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BLOGS
Antitrust

U.S. Supreme Court Weighs NFL's Antitrust Status

On January 13, 2010, the U.S. Supreme Court heard oral argument in a case testing the antitrust status of the National Football League, the result of which could affect not only sports franchises but franchising in general. The issue before the Court in *American Needle v. National Football League* (08-661) is whether the NFL and its member teams function as a "single entity" and therefore cannot possibly violate Section 1 of the Sherman Act, which requires proof of collective action involving separate entities. The case involves a challenge by an excluded hat maker to the joint effort of the NFL and its teams to sell, through only one company (Reebok), all hats, jerseys, and other fan gear displaying the teams' trademarked logos.

The Seventh Circuit and the district court had found that the NFL and the teams were operating as a single entity and were shielded from antitrust scrutiny, but the questions and comments made during the Supreme Court argument last week suggested that there may not be a majority of justices who would uphold broad immunity for pro sports leagues' joint commercial enterprises. Depending upon how broadly the Supreme Court decides to speak on the issue, it could ultimately limit its decision in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 753 (1984), in which the Court ruled that a company and its wholly owned subsidiary were not capable of conspiring with one another in violation of Section 1 of the Sherman Act. *Copperweld* has at times been cited by business format franchise systems to avoid antitrust liability.

Perhaps illustrating the challenges the current case presents, the United States participated as *amicus curiae* supporting neither party. When a decision is reached by the Supreme Court in this case, *The GPMemorandum* will provide an analysis of any impact it could have on franchising in general.