RECENT CASES

Title to movie A Little Romance protected from unauthorized use by Dell Publishing, under doctrine of unfair competition

Orion Pictures' movie "A Little Romance" was based on a French novel entitled "E=MC2, Mon Amour." When Dell Publishing Co. learned of Orion's plans to make a motion picture based on the novel, Dell obtained the English translation and paperback publication rights to it directly from the novel's French author and publisher. Dell then attempted to arrange a tie-in agreement with Orion.

After some discussions, during which Orion informed Dell of Orion's intention to title the movie "A Little Romance," Orion decided that a tie-in would not be suitable, because substantial changes made to the story left little similarity between the original book and the screenplay for the proposed movie. Orion offered to allow Dell to publish a novel based on the screenplay, but Dell declined the offer because of commitments it had made to the French author.

At no time did Orion authorize Dell to use the title of its movie as the title of Dell's paperback republication of the original novel. Nevertheless, Dell proceeded to publish the book under the title "A Little Romance," and also included on its cover the announcement that the book was "Now a Major Motion Picture." Furthermore, drawings on the book's cover bore noticeable resemblances to the movie's three stars, and publicity releases sent by Dell to book dealers commented that the movie "is sure to receive intense promotion and publicity — that's bound to help the Dell book! . . . the release of the major film will boost sales of this translation of a greatly acclaimed French novel."

Orion filed suit against Dell seeking an injunction restraining Dell from using the title "A Little Romance" and requiring Dell to reacquire and destroy all copies of the book previously published and delivered. According to Orion, Dell's actions constituted unfair competition under Section 43 of the Lanham Act, Section 368-d of the New York State General Business Law, and the common law of unfair competition. A Federal District Court in New York City has agreed and has issued an injunction, though not as broad a one as Orion had requested.

According to the court, the basic plot for the movie and novel are the same, but the movie is substantially different from, and better than, the book. In the court's opinion, "if one were to read the book first, the entertaining achievement of the film would not be anticipated."

The court held that in order for a film's title to be protectible under the doctrine of unfair competition, the title must have attained a secondary meaning; that is, through publicity and use, the title must have come to be associated in the minds of a substantial number of people with a certain film produced by a particular individual. In this case, Dell argued that because it marketed its book before the movie opened, no secondary meaning in the title could have developed. The court disagreed, however. It held that even if a movie has not been released, a sufficient amount of prerelease publicity of the title may cause the title to acquire recognition sufficient for protection. In this case, Orion had engaged in an extensive prerelease advertising campaign, eventually spending over $4 million for that purpose. Furthermore, the court said, it was clear from Dell's own promotion and advertising that it was counting on Orion's publicity as the primary means by which to promote the sale of the book.

In addition, the court held that even if the movie's title had not yet acquired a secondary meaning, relief would not necessarily be precluded. It held that when dealing with a descriptive term, including a movie title, an inference of secondary meaning would seem to be enough. Though the court did not explain what would constitute "an inference of secondary meaning," it did find that Orion had established such an inference. Moreover, the court ruled, "there appears to be growing support for the proposition that a secondary meaning `in the making' should be protected, at least to the extent of preventing intentional attempts, as by the defendant here, to capitalize on the efforts and goodwill of others."

The court also ruled that under New York law, secondary meaning is not necessary. Rather, under New York law, the question is whether the acts are unfair according to principles recognized in equity. Under this standard, the court held, it was clear that Dell had acted unfairly in using the movie's title and in explicitly advertising its book to be the same as the film,

The court also held that Dell had misled the public by promoting the impression that its book was the "official" novel version of the movie.

Because of the likelihood of consumer confusion, and because of the "possible injurious effect the book might have upon the public's desire to see the movie," the court ruled that injunctive relief was appropriate. However, because the books were already in the hands of retailers and readers, it would have been difficult if not impossible for Dell to recapture them. Accordingly, the court enjoined Dell from using the title, art work or other representations stating or implying a greater relationship between the movie and the book than actually exists, on subsequent printings of the book. In addition, the court ordered Dell to revise its promotional materials immediately to indicate the actual relationship between the book and movie.

