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SUPREME COURT 2020-2021 PREVIEW

September 23, 2020

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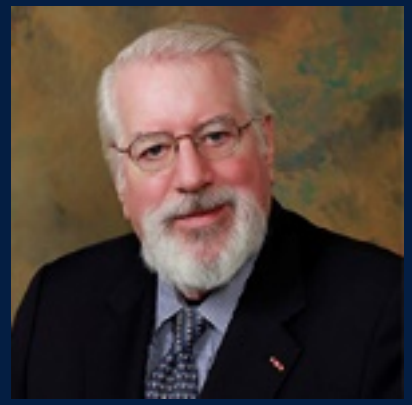

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IMPACT OF PASSING OF JUSTICE GINSBURG

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"ANALYSIS" OF GINSBURG RULINGS

- 2015 paper by Lee Epstein, Washington University of St. Louis.
  - Analyzed Court's tendency to rule in favor of businesses.
  - Created "Business Favorability Index."
- Found
  - Roberts Court favors business 61% of time.
  - On then-current Court, Justice Ginsburg the least likely to side with business.

”ANALYSIS” OF GINSBURG RULINGS

- Contrast:
  - Alito – 66%
  - Roberts – 62%
  - Kagan – 60%
  - Thomas – 57%
  - Scalia – 52%
  - Sotomayor – 52%
  - Breyer – 44%
  - **Ginsburg -- 42%**

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RECENT IP DECISIONS

- Last Term
  - *Thrv, Inc. v. Click-to-Call Tech:* Rejected judicial review of PTAB's determination of the timeliness of IPR.
  - *USPTO v. Booking.Com VB:* Rejected PTO's contention that generic term combined with generic TLD is itself generic.
- Copyrights
  - *Fourth Estate v. Wall-Street.*Com: confirmed need for registration certificate before filing copyright infringement suit. (2019)
  - *Petrella v. MGM*: unreasonable delay in filing copyright suit should not bar lawsuit. (2013)
- Known as very pro-copyright.

OTHER DECISIONS OF NOTE

- *United States v. O'Hagan*
  - Wrote opinion that insider trading laws apply to those who obtain confidential knowledge and use it for trading, regardless of whether they have ties to companies involved.
- *Daimler AG v. Bauman*
  - Rejected effort of foreign workers to sue German-based company based on conduct in Argentina.
- *Campbell-Ewald Company vs. Gomez*:
  - Rejected corporation's claim that an unaccepted settlement offer or offer of judgment mooted proposed class representative's individual claim.

OTHER DECISIONS OF NOTE

- Many of her writings in business-related cases were, in recent years, dissents.
  - *Ledbetter v. Goodyear*
    - Challenged Court's timeliness decision in employment discriminatory pay practices case.
  - *Citizens United*
    - Critical of Court's determination that political spending by corporations and unions were protected speech

INTELLECTUAL PROPERTY

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Continuation of long-standing war regarding Google's use of Java APIs in Android operating system.
  - Oracle claims infringement of patents and copyrights.
  - Jury Trial 1: jury found copyright infringement but deadlocked on whether copying was fair use.
  - Fed. Cir. reversed trial court determination that API packages not copyrightable as matter of law.
  - Remanded for further proceedings on fair use defense and damages.

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Jury Trial 2: Jury determined Google's use of declaring code, and structure, sequence and organization ("SSO") of Java API, was fair use.
- Appealed to Fed. Circuit: whether use was fair.
  - Oracle argued that each statutory factor weighed against fair use.
    - Purpose and character of use.
    - Nature of copyrighted work.
    - Amount and substantiality of portion used.
    - Market harm

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Federal Circuit determined use by Google *not* fair "as a matter of law;" reversed and remanded for trial on damages (886 F.3d 1179).
  - Applying 9th Circuit law, held trial court improperly deferred to jury's findings, and that fair use defense improperly submitted to jury.
  - Having then assumed the mantle of fact-finder, *inter alia*, court found Google's use not transformative as a matter of law, that the harm caused was "overwhelming," and that on balance, the use was not fair "as a matter of law."

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Issues presented:
  - Whether copyright protection extends to a "software interface."
    - Oracle challenged that question as presented, and asks the Court to focus on exactly what was copied.
  - Whether, as jury found, petitioner's use of "software interface" in context of creating new computer program constitutes fair use.
- As of last week: well over 50 amicus briefs have been filed.

