

In the Indiana Supreme Court

Akeem Daniels, Cameron Stingily, and
Nicholas Stoner,

Plaintiffs-Appellants,

v.

FanDuel, Inc. and DraftKings, Inc.,
Defendants-Appellees.

Supreme Court Case No.
18S-CQ-00134

U.S. Court of Appeals for the Seventh
Circuit Case No. 17-3051



Order

The United States Court of Appeals for the Seventh Circuit has certified a question of Indiana state law for this Court's consideration, pursuant to Indiana Appellate Rule 64. The question arises in Akeem Daniels, et al., v. FanDuel, Inc. et al., Case No. 17-3051 (7th Cir.). The question as framed by the Court of Appeals is as follows:

Whether online fantasy-sports operators that condition entry on payment, and distribute cash prizes, need the consent of players whose names, pictures, and statistics are used in the contests, in advertising the contests, or both.

The certified question, which each member of this Court has considered, is hereby ACCEPTED. The Court is primarily, though not exclusively, interested in the question as it relates to the statutory right of publicity under Indiana Code chapter 32-36-1.

The Court further directs as follows:

- a) There shall be simultaneous briefing of this matter. The briefs shall, to the extent reasonably practicable, conform to the provisions of Appellate Rules 43, 44, and 46, except that they may not exceed the greater of **twenty (20) pages or 9,000 words**, and any brief exceeding twenty (20) pages shall conform to the word count and certification requirements found in Appellate Rules 46(C), 46(E), and 46(F).
 - 1) Each side's principal brief, and any appendix (see below), must be filed by **May 18, 2018**.
 - 2) Each side may file a single brief in response to the other side's principal brief and any arguments of amici curiae by **June 9, 2018**. No reply briefs shall be permitted.
- b) If the parties believe there are documents from the federal-court cases necessary or helpful for deciding the certified question, then the parties shall confer and agree on the

materials to be included and file a joint appendix containing copies of those documents and also, if applicable, the items listed in Appellate Rule 50. The parties should avoid unnecessary inclusion in the appendix of memorandums of law or briefs filed in the district court or Seventh Circuit, since all necessary legal arguments should be presented to this Court in the briefs described in the preceding paragraph.

- c) The parties shall file and serve all documents electronically pursuant to Appellate Rules 24 and 68.
- d) The parties shall file appearance forms within twenty (20) days of this order or contemporaneously with the first document filed by the appearing party, whichever comes first, as required by Appellate Rule 16(C). The appearance forms shall include electronic mail addresses for each attorney appearing in this case. These e-mail addresses shall be used in this case for transmission of all orders, opinions, and notices from the Clerk of this Court. *See App. R. 26.*
- e) Extensions of time will be granted only in **truly extraordinary circumstances** and only for a very short period. Any motion seeking an extension of time must be made jointly by the parties.
- f) The Court will conduct oral argument in this matter on **Thursday, June 28, 2018 at 10:30 a.m.** A detailed order scheduling oral argument will issue contemporaneously with this order.
- g) No later than two (2) weeks after the conclusion of this matter before this Court, the parties shall supply file-stamped copies of all documents filed in this case, including the orders and opinions issued by this Court, in PDF format to the Clerk of the United States Court of Appeals for the Seventh Circuit.

The Court further invites participation of amici curiae, believing the question certified may be of wider interest. Pursuant to Appellate Rule 41(B), entities wishing to prepare and file a brief as amicus curiae on the issue **must file a motion for leave to appear as amicus** and tender a proposed brief **on or before May 18, 2018**. The Court encourages the submission of joint briefs. Any amicus brief will be limited in size to no greater than 3750 words exclusive of the items listed in Appellate Rule 44(C), and must be accompanied by the verified statement of word count referred to in Appellate Rule 44(F).

Done at Indianapolis, Indiana, on 4/19/2018.



Loretta H. Rush
Chief Justice of Indiana