RECENT CASES

Removal of star's name from movie credits, and substitution of another actor's name, constitutes violation of federal law

An actor's name is his trademark. And receiving proper credit may be critical to the success of an actor's career. These facts, long recognized within the motion picture industry, have now been given legal recognition as well in a precedent making decision of a Federal Court of Appeals in California. In a decision by Circuit Judge Harry Pregerson, the court has held that the removal of an actor's name from the credits and advertising for a movie in which he starred, and the substitution of another actor's name, constitutes a violation of section 43(a) of the Lanham Act.

The case was filed by actor Paul Smith who alleged that he had been hired by an Italian film company to star in the movie "Convoy Buddies." According to Smith's complaint, his employment contract assured him that he would receive star billing in the screen credits and in all advertising for the film. The contract also was said to provide that these same credit requirements would be imposed on any distributor of the movie.

"Convoy Buddies" was distributed in this country by Edward Montoro and Film Ventures International. However, for reasons that were not explained in the court's decision, Montoro and Film Ventures removed Smith's name from the credits and substituted the name of another actor, "Bob Spencer." As a result, Smith filed suit in federal court alleging that the substitution damaged his reputation as an actor and that he had lost specific employment opportunities. The suit was based on several legal theories, including breach of contract, "false

light publicity," and misappropriation of name and likeness, as well as the Lanham Act claim.

Section 43(a) of the Lanham Act prohibits false designations or representations in connection with the sale of goods and services. Smith contended that removing his name from "Convoy Buddies," and substituting the name of another actor, constituted a false designation. A Federal District Court disagreed, however, and dismissed Smith's Lanham Act claim. (It also dismissed his other claims, because they were based on state - rather than federal - law, and once the Lanham Act claim was dismissed, the court no longer had jurisdiction to consider state law theories.)

The Court of Appeals reversed, however. It ruled that Smith had stated a valid claim under section 43 (a), because if his allegations were true, the movie's distributors were guilty of "reverse palming off." That is, they "palmed off" Smith's work as that of another actor - a

well-recognized variety of "false representation" prohibited by the Lanham Act. In so ruling, the court made special note of the value of an actor's name and the "critical importance" of being "accurately credited for films in which they have played."

Smith v. Montoro, 648 F.2d 602 (9th Cir. 1981) [ELR 3:6:1]

Federal District Court in Alabama refuses to enjoin unauthorized sale of Styx concert memorabilia

Billy Joel, Styx and Van Halen have more in common than hit records and sold-out concerts. They, and many other performers, often have encountered unlicensed vendors selling bootleg souvenir merchandise in the immediate vicinity of concert halls where they are scheduled to perform. The bootleg merchandise generally costs less than, but is of inferior quality to, the items sold by the licensed concessionaire within the auditorium. Bootleg sales have been halted in dozens of instances throughout the country via temporary restraining orders barring such sales in the vicinity of the concert hall for a limited concert-related period of time. The order usually is accompanied by an order authorizing law enforcement officials to seize and impound the bootleg merchandise. There do not appear to have been any written opinions in these cases. However, a Federal District Court in Alabama, in an opinion acknowledged by the court itself as contrary to the results in "at least sixteen similar federal district court cases," has denied the temporary injunctive relief sought in an action brought by the musical group Styx and its exclusive licensee, Rock Tours, Ltd.

Styx had requested an order restraining certain unnamed defendants from manufacturing or selling, without authorization, products bearing the service mark of the group, or likenesses of the individual members, outside the Birmingham-Jefferson County Civic Center during a 23 hour period commencing on the afternoon preceding their scheduled concert. The group alleged that it would suffer damages due to the loss of business reputation and goodwill, as well as loss of sales and profits, because the public might associate it with the production of inferior merchandise.

The court noted that the city of Birmingham had passed an ordinance restricting the sale of unauthorized merchandise at its Civic Center and observed that the vigorous enforcement of the ordinance had curtailed bootlegging significantly. And the court ruled that the action was not a "case or controversy" within Article III of the United States Constitution since there was no

adversary parties before the court. It was pointed out that the court might not even have in personam jurisdiction over the unnamed defendants who were described in the complaint as "generally nomadic individuals without business premises or other connections in the locality."