Orion Pictures Company, Inc. v. Dell Publishing Co., Inc., 471 F.Supp. 392, CCH Copyright Law Reports, Para. 25,084 (S.D.N.Y. 1979) [ELR 1:9:1]

Lawsuit alleging copyright infringement by Univer-sal s movie The Sting is dismissed on jurisdictional grounds

Followay Productions, Inc. obtained a license to produce a motion picture based on material contained in a book entitled “The Big Con” written and copyrighted by David W. Maurer in 1940. Maurer obtained a renewal copyright to his book in 1968. When Universal released

"The Sting" in 1972, Maurer filed a copyright infringement action against Universal and others in Federal District Court in Kentucky.

Followay was aware of Maurer's lawsuit in Kentucky, but did not attempt to join it. Instead, Followay filed its own lawsuit in Federal District Court in Los Angeles in 1976, naming Maurer as an involuntary plaintiff. Maurer then moved to dismiss Followay's case on the grounds that the Los Angeles court did not have jurisdiction over him and that, in his absence, the action must be dismissed altogether because he was an indispensable party. The District Court agreed and dismissed the action without prejudice, a decision which the Court of Appeals has affirmed.

It was not disputed that Maurer was an indispensable party to the action, because under the 1909 Copyright Act, infringement actions had to be brought in the name of the owner of the copyright, not by mere licensees.

Where the copyright owner refused to bring or join in an infringement action, the owner had to be joined as an involuntary plaintiff.

There were four conditions for joining copyright owners as involuntary plaintiffs. First, the licensee must have invited the owner to become a voluntary plaintiff. Second, the copyright owner must have declined to take part in the case. Third, the licensee must have been an exclusive licensee. And fourth, there must have been no other way than involuntary joinder of securing justice to the exclusive licensee.

In this case, Followay established that Maurer had declined its invitation to join in the action voluntarily. However, Followay failed to establish that it had any interest in the renewal copyright, let alone an exclusive license under it. This was so, because the original license agreement was completely silent about renewal rights; and under the 1909 Copyright Act, renewal rights are not an extension of the initial term of copyright, but, rather, are a new grant which is separate and distinct from the original copyright. Accordingly, transfers of rights which made no mention of renewal rights did not convey rights under the renewal copyright.

Furthermore, the court held that Followay had failed to make a showing that it could protect its rights only by bringing an action in California. According to the court, nothing in the record suggested that Followay could not have fully vindicated whatever rights it had by joining in the Kentucky lawsuit filed by Maurer.

Followay Productions, Inc. v. Maurer, 203 USPQ 76, CCH Copyright Law Reports, Para. 25,095 (9th Cir. 1979) [ELR 1:9:2]

Award of trademark infringement damages to National Hockey League held excessive by Federal Court of Appeals

A Federal Court of Appeals in Texas has reduced the damages awarded by a lower federal court in an action brought by the National Hockey League and 13 of its member teams for the unauthorized manufacture and sale of embroidered cloth emblems depicting NHL team insignia. The defendant, Dallas Cap and Emblem Manufacturing, Inc., had been found liable for trademark infringement in violation of the Lanham Act in an earlier proceeding before the Court of Appeals; and the matter had been remanded to the District Court for a determination of damages. Boston Professional Hockey Association v. Dallas Cap & Emblem Mfg., Inc., 510 F.2d 1004 (5th Cir.), cert. denied, 423 U.S. 868 (1975).

