

April 2012

For the Love of the Name: Professional Athletes Seek Trademark Protection

Brett Harris Pavony
Pace Law School

Jaia Thomas
Law Office of Jaia Thomas

Follow this and additional works at: <https://digitalcommons.pace.edu/pipself>



Part of the [Entertainment, Arts, and Sports Law Commons](#), and the [Intellectual Property Law Commons](#)

Recommended Citation

Brett H. Pavony & Jaia Thomas, *For the Love of the Name: Professional Athletes Seek Trademark Protection*, 2 Pace. Intell. Prop. Sports & Ent. L.F. 153 (2012).

DOI: <https://doi.org/10.58948/2329-9894.1011>

Available at: <https://digitalcommons.pace.edu/pipself/vol2/iss1/7>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Intellectual Property, Sports & Entertainment Law Forum by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

For the Love of the Name: Professional Athletes Seek Trademark Protection

Abstract

Brett Pavony & Jaia Thomas wrote an article that explores the burgeoning relationship between professional sports and trademark law. After providing an overview of the various requirements outlined by the United States Patent and Trademark Office (USPTO), the article transitions into exploring the emerging trend of sports figures seeking federal trademark protection. Brett & Jaia blend their expertise and research to present an article that focuses on an analytical examination of professional athletes seeking trademark protection. The article also offers a glimpse into the future of intellectual property law as it pertains to professional athletes. As more and more athletes seek to take advantage of the legal tools afforded through U.S. trademark law, the article concludes by offering practical advice for athletes as they continue to protect and monetize their personal brands.

Cover Page Footnote

Brett Harris Pavony is currently a third-year law student, graduating this May from Pace Law School in White Plains, New York. Brett has focused his law studies on Intellectual Property, Sports & Entertainment Law. He received his B.A. in Political Science from The George Washington University in 2007 and subsequently worked at Latham & Watkins LLP as a paralegal before moving back to New York to pursue his law degree. Brett serves as Editor of PIPSELF and plans to take the New York & New Jersey Bar Examinations this summer.

Jaia A'lice Thomas is currently the Managing Partner at The Law Office of Jaia Thomas, a New York-based sports and entertainment law practice. She earned her J.D. from The George Washington University Law School and her B.A. in Political Science from Colgate University. She also holds a Certificate in Television, Film and New Media Production from University of California, Los Angeles. She is a member of the American Bar Association and New York Bar Association.

For the Love of the Name: Professional Athletes Seek Trademark Protection

Brett Harris Pavony¹ and Jaia Thomas²

When famed wide receiver Terrell Owens signed with the Dallas Cowboys in the summer of 2006, he instructed the world to ‘Getcha Popcorn Ready’. Since 2006, while avid football fans have been busy getting their popcorn ready, the phrase has become ubiquitous. In 2007, recognizing the potential profit that could be garnered, Terrell Owens (“T.O.”) sought federal trademark protection for the phrase. T.O. is one of countless athletes who now rely on United States trademark law to protect their intellectual properties. This article seeks to elucidate the intersection of professional athletes and trademark law.

The purpose of this article is to shed light on the growing trend of professional athletes seeking trademark protection. Section I of this Article provides a brief primer on trademark law. Section II evaluates the modern-day relationship between sports, professional athletes, and trademark law. Section III analyzes certain lawsuits and provides examples of the legal hurdles faced by athletes seeking to secure trademark protection for their respective intellectual properties. Section IV offers recommendations and strategies for those in the legal and sports

¹ Brett Harris Pavony is currently a third-year law student, graduating this May from Pace Law School in White Plains, New York. Brett has focused his law studies on Intellectual Property, Sports & Entertainment Law. He received his B.A. in Political Science from The George Washington University in 2007 and subsequently worked at Latham & Watkins LLP as a paralegal before moving back to New York to pursue his law degree. Brett serves as Editor of PIPSELF and plans to take the New York & New Jersey Bar Examinations this summer.

