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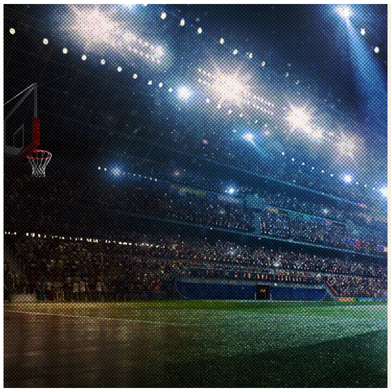

Three Point Shot

August 2026

A newsletter brought to you by the Sports Law Group at Proskauer.

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Welcome to *Three Point Shot*, a newsletter brought to you by the Sports Law Group at Proskauer. Three Point Shot brings you the latest in sports law-related news and provides you with links to related materials. In this issue, we feature contributions from Proskauer Summer Associates: Jackson Friedman, Andrew J. Rubin and Tara R. Shecter.

Your feedback, thoughts and comments on the content of any issue are encouraged and welcome. We hope you enjoy this and future issues.

Edited by **Robert E. Freeman**

A Whaling Wall Painted Blue: FIFA Faces Legal Challenge After It Covers a Dallas Mural

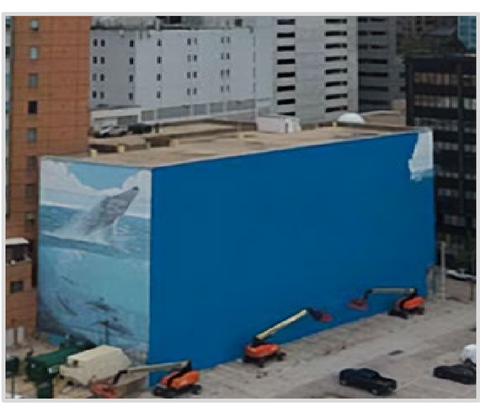
When soccer fans descended on the Dallas-Fort Worth area for the 2026 FIFA World Cup, they found a city buzzing with promotional activations, fan events and various public art installations. However, one existing public mural, a 17,000-square-foot mural of humpbacks and marine life that had adorned a downtown Dallas building for nearly three decades, had been covered over in blue paint. Now, the artist behind that mural is suing FIFA and others in what could prove to be a whale of a legal battle invoking a specialized, relatively obscure section of the Copyright Act dealing with artists' moral rights.(*Wyland v. Fédération Internationale de Football Association (FIFA)*, No. 26-01794 (N.D. Tex. Filed June 1, 2026)).

Robert Wyland, known professionally as "Wyland," is an artist recognized for large-scale public artwork focused on marine conservation. In 1999, Wyland painted "Ocean Life" (also known as "Whaling Wall 82") on the exterior walls of an eight-story building in downtown Dallas. According to Wyland's complaint, the mural spanned roughly 17,000 square feet and depicted an ocean scene with true-to-scale humpback whales, dolphins and other marine life. It was one of over 100 murals Wyland painted around the world to raise awareness about ocean pollution and conservation.

For nearly 30 years, the mural stood as, what Wyland called, an "iconic fixture of the Downtown Dallas skyline." [See image below from Plaintiff's complaint depicting the "Ocean Life" mural.]

Dallas was one of 16 host cities for the 2026 FIFA World Cup, with nine matches played in nearby Arlington, Texas. According to the complaint, in the lead-up to the tournament, the wall displaying Wyland's mural became the planned site for a new World Cup-related public art installation. Wyland alleges that he was not notified of this plan and did not give his consent.

The complaint alleges that, in mid-May 2026, work crews began painting over the mural to make way for proposed World Cup-related artwork to celebrate the arrival of the tournament in the city, and by May 18, most of the mural's larger wall had been covered in blue paint, leaving only a small portion of the work visible. Work on the replacement mural has reportedly since stopped. [See image below from Plaintiff's complaint depicting the wall after being painted over.]



