RECENT CASES

Universal wins preliminary injunction barring distribution of movie "Great White" which court found to be substantially similar to "Jaws"

Universal Pictures has obtained a preliminary injunction barring Film Ventures International from distributing the movie "Great White." According to Universal, "Great White" infringes the copyright to Universal's own movie "Jaws." Judge David V. Kenyon, of the Federal District Court in Los Angeles, has ruled that it is likely that Universal will succeed in proving that claim at trial.

The primary issue in the case is whether the two movies are "substantially similar" to one another. Universal contends that they are. And even Film Ventures agrees that the "general idea" of "Jaws" and "Great White" is the same. (Film Ventures is the U.S. and Canadian distributor of "Great White." It was produced by a pair of Italian companies.) In fact, Universal and Film Ventures stipulated in court that both of their movies are about "a terror fish attacking a coastal town on the Atlantic seaboard."

However, the two companies do not agree on whether the expression of that general idea is substantially similar in the two movies. Universal, of course, contends that the expression is substantially similar. It argues that the basic story points, the sequence of incidents, the major characters and interplay of those characters is the same in both movies. Film Ventures, on the other hand, argues that neither the basic idea nor the scenes a faire presented in "Jaws" are protected, and it says, when those are eliminated, "virtually no similarity remains" between "Jaws" and "Great White."

Judge Kenyon has agreed with Universal. In his findings of fact, Judge Kenyon itemized some five pages of "substantial similarities" between the two movies. Judge Kenyon noted, for example, that local politicians in both movies downplay news of the shark in the interest of local tourism; the action in both movies revolves around a salty, English-accented skipper who goes out in a boat to hunt the shark; the skipper is eaten by the shark in the finale of both movies, and in both movies the shark is then killed by an explosion. It was also noted that all of the major characters in "Great White" have substantially similar counterparts in "Jaws." Moreover, several scenes in "Jaws" have substantially similar counterpart scenes in "Great White," including a scene in which raw meat is lowered off a pier as shark bait which causes the shark to break off part of the pier throwing several people into the water.

Given these similarities, Judge Kenyon found that there is "significant likelihood" that a jury, applying the ordinary observer test, would find the protectible expression in "Jaws" to be substantially similar to that in "Great White." For this reason, he ruled that Universal was entitled to a preliminary injunction, because under the Copyright Act, irreparable injury is presumed whenever a prima facie case of copyright infringement is established.

Universal City Studios, Inc. v. Film Ventures International, Inc., Case No. CV 82-1033-Kn (C.D.Cal., April 21, 1982) [ELR 4:3:1]

Columbia Pictures fails in bid to enjoin distribution of "Paradise" despite similarities between that movie and "The Blue Lagoon"

Columbia Pictures has failed in its efforts to enjoin further distribution of the movie "Paradise" by Embassy Pictures, despite similarities between "Paradise" and Columbia's own movie "The Blue Lagoon." This case is especially interesting, because it was filed just weeks after Universal did win a preliminary injunction barring distribution of "Great White" (ELR 4:3:1), and because - quite by coincidence - the judge assigned to hear Columbia's suit was the very same one who ruled in Universal's favor, Judge David V. Kenyon of the Federal District Court in Los Angeles. The same principles of law which led Judge Kenyon to conclude that "Great White" probably does infringe the copyright to "Jaws," led him this time to conclude that "Paradise" probably does not infringe the copyright to "The Blue Lagoon." As in the earlier case, the issue was whether the two movies were "substantially similar." Several movie critics thought so, and said as much in their reviews. Embassy Pictures - the distributor of "Paradise" -thought otherwise, however, and also raised an additional defense of interest. Embassy pointed out that "The Blue Lagoon" was based on a 1903 novel of the same name. The copyright to that novel has expired, and thus the book is now in the public domain. Accordingly Embassy argued that even if there were similarities between the two movies, they would be irrelevant if they were based on elements found in the novel. Under the Copyright Act, Columbia would be entitled to copyright protection only for that which was new and original in its movie - not for things taken from the public domain novel.

