

U.S. Supreme Court Unanimously Decides *American Needle v. National Football League*

On May 24, the U.S. Supreme Court issued its decision in *American Needle, Inc. v. National Football League*, holding unanimously that the 32 teams of the National Football League (NFL) do not enjoy "single entity" status under the Sherman Antitrust Act in the context of licensing their intellectual property (IP).

Background of the Case

Although NFL teams each own their own team names, logos, and other IP, NFL Properties (a company wholly-owned by the teams) acts as their representative in licensing their collective IP to third parties. In 2000, NFL Properties decided to limit the number of its licensees permitted to manufacture caps, hats and other headwear and granted an exclusive license to Reebok International Ltd. (Reebok). Accordingly, NFL Properties allowed its license with American Needle, a competitor of Reebok and long-time non-exclusive headwear licensee, to expire in favor of the exclusive arrangement with Reebok.

American Needle filed suit in the U.S. District Court for the Northern District of Illinois against the NFL, its teams, NFL Properties (collectively, the NFL Defendants), and Reebok, alleging that Reebok's exclusive license violated antitrust law as an illegal conspiracy in restraint of trade under the Sherman Act. However, the District Court granted the NFL Defendants' motion for summary judgment, agreeing with their argument that in collectively licensing IP, the NFL Defendants function as a "single entity" and do not constitute the plurality of separate economic entities required for a Sherman Act conspiracy. The U.S. Court of Appeals for the Seventh Circuit affirmed.

The U.S. Supreme Court granted American Needle's petition for certiorari and heard oral argument on January 13, 2010 on the issue whether for purposes of the Sherman Act the NFL Defendants are capable of engaging in a "contract, combination . . . , or conspiracy", or whether the NFL Defendants' activities must be viewed as that of a single entity.

Holding

In a unanimous opinion authored by retiring Justice Stevens, the Court reversed the Seventh Circuit's decision and remanded the case for the lower courts to consider whether the potential pro-competitive effects of the NFL's IP licensing arrangement outweigh any potential anti-competitive harm (i.e., a "Rule of Reason" analysis).

The Court explained that the "single entity" determination does not depend on whether the alleged contracting, combining or conspiring parties are part of a legally single entity or "seem like" one entity or multiple entities in "in any metaphysical sense." Rather, the focus should be on whether or not the parties' agreement binds separate economic actors pursuing separate economic interests in a manner that deprives the marketplace of independent centers of decisionmaking. If so, the parties are engaging in concerted action under the Sherman Act that is illegal unless a court decides that the activity is permissible under the Rule of Reason.

In *American Needle*, the Court found the NFL teams are "substantial, independently owned, and independently managed business[es] [that] ... compete with one another, not only on the playing field, but to attract fans, for gate receipts and

for contracts with managerial and playing personnel." The Court observed that each team's IP competes with the other teams' IP in the market, even though all of the IP is licensed through a single vendor in a manner that deprives the market of "independent centers of decisionmaking." As such, the teams' activity constitutes "concerted action" that is subject to the Sherman Act.

The Court was not persuaded by the lower courts' reasoning in favor of single entity status. As Justice Stevens noted, although the teams necessarily depend on each other to engage in football games, they do not necessarily require concerted activity to license IP or engage in other aspects of managing the business of professional football. However, the Court also stressed that "football teams that need to cooperate are not trapped by antitrust law." The Court recognized that the successful operation of the NFL requires the teams to cooperate in certain respects, such as in the production and scheduling of games. The Court seemed to anticipate that in many instances the NFL teams' collective action would survive a Rule of Reason analysis, noting that it may be possible to apply the analysis "in the twinkling of an eye."

Potential Impact

The Supreme Court's decision in *American Needle* was widely anticipated primarily because of the possibility of the Court establishing a categorical rule that the NFL and its teams — and, by extension, similarly situated professional sports leagues — are a single entity under the Sherman Act. Among other things, such a holding could have significantly impacted the NFL's upcoming collective bargaining negotiations with the NFL Players Association (NFLPA) by limiting the players' ability to decertify the union and file an antitrust action against the NFL.

Instead, in many respects the Court's decision is a return to the status quo. Prior to *American Needle*, decisions in the First, Second and Ninth Circuits suggested that in no circumstances could a professional sports league comprised of separately owned teams constitute a single entity for purposes of a Sherman Act analysis. In those Circuits, claims that a professional sports league or its teams have engaged in anti-competitive behavior have been subject to a Rule of Reason analysis. Because the NFL necessarily requires agreement and coordination among its teams on certain matters to function as a professional sports league, various activities of the NFL have survived Rule of Reason analysis in cases preceding *American Needle*. Although a "single entity" ruling favorable to the NFL might have provided an absolute defense in certain future antitrust cases, the Court's decision likely means that the NFL and other professional sports leagues will continue to defend antitrust claims on a case-by-case, "Rule of Reason" basis. ♦

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