According to an attorney who has represented several performers in successful ex parte actions, the majority of courts have concluded that the imminent harm to performers and to their licensed merchandisers resulting from unauthorized sales by mobile, nomadic individuals does establish a justiciable controversy. Further, a bond covering the value of the merchandise seized is required and a hearing, at which the court's action may be contested, is set for within two or three days of the seizure.

Rock Tours, Ltd. v. Does, 507 F.Supp. 63 (N.D.Ala. 1981) [ELR 3:6:2]

Restrictions on use of "Dolby Stereo" trademark do not violate federal antitrust laws

Guidelines issued by Dolby Labs restricting the use of its "Dolby Stereo" logo to movie theaters equipped with sound systems actually manufactured by Dolby do not violate federal antitrust laws, a Federal District Court in Ohio has held.

Initially, Dolby manufactured noise reduction equipment used in the production of phono-recordings. During the 1970s however, it developed new methods of motion picture sound reproduction which offered a significant improvement in the quality of motion picture sound. The Dolby method requires the movie sound track to be specially recorded, or encoded, and then played back, or decoded, on specially designed

equipment. With the success of the Dolby encoded "Star Wars" in 1977, the Dolby method gained wide acceptance in the movie industry.

That year, Eprad Inc. entered into an agreement with Dolby under which Eprad, with Dolby's assistance and components, began producing the sound reproduction or decoding equipment for theaters which Eprad advertised as being suitable for playing Dolby encoded films.

In response to complaints concerning theaters that advertised Dolby sound though they did not have Dolby equipment, Dolby issued a statement of guidelines to theater owners concerning the use of Dolby trademarks. In those guidelines, Dolby specified that its "Dolby Stereo" logo could be used only by those theaters that were equipped with Dolby manufactured sound decoding equipment. Theaters that were not equipped with Dolby were prohibited from using the logo, but were permitted to use the statement, "Recorded in Dolby Stereo,

playback on (manufacturer name and/or trademark equipment)."

Eprad sought to enjoin Dolby's action, arguing that by preventing theater owners from using the Dolby trademarks to indicate how the film is played back, unless they use Dolby sound equipment, Dolby had tied its sound reproduction equipment to the use of its trademark.

A tying arrangement exists if a seller refuses to sell one product (the tying product) unless the buyer also purchases another product (the tied product). Courts are in disagreement as to whether a trademark may serve as a tying product, that is, whether a mark can be thought of as separate from the product or services it identifies.

In this case, the court assumed that a trademark may be a tying product, but it determined that Dolby's trademark cannot be viewed as a product distinct from its sound reproduction equipment. The court distinguished Siegel v. Chicken Delight, 448 F.2d 43 (9th Cir. 1971), in which the Chicken Delight trademark was viewed as distinct, primarily because it was used to represent a certain standard of quality. Here, the Dolby trademark has nothing to do with the manner in which a motion picture does business. Furthermore, Dolby has never separately sold its mark. Rather, it has allowed the use of its mark solely to identify its products.

The court also noted that if theater owners were allowed to use Eprad's equipment and the Do y mark, goodwill built into the Dolby mark might be destroyed, because film-goers expecting to hear a motion picture sound track on Dolby equipment could no longer be assured the equipment used was indeed Dolby's.

Eprad Inc. v. Dolby Laboratories, Inc., 209 U.S.P.Q. 238 (N.D.Ohio 1980) [ELR 3:6:3]

IATSE official's threat to withhold union "bug" if nonunion sound mixer worked on motion picture did not violate National Labor Relations Act

The International Alliance of Theatrical Stage Employee's union seal or "bug" is a registered trademark that is issued to producers when all of the members of the production crew on a film are IATSE members. It is possible that if a bug does not appear on a film, an IATSE projectionist might refuse to run the film.

In 1977, when hiring personnel for the film "The Double McGuffin," Mulberry Square Productions in Dallas hired a sound mixer, Bernard Blynder, who had been suspended from an IATSE local. An official of the Dallas local of the union stated that he would recommend withholding the bug unless Mulberry Square hired a union sounder mixer. The company eventually did hire a union member. An Administrative Law Judge concluded

that the union official's statement was coercive and discriminated against Blynder in violation of sections 8(b)(1)(A) and (2) of the National Labor Relations Act.

