Select Legal History for Ringling Bros. - Barnum & Bailey

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It's been alleged that ever since 1961, Ringling Bros. and Barnum & Bailey Circus (the "Circus") had owned trademarks and service marks for use of the phrase "The Greatest Show on Earth" in its various promotional materials. In 2017, the show closed for good. While circus and theater historians are writing the socio-cultural biography of this epic circus and while movie goers are enjoying "The Greatest Showman" in theaters near new, we propose a law-driven discussion of IP assets that are left behind when such giants, as Barnum & Bailey, or M. Knoedler & Co, or FAO Schwarz of the entertainment, arts and sports industries crumble. The following is a list of lawsuits involving the Circus, in IP, tax and negligence related cases that may be used for the Circus' law-inspired obituary.

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Feld Ent't, Inc. and Ringling Bros.-Barnum & Bailey Combined Shows, Inc., v. Robert James Ritchie (PKA Kid Rock), and Live Nation Ent'l, Inc., 17-cv-03075-MSS-TBM (Mid.D.Fl.Tampa D. Dec.26, 2017) IP LAW Plaintiffs, who own a series of trademarks related to "The Greatest Show on Earth," filed a complaint against musical performer and a ticket booking agent for headlining a series of concerts the "Greatest Show on Earth 2018." The complaint explains that Plaintiffs license their affected trademarks for various purposes, including tee shirts, books, food and novelty products, and given Defendant's knowledge of the rights, *inter alia* seeks tremble damages for willful infringement of their IP.

ASPCA v. Feld Entm't, Inc., 677 F. Supp. 2d 55 (D.D.C. 2009) ANIMAL RIGHTS/RICO Multiple animal groups sued the circus, through its parent company, alleging that it violated the Endangered Species Act by its treatment of Asian elephants in its circus.The circus countersued under the Racketeer Influenced and Corrupt Organizations Act in 2007, alleging conspiracy to harm its business. In 2012, ASPCA allegedly paid the circus over $9 million to settle parts of the lawsuit.

ASPCA v Ringling Bros. & Barnum & Bailey Circus, Inc., 354 US App DC 432, 317 F3d 334 (2003)**.** ANIMAL RIGHTS Plaintiff animal rights organizations and a former elephant handler sued defendant circus and its owner claiming that the circus mistreated its Asian elephants in violation of the Endangered Species Act, 16 U.S.C.S. § 1531 et seq. The plaintiffs appealed the judgment of the United States District Court for the District of Columbia dismissing the complaint for plaintiffs' lack of standing under U.S. Const. art. III. The judgment of the district court dismissing the complaint for lack of standing was reversed.

Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v Utah Div. of Travel Dev., 170 F3d 449 (4th Cir 1999). IP LAW Case involving trademark "dilution" and the Federal Trademark

Dilution Act of 1995 ("the Act"), when Defendant Utah Division of Travel Development ("Utah") an agency of the State of Utah decided to use its GREATEST SNOW mark in connection with Utah tourism services. Court affirmed decision that Utah did not dilute Plaintiff's trademark

Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. BE Windows Corp., 969 F. Supp. 901 (S.D.N.Y. 1997). IP LAW Following the 1993 World Trade Center bombing, restaurateur Joseph Baum ("Baum"), of Four Seasons and Rainbow Room fame, won the rights to reopen the restaurant on the 107th floor of One World Trade Center known as "Windows on the World." In November 1994, Defendants decided to rename the bar attached to that restaurant as "The Greatest Bar on Earth," a lawsuit followed alleging that a bar named "The Greatest Bar on Earth" would be a violation of the Circus' rights. Court held that the Circus' evidence did not support a claim of willful trademark infringement by Defendants.

Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Celozzi-Ettelson Chevrolet, Inc., 855 F.2d 480 (7th Cir. 1988). IP LAW In this suit, the Circus, as owner of the trademark "The Greatest Show on Earth," obtained a preliminary injunction prohibiting Celozzi-Ettelson Chevrolet, Inc., an Illinois car dealership, from using the slogan "The Greatest Used Car Show on Earth." The injunction was upheld despite the finding that originally the mark was primarily descriptive and weak.

Mikos v Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 497 So 2d 630 Fla. (1986). TAX LAW An application, alleging that respondent circus tour's property was not permanently located in Sarasota County for ad valorem tax purposes under Fla. Stat. ch. 192.032(2) and (5) (1983). Based on the allegations that the circus tour spent only two months of each year in Sarasota County, the County did not constitute a permanent situs that would subject petitioner to the assessment of ad valorem taxes. The decision that for taxes circus was not permanently located in Sarasota County was affirmed.

Ringling Bros.-Barnum & Bailey Combined Shows, Inc., v. Chandris America Lines, Inc., and Albert Frank Guenther Law, Inc., 321 F. Supp. 707 (S.D.N.Y. 1971) IP LAW In this suit brought under the Lanham Act, 15 U.S.C. §§ 1051-1127, the Circus claimed that Defendants willfully infringed, diluted and maliciously disparaged its trademark "The Greatest Show on Earth," and sought permanent injunction, compensatory damages in an undetermined amount, and punitive damages in the amount of $10 million. Defendants, a Delaware corporation in the business of offering wintertime vacation cruises in the Caribbean and an advertising agency which designed the advertisement for vacation cruises successfully argued that their actions gave no rise to the contention that the advertisement violated the anti-dilution statute.