Interestingly, however, Judge Kenyon ruled that he did not have to determine the precise scope of Columbia's copyright, because, he said, "even if the book Blue Lagoon were not in the public domain and the entire film 'Blue Lagoon' were subject to copyright protection, Columbia has not shown a likelihood that it will succeed on the merits of its copyright claim." Judge Kenyon so ruled, because despite the similarities noted by the critics, and itemized in detail by Columbia, he determined that the movies' general ideas and the way in which they were expressed are different.

As Judge Kenyon analyzed the case, "The general idea of `Blue Lagoon' is the coming of age of two young children who, marooned in an idyllic setting, mature to adolescence, cope with the problems they face, discover each other, fall in love, have a child, and apparently commit suicide when adrift at sea. The thrust of the entire movie is the maturation of and changing relationship between the boy and the girl." On the other hand, Judge Kenyon agreed with Embassy that "Paradise" is a "chase movie." In it, the heroine is chased by an evil character who brings her and the hero together and controls their future movements. Although "Paradise" also shows the development of the relationship between the boy and the girl, their relationship is not developed as fully as the relationship in "The Blue Lagoon." Furthermore, unlike "The Blue Lagoon," the boy and the girl in "Paradise" begin their relationship as teenagers. Although the girl becomes pregnant, she does not give birth. And eventually the two return to civilization.

Columbia also objected to Embassy's advertising campaign for "Paradise." Embassy's print ads feature the boy and girl staring into one another's eyes against a tropical background. The ad is similar to the print ad for "The Blue Lagoon." However, the copyright protection given to photographs is very narrow. Indeed, a subsequent photographer may photograph the same subject as an earlier photographer without violating the earlier photograph's copyright, so tong as the second photographer re-poses the subjects and varies the pose at least slightly. Here, Judge Kenyon found that the "Paradise" pose was different from the "Blue Lagoon" pose, and that loving couples, even against a tropical -background, are too common to be protectible. (A similar pose was used, for example, in the artwork for "South Pacific.")

Judge Kenyon also rejected Columbia's trademark infringement claim. He ruled that reviews by critics commenting on the similarity of the advertising for the two films were not sufficient to establish that Columbia's ads for "The Blue Lagoon" had acquired "secondary meaning." And Columbia failed to establish that there was a likelihood that Embassy's ads would cause confusion among movie-goers. Finally, Columbia's claim that Embassy's ads would "dilute" Columbia's trademarks was rejected, because Judge Kenyon concluded that Columbia had not shown that Embassy's ads impaired the effectiveness of the "Blue Lagoon" name or advertising, nor did Embassy's ads link "The Blue Lagoon" with anything unsavory or degrading.

Columbia Pictures Industries, Inc. v. Embassy Pictures, Case No. CV 82-2376-Kn (C.D.Cal., May 27, 1982) [ELR 4:3:2]

David Merrick ordered to repay CBS $916,666 for failing to produce mini-series based on "Blood and Money"

Litigation involving Thomas Thompson's "Blood and Money" may spawn the saga "Blood and Money II." The best-selling book has been the object of a copyright infringement claim (ELR 2:18:1) and a libel lawsuit (ELR 2:9:5). And recently, a Federal District Court in California has ruled that producer David Merrick must repay CBS $916,666 which CBS had advanced in connection with the proposed production of a mini-series based on Thompson's book about the alleged murders of a prominent Houston couple. Merrick acquired the motion picture and television rights to "Blood and Money" in 1977. On August 1, 1977, Merrick and CBS entered into a Rights Agreement and a Production Agreement. Under the Rights Agreement, CBS agreed to pay Merrick a total of $1,250,000 for his right, title and interest in "Blood and Money" and to budget $10 million for the project. Merrick was to be paid $833,333 upon execution of the Rights Agreement, $333,333 upon completion of principal photography, and $83,333 upon delivery of the final air prints. The agreement also provided that if principal photography of the mini-series did not begin by August 1, 1979, the agreement would terminate, the right to produce the property would revert to Merrick, and CBS would be obligated to pay the balance of the $1,250,000 due Merrick provided Merrick was not in breach of his contractual obligations.

