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SUPREME COURT OF FLORIDA
STATE OF FLORIDA

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BONITO BOATS, INC.,
Defendants/Appellant,
vs.
THUNDER CRAFT BOATS, INC.,
Plaintiff/Appellee.

CASE NO. 86-68829

BRIEF OF AMICUS CURIAE
NATIONAL MARINE
MANUFACTURERS ASSOCIATION

Tomas M. Russell
John A. Heller
SIDLEY & AUSTIN
One First National Plaza
Chicago, IL 60603
(312) 853-7000

On Appeal from the Fifth District Court of Appeal
State of Florida

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QUESTIONS PRESENTED

Amicus Curiae National Marine Manufacturers Association adopts Appellant Bonito Boats, Incorporated's statement of questions presented.

STATEMENT OF THE CASE

Amicus Curiae National Marine Manufacturers Association adopts Appellant Bonito Boats, Incorporated's statement of the case.

STATEMENT OF THE FACTS

Amicus Curiae National Marine Manufacturers Association adopts Appellant Bonito Boats, Incorporated's statement of the facts.

SUMMARY OF ARGUMENT

I.

Florida Statutes Section 559.94 was enacted by the Florida legislature in recognition of the great importance of the recreational boat manufacturing industry to Florida's economy and the need to protect that important industry from unfair competition. The courts of Florida have an obligation not to overturn such legislation unless there has been a compelling showing of unconstitutionality. No such showing was made in this case, and it appears that no thorough analysis was undertaken before the statute was held invalid. Instead, the courts below declared this important statute unconstitutional in an almost summary fashion. This approach yielded an erroneous result.

II.

When applying federal law to hold a state statute unconstitutional, state courts should give great weight to relevant federal case law. Contrary to the conclusion of the courts below, the relevant federal cases establish that §559.94 is not preempted by the federal patent laws. The courts below erroneously failed to consider or give appropriate weight to the relevant federal cases.

III.

Statutes like §559.94 are presently being applied in ten other states. If the decision of the courts below is not reversed, Florida will stand alone as the first and only jurisdiction to hold that the states are without power to enact legislation regulating the significant form of unfair competition addressed by these statutes.

ARGUMENT

I. SECTION 559.94 WAS ENACTED TO
PROTECT AN IMPORTANT FLORIDA
INDUSTRY FROM ONE METHOD OF
UNFAIR COMPETITION.

In enacting Florida's "anti-splash" statute, Florida Statutes Section 559.94 (hereinafter "§559.94"), the Florida legislature extended limited protection to Florida's recreational boat manufacturing industry from a single form of unfair competition.*

Like the legislatures of ten other states that have enacted substantially similar unfair competition statutes in recent years, the Florida legislature was aware of the importance of the recreational boat manufacturing industry to both the state and national economies. Realizing the significance of that industry to Florida's economic vitality, the legislature recognized the need to shield such an important industry from unfair means of competition.

* As illustrated by the photographs in the attached excerpt from an industry publication distributed by Sabre Yachts (The Sabre Spirit, Spring 1986, p.3), legitimate boat builders incur enormous expenses in designing and handcrafting the molds from which their hulls are made. Florida's "anti-splash" statute, as well as the virtually identical statutes now in force in ten other states (some of which are referred to as "plug molding" statutes), bar competitors from using a legitimate boat builder's finished hull in an inexpensive direct molding process to run off multitudes of copies without incurring any development costs. The statute does not purport to prohibit copying of a hull design through fair and honest means such as reverse engineering; it aims only at those whose unfair and unethical practices threaten the recreational boating industry and the commercial health of the state.

In a 1982 study of Florida's recreational boating industry that was available to the legislature while the "anti-splash" statute was under consideration, Florida Sea Grant College reported that as of 1980 Florida had 342 boat manufacturers which employed more than 6,800 persons. These Florida manufacturers produced almost 18,000 boats with a total wholesale value of nearly \$400 million in 1980.* Today, the number of boat manufacturers in Florida has increased to more than 600, with a corresponding increase in the industry's importance to the state.

The Florida legislature's decision to afford such a significant industry a measure of protection from an unfair trade practice should not lightly be set aside. The courts below acted precipitately in holding §559.94 unconstitutional. Indeed, it appears from the record as if those courts decided in almost routine fashion -- without engaging in a searching analysis -- that it was appropriate to declare the Florida legislature's efforts to be in violation of the Constitution. No state law, and particularly one that protects an important state interest, should be held unconstitutional in such a summary fashion.

* A copy of the report is attached.

The great importance of this legislation to the state of Florida, and the recreational boating industry nationally, requires that it be upheld in the absence of the most highly compelling reason to do otherwise. No such reason to invalidate the statute has been shown in this case, and as will be discussed below the relevant authorities support the constitutionality of the statute.

II. CONTRARY TO THE DECISIONS OF
THE COURTS BELOW, FEDERAL LAW
SUPPORTS THE CONSTITUTIONALITY
OF SECTION 559.94.

"Preemption is essentially a conflicts-of-laws question; it exists where state law has been supplanted by substantive federal law so that federal law must be applied to determine the merits of a plaintiff's claim." Young v. Oppenheimer & Co., Inc., 434 So. 2d 369, 373 (Fla. 3d D.C.A. 1983), approved, 456 So. 2d 1175 (Fla. 1984). In deciding this conflicts question, it is necessary "to consider the relationship between state and federal laws as they are interpreted and applied, not merely as they are written." Jones v. Rath Packing Co., 430 U.S. 519, 526 (1977).

