NEW LEGISLATION AND REGULATIONS

California amends its Athletes Agent Act; registration with California Secretary of State now required, even by some lawyers and licensed talent agencies

California has amended its Athletes Agent Act, again, in what appears to be a never-ending quest to get this troublesome area just right. The most significant feature of this latest revision is a requirement that player agents file a detailed "public-disclosure" statement with the California Secretary of State — a requirement that shows that the more things change the more they stay the same.

California was the first state to regulate player agents, perhaps because it is home to so many NCAA Division I athletic programs and to so many professional sports teams. California first did so in 1982 with an elaborate statute that required, among other things, player agents to register with the state's Labor Commissioner (*ELR* 3:17:5). For reasons that have never been apparent, California's registration requirement was largely ignored. More than two years after the requirement first took effect, fewer than 30 agents had registered in the entire state (*ELR* 5:10:3). And by 1996, that number had fallen to only 20 (*ELR* 18:6:21).

Moreover, as far as colleges were concerned, the California law did little or nothing to prevent or punish abuses, despite extensive amendments adopted in 1985 (*ELR* 8:2:3). As a result, the University of Southern California went to the legislature, accompanied by the entire University of California system and other California colleges, the NCAA, the PAC-10 and other athletic conferences. Together, these venerable institutions sought and received a complete top-to-bottom rewriting of the state's agent regulation statute.

The "Miller-Ayala Athlete Agents Act" became effective last year. It reflected a then-new philosophy that civil litigators and criminal prosecutors can do a better job of regulating player agents than an administrative agency. Thus the old requirement that agents register with the California Labor Commissioner was eliminated entirely. In its place, the Miller-Ayala Athlete Agents Act provided a set of specific "dos-and-don'ts" that player agents were required to comply with, or suffer the likelihood of severe civil and criminal penalties (*ELR* 18:6:21).

Now the one-year old Miller-Ayala Athlete Agents Act has been amended, and the recently-deleted registration requirement has been reinstated in modified form. The Labor Commissioner (which regulates *talent* agents in California) is still out of the picture insofar as player agents are concerned. Now player agents are required to file "public-disclosure" statements with the California Secretary of State.

These "public-disclosure" statements require agents to reveal an enormous of amount of personal as well as business information. For example, the disclosure statement must indicate the player agent's *social security number* and *driver s license number*, as well has his or her name and business and *residence* addresses. The names and residence addresses of "all persons financially intereted in the operation of the business of the athlete agent" — including partners, associates and employees — also must be set forth in the disclosure statement.

The public-disclosure statement must indicate whether the agent has been convicted of crimes or been disciplined by professional associations, and whether any student athletes have lost their eligibility as a result of the agent's actions. Agents must also disclose the names of all of the past and present athlete clients.

The disclosure statement must indicate other things as well, including the names of players associations with which the agent is registered. And agents must submit a schedule of the fees they will charge for their athlete agent services.

Filing a false or incomplete disclosure statement may result in civil or even criminal liability.

Agents will of course have to pay a filing fee at the time the mandatory disclosure statement is submitted. The California legislature has authorized the Secretary of State to set the amount of the filing fee so that the revenues it generates are "sufficient to cover the costs" of agent regulation.

The newly-enacted amendments add some other requirements as well. When an agent first contacts a student athlete (or any member of the athlete's family, or certain others), the agent must provide the person contacted with a written notice indicating that the agent has filed public-disclosure information with the Secretary of State, and "specific instructions on how to obtain the public disclosure information from the Secretary of State." Agent contracts and any written material sent by agents to prospective clients also must indicate that public-disclosure information has been filed.

Finally, the newly-enacted amendments make more specific the type of insurance or other "security" agents must have for the protection of their clients. Agents must have at least $100,000 per claim liability insurance; or they must have at least $100,000 in a trust or bank escrow account, or a $100,000 letter of credit or insurance bond, as "security" for damages arising out of claims.

California licensed attorneys and talent agencies are excluded from the coverage of the newly-amended

Act, but only in part. That is, the Act at first provides that an "athlete agent" "does not include a person licensed as an attorney . . . [or] a talent agency . . . licensed by the Labor Commissioner . . . except" under certain circumstances.

Thus, a lawyer is an "athlete agent" — and thus is subject to all of the requirements of the Miller-Ayala Athlete Agent Act — if in addition to, or instead of, rendering services of the kind "customarily provided" by lawyers, the lawyer "recruits or solicits an athlete to enter into any agent contract, endorsement contract, or professional sports services contract . . . or negotiates to obtain employment for any person . . . as a professional athlete."

Similarly, a talent agency licensed by the California Labor Commissioner is an "athlete agent" — and thus is subject to all of the requirements of the Miller-Ayala Athlete Agent Act — if in addition to, or instead of, rendering services of the kind "customarily provided" by talent agencies, the talent agency "recruits or solicits a *student* athlete [emphasis added] to enter into an agent contract, endorsement contract . . . or professional sports services contract . . . or negotiates to obtain employment for *any person* [emphasis added] to perform on-field play with a professional sports team or organization."

Editor s note: The information contained in agents' disclosure statements will be made available by the Secretary of State to agents' prospective clients — and presumably to just curious members of the public as well — including, apparently, such personal information as the agent's social security number, driver's license number and residence address. How wonderful this will be for those criminals whose *modus operandi* involves stealing the "identities" of their victims, in order to engage in fraudulent transactions using their victim's credit. There are at least two lessons taught by this new legislation. The first is that overly-aggressive and dishonest player agents have made life difficult for all agents, including those who are true professionals in every sense of the word; and that is a shame. The second is a paraphrase of a lyric from a famous country-western song: "Mamas, don't let your children grow up to be player agents." Even cowboys get more respect.

1997 Cal. Stats. Ch. 809, Senate Bill 94, amending California Business & Professions Code sections 18895 *et seq*. (1997)

RECENT CASES

Letter sent by lawyer for Philadelphia Magazine to editors of Esquire, asserting that Philadelphia Magazine had oral contract with journalist for publication of article Esquire had agreed to publish, was a privileged communication, and thus journalist s suit against lawyer is dismissed

Philadelphia lawyer Carl Solano, a partner in Schnader Harrison Segal & Lewis, has been dismissed from a lawsuit filed by journalist Bruce Buschel as a result of a dispute between Buschel and *Philadelphia Magazine* which is a Solano client.

The dispute arose because the editor of *Philadelphia Magazine* believes that he and Buschel orally agreed that Buschel would write an article for

Philadelphia about the head of that city's Film and Video Commission. Buschel denies the existence of any such agreement, and when the article was finished, he entered into an agreement with *Esquire* for its publication.

Before *Esquire* published the article, Solano wrote to that magazine's editors, asserting that Buschel was "under contract" with his client, *Philadelphia Magazine*, to write the article *Esquire* had agreed to publish. The letter warned *Esquire* that *Philadelphia Magazine* intended to "enforce its legal and contractual rights" to the article. And Solano enclosed a copy of another letter that *Philadelphia* s editor had written directly to Buschel, accusing Buschel of wanting "to commit a moral transgression against me and my magazine."

Esquire responded to Solano's letter as *Philadelphia Magazine* intended: it terminated its contract with Buschel and didn't publish his article.

Buschel responded with a lawsuit against *Philadelphia Magazine*, its editor, and against its lawyer Solano, alleging claims for defamation, false light invasion of privacy, interference with contract, and civil conspiracy.

Whatever the merits of Buschel's suit against *Philadelphia* and its editor may be, his suit against the magazine's lawyer has been dismissed. Solano's motion to dismiss the case against him has been granted. Federal District Judge Joseph McGlynn has ruled that Solano's letters to *Esquire* were privileged communications.

