

Leonard v Nike: Copyright in the Klaw

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Kawhi Leonard has been in the headlines for all of the right reasons recently. He led the Toronto Raptors to the franchise's first NBA championship and won the Finals MVP before leaving in free agency to play for the Los Angeles Clippers. Leonard became an internet sensation for his quiet and private demeanour with fans revealing certain nuances such as his motto "[board man gets paid](#)" and his hands that have been measured at [11.5 inches](#) across.

Whilst at San Diego State University (between 2009 and 2011), Leonard designed a [logo](#), which was a sketch of his hand, incorporating a "KL" and "2" within the sketch. Leonard entered the NBA Draft in 2011 and signed an endorsement contract with Nike. Leonard's defensive prowess on the basketball court earned him the nickname of the 'Klaw', which certainly fits in with the logo he originally designed.

Leonard [discussed](#) his logo with Nike and claims that Nike should not have registered a similarly stylised "Klaw" logo with the US Copyright Office, such registration giving Nike the exclusive right to make and sell products bearing the logo. Before joining Toronto, Leonard signed a lucrative contract with New Balance having been unable to agree terms to extend his existing sponsorship agreement with Nike. As such, Leonard filed a claim against Nike before the US District Court for the Southern District of California in June 2019.

Kawhi Leonard's complaint

Leonard's complaint alleged that he was not aware of Nike's registration of the logo until late 2018, after he had signed with New Balance. Leonard contends that he is the creator and owner of the logo and intended to use it for merchandise and as the banner under which to lead sports camps and charity events. Leonard [argued](#) that Nike did not have the exclusive rights to the logo and, as author, he did.

In his claim, Leonard sought the court to make a legal declaration that (i) he is the sole author of the logo; (ii) his use of the logo does not infringe any rights of Nike, and (iii) Nike committed a fraud against the copyright office when registering the logo.

Nike's defence

Nike [responded](#), submitting that the logo was designed and created under a “work for hire” system, which applies where an employer is the author and owner of intellectual property that is created by an employee in the course of business.

Nike refuted Leonard's claim that he created the ‘Klaw’ logo that was registered. According to Nike, Leonard provided a rough draft of the logo, which was different to what was ultimately registered and commercially exploited.

Going further, the endorsement agreement between Nike and Leonard contained a provision that Nike “exclusively owned all rights, title and interest in and to any logos” created in connection with the contract. Thus, the intellectual property rights attached to the ‘Klaw’ logo would vest in Nike only.

Other evidence strengthened the view that Nike created the logo (as registered with the copyright office). Nike submitted an [article](#) published in 2014 whereby Leonard states (in relation to the final logo):

“I drew up the rough draft, sent it over, and they (Jordan Brand) made it perfect...I give the Jordan Brand team all credit because I'm no artist at all...They refined it and made it look better than I thought it would ever be and I'm extremely happy with the final version.”

Court ruling in Nike's favour

The judge ruled in Nike's favour, distinguishing the two logos as two independent pieces of intellectual property.

It is worth noting that U.S. copyright is often a misunderstood concept. For example, there appears to be a lasting societal consensus in the U.S. that a copyright is something one applies for and obtains from the U.S. government. This is wrong; copyright is automatic. In other words, the minute an individual puts something into tangible form, a copyright exists and the author instantaneously owns the copyright in that work. Yet, although formal registration with the U.S. Copyright Office is not required to establish copyright, there are distinct advantages to registering one's work. Registering a copyright allows an individual to do three important things:

1. Establish yourself as the legal owner of the copyrighted work.
2. Legally establish the date of creation.
3. Take legal action against someone who infringes on your copyright.

One important aspect of U.S. copyright law is that copyrights do not protect facts or ideas, but copyrights *can* protect against the way facts or ideas are expressed. Here, the dispute involves Kawhi's original logo sketch and Nike's modified logo. In viewing the logos side by side, it is clear that each logo uses the same component parts (i.e., a hand design and the letter/number combination of ‘K’, ‘L’ and ‘2’). Thus, the question the court ultimately had to answer was whether Nike's modified logo was so transformative that it became distinct from the original logo sketch and resulted in an entirely new work of art.

Another important aspect of U.S. copyright law is the doctrine of Fair Use. In short, Fair Use provides that others can use an individual's copyright-protected work under certain circumstances. Transformational work is a term used to describe one such circumstance. Specifically, if a second or

third party has altered an original work in some way that causes it to become its own original work separate and distinct from the pre-existing work, use of the distinct or “transformed” work may be allowed under the doctrine of Fair Use^[1].

Here, it appears the Judge found Nike’s logo to be transformative. Ruling from the bench, Judge Mosman said, “[I do find it to be new and significantly different from \[Kwahi’s original\] design](#)” and that the logo used by Nike is an “independent piece of intellectual property.” Though we will have to wait for the final ruling to be posted in order to identify whether Judge Mosman used the transformative language in his opinion, a side by side comparison of the two logos and the subsequent decision that Nike’s logo is its own original work likely finds its roots in the transformational carve out of the Fair Use doctrine.

Comment

The ruling reinforces the importance of athletes knowing their intellectual property rights and, if seeking some sort of independence like Leonard, the importance of ensuring that any endorsement agreements contain adequate protections for the athlete. Conversely, brands should take note of Nike’s approach by ensuring that logos designed in collaboration with the athlete remain the property of the company.

Leonard’s lawyer has [stated](#) that “Kawhi put his heart and soul into that design so we are obviously disappointed the judge ruled the logo belongs to Nike and not Kawhi”. Leonard’s current New Balance apparel does not contain any claw-like emblems, but New Balance can always seek to purchase a licence from Nike to use the logo. Whilst Leonard is not a Nike athlete, it may be unlikely given the litigation and that New Balance and Nike are market competitors.

This is reminiscent of the dispute between Nike and Roger Federer. Federer used the RF logo whilst at Nike since 2006 and was also involved in the design process. However, it was Nike who registered the logo as a trade mark. When Federer signed an endorsement deal with UNIQLO in 2018, Nike refused Federer and UNIQLO the right to use the RF logo. However, the US Patents and Trademark Office recorded an assignment of ownership of the RF trade mark in March this year, assigning ownership of the mark from Nike to Tenro AG, one of Roger Federer’s holding companies.

New Balance famously designed and developed t-shirts printed with the phrase “*board man gets paid*” shortly after the 2019 NBA Finals. Leonard wore this t shirt during the [Raptors’ championship parade](#) in Toronto. The ownership of the rights to exploit that phrase ([that he coined whilst at high school and university](#)) is unknown as any agreements between New Balance and Kawhi Leonard are confidential and, depending on the content of the contract, Leonard could encounter a similar issue with New Balance.

^[1] For reference, transformative use is a fairly new concept, first used by the U.S. Supreme Court in 1994’s *Campbell v. Acuff-Rose Music*, [510 U.S. 569](#) (1994).

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