RECENT CASES

CBS Records was properly granted a new trial in promoter's action alleging that record company intentionally interfered with promoter's contract with musical group

It is likely that more California jurors and judges than music critics are acquainted with the musical trio High Mountain Hoedown. In its brief heyday in late 1969, the group signed an Exclusive Artists' Recording Agreement with the Etcetera Record Organization, a wholly owned corporation of Charlie Greene, a music promoter and producer. Jerry Williams, a member of the group, also signed a songwriter's contract with Eltolad Music, another of Greene's corporations.

Greene brought the group to the attention of CBS Records, and after some discussion, CBS delivered a draft of a proposed contract to Greene. However, on November 5, 1969, Etcetera agreed to sell its interest in the group to Atlantic Record Corporation. On November 24th, Greene advised CBS of the Atlantic contract and was met with "dismay and considerable anger." On November 25th, a CBS executive referred the group to two lawyers for the purpose of helping the group rescind its contract with Etcetera. It appeared that the group was not aware that Greene had signed them to Atlantic, because he had promised them that they would appear on CBS. In any event, members of the group already had concluded that they were no longer willing to perform their contract with Greene. A letter of rescission was sent to Etcetera on December 3rd, and on that date High Mountain Hoedown signed a contract with CBS. On December 9th, a letter was sent to Eltolad rescinding

Williams' songwriter's contract on the basis of his minority.

Etcetera and Eltolad sued CBS for intentional interference with contractual relations. After a prolonged trial and appeal process, a jury returned a verdict in favor of Etcetera for $68,213 in compensatory damages and $500,000 in punitive damages. The jury denied recovery to Eltolad. CBS' motion for judgment notwithstanding the verdict was denied. However, the court did grant CBS's alternative motion for a new trial.

A California appellate court has found that there was substantial evidence to support the findings of the jury as to liability and damages, and that the trial court correctly denied the motion for judgment n.o.v. The evidence appeared to "provide support for the jury's belief that (CBS representatives) met with members of the Group before the time the group had severed its relationship with Greene." But the trial court was within its discretion in granting CBS's motion for a new trial on the basis of insufficient evidence to justify the verdict. An additional ground supporting the award of a new trial was an improper instruction to the jury concerning the cause of the breach of the contract.

The trial court also was correct in denying a new trial in the Eltolad case, ruled the appellate court.

Eltolad Music, Inc. v. April Music, Inc., 188 Cal.Rptr. 858 (Cal.App. 1983) [ELR 4:23:1]

Bob Dylan song "Hurricane" did not defame woman referred to in lyrics

Patty Valentine, who testified as a witness at the highly-publicized trial of prize-fighter Rubin "Hurricane" Carter in 1967, filed a lawsuit against Bob Dylan and his collaborator, Jacques Levy, over the song "Hurricane." The song described the events occurring the night of the murder for which the fighter was wrongfully convicted and portrayed Miss Valentine's role as a witness to some of those events. The question for the Federal District Court was whether certain references in "Hurricane" implied that Miss Valentine participated with two other witnesses and the police in a conspiracy to unjustly convict Carter. The answer blowin' in the wind was no, as the District Court granted summary judgment for the songwriters and the Court of Appeals has affirmed that decision.

Miss Valentine was mentioned in three of the song's ten stanzas. The first stanza begins, "Pistol shots ring out in the barroom night, Enter Patty Valentine from the upper hall, She sees the bartender in a pool of blood, Cries out, 'My God, they killed them all!'" The second stanza continues "Three bodies lyin' there does Patty see, And another man named Bello, movin' around mysteriously ... And so Patty called the cops." The fourth stanza depicts Bello and his partner Bradley making false identification statements to the police ("Alfred Bello had a partner and he had a rap for the cops, Him and Arthur Dexter Gradley were just out prowlin' around, He said, I saw two men runnin' out, they looked like middleweights, They jumped into a white car with out-of-state plates") and depicts Miss Valentine as agreeing with them ("And Miss Patty Valentine just nodded her head"). The tenth stanza says that Bello and Bradley "badly lied."

Valentine alleged in her suit that these three stanzas, construed together, implied that by nodding her head, she acquiesced in the lie of the two other witnesses. The suit, filed against both songwriters, as well as Columbia Records who manufactured and distributed the recording of the song, and Warner Bros. Publications who published the sheet music, sought damages for defamation, invasion of privacy and unauthorized publication of name or likeness for commercial, trade or advertising purposes.