"This privilege operates to provide attorneys a higher degree of freedom in actively pursuing the interests of their clients," Judge McGlynn explained.

"Because he acted within the bounds of this privilege, Solano is protected from liability arising from Bushel's allegation[s]."

Bushel v. Metrocorp., 957 F.Supp. 595, 1996 U.S.Dist. LEXIS 14094 (E.D.Pa. 1996)

Kimberly Bryson s defamation and privacy suit against Seventeen magazine, complaining about a story which described a fictitious character named Bryson as a slut, should not have been dismissed, Illinois Supreme Court rules

The March 1991 issue of *Seventeen* featured a group of stories by writers the magazine described as "New Voices in Fiction." One of these voices belonged to Lucy Logsdon. Her story, entitled "Bryson," described its title character as a "slut."

Lucy Logsdon lives in Gallatin County in southern Illinois; and so does Kimberly Bryson. Kimberly thinks that the "Bryson" in Logsdon's story is meant to be her. Indeed, Kimberly says there are more than 25 similarities between herself and the physical attributes, locations and events attributed to the character "Bryson" in Logsdon's story.

Of course, Kimberly Bryson denies that she is or ever was a "slut." So shortly after the story was published, she sued *Seventeen* and Logsdon, alleging that the story "Bryson" defamed her. Later, Bryson amended her complaint to add a cause of action for false light invasion of privacy.

Seventeen and Logsdon persuaded the trial court to dismiss the case, on the grounds that the story did not defame Bryson and on the grounds that the privacy claim was barred by the statute of limitations. The Appellate Court affirmed the dismissal. But the Supreme Court of Illinois has reversed and has remanded the case for further proceedings.

In an opinion by Chief Justice Bilandic, the Illinois Supreme Court has ruled that as used in Logsdon's story, the word "slut" accused Kimberly Bryson of having engaged in fornication and being unchaste. Even though the story was identified as fiction, the 25 similarities between Kimberly Bryson and the story's title character could result in reasonable people understanding that the story was about Kimberly, the Chief Justice said. Moreover, he added, the story could be understood as describing actual facts, and thus the word "slut" was not necessarily a statement of opinion protected by the First Amendment.

The Supreme Court also ruled that Bryson's false light invasion of privacy cause of action was not barred by the statute of limitations. Even though the privacy claim was first alleged in an amended complaint that was filed quite some time after the offending story was published, the privacy claim was based on the same facts as those alleged in the original complaint. Thus the privacy claim related back to the date of the original complaint which was filed well within the period of limitations.

Justice McMorrow dissented. Among other things, he noted that none of the 25 similarities between the fictitious “Bryson” and Kimberly Bryson is “unique or conclusive.” For example, the story described its title character as a blonde, and Kimberly asserted that her mother owned a beauty salon so she was “always changing [her] hair color.” Another character in the story named “Anita” was grounded for refusing to tell her father what she had done with his Willie Nelson tapes. Kimberly said that she had a friend named

"Anita" whose brother was named "Nelson." Judge McMorrow said "these are not similarities which establish the identify of plaintiff as the Bryson in the fictional story."

Editor s note: This decision is the latest in a handful of defamation-by-fiction cases in which the plaintiff relies on alleged similarities to establish that he or she is portrayed in the fictional work, and alleged differences to establish that the fictional work is false and defamatory. One of the best known and most controversial of these cases is *Bindrim v. Mitchell*, 92 Cal.App.3d 869 (1979) (*ELR* 1:4:1), in which a judgment against author Gwen Davis, based on statements in her best-selling novel *Touching*, was affirmed. Though these cases are fascinating (to those not personally involved), there have been more law review articles about them than actual published decisions. The *Brooklyn Law Review* published an entire symposium issue devoted to the topic. (51 *Brooklyn Law Review* 225 *et seq.* (1985)). A case brought by the late Sylvia Plath's psychiatrist, complaining about his alleged portrayal in the movie version of Plath's novel *The Bell Jar*, looked as though it was going to produce a precedent-setting opinion; but it was settled for a reported $150,000 and a disclaimer on the videocassette version of the movie (*ELR* 8:9:14). Though no decision was rendered in that case, it did produce an insightful law review article. *Libel in Fiction: The Sylvia Plath Case and Its Aftermath* by Robert Callagy, Irwin Karp, Victor A. Kovner, Charles Rembar and Judith Rosaner, 11 *Columbia-VLA Journal of Law & the Arts* 473 (1987).

Bryson v. News America Publications, Inc., 672 N.E.2d 1207, 1996 Ill.LEXIS 118 (Ill. 1996)

Dismissal of defamation and privacy action against talk-show host Bob Grant and radio station WABC is affirmed on appeal; in context, Grant s statements were not actionable libel, and his disclosure of private facts was protected by newsworthiness privilege

Talk show host Bob Grant and WABC, the radio station that originates his program, have defeated a defamation and invasion of privacy action by a long-time critic of Grant named George Wilson. Wilson's lawsuit was triggered by Grant's on-air statement that Wilson is a "sick, no good, pot smoking, wife beating skunk," and by Grant's on-air disclosure that Wilson had once been a patient at Marlboro Psychiatric Hospital.

The Appellate Division of the New Jersey Superior Court acknowledged that Grant's statement that Wilson is a "wife beating skunk" could be defamatory, "especially in light of our society's heightened awareness of domestic violence." But the appellate court said that the statement had to be considered in the context of a long time "war of words" between Wilson and Grant. Taken in that context, the court concluded that listeners must have realized that Grant's words were "no more than rhetorical hyperbole," and thus were not actionable libel.

Although Grant's statement that Wilson once was a psychiatric hospital patient had revealed a previously private matter the dissemination of which would be offensive to a reasonable person, the statement was newsworthy and thus privileged, the appellate court concluded.

For these reasons, the appellate court affirmed the dismissal of Wilson's lawsuit.

Wilson v. Grant, 687 A.2d 1009, 1996 N.J.Super.LEXIS 480 (N.J.Super.A.D. 1996)

Detroit Free Press wins dismissal of defamation lawsuit filed against it by father of major league pitcher Steve Howe

Baseball fans of a certain age remember that cocaine had a terrible impact on the career of major league pitcher Steve Howe. In 1986, the *San Jose Mercury News* published an article about Howe's struggle with the drug. The article also reported that Howe's family "was a prisoner of his father's drinking problems," and that Howe's mother had to serve her children powdered milk "because his father was drinking up so many paychecks it was difficult coming up with a combined house and car payment of $84 a month."

The article was distributed to other newspapers by a wire service, and it was picked up and republished by the *Detroit Free Press*. As a result, Steve Howe's father sued the *Free Press* for defamation. The case was soon dismissed, however, and the Michigan Court of Appeals has affirmed.

In an opinion by Judge Murphy, the appellate court has ruled that the "wire-service defense" protects the *Free Press* from liability in this case, because the paper "reproduced, without substantial change, an apparently accurate article released by a reputable news-gathering agency," and there was "no evidence or allegation that [it] knew the article contained falsities, and there is nothing in the article itself that could reasonably have placed [it] on notice of potential inaccuracy."

Howe v. Detroit Free Press, 555 N.W.2d 738, 1996 Mich.App.LEXIS 306 (Mich.App. 1996)

New York trial court refuses to dismiss emotional distress lawsuit against radio station and on-air personalities, complaining of statements made about plaintiff during Ugliest Bride Contest segment of morning broadcast

A photograph taken during "one of the most beautiful and memorable occasions of life" became the subject of "a feeble and bad taste attempt at humor." As a result, liability may eventually be imposed on a Schenectady-area radio station and its morning on-air personalities. This is so because New York Supreme Court Justice Joseph Harris has refused to dismiss an intentional infliction of emotional distress lawsuit filed against them by Annette Esposito-Hilder.

