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The NFL's Trademark Rights Over "Super Bowl": Does it Give them an Unfair Advantage?

BY [SCOTT SEMAYA](#)/ON MARCH 7, 2022



Photo by Phillip Goldsberry from *Unsplash*

Whether you're a diehard football fan or just a casual observer, you've probably recognized that, leading up to the Super Bowl, many companies advertise their Super Bowl deals not using the actual phrase "Super Bowl" but using the phrase "The Big Game."¹ However, this is not a matter of choice. The NFL has held trademark rights over "Super Bowl" and several like phrases since 1969.² As a result, the NFL has been able to control who can use the phrase "Super Bowl" for many years. Thus, in order to utilize the term "Super Bowl," your company must be an official sponsor or licensee of the NFL, which usually comes at a steep price.³ Companies who are not an official sponsor or licensee of the NFL but who do utilize the term "Super Bowl" likely have to change their advertisement or marketing strategy and even face a risk of legal action by the NFL. Consequently, many articles are written each year warning companies to be careful of how they market their Super Bowl deals.⁴ One prominent trademark lawyer, Michael Stabbe, even sends out an annual explanation of how to avoid irritating the NFL in the weeks leading to the Super Bowl.⁵

Unquestionably, the Super Bowl has become a term that is universally known. Over the past few years alone, over 100 million Americans have consistently tuned in to watch the Super Bowl.⁶ With the increasing popularity of the NFL and the Super Bowl, the NFL's trademark control over "Super Bowl" raises an interesting question: is the NFL engaging in unfair competition by maintaining these exclusive trademark rights?

For many years, the NFL may have been more warranted in its exclusive use of the phrase "Super Bowl." The legal system has backed up that statement, as challenges to the NFL's trademark rights over the years have been unsuccessful.⁷ But with the advent of technology and the emergence of a multitude of organizations looking to take advantage of the Super Bowl as a marketing tool—for instance sports gambling companies looking to advertise Super Bowl promotions—have the NFL's rights lost their significance enough to make the term "Super Bowl" generic to the general public?⁸

It is interesting to note that no other major North American sports league has an issue similar to this. The NBA, MLB, and NHL do not possess the same trademark rights to the NBA Finals, the World Series, or the Stanley Cup, respectively, that the NFL enjoys with the Super Bowl.⁹ However, these other leagues do not have the following that the NFL has: eight out of the top ten television broadcasts in 2021 were NFL games (with the Super Bowl being the number one broadcast).¹⁰ So while it is clear that the NFL has an enormous influence over the American public, it is not clear that this fact, by itself, is enough to say definitively whether or not the NFL should keep its trademark rights to the Super Bowl.

What might shed some light in the conversation is the effect that the NFL's trademark rights have on companies and other entities looking to freely use the mark. Anecdotal evidence of the NFL's control over its "Super Bowl" trademark is ubiquitous. One famous instance occurred in 2007 when an Indianapolis church looking to host a Super Bowl watch party for one hundred of its congregants decided to ditch the plans after hearing about the NFL stopping a similar effort at another church.¹¹ Stories like these have flooded the conversation surrounding the Super Bowl for a long time. The question is whether or not it is fair for the NFL to continue its exclusive use of the term, requiring companies to pay many millions of dollars just to use a term that is widely known throughout the country.

While two of the goals of trademark law are to "protect consumers from confusion as to affiliation or approval" as well as "protect[ing] the goodwill that the trademark owners built up,"¹² trademark law also prevents the protection of marks that are or have become generic over time.¹³ Although the Super Bowl is clearly an NFL event, there is an argument that the actual phrase "Super Bowl" has become generic, or that the NFL is otherwise engaging in unfair competition through its exclusive use of "Super Bowl." Though the NFL is likely to continue its policing of the "Super Bowl" and like terms, it will be interesting to see how companies react moving forward.

All this leads to several unanswered questions that will be interesting to monitor in the near future. Is there a clear advantage to being granted the right to use the term "Super Bowl"? Conversely, are non-officially licensed or sponsored companies at a clear disadvantage by not being allowed to use the term "Super Bowl"? Would the NFL's goodwill really be hurt if it no longer has trademark rights to "Super Bowl"? These and more are stimulating questions to consider as the NFL continues to expand its influence nationwide.

