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# Codifying a 'No Advertising on the Field of Play' Rule is in the Best Interests of Major League Baseball

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# **TITLE: Codifying a ‘No Advertising on the Field of Play’ Rule is in the Best Interests of Major League Baseball**

By: Renee Levine, Juris Doctorate Candidate, Seton Hall University School of Law 2012

## **INTRODUCTION**

Advertising at sporting events is a common strategy to deliver messages to a large number of people, and is known in the marketing literature as “place-based media.”<sup>1</sup> In place-based media, the advertisers try to exploit the consumer’s common bond with the associated place, and go beyond that site itself to the actual point of sale.<sup>2</sup> The traditional means for determining whether a market strategy is effective beyond studies of the actual sales focuses on “advertising exposure, consumer attitudes, brand recall, and purchase intentions.”<sup>3</sup>

With the prevailing interests of commercial entities taking advantage of sporting events, there should be balance or bright line rule for advertising in professional baseball. United States Soccer, for example, has promulgated a specific rule against field of play advertising.<sup>4</sup>

Part I will discuss advertisements at live sporting events, including physical and virtual advertising. Part II will discuss the increase of new professional sports stadiums and the issues raised by granting the stadium naming rights to corporate entities. It will also consider the innovative sponsorship agreements for the newly constructed Yankee Stadium, which may ultimately have a detrimental effect on the best interests of baseball. Part III will discuss the Major League Baseball Constitution, other relevant rules for the baseball clubs regarding commercialization on the field, and Bud Selig’s power as Commissioner to regulate commercial activities. Part IV will analyze the advertising restrictions placed by United States Soccer and Fédération Internationale de Football Association (FIFA)<sup>5</sup>, and the potential application of a similar provision in baseball. It will also discuss a possible antitrust challenge to this rule. Part V

concludes that a ‘no advertising on the field of play’ rule should be created because it is in the best interest of Major League Baseball.

## **PART I: BACKGROUND**

### *A. General Overview*

Baseball is America’s pastime and a largely watched spectator sport. Promoting a commercial brand within a baseball stadium can be very effective because of the audience’s size. Traditional billboards are always a viable option at live sporting events, but advertisers and baseball clubs have been looking at new and innovative means of conveying a sponsor’s message. Commercialism has firm roots in baseball history. By 1972, advertisers were buying spaces on the stadium walls, for not only the live audience to see, but also those at home watching on television.<sup>6</sup>

The current Major League Baseball Commissioner, Allen “Bud” Selig, understands the delicate balance between advertising and the integrity of the game. He stated that “[t]he problem in sports marketing, particularly in baseball, is you’re always walking a very sensitive line. Nobody loves tradition and history as much as I do.”<sup>7</sup> Athletes in other sports such as NASCAR, golf, and tennis commonly wear logos during activities; however, this does not comport with the tradition and history of baseball.<sup>8</sup>

Commercial entities have a strong interest in merging the impression of a brand with a well-attended live event. Through sponsorship, the impressions of the advertising will create an overarching effect in the mind of the consumer.<sup>9</sup> The sponsor’s brand merges with the event, creating an association between the team and the product.<sup>10</sup> A fan of a particular team will have positive exposure to an unrelated brand.<sup>11</sup> One may think that if a team is performing poorly that the association will be negative. However, even if the team is not performing to the best of its ability, many sports fans have loyalty to a particular organization.<sup>12</sup>

A bright line rule should be implemented stating that advertising should not interfere with the game of baseball. This rule would boost public opinion of the sport and preserve the integrity of the game. Advertising is a necessary evil of the sport. "It is obvious that the commercial success of live television sports and entertainment depends substantially on advertising."<sup>13</sup>

However, advertisers should take heed to this infamous Don Draper quote:

Advertising is based on one thing: happiness. And do you know what happiness is? Happiness is the smell of a new car. It's freedom from fear. It's a billboard on the side of a road that screams with reassurance that whatever you're doing is OK. You are OK.<sup>14</sup>

Thus, an advertisement that frustrates MLB fans is contrary to one of the central purposes of promoting the brand.

#### *B. Advertising on the Field*

"Baseball has been the national pastime for over one hundred years and enjoys a unique place in our American heritage."<sup>15</sup> Baseball has a long history and tradition; therefore fans may be concerned about the overwhelming continuously growing amount of advertising.<sup>16</sup> Corporate sponsorships in sporting events are one of the most rapidly growing areas of marketing.<sup>17</sup>

The baseball industry does not necessary listen with deaf ears. An example of marketing that had gone too far occurred in 2004 when a promotion for the movie Spider-Man 2 was scaled back due to public outcry.<sup>18</sup> Part of the sponsorship plan was to cover the infield bases with logos for the movie during the interleague play weekend of June 11th through June 13th.<sup>19</sup> Columbia Pictures, which was in charge of promoting the picture, only considered the logos on the bases to be a minor contribution to the deal, which also comprised logos on the on-deck circles and featured movie trailers on each stadium's scoreboard.<sup>20</sup>

In this scenario the plug was pulled on the Spider-Man 2 logos before the weekend, because frankly, “bases aren’t billboards.”<sup>21</sup> There was strong fan opposition, including a petition to have the logos removed.<sup>22</sup> United States House Representative, George Nethercutt, also got involved when he wrote a complaint letter to Selig.<sup>23</sup> Nethercutt stated that, “[l]ittle leaguers deserve to see their heroes slide into bases, not ads....”<sup>24</sup>

As a former minor-league baseball team owner myself, I believe such aggressive advertising undermines the character of America's pastime at every level. Major League Baseball has a duty to keep baseball pure for future generations of Americans.<sup>25</sup>

Nethercutt strongly believed that MLB has a duty to honor history and tradition, which may mean restricting opportunities for economic gain. Outside commercial advertising is lucrative for teams and the alternative mediums for promotion are growing to be more innovative in delivering messages to the attendees in the stadiums, as well as to those watching the game via broadcast. Nethercutt made a request for Selig to listen to the fans and protect the values and traditions inherent in the national pastime.<sup>26</sup>

Bud Selig decided not to allow the Spider-Man 2 ads based on public outcry and his own judgment. It would be more appropriate that a rule, or at least some procedure, is put into place evaluating advertisements. The Commissioner and the member teams should be given guidelines regarding advertising within the sport. It is not feasible for the Commissioner to scrutinize individual ads to determine whether it will offend public opinion.

### *C. Virtual Advertising*

An interesting means for keeping sponsorships out of the physical stadium is virtual advertising for sporting events. In this scenario, advertising is not physically present in the stadium, but inserted into the walls of the stadium as though it is there.<sup>27</sup> The attendees at a

stadium have no way to avoid the growingly pervasive commercialism, but the people watching at home can change the channels during commercials or walk away.<sup>28</sup> However, changing the channels does not save the at home viewers from exposure. Beyond the commercial billboards physically behind home plate, it is common for the scoreboards and updates to be sponsored by corporations.

