

Athlete IP: Can Athletes Own Trademarks in Their Jersey Numbers?

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A jersey number distinguishes an athlete from others on the field, allowing referees and fans to easily identify them in a chaotic and crowded environment. Some commercially savvy athletes have carried this concept into the world of intellectual property, using their numbers as distinct identifiers for their brands. Here, in Part III of our series on athlete-controlled IP, we examine how athletes and their licensing partners can protect and commercialize jersey numbers, in combination with letters, names, words or phrases, through trademark law, right of publicity claims, and strategic brand development.

In April 2025, Baltimore Ravens quarterback Lamar Jackson filed a notice of opposition with the U.S. Patent and Trademark Office challenging NASCAR legend Dale Earnhardt Jr.'s attempt to register a stylized version of the number 8 for apparel and toy merchandise. Both Jackson and Earnhardt Jr. are closely associated with the number 8—Jackson has worn the number on his jersey for the duration of his NFL and college football career, and Earnhardt Jr. raced under the number for much of his NASCAR career. Jackson argued that Earnhardt Jr.'s mark could cause consumer confusion and falsely suggest a connection with Jackson's "ERA 8" brand, which includes multiple registered trademarks used in connection with apparel and sporting goods. Earnhardt Jr. ultimately withdrew the application at issue, citing his intent to continue using a different, non-registered, stylized 8 already provisionally used in connection with his Budweiser-sponsored car. But the dispute spotlights a bigger question: can an athlete trademark a number?

Strategies for Registering Jersey Numbers as Trademarks

Under U.S. trademark law, it is possible to register a number as a trademark if that number is used in a way that consumers recognize as identifying the source of goods or services. Some prominent examples of numbers registered as marks include Levi's "501," Heinz's "57," Chanel's "5," and Boeing's "747" and Dale Earnhardt's "1." However, when numbers are used generically (such as a jersey identifier), they are often considered merely descriptive, ornamental or even functional. A number like "8" or "23" may be

worn by hundreds of athletes, but to qualify for protection, the number must function as a mark in commerce, not just as a uniform identifier on the field.

The strongest athlete number trademarks are rarely standalone digits. While Earnhardt Sr.'s "1" was successfully registered for a wide variety of goods, most others appear in combination with other branding elements that enhance distinctiveness. Tom Brady's "TB12" is registered for, among other categories, nutritional supplements, clothing, books and training services, Cristiano Ronaldo's "CR7" is registered for eyewear, sports equipment and athletic bags, and Michael Jordan's "MJ23" is registered for clothing, restaurants, perfume and sports clinics. These hybrid marks incorporate personal identifiers that help transform numbers into signifiers of source rather than simple on-field designations. Lamar Jackson himself owns registrations and pending applications for marks including "ERA 8," "ERA 8 BY LAMAR JACKSON" and "YOU 8 YET?," which cover apparel, headwear and bags.

By contrast, efforts to protect a stylized number alone, such as Earnhardt Jr.'s application for a standalone version of the number 8, predictably invite objections based on lack of distinctiveness, as a number without accompanying features is more likely to be seen as descriptive or generic. In his notice of opposition, Jackson asserted that he is widely recognized by the number 8 due to his NFL career and brand promotion, and that Earnhardt's competing use could falsely imply a connection between the two athletes. To that end, the clearest path for players, teams or sponsors to capitalize on an iconic jersey number is to register it in combination with source-identifying initials, words or phrases.

Legal Framework for Registration and Enforcement

Athletes and licensing partners seeking to register or enforce a trademark incorporating a number must satisfy several legal requirements:

- **Use as brand identifier:** The numeric mark must function as a source identifier for goods or services—not merely as decoration or a jersey number. Athletes and licensing partners can overcome potential "ornamental use" refusals by demonstrating the numeric mark is used on brand-identifying materials.
- **Use in commerce:** The numeric mark must be used in connection with the sale, advertising or rendering of services that are sold or transported in interstate commerce.

