

**Mark G. Weinberg & Blue Line Publ'g, Inc. v. Chicago
Blackhawk Hockey Team, Inc.**

274 Ill. App. 3d 637 (Ill. App. Ct. 1995)

by Lerrin Goldberg

Plaintiffs Mark Weinberg and Blue Line Publishing, Inc. (Blue Line) published a program guide for each Chicago Blackhawk Hockey game (Blackhawk). The Blackhawks published their own game day program. In February of 1991, Blue Line was denied media credentials for Blackhawk home games because there were no credentials remaining, as they were given out on a first come, first serve basis. Plaintiffs requested credentials for the 1991-1992 season one week after the 1990-1991 season ended, but were again denied. The Blackhawks' assistant director of public relations said that they did not "want to set aside credentials for a publication that [was] conceivably competing against" their publication. Blue Line alleged that Blackhawk violated the Illinois Antitrust Act (the Act) by refusing to grant Plaintiffs media credentials and press access to the Chicago Stadium for the Blackhawks' practices, press conferences, and post-game interviews. The trial court dismissed the Plaintiffs' complaint for failing to state a cause of action under the Act; subsequently, the Court of Appeals reversed the lower court's holding because the Plaintiffs' theories based on monopoly leveraging and the facilities doctrine prove a violation of the Act.

The issue before the Illinois Appellate Court was whether the trial court properly dismissed the allegations in Plaintiffs' complaint relating to Defendant's refusal to grant Plaintiffs media credentials and press access to practices, press conferences, and post-game interviews. In reviewing the motion to dismiss for failure to state a claim, the Court looked to the four corners of the Plaintiffs' complaint, which revealed that the parties were publishing competing program guides.

When one party has monopoly power in one market and uses that power to gain a competitive advantage in a second market, monopoly leveraging is occurring. To prove a claim for this, Plaintiffs must allege the following: (1) Defendant has monopoly power in one market; (2) Defendant used that power to exact a competitive advantage for itself in another market; (3) the competitive advantage was not won on competitive merits, but rather stemmed from a coercive use of the monopoly power in the first market; (4) the Defendant acted with intent to gain the unwarranted advantage in the other market; and (5) the anti-competitive conduct resulted in decreasing the competition. The Appellate Court believed that Blue Line's complaint sufficiently satisfied each element.

It is out of the fear that a monopolist will be able to extend monopoly power from one market to another that the facilities doctrine arises. To sufficiently state a cause of action under the Act based on this doctrine, the Plaintiff must allege the following: (1) control of the essential facility by a monopolist; (2) the competitor's inability to practically or reasonably duplicate the essential facility; (3) the denial of the use of the facility to a competitor; (4) the feasibility of providing the facility; and (5) that denial has had an anti-competitive effect. Again, the Appellate Court believed that Blue Line alleged facts to support all five elements.

Because Plaintiffs sufficiently stated a cause of action in their complaint against Defendants for refusing to grant media credentials and press access, the order of dismissal was reversed and the case was remanded.