

You're Out?: Rooftop Views Of Sports Games Raise IP Issues

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In a high-profile dispute that strikes at the intersection of sports, intellectual property and Chicago neighborhood tradition, on Aug. 13, the Chicago Cubs Baseball Club LLC filed suit in the [U.S. District Court for the Northern District of Illinois](#) against Aidan Dunican and Rooftop by the Firehouse Inc., doing business as Wrigley View Rooftop.[1]

The case, *Cubs v. Dunican*, centers on the practice of rooftop businesses adjacent to famed Wrigley Field selling tickets to view Cubs baseball games from their vantage points — a practice that, for decades, operated under a licensing agreement with the Cubs.

As negotiations appear to have recently [broken down](#), and the parties anxiously await the court's order on the defendants' motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure filed in June that could issue any day, it is a good time to open a beer, review the replays and make some predictions about who could win out in this diamond donnybrook.

First, to set the scene for any nonsports fans or readers who visit the [Art Institute of Chicago](#) instead of taking in Cubs baseball games in the bleachers, the Chicago Cubs play their home games at Wrigley Field, which is one of the oldest stadiums in sports.

Located in a neighborhood on the north side of Chicago, the field is relatively low-lying, particularly in the outfield, where it is surrounded by buildings that have an unobstructed view into the stadium to watch games.

According to the Cubs' complaint, for 20 years, Dunican and Wrigley View Rooftop, and other neighboring rooftop owners, paid for licenses that allowed them to sell tickets to view Cubs games and use the Cubs' intellectual property.

That license expired at the end of 2023 when negotiations for a new agreement broke down. Despite the expiration, the Cubs allege that the defendants continued to sell tickets for the 2024 season, advertise themselves as an "Official Cubs Partner," and use Cubs trademarks and branding in their marketing.

The Cubs assert that the defendants' conduct constitutes misappropriation, unjust enrichment, federal trademark

infringement, unfair competition, false advertising and violations of Illinois state law. The team stops short of accusing the defendants of rooting for the Mets.

For relief, the Cubs seek damages, disgorgement of profits, and a permanent injunction barring the defendants from selling rooftop admissions to Cubs games or using Cubs intellectual property without a license.

The defendants, for their part, deny the allegations and raise a host of affirmative defenses, including fair use, nominative use, implied license, acquiescence and unclean hands. They argue that their continued operations were in good faith during ongoing negotiations, that any use of Cubs marks was either permitted or promptly ceased, and that the Cubs have suffered no actual harm.

In the context of attending events such as baseball games at Wrigley Field, a ticket is legally considered a license. A license is a revocable, nonpossessory right to enter or use another's property for a specific purpose.

When a person purchases a ticket to a Cubs game, they are not acquiring any ownership interest in Wrigley Field or the Cubs' property; rather, they are being granted permission — via a license — to enter the ballpark and watch the game under the terms and conditions set by the property owner.

The Cubs allege that for 20 years, Dunican and Wrigley View Rooftop paid the Cubs for a license to sell tickets to Cubs games and to use the Cubs' intellectual property. When that license expired, the right to sell tickets and use the Cubs' marks also expired.

The Cubs' position is that continuing to sell tickets to view Cubs games from the rooftop without a license constitutes misappropriation and unjust enrichment. The defendants counter that they are merely selling access to the roof of a building, and that further, no license is required to watch an event that is publicly visible without needing to enter Cubs property.

Misappropriation is defined as the "application of another's property or money dishonestly to one's own use."^[2] The Cubs' theory of misappropriation is not based on trespass to land, but on the unauthorized commercial exploitation of the Cubs' intangible property rights, most particularly in copyright.

But to what extent can what is in plain view be misappropriated? Indeed, the offices of the writers of this article have an unobstructed view of the inside of Georgia Tech's Bobby Dodd Stadium.

While, to our colleagues who are Georgia Tech alumni, we would respond that we would never actually watch a Georgia Tech football game, the question arises whether, under the legal logic of the Cubs, we need an intellectual property license to remain in our offices on a Saturday afternoon in the fall.

Title 17 of the U.S. Code, Section 106, outlines the exclusive rights of copyright holders.^[3] Specifically, it grants the copyright owner the exclusive right to perform the copyrighted work publicly, which includes broadcasting.