The court disposed of Miss Valentine's defamation theory, stating that a review of the entire song makes it clear that Miss Valentine's interpretation is not reasonably possible, but is "tortured and extreme." Valentine testified in the 1967 trial that she entered the murder scene from her upstairs room, saw several bodies, screamed aloud, observed a man standing by the door (later identified as Bello), returned to her room upstairs to call the police, and while doing so saw two men running to a car with out-of-state license plates, "Cast against this testimony," said the court, "it is obvious the lyrics are substantially and materially true, and are not reasonably susceptible to a defamatory meaning."

As to the invasion of privacy claim, the court noted that under Florida law the publication of facts regarding matters of legitimate public or general interest will not support an invasion of privacy action. The court found that Miss Valentine's role as a witness to a murder was clearly an event of legitimate public interest.

A Florida statute prohibits the unauthorized use of a person's name or likeness for commercial, trade or advertising purposes. The court concluded, however, that as a matter of law, the ballad "Hurricane" did not commercially exploit Valentine's name. "The defendants did not use her name to directly promote a product or service," stated the court. The appellate court also ruled that the trial court had properly construed the statute to avoid confronting constitutional questions as to its scope.

Valentine v. CBS, Inc., 698 F.2d 430 (11th Cir. 1983) [ELR 4:23:2]

Professional basketball player's loan-out corporation is disregarded for income tax purposes because NBA contracts were signed by player himself, not by corporation

A professional basketball player's creative financing has been ruled a technical foul by the U.S. Tax Court. Charles Johnson played for the Golden State Warriors from 1972 through 1977 and went on to play for the Washington Bullets for two more years. On August 16, 1974, on the advice of a California attorney, Johnson signed a contract with a Panamanian Corporation, Presentaciones Musicales S.A. (PMSA). The agreement gave PMSA the exclusive right to Johnson's services as a professional athlete for 6 years. The contract was assigned four days later to EST International Ltd., a

British Virgin Islands corporation. In return, Johnson was to receive monthly payments of $1,500. (Later, the payments were increased to $2,000 a month.)

Johnson then entered into negotiations with the Warriors for a new contract, attempting to persuade the Warriors to contract with EST directly. The Warriors insisted that Johnson personally sign an NBA Uniform Player Contract and refused to sign any contract or agreement with Johnson's corporations. Johnson signed the Uniform Player Contract on August 24, 1974 and the Warriors later agreed to make all contract payments to EST. Similar contracts were entered into on September 14, 1975 and August 29, 1977. Neither PMSA nor EST were a party to these contracts.

In January 1978, Johnson was placed on waivers by the Warriors and later signed an NBA Uniform Player Contract with the Washington Bullets. EST was not a party to the contract but the Bullets agreed to make all contract payments to the corporation.

In all of these years, Johnson's salary from the Warriors and the Bullets was much greater than the amount he was paid by EST. However, on his Federal income tax returns for 1975, 1976, and 1977, Johnson reported as income only the payments he received from EST. As a result, Johnson received refunds of Federal income taxes for these years. After audit, the Commissioner gave Johnson notice of deficiency declaring that all sums paid by the Warriors and Bullets to EST were salary income to him. Johnson's Tax Court action ensued.

The issue was whether the amounts paid by the teams for Johnson's services as a basketball player were income to Johnson or to the corporation to which the amounts actually were paid. The Tax Court noted that although previous cases looked to see who earned the income, "the realities of the business world prevent an overly simplistic application of the ... rule whereby the true earner may be identified by merely pointing to the one actually turning the spade or dribbling the ball." The court cited Laughton v. Commissioner, 40 B.T.A. 101 (1939), as an example of a valid corporate entity relying on the personal services of its employees to produce corporate income. In Laughton, the taxpayer, an actor, formed a corporation which in turn became the actual contracting party loaning out his services to film studios.

The court took note of "two necessary elements before a corporation, rather than its serviceperformer employee, may be considered the controller of the income." First, the corporation must have the right to control the activities and compensation of the performer, and second, this control must be recognized and accepted by the other contracting party. The court found that in Johnson's case the first element had been satisfied but it held that the second element was lacking. "Crucial is the fact that there was no contract or agreement between the Warriors and PMSA or EST," as evidenced by the team's insistence on having Johnson himself sign his contracts.

A subsequent decision by the Ninth Circuit Court of Appeals produced an identical holding in regard to Johnson's 1978 salary from the Washington Bullets.