The District Court then awarded the plaintiffs damages of $137,200. The court noted that Dallas Cap had offered the NHL $25,000 for a 3-year exclusive license to manufacture and sell the emblems. Thus, the court calculated that Dallas Cap's infringement for a 4-year period had resulted in damages of $33,000 on a prorated basis. An additional $33,000 was awarded as damages for Dallas Cap's unauthorized manufacture of the emblems in a larger size. Those damages were then doubled by the District Court because of "bad faith" by Dallas Cap, and an additional $5,200 was included in the award as Dallas Cap's profits attributable to the infringement. Dallas Cap appealed the $132,000 damage award (though not the $5,200 awarded on account of its profits).

The Court of Appeals rejected Dallas Cap's contention that no damages had been proved, finding that it had "caused economic injury to plaintiffs' business interests" by misappropriating a valuable property right. The court held, however, that the damages awarded were based on a "clearly erroneous finding of fact" and therefore had to be reduced.

The plaintiffs had previously granted rights to manufacture the emblems to another company. Therefore, the damages should have been calculated on the basis of Dallas Cap's alternative offer to pay the NHL $15,000 for a 3-year nonexclusive license — or a total of $20,000 for the 4-year infringement period. Similarly, the Court of Appeals reduced the award for the sale of the larger emblems to $20,000.

The Court of Appeals, refusing to engage in "appellate factfinding," then ordered further proceedings on the question of whether the damages should have been doubled. The court noted that the Lanham Act provides that a trial judge is given discretion to award additional damages in excess of actual damages. The District Court apparently had found that Dallas acted in bad faith when it sold the emblems without an appropriate disclaimer (thus violating an injunction against such sales) and when it failed to disclose in discovery certain sales and sales records.

The Court of Appeals, however, pointed out that sanctions other than an increase in damages were available for such conduct. “We would be reluctant to approve increased damages intended solely as punishment for conduct unrelated to the trademark infringement or to the actual damages caused by it,” the court said. The Court of Appeals agreed that increased damages might be justified if Dallas Cap deliberately withheld or misrepresented sales records, thereby affecting the plaintiffs’ ability to prove damages or profits. However, the District Court had not so found, and also had not made any specific finding that the defendant’s conduct was “willful trademark infringement.”

The Court of Appeals upheld the denial of attorneys' fees to the plaintiffs.

Boston Professional Hockey Association, Inc. v. Dallas Cap & Emblem Mfg., Inc., 597 F.2d 71 (5th Cir. 1979) [ELR 1:9:3]

Federal Court of Appeals reverses $10 million judgment in antitrust action against motion picture theater operator

A Federal Court of Appeals in Texas has reversed a jury award of over $10 million in trebled damages in an antitrust action alleging restraints on the motion picture exhibition business in Port Arthur, Texas.

The plaintiff Hayes and the defendant Solomon had a close business relationship, but a "falling-out" between the two resulted in a series of lawsuits. In this case, Hayes and several corporate plaintiffs first claimed that the defendant, who operated theaters in the Port Arthur area, had delayed a land sale agreement and thereby prevented them from building a competitive theater nearby in a shopping center they proposed to construct.

There may be recovery under the antitrust laws for a wrongfully frustrated attempt to enter a business if an intention to enter the business and the necessary preparedness are shown. The court held that the plaintiffs had failed to establish sufficient preparedness to enter the business of motion picture exhibition — they had not drawn up plans, borrowed construction funds, obtained commitments from prospective tenants or secured city zoning approval for the shopping center in which the theater was to be a tenant. According to the court, the plaintiffs were not entitled to recover damages "for the frustration of so ethereal a project."

The court also rejected a claim that Solomon had kept the plaintiffs from building a drive-in theater in Port Arthur by threatening to compete with it and try to drive it out of business if it were ever built. Again, there was no substantial evidence that the defendant's alleged conduct was a material and proximate cause for the plaintiffs' abandonment of plans for the drive-in. The court pointed out that "a statement of intent to compete . . . is not unlawful." And evidence indicated that some funds were spent on the theater project even after the defendant's alleged threats.

