

# Chicago Daily Law Bulletin®

Volume 161, No. 42

## Teed off: Caddies take aim at the PGA Tour

**P**GA Tour caddies have taken aim at one of their biggest targets imaginable — the PGA Tour itself.

Recently, 82 professional caddies filed a class-action lawsuit against the tour asserting claims for injunctive relief and more than \$50 million in annual unpaid compensation.

The caddies' use of the judicial system as an avenue for remedy and redress of perceived economic harm is consistent with the trend of antitrust and intellectual property litigation that has embroiled the NCAA over the past few years.

In this case, the crux of the matter pertains to the sponsored bibs traditionally worn by caddies during PGA Tour events. The caddies allege that the bibs are the "most valuable marketing medium between commercials during tournament broadcasts," and therefore, their uncompensated and uncompensated adornment of the bibs is a remediable injustice.

The proposed plaintiff class — pending certification — includes all caddies who wear or have worn bibs bearing the logos of PGA Tour sponsors while caddying during a tournament. As caddies enter into agreements directly with golfers, they are considered independent contractors and not employees of the tour.

Even without a direct contract, caddies must comply with the tour's player handbook and tournament regulations to participate in tournaments. The regulations include a player endorsement policy, which governs the permissible caddy attire.

The policy permits caddies to enter into endorsement deals, subject to the endorsements being "tasteful and in accordance with standards of decorum expected of professional golfers."

The caddies allege that their ability to benefit from their own endorsements is severely undercut by an obligation to wear the bibs pursuant to coercion by the PGA Tour. The bibs feature

logos of tour sponsors, which the caddies claim limits the exposure to the caddies' own sponsors and removes their ability to provide exclusivity in sponsorship rights.

Without identifying any specific instances, the complaint describes that the tour coerces the caddies to wear the sponsor bibs by threatening to prohibit caddies from providing caddy services at tournaments if they refuse to wear them. In addition, the complaint alleges the PGA Tour has contacted golfers to inquire about terminating caddy agreements if the caddy refuses to wear a bib.

The complaint asserts multiple causes of action including Sherman Act violations and misappropriation of images and likenesses. Interestingly, the caddies filed the complaint in the U.S. District Court for the Northern District of California, which is the same district court that has handled the massive antitrust and intellectual property claims against the NCAA — i.e., *O'Bannon v. National Collegiate Athletic Association et al.*

Given their status as independent contractors, the caddies' case is obviously different from the NCAA litigation, but many similarities exist in the content of their allegations.

In the caddies' case, the antitrust allegation is twofold: restraint of trade and monopolization.

First, the caddies assert the bib requirement is an unlawful restraint of trade because it prevents caddies from negotiating their own sponsorship deals. The complaint alleges the PGA Tour has knowingly reduced the endorsement market by fixing endorsement prices in an effort to limit channels of supply.

Second, the complaint contends the PGA Tour's bib policy is impermissibly monopolistic because it nearly eliminates all opportunities for caddies and potential endorsement suppliers to negotiate independently. The caddies claim that the size and prominence of the bibs are "dras-

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tically abridging" their ability to wear logos for their own sponsors.

The caddies' intellectual property allegations center on the PGA Tour's use of the caddies as uncompensated walking billboards. The caddies allege they are recognizable figures among the audience for tour events, and therefore, the PGA Tour has unlawfully compelled behavior for a commercial purpose that solely benefits the tour.

In an effort to establish that the PGA Tour understands that the caddies expect to be compensated for their wearing of tour sponsors, the complaint highlights the tour's compensation plan regarding hats promoting Nature Valley, the maker of granola bars and other food products.

According to the complaint, the PGA Tour utilizes a payment formula to compensate caddies who wear Nature Valley caps during tournament play. The caddies argue that the existence of this formula suffices as proof the tour is aware of the caddies' expectation to be remunerated for endorsing tour sponsors on their clothing.

Throughout the complaint, the caddies continually reiterate they have never consented to the bib policy or the use of their images

and likenesses. In the absence of consent, the caddies allege they have been forced to comply with the threats of the PGA Tour out of reasonable self-preservation of their own occupations.

The caddies seek both permanent injunctive relief and damages and disgorgement of compensation they believe was accrued through their endorsement services. The caddies contend their bib sponsorship capacity retained a value of more than \$50 million in the past year alone.

The forthcoming response from the PGA Tour will likely contest the caddies' claims by pointing to the absence of contractual language requiring the wearing of the sponsor bibs. It may also assert that caddies have impliedly consented to the unwritten bib policy given their lack of previous refusal of compliance.

Because class-action litigation of this kind is often protracted, if the complaint passes preliminary proceedings, the odds for a settlement greatly increase. The PGA Tour may favor a settlement agreement that adopts express bib policy regulations and caddy compensation as an alternative to exposing itself to the burdens of discovery.

From a broader perspective, this lawsuit is a continuation of efforts of caddies to unify and present a collective voice to the PGA Tour. While caddies are not unionized — due largely to their status as independent contractors — the Association of Professional Tour Caddies was formed in 2013 as a trade association designed to improve the profession.

Aside from bib sponsorship compensation, the complaint acknowledges some of the other grievances that caddies have discussed as a collective body, such as the denial of basic health-care coverage and access to pension plans.

Thus, the bib policy lawsuit merely serves as a microcosm for a larger, and still emerging, directional plan among PGA Tour caddies.