On June 1, 2026, Wyland filed suit in the U.S. District Court for the Northern District of Texas against Fédération Internationale de Football Association ("FIFA"), FIFA (Americas), Inc., FWC2026 US, Inc., 3PZ Property Company, LLC ("3PZ"), and Slate Asset Management ("Slate") (collectively, the "Defendants"). The complaint alleges that the Defendants "intentionally painted over and permanently destroyed" the mural without Wyland's notice or written consent, resulting in injury to Wyland, who seeks monetary damages. The complaint asserts that FIFA and its agents "authorized, promoted, and benefited from the destruction and replacement" of his work, that 3PZ owned the building, and that Slate, as an affiliated property manager, could not have allowed the painting-over without giving FIFA or its agents their consent. FIFA has reportedly denied any direct involvement and referred questions to the local organizing committee, which is not named as a defendant.

Wyland's suit hinges on the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. § 106A, a section of the Copyright Act that grants visual artists certain "moral rights" over their work. Unlike ordinary copyright protections, which primarily concern economic rights such as reproduction and distribution, VARA's right of integrity includes two related but distinct protections: the right to prevent intentional distortion, mutilation or modification of a qualifying work of visual art where the alteration would prejudice the artist's honor or reputation, and the right to prevent intentional or grossly negligent destruction of a work of "recognized stature." These rights, given to "the author of a work of visual art," generally last for the artist's life and are not transferred merely because the physical work is sold. They may be waived only through a written instrument signed by the artist, which instrument specifically identifies the work and the uses to which the waiver applies. An artist who establishes a violation of VARA may seek actual damages and profits or statutory damages, which are enhanced if the artist proves that a violation was willful.

Those VARA provisions map onto Wyland's complaint. First, he alleges that painting over "Ocean Life" was an intentional distortion, mutilation, or modification of his work that "prejudiced his honor and reputation." Second, he alleges that the mural had achieved "recognized stature" under the statute and that painting over it destroyed the work and violated his rights under VARA.

A key issue, if the case proceeds, will likely be whether a court finds that "Ocean Life" qualifies as a work of “recognized stature.” VARA does not precisely define that phrase. The Second Circuit in the *Castillo* case (discussed below), stated that “a work is of recognized stature when it is one of high quality, status, or caliber that has been acknowledged as such by a relevant community.”

Separate from the recognized-stature issue, the mural’s location on a building adds another important layer. VARA contains specific provisions for artwork incorporated onto a building. If the artwork is incorporated “in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work,” then the artist’s rights may be waived if the artist “consented to the installation of the work in the building ... in a written instrument” that specifies the work may be subject to destruction by reason of its removal. (See 17 U.S.C. § 113(d)(1)). Wyland alleges that no such written agreement was ever signed. However, VARA also contains a separate provision concerning a work that can be removed without such damage. Under that provision, “[i]f the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without … [its] destruction … or other modification of the work,” then, the artist’s rights will apply unless the building owner has made “a diligent, good faith attempt without success to notify the author of the owner’s intended action affecting the work of visual art” or the owner has “provide[d] such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.” (See 17 U.S.C. § 113(d)(2)). Thus, should this case continue, another key issue will center on the nature of the mural, the existence of any prior written agreements between Wyland and the building’s owners, and whether Wyland was notified before the mural was painted over.

There have been just a handful of noteworthy VARA cases in the last few years that have explored the contours of the law, including disputes between artists and building owners. One of the leading examples is the Second Circuit’s decision in *Castillo v. G&M Realty L.P.*, 950 F.3d 155 (2d Cir. 2020), commonly known as the 5Pointz case. There, the court affirmed a $6.75 million statutory damages award after a building owner whitewashed 45 aerosol artworks at the 5Pointz site in Long Island City, New York, that had been found to have achieved recognized stature. The Second Circuit upheld the trial court’s finding, after considering “voluminous” testimony and documentary evidence, that the artworks at issue could qualify for VARA protection and the works achieved the requisite “recognized stature” under the statute. To be sure, 5Pointz arose in a different jurisdiction and involved multiple works (some temporary, some permanent) that may have been of a different nature than Wyland’s mural. Although the 5Pointz decision is not binding in the Northern District of Texas, it remains one of the leading appellate decisions interpreting “recognized stature” under VARA and provides one framework for how courts have approached VARA claims involving public art displayed on buildings.

