

M&E MVP: Weil Gotshal's Yehudah Buchweitz

By **Melissa Lipman**

Law360, New York (December 17, 2015, 5:40 PM ET) -- Weil Gotshal & Manges LLP's Yehudah Buchweitz helped CBS Broadcasting Inc. escape a pair of cases claiming that the broadcaster and its website had violated college athletes' publicity rights by using their names and likenesses in television broadcasts and online without permission, earning him a spot on Law360's 2015 list of media and entertainment MVPs.

Buchweitz, a New York-based partner in the firm's complex commercial litigation group, helped win a key dismissal for CBS in June, when a Tennessee federal court dismissed a complaint that accused the broadcaster and others of violating federal antitrust and intellectual property laws, as well as the state's right of publicity law, with its broadcasts of National Collegiate Athletic Association football and basketball games.

A group former student-athletes had claimed that TV networks — including CBS, NBC, ABC, Fox and ESPN — and a number of college athletic conferences as well as group licensing agencies conspired to create a marketplace resembling a “plantation-type arrangement” that made billions of dollars from which student-athletes did not benefit.

But the judge handling the case concluded in June that players in sporting events did not have a right of publicity in the broadcasts. The athletes have appealed the decision to the Sixth Circuit

"This case ... was the first case to definitively say [the student-athletes] do not have a right of publicity in broadcasts," Buchweitz said. "It was under Tennessee law, but some of the interpretations including from past Supreme Court cases we were arguing could be applied in other states as well."

Unlike the broadcast litigation, in which CBS was part of a broad swath of companies facing antitrust and IP allegations, the broadcaster was ultimately the lone defendant in another case brought by student-athletes claiming that a service CBS offers to allow college athletic departments to post photos of the

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Yehudah Buchweitz
Weil Gotshal

players for purchase online violated their publicity rights.

The suit, brought by some of the same firms that successfully pursued right of publicity claims against the NCAA and Electronic Arts Inc. over the use of players' images in video games, once again sought a nationwide class of Division I student-athletes.

Although the plaintiffs survived a motion to dismiss, Buchweitz helped CBS defeat class certification in July in part by providing the court with a survey of the differences in right of publicity laws across the nation.

"I think that was one of the first times ever that was done, [and in its opinion] the court went into a pretty detailed analysis of why a nationwide class is not appropriate for right of publicity cases," Buchweitz said. "Courts have been stricter, ruling it's not just enough to say [that the laws are] different but how it's different and why that's impactful."

Buchweitz is also representing Showtime in multidistrict litigation claiming that promoters lied about boxer Manny Pacquiao's shoulder injury before his "Fight of the Century" in May with Floyd Mayweather and recently helped Simon & Schuster defeat an e-books price-fixing suit brought against Apple Inc. and several publishers by a rival e-book publisher.

The litigator likewise racked up a Second Circuit victory in a First Amendment case in 2015 in a constitutional challenge filed by the town of Westhamptom Beach to efforts to establish an eruv, a symbolic enclosure that lets orthodox Jews push strollers and take other things outside their homes on the sabbath.

In that case, the court agreed with Buchweitz's clients that it was a reasonable accommodation for the Long Island utility company to agree to put up small sticks on power poles in return for a fee to create the eruv.

--Additional reporting by Y. Peter Kang. Editing by Stephen Berg.

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