Ringling Bros.-Barnum & Bailey Combined Shows, Inc., v. ACME Circus Operations Co., Inc., 12 A.D.2d 894 (N.Y. App. Div. 1961)**.** N/A

Jacobs v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 141 Conn. 86, 103 A.2d 805 (Conn. App. Div. 1954). ADMINISTRATION Case dealing with fees owed to receiver for administering claimed in the many suits for personal injuries and deaths caused by the Hartford circus fire of 1944.

Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Higgins, 189 F.2d 865 (2d Cir. 1951) TAX LAW Circus unsuccessfully appealed from a judgment dismissing on the merits its complaint in an action for refund of $3,105.79 paid on or about June 10, 1938, as unemployment taxes for the year 1936. In response to the question whether certain persons engaged in plaintiff's circus in 1936 were employees, as the trial court held, or independent contractors, in which case the tax is not applicable the court held that while circus is enriched by individuality of each act" and a manager of a vaudeville "could hardly be expected to direct the manner and means by which a human cannonball should be shot from a gun," together "The performers were an integral part of plaintiff's business of offering entertainment to the public. They were molded into one integrated show, `the circus.' It was not a loose collection of individual acts like a vaudeville show but that of "the circus."

Ringling Bros.-Barnum & Bailey C. Shows, Inc., v. Ringling, Inc., 53 A.2d 441, 29 Del. Ch. 610, 29 Del. 610 (1947). CORPORATE LAW Case dealing with shares in the Circus and validity of an agreement between co-owners.

Ringling Bros.-Barnum & Bailey C. Shows, Inc., v. Olvera, 119 F.2d 584 (9th Cir. 1941). TORT LAW A consolidated appeal from two judgments upon a verdict awarding damages to America Olvera, hereafter called Olvera, for injuries to her while performing as a trapeze artist. Court reversed ruling for Olvera finding that the Ringling-Olvera contract exempts the appellants from liability for their ordinary negligence and the court erred in refusing the requested instruction concerning their liability solely for gross negligence.

Schock v. Ringling Bros. Etc., 105 P.2d 838 (Wash. 1940) TORT LAW Attractive nuisance case. Amos D. Schock brought this action on his own behalf, and as guardian ad litem of his three minor daughters, Jacqualine, Evangeline, and Marian, to recover damages resulting from injuries sustained by the three children while watching the unloading of defendant's circus within a railroad yard in Yakima. A trial to the court, sitting without a jury, resulted in findings of fact in favor of plaintiffs in varying amounts.

On August 23, 1939, at about 2:30 a.m., appellant's circus arrived in Yakima, Washington, by way of the Union Pacific Railroad. A large crowd of spectators, composed of men, women, and children, numbering from two hundred to three hundred people, congregated at the railroad yard during the early morning hours to watch the circus unload its equipment. At about 7:30 o'clock in the morning, respondents arrived at the railroad yard… One of the wagons detached and caused an accident. From a judgment entered in accordance with the findings, defendant appealed and the ruling was reversed on appeal because even though respondents had been standing in a

position of comparative safety, their act [viewing unloading of the Circus and resulting accident] cannot be charged against the Circus "in view of the fact that it used reasonable care under the existing circumstances."

Ringling Bros., Etc. v. Wilkinson, 83 S.W.2d 705 (Tex. App. 1935) CRIMINAL LAW Plaintiff, Wilkinson sued the Circus to recover damages for personal and property injuries sustained in a collision between the car in which he was riding and a wagon loaded with poles, belonging to the circus. The grounds of negligence alleged were due to the Circus leaving one of its wagons parked at night on a public street in the city of Dallas, without displaying thereon lights. Having pleaded contributory negligence, the Circus alleged that Plaintiff was in such a state of intoxication as not to be able to properly drive his car or to avoid the collision with the stationary wagon. Jury held for the Circus and the decision was affirmed on appeal.

Burke v. Barnum Bailey, Etc., 99 A. 1027 (R.I. 1917) CRIMINAL LAW This is an action of trespass on the case to recover damages for personal injuries. A trial was had in the Superior Court before Mr. Justice Brown and a jury and resulted, on December 30, 1915, in a verdict for plaintiff for $875. The defendant's motion for a new trial was denied, and the case is now before this court on the defendant's bill of exceptions.

The declaration of the plaintiff is in one count and sets up in substance that the defendant corporation, in June, 1910, was engaged in conducting a circus in the city of Cranston, Rhode Island, and that the plaintiff, having paid the defendant corporation the price of admission, was witnessing the circus performance in the tent and at the place provided by the defendant corporation, when said defendant corporation, by its agents and servants, negligently caused certain horses and vehicles to be driven against and over the plaintiff (he being then in the exercise of due care), and thereby caused the plaintiff to be severely and permanently injured.