Intellectual Property and The NCAA

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INTRODUCTION: What is Intellectual Property?

• Intellectual Property is broken down into two general types: (1) IP that protects the functional, or utilitarian, aspects of an invention, and (2) IP that protects the non-functional, or ornamental, aspect of an invention.
• Law does not protect ideas, rather law protects ideas that become a part of tangible mediums. Content-based ideas, copyrights, trademarks, patents, trade secrets, company names, etc. are all protected by Intellectual Property Law.
• To protect intellectual property, companies must identify what its IP is and cover themselves from the competition. This allows for a competitive advantage.
• Intellectual property, in essence, is an intangible object that is protected by the law and can only be enforced through the legal process.

Cornerstone Cases

1. Ed O’Bannon Case

• Ed O’Bannon is the plaintiff and the NCAA is the Defendant
• Reasons for the complaint
  • The NCAA is an organization that creates an anti-competitive conduct in regards to commercial business
  • Claims that the NCAA has no right to use the name, image, or likeness of an athlete
    • “You authorize the NCAA, or a third party acting on behalf of the NCAA, to use your name or picture to generally promote NCAA championships or other NCAA events, activities, or programs”
  • Exclusion from the college licensing market
  • Sherman Anti-Trust
  • Cost of Attendance
• The NCAA claims that Ed O’Bannon does not have Sherman Anti-Trust standing because in order to have standing you must:
  • Allege Anti-Trust Injury
  • Unlawful Conduct
  • Causing an injury to the plaintiff
  • Injury that flows for the unlawful conduct
  • Of the type the antitrust laws were intended to prevent

2. Jeremy Bloom Case

• Jeremy Bloom was recruited to play football at the Colorado University
• Bloom wanted to be endorsed to help with his skiing career, in which he was an Olympic and World Cup athlete.
• Colorado University filed a waiver to the NCAA on behalf of Bloom, but the request was denied.
• Bloom said there were 3 violations to the NCAA hindering him from being endorsed
  • 3rd party beneficiary, entitled to enforce NCAA bylaws permitting him to receive compensation from a sport different than his amateur sport
  • Restrictions from the NCAA were arbitrary and capricious
  • Constituted improper and unreasonable restraint of trade.

Ed O’Bannon Case
O’Bannon v NCAA

Jeremy Bloom Case
Bloom v NCAA

Argument for IP Rights for Athletes

• Sherman Antitrust Act
  • Section 1 states that there should be no restriction of trade.
  • The NCAA athlete is being restricted by the NCAA and the antitrust clause from being able to sell merchandise that has their image and likeness.
  • The NCAA is using Intellectual property that belongs to athletes to promote their own organization
  • This is a clear violation of restriction of trade in a tangible medium

Argument Against IP Rights for Athletes

• Amateurism Clause
  • Not able to receive compensation above "actual and necessary expenses"
  • Diminishes the fact the sport is seen as a monetary object not part of the athlete’s education
  • NCAA is sticking to it’s bylaws to protect themselves from complaints using Sherman Antitrust Laws as justification

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