The ALJ's decision has been reversed by a Federal Court of Appeals in Texas. The court ruled that the Union has "the right to maintain the integrity of its trademark" and that the union official had not threatened any illegal activity. He told Mulberry Square to hire whomever the company wished to hire. The threat of legal activity, that is, withholding the bug, did not violate the Act, the court ruled.

Dallas Stage Employees, Local Union No. 127 v. National Labor Relations Board, CCH Labor Law Reports, Para. 12,481 (5th Cir. 1981) [ELR 3:6:3]

Copyrighted "Be a Pepper" commercial and jingle were infringed by Sambo's Restaurants commercials

The invitation to "Be a Pepper" apparently proved attractive to Sambo's Restaurants. Sambo's created a television commercial entitled "Dancing Seniors" which was designed to resemble the format of the Dr. Pepper commercial. Both commercials begin with the appearance of an individual who sings a jingle about the product - "I drink Dr. Pepper and I'm proud" versus "I eat at Sambo's Restaurants every day." The individuals then begin dancing and are joined by others who follow their lead. The viewers of both commercials are invited to join the special or unique groups in the chorus of the jingle -"Wouldn't you like to be a Pepper, too?" versus "Don't you want to be a Senior, too?"

A Federal District Court in Dallas has enjoined the showing of the Sambo's commercials, based upon its finding that Sambo's copied the essence of the copyrighted Dr. Pepper commercial and jingle.

The court did not specifically rule on Sambo's claim that its commercials were noninfringing parodies of the Dr. Pepper commercials. But Sambo's fair use defense was denied, because of the substantial similarity between the commercials, and because Dr. Pepper had established that the Sambo's commercials would have more than a de minimis effect on the value of Dr. Pepper's copyrights. Dr. Pepper spent approximately \$100 million on its "Be a Pepper" campaign and had gross sales of \$330 million in 1980. The company also claimed that the success of the commercial had extended its projected viability from seven years to 10 years. The court found that "distractions from the uniqueness and originality of the Be a Pepper commercials would logically shorten the life of the campaign which would be a loss of the business goodwill of Plaintiff."

Dr. Pepper's claim for trademark infringement was denied. "The Dancing Seniors" commercial clearly depicted what goods and services were being sold by whom. And a market survey conducted by Sambo's demonstrated that there was no likelihood of confusion between Sambo's goods and services and Dr. Pepper's soft drink.

Dr. Pepper Company v. Sambo's Restaurants, Case No. CA 3-81-0072C (N.D.Tex., July 12, 1981) [ELR 3:6:3]

Trial required in antitrust suit by promoter Teddy Brenner against World Boxing Council

A Federal District Court in New York City has ruled that a trial is necessary to resolve an antitrust suit brought by boxing promoter Teddy Brenner against the World Boxing Council. According to Brenner, the WBC has attempted to prevent him from promoting professional boxing matches. The WBC has done so, Brenner alleges, by coercing boxers to enter into contracts with other promoters and not Brenner, by manipulating the lists of top contenders to favor certain boxers and certain other promoters, and by arbitrarily and capriciously suspending him from promoting WBC world championship fights without a hearing or any just cause.

WBC made a motion for summary judgment on the grounds that Brenner had not suffered any injury, and therefore lacked standing to sue, because he never was a boxing promoter. The court disagreed, however. Brenner's sworn affidavits indicated that he had promoted hundreds of fights prior to 1959; that from 1973 to 1978 he was the matchmaker for Madison Square Garden; that in 1978 he resumed his career as a professional

promoter; and that he had successfully promoted the Arguello-Escalera fight as well as several others.

The record also contained an affidavit from Floyd Patterson, the former heavyweight champion and now the Commissioner of the New York State Athletic Commission, who said that Brenner is the foremost promoter of boxing in the United States. Gil Clancy, the current matchmaker for Madison Square Garden, Ferdi Pacheco, a boxing consultant to NBC Sports, and Robert Arum, Chairman of the Board of Top Rank, also filed affidavits or testified that Brenner has been and remains an experienced and qualified boxing promoter.