Johnson v. Commissioner, 78 United States Tax Court Reports 882 (1982); Johnson v. United States, 698 F.2d 372 (9th Cir. 1982) [ELR 4:23:2]

Baseball's exemption from the antitrust laws does not require dismissal of broadcaster's action alleging antitrust and breach of contract claims against Houston Astros owner; but in a separate case, court rules that baseball exemption required dismissal of

minor league team's action against organized baseball

A sure sign of summer. The baseball litigation season has commenced with the publication of a decision by a Federal District Court in Houston which refused to dismiss, on the basis of baseball's exemptions from the antitrust laws, an action brought by a broadcasting company against the owner of the Houston Astros,

The exemption was announced by Justice Holmes in Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922). In Justice Holmes' view, the business of baseball consisted of the presentation of competitive "exhibitions." And although players were transported among the states, the enterprise of baseball was not found to be a part of interstate commerce and hence, was not within the scope of the federal antitrust laws. In 1953, the

Supreme Court, despite the impact of radio and television broadcasting upon baseball, adhered to Federal Base Ball in Toolson v. New York Yankees, 346 U.S. 356, a case involving a player challenge to the reserve clause.

The baseball exemption was on-deck again when Curt Flood alleged that antitrust violations had occurred in connection with his trade by the St. Louis Cardinals. In Flood v. Kuhn, 407 U.S. 258 (1972), the Supreme Court held, "in direct contradiction to the original premise for the exemption, that 'professional baseball is a business and it is engaged in interstate commerce.'" But the Court stated that Congress' failure to overrule Federal Base Ball and Toolson meant that those decisions would continue to immunize baseball's reserve system from an antitrust challenge.

The narrow scope of the exemption had been recognized even prior to Toolson by a Federal Court of

Appeals in the case of Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949), an action brought by a player who was barred from organized baseball after he violated the terms of the reserve clause of his contract. The district court had dismissed the action for lack of jurisdiction due to the baseball exemption. The Court of Appeals reversed this ruling and asked the district court to consider whether organized baseball's connection with radio and television broadcasting "bestowed an interstate character on baseball." This question was not resolved because Gardella was settled without further proceedings.

The issue raised in Houston Sports was whether the court had subject matter jurisdiction to determine an action charging Sherman Act violations and breach of contract which was brought against Houston Sports Association, Inc., the owner of the Houston Astros baseball team and against. Lake Huron B roadcasting Corporation, the owner of KENR-AM radio, by

Henderson Broadcasting Corporation, the owner of radio station KYST-AM. Henderson claimed that Houston Sports canceled KYST's contract to broadcast Astros baseball games when Houston Sports entered into a conflicting broadcast contract with KENR - a station with an overlapping signal. Henderson further alleged that Houston Sports and KENR conspired to divide and allocate advertising and audience territories in the greater HoustonGalveston radio broadcasting market.

The court considered whether radio broadcasting is as much a part of baseball as the reserve clause or league structure so that it "participates in baseball's exemption from the antitrust laws," and concluded that it is not. The "unique characteristics and needs" of baseball are not involved in a broadcast contract. Extending the baseball exemption to this situation would "transform it into an umbrella to cover other activities and markets outside baseball and empower (Houston Sports) to use that umbrella as a shield against the statutes validly enacted by Congress." The Supreme Court itself has stated that the distinction between baseball and other professional sports is "unrealistic," "inconsistent," and "illogical." Finding no reason to extend the anachronism, the District Court denied motions to dismiss Henderson's action.

In contrast, a Federal Court of Appeals in Florida has relied on the "anomalous" exclusion of baseball from the antitrust laws in dismissing a dispute over a baseball franchise in the Carolina League. The holder of a franchise in the league claimed that several activities of organized baseball violate the antitrust laws including the player assignment system; the franchise location system; and a Carolina League rule requiring member teams to play games only with other teams that belong to the National Association. These activities were held to be an "integral part of the business of baseball," and thus protected by the exemption. For this reason, dismissal of the case was upheld on appeal.

Henderson Broadcasting Corp. v. Houston Sports Association, Inc., 541 F.Supp. 263 (S.D.Tex. 1982); Professional Baseball Schools and Clubs, Inc. v. Kuhn, 693 F.2d 1085 (11th Cir. 1982) [ELR 4:23:3]

Woman professional boxer is required to show actual malice in New York Civil Rights law action against Celebrity Skin magazine involving publication of topless photo with false caption

Professional boxer Cathy Davis has lost a round in her bout with High Society Magazine, Inc., the publisher of Celebrity Skin magazine.

