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Sports & Entertainment Beat

Planning a Super Bowl-themed Marketing Campaign? 5 Tips for Staying In Bounds

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With the Super Bowl coming up, it is important for brands looking to capitalize on football-themed promotions to remember that the terms "Super Bowl" and "Super Sunday" are registered trademarks guarded by the National Football League (NFL) more closely than a shutdown corner on a wide receiver. Because there is a fine line between permissible fair uses of Super Bowl and Super Sunday (e.g., in on-air banter and news and sports reports) and impermissible promotional uses that may infringe the NFL's trademark, here are some guidelines to keep you from going "offsides:"

1. **Avoid promotional association**. Do not mention the Super Bowl or use the Super Bowl Logo in your advertisements, social media platforms, labeling or packaging in such a way that the viewer, listener or consumers may infer a relationship between your food or beverage brand or products and the NFL that does not exist. Unless you secure a license from the NFL, you cannot use any advertisement of that nature. For example, you cannot say, "Your go-to beverage for the Super Bowl," or even "Come here for all your Super Bowl party needs."
2. **Additional prohibited terms and logos**. In addition to "Super Bowl" and "Super Sunday," do not mention, or use the logo of "NFL," "AFC," "NFC," "National Football League," "American Football Conference," or "National Football Conference."
3. **Educate advertisers and marketing companies**. Your advertisers or marketing vendors may want to organize tie-in promotional events with the Super Bowl, like "XYZ Super Sunday Sweepstakes." Tell your vendors that the NFL is likely to send both you and them a nastygram (at a minimum) if they associate your brand or productions commercially with the big game.
4. **Be careful with events**. Don't use the Super Bowl or Super Sunday name in sponsoring or promoting gameday-related events, such as "XYZ's Super Bowl Party."
5. **Apply the same caution to teams and players**. All NFL team names (*e.g.*, "49ers," "Chiefs," *etc.*) and nicknames (and logos), like "Super Bowl," are registered trademarks, so the same considerations of avoiding promotional association apply. Even using team colors could draw the ire of the NFL. NFL players also routinely file trademark registrations for their names and nicknames.

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Some creative ways that brands have tried to keep both feet in bounds in their promotions include using statements such as "The Big Game," "The Big One," "Gameday," "Gametime," "The Big Matchup," "Football's Favorite Day"; referencing the date of the game (*e.g.*, "The February Football Finale"), the names of the cities/states of the teams competing in the Super Bowl (*e.g.*, "San Francisco" or "Kansas City"); or making fun of the fact that they are prohibited from mentioning "Super Bowl" (*e.g.*, by bleeping it out or by saying "the game that shall not be mentioned"). Remember, advertisers literally pay millions of dollars to be associated with the Super Bowl. Their willingness to pay reflects the substantial commercial goodwill that the NFL has developed in the game. The NFL persistently protects its investment by policing unauthorized use of its trademarks.

One additional cautionary note, the ongoing COVID-19 pandemic has created added concerns and conditions for Super Bowl advertisers. The potential for postponement of the game creates the fear of lower viewership and ratings than would be seen during the regularly scheduled game, as has happened with many of the regular-season games. Advertisers may be well advised to avoid including the date of the game in any promotional materials that cannot be later changed in the event the Super Bowl must be postponed.

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