

Chicago Daily Law Bulletin®

Volume 164, No. 31

Serving Chicago's legal community for 163 years

Keeping 'Super Bowl' trademark safe full-time job

Super Bowl 2018 was in many ways no different than National Football League championship games of previous years. As always, one of the most anticipated aspects of the game were the commercials. Filled with humor, social statements, celebrities and avocados, the commercials generally proved to be as entertaining as they were expensive.

And behind the scenes, the National Football League was as zealous as ever about protecting its intellectual property from those who would attempt an end-run around the league's trademarks and copyrights.

The NFL first trademarked the term "Super Bowl" in 1969, the year of Super Bowl III, and it has been fiercely policing unauthorized uses by advertisers and others ever since. But, as advertisers move away from traditional marketing methods and experiment with social media platforms and new ways of engaging viewers, the league's job has gotten more complicated.

Some brands are combining traditional commercials with creative digital campaigns. Avocados from Mexico, the marketing group that represents Mexican growers of Hass avocados, made its fourth consecutive appearance in the roster of Super Bowl commercials, once again touting the fruit as the healthy life of the party.

In addition to its light-hearted TV spot, Avocados from Mexico debuted a partnership with Inmoji, which uses emojis to create branded, clickable icons that users can send to share content, including advertising. Inmoji is deploying its new "Picmoji" function that allows users to combine selfies and emojis for its Avocados from Mexico campaign, featuring avocado emojis, according to Adweek.

The produce industry doesn't typically have the budget required for Super Bowl-level advertising, but Avocados from Mexico's broadcast and digital campaign indicates it thinks the exposure is worth the money.

SPORTS MARKETING PLAYBOOK



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In 2017, 111.3 million watched the Super Bowl and although viewership slipped a bit this year to 103.4 million viewers, the Big Game is still one of television's biggest nights all year. In fact, while this year's broadcast had the lowest viewership of the past nine years, it was still reportedly the 10th most watched show in U.S. television history.

Brands can also take an entirely different — but riskier — route. Some brands try to capitalize on the Super Bowl hype without paying big money to be an official sponsor or licensing partner.

Known as "ambush marketing" the practice can be a risky proposition because the NFL goes on the offensive every year to protect its prized Super Bowl intellectual property. From sending cease-and-desist letters to broadcast and print advertisers who use "Super Bowl" in their content to shutting down churches' Super Bowl-watching parties, the NFL has proven time and again that it means business when it comes to protecting its trademarks and licensing rights.

But that doesn't stop businesses from capitalizing on the Super Bowl event indirectly without actually infringing on the NFL's trademark rights. The most popular unprotected euphemism is "The Big Game," but the Super Bowl's iconic status and the annual advertising frenzy sur-

rounding the event means that non-NFL sanctioned advertisers can use the words "super" "game" and "party" and consumers will know exactly which game is being referenced. Using stock graphics of footballs, helmets and the teams' colors to boost the association doesn't hurt, either.

One of the most brazen examples of ambush marketing was Newcastle Ale's 2014 series of web videos starring actress Anna Kendrick, who told her hair stylist about a Super Bowl ad that the brewer was unable to make, noted Variety. Every time Kendrick said "Super Bowl," the words were bleeped out. But, of course, viewers got the message.

This year, Mercedes-Benz took ambush marketing to new digital levels. The automaker didn't air a commercial during the Super Bowl but ensured it remained on viewers' minds during the game, even if its idea didn't go as intended.

Mercedes-Benz planned to give away an AMG C 43 Coupe to the person who kept a finger on the car the longest as it moved across smartphone screens in a streamed video. Variety compared the game to car dealership promotions in which the person who remained physically touching a vehicle the longest got to keep it.

Dubbed "The Last Fan Standing," the challenge unfortunately

drew a little too much interest. The day after the Super Bowl, Mercedes-Benz announced on its website that it had run into technical difficulties and scrapped the game. Instead, a winner would be randomly drawn from a pool of everyone who had registered to play.

