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## From catchphrases to eyebrows, getting trademark no slam dunk

By now, Los Angeles Lakers superstar LeBron James is probably used to getting what he wants. But one thing he won't be getting is the trademark for the term "Taco Tuesday."

In early September, the U.S. Patent and Trademark Office denied the application filed by James' company, LBJ Trademarks, after concluding that "Taco Tuesday" is "a commonplace term" that is widely used and recognized, reported ESPN.

The increasing business savvy of athletes, teams and sports organizations means they are constantly looking for new ways to engage fans and to expand and protect their intellectual property assets.

At the same time, evolving ways of communicating on social media present both new opportunities and challenges. As James' most recent experience with the trademark office shows, the trademark process is not a slam dunk, no matter who's applying.

James sought to claim "Taco Tuesday" for his own purposes after the videos of his family's weekly taco dinners that he shared on Instagram during the off-season became must-see content for his followers. Fans' disappointment when James skipped posting for a week in August even made a few headlines.

James' plan to capitalize on the growing popularity of his family's taco night started with "It's Taco Tuesday" T-shirts, followed by the trademark application. ESPN noted that the application stated James planned to use the trademark for a range of marketing communication efforts on the Internet and social media.

But James likely isn't too upset by the trademark office's denial; all he really wanted was to ensure that he couldn't be sued for using "Taco Tuesday" in his business ventures, according to a spokesman for James. The fact that the term can't be trademarked guarantees no one can be sued for using it.



### SPORTS MARKETING PLAYBOOK

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The trademark office also refused last month to grant the trademark application of another well-known entity in the sports world that wants to ensure it's called The Ohio State University. The school submitted an application to trademark the word "The" when used as part of its name on Ohio State merchandise such as T-shirts and baseball caps, reported The Associated Press.

The trademark office told Ohio State it must prove that trademarking the article in front of its name is more than "a decorative or ornamental feature" on its merchandise and functions to identify the distinctive source of the merchandise. Ohio State said it would consider its options and respond in six months, The Associated Press said.

At least one Buckeye alum went on record as saying he wasn't a fan of the trademark push. College football broadcaster Kirk Herbstreit told USA Today's For the Win sports section that he

thought trying to trademark the word "The" was "ridiculous."

But then, "ridiculous" may be in the eye of the trademark holder when everything from a team's name to a player's eyebrows have been protected by trademark. Trademarking names, catchphrases and other identifiers has long been a way for athletes and organizations to build and protect their brands.

Sports teams often trademark their names because they double as the names of related-business entities. Many of the most famous athletes in the world, like LeBron James, Tiger Woods and David Beckham, have amassed entire portfolios of trademarks for their business ventures.

Athletes and other sports figures trademark their popular catchphrases as a part of their public identity that only they can use. An early example is "Three-Peat," which Los Angeles Lakers head coach Pat Riley coined in reference to the team's third-straight NBA championship title and which he trademarked in 1988.

Volatile tennis icon John McEnroe screamed "You cannot be serious" at umpires so many times over the course of his career that he finally trademarked the phrase in 2008.

Former NBA star Jeremy Lin wasted no time in registering the word "Linsanity" during his much-hyped debut with the New York Knicks in 2012. Baltimore Ravens quarterback Robert Griffin III has trademarked a handful of his highly quotable sayings, including "Unbelievably Believable," "No Pressure No Diamonds" and "Know Your Why."

Trademark registration has extended into athletes' other unique characteristics. Former quarterback Tim Tebow won in 2012 the trademark rights to the pose known as "Tebowing" in which he takes a knee and holds his fist to his forehead in prayer. Track superstar Usain Bolt trademarked his lightning bolt pose after the London Olympic Games in 2012.

One of the most unique identifiers to get trademark protection is NBA player Anthony Davis' eyebrows. Davis' unibrow gained its own following when he was still playing college basketball for the University of Kentucky Wildcats.

NCAA eligibility rules forbid Davis from monetizing his own eye-catching brows, although the school did send cease-and-desist letters to anyone who attempted to sell brow-related merchandise, CNBC noted.

But after graduation and before he was drafted by the New Orleans Hornets in 2012, Davis promptly filed to register trademarks for his brows, including the phrases "Fear The Brow" and "Raise The Brow."

Registering trademarks does give the mark holder a greater ability to prevent other people from using them. USA Today reported last month that a trademark application was filed for "Danny Dimes," a nickname of New York Giants new quarterback Daniel Jones. But Jones isn't the one trying to claim the nickname.

Two New York men, hoping to make money from selling merchandise with the player's nickname, pounced on the opportunity the same day Jones was announced as the team's new QB and his

jersey immediately became a best seller, said USA Today.

Of course, obtaining a trademark is one thing, protecting the intellectual property is another — from the logo on a hoodie sold online to commercial air time during one of the biggest sports events in the world. When the trademark(s) belong to an internationally established brand that took decades to create, millions — if not billions — of dollars in advertising revenue can be at stake.

The evolution of communication on social media is also adding new dimensions to the issues of trademark ownership and the extent of trademark rights. Intellectual property protection for emojis, static or animated icons used in social media to convey an emotion or concept, is likely the next battleground in the legal debate over trademark rights and ownership.

The Unicode Consortium establishes universal encoding standards for keyboard characters and now emojis, which enables them to be recognized across platforms, notes the World Intellectual Property Organization.

Emojis can be developed outside of the Unicode standards, such as proprietary emojis that are designed with an

individual's face and other unique attributes. The NFL, NBA, Major League Baseball and Major League Soccer have released official sets of team emojis and custom hashtag-emoji combinations.

Branded emojis — customized icons developed for advertisers — have been used in social media campaigns surrounding sporting events like the Super Bowl by advertising giants including Coke and Anheuser-Busch.

The World Intellectual Property Organization says emojis can be protected as intellectual property, but the extent of protection for icons developed outside the Unicode standards is unclear.

The proliferation of third-party emoji designs could make communicating with emojis on social media increasingly confusing and ineffective, while making and protecting trademark rights difficult.

For business-minded athletes, protecting their trademark rights to social media-based intellectual property is a matter of defense as much as offense. Considering the potential legal challenges on both sides is essential to maintaining control of personal and corporate brands in a marketing world where communication styles and platforms are constantly evolving and the goal posts are continually moving.