

Tattoos May Bring on a Host of New Legal Complications for Athletes, Businesses

by Anthony Caruso on September 13, 2013

Professional athletes may be accustomed to a slew of potential lawsuits stemming from sports violations, contract issues, defamation and slander, union agreements, and injuries. But a new and unexpected issue may be on the forefront that could pose new legal complications for athletes, game makers, and the sports industry: tattoos.

In recent years, a string of copyright infringement lawsuits have been brought against various organizations and businesses when they display players - and their identifying tattoos - in video games, commercials, promotional materials, and other media coverage without crediting the tattoo artist. Bloomberg recalled a 2009 case in which tattoo artist Christopher Escobedo sued game maker THQ for displaying a tattoo he created for martial arts fighter Carlos Condit in a video game. Escobedo claimed he received no recognition for an "exact replica" of his art.

Several other cases have emerged since then, and given the largely uncharted territory of how tattoos may be treated under federal copyright law, athletes, sports unions, leagues and third-party businesses are expected to see an uptick in these cases, which may provide some clarity to this thorny issue. Currently, many judges are in agreement that under existing copyright laws, tattoos fall under the "modicum of creativity" clause that enables them to be copyrighted.

The bigger question is how courts will treat images displayed on a person's skin once that person has left the tattoo parlor and chooses to display the images elsewhere. Does that individual then have ownership of the art, and therefore the discretion to give game makers and other parties permission to use their likeness without giving attribution to the tattoo artist? Or, in instances where artists create a unique image for a player, do tattoo artists then have more discretion over how these images are viewed? Even more complex is whether these artists should be able to register and copyright unique images to prohibit athletes from displaying them on or off the field.

As the courts set new precedents surrounding the treatment of tattoos under copyright law, players and businesses may need to tread more carefully to avoid potentially costly litigation.