A photo of the plaintiff and her husband was published in the weddings section of a local newspaper. On the morning their photo appeared, the defendants broadcast their weekly "Ugliest Bride Contest" segment, during which they made "demeaning and outrageous remarks" concerning the plaintiff's "physical attractiveness and desirability." Ordinarily, the defendants do not identify their targeted brides. But on the morning in question, they included the plaintiff's full name, her employer's name, her position, and the names of her supervisors. Unfortunately, the plaintiff heard the offending broadcast, as did her supervisors and colleagues.

The defendants made a motion to dismiss the plaintiff's lawsuit, citing *Hustler v. Falwell* (*ELR* 9:10:3). That was the case in which the United States Supreme Court held that public figures may not recover for infliction of emotional distress, unless they prove the defendant made a false statement of fact with actual malice.

Justice Harris denied the defendant's motion however. He ruled that "by implication the rule [of *Hustler v. Falwell*] does not apply to private persons." In this case, he said, the "plaintiff is a private person; neither marriage nor newspaper bridal photographs convert a private person into a public figure." Moreover, Justice Harris added, "The First Amendment was not enacted to enable wolves to parade around in sheep's clothing, feasting upon the character, reputation and sensibilities of innocent private persons."

He also noted that the plaintiff was employed by a competing radio station, and said, "This raises the specter of a possibly high level of vindictiveness on the part of defendants, raising the reasonable possibility that plaintiff was unfairly transformed by defendants into a pawn in a battle between competing broadcasters, with a specific intent to injure."

The justice concluded that "All of the elements of the tort of intentional infliction of emotional distress have been met herein as a matter of law. It is for the jury to determine whether they have been met as a matter of fact."

Esposito-Hilder v. SFX Broadcasting, Inc., 654 N.Y.S.2d 259, 1996 N.Y.Misc.LEXIS 536 (N.Y.Sup. 1996)

Home version of Mortal Kombat did not violate publicity rights of martial artists who were hired to model for arcade version of video game

"Mortal Kombat" and "Mortal Kombat II" are martial arts video games, now available in both arcade and home versions.

When "Mortal Combat" was first produced, at least four martial artists were hired to model the games' characters. Then, in a feat of technical wizardry, the artists' movements were videotaped or otherwise captured by computer, so they could be incorporated into the games after extensive computer editing.

Apparently, the contracts signed by the four martial artists recited that their services would be used in connection with *coin-operated* or *arcade* video games, because when Midway Manufacturing and other companies began selling home versions of "Mortal Kombat," all four sued. Their basic assertion, made in two separate lawsuits, was that the use of their likenesses in the *home* versions of the games violated their rights of publicity.

Though the plaintiffs are experienced martial artists, litigation is a different sort of contest; and Midway and its co-defendants have prevailed.

In one case, federal District Judge Elaine Bucklo has ruled that the use of Daniel Pesina's likeness did not violate his common law right of publicity for two reasons. First, he was required to show that his likeness had commercial value before it was used by the defendants; and he did not do this. Second, he had to show that his likeness was recognizable to game players; but he could not do this, because he is not widely known and the game players do not recognize him as the model for Mortal Kombat's "Johnny Cage" character. Judge Bucklo rejected Pesina's Lanham Act claim for similar reasons. And the judge held that because Pesina's modeling services had been performed under a written contract, his quantum meruit claim was barred.

In the other case, federal District Judge Robert Gettleman has held that the right of publicity claims made by Philip Ahn, Elizabeth Malecki and Katalin Zamiar were preempted by federal copyright law, because their written agreements with Midway had authorized the company to film them and had made Midway the owner of all of their copyrightable expression, defining such expression as works made for hire. Judge Gettleman also rejected the martial artists' quantum meruit claims.

Pesina v. Midway Manufacturing Co., 948 F.Supp. 40, 1996 U.S.Dist.LEXIS 18390 (N.D.Ill. 1996); *Ahn v. Midway Manufacturing Co.*, 965 F.Supp. 1134, 1997 U.S.Dist.LEXIS 7773 (N.D.Ill. 1997)

Assignment of all of songwriter s contractual rights to royalties from Release Me entitled assignee to foreign royalties during renewal term of song s copyright, and may entitle assignee to domestic royalties too, even though assignment did not specifically refer to royalties earned by song during its renewal term, federal Court of Appeals holds

There is a difference between the transfer of a *copyright* and the transfer of a *contractual* right to *royalties* earned by a copyrighted work. That difference — subtle and conceptual, though it is — is at the heart of a decision by a federal Court of Appeals concerning who has the right to royalties earned during the renewal term of the copyright to the song “Release Me.”

One claimant to those royalties is Robert Yount who co-authored “Release Me” back in 1949. Shortly after the song was written, Yount and his co-authors assigned the song's copyright, "including any renewals of copyright," to a music publisher, pursuant to an agreement that entitled Yount to royalties.

Eleven years later, in 1958, Yount assigned "all" of his "rights" in the song to a fellow named W.S. Stevenson. That assignment said nothing about the song's renewal term. By the time the assignment to Stevenson was made, of course, Yount had only one right in the song — the contractual right to receive royalties from the song's publisher.

The song's copyright was properly renewed by the song's publisher, and when the second term began, Yount claimed the right to receive its royalties once again. Stevenson's successors did too, of course; and they are now the other claimants to the song's royalties.

Yount's claim rests on a line of copyright cases that hold that an assignment of a *copyright* made in general terms, that does not specifically mention the copyright's renewal term, does not assign the renewal term. Apparently relying on those cases, a federal District Court awarded Yount the domestic royalties for the renewal term, but not the royalties earned by the song in other countries. The District Court awarded foreign royalties to Stevenson's successors, probably because other countries have single-term copyrights (rather than the initial and renewal terms that apply to pre-1978 U.S. works).

Yount and Stevenson's successors both appealed; and Stevenson's successors have won. That is, in an opinion by Judge Ferdinand Fernandez, the Court of Appeals has ruled that the foreign royalties earned by "Release Me" were properly awarded to Stevenson's successors, and they may be entitled to the song's domestic royalties as well.

Insofar as the foreign royalties are concerned, Judge Fernandez noted that "it is axiomatic that United

States copyright law does not apply extraterritorially." Thus, the question of who is entitled to foreign royalties earned during the renewal term is "purely an issue of contract law." Since Yount assigned "all" of his "rights" in the song to Stevenson, he assigned "*all* of [his] royalty rights from the song, including the right to foreign royalties earned during the whole term of the contract." This meant the District Court properly awarded Stevenson's successors the song's foreign royalties, the Court of Appeals held.

Judge Fernandez gave more detailed consideration to the domestic royalties issue. Having done so, the judge concluded that federal decisions concerning assignments of *copyrights* do not apply to assignments of *contractual* rights to *royalties*, at least when the royalty assignment was made (as it was in this case) by someone who no longer owned the copyright that was earning the royalties. The question of whether Yount assigned his right to royalties for the renewal term of the song's copyright "became a question of state law only, and the district court erred when it granted summary judgment to Yount based upon renewal term jurisprudence," the appellate court held.

As a result, the case has been remanded to the District Court for reconsideration of the domestic royalties issue, which is to be decided as a matter of state contract law interpretation.

