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Chicago Professional Sports Limited Partnership v. National Basketball Association, 961 F.2d 667 (7th Cir. 1992); *cert. denied*, 61 U.S.L.W. 3171, 3327, 3334 (1992)

violation of §§ 32(1) and 43(a) of the Lanham Act and the Copyright Act. The District Court for the Northern District of California required the recall of Accolade's infringing games within 10 business days. The Ninth Circuit Court of Appeals stayed the recall order. Appellee Sega Enterprises develops and markets video entertainment systems, including the "Genesis III" console and video game cartridges. Sega licensed a patented trademark security system for the Genesis III. When a game cartridge is inserted, the microprocessor contained in the Genesis III searches the game program for four bytes of data consisting of the letters "S-E-G-A" which constitutes the initializing code. If the Genesis III finds the initialization code, the game will operate and the monitor displays "Produced by or under license from Sega Enterprises, Ltd." for approximately three seconds. Through reverse engineering on Sega game cartridges, Accolade engineers discovered the initialization code and added the code to all games marketed for the Genesis III. Unbeknownst to Accolade, the standard header file in the Genesis III games caused the display of the Sega message, although Accolade's packaging stated that Accolade is not associated with Sega.

The Ninth Circuit held that when the person seeking understanding of the unprotected functional elements of a program has a legitimate reason for doing so, and when no other means of access to the unprotected elements exist, disassembly of copyrighted object code is, as a matter of law, a fair use of the copyrighted work. The court analyzed section 107 of the Copyright Act and concluded that Accolade clearly had the better case on the fair use issue. The court stressed that the ultimate aim of the Copyright Act is to stimulate the artistic creativity for the general public good. The court also held that when there is no other method of access to the computer that is known or readily available to rival cartridge manufacturers, the use of the initialization code by a rival does not violate the Lanham Trademark Act even though that use triggers a misleading trademark display.

-J.F.B.

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In distributing the television rights to their games, the NBA owners allowed NBC and TNT to telecast nationally a set number of games per season. The individual teams retained the rights to the remainder of the broadcasts and could split them between local broadcast and cable and keep the revenue as long as no games conflict with the NBC or TNT telecasts. In 1990, however, the NBA decided to allow superstations, local channels that are carried to a national audience by local cable operators, to only broadcast twenty of their local teams' games per season, with the number to decrease by five per season until superstation broadcasts were eliminated altogether. The NBA's Chicago Bulls and WGN, the Chicago superstation that carried the Bulls' games, challenged the NBA's superstation restriction, claiming it violated the Sherman Anti-Trust Act. The United States District Court, Northern District of Illinois held that the superstation limitation was not protected by the Sports Broadcasting Act and violated the Sherman Act. It issued a final injunction forbidding the NBA from enforcing the limitation.

The United States Court of Appeals for the Seventh Circuit affirmed the district court's decision. The court ruled that the NBA did not receive the protection of the Sports Broadcasting Act because the NBA reserved the rights to all games not sold to the networks to the individual franchises and did not transfer the rights to sponsored telecasting to the networks involved, as is required to get protection under the Act. Treating the NBA as a joint venture, the court agreed with the district court in applying the Rule of Reason as the framework for the antitrust analysis. The court found no sound justification for the NBA's restriction on superstation telecasts, which foreclosed the court from going into further analysis. The court then acknowledged the NBA's contention that their superstation policy controlled the free-rider problem, an accepted justification. The NBA contended that the Bulls and WGN were receiving the benefit of the Bulls' exposure on the networks without having to pay for this promotion. The Bulls, according to the NBA, took advantage of this when they were a weaker team, helping them to become more competitive. The NBA further claimed that the broadcasts on WGN reduced viewers and money from the network broadcasts, reducing income available to today's weaker NBA teams and undermining the NBA's current success in the competitive sports market. The court, however, felt that the avoidance of free-riding did not justify the superstation telecast limit. The court was careful not to decide whether any of the cooperative efforts in place among the NBA franchises violated the Sherman Act. This left open the question of whether requiring superstation broadcast revenue to be shared with the rest of the league violated the Sherman Act. The court did state, however, that if such a practice is not legal, then a limit on the number of

games has the same effect and is unjustifiable as well.
-J.M.K.

VIDEO SOFTWARE DEALERS ASS'N V. WEBSTER, 968 F.2D 684 (8TH CIR. 1992).

A Missouri statute prohibited the rental or sale to minors of videos depicting violence and required dealers to display or maintain such videos in separate areas of their stores. Three groups, associations whose members rent or sell videos, an association of film producers and distributors, and owners and operators of video retail stores brought preenforcement class challenges to the constitutionality of the statute.

The Eighth Circuit Court of Appeals affirmed the district court's determination that the statute was unconstitutional. The court determined that the statute was not narrowly tailored to promote a compelling state interest because it did not articulate the type of violence it deemed harmful to minors. The statute did not "refer to slasher videos or define the term 'slasher,' " therefore covering all types of violence. This was held to be too burdensome on protected expression. The court also found the statute unconstitutionally vague. Because there was no definition of "violence," people of common intelligence would not be able to determine the meaning of the statute. Finally, the court held that the statute unconstitutionally imposed strict liability because it was "quasi-criminal" in nature, and violated the First Amendment because video dealers would be reluctant to rent the videos, thereby restricting the public's access to constitutionally protected videos.
-M.D.B.

KRAFT, INC. V. FEDERAL TRADE COMMISSION, 970 F.2D 311 (7TH CIR. 1992).

The Federal Trade Commission (FTC) found that Kraft, Inc. had violated the Federal Trade Commission Act by misleading consumers through deceptive advertising. The advertising campaign claimed that Kraft Singles American Pasteurized Cheese Food contained the calcium content of five ounces of milk and was superior in this respect to imitation slices. The FTC ordered Kraft to cease and desist from making the misrepresentations and Kraft filed a petition for review.

The Seventh Circuit Court of Appeals enforced the FTC's order, finding that the advertisements violated the Federal Trade Commission Act. First, the court established that the standard for