² Jaia A’lice Thomas is currently the Managing Partner at The Law Office of Jaia Thomas, a New York-based sports and entertainment law practice. She earned her J.D. from The George Washington University Law School and her B.A. in Political Science from Colgate University. She also holds a Certificate in Television, Film and New Media Production from University of California, Los Angeles. She is a member of the American Bar Association and New York Bar Association.

profession navigating the landmine of trademark registration and protection. Lastly, Section V offers a list of recommendations for those working within the realm of sports.

I. First Down: Trademark Law Up the Middle

The Federal Trademark Act of 1946,³ commonly known as the Lanham Act, governs trademark law.⁴ The Lanham Act defines a trademark as any word, name, symbol or device or combination thereof, used by an individual or company to identify and distinguish his, her or its goods, including a unique product, from the goods of another, and to indicate the source of the goods, even if that source is unknown.⁵ In a famous Supreme Court decision, it was held that, “the primary purpose of trademark law is to aid consumers in assuring them that the products with the same trademark come from the same source.”⁶ A trademark can receive legal registration & protection in one of three distinct venues: (1) common law; (2) state; and (3) federal. This article will exclusively focus on federal trademark law.

To receive federal trademark protection, an applicant must register with the United States Patent and Trademark Office (“USPTO”), alleging to use the mark or ‘intend to use’ the mark in commerce. A mark is “in commerce,” with respect to goods, when the mark is placed on the goods and they are sold or transported in commerce.⁷ There are two ways to establish protectable, exclusive trademark rights in the U.S. The first way is through actual use which can be accomplished by affixing the trademark to the goods or to point-of-purchase displays for

³ 15 U.S.C. §§ 1051-1127 (1946).

⁴ *Id.* §§ 1114-21.

⁵ *Id.* §1127.

⁶ *Qualitex Co. v. Jacobson Products Co. Inc.*, 514 U.S. 159, 115 S. Ct. 1300, 131 L. Ed. 2d 248 (1995).

⁷ 15 U.S.C. § 1127 (1946).

them, or by displaying a service mark in rendering or advertising the services.⁸ The second avenue is through an intent-to-use. This is based on a bona fide plan to use the mark, but the mark must be used in the ordinary course of trade.⁹

Trademark rights continue indefinitely as long as the mark is in use directly or through a licensee; however, federal registrations must be renewed every ten years and a declaration of use must be filed during the sixth year after registration. A mark is considered abandoned when its use has been disconnected, with intent not to resume. Intent not to resume can be inferred from nonuse for three consecutive years or when it has lost its trademark significance through any course of conduct. Federal trademark protection provides constructive notice of your exclusive ownership rights to everyone who later starts using that trademark anywhere in the country, and it gives federal courts jurisdiction to hear infringement claims.

The Lanham Act defines trademark infringement as the reproduction, counterfeiting, copying or imitation in commerce of a registered mark “in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake or to deceive”¹⁰ without consent of the registrant. The ‘likely to cause confusion’ element, which has proven to be the key factor in the majority of sports trademark cases, has been particularly important in trademark infringement cases involving professional sports leagues and sports good manufacturers and sellers.¹¹

The potential value of the assets of sports enterprises – including the trademarks identifying them – should not be underestimated. Even slogans can be established, registered,

⁸ *See id.* (“The term “service mark” means any word, name, symbol, or device, or any combination thereof (1) used by a person or (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act, to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.”).

⁹ WILLIAM M. BORCHARD, *TRADEMARK & THE ARTS* 34 (2nd ed. 1990).

¹⁰ 15 U.S.C. § 1114(1)(a) (1946).

