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## Trademark ruling for Yankees' Judge shows perception matters

A recent landmark ruling in a trademark infringement action may make it easier for celebrity athletes to claim signature phrases and slogans connected with them.

The U.S. Patent and Trademark Office's Trademark Trial and Appeal Board (TTAB) recently ruled that a Long Island man could not trademark two judicial-themed slogans — "All Rise" and "Here Comes The Judge" — because the slogans were already strongly associated with baseball superstar Aaron Judge, captain and right fielder of the New York Yankees.

What's noteworthy about this precedent-setting decision is that neither Judge nor any entity connected with Major League Baseball had filed for a trademark application for the phrases.

Michael P. Chisena sought to trademark the two slogans plus a logo design with an image of the scales of justice superimposed on a baseball field for use on apparel. The Major League Baseball Players Association (MLBPA) and Judge opposed the application, saying third-party licensees had been using judicial terminology and designs to refer to Judge on apparel since August 2016.

Chisena did not file his trademark application until July 2017, just days after Judge won the All-Star Home Run Derby and played in the All-Star Game as the American League team's starting right fielder.

The media, fans and the Yankees organization have capitalized on the Judge surname since Judge's Major League debut in 2016. For example, the ruling notes that during a 2016 game in which he hit his first Major League home run, a Yankees announcer said, "Here's Aaron Judge! Here comes the Judge!" In May 2017, Judge was on the cover of Sports Illustrated and featured in an article with the headline: "All Rise! The Yankees Youth Movement Is in Session. The Powerful AARON JUDGE Presiding."

Chisena maintained that this prior use of the well-known phrases "All Rise" and "Here Comes The Judge" were only meant to generate support and enthusiasm for Judge and did not translate into trademark designations for the MLBPA and Judge. Interestingly, Chisena also claimed that he is not a baseball



### SPORTS MARKETING PLAYBOOK

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fan and knew nothing about Judge until 2017.

The TTAB ruled in favor of the MLBPA and Judge. Common, widely used expressions convey the ordinary concept usually associated with that phrase. But, in this case, even though the MLBPA and Judge did not apply to register the slogans and symbols, baseball fans recognize that the judicially related slogans and symbols identify one baseball player on one Major League team, according to the ruling.

Therefore, TTAB concluded, any use of the slogans and symbols by Chisena would likely confuse consumers.

Athletes protect and apply to register their catchphrases and terms associated with them to build and protect their brands, and have been doing so for years.

For example, Baltimore Ravens quarterback Robert Griffin III applied to register several of his sayings, including "Unbelievably Believable" and "Know Your Why." But sometimes the phrase in question is too common to be protectible.

In 2019, the U.S. Patent and Trademark Office (USPTO) rejected Los Angeles Laker superstar LeBron James' bid to trademark

"Taco Tuesday" to capitalize on the popularity of his family's weekly taco dinners that he shared on Instagram. The USPTO said the phrase was too widely used to be protected as a trademark.

James is currently embroiled in another trademark dispute over the slogan "I Am More Than an Athlete." He started using the slogan in 2018 after a Fox News host told him to "shut up and dribble," and he made licensing deals with ESPN, Nike and others to use it in various ways, Sports Illustrated reported.

A nonprofit youth organization called Game Plan challenged the usage, arguing that it started using the phrase as a service mark in July 2018, a month before James began using it. Game Plan filed a \$33 million trademark infringement suit against James and others in federal court in 2020, but the action has been paused until the TTAB makes a determination.

The TTAB's decision in the Judge action indicates that public perception plays an important role in trademark disputes. While the phrases "All Rise" and "Here Comes The Judge" are common expressions, they have become firmly linked to Judge in consumers' minds, which preempts the attempt to trademark the phrases by someone other than Judge.

Before rendering the Judge ruling, the TTAB reached a similar conclusion when it reversed a denial of hip-hop star Lizzo's trademark application for the phrase "100% That Bitch." The USPTO initially held that the phrase was merely a common expression of "female empowerment" and not unique enough for trademark protection, Billboard reported.

On appeal, the TTAB noted that while Lizzo did not invent the phrase, she used it in her breakout hit "Truth Hurts," linking it in the public consciousness to the singer.

It remains to be seen whether LeBron James will prevail in his latest action before the TTAB. But, for now, the biggest takeaways for athletes seeking to protect their brand-related intellectual property is to clearly document the evolution of its connection to the athlete and head to the trademark office as soon as possible.