AMERICAN NEEDLE V. NFL: LEGAL AND SPONSORSHIP IMPLICATIONS

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I. INTRODUCTION

Application of antitrust laws to the professional sports industry and resolution of whether professional leagues should be exempt from antitrust laws continue to receive judicial review. The debate centers on whether professional sports leagues are a collective, singular economic entity or if teams are individual businesses even when they cooperate on joint or collective business relationships.

This question was addressed by the U.S. Supreme Court in *American Needle Inc. v. NFL*.[1] In 2000, National Football League (NFL) Properties entered into an agreement with Reebok on a ten-year, $25 million contract to be the league's exclusive licensee for the manufacture and sale of trademark headgear for all thirty-two NFL teams. Due to the exclusive nature of the contract with Reebok, the NFL did not renew its contract with American Needle, a suburban Chicago clothing manufacturer who had been manufacturing and selling headgear with NFL team logos for more than twenty years. American Needle filed suit in Federal District Court for the Northern District of Illinois, claiming the agreement between NFL Properties and Reebok violated the Sherman Antitrust Act.[2] NFL Properties claimed it was not capable of conspiring to violate Antitrust Laws because it is a collective, singular economic entity.[3] In *American Needle v. New Orleans Louisiana Saints*, the district court found the NFL "should be deemed a single entity rather than joint ventures cooperating for a common purpose."[4] The U.S. Court of Appeals for the Seventh Circuit affirmed the decision.[5] American Needle petitioned and was granted that the case be heard by the Supreme Court. The NFL joined the case hoping to receive a broader exemption that could reduce lawsuits on antitrust grounds.[6] This article reviews the economic backdrop of the Court's holding, then analyzes the Court's holding itself and the implications it presents to the NFL and related entities.

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[1] Am. Needle Inc. v. Nat'l Football League, 130 S. Ct. 2201 (U.S. 2010).
[2] Am. Needle Inc. v. New Orleans La. Saints, 496 F. Supp. 2d 941, 943 (N.D. Ill. 2007).
[3] *Id.*
[4] *Id.*
[5] Am. Needle v. NFL, 538 F.3d 736, 736 (7th Cir. 2008).
[6] *See* Bill King, *Supreme Court weighs a game changer,* STREET & SMITH'S SPORTS BUS. J., Jan. 4, 2010, at 1, 8-10, *available at* http://www.sportsbusinessjournal.com/article/64469.

II. THE RELATIONSHIP BETWEEN SPONSORS AND SPORTS LEAGUES

Corporate sponsorship has become an essential component of the sports industry business model. Researchers have identified the core components of a sponsorship agreement as an investment by the corporate sponsor in exchange for the exploitable commercial potential associated with the sports event or property.[7] For sports leagues and teams the benefits are obvious. On entering into sponsorship agreements they add another major revenue stream to their business. For the sponsoring companies, they enter into sponsorship agreements with sports properties for a multitude of reasons, including brand exposure, brand image association, and the potential to influence consumer purchase behavior.[8] Sponsorship can take on many different forms (i.e., stadium naming rights, stadium signage, ticket or hospitality opportunities, pouring rights). What makes sponsorship such an attractive strategy for many corporations is that all of the parameters of the deal are negotiable and bound only by what the sponsor and the sponsored property agree upon.[9]

One of the negotiated characteristics of a sponsorship is exclusivity for the sponsoring corporation within its particular product category. Sports leagues sell exclusivity in a variety of product categories, i.e., airlines, automobiles, and financial services. Exclusivity eliminates any competition from a rival within that product category at the sponsored event or location.[10] Exclusivity avoids competitive interference that would be incurred in other media contexts.[11] For some industries, such as beer, soda, and credit cards, the characteristic of exclusivity provides not only brand exposure but the additional advantage of selling their product through point-of-purchase at the stadium without competition. Other exclusivity agreements could include an athlete only using his or her sponsors' equipment, i.e., Tiger Woods only using Nike golf balls, or a league only using its sponsors' product or service, i.e., the NFL only having Reebok manufacture its licensed headwear.

