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Supreme Court Weighs Single Entity Treatment for Pro Sports Leagues

On January 13, 2010, the Supreme Court heard oral arguments in *American Needle v. National Football League,* Case No. 08-661, which concerns whether the teams belonging to the National Football League should be treated as a single entity or as thirty-two independent entities for antitrust purposes. If the former view were to be adopted in this case, the teams in the NFL possibly could enjoy immunity from lawsuits brought under Section 1 of the Sherman Act, which only applies to combinations of two or more entities.

The case arose in 2001 when NFL Properties, a business entity tasked with licensing intellectual property owned by the NFL's member teams, granted one of American Needle's competitors an exclusive license to manufacture headwear bearing teams' logos and trademarks for all teams in the NFL. American Needle, which had previously had the right to manufacture headwear for one NFL team, lost its contract to do so, and challenged this arrangement as a conspiracy among the teams to restrain trade in violation of Section 1.

The trial court granted summary judgment for the NFL, concluding that "the NFL and the teams act as a single entity in licensing their intellectual property," and are thus immune from Section 1 challenges. The Seventh Circuit affirmed, but sought to limit the precedential impact of its holding, noting that "the question of whether a professional sports league is a single entity should be addressed not only one league at a time, but also one facet of a league at a time." *American Needle v. N.F.L.,* 533 F.3d 736, 742 (7th Cir. 2008).

On certiorari, the NFL advocated an expansion of the Seventh Circuit's holding to confer Section 1 immunity on virtually any joint activity undertaken by its member teams. Central to the NFL's position is *Copperweld Corp. v. Independence Tube Corp.,* 467 U.S. 752 (1984), in which the Supreme Court held that a parent corporation cannot combine with its wholly-owned subsidiary for purposes of Section 1. Like the defendants in *Copperweld*, the NFL argued, its member teams are so interdependent that agreements among them do not actually reduce competition. Instead, such agreements allow the NFL to compete for audiences against other forms of entertainment.

American Needle argued that, unlike the defendants in *Copperweld*, the NFL's member teams are independent entities that compete amongst themselves. While some inter-team cooperation may be necessary to produce the NFL's product, *i.e.* football games, American Needle asserted that

each team could be free to license its own intellectual property. Thus, according to American Needle, collective decisions with respect to licensing have the potential to reduce competition and should be susceptible to challenge under Section 1.

Some commentators have stated that a comprehensive victory for the NFL would substantially reduce the bargaining power of individuals and companies that do business with sports leagues, since many of these entities rely upon actual or threatened antitrust lawsuits for leverage. Not surprisingly, prominent *amici curiae* have lent support to both parties. A number of professional sports organizations, including the National Basketball Association and the National Hockey League, have submitted briefs on behalf of the NFL. Meanwhile, players' associations from all four major sports have supported American Needle.

During oral arguments, some Justices seemed skeptical of the NFL's single entity argument. At one point, Justice Sotomayor told counsel for the NFL, "you are seeking through this ruling what you haven't gotten from Congress: an absolute bar to an antitrust claim." Others probed the NFL's position with hypotheticals about selling houses or farm equipment. When counsel for the NFL rejected these examples as implausible, Justice Roberts responded that, "selling logos is closer to selling houses than it is to playing football." However, the Court's reluctance to award the NFL blanket Section 1 immunity does not necessarily portend a win for American Needle, as a number of intermediate approaches are possible.

The Supreme Court's decision is expected in May or June.

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