

RECENT CASES

Ruling that "Miss Wyoming" is private figure is followed by multi-million dollar libel judgment against Penthouse magazine; appeal pending

An article in a 1979 issue of Penthouse magazine - which was intended as humorous fiction, according to its publisher - has resulted in a \$14 million libel judgment against the periodical. The article, entitled "Miss Wyoming Saves the World," featured a Miss Wyoming named "Charlene" who was alleged to have been portrayed as sexually promiscuous and immoral. As a result, the real Miss Wyoming of 1978, Kimberli Jayne Pring, filed a libel suit against the magazine and the article's author.

Shortly before trial, Penthouse made a motion for summary judgment, contending that Pring was a "public figure," and thus would have to prove "actual malice," and that the article was not intended and could not be perceived by any reasonable person to be about her.

It was not disputed that Pring had entered and won many beauty and baton twirling contests. In addition to being selected "Miss Wyoming" of 1978, she won more than 500 twirling trophies, appeared on the covers of majorette publications, and performed as a baton twirler for four years at University of Wyoming football games. However, the trial court ruled that none of these accomplishments made Pring a "public figure." Said the court, "We think it is a matter of general knowledge that our country has a multitude of beauty contests, in each of which there may be dozens or even perhaps hundreds of contestants. It also has countless marching bands, each of which usually enjoys the services of a twirler. But

who among us can name or recall their names.... Ex-beauty queens and ex-twirling champions surely do not assume an 'influential role in ordering society. . . .' Nor have they 'assumed roles of especial prominence in the affairs of society,' nor do they occupy positions of 'persuasive power and influence.'" The court also noted that Pring had not drawn herself into any particular public controversy. In fact, said the court, Pring's "heyday may have been behind her" when the Penthouse article was published. If Pring were a public figure, the court reasoned, then every good twirler and every beauty contestant would be a public figure, "and therefore subject to defamatory statements without redress except for actual malice."

The trial court also ruled that a person may be libeled by fiction, if it would be reasonable for readers to understand that a fictional character was intended to portray that person. Whether Penthouse readers could

reasonably conclude that "Charlene" was intended to portray Pring was an issue for the jury, the court held.

After trial, the jury apparently found that readers could reasonably conclude that "Charlene" was Pring. The jury awarded Pring \$1.5 million in actual damages and \$25 million in punitive damages against Penthouse magazine, and an additional \$10,000 in actual and \$25,000 in punitive damages against the author of the article.

In response to a Penthouse motion for judgment notwithstanding the verdict or for a new trial, the trial court reduced the punitive damage award against the magazine to \$12.5 million. Pring agreed to accept the reduction rather than retry the case. Penthouse immediately appealed to the Federal Court of Appeals for the Tenth Circuit where the case is pending at this time.

Pring v. Penthouse, 7 Media Law Reporter 1101 (D.Wyom. 1981) [ELR 3:11:1]

Playboy magazine wins libel suit because it was not "reckless" in publishing mistaken article about federal customs official

Some litigation seems never to end, and this can be a source of aggravation and expense not only for those involved in the case, but also for those who report on it. For example, in 1979, Playboy magazine ran a brief article in its "Newsfront" section concerning an unnamed federal customs agent in Texas who had been convicted of planting marijuana in cars crossing into the U.S. from Mexico. Playboy had been alerted to the story by a reader who had sent it an article about the case clipped from the Houston Chronicle.

At one time, the facts in the Playboy article had been true. The agent referred to had been convicted in July of

1978, just as Playboy reported. Prior to sentencing however, the agent was granted a new trial. Although the agent's motion for a new trial was granted before the copy deadline for the Playboy issue in which the article appeared, the new trial was held - and the agent acquitted - before the issue was distributed. Playboy had not known that a new trial had been granted, and did not learn of the agent's acquittal until after the issue had been shipped.

Because the Playboy article had failed to report that the agent had been acquitted on retrial, the article was not true. Nevertheless, a Federal District Court in Texas has granted Playboy's motion for summary judgment and has dismissed the case. In doing so, the court ruled that "a customs inspector, whose decisions to search and to arrest directly and personally affect individual freedoms, would ... be classified as a 'public official.'" Thus, the

agent was required to prove that Playboy had acted with "actual malice" when it published the article.

