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ARTICLES

This article seeks to introduce legal discourse into the discussion of freak shows and, in the process, to comment on legal approaches to preventing discrimination against persons who are physically different. Drawing upon the theories and analysis of non-legal scholars and laws concerning employment of persons with disabilities, this article examines statutes, ordinances, and case law that address freak shows.

This article argues that current laws and cases that address regulation and prohibition of freak shows are rendered ineffective because they fail to see beyond the fiction and drama of the freak show and instead adopt stigmatizing assumptions about persons with unusual bodies. The Article concludes that a better approach is to recognize that freak shows are a kind of theater subject to First Amendment protection. Courts should enforce anti-discrimination laws with the understanding that social assumptions, not physical conditions, are the root of discrimination against persons with unusual bodies.

The Press as an Interest Group: Mainstream Media in the United States Supreme Court

This article explores the manner in which the institutional press uses the litigation process strategically, in much the same way that another interest group might lobby the legislative branch to shape its own regulatory environment, particularly the First Amendment doctrine within which news workers must operate. The purpose of this preliminary work is to examine, quantitatively, the degree of participation and success by the mainstream media in U.S. Supreme Court litigation as parties and amici curiae.

There can be little doubt that the institutional press is an interest group to be reckoned with in the Supreme Court. Over the past century, and especially since 1964, the press has secured for itself the greatest legal protection available anywhere in the world. While some of that protection has come from Congress, by far the greatest share has come from the Supreme Court's expansive interpretation of the First Amendment's Press Clause.

COMMENTS

Can Google be Liable for Trademark Infringement? A Look at the "Trademark Use" Requirement as Applied to Google AdWords

Google has been no stranger to legal controversy in recent years. One of the hotly contested issues which courts are currently sorting through involves the legality of Google AdWords, Google's lucrative advertising program which is

the source of nearly half of its revenue. The AdWords program allows advertisers to purchase words or phrases related to their businesses that will bring up their websites under "sponsored links" when those keywords are typed into Google's search engine. The controversy centers around the fact that sometimes the words which Google sells and advertisers purchase are trademarked terms. This has caused some concern for businesses looking to protect their trademarked interests and has also raised questions as to Google's liability for trademark infringement.

This comment will examine direct trademark infringement claims against Google. Specifically, this comment will focus on the "trademark use" element in these claims and will analyze the various court decisions to delineate the basic arguments for and against finding "trademark use" in contextual advertising cases. An examination of the competing policies behind the various interpretations of "trademark use" will be presented, arguing that "trademark use" should be interpreted strictly. Applying this interpretation, it will be argued that Google AdWords' practice of "keying" does not amount to "trademark use" and that, as such, Google AdWords will not be liable for direct trademark infringement.

In August, 2006 a Missouri court held that the use of Major League Baseball players' names and statistics by fantasy baseball leagues did not violate the players' rights of publicity. The case, C.B.C. Distribution and Marketing v. MLB Advanced Media, presented a unique issue due to the completely virtual existence of the leagues that C.B.C. operates, appearing to merely publish informational speech about the players' on-field achievements. Speech that is intended to be informative is typically granted greater lee-way, and less protection is afforded those making a claim of infringement of their right of publicity, due to questions about interfering with free speech. In its decision, the court provided great deference to these concerns and in doing so clearly departed from the existing precedent covering the still-developing common-law right. The court presented a new definition for when an individual's identity is used and when such use is for a commercial advantage.

This comment begins by providing background information about fantasy baseball and establishing the foundations of protection under the right of publicity. The comment then examines the court's reasoning and identifies where it departed from previous understandings of the right of publicity. Finally it presents potential explanations for the court's conclusion and possible affects of the decision.