A state court considering the relationship between state and federal laws should not interpret the federal law to hold that a state statute is preempted when the federal

courts themselves have declined to give the federal law such a broad construction. Instead, the federal courts' interpretation of federal law should be given great weight by state courts, particularly when the federal decisions support the constitutionality of a state statute. See, e.g., Blue Cross & Blue Shield v. Matthews, 473 So. 2d 831 (Fla. 1st D.C.A. 1985) (relying on federal courts' interpretation of the scope of ERISA in holding that state statutes were not preempted by ERISA). Contrary to these principles, the courts below failed to take into account federal case law which establishes that the federal patent statutes do not bar the states from regulating unfair forms of competition, including the means by which competitors copy unpatented articles.

In Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470 (1973), the Supreme Court observed that the objective of the federal patent laws is to promote the progress of science and the useful arts by granting to inventors the right to exclude others for a limited period from making, using, or selling their patented inventions. This exclusion serves as an incentive to inventors to undertake the risks associated with invention. Based on this conclusion regarding the purpose of the patent laws, the Court held that the Congressional goal is not impaired by state laws protecting trade secrets, since such laws are intended only to guard against improper or unethical disclosures of secret information and do not purport to bar the use of such information if it is discovered through fair and honest means.

Building on the Kewanee rationale, the Court of Appeals for the Federal Circuit recently held that a California "plug molding" statute which is virtually identical to §559.94 is not preempted by federal patent law. Interpart Corp. v. Italia, 777 F.2d 678 (Fed. Cir. 1985). Like the Supreme Court in Kewanee, the Federal Circuit began its analysis by noting that the federal patent laws serve only to grant inventors a limited right of exclusion with respect to patented articles. Turning to the California statute, the court noted that in contrast to the patent laws, it confers no exclusive rights on the creators of products. Rather, the statute merely bans a particular method of copying which the state of California has deemed unfair, and "does not prohibit copying the design of the product in any other way." Id. at 685. Thus, since "the two laws have different objectives," they do not conflict and the state law is not preempted. Id.

Had the courts below given appropriate recognition and weight to Kewanee, Interpart, and other federal cases that have refined and clarified the Sears/Compco doctrine, they would have been compelled to conclude that §559.94, like its California counterpart at issue in Interpart, is not preempted by federal patent law.

III. ANTI-SPLASH AND PLUG MOLDING
STATUTES ARE BEING APPLIED AND
ENFORCED IN OTHER STATES.

Florida is not alone in outlawing the unfair and unethical practice of "splashing" or "plug molding." Similar laws exist in California, Cal. Bus. & Prof. Code §17300; Michigan, Mich. Comp. Laws §445.621; Tennessee, Tenn. Code Ann. §47-15-115; Missouri, Mo. Rev. Stat. §306.900; North Carolina, N.C. Gen. Stat. §75A-27; Wisconsin, Wis. Stat. §134.34; Louisiana, La. Rev. Stat. Ann. §51:462; Kansas, Kan. Stat. Ann. §802; Mississippi, Miss. Code Ann. §59-21-41; and Maryland.

These laws are being upheld and enforced by the courts. See Metro Kane Imports, Ltd. v. Rowoco, Inc., 618 F. Supp. 273 (S.D.N.Y. 1985). The only previous reported attempt to overturn one of these statutes on the ground of federal preemption has been rejected. Interpart Corp. v. Italia, 777 F.2d 678 (Fed. Cir. 1985). It is of special significance that the court which concluded that the federal patent laws are not in conflict with state laws of this type was the Court of Appeals for the Federal Circuit, the federal appellate court that now has jurisdiction over appeals in all cases involving patents. 28 U.S.C. §1295.

This decision by the Federal Circuit strongly suggests that Florida would stand alone in rejecting this important legislation if the decision of the courts below is not reversed.

CONCLUSION

The recreational boat manufacturing industry is an important component of Florida's economy, and the Florida legislature has determined that this important industry should be protected from one form of unfair competition. To achieve this objective, the legislature enacted §559.94, which mirrors statutes that are successfully being used in ten other states.

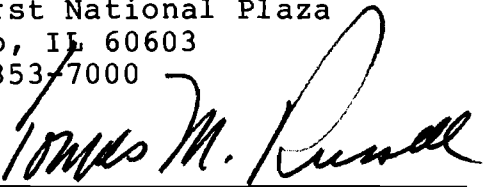
As recognized in the precedents of this Court, it is the duty of the Florida courts to uphold such legislation unless there has been a clear and unequivocal showing that it is constitutionally infirm. No such showing has been, or could be, made in this case. On the contrary, the relevant authorities uniformly establish the constitutional soundness of the legislation at issue. The courts below failed to give appropriate weight to those authorities, and may have overlooked them entirely, while giving the doctrine of federal preemption an unduly expansive interpretation.

The decision of the Fifth District Court of Appeal, which affirmed the trial court's dismissal of the complaint on the ground that §559.94 is preempted by the federal patent laws, should be reversed and the case remanded for further proceedings.

Respectfully submitted,

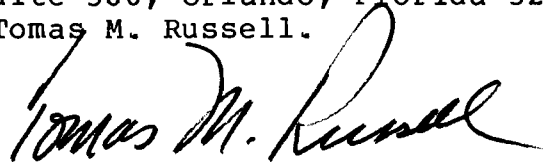
SIDLEY & AUSTIN
One First National Plaza
Chicago, IL 60603
(312) 853-7000

By:


Tomas M. Russell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief of Amicus Curiae National Marine Manufacturers Association has been furnished to: JOHN S. SCHOENE, ESQ., Baker & Hostetler, 1300 Barnett Plaza, Post Office Box 112, Orlando, Florida 32802, and HAL K. LITCHFORD, ESQ., Davis, Litchford, Downing & Christopher, One South Orange Avenue, Suite 500, Orlando, Florida 32802, this 30th day of June, 1986, by Tomas M. Russell.


Tomas M. Russell