Yount v. Acuff Rose-Opryland, 103 F.3d 830, 1996 U.S.App.LEXIS 33460 (9th Cir. 1996)

Copyright infringement suit by musical group Raquel is dismissed, because group did not own copyright to commercial which defendants continued to use after expiration of three-year license

There is a significant distinction between the copyright to a *song* and the copyright to a *recording* or *video* of a performance of that song. To the uninitiated, the distinction may seem technical, but it has extremely practical implications. Among other things, it is possible for the copyright to a song to be owned by one person or company, while the copyright to the recording or video of the performance of that song is owned by another. Indeed, this is often the case, as it was in a lawsuit filed by the musical group known as "Raquel."

Raquel wrote and owns the copyright to the song "Pop Goes the Music." Raquel then licensed the song for three years' use in a television commercial. The companies that produced the commercial also hired Raquel to perform the song for the commercial.

The commercial was used after the three-year license expired, according to a copyright infringement complaint filed by Raquel. However, Raquel made two mistakes in connection with its claim — one more serious than the other.

First, when Raquel prepared its copyright registration application, it mistakenly identified the work for which it claimed copyright as an "audiovisual work," rather than as a song. It reinforced this mistake by sending the Copyright Office a video of the group's performance of the song (as shot for the commercial), rather than sheet music or an audio tape of the song. Second, in its copyright infringement complaint, Raquel identified the allegedly infringed work as a television commercial rather than as a song.

In fact, it was not disputed that the copyright in the commercial was actually owned by the companies Raquel had sued, not by Raquel.

The first mistake was not fatal by itself, because Federal Magistrate Judge Francis Caiazza ruled that the inadvertent description of Raquel's work as an "audio-visual work" in its copyright registration application did not invalidate the copyright Raquel owned in the music and lyrics of the song itself. However, when this non-fatal mistake was carried over into the complaint, it turned into a "fatal flaw," because Raquel has no copyrightable interest in the commercial whose copyright was allegedly infringed.

Magistrate Caiazza therefore recommended that Raquel's complaint be dismissed, without prejudice; and federal Judge Donald Lee has done so.

Raquel v. Education Management Corp., 955 F.Supp. 433, 1996 U.S.Dist.LEXIS 20697 (W.D.Pa. 1996)

Chicago s Eat Your Art Out art fair does not infringe copyright or trademark to guidebook entitled Eat Your Art Out, Chicago, federal District Court rules

Edward and Kimberly Sweet are the authors of a guidebook to restaurants and bars in Chicago that exhibit art for sale. The book, first published in 1989, is entitled “Eat Your Art Out, Chicago.” The Sweets own the copyright to the book, and claim trademark rights in its title.

For many years, the City of Chicago has presented an annual food festival called “Taste of Chicago.” And since 1995, the City has presented an art fair as part of the food festival. The City calls its art fair "Eat Your Art Out."

Whether the city copied the title of its art fair from the title of the Sweets' guidebook, or — like the Sweets — simply adopted a variant of the well-known phrase "eat your heart out," is not a matter of record. Nor will it ever become a matter of record. Because although the Sweets sued the City for copyright and trademark infringement, their suit has been dismissed.

Federal District Judge Wayne Andersen has ruled that the City's art fair is not a derivative work based on the guidebook. The art fair doesn't indicate which restaurants or bars in Chicago display art for sale; and doing so would merely be "the expression of an idea, which is insufficient . . . to establish copyright infringement."

The "essence" of the Sweets' copyright claim is that "the City copies the title of the Guidebook, appropriates the idea of connecting art and dining establishments, and uses similar graphics in its advertising." This claim is "without merit," Judge Andersen ruled, because neither ideas nor titles or short phrases are protected by copyright. Moreover, despite the Sweets' allegation that the graphics used by the City were "strikingly similar" to the art work in their book, the judge concluded that "the graphics at issue here are not substantially similar," and "indeed . . . do not even express the same or a similar idea."

The judge also rejected the Sweets trademark claim, because he found that the Sweets "are unable to establish any likelihood of confusion as to either [the] origin or sponsorship" of Chicago's art fair. This is so, he explained, because the guidebook and art fair are unrelated to one another and are marketed through different channels.

Sweet v. City of Chicago, 953 F.Supp. 225, 1996 U.S. Dist.LEXIS 19168 (N.D.Ill. 1996)

Partnership agreement between musicians does not have to be in writing in order to be valid, despite Statute of Frauds, New York court rules

An oral partnership agreement between two musicians may be valid, the Appellate Division of the New York Supreme Court has ruled, despite the Statute of Frauds.

In New York, the Statute of Frauds bars enforcement of oral agreements which by their own terms are not to be performed within a year of their making. For this reason, a trial court dismissed a lawsuit by composer-performer Marvin Prince alleging that performer Darrin O'Brien had breached an oral agreement by which the two musicians had formed a partnership.

However, the Appellate Division has reversed. In a Memorandum Decision, that court ruled that "An oral agreement to form a partnership for an indefinite period creates a partnership at will and is not barred by the Statute of Frauds."

O'Brien also denied that he ever entered into the alleged oral partnership agreement with Prince. But conflicting deposition testimony was offered on that issue, so summary judgment could not be granted to O'Brien on that ground.

Prince v. O Brien, 650 N.Y.S.2d 157, 1996 N.Y.App. Div. 12252 (App.Div. 1996)

Musician is not entitled to recover commissions paid to his former agent, even though agent did not have entertainment agency license required by Minnesota law

Minnesota band leader and musician Greg Haage has failed in his bid to recover more than $80,000 in commissions he paid to his former agent Bo Bogotty, even though Minnesota law requires entertainment agencies to obtain a license from that state's Department of Labor and Industry, and Bogotty did not have such a license.

In a decision by Judge Lansing, the Minnesota Court of Appeals has ruled that the statute in question makes it a misdemeanor to violate its licensing requirement, and that violations can result in monetary penalties and even imprisonment. But the statute gives enforcement powers only the Department of Labor and

Industry; it says nothing about entertainers being able to demand a refund of commissions.

The appellate court rejected Haage's argument that it should imply a private right of action. As a result, Haage did not have standing to sue under the statute, and the appellate court affirmed the dismissal of his lawsuit.

Haage v. Steies, 555 N.W.2d 7, 1996 Minn.App.LEXIS 1192 (Minn.App. 1996)

ABC may be liable to aspiring actor for sexual harassment, in case alleging that actor was drugged and raped by ABC casting director

It's the kind of case that gives an unsavory connotation to the phrase "casting couch."

An aspiring actor has alleged that he was drugged and then raped by an ABC Entertainment casting director, on a Sunday morning in the casting director's home, where the actor had gone, at the director's invitation, expecting to meet entertainment industry executives who could promote his career. Now, the actor seeks to recover damages, not only from the casting director, but from ABC as well, on the theory that the network is liable for the casting director's actions.

A California trial court failed to see how ABC could be liable for the director's alleged behavior under the circumstances alleged by the actor; so the trial court dismissed the case as against ABC, for failure to state a claim. On appeal, however, the actor has faired better. In an opinion by Justice Charles Vogel, the California Court of Appeal has reversed the dismissal of the case, and has remanded it for trial.

A California statute makes unlawful the "harassment of an employee or applicant." This section has been interpreted to mean that employers are "strictly liable" for harassing activity by its "supervisors and agents." (The statute also makes employers liable for harassing activity by coworkers, but only if the employer knew or should have known of the harassing activity and failed to stop it immediately.)

Justice Vogel ruled that the actor's complaint alleged facts that made the casting director ABC's "agent," for the purpose of the statute. These facts were that the casting director worked for ABC, that ABC was developing shows that could be suitable for the actor, that the actor interviewed with the casting director, and that the director helped the actor prepare for auditions. Justice Vogel also ruled that the casting director's alleged harassment of the actor occurred in a "work-related context," even though it occurred in the casting director's home on a Sunday morning.

For these reasons, the appellate court ruled that ABC could be strictly liable to the actor, without regard to what ABC knew or should have known about its casting director's "propensities."