Wyland’s lawsuit remains far from the end line. As of this writing, Defendants have not filed an answer or otherwise responded to the complaint, so we will have to wait and see what defenses or substantive arguments they intend to assert.

The dispute sits at the intersection of sports promotion, public art, and property rights. Major sporting events often transform host cities through signage, fan zones, temporary installations, and public-facing branding. Wyland’s lawsuit asks what happens when that transformation collides with artwork that had already been part of a city’s visual landscape.

Not a Heavy Lift: USAW Outlasts Breakaway Masters Weightlifting Organization in Trademark Suit

USA Weightlifting (“USAW”) flexed its legal muscle this past March when it prevailed at summary judgment in the Southern District of New York on its trademark-related counterclaims against USA Masters Weightlifting (“Masters Weightlifting”), a splinter organization that broke away from USAW in an effort to control weightlifting events for athletes 35 years or older. (*USA Masters Weightlifting, Inc. v. USA Weightlifting, Inc.*, No. 25-06095 (S.D.N.Y. Mar. 17, 2026)). Since then, the court granted USAW’s request for injunctive relief and damages.

USAW is the national governing body for weightlifting in the United States and oversees national competitions, membership, development, and training programs. Within the sport, “masters” competitions are events for athletes 35 years and older. For decades, USAW's Masters Committee, a subcommittee of USAW, supported and promoted those competitions under USAW's bylaws and oversight (though Masters Weightlifting had different views of the committee's autonomy).

In November 2021, five Masters Committee members separated from USAW and formed a new organization that claimed to be a continuation of the Committee's work. That organization was later incorporated as the plaintiff, USA Masters Weightlifting, Inc., and began using the Masters Committee's social media pages, website domains and USAW's registered trademarks (the "Marks"), including USA WEIGHTLIFTING and USA MASTERS WEIGHTLIFTING, to promote its own events and attract members.

By July 2025, the dispute had moved from the platform to the courthouse. Masters Weightlifting sued USAW and sought a declaratory judgment of non-infringement and a ruling to invalidate USAW's Marks, arguing that they were generic and that Masters Weightlifting had prior use and control of the Marks through the Masters Committee, among other claims. (*USA Masters Weightlifting, Inc. v. USA Weightlifting, Inc.*, No. 25-06095 (S.D.N.Y. Filed July 24, 2025)). USAW counterclaimed and argued Masters Weightlifting committed trademark infringement and false designation of origin under the Lanham Act as well as related New York law claims when Masters Weightlifting displayed USAW's Marks on its website and social media accounts to market its events. USAW further alleged Masters Weightlifting had engaged in a different type of squatting, cybersquatting under the Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d), when Masters Weightlifting used website domains containing USAW's trademarks with the intent to profit from them.

On March 17, 2026, the district court denied Masters Weightlifting's summary judgment motion and granted USAW's cross-motion for summary judgment. The court first rejected Masters Weightlifting's effort to invalidate USAW's Marks as generic, specifically its argument that USA MASTERS WEIGHTLIFTING was nothing more than a descriptive, generic term for older American weightlifters. As the court stated, "a mark is generic when, in the mind of the relevant purchasing public, it refers to the product or service category itself rather than to the source of that product or service," with courts looking for evidence of widespread uncontested use by competitors, among other things. Because USAW's Marks were federally registered, the Marks enjoyed a presumption of validity, and the court noted that Masters Weightlifting offered no consumer surveys, media usage, competitor uses or dictionary definitions showing that USAW's trademarks were a blanket category descriptor so as to be generic. USAW also put forth evidence that established the Marks were protected, having used the relevant Marks for more than two decades, received unsolicited media coverage for events that used the Marks, and expended resources on sales and marketing campaigns to promote its product.

