

Lamar Jackson Successfully Opposes Dale Earnhardt Jr.'s Claim to No. 8

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Last month, two high-profile athletes, each identified by the number “8” in his respective sport, faced off (albeit briefly) at the USPTO’s Trademark Trial and Appeal Board. Lamar Jackson—starting quarterback of the NFL’s Baltimore Ravens and two-time MVP of the league—blocked racing legend Dale Earnhardt Jr.’s attempt to trademark a specific stylized version of the number 8 that is displayed on his racecar:



USPTO trademark application status for Serial No. 98513061

Jackson’s Claim to No. 8

In addition to wearing number 8 on the field, Jackson has obtained a trademark registration for a logo incorporating the words “2018 ERA 8 BY LAMAR JACKSON 2018” and owns two pending applications for the word marks “ERA 8” and “ERA 8 BY LAMAR JACKSON.” In his [Notice of Opposition](#), Jackson relied on these trademark records, whose underlying marks are affiliated with clothing, headwear, footwear, backpacks, and other athletic accessories, to argue that Earnhardt Jr.’s pending application for a stylized 8 covering similar goods may result in consumer confusion.

Specifically, Jackson contended that he is well known by his uniform number 8 “due to his notoriety and fame, along with his promotion of the number in his trademarks and in media coverage” such that registration of Earnhardt Jr.’s proposed 8 mark could falsely suggest an affiliation or other type of partnership between the two athletes. The crux of Jackson’s filing is the concern that consumers are likely to mistakenly believe that apparel and other products offered under Earnhardt Jr.’s mark are related to those provided by Jackson.

The legal battle between Jackson and Earnhardt Jr. was short-lived, as Earnhardt Jr. abandoned the application for his version of the stylized 8 mark less than one week after the Notice of Opposition was filed. Jackson is no stranger to defending his rights to the number at the USPTO, as he has also opposed retired quarterback Troy Aikman's trademark application for the word "EIGHT" in an opposition proceeding that remains pending.

Athletes & Trademarks Incorporating Jersey Numbers

Numbers, standing alone, are merely symbols that denote certain meanings and are not inherently distinctive under trademark law. Therefore, to obtain a trademark registration for a number (or letter), an applicant must first establish that the number is distinctive, such that it functions as an identifier of the source of goods or services.

An applicant may demonstrate a nondescript mark has acquired distinctiveness by submitting evidence that consumers associate the mark specifically with the applicant. It is unlikely that an athlete (or anyone) could gain exclusive control over a standalone number like the number 8. Still, as here, when an athlete incorporates a jersey number into their personal brand it can transform a jersey number common to many athletes into a personal brand identity for a single person.

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