¹¹ *Id.*

and protected as trademarks or service marks in the same manner as single words or unique designs.¹² Lawyers who handle intellectual property rights say the practice has accelerated in recent years as athletes and sports figures seek to extend their brands into the entertainment world. Unfortunately, the Federal Trademark Office does not keep statistics on the professional athletes who file for protection, nor does the International Trademark Association, which represents owners.¹³

II. Second Down: Play-Action Past, Present & Future Marks

Already happening at a record rate today, sports' figures have been using trademark law to protect nicknames and slogans for decades. Hall of Fame coach Pat Riley, an iconic figure in and around the sport of basketball, obtained a trademark for the term 'three-peat' in 1989, when he was then head coach of the Los Angeles Lakers. The term 'three-peat' indicates that a team has won three consecutive championships, an extremely rare and remarkable feat in any sport. Riley's first trademark related only to the appearance of 'three-peat' on: T-shirts, hats, and jackets. He has since registered three additional trademarks on his catchphrase, specifically covering its use on: nonmetal key chains, plaques, collector plates, mugs, tankards, bumper stickers, decals, paper pennants, paperweights, posters, and trading cards.¹⁴

Since 1989, countless professional athletes and sports figures have sought trademark protection – ranging from Manny Ramirez ('Manny Being Manny') to Donovan McNabb ('Donovan McNabb'). It should be noted that trademark protection in the sports world is not only confined to athletes and coaches seeking protection of their name or phrase but also

¹² JOHN D. OATHOUT, TRADEMARKS 25 (1981).

¹³ Katie Thomas, *Sports Stars Seek Profit in Catchphrases*, N.Y. TIMES, Dec. 9, 2010, at A1, available at <http://www.nytimes.com/2010/12/10/sports/10trademark.html>.

¹⁴ Dave McKenna, *Cheap Seats: Three-Peat Offender*, WASHINGTON CITY PAPER (June 21, 2002), <http://www.washingtoncitypaper.com/articles/23988/three-peat-offender>.

expands to athletes seeking to protect the name of business endeavors (Amare Stoudemire – ‘Stoudemires’) as well as the licensing of names to third-party companies (Chad Johnson has licensed the name ‘Mad Chad’ to Rocklive, as an iPhone app game).

A. Nicknames and Catchphrases

Professor J. Gordon Hylton of Marquette University Law School noted, “World renowned athletes like Michael Jordan and Tiger Woods have earned millions of dollars above and beyond their income from competing in sports by successfully exploiting their own names.”¹⁵ Additionally, Daniel Glazer, a member of *Intellectual Property Magazine*’s Advisory Board and a Senior Editor of *The Trademark Reporter*, explains, “Most of these athletes (filing for protection) have a very limited period of time where they have their primary earning years, and this is a way to capitalize on their fame and maximize their earnings during their playing career.”¹⁶ Statistics indicate that the average NFL career is 3.5 years, with the number fluctuating because of varied factors (e.g. the average career length for a player who makes a club’s opening day roster in his rookie season is six years).¹⁷ The average NBA career length is 4.8 years and the average MLB career length is 5.6 years.¹⁸

Former New York Giant Michael Strahan may be known as a Super Bowl champion and one of the best defensive ends in NFL history, but his fame increased significantly when he delivered his memorable phrase “Stomp You Out.” What initially began as a pre-game ritual

¹⁵ J. GORDON HYLTON, *THE OVER-PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN SPORT* (2010), available at <http://shiac.com/files/arablexsportiva-presentations/004003.pdf>.

¹⁶ Katie Thomas, *Sports Stars Seek Profit in Catchphrases*, N.Y. TIMES, Dec. 9, 2010, at A1, available at <http://www.nytimes.com/2010/12/10/sports/10trademark.html>.

¹⁷ *What is Average NFL Player’s Career Length? Longer than you might think, Commissioner Goodell says*, NFL COMM. BLOG (Apr. 18, 2011), <http://nflcommunications.com/2011/04/18/what-is-average-nfl-player%E2%80%99s-career-length-longer-than-you-might-think-commissioner-goodell-says/>.

¹⁸ Adam Beasley, *At the Buzzer: An NBA Settlement*, MIAMI HERALD (Nov. 27, 2011), <http://www.miamiherald.com/2011/11/27/v-fullstory/2518717/the-nba-lockout-playing-chicken.html>.

between Strahan and his teammates, ‘Stomp You Out’, referring to “stomping out” Tom Brady and the New England Patriots in Super Bowl XLII, came to fame in his legendary Super Bowl Parade speech in New York City. Strahan filed for trademark protection of the phrase¹⁹ on May 27, 2008, and on June 9, 2008 (12 days after his filing date), Strahan officially retired from the NFL. Strahan’s trademark is a clear illustration of a superstar athlete relying on trademark law, in order to profit from his athletic fame, post-retirement.