WBC also argued that Brenner had been suspended because of his failure to present his promoter's license to the WBC in connection with the Arguello-Escalera bout, to register as a promoter with the WBC, to pay the required promoter's fee, or to submit to the WBC his contracts with Arguello and Escalera. Brenner countered

that the Arguello-Escalera fight was technically promoted on the license of a local co-promoter, as is customary in the industry, and that the WBC received all required payments in connection with that fight. Brenner also contended that WBC rules are inconsistently applied and that the WBC discriminated against him in the way it applied them to him. According to Brenner, the WBC had never suspended a promoter before, and that his suspension was really designed to prevent him from fulfilling his contract with Arguello.

Although Brenner did not seek a hearing before the WBC to appeal his suspension, he claimed that he was not notified of any hearing, and the "hearing" conducted by the WBC when it suspended him took place in Morocco, a most inconvenient location for him.

WBC also contended that it is a voluntary, nonprofit organization which is not engaged in commerce, and is thus exempt from federal antitrust laws. The court rejected this contention, however. It found that because of its television contracts, and because it is one of only two organizations that control the promotion of championship boxing matches, it is engaged in commerce, and "there is no doubt as to the applicability of the Sherman Act to the facts alleged by Brenner."

The court also denied a motion for summary judgment made by Brenner. The court ruled that even if the WBC's actions constituted a "group boycott," which is per se illegal, some inquiry concerning the reasonableness of its actions would be necessary, because of a narrow exception to the per se rule. And such an inquiry would have to be made at trial.

Brenner v. World Boxing Council, 1980-81 CCH Trade Cases, Para. 63,789 (S.D.N.Y. 1981) [ELR 3:6:4]

U.S. Supreme Court upholds New York ban on topless dancing in establishments where liquor is served; but Washington ban on topless dancing is ruled unconstitutionally overbroad by Federal Court of Appeals

The constitutionality of legislation banning topless and/or nude dancing in establishments where liquor is served has arisen in two recently-decided cases. The United States Supreme Court has ruled that the power of a state, under the Twenty-first Amendment, "to ban the sale of alcoholic beverages entirely includes the lesser power to ban the sale of liquor on premises where topless dancing occurs." In a per curiam opinion, the court found that a New York statute prohibiting topless dancing in establishments licensed by the state to sell liquor does not violate the First Amendment, thereby reversing a decision of the New York Court of Appeals.

In dissent, Justice Stevens strongly objected to the majority's "blatantly incorrect" reading of the Twenty-first Amendment as a grant of overly broad authority to the states to prohibit "presumably protected" expressive activities in connection with the regulation of the sale of liquor. Justice Stevens noted that LaRue v. California, 409 U.S. 109, cited by the majority, carefully weighed the state's interest in protecting order and decency against the slight impairment of free expression involved in prohibiting acts of "gross sexuality." Explicit legislative findings were the basis of the California statute upheld in that case. However, there was no legislative explanation in 1977 when the New York statute, which had been in effect for some time, was amended to its present form, Justice Stevens noted.

A Federal Court of Appeals has affirmed a judgment that a Pierce County, Washington resolution prohibiting topless entertainment in all non-theatrical establishments engaged in selling food or beverages was unconstitutionally overbroad. Since the ban might be applied to restaurants and cabarets, and to nonobscene entertainment containing nudity, such as the musical "Hair," the resolution was ruled substantially overbroad. An argument that the topless dancing at the Night Moves Tavern was "commercial speech," to which the overbreadth doctrine does not apply, was rejected by the court.

New York State Liquor Authority v. Bellanca, Case No. 80-813 (U.S. Sup. Ct., June 22, 1981); Chase v. Davelaar, Case No. 79-4471 (9th Cir., May 18, 1981) [ELR 3:6:5]

Network denial of broadcast time to Carter-Mondale Presidential Committee violated reasonable access rule, U.S. Supreme Court rules

In October 1979, the Carter-Mondale Presidential Committee requested one-half hour of broadcast time from each of the three commercial television networks. The proposed broadcast date in early December was scheduled to coincide with President Carter's formal announcement of his candidacy for re-election. The networks refused to sell the time to the Committee so early in the campaign. The Committee filed a complaint with the Federal Communications Commission and the FCC ruled that the networks' action constituted a refusal to provide reasonable access time to the Committee in violation of section 312(a)(7) of the Communications Act. The FCC's decision has been -upheld by the United States Supreme Court in a 6-3 decision.

