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Indianapolis Colts, Inc. v. Metropolitan Baltimore
Football Club, Club Limited Partnership, 63 USLW
2126, 31 U.S.P.Q. 2d 1811 (7th Cir. 1994)

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CASE SUMMARIES

Selected Case Summaries - Spring 1994

INDIANAPOLIS COLTS, INC. v. METROPOLITAN BALTIMORE FOOTBALL CLUB, CLUB LIMITED PARTNERSHIP, 63 USLW 2126, 31 U.S.P.Q. 2d 1811 (7th Cir. 1994).

The Indianapolis Colts ("Indianapolis") and the National Football League ("NFL") brought suit for trademark infringement against the Canadian Football League's ("CFL") new team in Baltimore ("Baltimore") which wanted to call itself the "Baltimore CFL Colts." The NFL "Colts" played in Baltimore for 32 seasons. However, in 1984, the team's owner, with the permission of the NFL, moved the team to Indianapolis, where it was renamed the "Indianapolis Colts." Baltimore fans were outraged at the move, and tried unsuccessfully to get the team back.

The CFL granted a franchise for a Baltimore team in 1993 and the team's owner decided to name it the "Baltimore Colts." Upon discovering this, the NFL threatened legal action, and Baltimore changed its name to the "Baltimore CFL Colts" and began licensing merchandise and launching publicity under that name in preparation for its upcoming season. Indianapolis obtained a preliminary injunction preventing Baltimore from using the name "Baltimore CFL Colts" in connection with playing professional football, broadcasting football games, or selling merchandise, and Baltimore appealed the order granting the injunction.

Held: The court of appeals, not wishing to prejudice the trial on the merits, denied Baltimore's appeal in a "tentative" opinion. The two issues before the court were whether the preliminary injunction granted by the district court in Indiana was proper, and whether that court had personal jurisdiction over Baltimore. Reasoning that the state in which the injury occurs is the state in which the tort occurs, the court held that Baltimore was amenable to suit in Indiana via its long-arm statute because Indianapolis uses the trademarks they sought to defend mainly in Indiana, and

if the trademarks were impaired as alleged, the injury would be felt mainly in Indiana.

On the question of whether the district court's preliminary injunction was proper, the court held that the likelihood of the NFL and Indianapolis succeeding on their trademark infringement claim that Baltimore's use of the name "Baltimore CFL Colts" would confuse the consuming public warranted a preliminary injunction against Baltimore's use of the name. In deciding this issue, the court discussed whether Baltimore could appropriate the name "Baltimore Colts." Baltimore contended that when a mark is abandoned, it returns to the public domain and is appropriable anew, urging the court to adopt the decision in *Major League Baseball Properties Inc. v. Sed Olet Denarius, Ltd.*, 817 F. Supp. 1103 (S.D.N.Y. 1993). In that case, over the objection of the Los Angeles Dodgers, a restaurant in Brooklyn was allowed to use the name "Brooklyn Dodger" on the ground that the "Brooklyn Dodger" was a nontransportable cultural institution separate from the "Los Angeles Dodgers." In deciding that case, Chief Judge Posner declared that while the above statement is true in principle, it may not always apply in practice, reasoning that the subsequent use of an abandoned mark may evoke a continuing association with the mark's prior use, and those making the subsequent use may be required to take reasonable precautions to prevent confusion.

This idea is especially important where, as in this latest case, the former owner of the abandoned mark continues to market the same product or service under a similar name. Furthermore, the "Brooklyn Dodger" was a restaurant, not a baseball team, and unlike the case at hand, there was no risk of confusion in *Major League Baseball*. The court found it likely that the Lanham Act, 15 U.S.C. 1125 (1993), would protect the trademark in a trial on the merits, because if the consuming public is likely to be confused by Baltimore's use of the name, then there is a harm for which the Act provides a remedy. If a consumer buys merchandise stamped "Baltimore CFL Colts," or watches the team on television, believing he or she is following the NFL team, then Indianapolis and the NFL will be harmed because they will lose revenue.

In assessing expert testimony presented to the district court on the likelihood of Baltimore's use of the mark causing confusion among the consuming public, the court considered the similarity of the marks and of the parties' products, the average consumer's knowledge of the products, the overlap in the parties' geographical markets and other relevant factors. The appellate court decided the district court did not commit clear error in finding the plain-

tiffs' expert's study to be more credible than that performed by the defendant's expert. Affirmed.

L.H.

NATIONAL BASKETBALL ASSOCIATION V. WILLIAMS

WILKINS V. NATIONAL BASKETBALL ASSOCIATION, 857 F. Supp. 1069
(S.D.N.Y. 1994)

The National Basketball Association ("NBA") and the twenty-seven teams that compete in it ("Teams") initiated an action seeking a declaratory judgment that the NBA's use of a college draft, salary cap and right of first refusal do not violate antitrust laws. Additionally, the NBA and the Teams wanted to continue these policies following the expiration of the collective bargaining agreement which allowed them. The class of players who were defendants in the NBA's declaratory judgment claim ("Players") counterclaimed, alleging that continuation of the policies in question would be an unreasonable restraint on trade and thus violate the Sherman Act, 15 U.S.C. §1.

The 1988 Collective Bargaining Agreement, the most recent agreement between the NBA and the Players, continued the college draft, right of first refusal and salary cap policies as set forth in earlier agreements. The 1988 Agreement formally expired on June 23, 1994, at which time the Players demanded the three disputed employment practices be eliminated. The NBA contended that antitrust law did not apply because, despite the expiration of the formal agreement, a collective bargaining relationship still existed between the NBA and the Players, and that the non-statutory labor exemption therefore applied.

Held: The court, finding no case on point, agreed with the NBA that antitrust immunity given by the nonstatutory labor exemption continued as long as a collective bargaining relationship existed between the NBA and the Players after the expiration of the formal agreement. Following the reasoning of *Bridgeman v. National Basketball Ass'n*, 675 F. Supp. 960 (D.N.J. 1987), the court refused to accept the Players' contention that antitrust immunity ends the moment a collective bargaining agreement expires. It also indicated that such antitrust immunity survives only as long as the employer continues the policies in question unchanged and reasonably believes such policies will be continued in the next collective bargaining agreement. As the three disputed practices were part of several prior agreements between the NBA and the Players, the NBA could reasonably believe they would be