On January 7, 2010, New York Jets defensive back Darrelle Revis filed for federal trademark protection. Revis is best known for shutting down the opponent’s best receiver and is regarded as one of the very elite defensive players in the NFL. Playing defensive back against the fastest and most talented offensive players in the world is no easy task, but Revis has excelled since the first snap of his career. In the 2008 season, Jets head coach Rex Ryan referred to his star as “Revis Island” in a press conference. Essentially, ‘Revis Island’ means that Revis will guard the best player on the opposing team, in man-to-man coverage. ‘Revis Island’ is one of the catchier phrases emanating from recent professional sports, and the trademark gives protection to its use on: T-shirts, sweatshirts, sweatpants, hats, footwear, sleepwear and swimwear. Trademark licensing allows Revis, the owner of ‘Revis Island’, to license his mark to retailers, manufacturers, and sports stores, with a percentage of a royalty rate, determined and fixed in the Licensing Agreement, going directly to Revis.

In addition to the athletes mentioned above, there are many others that have filed for federal trademark protection. Terrell Owens currently has three live trademarks: (1) ‘Getcha Popcorn Ready’ which is a catchphrase; (2) ‘ T.O.’ which is his nickname; and (3) ‘I love me some me’ another catchphrase. Jared Allen, current Pro-Bowl Defensive End for the Minnesota

¹⁹ The phrase primarily protect clothing, mainly men’s and women’s sportswear.

Vikings, has a live and registered federal trademark, ‘Got Strange’. New York Yankees shortstop Derek Jeter has a federally protected mark ‘Turn 2,’ which can be used on all sorts of baseball–related attire.

Lance Armstrong owns potentially the most well-known and lucrative trademark. Armstrong’s ‘LIVESTRONG’ mark is universally known and owned by his company, the Lance Armstrong Foundation. Armstrong’s foundation is the owner of the LIVESTRONG trademark for wristbands and fundraising. The LIVESTRONG mark was first used in interstate commerce in December of 2003 and, Armstrong’s foundation secured a federal trademark registration on January 31, 2006. Armstrong’s foundation has fifteen registered or pending trademark applications, primarily in the jewelry class and fundraising class.²⁰

B. Business Endeavors

Not only do many athletes seek trademark protection for their names, nicknames and particular catchphrases but numerous athletes also seek trademark protection for their wide-ranging business endeavors. Earlier this year, NBA All-star Kevin Garnett filed for federal trademark protection of the name ‘Holla Energy’. Unlike Revis and Strahan, Garnett’s trademark ‘Holla Energy’ refers to a business endeavor that is not a nickname, slogan or catchphrase related to Garnett as an athlete. The ‘Holla Energy’ trademark is filed in the category of light beverage products and the description provided to the USPTO is “energy drinks, sports drinks, and soft drinks.” New York Knicks power forward Amare Stoudemire has also filed for trademark protection of several business endeavors. This year, Mr. Stoudemire

²⁰ Tamara H. Bennett, *Livestrong: Barking up the Trademark Tree*, I.P. & ENT. L. BLOG (Sept. 14, 2007), <http://ipandentertainmentlaw.wordpress.com/2007/09/14/livestrong-barking-up-the-trademark-tree/>.

filed for ‘Stoudemire’s Downtown’ and ‘Stoudemires’, which is listed as a restaurant and bar service.

It is worth noting, for those athletes attempting to register a trademark, they should understand that the use of such mark must be continuous. Jonathan Goins, a Partner at the Atlanta law firm, Gonzales Saggio & Harlan states that, “Often athletes have a name associated with a new business idea or venture that is short-term, which may defeat the purpose of trademark protection given that securing and maintaining its registration requires continuous use.” Mr. Goins has a breadth of experience in the intellectual property practice areas of trademark, copyright and trade secret. Recently, he secured federal registration for the trademark ‘Wilfork U Up’ on behalf of NFL defensive tackle Vincent Wilfork of the New England Patriots.

