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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91249886
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>LBJ TRADEMARKS, LLC and LEBRON JAMES,</p> <p style="text-align: center;"><i>Opposers</i></p> <p style="text-align: center;">v.</p> <p>JAMES GOLDING,</p> <p style="text-align: center;"><i>Applicant.</i></p>	<p>Opposition No. 91249886</p> <p>Serial No.: 88/111,451 Mark: KING JAMES</p>
<p>LBJ TRADEMARKS, LLC and LEBRON JAMES,</p> <p style="text-align: center;"><i>Petitioners,</i></p> <p style="text-align: center;">v.</p> <p>JAMES GOLDING,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Cancellation No. 92072657</p> <p>Reg. No.: 3,972,356 Mark: KING JAMES ACTIVEWEAR</p>

**OPPOSERS LBJ TRADEMARKS, LLC AND LEBRON JAMES’
MOTION FOR PROTECTIVE ORDER**

Pursuant to Trademark Trial and Appeal Board Manual of Procedure § 412.06(a), 37 C.F.R. § 2.120(g), and Rule 26(c)(1) of the Federal Rules of Civil Procedure, Petitioners and Opposers LBJ Trademarks, LLC (“LBJ Trademarks”) and LeBron James (“Mr. James”) (collectively, “Opposers”) hereby move for a protective order to quash a Notice of Deposition served by Applicant and Respondent James Golding (“Golding” or “Applicant”) seeking the deposition of Mr. James.

I. INTRODUCTORY STATEMENT

Applicant's requested deposition should be quashed because it is only intended to harass Mr. James. Opposers' claims are based on Lanham Act §§ 2(a) and 2(c), which look *only* to the public's understanding of the applied for mark and require no trademark use by Opposers. Accordingly, Mr. James has no particular, relevant knowledge or information concerning this understanding. To the extent that Mr. James has any knowledge or information of arguable relevance here, LBJ Trademarks, an organization which owns and manages Mr. James's intellectual property, would have the same or superior knowledge or information and would, as Opposers have offered, testify pursuant to a Rule 30(b)(6) Deposition Notice.

Moreover, Opposers' expert witness, Eldon Ham, has provided a detailed, extensive report setting forth his opinion on the fame of Mr. James's "King James" nickname and the public's broad association of that name with Mr. James, citing a plethora of publicly available publications and broadcasts supporting his opinions. As shown by his expert report, Mr. Ham has much more relevant information concerning the issues in this case than either LBJ Trademarks or Mr. James.

Yet, despite the availability of two witnesses with superior knowledge, Applicant has not even attempted to notice those depositions. Rather, Applicant has insisted Mr. James, a public figure and celebrity with no relevant knowledge or information, sit for a deposition, without even indicating what relevant information Mr. James might have. Nor has Applicant disputed that Mr. Ham and LBJ Trademarks have more relevant information than Mr. James.

That Applicant has passed up depositions of the relevant individuals and insists on Mr. James's deposition alone, suggests that Applicant seeks only to harass Mr. James and hopes that by threatening to waste his time, Mr. James will drop this matter. The Board has broad discretion to issue a protective order to prevent this harassment. Therefore, Opposers respectfully request that the Board issue a protective order barring Mr. James's deposition, at least until Applicant has deposed persons with greater knowledge, who can better provide information relevant to this case.

II. BACKGROUND

On July 31, 2019, Opposers filed a Notice of Opposition (the "Notice") to Golding's Trademark Application Serial No. 88/111,451, seeking registration of the mark KING JAMES in connection with various items of apparel. (1 TTABVUE). The Notice asserts that Mr. James, a famous professional basketball player currently playing for the Los Angeles Lakers basketball team in the National Basketball Association, has been known by his famous nickname King James for many years, well preceding Applicant's alleged date of first use. (*Id.* ¶¶ 4, 8.)

LBJ Trademarks is the licensee of certain of Mr. James's trademark and intellectual property rights. (*Id.* ¶ 5.) Specifically Mr. James has licensed to LBJ Trademarks the right to use, sublicense, and arrange for licenses to his name, nicknames (including King James), likeness, trademarks, and other intellectual property in connection with apparel such as Applicant's goods. (*See id.* ¶ 5; Second Amended Petition for Cancellation in Cancellation No. 92072657 (D.I. 9) ¶ 4.) The Notice asserts grounds for opposition based on a false suggestion of a connection with Mr. James pursuant to Lanham Act § 2(a) (Count 1) and that Applicant's applied-for mark consists of a name identifying Mr. James, a living individual, pursuant to Lanham Act § 2(c)

(Count 2).

The Board instituted the opposition on July 31, 2019 and set the initial schedule on the same day. (2 TTABVUE). Applicant filed his Answer on September 9, 2019. (TTABVUE 4). Applicant's Answer cited to a prior Registration No. 3,972,356 for the mark KING JAMES ACTIVEWEAR (the "KING JAMES ACTIVEWEAR registration"), which Applicant alleged supported his registration of the KING JAMES mark.

On October 31, 2019, Opposers filed a Petition to Cancel the KING JAMES ACTIVEWEAR registration on the same grounds as their Notice (Lanham Act §§ 2(a) and 2(c)) along with grounds that the KING JAMES ACTIVEWEAR mark had been abandoned and is functional. (Cancellation No. 92072657, 1 TTABVUE) That proceeding was instituted on November 4, 2019. (Cancellation No. 92072657, 3 TTABVUE). On June 30, 2020 Opposers filed a Second Amended Petition to Cancel with the consent of Applicant. (Proceeding No. 92072657, 9 TTABVUE).

On November 8, 2019, Opposers served Initial Disclosures on Applicant, identifying a Corporate Representative of LBJ Trademarks as having relevant information concerning the fame of Mr. James and his nickname, King James, and the public's recognition of King James as a nickname for Mr. James.

On December 10, 2019, the parties filed a Joint Motion to Consolidate the Opposition and Cancellation Proceedings on the grounds that both proceedings involve common questions of law and fact and that consolidation would be more efficient for the parties and for the Board. (6 TTABVUE). The Board granted the Motion to Consolidate on December 16, 2019. (7 TTABVUE).

On September 22, 2020, Opposers served the expert witness report of Eldon Ham and filed a Notice of Expert Disclosures. (14 TTABVUE). Mr. Ham, an expert on, *inter alia*, athlete endorsements, offered the opinions, for example, that King James is a well-known and famous nickname of Mr. James and has been since at least 2002—well before Applicant’s claimed date of first use in 2010. *See* Exhibit “A,” Report of Eldon Ham for the Trademark Trial and Appeal Board, at 5-14. Mr. Ham also offered the opinions that professional athletes, such as Mr. James, commonly allow their names and nicknames to be used in connection with brands and apparel, and that the general public would immediately associate with LeBron James any items of apparel displaying or sold under the name King James. *See id.* at 14-18.

On October 8, 2020, Applicant served a Notice of Deposition seeking Mr. James’s deposition on the last day of discovery, October 23, 2020. Following receipt of Applicant’s Notice of Deposition, counsel for Opposers wrote to counsel for Applicant to reiterate that Mr. James had no relevant information and that Applicants would not be relying on any testimony from Mr. James.. *See* Ex. “B” (10/13/2020 E-mail from counsel for Opposers to counsel for Applicant and Applicant’s 10/15 Response). Counsel for Opposers reiterated that any relevant information could be obtained more easily through a Rule 30(b)(6) Deposition of LBJ Trademarks and through a deposition of Mr. Ham, noting that Mr. Ham had the most relevant information concerning these proceedings. As counsel for Opposers, noted:

Our case is a very simple one. By virtue of, *inter alia*, widespread third party media coverage, the term King James has become a very well-known nickname of LeBron James and has become so strongly associated with Mr. James, that Mr. Golding’s marks identify Mr. James pursuant to Lanham Act § 2(c) and falsely suggest a

connection to Mr. James pursuant to Lanham Act § 2(a). The relevant inquiry is whether the public will understand that Mr. Golding's marks refer to Mr. James. Mr. James certainly does not have any unique knowledge on this issue. Indeed the most relevant witness for you to depose is Mr. Ham, not Mr. James.

