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Sports Marketer Wants Ex-OSU Player's Antitrust Suit Tossed

By Adam Rhodes

Law360, New York (October 3, 2017, 7:18 PM EDT) -- A collegiate sports marketing company on Monday urged an Ohio federal judge to dismiss a former Ohio State University football player's antitrust suit against it and OSU over banners hung in the school's football stadium with former football players' images, saying the player's claims against the company aren't specific enough.

IMG College LLC and its affiliates argued in a motion to dismiss Monday that not only has former OSU football player Charles C. Spielman failed to properly allege any of IMG's involvement in the alleged antitrust violations — aside from conclusory statements or mentions in passing — but if OSU's bid to dodge the suit is granted, proceeding without the university would be unfair to the school and could never give Spielman the relief he seeks.

"Nowhere in the complaint are there allegations of what IMG allegedly did; how it has been able to restrain trade, in likenesses or anything else; or how it would benefit from doing so," IMG argued in its motion. "Indeed, the complaint describes no possible transaction that would ever have involved IMG potentially paying Spielman anything."

Spielman tackled his alma mater and the sports marketing company with the suit in July, alleging that they conspired with Nike Inc. and American Honda Motor Co. Inc. to eliminate the rights of former student athletes to receive a share of revenues derived from the use of their names and images.

On Sept. 18, the university urged an Ohio federal judge to toss the antitrust claims and send the case to state court, arguing that the Eleventh Amendment provides the university, as an extension of the state of Ohio, with sovereign immunity from federal suits, an immunity OSU said it hasn't waived.

In Monday's motion, the marketing company signed onto the university's bid to dodge the suit, adding that it and its affiliates should be dismissed as a "necessary consequence" of OSU's sovereign immunity in the case, calling the university an "indispensable party."

Additionally, IMG argued that Spielman has failed to tie the company to any of his allegations, namely that IMG has used his likeness, that the company controls any revenue streams or how it could do anything to prevent future harm going forward.

IMG cannot be held liable for a violation of publicity rights that Spielman is not entitled to under Ohio state law, the company said. In actuality, it contends, promotional use of student athletes' likenesses on behalf of the university — the very nature of the claims Spielman alleges — is exempt under the Ohio Right of Publicity Act, and as such, he has no

cause of action.

Representatives for the parties could not be immediately reached for comment Tuesday.

IMG College is represented by Joseph A. Castrodale, Gregory J. Phillips and James E. von der Heydt of Benesch Friedlander Coplan & Aronoff LLP.

OSU is represented by Robert N. Webner, James A. Wilson, Michael J. Garvin, Amanda McMurray Roe and Aaron M. Williams of Vorys Sater Seymour and Pease LLP.

Spielman is represented by Brian K. Duncan of BKD Legal LLC.

The case is Spielman v. IMG College LLC et al., case number 2:17-cv-00612, in the U.S. District Court for the Southern District of Ohio.

--Additional reporting by Eric Kroh. Editing by Pamela Wilkinson.

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