

# UCLA ENTERTAINMENT LAW REVIEW

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Volume 14

Issue 2

Summer 2007

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## ARTICLES

### **The Legacy of Lords: The New Federal Crackdown On the Adult Entertainment Industry's Age-Verification and Record-Keeping Requirements**

*Robert D. Richards & Clay Calvert* ..... 155

The FBI in July 2006 began an unprecedented series of inspections on “adult” movie studios in Southern California’s San Fernando Valley. The declared purpose of the inspections was to verify the ages of all performers and off-camera employees and to examine records that the industry is now required to keep under 18 U.S.C. §2257.

So what political or other motivations did the FBI have for suddenly beginning the §2257 compliance inspections in 2006? Have the inspections, in fact, uncovered any problem with underage performers in the adult movie industry? How have the inspections affected the adult movie business in Southern California, and what are the long-term effects likely to be on the industry? Is there selective enforcement by the FBI in terms of which companies are being targeted? What actually transpires when the FBI comes knocking on the doors of an adult movie company, and what takes place once the agents are inside? How much time, effort and money do adult movie companies spend in their efforts to comply with the §2257 rules?

This article addresses these issues, in interview form, from the unique first-person perspectives of more than a half-dozen leading individuals

### **Dangerous Bodies: Freak Shows, Expression, and Exploitation**

*Brigham A. Fordham* ..... 207

The freak shows of the late 1800s and early 1900s, which traveled the nation exhibiting “human oddities” for profit, are regaining popularity as an underground form of entertainment. While some non-legal scholars have investigated the meaning of freak shows in American culture, little attention has been paid to the laws that regulate freak shows or the legal rights of freak show participants.

This article seeks to introduce legal discourse into the discussion of freak shows and, in the process, to comment on legal approaches to preventing discrimination against persons who are physically different. Drawing upon the theories and analysis of non-legal scholars and laws concerning employment of persons with disabilities, this article examines statutes, ordinances, and case law that address freak shows.

This article argues that current laws and cases that address regulation and prohibition of freak shows are rendered ineffective because they fail to see beyond the fiction and drama of the freak show and instead adopt stigmatizing assumptions about persons with unusual bodies. The Article concludes that a better approach is to recognize that freak shows are a kind of theater subject to First Amendment protection. Courts should enforce anti-discrimination laws with the understanding that social assumptions, not physical conditions, are the root of discrimination against persons with unusual bodies.

### **The Press as an Interest Group: Mainstream Media in the United States Supreme Court**

*Eric B. Easton* ..... 247

This article explores the manner in which the institutional press uses the litigation process strategically, in much the same way that another interest group might lobby the legislative branch to shape its own regulatory environment, particularly the First Amendment doctrine within which news workers must operate. The purpose of this preliminary work is to examine, quantitatively, the degree of participation and success by the mainstream media in U.S. Supreme Court litigation as parties and amici curiae.

There can be little doubt that the institutional press is an interest group to be reckoned with in the Supreme Court. Over the past century, and especially since 1964, the press has secured for itself the greatest legal protection available anywhere in the world. While some of that protection has come from Congress, by far the greatest share has come from the Supreme Court's expansive interpretation of the First Amendment's Press Clause.

### **COMMENTS**

#### **Can Google be Liable for Trademark Infringement? A Look at the "Trademark Use" Requirement as Applied to Google AdWords**

*Stephanie Yu Lim*..... 265

Google has been no stranger to legal controversy in recent years. One of the hotly contested issues which courts are currently sorting through involves the legality of Google AdWords, Google's lucrative advertising program which is

the source of nearly half of its revenue. The AdWords program allows advertisers to purchase words or phrases related to their businesses that will bring up their websites under “sponsored links” when those keywords are typed into Google’s search engine. The controversy centers around the fact that sometimes the words which Google sells and advertisers purchase are trademarked terms. This has caused some concern for businesses looking to protect their trademarked interests and has also raised questions as to Google’s liability for trademark infringement.

This comment will examine direct trademark infringement claims against Google. Specifically, this comment will focus on the “trademark use” element in these claims and will analyze the various court decisions to delineate the basic arguments for and against finding “trademark use” in contextual advertising cases. An examination of the competing policies behind the various interpretations of “trademark use” will be presented, arguing that “trademark use” should be interpreted strictly. Applying this interpretation, it will be argued that Google AdWords’ practice of “keying” does not amount to “trademark use” and that, as such, Google AdWords will not be liable for direct trademark infringement.

### **Switch Hitting: How *C.B.C. v. MLB Advanced Media* Redefined the Right of Publicity**

*Gabriel Grossman* ..... 285

In August, 2006 a Missouri court held that the use of Major League Baseball players’ names and statistics by fantasy baseball leagues did not violate the players’ rights of publicity. The case, *C.B.C. Distribution and Marketing v. MLB Advanced Media*, presented a unique issue due to the completely virtual existence of the leagues that C.B.C. operates, appearing to merely publish informational speech about the players’ on-field achievements. Speech that is intended to be informative is typically granted greater lee-way, and less protection is afforded those making a claim of infringement of their right of publicity, due to questions about interfering with free speech. In its decision, the court provided great deference to these concerns and in doing so clearly departed from the existing precedent covering the still-developing common-law right. The court presented a new definition for when an individual’s identity is used and when such use is for a commercial advantage.

This comment begins by providing background information about fantasy baseball and establishing the foundations of protection under the right of publicity. The comment then examines the court’s reasoning and identifies where it departed from previous understandings of the right of publicity. Finally it presents potential explanations for the court’s conclusion and possible affects of the decision.