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Google's arguments:
  - Merger Doctrine – copyright protection does not apply when there are only a few ways to express or embody a particular function.
    - Reuse was only as absolutely required.
    - Merger doctrine bars copyright claim over the only declaration that can perform a function.
  - Functional features are excluded from copyright laws.
    - Fed. Circuit effectively engrafted patent rights.

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Google's arguments:
  - Federal Circuit improperly usurped jury's determination of fair use.
    - Appellate court substituted its own weighing of evidence for the jury's.
    - Substantial evidence supported jury's fair use verdict.

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Oracle's arguments
  - Supreme Court has already rejected Google's earlier petition challenging Federal Circuit's holding that declaring code and structure and organization are both copyright protected.
    - Original computer code, and the structure and organization of a program, warrant copyright protection in all Circuits.
    - Nothing in the declaring code at issue distinguishes it from other computer code that is entitled to protection.

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Oracle's arguments
  - Supreme Court has already rejected Google's earlier petition challenging Federal Circuit's holding that declaring code and structure and organization are both copyright protected.
    - Argues that focus of merger doctrine analysis is not whether choices were available to Google, but whether they were available to the *original author*.
      - And Google concedes Oracle had "unlimited options."
  - That Oracle's work became popular does not allow Google to "hijack" the expressive value of what the author wrote.

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Oracle's arguments
  - Federal Circuit's reversal of jury's fair use verdict was proper, as any other result would deprive copyright protection for software.
    - Oracle does not address appellate court's conclusion that it could impose its own findings of fact over the jury's.
  - Google's Reply notes that "it is essentially unheard of for a court of appeals to reverse a jury's finding of fair use."

GOOGLE LLC V. ORACLE AMERICA, INC. (NO. 18-956) (ARG. 10/7/20)

- Impacts:
  - Scope of fair use in software copyright cases.
  - Ability of companies like Google to ignore limits set by owners of software they wish to incorporate.
  - Ability of appellate courts to substitute their judgments for jury in fair use cases.
- Loss of Justice Ginsburg: what impact given this high profile copyright case?

COMPUTER FRAUD AND ABUSE ACT

VAN BUREN V. UNITED STATES (NO. 19-783) (ARG. 11/30/2020)

- Arises from jury's conviction of police officer for honest-services fraud and computer fraud.
- Sergeant Van Buren decided that to address his financial difficulties, he would use his office's resources to help a less-than-admirable character, in exchange for "loans."
- An FBI sting operation resulted in indictments for honest-services wire fraud (18 USC §§ 1343, 1346) and computer fraud (18 USC § 1030).
  - In this case, related to running a license plate number for the "character" for nefarious reasons.

VAN BUREN V. UNITED STATES (NO. 19-783)

- 11th Circuit Decision
  - Honest Services Fraud
    - Deprived public of honest services by accepting a bribe in performance of "official act."
    - Circuit Court reversed conviction because trial court incorrectly instructed jury regarding the meaning of "official act."
      - Jury not instructed that an "official act" needs to be a formal action of the same gravity of a lawsuit, hearing, or administrative determination.

VAN BUREN V. UNITED STATES (NO. 19-783)

- 11th Circuit Decision
  - Computer Fraud
    - Under 18 U.S.C. § 1030 – Fraud and related activity in connection with computers.
      - Computer Fraud and Abuse Act
        - Originally enacted in 1986 to address hacking.
        - Protected classified information, financial records, and credit information on governmental and financial institution computers.
        - Expanded in 1994 to included theft of property via computer which occurs as part of a scheme to defraud; intentional alteration, damage, or destruction of data belonging to others; distribution of malicious code and denial of service; and trafficking in passwords and similar items.

VAN BUREN V. UNITED STATES (NO. 19-783)

- 11th Circuit Decision
  - Computer Fraud
    - Under 18 U.S.C. § 1030 – Fraud and related activity in connection with computers.
      - Computer Fraud and Abuse Act
        - Since then, multiple amendments to reach scope of commerce clause, and expand what is covered.
        - For instance, now covers intentionally accessing or exceeding access authority for a computer and thereby obtaining "information" from any "protected computer."
          - Protected computer" includes any computer used in interstate commerce.

