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## As NFL protects lucrative Super Bowl IP, some businesses retort

By now, everyone knows that brands pay big bucks to air commercials during the Super Bowl. This year, advertisers shelled out roughly \$7 million for a 30-second spot, for an estimated total of \$650 million, according to estimates by the Sports Business Journal.

A feel-good parade of humor, nostalgia and celebrities accompanied the Feb. 11 event that generated relatively little controversy — unless you count the mixed feelings over pop superstar Taylor Swift cheering on her boyfriend, Kansas City Chiefs tight end Travis Kelce.

Everyone also knows the National Football League does not play around when it comes to protecting its Super Bowl intellectual property. With brands — the household names and the not-so-well-knowns — paying millions for commercial time, official sponsorships and licensing partnerships, the NFL aggressively guards its Super Bowl IP exclusivity, no matter how small the transgression might be.

The Chiefs won Super Bowl LVIII in overtime, beating the San Francisco 49ers 25-22. Las Vegas hosted its first Super Bowl, which aired on CBS. Commercial-wise, the regular players were present and accounted for — auto brands, Big Beer, movie trailers, snacks and sodas — while first-time advertisers represented a variety of categories including Lindt, BetMGM, CeraVe, Etsy, Homes.com, Kawasaki and Popeyes.

Behind the scenes, the NFL remains as vigilant as ever to protect its Super Bowl trademarks, copyrights and licensing partnerships. In the past year, however, at least two small businesses pushed back against the NFL restrictions directly and indirectly in



### SPORTS MARKETING PLAYBOOK

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court, with noteworthy results.

Since it registered the phrase “Super Bowl” in 1969, the NFL has obtained federal protection for more than 100 related words and phrases, including “Super Sunday,” “1st and Goal,” and “Gameday.” To skirt the NFL’s restrictive trademarks, some unofficial Super Bowl advertisers engage in “ambush marketing” to indirectly link their brand to the championship hype without paying for the pricey airtime by using permissible euphemisms like “The Big Game.”

One of the boldest (and perhaps most successful) examples of ambush marketing was a series of teasers, digital ads and social media posts by Newcastle Brown Ale in 2014, all part of their campaign “If We Made It,” talking about the “Big Game” ad they would have made, but for the fact that they didn’t have the money for the spot — costing \$4 million at the time. The

campaign included revealing the “cheap storyboard for the mega ad we would have made.”

The highlight of the campaign was a digital ad featuring actress Anna Kendrick delivering an expletive-filled, commercial-length rant about how the beer brand didn’t have the money and scrapped the Super Bowl commercial at the last minute — with numerous references to the Super Bowl simply bleeped out. The campaign culminated on game day, when the company tweeted out their own storyboard versions — improved, of course — of some of the most anticipated (and previously leaked) ads, within minutes of each ad airing during the broadcast.

Not all brands can get away with Super Bowl ambush marketing, and the NFL isn’t shy about sending cease-and-desist letters. But in March 2023, a Las Vegas personal injury attorney fought back.

After the league warned him to stop running television commercials for his firm featuring a Las Vegas Raiders player before and during the Super Bowl the previous month, the attorney sued the NFL and the Las Vegas Raiders. The commercial, which aired locally, featured players from Las Vegas’ various professional sports teams, including the Raiders, suiting up as the lawyer prepared for trial. The players wore generic black-and-silver uniforms, the same color scheme used by both the lawyer’s firm and the Raiders.

The attorney sought a ruling that the commercial did not infringe on NFL or Super Bowl trademarks because it did not include the Raiders or NFL logos. Ultimately, the parties agreed to dismiss the litigation with prejudice in

September. Terms of the settlement were not disclosed.

A second dispute involved the “Clean Zone” designated by a Super Bowl host city where brands that are not official NFL partners are barred from advertising for a period of time.

An Arizona businessman sued the city of Phoenix alleging it violated his right to free speech by preventing him from selling advertising space on the side of a building he owns. The building was located inside the Clean Zone, delineated by a city resolution as areas around the stadium and

nearby fan gathering places during the 2023 Super Bowl festivities. The resolution stated that all temporary signage had to be authorized by the NFL or the Arizona Super Bowl Host Committee.

An Arizona trial court sided with the building owner, ruling in February 2023 that the city passed an unconstitutional resolution. The resolution gave the host committee — a private entity interested in protecting NFL sponsors and the NFL — the authority to approve the submission of temporary sign applications to the city based

on the signs’ content, according to the ruling. The court then ordered the city to consider plaintiff applications within 48 hours of their submission, using “ordinary, content-neutral rules for temporary signage” in the “Special Promotional and Civic Events” zone the city had set up for Super Bowl-related civic events.

The NFL’s fierce guardianship of its Super Bowl IP is legendary and would-be plaintiffs should think carefully before tackling the deep-pocketed league. But the two 2023 suits show that it’s not entirely one-sided.