

*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## **Insuring a Great Super Bowl Trademark Fight**

By [Steve Baird](#) on February 4th, 2012

So, tomorrow is the big day, the big game, or whatever else other [intimidated advertisers](#) might call it. I just want to find the [best deal on a flat screen television today!](#)

But, more to [Mike Masnick's point on Techdirt](#) about the NFL's reputation as a "[trademark bully](#)," and his challenge to advertisers — "It's the Super Bowl. Call it the Super Bowl" — just today, Robert Channick of the Minneapolis Star Tribune writes how "[football ads tiptoe around trademarks](#)."

As Channick points out, significant sums of money are at stake for the NFL, and when that is the case, I suspect it won't be difficult for the NFL to continue to convince others that their trademark rights in the SUPER BOWL mark are far more important to them than it ever could be to any individual advertiser to defend a trademark infringement case to conclusion, at least on their own dime.

The power of the "it's-far-more-important-to-me-than-it-ever-could-be-to-you" position should not be underestimated — even in legitimate trademark enforcement efforts.

Paul Alan Levy, writing for [Public Citizen](#), incites "[Brand Name Weenies: It's Time to Stand Up to the NFL and Call it the Super Bowl](#)."

Here's a thought, and one possible way to ensure a good, vigorous trademark fight over the SUPER BOWL mark and to counter the "it's-far-more-important-to-me-than-it-ever-could-be-to-you" imbalance (assuming you can't convince our good friend [Ron Coleman over at Likelihood of Confusion](#) to take on your defense — just for the sport of it) — make sure your commercial liability insurance policy covers [advertising injury](#) and there aren't any exceptions that exclude coverage for trademark infringement claims.

Just saying too, it probably makes sense to confirm that your policy permits you to select your own trademark defense counsel when the NFL comes knocking.



Your usual trademark counsel happily will explain why that is so important.

In the end, I'm skeptical that the question of nominative fair use of the words SUPER BOWL in an ad published by a non-NFL sponsor will ever be litigated to conclusion or decided by a court, unless the cost of the defense is on someone else's dime.

Unless someone else is bound to pay for the fight, the cost of defending on principle is probably just too high, and it's simply easier to continue to tiptoe around the SUPER BOWL mark.