VAN BUREN V. UNITED STATES (NO. 19-783)

- 11th Circuit Decision
  - Computer Fraud
    - Van Buren charged under 18 U.S.C § 1030(a)(c)(2).
      - Obtaining "information from any protected computer" by "intentionally access[ing] a computer without authorization or exceed[ing] authorization."
        - Whether a felony or misdemeanor turns on whether it is for "private financial gain."
        - Appellate court rejected contention that failure to instruct about lesser included offense was reversible error.

VAN BUREN V. UNITED STATES (NO. 19-783)

- 11th Circuit Decision
  - Computer Fraud
    - Van Buren charged under 18 U.S.C § 1030(a)(c)(2).
      - Obtaining "information from any protected computer" by "intentionally access[ing] a computer without authorization or exceed[ing] authorization."
      - More importantly, challenged conviction of a person for "exceeding authorized access," as it would allow employers to criminalize behavior through internal policies.
        - Court acknowledged risk, but was bound by Circuit precedent.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Computer Fraud
  - This last point raises the issues on appeal:
    - Vagueness of the term “exceeds authorized access.”
    - Split in Circuits on meaning of “exceeds authorized access.”
- 22 Amicus Briefs

VAN BUREN V. UNITED STATES (NO. 19-783)

- Petitioner's Position
  - Conviction based on person who has permission to access information, but accesses for an improper purpose.
  - If conviction allowed, will implicate virtually every employee subject to employer's computer use policies.
    - Checking sports scores.
    - Facebook posts.
    - NCAA pools!!!
    - "inflating one's height on a dating website."

VAN BUREN V. UNITED STATES (NO. 19-783)

- Petitioner's Position
  - Circuits split Four to Three on whether person authorized to access information violates CFAA if accessed for improper purpose.
    - Yes: 1st, 5th, 7th, 11th.
    - No: 2nd, 4th, 9th.
  - The core issue is whether CFAA applies to hacking-like conduct, or whether it extends to "whole categories of otherwise innocuous behavior."
  - Not only is CFAA often included in criminal prosecutions, but it is then cited on civil side.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Petitioner's Position
  - Applying CFAA as was upheld by Circuit Court would cause 1st Amendment risks, as those with compelling reasons to conceal identities online in violation of websites' terms of service would be in violation.
    - Of course, that's not applicable here.
  - "Void for vagueness" due process concerns: language allows prosecutors (and employers) free rein to prosecute virtually anyone.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Government's Position
  - Using law-enforcement access to view confidential license-plate records for profit unambiguously "exceed[ed] authorized access."
    - Statute is aimed at "insider" conduct like the officer's.
    - He used access authorized for law enforcement activities to instead obtain confidential records for cash.
      - Not something he was "entitled to" do.
        - No more than bank employee rummaging through credit reports he has authority to access to steal SSNs.
        - No more than medical assistant accessing records to sell to tabloid.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Government's Position
  - Public policy concerns about innocuous "uses" should be rejected.
    - In essence, Government argues that the "uses" cited by Petitioner could all be done by public or non-password computers and devices.
      - Appears to side-step Petitioner's arguments.
        - E.g., seems to concede prosecution available if the defendant "at least knew and understood" the authorized access was being used for improper purpose.
        - Would that not include almost every employee's password-based system?
    - Notes that Petitioner cannot point to judgments based on "innocuous and routine computer use."

VAN BUREN V. UNITED STATES (NO. 19-783)

- Government's Position
  - Constitutional challenges.
    - "Overbreadth:" no First Amendment applicability as statute governs conduct, not speech.
    - "Void for vagueness:" concerns about prosecutorial over-reach not a basis to overturn.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Amicus Points
  - CFAA was enacted to protect sensitive financial information from both hackers and insiders.
  - After it was expanded, scholars have argued that it has an "overcriminalization" problem, in that "without authorization" and "exceeds authorized access" are ambiguous:
    - Because a violation may occur based on a use beyond a "word-based restriction" (i.e., written use policies), it either criminalizes everyday actions of millions, or fails to give notice of criminal liability.
  - The statute will chill research and journalism.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Amicus Points
  - Law enforcement amici respond that insider unauthorized access is a critical issue.
  - Thus, so long as the system operator determines a scope of permitted use and "clearly delineates" it to the user, the scope of authorization controls.
  - Otherwise, there is no logical line to be drawn.