Next, the court rejected Masters Weightlifting's argument that USAW did not actually control the nature and quality of the goods and services bearing the Marks, and therefore could not claim as its own the plaintiff's use of the Marks through the Masters Committee. The court found that the Masters Committee — not plaintiff USA Masters Weightlifting — was a subordinate committee within USAW, and that the Committee's use of the marks therefore constituted USAW's own use. The court also found that USAW exercised extensive control over Masters Committee events, which were USAW-sanctioned, conducted under USAW rules, and subject to USAW oversight. The court thus rejected Masters Weightlifting's argument that USAW's trademarks were invalid or that Masters Weightlifting controlled the Marks used by the Masters Committee.

Turning to USAW's counterclaims, the court found that Masters Weightlifting committed trademark infringement under the Lanham Act and violated applicable New York law. The district court quickly found that (i) USAW had valid trademarks entitled to protection, and (ii) determined that Masters Weightlifting's use of the USAW Marks was likely to cause consumer confusion. Specifically, the court noted that USAW's Marks were strong, Masters Weightlifting used identical or substantially similar marks, the organizations offered the same services to the same weightlifters through the internet, and USAW submitted evidence of actual consumer confusion. The court also found Masters Weightlifting's bad faith "clear beyond any genuine dispute," noting that Masters Weightlifting's principals formed a competing entity in secret, purported to transfer USAW property without authority, and then used the identical Marks, the identical URL and near-identical website content to create the impression of organizational continuity. That finding also doomed Masters Weightlifting's trademark fair use defense, which required good faith and a viable claim that the party was not using the Marks as a trademark, rather as a descriptor.

USAW also cleared the bar on its cybersquatting claim. As the court noted, cybersquatting occurs when a person other than the trademark holder registers an identical or confusingly similar domain name of a distinctive trademark and then acts "with bad faith intent to profit from that mark," such as by attempting to ransom the domain name back to the trademark holder or use the domain name to divert business away from the trademark holder. On the ACPA claim, the court found USAW proved the requisite elements to establish ACPA liability, namely that: (1) USAW's Marks were distinctive, (2) the disputed website domain run by Masters Weightlifting was confusingly similar to USAW's Marks, and (3) Masters Weightlifting acted with a bad-faith intent to profit by soliciting members to its organization.

The remedies phase of the litigation followed in two rounds. On April 17, 2026, the court entered a broad permanent injunction, barring Masters Weightlifting and those acting in concert with it from using USAW's Marks (and also confusingly similar marks and specified terms) to promote goods or services, or the words "USA Masters Weightlifting" or "USA Weightlifting," in corporate names, trade names, website URLs or social media titles, or making statements that Masters Weightlifting is associated with USAW. The order also required Masters Weightlifting to transfer the disputed websites and domain names (e.g., <mastersweightlifting.org>) to USAW.

With little recovery time, the court moved to monetary damages. On June 9, 2026, the court awarded USAW $14,973 in actual, trebled Lanham Act damages, $50,000 in ACPA statutory damages, $262,899 in attorneys' fees, $13,442 in costs, and prejudgment interest, resulting in a $361,000 judgment. The court declined to award the $100,000 statutory maximum under the ACPA, noting USAW's existing damages award under the Lanham Act for similar harms and Masters Weightlifting's limited profits, but still awarded $50,000 to "punish the bad faith" of Masters Weightlifting and deter future infringers.

The district court's ruling offers a cautionary tale for breakaway sports entities that leave an organization and seek to take the organization's brand with it. Still, this entire exercise is not yet finished, as Masters Weightlifting appealed to the Second Circuit in early July. The next lift will be appellate.

