

**Ohm's Law: Famous Nicknames**  
**By Hun Ohm\***

Your beloved hometown hockey team has made a surprising deep run through the playoffs, and it's been riveting to behold. What's more, an unlikely journeyman, Andy Athlete, has emerged as a scoring machine, bringing your team back from the brink of elimination to the cusp of a championship. He has captured the nation's imagination, and his popularity is soaring. During this streak, he's adopted a nickname to describe his cool and uncanny ability to spot opportunities on the ice. The Cold Score. The crowd chants it. The TV announcers repeat it. At post-game interviews, it's all they talk about.

You too are looking for opportunities, and you think you've found it. A new business selling The Cold Score merchandise. Realizing that timing is everything, you rush to file a trademark application to register the trademark for "The Cold Score" for some classic goods – t-shirts, duffel bags, and sweatshirts. You are going to make it big riding The Cold Score's wave of popularity, and you can't wait to reap the rewards of your quick thinking and actions. What could stand in your way?

Here's one – the US Patent and Trademark Office (USPTO). The USPTO frowns upon unauthorized usages of an individual's name, portrait, signature or other indicia of that person. In light of the national renown that The Cold Score has garnered over the playoff run, an Examining Attorney at the USPTO might reject your application based on this position.

For example, your application might be rejected because the mark consists of a nickname identifying a particular well known living individual whose written consent to register the mark is not of record. The rationale here is that use of The Cold Score in connection with your products will be associated with Andy Athlete because he is so well known that the public will reasonably assume a connection. Thus, the USPTO will require evidence of Andy Athlete's written consent for you to register The Cold Score with the USPTO, which consent you will most likely face difficulty securing.

In addition, your application might be rejected because the mark consists of matter which may falsely suggest a connection with a famous individual. Given the widespread use of The Cold Score in connection with Andy Athlete, consumers would presume a connection to him if they see the "The Cold Score" on the goods identified in your application; however, there is no actual connection. Another no-no in the USPTO's eyes.

The case of the NBA basketball star Jeremy Lin is instructive. When Lin rose to prominence coming off the bench in early 2012, "Linsanity" swept across the US as well as abroad. Along with that buzz, numerous applications were filed with the USPTO by entities looking to ride the crest of his fame and notoriety. While the various applicants may have had high hopes of robust sales and immediate market recognition when the applications were filed, each application has since been refused registration by the USPTO, or expressly abandoned by the applicant.

Outside of the complications that occur in the USPTO realm, people who try to capitalize on the fame of individuals could likewise be found to violate the right of publicity. While the laws

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governing the right of publicity vary from state to state, the right of publicity will generally enable someone such as Andy Athlete to protect and control the commercial use of his or her name, likeness and identity. So, if you are looking to commercialize The Cold Score as a brand, you risk running afoul of Andy Athlete's right of publicity as well, and could find yourself on the receiving end of a legal slap shot from his representatives.

The fact that you are an enthusiastic fan, or that you are the first in line to try to commercialize a famous athlete's nickname, may not carry the day with the USPTO or in a dispute between you and the famous athlete. Indeed, while the lure of quick and easy market recognition, big sales and big opportunity may seem like money in the bank, there is a wealth of pitfalls awaiting you. It may be better for you to remain in the stands and simply cheer The Cold Score on as a fan than to step on the ice and pursue his fame.

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