A third contention was that the defendants, who leased one of the plaintiffs' theaters, conspired to downgrade the theater and destroy its goodwill by showing primarily X-rated films. This was allegedly done in order to eliminate competition with two newly renovated theaters owned by the defendants in the same area. The court found that this was a viable antitrust claim but that the jury may have relied on improper evidence in reaching its verdict. The court therefore ordered a new trial on this claim, while ordering the District Court to dismiss the other two causes of action.

Hayes v. Solomon, 1979-2 CCH Trade Cases, Para. 62,731 (5th Cir. 1979) [ELR 1:9:3]

NLRB decides appropriateness of proposed bargaining units in cases involving radio and television stations and a movie studio

The National Labor Relations Act provides that a union selected by the majority of the employees "in a unit appropriate for such purposes" shall be the exclusive representative of all of the employees in that unit for collective bargaining purposes. 29 USC Section 159(a).

Many factors are considered in determining whether a group of employees constitutes an "appropriate unit," such as the homogeneity and distinctness of the proposed unit, the similarity of jobs and functions performed by the employees, the relationship of the proposed unit to the employer, previous bargaining history, and the general community of interest of the members of the proposed unit.

The National Labor Relations Board has recently decided four separate cases involving the appropriateness of proposed bargaining units at radio and television stations and at a movie studio. In one case, the National Association of Broadcast Employees and Technicians sought to represent all of the engineers employed by Starr KABL, Inc. at its San Francisco radio station. Starr contended that two of the four engineers had supervisory duties and therefore should not be included in the proposed unit. (The National Labor Relations Act distinguishes between "employees" who have the right to organize, and "supervisors." 29 USC Section 152.) The NLRB found, however, that the two engineers in question were not supervisors. Although they gave assignments and directions to the others, the NLRB found that this was because they had greater seniority and experience than the others and not because they were responsible for directing the others. In fact, all of the engineers performed similar duties and all were directly responsible to the radio station's general manager. Also, the two engineers did not have the authority to effectively recommend the hiring of employees. Such recommendations as they in fact made were made because of their technical expertise, but ultimate hiring authority remained with the general manager. Finally, the NLRB found evidence concerning the engineers' attendance at management meetings to be vague and inconclusive, but said that in any event, attendance at management meetings was no substitute for the exercise of supervisory functions. Accordingly, the NLRB ruled that all of the engineers were members of an appropriate unit, and it directed an election among them to determine whether they wished to be represented by NABET.

In a similar case involving Engineers in Charge employed at radio and television stations operated by the WGBH Educational Foundation, the NLRB determined that the Engineers in Charge did not assign or responsibly direct other engineers, and thus were not supervisors, and were properly included in the same unit with those other engineers. The NLRB based its decision on the fact that schedules for all engineers were developed by others, Engineers in Charge were paid by the hour, did not attend management meetings, did not effectively recommend the hiring, promotion, demotion, or transfer of other engineers, and directed the tasks of other engineers because of their greater experience and expertise, and not because they had authority to exercise independent judgment.

In a third case, the NLRB agreed with Buffalo Broadcasting Co., Inc., that those employed at its television station should be grouped into two units rather than three. Prior to this decision, Buffalo Broadcasting had a collective bargaining agreement with AFTRA for its on-the-air emyloyees, and an agreement with NABET covering two separate units, one unit consisting of technicians, and the other of announcers, newswriters, editors, and street reporters. Buffalo Broadcasting and AFTRA contended that only two units were appropriate, one consisting of technicians (who all agreed should be represented by NABET), and another consisting of on-the-air personnel, announcers, newswriters, editors, and street reporters. NABET, on the other hand, sought to represent all of Buffalo Broadcasting's employees, including those previously represented by AFTRA. The

NLRB ruled that a long history of collective bargaining recognized a clear distinction between technical work, on the one hand, and on-the-air work and writing and editing news, on the other. Accordingly, the NLRB found that the two separate units proposed by Buffalo Broadcasting and AFTRA were appropriate.