Virtual advertisements can give spectators at home the impression that the ads are on the field, even if they are physically absent. For all intents and purposes, any rules that would prohibit physical advertisements on the field should also prohibit subsequently added advertisements. U.S. Soccer has taken this approach to virtual advertising.<sup>29</sup>

Increasing virtual advertising, however, may be an option for preserving the sanctity of the live game while still giving advertisers what they want. This would shield ticket holders from overly excessive advertisements and expose more commercial elements to viewers at home. This method would be effective for advertisers because the home audience that watches via broadcast is larger than the amount of people who are physically in the stadium. It would also create a small incentive for fans to attend games because advertising would not be as pervasive.

## **PART II: CONSTRUCTION OF NEW PROFESSIONAL SPORTS STADIUMS AND SPONSERSHIPS**

All professional sports teams need a venue to host events. Building a stadium is cost intensive process, which is riddled with controversies. Typically a local community pays for stadiums in order to have the exclusive benefit of having a hometown professional team.<sup>30</sup> If the public does not provide a subsidy for building the new stadium, the team may decide to relocate.

Recently, a taxpayer subsidy was denied for a new Minnesota Vikings stadium, which may prompt the team to move.<sup>31</sup> The team believes that the Metrodome cannot be renovated to unlock the high-end revenue streams needed to stay competitive with other teams in the league.<sup>32</sup>

Professional teams argue that these stadiums are necessary to keep the team competitive both on and off the field.<sup>33</sup> When a new stadium is built a team has an opportunity to obtain favorable leases, increase luxury and premium seating, secure corporate naming rights and increase general event ticket revenue.<sup>34</sup>

Naming a stadium after a corporate entity is practice that became popular in the late 1980's and early 1990's.<sup>35</sup> Naming rights is defined as a "transaction in which money of consideration change[s] hands in order to secure the right to name a sports facility."<sup>36</sup> There are certain risks associated with having a stadium named after a corporation. Those risks extend to the proprietary rights inherent with the naming party, and great efforts should be made to protect the reputation of the team.<sup>37</sup>

The National Football League's Miami Dolphins' facility was renamed to Pro Player Park after the sports apparel company Pro Player.<sup>38</sup> In 1999, Pro Player filed for bankruptcy, leaving the Dolphins with a lame duck stadium name until 2005.<sup>39</sup> At times a team may no longer want to be associated with a corporate name, such as the former association between the MLB's Houston Astros and Enron.<sup>40</sup> The Astros did not officially sell their naming rights to the new stadium, but it was presumed after Enron aided in funding the construction.<sup>41</sup> Eventually the Astros paid \$2.1 million to Enron for a buyback of the stadium naming rights.<sup>42</sup> Ultimately, the Astros did not name the stadium after the home team. The Astros briefly hosted games at Astros Field, but ultimately sold the naming rights to Minute Maid Company.<sup>43</sup> The management was more concerned about having a positive brand image associated with the team, and not necessarily maintaining the venue name.

The New York Yankees are one of the most profitable and well recognizable professional sporting teams in the nation and globally.<sup>44</sup> The team is located in a large marketplace and has

strong stadium attendance. In 2011, the total attendance for the season was 3,653,680, second only to the Philadelphia Phillies.<sup>45</sup>

The old Yankee Stadium was firmly rooted with a rich history and is affectionately known as the House That Ruth Built.<sup>46</sup> The building housed some of baseball's greatest legends and stars.<sup>47</sup>

The Yankee pinstripes belong to New York like Central Park, like the Statue of Liberty, like the Metropolitan Museum of Art, like the Metropolitan Opera, like the Stock Exchange, like the lights of Broadway, etc. Collectively then are 'The Big Apple'. Any loss represents a diminution of the quality of life here, a blow to the city's standing at the top, however narcissistic that perception may be.<sup>48</sup>

Yankee Stadium is truly intertwined with New York culture and history. The Yankees constructed a new stadium in 2006 to keep up with the trend of new stadiums.<sup>49</sup> The total tab for the taxpayers on the construction has totaled about four billion dollars.<sup>50</sup> It is a frustrating prospect to have "a stadium paid for by taxpayers that taxpayers can't afford to attend."<sup>51</sup> However, the Yankees protected the history of the club, MLB, and the City of New York by retaining the naming rights to the stadium.

Although keeping the naming rights to Yankee Stadium was a great step in honoring baseball's traditions and purity, some of the practices within the stadium may run afoul of the best interests of baseball. Management created some inventive ways to increase corporate sponsorships to supplement the lost income from retaining the naming rights.

The Yankee management decided to put everything up for sale with the exception of the stadium name.<sup>52</sup> Beginning with the 2009 season, the new Yankee Stadium plays the P.C. Richard trademarked whistle jingle after a Yankees' pitcher makes a strikeout.<sup>53</sup> Also the Modell's jingle plays after a Yankee steals a base.<sup>54</sup> This can be considered supplemental

advertising.<sup>55</sup> The media has proclaimed that this type of sponsorship lessens the integrity of the game.<sup>56</sup> By retaining the name to the stadium, it may sacrifice the profits obtained by selling the naming rights.<sup>57</sup> However, by holding the namesake, the Yankee organization retains trademark rights by using the Yankee Stadium name.<sup>58</sup>

Fans are unhappy with the supplemental advertising practices at Yankee Stadium.<sup>59</sup> This is similar to the public outcry received for the Spider-Man 2 promotion.<sup>60</sup> Only in this case, Selig has not taken action. Perhaps it will be necessary for people like former House of Representative member George Nethercutt to make a statement before Selig evaluates this issue.<sup>61</sup> Then there is an open question as to if Selig will ever consider banning the on-going advertising practices at Yankee Stadium. The longer that this practice continues, the more difficult it will be to make a challenge due to acquiescence. The Commissioner may on his own initiative remedy practices that are “detrimental to the best interest of baseball,”<sup>62</sup> but guidelines should be put in place for all MLB teams.<sup>63</sup> Adherence to formulated guidelines would aid in compliance and alleviate the need for the Commissioner to investigate all advertising practices individually.