VAN BUREN V. UNITED STATES (NO. 19-783)

- Obvious impacts on multiple levels.
  - Scope of ability to criminally prosecute persons with authorized access, but who exceed.
  - Employee use of work computers.

FTC ACT

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FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- Two consolidated cases:
  - *Fed'l Trade Comm'n v. Credit Bureau Center, LLC*.
    - Appeal from 7th Circuit.
  - *Fed'l Trade Comm'n v. AMG Capital Management, LLC.*
    - Appeal from 9th Circuit.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- *FTC v. CBC*
  - Action against credit-monitoring service and its owner/operator, Michael Brown.
  - FTC sued under § 13(b) of FTC Act for violation of consumer protection statutes.
  - Trial court entered permanent injunction, and ordered restitution payment to FTC of $5 million.
  - Reversed on appeal on grounds that § 13(b) did not authorize restitution awards.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- *FTC v. AMG Capital Management*.
  - Action against payday lenders and owner, claiming violation of § 5 of FTC Act because disclosures did not reflect terms lender actually enforced.
  - After summary judgment, trial court enjoined and ordered owner to pay $1.27 billion in "equitable monetary relief" to FTC under § 13(b).
  - Ninth Circuit affirmed, based on precedent that § 13 "empowers district courts to grant any ancillary relief necessary to accomplish complete justice, including restitution."
  - Court *repeatedly* noted it was bound by precedent.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- Thus, obvious split in Circuits about the scope of relief available under § 13(b).
- In fact, eight Circuits had held that there was “implied authority” to order restitution.
- Appears to be a movement away from the ”settled” interpretation.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- FTC Act § 13(b): Temporary restraining orders; preliminary injunctions
  - Whenever the Commission has reason to believe
    - (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
    - (2) that the enjoining thereof . . . would be in the interest of the public,
  - the Commission . . . may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond.
- No reference to any other equitable remedy.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- Merits Briefs Not Yet Due.
  - Top Side Briefs: Sept. 25, 2020
  - Bottom Side Briefs: November 30, 2020.
- Cert. briefs give some guidance, however.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- FTC's Position
  - Section 13(b) states that it allows injunctive relief.
    - Almost all Circuits have held this includes awards of restitution and other forms of monetary relief.
    - This is premised upon *Porter v. Warner Holding Co.* (1946) and *Mitchell v. Robert DeMario Jewelry, Inc.* (1960).
      - Presumptive power to order violator to disgorge profits.
      - Power in equity to provide complete relief.
    - Acknowledges a split in Circuits.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- FTC's Position
  - Suggests defer decision on cert petition until disposition of *Liu v. SEC.*
    - Decided June 22, 2020.
    - Held that under SEC's authority to obtain "equitable relief," disgorgement that does not exceed wrongdoer's net profits is permissible.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- AMG's Position
  - This case is an ideal vehicle to resolve proper interpretation of § 13(b) and the split in Circuits.
    - Especially since FTC touts the $1.27 billion judgment.
  - § 13(b) only mentions injunctive relief; it never mentions restitution or any monetary remedies.
    - Restitution is not an injunction.
  - Restitution relief does not "sit comfortably" within the framework of § 13(b).

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- AMG's Position
  - *Liu* should not provide any guidance, given in statutory language.
    - *Comment:* I agree and it appears Court did as well.
  - Allowance of restitution relief runs afoul of FTC Act statutory scheme.

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- Credit Bureau Center's Position.
  - Cert. should not be granted as Seventh Circuit's holding is persuasive.
  - If Court does not agree, this case is a better vehicle for review of the statute than is *AMG.*

FTC V. CBC; FTC V. AMG CAPITAL MANAGEMENT (NO. 19-508)

- Court has consolidated, and the briefing is soon to begin.
- Impact: will drastically affect the financial exposure of firm's targeted by FTC.

OTHER CASES TO WATCH

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OTHER CASES TO WATCH

- *Rutledge v. Pharm. Care Mgmt Ass'n*, No. 18-540 (Arg. 10/6/20)
  - ERISA case involving preemption of state statute for drug reimbursement rates.
- *Texas v. California* (No. 19-019) and *California v. Texas* (No. 19-840) (Arg. 11/1/20)
  - Obamacare cases involving validity challenges.

