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NFL: NATIONAL FOOTBALL LEAGUE OR NO FREE LOGOS?

by KATHRYN KOKOCZKA

“Most things in this world come with a price.” This old adage certainly rings true in the world of intellectual property. However, judging from a recent case, *Bouchat v. Baltimore Ravens Limited Partnership*, it is possible that the NFL thinks otherwise.¹ Surely, football fans identify their favorite NFL teams by creative logos. For example, Miami Dolphins players sport an image of a dolphin on their helmets, the Detroit Lions utilize the image of a lion, and the Indianapolis Colts display a horseshoe on team-related sports paraphernalia.

In 1995, a new NFL expansion team, the Baltimore Ravens, searched for a similar type of identifying team logo. But what ensued eventually landed the Ravens and the NFL in hot water after they lost a lawsuit brought against

them when a strikingly similar logo to Frederick Bouchat's logo submission appeared centerfield at the Ravens' stadium and on Ravens' team jerseys and helmets.²

Frederick Bouchat, a Maryland security guard and amateur graphic artist, learned that creative works by amateur artists can possess both monetary and sentimental value and can potentially lead to litigation.³ In 1995, Bouchat entered a contest and submitted a proposed logo for the NFL expansion team eventually named the "Ravens."⁴ The Baltimore Ravens, a member team of the NFL, rejected Bouchat's logo submission, but the official logo that the Ravens ultimately adopted "bore a striking resemblance" to Bouchat's copyrighted submission.⁵

Fast forward to September 2, 2010 when the Fourth Circuit Court of Appeals rejected fair use arguments and held that the NFL and the Baltimore Ravens committed copyright infringement against Bouchat's logo by using the image in game and highlight films without compensating Bouchat.⁶

Surprisingly, it is rather common for amateur artists like Bouchat to experience infringement or misappropriation of their creative works during their career. Matthew Sag, Professor of Intellectual Property Law at Loyola University Chicago, estimates "one hundred percent" of creative artists experience infringement or misappropriation during their careers.⁷ However, Professor Sag also noted, "If the question was how many are harmed by infringement, my answer would surely be much lower."⁸

Amateur artist Bouchat fits into the latter category. The Ravens used a logo on players' helmets and on the home field substantially similar to Bouchat's "flying B," which consisted of a "shield with the letter 'B' in the middle, flanked by wings," for the 1996, 1997, and 1998 seasons.⁹ What is problematic about this situation is that the NFL failed to pay Bouchat royalties, give him recognition for the logo, or seek permission to use the image.

Scenarios like this beg the question, in a world where people constantly strive to get ahead, where would the arts community be without intellectual property protection? However, it is important to note that misappropriation and infringement have contributed to the progression of the arts community.

Benjamin Goldenberg, a French attorney and former Law Fellow at California Lawyers for the Arts, believes that “art is actually based on appropriation and the use of pervious works.”¹⁰ Subsequently, he stated, “Infringement or misappropriation can be beneficial when the new piece of art brings something new to the table like sampling.”¹¹ According to Goldenberg, “There is a large amount [of] evidence that artists and creators of all kinds have in fact benefited from piracy.”¹²

“Even if a pirated CD equates to a lost sale (which is not always the case), it might lead to a purchased CD, or it might create a fan who then buys a concert ticket or a tee-shirt,” he said.¹³ Goldenberg believes that the key is preventing this practice when it causes *harm* to the artist.¹⁴

Undoubtedly, wrongdoers engage in infringement and misappropriation of creative works because it benefits them. For instance, infringers avoid paying licensing or attorney’s fees.¹⁵ Cynthia Ho, Professor of Intellectual Property Law at Loyola, pointed out several additional reasons as to why infringement occurs, including limited knowledge of copyrights law, lack of interest in paying for rights, or belief that using the logo would not constitute copyright infringement because the image lacked minimum creativity required for protection.¹⁶

As in Bouchat’s case, infringement or misappropriation creates a financial burden on the artist when, as Goldenberg states, “the other party takes advantage of the artist’s creativity to make money without having to take a creative step.”¹⁷ Goldenberg asserts another negative consequence of this practice “is diminishing the artist’s will to continue to create other pieces of art, [for fear] of being misappropriated again.”¹⁸

There are, however, various steps that can be taken to educate artists on how to protect their artwork. Numerous nonprofit or public interest organizations across the United States seek to help novice or amateur artists with various intellectual property issues. One such organization is California Lawyers for the Arts (CLA). As Goldenberg states, CLA “direct[s] clients to the proper resources or attorneys and suggest[s] that clients . . . attend copyright workshops.”¹⁹ Moreover, most of these organizations are easily located with a simple Internet search.

Infringement and misappropriation undoubtedly happen to creative artists; however, the outcome is not always negative. In fact, it can actually bolster the efficacy of the creative work itself. The trick is for artists to become aware of what to do when they are harmed and to learn how to take preventative measures before such problems arise. Many organizations like CLA are devoted to protecting the integrity of the arts community by ensuring fair outcomes for all parties involved.

NOTES

- 1 *Bouchat v. Balt. Ravens Ltd. P'ship*, No. 08-2381, 2010 WL 3440867 (4th Cir. 2010).
- 2 Larry O'Dell, *Court Rules Against Ravens in Logo Dispute*, ASSOCIATED PRESS, Sept. 2, 2010, available at <http://sports.yahoo.com/nfl/news?slug=ap-ravenslogosuit>.
- 3 *Quoth the Ravens: "Sucker!"*, ETHICS SCOREBOARD (FEB. 16, 2004), available at <http://www.ethicsscoreboard.com/list/ravens.html>.
- 4 *Id.*
- 5 *Id.*
- 6 O'Dell, *supra* note 2.
- 7 Interview with Matthew Sag, Assoc. Professor, DePaul Univ. Coll. of Law and Visiting Assoc. Professor, Loyola Univ. Chi. Sch. of Law, in Chi., Ill. (Oct. 6, 2010).
- 8 *Id.*
- 9 O'Dell, *supra* note 2.
- 10 Interview with Benjamin Goldenberg, French Intellectual Prop. Att'y and former Manager of Legal Servs., Cal. Lawyers for the Arts, in S.F., Cal. (Oct. 3, 2010).
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 Goldenberg, *supra* note 10.
- 16 Interview with Cynthia Ho, Professor, Loyola Univ. Chi. Sch. of Law, in Chi., Ill. (Oct. 4, 2010).
- 17 Goldenberg, *supra* note 10.
- 18 *Id.*
- 19 *Id.*