Teams, too, derive substantial revenue by selling sponsorships. Teams sell sponsorships in a similar manner, creating exclusivity in a variety of product categories.

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[7] *See* Tony Meenaghan, *The Role of Sponsorship in the Marketing Communications Mix*, 10 INT'L J. OF ADVER. 35 (1991); LESA UKMAN, IEG'S COMPLETE GUIDE TO SPONSORSHIP: EVERYTHING YOU NEED TO KNOW ABOUT SPORTS, ARTS, EVENT, ENTERTAINMENT AND CAUSE MARKETING (1996).

[8] *See* T. Bettina Cornwell & Isabelle Maignan, *An International Review of Sponsorship Research*, 27 J. ADVER. 1 (1998); Dwane Hal Dean, *Associating the corporation with a charitable event through sponsorship: Measuring the effects on corporate community relations*, 31 J. ADVER. 77 (2002); Bill Harvey, *Measuring the effects of sponsorship*, 41 J. ADVER. RES. 59 (2001); Richard L. Irwin et al., *Cause-Related Sports Sponsorship: An Assessment of Spectator Beliefs, Attitudes, and Behavioral Intentions*, 12 SPORT MKTG. Q. 131 (2003); Robert Madrigal, *The influence of social alliances with sports teams on intentions to purchase corporate sponsors' products*, 29 J. ADVER. 13 (2000); BERNIE MULLIN ET AL., SPORT MARKETING, (3d ed. 2007); MATTHEW SHANK, SPORTS MARKETING: A STRATEGIC PERSPECTIVE (4th ed. 2008).

[9] JOHN A. FORTUNATO & ANGELA E. DUNNAM, *The negotiation philosophy for corporate sponsorship of sports properties, in* SHARING BEST PRACTICES IN SPORTS MARKETING: THE SPORTS MARKETING ASSOCIATION'S INAUGURAL BOOK OF PAPERS 73 (Brenda G. Pitts ed. 2004).

[10] *Id.*

[11] Anthony D. Miyazaki & Angela G. Morgan, *Assessing Market Value of Event Sponsoring: Corporate Olympic Sponsorship*, 41 J. ADVER. RES. 9 (2001).

A critical characteristic of the team selling sponsorships is that this revenue is not shared with the other teams in the league.[12]

Conflicts can emerge between league and team sponsors where leagues and teams have different sponsors within the same product category. For example, the NFL used to have one beer sponsor for the league and all of the teams. In 2002, the league changed to a system of having one sponsor for the league, but the teams could pursue their own beer sponsors for their local markets.[13] Coors is the official beer sponsor for the NFL, but Anheuser-Busch and Miller had contracts with individual teams.[14] It must also be noted that sponsorship with the premier sports properties is very expensive and often available to only the large brands that can afford the cost.[15]

A. Antitrust Laws and Professional Sports

The Sherman Antitrust Act has the primary purpose of thwarting trusts, and other arrangements, that may restrain trade. Sherman Act § 1 prohibits combinations and conspiracies that are in restraint of trade.[16] Section two examines the practices of monopolization, with firms deemed an illegal monopoly if: (1) they have monopoly power and (2) there has been a willful acquisition or maintenance of that power through predatory or exclusionary conduct.[17] The language of the Sherman Act is, however, broad and ambiguous.[18] Viewed most broadly, one could interpret it to declare almost every type of agreement between two or more businesses as illegal. Consequently, the Supreme Court has held over the course of the last century that only those agreements that operate as an "unreasonable" restraint of trade are in violation of the law.[19] This has come to be known as the "rule of reason" standard. LaBletta observes that "under the rule of reason standard, courts balance all the competitive harms and benefits of a particular business arrangement before labeling it an unreasonable restraint of trade."[20]

In the sports industry, antitrust questions have often centered on whether professional sports leagues are a collective, singular economic entity or if teams are their own individual businesses. Much of the courts early involvement with antitrust application into the sports industry dealt with the issue of television contracts. The first antitrust issue was raised in the 1940s when Major League Baseball (MLB) adopted a

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12 James T. Reese & Mark S. Nagel, *The Relationship Between Revenues and Winning in the National Football League,* 2 INT'L J. SPORT MGMT. 125 (2001).