In *National Basketball Association v. Motorola Inc.*, the U.S. Court of Appeals for the Second Circuit held in 1997 that once a performance is fixed in a tangible medium, such as a broadcast, both the broadcast and the underlying event fall within the subject matter of copyright for preemption purposes.^[4]

The court emphasized that Congress intended for uncopyrightable elements within copyrightable works to remain in the public domain, and allowing state law protection for such elements would undermine that intent.[5]

A brief review of the facts of the NBA case can provide insight into how the Northern District of Illinois might rule in the present case.[6] The development of the defendants' pager and website provided real-time factual information about NBA games, such as scores and statistics, but did not reproduce any expressive content from NBA broadcasts.[7]

The information provided by the defendants and the AOL site was collected independently by reporters, who watched games on TV or listened on the radio, rather than copying from the NBA's own data services.[8]

The Second Circuit in the NBA case found that the underlying basketball games do not fall within the subject matter of federal copyright protection because they do not constitute "original works of authorship" under Title 17 of the U.S. Code, Section 102(a).[9]

Sports events are not "authored" in any common sense of the word. Case law from the [U.S. Court of Appeals for the Seventh Circuit](#), although scarce on the issue, was used to support these findings. In *Production Contractors Inc. v. WGN Continental Broadcasting Co.* in 1985, the Northern District of Illinois held that a Christmas parade was not a work of authorship entitled to copyright protection.[10]

Further, the NBA relied in part on a footnote in *Baltimore Orioles Inc. v. Major League Baseball Players Association*, decided by the Seventh Circuit in 1987, stating that the "[p]layers' performances" contain the "modest creativity required for copyright ability." [11]

However, the court went on to state, "Moreover, even if the [p]layers' performances were not sufficiently creative, the [p]layers agree that the cameramen and director contribute creative labor to the telecasts." [12] Here, there is an indication that the Seventh Circuit was considering the telecasts — not the underlying games.

In cases concerning hot-news misappropriation, the court recognized a narrow form of this claim survives preemption, specifically where the plaintiff gathers information at a cost, the information is time-sensitive, the defendant's use constitutes free-riding, the defendant is in direct competition, and the free riding would threaten the existence or quality of the product or service.

Applying this test, however, the court held that Motorola and Sports Team Analysis and Tracking Systems LLC did not engage in unlawful misappropriation in creating their sports statistics pager, SportsTrax.

Although the information transmitted by the pagers was time-sensitive and the NBA planned to offer a competing pager product, Motorola expended its own resources to collect and transmit factual information, rather than riding on the NBA's efforts.

The court distinguished this situation from *International News Service v. Associated Press*, decided by the [U.S. Supreme Court](#) in 1918, noting that SportsTrax did not substitute for attending games or watching broadcasts, nor did it undermine the NBA's primary business or its future pager product, as both parties bore their own costs of data collection.[13]

For the Cubs and Dunican, provided that there is no copyrighted property protection for the Cubs games, the hot-news misappropriation test adopted by *NBA v. Motorola* will also likely fail, in that it is unlikely for a court to find that any free riding committed by Dunican would threaten the existence or quality of the product or service offered by the Cubs.

However, the unauthorized use of the Cubs trademark and intellectual property is a viable issue that could enjoin their use in the promotion and provision of the rooftop tickets.

This case not only tests the boundaries of intellectual property rights in the context of live sporting events, but also highlights the evolving relationship between the Cubs and the iconic rooftop businesses that have become part of the Wrigley Field experience.

The outcome will likely have significant implications for both the protection of the business of live sports, and also the character of the Wrigleyville neighborhood.

Live sporting event owners and promoters, such as the Boston Marathon or the F1 race in Las Vegas, will need to consider if there are ways to stop unlicensed third parties from selling viewing rights to their events.

As we await the district court's order regarding the defendants' motion for judgment on the pleadings pursuant to Rule 12(c), Chicago residents may wonder if they should anticipate a shift in the relationship between the Cubs and the rooftops surrounding Wrigley Field, such as erecting an outfield wall in the spirit of Fenway Park's Green Monster to block the rooftop views, which could render the intellectual property and other dispute issues moot.

[1] [Chicago Cubs Baseball Club, LLC v. Dunican](#), No. 24-cv-05086, 2025 WL 1101654 (N.D. Ill. Apr. 14, 2025).

[2] Black's Law Dictionary (12th ed. 2024) (defining "misappropriation").

[3] 17 U.S.C. § 106.

[4] [Nat'l Basketball Ass'n v. Motorola, Inc.](#), 105 F.3d 841, 849 (2d Cir. 1997).

[5] *Id.*

[6] *Id.* at 843-44.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 846.

[10] [Production Contractors, Inc. v. WGN Continental Broadcasting Co.](#), 622 F.Supp. 1500 (N.D.Ill.1985).

[11] [Baltimore Orioles, Inc. v. Major League Baseball Players Assn.](#), 805 F.2d 663, 669 n. 7 (7th Cir.1986).

[12] Id.

[13] NBA v. Motorola, 105 F.3d at 850?51.

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