

DLA PIPER SECURES LANDMARK RULING IN FOOTBALL FIXTURE LIST LICENSING

26 April 2010

High Court decides that the football leagues have enforceable IP rights in fixture lists

London - In a judgment handed down in London's High Court today the uncertainty surrounding what rights subsist in football fixture lists was clarified. With the effect of the Judge's ruling that the various entities using the lists including betting companies, pools companies and the media must now pay for the right to publish and use football fixture lists.

DLA Piper argued the landmark case on behalf of the English and Scottish professional football leagues and Football DataCo Ltd (DataCo) - the organisation that markets and licenses data for the UK professional football leagues - against the pools company, Brittens Pools Ltd, the media company Yahoo! UK Ltd and betting companies Stan James (Abingdon) Ltd and Stan James Plc and Enetpulse ApS.

Today's judgment is of huge significance to UK football and to all of the UK and European sporting bodies that compile their fixtures in a similar way to that of the English and Scottish football leagues.

Simon Levine, EMEA Group Head of Intellectual Property and Technology, and intellectual property partner Ruth Hoy, both at DLA Piper represented the football leagues and DataCo. Commenting on the groundbreaking case, Levine said :

"Today's ruling has confirmed that there are indeed enforceable IP rights in these lists. It also clarifies any existing confusion as to whether the use and publication of the fixture lists have a commercial value.

"This is not only a significant ruling for the for the football leagues but also for all rights holders. In an increasingly digital world where rights holders are finding it more and more difficult to keep control of their intellectual property, results like today's in the sports industry, illustrate that the law is in fact able to protect the creative industries and keep the creative economy alive."

Historically, copyright has been held by UK courts to subsist in works such as pools coupons and football fixtures lists. On that basis, there has been

a tradition on the part of the football leagues of licensing of football fixture lists. However, as a result of four decisions that were made by the European Court of Justice (ECJ) in November 2004 (BHB v William Hill and three Fixtures Marketing cases from Finland, Sweden and Greece), many people had concluded that there were no protectable intellectual property rights in football fixture lists, and a number had sought to question the need to obtain licences to reproduce fixtures. Today's judgment shows that these IP rights do in fact exist and are enforceable giving protection to the creators of databases.

DLA Piper argued, on behalf of their clients, that given the level of skill and effort expended in the selection of (a) the dates on which matches will be played, (b) which matches are to be played and (c) the dates of specific matches it would be wrong if the football leagues had no enforceable intellectual property rights whatsoever, as it would leave a lacuna in copyright protection. The Claimants also sought to persuade the court that the skill and labour employed by those compiling the football fixture lists falls squarely within the new test for originality for a database to acquire copyright protection set out in the 1996 Database Directive.

Mr Justice Floyd agreed, saying: "I conclude that the process of preparing Fixture Lists involves very significant labour and skill in satisfying the multitude of often competing requirements of those involved" and is "not mere "sweat of the brow", by which I mean the application of rigid criteria to the processing of data...The quality of the solution depends in part on the skill of those involved." He had no problem in concluding that the Fixture Lists were protected by copyright.

David Folker, General Manager at Football DataCo Ltd (DataCo), said: "It is reassuring to note that UK law has recognised the intellectual efforts of the professional football administrators, Police, Supporters Associations and others who expend a great deal of time and effort in compiling and checking the fixtures so that millions of fans can travel the UK supporting their favourite teams. Contrary to some misguided opinions, fixtures are not drawn from a hat or produced at the press of a computer button, they require deep, precise and detailed planning to achieve the right solutions for 134 UK professional clubs playing in an interrelated range of competitions. Too often the "backroom" of football can be lost in the excitement of the competitions - like all great events, a large volume of effort is expended in ensuring the fans have the best experience possible. Over the years UK copyright law has modified to keep pace with our changing society - once again the intellectual effort

associated with fixtures has been recognised, just as it was in football's original case in 1959."

The DLA Piper team was led by partners Simon Levine and Ruth Hoy assisted by associates John Wilks, Catherine Beloff and solicitor Nick Edbrooke.