13 John A. Fortunato & Jared Melzer, *The Conflict of Selling Multiple Sponsorships: The NFL Beer Market*, 2 J. SPONSORSHIP 49 (2008).

14 Anheuser-Busch will become the official beer sponsor of the NFL in April 2011 in an agreement estimated to be $1.2 billion over six years. *See* Terry Lefton, *Strong Brew: A-B flexes its Muscles with 'big bet' on NFL,* STREET & SMITH'S SPORTS BUS. J., May 10, 2010, *available at* http://www.sportsbusiness journal.com/article/65675.

15 John A. Fortunato & Jef Richards, *Reconciling Sports Sponsorship Exclusivity with Antitrust Law*, 8 TEXAS REV. OF ENT. & SPORTS L. 33 (2007).

16 Sherman Antitrust Act, 15 U.S.C. § 1 (2010).

17 *Id*. at § 2.

18 ROSS D. PETTY, THE IMPACT OF ADVERTISING LAW ON BUSINESS AND PUBLIC POLICY (1992).

19 Standard Oil Co. v. United States, 221 U.S. 1, 58 (1911).

20 Nicole LaBletta, *If per se is Dying, why not in TV Tying? A case for Adopting the rule of Reason Standard in Television Block-Booking Arrangements*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 197 (2001).

rule prohibiting one team from broadcasting a game in another team's home territory or from another stadium without the home team's consent as a way to protect the home team's attendance.[21] The NFL adopted a similar policy. Fearing creation of a broadcast system without competition, the Justice Department became interested in the issue and filed suit against the NFL. In *United States v. NFL*, Judge Allan K. Grim upheld the NFL's policy preventing broadcasts of an outside game in a third team's home territory when that team had a home game.[22] Horowitz explains, "the court found that such a restraint was reasonable because of the adverse effects that competitive outside telecasts would be likely to have on the home club's attendance."[23]

In the 1950s and into 1960 the NFL teams made their own individual deals with television networks to broadcast their games. For example, CBS had agreements with nine teams, while NBC had contracts with the Baltimore Colts and Pittsburgh Steelers, and the Cleveland Browns had their own independent network. For the 1961 season, the NFL decided to move to a system of having one network televise all the league's games and share the revenue equally among all teams. The NFL signed a contract with CBS. The NFL sought further interpretation of the 1953 ruling from the courts. Judge Grim, however, ruled that by pooling television rights, the teams eliminated competition among themselves in the sale of these rights and therefore deemed the television contracts to be a violation.[24]

Having failed in the courts, the league petitioned Congress for permission to pool and sell the broadcast rights to television networks. The system of sports leagues selling broadcast rights to television networks in the United States was legally established in 1961 when President John F. Kennedy signed the Sports Broadcasting Act into law.[25] The law provides leagues with an antitrust exemption that allows them to collectively pool the broadcast rights to all of their teams' games and sell them to the highest bidding television network.[26] The Sports Broadcasting Act has been described as "special interest legislation, a single-industry exception to a law designed for the protection of the public."[27]

The main argument of professional sports leagues for their need of an antitrust exemption is that sports leagues need competitive balance to thrive. Pete Rozelle was the Commissioner of the NFL from 1960 to 1989. Rozelle is credited with convincing NFL owners to share their television revenue, thus developing the economic business model that is the standard for modern professional sports.[28] Rozelle believed that fans in every city needed to have the belief that their team, if managed properly, could compete and