### **PART III: THE MAJOR LEAGUE BASEBALL CONSTITUTION, POWER OF THE COMMISSIONER, AND THE CURRENT RULES LIMITING COMMERCIALIZATION ON THE FIELD**

#### *A. Role of the Commissioner and Relevant Provisions of the MLB Constitution*

The first Commissioner of MLB was former federal Judge Kenesaw Mountain Landis, who was appointed in 1920.<sup>64</sup> This unique role was created in order for an authoritative single source to manage the integrity of baseball.<sup>65</sup> After the Black Sox World Series scandal of 1919, when Landis became Commissioner, he demanded and was granted absolute power.<sup>66</sup>

Bud Selig became the Commissioner of Major League Baseball in 1992.<sup>67</sup> The Commissioner’s authority is based on textual clauses in the MLB Constitution. However,

external factors play a role in his decisions, including public opinion about the sport.<sup>68</sup> The MLB Constitution provides the Commissioner with the power:

(b) To investigate, either upon complaint or upon the Commissioner's own initiative, any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball, with authority to summon persons and to order the production of documents, and, in case of refusal to appear or produce, to impose such penalties as are hereinafter provided.<sup>69</sup>

This clause grants the Commissioner authority to investigate nearly anything related to baseball.

One reason that this clause exists is because the game of baseball has interests that are not purely based on business principles.<sup>70</sup> The owners and the players both are economically self-interested. It is the Commissioner's role to advocate for the sport.<sup>71</sup>

The long-standing popular assumption is that it is the responsibility of the "commissioner" to decide whether and how to protect the "best interests of the sport" from such behavior. Any organization needs a chief executive officer-in the case of sports, to establish schedules and league championships, to supervise officials, to negotiate television and merchandising contracts, and the like. What makes sports unique (by comparison with the movie world, for example) is that the office of the commissioner has historically been viewed as the supreme voice about what truly is in the *best* interests (not just the business interests) of the game.<sup>72</sup>

The powers granted to the Commission in the MLB Constitution "are so unlimited in character" that the Commissioner has power to "prevent any conduct destructive of the aims of the code."<sup>73</sup> "[T]he Commissioner is given almost unlimited discretion in the determination of whether or not a certain state of facts creates a situation detrimental to the national game of baseball."<sup>74</sup> The Commissioner is also appointed to make determinations that would be inappropriate for the judiciary.<sup>75</sup>

The Constitution also provides the Commissioner with the power to:

(d) From time to time, to formulate and to announce the rules of procedure to be observed by the Commissioner and all other parties in connection with the discharge of the Commissioner's duties. Such rules shall always recognize the right of any party in interest to appear before the Commissioner and to be heard.<sup>76</sup>

This provision allows Selig to formulate new rules or guidelines relating to the current and future commercialization practices within MLB.

In place of adding an additional rule to the Official MLB Rules, there is an option to amend the MLB Constitution. An amendment limiting advertising practices could be added according to the following provision:

(b) The vote of three-fourths of the Major League Clubs shall be required for the approval of any of the following: (7) Any provision amending this Constitution, except as specifically provided elsewhere in this Constitution.<sup>77</sup>

It is not likely that seventy-five percent of the MLB team owners would vote for a rule that limits their own revenue streams. Although it is possible that the clubs would recognize that a rule could protect the interests of baseball, the clubs are economically self-interested. This is the one of the main reasons a Commissioner is appointed.<sup>78</sup> However, the MLB team owners assign the Commissioner.<sup>79</sup> Therefore it would be difficult for the Commission to initiate a rule that is in direct conflict with interests of the owners.<sup>80</sup>

The Constitution also provides member clubs the power to limit the practices of other clubs in certain respects. The following provision allows a majority vote approval for any action relating to radio, television, and Internet media rights.

(a) The vote of a majority of the Major League Clubs shall be required for the approval of any of the following:  
(5) Any action relating to radio, television or other audio or video media (including the Internet or any other online technology), including but not limited to any agreement or amendment thereto with any other party, pursuant to which there is the grant, license

or other transfer of radio, television or other audio or video media rights for Major League Baseball games.<sup>81</sup>

This provision could play a role when negotiating with a television network or commercial entity about virtual advertising.<sup>82</sup> Additional virtual advertising could be a solution to purifying the live game for fans.<sup>83</sup>

### *B. The Current Rules Limiting Commercialization on the Field*

The MLB Official Baseball Rules state that “[n]o part of the uniform shall include patches or designs relating to commercial advertisements.<sup>84</sup> This rule is under-inclusive and inadequate to prevent all of the on the field advertising antagonistic to the best interests of baseball. These rules are established in order to protect the intellectual property of the league and the teams.<sup>85</sup> Although some provisions are enacted with the foresight of protecting the game itself, the rules are inadequate means of separating commercialism from the sport.

Similar clauses in other leagues, such as the National Football League,<sup>86</sup> are arguably only in existence not to protect the game, but to protect the commercial and conceptual strength of the organizations’ trademarks.<sup>87</sup> The Lanham Act<sup>88</sup> protects trade dress, *inter alia*. Keeping a consistently used trade dress on the field strengthens the trade protection of the respective league and the individual member teams under federal law.<sup>89</sup>

In the NFL, players have been fined for the wearing articles of clothing not provided by their respective team. In the 2011 season, Wes Walker of the New England Patriots was fined \$10,000 for wearing a hat promoting Bonk Breaker energy bars, a company in which he personally invests.<sup>90</sup> The rules pertaining to uniforms are even more stringent restraining the colors an athlete can wear on the field.<sup>91</sup> Several New Orleans Saints’ players received \$5,000 fines for wearing Christmas themed red and green tape around their ankles on a Christmas Eve edition of Monday Night Football against the Atlanta Falcons.<sup>92</sup>

Major League Baseball has similar rules to protect the intellectual property of the league as well as the member teams. The MLB Rule 1.17 provides protection by notifying the teams and players as follows:

Playing equipment including but not limited to the bases, pitcher's plate, baseball, bats, uniforms, catcher's mitts, first baseman's gloves, infielders and outfielders gloves and protective helmets, as detailed in the provisions of this rule, shall not contain any undue commercialization of the product. Designations by the manufacturer on any such equipment must be in good taste as to the size and content of the manufacturer's logo or the brand name of the item.<sup>93</sup>

This provision was previously enforced when Barry Bonds was fined for wearing a particular set of wristbands.<sup>94</sup> The fine levied for \$5,000. Bonds was personally penalized because the size of the logo ran afoul of this rule.<sup>95</sup> This provision explicitly prevents baseball manufacturers' from putting their own logos on the field. However, this only pertains to those equipment manufacturers that are self-promoting their own brand.

MLB Rule 1.17 would not prevent a third party advertiser from printing a logo on the bases. As seen from the Spider-Man 2 example,<sup>96</sup> there is no specific provision to keep an advertisement from physically being present on the field. Taking the ads off of the bases was based on a Selig's individual assessment, not a categorical rule.<sup>97</sup> Even though there is an existing no advertising on the equipment rule, it is inadequate because it only applies to the manufacturer of the equipment.<sup>98</sup>

Major League Baseball is bending its own rules by allowing other corporate entities to display logos on equipment for select games. The opening weekend for the 2012 season was held in Japan between the Seattle Mariners and the Oakland Athletics.<sup>99</sup> Gloops, which is a Japanese company in the social media field, sponsored the event, which was held in the Tokyo Dome.<sup>100</sup>

The Gloops event logo appeared on both teams' batting helmets and the logo was also patched on the Oakland players' jerseys.<sup>101</sup> Gloops is unrelated to the equipment manufacturers, but the company did provide a significant monetary contribution to Major League Baseball.<sup>102</sup> This is the exact commercialization that Rep. Nethercutt sought to limit in his plea to Selig in 2004.<sup>103</sup> This practice was limited to the opening weekend in Japan, so there may be an argument that Selig would not allow the same commercial practices at stadiums within the MLB member teams' stadiums.