The National Labor Relations Act contains a few provisions specifying what units are not appropriate. One of these provisions specifies that a unit is not appropriate if it includes guards along with other employees. Furthermore, no union may represent guards if it also represents employees other than guards. This provision was at issue in a case in which the National Security Association-Studio Security Association sought to represent the security guards and watchmen employed by Deluxe General at its Hollywood facility. Deluxe General contended that the union was ineligible to represent its guards and watchmen, because it also admitted into membership and represented whistlemen and flagmen. Whistlemen and flagmen regulate the flow of traffic during the filming of a movie in order to minimize extraneous sound interference, but they do not enforce rules or protect property. The NLRB explained: “An employee engaged in traffic control, albeit facilitating the Employees film production, bears little resemblance to employees historically found to be guards. Indeed, we perceive the functions performed by part-time whistlemen and flagmen to be an integral part of the Employers production process. Thus, quiet on a movie set is as important to the film’s production as the sound crew. Yet employees traditionally found to be guards perform a role apart from the actual production process and are often most active when production has ceased. More akin to regular production employees, part-time whistlemen and flagmen are no more responsible for the protection of the

Employer's property than any other regular production employee, including sound crewmen."

Thus, because whistlemen and flagmen were not guards, and because the National Security Association-Studio Security Association represented whistlemen and flagmen, the NLRB held that it was ineligible to represent Deluxe General's security guards and watchmen.

Starr KABL Inc. and NABET, 239 NLRB No. 184, 1978-79 CCH NLRB Para. 15,444 (1979); WGBH Educational Foundation and NABET, 240 NLRB No. 167, 1978-79 CCH NLRB Para. 15,590 (1979); Buffalo Broadcasting Co., Inc. and NABET, 242 NLRB No. 152, 1978-79 CCH NLRB Para. 15,925 (1979); Deluxe General Inc. and National Security Association-Studio Security Association, 241 NLRB No. 33, 1978-79 CCH NLRB Para. 15,660 (1979) [ELR 1:9:4]

Court of Appeals upholds FCC s refusal to renew broadcaster s license due to practice of double billing advertisers

The Federal Court of Appeals in Washington, D.C. has held that the FCC was not obligated to explain its decision not to renew the license of two radio stations owned by White Mountain Broadcasting. The stations had engaged in the practice of double billing for approximately 5 1/2 years, with the knowing participation of the licensee’s sole shareholder, in violation of FCC rules. (The stations would send two bills to local advertisers — one for the true cost of advertising and the other in a higher amount which the local advertiser would forward to its national supplier for reimbursements under a cooperative advertising agreement.)

White Mountain Broadcasting contended that the FCC had not presented its reasons for allegedly treating this case differently from cases in which the conduct of lice sees may have presented a greater threat to the public interest. The example cited by White Mountain involved the CBS television network broadcasts of certain misleadingly advertised "winner-take-all" tennis matches. According to the court, the CBS matter involved a single occurrence, and the differences between the CBS case and White Mountain's misconduct were so obvious that the FCC was not required to refer to them in its decision.

White Mountain Broadcasting Co., Inc. v. Federal Communications Commission, 598 F.2d 274 (D.C.Cir. 1979) [ELR 1:9:5]

Preliminary injunction obtained by model s manager is reversed by New York appellate court

A contract between Wilhelmina Models, Inc. and model Iman Abdulmajid contained certain provisions standard in personal services contracts, such as that the model's services were extraordinary and unique, that there would be no adequate remedy at law for the breach of the agreement, and that the manager would be entitled to equitable relief in the event of breach or threatened breach of the agreement by Iman. Relying on these provisions, a trial court in New York granted Wilhelmina's motion for a preliminary injunction. The appellate court reversed, pointing out that Wilhelmina had not shown that it would be irreparably harmed if injunctive relief were not granted.

