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BLOGS
Antitrust

Supreme Court Ruling Against NFL Raises Question of Applicability to Non-Sports Franchisors

Late last month, the United States Supreme Court issued its decision in *American Needle, Inc. v. National Football League, et al.*, 2010 LEXIS 4166 (U.S. May 24, 2010), which was previewed in Issue 127 of *The GPMemorandum*. In a unanimous opinion authored by the retiring Justice Stevens, the court rejected the argument of the National Football League and its 32 teams that they are categorically immune from Sherman Act Section 1 liability because they operate as a single economic unit. The Supreme Court held that the teams function separately, with "independent centers of decision-making," and thus are theoretically capable of reaching illegal agreements in restraint of trade in violation of Section 1. The court reiterated that joint venturers are not *per se* immune from Section 1 liability and that such arrangements must be scrutinized under the rule of reason.

In light of this decision, the question now is whether business format franchisors and their franchisees could also be subject to Section 1 liability and, if so, as to what types of agreements. We will be analyzing this issue and writing more on it when time permits. The Supreme Court's decision is noteworthy in several additional respects. First and foremost, it is the first time in many years an antitrust plaintiff has prevailed at the high court. The unanimity of the decision is also notable. Further, the logic and reasoning of the decision could have profound effects. While franchisors and others ultimately may still defeat challenges to their joint activities, plaintiffs will be more encouraged to attack collaborative efforts, and courts will be more reluctant to dismiss such cases.