---Will Major League Baseball and the Players Association Lose Claim To Continue their Right To License Use of Players' Names and "Stats"?

EDITOR'S NOTE: *The Business of Sports Network is pleased to offer up an extensive summary of the CBC v. MLBAM case, or as it is often refered to as the "Fantasy Stats" case by* ***Lawrence Boes, Esq.*** *Lawrence is a semi-retired NYC lawyer, living in Westbury, NY. He has litigated intellectual property and antitrust law cases in various federal and state courts at trial and appellate levels, represented a sports concessionaire at various MLB ballparks for many years, and studies legal aspects of the business of baseball. - Maury Brown - President - Business of Sports Network*

On October 16, 2007, the U.S. Court of Appeals in St. Louis affirmed the summary judgment of the district court issued August 8, 2006, in favor of the online fantasy sports operator, C.B.C. Distribution & Marketing, Inc. ("CBC," also known online as "CDM Fantasy Sports"). By a 2-to-1 vote of a three-judge panel, the appellate court granted CBC the right to use major league baseball (MLB) players' names and playing records ("stats") as part of CBC's for-profit fantasy games without a license from and payment of licensing fees to MLB players. Curiously, there have been no prominent news articles or other publicity or any press releases by either side, as had taken place in 2005 and 2006 before and after the district court decision.

This decision is a significant legal victory for CBC and against the MLB Players Association (MLBPA) and MLB's licensing organization for online interactive media (MLBAM, which operates MLB.com). (MLBAM had paid the Players Association $50 million in late 2004 for an assignment of these rights granted by almost all member-players. Nevertheless, the Players Association intervened in CBC's legal action in order that it could pursue its own claims against CBC.)

Although the appellate decision in every respect but one either repudiated or abandoned the district court's reasoning, it affirmed the district court's final summary judgment and injunctive relief granted CBC. The majority and dissenting opinions facilitate, however, the MLB parties' ability to seek further review by the eleven regular judges of the 8th Circuit and ultimately the U.S. Supreme Court under its discretionary review process.

Assuming CBC prevails in any further review proceedings and the 8th Circuit decision stands, which is more likely than not when a federal court of appeals issues a decision, this case will have significant precedential effect in depriving professional sports and entertainment figures of any right to deny or limit or obtain substantial licensing fees for use of their names and identities for a broad range of methods of commercial exploitation.

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