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Intellectual Property

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"Linsanity": Who gets the trademark?

By now, if you watch basketball, know someone who watches basketball, or know what basketball is, you've no doubt heard of the "Linsanity" phenomenon sweeping the NBA and the world. Within one week, New York Knicks point guard Jeremy Lin went from being a fourth string benchwarmer to an international sensation. And of course, this being America, enterprising entrepreneurs have been quick to capitalize on the craze.

Just days after Lin began his streak of top scoring games, two people filed applications to register the trademark "Linsanity" with the U.S. Patent & Trademark Office (PTO) for use with athletic apparel. One was filed by Andrew Slayton, an unofficial volunteer basketball coach of Lin at Palo Alto high school, who has been selling unauthorized Jeremy Lin T-shirts since he created the first "Linsanity" website in July 2010, well before Lin's sudden fame. But he was beat by Michael Yenchin Chang, a California businessman, who filed an application on February 7th--two days before Slayton. According to a Bloomberg Businessweek article, Chang said that he would be willing to sell the trademark to Lin, but he "just wanted to be part of the excitement."

Does Slayton or Chang have the right to trademark the term "Linsanity"? If someone files an "Intent-to-Use" application with the PTO, as Chang did, he can acquire senior trademark rights in the term once the application matures to registration. However, under trademark common law, the first person to use a term specifically *to sell goods or services* generally has senior trademark rights in the term. So, between Slayton and Chang, Slayton would likely have the upper hand because he was selling T-shirts under the trademark before Chang filed his application, but it would require some legal feuding to sort it out.

How about Jeremy Lin himself – does he have any rights in the term "Linsanity?" If a term being trademarked is associated with a living person's name, permission from that person is required under federal trademark law. Also, if that person is well known, as is now the case with Lin, many states grant a right of publicity that may be violated by someone attempting to trade on his name without permission. Slayton and Chang might argue that "Linsanity" is a made-up term and not Lin's actual name, but it is quite obviously a reference to Lin. And while Slayton might have had a role in Lin's success as a former coach, that alone would not give him the legal right to trade on Lin's fame. Chang has even less of a claim, having no relationship to Lin and no prior use of the term whatsoever.

Just recently in January 2012 another enterprising entrepreneur attempted to register the trademark "Blue Ivy Carter" for use with beauty products. The PTO quickly rejected the application on the ground that the trademark would falsely suggest a connection with the famous newborn of singer Beyoncé and rap artist Jay-Z. Chances are good that the PTO will also reject both Slayton's and Chang's attempt to trade on Lin's fame.

Regardless of who wins the right to register "Linsanity" as a trademark, Jeremy Lin fans and sports commentators do not need to worry that they will need to stop using the term to describe the current sports craze. Owning a trademark does *not* mean that one has the right to stop others from using the term generically. A trademark owner only has the right to stop others from using the same term, or any confusingly similar term,

to sell goods or services similar to those sold by the trademark owner. NBA fans may remember the term "Threepeat," which was registered as a trademark by retired NBA coach Pat Riley's company after the quest for three successive championships by his former team, the L.A. Lakers. Although Riley can stop others from selling "Threepeat" T-shirts, he cannot stop fans from using the term generically to refer to the act of winning three championships.

That should be good news for all of us who want to continue enjoying the Linsanity craze.