OTHER CASES TO WATCH

- CIC Services, LLC v. Internal Revenue Service, No. 19-930 (Arg. 12/1/20)
  - Interplay of Anti-Injunction Act and challenges to regulatory mandates issued by administrative agencies.
- *Uzuegbunam v. Preczewski*, No. 19-968
  - First Amendment challenge to college speech code, where courts dismissed on mootness grounds based upon changes in policies and circumstances during pendency, notwithstanding nominal damages claim.
  - Not yet set for argument.

WHICH CELEBRITY IS THE OWNER OF ISSUED PATENTS FOR MODEL TRAIN CONTROLLER SYSTEMS

A. Jamie Lee Curtis
B. Neil Young
C. Hedy Lamarr
D. Gary Burghoff

CURRENT CASES LISTED FOR ARGUMENT

FORD MOTOR COMPANY, PETITIONER VS MONTANA EIGHTH JUDICIAL DISTRICT, RESPONDENT, NO. 19-368

- Argument set for 10/07/2020
- Consolidated docket with *FORD MOTOR COMPANY vs BRANDEMER*, No. 19-369
- Issue
  - Personal Jurisdiction
  - Stream of commerce vs. causation

CITY OF CHICAGO, PETITIONER VS ROBIN L. FULTON, GEORGE PEAKE AND THOMAS SHANNON, RESPONDENTS, NO. 19-357

- Argument set for 10/13/2020
- Issue
  - Whether 11 USC 362 (a) (3) and 11 USC 542 (a) of the Bankruptcy Code require immediate turnover of property of debtor seized lawfully prepetition
  - Or whether the trustee must initiate an adversary proceeding and offer adequate protection

HENRY SCHEIN INC., PETITIONER VS ARCHER AND WHITE SALES, INC., RESPONDENT, NO. 19-363

- Argument set for 12/08/2020
- Issue
  - May the court decide arbitrability if the parties clearly delegate that to the arbitrator?

PETITIONS FOR NEXT CONFERENCE

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DEUTSCHE BANK TRUST COMPANY AMERICA, PETITIONER VS ROBERT MCCORMICK FOUNDATION, RESPONDENT, NO. 20-8

- Issue
  - Whether the Bankruptcy Code preempts creditors' rights established under state law and whether a bank's role as a mere conduit invokes 11 USC 546?

STERLING JEWELERS INC., PETITIONER VS JOCK, RESPONDENT, NO. 19-1382

- Issue
  - May the court disregard the intent of the parties to arbitrate, as determined by an arbitrator, in favor of public policy considerations?
  - Is arbitrability of whether an arbitrator may certify a class a decision solely for the arbitrator?

CASES CONTINUED

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U.S. FISH AND WILDLIFE SERVICE V. SIERRA CLUB

- Background
  - Industrial facilities, power plants, and other manufacturing complexes use water from lakes, rivers, estuaries, and oceans to cool their facilities through cooling water intake structure
    - Section 316(b) of the Clean Water Act directs the Environmental Protection Agency (EPA) to regulate their design and operation
    - April 2011, the EPA proposed new regulations for cooling water intake structures
      - Required by Section 7 of the Endangered Species Act, in 2012, the EPA consulted with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) about the potential impacts of the regulations

U.S. FISH AND WILDLIFE SERVICE V. SIERRA CLUB

- The Sierra Club made a FOIA request for records generated during the EPA's rule-making process
  - Services withheld some of the requested records, citing Exemption 5 of FOIA (5 U.S.C. 552(b)(5)
    - Shields from disclosure documents subject to the "deliberative process privilege
  - District court determined 12 of the 16 requested records were not protected by the privilege and ordered disclosure
    - The U.S. Court of Appeals for the Ninth Circuit affirmed the lower court's order to disclose some of the records but reversed as to two of the records

BROWNBACK V. KING

- Background:
  - Two undercover FBI agents mistakenly identified petitioner James King as a criminal suspect and approached him
    - King apparently perceived he was being mugged and resisted their attempts to restrain him
    - A violent fight ensued, in which the officers severely beat King until onlookers called 911 and local police arrived on the scene
    - King filed a lawsuit against the U.S. and both FBI agents

