

# Fantasy Meets a Harsh Reality

By Reg P. Wydeven  
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Last week I wrote about my friends, Tree and Ducker, who are heavily into NASCAR. A few years ago they recruited me into their NASCAR fantasy league, where you pick drivers you think will win each race. I picked Bill Elliot because his sponsor was McDonalds, my favorite restaurant. Needless to say, I didn't fare well.

I do fare much better in our fantasy football league, where my San Jose Yaks are a perennial contender (or pretender, as Tree and Ducker would claim). A web site keeps track of all of our players stats and our standings. These web sites are a big business - according to the Fantasy Sports Trade Association, more than 15 million people spend about \$1.5 billion annually to play fantasy sports, most of which, like us, use a web site to keep track of rosters, players' statistics, trades and more.

Because of the big dollars at stake, the use of players' statistics in fantasy leagues is the focus of a recent lawsuit filed by CBC Distribution and Marketing, Inc. against Major League Baseball Advanced Media, a subsidiary of MLB that purchased the players' Internet and wireless rights from the players union in January 2005 for \$50 million over five years.

CBC is suing MLBAM for requiring anyone using players' names and statistics to operate a fantasy league commercially to purchase a license. Several big sites, such as CBS Sportsline, Yahoo and ESPN, have paid the \$2 million license fee to use players' names and photographs, team logos and even video highlight clips. CBC refused to buy a license because it only posts players' names and statistics, not photographs or team logos.

CBC claims player names and stats are in the public domain and are protected by the freedom of press under the First Amendment, as anyone can pick up the sports section of the USA Today and find player names and stats. MLB claims that CBC's use of player names and stats goes beyond conventional journalism and constitutes commercial use.

The case revolves around the concept of the "right of publicity," or the players' ability to control the use of their names in commercial ventures. This term was coined in a 1953 case involving baseball, where a court ruled that Topps Chewing Gum company could not print trading cards that featured baseball players' names and likenesses without their permission.

To bolster its case, however, CBC will be citing yet another baseball lawsuit, this one involving a 1996 California Court of Appeals decision in favor of MLB. In that case, several players from the 1940's and 50's sued the league over its use of their names and statistics in promotional materials like videos and game programs. MLB argued that its use was protected by the First Amendment, and the court agreed, stating that such use did not imply a commercial product endorsement, and therefore did not violate their collective right of publicity.

Fantasy owners aren't the only people following this case. If the court rules in MLB's favor, this right of publicity may prevent the use of a professional athlete's or any celebrity's name in trivia games like 'Trivial Pursuit' or 'Jeopardy'.

Unlicensed web sites, like the one we use, will also be in jeopardy, for if the court requires them to pay a licensing fee, many will go out of business. And that's a harsh reality for fantasy sports.

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