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TESLAW E-Newsletter
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Dear Members,

Happy SXSW Month! My feet hurt just thinking about walking around downtown Austin, but I think I have the perfect schedule planned.

Don't forget about the **FOURTH** Annual TESLAW SXSW Mixer. It's **Thursday, March 14, 2014** from 4:00 – 6:00 p.m. at the Iron Cactus (Sixth Street/Trinity).

Have contributions or questions? Feel free to contact us.

Thanks again to the e-newsletter contributors and editors! See you in Austin.

Very truly yours,
[Catherine Hough](#), Chair
Entertainment and Sports Law Section

TESLAW Member Spotlight



Few people have done more to bring the film, television, and music industries to the Lone Star State than

attorney Larry Waks. Practicing law for over 35 years, Mr. Waks has represented clients as diverse as Harper Collins, Motown, Arista, Warner Chappell, Creative Artists Agency, GSD&M, and Playboy, just to name a few.

Mr. Waks is a founding member of the Latin Grammys, a voting member of the Grammys, serves on the Governing Committee of the ABA Forum on the Entertainment and Sports Industries, and is chair of the litigation division of the Forum. He is also a past-President of the Texas State Bar Entertainment and Sports Law Practice Section. Mr. Waks has helped build Texas' native entertainment industry by serving as counsel to Austin City Limits, the University of Texas Film Institute, and Burnt Orange Films.

These days, Mr. Waks' law practice area is heavily concentrated on the transactional side of filmmaking, as he regularly provides counsel to movie producers and film studios based on the East and West Coasts. Currently, Mr. Waks is involved in the creation of several major motion pictures. "In the 1990s, people in the entertainment industry used to be genuinely surprised to find out my practice was based in Texas and not in New York or L.A., but not anymore," Waks explains.

Of course, Texas' transformation into the entertainment industry's "Third Coast" has much to do with the outsized role played by Larry Waks. For more information on Larry, visit his [website](#).

To be considered for the TESLAW Member Spotlight please submit a short bio (no more than 200 words) and photograph to [Victoria Helling](#).

After Official Review, Fourth Circuit Rules No Unsportsmanlike Conduct in NFL's Use of Franchise Logo

Months before the Baltimore Ravens' inaugural season in 1996, the NFL team premiered its Flying B logo, which featured a gold shield with a purple "B" in the center and purple wings extending from both sides of the shield. Frederick Bouchat, an artist, noticed that the logo had a strong resemblance to a sketch he previously provided to the chairman of the Maryland Stadium Authority, to be passed on to the Ravens. Bouchat quickly obtained a copyright registration on his sketch, but did not reach out to the Ravens. The Ravens used the Flying B logo until 1998, when they adopted a different logo. While the U.S. Court of Appeals for the Fourth Circuit has addressed several previous disputes between Bouchat and the NFL over this logo, most recently the Court addressed Bouchat's latest suit regarding the NFL's and Ravens' use of this logo in three documentary videos and visual displays inside the Ravens' stadium. *Bouchat v. Baltimore Ravens Ltd. P'ship*, 737 F.3d 932 (4th Cir. 2013). For purposes of brevity, this case note will discuss only the videos at issue.

The NFL distributed these videos via the NFL Network, NFL.com, and Hulu. In the first video, Top Ten: Draft Classics, a four-minute segment analyzed the Ravens' impressive 1996 draft class by featuring voiceovers, b-roll footage, and interviews of players, journalists, and team officials. In two portions of the b-roll, the fleeting logo is visible for less than one second. The second video, Top Ten: Draft Busts, revisited some of the least successful draft picks in the NFL's history. While showing footage of Lawrence Phillips, a St. Louis Rams running back, the Flying B logo is momentarily visible on a defensive player's helmet as he tackles Phillips. The third video, Sound FX: Ray Lewis, chronicles the career of the outspoken Ravens linebacker. The Flying B logo can be seen for less than ten seconds of the twenty-four minute program. The district court found that all of these uses of the Flying B logo constituted fair use. Bouchat appealed, arguing that the NFL and the Ravens could not avail themselves of the fair use defense because their use of the logo did not "[add] something new, with a further purpose or different character, altering the first with new expression, meaning, or message" and, therefore, was not

transformative. See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994).

In its opinion, the Court emphasized the importance of the first factor of the fair use analysis, which addresses the “purpose and character of the use” at issue. 17 U.S.C. § 107(1). This factor looks to both whether the new use was transformative and whether the use was commercial. The Court found that the use of the Flying B logo in these videos was substantially transformative because the logo was no longer used for the purpose of identifying the team, as it was from 1996-1998. Instead, these videos used the logo as “a historical guidepost” within these newly constructed narratives about individual athletes and a specific draft class. Because the Court found that the NFL’s use was substantially transformative, the league’s profit-seeking motives behind the videos weighed less strongly against a finding of fair use. As the Supreme Court has stated, “the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994). Because the NFL’s use of the Flying B logo in the videos was substantially transformative, the logo played an “unquestionably minimal” role in facilitating monetary gain, and the remaining three factors of the fair use analysis were largely neutral, the Fourth Circuit affirmed the district court’s conclusion that the NFL’s use of the logo in its videos constituted fair use.

Brent Turman is an associate in the Dallas office of Vincent Lopez Serafino Jenevein, P.C. where he focuses his practice on entertainment law and business litigation. Before Mr. Turman was a lawyer, he worked as an Associate Operations Producer with ESPN/ABC College Football.

Practice Document

Please find attached to our March E-Newsletter an [Artist for Hire Agreement](#) provided by Kevin Harrison. Kevin is a solo practitioner in Denton, Texas practicing Entertainment Law with a focus on music. The attached agreement is for commissioning artwork to be made for hire. It contemplates a visual artist creating a logo for a company and assigning the copyright of the logo to the company.

Send questions, comments, and submissions for the TESLAW E-Newsletter to [Victoria Helling](#).

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