

Ninth Circuit Court of Appeals Rejects EA, NCAA Appeal in Player Likeness Case

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Seattle – Today a U.S. court of appeals handed down a ruling in the high-profile case against Electronic Arts (NASDAQ: EA) and the National Collegiate Athletic Association (NCAA) over the use of student-athletes' likenesses in video games, gutting Electronic Arts' claim that the practice is protected by the First Amendment.

The ruling, handed down by the Ninth Circuit Court of Appeals, remands the case back to the trial court to proceed against all defendants, including the NCAA.

The case, originally filed on May 5, 2009, in U.S. District Court in Northern California, was brought by Sam Keller, a former starting quarterback for Arizona State University and University of Nebraska. Keller and his attorneys at Hagens Berman Sobol Shapiro LLP claim that EA's NCAA games use the athletes' likenesses, accurately depicting the height, age, weight and other information, without permission.

EA had claimed the First Amendment protected its right to publish the games. After losing in US District Court, EA appealed to the Ninth Circuit.

In a 2-1 decision, the appellate court rejected EA's first amendment defense. According to the majority opinion, "EA's use of the likenesses of college athletes like Samuel Keller in its video games is not, as a matter of law, protected by the First Amendment."

According to Steve Berman, managing partner of Hagens Berman and the attorney who argued Keller's case on appeal, today's ruling is a pivotal point in the four-year litigation.

"The Court of Appeals confirmed that EA's defense – the First Amendment claim – was fundamentally and fatally flawed," Berman said. "We expect that when we appear before the trial court again this fall, the defendants will have a very difficult time mounting a new defense for their blatant exploitation of student-athletes."

A status call on the case is scheduled for Sept. 5, 2013.

Today's ruling follows the NCAA's decision two weeks ago to not renew its licensing relationship with EA when it expires in 2014.

"Today's ruling, combined with the NCAA's decision not to renew its license, speaks volumes about the actions of the defendants," said Berman. "We are confident that EA and the NCAA made millions of dollars at the expense of student-athletes by improperly taking property belonging to the athletes and the athletes alone. This ruling will give us a chance not only to recover the value of the images for the college athletes, but also to punish EA and the NCAA for intentionally profiting off of things they knew were off limits to them."

More information about the case is available at www.hbsslaw.com/NCAAvideogames.

About Hagens Berman

Seattle-based Hagens Berman Sobol Shapiro LLP is a nationwide class-action law firm with offices in nine cities. Founded in 1993, the firm's mission is to represent plaintiffs in class actions and multi-party, large-scale litigation that has the potential to protect the rights of investors, consumers, workers, whistleblowers, inventors and the environment. The National Law Journal has rated Hagens Berman as one of the top plaintiffs' firms in the country four out of the last five years. More information about the firm is available at www.hbsslaw.com, and the firm's class-action blog is at www.classactionlawtoday.com.

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