

U.S. at 674; G & T Terminal Packaging, 425 F.3d at 717-18; M & M Produce, 335 F.3d at 132-36; T & T Mfg., 587 F.2d at 538.

IV. CONCLUSION

For the reasons more fully set forth above, the court finds that the undisputed facts establish that the players do not have a right of publicity in their names and playing records as used in CBC's fantasy games and that CBC has not violated the players' claimed right of publicity. The court further finds, alternatively, that even if the players have a claimed right of publicity, the First Amendment takes precedence over such a right. The court further finds that the undisputed facts establish that the names and playing records of Major League baseball players as used in CBC's fantasy games are not copyrightable and, therefore, federal copyright law does not preempt the players' claimed right of publicity. Additionally, the court finds that the no-challenge provision of the 2002 Agreement between CBC and the Players' Association and the provision of this Agreement which prohibits CBC from using players' names and playing records after the expiration of the Agreement are unenforceable based on public policy considerations. The court finds, therefore, that declaratory judgment should issue in CBC's favor. As such, the court will order the Players' Association and Advanced Media to refrain from interfering with CBC's fantasy games in the manner proscribed by his court's decision.

Accordingly,

IT IS HEREBY ORDERED that CBC's Motions for Summary Judgment are **GRANTED**;

[Doc. 72, Doc.107]