

# End Run Around Claimant Yields Big Win for Sports Mark

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## Related Capabilities

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A recent United States Court of Appeals for the Federal Circuit (“Federal Circuit”) decision highlighted the importance of litigation strategy. In 2023, the Trademark Trial and Appeal Board (“Board”) granted Uninterrupted IP LLC’s (“UNIP”) request to cancel a trademark registration held by Game Plan Inc. (“Game Plan”) and found that UNIP had priority over Game Plan, defeating Game Plan’s likelihood of confusion claims. The Federal Circuit affirmed both rulings, and declined to reconsider the case earlier this week.

The case began years ago over which party had the rights to I AM MORE THAN AN ATHLETE, and likely would have gone in Game Plan’s favor but for UNIP seizing a strategic opportunity and Game Plan fumbling its case.

Game Plan is a youth charitable organization focused on empowering student athletes in

**I AM MORE  
THAN AN  
ATHLETE.**



sports and life. It registered the mark on June 5, 2018 for “Charitable fundraising services by means of selling t-shirts to raise funds for educational and entertainment programs.” Game Plan filed this application on December 28, 2016 and claimed an October 8, 2017 use in commerce date.

UNIP is a media company, of which LeBron James is a founder, that provides athletes an opportunity to build identities beyond sports. In March 2018, UNIP filed intent-to-use

I AM MORE  
THAN AN ATHLETE

applications for , MORE THAN AN ATHLETE and I AM MORE THAN AN ATHLETE for clothing and entertainment services.

In November 2018, Game Plan opposed UNIP’s applications, alleging likelihood of confusion. Also in 2018, a third party, More Than an Athlete, Inc. (“MTAA”), contacted both Game Plan and UNIP, objecting to each entity’s use of “More Than an Athlete.” MTAA was a small enterprise started by DeAndra Alex, a sports lover who wanted to highlight athletes’ non-sports accomplishments. Ms. Alex had been selling clothing and wristbands under MORE THAN AN ATHLETE since 2013. MTAA also registered MORE THAN AN ATHLETE for “publicity and sales promotion services” in 2013.

Following MTAA’s objections, UNIP engaged with Ms. Alex and in early 2019, acquired all of MTAA’s rights to MORE THAN AN ATHLETE. As part of the deal, UNIP also hired Ms. Alex as a consultant. Relying on the new priority position gained by these rights, UNIP turned the tables on Game Plan with a counterclaim to cancel Game Plan’s registration based on a likelihood of confusion.

In its defense, Game Plan argued that the MTAA assignment was invalid because it constituted an assignment in gross and occurred during the opposition proceeding. Game Plan’s counsel, however, failed to submit any evidence to support such claims.

The assignment agreement included customary language to assign all of MTAA’s

goodwill along with the mark. Based on that, and the fact that the use of the mark for clothing was continuous from MTAA to UNIP, both the Board and Federal Circuit found the assignment to be valid. As a result, UNIP had acquired valid and enforceable common law rights in the mark, giving UNIP priority.

As to timing, the tribunals found no authority that acquiring rights to change one's position in litigation is improper. To the contrary, motivation for an assignment is irrelevant.

Additionally, the Federal Circuit found the Board did not err in its consideration of evidence. Game Plan had attempted to rely on evidence it had submitted during a prior summary judgment motion without reintroducing such evidence during the trial period. The tribunals both agreed that it was proper for such evidence not to be considered, particularly because Game Plan's counsel was expressly advised that evidence needed to be submitted at each stage.

The case is an important reminder of how vital strategic decisions are during disputes. Turning an objection from one party into an opportunity not only to collaborate but to defeat the claims of another party made all the difference in this case. Trademark litigators are also cautioned to remember the importance of following procedure carefully.