The agent did not contend that Playboy published the article knowing that it was false. Instead, the agent suggested that Playboy had been reckless. The court disagreed, however. A Playboy research editor had called the Assistant U.S. Attorney in charge of the criminal prosecution, had read her the entire article, and had been assured by the U.S. Attorney that it was accurate. The research editor had not called the court clerk's office to double check, because it had been her experience that certain clerk's offices do not allow their personnel to read documents over the phone, and the editor thought it preferable to talk directly to someone who knew something about the case.

The court acknowledged that when a story is no longer "hot news," investigations must be more thorough, and actual malice may be inferred if an investigation is

"grossly inadequate under the circumstances." Nevertheless, said the court, "a reporter may safely rely on statements made by a single source, even though they reflect only one side of the story, so long as he is without 'a high degree of awareness of their probable falsity.'"

In this case, the criminal prosecution of the customs agent was not "hot news." But neither was Playboy's investigation grossly inadequate, the court held. Although contacting the court clerk's office about the case would have been an extra precaution, Playboy's failure to do so was not reckless, "particularly considering what should have been the reliability of the primary source, the United States Attorney's Office."

Torres v. Playboy Enterprises, 7 Media Law Reporter 1182 (S.D.Tex. 1980) [ELR 3:11:2]

Trial required in suit by book author against Prentice-Hall for alleged breach of implied condition that publisher make advertising and publicity decisions in good faith

In a case that may well result in a precedent-setting decision, author Gerald Zilg has sued his publisher, Prentice-Hall, Inc., for failing to promote his book "duPont: Beyond the Nylon Curtain." A Federal District Court in New York has refused to dismiss the case denying Prentice-Hall's motion for summary judgment.

Zilg has charged that Prentice-Hall adversely altered its advertising and promotion plans for the book after the publisher received claims that the book was untruthful and other objections from duPont. DuPont has been joined in the lawsuit for allegedly interfering with Zilg's contract. He alleges that Prentice-Hall reduced the first printing of the book by onethird, reduced the advertising

budget by almost twothirds, and did not publicize the dupont effort to suppress the book, or cooperate with the author in this regard.

Prentice-Hall moved for summary judgment on the basis of a provision in its publishing contract granting the publisher the right "to determine the method and means of advertising, publicizing, and selling the work, the number and destination of free copies, and all other publishing details, including the number of copies printed ... and like details."

Prentice-Hall's motion has been denied. Every contract contains an implied covenant of good faith and fair dealing, said the court, and "the implication of a requirement that the publisher make its determination as to all publishing details in good faith does not conflict with any express provision ... which gives it the ,right to determine' the details." The court concluded that it was inappropriate to grant summary judgment, because whether

a party to a contract has failed to act in good faith is a question of fact which should be resolved at trial.

Zilg v. Prentice-Hall, Inc. 515 F.Supp. 716 (S.D.N.Y. 1981) [ELR 3:11:2]

Projectionists union local is ordered to discontinue unlawful hiring hall procedures

The National Labor Relations Board has found that Moving Picture and Projection Machine Operators Union, Local No. 143, operated an "exclusive hiring hall" in violation of federal labor laws, and a Federal Court of Appeals has ordered the Union to stop refusing to refer a former member of a New York local to permanent projectionist jobs in the St. Louis area.

The Union maintained a list of projectionists indicating the amount of time each projectionist spent working or training at the theaters to which he previously had been referred. Those on the list were either members of the Union or in training programs sponsored by the Union. Anyone on the projectionist's list could bid for vacant jobs, and the bidder who was shown by the list to have worked the longest was referred for the job if he was qualified.

A projectionist who had worked from 1971 until 1975 in New York, where he was a member of a New York local of the Union, challenged legality of the Union's referral system after he, along with 48 others, had been denied admission to the Union's training program. The NLRB found that under the Union's referral system, only Union members were referred to employers for permanent jobs. Since the theater operators, as a matter of practice, hired only those persons who were referred to

them for employment by the Union, the NLRB concluded that the Union operated an exclusive hiring hall in violation of the National Labor Relations Act.

A Federal Court of Appeals has agreed with that conclusion and in response to an NLRB Petition, the Court has ordered the Union to refer the projectionist for permanent employment on a non-discriminatory basis and to make him whole for any loss of earnings he may have suffered from the discrimination.

The Court did not, however, affirm another NLRB finding that the Union refused to refer non-union members to temporary jobs. The record showed conclusively, said the Court, that trainees who were not members of the Union were frequently referred to temporary jobs.

