

With the “Big Game” Approaching, Stations Should Be Careful About Use of Trademarks in Their Broadcasts and Promotions

January 14, 2016

When the National Football League (NFL) holds Super Bowl 50 in San Francisco on February 7, 2016, it will use Arabic numerals for the first time. Even without the characteristic Roman numerals, the term “Super Bowl” remains one of the most iconic and well-known marks in sports. And, given that the Super Bowl is the most watched event of the year, advertisers and stations alike understandably want a piece of the Super Bowl action. But you should think twice before running advertisements for the “Super Bowl of sales” or the “Super Sunday Special,” as that may violate the NFL’s trademark rights.

What Terms Should You Be Concerned About?

The terms “Super Bowl,” “National Football League,” “National Football Conference,” “American Football Conference,” “Lombardi Trophy,” and even “Super Sunday” are all registered trademarks along with the names of all 32 NFL teams (including the newly minted Los Angeles Rams). The NFL and its teams guard their trademarks fiercely, and have shown little hesitation in prosecuting individuals and businesses that use the trademarks without permission. Corporate sponsorships, which often are accompanied by a limited right to use these marks, are quite lucrative for the league. As a result, neither the NFL nor its teams want non-sponsors using these popular terms for free. Broadcasters (or other businesses) using these terms for a promotional or commercial purpose, or to suggest an affiliation with either event, risk a lawsuit.

Authors

Joan Stewart
Of Counsel
202.719.7438
jstewart@wiley.law
Ari Meltzer
Partner
202.719.7467
ameltzer@wiley.law

Practice Areas

Media
Telecom, Media & Technology

How Can I Use the Trademarked Terms?

Whether it is appropriate to use a trademarked term in connection with the Super Bowl depends on the nature of the use and the term being used. As a general matter, promotional uses are not allowed, while informational uses may be appropriate.

Promotions and contests using the term Super Bowl or the names of the participating teams in the promotion or contest name are likely to violate trademarks. Instead of calling your contest “WXYZ’s Super Bowl Party Pack Contest,” try “WXYZ’s Big Game Party Pack Contest.” And instead of talking about the Patriots against the Seahawks, you can say “New England vs. Seattle.” Or, if one of the teams is local, use a descriptive term like “our home team” or “Green Bay’s favorite football team.” The key is to avoid any suggestion that the advertiser or station is somehow affiliated with the Super Bowl or the NFL.

In addition to policing your station sponsored contests, be sure to check the spots provided by your advertisers (especially from local advertisers) to make sure they do not use prohibited trademarks.

Informational uses of trademark terms are less controversial. If your station is allowed to broadcast the Super Bowl, a local station announcement to “watch the Super Bowl on January 7th, only on WXYZ” likely would be appropriate. But remember, just because you are licensed to show the game, you (or your advertisers) do not have the automatic right to use the terms in commercials or contest promotions.

Finally, broadcasters can always use trademarked terms for non-promotional purposes. For example, it is perfectly acceptable to discuss the Super Bowl and its participants – by name – as a legitimate news event. Stations certainly can run stories about the game on the news, and anchors/DJs can discuss who they think will win, what happened during a game, etc.

What About Ticket Giveaways?

So your home team is one win away from a national championship and an advertiser wants to provide one lucky listener with a pair of tickets to the big game. While it might sound like a good idea, it’s probably not. Even tickets purchased directly from the league provide only a limited license to access the stadium and generally may not be used for promotional purposes without the express permission of the NFL (check the fine print on the back of the ticket). Therefore, unless your advertiser is an official sponsor of the NFL and received the tickets as part of its sponsorship, the giveaway is not allowed.

If you have any questions about your Big Game promotions, please feel free to contact us.