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NCAA Argues For Dismissal of Athletes' Latest Antitrust Complaint

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Last week, the NCAA asked the Northern District of California to throw out a suit initiated in 2009 on behalf of former and current NCAA athletes. NCAA Student-Athlete Names & Likeness Licensing Litigation, case number 4:09-cv-01967. The athletes claim that the NCAA, its member schools, video game creator Electronic Arts ("EA"), and the Collegiate Licensing Company ("CLC") conspired not to compensate athletes for the use of their names, images, and likenesses in video games and television broadcasts. Specifically, the third amended complaint alleges that the NCAA and its member schools agreed not to offer athletes licensing revenues and that EA and CLC agreed to follow the NCAA's no compensation rule so as not to undermine the scheme. As a result of this conspiracy, the athletes were deprived of compensation for defendants' use of their names and likenesses and were excluded from entering the market for the licensing, use, and sale of their names and images.

In response, the NCAA moved to dismiss the action. It told the court that in light of the Supreme Court's opinion in NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984), the athletes cannot allege any facts that can allow the action to survive. In that case, the Supreme Court upheld the prohibition on paying student-athletes as procompetitive because the ban preserved amateurism in collegiate sports. Id. at 117. In addition, the NCAA argued that its rules did not deny any rights the athletes had to license their names and likenesses in broadcast games because the law does not recognize these rights in sporting events. The NCAA further pointed out that it did not provide any licenses to EA for use in EA's video games. Lastly, the NCAA disputed the former athletes' claims that the compensation ban prevented these individual's ability to license their names and likenesses because the amateurism rules only apply to current student-athletes.

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