Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

The Biggest Sports Rulings Of The 1st Half Of 2017

By **Zachary Zagger**

Law360, New York (July 7, 2017, 1:15 PM EDT) -- From a U.S. Supreme Court decision that will save the Washington Redskins' trademark registration to the dismissal of a lawsuit alleging NFL teams improperly handed out painkillers to players without regard to potential long-term risks, 2017 has already been a busy year for litigation surrounding the sports industry.

Here, Law360 takes a look back at some of the biggest court rulings in sports so far this year.

High Court Says Offensive-TM Ban is Unconstitutional

The U.S. Supreme Court in June **struck down the federal government's ban** on registering offensive trademarks, saying it violated the First Amendment. The ruling will have direct implications for the NFL's Washington Redskins and other sports teams with names and logos that are arguably disparaging to a group of people.

The ruling was technically a win for the rock band The Slants — a member of the group had brought the case after being refused a trademark registration for the name on the grounds that it was disparaging to people of Asian descent — but the Washington team has been engaged in its own legal battle over the same issue.

The team had registrations on their billion-dollar intellectual property revoked by the U.S. Patent and Trademark Office in 2014 under the same rule used to block the rock band's case, specifically the so-called disparagement clause of the Lanham Act's Section 2a. The team's case has been on hold in the Fourth Circuit pending outcome of the band's high court appeal.

Experts say the June ruling paves the way for victory in the Washington team's case and for the eventual renewal of its federal trademark registration, a valuable tool in claiming ownership over a trademark such as a team name or logo.

The ruling will likely end a two-decade effort by Native American activists to cancel the team's registrations and apply pressure to change the name, and will likely **force such activists to change course** in challenging Washington's nickname and logo, as well as other teams such as the Cleveland Indians and its "Chief Wahoo" logo that have drawn similar ire.

"But that doesn't mean that teams cannot do the right thing by doing the right thing like Stanford did in changing from the 'Indians' to 'The Cardinal,' and I expect there still to be public pressure on these teams to change their names," said Eric Ball, a trademark litigator with Fenwick & West LLP.

The Supreme Court ruling "doesn't say that the marks are not disparaging, it just says that the trademark registrations can't be rejected based on disparagement grounds," Ball said.

The case is Matal v. Tam, case number 15-1293, in the Supreme Court of the United States.

9th Circ. Upholds Baseball Antitrust Exemption in Minor Leaguer Pay Suit

The Ninth Circuit last month rejected a lawsuit by minor league baseball players alleging Major League Baseball colluded to fix their wages, again upholding a nearly 100-year-old judicially created

antitrust exemption for the business of baseball.

The minor leaguers' suit, launched by infielder Sergio Miranda in December 2014, had alleged that while some players are legitimate major league prospects, most minor leaguers earn between $3,000 and $7,500 for the entire year despite working between 50 and 70 hours per week during the roughly five-month season.

The minor leaguers urged the Ninth Circuit not to rely on the exemption, which it called "wrong law," but their arguments faced an uphill battle from the beginning. Congress eliminated the exemption for major leaguer pay issues with the Curt Flood Act, but that law expressly kept such issues for minor leaguers exempted from antitrust laws.

In the end, a unanimous Ninth Circuit panel said it was bound by precedent and affirmed a district court decision that had tossed the ballplayers' claims.

However, the players' attorney said they plan to petition for an en banc review and if necessary petition the Supreme Court. Regardless, the case keeps the antitrust exemption intact for now.

The case is Sergio Miranda et al. v. Allan Selig et al., case number 15-16938, in the U.S. Court of Appeals for the Ninth Circuit.

Judge Nixes Claims NFL Teams Pushed Painkillers on Players

A California federal judge in May **decimated a lawsuit** by former NFL players alleging the league's 32 teams encouraged players to abuse painkillers in order to keep them playing through injuries without disclosing the potential long-term risks.

The players alleged that team doctors handed out opioid and other pain medication without proper warnings, and handled the drugs in violation of the Controlled Substances Act. They claimed to have suffered aggravated injuries and long-term effects from the constant drug usage.

But U.S. District Judge William Alsup dismissed nearly all of the claims, leaving alive only claims by two players against three teams, finding that the claims were too broad and unspecific to continue. He said the complaint, which he had given the players a final shot to correct, was stilled filled with unnecessary allegations to push an "advocacy-based agenda."

However, it was not the only suit to bring such claims, as the attorneys had first targeted the NFL itself, in Dent v. NFL, only to have the claims dismissed as being intertwined with collective bargaining. A **bid to revive that case** was argued before the Ninth Circuit and a decision is forthcoming.