Further, according to the court, The uniqueness of defendant model's services would seem to be somewhat diluted by the fact that plaintiff apparently requires all of the models it manages to sign contracts with such recitations.

The court found that the unique quality of Iman's services was significant to the photographers and organizations who hire models rather than to Wilhelmina itself. The plaintiffs interest was in receiving commissions based on]man's compensation for such assignments and therefore damages would be an adequate remedy.

Wilhelmina Models, Inc. v. Abdulmajid, 413 N.Y.S.2d 21 (1979) [ELR 1:9:5]

Los Angeles Coliseum Commission lawsuit against National Football League proceeds

The decision of the Los Angeles Rams to move to Anaheim from Los Angeles as of the 1980-81 football season resulted in an antitrust lawsuit against the National Football League filed by the Los Angeles

Memorial Coliseum Commission, the agency which operates the Coliseum in which the Rams have played, their home games since 1946. At issue in the case are provisions of the NFL Constitution and By-laws which require an affirmative vote of three-fourths of the team owners before a team may move from one city to another or before a new team may be admitted to the league. The Coliseum Commission contends that these provisions violate federal antitrust law, and the Commission seeks to enjoin the NFL and its teams from enforcing them. According to the Coliseum Commission, the By-law provisions impede its efforts to obtain another football team as a tenant for the Coliseum.

At a very early stage in the case, the NFL made a motion for dismissal of the lawsuit on the grounds that the Coliseum Commission did not have standing to bring the action at this time, and the Coliseum Commission made a motion for a partial summary judgment declaring that the By-law provisions at issue violate the antitrust laws.

Judge Harry Pregerson of the Federal District Court in Los Angeles granted the NFL's motion to dismiss, but gave the Coliseum Commission leave to amend, and denied the Coliseum Commission's motion for partial summary judgment.

Although Judge Pregerson granted the NFL's motion to dismiss, his written decision makes it clear that in his opinion the Coliseum Commission does have standing to bring its lawsuit at this time, and it is not necessary for the Commission to wait until the 1980-81 football season begins without a team in the Coliseum. All that is necessary, the court held, is that the Commission's complaint allege a reasonable likelihood that the NFL would not approve the transfer of an existing team to Los Angeles or the creation of an expansion team for Los Angeles by 1980-81 and reasonable likelihood that in the absence of the NFL's approval requirement, the Commission would be able to attract a transfer team or find owners for an expansion team desiring to play in the Coliseum.

The basis for the Commission's motion for partial summary judgment was its contention that the By-law provisions at issue constitute an allocation of territories which is per se illegal. Judge Pregerson held, however, that it would be inappropriate to apply the per se rule to the circumstances of this case, and, accordingly, the legality of the provisions at issue must be tested under the rule of reason. Although the Coliseum Commission also contended that the provisions at issue are illegal even under the rule of reason, Judge Pregerson held that before a decision could be made on that question, additional evidence would be necessary concerning the business of professional football, the nature of the restraints and their effects, their history, and the reasons they were imposed. Thus, he decided that application of the rule of reason had to be postponed until the record has been more fully developed.

The Coliseum Commission has since filed an amended complaint, to which the NFL and its members have filed an answer; and discovery is proceeding.

Los Angeles Memorial Coliseum Commission v. National Football League, 468 F.Supp. 154, 1979-1 CCH Trade Cases, Para. 62,617 (C.D.Cal. 1979) [ELR 1:9:6]

Humor and hyperbole may be libelous, Massachusetts and Georgia courts decide

The September 1976 issue of Boston Magazine contained an article entitled "Best and Worst Sports." The article consisted of 8 sports categories, beneath which were the names and descriptions of those selected as the best and worst in each category. Several of the categories were "patently humorous or playful," such as "Sexy athlete," "Sports move of the year," and "Sports groupie." Other categories appeared to be straightforward or serious, however, such as "Sports announcer," "Local sports book," and "Local ski slopes."