C. Trademark Licensing

A trademark owner can license a trademark for use in connection to goods and services in different fields of use and geographical markets, as long as the trademark is in use and under quality control by the trademark holder.²¹ Trademark licenses can last as long as the parties to the license agreement wish and as long as there is no abandonment of the trademark.²² Trademark licensing allows the licensor to share their mark with a licensee, typically to arouse the sale of ordinary goods such as t-shirts and hats. When a trademark owner licenses their intellectual property, it is critical that a detailed and extensive licensing agreement is prepared. The licensor has many options on how to protect, profit, and control their mark. The licensor can

²¹ DANIELLE M. CONWAY, ROBERT W. GOMULKIEWICZ, & XUAN-THAO NGUYEN, LICENSING INTELLECTUAL PROPERTY: LAW AND APPLICATION 140 (Wolters Kluwer, 2nd ed. 2011)

²² *Id.*

choose between an exclusive license²³ and a non-exclusive license.²⁴ Additionally, a ‘quality control’ provision is a vital and indispensable feature, distinctive to trademark licensing. The licensor must control the nature and quality of goods or services sold under its trademark. The protected interests are those of the consumer. The quality and nature of the licensed goods or services must be the same as they were before the licensing agreement.

III. Third Down: If Winning Isn’t Everything, Why Do They Keep Score

- Vince Lombardi

Athletes seeking to secure trademark protection for their intellectual properties are often met with legal hurdles and obstacles. As Glenn Wong noted, “As a result of the growth in the use of sports trademarks, there has been an increasing amount of litigation in this area with the guidelines governing the use of sports trademarks still being established in the courts.”²⁵

Perhaps the most well known legal battle surrounding trademark protection involves NFL quarterback, Vince Young. In December 2008, Vince Young filed a lawsuit against Rodney Vannerson, Tom Roberson and former Major League baseball player Enos Cabell, who had filed an intent-to-use trademark application with the USPTO, for the right to use the marks ‘VY’²⁶ and ‘Invinceable’.²⁷ Although the defendants had yet to sell merchandise containing these marks, they had “contacted several manufacturers” and “produced samples of various products for use

²³ Exclusive license is where the licensor grants licensee the right to use the mark in connection with certain goods/services in a particular region and no other licensees may receive rights for same goods/services in that region.

²⁴ Non-exclusive license is where licensee is not the only party that may use the mark in connection with goods/services in a particular region.

²⁵ Glenn M. Wong, *Recent Trademark Law Cases Involving Professional and Intercollegiate Sports*, 87 Det. C.L. Rev. 87 (1986).

²⁶ See, e.g., Darren Heitner, *Tennessee Titans, VINCESANITY* (Dec. 23, 2008), <http://bleacherreport.com/articles/96340-vincsanity> (“VY was a nickname he grew up with as a child.”).

²⁷ See *id.* (“Young got his nickname ‘Invinceable’ after winning the Rose Bowl almost singlehandedly in 2006.”).

with the ‘VY’ and ‘Invinceable’ marks.”²⁸ Also, Young alleged that defendants had “approached organizations to develop marketing strategies” as well as “tested the market with several different types of products using the mark.”²⁹

According to the lawsuit, Young alleged that defendants filed the intent-to-use applications for the purpose of creating a false connection with Young and interfering with his proprietary right to use the ‘VY’ and ‘Invinceable’ marks. Young further alleged that defendants violated the Lanham Act by failing to obtain Young’s consent before registering a trademark that consisted of a “name, portrait, or signature identifying a particular living individual.”³⁰ After five years of disputing the matter, the case was settled, and Vince Young presently owns the trademark, ‘VY’³¹ and ‘Invinceable’.³²