(*Id.*) Counsel for Opposers also offered to consider providing Mr. James for deposition after Applicant took depositions of LBJ Trademarks and Mr. Ham, if Applicant could at that time identify some relevant information he was unable to obtain from those depositions and which was likely to be in Mr. James's possession. (*Id.*)

In response, counsel for Applicant merely pressed for Mr. James's deposition and neither attempted to identify any relevant information Mr. James might have, nor ask for a deposition of LBJ Trademarks or Mr. Ham. (*Id.*) In a meet and confer telephone call on November 2, 2020, when asked why he wanted to depose Mr. James, Applicant's counsel argued his "gut instinct" told him the Mr. James "knows everything" without any further support.

III. ARGUMENT

A. Opposers' Claims Rely, By Definition, On Information Related to the Public's Knowledge of Mr. James and the King James Nickname, and Not Upon Any Information or Knowledge Possessed by Mr. James

Both the Notice of Opposition and the Second Amended Petition for Cancellation assert grounds pursuant to §§ 2(a) and 2(c) of the Lanham Act based on the public's wide recognition of Mr. James and of King James as a nickname for Mr. James. These claims depend *entirely* on the public's recognition of King James as a nickname for Mr. James and Mr. James's prominence as a public figure. Unlike most trademark cases, Opposers rely on no use of King James as a trademark.

Relevant evidence for these claims relate to the public's knowledge, and not to

any knowledge or information Mr. James might have. Rather, the witness with extensive knowledge and information on these issues is Opposers' expert, Mr. Ham. His report discusses the relevant issues in depth and relies on enormous documentary evidence in the form of publicly available publications, books, and broadcast transcripts. Yet Complainant, tellingly, has not sought Mr. Ham's deposition.

Claims under Lanham Act §§ 2(a) and 2(c), as are asserted here, differ significantly from likelihood of confusion claims under § 2(d). Sections 2(a) and 2(c) have no requirement of use of a trademark or even any proprietary rights in the asserted name. *See, e.g., Lesley Hornby a/k/a Lesley Lawson a/k/a Twiggy v. TJX Companies, Inc.*, 87 U.S.P.Q.2d 1411, (T.T.A.B. 2008) (Even if a celebrity's trademark rights in her name were abandoned by nonuse as a trademark for goods, that person can still prevail under 2(a) if the registered mark falsely suggests a connection with the person.). Rather, they look to the public's understanding of the name and the renown of the named individual in the public's eyes. For example, Lanham Act § 2(a) precludes registration of a mark that "falsely suggest[s] a connection with persons, living or dead." 15 U.S.C. § 1052(a). The Board looks to the following four-part test to determine whether a false suggestion of a connection has been established:

1. The mark is the same as, or a close approximation of, the name of or identity previously used by another person;
2. The mark would be recognized as such because it points uniquely and unmistakably to that person;
3. The person named by the mark is not connected with the activities performed by the applicant under the mark; and
4. The prior user's name or identity is of sufficient fame or reputation that a connection with such person would be presumed when applicant's mark is used on applicant's goods.

In re Jackson International Trading Co., 103 U.S.P.Q.2d 1417, 1419 (T.T.A.B. 2012) (barring under § 2(a) registration of BENNY GOODMAN COLLECTION THE FINEST QUALITY for fragrances, leather goods and clothing, as falsely suggesting a connection with the late musician Benny Goodman). Setting aside factor 3, which is not disputed, none of these factors looks to information that Mr. James would be in a position to provide.

Rather all three remaining factors look to the *public's* knowledge, *not* Mr. James's knowledge. Those factors will be established, or refuted, through evidence of the public's recognition, a significant amount of which has been produced by LBJ Trademarks and cited by Mr. Ham, and through Mr. Ham's expert witness testimony. None will be established though any information or testimony that Mr. James can or will provide.

Section 2(c) of the Lanham Act bars registration of any mark that "consists of or comprises a name . . . identifying a particular living individual except by his written consent." 15 U.S.C. § 1052(c). In determining whether a particular living person bearing the name at issue would be associated with the proposed mark, refusal is proper if either of the following is true:

- (1) if the person is so well known that the public would reasonably assume the connection; or
- (2) the individual is publicly connected with the business in which the mark is used.

In re Richard M. Hoeffline, 97 U.S.P.Q.2d 1174, 1176 (T.T.A.B. 2010) (affirming refusal of OBAMA BAHAMA PAJAMAS for pajamas based on § 2(c)); *see also Krause v. Krause Publications, Inc.*, 76 U.S.P.Q.2d 1904 (T.T.A.B. 2005). If the Board finds that the person enjoys a reputation of such fame to be to recognizable by the public at large,

such as in the case of a well-known celebrity, then no connection to the relevant goods need even be shown. *Id.* And courts have repeatedly held that 2(c) applies with equal force to nicknames identifying a particular living individual. *See, e.g., Hot Stuff Foods, LLC v. Mean Gene's Enters., Inc.*, 468 F. Supp. 2d 1078 (D.S.D. 2006); *Reed v. Bakers Engineering & Equip. Co.*, 100 U.S.P.Q. 196, 199 (1954).

Again, by definition, this showing does not depend on information or knowledge from Mr. James, but on evidence that he and his King James nickname, are so famous in the eyes of the public at large that that the public would assume a connection between Applicant's King James apparel and Mr. James. As with § 2(a), LBJ Trademarks has produced the relevant, publicly available documents and Mr. Ham has relied upon those documents in offering his opinions. Mr. Ham is the correct deponent to examine with respect to these issues. Any background information that Applicant might seek regarding Mr. James or his King James nickname can be provided more easily, and without any burden, by a corporate representative of LBJ Trademarks.

B. The Board Should Issue a Protective Order Against a Deposition of Mr. James at this Time

Although the Rules contemplate liberal discovery, the right to a deposition is not unlimited and the Board has discretion to manage the discovery process in order to balance the discovery proponent's need for the requested testimony against harm that may result from discovery abuse. *E.g., FMR Corp. v. Alliant Partners*, 51 USPQ2d 1759, 1761 (TTAB 1999) (issuing protective order barring deposition of executive). To that end, Rule 26 of the Federal Rules of Civil Procedure allows the Board to limit discovery if it finds that the requested discovery is obtainable from other sources that are more convenience and less burdensome than the discovery sought. *Id.*

For example, the Board, consistent with the practice of many courts, has limited discovery of high level executives where they do not have relevant information that could not be obtained from lower-level employees. *Id.* at 1763-64. At a minimum, courts generally insist that a party seeking discovery from an executive start with lower level employees to determine whether there are gaps in relevant information that can only be filled by an executive. *See, e.g., FMR Corp.*, 51 USPQ2d at 1762 (“[C]ourts have granted a protective order when a party seeks to initiate its discovery ‘at the top’ before exhausting less intrusive discovery methods.”). For instance in *Salter v. Upjohn Co.*, 593 F.2d 649 (5th Cir. 1979), the Court upheld a protective order barring a deposition where the proponent sought to depose the corporate president in the first instance before deposing other employees with more direct knowledge of the relevant facts. *See also Baine v. General Motors Corp.*, 141 F.R.D. 332, 334-336 (M.D. Ab. 1991).

Mr. James is a professional basketball player, celebrity, and public figure, with a host of endorsements and business interests managed by various organizations he owns or controls, including LBJ Trademarks. Employees and officers of LBJ Trademarks, as its name suggests, handle Mr. James’s trademark-related business, such as the licensing of his name and nickname, prosecution and maintenance of his trademark portfolio, and policing the marketplace for misuse or infringement of his intellectual property. To the extent Opposers have any relevant information subject to discovery, this information can be obtained more easily and without burden, from a corporate representative of LBJ Trademarks, as offered in Opposers’ Initial Disclosures and in Opposers’ subsequent discussions and correspondence with Applicant.

Yet, Applicant has not even bothered to notice a deposition on LBJ Trademarks.