New issues that may be on the forefront of athlete self promotion are players displaying their Twitter handles on the field. According to the MLB Rules, "any player other than the pitcher may have numbers, letters, insignia attached to the sleeve of the undershirt."<sup>104</sup> Under the current rules a player can have a twitter handle on his undershirt, or on his baseball mitt. A twitter handle is a user name that a person has selected and the accompanying URL.<sup>105</sup> National Hockey League teams have started adding Twitter handles to their uniforms to promote the teams' social media presence.<sup>106</sup> The Twitter account can be linked to a team or to an athlete personally. However, this can present a problem when an athlete is promoting his Twitter account, which is in reality closely linked to a private endorsement.

A rule should be introduced to limit both commercial and private player endorsements on the field. With the immersion of the Internet and social media into people's everyday lives, the baseball field should remain free of outside influences.

#### **PART IV: POTENTIAL CODIFICATION OF A MAJOR LEAGUE BASEBALL FIELD OF PLAY RULE AND A PROSPECTIVE ANTIRUST CHALLENGE OF THE RULE**

##### *A. Potential No-Advertisements on the Field of Play Rule*

Creating a rule in MLB that limits advertising on the field of play is beneficial to the best interests of baseball.<sup>107</sup> The current rules are inadequately protecting the field from corporate

logos.<sup>108</sup> United States Soccer has taken a proactive approach to regulating advertising.

Interpretation of Law 1 – The Field of Play rule specifically provides:

**Commercial advertising**

Commercial advertising shall be at least 1 yard from the boundary lines of the field of play.

No form of commercial advertising, whether real or virtual, is permitted on the field of play, on the ground within the area enclosed by the goal nets or technical area, or within 1 yard of the touch line from the time the teams enter the field of play until they have left it at half-time and from the time the teams re-enter the field of play until the end of the match. Similarly, advertising is not permitted on the goals, nets, flag posts or their flags and no extraneous equipment (cameras, microphones, etc.) may be attached to these items.<sup>109</sup>

This provision, as worded, clearly would not work for Major League Baseball because baseball is played on a different field with different equipment.<sup>110</sup> A rule that is similar to the U.S. Soccer rule would probably not be feasible because of the history of advertising in baseball. U.S. Soccer prohibits advertisements within 1 yard from the boundary lines of the field of play.<sup>111</sup> The outfield walls and other boundary walls of MLB stadiums have been covered in advertising for at least seventy years.<sup>112</sup> Behind-the-plates advertisements are typical for all ballparks located behind the batter, catcher, and umpire.<sup>113</sup> These advertisements are lucrative because the ads are prominent to viewers watching via broadcast and may be replayed several times in a game's highlights.<sup>114</sup>

Although a provision identical to U.S. Soccer would not be plausible for MLB, it is possible to create a rule that captures the same spirit. There should be no advertising on the field. This would include, but not be limited by, the on the field equipment and the players' uniforms. A rule such as this should be the minimum of limitations for prohibiting commercialization on the field. This rule would simply keep the actual field, including the players, equipment, and

physical field, free from any advertisements. As shown from the Spider-Man 2 incident in 2004,<sup>115</sup> the Commissioner will take steps to restrict advertising if it conflicts with public opinion. This categorical rule would prohibit advertisements specifically of this nature. This rule would alleviate the need for advertising campaigns to be evaluated on an ad hoc basis.

MLB should go above and beyond what U.S. Soccer has codified. This would include banning a player from sporting his Twitter handle on the field.<sup>116</sup> A player's Twitter may be used for personal reasons only, however, many professional player's Twitter accounts are full of endorsements by corporations.<sup>117</sup> Allowing a player to wear his Twitter handle would only circumvent the language of the no advertising rule and diminish its purpose.

Attending a baseball game is an experience that goes beyond what is seen on the field. MLB should incorporate a rule that prohibits advertising based on the merits of the game. This would include tossing out the P.C. Richard jingle from Yankee Stadium.<sup>118</sup> The jingle is not popular with the fans and detracts from the experience of the game.<sup>119</sup> This rule would only bind the member organizations of MLB, and not necessarily outside promotions based on the merits of the game.<sup>120</sup>

#### *B. Possible Challenges to the No Advertising Rule through Antitrust Law*

Team owners within a sports league should conduct their behavior within the best interests of the sport. Creating a rule that prohibits a member team from allowing third-party advertisements based on the merits of the game is beneficial to the sport.

Certain MLB member teams may not appreciate a new rule that limits revenue from advertising. Generally, it is difficult to challenge a Commissioner's rule if he "acted in good faith, after investigation, consultation, and deliberation, in a manner which he determined to be in the best interests of baseball."<sup>121</sup> If that is the case then "whether he was right or wrong is

beyond the competence and the jurisdiction of [a] court to decide.”<sup>122</sup> However, it is feasible that a team will challenge a rule based on antitrust principles or the First Amendment.

A rule excluding teams from featuring third-party advertising based on the merits of the game may challenge the rule based on its exclusionary nature. Individual sports teams within a league may choose to challenge a rule under an antitrust theory.<sup>123</sup> The Sherman Act prohibits, “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade....” A rule that all MLB member teams codify through the power of the Commissioner would constitute a contract restraining trade. The relevant standard is whether the contract or conspiracy unreasonably restrains trade.<sup>124</sup>

Although theoretically subject to antitrust scrutiny, baseball has a historic antitrust exemption that would most likely halt a challenge.<sup>125</sup> However, the sport of baseball may no longer be shielded from antitrust law.<sup>126</sup> Some Courts have limited this exemption specifically to the reserve clause,<sup>127</sup> or to only the sport’s “unique characteristics and needs.”<sup>128</sup>

Also there have been questions in the past to whether a sports league could offer a single entity defense to an antitrust challenge. *American Needle*<sup>129</sup> answered that question in the negative. Although teams are required to establish rules in order for a league to function, each team has its own economic interests and pursuits separate from other member teams.<sup>130</sup> Teams within a sports league have business interests that frequently coincide with the interests of the league as a whole; however, a commonality of interests exists in every cartel.<sup>131</sup> It is for this reason that sports leagues are still subject to antitrust scrutiny even though commonality of interests is required for the league to function as a whole.<sup>132</sup>