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[21] *See* Ira Horowitz, *Sports Broadcasting*, *in* GOV ERNMENT AND THE SPORTS BUSINESS 275-83 (Roger G. Noll, ed. 1974).
[22] United States v. NFL, 116 F. Supp. 319 (E.D. Pa. 1953).
[23] Horowitz, *supra* note 21, at 281.
[24] United States v. NFL, 196 F. Supp. 445 (E.D. Pa. 1961), *superseded by statute as stated in* Kingray, Inc. v. NBA, Inc., 188 F. Supp. 2d 1177, 2002-11 (S.D. Cal. Feb. 1, 2002).
[25] Sports Broadcast Act § 15 U.S.C. § 1291 (1961).
[26] *Id*.
[27] Chicago Prof'l Sports Ltd. P'ship v. Nat'l Basketball Ass'n, 961 F.2d 667, 671 (7th Cir. 1992).
[28] JOHN A. FORTUNATO, COMMISSIONER: THE LEGACY OF PETE ROZELLE (2006); PAUL ATTNER, *The Power of Persuasion: The Most Powerful People in Sports for the 20th Century,* THE SPORTING NEWS, Dec. 20 1999; MICHAEL LEWIS, *Pete Rozelle: He Hooked us on Football as Show biz and Gave Sunday (and Monday) a new Kind of Religious Significance*, TIME, Dec. 7. 1998, *available at* http://205.188.238.109/ time/time100/builder/profile/rozelle.html.

win a championship.[29] He felt that if fans did not believe their team could win they might lose interest in the league and no longer attend or watch games.[30]

Rozelle thought that competitive balance was linked to the league's equitable distribution of revenues, with every NFL team equipped with the similar economic capabilities.[31] Large differences in revenues might allow only wealthier franchises to sign the better players, creating a system where some teams could simply not compete. Because it was television that provided the league with its greatest source of revenue, it was television money that would have to be shared equally among all franchises. Rozelle explained the rationale for this economic model for the NFL on many occasions in testifying before the United States Congress:

> The shared revenues are jointly produced by all league members in co-producing their "league" product through the joint league enterprise. For the NFL, revenue sharing is essential, among other resources, to maintain high quality of the league's product through league balance and to maintain league teams in relatively small markets—avoiding the emergence of "have" and "have not" clubs. Further, the immediate effect of revenue sharing would appear to be to make the member clubs and the league itself more competitive with other sports and entertainment. The league balance resulting from revenue sharing tends to make all clubs more viable, and the league as a whole more viable.[32]

Currently, television money represents the NFL's most lucrative revenue source. In agreements with CBS, Fox, NBC, ESPN, and Direct-TV the NFL earns more than $3.75 billion *per se*ason.

As noted above, individual teams also sell some exclusive sponsorships and keep all of the revenue themselves. Similarly, individual team broadcast revenue is also not shared. For the games that are not broadcast on national television, the rights revert to the teams. While in the NFL each game is televised by a national broadcast network, in Major League Baseball, the NBA, and the NHL the majority of games are sold by the teams to local networks to broadcast the games in that particular city. The selling of local broadcast rights in these sports creates wide disparities in revenues between teams from larger or smaller television markets.

The selling of local sponsorship and local broadcast rights are not the only areas where teams are financially independent. Teams have their own ticket revenue, the ancillary revenue that is obtained through ticket sales, from sources such as parking and concessions, and their own radio broadcast contracts. These revenue streams provide individual teams with their own level of profits and losses. Thus sports teams thrive economically not only on the revenue generated at the league level, but also very much depend on their individual revenue streams. This dual revenue structure further

[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Statement of NFL Commissioner Pete Rozelle, *Professional Sports Antitrust Immunity: Hearing Before Senate Comm. on the Judiciary*, 99th Cong. (1985).

complicates the question of professional sports leagues being a collective, singular economic entity or teams being their own individual businesses.

B. Case Law: Sports Leagues as a Single Entity or Individual Teams

The courts have been inconsistent in their rulings as to the question of whether professional sports leagues are a collective, singular economic entity or if teams are individual businesses. For example, in support of the argument that sports leagues are a single entity, courts have found the NFL to be "a unique type of business" whose clubs "must not compete too well with each other in a business way."[33] The NFL is a "unique" business organization having "some of the characteristics of a joint venture."[34] And, explicitly declaring the NFL is a "single economic entity."[35]

These opinions contrast with declarations of sports leagues being comprised of individual team businesses. For example, "the NFL is like any other business" and "open unfettered competition" must take place among its clubs.[36] The NFL Clubs are no different from ordinary business competitors.[37] And, finally, the NFL is not a "single business entity" and the teams are business competitors.[38]