It seems clear that the goal of Applicant's Notice of Deposition is to harass Mr. James, rather than engage in a good faith attempt to obtain relevant testimony. The Board should prevent this harassment by issuing the requested Protective Order preventing any deposition of Mr. James.

At a minimum, Applicant should be required to depose Mr. Ham and LBJ Trademarks and make a showing that there is some gap in relevant testimony that can only be filled by Mr. James before pressing for his deposition, just as parties seeking depositions of high level executives in the *FMR* and *Upjohn* cases were barred from "starting at the top" with depositions of high-level employees.

IV. CONCLUSION

The only relevant issues in this case are the public's association of King James with Mr. James and the public's understanding that athletes commonly endorse Applicant's products. Opposers have repeatedly indicated Mr. James has no relevant knowledge or information concerning these issues and Applicant has provided no basis to believe otherwise. Instead, Applicant blithely speculates, without any support, that Mr. James "knows everything". Instead, Opposers have identified two witnesses – Mr. Ham and a corporate witness for LBJ Trademarks – who possess information and evidence relevant to these issues.

Applicant continues to ignore these relevant witnesses and chooses, instead, to press for the deposition of only Mr. James. In doing so, Applicant is seeking only to harass Mr. James. Applicant's calculus seems to be the hope that Mr. James's time is worth more than his interest in this matter. Therefore, by pressing for Mr. James's needless deposition, he can prompt Mr. James to drop his valid claims against

Applicant's marks. Such gamesmanship should not be countenanced, particularly where other witnesses who possess a greater level of relevant evidence exist and have been identified. Accordingly, Opposers respectfully request that the Board grant their Motion for a Protective Order.

Respectfully submitted,

Date: November 8, 2020

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Exhibit “A”

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 88111451
For the Mark: KING JAMES
Published in the Official Gazette of April 2, 2019

LBJ TRADEMARKS, LLC, and)	
LEBRON JAMES,)	Opposition No. 91/249,886
)	Serial No. 88/111,451
Opposers,)	Mark: KING JAMES
)	
v.)	
)	
JAMES GOLDING,)	
)	
Applicant.)	
<hr/>		
LBJ TRADEMARKS, LLC, and)	
LEBRON JAMES,)	Cancellation No. 92/072,657
)	Registration NO. 3,972,356
Petitioners,)	Mark: KING JAMES ACTIVEWEAR
)	
v.)	
)	
JAMES GOLDING,)	
)	
Registrant.)	
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REPORT OF ELDON L. HAM
FOR THE TRADEMARK TRIAL AND APPEAL BOARD

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INTRODUCTION AND QUALIFICATIONS

I have been engaged by the law firm Troutman Pepper, counsel for LeBron James and LBJ Trademarks LLC, in connection with their opposition to the KING JAMES trademark application and cancellation of the KING JAMES ACTIVEWEAR registration in question. I have been asked to independently review, opine on, and submit a written report regarding the specific questions set forth below (this “Report”).

I am a lawyer licensed to practice in Illinois since 1976, and I am a member of the faculty at IIT/Chicago-Kent College of Law, a tier-1 national law school where I have taught sports law since 1994. I am the author of five published books on matters of sports and society, a number of law review articles, and numerous other sports pieces on law and history, including such topics as intellectual property, fair use, league commissioner authority, antitrust, disabled athletes, and the like. I am also the designated sports legal analyst for WSCR Sports Radio Chicago, and I have appeared on numerous radio and television programs on matters of sports law and business. I have been a panel member or featured speaker at numerous venues and organizations including the 100th anniversary of the World Series forum in Boston, the Chicago History Museum, the Alabama State Bar annual meeting, the Dallas Bar Association, DePaul Law School, John Marshall Law School, Northwestern University Pritzker School of Law, the IIT/Chicago-Kent College of Law, and the Meritas Law Litigation Group.

In 1992, I co-founded a company that created, manufactured, and distributed trivia board games licensed by such properties as the National Football League, Major League Baseball, Caesar’s Palace, CNN, and others. Games were sold through numerous retail outlets nationally including Toys-R-Us, Walmart, and Target.

In 1994, I was a plaintiff in a lawsuit filed in the District Court for the Northern District of Illinois (*Zucker et al v. American Greetings Corp.*, No. 94 C 1844, N.D. Ill.) alleging the

violation of trade secret intellectual property rights related to the creation and proposed distribution of sports greeting cards that were to be licensed by various sports leagues such as the NFL, MLB, National Basketball Association (“NBA”), and others.

In addition to teaching and writing on matters of sports law, I have personally participated in the business of representing professional athletes throughout the United States. Beginning in 1987, I performed as outside legal counsel to Zucker Sports Management Group, a nationally recognized sports agency firm (“Zucker Sports Management”). In 1988, I represented Super Bowl MVP Richard Dent when he brought an action in the Circuit Court of Cook County, Illinois, Chancery Division, to challenge a league suspension near the beginning of the 1988 NFL season. (*Dent v. National Football League*, Circ. Court of Cook Co. Ill., Chancery Division, No. 88 CH 8111). Beginning in 1989, I became a principal in Zucker Sports Management and also a law partner of its founder and CEO, Stephen W. Zucker.

In 1995, I represented Nick Knapp, a basketball player recruited to play under scholarship at Northwestern University. Knapp brought a federal disability action when Northwestern refused to allow him to play competitive intercollegiate basketball after he had collapsed from an undiagnosed heart episode. (*Knapp v. Northwestern University*, 542 F. Supp. 1191 (N.D. Ill. 1996)). The Knapp case is still featured in sports law textbooks used nationally.

Zucker Sports Management began its representation business by signing the Chicago Bears first round pick, quarterback Jim McMahon who won the Super Bowl with the Bears after the 1985 season. The practice expanded each year. Zucker Sports Management represented 17 players chosen in the 1989 NFL draft, including Deion Sanders, which caused ESPN to televise portions of the draft from Mr. Zucker’s residence in the Chicago suburbs. From 1987 through approximately 1997, I represented over 50 professional athletes in numerous legal matters

including various contracts concerning endorsements by, or the marketing of, professional athletes. These athletes were comprised mostly of players in the NFL, NBA, and MLB, plus various other sports. In addition to Deion Sanders and Jim McMahon noted above, such client list also included star NFL players Richard Dent, Quentin Coryatt, Richmond Webb, Broderick Thomas, Louie Oliver, Dave Duerson, and many others, plus Dee Brown (Boston Celtics), Kenny Lofton (Cleveland Indians), and Muhammad Ali among a number of non-NFL clients.

A more thorough CV has been submitted in connection with this Report and is attached hereto as Exhibit A.

ASSIGNMENT

My assignment was to opine on three principal questions highlighted below and to prepare a written report regarding same. This is my Report based on the specific research and references cited herein; my personal knowledge and expertise from teaching and writing about sports, law, and athletes; and my professional expertise and experience with professional athletes. I have considered and relied upon the documents cited herein and those listed in Exhibit B to this Report. Exhibit C (“Ex. C”) to this Report contains copies of Complainants’ production to date in this matter which are documents that I have reviewed and considered and upon which I rely in my Report. I am aware of no conflicts of interest regarding the parties and subject matter herein. The conclusions enumerated in this Report are based upon my professional opinion. I have been assigned the following specific questions to consider and address:

▶ Is the NBA player LeBron James known and commonly identified as “King James”?

▶ Was LeBron James known and commonly identified as “King James” during and before the year 2010?

▶ **Do professional athletes, including NBA players, commonly allow their names, including nicknames, to be used in connection with various apparel brands and items?**

SUMMARY OF OPINIONS

Following is a summary of my professional opinions expressed more fully herein, based on my cited sources, my own knowledge and expertise gained through teaching and writing about sports and representing and working with athletes: The NBA player LeBron James is known and commonly identified as King James; Mr. James was known and commonly identified as King James during and long prior to 2010; professional athletes, including NBA players, commonly allow their names and nicknames to be used in connection with various apparel brands and items; and the general public and sports fans would immediately associate with LeBron James any items of apparel displaying or sold under the name King James.