Under the Production Agreement, CBS agreed to pay Merrick $250,000 for his services as the producer of the mini-series. Merrick, consulting with CBS, was to negotiate the terms and conditions for the employment of a screenwriter, director, actors and other personnel.

Merrick selected William Friedkin as his director and asked Walon Green to write the screenplay. At the time Merrick hired Friedkin (whose fee was $500,000) and Green (who was paid $250,000), Merrick knew that they were obligated to make a film entitled "The Brinks Job" and would not be able to work on "Blood and Money" until their work on the "Brinks" film was completed.

Not surprisingly, the first portion of the "Blood and Money" screenplay was not delivered until September 1, 1978, and the last part was not delivered until June 15, 1979. Merrick failed to meet with Friedkin concerning

"Blood and Money" between November 16, 1977 and August 3, 1978.

In May of 1978, Green had told Merrick he could not complete a draft of the screenplay in less than a year, but Merrick did not advise CBS of this information. The Merrick-CBS Production Agreement allowed CBS 90 days from the delivery of the final screenplay to decide whether to proceed with filming, as well as six months for preproduction work before the start of principal photography. Thus, Merrick was aware in May of 1978 that the planned August 1, 1979 start date might be missed by at least six months.

It was not until March of 1979 that CBS realized the extent of the delay. At an April 9, 1979 meeting with Merrick to prepare a revised production timetable, CBS agreed that it would advise Merrick whether it would proceed with production of the miniseries after the originally agreed-upon August 1st date. This oral modification of the Production Agreement subsequently was repudiated by Merrick, who then apparently retracted his repudiation.

The first draft of the "Blood and Money" screenplay eventually was completed on June 15, 1979, and on July 27, 1979, CBS informed Merrick that it was ready to order a 10-hour mini-series. CBS' preparations for commencing photography continued during the summer of 1979, but in early September, Merrick informed CBS that because principal photography had not commenced by August 1, 1979, the rights to the property had reverted to him.

CBS thereafter screened its breach-of-contract claim before a most attentive audience, Judge David Williams of the Federal District Court in Los Angeles. Judge Williams noted that the CBS-Merrick Production Agreement stated that the default of anyone hired to work on "Blood and Money" would not be a breach by CBS. The delays, which were caused by Friedkin and Green, were attributable in part to Merrick who would not agree to a new director-writer team. While the Production Agreement did not assign supervisory responsibility over the director or writer to either party, Judge Williams found that there was a joint responsibility to monitor the pace of the writing. But Merrick bore a greater share of this responsibility due to his creative control of the project. Only the "intransigence of Merrick spelled the doom of the production," stated Judge Williams.

Merrick denied that he had agreed to any change in the production schedule. But the court found that there was a mutual abandonment of the August 1st date. Merrick continued to work with CBS personnel during the summer of 1979 despite his agent's unheeded request that CBS pay Merrick an additional $500,000 to "appease" him for the delays. On the whole, the parties' conduct was incompatible with an intention to enforce the

August 1st deadline, said the court. And if any consideration was necessary to support the oral modification of the commencement date, it was supplied by "the substitution of a new set of duties based on an amended timetable for the performance of the contract."

Merrick's argument that the August 1st date was an "option date" was rejected. The court found that it was a "target" date which was not met because of the writer's delay. Merrick himself was responsible for their inability to begin principal photography, stated Judge Williams, due to his failure to negotiate competently with Friedkin and Green for their "timely" services, his failure to adequately monitor their performance, his refusal to replace Friedkin and Green or to select an additional writer to assist Green, and his failure to keep himself in a "ready, willing and able position" to effectuate the project. Merrick "knew of the delays ... yet lulled [CBS] into spending more and more money in prefilm preparation before he sprang ... his deadline rights."

