

Chicago Daily Law Bulletin®

Volume 163, No. 231

Serving Chicago's legal community for 162 years

Lowly gym shoe may be undoing of college hoops

It's gotta be the shoes, Money?" Mars Blackmon, Spike Lee's diminutive, bespectacled bike messenger character, suspected that there was one secret to Michael Jordan's mastery of gravity and uncanny ability to outshine his opponents so effortlessly. Blackmon's No. 1 suspicion? "It's gotta be the shoes." The money followed — Mars' catch phrase, coupled with Jordan's unprecedented abilities, charisma and success, catapulted Nike's basketball shoe revenue into the billions during Jordan's NBA career. Still today, Jordan brand U.S. sneaker sales generate more than \$3 billion per year.

The success of Nike became the blueprint for shoe and apparel companies. These corporations crave the next big superstar endorsement. The right endorsement can propel earnings into rare air. Nike has LeBron James. Under Armour has Steph Curry.

Adidas needs a marquee endorsement. The German shoe and apparel company has been out of the basketball spotlight for a long time. Its last mega-endorsement failed to pan out once Derrick Rose's career was sidetracked by numerous injuries.

Desperate times call for desperate measures. In 2014, Adidas announced a plan to compete more aggressively in the basketball market. Its plan was to outfit more colleges and universities as well as invest in high school travel teams and summer basketball tournaments for the nation's top recruits.

Participants in the McDonald's All-American game wore Adidas shoes, warmups and uniforms. In placing its product on more young players, it hoped to eventually land the endorsement deal of a superstar.

According to a criminal complaint unsealed on Sept. 26, one senior executive took Adidas' marketing campaign to new heights to land top talent for the brand. Allegedly, a quid pro quo existed among Adidas, a college's men's basketball program and high profile, five-star recruits.

According to the charges, Adidas provided the cash to kids and their families in exchange for the kids

promise to play for an Adidas-sponsored college team and wear Adidas in the NBA (star players typically enter the professional ranks after only one year in college).

The federal complaint accuses Adidas' executive James Gatto of transferring hundreds of thousands of dollars through AAU coaches to the families of at least two high school basketball recruits in return for them to attend an Adidas-sponsored school and eventually sign with Adidas when those players turned pro. *United States of America v. James Gatto, et. al.*, Crim. No. 17-MJ-7120 (U.S. District Court for the Southern District of New York).

Separate criminal complaints unsealed on the same day detail allegations of wire fraud, bribery, travel act and conspiracy offenses involving assistant basketball coaches from Auburn, Arizona, USC, Oklahoma State and South Carolina.

As acting Manhattan U.S. Attorney Joon H. Kim stated, "The picture of college basketball painted by the charges is not a pretty one — coaches at some of the nation's top programs taking cash bribes, managers and advisers circling blue chip prospects like coyotes and employees of a global sportswear company funneling cash to families of high school recruits."

The extent to which head basketball coaches were aware of the payments to their players is unknown. The first coach to be relieved of his duties in the wake of the arrests, Rick Pitino, is fighting back. Pitino rebuts the innuendo that he was aware of, or involved in procuring, the funds for recruits.

In a verified complaint filed by the University of Louisville's deposed head coach, Pitino claims he had absolutely no knowledge of Adidas' plan to pay players to attend Louisville. *Pitino v. Adidas America, Inc.*, 3:17-cv-639 (U.S. Dist. Court, W. Div. of KY). While he admits that he spoke with Gatto, the unscrupulous Adidas executive, in the days leading up to the transfer of money to Louisville's top recruit, "[Pitino] has never authorized, tolerated, participated in or otherwise condoned giving improper benefits to recruits or players, or

SPORTS TORTS



BY WILLIAM
T. GIBBS

William T. Gibbs is a trial attorney at Corboy & Demetrio P.C., representing victims of negligence. He currently represents several former NFL and NHL athletes and their families. He can be reached at WTG@corboymdemetrio.com.

to their families, especially as an inducement to have recruits join the University of Louisville men's basketball program," the lawsuit states.

At Louisville, Pitino was one of the highest paid coaches in college basketball with an annual salary topping \$7 million. Notably, a good portion of Pitino's salary was paid by Adidas, which is the official sponsor of Louisville athletics.

The filing of his civil case came one day after Adidas severed its personal services contract with Pitino, mere hours after he was fired by the University of Louisville Athletic Association as the school looks into its role in the college basketball fraud investigation.

In separate litigation, Pitino is challenging Louisville's determination that he could be fired "for cause" as a result of the Adidas scandal.

Pitino's civil lawsuit is unique and somewhat novel. Pitino alleges that Adidas is liable to him for the emotional distress he has suffered because of the company's "outrageous conduct in conspiring to funnel money to the family of a college basketball recruit." *Id.*

The lawsuit avers that Adidas was highly motivated to obtain top-flight recruits to play for its Adidas-branded schools, like Louisville: "It is and was in Adidas' interest to have the teams for schools that Adidas outfits succeed, especially because high-profile television coverage of championship events would show

athletes wearing Adidas products."

Likewise, Adidas was casting a wide net in hopes of snaring the next superstar to hawk its products: "It was in Adidas' long-term interest to build relationships with recruits early in their careers in order to influence them to sign contracts with Adidas once they became professional athletes."

Pitino's cause of action, labeled as the tort of outrage in accordance with Kentucky law, is akin to the tort of intentional infliction of emotional distress. He alleges that "Adidas and its employees engaged in extreme and outrageous conduct by bribing a University of Louisville basketball recruit, or his family, to join the University of Louisville's men's basketball team ... [and] that conduct intentionally or recklessly caused emotional distress to coach Pitino."

Pitino alleges that "Adidas knew, or recklessly avoided knowing, that Coach Pitino's reputation for honesty and integrity would be seriously damaged by the perception — even if unfounded — that he was involved with the illegal and wrongful payment of money to recruits, or on their behalf."

The case may shed significant light on Adidas' business and marketing practices in basketball. According to Pitino, "The lawsuit is about more than just money; it is Coach Pitino's vehicle for proving that he had nothing to do with Adidas' outrageous, wrongful and illegal conspiracy." Certainly, discovery in the civil case will be salacious.

What will become of the FBI's ongoing investigation into the sordid involvement of shoe companies in college basketball recruiting?

Do other companies avoid involvement in such seedy matters? Will other schools, coaches or players be implicated?

Many predict that the current scope of the scandal is only the proverbial tip of the iceberg.

Other players, coaches, universities, and/or conferences may seek civil damages for Adidas' improper meddling with recruits.

Until then, the basketball world waits for the other shoe to drop.

It is all about the shoe money, Mars.