Company, 386 So.2d 342 (La. 1980) [ELR 2:17:6]

Briefly Noted:

Broadcasting.

Florence Bridges, a volunteer producer of community affairs programs for a Pittsburgh area non-commercial educational FM radio station, instituted proceedings before the FCC and the Pennsylvania Human Rights Commission alleging sexual and racial harassment at the station. The station subsequently advised Bridges that she could no longer host or produce programs or use the station's facilities. Bridges then brought an action in a Federal District Court in Pennsylvania claiming that she was deprived of free access to a place of public accommodation in violation of Title 11 of the 1964 Civil Rights Act and that the termination of her programming privileges violated her First Amendment right to freedom of speech. The court has dismissed the action,

noting that "access to broadcast media is not a matter of constitutional or statutory right." Further, the station's premises were not a public accommodation and the station was entitled to grant access only to individuals involved with its activities.

Bridges v. Pittsburgh Community Broadcasting Corp., 491 F.Supp. 1330 (W.D.Pa. 1980) [ELR 2:17:7]

Copyright.

An organization representing jukebox owners brought an action in Federal District Court seeking to set aside regulations issued by the Copyright Royalty Tribunal which required the owners to report the locations of their jukeboxes in order to facilitate the determination of royalty claims. The District Court's judgment upholding

the regulations has been vacated by a Federal Court of Appeals on the grounds that the District Court lacked jurisdiction to review the regulations. Under the Copyright Act of 1976, the Court of Appeals was designated as the proper forum to review final decisions of the Tribunal. The District Court was ordered to dismiss the complaint.

Amusement and Music Operators Assoc. v. Copyright Royalty Tribunal, CCH Copyright Law Reports, Para. 25,172 (D.C.Cir. 1980) [ELR 2:17:7]

Constitutional Law.

A resolution of the Colorado State Fair and Industrial Exposition Commission provided that all exhibitors at the Fair were required to confine transactions, displays

and advertisements to their leased space. A request of the International Society for Krishna Consciousness, Inc. for permission for its members to sell religious literature to, and to solicit contributions from, patrons attending the Fair was denied; and the Commission did offer to rent booth space to the Society. The Supreme Court of Colorado has upheld a lower court finding that the Commission resolution was an unconstitutional restriction on the Society's freedom of religion. A state generally may restrict the time, place and manner of the exercise of First Amendment rights. But the evidence in this case did not support a conclusion that the circulation of Society members throughout the Fair would result in an unacceptable degree of congestion requiring such restrictions, the court held.

International Society for Krishna Consciousness, Inc. v. Colorado State Fair and Industrial Exposition Commission, 610 P.2d 486 (Colo. 1980) [ELR 2:17:7]

Contracts.

HRG Productions, a Texas Corporation that sent representatives to New York City for the specific purpose of furthering a contract for the services of Dennis Wayne's Dancers, a contemporary ballet company, has been held amenable to a breach of contract action by an agent for the dance group in a Federal District Court in New York. Although an agreement was not reached in New York, the court found that both the offer and the negotiation took place in New York. Further, the HRG officials viewed a premiere rehearsal performance of the dance group and had the opportunity to meet with

Dennis Wayne and to discuss with him some aspects of the ballet and the proposed tour. The court found that the three day trip to New York was essential to the existence of the contract, and therefore constituted "transacting business" within the State of New York, which is a basis for jurisdiction in that state.

M.L. Byers, Inc. vs. HRG Productions, Inc. 492 F.Supp. 827 (S.D.N.Y. 1980) [ELR 2:17:7]

Invasion of Privacy.

The general rule that a magazine publisher is amenable to suit in jurisdictions in which its publications are ultimately distributed was not applied in an action against Esquire magazine. A Federal District Court has found that an allegedly libelous issue of Esquire was not

distributed by the defendant Esquire, Inc., but rather by that firm's former subsidiary Esquire Magazine, Inc., which would have been the proper defendant in the case. The question of whether Maryland's one year statute of lilimitations governing slander and libel applies to "false light" invasion of privacy has never been addressed by the Maryland state courts, yet the federal court applied the one year limitations period as an additional ground for dismissing the plaintiff's invasion of privacy count.

Smith v. Esquire. Inc., 494 F.Supp. 967 (D.Md. 1980) [ELR 2:17:7]

Tax.

The parents of figure skater Tai Babilonia could not deduct expenses incurred by them for Tai's skating lessons or travel costs, nor could they deduct Mrs. Babalonia's travel costs incurred while accompanying Tai to World Championship and Olympic competitions, the Tax Court has held. The Babilonias had sought to deduct such expenses on the theory that they were charitable contributions to the U.S. Olympic Committee and to the U.S. Figure Skating Association. Both organizations are tax exempt organizations, contributions to which are deductible. Although federal tax regulations do not permit deductions for the contribution of services to exempt organizations, regulations do permit the deduction of expenses incurred in connection with the rendition of such services. In this case, however, the Tax Court concluded that neither Tai nor her parents had rendered services either to the Figure Skating Association or to the Olympic Committee, and that the expenses which the Babilonias

sought to deduct actually were for their personal benefit. As such, they were not deductible, the court held.

Babilonia, TC Memo 1980-207, PH Memo TC, Para. 80,207 (1980) [ELR 2:17:8]

Tax.

The Tax Court has recently held that a high school physical education instructor, who was also a track coach at another school, was not entitled to a deduction for home office expenses. The Tax Court held that the principal place of business for his business of coaching was the school athletic facilities and his home office was only incidental thereto.

Kastin v. Commissioner, 80(10) CCH Standard Federal Tax Reports, Para. 7887(M) [ELR 2:17:8]

DEPARTMENTS

In the Law Reviews:

Performance Rights in Sound Recordings - To Pay or Not to Pay, That is the Question by Steven J. D'Onofrio, 15 Beverly Hills Bar Association Journal 347-371 (1980)

The Enforceability of Mid-Term Extensions of Employment Agreements Under California Labor Code Section 2855 by Henry I. Bushkin and Rauer L. Meyer, 15 Beverly Hills Bar Association Journal 385-398 (1980)

Measuring Divestiture of Network owned Television Stations: An Econometric Approach by Barry R. Litman, 25 The Antitrust Bulletin 363-376 (1980)

Trademark Preliminary Injunctive Relief by Bradford J. Duft, 16 California Western Law Review 90-128 (1980)

Football Hooliganism: Offenses, Arrests and Violence - A Critical Note by J. Williams, 7 British Journal of Law and Society 104-110 (1980)
[ELR 2:17:8]