Clearly, creating an indirect association with the Super Bowl association can be invaluable — not to mention cost-effective — for a brand that can't afford or wants to avoid paying the stratospheric amounts charged for commercials and licensing rights.

For Super Bowl LII, advertisers paid NBC more than \$5 million to air a 30-second commercial during the game, Sports Illustrated reported. NBC expected Super Bowl commercials to yield \$500 million, a record for single-day revenue generated by one company, according to Adweek.

The much-hyped commercials have become nearly as big a draw as the game itself. This year, the commercials aired showcased brand luminaries including Budweiser, Doritos, Febreze, Groupon, Hulu, Hyundai, Kraft, Lexus, M&Ms, Mountain Dew, Pepsi, Pringles, Squarespace, Stella Artois, T-Mobile, Toyota and Verizon.

The NFL has strict rules about what does and doesn't fly when it comes to infringing on its intellectual property. For example, sweepstakes and giveaways should avoid using the words "Super Bowl" and awarding game tickets as prizes. Even using a disclaimer proclaiming the advertiser is not an official sponsor or licensee of the Super Bowl could draw a cease-and-desist letter from the NFL's lawyers.

The league also has a strict stance on Super Bowl watching parties at bars and restaurants. Establishments that have public performance licenses to show TV programs can air the Super Bowl for its patrons, but can't use the words "Super Bowl" to advertise the event or charge a fee to watch the game.

The NFL took some heat in 2007 when it sent a warning to an Indianapolis church that planned a large-screen viewing Super Bowl party for Colts fans. The league relaxed its game-watching rules for churches as long as they do not charge admission, although they may ask for donations; show the game live on equipment they use in the course of their ministry; and avoid calling the event a “Super Bowl” party, according to the website Christian Copyright Solutions.

So, given all these constraints, it’s no surprise that this year, the NFL swiftly shut down a grassroots campaign for fans of the Super Bowl champion Eagles to watch the game together on the giant screen at Lincoln Financial Field in Philadelphia.

Advertisers that hope to use ambush marketing to their ad-

vantage must proceed with caution, particularly if they use evolving digital media formats and novel marketing ideas.

Copyright law has struggled to keep pace with emerging social media content and technology, which could result in disputes with the NFL for which there are no legal precedents.

At least one social media giant is embracing nonofficial Super Bowl advertisers, however. This year, Twitter made sure that Super Bowl commercials got more exposure than ever by introducing its first #BrandBowl, which handed out awards for the best ads and created a space for users and advertisers to discuss the Big Game and the commercials. Significantly, the #BrandBowl also included brands that didn’t advertise during the Super Bowl but still drove the most tweets.

Pepsi won the first #MVP award for the brand that received highest percentage of brand-related tweets. It certainly didn’t hurt that Pepsi sponsored the Super Halftime Show and any tweets about the concert counted toward Pepsi’s total, noted the website Marketing Land.

Doritos and Mountain Dew’s joint commercial won the #Blitz award for generating the most tweets per minute. The #Quarterback award for the brand that received the most retweets on a single tweet went to Universal Pictures’ “Jurassic World.”

Notably, Ally Bank won the #Interception award for the brand that did not run a national TV spot during the game but received the highest percentage of brand-related tweets. Awards were also given to the brands that garnered the most tweets in

a variety of industries, including alcoholic beverages (Bud Light), automotive (Ram Trucks), travel (Tourism Australia), consumer packaged goods (Tide) and dining (Avocados from Mexico).

The #Brand Bowl is a savvy move for the struggling Twitter, according to Adweek, because it gives advertisers an opportunity to reinforce their brand with a Twitter campaign while giving non-Super Bowl advertisers an incentive to use Twitter during the game.

Brands only have to look at how the latest digital media content and technology is transforming sports marketing to see that staying on top of new trends could be highly rewarding.

At the same time, it’s a safe bet that such trends will inspire a new wave of ambush marketing tactics that will continue to keep the NFL on its toes.