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Kraft, Inc. v. Federal Trade Commission, 970 F.2d 311 (7th Cir. 1992)

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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
reviewing the FTC's findings would be the highly deferential substantial evidence test because the findings required resolution of extremely complex and technical factual issues, and the question of whether an advertisement is deceptive was more "akin to a finding of fact than a conclusion of law." Secondly, the court held that the FTC could rely on its own analysis in determining what claims an advertisement conveys without examining extrinsic evidence, as long as those claims are reasonably clear from the face of the advertisement. The court reasoned that extrinsic evidence was not necessary because "common sense and administrative experience provide the commission with adequate tools to make its findings." Finally, the court determined that the advertisements did violate the Federal Trade Commission Act because it was unlikely that the average consumer knew that 30% of the calcium was lost in the processing of the product, and the implication that consumers will receive five ounces of milk by consuming the product was a material misrepresentation.

-M.D.B.


The Federal Communications Commission denied licenses to Galaxy Communications, Inc. and Susan Bechtel for a new FM radio station and awarded the license to a competitor, Anchor. A major factor in the FCC determination was the degree of "integration" of ownership into management. Both Galaxy and Anchor had 100% integration with the respective owners participating full-time in the radio station operations, while Bechtel was prepared to hire outside management. Galaxy alleged that Anchor's proposal regarding integration was a sham, while Bechtel alleged that the integration criterion no longer serves its stated objectives of ensuring "greater sensitivity to an area's changing needs."

The District of Columbia Circuit Court of Appeals held that, in regard to Galaxy's challenge of Anchor's proposal, substantial deference would be accorded to the FCC's determination, especially since the Commission's findings of factual and credibility issues were in accord with those of the administrative law judge. The court then determined that the record supported Anchor's promises pertaining to integration. Regarding Bechtel's claim, the court ordered the FCC to respond to Bechtel's challenges and to consider her application in light of those challenges. The FCC was instructed to demonstrate why its focus on the integration crite-