A. High profile athletes and other celebrities are often known by their nicknames.

It is not unusual for celebrities, athletes, and similar public figures to have nicknames that are widely recognized. Athletes in particular often embrace or are frequently identified by nicknames that are commonly known and associated with those respective athletes. Professional athletes are part of the entertainment business, so athletes are often celebrities in addition to becoming sports stars and superstars. For example, a basic Google search reveals 300 NBA basketball players associated with myriad nicknames.¹ Many of those names are commonly known and publicly used to identify those respective players. Some of today's NBA players with nicknames include Giannis Antetokounmpo ("Greek Freak"), Jimmy ("Buckets") Butler, Anthony Davis ("Unibrow"), and James Harden ("The Beard"). Not all nicknames are used

¹ See, for example, 300 NBA player nicknames, supported by 208 footnotes, listed at Wikipedia. https://en.wikipedia.org/wiki/List_of_nicknames_used_in_basketball (viewed May 21, 2020); see also Ex. C at LBJ_0002100 – LBJ_0002126.

interchangeably with a player's real name with the same frequency, however.

Athlete and celebrity nicknames can be arranged into a few basic categories. Sometimes these nicknames invoke a degree of grandeur, as in "The Greatest" (Muhammad Ali) or "Prime Time" (Deion Sanders). Sometimes they denote royalty like "The Queen of Soul" (Aretha Franklin), "Duke" (John Wayne), "Sir Charles" (Barkley), "His Airness" (Michael Jordan), or the "Sultan of Swat" (Babe Ruth). Often the names offer clever references to what the celebrity is known for, whether by skills or appearance, including "The Refrigerator" (William Perry), "The Round Mound of Rebound" (Charles Barkley), or "Babe" (Ruth), or sometimes just by initials as a shortened sign of status ("MJ" Michael Jordan), ("KD" Kevin Durant), ("KG" Kevin Garnett), and ("CPIII" Chris Paul).

Nicknames frequently appear in combination with a celebrity's own given name. See, for example, "Hakeem the Dream" (Olajuwon), the "Great Gretzky" (Wayne), "Jimmy Mac" (Jim McMahon), "Melo" (Carmelo Anthony), "Boom Boom" Mancini, and "Air Jordan" (Michael). Some nicknames are short, although some can be rather long: "The Chairman of the Board" (Frank Sinatra) or Barkley's "Round Mound of Rebound."

B. LeBron James is presently known and commonly identified as "King James."

Some athletes are known by more than one nickname, such as Charles Barkley ("Round Mound of Rebound," "Chuck," and "Sir Charles"), George Herman Ruth, Jr. ("Babe," "Bambino," "Sultan of Swat"), and Shaquille O'Neal ("Shaq," "Shaq Attack," "Superman"). Generally, one nickname stands out (such as Shaq, Air Jordan, or "Babe" Ruth) and sometimes the nickname becomes a commonly used name for the player. LeBron James is, or has been, known by various nicknames, including "King James," "Bron," and "The Chosen One." The "King James" and "Chosen One" handles originated during Mr. James' high school basketball days in Akron, Ohio, evidenced by a noteworthy February 18, 2002 issue of *Sports Illustrated*

released when Mr. James was a high school junior. Mr. James was prominently featured on the cover² along with the heading “The Chosen One,” while the inside feature article by Grant Wahl compared Mr. James to Michael Jordan by using their respective nicknames: “Here, together, are His Airness and King James, the 38-year-old master and the 17-year-old prodigy...”³

Today Mr. James continues to be widely and commonly identified as “King James.” The King James nickname is the primary one that the public associates with Mr. James, while his other nicknames, such as “Bron” and the “Chosen One,” are far less prominent. The King James nickname plays upon the dual meaning of the word “court,” as the retinue and residence of a king and as the surface on which basketball is played. It is catchy, regal, easy to say, and blends with his own surname, making it particularly apropos for Mr. James as well as easy to remember and use. Moreover, Mr. James recognizes and openly embraces the “King James” name for himself. His twitter handle is @KingJames and currently has more than 46 million followers⁴; his Instagram account is @kingjames and that account currently has more than 70 million followers.⁵ The reach of these social media pages in which Mr. James has held himself out to the public as King James is enormous. The Basketball-Reference.com website places “King James” as Mr. James’s first nickname among those listed.⁶ In another example, the *Encyclopedia*

² See Ex. C at LBJ_0002275.

³ Wall, Grant, “Ahead of his class,” *Sports Illustrated*, 2002 Feb 18, <https://vault.si.com/vault/2002/02/18/ahead-of-his-class-ohio-high-school-junior-lebron-james-is-so-good-that-hes-already-being-mentioned-as-the-heir-to-air-jordan> (viewed May 21, 2020); see also Ex. C at LBJ_0000001 – LBJ_0000003.

⁴ See twitter.com/KingJames (viewed August 19, 2020); see also Ex. C at LBJ_0002255.

⁵ See www.instagram.com/kingjames/?hl=en. (viewed August 19, 2020); see also Ex. C at LBJ_0002127.

⁶ See Basketball-Reference, LeBron James, <https://www.basketball-reference.com/players/j/jamesle01.html> (viewed August 19, 2020); see also Ex. C at LBJ_0002156.

Britannica refers to Mr. James as “King James,” listing it prominently as the one recognized alternative name besides his given name (“LeBron James” and “LeBron Raymone James”).⁷

LeBron James

LeBron James, in full **LeBron Raymone James**, byname **King James**, (born December 30, 1984, Akron, Ohio, U.S.), American professional basketball player who is widely considered one of the greatest all-around players of all time and who won National Basketball Association (NBA) championships with the Miami Heat (2012 and 2013) and the Cleveland Cavaliers (2016).

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Moreover, the LeBron James Family Foundation, a charitable organization founded by Mr. James, prominently features a crown as part of its logo.⁹

Further evidence that Mr. James is widely and commonly referred to as King James can be found in many recent news and other media articles. For example in a CNN.com Business piece about a new Nike commercial, the first sentence referred to “King James,” the only nickname used in the article (“Nike has turned to King James to carry out its latest message...”).¹⁰ Another example is a *Bleacher Report* article (June 9, 2013) titled “Evolution of LeBron James: Complete Timeline Capturing King James’ Dominance.”¹¹ On June 20, 2020, a Google search of “King James NBA” produced over 59 million results of print and video references, including countless hits from CNN, YouTube, Twitter, ESPN, Pinterest, CBS News,

⁷ Augustyn, Adam, “LeBron James, American Basketball Player,” *Encyclopedia Britannica*, <https://www.britannica.com/biography/LeBron-James> (viewed June 9, 2020); see also Ex. C at LBJ_0002181 – LBJ_0002184 (“LeBron James, in full LeBron Raymone James, byname King James”).

⁸ Id.

⁹ <https://www.lebronjamesfamilyfoundation.org/> (viewed June 3, 2020); Ex. C at LBJ_0002250.

¹⁰ Kalilanz, Parija, “Nike’s new ad with LeBron James wants people to know there’s hope,” *CNN.com*, 2020 May 23, <https://www.cnn.com/2020/05/23/business/nike-lebron-james-ad-hope/index.html> (viewed May 23, 2020); see also Ex. C at LBJ_0000574 – LBJ_0000575.

¹¹ Bowers, Brendan, “Evolution of LeBron James: complete timeline capturing King James’ Dominance,” *Bleacher Report*, 2013 June 9, <https://bleacherreport.com/articles/1666129-evolution-of-lebron-james-complete-timeline-capturing-king-james-dominance> (viewed June 22, 2020); see also Ex. C at LBJ_0000588 – LBJ_0000592.