Doe v. Capital Cities, 58 Cal.Rptr.2d 122, 1996 Cal. App.LEXIS 1046 (Cal.App. 1996)

Art print publisher is subject to trust provisions of New York Arts & Cultural Affairs Law, so artist Tom Wesselmann is entitled to possession of prints, New York court rules

Acclaimed pop artist Tom Wesselmann is entitled to possession of prints published by his former publisher, International Images, New York Supreme Court Justice Beverly Cohen has ruled in response to cross-motions for summary judgment made by both parties. Earlier in the case, Justice Cohen had issued a preliminary injunction barring International Images from disposing of the prints, until the case was ultimately decided (*ELR* 18:8:17).

Wesselmann contended that he was entitled to possession of the prints under section 12.01 of the New York Arts & Cultural Affairs Law. That section provides that when an artist delivers "prints of his own creation" to an "art merchant," the merchant holds the prints and the proceeds from their sale in trust for the artist. International Images had argued that section 12.01 did not apply to its relationship with Wesselmann, because it was a publisher rather than an "art merchant," and because the prints at issue in the case were not Wesselmann's "own creation," because they had been manufactured by International Images itself.

However, in a decision that is consistent with her earlier preliminary injunction ruling, Justice Cohen has held that art publishers are "art merchants" under section 12.01 of the New York Arts & Cultural Affairs Law, and that prints are held in trust by the publisher for the benefit of the artist, even though the prints are manufactured by the publisher rather than delivered by the artist.

Wesselmann v. International Images, Inc., 657 N.Y.S.2d 284, 1996 N.Y.Misc.LEXIS 575 (N.Y.Sup. 1996)

Art gallery not entitled to retain possession of art works as security for loans gallery made to artist, because New York Art & Cultural Affairs Law prohibits liens or security interests in art works held by merchants

A dispute between artist Joseph Zucker and the gallery that once was his exclusive representative has resulted in the discovery of what may have been a clerical error in the text of an important provision of the New York Arts and Cultural Affairs Law. The provision in question is section 12.01(a). That section does three things when artists deliver their works to art merchants: it creates a "consignor/consignee" relationship between the artist and merchant; it makes the art works "trust property"; and it prohibits the "trust property" from becoming subject to "liens or security interests of any kind or nature whatsoever."

Zucker's representative, the Hirschl & Adler Galleries, once lent him some $129,000, more than $36,000 was still outstanding when their relationship came to an end. According to Zucker, the loans were really advances which Hirschl & Adler could recoup from his share of sales proceeds, but which he was not obligated to repay. Hirschl & Adler thought otherwise. It contended that the loans were conventional loans, and that Zucker was personally obligated to repay them. So when Zucker refused, Hirschl & Adler simply retained possession of Zucker's unsold art works, in accordance with an oral agreement it said it had made with Zucker when it first began lending him money.

Zucker sued to regain possession of his art works, arguing that he didn't owe Hirschl & Adler the money it claimed, that he had never agreed that the gallery could retain possession of his art as security for repayment of the advances, and that in any event, section 12.01(a) of the Arts & Cultural Affairs Law prohibited Hirschl & Adler from asserting a lien or security interest in those works.

New York Supreme Court Justice Herman Cahn has agreed with Zucker, and thus has granted Zucker's motion for partial summary judgment and has ordered Hirschl & Adler to return Zucker's art works to him.

Hirschl & Adler had prepared "a thoughtful and detailed analysis" of section 12.01(a) to support its argument that the New York legislature had intended the section to provide that art works could not become subject to "liens or security interests . . . *of the consignee s creditors*"; but that the critical last four words had been dropped as a result of a clerical error. If those words had been part of the statute, an artist's *own* creditors — like Hirschl & Adler — *could* claim a security interest in the artist's works.

While Justice Cahn seemed persuaded by Hirschl & Adler's "insightful review of the legislative history" that the critical four words were dropped from section 12.01. But, he said, "it is not for the court to change the statutory language. . . . The court is constrained to apply the statutory provision as written . . . especially where, as here, the alleged clerical error occurred twelve years ago and no steps have been taken by the legislature . . . to rectify this error."

Zucker v. Hirschl & Adler Galleries, Inc., 648 N.Y.S.2d 521, 1996 N.Y.Misc.LEXIS 380 (N.Y.Sup. 1996)

Miami television station violated Age Discrimination Act by demoting 44-year-old news anchor; independent research group s report concerning viewer preferences did not establish that station had non-discriminatory reason for demotion, federal District Court rules

Miami television station WPLG/TV violated the federal Age Discrimination in Employment Act when it demoted on-air personality Arthur Carlson from his long-time position as news anchor and medical reporter to the lesser position of medical reporter, a federal District Court has held. Carlson was 44-years old when he was demoted, and thus was within the 40 to 70 year-old age range protected by that Act.

The station contended that it had demoted Carlson for non-discriminatory reasons, and said that it made its decision in part in reliance on a report on audience preferences prepared by the McNulty Research Group. Judge Ursula Ungaro-Benages was convinced that the station had in fact relied on the McNulty report in deciding to demote Carlson. But the judge did not agree that the independent research group's report was a legitimate, non-discriminatory basis for Carlson's demotion.

The McNulty report was based on a focus group's answers to several questions, all of which referred in one way or another to the ages of the station's on-air personalities. Thus, the McNulty report's conclusion that audiences prefer "younger and more vibrant news reporters and anchors" was not a non-discriminatory reason for demoting Carlson, because the report was "in part based on the impermissible motive of age consideration," Judge Ungaro-Benages concluded.

Carlson v. WPLG/TV-10, Post-Newsweek Stations, 956 F.Supp. 994, 1996 U.S.Dist.LEXIS 12612, 21355 (S.D.Fla. 1996)

Dispute over production of Hair at Old Vic Theater must be arbitrated, New York Court of Appeal affirms, even though defendants who sought arbitration were only officers and owners of party to arbitration agreement and not parties themselves

David and Edwin Mirvish are entitled to arbitrate a claim made against them by Hirschfeld Productions, Inc., and thus a lawsuit filed against them by Hirschfeld was properly stayed, the New York Court of Appeals has ruled.

The dispute to be arbitrated arose out of a joint venture between Hirschfeld and Ed Mirvish Enterprises

Limited to produce "Hair" at the Old Vic Theater in London. Their joint venture agreement contained an arbitration clause. David and Edwin Mirvish are officers and owners of Ed Mirvish Enterprises, but they were not parties to that joint venture agreement as individuals. Thus, when the dispute arose, Hirschfeld sued the Mirvishes in court, contending that since they were not parties to the joint venture agreement, they could not demand arbitration.

The Appellate Division sided with the Mirvishes, however (*ELR* 17:12:12). And the Court of Appeals has affirmed. In a short Memorandum opinion, the Court of Appeals has said that the Federal Arbitration Act gives "agents the benefit of arbitration agreements entered into by their principals to the extent that the alleged misconduct relates to their behavior as officers . . . or in their capacities as agents . . . ." (The Federal Arbitration

Act applies in this case, because the joint venture involved "an international commercial contract.")

Hirschfeld Productions, Inc. v. Mirvish, 673 N.E.2d 1232, 1996 N.Y.LEXIS 3155 (N.Y. 1996)

Actor ordered to arbitrate, rather than litigate, dispute with Universal Pictures concerning reuse of commercial in which actor had appeared

The Appellate Division of the New York Supreme Court has affirmed an order requiring actor Daniel Hannafin to arbitrate, rather than litigate in court, a claim he has made against Universal Pictures, arising out of Universal's reuse of a commercial in which Hannafin appeared.