Merrick's repudiation of the orally modified agreement constituted a breach of contract, ruled Judge Williams. CBS was granted rescission of its agreement with Merrick, both because Merrick repudiated the modified agreement and breached the original agreement. Merrick was ordered to return to CBS $833,333 which the company paid him under the Rights Agreement. Merrick will not be required to reimburse CBS the amounts it paid to Friedkin or Green, since Merrick was not a party to those agreements. However, CBS also will be entitled to recover from Merrick $83,333, the amount paid to his agents at the William Morris Agency. CBS, on its part, must return to Merrick the rights to "Blood and Money." However, the "physical property rights" to the screenplay segments prepared by Green will belong to CBS.

CBS Inc. v. Merrick, Case No. CV 79-4822-DWW (C.D.Cal., April 27, 1982) [ELR 4:3:3]

New York statute banning topless dancing in establishments licensed by the State Liquor, Authority is declared a violation of state's constitutional guarantee of freedom of expression

The New York Court of Appeals has gracefully danced around a United States Supreme Court decision and, for the second time, has declared unconstitutional a state statute prohibiting all topless dancing in premises licensed by the State Liquor Authority.

The Court of Appeals originally declared that subdivision 6-a of section 106 of the New York State Alcoholic Beverage Control Law violated the First Amendment of the United States Constitution. Bellanca v. New York

State Liquor Authority, 429 N.Y.S.2d 616 (N.Y. 1980) (ELR 2:19:7) This decision was based on the view that dancing, as a form of expression, is entitled to "at least limited protection" under the First Amendment. Regulation of this activity nevertheless would be authorized, stated the court, if the dancing were found to be obscene, or if the state determined that restrictions on non-obscene dancing were "functionally related to the exercise of the state's authority to regulate the sale and consumption of alcoholic beverages." For example, prior to the enactment of subdivision 6-a, SLA regulations prohibited topless dancing performed on a stage less than 18 inches above floor level, or removed by less than six feet from the nearest patron. But the Court of Appeals noted that there had been no legislative finding which factually justified the blanket prohibition of subdivision 6-a.

The United States Supreme Court, however, in a per curiam opinion, ruled that subdivision 6-a was a valid exercise of the state's authority under the Twenty-First Amendment to prohibit totally, and hence to regulate, the sale of alcoholic beverages. The matter then was remanded to the New York Court of Appeals. New York State Liquor Authority v. Bellanca, 101 S.Ct. 2599 (1981) (ELR 3:6:5)

On remand, the Court of Appeals has held that the statute violates New York State's constitutional guarantee of freedom of expression under section 8 of article 1 of the state's own Constitution. The court did not consider whether the state constitutional guarantee is broader than the guarantee of freedom of expression granted under the Federal Constitution. But it was pointed out that the New York Constitution does not contain a provision, such as the Twenty-First Amendment, which would in any way modify or curtail section 8's guarantee of freedom of expression. And the Twenty-First Amendment does not apply to the state's constitutional provisions, stated the court. The source of the state's authority to regulate the sale and consumption of alcohol derives from its inherent police power, not from the Twenty-First Amendment. This police power is subject to the provisions of the State Constitution, including its guarantee of freedom of expression. Therefore, the Court of Appeals upheld the trial court decision granting summary judgment to the various owners of nightclubs, bars and restaurants in their action seeking a declaratory judgment that subdivision 6-a is unconstitutional.

In dissent, Judge Gabrielli stated that he would have recognized the state's authority under the TwentyFirst Amendment to regulate the time, place and manner of liquor sales. Even without considering the Twenty-First Amendment, however, Judge Gabrielli would have upheld subdivision 6-a on the ground that a legislative support memorandum accompanying the statute demonstrated the requisite rational connection between the activity to be prohibited and the state's legitimate concern in controlling alcohol consumption. The memorandum made the common sense observation, according to the judge, that "any form of nudity coupled with alcohol in a public place begets undesirable behavior."

Judge Jasen, who also dissented, emphasized that a state's authority to regulate the sale of alcohol derives from both its general police power and, independently, from the Twenty-First Amendment, and that the Twenty-First Amendment "has been recognized as conferring something more than the normal state authority over public health, welfare and morals." According to Judge Jasen, since the authority to enact subdivision 6-a derived from both sources, the state constitutional provision guaranteeing freedom of expression was as much subject to restriction by the Twenty-First Amendment as was the First Amendment of the Federal Constitution. Given the majority's view that the state's right of freedom of expression was no broader than the rights conferred under the First Amendment, the majority was obligated to follow the United States Supreme Court ruling in accordance with the supremacy clause.