NPR and other recognized national sources (a sampling of which shows frequent, multitudinous hits for King, James, or King James in referencing Mr. James).¹²

Overall, there is a plethora of contemporary national media material referring to Mr. James as “King James” (see Google search cited above, plus numerous footnotes herein). For specific examples, see the *ESPN.com* article “Destination LeBron: Where could King James land this summer?” (June 29, 2018) and *USA Today’s* “The three different Nike LeBron sneakers that King James wore for a Lakers game with Warriors” (Oct. 6, 2019).¹³ Mr. James’ fame and “King James” handle are so common that they are not confined to the United States. For example, he is a three-time Olympian and, more recently, *The Athletic* published a piece on Feb. 13, 2020, quoting Mr. James’ Lakers teammate Jared Dudley about the team’s September 2019 trip to China. Mr. Dudley reportedly remarked that Mr. James and the team were greeted by 4,000 people who “kept chanting his name, ‘King James, King James.’”¹⁴

To date, Mr. James has been featured on the cover of *Sports Illustrated* at least 26 times, including two feature articles headlining his “King” status on the cover (“King James Revised,” in 2012, and “All the King’s Men” from 2014).¹⁵

¹² Google search of “King James NBA” on June 20, 2020: https://www.google.com/search?q=King+James+NBA&ei=aDPuXtv5Jdu4tAaV_4ngAw&start=50&sa=N&ved=2ahUKewjzby_4pDqAhVbHM0KHZV_AjwQ8tMDegQIExA0&biw=1280&bih=630; see also Ex. C at LBJ_0002098 – LBJ_0002099.

¹³ “Destination LeBron: where could King James land this summer?” *ESPN.com*, 2018 June 29, https://www.espn.com/nba/story/_/id/23772599/destination-lebron-where-king-james-land-free-agency-summer (viewed May 23, 2020) (see also Ex. C at LBJ_0000576 – LBJ_0000587); Bowers, Brendan, “The 3 different Nike LeBron sneakers King James wore for Lakers game with Warriors,” *USA Today Sports LeBronWire*, 2019 Oct 6 <https://lebronwire.usatoday.com/2019/10/06/the-3-different-nike-lebron-sneakers-king-james-wore-for-lakers-game-with-warriors/> (viewed May 23, 2020) (see also Ex. C at LBJ_0000595 – LBJ_0000596).

¹⁴ Vardon, Joe, and Lloyd, Jason, “A card shark who ‘eats like s—’ and helps save lives,” *The Athletic*, 2020 Feb 13, <https://theathletic.com/1593937/2020/02/13/the-most-amazing-thing-i-have-ever-seen-anyone-do-laugh-cry-be-electrified-by-the-nbas-favorite-lebron-james-stories/> (viewed June 22, 2020).

¹⁵ See <https://www.si.com/nba/2007/06/07/07lebron-james-si-covers> (viewed June 9, 2020); see also Ex. C at LBJ_00002275 – LBJ_00002300. The 2012 and 2014 covers referenced above can be found in Ex. C at LBJ_0002291 (“King James, Revised”) and LBJ_0002296 (“All the King’s Men”).

Conclusion: LeBron James is closely associated with the name King James and is linked to and identified as King James innumerable times by all varieties of the national media serving the general public, including ESPN, CNN, *Sports Illustrated*, *USA Today*, *Encyclopedia Britannica*, and many others. It is my professional opinion that LeBron James is currently known and commonly identified as “King James.” So far as the media and general public perceptions go, LeBron James is King James and King James refers to LeBron James.

C. LeBron James has been known and commonly identified as “King James” since at least as early as 2002.

There are innumerable references to LeBron James as “King James” found in the national media and various local media across the country going back to at least 2002. As noted above, Mr. James was featured as the 2002 *Sports Illustrated* cover story and referenced therein as “King James” while he was still a junior in high school. By mid-December 2002, after his high school team had defeated the top nationally ranked team Oak Hill Academy by a 20-point margin in a game televised nationally by ESPN2, Mr. James was routinely referred to in the national press as “King James” in headlines and articles coast to coast.¹⁶ Mr. James was still called “King James” in 2010 when he famously left Cleveland to play in Miami.¹⁷ Also in 2010,

¹⁶ For example, see Ex. C at LBJ_0000004 – LBJ_0000005 (“King James should keep close watch of his throne,” *Cleveland Plain Dealer*, 2002 Dec. 16); Ex. C at LBJ_0000014 – LBJ_0000016 (Associated Press, “James struts his stuff for nation: Real deal: Ohio prep star a national hit,” *Telegraph Herald*, Des Moines, Iowa, 2002 Dec. 15); Ex. C at LBJ_0000012 – LBJ_0000013 (Jenkins, Bruce, “Great college days are just a myth for James,” *San Francisco Chronicle* (Final Ed.), San Francisco, CA, 2002 Dec. 14); Ex. C at LBJ_0000011 (Post Wire, “King James Delivers,” *New York Post*, New York, NY, 2002, Dec. 13); Ex. C at LBJ_0000006 – LBJ_0000007 (Markus, Don, “James scored 31, steals show on national stage,” *Baltimore Sun* (Final Ed.), 2002 Dec. 13); Ex. C at LBJ_0000008 – LBJ_0000010 (Mariotti, Jay, “Just call it hype school hoops,” *Chicago Sun Times*, 2002 Dec. 13); Ex. C at LBJ_0000017 – LBJ_0000019 (Poole, Monte, “World is ready for ‘King James,’ but is he ready?,” *Alameda Time-Star* (Alameda, CA), 2002 Dec. 15); Ex. C at LBJ_0000020 – LBJ_0000022 (Harvey, Buck, James and Judson: Just boys being men, *San Antonio Express-News* (Texas), 2002 Dec. 15); Ex. C at LBJ_0000023 – LBJ_0000026 (Ryan, Shammon, The King Holds Court, *Philadelphia Inquirer*, 2002 Dec. 16).

¹⁷ Moehringer, J.R., 2010, September, “Into the funhouse with King James,” *GQ.com*, <https://web.archive.org/web/20100819162817/http://www.gq.com/sports/profiles/201009/lebron-james-september-gq-miami-heat-summer-lebronathon> (viewed May 26, 2020); see also Ex. C at LBJ_0000597-LBJ_0000598.

after Mr. James arrived in Miami, the *Political Mavens* website published this author's piece titled, "King James: the next Michael Jordan?"¹⁸

Since at least 2002 and continuing up through today, Mr. James has been called "King James" in person, on radio and television¹⁹, and by print journalists²⁰ everywhere throughout the United States. Even a 2003 book included his "King James" name in the title: *King James: Believe the Hype—The LeBron James Story* published by St. Martins/Griffin in 2003 and 2005 (paperback).²¹ I understand that the United States Patent and Trademark Office has cited this book as evidence that the public understandings "King James" to refer to Mr. James.²² I have reviewed a 2005 PTO office action in which the trademark examiner refused registration of the mark KING JAMES "because [it] consists of or comprises matter that may falsely suggest a connection with LeBron James" and "[a]lthough not connected with the goods that applicant provides under the proposed mark, LeBron James is so famous that consumers would presume a connection" between the applicant's products and Mr. James.²³ I agree with the examiner that

¹⁸ Ham, Eldon, 2010 Oct. 20, "King James: the next Michael Jordan?" *Political Mavens*, <http://politicalmavens.com/index.php/author/eldonham/> (viewed May 26, 2020); see also Ex. C at LBJ_0000593-LBJ_0000594.

¹⁹ I reviewed and have included here hundreds of examples of references to Mr. James as King James on television programs in local and national markets, including for example, many such references on ESPN, ABC, NBC, CNN, and Fox Business channels, as well as local broadcast affiliates from Honolulu to Seattle to New York to Miami and in between, and on radio broadcasts, going back to 2005, the first year for which I was able to obtain broadcast transcripts. See Ex. C at LBJ_0000472 – LBJ_0000473; LBJ_0000525 – LBJ_0000527; LBJ_0000536; LBJ_000599 – LBJ_0002097.

²⁰ Examples of references to Mr. James in print articles include, for example, the many articles produced in this case, and included here in Ex. C, e.g., at LBJ_0000001 – LBJ_00000058; LBJ_0000090 – LBJ_0000196; LBJ_0000200 – LBJ_00000471; LBJ_0000474 - LBJ_00000524; LBJ_0000528 – LBJ_00000535; LBJ_00000537 – LBJ_00000598.

