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METS T-SHIRT SALE BARRED IN NEW YORK

JUDGE ISSUES INJUNCTION UNDER CIVIL RIGHTS LAW

By Edward A. Adams

BASEBALL IS an individual sport, at least when it comes to publicity, a Manhattan State Supreme Court justice has ruled in a case of first impression. The decision will be published Monday.

Most of the members of the 1969 New York Mets, who improbably won the World Series after years of being a fixture at the bottom of the standings, have won an injunction against a New York company that, without the team members' permission, was selling a shirt featuring the team picture.

The company claimed the picture celebrated the "team identity," which is a "separate and historically recognizable entity," entitling the individual players to no compensation. But Justice Martin Schoenfeld ruled in *Shamsky v. Garan Inc.* that "these players have the right to commercial exploitation of their individual identities, even if collectively these identities may be somewhat less valuable than the identity of a greater, more memorable, whole."

However, because the case was brought under New York law, the injunction is limited only to sales within New York.

Garan Inc. manufactures a line of jerseys called "Long Gone," that celebrates great baseball teams from the past. The Mets shirt features the 1969 team photograph on the front, and a team photo from the 1962 inaugural season on the back. Around the pictures and on the sleeves are statistics and box scores that contrast the first season - when the team won 40 games and lost 120, ending "a mere 60 1/2 games out of first place" - with the 1969 season record of 100-62 and a victory in the World Series in five games.

Twenty of the 1969 team's players, including Bud Harrelson, Tommie Agee and Tug McGraw, sued the company, claiming the shirt violated New York Civil Rights Law §50, which prohibits the use of an individual's likeness for commercial purposes without consent.

The company said it purchased the photo from the Baseball Hall of Fame in Cooperstown, N.Y., which it said granted it the rights to use it on the shirt.

But the Uniform Player's Contract which was signed by each of the team members granted the Mets the right to photograph or film them, and assigned the team's owners the rights to those pictures, films or broadcasts. The Mets told the court that they did not license Garan Inc. to use the players' photograph on its shirt.

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Recognizable Guys

Each of the company's several attempts to get around that problem failed.

First, it claimed since it was a team photo, the individual players had no right to object to its use. Justice Schoenfeld said he "agrees wholeheartedly that the team is commemorated, and that the whole is greater than the sum of its parts. But the players' pictures are used, and the parts have an independent existence."

Second, the company argued that the reproduction of the photo was so poor, it was difficult or impossible to identify individual players. In an opinion that quoted baseball writer Roger Kahn and William Shakespeare, who is known primarily for non-baseball works, Justice Schoenfeld said he "takes judicial notice that hordes of baseball fans would be able to recognize numerous players in the 1969 Mets picture."

Third, the company claimed the players gave away all rights to the picture when they signed their contracts. But the judge noted that the contract required players to get the ball club's approval if, during the season, they made public appearances, went on television, or wrote for a newspaper. For the contract to have limited their rights over their likenesses, they first had to retain those rights, the judge said.

But the players' attempt to ban all sales of the shirt fell short. The judge found that the law applies only to the use of a likeness within New York.

Philip Klein of Zivnyak, Klein & Liss, who along with Leonard Benowich represented the players, said he interpreted the decision to ban workers in the company's New York headquarters from marketing the shirt. Paul Fields of Darby & Darby, who represented the company, said sales outside of New York would continue.

The court did not determine damages.

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