*NASL v. NFL* is one example of an owner of a professional sports team challenging a rule set in place by the league. In *NASL v. NFL*<sup>133</sup> there was a challenge to a NFL rule prohibiting an

owner from selling his franchise without a majority vote of the other owners. Such restrictions on ownership are challenged under Section 1 of the Sherman Act.<sup>134</sup> A rule will fail if the unless it has pro-competitive effects that outweigh the clear restraint on competition.<sup>135</sup>

Although NFL members... participate jointly in many of the operations conducted by [the league] on their behalf, each member is a separately owned, discrete legal entity which does not share its expenses, capital expenditures or profits with other members. Each also derives separate revenues from certain lesser sources, which are not shared with other members, including revenues from local TV and radio, parking and concessions.... The NFL teams are separate economic entities engaged in a joint venture.<sup>136</sup>

As shown by other challenges in the past, an owner would be able to question a rule properly set in place by league procedures. Whether that rule will pass antitrust scrutiny depends on whether the rules reasonably restrain competition, or if the rule is otherwise ancillary to the agreement.<sup>137</sup> A rule that prohibits advertising could foreseeably be challenged because it will regulate private profit by a private agreement as opposed to a market place regulation.<sup>138</sup>

It is possible that an antitrust challenge is not needed because the market will be self-correcting regarding on the field advertising. Fans of a particular team are often very loyal,<sup>139</sup> however, if advertising becomes too prevalent, then the fans may switch to a new team or chose not to attend games. If an antitrust challenge were to survive summary judgment, then a detailed market analysis would be conducted, including substitutes for Major League Baseball.<sup>140</sup>

## **PART V: CONCLUSION**

A 'no advertising on the field of play' rule is in the best interests of Major League Baseball. MLB fans may be concerned that the sanctity of the game is being threatened by commercialism. Running advertising during live sporting events is very lucrative for corporations. The advertiser and the MLB member teams are both economically self-interested,

which may cause the entities to disregard the best interests of the sport. The MLB Commissioner should take preventative measures and regulate these commercial activities.

Constructing new stadiums is a controversial topic, and professional sports teams often name the stadium after a sponsoring corporate entity. The professional team must evaluate whether this corporate entity's reputation coincides with the reputation of the team. Yankee stadium has increased sponsorships through new advertising mediums to finance retaining the stadium's name. Rising ticket prices often coincide with a new stadium, and the local fans suffer because they aid in subsidizing a building that they have to pay more for to enter.<sup>141</sup> Fans would most likely appreciate MLB teams internalizing costs, perhaps by decreasing ticket prices due to an increase of advertising.

The marketplace might be self-correcting in regards to on the field advertising. If the advertisers are seeing a decline in sales based on an aggressive advertising scheme, then that commercial entity may decide not to continue. Alternatively, if the trends show that stadium attendance declines with increased advertising the MLB team may cut back.

Adding more virtual advertising to live game broadcasts is a viable option for MLB, the fans, and the advertisers. If fans wish to watch the games without virtual advertising then the fans have the option to physically attend the game or to watch a subscription broadcast that does not have prevalent virtual advertising.

Sponsoring an event helps shape consumer attitudes and create positive publicity in most cases. However, when fans are opposed to an advertising practice, it is detrimental to the game of baseball.

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<sup>1</sup> J.A.F. Nicholls et al., *Sports Event Sponsorship for Brand Promotion*, 10 J. APPLIED RES. 35 (1994), available at <http://journals.cluteonline.com/index.php/JABR/article/view/5905/5983>.

Place-based marketing can also occur on sites used to induce immediate purchase of items such as in shopping malls or supermarkets. An example of place-based marketing that occurs in a baseball stadium is scoreboards that are sponsored by beer suppliers. The event goes see the beer advertising in an effort to immediately induce purchases within the stadium.

*Id.*

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 37.

<sup>4</sup> *Law 1- The Field of Play*, U.S. SOCCER, <http://www.ussoccer.com/referees/laws-of-the-game/law-1.aspx> (last visited Apr. 21, 2012).

#### **Commercial advertising**

Commercial advertising shall be at least 1 yard from the boundary lines of the field of play.

No form of commercial advertising, whether real or virtual, is permitted on the field of play, on the ground within the area enclosed by the goal nets or the technical area, or within 1 yard of the touch line from the time the teams enter the field of play until they have left it at half-time and from the time the teams re-enter the field of play until the end of the match. Similarly, advertising is not permitted on the goals, nets, flag posts or their flags and no extraneous equipment (cameras, microphones, etc.) may be attached to these items.

#### **Logos and emblems**

The reproduction, whether real or virtual, of representative logos or emblems of FIFA, confederations, member associations, leagues, clubs or other bodies is forbidden on the field of play, the goal nets and the areas they enclose, the goals, the flag posts and their flags during playing time.

*Id.*

<sup>5</sup> *Law 1: The Field of Play*, FIFA,

[http://www.fifa.com/mm/document/afdeveloping/refereeing/law\\_1\\_the\\_field\\_of\\_play\\_en\\_47427.pdf](http://www.fifa.com/mm/document/afdeveloping/refereeing/law_1_the_field_of_play_en_47427.pdf) (last visited Apr. 21, 2012) (“Commercial advertising shall be at least 1 metre from the boundary lines of the field of play”).

<sup>6</sup> Jason S. Weiss, *The Changing Face of Baseball: In an Age of Globalization, is Baseball Still as American as Apple Pie and Chevrolet?*, 8 U. MIAMI INT'L & COMP. L. REV. 123 (2000) (“In addition to buying television commercial time, corporate sponsors purchased advertising space on stadium walls that thousands of spectators at home and at the ballpark could see.”).

<sup>7</sup> Darren Rovell, *Baseball Scales Back Movie Promotion*, ESPN SPORT BUSINESS (May 7, 2004, 7:15 PM), <http://sports.espn.go.com/espn/sportsbusiness/news/story?id=1796765>.

<sup>8</sup> See Stephen M. McKelvey, *Commercial “Branding”: The Final Frontier or False Start for Athletes’ Use of Temporary Tattoos as Body Billboards*, 13 J. LEGAL ASPECTS SPORT 1, 1 (2003)

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(“[T]he major professional team-oriented leagues have historically restricted "on-field" commercialization of its players, due not only to tradition but also to the desire to protect their own league-wide business interests.”).

<sup>9</sup> Pi-Hsuan Monica Chien et al., *A Theoretical Framework for Analysis of Image Transfer in Multiple Sponsorships*, in ANZMAC 2005: BROADENING THE BOUNDARIES: CONFERENCE PROCEEDINGS, available at <http://eprints.qut.edu.au/23915/>.

<sup>10</sup> *See Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See* Dennis N. Bristow, *Holy Cow! Wait 'til Next Year! A Closer Look at the Brand Loyalty of Chicago Cubs Baseball Fans*, 18 J. CONSUMER MARKETING 256 (1984).