²¹ Jones, Ryan, *King James: Believe the Hype—The LeBron James Story*, St. Martins/Griffin (2005), still in print and available from Amazon. See Amazon website at: <https://www.amazon.com/King-James-Believe-Hype-LeBron/dp/0312349920>; see also Ex. C at LBJ_0000081.

²² Ex. C at LBJ_0000079 – LBJ_0000082.

²³ Ex. C at LBJ_0000079.

Mr. James and his nickname King James are so famous that the public would assume goods sold under that name, and in particular apparel sold under that name, are connected to Mr. James.

Mr. James' broad image and recognition reach beyond sports, evidenced by the breadth of Google search results cited herein, national appearances on such network programs as ABC's Good Morning America²⁴ and, notably, by Mr. James hosting the 2007 season premiere of the long running, popular NBC television program *Saturday Night Live* (season 33, episode 1). The live show referred to him as LeBron James, but the "SNL Fandom" website featuring such appearance introduced him in print as "LeBron James (born December 30, 1984), nicknamed King James..."²⁵ In addition to his many personal appearances on television and various documentaries,²⁶ Mr. James has also appeared in scripted movies and television shows playing himself, including, for example, the 2015 Judd Apatow-directed movie, *Trainwreck*, a 2009 episode of the HBO show, *Entourage*, and an episode of Cartoon Network's *Teen Titans Go!*, in which he voiced an animated version of himself.²⁷

The public recognition of Mr. James as King James and of King James as Mr. James is clearly not limited to basketball fans or sports fans. Mr. James has also been referred to as King James in publications and on broadcasts geared toward readers and viewers well beyond sports or basketball fans. In addition to his personal appearances on ABC's Good Morning America, on many occasions, Mr. James has been discussed on that program and referred to often as King

²⁴ Ex. C at LBJ_0000707 – LBJ_0000708.

²⁵ See https://snl.fandom.com/wiki/LeBron_James (viewed June 20, 2020); see also Ex. C at LBJ_0002177.

²⁶ See https://www.imdb.com/name/nm1429908/?ref=fn_al_nm_1 (viewed September 17, 2020); see also Ex. C at LBJ_0002261 – LBJ_0002274.

²⁷ See https://www.imdb.com/name/nm1429908/?ref=fn_al_nm_1 (viewed September 17, 2020); see also Ex. C at LBJ_0002261 – LBJ_0002262, LBJ_0002264. Mr. James IMDB page shows 14 credits as an actor, starting in 2008 (Id. at LBJ_0002264), 107 credits as "self" starting in 2006 (Id. at LBJ_0002264 – LBJ_LBJ_0002272), and also notes that King James is his nickname (Id. at LBJ_0002272).

James.²⁸ Similarly, in further examples, Mr. James has often been discussed and referred to as King James on the national programs, CBS This Morning²⁹ and NBC’s Today Show.³⁰ Mr. James was interviewed by Larry King on CNN Larry King Live during which Mr. King opened the show with “Tonight, King James – LeBron James exclusive”³¹ Mr. James even introduced eventual Democratic nominee, Hillary Clinton, before Secretary Clinton gave a campaign speech in Cleveland in 2016, with one local paper leading its story with: “On Friday, Queen Bey gave her blessing to Hillary Clinton’s presidential bid in Cleveland. Sunday, it was King James’ turn.”³² In the February 2009 issue of *GQ*,³³ Mr. James is referred to as “King James.”³⁴ A March 19, 2007 article in *Jet*³⁵ about the birth of Mr. James’s first son is entitled “King James’ New Prince.”³⁶ Mr. James is referred to as “King James” in an article in the May

²⁸ See, e.g., Ex. C at LBJ_0000472 – LBJ_0000473; LBJ_0000525 – LBJ_0000527; LBJ_0000536; LBJ_0000644 – LBJ_0000645; LBJ_0000674 – LBJ_0000677; LBJ_0000686 – LBJ_0000688; LBJ_0000689 – LBJ_0000690; LBJ_0000698 – LBJ_0000699; LBJ_0000707 – LBJ_0000708; LBJ_0000718 – LBJ_0000719; LBJ_0000813 – LBJ_0000815; LBJ_0001037 – LBJ_0001040; LBJ_0001107 – LBJ_0001109; LBJ_0001273 – LBJ_0001280; LBJ_0001369 – LBJ_0001371; LBJ_0001372 – LBJ_0001374; LBJ_0001414 – LBJ_0001416; LBJ_0001417 – LBJ_0001418; LBJ_0001586 – LBJ_0001587; LBJ_0001588 – LBJ_0001589; LBJ_0001590 – LBJ_0001592; LBJ_0001679; LBJ_0001721 – LBJ_0001722; LBJ_0001774 – LBJ_0001777; LBJ_0001796 – LBJ_0001799; LBJ_0001800 – LBJ_0001801; LBJ_0001802 – LBJ_0001803; LBJ_0001804 – LBJ_0001807; LBJ_0001853 – LBJ_0001855; LBJ_0001889 – LBJ_0001891; LBJ_0001925 – LBJ_0001927; LBJ_0001943 – LBJ_0001944; LBJ_0001945 – LBJ_0001950; LBJ_0001951 – LBJ_0001953; LBJ_0001965 – LBJ_0001966.

²⁹ See Ex. C at LBJ_0000709 – LBJ_0000712; LBJ_0001593 – LBJ_0001600; LBJ_0001725 – LBJ_0001733; LBJ_0001764 – LBJ_0001773; LBJ_0001817 – LBJ_0001821; LBJ_0001835 – LBJ_0001838; LBJ_0001885 – LBJ_0001888; LBJ_0001909 – LBJ_0001911; LBJ_0001921 – LBJ_0001924.

³⁰ See Ex. C at LBJ_0000638 – LBJ_0000639; LBJ_0000670 – LBJ_0000673; LBJ_0000700 – LBJ_0000702; LBJ_0001380 – LBJ_0001389; LBJ_0001390 – LBJ_0001401; LBJ_0001449 – LBJ_0001452; LBJ_0001578 – LBJ_0001580; LBJ_0001581 – LBJ_0001585; LBJ_0001809 – LBJ_0001816; LBJ_0001969 – LBJ_0001977; LBJ_0001978 – LBJ_0001997.

³¹ Ex. C at LBJ_0000739.

³² Ex. C at LBJ_0000479.

³³ See www.gq.com (viewed August 14, 2020), showing that the magazine’s content categories include Style, Grooming, Culture, Wellness, and Sports; see also Ex. C at LBJ_0002128.

³⁴ Ex. C at LBJ_0000031.

³⁵ See www.jetmag.com (viewed August 14, 2020), showing that the magazine’s content categories include Entertainment, News, Lifestyle, Music, and Beauty; see also Ex. C at LBJ_0002258 – LBJ_0002260.

³⁶ Ex. C at LBJ_0000029.

26, 2008 issue of New York Magazine.³⁷ Still other such examples include *MarketWatch*³⁸ and *Politico.com*³⁹. In another noteworthy example, a May 2009 article in *Washingtonian* magazine, entitled 26 Reasons to Love Washington, contrasts the style of Mr. James, who it notes “goes by the nickname King James” to that of Washington Capitals star Alex Ovechkin.⁴⁰

Further evidence that the public has understood since long before 2010 that “King James” refers to Mr. James are the many articles that refer to the “King” or “King James” as part of their title without any explicit reference to “LeBron James.” For instance, a May 25, 2009 article about Mr. James in *Jet*, has the title “NBA’s ‘King James’ Wins 1st League MVP.”⁴¹ The reader of *Jet* is expected to immediately understand that “King James” is LeBron James. This is also evidenced by the *Jet* article cited above, entitled, “King James’ New Prince.”⁴² Other such articles include, for example, the December 16, 2002 *Plain Dealer* article entitled, “King James Should Keep Close Watch on his Throne,”⁴³ the December 13, 2002 *New York Post* article “King James Delivers,”⁴⁴ the December 15, 2002 *Alameda Time-Star* article entitled “World is ready for ‘King James,’ but is he ready?,”⁴⁵ and the December 16, 2002 *Philadelphia Inquirer* article entitled “The King Holds Court,”⁴⁶ all of which were cited above. Further examples include, the July 8, 2002 *The Record* (Bergen County, NJ) article entitled “KING JAMES: LeBron rules over

³⁷ Ex. C at LBJ_0000030.

