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CASES OF INTEREST

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IP/Entertainment Law Weekly Case Update For Motion Picture Studios And Television Networks

November 16, 2011

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- Bouchat v. Baltimore Ravens L.P.

Bouchat v. Baltimore Ravens L.P., USDC Maryland, November 9, 2011

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- District court denies plaintiff's request for an injunction preventing defendants, including the Baltimore Raven football team, from using the team's infringing "Flying B" logo – which has since been replaced – in highlight films and video clips, finding that plaintiff did not meet his burden of establishing the four factors supporting injunctive relief, and directing the parties to "make an effort to reach agreement" as to the reasonable compensation owing to plaintiff for the use of the infringing logo in the films at issue.

Plaintiff artist sued defendants for copyright infringement for their use, from the 1996 through 1998 seasons, of the Baltimore Ravens football team's primary symbol, the "Flying B Logo," which was copied from one of plaintiff's drawings, "the Flying B Drawing." Plaintiff sought to enjoin defendants from publicly displaying the infringing logo in season highlight films, video clips during home games, and in the Baltimore Ravens' corporate lobby where team history is displayed. Following a bench trial, the court held that defendants made fair use of the copyrighted work and had not infringed plaintiff's copyright. Plaintiff appealed, and the Fourth Circuit affirmed the lower court's finding of fair use as to the displays in the team's corporate lobby, but reversed as to the displays in films and video clips. The Fourth Circuit remanded the case to the district court with instructions to consider whether an injunction would be appropriate.

On remand, the district court denied plaintiff's request for an injunction, concluding that he had not met his burden of establishing the four factors under the Supreme Court's decision in *eBay*.

Noting that, after *eBay*, irreparable harm is no longer presumed by a copyright infringement, the court found that plaintiff had not established that defendants' infringement interfered in any meaningful way with his potential commercial use of the



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Flying B Drawing, since he appeared to be limited (perhaps totally) in his ability to use the Flying B Drawing by defendants' trademark rights in the name "Ravens." Even if plaintiff could make a commercial use of his Flying B Drawing that would not infringe defendants' trademark rights, he produced no evidence that he had the intent or any realistic possibility of doing so. The court held: "provided that [plaintiff] can receive reasonable compensation for Defendants' use of his copyright-protected work, he would not suffer any irreparable harm so as to satisfy the first of the *eBay* tests."

The court rejected defendants' argument that plaintiff was not entitled to compensation for their future use of the Flying B Drawing, since the appeals court had specifically determined that defendants' use infringed plaintiff's copyrighted work. Instead, the court found that plaintiff's right to recover reasonable compensation provided him with an adequate remedy at law, even if that "reasonable compensation" might not yield a substantial amount to plaintiff.

Under *eBay*, in balancing the hardships between the parties, the court considers the harm that would result to the parties' commercial interests that cannot be remedied after a final adjudication, whether by damages or a permanent injunction, and ensuring that it does not encumber a great deal of property unrelated to the infringement. Likening this case to *Abend v. MCA, Inc.*, 863 F.2d 1465 (9th Cir. 1988), the district court concluded that the balance of the hardships weighed too heavily against defendants to support the injunction plaintiff sought, again provided that plaintiff received reasonable compensation for defendants' future use of the copyright work. In *Abend*, the author of the story on which the movie "Rear Window" was based, established copyright infringement but was denied an injunction against the distribution of the infringing movie, because it resulted from the collaborative efforts of many talented individuals other than the author of the underlying story. Since the success of the movie resulted, in large part, from factors completely unrelated to the underlying story, the court found that it would cause a great injustice for the owners of the film if the court enjoined them from further exhibition of the movie.

The district court similarly found that the NFL films at issue resulted from the collaborative efforts of many, including at least the depicted players as well as those who produced the film. It noted that plaintiff did not produce the script, as the plaintiff had in *Abend*, but merely a decoration on the "costumes" of the performers. Even though the Flying B Logo can be viewed as a significant "decoration," according to the court, an injunction against defendants' use of the films would result in a degree of hardship on defendants and others that would exceed the hardship plaintiff would suffer,



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provided he received reasonable compensation for the use of his copyrighted work in lieu of injunctive relief.

On the public interest factor under *eBay*, the court noted that while the public's interest is served by upholding the copyright holder's right to exclude others from using his property, this right must be balanced against the public's right to obtain a benefit from the copyright-protected material. Again citing to *Abend*, in which the court stated that an injunction could cause injury to the public by denying it the opportunity to view a classic film for many years to come, the court concluded that, while it would not find NFL highlight films – particularly those relating to the Ravens' 1996-98 seasons – to be "classic films" or even to have particularly significant artistic value, the films do preserve and present images of what some portion of the public might consider to be "historical events." On balance, the public interest in the "historical" aspect of the films at issue, albeit not great, outweighed the public interest in granting a monopoly to plaintiff, the owner of a copyright in a drawing shown in the films, again provided that he received reasonable compensation.

Noting its discretion to condition the denial of the injunction on the payment of reasonable compensation for use of the copyrighted work, the court refused to enjoin defendants' use of depictions of the Flying B Logo in the films at issue, and ordered the parties to make an effort to reach an agreement on reasonable compensation for use of the logo and set a deadline of Dec. 15, 2011, to report on the status of the efforts. That court also ordered that, if at any time any party determined that an agreement could not be reached, that party will arrange a telephone conference with the court to resolve outstanding issues.

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