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Welcome to *Three Point Shot*, a newsletter brought to you by the Sports Law Group at Proskauer. In *Three Point Shot*, we will attempt to both inform and entertain you by highlighting three sports law-related items and providing you with links to related materials. We hope you enjoy this and future issues. Any feedback, thoughts or comments you may have are both encouraged and welcome.

Florida Broker Denied Assist in Argentine Soccer Media Rights Deal

2014 has been a decent year for soccer – ahem, fútbol – in Argentina. An Argentine club team (San Lorenzo) won the 2014 Copa Libertadores, South America's premier international club competition, the Argentine national team jumped to number two in the FIFA/Coca-Cola World Rankings after narrowly missing out on 2014 World Cup glory, and two of the game's top talents – Lionel Messi and Ángel Di María – hail from the South American country. But not everybody in the Argentine soccer community is in a celebratory mood. A recent lawsuit claims that Asociación del Fútbol Argentino (the "AFA"), the governing body of soccer in Argentina, breached a broker agreement when it scored a valuable media rights deal back in 2009.

Founded in 1893, the AFA is tasked with organizing and governing all Argentine soccer leagues (youth, amateur and professional), including the Primera División, which is home to world-renowned clubs such as Boca Juniors (former club of the country's, and arguably the world's, greatest player of all time, Diego Maradona) and Newell's Old Boys (boyhood club of one of the few other soccer players who may have an equal claim to being called the "greatest of all-time," Lionel Messi). The AFA also oversees the Argentine national team – or "La Albiceleste" (the white and sky blue, referring to their iconic jersey) – one of the world's most celebrated and decorated squads, with 16 World Cup appearances, five finals appearances, and a championship trophy in both 1978 and 1986, the latter made famous by Maradona's "Hand of God" goal and "Goal of the Century". Trying to cash in on its long-standing success, in 2006, the AFA struck a deal with GMI, LLC ("GMI"), a Florida broker, granting GMI the exclusive right to market and sell its television and media rights, a deal that GMI now claims was sidestepped when the AFA subsequently secured a sale of these rights directly.

According to a complaint filed in Florida state court, in 2006, the principals of GMI, Alejandro and Gustavo Mascardi, were approached by then-President of the AFA, Julio H. Grondona, about brokering a sale of the AFA's television and media rights for its soccer matches. In 2007, GMI and the AFA, through Mr. Grondona, entered into an

Exclusive Authorization Agreement (the "Broker Agreement"), which, according to GMI's complaint, granted GMI the exclusive right to "make ... any arrangements aimed at having [a buyer] acquire the image, marketing and transmission rights for any platform ... in any language and for any country in the world ... for ... championship football matches [the AFA] puts on" (the "Media Rights") (*see GMI, LLC v. Asociación del Fútbol Argentino*, No. 2014-21682-CA-01 (Fla. 11th Cir. Ct., filed Aug. 20, 2014)). GMI also asserts that the Broker Agreement required the AFA to "reach an agreement with the buyer on the financial compensation due [GMI] for organizing the [the Media Rights purchase]." While the Broker Agreement did not explicitly state the amount of commission that GMI was to receive, GMI claims that the industry standard for brokering television and media rights is 15% of the purchase price.

Upon executing the Broker Agreement, GMI initiated a campaign to locate potential buyers, including various international power brokers and corporations. Throughout 2009, after struggling to find a buyer, GMI purportedly brokered a series of meetings with Argentine government officials in hopes of securing a deal with the Republic of Argentina itself. However, in August 2009, Mr. Grondona allegedly attended a meeting with Argentine officials *without* GMI – a meeting that resulted in the execution of a Partnership Agreement for the Transmission of Soccer Events between the AFA and a group of Argentine government entities (the "Media Rights Agreement"). Pursuant to the Media Rights Agreement, the AFA assigned to the Argentine entities the Media Rights for a period of ten (10) years in consideration for 50% of the total net sums generated thereby, with a guaranteed annual minimum of 600,000,000 Argentine pesos (approximately $70,000,000 at current exchange rates). Though it asserts that it set up the deal in accordance with the Broker Agreement, GMI claims it has not seen a single peso to date.

