

“Linsanity” Strikes the U.S. Patent and Trademark Office

February 27, 2012 By **Dan Nabel**



When I used to live in China, people liked to say, “Yao Ming lai le” (Yao Ming has arrived) whenever they saw my excessively tall frame lumbering towards them in a grocery store or crouching down beside them in a preposterously low-ceilinged subway car. And I would smile, politely (usually while ducking my head under something or other). At least they didn’t shout “**John Jacob Jingleheimer Schmidt**” whenever I went out. That would have been weird.

But half a dozen years ago, calling a tall person Yao Ming in China wasn’t unusual. Yao Ming was (and still is) a household name there. If you were in China watching the NBA back then, you were watching the Houston Rockets — because that was more or less the only team you could watch on China Central Television 5 (the government approved sports channel).

Now, it’s all about “Linsanity” — both in China, and at the U.S. Patent and Trademark Office.

Jeremy Lin’s Meteoric Rise to Fame Gives Rise to “Linsanity”

For those of you troglodytes out there who don’t know who Jeremy Lin is, he is, to much of the world, the new Yao Ming. Only shorter. And American. Until recently, the 6’3” Harvard alum was an NBA benchwarmer. But earlier this month, injuries to teammates and a “**desperation**” coaching decision thrust Lin into the limelight as an NBA starter. Since then, Lin has played phenomenal basketball and the Knicks are winning games.

But Lin is not just special because of his rise to fame. Lin is also special because he is the first American NBA player with “Chinese/Taiwanese” descent. He also happens to be a devout Christian. Some have speculated that Lin’s affiliations with Taiwan and Christianity have been **difficult for the Chinese government to grapple with** and argued that China isn’t showing as many Knicks games as one might expect given Lin’s fame. More likely, though, is that the Knicks games aren’t on CCTV



5 too frequently because China recently implemented new rules limiting foreign programming to **25% of total broadcasted content per day**.

Nevertheless, the “Linsanity” obsession in Asia is just as strong (or perhaps stronger) than in the United States. **Yao Ming was recently quoted** as saying that Lin has given China “something to reflect on, [i.e.] whether there are imperfections over the development and selection process for [China’s] basketball players over the past 10 or 20 years.”

Enter the Opportunists

Of course, with great fame comes (1) great numbers of **excruciating puns** (from which, that link aside, we have mercifully spared you), and (2) great numbers of opportunists seeking to profit from that fame.

Since Lin made his debut as New York’s starting point guard in early February, there have been more than half a dozen attempts to trademark the term “Linsanity” — a term which has become synonymous with the fervor surrounding Jeremy Lin. And Jeremy Lin himself wasn’t close to being the first person in line.

First, Matthew Chang of Alhambra, California filed an **intent-to-use** application for the mark “LINSanity” on February 7, 2012 for clothing categories. Second, Andrew Slayton, one of Lin’s former high school coaches, applied for the mark “Linsanity” on February 9, 2012, in which he claims to have first used the mark in July of 2010 and first used the mark in commerce on February 8, 2012, in connection with athletic apparel. (Gee, thanks, Coach.) Mr. Slayton also operates **www.linsanity.com**, where you can purchase all types of Linsanity gear, and has at held that domain name since 2010. Third, a Washingtonian man named Alan Hock filed an intent-to-use application for the mark “Lin-sanity” on February 10, 2012, also for athletic apparel.

Then came Jeremy’s Lin’s intent-to-use application on February 13, 2012. (Slowpoke. Thankfully, his drives to the basket are faster than his drives to the PTO.)



Lin's application was followed by his agent Roger Montgomery's February 14, 2012 application to use Linsanity in connection with "business management of sports people" (a beautiful turn of phrase he'll have to include on his next run of business cards). And at least three more Linsanity applications came in over the next few days — one seeking to use the mark in connection with, among other things "wristbands and necklaces that also provides notification to the wearer of a pending medical related task" (obviously) — and two others from a California corporation seeking to use the mark in connection with sunglasses and cell-phone accessories.

Lin vs. the Opportunists

If you read [my last blog post](#), you might be able to guess what the outcome of these applications is likely to be. In short, each applicant for the mark "Linsanity" — other than Jeremy Lin — is likely to get rejected on at least one of two grounds. First, there is a "Section 2(a)" issue because Linsanity may falsely suggest a connection with Jeremy Lin, when in fact no such connection exists. Second, there is a "Section 2(c)" issue because Linsanity includes Jeremy Lin's surname. Jeremy Lin is a living individual who has not given anyone written consent to trademark his name, and he is now so well known that the public would reasonably assume a connection between him and the use of the mark Linsanity. All of that, of course, ignores the non-statutory "this is icky and intensely opportunistic" issue.

Separate and apart from these trademark issues, Lin could also seek to prevent others from profiting off the term Linsanity on the grounds that doing so violates his right of publicity. Although each state has different right of publicity laws, almost all of the applicants are Californians, and as we've often [explored on this blog](#), California has strong protection for celebrity's seeking to protect their commercial identities.

In particular, as I have [written about before](#) myself, the right of publicity gives a person the right to control the commercial use of his or her identity or "likeness." And in Lin's case, selling merchandise bearing his name or the term Linsanity, would probably be an encroachment on Lin's ability to reap the reward of his endeavors.



But What About the Opportunists in China?

Despite the fact that Lin is on good legal footing to protect his rights in the United States, Lin probably stands to make a whole lot more money with “Linsanity” in China. The only problem is that someone may have beaten him to the punch.

In 2010, probably around the time when Lin signed with the Golden State Warriors, **a Chinese businesswoman registered “Jeremy S.H.L.”** in anticipation that Lin might one day rise to fame. Consequently, **according to some Chinese experts**, Lin might need to get authorization from her company if he decides to claim trademark rights in China. Unfortunately for Lin, China is a **first-to-file country** — i.e., granting superior trademark rights to whoever first files a registration, as opposed to whoever first uses a mark — making it a fertile breeding ground for trademark squatters. (Of course, the **same woman registered a trademark in the name of NBA non-phenom Yi Jianlian** — a player whose primary claim to fame is **absolutely torching a chair during pre-draft workouts** — back in 2009. So these things don’t always work out.)

Then again, Chinese trademark law is **quite complicated**. And as I myself learned from living in China, sometimes the Chinese way of resolving things is not always what we Americans expect. For now, though, I think Jeremy Lin will be happy to focus on his **legions of new fans, stylish new digs**, and wide array of **somewhat amusing, vaguely offensive/stereotyped puns**, and leave the vagaries of Chinese intellectual property law for later. So I shall do the same.