<sup>13</sup> *NFL v. McBee & Bruno's, Inc.*, 621 F. Supp. 880, 886 (8th Cir. 1985).

<sup>14</sup> *Don Draper*, IMDB, <http://www.imdb.com/character/ch0031457/quotes> (last visited Apr. 21, 2012).

<sup>15</sup> *Flood v. Kuhn*, 407 U.S. 258, 266 (1972).

<sup>16</sup> *See Commercialism in Sports*, LEAGUE OF FANS, <http://www.leagueoffans.org/commercialism/index.html> (last visited Apr. 21, 2012)

Sports fans across the country have become bitter because money, ads and hype are draining the fun out of sports. Even worse, what we pay for with our hard-earned dollars is the further degradation of culture and deterioration of the games we love, while commercial values are introduced and reinforced to new generations of sports fans.

*Id.*

<sup>17</sup> John A. Fortunato, *Using Sponsorship as a Form of Public Relations: A Case Study of Chevrolet and Major League Baseball*, 2 J. SPONSORSHIP 330 (2009) (“Because of the large and loyal audiences, the area of sports sponsorship serves as an ideal communication vehicle for a company to simultaneously achieve advertising and public relations objectives.”).

<sup>18</sup> Rovell, *supra* note 7.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Carl Hulse, *Rep. Nethercutt Goes to Bat Against Spiderman Ads*, THE NEW YORK TIMES TRAIL (May 6, 2004, 7:27 AM), <http://www.nytimes.com/2004/05/06/politics/trail/07TRAIL-SPIDER.html>).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* (“Before haphazardly placing advertisements on the baseball diamond, I hope you engage in a dialogue with fans.”).

<sup>27</sup> *See* Askan Deutsch, *Sports Broadcasting and Virtual Advertising: Defining the Limits of Copyright Law and the Law of Unfair Competition*, 11 MARQ. SPORTS L. REV. 41, 46 (2001).

<sup>28</sup> *Id.*

<sup>29</sup> *See* Part IV, *infra*.

<sup>30</sup> Howard M. Wasserman, *Fans, Free Expression, and the Wide World of Sports*, 67 U. PITT. L. REV. 525, 547 (2006).

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<sup>31</sup> Josh Zerkle, *Minnesota Vikings: New Stadium Rejected... Time to Pack Up the Mayflower Truck?*, BLEACHER REPORT (Apr. 17, 2012), <http://bleacherreport.com/articles/1149455-minnesota-vikings-new-stadium-shot-downtime-to-pack-up-the-mayflower-truck>.

<sup>32</sup> Mike Florio, *10 Things to Know about the Vikings Stadium Situation*, NBCSPORTS (Apr. 19, 2012, 11:55 PM), <http://profootballtalk.nbcsports.com/2012/04/19/10-things-to-know-about-the-vikings-stadium-situation/>.

<sup>33</sup> Wasserman, *supra* note 30, at 542.

<sup>34</sup> Kenneth L. Shropshire, Keynote, *Sports Facilities, Franchises, Events and the American Urban Renaissance*, 30 U. TOL. L. REV. 385, 390 (1999).

If I have not made it clear, owners are motivated to relocate primarily for increased profitability. It certainly depends on the venue, but new facilities for owners have increased franchise revenues in a range from \$ 10-30 million. The list of revenue generators is extensive. A favorable lease directs revenues, including: those from luxury and premium seats, parking, corporate naming rights, advertising (including sponsorships and signage), concessions, permanent seat licenses, retail stores, restaurants and stadium clubs, facility tours, museums, facility logo revenue, rental income, general event ticket revenues, and taxes. The cities are caught in a version of the children's game of musical chairs where there are fewer sports franchises than cities that desire to host them.

*Id.*

<sup>35</sup> See Christopher B. Carbot, *The Odd Couple: Stadium Naming Rights Mitigating the Public-Private Stadium Finance Debate*, 4 FIU L. REV. 515 (2009).

<sup>36</sup> *Id.*

<sup>37</sup> Robert H. Thornburg, *Stadium Naming Rights: An Assessment of the Contract and Trademark Issues Inherent to both Professional and Collegiate Stadiums*, 2 VA. SPORTS & ENT. L.J. 328, 349 (2003) (“When negotiating and drafting a contract for naming rights, stadium ownership should recognize the numerous trademark and trade dress rights inherent in the various aspects of a sports stadium, including the nicknames hat fans have adopted and use to identify the stadium, the unique design and shape of a specific stadium as a separate source identifying trade dress right, and potential consumer confusion caused by a corporate sponsor seeking multiple naming rights contracts.”).

<sup>38</sup> Carbot, *supra* note 35, at 541.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 542

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Kurt Badenhausen, *The World's 50 Most Valuable Sports Teams*, FORBES.COM (July 12, 2011, 1:38 PM), <http://www.forbes.com/sites/kurtbadenhausen/2011/07/12/the-worlds-50-most-valuable-sports-teams/2/> (“[T]he New York Yankees, ranked No. 3 with a valuation of \$1.7 billion. The Yankees[] have used a new stadium to dramatically boost revenues. The team took

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in \$325 million from regular season tickets and suites in 2010, nearly twice as much as in the old Yankee Stadium.”).

<sup>45</sup> *MLB Attendance Report - 2011*, ESPN MLB, [http://espn.go.com/mlb/attendance/\\_/year/2011](http://espn.go.com/mlb/attendance/_/year/2011), (last visited Apr. 21, 2012).

<sup>46</sup> *New York Yankees*, ESPN MLB, [http://espn.go.com/travel/stadium/\\_/s/mlb/id/10/yankee-stadium](http://espn.go.com/travel/stadium/_/s/mlb/id/10/yankee-stadium) (last visited Apr. 21, 2012).

<sup>47</sup> See John J. Dabney, Dedication, *Mickey Mantle: An American Legend*, 7 SETON HALL J. SPORTS L. 1, 5 (1997) (“Through it all, Mickey Mantle remains an American icon. Perhaps it is because he overcame his faults and addictions to achieve greatness. Perhaps it was the timing of playing on so many great Yankee teams at the height of the golden age of baseball.”).

<sup>48</sup> *City of New York v. New York Yankees*, 458 N.Y.S.2d 486, 490 (1983).

<sup>49</sup> Tyler Kepner, *Challenge of the New Yankee Stadium*, THE NEW YORK TIMES BASEBALL (Apr. 3, 2009, 11:31 PM), <http://bats.blogs.nytimes.com/2009/04/03/challenge-of-the-new-yankee-stadium/>.