Section 312(a)(7) states "The Commission may revoke any station license or construction permit ... for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." Chief Justice Burger, in his majority opinion, found that the statute created an affirmative right of access to broadcast stations for paid political broadcasts by individual candidates for federal elective office, whether or not an opponent had secured air time. Broadcasters may deny the sale of air time prior to the commencement of a campaign, but .. once a campaign has begun, they must give reasonable and good faith attention to access requests from 'legally qualified' candidates for federal office." And the FCC has the authority to evaluate whether a campaign has begun for purposes of the statute.

The Court found that section 312(a)(7) did more than clarify the preexisting public interest standard for broadcasters. The section requires that access requests must be considered on an individualized basis. A policy of across-the-board denial of access requests or of granting the same time allocation to all candidates would be considered unreasonable, the Court ruled. Broadcasters must attempt to accommodate the candidate's purpose in seeking air time. However, in responding to access requests, broadcasters may consider "the amount of time previously sold to the candidate, the disruptive impact on regular programming, and the likelihood of requests for time by rival candidates under the equal opportunities provision of section 315(a)." A denial of access may be justified only by a showing of a "realistic danger of substantial program disruption ... or of an excessive number of equal time requests."

The Court also ruled that section 312(a)(7) does not violate the First Amendment rights of broadcasters by interfering with their editorial discretion. The section represents a balance of the interests of candidates and viewers as well as those of broadcasters, the Court said.

In a lengthy dissent, Justice White argued that broadcast licensees, in keeping with their duty to inform the public about political, campaigns, were entitled to determine the parameters of reasonable candidate access. The FCC's action with respect to the Carter-Mondale access request was characterized as "arbitrary, capricious, an abuse of discretion and otherwise contrary to law." The legislative history and prior FCC interpretations of the section did not require the broad access rights suggested by the majority, according to Justice White. The section only served to ..put teeth" in the broadcasters' public interest obligation by providing the license revocation remedy. Further, the individualized treatment of each candidate's request would seem contrary to section 315 of the Communications Act which requires that all candidates be treated equally. The justifications offered by the networks in rejecting the Committee's request were not "patently unreasonable" and were within the "traditionally recognized discretion of the broadcaster," concluded Justice White.

CBS, Inc. v. Federal Communications Commission, Case No. 80-207 (U.S.Sup.Ct., July 1, 1981) [ELR 3:6:5]

New Times article not protected by "neutral reportage" privilege

The cover of a 1978 issue of New Times magazine bore a photograph of Vincent "Buddy" Cianci, Mayor of Providence, Rhode Island. Cianci was seeking reelection at the time. But he was not pleased with the publicity the cover photograph brought him. He was not, because the picture's caption read, "Was this man accused of raping a woman at gunpoint 12 years ago?" The accompanying article was headlined, "Buddy, We Hardly Knew Ya," and it reported that while Cianci was attending Marquette Law School, he allegedly raped a woman at gunpoint. The article liberally quoted a statement made by the alleged victim to the article's author in 1978 in which she related in detail what she claimed to have occurred on the evening of her rape 12 years earlier.

A Federal District Court dismissed Cianci's libel suit against New Times, finding that the article was not defamatory because it "carefully refrains from stating that Cianci was indicted, officially charged, or guilty of the crime of rape" and because its defamatory effect is "slender indeed." A Federal Court of Appeals has reversed, however. It has ruled that the article is "reasonably susceptible of a defamatory connotation."

In so ruling, the appeals court determined that the article is not protected by a constitutional privilege of neutral reportage. Though the U.S. Supreme Court has not yet ruled on whether such a privilege exists, the Second Circuit Court of Appeals has held that the media does enjoy a privilege of neutral reportage concerning public officials or public figures. This privilege protects the accurate and disinterested reporting of charges against public figures, regardless of the reporter's private views regarding their validity, so long as the journalist believes, reason-ably and in good faith, that his report accurately conveys the charges made. "The public interest in being fully informed about such controversies that rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them ... What is newsworthy about these accusations is that they were made."

There are limits to this privilege however. "A publisher who in fact espouses or concurs in the charges made by others or who deliberately distorts these statements to launch a personal attack of his own on a public figure, cannot rely on a privilege of neutral reportage."

