

United States Court of Appeals for the Second Circuit  
**NATIONAL BASKETBALL ASSOC. v. MOTOROLA, INC.**  
105 F.3d 841 (1997)

WINTER, Circuit Judge.

Motorola, Inc. and Sports Team Analysis and Tracking Systems (“STATS”) appeal from a permanent injunction entered by Judge Preska. The injunction concerns a handheld pager sold by Motorola and marketed under the name “SportsTrax,” which displays updated information of professional basketball games in progress. The injunction prohibits appellants, absent authorization from the National Basketball Association and NBA Properties, Inc. (collectively the “NBA”), from transmitting scores or other data about NBA games in progress via the pagers, STATS’s site on America On-Line’s computer dial-up service, or “any equivalent means.”

The crux of the dispute concerns the extent to which a state law “hot-news” misappropriation claim based on *International News Service v. Associated Press* survives preemption by the federal Copyright Act and whether the NBA’s claim fits within the surviving *INS*-type claims. \* \* \*

I. BACKGROUND

The facts are largely undisputed. Motorola manufactures and markets the SportsTrax paging device while STATS supplies the game information that is transmitted to the pagers. The product became available to the public in January 1996, at a retail price of about \$200. SportsTrax’s pager has an inch-and-a-half by inch-and-a-half screen and operates in four basic modes: “current,” “statistics,” “final scores” and “demonstration.” It is the “current” mode that gives rise to the present dispute.<sup>1</sup> In that mode, SportsTrax displays the following information on NBA games in progress: (i) the teams playing; (ii) score changes; (iii) the team in possession of the ball; (iv) whether the team is in the free-throw bonus; (v) the quarter of the game; and (vi) time remaining in the quarter. The information is updated every two to three minutes, with more frequent updates near the end of the first half and the end of the game.

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1. The other three SportsTrax modes involve information that is far less contemporaneous than that provided in the “current” mode. In the “statistics” mode, the SportsTrax pager displays a variety of player and team statistics, such as field goal shooting percentages and top scorers. However, these are calculated only at half-time and when the game is over. In the “final scores” mode, the unit displays final scores from the previous day’s games. In the “demonstration” mode, the unit merely simulates information shown during a hypothetical NBA game. The core issue in the instant matter is the dissemination of continuously-updated real-time NBA game information in the “current” mode. \* \* \*

There is a lag of approximately two or three minutes between events in the game itself and when the information appears on the pager screen. SportsTrax's operation relies on a "data feed" supplied by STATS reporters who watch the games on television or listen to them on the radio. The reporters key into a personal computer changes in the score and other information such as successful and missed shots, fouls, and clock updates. The information is relayed by modem to STATS's host computer, which compiles, analyzes, and formats the data for retransmission. The information is then sent to a common carrier, which then sends it via satellite to various local FM radio networks that in turn emit the signal received by the individual SportsTrax pagers.

Although the NBA's complaint concerned only the SportsTrax device, the NBA offered evidence at trial concerning STATS's America On-Line ("AOL") site. Starting in January, 1996, users who accessed STATS's AOL site, typically via a modem attached to a home computer, were provided with slightly more comprehensive and detailed real-time game information than is displayed on a SportsTrax pager. On the AOL site, game scores are updated every 15 seconds to a minute, and the player and team statistics are updated each minute. The district court's original decision and judgment did not address the AOL site, because "NBA's complaint and the evidence proffered at trial were devoted largely to SportsTrax." Upon motion by the NBA, however, the district court amended its decision and judgment and enjoined use of the real-time game information on STATS's AOL site. Because the record on appeal, the briefs of the parties, and oral argument primarily addressed the SportsTrax device, we similarly focus on that product. However, we regard the legal issues as identical with respect to both products, and our holding applies equally to SportsTrax and STATS's AOL site.

The NBA's complaint asserted six claims for relief: (i) state law unfair competition by misappropriation [and five others]. Motorola counterclaimed, alleging that the NBA unlawfully interfered with Motorola's contractual relations with four individual NBA teams that had agreed to sponsor and advertise SportsTrax.

The district court dismissed all of the NBA's claims except the first—misappropriation under New York law. The court also dismissed Motorola's counterclaim. Finding Motorola and STATS liable for misappropriation, Judge Preska entered the permanent injunction, reserved the calculation of damages for subsequent proceedings, and stayed execution of the injunction pending appeal. Motorola and STATS appeal from the injunction.... \* \* \*