<sup>50</sup> Mike Dodd, *Baseball’s New Palaces: Yankee Stadium and Mets’ Citi Field*, USATODAY (Apr. 6, 2009, 12:47 PM), [http://www.usatoday.com/sports/baseball/2009-04-02-baseball-palaces\\_N.htm](http://www.usatoday.com/sports/baseball/2009-04-02-baseball-palaces_N.htm).

<sup>51</sup> *Id.* (quoting New York State Assemblyman Richard L. Brodsky).

<sup>52</sup> Benjamin Kabak, *Everything – Except the Name – is for Sale*, RIVER AVE BLUES (July 30, 2009), <http://riveraveblues.com/2008/07/everything-except-the-name-is-for-sale-3424/>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Carbot, *supra* note 35, at 546-47.

One method of recouping lost revenues is to increase the use of “supplemental advertising” throughout the league or franchise product. Sports leagues and franchises could sell advertising space on uniforms, not unlike European soccer clubs and NASCAR race teams. While sports purists certainly would be up in arms at even the notion of such a suggestion, the benefits of such as shift would arguably far outweigh the perceived sacrilege of having a corporate logo on a uniform.

*Id.*

<sup>56</sup> R.J. Huneke, *Yankees Classic Game Desecrated*, EXAMINER.COM (Oct 18, 2009), <http://www.examiner.com/article/yankees-classic-game-desecrated>.

In order to keep the organization’s integrity [by selling the rights to the stadium name, the Yankees owners instead sold off the integrity of the sport itself. Every time a base is stolen by a Yankee player, “You Gotta Go to Mo’s Modells!” is blasted over the loudspeakers, and every time a Yankee pitcher gets a strikeout the P.C. Richards Whistle sounds too.

*Id.*

<sup>57</sup> See Shropshire, *supra* note 34.

<sup>58</sup> See Thornburg, *supra* note 37, at 350

<sup>59</sup> See Huneke, *supra* note 56.

<sup>60</sup> See Part I, *supra*.

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<sup>61</sup> *Id.*

<sup>62</sup> MAJOR LEAGUE BASEBALL CONSTITUTION, art II sec. 2(b) (2005), *available at* <http://www.bizofbaseball.com/docs/MLConstitutionJune2005Update.pdf>.

<sup>63</sup> *See* Part III, *infra*.

<sup>64</sup> Jason M. Pollack, note, *Take My Arbitrator, Please: Commissioner "Best Interests" Disciplinary Authority in Professional Sports*, 67 *FORDHAM L. REV.* 1645 (1999).

<sup>65</sup> *See* PAUL C. WEILER & GARY R. ROBERTS, *SPORTS AND THE LAW: CASES, MATERIALS AND PROBLEMS* 9 (Thompson West 3d ed. 2004).

<sup>66</sup> Rob Neyer, *Landis had Major Impact as First Commish*, ESPN MLB (January 22, 2004), [http://sports.espn.go.com/mlb/columns/story?columnist=neyer\\_rob&id=1714894](http://sports.espn.go.com/mlb/columns/story?columnist=neyer_rob&id=1714894).

<sup>67</sup> Colin J. Daniels, *From the Black Sox to the Sky Box: The Evolution and Mechanics of Commissioner Authority*, 10 *TEX. REV. ENT. & SPORTS L.* 23, 34 (2008) (“[P]icked by the owners, Selig was given reduced power to intervene in business and labor matters, and accepted the reduced powers as expressing the original intention of the "best interests" clause, which he claimed was never intended to apply to all business matters.”) (footnotes omitted)

<sup>68</sup> *Id.* at 37.

<sup>69</sup> MLB CONST., *supra* note 62.

<sup>70</sup> Weiler, *supra* note 65.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Milwaukee Am. Ass'n v. Landis*, 49 F.2d 298 (N.D. Ill. 1931).

<sup>74</sup> *Id.*

<sup>75</sup> *Charles O. Finely v. Bowie Kuhn*, 569 F.2d 527 (7th Cir. 1978).

<sup>76</sup> MLB CONST., *supra* note 62, at art. II sec. 2(d)(5).

<sup>77</sup> *Id.* at art. V § 2(b)(7).

<sup>78</sup> *See* Weiler, *supra* note 65.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Supra*, note 62, at art. V sec. 2(a)(6).

<sup>82</sup> *See* Part I, *supra*.

<sup>83</sup> *Id.*

<sup>84</sup> MAJOR LEAGUE BASEBALL OFFICIAL BASEBALL RULES, Rule 1.11(h) (2011 ed.), *available at* [http://mlb.mlb.com/mlb/downloads/y2011/Official\\_Baseball\\_Rules.pdf](http://mlb.mlb.com/mlb/downloads/y2011/Official_Baseball_Rules.pdf).

<sup>85</sup> *See* Thornburg, note 37 *supra*.

<sup>86</sup> 2011 OFFICIAL PLAYING RULES AND CASEBOOK OF THE NATIONAL FOOTBALL LEAGUE, Section 4, Art. 3(f) (2011), *available at* [http://static.nfl.com/static/content/public/image/rulebook/pdfs/2011\\_Rule\\_Book.pdf](http://static.nfl.com/static/content/public/image/rulebook/pdfs/2011_Rule_Book.pdf).

Players are permitted to wear as many layers of stockings and tape on the lower leg as they prefer, provided the exterior is a one-piece stocking that includes solid white from the top of the shoe to the mid-point of the lower leg as they prefer, provided the exterior is a one-piece stocking that includes solid white from the top of the show to the mid-point of the lower leg, and *approved team color or colors* (non-white) from that point to the top of the stocking.

*Id.* (emphasis added).

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<sup>87</sup> See Thornburg, note 37 *supra*.

<sup>88</sup> 15 U.S.C. §§ 1051 *et seq.* (2006).

<sup>89</sup> See Thornburg, *supra* note 37.

<sup>90</sup> Michael David Smith, *NFL Fines Wes Welker \$10,000 for Wearing Unauthorized Hat*, NBCSPORTS (Dec. 31, 2011, 9:26 AM), <http://profootballtalk.nbcsports.com/2011/12/31/nfl-fines-wes-welker-10000-for-wearing-unauthorized-hat/>.

<sup>91</sup> See *supra* note 86.

<sup>92</sup> Bradley Handwerger, *NFL Fines All Saints Wearing Red and Green Tape Against Atlanta*, WWLTV.COM EYEWITNESS NEWS (Dec. 30, 2011, 3:39 PM), <http://www.wwltv.com/sports/black-and-gold/NFL-fines-all-Saints-wearing-red-and-green-tape-against-Atlanta-136443308.html>.

<sup>93</sup> MLB RULES, *supra* note 84, at Rule 1.17.

<sup>94</sup> *MLB Fines Bonds \$5,000 for Uniform Infraction*, ESPN MLB (Apr. 19, 2006, 10:43 PM), <http://sports.espn.go.com/mlb/news/story?id=2414724>.

