

Names and Brand Names

Article By:

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A key aspect of trademarks has been at the forefront of both fiction and real-life sports news over the past few weeks: what makes a name a name and who can use a name as a trademark? While trademarks are commercial rights, trademark law also protects a person's right to control their own identity, including well-known pseudonyms and nicknames.

Marvel's *She-Hulk: Attorney-at-Law* is, like most TV shows about lawyers, often cavalier with how it represents the law, but when the question of the protagonist's rights in her *nom de guerre* came up, it was more accurate than most courtroom dramas. Jen Walters (the civilian identity of the titular She-Hulk) discovers a "super-influencer" has launched a line of cosmetics under the SHE-HULK brand and based on that use, is claiming trademark rights in SHE-HULK, going so far as to sue Jen Walters for her use of the name She-Hulk. While much of the terminology is mangled, the show's hearing on the issue reaches points that are relevant in the real world. First, does "She-Hulk" identify a living person? And second, would another's use of SHE-HULK be "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association" (as set forth in 15 U.S. Code § 1125) of that user and the person known to the public as SHE-HULK? It being a superhero show, Jen Walters ultimately vindicates her rights to the She-Hulk name and SHE-HULK Mark.

Circumstances in the real world are rarely as cut-and-dried. In a proceeding before the Trademark Trial and Appeal Board, NBA player Luka Doncic is attempting to reclaim the trademark rights in his own name from his ex-manager, his mother. Doncic, born in 1999, was a basketball star from his early teens. During his meteoric rise in European basketball, his mother, with his consent at the time, registered a design trademark (consisting mainly of his name) for goods and services including soaps, recorded basketball games, apparel, sports equipment, and promotional and educational services, starting with an application in the European Union in 2015 (when Doncic was 16) and filing in the U.S. in 2018 (when he was 19).

Doncic, as stated in his petition to cancel that U.S. Registration, has since withdrawn his consent to his mother's use and registration of his name as a trademark. Instead, he has, through his own company, Luka99, Inc., applied to register a few marks including his own name, which have been refused registration because of the existing registration owned by his mother. To clear the way for his own registrations, he is seeking to cancel hers on the basis that (as in the fictional example above) her use or registration is likely to make consumers believe the goods and services offered with her authorization are associated with or endorsed by him, and because he has withdrawn his consent, her registrations are no longer permitted to remain on the register.

As Doncic was a minor when he gave consent, he has a good chance of regaining control of his name. Not everyone is so lucky, so you should be especially careful when entering any agreement that allows someone to use your name as a trademark.

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