

## ***American Needle v. National Football League***

On January 13, the U.S. Supreme Court will hear oral argument in *American Needle, Inc. v. National Football League*, a case presenting questions of antitrust and intellectual property (IP) law that potentially could change the manner in which professional sports leagues conduct business. As the author of a leading sports law textbook told ESPN.com, the Court's decision in *American Needle* "could easily turn out to be the most significant sports law decision ever."

### **Overview**

- American Needle, a former licensee of the NFL, sought Supreme Court review after it unsuccessfully challenged the NFL's grant of an exclusive apparel license to Reebok.
- The Supreme Court will consider the question of whether NFL teams should be deemed to be a "single entity" for purposes of analyzing whether certain collective undertakings could violate antitrust law.
- A decision in the NFL's favor could exempt the league — and potentially similarly situated professional sports leagues — from the review of certain business activities under antitrust law.
- A decision in *American Needle's* favor could require collective activities to be subject to a case-by-case review as to whether pro-competitive effects outweigh potential anti-competitive harm.

### **Background of the Case**

The respondent, the National Football League (NFL), is an unincorporated association of 32 separately owned and operated member clubs. 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 IP to third parties. This arrangement allows potential licensees to avoid engaging in separate negotiations with each team. In fact, as the NFL stated in its merits brief submitted to the Supreme Court, NFL Properties sells only a "complete package" of IP and requires apparel licensees to manufacture, distribute and sell on a national basis product lines bearing, in the aggregate, the marks identifying all NFL teams.

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 petitioner 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 subsequently filed suit in the U.S. District Court for the Northern District of Illinois against the NFL, its teams, NFL Properties (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 District Court's ruling, and American Needle appealed to the Supreme Court. The NFL Defendants took the unusual step of joining American Needle's petition for writ of certiorari, seeking a uniform rule that the NFL Defendants enjoy "single entity" status under the Sherman Act. Over the U.S. Solicitor General's objections that Supreme Court review was unwarranted, certiorari was granted in June 2009.

## The "Single Entity" Defense

Section 1 of the Sherman Act prohibits any "contract, combination or conspiracy" between economic entities operating in interstate commerce that restrains competition. However, the parties to the relevant agreement may be deemed to be a "single entity" for purposes of the Sherman Act if they are subject to a single source of control or otherwise not independent sources of economic power. In such instances, even if the undertaking restrains competition, there necessarily can be no "contract, combination or conspiracy" without multiple entities to the arrangement. The Supreme Court recognized this "single entity" defense in *Copperweld Corp. v. Independence Tube Corp.* (467 U.S. 752 (1984)), finding a corporation and its wholly-owned subsidiary to be incapable of conspiring with one another under the Sherman Act.

In affirming the District Court's ruling in *American Needle*, the Seventh Circuit found that a professional sports league such as the NFL "could be considered a single entity," and the "question of whether a professional sports league is a single entity should be addressed not only 'one league at a time,' but also 'one facet of a league at a time.'" With respect to the NFL, the Seventh Circuit observed that "NFL teams share a vital economic interest in collectively promoting NFL football" in competition "with other forms of entertainment," such that NFL teams are "a single source of economic power when promoting NFL football through licensing the teams' intellectual property."

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. These Circuits appear to have based their decisions on, among other considerations, the fact that teams in such leagues have independent value, separate profits and losses, and compete on and off the field for players, coaches and fans. In those Circuits, claims that a professional sports league or its teams have engaged in anti-competitive behavior are subject to a "rule of reason" analysis, whereby the court inquires whether the pro-competitive effects of the relevant activities outweigh the potential anti-competitive harm. 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 analyses in cases preceding *American Needle*.

## Potential Impact

It is possible the Supreme Court in *American Needle* will establish 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, which would reduce uncertainty for the NFL in the operation of its business and the risk of inconsistent decisions among Circuits. Such a holding potentially could provide the NFL and other sports leagues with significant bargaining power in negotiating commercial arrangements with licensees and vendors, as well as employment arrangements with coaches and players. To underscore the significance of such a result, the NFL Coaches Association has submitted an amicus brief in support of American Needle, as has a group comprised of the NFL Players Association and the players associations for the National Basketball Association, National Hockey League, and Major League Baseball.

However, the Supreme Court could take a much more limited approach to the case. As the Seventh Circuit suggested, the Court could consider "one facet of a league at a time" and rule that solely for the purposes of licensing team names, logos, and other IP, the NFL and other professional sports leagues should be deemed to be single entities under the Sherman Act. The Court also could resolve the Circuit split in American Needle's favor and uniformly deny single-entity status for the NFL and other leagues, in which case league and team activities would continue to be subject to a rule of reason analysis.

*American Needle* also presents the Supreme Court with an opportunity to broadly revisit the single entity defense. *Copperweld* addressed the concept in the context of a parent-subsidary relationship, but some subsequent lower court decisions appear to expand the range of corporate relationships that can qualify as a single entity under the Sherman Act. The Court in *American Needle* may decide to broaden or clarify the limits of the single entity defense, which would provide further insight as to the Roberts Court's philosophy on antitrust law.

As a result, *American Needle* has attracted widespread attention, with amicus briefs submitted not only by various sports leagues, governing bodies, players associations, and licensees, but also economists, consumer groups, and non-sports joint ventures. At the Supreme Court's invitation, the U.S. Solicitor General has filed a brief (in support of American Needle) and will participate in oral argument. The Court's ruling is expected by the end of June. ♦

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**For more information regarding this alert, please contact Daniel C. Glazer at 212.336.2523 (dcglazer@pbwt.com) or Jason S. Zack at 212.336.7616 (jzack@pbwt.com).**

**If you would like more information on the firm's Sports Law Team, please contact one of the following attorneys:**

<b>Karen R. Berry</b>	<b>212.336.2545</b>	<b>krberry@pbwt.com</b>
<b>William F. Gaske</b>	<b>212.336.2923</b>	<b>wfgaske@pbwt.com</b>
<b>Daniel C. Glazer</b>	<b>212.336.2523</b>	<b>dcglazer@pbwt.com</b>
<b>Peter C. Harvey</b>	<b>212.336.2810</b>	<b>pcharvey@pbwt.com</b>
<b>Robert W. Lehrburger</b>	<b>212.336.2996</b>	<b>rwlehrburger@pbwt.com</b>
<b>Daniel S. Ruzumna</b>	<b>212.336.2034</b>	<b>druzumna@pbwt.com</b>
<b>Saul B. Shapiro</b>	<b>212.336.2163</b>	<b>sbshapiro@pbwt.com</b>

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