Adding to the complexity of the issue, and the inconsistency of the courts on the question, is the affirming summary judgment of the District Court in the initial American Needle case.[39] The Court of Appeals for the Seventh Circuit held that "in some contexts, a league seems more aptly described as a single entity immune from antitrust scrutiny, while in others a league appears to be a joint venture between independently owned teams that is subject to review under § 1."[40]

III. *AMERICAN NEEDLE V. NFL*: SUMMARY AND ANALYSIS

A. The Arguments

The petitioner, American Needle, claimed the NFL hindered competition and acted as and created a monopoly in its exclusive agreement with Reebok. In its petition to the Supreme Court, American Needle contended that "the teams are independently owned and controlled for-profit businesses that do compete, and are capable of competing, with each other in numerous ways, including in the licensing and marketing of their respective

[33] United States v. NFL, 116 F. Supp. 319, 323 (E.D. Pa. 1953) *superseded by statute as stated in* Shaw v. Dallas Cowboys Football Club, Ltd., 172 F.3d 299 (3d Cir. 1999).
[34] Mackey v. NFL, 543, F 2d 606, 619 (8th Cir. 1976).
[35] N. Am. Soccer League v. NFL, 505 F. Supp. 659, 688 (S.D.N.Y. 1980) *aff'd in part, rev'd in part*, 670 F.2d 1249 (2d Cir. 1982).
[36] Bowman v. NFL, 402 F. Supp 754, 756 (D. Minn.1975).
[37] Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976), *aff'd in part, rev'd in part*, 593 F.2d 1173 (D.C. Cir. 1979).
[38] Los Angeles Mem'l Coliseum Comm'n v. NFL, 519 F. Supp. 581, 585 (C.D. Cal. 1981).
[39] Am. Needle Inc, 496 F. Supp. 2d at 943.
[40] Am. Needle v. NFL, 538 F.3d 736, 741 (7th Cir. 2008), *rev'd* 130 S. Ct. 2201 (2010).

intellectual property."[41] According to American Needle the price of NFL licensed hats increased immediately after its signing with Reebok.[42]

The NFL argued that it is a single entity, incapable of conspiring and that its teams cannot produce the product of NFL football games without collaboration.[43] In speaking specifically on the issue of its intellectual property, the NFL maintained the logos and trademarks are necessary for the promotion of NFL football.[44] In its brief to the Supreme Court, the NFL explained, "to protect and deploy its jointly generated value, the League controls the use of intellectual property."[45] The NFL also emphasized the revenue sharing aspect of its licensing agreements and the importance in the structure of the league in its brief presented to the Supreme Court.[46]

Several groups submitted amicus briefs on behalf of either American Needle or the NFL. Among those briefs in support of American Needle were the players associations' of all four major professional sports leagues as well as the NFL Coaches Association. Among the briefs in support of the NFL were the National Basketball Association (NBA), National Hockey League (NHL), Major League Soccer (MLS), and the National Collegiate Athletic Association (NCAA), as well as companies that continuously invest in sports sponsorships: Mastercard, Visa, Reebok, and Electronic Arts. Reebok pointed out that American Needle could have won the bid with the NFL. Reebok also said, "the antitrust laws are designed to protect competition – not individual competitors. Having failed to win its license renewal in the marketplace, American Needle cannot now use the antitrust laws to compel a different result."[47]

B. Findings

In examining the American Needle case, the Supreme Court provided a decision on the narrow issue of whether the NFL is capable of engaging in a "contract, combination . . . or conspiracy"[48] as defined in the Sherman Act. In delivering the opinion of the Court, Justice Stevens explained, "the question is not whether the defendant is legally a single entity or has a singular name; nor is the question whether the parties involved 'seem' like one firm or multiple firms in any metaphysical sense. The key is whether the alleged 'contract, combination… or conspiracy' is concerted action – that is, whether it joins together separate decisionmakers."[49]