The third edition of Celebrity Skin contained several photographs of women participating in boxing matches. Davis acknowledged that she appeared in two of the pictures. But another picture showed two women posing topless and was accompanied by a caption which identified the photograph as "Cat Davis," listed her "vital statistics," and stated "Although her manager/husband Sal Algieri claims she's never posed nude, this photo sent in by a reader sure looks like the Top Cat to us." Davis claimed that she was not one of the topless boxers and sued High Society under section 51 of New York's Civil Rights Law. The trial court granted summary judgment to Davis, finding that High Society's use of Davis' name along with the objectionable picture constituted commercial use without consent for purposes of trade.

The Appellate Division of the New York Supreme Court has reversed the trial court ruling, after sparring with those seasoned contenders in section 51 actions:

the need to provide redress to victims of the "devastating, but often subtle techniques of commercial exploitation of a person's identity" versus the public interest in being informed of a newsworthy event.

Points initially were awarded to Davis. The appellate court agreed that the publication was without consent, and no evidence was presented that one of the partially nude women was Davis. Further, High Society was unsuccessful in claiming that the caption expressed only an opinion that one of the women was Davis; the ordinary and average reader in this instance would conclude, erroneously, that Davis had indeed posed topless.

But when the bell rang, the court declared that Davis had not yet proved that High Society published the offending picture and caption with knowledge that the nude photo did not depict Davis or with reckless disregard of that fact. While noting that there is a "substantial question" as to whether actual malice in the constitutional sense need be proven in Civil Rights Law cases where the plaintiff is neither a public official nor a public figure, the standard was found appropriate in this case because of Davis' status as a limited purpose public figure. And the court ruled that the presence of actual malice was sufficiently in question so as to require reversal of the trial court order.

Davis v. High Society Magazine, Inc., New York Law Journal, p. 1, col. 6 (N.Y.App., Jan. 21, 1983) [ELR 4:23:4]

State order requiring Times-Mirror Company to sell controlling interests in Connecticut cable systems or The Hartford Courant violated federal regulatory policy on media cross-ownership

During 1978 and 1979, the Times Mirror Company acquired a controlling interest in Hartford CATV and in Telesystems of Connecticut, Inc., each of which holds a cable franchise serving several Connecticut towns. At the same time, Times Mirror also purchased The Hartford Courant, the leading newspaper in Connecticut in terms of circulation. Connecticut's Division of Public Utility Control (DPUC) decided that Times Mirror was an unsuitable owner of the controlling interests in the cable franchises because of its cross-ownership of the Courant. The DPUC therefore gave Times Mirror the option of divesting itself of the Courant or of the cable franchises, and ordered that if the cross-ownership were not eliminated by April 1, 1981, the cable franchises would be revoked. This order has been ruled invalid by a Connecticut trial court on the ground that the regulatory scheme of the Federal Communications

Commission preempts local bans on cable television/newspaper cross-ownerships.

The DPUC had found that cross-ownership of the franchisees and the Courant was contrary to the public interest in that "the dissemination of information from diverse and antagonistic sources" might be reduced. Editorial decisions as to what news and other features to carry on the cable channels might be "clouded" by cross-ownership, and public access to cable which conflicted with the newspaper's interest might lead to limitations on access. The DPUC concluded that cross-ownership also has the potential to retard the development of cable due to competition for limited advertising dollars in the same market area. For example, a common owner might neglect the development of the cable franchises in order to benefit the newspaper.

Nevertheless, after reviewing federal regulatory pronouncements on cross-ownership of media properties, the court concluded that the FCC has chosen not to restrict the simultaneous holding of interests in both cable television franchises and in newspapers. In 1970 the FCC issued a rule prohibiting crossownership between cable television systems and television broadcast stations which overlap the service area of the cable system, and between cable television systems and national television networks. However, in its Notice of Proposed Rule Making and of Inquiry in Docket No. 18891, 23 FCC 2d 833 (1970), the FCC deferred consideration of the issue of cable television/newspaper cross-ownership because of a then-pending rule-making proceeding involving local broadcast station/newspaper cross-ownership. In 1975, the Commission stated that it would postpone its final determination on cable/ newspaper crossownership in the same market since such ownership as of that date represented only a minor portion of the industry and apparently had only limited potential for abuse.

