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Caddyshock!

An Analysis of Hicks, et al. v. PGA Tour Inc.

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Introduction

Not since Danny Noonan sank an explosion-aided hanging putt to defeat Tony D'Annunzio in the Bushwood Caddy Day golf tournament in 1980^[1] have caddies garnered the attention



they are currently receiving by virtue of the recent lawsuit filed on February 3, 2015 in the United States District Court for the Northern District of California.

The Lawsuit

In the matter of Hicks, et al. v. PGA Tour Inc.^[2], lead plaintiffs Mike Hicks and Kenny Harms^[3] are currently joined by 80 other caddies who are seeking class-action status for the nearly 1,000 caddies who work on the PGA Tour,

Champions Tour and Web.com Tour based on an unpaid endorsement scheme valued at \$50 million per year in corporate sponsorships. Causes of action are based upon violations of the

Sherman Act,^[4] the Clayton Act,^[5] the Lanham Act,^[6] right of publicity/misappropriation of likeness, breach of contract, unjust enrichment/quantum meruit, duress/business compulsion and California's unfair competition laws. In addition to seeking compensation for their compelled endorsement of PGA Tour sponsors and affiliates, the caddies also asked the court to enter a preliminary injunction that would prevent the PGA Tour from hampering the caddies' ability to work at future tournaments while the case is pending (since withdrawn on February 19, 2015, more below).

As stated in the Complaint, "The main issue in this lawsuit is whether [the PGA Tour] may lawfully compel caddies to wear "bibs" during professional golf tournaments and then retain for itself the tens of millions of dollars in advertising revenue generated by those bibs annually."^[7] Although the caddies have never consented to or been paid for the use of their likenesses, they say the PGA Tour forces them to serve as human billboards by requiring them to wear logo-covered "bibs" over their shirts during tournaments.

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It is interesting to note that the PGA Tour's Player Handbook & Tournament Regulations purports to grant caddies the same right to endorse products on their clothing as tour players pursuant to its Player Endorsement Policy, providing that "Caddies' clothing must conform to the Player Endorsement Policy."^[8] However, that right is essentially eliminated by the mandated use of bibs by caddies and the verbiage in the Player Endorsement Policy that states:

Logo Size, Location and Quantity. Logos on a player's clothing and headwear must be in good taste as to size, location and quantity. As a guideline, logos which do not exceed three by five inches (3"x5") are considered reasonable. Generally accepted locations are as follows: right and left breast of shirt, right and left sleeve of shirt, right and left collar of shirt, yoke of the shirt and front, back and sides of headwear. Examples of unacceptable locations include: across the back of a shirt, down the length of either sleeve, down the length of a player's pant legs and rearend area of a player's pants. As a guideline, no more than four different sponsor logos should appear on a player's clothing and headwear. In addition, hat, shirt and pants designs may incorporate the apparel maker's logo, other corporate logos, words, slogans, or the like provided they do not exceed the 3" x 5" size guideline.^[9]

Another item of interest is the alleged conduct of the PGA Tour in maintaining its control over its "human billboards."

To wit, the Complaint alleges that the PGA Tour has threatened to prohibit caddies from providing services at tournaments organized and promoted by the Tour if caddies refuse to wear the mandated bibs. Further, the Tour has contacted tour players to determine whether players would be willing to terminate their agreements with caddies who refuse to wear the bibs—all the while simultaneously engaging in other strong-arm tactics directed towards maintaining the status quo.^[10]

Next Steps

As this article is being written, counsel for the plaintiff caddies has just filed a notice withdrawing its request for preliminary injunction, stating:

Defendant PGA TOUR, Inc. has informed the players on the PGA TOUR, Champions Tour, and Web.com Tour that the TOUR is in no way suggesting or requiring that any member take any action against any caddie solely as a result of the lawsuit. In addition, the TOUR has represented that it has directed TOUR officials not to take any action, or make any statements to players, inconsistent with the foregoing statement made to players.

However, the plaintiffs reserved their right to seek injunctive relief in the form of a temporary restraining order or preliminary injunction order in the future should the circumstances warrant such relief.

Aside from the preliminary injunction issue, the PGA Tour has 20 days from

the date of service to answer or otherwise plead to the caddies' Complaint. That being said, it is reasonable to expect most, if not all, of the following to occur over the coming weeks and months:

- The PGA Tour will ask for, and be granted, an extension of time in which to respond to the Complaint;
- The PGA Tour will file a motion to dismiss and/or a motion to transfer venue rather than simply answering the complaint; and
- The plaintiffs will amend their Complaint to update class representative plaintiffs, individual plaintiffs and/or facts and causes of action.

Assuming the traditional course that cases of this nature take, it is likely that motion practice and hearings relating to a motion to dismiss and/or a motion to transfer venue will be ongoing when the first scheduled status conference in this matter rolls around the first week of May 2015.

That being said, we can expect rulings on any such motions about the same time that caddies are shouldering their bags at Chambers Bay for the U.S. Open in June or St. Andrews for the Open Championship in July.

This case should prove to be a game-changer in the world of professional

golf, either through settlement or court mandate.

Now if I could only get Jim Nantz to read me all motions, memoranda and court orders/opinions in this matter as the Masters theme music plays softly in the background...

Footnotes

[1] Caddyshack (Orion Pictures, 1980)

[2] Hicks v. PGA Tour, Inc., No. 3-15-CV-00489 (N.D. Cal. Feb. 3, 2015)

[3] Hicks formerly caddied for Payne Stewart, Greg Norman, Justin Leonard and Steve Stricker, among others. Harms currently caddies for Kevin Na, and formerly caddied for Hale Irwin, Aaron Baddeley, Ray Floyd, Gary Player, Lee Trevino, Michelle Wie, among others.

[4] 15 U.S.C. § 1 et seq.

[5] 15 U.S.C. § 12 et seq.

[6] 15 U.S.C. § 1050 et seq.

[7] Hicks Complaint at ¶ 1.

[8] Prof'l Golfers ASS'N, 2014-2015 PGA Tour Player's Handbook and Tournament Regulations, pp. 57-59, 76-77 (2015)

[9] Id. at 77

[10] Hicks Complaint at ¶¶ 54-56.