Hannafin is a member of the Screen Actor's Guild, and there is an arbitration clause in section 56 of the Guild's Commercial Contract (which is SAG's collective bargaining agreement for commercials). The clause directs arbitration of all disputes between producers and performers arising out of commercial contracts and engagements.

The reason the dispute over arbitration or litigation arose is this. A separate section of the Commercial Contract — section 17B — appears to give actors a choice between arbitration and litigation.

But Hannafin's own employment agreement refers to section 56 rather than section 17B. And the Appellate Division concluded that the reference in Hannafin's employment agreement to section 56 resolved the apparent conflict between the two sections of the Commercials Contract.

Hannafin v. Universal Pictures Co., 650 N.Y.S.2d 165, N.Y.App.Div.LEXIS 12239 (App.Div. 1996)

Utah Supreme Court confirms arbitration award requiring Portland Beavers baseball team to pay $1.75 million to Salt Lake Trappers when Beavers moved to Salt Lake and became the Buzz

The owner of the Triple A baseball team that used to be the Portland Beavers must pay $1.75 million to the owner of what used to be the rookie league Salt Lake Trappers, as a result of a Utah Supreme Court decision confirming an arbitration award in that amount in favor of the Trappers.

The Beavers moved to Salt Lake City in 1994, where they became the Salt Lake Buzz. The move was made pursuant to an agreement among minor league baseball teams that allowed a higher classification team to "draft" the territory of lower classification team, provided the lower classification team was paid "just and reasonable compensation" for the loss of its territory.

Arbitrators awarded the Trappers $1.75 million as compensation. But the owners of the Buzz persuaded a trial court that the arbitrators' award included $400,000 in improper double compensation for the value of the Trappers franchise, and the trial court reduced the award by $400,000.

In an opinion by Chief Justice Zimmerman, the Utah Supreme Court has set aside the reduction, however, ruling that the trial court should not have substituted its judgment for that of the arbitrators. The Supreme Court confirmed the arbitrators' award in its original amount.

Buzas Baseball v. Salt Lake Trappers, 925 P.2d 941, 1996 Utah LEXIS 87 (Utah 1996)

New Orleans Saints are only entitled to three-week credit against worker s compensation benefits awarded to injured player, rather than credit for full amount paid to him as injury settlement

Thomas Gordon Ricketts, Jr., had a short playing career with the NFL's New Orleans Saints. He was seriously injured the very month he signed with the Saints, and was released by the team because of his permanent and total disability. The Saints paid Ricketts $26,470 in an injury settlement — the equivalent of three weeks pay. As was his right, Ricketts then sought worker's compensation benefits under Louisiana law.

Louisiana law provides that workers compensation benefits payable to a professional athlete are to be reduced "on a dollar-for-dollar basis" by any payments made to the athlete by his team as wages, severance, injury or termination pay. The Saints therefore sought a $26,470 reduction in the amount of workers compensation benefits it would have to pay Ricketts.

Ricketts was awarded worker's compensation benefits payable over 520 weeks. The amount he is to receive each week is much less than a third of the three weeks' pay of $26,470 he received when he was released by the Saints. Thus, Ricketts argued that the Saints were entitled to reduce his workers compensation benefits only by the amount he would receive in benefits for three weeks rather than by the full $26,470.

Ricketts was able to make this argument only because his contract with the Saints contained a clause that said that any payments made to him "for a period during which he is entitled to workers' compensation benefits . . . will be deemed an advance payment of workers' compensation benefits due Player." Apparently, Ricketts contended that the three weeks for which he was paid $26,470 was "a period during which" he was entitled to benefits, and thus the $26,470 he received from the Saints was "an advance" for just those three weeks.

The Louisiana Court of Appeal has agreed with Ricketts' interpretation of his Saints' contract. Relying on a similar ruling by a Florida appellate court in a case involving the Tampa Bay Buccaneers (*ELR* 18:8:15), the Louisiana court held that the Saints "waived any right to a dollar-for-dollar offset" under the Louisiana statute by signing the contract containing the "advance . . . for a period" language, rather than language that was similar to the statute.

Ricketts v. New Orleans Saints, 684 So.2d 1050, 1996 La.App.LEXIS 2912 (La.App. 1996)

Brown University violated Title IX by discriminating against women students in operation of its intercollegiate athletic programs, federal appellate court affirms, though appellate court remands for reconsideration of actions Brown must take to comply with law; Supreme Court denies petition for certiorari

Brown University has suffered its fourth and final setback in a long-running class-action battle with those who have charged it with discriminating against women in the operation of its intercollegiate athletic programs.

A federal Court of Appeals has affirmed a trial court ruling that Brown violated Title IX and its implementing regulations by denying Brown's women students adequate opportunities — compared to those offered to its men students — to participate in intercollegiate athletics. The United States Supreme Court has denied Brown's petition that it review the case.

The University did salvage one significant point at the Court of Appeals level, concerning the actions Brown must now take to comply with the law. After District Judge Raymond Pettine ruled against Brown on the merits, the University submitted a proposal to cut several men's teams in order to end its discrimination against women. The University did this in response to Judge Pettine's statement that he would ". . . leave it entirely to Brown's discretion to decide how it will balance its program to provide equal opportunities for its men and women athletes." (*ELR* 17:7:11) Thereafter, however, Judge Pettine rejected Brown's proposal to cut men's teams. Instead (in a final unpublished ruling) he ordered Brown to elevate and maintain women's gymnastics, water polo, skiing and fencing to university-funded varsity status.

In an opinion by Judge Hugh Bownes, the appellate court ruled that Judge Pettine had erred when he rejected Brown's proposal to cut men's teams and ordered it to elevate the status of women's teams. "It is clear," the appellate court held, "that Brown's proposal to cut men's teams is a permissible means of effectuating compliance with the statute. Thus, although . . . the district court's remedy is within the statutory margins and constitutional, we think that the district court was wrong to reject out-of-hand Brown's alternative plan to reduce the number of men's teams. . . . Our respect for academic freedom and reluctance to interject ourselves into the conduct of university affairs counsels that we give universities as much freedom as possible in conducting their operations consonant with constitutional and statutory limits."

As a result, the case has been remanded to the district court so that Brown can submit a further plan for consideration. But in all other respects, Brown's loss was affirmed.

Cohen v. Brown University, 101 F.3d 155, 1996 U.S.App.LEXIS 30192 (1st Cir. 1996), *cert. denied*, 117 S.Ct. 1469, 1997 U.S.LEXIS 2554 (1997)

Northwestern University wins reversal of order requiring it to allow student with heart condition to play intercollegiate basketball despite risk of fatal heart attack; appeals court rules that Rehabilitation Act does not apply to student; Supreme Court denies petition for certiorari

"Nicholas Knapp wants to play NCAA basketball for Northwestern University — so badly that he is willing to face an increased risk of death to do so." That's the way federal Court of Appeals Judge Terrence Evans begins his decision in a case that pitted Knapp against Northwestern in a dispute over who should get to decide whether Knapp should be able to play.

Knapp's skills as a basketball player were not at issue. He enrolled at Northwestern on a basketball scholarship. But the University's team physician declared Knapp ineligible, because he has a potentially fatal heart condition.

Knapp contended that under the federal Rehabilitation Act, Northwestern was required to allow him to play. That Act prohibits colleges (and others) from discriminating against a "disabled" but "otherwise qualified" person on account of his or her disability. Knapp won the first round of his lawsuit, when District Judge James Zagel agreed with Knapp's interpretation of the Rehabilitation Act and thus issued an order requiring Northwestern to allow him to play (*ELR* 19:1:12).

However, Northwestern has won the second and third rounds of the case.