<sup>95</sup> *Id.*

<sup>96</sup> See Part I, *supra*.

<sup>97</sup> *Id.*

<sup>98</sup> See *supra*, note 93.

<sup>99</sup> Jeff Grant, *Mariners vs. Athletics: Major League Baseball Says Goodbye to the Tokyo Dome*, BLEACHER REPORT (March 28, 2012), <http://bleacherreport.com/articles/1123365-mariners-vs-athletics-major-league-baseball-says-goodbye-to-the-tokyo-dome>.

<sup>100</sup> Cash Kruth, *Gloops Named Title Sponsor for Japan Series*, MLB.COM (March 19, 2012, 1:21 PM), [http://mlb.mlb.com/news/article.jsp?ymd=20120319&content\\_id=27409958&vkey=news\\_oak&c\\_id=oak](http://mlb.mlb.com/news/article.jsp?ymd=20120319&content_id=27409958&vkey=news_oak&c_id=oak).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> See Part I, *supra*.

<sup>104</sup> MLB RULES, *supra* note 84, at Rule 1.11.

<sup>105</sup> *The Twitter Glossary*, TWITTER, <http://support.twitter.com/articles/166337-the-twitter-glossary> (last visited Apr. 21, 2012) (“A user’s ‘Twitter handle’ is the username they have selected and the accompanying URL, like so: <http://twitter.com/username>.”).

<sup>106</sup> Stephen App, *Twitter Handles: Coming Soon to a Uniform Near You*, SOCIALMEDIATODAY (March 15, 2012), <http://socialmediatoday.com/stephenapp/469994/twitter-handles-coming-soon-uniform-near-you>.

Major League Baseball’s policy specifically violates patches and designs relating to commercial advertisements on any part of the uniform. However, one could argue that a player isn’t promoting a commercial entity if it is their personal Twitter handle. MLB also states, “any player other than the pitcher may have numbers, letters, insignia attached to the sleeve of the undershirt.” That would seem to indicate undershirt sleeves are fair game. Also, don’t be surprised if you see a Twitter handle appear on a player’s baseball glove at some point this season.

*Id.*

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<sup>107</sup> See Part III, *supra*.

<sup>108</sup> See note 100, *supra*.

<sup>109</sup> See note 4, *supra*. FIFA has a similar provision, *see* note 2, *supra*.

<sup>110</sup> MLB RULES, *supra* note 84.

<sup>111</sup> See note 4, *supra*.

<sup>112</sup> Steve Silverman, *Typical Baseball Outfield Fence Details*, LIVESTRONG.COM (March 5, 2011), <http://www.livestrong.com/article/397313-typical-baseball-outfield-fence-details/>.

<sup>113</sup> Diego Vasquez, *Ads Offer Advertisers Wonderful Exposure on TV*, MEDIALIFE (Aug. 31, 2009),

[http://www.medialifemagazine.com/artman2/publish/Out\\_of\\_Home\\_19/Your\\_client\\_s\\_ad\\_behind\\_home\\_plate.asp](http://www.medialifemagazine.com/artman2/publish/Out_of_Home_19/Your_client_s_ad_behind_home_plate.asp).

<sup>114</sup> *Id.*

<sup>115</sup> See Part I, *supra*.

<sup>116</sup> See Part III, *supra*.

<sup>117</sup> *Id.*

<sup>118</sup> See *supra*, Part I.

<sup>119</sup> *Id.*

<sup>120</sup> See, e.g., Adam Clayton-Holland, *Eat, Drink, and Sell Out Your Local Sports Team*, AVClub.com (Apr. 21, 2010), <http://www.avclub.com/denver/articles/eat-drink-and-sell-out-your-local-sports-team,40317/>.

Remember when the Colorado Rockies played the Red Sox in the 2007 World Series? Remember that bizarre promotion where if a player stole a base, all of America got free tacos the next day? Seems like a long time ago, doesn't it? Now we don't even blink when we get four tacos for a buck because the Nuggets scored 100 points or the Rockies scored seven runs or someone watched a hockey game or Ben Roethlisberger had consensual sex. It's become part of the sports landscape. Taco Bell ingeniously realized that a promotion doesn't have to make any sense. People just like free tacos. Or free anything.

*Id.*

<sup>121</sup> Charles O. Finely v. Bowie Kuhn, 569 F.2d 527 (7th Cir. 1978).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> See *United States v. Socony-Vacuum*, 310 U.S. 150 (1940).

<sup>125</sup> See *Flood v. Kuhn*, 407 U.S. 258, 282 (1972) (“[P]rofessional baseball is a business and it is engaged in interstate commerce..[however the sport is] an exception and an anomaly [and therefore enjoys an] exemption from the federal antitrust laws.”).

<sup>126</sup> See Nathaniel Grow, *Defining the ‘Business of Baseball’: A Proposed Framework for Determining the Scope of Professional Baseball’s Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557 (2010) (“Specifically, the article finds that lower courts have applied the exemption in widely divergent ways, due to a misunderstanding, and in some cases a misinterpretation, of the underlying focus of the United States Supreme Court’s opinions first creating and affirming the exemption.”).

<sup>127</sup> *Piazza v. MLB*, 831 F.Supp. 420, 436 (E.D. Pa. 1993).

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<sup>128</sup> See *Postema v. Nat'l League of Prof. Baseball Clubs*, 799 F.Supp. 1475 (S.D.N.Y. 1992); *Henderson Broadcasting Corp. v. Houston Sports Assoc.*, 541 F.Supp. 263 (S.D. Tex. 1982).

<sup>129</sup> *Am. Needle, Inc. v. NFL*, 130 S. Ct. 2201 (2010).

<sup>130</sup> *Id.* at 2212.

<sup>131</sup> See *United States v. Sealy, Inc.*, 388 U.S. 350 (1967).

<sup>132</sup> *Id.*

<sup>133</sup> *NASL v. NFL*, 670 F.2d 1429, 1252 (2d Cir. 1982).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> See *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

<sup>138</sup> See *Los Angeles Memorial Coliseum v. Conn'm v. NFL*, 726 F.2d 1381 (9th Cir 1984).

<sup>139</sup> See *Bristow*, note 12 *supra*.

<sup>140</sup> See *United States v. Appalachian Coals, Inc.*, 228 U.S. 344 (1933).

<sup>141</sup> Logan E. Gans, *Take Me Out to the Ball Game, But Should the Crowd's Taxes Pay for It?*, 29 VA. TAX REV. 751, 780 (2010).

Many owners argue that a new stadium will increase sporting event revenues and boost attendance and interest in a team. While this effect was profound for many of the first stadiums of the 1990s, however, the effect or novelty of a new arena seems to be fleeting. Most sports economists agree that attendance is likely to increase for the first two or three years of a new stadium's operations and then settle close to old levels.

*Id.*