National Labor Relations Board vs. Moving Picture and Projection Machine Operators Union, Local No. 143, 649 F.2d 610 (8th Cir. 1981) [ELR 3:11:3]

Songwriter not entitled to share in proceeds received by publisher from suit against competing publisher based on songwriter's own fraud

"One may not profit from his own wrongdoing," was the "black letter" legal principle involved in a music industry lawsuit composed of some rather unusual facts. Screen Gems-Columbia Music (currently Screen Gems-EMI) entered into exclusive song writing and recording contracts with songwriters Linzer and Randell in October of 1964. After signing the Screen Gems agreements, Linzer and Randell entered into an exclusive songwriters agreement and an exclusive record producer

agreement with Saturday Music, Inc. These agreements were not only in conflict with the agreements made with Screen Gems, but were intentionally back dated so that it appeared they were signed prior to the date of the Screen Gems agreements. Screen Gems was then fraudulently induced to release the two songwriters from their agreements with it.

Linzer and Randell soon became a commercial success, earning substantial sums for Saturday Music and substantial royalties for themselves. However, in 1966, when Linzer and Randell's agreements with Saturday Music expired, the two songwriters signed again with Screen Gems. In a subsequent lawsuit between Saturday Music and Screen Gems, Screen Gems discovered the back dating of Saturday Music's agreements. Screen Gems sued Saturday Music for fraud and obtained a judgment requiring Saturday Music to assign to Screen Gems the copyrights in those compositions obtained by

Saturday through its fraud and to pay Screen Gems liquidated damages and profits in the sum of \$100,000.

A lawsuit was then brought by Linzer seeking to recover \$16,666.66 of the \$100,000 received by Screen Gems. The songwriters' 1966 agreements with Screen Gems, as amended in 1970, recognized the then pending litigation between Screen Gems and Saturday Music and provided that Linzer was to receive onesixth of any money received by Screen Gems because of the lawsuit's settlement or judicial resolution.

A New York trial court has dismissed Linzer's case however. "It has long been black letter law in the state of New York that one may not profit by his own wrongdoing," said the court. Any other result would clearly offend public policy. "[Linzer] has already received (and will continue to receive) royalties as coauthor of his songs, but will not therein receive a reward for being the co-author of a tort."

Linzer vs. Screen Gems-EMI Music, Inc., New York Law Journal (September 22, 1981) [ELR 3:11:3]

Indictment of record pirate is upheld; recordings fixed prior to February 15, 1972 were protected under New York's antipiracy laws despite legislature's reorganization of applicable statutes

Prior to June of 1978, New York's General Business Law provided that it was a misdemeanor to make an unauthorized copy of a phonograph record, or to manufacture, distribute or sell phonograph records without the name and address of the manufacturer. In June of 1978, the crime of manufacturing an unauthorized sound recording was elevated from a misdemeanor to a felony. This entailed re-enacting the General Business Law

provisions as separate penal statutes. M&R Records, which was charged with "pirating" and unlawfully marketing records by groups such as the Beatles, the Yardbirds and Led Zeppelin, claimed that the penal statutes were unconstitutional in that they were preempted by the Federal Copyright Act (17 U.S.C. section 301) which became effective on January 1, 1978.

Federal copyright protection extends to sound recordings "fixed" after February 15, 1972. Under 17 U.S.C. 101, "A work is fixed in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is 'fixed' . . . if a fixation of the work is being made simultaneously with its transmission." The recordings which allegedly

were pirated were fixed prior to February 15, 1972. Title 17 did not annul or limit any rights or remedies under the common law or statutes of any state with respect to causes of action arising before January 1, 1978. However, after January 1, 1978, an author could no longer claim protection, under state law, of rights falling "within the general scope of copyright."

A Suffolk County Court, describing the repeal of New York's General Business Law provisions regarding the piracy of sound recordings as "part of the mechanics of statutory draftsmanship," has found that the New York Legislature intended to extend, rather than change existing law. The penal code sections under which M&R was indicted therefore were not preempted by the 1976 Copyright Act, the court ruled.

M&R also was charged with selling a record which purportedly was recorded by the Rolling Stones, but which actually was recorded by an unnamed group.

