

## WWE May Seize Goods from Unnamed Counterfeiters at its Events

World Wrestling Entertainment, Inc. (WWE) may seize unauthorized merchandise sold around its live events without giving to the court in advance the names of those making the illicit sales. Whether the seizures may actually be made by the WWE’s “Enforcement Officials” or law enforcement officers will be up to the trial court, the Fifth Circuit said.

WWE asked for an *ex parte* seizure order under the Trademark Counterfeiting Act to seize goods sold by “fly-by-night” counterfeiters. WWE argued that it faces a “real threat from such counterfeiters who, upon detection and notice of suit, disappear without a trace and hide or destroy evidence, only to reappear later at the next WWE event down the road. This is the very nature of the ‘fly-by-night’ bootlegging industry.”

A Louisiana district court denied the request because the WWE did not specifically identify in its court filings the persons “against whom seizure would be ordered.” Without the names, the district court reasoned, the court could not determine if the goods were counterfeit and thus could not determine if WWE would ultimately succeed on the merits.

However, the appellate court reversed, saying the identities were not necessary because WWE “does not license third parties to sell merchandise at live events. Rather, it makes its own merchandise sales directly. The resulting confined universe of authorized sellers of WWE merchandise necessarily ‘identifies’ any non-WWE seller as a counterfeiter. WWE cannot know in advance the specific identities of counterfeiters who will present themselves at any given event, but it does know that any non-affiliated seller at or near an event is almost certainly a counterfeiter.”

WWE asked the district court to “deputize” WWE’s “Enforcement Officials” to carry out the seizures. The appellate court observed that the Counterfeiting Act did not appear to authorize private citizens to carry out *ex parte* seizure orders but rather left the seizure to law enforcement officers. However, the appellate court left to the district court the final decision on who actually seizes the counterfeit goods.

*World Wrestling Entertainment, Inc. v. Unidentified Parties*, Fifth Cir. No. 14-30489, issued Nov. 4, 2014.