

FOUL?

High Court Sacks NFL

A recent Supreme Court decision, *American Needle, Inc. v National Football League*, received plenty of press due to its sports hook. But the case's broader impact on joint ventures between competitors received scant attention.

Too bad. Because the decision is a good reminder that joint ventures and other cooperative conduct between competitors should be carefully reviewed by antitrust counsel.

In *American Needle*, the Court reinstated a lawsuit that challenged the NFL's right to license all 32 of its team logos to a single apparel vendor, Reebok International. The NFL is an unincorporated association of its teams. But the teams had organized their own company, National Football League Properties (NFLP), which had long licensed team logos to a variety of clothing vendors—among them, American Needle.

Then, in December 2000, NFLP granted Reebok an exclusive 10-year license for all 32 teams. That's when American Needle sued under Section 1 of the Sherman Act, which prohibits conspiracies that restrain trade.

Both the district court and Court of Appeals threw out the lawsuit, ruling that the NFL should be viewed as a single entity. Traditionally, the law has held that officers, employees, and wholly-owned subsidiaries of a single entity aren't capable of conspiring.

Wrong, ruled the Supreme Court. The mere fact that the teams cooperate to produce NFL football doesn't mean they're immune from the antitrust laws. After all, the teams compete with one another for fans, on the playing field, for gate receipts, and in matters related to managerial contracts. Team interests in licensing their trademarks are not necessarily aligned and they could have made their decisions separately. Therefore, said the Court, NFLP's licensing decisions were "concerted action" subject to scrutiny under the Sherman Act.

In essence, the Supreme Court looked upon the NFL as a joint venture between its member teams. Now, it's up to the lower courts to decide whether antitrust laws were

broken, applying the antitrust "Rule of Reason," which takes into account a variety of factors to decide whether conduct unreasonably restrains competition in the market.

The lesson learned? Partners in a legitimate joint venture can violate antitrust laws if they cooperate on matters that are too far from their venture's core purpose. When a joint venture is necessary to create a product, the joint venture itself is usually lawful. But conduct that pushes the boundaries of a joint venture, such as the NFLP's licensing decisions, deserves a closer look.



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CLOCK CONTINUES TO TICK ON FEDERAL ESTATE TAX STATUS

As we flip the calendar to this year's final quarter, Congress still hasn't taken action to reinstate the Federal Estate Tax for deaths occurring in 2010 or to change the exemption amount or rate for persons dying in 2011. Effective January 1, 2010, the tax was repealed for individuals dying during the year. Under current law, the estate tax is scheduled to return in 2011, reverting to a \$1 million exemption and a maximum estate and gift tax rate of 55%.

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