Trademark infringement cases are not confined to the sport of football. In January 2010, Shaquille O’Neal’s company, Mine O’ Mine, filed a lawsuit against Michael Calmese for opening an online store called ‘Shaqtus Orange Clothing Co.’ and for selling ‘Shaqtus’ apparel and collectibles. Calmese’s store featured an animated character in the form of a cactus with the facial features of O’Neal wearing an orange basketball jersey, bearing the name Phoenix Shaqtus and the number 32.³³ The website offered Shaqtus products such as: adult and kids apparel, hats, bags, pillows, journals and more. During his tenure with the Phoenix Suns, the public dubbed O’Neal ‘The Big Cactus’ and ‘The Big Shaqtus’ in reference to the combination of O’Neal and the cacti that are prevalent in Phoenix, Arizona. In his suit, O’Neal brought the following claims against Calmese: trademark infringement, unfair competition, trademark dilution, cybersquatting

²⁸ Young v. Vannerson, 612 F. Supp. 2d 829 at 836 (S.D. Tex. 2009).

²⁹ *Id.*

³⁰ *Id.*

³¹ Classified for use on clothing items (e.g. hats, jackets, dresses, blouses, shirts and sportswear).

³² Classified for use in entertainment in the nature of football competitions and entertainment services, personal appearances by a sports celebrity.

³³ Mine O’Mine, Inc. v. Calmese, No. 2:10-CV-00043-KJD, 2011 WL 2728390, at *1 (D. Nev. July 12, 2011).

³³ *Id.* at 2.

and violation of the right of publicity.³⁴ O’Neal claimed that the Shaqtus mark contained the Shaq mark in its entirety and Calmese was using the mark in connection with goods covered by O’Neal’s trademark rights.

In the October 2011 ruling, Judge Kent Dawson found Calmese guilty of trademark infringement and unfair competition. He issued an injunction barring Calmese from using the ‘Shaqtus’ mark and the website domain names shaqtus.com, shaqtus.net, and any other marks or domain names confusingly similar to any of the Shaq trademarks.³⁵ No financial damages were awarded. The judge opined that there was a likelihood of confusion among consumers as to the origin of t-shirts sold by both O’Neal’s company and Calmese’s firm.³⁶ According to the court order, “both Shaqtus and the Shaq mark begin with the same four letters and therefore when consumers read and hear the two terms, Shaqtus and Shaq, they see and hear words that are similar in sight and sound.”³⁷ Further, since Shaq and Shaqtus have both been used to refer to O’Neal, the marks are similar in meaning. It should be noted that O’Neal’s company, Mine O’ Mine, owns numerous trademark registrations in the United States and abroad, including such marks as: ‘Shaq’n up with Hoopz,’ ‘Shaqtacular,’ ‘Shaq Attaq’ and ‘Dunkman.’

IV. Fourth Down: The Future of Federal Trademark Protection for Athletes

³⁴ *Id.*

³⁵ *Id.* at 6.

³⁶ *Id.*

³⁷ J. GORDON HYLTON, THE OVER-PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN SPORT (2010), *available at* <http://shiac.com/files/arablexsportiva-presentations/004003.pdf>.

As Professor J. Gordon Hylton aptly noted, “In the modern era, intellectual property rights have become a major source of revenue for the sports industry.”³⁸ The National Football League Properties (“NFLP”) receives millions of dollars in revenues each year as a result of the sale of sportswear, athletic equipment and other gift items bearing the trademarks of the NFL and its member teams. For example, fans quickly recognize the aqua-colored dolphin jumping through the bright orange sun ring as the logo for the Miami Dolphins football club. The Dolphin’s trademark, the logos of the other thirty-one NFL teams, and sometimes those identifying the NFL itself, are licensed to hundreds of manufacturers. These companies produce over 400 NFL promotional items and goods.³⁹

What does the future hold for professional athletes seeking trademark law? Many within the legal community expect a continuing rise in the number of athletes seeking federal trademark protection. According to attorney Jonathan Goins, “We will continue to see an increase in trademark applications and trademark litigation by athletes.”⁴⁰ He further states that “The unsettled, unregulated nature or use of the Internet and advancements in technologies for social media platforms will continue to make it difficult for athletes to control their image and prevent commercial exploitation, unauthorized, or infringing use. The increase in monetization of sports as an industry, including additional revenue streams of media-driven television shows based on persons’ affiliations with players, will continue to drive the athlete’s desire for greater trademark protection and controlling the use and image of any trademark associated therewith.”⁴¹ Chris Cabott agrees, stating that, “there will certainly be an increase as the ability to create merchandise that can be trademarked and sold directly to a social media following increases.”

