

ALI-ABA Topical Courses
American Needle:
**Supreme Court Sacks NFL for Loss of 9, Holding Joint Ventures Not
Outside Reach of Sherman Act**

July 13, 2010
Telephone Seminar/Audio Webcast

**Analysis of and Information About
*American Needle, Inc. v. National Football League***

Links to briefs, certiorari-stage documents, and other documents appearing on this SCOTUSwiki web page can be accessed by clicking on (or cutting and pasting into a web browser) the underlined link appearing at the bottom of the web page.

Submitted by

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American Needle Inc. v. NFL

From ScotusWiki

Argued January 13, 2010. Decided May 24, 2010.

Authorship: Lyle Denniston of *SCOTUSblog*

Docket: 08-661

Issue: Whether NFLP, the NFL, and the teams functioned as a “single entity” when granting the company an exclusive headwear license and therefore could not violate Section 1 of the Sherman Act, 15 U.S.C. 1, which requires proof of collective action involving “separate entities.”

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Briefs and Documents

Decision

REVERSED in a 9-0 decision with an opinion written by Justice Stevens.

Oral Argument

Transcript (January 13, 2010)

Merits Briefs

- Brief for Petitioner American Needle, Inc.
- Brief for Respondents NFL
- Brief for Respondent Reebok International LTD
- Reply Brief for Petitioner American Needle, Inc.

Amicus Briefs

- Brief for the National Football League Players Association, the Major League Baseball Players Association, the National Basketball Players Association, and the National Hockey League Players Association in Support of Petitioner
- Brief for the American Antitrust Institute and the Consumer Federation of America in Support of Petitioner
- Brief for Economists in Support of Petitioner
- Brief for the National Football League Coaches Association in Support of Petitioner
- Brief for the United States of America in Support of Petitioner
- Brief for ATP Tour, Inc., WTA Tour, Inc., Major League Soccer, L.L.C., and the National Association for Stock Car Auto Racing, Inc., in Support of Respondents
- Brief for VF Imagewear, Inc., in Support of Respondents
- Brief for Mastercard Worldwide and Visa, Inc., in Support of Respondents
- Brief for the National Hockey League in Support of the NFL Respondents
- Brief for Electronic Arts, Inc., in Support of the NFL Respondents
- Brief for Economists in Support of Respondents
- Brief for the National Collegiate Athletic Association in Support of Respondents
- Brief for the National Basketball Association and NBA Properties in Support of Respondents
- Brief for the Merchant Trade Association in Support of Petitioner and Reversal

Certiorari-Stage Documents

- Petition for certiorari
- Brief of respondents NFL
- Petitioner’s supplemental brief
- Brief amicus curiae of NHL in support of respondents
- Brief amicus curiae of NBA in support of respondents
- Brief amicus curiae of the United States (recommending that certiorari be denied)

Opinion Analysis

Lyle Denniston originally wrote the following for SCOTUSblog:

As the Supreme Court moved in to referee a major dispute over pro sports leagues and their plea for antitrust immunity, the labor unions that represent the players in those leagues warned the Justices not to allow team owners to send a “Trojan horse” into that arena. Whether or not that was a valid fear, the Court with Monday’s decision clearly did not give team owners a free pass to carry on a wide range of joint activity to promote their sport with American consumers. But neither did the Court add much of anything new to antitrust law in general.

The National Football League’s owners had won a major exemption from Sherman Act liability in the Seventh Circuit Court for themselves and for the owners in other pro leagues. They won a new right to agree among themselves that only a single outlet could sell hats, sweatshirts and other gear bearing the teams identifying logos and names. But the bigger part of the victory was that the Circuit Court made a significant leap in the reasoning behind that exemption. It ruled that, if a sports league seeks to promote its “brand” or its “product,” it must do so, as a matter of economic reality, through a joint venture, with no one competing with anyone else.

By itself, that was no small thing, in dollars and cents. Fan loyalty often expresses itself in the purchasing and wearing of identifying team gear; President Obama, for example, is so devoted to his hometown Chicago White Sox that he actually wore his Sox cap as he threw the first pitch for another baseball team’s opening game. That was commonly taken to be a sacrilege.

How much further beyond trademark licensing this exemption might have gone, no one could be quite sure. The players’ unions, in their expressed fear of a “Trojan horse,” speculated that the leagues would next argue that “promoting” the game also meant a joint, anti-competitive deal on players’ salaries and selection. And the coaches, in turn, worried about an anti-competitive approach to hiring and paying the on-the-field managers. And so on.