- **Distinctiveness:** Standalone numbers most often require proof of secondary meaning and are unlikely to possess inherent distinctiveness. Athletes and licensing partners must show that the consuming public has come to associate the numeric mark with a specific source.
- **Limited functionality:** If a number serves a functional purpose—such as identifying a player on the field—it may be ineligible for trademark protection. Aesthetic functionality may also bar registration where the number’s value lies in its ornamental or expressive appeal. Athletes and licensing partners must demonstrate that a numeric mark is used primarily to indicate source.
- **No likelihood of confusion:** The numeric mark must not be confusingly similar to others already in use, as determined by factors such as visual appearance and commercial impression. Athletes and licensing partners must show that the context, style, words or initials, as well as the nature of the products accompanying their mark, make confusion unlikely.

Jackson argued that Earnhardt Jr.’s proposed mark could create confusion with Jackson’s “ERA 8” marks and mislead consumers into believing a connection existed. The dispute highlights the importance of assessing both the distinctiveness of numeric marks and the risk that consumers may associate them with an existing brand.

Additional Ways to Protect Numeric Identity: Right of Publicity and False Endorsement

Trademark law is not the only tool available to athletes seeking to protect their association with a number. Under state right-of-publicity laws, an athlete may assert control over the commercial use of elements that evoke their identity when used in advertising or merchandise. Likewise, under Section 43(a) of the Lanham Act, athletes may bring claims for false endorsement where unauthorized use of a number creates the misleading impression that an athlete has sponsored or is affiliated with a product or brand.

Courts have recognized that even without using a name, a realistic depiction of an athlete wearing a distinctive number in a commercial setting may violate publicity rights or create a misleading impression of endorsement. In *Jordan v. Jewel Food Stores, Inc.*, Michael Jordan sued Jewel-Osco after it ran an advertisement featuring a pair of sneakers with the number 23 as well as the Jewel-Osco logo and tagline. The Seventh Circuit held that the use, even though it was congratulating Jordan on his Basketball Hall of Fame induction, was commercial in nature and improperly used Jordan’s name and jersey number to promote the Jewel-Osco brand to create the false impression that

Jordan endorsed Jewel-Osco. And in *Keller v. Electronic Arts*, a college football quarterback asserted that EA Sports misappropriated his identity by including a digital avatar in its *NCAA Football* video game, which used his jersey number, position and team, despite omitting his name. The Ninth Circuit held that such use could lead consumers to believe the athlete had endorsed the product, reinforcing that numeric identifiers can serve as powerful proxies for athlete identity.

Recommendations for Athletes and Brands

As athletes increasingly seek to monetize their brands and the identifiers associated with their success and popularity, including signature celebrations, phrases, and jersey numbers, those seeking to build, license or enforce rights around jersey numbers should consider the following strategies:

- Register composite trademarks that combine jersey numbers with names, initials, slogans or logos to increase distinctiveness and enhance brand recognition.
- Use the numbers in a trademark (source identifying) capacity, such as on hangtags, packaging or product labels, rather than solely as decoration on apparel or merchandise.
- Establish numeric marks' secondary meaning in the marketplace through advertising, endorsements, consistent branding, product sales, and media coverage that connect the number to the athlete's identity.
- Coordinate protection efforts across trademark, right-of-publicity and endorsement frameworks to ensure comprehensive coverage and enforceability.
- Recognize the difficulty of monopolizing numbers under trademark law and plan for coexistence where numbers are widely used or highly diluted—differentiating branding through stylization, product categories or market positioning.

Jersey numbers may start on a uniform, but they don't have to stay there. With the right strategy and combination with initials, names, words, or phrases, jersey numbers can evolve into lasting and protectable assets within an athlete's brand portfolio.

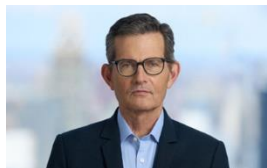
[Read](#) Part I of our series on athlete IP, which explores how athletes are gaining control over their intellectual property—and how teams, leagues and sponsors can evolve through joint IP ownership structures, NIL collectives, and multi-tiered IP licensing models.

[Read](#) Part II of our series on athlete IP, which examines how athletes can protect and profit from their signature celebrations using copyright and trademark law.

Please do not hesitate to contact us with any questions.



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