New York's penal law makes it a misdemeanor to fail to disclose, on the cover, box or jacket of a record, the name of the manufacturer of and actual performer or group on the record. The statute does not require that the recording be fixed, and therefore it was not preempted by the Copyright Act. Further, consumer protection, rather than copyright infringement, was the focus of the statute. The court sustained this charge against M&R.

The claim that M&R engaged in the unauthorized recording and sale of a November 1978 radio broadcast of the group Blondie also was upheld. There was a question as to whether the performance was produced as a record. Again, the court ruled that the statute did not require that the record be fixed in order to "trigger" the commission of the crime charged.

People v. M&R Records, CCH Copyright Law Reports,
Para. 25,215 (N.Y.Sup.Ct. 1980) [ELR 3:11:4]

Art museum trustees acted within discretion in exhibiting and deaccessioning art works

When founded in 1924, the Pasadena Museum of Art's stated purpose was to maintain a collection of art, painting and sculpture. In 1952, the Museum acquired a collection which contained works of four 20th century artists. Subsequently, the Museum's collection became increasingly contemporary, resulting in a name change in 1973 to the Pasadena Museum of Modern Art. The original broadly stated purpose was not changed, however. A brochure prepared in the late 1960s for a fundraising campaign described the Museum's collection of

oriental art and old masterpieces, as well as its works of contemporary art.

Industrialist Norton Simon became associated with the Museum in 1974. In return for Simon's financial assistance, the Museum agreed that for five years an average of 25% of the Museum's exhibition space would be available for exhibiting the Museum's collections and other modern and contemporary art loaned to the Museum. The remaining 75% of exhibition space would be available for exhibiting works from Simon-controlled foundations. The Museum's name was changed to the Norton Simon Museum of Art at Pasadena.

In a recent lawsuit, three former members of the Board of Trustees of the Museum sought to enjoin the sale of certain art work belonging to the Museum. The trustees argued that the purpose of the Museum had so changed that only works of modern and contemporary art could be exhibited. They also argued that the Board had failed

to maintain the Museum's collection, did not properly exhibit the Museum's art and did not receive reasonable amounts for the sale of its art.

Judge Julius M. Title of the Los Angeles Superior Court has ruled that there was no restriction barring the Board of Trustees from deemphasizing modern and contemporary art. The court noted that section 5231 of the California Corporations Code requires directors of a charitable trust to serve in good faith and in the best interest of the corporation. The directors were found to have met their fiduciary obligations, both in exercising reasonable discretion as to deaccessioning works of art, and in determining which materials from the Museum's own collection would be displayed. The Board had adopted a written deaccession policy in 1978 and had followed the policy. The court also noted that proceeds from sales of deaccessioned items will be used to acquire or restore pieces, and it ruled that the fact that the

Board may have no immediate plans to acquire additional works of art does not constitute an abuse of discretion.

The court therefore dissolved a previously issued preliminary injunction.

Rowan v. Pasadena Art Museum, Case No. C322817 (L.A. Sup.Ct., Sept. 22, 1981) [ELR 3:11:5]

ABC television station affiliate in Syracuse, New York is denied relief in antitrust action against NBC and CBS affiliated competitors

Straight-edge business practices may dismay competitors, but they are not, of themselves, antitrust violations. In November of 1978, WIXT Television, Inc., the ABC television affiliate in Syracuse, New York, took on two

"formidable communications conglomerates," Meredith Corporation and Newhouse Broadcasting Corporation, the operators of the CBS and NBC television affiliates in Syracuse. WIXT alleged the following claims under Section 1 of the Sherman Act: that Newhouse and its newspaper affiliate, the Herald Company, engaged in reciprocal advertising practices, and that Newhouse and Meredith conspired both to interfere with WIXT's ABC affiliation and to deny WIXT access to various government agencies considering WIXT's application to relocate its transmission facilities. A Federal District Court in New York, in a lengthy opinion, has granted summary judgment to Newhouse and Meredith.

Reciprocal advertising between WSYR, Newhouse's television station, and the Herald Company was a business practice "intrinsically related to common corporate ownership" and did not constitute a conspiracy in restraint of trade, ruled the court. The Herald advertised

WSYR's television programs in exchange for television advertising time which was used to promote the Herald newspapers. The advertising was accounted for but not paid for in cash. WIXT claimed that it was denied the opportunity to enter a similar exchange arrangement with the Herald. However, the court stated that "Mere inequality of treatment by a corporation towards its competitors has yet to become a violation of the antitrust laws." The arrangement did not contribute substantially to WIXT's weaker position in the Syracuse television market. And, as in the similar case of Syracuse Broadcasting Corp. v. Newhouse, 319 F.2d 683 (2d Cir. 1963), the court concluded that the WSYR-Herald advertising arrangement achieved "legitimate business efficiencies." There was no showing that the arrangement was reciprocal dealing which was intended to foreclose WIXT from the Syracuse television advertising market,

or that WSYR received increased publicity, viewers and profitability at the expense of WIXT.

