[NL] Professional Soccer Players Cannot Claim Image Rights Relating to the Broadcast of Soccer Matches

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On 10 December 2013, the Court of Appeal in Amsterdam found that soccer players have no claim to image rights relating to the broadcast of their professional soccer matches. This confirms the judgment of the District Court of Amsterdam on 24 February 2004.

Every player and club in the professional soccer business in the Netherlands, is a member of the Royal Dutch Soccer Union (KNVB). The clubs receive payment from the broadcasters and television stations for the right to broadcast match reports or parts of the match. The trade union for professional soccer players (VVCS), claimed that they had not received any payment for the broadcasting of matches and match reports since 2000.

VVCS argued that the soccer players therefore had a right to compensation based on article 21 of the Copyright Act (CA). Article 21 states that the communication to the public of images without consent of the person portrayed is unlawful where the person portrayed has a legitimate interest in opposing communication of his/her image to the public. The District Court of Amsterdam considered whether the players gave their (explicit or tacit) consent to the KNVB for the broadcasting of the match. In its decision, the District Court concluded that this consent was in principle contained in the employment contracts of players in the professional soccer business.

The Court of Appeal considered the Supreme Court judgment Cruijf v Tirion of 14 june 2013. In that case, the Supreme Court found with regard to article 21 CA, that a person whose image is portrayed without having been commissioned by or on behalf of the persons portrayed may oppose communication to the public of the image without his/her consent, where the person has a legitimate interest, to which the right of expression and freedom of information under the circumstances must yield.

According to the Court of Appeal, the opposition of the use of the players' image rights was particularly based on considerations of a commercial nature. VVCS claimed that the absolute right of the soccer players to commercial exploitation of their image right is a legitimate interest and therefore outweighs the right to freedom of expression. The Court did not agree with this reasoning due to the fact

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that professional soccer players receive compensation, in the form of a fixed salary, for their participation in competitions where the recordings are created and broadcasted. It is, however, important that the images that are broadcast relate to the activities of those involved as part of a team as this portrayal will not affect the commercial exploitation potential of the players.

The Court also found that there had been no agreement or acknowledgment by the clubs that the players would have been entitled to financial arrangements based on an attributable image right in addition to their income/salary.

Gerechtshof Amsterdam, 10 December 2013, ECLI:NL:GBAMS: 2013:4501, KNVB c.s./VVCS

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2013:4501

Court of Appeal Amsterdam, 10 December 2013, ECLI:NL:GBAMS: 2013:4501, KNVB c.s. v VVCS

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