Judge Jasen also pointed out that topless dancing involves only "the barest minimum of protected expression," and further, that subdivision 6-a was not an "across-the-board" prohibition of such dancing, but rather was a ban on topless dancing only in establishments where liquor is sold for on-premises consumption.

Bellanca v. New York State Liquor Authority, 445 N.Y.S.2d 87 (N.Y. 1981) [ELR 4:3:4]

Harness racing association's regulations did not violate antitrust laws, rules Federal Court of Appeals in action brought by nonmember racetrack operator

The United States Trotting Association, in keeping with its purpose of developing comprehensive national records and establishing uniform rules and standards in the field of harness racing, issues registration and eligibility certificates to its owner members. Owner members register standardbred horses with the USTA and obtain a certificate describing the horse's markings and pedigree and identifying the owner or breeder. The USTA maintains central records of the information contained on the certificates, which aid in insuring accurate identification and honest transfers of horses. The eligibility certificate contains performance information on registered horses. The information is assembled by racetrack employees, added to the certificate and used by track officials to select competitive horses for various races.

In 1975, 1977 and subsequent racing seasons, neither Chicago Downs Association, Inc. nor Fox Valley Trotting Club, Inc. - management corporations which sponsor harness horse-racing meetings at Sportsmen's Park racetrack in Cicero, Illinois joined the USTA as a regular member and did not contract to buy the USTA's services. Nevertheless, both organizations continued to hold races with USTA-registered horses, to use the information on the USTA certificates, and to forward information about racing performances to the USTA. Viewing this conduct as a "free ride," the USTA announced that it would no longer provide services to Fox Valley and Chicago Downs, would not enter in its records information about racing performances at meets sponsored by those organizations, and would enforce the provisions of its bylaws which prohibit members from racing horses at meets sponsored by organizations that are not USTA members or contract tracks. The USTA also brought an action against Fox Valley and Chicago Downs for misappropriation of its records and services.

A Federal District Court granted summary judgment to Fox Valley and Chicago Downs, stating that the USTA had not established a "proprietary interest in the certificates or the information contained therein." However, a Federal Court of Appeals has reversed this decision, in part, and has remanded the matter for further proceedings.

The Court of Appeals noted that the eligibility certificates bear a legend which states that the certificate and the information it contains are the property of the USTA, and which restricts use of the information to USTA members. The District Court had concluded that any inference of USTA ownership of the certificate, as opposed to ownership by the horseowner, was negated by the adhesive nature of the contract between the USTA and its horseowner members. But the Court of Appeals did not agree that the USTA rules amounted to a contract of adhesion. Horseowners and the USTA are not parties of "vastly disparate bargaining power" and horseowners may act collectively to modify the "eligibility" certificates, stated the court. The USTA therefore was entitled to an accounting, damages and an injunction on the misappropriation claim based on the "eligibility" certificate.

The "registration" certificate, however, does not contain an explicit statement of USTA ownership and does remain in the possession of the horseowner. Despite the USTA's argument that horseowners do not have "unfettered control" over the use of registration certificates, the Court of Appeals agreed with the District Court that the USTA had not demonstrated sufficient ownership rights on which to base a misappropriation claim as to those. The Court did point out that the USTA may submit further evidence on remand as to its ownership claim. And the court suggested that even if the USTA fails to support its claim of ownership, it still may be entitled to reimbursement for the services it provides to Fox Valley and Chicago Downs.