³⁸ E-mail from Jonathon Goins, Senior Editor, The Trademark Reporter, to author (Nov. 27, 2011) (on file with author).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

According to Cabbott, “There has never been a better time for direct to consumer sales than Twitter and website provide.”⁴² Given the upsurge in professional athletes seeking trademark protection, the future looks bright for post-retirements athletes, but what can be done to ensure that?

Moving forward, it is imperative for sports agents and attorneys representing athletes to ensure that their clients are aware of their intellectual property rights, in particular and specifically trademark rights. Ideally, all professional athletes should have a basic, rudimentary understanding of trademark law. Trademarks can provide an enormous source of income for athletes during their professional career and long after retirement. As Cabott notes, “The average career span of an athlete is short as compared to non-athletes. In view of this shortened span that is not immune from the ever-expanding cost of living, it is important that athletes be able to transition to off-the-field careers that offer consistent income streams, while adjusting to life after the field, court, ice or diamond. Building brands as an athlete and learning to leverage those brands early will help ease the transition.”⁴³ However, agents and attorneys should not bear all the responsibility. Professional organizations such as the National Football League Players Association, should work to educate and inform their players about the intricacies of trademark law as well. Jonathan Goins recommends, “All major professional league players associations should offer an instructional course to first-year players on intellectual property rights.”⁴⁴ Attorney Cabott agrees, stating, “Similar to what the NFL does with its broadcasting boot camp, all leagues should offer courses to their athletes that address branding, social media,

⁴² E-mail from Christopher Cabbott, Adjunct Law Professor, Temple University School of Law, to author (Jan. 17, 2012) (on file with author).

⁴³ *Id.*

⁴⁴ Daniel Miller, *Locked-Out NBA Stars Explore Hollywood*, THE HOLLYWOOD REPORTER (Oct. 23, 2011), <http://www.hollywoodreporter.com/news/locked-nba-stars-explore-hollywood-252274>.

merchandising, monetization of the foregoing and the laws that protect such exploitation.”⁴⁵

Although this article exclusively focuses on trademark law, it should be noted that attorneys and agents should also make a concerted effort to educate and inform athlete clients about all the legal tools available to them for protection of their intellectual properties – ranging from copyright to patent law.

V. Touchdown

In an October 23, 2011 article entitled, *Locked-Out NBA Stars Explore Hollywood*,⁴⁶ The Hollywood Reporter discussed players’ pursuits outside the confines of professional basketball. The article mentioned Philadelphia 76-ers forward Elton Brand and Cleveland Cavalier Baron Davis producing films. The article noted that “such deals [referring to the then existing NBA Lockout] aren’t just about cashing a paycheck” but as Jeff Marks of Premier Partnerships⁴⁷ said, “The projects are just as important for developing athletes’ brands as well.”⁴⁸

The professional athletes of the past are not the professional athletes of the present. With their own reality shows, web series, clothing brands and restaurants, it is now more important than ever for professional athletes to legally protect their intellectual property rights. The recent NFL and NBA lockouts have given players ample time to consider alternative sources of capital, as well as outside ventures. Professional athletes deserve a heightened awareness of their intellectual property rights and need a better understanding of what the law has to offer, so that the relationship between trademark law and sports can continue to grow and effectively co-exist.

⁴⁵ E-mail from Christopher Cabbott, Adjunct Law Professor, Temple University School of Law, to author (Jan. 17, 2012) (on file with author).

⁴⁶ Premier Partnerships is a sports business consultancy firm.

⁴⁷ Daniel Miller, *Locked-Out NBA Stars Explore Hollywood*, THE HOLLYWOOD REPORTER (Oct. 23 2012, 12:17 PM), <http://www.hollywoodreporter.com/news/locked-nba-stars-explore-hollywood-252274>.

⁴⁸ *Id.*