In its complaint, GMI cries foul over the AFA's decision to deal directly with the Argentine government, effectively cutting it out of the lucrative, long-term arrangement. It asserts that the AFA was playing dirty when it secured the independent deal, bringing claims for breach of contract and, alternatively, unjust enrichment. In short, GMI alleges that it fulfilled all of its obligations under, and complied with all terms of, the Broker Agreement by securing a purchaser but received no compensation as required thereunder. As such, the pending suit seeks to recover monetary damages, presumably approaching 15% of the overall value of the Media Rights Agreement.

The defendant AFA has yet to file an answer, and it remains to be seen whether GMI can sustain its attack or whether the AFA will simply park the bus in defense. In the meantime, the Argentine club teams will continue to battle it out for the coveted Copa Campeonato (the Primera División trophy) and La Albiceleste will continue to prepare for the 2015 Copa America, the main international tournament for South American national teams, a tournament that Messi – or "La Pulga" (the flea, referring to his stature, quickness and ability to drive opposing defenses crazy) – has claimed he is desperate to win. Assuming Messi can keep up his current form, when it comes to soccer in Argentina, 2015 could shape up to leave 2014 in its dust, lawsuit or not.

Ohio State Tries to Buck Online T-Shirt Company

As the leaves change and fall temperatures drop, things are heating up in federal court where The Ohio State University has filed suit against do-it-yourself t-shirt company Teespring Inc. for allowing individuals to produce unauthorized Ohio State apparel. Trading in its traditional red, white and gray uniforms for proper courtroom attire, Ohio State asserts numerous trademark claims, including infringement, unfair competition, passing off, and counterfeiting under the Lanham Act. (*The Ohio State University v. Teespring*, No. 14-00397 (S.D. Ohio First Amended Complaint filed June 6, 2014)). Ohio State argues Teespring's users have submitted designs that use unlicensed versions of Ohio State trademarks, including logos, buckeye leaves, images of head football coach Urban Meyer, and even the image of fans spelling out O-H-I-O (which Ohio State trademarked in 2012). Not surprisingly, Ohio State merchandise is a lucrative business. In fact, the university claims that Ohio State's licensing program has been the most profitable collegiate licensing program in the U.S. over the past five years, with royalties exceeding $45 million – when it comes to licensing its image, Ohio State definitely makes sure all its i's are dotted.

Teespring co-founders Walker Williams and Evan Stites-Clayton met at Brown University. When a favorite campus watering hole was shut down, there was an outcry on social media, and Williams and Stites-Clayton decided to make t-shirts around the buzz. After calling the local screen printer, who wanted to know exact quantities, sizes, and demanded upfront payment, the two seniors saw a new business opportunity combining e-commerce and crowdfunding. The founders put together a website that allows users to create and upload designs for their own t-shirts. Customers start a "campaign" that sets a goal for the number of t-shirts they wish to sell, and if the goal is met, Teespring manufactures the t-shirts and ships them to the customer.

According to the complaint, the university first cried foul about Teespring's use of its trademarks in December 2013. Teespring called a team meeting and assured Ohio State that it would take down any t-shirts to which the university objected. However, at least according to the complaint, potentially infringing t-shirts have continued to appear on Teespring's website. The university contacted Teespring again in January 2014, and although Teespring offered the same assurances, the university believes that the site continued to ship infringing Ohio State products, necessitating the current lawsuit.

The case against Teespring is not Ohio State's kickoff classic. In 2012, it filed a similar lawsuit in the Southern District of Ohio against Columbus-based Skreened Ltd. Skreened has a similar business model to Teespring and allegedly ignored warnings from the school to stop selling knockoff items containing its trademarks. Earlier this year, the court ruled in favor of Ohio State, finding that Skreened could not "take an ostrich approach to policing [its] business activities" regardless of "how much of a hassle it is to comply with the law." The court even deemed the case "exceptional" and awarded Ohio State attorney's fees.

In June 2014, Teespring filed a motion to dismiss, arguing that it had rejected and removed hundreds of potentially infringing campaigns from its website at the request of intellectual property owners, and had previously cooperated with Ohio State following the receipt of a takedown notice. According to Teespring, it utilizes a "robust intake filter" that identifies potentially infringing campaigns, enforces a review and response policy and a complaint submission policy for the benefit of rights holders, and takes a proactive approach that, Teespring argues, is consistent with precedent and mimics the procedures of the web's largest marketplaces. Moreover, Teespring argues that it cannot be contributorily liable because it does not encourage infringing activity and acts expeditiously when it gains specific knowledge of infringing listings. Teespring claims it responded to each request sent by Ohio State, and therefore cannot be liable solely for having general knowledge that its platform could be used for infringing activity. The company also points to its terms of service where customers must attest that they are "the owner, or licensee, of all rights associated with any created or uploaded artwork or text, including, but not limited to, the trademarks and copyrights that may be associated with said material."