Fox Valley, on its part, had filed a counterclaim alleging that the USTA's threatened enforcement of its bylaws would be a group boycott and a per se violation of section I of the Sherman Act. The District Court granted summary judgment for Fox Valley and permanently enjoined the USTA from preventing its members from racing at non-USTA tracks. But the Court of Appeals found that the USTA had acted solely to enforce its bylaws and there had been no showing of a purpose to exclude competition. Further, a rule of reason analysis of the USTA's conduct would be appropriate in view of a line of cases acknowledging the necessity for self-regulation in the context of organized sports and sanctioning organizations. On remand, the question will be whether the challenged conduct "went beyond the level of restraint reasonably necessary to accomplish whatever legitimate business purpose might be asserted for it."

Fox Valley also had claimed that the USTA's statement to its members that racing information would not be supplied to or recorded from Fox Valley was a tortious interference with the contract and business relations between Fox Valley and the Illinois Harness Horsemen's Association. The District Court ruling in favor of Fox Valley was reversed and remanded because the record did not show that the USTA knew of an IHHA agreement with Fox Valley. In any event, the USTA has been enjoined since 1977 from applying its rules to members who participate in Fox Valley's race meetings.

United States Trotting Association v. Chicago Downs Association, 665 F.2d 781 (7th Cir. 1981) [ELR 4:3:5]

Boxing promoter, but not boxer's manager or agent, is entitled to pursue action alleging improper collusion between opponent and second promoter in bidding for rights to hold lightweight championship fight

When the World Boxing Council solicited bids for the lightweight championship contest between Howard Davis, Jr., and Jim Watt, the highest bidder was promoter Mickey Duff. The fight was held in Glasgow, Scotland, and Watt was the winner. Davis, his manager, his agent, and promoter Tiffany Promotions, Inc. brought an action claiming that Duff's $1.3 million bid was fraudulent in that he conspired with Watt to agree that Watt would not be bound by the terms of the bid as to his share of the purse in order to obtain Glasgow, which was Watt's native town, as the site of the fight. It was alleged that the ardent support expressed by Watt's followers adversely affected Davis' style of boxing and that the boxing officials were unfavorable to him.

A New York appellate court has found that Davis' motion to serve an amended complaint should have been granted, and that the amended complaint stated a cause of action in favor of Tiffany for the deprivation of a legitimate business expectancy. Any secret agreement by Watt would have been a violation of the stipulated terms of bidding and would have given Duff an unfair advantage over the other bidders.

Davis' manager and his agent did not possess a cognizable claim, however. It was "entirely speculative" that Davis would have won if the fight had been held in the United States.

A concurring judge also would have dismissed Tiffany's complaint, finding that the facts did not establish a cause of action based on fraud, unlawful interference with precontractual rights, unfair competition or prima facie tort. Tiffany could not have relied to its detriment on facts included in a sealed bid, stated Judge Cohalan.

Jones v. Duff 445 N.Y.S.2d 838 (App.Div. 1981) [ELR 4:3:6]

Dismissal of libel suit by purported underworld figure referred to in Newsweek article about Jimmy Hoffa's disappearance is affirmed; no "actual malice" was shown

An article in Newsweek entitled "Where's Jimmy Hoffa?" referred to an individual named Leonard Schultz as a "Detroit underworld figure" who, allegedly, was one of a three-person group scheduled to meet with the former labor leader on July 30, 1975, the day of Hoffa's disappearance. In response to Schultz's libel action, Newsweek relied on Michigan's privilege of fair comment on matters of public interest, and on its asserted lack of actual malice. A Federal District Court granted summary judgment to Newsweek on the basis of the magazine's qualified privilege. Schultz v. Newsweek, 481 F.Supp. 881 (E.D. Mich. 1979) (ELR 2:6:6) The District Court pointed out that the standard of malice to be applied under Michigan's qualified privilege is not totally clear, but concluded that Schultz would have had to establish that Newsweek acted with actual malice as defined by New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

A Federal Court of Appeals has upheld the District Court decision. It noted that Newsweek's reporter relied upon information from reputable sources, including FBI and other police personnel, that the information from various sources was consistent, and that there was no reason for the reporter to doubt its truthfulness. The public had an interest in the details of the police investigation into Hoffa's disappearance. And the reporter had seen Schultz's police record which listed four felony convictions, and knew of his continued association with underworld figures who had been publicly identified as such. Hence, there had been no showing that the allegedly defamatory statement concerning Schultz was published with actual malice.