The Supreme Court, ruling unanimously in *American Needle v. NFL* (08-661), put at least a temporary end to the speculation — at least to this extent: a claim that joint action is the only way to promote the “brand” of “NFL football” was simply but firmly rejected. Justice John Paul Stevens wrote that “defining the product as ‘NFL football’ puts the cart before the horse. Of course, the NFL produces NFL football, but that does not mean that cooperation amongst NFL teams is immune from [Sherman Act]

scrutiny. Members of any cartel could insist that their cooperation is necessary to produce the ‘cartel product’ and compete with other products.”

If promoting pro football with the consuming public is the economic goal, “there would be nothing to prevent each of the teams from making its own market decisions relating to purchases of apparel and headwear, to the sale of such items, and to the granting of licenses to use its trademarks,” Stevens said. “Competitors,” he added, quoting colleague Justice Sonia Sotomayor when she was a judge on the Second Circuit Court, “‘cannot simply get around’ antitrust liability by acting ‘through a third-party intermediary or ‘joint venture.’”

The concluding part of the opinion represented an attempt to narrow the scope of the ruling, suggesting that the NFL and other pro leagues may well be entitled to quite broad antitrust immunity for such joint efforts as producing and scheduling games, taking steps to maintain “a competitive balance” between teams, and acting to ensure that the sport makes money. The actual legality of any joint practice, the Court made clear, was not being decided in this case — including the specific tactic of joint marketing of the right to use team trademarks. Each “collective decision” a league chooses to make, the opinion concluded, is to be judged by an antitrust “rule of reason” — a flexible standard that is keyed to particular facts and circumstances.

The trademark licensing case now returns to the Seventh Circuit, and very likely back to District Court, for a trial on whether that scheme is, in fact, an “unreasonable restraint of trade” in the way that it actually operates. The outcome was not foreordained by Monday’s ruling.

While the *American Needle* case always had the potential to produce a significant new statement from the Court on the Sherman Act’s application to commercial “joint ventures” in general, in the end it did not do so. Much of Justice Stevens’ opinion is simply a reiteration of past rulings on such collective activity, and, indeed, did not mark any deviation from the main precedent on the subject, the Court’s 1984 decision in *Copperweld Corp. v. Independence Tube Corp.* Stevens was an entirely faithful follower of that decision — even though he had dissented when it was issued.

Reversal

Lyle Denniston originally wrote the following for SCOTUSblog.

Rejecting the National Football League’s claim that it has across-the-board immunity to antitrust law when its teams join in a commercial activity, the Supreme Court unanimously cleared the way Monday for trial of a lawsuit against the joint marketing of the right to use the teams’ logos and trademarks on consumer goods. The ruling applied only to that specific joint venture, and did not cover any other collective action that the NFL — or any other pro sports league — might carry out. The Court also did not decide whether the NFL did in fact act illegally in this specific marketing effort; that will be decided at a trial, with the legality weighed under a “rule of reason” standard.

The ruling was issued on a busy morning at the Court, with the release of six decisions and the grant of review in five new cases. Among the more noteworthy new grants were a pair of cases from Arizona on the constitutionality of a state program of providing state tax credits to parents to cover tuition when they send their children to private schools, including church-run elementary and secondary schools. The Court will reach the constitutional issue in that case only if it first decides that state taxpayers had a right to file their challenge in court — a separate question in the cases.

Although major league baseball has been exempt from the antitrust laws since 1922, under a Supreme Court decision that year, the other pro leagues have not shared that immunity, and Monday’s ruling in the NFL case re-opened them to court challenge on at least some of their collective commercial efforts. The Court, however, sought to ease the anxiety that its ruling might create, saying “Football teams that need to cooperate are not trapped by antitrust law.” In an opinion by Justice John Paul Stevens, the Court went on to say that pro teams “share an interest in making the entire league successful and profitable,” and in pursuing that they may need to make “a host of collective decisions” that would be beyond antitrust challenge. The particular activity at issue, though, is “concerted activity” of the kind that is subject to challenge under the Sherman Act’s Section 1, the Court concluded.

The ruling was at least a temporary victory for a modest-sized company in Buffalo Grove, Ill. — American Needle, Inc., a maker of sports hats, uniforms and other apparel. It formerly was one of the consumer goods makers whose products were allowed to carry NFL trademarks and identifiers. But, in 2001, it was shut out, when the NFL’s 32 teams decided to solicit bids for an exclusive license to use those marks on headgear, and Reebok International Ltd., won the bidding contest, and got an exclusive license. Now, American Needle, whose claim was thrown out by the Seventh Circuit Court, now gets a chance to try to prove that the joint marketing was an illegal “restraint of trade.” The Court ruled in *American Needle v. N.F.L.* (08-661).