Cianci's case was considered by the Second Circuit Court of Appeals - the one that does recognize such a privilege. It held, however, that the New Times article did not qualify. The "the precise bounds of the privilege remain to be delineated," the court ruled, "it is enough for decision in this case that a jury could well find that the New Times article did not simply report the charges but espoused or concurred in them; indeed, despite the ingenious construction of the article, more naivete than ought to be demanded even of judges is needed to consider the article as doing anything else."

Cianci v. New Times Publishing Company, 639 F.2d 54 (2d Cir. 1980) [ELR 3:6:6]

Briefly Noted:

Torts.

The producer, syndicator and broadcaster of the "Mickey Mouse Club" television show have been found not liable for the injuries suffered by an 11 year old boy when he attempted to duplicate sound effects demonstration which involved placing a BB pellet inside a balloon. The Georgia Supreme Court, in reversing a Court of Appeals decision, found that the suit was barred by the First Amendment in that the demonstration did not create an unreasonable risk of harm and was not an

invitation to the child to act in a manner that would pose a clear and present danger of injury.

Walt Disney Productions, Inc. v. Shannon, 276 S. E.2d 580 (Ga. 1981) [ELR 3:6:6]

Employment Discrimination.

John Watson, a Native-American employee of Paramount Pictures, refused to comply with his supervisor's direction to consider only minority applicants when hiring personnel for Paramount Studios. When Watson was rejected for an executive training position, he filed a discrimination charge with the EEOC and subsequently filed an action against Paramount and against Gulf and Western Industries (of which Paramount is a wholly owned subsidiary). A Federal District Court had ruled

that the claims were time-barred and found that Gulf and Western was not involved in Paramount's personnel policies and was not a proper party to the action. However, a Federal Court of Appeals in California has ruled that several of Watson's claims were timely and that he was entitled to a trial on the merits of those claims. Summary judgment in favor of Gulf and Western was upheld, because "in the absence of special circumstances, a parent corporation is not liable for the Title VII violations of its wholly owned subsidiary."

Watson v. Gulf and Western Industries, Case No. 78-3331 (9th Cir., June 23, 1981) [ELR 3:6:6]

Obscenity.

A California Court of Appeal once again has upheld the granting of a preliminary injunction in a public nuisance abatement action which barred the exhibition or sale of approximately 50 films and film previews and the videotape cassettes of the films by the Mitchell Brothers' Santa Ana Theater (see ELR 2:20:6). The injunction was issued when the trial court, after an adversary hearing, determined that the films and film previews were obscene by clear and convincing evidence. The Court of Appeal concluded that the statutory procedure for the issuance of an injunction contained sufficient safeguards so as not to involve an unconstitutional prior restraint when applied to the regulation of allegedly obscene films. The sale of videotape cassettes of obscene films was ruled commerce in" and "public distribution" of obscenity, subject to regulation by the same means as the exhibition of films. And an argument that the Santa Ana City Attorney had failed to establish irreparable injury was rejected by the court, because the harm caused by the unabated exhibition of obscene films constituted such an injury.

People v. Mitchell Brothers Santa Ana Theater, Cal.Ct.App., 4 Civ. 23408 (May 5, 1981) [ELR 3:6:7]

First Amendment.

Members of the news media appealed from a South Carolina Circuit Court finding that they were in contempt of court for violating a state statute that prohibited the publication of a juvenile criminal defendant's name or picture without a court order. The South Carolina Supreme Court reversed, holding that the state statute

violated First Amendment rights because it prevented media from publishing lawfully obtained information about a juvenile charged with a crime. Said the court, ". . . we are aware of no interest of the State or the juvenile which is sufficient to withstand the mandate of the First Amendment when there is an attempt to prevent, because of the youthfulness of the alleged offender, the truthful publication of lawfully obtained information about a juvenile charged with a crime."

State, Ex Rel., The Times and Democrat, 274 S.E.2d 910 (S.C. 1981) [ELR 3:6:7]

Tax.