³⁸ Ex. C at LBJ_0000346.

³⁹ Ex. C at LBJ_0000368.

⁴⁰ Ex. C at LBJ_0000039.

⁴¹ Ex. C at LBJ_0000033.

⁴² Ex. C at LBJ_0000029.

⁴³ Ex. C at LBJ_0000004.

⁴⁴ Ex. C at LBJ_0000011.

⁴⁵ Ex. C at LBJ_0000017 – LBJ_0000019.

⁴⁶ Ex. C at LBJ_0000023 – LBJ_0000026.

his prep competition;”⁴⁷ the June 3, 2007 The Kansas City Star article entitled “All Hail King James;”⁴⁸ and February 21, 2005, *AP State & Local Wire* articles entitled “King James or the Gift: LeBron is just his humble self.”⁴⁹ Further examples of publications using “King James” in their titles to refer to Mr. James are set forth in my Exhibit B and are attached in my Exhibit C. More recent examples also include, for example, the March 6, 2020 *Washington Post* article entitled “Benevolent King James won’t abdicate;”⁵⁰ the June 3, 2019 *Sarasota Herald Tribune* article entitled “BUSINESS SCORE CARD – Tesla’s CEO and King James;”⁵¹ the May 12, 2012 *Chicago Daily Herald* article “King James rules NBA again;”⁵² and several additional articles that I have reviewed and are included in my Exhibits.

Conclusion: It is my professional opinion that beginning during his high school playing days in 2002 through 2010 when he left Cleveland to play in Miami and in subsequent years up to the present, LeBron James was frequently and commonly identified as “King James” and the public understood and understands “King James” to refer to LeBron James.

D. Professional athletes, including NBA players, commonly allow their names and nicknames to be used with various apparel brands and items.

For decades athletes have been associated with fashion and apparel, sometimes including their own apparel lines. Star PGA golfer Johnny Miller gained a reputation as a fashion template in the early 1970s and soon had his own line of men’s dresswear at Sears Roebuck.⁵³ Other

⁴⁷ Ex. C at LBJ_0000102 – LBJ_0000105.

⁴⁸ Ex. C at LBJ_0000290 – LBJ_0000291.

⁴⁹ Ex. C at LBJ_0000225 – LBJ_0000227.

⁵⁰ Ex. C at LBJ_0000569 – LBJ_0000571.

⁵¹ Ex. C at LBJ_0000546 – LBJ_0000548.

⁵² Ex. C at LBJ_0000375 – LBJ_0000377.

⁵³ Myers, Alex, “Johnny Miller’s bold fashion claim to fame,” *Golf Digest*, 2017 Apr 26, <https://www.golfdigest.com/story/johnny-millers-bold-fashion-claim-to-fame>, (viewed May 31, 2020); see also Ex. C at LBJ_0002172 – LBJ_0002176.

athletes have followed, many with athletic shoe endorsements (Michael Jordan, Jim McMahon, Dee Brown) and many others with clothing apparel in general. This author was a principal with Zucker Sports Management and personally involved with several shoe and apparel endorsement contracts involving client athletes, such as NFL client Jim McMahon who negotiated and signed his adidas shoe deal in the 1980s; NFL star Deion Sanders, who developed his “Prime Time” apparel line and “Prime Time” logo beginning in 1989;⁵⁴ Boston Celtics point guard Dee Brown, who signed his Reebok shoe deal, then famously pumped his Reeboks on air while winning the NBA slam dunk contest in 1991; and Muhammad Ali, who endorsed NFL licensed apparel in 1991. Many top athletes have developed their own apparel lines, often with established apparel companies, or have otherwise become identified with apparel brands, such David Beckham, Michael Jordan (Hanes, and “Air Jordan” with Nike), Steve Nash, Jack Nicklaus (Jack Nicklaus Apparel), Greg “the Shark” Norman (Greg Norman Collection), Maria Sharapova (Nike), Russell Westbrook (Barney’s Westbrook XO), Serena Williams, and numerous others.⁵⁵ This is consistent with my personal experience involving celebrated athletes like Deion Sanders (“Prime Time”), Jim McMahon (adidas), and Dee Brown (Reebok). Nike even offers a LeBron sports apparel line as noted on its website.⁵⁶ Moreover, Mr. James is credited with changing consumer fashion at least once when he wore “Beats by Dre” headphones and propelled Beats as a

⁵⁴ See Pinterest photo at <https://www.pinterest.com/pin/478226054152266395/> (viewed June 20, 2020); see also Ex. C at LBJ_0002150 – LBJ_0002152.

⁵⁵ Goldman, Chelena, “15 athletes who have their own clothing lines,” https://www.yardbarker.com/nba/articles/15_athletes_who_have_their_own_clothing_lines/s1_20117158 2018 June 20 (viewed June 5, 2020); see also Ex. C at LBJ_0002185 – LBJ_0002238.

⁵⁶ See Nike website, search results for “LeBron James”: <https://www.nike.com/w?q=lebron%20james&vst=LeBron> (viewed June 20, 2020); see also Ex. C at LBJ_0002153 – LBJ_0002155.

consumer brand as *Esquire* Magazine noted in 2019: “Fans don’t just care about LeBron James the basketball player. They care about LeBron James the *man*. LeBron James the *brand*.”⁵⁷

Conclusion: It is my professional opinion that professional athletes, including NBA players, are commonly associated with various apparel brands and items. Further, the public commonly associates the various apparel brands and items connected to various athletes with those athletes.

OVERALL CONCLUSION

The “King James” name is not a random fluke, nor is it merely a humorous name or one that emphasizes a physical attribute (like “Wilt the Stilt” Chamberlain). It is a fitting name that at once identifies Mr. James with career excellence and ability, and it is uniquely suited to Mr. James since it incorporates his own surname. Moreover, this is, in fact, how he is commonly identified by sports fans and the general public at large. Mr. James earned this name in 2002 while still in high school, and his accolades, accomplishments, and NBA career statistics have been worthy of the King James moniker from high school through his NBA career. Even a cursory web search of Mr. James reveals a plethora of awards and achievements from being named NBA Rookie of the Year to earning four MVP awards and three Finals MVP awards. He has led the NBA in various single season categories, such as points scored, points per game, assists, minutes per game, total games played, and field goals made. Six times he led the NBA in playoff games played, three times in points per playoff game, and four times in playoff minutes per game.⁵⁸ He recently ended a stretch, from 2010 through 2018, that saw his teams (the Miami

⁵⁷ Flammia, Christine, “How the NBA’s best-dressed players turned the tunnel into a business,” *Esquire* Magazine, 2019 June 11, <https://www.esquire.com/style/mens-fashion/a27760825/basketball-fashion-style-nba-business-concrete-runway/> (viewed June 20, 2020); see also Ex. C at LBJ_0002135 – LBJ_0002149.

⁵⁸ Playoff stats discussed here do not include the current 2020 playoffs.

Heat and later the Cleveland Cavaliers) appear in eight consecutive NBA Finals series and as of this writing his Lakers are in the 2020 Western Conference Finals, i.e., a semi-final series. And his teams have won the NBA championship title three times.⁵⁹ So far.

Mr. James' fame and identity are second to none in sports, yet his popularity goes far beyond sports. He often dominates television sports programming, but he also has also appeared in scripted movies and television series and been featured on numerous national non-sports shows including 60 Minutes, Good Morning America, CBS This Morning, Saturday Night Live, Ellen DeGeneres, The Tonight Show, The Late Show with David Letterman, and Jimmy Kimmel Live among many others, before and after 2010.⁶⁰ Along with a multitude of sports publications, he has been featured in numerous non-sports publications including *CNN.com*, the *New York Post*, *USA Today*, *GQ*, *Jet*, *Marketwatch*, *Politico.com*, *Encyclopedia Britannica*, and even my own 2010 article "King James: the next Michael Jordan?" — all cited herein referring to Mr. James as King James.