WIXT then contended that Meredith and Newhouse had conspired to convince ABC that WIXT possessed inferior transmission strength in an effort to influence ABC to terminate WIXT's affiliation agreement. The court observed that "Courts have consistently held that the Sherman Act is not violated when a distributor unilaterally attempts to get a supplier to transfer patronage." Although Meredith, independently, had approached ABC regarding the network's Syracuse affiliation, this was found to be of little, if any, significance, since ABC never indicated that it was considering a change in its affiliation. And it was not shown that Meredith or Newhouse had sufficient leverage with ABC to induce the termination of WIXT's affiliation. The presence of economic coercion is a requisite element in establishing a group boycott.

Meredith and Newhouse also purportedly attempted to deny WIXT access to a local zoning board proceeding regarding a variance which would have permitted the relocation and upgrading of the WIXT transmission antenna. (Meredith had previously filed a Petition to Deny WIXT's application for a relocation with the FCC; the FCC has not yet ruled on the matter.) WIXT alleged that Newhouse and Meredith appeared before the zoning board and presented "sham" objections to the proposed relocation, primarily to convince advertisers that WIXT's signal was technically deficient. The court accepted Newhouse and Meredith's argument that their conduct was protected by the First Amendment. The First Amendment protects appearances before governmental bodies except when the political process has been abused through bribery, perjury or misrepresentation in order to harm a competitor. The court found that the sham exception did not apply to Meredith and

Newhouse's conduct because their appearances were made in the course of the legitimate exercise of First Amendment rights, and were not part of a plan to drain the funds and manpower of WIXT. Further, no causal connection was shown between the denial of WIXT's relocation request and the appearances of Newhouse and Meredith before the zoning board - other factors were cited as the basis for the denial.

WIXT Television, Inc. v. Meredith Corporation, 506 F.Supp. 1003 (N.D.N.Y. 1980) [ELR 3:11:5]

Jury must decide whether golf tournament spectator assumed risk of being hit by errant golf ball

An Illinois appellate court has reversed a decision granting summary judgment to a country club and golf

association in an action brought by a golf tournament spectator who was struck in the eye by a golf ball hit by golfer Dow Finsterwald. It was noted that at the time the injury occurred, the spectator was standing near a concession booth located in an area between two fairways. Testimony indicated that it was not possible to see golf balls approaching in that area and that balls had been hit there daily in the past. The spectator asserted that she was a business invitee to whom a duty of care was owed and that the duty was breached by the failure to warn her of the possibilities of danger.

The golf association contended that the spectator, who played golf twice a week, had assumed the risk of injury. In view of the contractual relationship between the parties, the assumption of risk defense was available to the tournament operator under Illinois law. But this was a factual determination for the jury, stated the court. The tournament operator would be required to prove that the

spectator was aware of the danger of being struck by a golf ball "while in a presumed area of safety."

Duffy v. Midlothian Country Club, 415 N.E.2d 1099 (Ill.App. 1980) [ELR 3:11:6]

Federal Communications Act provision limiting commercial radio operator licenses to U.S. citizens is constitutional, Federal Court of Appeals rules

A disc jockey and a radio station engineer challenged a Federal Communications Commission decision denying them commercial radio operator licenses because they were not citizens of the United States.

Broadcast station engineers are required by the FCC to be licensed. Ismael Rodriguez, a radio station engineer, and Javier Navarro, a disc jockey, both aliens admitted

for permanent residence, sought to secure Third Class Radio Telephone Operator Permits in order to pursue their careers. Though disc jockeys are not required by the FCC to be licensed, Navarro alleged that his career opportunities would be severely limited by his inability to obtain licensing because many smaller stations require their broadcasters to perform additional technical functions for which licensing is necessary.

The FCC denied both license applications because of Section 303(1) of the Communications Act of 1934 which specifically prohibits the FCC from granting commercial radio operators licenses to aliens. A Federal Court of Appeals has ruled that this prohibition does not violate due process of law, and it therefore affirmed the application denials.

