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Aaron Judge Makes Triple Play in TTAB Opposition

On April 12, 2023, in *Major League Baseball Players Association and Aaron Judge v. Michael P. Chisena*, Opposition Nos. 91240180, 91242556 and 91243244, the Trademark Trial and Appeal Board (TTAB) found in favor of the Major League Baseball Players Association (MLBPA) and New York Yankees outfielder Aaron Judge, sustaining their opposition against three trademark applications. The trademarks at issue were HERE COMES THE JUDGE, ALL RISE, and the following design mark:



The applicant, Michael Chisena, applied to register the marks in connection with clothing. Aaron Judge and the MLBPA, however, objected, arguing that the trademarks were already associated with Judge based on prior common law rights.

After starting his Major League Baseball career with the Yankees in 2016, Judge quickly became a well-known name in baseball. In the 2017 season, he was

named American League Rookie of the month in April, May, and June and American League Player of the month in June and September. By midsummer, he led the MLB in home runs and on-base percentage.

Media publications and fans quickly began playing on Judge's surname. In May 2017, he was featured on the cover of *Sports Illustrated* in an article titled, "All Rise! The Yankees Youth Movement is in Session. The Powerful AARON JUDGE Presiding." Another publication ran an article featuring Judge titled, "HERE COMES THE JUDGE". That May, Yankee Stadium also opened "The Judge's Chamber": three rows behind Judge's right field position in which fans are given black "judge's robe" t-shirts and a foam gavel with the wording "ALL RISE" on it. With Judge's approval, the MLBPA also began licensing third parties to use judicial-themed phrases on apparel, such as ALL RISE and HERE COMES THE JUDGE, as well as images of gavels, courthouses, and the scales of justice.

On July 10, 2017, Judge won the All-Star Home Run Derby. Four days later, Michael Chisena applied to register ALL RISE and HERE COMES THE JUDGE. Chisena, a resident of Long Island, claimed that he had no knowledge of Aaron Judge but independently arrived at the trademarks for a baseball-themed line of clothing because "baseball is governed by rules and umpires similar to [how] a courtroom proceeding is governed by laws and judges." He claimed the timing of Judge's

accomplishments and the filing of the trademark applications was coincidence.

Determining Priority in the Trademarks

The TTAB noted that Chisena's position "strained credulity" but ultimately did not factor that into its decision. Rather, the core dispute was over which party could establish priority in the trademarks.

The MLBPA included as evidence a declaration from a licensee, BreakingT LLC, stating that the MLBPA had approved a request on July 5, 2017 for BreakingT to sell a t-shirt featuring the wording ALL RISE with a gavel design. BreakingT began to offer the t-shirt for sale that same day. Chisena did not depose BreakingT or otherwise establish that the declaration was inaccurate, and so the TTAB relied on the declaration. Although much of the additional evidence was redacted to the public and not discussed in detail in the opinion, ultimately, the TTAB found that the MLBPA and Judge had established priority.

Mr. Chisena did not address whether a likelihood of confusion existed, apparently conceding the point. Nevertheless, the TTAB analyzed the *DuPont* factors and found that a likelihood of confusion existed. The TTAB therefore sustained the opposition against all three applications.

Interestingly, in the opposition against Chisena's baseball diamond design mark, the MLBPA and Judge alleged rights broadly in "judicial symbols"—"especially when used with baseballs and baseball fields," rather than one specific design. The TTAB found

that, because licensees authorized by Judge had sold apparel with various judicial phrases and symbols in connection with Judge, Chisena's design similarly conveyed the impression that it was authorized by Judge. The decision, in effect, granted quite broad rights to the MLBPA and Judge in an undefined range of design marks.

In 2018, Judge's mother applied to register ALL RISE and HERE COMES THE JUDGE on behalf of the Aaron Judge All Rise Foundation, with Judge's permission. The applications have been suspended pending the outcome of Chisena's applications. The TTAB's decision should now clear the path for Mrs. Judge's applications to

register, unless Chisena appeals further.

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