One major case used in the Supreme Court's ruling in the *American Needle v. NFL* case was *Copperweld Corp. v. Independence Tube Corp*,[50] a case that examined whether contract language could be construed as a "basic distinction" under the Sherman Act "between concerted and independent action."[51] In applying *Copperweld* in his

[41] Brief of Petitioner, Am. Needle v. NFL, 538 F.3d 736 (7th Cir. 2008).
[42] *Id.*
[43] Brief of Respondent, Am. Needle v. NFL, 538 F.3d 736 (7th Cir. 2008).
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] Brief of Respondent, Reebok Int'l Ltd., Am. Needle v. NFL, 538 F.3d 736 (7th Cir. 2008).
[48] Am. Needle Inc., 130 S. Ct. at 2208.
[49] *Id.* at 2212.
[50] Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984).
[51] *Id. at 767.*

opinion, Justice Stevens said the court found "that although a parent corporation and its wholly owned subsidiary are 'separate'[52] for the purposes of incorporation or formal title, they are controlled by a single center of decision-making, and they control a single aggregation of economic power. Joint conduct by two such entities does not 'depriv[e] the marketplace of independent centers of decision-making.'"[53] The question that emerged then in *American Needle v. NFL* was whether the agreement between the NFL and Reebok joined together independent centers of decision-making: the league and its teams.

On this central question of independent or central decision-making, Stevens wrote "the NFL teams do not possess either the unitary decision-making quality or the single aggregation of economic power characteristic of independent action. Each of the teams is a substantial, independently owned, and independently managed business."[54] He added, "directly relevant to this case, the teams compete in the market for intellectual property. To a firm making hats, the Saints and the Colts are two potentially competing suppliers of valuable trademarks. When each NFL team licenses its intellectual property, it is not pursuing the 'common interests of the whole'[55] league, but is instead pursuing interests of each 'corporation itself,'[56] teams are acting as 'separate economic actors pursuing separate economic interests,' and each team therefore is a potential 'independent cente[r] of decision-making.'[57] Decisions by NFL teams to license their separately owned trademarks collectively to one vendor are decisions that 'depriv[e] the marketplace of independent centers of decision-making,'[58] and therefore of actual or potential competition."[59]

The Supreme Court thus rejected the NFL's argument of it being a collective singular, economic entity. On that point, Stevens wrote, "although NFL teams have common interests such as promoting the NFL brand, they are still separate, profit-maximizing entities, and their interests are not necessarily aligned."[60]

The Court also rejected the NFL's argument of collaboration being necessary to produce the NFL product. Stevens explained, "any joint venture involves multiple sources of economic power cooperating to produce a product. And for many such ventures, the participation of others is necessary. But that does not mean that necessity of cooperation transforms concerted action into independent action."[61]

IV. LOOKING AHEAD: THE IMPLICATIONS

The *American Needle v. NFL* case was decided on the issue of centralized versus independent decision-making, and what was in the best interest of the consumer. This May 2010 decision was limited to the antitrust concern, and the opinion has already been

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[52] *Id. at 769.*
[53] *Id.*; Am. Needle Inc., 130 S. Ct. at 2211.
[54] *Id.* at 2212.
[55] Brief of Respondent, s*upra* note 43.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] Am. Needle Inc., 130 S. Ct. at 2201.
[60] *Id.* at 2213.
[61] *Id.* at 2214.

applied at least once.[62] When the NFL awarded the exclusive contract to Reebok, a centralized decision was made that prohibited individual teams from contracting with their own headwear manufacturers. Yet the NFL permits each team, for example, to have its own individual beer or soft-drink sponsor (with stadium pouring rights). With the *American Needle* decision the Court may be signaling the NFL, and all sports leagues, to be more consistent in the establishment of their sponsorship selling systems. Whether leagues or teams are selling the sponsorships, cost will remain a factor with only wealthier corporations able to afford these exclusive contracts.

