

## **Gionfriddo v. Major League Baseball et al.**

94 Cal. App. 4<sup>th</sup> 400 (2001)

Authored by David I. Wallack

Four former professional baseball players (“the players”) brought suit against Major League Baseball (“MLB”) for violating their common law and statutory right of publicity by publishing factual data about the players, their statistics, photographs, and video depictions of their play without permission or compensation. The depictions were made available to the public through MLB’s website, video clips, and other publications. At issue in the case was whether the published information constituted “commercial speech” under the First Amendment, entitling it to a reduced level of constitutional protection. The trial court found for MLB and the California Court of Appeals affirmed.

The California common law right of publicity provides a cause of action to plaintiffs when the defendant’s unauthorized use of the plaintiff’s identity through the appropriation of the plaintiff’s name or likeness to the defendant’s advantage causes the plaintiff damage or injury. This common law right, however, is not absolute; it must be balanced against the public interest in the dissemination of news and information protected by the constitutional guarantees of free speech under the First Amendment.

The players argued that MLB’s publication of this material constituted “commercial speech” because MLB has a pecuniary interest in the publication of this information through the promotion of the sport and, therefore, should be entitled to a lower form of constitutional protection. The court disagreed with this argument, noting that commercial speech has a “special meaning” within the context of the First Amendment, and that the “core notion” of commercial speech is that it does no more than propose a commercial transaction. In the case at bar, the speech in question did more than simply propose a commercial transaction; it was used as a historical reference for the game’s past. The court noted that because MLB is followed by millions of fans across the country on a daily basis, and the history of baseball is integral to the full understanding of the current game and its players, there exists a significant public interest in the information conveyed by the challenged uses.

The court further elaborated that even if the information were used as a direct advertisement for MLB, this still would not violate the players’ right of publicity. Advertisements are actionable when the plaintiff’s identity is used, without consent, to promote an unrelated product. A celebrity’s likeness, however, may be used to advertise a related product. The owner of a product has a right to use images of the product in order to promote it, even if those images portray the likenesses of the celebrities related to the product. The right to exploit one’s celebrity is primarily an economic right, and the uses involved here did not injure that right, and in fact, they may have enhanced the player’s marketability. The players did not present any compelling evidence that they had been economically injured through MLB’s use of their likenesses. The court did not discuss at length whether or not the players were, in fact, celebrities. The court did note that the players in question enjoyed great success during their professional careers, and mentioned several of their accomplishments, thereby implying that the players should be classified as celebrities.

The holding of the case strengthens the First Amendment right of the press to publish

factual information. It also identifies a significant public interest in the access to information reported by various popular sports leagues, even though such information may contain unauthorized uses of information, or likenesses of the athletes that participate in the sport.