Immigration is an exclusively federal interest, said the court, which is political in nature and necessarily subject to narrow judicial review. "The national interest in

providing an incentive for aliens to become naturalized, or possibly even as providing the President with an expendable token for treaty negotiating purposes" is sufficient to justify the citizenship requirement.

Campos vs. Federal Communications Commission, 650 F.2d 890 (7th Cir. 1981) [ELR 3:11:6]

Article in Consumer Reports magazine disparaged Bose loudspeaker, Federal District Court rules

In an opinion of interest - and possible concern - to all who write and publish critical reviews, a Federal District Court in Boston has ruled that Consumer Reports "disparaged" the Bose 901 Series I loudspeaker system in an article published more than ten years ago. The article evaluated the quality and performance of 24 different

loudspeakers, based on tests conducted by Consumers Union itself. The article's report of those tests said that "individual instruments heard through the Bose system ... tended to wander about the room." According to the court, "A statement that attributes such grotesque qualities as instruments wandering about the room could have no effect other than to harm the reputation of the product."

Product "disparagement" is one form of defamation, and the legal principles involved in the case were those of libel law. Thus, an important issue was whether Bose had to prove that Consumers Union published the offending statement with actual knowledge that it was false or in reckless disregard of its falsity, or whether Bose merely had to prove that the statement was published negligently. On this issue, the court ruled in favor of Consumers Union. That is, it ruled that Bose had to prove actual knowledge or reckless disregard. The court

ruled that this standard - which is the "actual malice" standard of *New York Times v. Sullivan* - applied to this case, because damage to the reputation of a product can always be measured in money, and because there is a great public interest in obtaining information about the quality of consumer products. Also, Bose had become a "public figure" - at least insofar as the quality of its speakers was concerned - because Bose itself had created a "public controversy" concerning its speakers by advertising them and by actively soliciting tests and reviews. In this way, said the court, Bose voluntarily assumed the risk that reviewers might say something false about its product. Furthermore, the facts showed that Bose had access to the media to rebut the offending statement, because shortly before its case was filed, Bose delivered copies of its complaint to UPI, the *New York Times*, *Business Week*, and the *Boston Herald*

Traveler, and each of them published an article about Bose's charges against Consumers Union.

However, though Bose is a "public figure," that did not mean that Consumers Union was automatically entitled to win the case. Bose was still entitled to prove, if it could, that Consumers Union had published an article with actual malice. And, according to the court, Bose in fact did so. Apparently, during the Bose speaker test, the article's author did not really bear instruments "wander about the room." Instead, heard them wander "along the wall." Thus, the author knew that his article had not accurately described the effects he had heard during the test. And for this reason, the court ruled that Consumers Union had published a false statement of material fact with knowledge that it was false or in reckless disregard of its falsity.

Bose v. Consumers Union, 7 Media Law Reporter 1069
(D.Mass. 1981) [ELR 3:11:7]

Briefly Noted:

Libel.

In a libel action against a Memphis television station, arising out of its broadcast of news reports that there were "cow deaths" and "starving cattle" on a ranch owned by Shelby Wilson, a Federal Court of Appeals has held that Wilson was a private, not public, figure, but that the burden was on him to prove that the reports had been false. The trial court too had ruled that Wilson was a private figure, despite the fact that he had invited media attention to his business some seven years before. However, the trial court also had instructed the jury that

the television station had the burden of proving that its reports were truthful. The jury awarded Wilson a \$75,000 verdict which the trial court later reduced to \$30,000. The Court of Appeals reversed even the judgment, because of the trial court's error in ruling that the station had to prove truth, rather than Wilson prove falsity.

Wilson v. Scripps Howard, 7 Media Law Reporter 1169
(6th Cir. 1981) [ELR 3:11:7]

Sports.

A Federal Court of Appeals has overturned a preliminary injunction restraining a school board from refusing to permit a girl to try out for the boys' basketball team. The lawsuit was filed by an athletically gifted

11-year-old girl who claimed that the school board's policy of maximizing participation in sports by providing "separate but equal" boys' and girls' interscholastic sports teams violated the Federal and Illinois constitutions and Title IX of the U.S. Education Act. The court ruled however that she had failed to show a reasonable likelihood of success on the merits, and thus was not entitled to the injunction, because the school board showed that its program increased girls' participation in sports.