The court rejected Schultz's claim that Newsweek's references to him were outside the protection of the privilege since he was an "incidental figure" in reports about Hoffa. The scope of the privilege was not a jury question. Moreover, the privilege had not been abused by Newsweek, and the proper federal standard for summary judgment was applied, concluded the court. In nearly three years of discovery, Schultz failed to produce evidence of "a single fact" which demonstrated the existence of a genuine issue with respect to actual malice.

The District Court decision denying Schultz' libel action against the Detroit News, which had published several articles about Schultz' alleged relationship with Hoffa, also was upheld.

Schultz v. Newsweek, Inc., 668 F.2d 911 (6th Cir. 1982) [ELR 4:3:6]

Briefly Noted:

Tax.

When the Plumstead Theatre Society required additional capital to stage a production of the play "First Monday in October," the corporation sold a portion of its rights in the production to two individuals and a for-profit corporation. However, Plumstead's participation in this limited partnership with private investors did not impair its tax-exempt status as a charitable and educational corporation under IRC section 501(c)(3), a Federal Court of Appeals has ruled. In agreeing with a Tax Court decision (ELR 2:18:4), the Court of Appeals found that Plumstead was not being operated for the benefit of private individuals in violation of tax regulations. The private investors were not shareholders in or officers or directors of Plumstead and the limited partnership agreement expressly reserved full management control to Plumstead.

Plumstead Theatre Society, Inc. v. Commissioner of Internal Revenue, Case No. 81-7002 (9th Cir., April 21, 1982) [ELR 4:3:7]

Copyright.

A Federal District Court in New York has held that a contract action for unpaid royalties "is not one 'arising under' the Copyright Act merely because it has 'an aroma of copyright.'" Rather, an action "arises under" the Copyright Act "if and only if the complaint is for a remedy expressly granted by the Act." Songwriter Chris Hall had sued Inner City Records in Federal District Court to recover unpaid royalties allegedly due him from the sale of records containing his copyrighted lyrics for the Miles Davis jazz composition "So What." The court granted Inner City Records' motion for summary judgment because the action did not "arise under" the Copyright Act, and the court was therefore without subject matter jurisdiction.

Hall v. Inner City Records, 212 U.S.P.Q. 272 (S.D.N.Y. 1980) [ELR 4:3:7]

Copyright.

Universal Studios and Marty Feldman have been granted a directed verdict by a Federal District Court in California in a copyright infringement action brought by writers Mort Lachman and Ed Simmons. Lachman and Simmons contended that Universal's film "In God We Trust" infringed their script entitled "Albert" which was written in 1971 for CBM Productions. Judge Cynthia H. Hall ruled that the employment agreement between

CBM and Lachman and Simmons had not been rescinded in the manner required by California Civil Code. Section 1691 of the CCP provides that a party attempting to effect a rescission must give notice of rescission to the other party and restore to the other party everything of value received under the contract. The court found that Lachman and Simmons had never offered to rescind the employment agreement with CBM or to return the $15,000 paid to them by CBM. Accordingly, since CBM still owned the copyright to "Albert," Judge Hall ruled that Lachman and Simmons lacked standing to pursue a copyright infringement action.

Simmons v. Universal City Studios, Inc., Case No. CV 80-0397 (C.D. Cal., Mar. 18, 1982) [ELR 4:3:7]

Employment Contracts.

George Murray, a salesman and announcer for radio station WJEM, a country music station in Lowndes County, signed an employment contract containing a covenant which stated that if his employment were terminated for any reason he would not "engage in the business of announcer, disc jockey, advertisement selling, station manager or director for any other station in Lowndes County, Georgia for two years from the date of termination." Murray resigned from WJEM in order to become general manager of station WGAF, a country music station in nearby Valdosta.

A trial court ruling enjoining Murray from breaching the noncompetition covenant in his employment contract has been upheld by the Supreme Court of Georgia. The covenant was found reasonable in duration and in geographical limitation and also was not unreasonably broad in its job restrictions. The court said that Murray was eligible for several positions in radio broadcasting, such as radio engineer, which were not restricted by the covenant. Thus, he was not precluded from working in his trade for a competitor "in capacity."