What was left out of the *American Needle* opinion was guidance on the question of intellectual property rights in the context of antitrust concerns. Though there are cases in the lower courts concerning this nexus, there has been little help from the Supreme Court in establishing the parameters for copyrights bundled or handled in a centralized consortium of independent holders who normally would compete for the revenue.[63] Until the Court directly addresses this issue, lower courts and the other branches of the government will continue to float ideas, such as that recently offered by the Federal Trade Commission as it sought ways to sustain a faltering newspaper industry.[64] Boundless litigation will likely flow from this confusion.

What is clear in the *American Needle* case is that sponsorship revenue is an essential component of the business model of professional sports leagues and teams. Sports leagues create a system that will generate the most revenue for themselves and their teams. The NFL, as a private company, legally could and did set up a system of selling sponsorship where companies pay for the right to the exclusive partner of the NFL in their respective product categories. It is also clear that exclusivity is a characteristic that sponsors hope to obtain in their agreements with sports properties and are willing to pay for that designation.

It is this revenue provided by sponsors, television networks, and other league-wide rights holders that is shared equally by all teams with the hope that this system of revenue sharing will help achieve an asset balance. The need for competitive balance among all its members remains a pillar of the NFL's argument that as an organization in the industry of professional sports there should be exemptions from antitrust scrutiny. It is this economic model that is the basis for why the NFL views itself as a collective, singular economic entity, incapable of conspiring.

On the other hand, it is undeniable that each team has its own system of profits and losses, and has independent revenue streams that are not shared among all members of the NFL. These independent, team-specific revenue streams contribute to winning and losing as team assets are used to hire and support players, build facilities and contract with support staff. Although the NFL has had a salary cap that limited team payroll, the

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[62] *In re* Welding Fume Prods. Liab. Litig., No. 1:03-CV-17000, 2010 WL 2403355, (N.D. Ohio June 11, 2010).

[63] The Supreme Court has made several decisions recently about the handling of patents within the context of antitrust. *See*, for example, Lab. Corp of Am. Holding v. Metabolite Labs., Inc., 548 U.S. 124 (2006), Fla. Prepaid Postsecondary Educ. Expense Bd. V. College Sav. Bank, 527 U.S. 627 (1999), Bonito Boats v. Thunder Craft Boats, 489 U.S. 141 (1989), Nat'l Gerimedical Hosp. & Gerontology Ctr. v. Blue Cross, 452 U.S. 378 (1981), Aronson v. Quick Point Pencil Co., 440 U.S. 257 (1979).

[64] Jeremy W. Peters, *Government Takes On Journalism's Next Chapter*, N.Y. TIMES, June 13, 2010; FED. TRADE COMM'N, FTC SEEKS PUBLIC COMMENTS ON THE FUTURE OF THE NEWS MEDIA IN THE INTERNET AGE (2009), *available at* http://www.ftc.gov/opa/2009/09/media.shtm.

profits for any particular team can affect its ability to sign players. Large signing bonuses, the only guaranteed part of an NFL players' contract, often are a major factor in the ability to sign players.[65]

Perhaps the NFL and all sports leagues need to be more consistent in the establishment of their sponsorship selling systems. Perhaps the courts can prod sports leagues into creating a unified system of selling sponsorships when American Needle is re-examined in the lower court. Or, perhaps in antitrust cases that concern sports leagues the courts will begin to recognize a distinction based on the product category. A beer sponsorship with a team is limited by geography, for example, while a sponsorship with a clothing manufacturer has fewer limitation of that sort any more. For clothing, technology has eliminated the concept of geographical markets with consumers easily able to purchase apparel of any team through numerous websites, including nfl.com. What is clear is that the decisions of the courts will continue to impact the professional sports industry and the practices of sponsorship.

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[65] *See* David J. Sipusic, *Instant Replay: Upon Further Review, the National Football League's Misguided Approach to the Signing Bonus Should Be Overturned*, 8 SPORTS LAW. J. 207, 212 (2001) (stating the NFL signing bonus are "an extremely powerful tool" to lure players away from other teams); *see also* Marc D. Oram, *The Stadium Financing and Franchise Relocation Act of 1999*, 2 VA. J. SPORTS & L. 184 (2000) (arguing teams with lower revenues are less successful because they cannot offer competitive signing bonuses).