O'Connor v. Board of Education of School District No. 23, 645 F.2d 578 (7th Cir. 1981) [ELR 3:11:7]

Casino Regulation.

A New Jersey Casino Control Commission regulation which prohibits a licensed casino from acquiring more than 50% of its slot machines from any one manufacturer has been upheld by the New Jersey Supreme Court. Bally Manufacturing Corporation argued that it was singled out for special restriction since the company accounts for about 80% of the sales of slot machines in the United States, and therefore was entitled to an evidentiary hearing. However, the court ruled that the regulation was within the Commission's authority to prevent economic concentration in the casino industry. The regulation was not directed at Bally, stated the court, but rather was a policy decision based on undisputed facts. Bally's argument that the regulation violated the Sherman Act also was unsuccessful since state regulatory programs have been ruled immune from the provisions of the Act. The U.S. Supreme Court has declined to review the case.

Bally Manufacturing Corporation v. New Jersey Casino Control Commission, 426 A.2d 1000 (N.J. 1981) [ELR 3:11:8]

Television Advertising.

A television station's right to refuse to broadcast a commercial was not totally discretionary, despite contractual language giving the station the right to reject material submitted by the advertiser, a Federal District Court in Louisiana has held. The court ruled that the station had an implied duty to act reasonably and in accordance with objective standards in the television industry. Questions of fact remained to be resolved regarding the cancellation of Sam's Style Shop's retail comparative price advertising. Therefore, WSDU's motion for

summary judgment in Sam's action for breach of contract was denied.

Sam's Style Shop v. Cosmos Broadcasting Corporation,
496 F.Supp. 46 (E.D.La. 1980) [ELR 3:11:8]

Previously Reported:

The following cases have been officially reported: Hospital for Sick Children v. Melody Fare Dinner Theater, 516 F.Supp. 67 (2:6:1); Estate of Presley v. Russen, 513 F.Supp. 1339 (3:2:1); Sailor Music v. The Gap Stores, 516 F.Supp. 923 (3:2:4); Barnstone v. University of Houston, 514 F.Supp. 670 (3:5:2); Dr. Pepper Co. v. Sambo's Restaurants, Inc., 517 F.Supp. 1202 (3:6:3); Miller v. Universal City Studios, Inc., 650 F.2d 1365 (3:7:2); Malrite TV v. FCC, 652 F.2d 1140 (3:5:2);

Warner Bros. v. ABC, 654 F.2d 204 (3:7:1); Seegmiller v. KSL, 626 P.2d 968 (3:9:8). [ELR 3:11:8]

WASHINGTON MONITOR

Copyright Office issues new circulars concerning motion pictures and compulsory licenses for phonorecords

The Copyright Office has just issued two new circulars of special interest to those in the movie and music businesses. Circular R45 bears the formal title "Copyright Registration for Motion Pictures Including Video Recordings." As the title implies, the circular does explain how to register copyright claims in movies and videotapes. It includes step-by-step instructions for completing the necessary forms as well as a half-dozen

completed samples. The circular is more than an instruction sheet, however. It also includes a brief explanation of the Copyright Act of 1976, as it pertains to movies, and it offers advice on whether separate registration should be made for treatments, scripts and scores. On this question, the circular explains that to the extent a treatment, script or score is actually embodied in a finished motion picture which is itself registered, the registration of the movie will usually protect the underlying treatment, script or score as well. However, the circular points out that if the copyright owner of these underlying elements is different from the owner of the finished film, or if the treatment, script or score contains material that does not appear in the finished film, separate registration would serve a purpose.

Although the Copyright Office circular does not say so, registration of scripts and circulars with the Copyright Office should not be confused with registration with the

Writers Guild of America. The WGA registration process is unrelated to copyright registration and does not, by itself, grant copyright protection. WGA registration merely provides evidence of the day by which registered material was created. Published material must be registered with the Copyright Office to be protected by copyright, even if it already has been registered with the WGA.

Circular R73, entitled "Compulsory License for Making and Distributing Phonorecords," explains the compulsory license section of the Copyright Act, including when and under what circumstances such a license may be obtained. The circular also explains how to obtain a compulsory license.

Copies of both circulars may be obtained directly from the Copyright Office, Library of Congress, Washington, D.C. 20559. [ELR 3:11:4]