Ohio State is asking for a permanent injunction against Teespring, profits from the sale of Ohio State merchandise and damages of $1 million per counterfeit item sold. It remains to be seen whether or not Teespring can tackle the trademark suit in the backfield, or whether Ohio State's legal team will make it into the open field and score a victory… and a buckeye leaf sticker on their helmets for outstanding play.

Beast vs. Monster? Marshawn Lynch and Monster Energy Poised for Trademark Battle

Since his defining 67-yard touchdown run against the then-defending Super Bowl champion Saints in the 2011 NFC Wild Card game (Lynch's first playoff game), "Beast Mode" has taken off. Marshawn Lynch, a four-time pro bowl running back, catalyst to the Seattle Seahawks' 2014 Super Bowl championship and Skittles enthusiast, anchors the team's running game and is apparently just as enthusiastic about his brand as he is about stiff-arming safeties. Lynch has used the Beast Mode moniker since college and registered the BEAST MODE trademark in his second year in the NFL in connection with t-shirts, men's, women's and children's clothing and headwear (BEAST MODE, Registration Nos. 3,650,781 and 4,254,213).

Just as he totes the rock, Lynch aggressively defends his brand, which brings in more than six-figures each year for his non-profit Fam 1st Family Foundation, Lynch reportedly rejects at least five proposals per month to license his mark (including resisting requests from apparel companies and an electronics manufacturer), and has even turned down the L.A. Dodger's request to use "BEAST MODE" in conjunction with outfielder Matt Kemp. However, Lynch has allowed his trademark to be licensed to the University of South Carolina for apparel, supplement manufacturer MusclePharm, , Deuce Watches and Nike footwear. Fellow NFL'ers Aaron Rodgers (through his brother Luke) and Joe Montana (through his wife, Jennifer) have also received licenses to use "BEAST MODE" on certain items.

Earlier this year, Lynch filed an application to extend his trademark for use in other classes of goods, including in connection with candy and non-alcoholic beverages, namely energy drinks, sports drinks and coconut water.

But, it appears, Lynch's run at the expanded trademark registration will not be an open-field rumble to the end zone. Instead, several companies holding similar-sounding marks may attempt to tackle Lynch's latest registrations.

- Already Monster Energy has filed for an extension with the Trademark Trial and Appeal Board (TTAB) to oppose Lynch's trademark. Monster owns trademarks to the phrases "Unleash the Ultra Beast" and "Pump Up The Beast!", and is no stranger to the TTAB, having filed more than 40 oppositions this year. Indeed, the producer of Monster Energy Drink, Monster Beverage Corporation,is not shy when it comes to protecting its brands. In recent years, it has sent C&D letters to a Vermont Brewery, a beverage review website and a Montana energy drink start-up, just to name a few, and, like the Seahawks, plays aggressive defense to keep potential infringers out of their end zone. This zealous policing of its brand has earned Monster a rebuke from a U.S. Senator and the moniker "trademark bully", yet others have categorized the company as simply rightfully protecting its intellectual property.

- USA Nutraceuticals Group, has also announced that it may object to Lynch's registration. In 2010, the Florida company registered the "Beast Mode" trademark for dietary and nutritional supplements and may view Lynch's current request as encroaching on its registered mark (BEAST MODE, Registration No. 3,978,998).
- And while outside of the scope of his current application, before Mr. Lynch thinks about brewing a "Beast Mode" brew, Sixpoint Craft Ales may also have something to say. In September 2011, Sixpoint registered the trademark BEAST MODE in connection with beer (Beast Mode, Registration No. 4,142,459).

It remains to be seen whether any of the above will bring Lynch down in the backfield or whether Lynch will make them miss and expand the BEAST MODE brand. Assuming Lynch is successful, at *Three Point Shot*, we'll be looking forward to serving "Beast Mode" coconut water at our Thanksgiving holiday dinner next year.

For more than 45 years, Proskauer has represented sports leagues and sports teams in all aspects of their operations.

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