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## American Needle, Inc. v. National Football League - 130 S. Ct. 2201 (2010)

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## OTHER DEVELOPMENTS IN INTELLECTUAL PROPERTY

### ANTITRUST LAW

#### *AMERICAN NEEDLE, INC. V. NATIONAL FOOTBALL LEAGUE*

*130 S. Ct. 2201 (2010)*

The Supreme Court's decision in *American Needle* is one of the most important antitrust cases of the year. This new precedent on the applicability of § 1 of the Sherman Act to joint ventures, intellectual property pooling, and other integrative activities between competitors is likely the end of a turbulent feud dominating American sports law for the last ten years. The question at issue was whether the National Football League (NFL) may act as a single entity or if licensing activities for individual teams' intellectual property, conducted through a corporation separate from the teams and within its own management, constituted concerted action violating § 1 of the Sherman Act. The Court held the latter, marking the first Supreme Court decision for antitrust plaintiffs in eighteen years.

The NFL is an unincorporated association that now includes thirty-two separately owned professional football teams. Each team has its own name, colors, and logo, and owns related intellectual property. In December 2000, NFL member teams ("Members") authorized the NFL Properties, Inc. (NFLP) to enter into a ten-year exclusive license agreement with Reebok International, Ltd. According to the agreement, Members were bound not to compete with each other in the licensing and sale of consumer team headwear and clothing, and not to permit any licenses to be granted to Reebok's competitors.

American Needle, Inc., which held a nonexclusive license with the NFL since the 1960s, alleged that the NFLP agreement violated §§ 1 and 2 of the Sherman Act. Defendants argued that the NFL, NFLP, and associated Members were incapable of conspiring because they are a single economic enterprise, competing with other entertainment providers rather than with each other. The U.S. District Court for the Northern District of Illinois held that the NFL, NFLP, and associated Members' operations are integrated such that they should be deemed a single entity rather than joint ventures cooperating for a common purpose. The Seventh Circuit affirmed, noting that football itself can only be carried out jointly and that finding that the

NFL and its Members constituted a single source of economic power when promoting NFL football through licensing the teams' intellectual property. *American Needle Inc. v. National Football League*, 538 F.3d 736 (7th Cir. 2008). This result caused concern in the sports community, as sports leagues could potentially exercise unprecedented power over their players, coaches, and staff, as well as suppliers and related markets.

The Supreme Court granted certiorari. The issue was whether the Members are capable of engaging in a "contract, combination, or conspiracy" as defined by § 1 of the Sherman Act. The Court analyzed the difference between the scope of cooperation covered in § 1, applied only to concerted action that restrains trade, and the scope of § 2, covering both concerted and independent monopolizing action or actions threatening actual monopolization. The Court noted that monopoly power may be equally harmful whether it is the product of joint action or individual action.

The Court, somewhat contrary to its previous opinions, chose a more functional approach to the issue, rather than focusing on formalistic distinctions. Traditionally, coordinated activity of a parent and its wholly owned subsidiary does not fall within § 1 nor § 2 of the Sherman Act. Nevertheless, the Court believed that substance, not form, should determine whether the entity is capable of conspiring. If a parent and subsidiary constitute two independent decision-making centers, it is inconsequential that they are covered by one official entity. The Court could not decide the case on the basis of a *per se* rule, instead engaging in a more flexible analysis. While the Court noted that a certain degree of cooperation is necessary if the type of competition that the petitioner and its member institutions seek to market is to be preserved, it held that NFL teams are separate economic actors pursuing separate economic interests. The mere existence of the NFLP does not justify their actions: "joint ventures have no immunity from antitrust laws." The Court found that "any joint venture involves multiple sources of economic power cooperating to produce a product. And for many such ventures, the participation of others is necessary. But that does not mean that necessity of cooperation transforms concerted action into independent action . . ." The Court concluded that the Members' interest in cooperation does not "does not justify treating them as a single entity for § 1 purposes when it comes to the marketing of the teams' individually owned intellectual property."