The article named Jimmy Myers as the worst sports announcer and described him as being "The only newscaster in town who is enrolled in a course for remedial speaking." According to Boston Magazine, this description was nothing more than a "humorous jibe" or "rhetorical hyperbole."

Jimmy Myers, however, failed to see the humor and filed a libel lawsuit alleging that the statement was untrue and was made by Boston Magazine knowing it to be untrue or with reckless disregard for its falsity. The trial court dismissed his lawsuit, but that dismissal has been reversed by the Appeals Court of Massachusetts.

The Appeals Court held that had Boston Magazine written that Jimmy Myers was "the only newscaster in town in need of a course in remedial speaking," the statement would have fallen clearly within the realm of protected, and thus not libelous, opinion and ideas. However, the statement actually published was a factual assertion that Myers was "the only newscaster in town who is enrolled" in such a course, and thus it would not have been impossible, farfetched or unreasonable for many readers to believe that Myers was in fact taking some sort of remedial speech training. The court further held that if understood in that factual sense, the statement would be "particularly disparaging" to a sports announcer, because it would "impute to him the lack of skills necessary for the adequate performance of his trade." Such an imputation would be defamatory, because it would tend to injure him in his profession. Said the court in conclusion, "If a man in jest conveys a serious imputation, he jests at his peril."

In another case, a Georgia newspaper published an article apologizing for a story written by one of the paper's editors. The article in question was entitled "An Apology is in order," and it contained the following sentence: "We who put your newspaper together can be turkeys, too."

The article of apology resulted in a libel lawsuit filed by the editor who wrote the original story. The trial court granted summary judgment for the newspaper, but the Court of Appeals of Georgia has reversed. The Court of Appeals held that the phrase "We who put your newspaper together can be turkeys, too" could be defamatory, because the term "turkey" could connote ineptitude, dumbness, or ignorance.

Myers v. Boston Magazine Co., Inc., 389 N.E.2d 779 (Mass.App. 1979); Ferguson v. Park Newspapers of Georgia, Inc., 253 S.E.2d 231 (Ga.App. 1979) [ELR 1:9:6]

Briefly Noted:

Administrative Law.

The Colorado Court of Appeals has held that the Cloverleaf Kennel Club was not entitled to judicial review of a decision by the Colorado Racing Commission granting additional racing days to the Mile High Kennel Club, an economic competitor of Cloverleaf. The basis for the court's decision was that economic injury from lawful competition did not give Cloverleaf standing to question the legality of Mile High's operations. In addition, Cloverleaf had not shown it was adversely affected by the Racing Commission's decision, because Cloverleaf did not operate on any of the additional days granted to Mile High; and thus, Cloverleaf lacked standing for that reason also.

Cloverleaf Kennel Club, Inc. v. Coloardo Racing Commission, 592 P.2d 1341 (Colo. App. 1979) [ELR 1:9:7]

Antitrust Law.

A Federal Court of Appeals in California has held that the Sacramento Bee did not violate the Sherman Act when it terminated its independent distributors and replaced them with salaried employees, because there was no evidence that the Bee's publisher intended to control prices or improve the newspaper's position in the

Sacramento market by means of the terminations. The court also held that the Bee did not violate the Sherman Act by refusing to sell additional papers to certain retained independent distributors, who intended to sell the additional papers to the terminated independents.

Naify v. McClatchy Newspapers, 1979-2 CCH Trade Cases, Para. 62,723 (9th Cir. 1979) [ELR 1:9:7]

Broadcast Regulation.

The Federal Court of Appeals in Washington, D.C. has held that the FCC acted in an arbitrary and capricious manner when it denied a motion to waive its cut-off date for the filing of an application for a comparative hearing for a license to operate a television station in Louisiana. The prospective applicant lacked actual knowledge of the cut-off date and thus had filed its application late. The FCC, however, had neglected to publish the cut-off date in the Federal Register as required by Section 1.572(c) of its own rules. Accordingly, the FCC was ordered to consider the application, together with others that had been filed on time.