Murray v. Lowndes County Broadcasting Company, 284 S.E.2d 10; 1981-2 CCH Trade Cases, Para. 64,355 (Ga. 1981) [ELR 4:3:7]

Invasion of Privacy.

Lynda Clark has been awarded $63,750 in damages for Celeb Magazine's unauthorized publication of her photographs on its cover and in advertisements for the magazine's April and May 1981 issues, as well as in subscription advertisements. Celeb, which was described by the court as a "low quality and very explicit pornographic magazine," apparently obtained the photographs from a photographer who had taken the pictures several years earlier for Clark's personal portfolio. He had agreed with Clark that the photographs would not be used for any other purpose. After a default judgment against the magazine, the court determined that California law would govern the award of damages in this diversity action. The court awarded Clark $25,000 in damages for emotional suffering, pursuant to California Civil Code section 3333. An additional $6,750 was awarded for the loss of compensation for the use of the photographs. And Clark received $7,000 as compensation for the economic injury suffered from the projected loss of modeling fees for 1981. Punitive damages of $25,000 also were assessed because Celeb disregarded Clark's demand that the magazine discontinue publication of the photographs.

Clark v. Celeb Publishing. Inc., 530 F.Supp. 979 (S.D.N.Y. 1981) [ELR 4:3:7]

DEPARTMENTS

In the Law Reviews:

In Support of Performance Rights in Sound Recordings, by Steven J. D'Onofrio, 29 UCLA Law Review 168 (1981)

Pooling of Local Broadcasting Income in the American Baseball League: Antitrust and Constitutional Issues by Scott Lee Hoffman, 32 Syracuse Law Review 841 (1981)

FCC Eliminates Longstanding Cable TV Rules, 31 American University Law Review 471 (1982)

Federal Appeals Court's State Law Ruling Entitled to Conclusive Deference: Factors Etc., Inc. v. Pro Arts, Inc., 1981 Brigham Young University Law Review 974

Advertising and Marketing on Cable Television: Whither the Public Interest? by Dot Pridgen with Eric Engel, 31 Catholic University Law Review 227 (1982)

Municipalities May Not Exclude Live Entertainment from Areas Zoned for Commercial Uses: Schad v. Burough of Mount Ephraim, 86 Dickinson Law Review 391 (1982)

Authors' and Artists' Rights in the United States: A Legal Fiction, 10 Hofstra Law Review 557 (1982)

The FCC's Deregulation of Cable Television: The Problem Of Unfair Competition and the 1976 Copyright Act, 10 Hofstra Law Review 591 (1982)

Prior Restraint of Obscenity as a Public Nuisance: Vance v. Universal Amusement Co., 26 New York Law School Law Review 1122 (1981)

Community Standards and Federal Obscenity Prosecutions by Pamela J. Stevens, 55 Southern California Law Review 693 (1982)

Publicity as an Aspect of Privacy and Personal Autonomy by Alisa M. Weisman, 55 Southern California Law Review 727 (1982)

Compensation Planning for the professional Athlete by Leonard G. Brown, 7 Southern University Law Review 235 (1981)

Comparison Evidence in Obscenity Trials by Marguerite Munson Lentz, 15 University of Michigan Journal of Law Reform 45 (1981)

Religious Freedom and the Federal Communications Commission by Ashton R. Hardy and Lawrence W. Secrest Ill, 16 Valparaiso University Law Review 57 (1981)

Pay Television and Section 605 of the Communications Act of 1934: A Need for Congressional Action, 38 Washington and Lee Law Review 1249 (1981)

A New Approach to an Entertainer's Right of Performance, 59 Washington University Law Quarterly 1269 (1982)

FCC Minority Distress Sale Policy: Public Interest v. The Public's Interest by Philip H. Lebowitz, 1981 Wisconsin Law Review 365 (1981)

Protecting Public Interest in Art, 91 Yale Law Journal 121 (1981)
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