

The King of the North v. Nike: A Clash Over Valuable IP Rights

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The King of the North was anointed on May 12, 2019. And not surprisingly for the coronation of such an unassuming star, King Edward's Chair was nowhere in sight. Kawhi Leonard squatted instead, and watched expectantly as his offering bobbed four times in the electric air—twice off the front of the rim then twice off the back—before falling to its destiny. In that moment, a legend was born. After that moment, Nothing Was The Same for Canadian basketball fans.

A dominant series win over the Milwaukee Bucks then set up a dream matchup between Leonard's Toronto Raptors and the Golden State Warriors. While the Raptors were clear underdogs heading into the Finals, Leonard's sponsor New Balance doubled down on its allegiance by erecting a massive billboard off Highway 880 in California, warning Bay Area fans that "The King of the North is Coming." The warning proved prophetic as Leonard and the Raptors have imposed their will thus far on the basketball court.

New Balance's message was prophetic for another reason too, as it foretold the beginning of another battle in another court, this one between Leonard and his former sponsor Nike. On Monday Leonard filed suit against Nike in the U.S. District Court for the Southern District of California. Leonard claims that Nike perpetrated a fraud on the U.S. Copyright office when it registered—without Leonard's consent—a stylized claw logo that incorporates Leonard's initials and jersey number. Leonard claims to have conceptualized the logo in college and refined it by late December 2011.

A few months earlier however, in October 2011, Leonard signed an endorsement contract with Nike, a relationship that—after a series of extensions—expired in 2018. That's when Leonard, reportedly slighted by the terms of Nike's offer for another extension, signed a lucrative deal to become the face of New Balance.

Leonard concedes that he discussed concepts for a personalized logo with Nike while under contract with them. But he claims to have rejected "for the most part" Nike's proposals, wanting instead to use the logo he designed in 2011. Leonard claims that he and Nike eventually agreed on a concept that incorporated his logo design in 2014. Critically though, Leonard maintains that while he allowed Nike to use the logo on its merchandise during the term of their contract, he never transferred ownership of the logo to Nike. In support of his claims, Leonard points to his continued use of the logo on non-Nike apparel and at non-Nike appearances and events—without Nike's objection—as further evidence of their mutual understanding. He also claims that Nike consistently referred to the logo as "Kawhi's logo" in correspondence.

This is why Leonard believes that Nike committed a fraud on the Copyright Office when—unbeknownst to Leonard—Nike registered a Kawhi Leonard logo on May 11, 2017, claiming in its application that Nike created and authored the logo in 2014. Nike's copyright registration gives it the exclusive right to make and sell products bearing the logo.

It is unclear when Leonard became aware of the registration, but he registered his own trademark for the logo in November 2017, claiming in his application that he authored and owned the logo.

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Leonard's complaint suggests that he did not become aware of Nike's registration of his logo until late 2018, after he signed with New Balance. Leonard claims that Nike then asserted ownership in the logo pursuant to the prior endorsement contract and Nike's copyright registration, and that Nike demanded that Leonard cease all use of the logo on non-Nike apparel. Leonard's lawyers demanded in response that Nike rescind the allegedly fraudulent registration. Nike refused, and Leonard filed suit.

In his complaint Leonard contends that he is the creator and owner of the logo and that he intends to use it on apparel and footwear that he is developing, and at sports camps and charity events. He asks the court for a legal declaration that (i) he is the sole author of the logo; (ii) his use of the logo does not infringe any rights of Nike; and (iii) Nike committed a fraud on the Copyright Office when it registered the Leonard logo.

It is important to note that these allegations remain unproven and we have yet to hear Nike's side of the story. While Leonard claims to have considerable evidence of his authorship and ownership of a logo, it is unclear to what extent that is *the* logo at issue, and if so, how much Nike contributed to the final concept. We also don't know if Leonard's endorsement contract with Nike addressed the issue of ownership of developed intellectual property. The complaint does not suggest that it does, but Nike may disagree. Moreover, Nike's copyright application suggests that the logo was a "work for hire," a legal concept that gives an employer ownership in a work prepared by an employee. It is unclear if Nike was claiming in its application that one of its employees created the logo, if Leonard falls within the sometimes nebulous definition of an employee applied in copyright cases, or if the endorsement contract made Leonard's creation a "work for hire." We can expect Nike's response to address these issues.

In all likelihood, the dispute will end in a negotiated resolution. Protracted and public litigation may not be in either party's best interest. But both sides have interests to protect and seemingly significant leverage. Nike has an interest in protecting its intellectual property, and it knows that Leonard and its competitor New Balance want to capitalize now on Leonard's soaring popularity. On the other hand, Leonard's claims may have merit and they are likely compelling to many athletes. Nike will not want to be perceived as unreasonable in what has become an increasingly competitive marketplace. A few years ago it seemed unlikely that a Finals could ever be headlined by New Balance and Under Armour-endorsed superstars (Stephen Curry is the face of Under Armour).

This dispute underscores the importance—from a legal and business perspective—of game-planning for these issues during negotiations. One thing is certain—like the series between the Warriors and the Raptors, this battle is far from over.