

Kawhi Leonard told to keep his hands off Nike's logo

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In an oral ruling last month, Oregon District Court Judge Michael W. Mosman granted Nike's motion dismissing NBA star Kawhi Leonard's claims that he rightfully owned "The Claw" logo. The Claw is a logo depicting Leonard's initials "KL" and jersey number "2" in the palm of an outstretched hand. Although no written order has been

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issued yet, the ruling reveals potential pitfalls facing athletes or celebrities attempting to build out brands with personalized logos or trademarks.

Leonard, who led the Toronto Raptors to its first NBA title last year, is nicknamed "The Claw" (or "The KLaw" - using Leonard's initials) because of his enormous hands. Those powerful paws, reportedly as big as Wilt Chamberlain's and measuring over 11 inches long, are credited as one of the reasons behind Leonard's success as a basketball player.

Nike, which signed Leonard to an endorsement deal in 2011, set out to immortalize Leonard's iconic hands in a logo, just as it had done with Michael Jordan's iconic free

throw line dunk in the Jumpman logo. (Incidentally, Judge Mosman is the same judge who dismissed claims challenging Nike's copyright ownership of the Jumpman logo in *Rentmeester v. Nike, Inc.*, No. 3:15-cv-00113-MO, 2015 U.S. Dist. LEXIS 77468 (D. Or. June 15, 2015)). The eventual "Claw Design" was created by Nike artists during the course of Leonard's endorsement deal, but it shared similarities with a prior drawing Leonard created and provided to Nike.

Leonard's "Rough Draft"	NIKE's Copyrighted Claw Design
 A rough, hand-drawn sketch in purple ink on a light-colored background. It depicts an outstretched hand with the fingers spread. Overlaid on the hand are the letters 'K' and 'L' and the number '2'. The 'K' is on the left side of the hand, the 'L' is on the right side, and the '2' is on the right side, near the fingers. The drawing is somewhat messy and appears to be a preliminary sketch.	 A clean, black-and-white graphic design of a hand. The hand is outstretched with fingers spread. Overlaid on the hand are the letters 'K' and 'L' and the number '2'. The 'K' is on the left side of the hand, the 'L' is on the right side, and the '2' is on the right side, near the fingers. The design is sharp and professional, representing the copyrighted 'Claw Design'.

Both drawings include the letters "K" and "L" as well as the number 2 (Leonard's jersey number) on an outstretched hand. Nike copyrighted The Claw design and listed itself as the author as an employer for hire, indicating that its employees—rather than Leonard—created the work.

In late 2018, Nike's endorsement contract with Leonard expired. Instead of re-signing with Nike, Leonard and his giant hands inked a new deal with New Balance. Intent on continuing to use The Claw as part of his personal brand with his new partner New Balance, Leonard sued Nike in 2019 seeking a declaration that he authored and owns the The Claw, and that Nike was neither the creator nor owner of the logo. Leonard's claims were originally brought in the S.D. of California, but Nike was successful in transferring the case to its backyard: the District of Oregon.

After the case was transferred to the District of Oregon, Nike answered, asserted counterclaims, and moved under Federal Rule of Civil Procedure 12(c) for judgment on

the pleadings. The focus of Nike's motion was dismissal of Leonard's copyright claims, and recognition that Nike owned the copyright to The Claw. In his complaint, and in response to Nike's motion, Leonard alleged that because he drew a previous draft logo and shared it with Nike, he was the actual owner of the subsequent Claw Design. Nike's motion argued that its design was "obviously distinct" from Leonard's, and that Nike never claimed ownership of Leonard's own drawing.

Nike's Rule 12(c) motion further relied on a provision in its endorsement contract that stated "Nike shall exclusively own all rights, title and interest in and to any logos, trademarks, service marks, characters, personas, copyrights, shoe or other product designs, patents, trade secrets or other forms of intellectual property created by Nike (and/or its agents), consultant or athlete in connection with this contract." Leonard claimed that his drawing, which was made before the endorsement deal was signed, was not made "in connection with" the endorsement contract. Although Leonard did not dispute that The Claw was made in connection with the contract, he claimed it was derivative of his drawing and ineligible for copyright protection.

Ultimately, the court ruled in favor of Nike on its claim that it owned The Claw copyright. The minute entry from the hearing noted the court's position: "As stated on the record, I grant the motion with respect to defendant Nike's ownership of the Claw design...."

Although it isn't clear from the minute order whether the court found The Claw to be independently copyrightable by Nike, or a derivative work of Leonard's that Nike owned by contract, Oregon Live reports that the Judge stated, "It's not merely a derivative work of the sketch itself...I do find it to be new and significantly different from the design." In other words, Nike's logo was sufficiently original to merit independent copyright protection, regardless of any inspiration from Leonard's sketch.

This case is a reminder of the potential importance of securing copyrights over trademarks. For instance, if The Claw was merely trademarked, Nike could lose its trademark protection by ceasing to use The Claw on advertising or merchandise for a period of time (generally three years), which would be expected after the endorsement deal expired. But because Nike copyrighted The Claw, there is no requirement that Nike actually use the copyright in commerce to retain sole ownership. In addition, this case is a warning to athletes, celebrities, or other public persons that they should take care to clearly define in endorsement contracts the ownership of personalized copyrights or trademarks that might become part of their personal brand.