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FROM THE FIELD OF  
INTELLECTUAL PROPERTY

## Lynch provides a 'Beast Mode' seminar on use of trademarks



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ALEXANDER MOONEY

**J**ust before the 2015 Super Bowl, Seattle Seahawks running back Marshawn Lynch famously responded to 25 separate questions that he was only attending the event's annual Media Day "so I won't get fined." Although the display made international headlines, it was not apparent at the time how much the episode would illustrate the use of trademarks in professional sports.

There is no question that the protection of sports trademarks is big business. For example, one court called it "indisputable" that the NBA logo, with its "distinctive depiction of a silhouetted basketball player," is a strong mark in light of its decades of use, its wide promotion, and the billions of dollars in sales of licensed NBA merchandise. Courts have frequently recognized that the uniforms worn by professional athletes and their cheerleaders can themselves function as a trademark, allowing courts to enjoin their imitation, whether in knockoff merchandise or as satirized in adult films.

What makes Lynch's case interesting is that his meticulous effort to avoid "get[ting] fined" actually came close to getting him fined, not because of what he said, but because of what he wore. Lynch appeared before hundreds of clicking cameras in a hat embossed with the prom-



GETTY IMAGES

**Marshawn Lynch made news for what he said at Super Bowl Media Day, but it was his apparel that nearly got him in trouble with the league.**

inent logo of his clothing line Beast Mode, which was not an official NFL sponsor.

To maximize the value of their sponsorship deals, sports leagues often limit the brands that players are permitted to wear before and during game day. Sponsors typically ask for reassurances that their brands will be the only ones seen in media coverage, because they do not want to pay if their competitors can simply cut side deals with other participants that allow them to free ride on the exposure at a fraction of the cost.

For example, NFL Rule 5, Section 4, Article 6 states that "throughout the period on game-day that a player is visible to the

stadium and television audience," the player is "prohibited from wearing, displaying, or orally promoting equipment, apparel, or other items that carry commercial names or logos/identifications of companies." Similarly, sports organizations increasingly ask the cities that host their events to establish "clean zones," in which unsanctioned brands are prohibited from advertising or selling products that compete with their sponsors.

Lynch escaped a fine for violating this rule only because his hat was manufactured by an NFL licensee. Other professional athletes have not been as lucky. For example, former Chicago Bears line-

backer Brian Urlacher was fined \$100,000 in 2007 for wearing a hat on Super Bowl Media Day that bore the logo of one of his personal sponsors. Urlacher, in fact, removed the hat shortly after cameras started rolling, and most fans watching at home likely never saw it. But with the advent of camera phones and social media, once passing moments can be captured and reposted ad infinitum.

Importantly, the First Amendment does not protect a player's choice to wear particular brands. Sports leagues are private organizations, and a First Amendment claim can only be asserted against someone acting under the color of governmental authority. Moreover, advertising a particular brand is a form of "commercial speech," which does not receive as much protection as core political speech. The federal trademark statute, the Lanham Act, expressly prohibits the use of a trademark in ways that are likely to cause consumer confusion.

Ironically, some trademark owners may actually benefit from rigorous enforcement of these brand enforcement rules, when a fine itself attracts significant publicity. Last year, San Francisco 49ers quarterback Colin Kaepernick was fined for wearing headphones with the signature "B" logo of Beats headphones. The incident received so much free media exposure that Beats' co-founder was quoted as saying, "I can't believe I'm this lucky."

Lynch may similarly benefit from his run-in with the NFL's logo policy. In February, Lynch filed an application with the U.S. Patent and Trademark Office to register the phrase "I'm Just Here So I Won't Get Fined" as a trademark. The Lanham Act allows companies and individuals to register phrases and other indicators that communicate to consumers that goods or

services come from one specific source. In Lynch's case, his application announces an "intent to use" the phrase to sell sporting goods like shirts and hats.

Lynch is not the first athlete to trademark a famous phrase. For example, former Los Angeles Lakers coach Pat Riley famously registered

that Bulls or Yankees fans bought goods erroneously believing them to have been marketed by Riley. That registration lapsed in 2012, likely because Riley obtained a separate registration for "Three-peat" in 2011 when his Miami Heat seemed primed to make use of the phrase.

Professional athletes often register trademarks for their charitable and business endeavors, such as former Yankee

Derek Jeter's "Turn 2" trademark for his charitable foundation and Denver Bronco John Elway's "Elway's" mark for his restaurants. Former Chicago Bulls star Michael Jordan has registered at least 15 trademarks that incorporate his famous name.

Importantly, trademark law will not allow Lynch a complete monopoly on the phrase "I'm Just Here So I Won't Get Fined." Trademark law does not reach the use of a term in common, everyday speech and does not prevent others from copying the phrase in the way that copyright law protects more substantial creative works such as books. So fans, detractors and parodists can continue to repeat the phrase as long as it is not used in ways that are likely to cause consumers confusion.

For now, a PTO examining attorney will evaluate Lynch's application and decide whether it is sufficient. A decision is expected by midyear. To maintain the registration, though, Lynch will need to demonstrate that he can actually use the phrase to sell merchandise. ■

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**Lynch has applied to register his phrase, which is on T-shirts on his brand's website.**

the trademark "Three-Peat" after his team won its second consecutive championship in 1988. Although Riley's Lakers did not ultimately win a third championship in 1989, press reports have indicated that he later benefited widely from the registration when the Chicago Bulls and the New York Yankees each won three consecutive championships. But it is unclear how much, if anything, those teams paid to license the rights, since it seems unlikely