Just prior to Judge Alsup's ruling, it came to light in the Dent case that the National Football League Players Association **filed a grievance** arguing team doctors are violating a contractual duty to provide proper and ethical medical care in dispensing drugs.

"As alluded to in Dent, these dismissals demonstrate simply that the court system may not be the appropriate venue for these claims to be heard," said sports attorney Joseph Hanna of Goldberg Segalla. "The NFL Players Association has filed a grievance dealing with these same painkiller issues, which likely will be where more of the substantive issues are finally handled."

The case is Evans et al. v. Arizona Cardinals Football Club LLC et al., case number 3:16-cv-01030, in the U.S. District Court for the Northern District of California.

7th Circ. Won't Rethink Penn Athletes-Not-Employees Ruling

The Seventh Circuit in January **refused to rethink** its dismissal of a lawsuit by the University of Pennsylvania student-athletes who said they should be considered employees, upholding a ruling that protects the National Collegiate Athletic Association's ideal of amateurism in college sports and a deals a devastating blow to college athletes who seek to be considered employees under federal labor laws.

The two Penn track-and-field athletes **had asked the appellate court** to overturn its **precedential ruling from just weeks before** that affirmed dismissal of their suit, which had alleged student-athletes are unlawfully denied minimum wage and overtime pay under the Fair Labor Standards Act.

The panel held that student participation in collegiate athletics "is entirely voluntary" and that, as amateurs, they participate in their sports for reasons entirely unrelated to immediate compensation and without any real expectation of earning an income. The players then asked for the full court to rehear the case, but none of the active judges on the circuit went along, leaving in place the panel decision.

The ruling was praised by the NCAA, which said there is no basis for student-athletes to be considered employees as their primary goal is education. But it came amid several challenges to the NCAA's amateurism rules and ongoing wider debate over the treatment of college athletes as schools make millions from television rights, merchandising and ticket sales.

"At the college level, looking at it from a 40,000-foot level, it seems there are different athletes who are trying to disrupt the system in different ways…and it doesn't seem to be working," said sports attorney Aaron B. Swerdlow of Gerard Fox Law PC. "It makes me think it will take some sort of student-athlete protest at a high level, such as a team sitting out a Final Four, to push policy reform."

However, in a concurring opinion, U.S. Circuit Judge David F. Hamilton noted that he is "less confident" the court's analysis would apply had plaintiff-athletes not played track and field, which doesn't generate much revenue, opposed to major, revenue-generating sports such as football and basketball.

"In those sports, economic reality and the tradition of amateurism may not point in the same direction," he wrote. "Those sports involve billions of dollars of revenue for colleges and universities. Athletic scholarships are limited to the cost of attending school."

The case is Gillian Berger et al. v. NCAA et al., case number 16-1558, in the U.S. Court of Appeals for the Seventh Circuit.

NHL Wins Bid to Toss Boogaard Wrongful Death Suit

Putting an end to a nearly four-year-old suit by the family of the deceased National Hockey League player Derek Boogaard, U.S. District Judge Gary Feinerman **tossed the lawsuit**, which alleged the league was negligent in Boogaard's eventual death from a drug overdose.

Boogaard played in 277 games over six years in the league with the Minnesota Wild and New York Rangers before his career was cut short when he overdosed while dealing with the effects of a concussion. Known as an "enforcer" or "fighter," a player tasked with taking revenge for brutal hits on his teammates, he participated in 66 fights until one such fight led to a severe concussion, the suit alleged.

But Judge Feinerman found his parents had failed to show how the NHL was negligent or negligent in misrepresenting the potential dangers of repeated head injuries.

The case was a blow to professional athletes and their families seeking to hold leagues legally liable for the effects of repeated head trauma in sports and the way doctors hand out painkillers to deal with injuries. However, the case may be confined to the particular set of circumstances in the Boogaard case.

"While the parents of Boogaard were unable to meet their burden of proof to show that the NHL was negligent, a different player with slightly altered circumstances could someday result in the NHL being found responsible," Hanna said.

Judge Feinerman noted that the Boogaard case "should not be read to commend how the NHL handled Boogaard's particular circumstances — or the circumstances of other NHL players who over the years have suffered injuries from on-ice play."

The case is Boogaard et al. v. National Hockey League, case number 1:13-cv-04846, in the U.S. District Court for the Northern District of Illinois.

--Editing by Rebecca Flanagan.