In a decision by Judge Evans, the Court of Appeals has ruled that Knapp is neither "disabled" nor "otherwise qualified" within the meaning of the Rehabilitation Act.

Knapp is not "disabled," Judge Evans explained, because the Act defines that word to mean an impairment that limits "major life activities." While obtaining an education is a major life activity, Knapp's heart condition has not limited his ability to get an education. His ability to play intercollegiate basketball is limited; but playing intercollegiate basketball is not a major life activity, the appellate court concluded.

Moreover, the judge said, Knapp is not "otherwise qualified" under the Act, because "an otherwise qualifed person is one who is able to meet all of a program's requirements in spite of his handicap," and "a significant risk of personal physical injury can disqualify a person from a position if the risk cannot be eliminated."

The United States Supreme Court has denied Knapp's petition for certiorari.

Knapp v. Northwestern University, 101 F.3d 473, 1996 U.S.App.LEXIS 30390 (7th Cir. 1996), *cert. denied*, 117 S.Ct. 2454, 1997 U.S.LEXIS 3744 (1997)

University of Washington football players lose lawsuit complaining of penalties imposed on Huskies by Pac-10 Conference for player recruiting violations

The University of Washington Huskies have long been an outstanding football team. But 1993 and ’94 were unhappy seasons, in several respects. An eight-month investigation by the Pac-10 Conference concluded that the Huskies had violated NCAA player recruiting rules, and the Conference imposed several sanctions on the team for those years. The team was barred from post-season bowl games; it had to forfeit a year’s worth of television revenue; the number of scholarships and recruiting visits it could offer was reduced; and it was put on probation.

These penalties "devastated both the players and their fans." And several of those players decided to do something about it. They sued the Pac-10 in federal court, alleging antitrust and breach of contract violations by the Pac-10. But they were not successful. The District Court granted the Pac-10's motion for summary judgment; and the Court of Appeals has affirmed.

In an opinion by Judge Cynthia Holcomb Hall, the appellate court acknowledged that the Pac-10 members' agreement to sanction the Huskies constituted a "contract, combination or conspiracy," and that the agreement affected interstate commerce. The question was whether the restraint imposed by those sanctions — especially the bowl game ban — was unreasonable. The Pac-10 offered evidence that there are "significant pro-competitive effects" that come from punishing teams that violate the rules. This evidence required the players to show that these benefits could have been achieved in a less restrictive manner.

In an effort to do so, the players argued that the penalties were "grossly disproportionate" to the team's violations. But they failed to offer evidence to support their argument. Instead, the testimony of a University of Washington law professor who had analyzed the sanctions imposed against other teams for similar violations showed that the penalties imposed on the Huskies "were within the range of appropriate penalties." Likewise an NCAA report on the Pac-10's sanctions concluded that the sanctions imposed on the Huskies were "too lenient," rather than too harsh. Thus, the players' antitrust claim was properly dismissed, the appellate court ruled.

The players' breach of contract claim was based on their assertion that the Pac-10's Constitution and By-laws created a contract between the conference and its member schools, and that players were "third-party beneficiaries" of that contract. Under Washington law, however, to create a contract that has third-party beneficiaries, the parties to the contract must intend to create direct obligations between themselves and third parties. In this case, Judge Hall concluded, the players failed to offer evidence that the Pac-10 and its members intended to create obligations to players. Thus the players' breach of contract claim was found to be without merit and was properly dismissed, the appellate court ruled.

Hairston v. Pacific 10 Conference, 101 F.3d 1315, 1996 U.S.App.LEXIS 33158 (9th Cir. 1996)

Amateur volleyball association is permitted to expel coach for having sexual relations with three minor players

Rick Butler was one of the best known members of USA Volleyball (the amateur volleyball organization that used to be known as United States Volleyball Association). He had coached junior girls teams for years, almost 30 of them to national championships.

But in 1994, USA Volleyball received complaints from several of Butler's former players, alleging that he had had sexual relations with them while they were still minors. At a hearing in 1995, three of those players testified that Butler had "had unprotected sexual intercourse" with them while they were just 16 and 17 years of age.

As a result, USA Volleyball expelled Butler "for life," relying on a section of the association's bylaws that authorizes the expulsion of members who cause "public embarrassment or ridicule" to the association.

Butler sued, and was granted an injunction by an Illinois trial court that set aside his expulsion. The trial judge concluded that the association's "embarrassment or ridicule" standard was "impermissibly vague." But the Illinois Appellate Court has reversed.

In an opinion by Justice Theis, the appellate court has ruled that the law does not require private associations to draft bylaws that detail specific acts as grounds for discipline. Justice Theis explained that "as long as the association's bylaws are reasonable, and their enforcement not arbitrary, courts will not interfere."

In this case, the appellate court concluded, "USA Volleyball's decision that Butler's behavior was unreasonable was not arbitrary. Further, the association's decision that it would be subject to public embarrassment because one of its best known members had sexual relations with minor players was not fundamentally unfair."

The appellate court therefore dissolved the injunction against Butler's expulsion.

Butler v. USA Volleyball, 673 N.E.2d 1063, 1996 Ill. App.LEXIS 870 (Ill.App. 1996)

Suspension of member by youth soccer league is affirmed by appellate court

The Michigan Court of Appeals has affirmed a trial court order dismissing a lawsuit brought by Mark Christensen against the Michigan State Youth Soccer Association, on account of the Association's decision to suspend Christensen following complaints about his behavior at several youth soccer league functions.

According to Christensen, he was fired as head coach of the Detroit Wheels professional soccer team, and the Detroit Neon professional soccer team withdrew an employment offer, both as a result of his suspension by the Youth Soccer Association.

The appellate court has ruled: that Christensen failed to exhaust his remedies within the Youth Soccer Association; that he was not entitled to Constitutional Due Process because the Association is private; and that he had not been injured by the Association's action, because his injuries stemmed from decisions made by the two professional teams rather than the Association.

Christensen v. Michigan State Youth Soccer Association, Inc., 553 N.W.2d 638, 1996 Mich.App.LEXIS 227 (Mich.App. 1996)

Amateur hockey league s decision not to release 12-year-old player from exclusive team commitment is affirmed by Illinois appellate court

The Amateur Hockey Association of Illinois is an organization that regulates youth hockey. Some of its players, including a boy named Ricky Lee, are as young as 12. As young as its players are, the Association has copied at least one practice from the organizations that regulate college and professional team sports. The Amateur Hockey Association of Illinois requires its best players to sign cards by which they make exclusive commitments to their teams for an entire season.

Ricky Lee signed one of these cards, thereby committing himself to play exclusively for Team Illinois for the 1994 season. Thereafter, however, he changed his mind and asked to be released from his Team Illinois commitment. He had lots of reasons for doing so, including scheduling conflicts, school work, and a desire to play for "better teams" in Michigan and Canada and another team in Illinois.

But the Association wouldn't let Ricky out his commitment, so he sued. An Illinois trial court ruled in Ricky's favor, finding that an Association representative had made false misrepresentations to get Ricky to sign. Now, however, the Illinois Appellate Court has reversed.

In an opinion by Justice Cahill, the appellate court noted that "voluntary associations have great discretion when conducting their internal affairs, especially when their conduct relates to the interpretation and enforcement of the association's rules and regulations." In this case, the trial court had done its own review of the facts that had been considered by the Association in the proceeding it conducted; and the trial court shouldn't have. The credibility of the evidence concerning what Ricky and his parents had been told before Ricky signed his commitment card were for the Association to determine, Justice Cahill said, not the trial court.

The record showed that the Association had followed the grievance procedures set forth in its Rules and Regulations, and that its decision was not the result of mistake, fraud, collusion or arbitrariness. Thus the appellate court has vacated the trial court's injunction.