While engaged in rulemaking proceedings, the FCC has commented that some aspects of cable regulation - such as the legal, technical, financial and character qualifications of the franchise applicant, the area to be served, the reasonableness of the rate to be charged and the quality of service - may be suitable for regulation by state and local governments. But cable remains "an integral part of the inter-state movement of electronic communications." Diversification of media control as well as such areas as signals carried, technical standards, program organization and equal employment opportunities are matters for federal regulation because state regulation might be inconsistent with the FCC's regulatory concern with the national communications structure. Hence, the current lack of FCC regulation of cable/newspaper cross-ownership "is not inadvertent. It is the result of a conscious decision not to do so."

The DPUC order, by imposing as a condition of the Times Mirror franchises a prohibition which the FCC has determined should not be imposed, conflicts with a federal policy and therefore was reversed.

The Times Mirror Company, Inc. v. Division of Public Utility Control, Case No. 244213 (Jud.District of Hartford, Superior Ct., Jan. 25, 1983) [ELR 4:23:5]

Nebraska Supreme Court upholds dismissal of actions brought by Omaha resident and city councilmen alleging improper award of cable television franchise

The dismissal of an Omaha resident's action challenging the City Council's award of a cable television franchise to Cox Cable of Omaha, Inc., has been affirmed by the Supreme Court of Nebraska. The court ruled that Harold Hall did not have standing to sue, because his petition did not demonstrate that he suffered a legal injury by being denied a right to vote on the award of the franchise. While a ratepayer might claim that the rates which had been approved by the mayor and city council were not reasonable and compensatory, Hall was not a ratepayer and his allegations were not based upon any facts. The court noted that "a ratepayer does not have legal standing to attack a rate established by a legislative body, absent a showing of discrimination or a violation of a statute, and solely on the basis that the ratepayer thinks the service should be provided more cheaply." Further, Hall had not sought review by the city of the purportedly excessive rates. The trial court therefore correctly sustained the city's demurrer to Hall's action.

In a separate case arising out of the same situation as presented in Hall, two elected members of the Omaha City Council sought to have the cable franchise award declared null and void. Mary Kay Green and Jerry Hassett claimed that the franchise was issued in violation of the home rule charter of the city, and was the result of favoritism, collusion and undue influence. But Green and Hassett had no greater standing to sue generally as members of the city council than Hall had standing to sue as a city resident, the court held. "Absent ... special legal injury, city council members have no right to litigate the validity of a city ordinance solely on the basis of being members of a council whose position has been rejected." Green and Hassett's claim to standing as taxpayers of the city also was rejected, because they did not allege an illegal expenditure of funds, or an increase in the burden of taxation. Therefore, the dismissal of this action also was upheld.

Hall v. Cox Cable of Omaha, Inc., 327 N.W.2d 595 (Neb. 1982); Green v. Cox . Cable of Omaha, Inc., 327 N.W. 603 (Neb. 1982) [ELR 4:23:5]

Georgia Supreme Court upholds constitutionality of state statute prohibiting blind bidding

The Supreme Court of Georgia has affirmed the opinion of a trial court (ELR 3:21:3) and upheld the constitutionality of the state's Motion Picture Fair Competition Act which prohibits "blind bidding." The statute was ruled a valid content-neutral exercise of the state's legitimate and substantial interest in furthering fair and open bidding practices in the motion picture industry, in promoting competition between independent and major film distributors, and in allowing exhibitors to view films prior to bidding on them. The statute is not intended to suppress expression and, in all, does not violate either the free speech clause or the due process clause of the Georgia Constitution, concluded the court.

Judge Weltner, in dissent, opined that the state should not have intruded in a private industry dispute which, in his view, did not involve any state interest.

Paramount Pictures Corp. v. Busbee, 297 S.E.2d 250 (Ga. 1982) [ELR 4:23:6]

Briefly Noted:

Trademark Infringement.

The Prudential Insurance Company of America has failed in its attempt to enjoin Gibralter Financial Corporation's use of the Rock of Gibralter as its service mark. Gibralter's continuous and uncontested use of the trademark since 1954 gave rise to an equitable defense of laches barring injunctive relief, a Federal Court of Appeals has held. Prudential alleged that Gibralter's expansion of the type and amount of its business, along with its increase in television advertising, constituted "progressive encroachment." A finding of progressive encroachment would have precluded the use of laches as a bar to relief. The court held that absent proof of actual market confusion, Gibralter's "growth alone does not infringement make." The court noted that the two companies provide different services and are not in competition with one another. Furthermore, Prudential's state law claims of dilution and unfair competition were also barred by laches. However, the court did vacate the lower court's cancellation of Prudential's older marks, because it found that Prudential had not intended to abandon them.

