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ARTICLES

Trademark Protection for Color *Per Se* After *Qualitex Co. v. Jacobson Products Co.*: Another Grey Area in the Law

Michael B. Landau 1

Over the years, federal trademark protection has expanded so that today under the Lanham Act, almost anything that is capable of identifying the source of goods and services is entitled to trademark protection. Examples of now protected, but previously unprotected, indicia of origin include shape, sound, and even fragrance. In 1985, in *In re Owens-Corning Fiberglas Corp.*, the Federal Circuit allowed product color—specifically, pink in connection with insulation—to be registered and protected as a trademark. In contrast, in early 1994 the Ninth Circuit adopted an absolute *per se* rule against allowing trademark registration for color in *Qualitex Co. v. Jacobson Products Co.* In addition to creating an inter-circuit split of authority, the decision also creates an easy mechanism for the Ninth Circuit to cancel validly issued registrations for color. Recognizing the importance of the case, the Supreme Court granted certiorari in September 1994 and heard oral arguments in January 1995. This Article analyzes the expansive role of trademarks in recent history, and presents the reasons that the Supreme Court should hold that if color serves to identify the source of goods or services, it should be granted the protection of trademark registration.

The Visual Artist and the Law of Defamation

Robert C. Lind 63

The law of defamation protects individuals' professional and personal reputations. Visual artists may find themselves involved in this area of law either as plaintiffs, suing for damage to their reputation, or as defendants, who are sued for injuring the reputation of another. As plaintiffs, visual artists must understand the difficult matters of proof in bringing successful defamation actions. As possible defendants, visual artists must be aware of the legal protection afforded them. However, the unlikelihood of a successful defamation suit, along with the potentially enormous legal costs, are significant disincentives to bringing such actions.

COMMENTS

The Impact of *Piazza* on the Baseball Antitrust Exemption

Deborah L. Spander 113

Since 1922 baseball has enjoyed an exemption from the federal antitrust laws. However, in 1993 a federal district judge held that the baseball antitrust exemption is limited to the reserve clause, and that the overall business of baseball is, therefore, subject to antitrust scrutiny.

This Comment analyzes the structure of the baseball draft and the minor league system, the holding in *Piazza v. Major League Baseball*, and the application of both the nonstatutory labor exemption and current sports antitrust law to the baseball restraints. This Comment argues that under *Piazza*, both the baseball draft and the minor league system likely violate section 1 of the Sherman Antitrust Act, and sets forth a prescription for less restrictive baseball restraints.

The Right(s) of Publicity in California: Is Three Really Greater Than One?

Stephen M. Lobbin 157

California law currently recognizes three different causes of action for asserting a right of publicity, which protects the commercial values of an individual's personality or "persona." This Comment traces the development of the three right of publicity doctrines and analyzes how the doctrines are different and largely inconsistent. The Comment then draws on the policies and justifications behind the right of publicity to suggest how the doctrines may be reformed and combined into a single right of publicity cause of action. The doctrine that would emerge would better uphold the justifications for the right of publicity and would allow the law to develop in a more consistent fashion.

How to Stop the Fast Break: An Evaluation of the "Three-Peat" Trademark and the FTC's Role in Trademark Law Enforcement

Todd D. Kantorczyk 195

By passing the Trademark Clarification Act of 1984, Congress has determined that the primary significance test shall be the test to determine whether a trademark is generic and thus undeserving of federal protection. However, because in 1980 Congress stripped the FTC of its authority to petition to cancel trademarks on genericness grounds, terms that are generic according to the primary significance test may go unchallenged, generating monopoly profits for the trademark holders. The recent activity surrounding the term "three-peat," which this Comment argues is a generic term, demonstrates how this lack of FTC authority allows this process to continue. The best way to remedy this problem is to reinstate FTC authority to petition to cancel trademarks on genericness grounds.