Way of Life Television Network, Inc. v. FCC, 593 F.2d 1356 (D.C.Cir. 1979) [ELR 1:9:7]

Broadcast Regulation.

The Utah Supreme Court has held that a Utah trial court did not impinge upon the jurisdiction of the FCC when the court declared that the purchaser of a radio station had defaulted in its payments, and therefore the purchaser's interest in the station's FCC license (as well as other assets) was forfeited back to the seller, as provided in the parties' purchase and sale agreement. The FCC would have to approve the license transfer thereafter; but as between the purchaser and seller, the seller owned the license. If the FCC did not approve the transfer, the license apparently would be terminated.

Themy v. Seagull Enterprises, Inc., 595 P.2d 526 (Utah 1979) [ELR 1:9:7]

Cable Television Regulation.

The New York Court of Appeals has held that the New York State Commission on Cable Television has the authority, under state law, to approve some proposed amendments to city cable television franchise agreements, while disapproving other amendments proposed in the same application. New York City had contended that the Commission was required to approve or disapprove applications to amend franchise agreements in their entirety, and not part by part. The Court of Appeals disagreed, however.

City of New York v. State of New York Commission on Cable Television, 416 N.Y.S.2d 786 (1979) [ELR 1:9:7]

Employment Contracts.

The Supreme Court of South Carolina has held that an agreement by which the plaintiff was to be employed as editor in chief of the defendant's newspapers could not be enforced by the plaintiff after his termination, because the agreement was not in writing. According to the plaintiff the agreement was to have remained in effect more than 3 years. In South Carolina (as in many if not most other states), the statute of frauds provides that contracts which are not to be performed within 1 year may not be enforced, unless they are in writing. Certain written documents relied upon by the plaintiff in this case were held not to be an employment contract.

Young v. Independent Publishing Company, 254 S.E. 2d 681 (S.C. 1979) [ELR 1:9:7]

Employment Contracts.

The Georgia Court of Appeals has held that an oral agreement by which the plaintiff was to be employed as a distributor of the defendant's newspaper for "as long as he owned the newspaper" was unenforceable. The agreement was held to be for an indefinite period, and thus "was terminable at the will of either party." The contract was not made enforceable by the plaintiffs purchase of a truck and office equipment, the court held, because they were not purchased in exchange for a promise of employment; they were purchased after the plaintiff was employed. Furthermore, the court held that even if they had been purchased in exchange for a promise of employment, the plaintiff would not have been entitled to employment for life, but only for a reasonable time. In this case, the plaintiff had been employed for 6 years, a period which the court found to be a reasonable time.

Morris v. Park NewsPapers of Georgia, Inc., 255 S.E.2d 131 (Ga. 1979) [ELR 1:9:8]

DEPARTMENTS

In the Law Reviews:

CBS v. ASCAP: An Economic Analysis of a Political Problem by John Cirace, 47 Fordham Law Review 277-306 (1978)

Privacy, Publicity, and the Portrayal of Real People by the Media by Peter L. Felcher and Edward L. Rubin, 88 Yale law Journal 1577-1622 (1979)

Not Even Semitough: Professional Sport and Canadian Antitrust by J. C. H. Jones and D. K. Davies, 23 Antitrust Bulletin 713-742 (1978)

Defining the Relationship Between Antitrust Laws and Labor law: Professional Sports and the Current Legal

Background by Barry S. Roberts and Brian A. Powers, 19 William & Mary Law Review 395-467 (1978)

FCC's Authority to Pre-empt State Regulation of Pay Cable Television Upheld by Susan E. Gordon, 53 St. John's Law Review 255-265 (1979)
[ELR 1:9:8]