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Editorial: NFL sacked on logo deal

THE ORANGE COUNTY REGISTER

Story Highlights
High court denies league antitrust exemption in licensing of clothing bearing logos of the 32 teams.

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Should the National Football League be able to act as one entity and contract with only one company for all sports logowear for all 32 NFL teams? Does acting as one entity unfairly constrain competition in the logowear business?

On May 24, a unanimous U.S. Supreme Court found that the league's 32 teams are not a single business entity that is exempt from antitrust laws on franchise deals, such as those for caps, jerseys and equipment with team logos. Instead, the league is 32 separate teams.

FILE - In this June 29, 2009 file photo, American Needle's Dan Parenti works on the computer at his office in Buffalo Grove, Ill. The Supreme Court on Monday turned away the National Football League's request for broad antitrust law protection, ruling that the league can be considered 32 separate teams, not one big business , when it comes to selling branded items like jerseys and caps. (AP Photo/Nam Y. Huh. File)

The ruling signals that the high court will continue to take antitrust cases seriously, but it also shows that it will be making important distinctions.

The case, American Needle vs. NFL, involved a lawsuit by a Chicago company that made caps for NFL teams. It still makes caps for other sports and sells cap designs from the past, such as those of the 1971 California Angels and the 1958 Los Angeles Dodgers, according to American Needle's website. When in 2001 the NFL made a 10-year deal with Reebok for sales of logo-bearing clothing on behalf of all teams, American Needle and many other firms lost business.

"Decisions by NFL teams to license their separately owned trademarks collectively and to only one vendor are decisions that deprive the marketplace of ... actual or potential competition," Justice John Paul Stevens wrote in his 9-0 opinion. The case will go back to a trial court in Chicago to determine if antitrust laws actually were violated.

"It was the right decision," Ilya Shapiro told us; he's senior fellow in constitutional studies at the libertarian Cato Institute and editor-in-chief of the Cato Supreme Court Review. He said the NFL "doesn't get a pass on antitrust law" but still might prevail when the lower court examines the actual case. "The court wisely made a distinction between the teams getting together on something not related to football, such as if they wanted to have an NFL airline, which would violate antitrust laws," and other things the teams justifiably can come together on, such as TV deals. "The court below will have to determine if there are economies of scale" to the franchising deals.

Mr. Shapiro also said the matter also is about "how you define the market." In other words, is the market just among NFL teams? Or is it the NFL vs. the National Basketball Association, the National Hockey League, Major League

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Baseball, the Professional Golfers Association, college football, Disneyland, rock groups, rap groups, etc.? If you think a New Orleans Saints cap costs too much, you always can buy one for the Anaheim Ducks or the Los Angeles Lakers.

Or not buy one at all.

We've always believed in the light application of antitrust law. We remember the silly lawsuit the U.S. government brought against Microsoft in 1998, for "tying" its Internet Explorer browser into its Windows operating system. Even in those early days of the Internet, it was obvious that nobody could tame the Net, not even then-mighty Microsoft. And that was before the rise of Google, the re-emergence of Apple, Internet-capable cell phones and so much more. At a cost of tens of millions of dollars, Microsoft reached a settlement with the government in 2001. (And, the case was in no small part motivated by rivals Netscape and Sun Microsystems.) What a waste.

In the NFL case, we hope that the Chicago court concludes that this is not an antitrust violation, but that plenty of competition exists from other sports and forms of entertainment.

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