BROWNBACK V. KING

- The Federal Tort Claims Act (FTCA) waives sovereign immunity in specific situations, and the plaintiff bringing an FTCA claim bears the burden of showing his claim falls within such a situation
  - FTCA also contains a "judgement bar" provision
- The district court found that King failed to prove one of the 6 requirements for FTCA to apply

FACEBOOK V. DRUGUID

- Background:
  - Noah Duguid brought this lawsuit because Facebook sent him numerous automatic text messages without his consent
  - Duguid did not use Facebook, yet for approximately ten months, the social media company repeatedly alerted him by text message that someone was attempting to access his (nonexistent) Facebook account
  - Duguid sued Facebook for violating a provision of the Telephone and Consumer Protection Act of 1991 (TCPA)

FACEBOOK V. DRUGUID

- Facebook moved to dismiss Duguid's claims
  - Equipment it used to send text messages to Duguid is not an ATDS within the meaning of the statute
    - The district court dismissed the claim, and a panel of the U.S. Court of Appeals for the Ninth Circuit reversed, finding Facebook's equipment plausibly falls within the definition of an ATDS

NESTLE V. DOE I / CARGILL V. DOE I

- Background:
  - Respondents in this case are former enslaved children were kidnapped and forced to work on cocoa farms in the Ivory Coast for up to 14 hours without pay
    - They filed a class-action lawsuit against large manufacturers, purchasers, processors, and retail sellers of cocoa beans
      - Including petitioners Nestle USA and Cargill, Inc.

NESTLE V. DOE I / CARGILL V. DOE I

- Respondents filed a proposed class action in the U.S. District Court for the Central District of California, alleging that appellants were liable under the Alien Tort Statute (ATS) for aiding and abetting child slavery in the Ivory Coast
- The court granted appellants' motion to dismiss based on its conclusion that corporations cannot be sued under the ATS, and that even if they could, the respondents failed to allege the elements of a claim for aiding and abetting slave labor

SOME OTHER PETITIONS TO WATCH FOR

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OTHER PETITIONS TO WATCH

- *Deutsche Bank Trust Co. v. Robert R. McCormick Foundation* (No. 20-8).
  - Bankruptcy; fraudulent transfers.
- *Sterling Jewelers Inc. v. Jock* (No. 19-1382)
  - Arbitration; compelling class arbitration without finding actual consent.
- *Szonyi v. Barr* (No. 19-1220)
  - Deference to administrative agency standards, including where court had already deemed it impermissible.

OTHER PETITIONS TO WATCH

- *Linkedin Corp. v. hiQ Labs Inc.* (No. 19-1116)
  - Another Computer Fraud and Abuse Act case.
  - Resolve Circuit split as to whether CFAA protects public-facing websites from data-scraping by third parties who harvest and exploit personal data.
- *Willowood, LLC v. Syngenta Crop Protection, LLC* (19-1147)
  - Patents: must all steps of patented process be practiced by single entity.
  - Copyrights: does EPA's approval process for labels bar copyright claims for generic pesticide labels.

OTHER PETITIONS TO WATCH

- *Steinbeck v. Kaffaga* (No. 19-1181)
  - Scope of collateral estoppel in copyright litigation regarding termination rights.
- *TCL Communication Tech. Holdings v. Telefonaktiebolaget LM Ericsson* (No. 19-1269)
  - Right of patent holder required to license patents on fair, reasonable, and nondiscriminatory terms to jury trial in proceeding seeking equitable relief of specific performance.

THANK YOU! IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ONE OF THE PRESENTERS

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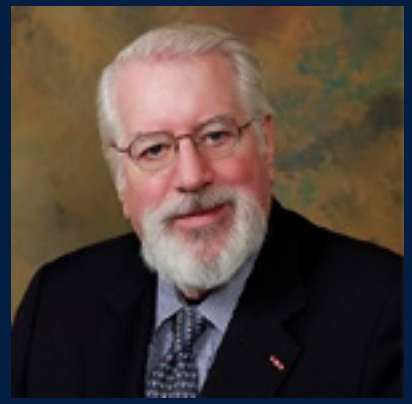

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