Lee v. Snyder, 673 N.E.2d 1136, 1996 Ill.App.LEXIS 884 (Ill.App. 1996)

Dismissal of college athletic director college did not breach his contract or constitute a tort, New York appellate court affirms

Carol Tramontozzi, the former athletic director of St. Francis College, has lost his bid to recover damages resulting from his termination by the president of the college, Donald Sullivan. The Appellate Division of the New York Supreme Court has affirmed a lower court order dismissing Tramontozzi's lawsuit against the college, President Sullivan and Tramontozzi's direct superior, James Adams.

Tramontozzi's written contract with the college provided that he had been hired for an indefinite period. This made him an "at-will" employee who could be terminated "for any cause or no cause at all" under New York law. Thus, the dismissal of his breach of contract claim was proper, the Appellate Division affirmed in a memorandum opinion.

Tramontozzi also had asserted a claim for intentional infliction of emotional distress, but he failed to allege facts demonstrating "extreme, outrageous, or malevolent behavior" by the defendants, so that claim was properly dismissed as well, the appellate division ruled. The appellate division added that since "there exists no tort in New York for abusive or wrongful discharge of an at-will employee," Tramontozzi could not "subvert or circumvent the traditional at-will contract rule by recasting his cause of action as the tort of the infliction of emotional distress or as a prima facie tort."

Tramontozzi v. St. Francis College, 649 N.Y.S.2d 43, 1996 N.Y.App.Div.LEXIS 11344 (App.Div. 1996)

Constitutionality of Baltimore ordinances banning billboard advertising for liquor and cigarettes is upheld, again; Supreme Court denies petition for certiorari

The Fourth Circuit Court of Appeals has again upheld the constitutionality of Baltimore ordinances which prohibit liquor and cigarette advertising on billboards in particular areas of the city where children are expected to walk to school or play in their neighborhood.

After the Fourth Circuit upheld the constitutionality of these ordinances once before (*ELR* 17:11:12), the United States Supreme Court vacated the Fourth Circuit's earlier decisions and ordered that court to reconsider its rulings "in light of" the Supreme Court's then-recent decision in a similar case known as *44 Liquormart, Inc. v. Rhode Island* (*ELR* 18:2:6). In *44*

Liquormart, the Supreme Court struck down as unconstitutional a Rhode Island statute that prohibited virtually all liquor advertising in that state.

Despite the similarities between Rhode Island's ban on liquor advertising and Baltimore's ban on liquor and cigarette billboard advertising, the Fourth Circuit has again upheld the Baltimore ordinances. It did so by emphasizing that the Rhode Island statute banned *all* liquor advertising in order to reduce consumption by *adults*, while the Baltimore ordinances ban only *some* advertising in order to protect *children*. "This decision," the Fourth Circuit said, "thus conforms to the Supreme Court's repeated recognition that children deserve special solicitude in the First Amendment balance because they lack the ability to assess and analyze fully the information presented through commercial media."

Apparently, the Supreme Court is comfortable with the distinction thus drawn by the Fourth Circuit, because the Supreme Court has denied petitions for certiorari filed by those who challenged the Baltimore ordinances.

Anheuser-Busch, Inc. v. Schmoke, 101 F.3d 325, 1996 U.S.App.LEXIS 29460 (4th Cir. 1996), *cert. denied*, 117 S.Ct. 1569, 1997 U.S.LEXIS 2791 (1997); *Penn Advertising v. Mayor of Baltimore*, 101 F.3d 332, 1996 U.S.App.LEXIS 29462 (4th Cir. 1996), *cert. denied*, 117 S.Ct. 1569, 1997 U.S.LEXIS 2792 (1997)

Cable TV company obtains judgment against seller of illegal descramblers, including increased award for seller s willful violation of law; District Court rules that seller s use of disclaimer did not negate his intent to assist customers to obtain unauthorized cable service

Columbia Cable TV Company has obtained a judgment of $93,500 against Fred McCary on account of McCary's unauthorized sale of 340 descrambling devices to customers who used them to obtain cable TV service without paying for it. The judgment amounts to $85,000, at the rate of $250 per decoder, for the sale of the devices in violation of section 553 of Title 47 of the United States Code, plus an additional $8,500, at the rate of $25 per decoder, on account of McCary's "willful" violation of the law.

McCary claimed that he had not intended to violate the law, and as evidence of his honest intentions, he testified that he provided his customers with an oral and written disclaimers. In these disclaimers, McCary's customers declared "under penalty of perjury" that they purchased decoders only for use "with proper authorization" from their cable companies.

But Federal District Judge Joseph Anderson was not persuaded that McCary's disclaimers negated his intent to assist others to obtain unauthorized cable TV service. "In fact," Judge Anderson said that he found that "the disclaimer demonstrates knowledge of the most probable if not only use of the devices."

Columbia Cable TV Company, Inc. v. McCary, 954 F.Supp. 124, 1996 U.S.Dist.LEXIS 20350 (D.S.C. 1996)

DEPARTMENTS

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The UCLA Entertainment Law Review has published Volume 4, Number 2 with the following articles:

Order in the Court: An Evaluation of Copyrights on Videotaped Coverage of Trial Proceedings by Sandra J. Garcia, 4 UCLA Entertainment Law Review 143 (1997)

The Irrelevant V-Chip: An Alternate Theory of TV and Violence by Peter Johnson, 4 UCLA Entertainment Law Review 185 (1997)

Pregnancy Discrimination in Show Business: Tylo v. Spelling Entertainment Group by Diane Klein, 4 UCLA Entertainment Law Review 219 (1997)

Holy Case of Copyright Infringement, Batman! by Aielleen Fajardo, 4 UCLA Entertainment Law Review 263 (1997)

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Law Without Borders in Cyberspace by Joanna Zakalik, 43 The Wayne Law Review 101 (1996)

Copyright and the Internet-World Without Borders by Leslie A. Kurtz, 43 The Wayne Law Review 117 (1996)

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University of Dayton Law Review has published a Symposium: Copyright Owners' Rights and Users' Privileges on the Internet with the following articles:

Nine Guidelines and a Reflection on Internet Copyright Practice by Professor Howard C. Anawalt, 22 University of Dayton Law Review 393 (1997)

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Dealing with Overlapping Copyrights on the Internet by Professor Mark A. Lemley, 22 University of Dayton Law Review 547 (1997)

Reforming Information Law in Copyright s Image by Professor Jessica Litman, 22 University of Dayton Law Review 587 (1997)

Digital Information As Property and Product: U.C.C. Article 2B by Professor David A. Rice, 22 University of Dayton Law Review 621 (1997)

Alternative Dispute Resolution in Youth and Intercollegiate Athletics by Gil Fried and Michael Hiller, 3 Brigham Young University Law Review 631 (1997)

No Regulation, Government Regulation, or Self-Regulation: Social Enforcement or Social Contracting *for Governance in Cyberspace* by Llewellyn J. Gibbons, 6 Cornell Journal of Law and Public Policy 475 (1997)

Lost in Cyberspace: Intellectual Property Issues on the Internet by Wendell J. Jones, 22 Thurgood Marshall Law Review 95 (1996)

Television Without Frontiers: The European Union s Continuing Struggle for Cultural Survival by Shaun P. O'Connell, 28 Case Western Reserve Journal of International Law 501 (1996)

The European Intellectual Property Review, published by Sweet & Maxwell, Cheriton House, North Way, Andover Hants SP10 5BE, England, has issued Volume 19, Number 10 with the following articles:

WTO-WIPO Co-operation: Does It Have a Future? by Nikolay Khlestov, 19 European Intellectual Property Review 560 (1997) (for address, see above)

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