The Wisdom Society, a nonprofit corporation whose activities included the publication of scholarly and

historical works, has been found to be a charitable corporation under section 12582.1 of the California Government Code and has been ordered to comply with the reporting requirements for charitable corporations, by the California Court of Appeal. The court determined that the Society was organized for the advancement of education, based upon a reading of the corporate purposes set forth in the articles of incorporation and upon the Society's actual conduct. Its publications were limited to "informing readers on many literary, philosophical, religious, scientific, historical, political and other subjects." The particular code section under which the Society was formed did not conclusively determine the character of the corporation. And the fact that the Society's publications were not free also did not preclude charitable status, because the publications clearly were produced for public benefit rather than private gain.

Younger v. Wisdom Society, Cal.Ct.App., 2 Civ. No. 60407 (July 10, 1981) [ELR 3:6:7]

Sports.

Schoolboys brought an action seeking to enjoin the enforcement of an interscholastic league rule which precludes students nineteen years of age or older from participating in league contests. A federal district court in Texas has held that the rule was enforcable because it did not violate the schoolboys' right to due process and equal protection under the law. The court reasoned that the schoolboys' interest in participating in "football playoffs amounts to a 'mere expectation' rather than a constitutionally protected claim of entitlement." Further, the rule was rationally related to the league's "valid and legitimate interest in assuring fair competition and to

minimize the hazard of having the usual high school athletes competing with older, more skilled players."

Blue v. University Interscholastic League. 503 F.Supp. 1030 (N.D.Tex. 1980) [ELR 3:6:7]

NEW LEGISLATION AND REGULATIONS

Television networks may acquire nonbroadcast rights in programs without violating FCC's financial interest rule

The major television networks may proceed to acquire rights to nonbroadcast uses of television programs, including videodiscs, videocassettes and cable television, without violating the FCC's financial interest rule, according to a recent FCC ruling. Section 73.658 (j)(l)(ii)

of the Commission's rules provides that no television network shall "... acquire any financial or proprietary right or interest in the exhibition, distribution, or other commercial use of any television program produced wholly or in part by a person other than such television network, except the license or other exclusive right to network exhibition within the United States and on foreign stations regularly included within such television network ..."

In a Memorandum Opinion and Order, issued in response to a CBS petition for a declaratory ruling, the Commission determined that the financial interest rule only applied to rights related to the syndication of programming. The possibility of anticompetitive practices by the networks was discounted for two reasons. First, the networks have agreed to consent decrees with the Department of Justice which require that negotiations for broadcast and nonbroadcast rights must be

negotiated in separate transactions, presumably lessening the leverage the networks might otherwise exert (ELR 2:11:1). And, as noted in a separate statement by FCC Chairman Mark Fowler, the nonbroadcast program market is "highly competitive and directly responsive to the preferences of viewers." The networks' success in the field will be determined largely by the marketplace.

In the Matter of Request by CBS, Inc. for a Declaratory Ruling, Memorandum Opinion and Order, FCC 81-274 (June 16, 1981) [ELR 3:6:2]

DEPARTMENTS

Book Notes:

"Counseling Clients in the Entertainment Industry"; "Current Developments in CATV"; and "Libel Litigation 1981"

"Counseling Clients in the Entertainment Industry" is a 639-page volume containing outlines, agreements and other materials on a wide range of subjects including talent agencies, sound recordings, music publishing, motion pictures, theatrical productions, television, merchandising and income taxes. It is designed to supplement the two-volume set of materials distributed by PLI at its 1980 program. (ELR 2:15:7) The 1981 book is Handbook Number 128 and is available for \$25.

"Current Developments in CATV" contains materials on First Amendment Issues, Pole Attachments, FCC Regulations and Deregulation, Program Rights and Copyright Issues, Access, Franchising, Network Affiliation and Pending Legislation. It is Handbook Number 129, runs 629 pages, and is also available for \$25.

"Libel Litigation 1981" covers Preventive Counseling, Pleading and Motion Practice, the Confidential Source Dilemma, Discovery, Summary Judgment, Trial, Appeals and Privacy. The outlines in this volume are complete and cohesive, making this an excellent research tool. It is Handbook Number 131 and is 564 pages. It too is \$25.

The Practicing Law Institute, from which these books may be ordered, is located at 810 Seventh Avenue, New York, N.Y. 10019; phone (213) 765-5700. [ELR 3:6:7]

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