

Perfect Trademark

By Reg P. Wydeven
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The Kimberly Papermaker boys' basketball team started their season 13-0 before losing their first game to a tough Oshkosh North squad. Hopefully they'll get their revenge on February 21 on the Spartans' home court and go on to make it to the state tournament.

Had they won, the basketball team would have matched Kimberly's football team's 14-0 record – its fourth consecutive undefeated season. While an undefeated season would have been thrilling, that's a pretty rare feat in hoops because they play twice as many games. Only 44 teams have gone undefeated in the 100 year history of WIAA boys basketball.

So while my kids proudly wear Kimberly sweatshirts boasting the football team's 4 consecutive undefeated championship seasons, they won't be able to wear shirts reflecting a "perfect season" for the basketball team.

But if they did, those shirts would be pretty expensive.

The added cost would come from having to pay a licensing fee to none other than the New England Patriots.

The Patriots just capped off a terrific season with a historic Super Bowl win. It's all the more impressive considering the team started the year with legendary quarterback Tom Brady on the bench, serving a four-game suspension resulting from Deflate-gate. Then backup Jimmy Garoppolo went down with a shoulder injury. This season was the opposite of the team's 2007 campaign, which started 18-0 but ended in a heart-breaking loss in the Super Bowl to the New York Giants.

In anticipation of the first undefeated season in the NFL since the 1972 Miami Dolphins, the Patriots applied for two trademarks in the week before the 2007 Super Bowl: "Perfect Season" and "19-0." Despite losing to the Giants, the team still pursued the trademarks.

Well, in December of 2016, the U.S. Patent and Trademark Office granted the trademarks to the team's parent company, The Kraft Group. The approval was surprising because a trademark must be used in commerce in order to be granted. The Lanham Act, which is the 1946 law that governs trademarks, defines 'use in commerce' as "the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark."

Because the Patriots lost in the Super Bowl, they neither had a "perfect season" nor went "19-0," so legal experts were perplexed as to how the team used those trademarks in commerce. Well it should come as no surprise that the Patriots maximized the rules to their advantage.

Although their 2007 season ended in a loss, the Patriots licensed the phrase "Perfect Season" to the Massachusetts Interscholastic Athletic Association, which produced a DVD of the 2015 state football championship game between Xaverian Brothers and Central Catholic high schools. Xaverian's victory was its 24th straight win.

So now any sports team wanting to commemorate their undefeated season on sweatshirts, t-shirts or hats will have to pay a licensing fee to the New England Patriots if they want to use the phrase "Perfect Season."

If the Kimberly football team goes undefeated next season, I will trademark "Cinco in a Row," and I'll license it to the Papermakers for \$1. Everyone else will have to pay big bucks to use it. Especially the Patriots.

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