

NEWS RELEASES

PUBLISHED: NOVEMBER 1, 2018

Service

Intellectual Property
Litigation

Professionals

RUDY TELSCHER
ST. LOUIS:
314.345.6227
RUDY.TELSCHER@
HUSCHBLACKWELL.COMKARA R. FUSSNER
ST. LOUIS:
314.345.6229
KARA.FUSSNER@
HUSCHBLACKWELL.COM

Indiana Supreme Court Finds Exception to Right of Publicity Statute

The Indiana Supreme Court has ruled unanimously in a matter of first impression involving the right of online fantasy sports contest operators to use the names, likenesses and statistics of college athletes. The court held in *Akeem Daniels, Cameron Stingily and Nicholas Stoner v. FanDuel, Inc., and DraftKings, Inc.* that “Indiana’s right of publicity statute contains an exception for material of newsworthy value that includes online fantasy sports operators’ use of college players’ names, pictures, and statistics for online fantasy contests.” The decision potentially provides an important legal protection for the multi-billion-dollar fantasy sports industry amid numerous attempts by players and professional sports leagues to claim that the industry violates a right to publicity.

Husch Blackwell represented the Fantasy Sports Trade Association (FSTA), an organization that advocates for the fantasy sports industry with over 150 member companies ranging from small startups to large media corporations, in the filing of an amicus brief in *Akeem Daniels, Cameron Stingily and Nicholas Stoner v. FanDuel, Inc., and DraftKings, Inc.* The suit was filed by collegiate student-athletes against operators of online fantasy-sports games. The U.S. District Court for the Southern District of Indiana granted the defendants’ motion to dismiss, and upon appeal, the Seventh Circuit turned to the Indiana Supreme Court on questions of Indiana state law at stake in the federal litigation.

Partners Rudy Telscher and Kara Fussner took the lead in crafting the brief, relying in part on their previous successful litigations concerning right of publicity claims, including *CBS Interactive Inc. v. National Football League Players Association, Inc., et al.* (2009) and *C.B.C. Distribution and Marketing, Inc. v. Major League Baseball Advanced Media L.P.* (2007), the latter of which saw the Eighth Circuit affirm a lower court’s decision to uphold the right

of fantasy sports operators “to use, without license, the names of and information about major league baseball players in connection with...fantasy baseball products.”

The Indiana Supreme Court’s decision largely adopted the view of the Husch Blackwell-authored brief. While the decision does not determine the outcome of the Seventh Circuit case, the appellate court will rely on this decision in the resolution of this matter should the plaintiffs elect to pursue their claims further. For additional information and comment on this matter, please refer to the FSTA’s press release: [FSTA Applauds Ruling in Indiana Supreme Court Right of Publicity Case](#)