Prudential Insurance Company of America v. Gibraltar Financial Corporation of California, 694 F.2d 1150 (9th Cir. 1982) [ELR 4:23:6]

Copyright Infringement.

The unauthorized performance of ASCAP musical compositions at an Exeter, Rhode Island club known as the Covered Wagon infringed the rights of the copyright owners of the compositions, a Federal District Court has ruled. The court stated that affidavits submitted by ASCAP investigators constituted sufficient proof of live public performance. The club has resumed its license arrangement with ASCAP, but the court nevertheless issued an injunction barring the individual and corporate owners of the club from presenting further unlicensed performances. The club's deliberate infringement also resulted in an award of $5,000 in damages, based on $625 for each infringing act, as well as costs, and attorney's fees of $2,250.

Milene Music, Inc. v. Gotauco, 551 F.Supp. 1288 (D.R.I. 1982) [ELR 4:23:6]

Federal Civil Procedure.

A dispute involving the foreign rights to Laurel and Hardy films should not have been dismissed on grounds of forum non conveniens, a Federal Court of Appeals in New York has ruled. The District Court had determined that the case presented issues of foreign copyright law which moved "the center of the controversy" from New York to a location outside the United States. (Lawsuits regarding the rights in issue are in progress in three foreign countries.) But the District Court erred in not designating a more convenient forum for the parties and for the many witnesses who reside in the U.S., the Court of Appeals ruled. Further, the District Court failed to focus on the basic issue of whether Overseas Programming Companies, Ltd. possessed contractual rights to the films under several agreements which are governed by New York law. The infringement issues are secondary to the question of whether Overseas has the rights it claims, the Court of Appeals stated. Thus issues of foreign copyright law would not so dominate the case as to render inappropriate a trial in New York - a forum with a "substantial nexus" to the litigation.

Overseas Programming Companies, Ltd. v. Cinematographische Commerz-Anstalt, Docket No. 82-7138 (2d Cir., July 23, 1982) [ELR 4:23:6]

Workers Compensation.

The existence of a bona fide issue as to the liability of the Burbank Studios for an arm injury suffered by an employee justified the approval by a worker's compensation judge of a settlement agreement between the employee and the Studio that released the Studio from all liability for rehabilitation rights. The Workers' Compensation Appeals Board therefore erred in rejecting the compromise provision, a California appellate court has ruled in a decision remanding the matter to the Board for further proceedings.

The Burbank Studios v. Workers' Compensation Appeals Board of the State of California, 184 Cal.Rptr. 879 (1982) [ELR 4:23:7]

Music Club License.

The revocation of the Starwood club's business licenses by the Business License Commission and License Appeals Board of the County of Los Angeles has been upheld by a California appellate court. The Starwood's entertainment, dance, billiard room, public eatery and coin game licenses were revoked in February 1980 after residents in the vicinity of the club had complained for many years about loud noise, boisterous crowds and allegedly illegal activity associated with the club. During a seven-month period in 1978, there were 389 citizen's complaints and patrol deputy observations and 134 arrests. Among other infractions, the club was cited for operating after hours and for overcrowding, and was fined for selling alcoholic beverages to minors. In upholding the license revocations, the court rejected the Starwood's challenge to the composition of the Business License Commission, finding that no bias or prejudice had been shown. While the club's entertainment license involved First Amendment protected activities, the revocation nevertheless was justified, the court ruled, because of the club's guilty plea to a violation of the Los Angeles County Fire Code. The other business licenses, unprotected by the First Amendment, required only a finding that the business was conducted in a manner contrary to the peace and general welfare of the public. The record amply demonstrated that the Starwood "has been a constant source of pain and anguish to the neighboring community . . ." declared the court. The club was aware of the use of illegal drugs by patrons while on the Starwood parking lot and of the sale by Starwood employees of alcoholic beverages to minors. Such actions directly con ributed to the disruption of the peace of the community, the court concluded.

12319 Corporation, dba Starwood v. Business License Commission of the County of Los Angeles, 186 Cal.Rptr. 726 (Cal.App. 1982) [ELR 4:23:7]

DEPARTMENTS

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[ELR 4:23:7]