

Filed: December 28, 2000

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 99-1617**

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FREDERICK E. BOUCHAT,

Plaintiff-Appellee,

versus

BALTIMORE RAVENS, INCORPORATED;  
NATIONAL FOOTBALL LEAGUE  
PROPERTIES, INCORPORATED,

Defendants-Appellants.

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O R D E R

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We have considered the petition for rehearing in this case, filed by Baltimore Ravens, Inc., et al., and the response of Bouchat.

Upon a request for a poll of the court, Judges Wilkinson, Niemeyer, Michael, Motz and King voted to grant rehearing en banc. Judges Widener, Wilkins, Luttig and Traxler voted to deny rehearing en banc.\*

Fewer than a majority of the circuit judges who are in regular active service having voted for rehearing en banc, it is accordingly ADJUDGED and ORDERED that the petition for rehearing en banc shall be, and it hereby is, denied.

The panel considered the petition for rehearing and is of opinion it is without merit.

It is accordingly ADJUDGED and ORDERED that the petition for rehearing shall be, and it hereby is, denied.

It is FURTHER ORDERED that the opinion in this case shall be, and it hereby is, amended by adding thereto Footnote AI in the slip opinion, page 11, following the word "drawing," the last word of Part II of the opinion. Footnote AI is attached hereto and made a part hereof.

It is FURTHER ORDERED that the slip opinion shall be, and it hereby is, further amended by the addition of Footnote 10 following the word "him" in the third line from the bottom of page 23 of the slip opinion, which Footnote 10 is attached hereto and made a part hereof.

With the concurrence of Judge J. H. Michael. Judge King dissents. He would grant rehearing and require judgment to be entered for the defendants, for the reasons expressed in his dissenting opinion.

/s/ H. E. Widener, Jr.

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For the Court

\*Judge Williams being disqualified, did not participate in the decision in this case.



Plaintiff's  
Drawing

Accused  
Work

A copy of the plaintiff's shield logo and the accused work of the NFL Properties is shown above. There is no dispute as to the similarity of the works, not only because the similarity is facially indisputable, but the defendants' expert witness testified, and the plaintiff's expert agreed, that the designs are so similar that they could not have been created independently from one another. The dissent notes that "it is just as likely that Bouchat copied the Ravens logo as vice versa." *Infra*, note 10. The jury decided this issue of fact after considering such evidence as: the testimony from 19 identification witnesses for the plaintiff that they had seen the plaintiff's shield drawing in late 1995 (two of whom had received copies of the shield drawing as Christmas presents in December, 1995); the March 28, 1996 offer from Mr. Moag to forward Bouchat's drawings to Mr. Modell; the forwarding by Mr. Modell to NFL Properties of unsolicited sketches on at least two occasions in the relevant time period; Bouchat's April 1 or 2, 1996 fax of his shield drawing to Moag; the defendants' inability to present convincing evidence of any preliminary sketches or drawings before April 2, 1996 by NFL Properties of the Ravens shield logo; the June 6, 1996 unveiling of the Ravens shield logo; and the instant recognition by Bouchat and others of the Ravens logo as a copy of Bouchat's work.

The dissent states that there is evidence counter to the above, but such a conflict in evidence presents the classic jury issue, and the jury's resolution of that issue was for the plaintiff.

Footnote 10

The panel majority has affixed to its opinion Bouchat's shield drawing and the Ravens logo, apparently to illustrate their "striking similarity" to each other. It strikes me that these drawings better illustrate the point made in the Keats' hypothetical. In fact, it is just as likely that Bouchat copied the Ravens' logo as vice versa. It bears repeating, see supra note 1, that Bouchat did not copyright his shield drawing until nearly two months after the Ravens unveiled their logo.