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ADVERTISING LAW @MANATT

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

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Minnesota Video Game Law Declared Unconstitutional

The video game industry and First Amendment advocates kept up a streak of legal victories on March 17, when the Eighth Circuit Court of Appeals upheld a lower court's rejection of a Minnesota law that would have fined minors for buying or renting violent games.

Under the law, children aged 16 and under could have been fined up to \$25 for buying or renting video games rated "M" for mature or "AO" for adults only.

The day before the law was to take effect, it was blocked by a federal court over First Amendment concerns and "a paucity of evidence linking the availability of video games with any harm to Minnesota's children at all." On appeal, a three-judge panel of the Eighth Circuit unanimously upheld the district court's findings.

The win for the Entertainment Software Association, the video game industry's main trade group, counts as yet one more win in its ongoing fight against states' attempts to ban or restrict the sale or rental of violent games to minors. In recent years courts have struck down similar laws in California, Oklahoma, Louisiana, and Michigan. Despite the near certainty that such laws won't pass constitutional muster, state legislators continue to churn them out. The industry is an easy target for politicians looking to curry favor with concerned

UPCOMING EVENTS

October 21, 2008

ACI: Sports Sponsorship Advertising and IP

Topic:

"When Retired Players Sue: From Coscarart v. Major League Baseball to Parrish v. NFLPA"

Ronald S. Katz

"Morality and an Agreement's Mortality--Taking Appropriate Measures to Avoid the Termination of an Endorsement Deal"

Linda Goldstein

The Carlton Hotel
New York, NY

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October 22, 2008

D.C. Bar CLE Seminar

Topic:

"Copyright Law and Litigation"

Kenneth M. Kaufman

D.C. Bar Conference Center
Washington, D.C.

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November 20-21, 2008

PMA's 30th Annual Promotion Marketing Law Conference

Topic:

"Navigating the Potholes: The Evolving Landscape for

parents and other constituents.

In its court filings, Minnesota cited studies claiming to prove a causal link between aggressive behavior in children and media violence. The appeals court disagreed, ruling that the state "failed to come forth with incontrovertible proof of a causal relationship between the exposure to such violence and subsequent psychological dysfunction."

The court also rejected Minnesota's argument that the law did not violate the First Amendment, writing, "Indeed, a good deal of the Bible portrays scenes of violence, and one would be hard-pressed to hold up as a proper role model the regicidal Macbeth. . . . Although some might say that it is risible to compare the violence depicted in the examples offered by the State to that described in classical literature, such violence has been deemed by our court worthy of First Amendment protection, and there the matter stands."

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Court Grounds New York Passenger Bill of Rights

A New York law requiring airlines to provide food, water, clean toilets, and fresh air to passengers stranded for more than three hours on the runway has been struck down.

In a unanimous ruling reversing a lower-court decision, a three-judge panel of the Second Circuit Court of Appeals found that the federal Airline Deregulation Act of 1978 preempted the New York Passenger Bill of Rights.

After winter storms in 2007 caused delays that left passengers confined on runways for up to 10 hours, the New York Legislature passed the law – the first of its kind – last August. Eight other states are currently weighing proposed legislation that would compel airlines to take a variety of similar measures, such as allowing passengers to disembark.

In December the lower court held that the law constituted a necessary exercise of the state's power to protect public health. However, the appeals court said the law was preempted, citing a provision in the Airline Deregulation Act that reserves the regulation of matters of "price, route or service" provided by airlines to the federal government.

The panel said the law, although "laudable," conflicted with the federal law, which aimed to reinvigorate the airline industry by replacing a "patchwork of state service-

Sweepstakes, Games & Contests"

[Linda Goldstein](#)

Topic:

"Consumer Product Safety: Hear from the Regulators How the New Laws Affect Your Promotion"

[Kerrie L. Campbell](#)

Marriott Downtown Magnificent Mile
Chicago, IL

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December 4-5, 2008
Film & Television Law

Topic:

"Product and Music Placement, Branded Entertainment: Issues and Litigation"

[Linda Goldstein](#)

Topic:

"The Value of Fame: Understanding the Right of Publicity"

[Mark S. Lee](#)

Century Plaza Hyatt Regency
Los Angeles, CA

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OUR PRACTICE

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determining laws, rules and regulations" with competitive forces.

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Cisco Lawyer Sued Over "Patent Troll Tracker" Site

Two Texas lawyers are suing Cisco Systems Inc. and one of its in-house lawyers for allegedly defaming them on the popular "Patent Troll Tracker" blog.

Lawyer Eric Albritton filed a complaint last month in Texas state court against Cisco and attorney Richard Frenkel. Albritton claims that last October Frenkel blogged that Albritton "conspired" with the clerk of the U.S. District Court for the Eastern District of Texas to modify official documents in a case involving Cisco. Albritton claims further that Frenkel "acted with specific intent to injure" Albritton's reputation and professional standing. He also fingers Cisco, alleging that Frenkel "was acting in his official capacity as director of intellectual property litigation for Cisco, and thus Cisco is vicariously liable for the acts of Frenkel."

In a separate suit filed last month as well, Texas attorney John Ward Jr. likewise alleges that Cisco and Frenkel acted to hurt his reputation by blogging about him on the site.

Frenkel had posted anonymously on the Patent Troll Tracker until February, when he came forth after another lawyer offered a \$15,000 reward to anyone willing to identify him.

Frenkel's popular blog condemns "patent trolls" – companies whose sole purpose is to exploit their patent portfolio by suing other companies. Cisco and other corporations that are frequently the target of such lawsuits contend that because these companies do not use the patents to make products, they should be restricted from bringing patent lawsuits.

Access to the blog was recently changed to invitation-only.

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Reebok Fined \$1 Million for Lead-Bracelet Promotion

Reebok International Ltd. will pay \$1 million to settle federal charges arising from a recall of 300,000 free charm bracelets that turned out to contain toxic levels of lead and contributed to the death of a four-year-old boy.

According to the U.S. Consumer Product Safety Commission,

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the fine issued against the sports footwear and apparel company stands as the largest to date for a violation of the Federal Hazardous Substances Act.

The charges centered on a 2006 recall of Chinese-made bracelets engraved with the Reebok logo that were given as a free promotion with the purchase of children's footwear. In March 2006 a four-year-old boy who swallowed a pendant on the bracelet died from lead poisoning. According to the agency's complaint, parts of the pendant contained 78% to 93% lead.

"Since the recall, Reebok has implemented strict, mandatory policies and procedures, which ensure all gift with purchase and promotional items and premium products associated with our brand meet or exceed the highest quality and safety standards," Reebok said in a statement. As part of the settlement agreement, Reebok denied that it violated federal law.

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EchoStar in Court Over "Frank TV" Spots

Satellite TV provider EchoStar has filed a court request for a declaratory judgment that its "Frank TV" spots are legal parodies that don't infringe on the trademark or privacy rights of sports commentators John Madden and Charles Barkley.

The controversy centers on an ad campaign by EchoStar in which

comedian and star of "Frank TV" Frank Caliendo does impressions of Madden and Barkley. After representatives of Madden and Barkley threatened to sue the company over the commercials, EchoStar filed its complaint.

In its complaint, EchoStar argues that the ads "are parodies and caricatures protected by the First Amendment."

"Mr. Caliendo's impressions of Mr. Madden and Mr. Barkley are intended to be, and are, obvious and humorous parodies and caricatures of some of the traits of Mr. Madden and Mr. Barkley," the complaint alleges. "[They] do not create any likelihood of confusion, or suggest or imply that Mr. Madden or Mr. Barkley sponsor or promote Dish Network."

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