What's Luck Got to Do with It? Pennsylvania High Court Finds Skill Game Machines Are No Safe Bet

Feeling lucky? For operators and hosts of coin-operated electronic "skill games" devices in Pennsylvania, their fortune recently turned when the Supreme Court of Pennsylvania reversed two favorable lower court rulings and found the skill games machines at issue were unlicensed slot machines under state law. (*In re Three Pa. Skill Amusement Devices, One Green Bank Bag Containing $525.00 in U.S. Currency, & Seven Receipts*, No. 50 MAP 2024 (Pa. June 15, 2026)). The court stayed its order for 120 days, barring law enforcement agencies from taking adverse action against owners or operators in reliance on the decision during that period, leaving lawmakers a window to debate a legislative fix.

Skill games are machines that might be placed in taverns, social clubs, mini-marts, gas stations, pizza parlors and other establishments throughout the state for casual gaming enjoyment. Such devices are marketed as distinct from traditional slot machines and as games in which a player's ability, strategy or knowledge can affect the outcome. In other words, a skill game is one where the player's skill is said to affect whether the player wins, even if chance also plays a role.

The skill game devices at issue use software distributed by POM of Pennsylvania, LLC ("POM") and outwardly resemble a modern, electronic version of a slot machine, with a 3x3 grid with various symbols and numbers. The base part of the game uses virtual reels and a "Tic-Tac-Toe" style puzzle, where chance-determined combinations may result in a win. The player can place a "wild" symbol, but the base-game outcome is preordained by chance. There are three outcomes: (1) the puzzle can be solved, resulting in an award equal to 105% of the committed points; (2) the puzzle can be solved, resulting in an award less than 105% of the committed points; and (3) the puzzle cannot be solved, resulting in a loss. Whenever the player loses in this base part of the game or "wins" less than 105% of the amount wagered on a given spin, the player can choose to participate in an additional challenge. [Watch this tutorial video from 0:23 to 1:17 for Pace-O-Matic's own explanation]. The challenge, called "Follow Me," is a memory test (akin to the classic Simon flashing lights memory game) and is the "skill" feature at issue. According to POM and the lower court findings, if a sharp-eyed and patient player with a knack for recognizing patterns and sequences wins the memory challenge, the player can avoid realizing a loss on any given play. [Watch the tutorial from 1:18 to 1:28 to see how the game works].

That is the legally tricky part about skill games and the POM devices; sometimes these games involve both skill and chance. Under the traditional "predominant factor" test, if the skill of the player is the "predominant factor" that determines the "outcome" of the game, then the device is not a gambling device per se and may fall outside the scope of state gaming regulations that prohibit slot machines outside of licensed casinos.

According to POM, the memory challenge feature is the requisite skill element in its devices. Therefore, per the predominant factor test, such machines may be deemed to fall outside the definition of a "gambling device" under the law, even if the use of the device otherwise bears the hallmarks of gambling. Such an argument had persuaded the lower courts. In rebuttal, the Commonwealth argued that this skill element was not readily obvious to many players, not to mention "tedious and unreasonably difficult," and was "an obvious fig leaf, included to cloak the game's primary purpose as a gambling device." In the POM action, the state agency sought a declaration that the devices were illegal slot machines and an order requiring POM to remove the machines from Pennsylvania establishments and cease further sales unless it obtained appropriate licenses.

