

Rentmeester v. Nike, Inc. – “Jumpman” may be falling down to Earth

After waiting almost thirty years, a photographer now claims he is the true owner of the Air Jordan logo

By Rebecca Bellow and Trevor K. Roberts

* This article first appeared in Inside Counsel Magazine on April 29, 2015: <http://bitly.com/1Eof1st>

In 1984, Nike signed an NBA rookie named [Michael Jeffrey Jordan](#) to a then record \$2.5 million shoe endorsement deal. Included in the agreement was a clause that allowed Nike to opt out of the contract if the young player did not make the All-Star Game within his first three years in the NBA – or if the shoes did not earn at least \$3 million. As it turned out, such concerns were laughable.

Jordan was voted onto the All-Star team his very first year in the NBA, the first of 14 such appearances, and he then went on to win the NBA Rookie of the Year *and* an Olympic gold medal while playing for the [U.S. Men’s Basketball Team](#) in 1984. And the shoes? Well, the first generation Air Jordan generated a bit more than the \$3 million in revenue for which Nike had hoped – about \$100 million more!

It was not until Michael Jordan’s third year in the NBA, however, that his statistics, and [Air Jordan](#) shoe sales, really took flight. It was in the 1986-87 season that Jordan scored over 3,000 points and *averaged* 37.1 points per game. He became the first player in NBA history to record 200 steals and 100 blocks in a single season. It was also during this season that Air Jordan changed the logo imprinted on its shoes.

The Air Jordan I and II had used a mark that was reminiscent of vintage World War II aviator wings:



But, beginning with the Air Jordan III, Nike began using a silhouette of Jordan slam dunking a basketball. This image would come to be known as the [“Jumpman” logo](#) and it would become one of the most recognized trademarks in the entire athletic shoe industry. Between 1987 and 1989 – after adding this mark to the Air Jordan – Nike’s revenue skyrocketed to \$1.7 billion.



Even now, more than a decade after MJ’s retirement, the Jordan brand is still wildly popular and profitable, having earned \$3.2 billion in 2014 alone. In fact, the Air Jordan 10 “Powder Blue” retro sneaker generated \$35 million in a single day according to [Forbes](#), which is almost as much as what Adidas’ “D Rose” shoe line earned for the entire *year* in 2013.

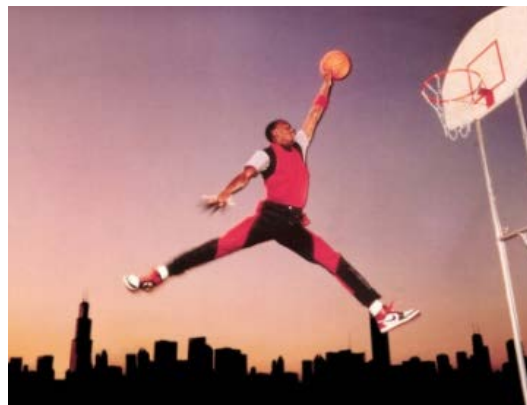
But now, a copyright lawsuit has been filed by a New York photographer, and his infringement claim is threatening to trip up the high-flying Air Jordans.

Jacobus (“Co”) Rentmeester has a [complaint](#) in federal court in Oregon, claiming that the Jumpman logo is based on a picture he created in 1984. Rentmeester says that he took the shot of Jordan as part of a photographic essay for he was doing for Life Magazine, and that he personally choreographed the leap that has made Jumpman so famous.

Rentmeester claims he had Jordan repeatedly jump in the air, splaying his legs as far and high as possible. This technique was inspired by a ballet leap called a “grand jeté.” This form was very different from MJ’s usual slam dunk style, especially since it required the right-handed Jordan to perch the ball straight up in his left hand. But, after much practice, Rentmeester was able to get the shot he wanted.



Apparently, Nike saw the two-page spread in Life Magazine – where Jordan is ironically wearing Converse sneakers – and tracked down Rentmeester to request temporary use of the image. The photographer agreed, but alleges that the use was to be limited to a “slide presentation.” It was not long after this, however, that Nike created its own photo of a leaping Jordan.



Rentmeester claims that when he discovered that Nike was using this similar image on billboards, ads and tags, he threatened to sue. Nike agreed to pay Rentmeester \$15,000 in March, 1985 for a license, but Rentmeester claims that he only granted Nike a limited license to use the image for two years, and only on posters and billboards in North America.

In 1987, however, Nike transformed the shot into the famous Jumpman silhouette and registered it as a trademark. And beginning with the Air Jordan III, this emblem has been directly imprinted on every

subsequent model of the Air Jordan shoe. A side-by-side comparison shows the similarities – and differences – between the image created by Rentmeester (in the form of a silhouette) and Jumpman.



Rentmeester has now filed suit, seeking damages as well as an injunction. The issue hinges on whether a judge will find that the two images are so alike as to be considered an infringement. After all, kicking one's legs out while driving to the rim is not at all unusual in basketball. For example, here is a 1981 photo of Marcus Allen striking a similar pose in a photo tweeted by Sports Illustrated's Andy Gray.



The first consideration, of course, is if the suit is time-barred since Rentmeester waited almost *thirty* years to file his lawsuit. Typically, there is a three-year statute of limitations on copyright infringement claims under 17 U.S. Code §507 (b). But an important 2014 Supreme Court decision, [Petrella v. MGM](#), may allow for Rentmeester's suit to move forward despite this three-decade-long delay.

In [Petrella](#), the daughter of the late screenwriter of *Raging Bull* brought suit seeking royalties for MGM's continued commercial use of the film. Though Petrella's complaint was not filed until 18 years after the discovery of the infringement, the Court determined it was not time-barred since MGM re-released the film many times on DVD and other formats, and each release reset the clock for infringement purposes.

The Court thereby determined that the claim was still within the Copyright Act's three year statute of limitations and that laches could not be invoked to bar the claim. Rentmeester may similarly be allowed to pursue his claim since Nike has continued to use the allegedly infringing mark in advertising campaigns and on each new model of Air Jordan shoes it has designed since 1987.

In its [Motion to Dismiss](#), Nike does not focus on a potential statute of limitations or laches issue; rather, it stresses consideration of the purported obvious differences between the images. Nike argues that copyright protection can only occur where two photographs of the same subject are “virtually identical,” and that, in this case, the dissimilarity is self-evident.

Nike further argues that by changing his original photo into a silhouette, Rentmeester has unfairly altered his original photograph to increase its resemblance to Jumpman. A fair comparison, according to Nike, is between Rentmeester’s original color image of Jordan – complete with a basketball hoop and sunny outdoor background – and the monochromatic Jumpman logo.

Conclusion

The thrust of Nike’s argument is simply that Rentmeester cannot claim to have a monopoly on Michael Jordan, his appearance, his athletic prowess, or images of him dunking a basketball, and that Rentmeester’s copyright begins and ends with his specific, original expression of that subject and theme. Here, according to Nike, it cannot be shown that any such protected expression has been copied.

This is certainly a very high-stakes case, and it will be interesting to see if the parties settle or go to trial to fully litigate these issues. One thing is for sure- Nike is going to do whatever it takes to protect its ownership interest in its most valuable asset. Jumpman has been dominating the competition for almost twice as long as MJ dominated the NBA – and there doesn’t appear to be any letup in sight. Talk about amazing hang time!