In my experience, athletes are often known by their nicknames as more fully set forth above. LeBron James is not only largely identified as King James, he embraces that name himself as noted by his "KingJames" Twitter handle and Instagram account. One of the most regal of all such names is "King James," particularly fitting for Mr. James' many accomplishments at the highest level, as well as a snappy memorable name featuring his own surname. Many sports-related and non-sports publications actually identify him as King James (see, for example, *Basketball-Reference.com* and *Encyclopedia Britannica* cited herein).

⁵⁹ Statistics and awards from Basketball-Reference.com, <https://www.basketball-reference.com/players/j/jamesle01.html> (viewed June 25, 2020); see also Ex. C at LBJ_0002167 – LBJ_0002168.

⁶⁰ *TV Guide*, LeBron James, <https://www.tvguide.com/celebrities/lebron-james/credits/197773/> (viewed June 25, 2020); see also Ex. C at LBJ_0002239 – LBJ_0002249; see also Ex. C at LBJ_0002261 – LBJ_0002274.

Athletes are drawn to apparel and fashion. As noted above, NFL star Deion Sanders began a clothing line using his own nickname, Prime Time; Muhammad Ali endorsed NFL apparel wear; Super Bowl quarterback Jim McMahon promoted the adidas brand; and Dee Brown was signed to promote Reebok. Golfer Johnny Miller launched his Johnny Miller menswear in the 1970s; golfer Greg Norman's "Shark" line of clothing is still in wide distribution; and many other top athletes have promoted their own apparel lines (Serena Williams, Maria Sharapova, Russell Westbrook).

In light of the public's common association of athletes with their brands as used on various apparel and in light of the public's association of the King James name with LeBron James, it is my opinion that the general public and sports fans would immediately associate with LeBron James, any items of apparel displaying or sold under the name King James.

* * *

The opinions I have expressed represent my true and complete professional opinions on the matters set forth herein. I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness would testify competently thereto.

I have not testified as an expert at trial or by deposition in the last 4 years. My publications are listed in the CV submitted in connection herewith. See also my website at: www.eldonham.com.

My agreed compensation related to this Report is as follows: The sum of \$4,500 for the Report plus \$400 per hour for related additional testimony, as may be required.

Dated: September 22, 2020



Eldon L. Ham
303 W. Madison Street
Suite 850
Chicago, IL 60606
eldonham@gmail.com
312-876-0590

Exhibit “B”

From: Brian Kinder <bkinder@tklglaw.com>
Sent: Thursday, October 15, 2020 12:07 PM
To: Cataldo, Anthony H.
Cc: Shire, Howard J.; Martell, Vincent; NY_TMDocketing
Subject: RE: Notice of Deposition - LeBron James - October 22, 2020

EXTERNAL SENDER

Hi Anthony:

Thank you for your email.

While I understand your position, I respectfully disagree with your premise. If the CEO of the company were a party to the case, then they could unquestionably be deposed without the need to climb the ladder as you suggest. To the extent this explanation does not change your position (as I anticipate it will not), then I imagine you will be seeking a protective order.

Before you proceed, however, allow me to make a proposal. I suggest we suspend for 30 days because I am presently working with my client to put together what I hope your client will find to be a reasonable settlement proposal. Allow me some time to finalize that and then we can discuss during the 30 day suspension. To the extent we are unable to resolve the matter, then you may proceed with seeking a protective order.

Please let me know your thoughts.

Thank you.


THE KINDER LAW GROUP
Brian P. Kinder | Intellectual Property Law
19200 Von Karman, Fourth Floor
Irvine, California 92612
O: 949.216.3070 **F:** 949.216.3074
M: 562.673.4300 **W:** www.tklglaw.com

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From: Cataldo, Anthony H. <Anthony.Cataldo@Troutman.com>
Sent: Tuesday, October 13, 2020 12:13 PM
To: Brian Kinder <bkinder@tklglaw.com>
Cc: Shire, Howard J. <Howard.Shire@Troutman.com>; Martell, Vincent <Vincent.Martell@Troutman.com>;

NY_TMDocketing <nytmdocket@troutman.com>

Subject: RE: Notice of Deposition - LeBron James - October 22, 2020

Dear Brian,

As I have mentioned to you previously when we discussed your prior request to depose Mr. James, there is no reason to depose him. You have not explained why you believe he has any unique information relevant to this matter. Mr. Golding should begin by taking a 30(b)(6) deposition of LBJ Trademarks LLC or by deposing our expert witness, Eldon Ham, who has provided massive amounts of evidence and information in support of our clients' claims. Do you intend to take these depositions? Please explain why you should not take these depositions first, and then decide if you still need the deposition of Mr. James. To the extent that Mr. James might have any relevant information related to the current dispute, LBJ Trademarks would have the same information and could provide it pursuant to a Rule 30(b)(6) deposition notice, and Mr. Ham has even more relevant information. Just as you would not be permitted to take the deposition of a CEO without first deposing a corporate representative or others and showing that the CEO has some unique, relevant knowledge, so too you should not be permitted to take Mr. James's deposition without the same showing. That you continue to press for that deposition without having served a 30(b)(6) notice or deposing the person who has submitted massive evidence in support of our clients' claims, suggests that the deposition is being requested in bad faith, to harass Mr. James, a famous public figure.

As you know, the relevant facts concerning our claims are by their very nature, publicly available and have been disclosed to you in discovery and Mr. Ham's expert report. Our case is a very simple one. By virtue of, inter alia, widespread third party media coverage, the term King James has become a very well-known nickname of LeBron James and has become so strongly associated with Mr. James, that Mr. Golding's marks identify Mr. James pursuant to Lanham Act § 2(c) and falsely suggest a connection to Mr. James pursuant to Lanham Act § 2(a). The relevant inquiry is whether the public will understand that Mr. Golding's marks refer to Mr. James. Mr. James certainly does not have any unique knowledge on this issue. Indeed the most relevant witness for you to depose is Mr. Ham, not Mr. James. Moreover, Complainants will not call Mr. James as a witness or seek to rely on his testimony in this matter.

Please let us know whether you will agree to depose Mr. Ham and LBJ Trademarks before pressing for Mr. James's deposition. After you take these two depositions, Complainants will consider a request to take Mr. James's deposition if you can identify relevant information you were unable to obtain from the other deponents and which Mr. James is likely to have. This is the sensible and logical way to proceed. Otherwise, we will seek a protective order to preclude Mr. James's deposition.

Thank you,
Tony

Anthony H. Cataldo

Associate

troutman pepper

Direct: 617.204.5159 | Internal: 815-5159

anthony.cataldo@troutman.com

From: Brian Kinder <bkinder@tklglaw.com>

Sent: Thursday, October 8, 2020 1:32 PM

To: Cataldo, Anthony H. <Anthony.Cataldo@Troutman.com>

Cc: Shire, Howard J. <Howard.Shire@Troutman.com>; Martell, Vincent <Vincent.Martell@Troutman.com>;

NY_TMDocketing <nytmdocket@troutman.com>; Harrison, Lori E. <Lori.Harrison@Troutman.com>

Subject: Notice of Deposition - LeBron James - October 22, 2020

EXTERNAL SENDER

Anthony:

I attach hereto a notice of deposition of Mr. LeBron James for October 22, 2020.

As I indicated when we spoke last time on the topic, I respect everyone's schedules and reiterate that I am amenable to modifying the date as appropriate.

Please confirm receipt and please also confirm whether the October 22, 2020 date will work for everyone.

Thank you.


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CERTIFICATE OF SERVICE

I, Howard J. Shire, hereby certify that on November 8, 2020, a true and correct copy of the foregoing document was served via electronic mail, upon the following:

Brian P. Kinder, Esq.
The Kinder Law group, APC
19200 Von Karman Ave., Fourth Floor
Irvine, California 92612
Email: bkinder@tklglaw.com

Attorney for Applicant/Registrant

By: By: /Howard J. Shire/