In this long-running litigation, the parties disputed the proper interpretation of Section 5513 of the Crimes Code, which was relied upon by state officials in seizing the POM machines. Under Section 5513 of Pennsylvania's Crimes Code, only licensed gambling operators, like racetracks and casinos, can effectively operate "slot machines" or "any device to be used for gambling purposes," and the state can seize any gambling device that is used in violation of the statute. (See 18 Pa.C.S. § 5513). Importantly, the statute fails to define the following: "slot machine" or "unlawful gambling," but it contains carveouts for activities lawfully conducted under other Pennsylvania gaming statutes, including the Gaming Act, which authorizes traditional table games at licensed casinos, along with new forms of gambling such as "interactive gaming" and "sports wagering." (See Act of October 30, 2017, P.L. 419, No. 42). The two acts work in tandem: according to the Supreme Court of Pennsylvania, "activities that are 'lawfully conducted' under the Gaming Act are therefore not prohibited under the Crimes Code, but an activity that is not lawful under the Gaming Act remains subject to Section 5513(a) of the Crimes Code."

On June 15, 2026, the Supreme Court of Pennsylvania held that the skill device at issue, which used software distributed by POM ("POM Machines" or "POM Devices"), were slot machines subject to both the Gaming Act and Section 5513 of the Crimes Code, notwithstanding their "skill" component. The decision arose from two related appeals involving seizure of the same type of POM device, but they reached the high court by different routes. In the first case, *POM of Pennsylvania, LLC v. Department of Revenue*, 221 A.3d 717 (Pa. Cmwlth. 2019) (en banc), POM sued after law-enforcement officials seized its devices from establishments in Philadelphia in 2017 and 2018. POM sought a declaration that the devices were lawful games of skill, while the Department of Revenue argued that the devices were slot machines subject to the Gaming Act. The Commonwealth Court held that the Gaming Act only applied to licensed slot machines in licensed facilities. In the second case, which we wrote about in a prior edition of *Three Point Shot*, *In re: Three Pennsylvania Skill Amusement Devices, One Green Bank Bag Containing $525.00 in U.S. Currency, and Seven Receipts*, 306 A.3d 432 (Pa. Cmwlth. 2023) (en banc), state officials seized three POM devices, cash, and receipts from a sports bar that was hosting some machines. The trial court ordered the property returned, and the Commonwealth Court affirmed, concluding that luck-based gaming terminals that contain a skill component allowing a player to guarantee a winning result are not gambling devices per se for purposes of Section 5513(a)(1) of the Crimes Code. As a result of these prior rulings, "skill game" devices in the state were deemed to fall into a legal gray area outside of the reach of the relevant state gaming law.

In the end, the Supreme Court of Pennsylvania did not need to flip a coin or roll the dice or even use the predominant-factor test. The majority opinion did not apply the predominant-factor test because it concluded that the devices were "slot machines" under the Gaming Act's statutory definition. In the court's view, the legislature's inclusion of "skill slot machines" and "hybrid slot machines" made clear that the presence of a skill component does not, by itself, take a device outside the statute. Further, looking at the Gaming Act and Crimes Code in isolation is improper, said the court; they are a "unified scheme" with a relatively broad scope. It determined that the lower court erred in the *POM* case by suggesting that the Gaming Act only applied to licensed gambling facilities (and that it did not apply to unlicensed devices in unlicensed facilities). According to the state supreme court, the intent behind the creation of both statutes was to regulate gambling activities and devices, and to suggest that "there is nothing impermissible at all about their unlicensed operation in unlicensed facilities" is an "absurdity."

A skill game is a game where your ability can affect whether you win. However, after the state high court's decision, calling an entertainment device a "skill game" does not necessarily mean that the odds are in your favor or that it will avoid classification as a "slot machine" under Pennsylvania law (at least where the device resembles the POM machines at issue and falls within the Gaming Act's definition of a slot machine). For now, the POM skill game devices at issue are "slot machines" and not lawfully operated under the Gaming Act. The court stayed its order for 120 days and expressly left policy choices to the state legislature. Recent reporting suggests lawmakers are already discussing how to regulate the machines and generate tax revenue for the Commonwealth. With the Court's 120-day safe harbor now ticking, the next play moves to Harrisburg, where skill game supporters may need both skill and luck to keep these machines in play.

Proskauer has more than 60 years of experience counseling the world's premier sports organizations on their most critical and complex matters.

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