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1. Leading up to the Super Bowl this year, BetMGM, an online sports betting company, "repeatedly describe[d] the game as 'The Big Game LVI.'" Marc Edelman, Big Game 56? Why Sports Betting Companies Are Not Calling It The 'Super Bowl', Forbes (Feb. 12, 2022, 11:00 AM), <https://www.forbes.com/sites/marcedelman/2022/02/12/big-game-56-why-some-sports-betting-companies-are-not-calling-it-the-super-bowl/?sh=7aa4dc89234b> [<https://perma.cc/S84D-H688>].
2. National Football League Trademarks, Gerben L., <https://www.gerbenlaw.com/trademarks/sports-leagues/nfl/#72321005> [<https://perma.cc/W2K2-RT5Z>] (last updated Feb. 19, 2022) (see "Super Bowl" and "Super Sunday" as examples).
3. Jabari Young, The NFL Lost Big in Ticket Sales This Season, But Corporate Sponsorships Blunted the Blow, CNBC (Feb. 3, 2021, 11:44am), <https://www.cnbc.com/2021/02/03/nfl-corporate-sponsorships-helped-as-covid-hurt-ticket-sales-in-2020.html> [<https://perma.cc/764C-ZJYX>] ("Partnership deals with the NFL usually run from three to seven years and cost a minimum of \$10 million per year for smaller companies. More prominent firms could pay more than \$200 million per year.").
4. See Super Bowl Advertising Guidelines: The Do's And Don'ts for Marketers, The Motherhood (Jan. 17, 2022), <https://www.themotherhood.com/super-bowl-advertising-guidelines/> [<https://perma.cc/6C4Q-8LHA>]; see also Nicole Norfleet, Be Careful with the Phrase 'Super Bowl' in Marketing; NFL Has the Trademark, Star Tribune (Sept. 23, 2017, 11:41 AM), <https://www.startribune.com/be-careful-with-the-phrase-super-bowl-in-marketing-campaigns-nfl-has-the-trademark/446916483/?refresh=true> [<https://perma.cc/9L3Z-5H4R>].
5. Michael Stabbe, The Clock is Ticking Towards the Super Bowl: 2022 Update on Super Bowl Advertising and Promotions, Broadcast L. Blog (Jan. 27, 2022), <https://www.broadcastlawblog.com/2022/01/articles/the-clock-is-ticking-towards-the-super-bowl-2022-update-on-super-bowl-advertising-and-promotions/> [<https://perma.cc/L483-5SX2>].

6. See Super Bowl Ratings History (1967-present), Sports Media Watch, <https://www.sportsmediawatch.com/super-bowl-ratings-historical-viewership-chart-cbs-nbc-fox-abc/> [<https://perma.cc/X46S-4XPW>] (last visited Feb. 17, 2022).
7. See Michelle Kaminsky, Super Bowl Legal Blitz: Inside The NFL's Legendary Trademark Defense, Forbes (Jan. 30, 2018, 6:20 AM), <https://www.forbes.com/sites/michellefabio/2018/01/30/inside-the-nfls-legendary-trademark-defense/?sh=3fc6de353293> [<https://perma.cc/KS8D-9EHW>] (The NFL "regularly files such lawsuits around Super Bowl time preemptively, often with unnamed plaintiffs such as 'Does 1-100,' in an attempt to head off the production and sale of counterfeit items.").
8. See Jabari Young, Tech, Gambling and Alcohol Helped the NFL Earn Almost \$2 Billion in Sponsorships this Season, CNBC (Jan. 26, 2022, 5:00 AM), <https://www.cnbc.com/2022/01/26/tech-gambling-alcohol-helped-nfl-earn-almost-2-billion-in-sponsorships.html> [<https://perma.cc/4RQX-692E>].
9. The NBA and NHL do possess some trademarks for the NBA Finals and the Stanley Cup, respectively, but neither of them police their trademark rights to the same degree as the NFL. National Basketball Association Trademarks, Gerben L., <https://www.gerbenlaw.com/trademarks/sports-leagues/nba/#78662187> [<https://perma.cc/9TYX-W38R>] (last updated Feb. 25, 2022); National Hockey League Trademarks, Gerben L., <https://www.gerbenlaw.com/trademarks/sports-leagues/nhl/#72326176> [<https://perma.cc/X7Q9-PJ8A>]; see Major League Baseball Trademarks, Gerben L., <https://www.gerbenlaw.com/trademarks/sports-leagues/mlb/> [<https://perma.cc/25QX-HL9Z>] (last updated Feb. 22, 2022) (the MLB has no trademarks for "World Series" or like terms).
10. Michael Schneider, Top 100 Telecasts of 2021: 'NCIS,' 'Yellowstone,' NFL Dominate, as Oscars Fail to Make the Cut, Variety (Dec. 29, 2021, 10:30 AM), <https://variety.com/2021/tv/news/top-rated-shows-2021-ncis-yellowstone-squid-game-1235143671/> [<https://perma.cc/VRP4-5YMY>].
11. NFL To Churches: Not In Thy Father's House, CBS News (Feb. 3, 2007, 2:11 PM), <https://www.cbsnews.com/news/nfl-to-churches-not-in-thy-fathers-house/> [<https://perma.cc/9SWL-CDBZ>].
12. Philip Bump, How to Get the NFL Mad About Calling the Super Bowl 'the Super Bowl', Wash. Post (Feb. 9, 2022, 6:13 PM), <https://www.washingtonpost.com/politics/2022/02/09/how-get-nfl-mad-about-calling-super-bowl-super-bowl/> [<https://perma.cc/T6EW-9EZR>].
13. A mark shall be cancelled "[a]t any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered." Lanham Act, 15 U.S.C. § 1064(3).