

## ***Athletic Branding 101***

By Jonathan Goins<sup>1</sup>



Future NFL Hall-of-Fame linebacker Ray Lewis recently suggested that criminal activity will go up if there is no NFL season come fall. I propose spending this time getting your brand to go up instead. Although the NFL lockout has created much uncertainty with players on the field, now is the perfect time for players to develop their brand off the field. I “tackle” four small lessons for consideration.

**Lesson #1:** What’s in a brand? From a corporate marketing perspective, a “brand” encompasses consumer association, public awareness, perceived quality or character, good will and value. In other words, your “brand” is your persona. A brand can also be a trademark. A “trademark” is any word, name, symbol, or device used to identify and distinguish his or her goods or services and serves as a unique source of said goods or services.<sup>2</sup> So a trademark is a source identifier of the brand, and signifies ownership rights of your brand. A brand is the commercial magnetism and strength of a trademark. Your brand is what people think of you when they think of your name, and your name is your brand that you register, license and protect as a trademark when used on or in connection with a good or service. When one says “adidas” or “Nike” we think shoes; and “NFL” for football.

**Lesson #2:** the power of an endorsement. An athlete is often asked to endorse a company’s brand (and/or trademark) in connection with a product or service advertisement. The whole “brand marketing strategy” point is for the athlete to help increase the company’s awareness, popularity or media “buzz” (which in turn, can help boost sales and good will of the brand). The “branding” advertisement of a product or service can be so influential that it generates cultural iconic influence, fame and notoriety – more so than the individual recognition of the athlete himself in his own sport. It’s the reason many were puzzled that LeBron James granted Nike with the intellectual property ownership rights to his name (which is owned by Nike, not LeBron). Consequently, an athlete should co-brand himself as a partner with company endorsement deals. Athletes should give considerable thought to developing his own brand around his business endeavors, endorsements and other off-the-field initiatives (Chad Ochocinco is a good example of one who has excelled at creating his own brand).

**Lesson #3:** the power of licensing. The athlete should develop and trademark his own brand before negotiating endorsement deals with companies – doing so may increase his appearance fee for live promotional events; his royalty share of merchandise offered for sale in connection with his name, likeness and image; and his ability to control and approve the nature of use of said name, likeness and image brand. Many athletes are starting to take note, and often begin engaging in selling merchandise, for example, via their own business under their own name. There is no



athlete that understands this corporate branding concept, his own trademark rights and command for negotiating high licensing and appearance fees with companies more so than pre-2009 Tiger Woods.<sup>3</sup>

**Lesson #4:** enforcement. An athlete's decision to trademark his brand name has benefits beyond his endorsement and licensing power. Securing a federal trademark of an athlete's name creates a presumption that you own and possess the exclusive right to use your name nationwide on or in connection with the good or service as listed in your registration. It validates that you own what you claim to own. Having a federal trademark registration also creates automatic standing in federal court when faced with concerns over commercial misappropriation and unauthorized use of an athlete's name, likeness and image. In this social media-driven environment and the fast-pasted nature of technology and the Internet, now more than ever, athletes are faced with enormous concerns regarding appropriate commercial use of their image. Their name, likeness and image often appear in advertising for promotions and other events without their knowledge or consent.

The time has come for an athlete to quarterback his own brand.

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<sup>3</sup> According to the Trademark Electronic Search System, approximately 36 applications incorporate TIGER WOODS or a similar variation thereof as a trademark. Mr. Woods also has several business entities under the name "ETW." And according to federal court records, Tiger Woods has not hesitated to sue for unauthorized use of his name, likeness and image. See, e.g., *ETW Corp. v. Jireh Publishing, Inc.*, 332 F.2d 915 (6th Cir. 2003) (involving trademark and rights of publicity claims).

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<sup>2</sup> See Lanham Act, 35 U.S.C § 1127.