

BACKING A WINNER: When Your Client Wins the Triple Crown

► **How many firms have a horse for a client, let alone a champion such as Justify? McNees IP group co-chair Michael Doctrow discusses the firm's work with thoroughbred clients and their owners.**

CCBJ: The horse Justify is the 13th Triple Crown winner and only the second undefeated horse to win the title. How did you come to represent him and his owners?

Michael Doctrow: We have a history of representing Triple Crown contenders, but this is our first winner. We've represented about ten thoroughbreds since we started with Smarty Jones, who won the Kentucky Derby in 2004 and aspired to win the Triple Crown. From that point forward, folks at Churchill Downs and with the National Thoroughbred Racing Association began recommending us as counsel to owners to handle trademark protection and licensing matters.

Who are Justify's owners, and how is the ownership structured?

We've represented groups with a variety of ownership structures. Some of those owners have been individuals, and some of them have been corporations in the horse racing industry. That's the interesting thing about this sport. We have corporate owners, and we also have individual owners. Individual owners can be one well-to-do person or a group of people who enjoy the sport.

For Justify, the primary owner is a company called WinStar Farms, which breeds and sells horses in Kentucky. Over time they sold off some ownership interest in Justify to several other ownership groups,

the most significant of which is China Horse Club.

In this industry, it is possible for individuals or entities to own the horse, for different individuals or entities to own the racing rights, and others to own the breeding rights. There's a good amount of flexibility in what you can do with thoroughbred racing and the ownership structure.

What structure do you see more often? Is it usually a corporate ownership or is an individual entity more common?

It's really a mix. There's very little consistency in the horse racing business. Some people have been able to buy horses for \$30,000 or \$40,000 and have them win significant races. Other times, the horses cost much more money.

Corporate ownership is more common these days, given the expense involved in breeding, acquiring and maintaining a thoroughbred, but we've represented several horses over the last ten years that have been owned by individuals. Two individuals owned California Chrome, who won the 2014 Derby and Preakness. The owner of the 2006 Derby winner, Barbaro, owned dozens of horses at any given time. In other cases, a corporate conglomerate or group has owned the horse.



Michael Doctrow is co-chair of the McNees intellectual property group. His practice focuses on trademark clearance, registration and protection, copyright protection, and advertising and branding strategies. Reach him at mdoctrow@mcneeslaw.com.

Please describe the scope of your representation and the next steps for a horse like Justify.

For Kentucky Derby winners, we represent the owners in securing and registering trademarks associated with the horse. That may involve the horse's name, the name of the stables or the owners, the design and colors of the silks, or the logo that appears on the jockey's clothing. We also get involved in licensing those trademarks for use on merchandise like hats, T-shirts, cups and the like.

If the horse wins the Preakness, there are some additional interests in licensing the horse's name and likeness on things such as artwork and other collectible items. And we can negotiate significant sponsorship deals when companies are interested in having their name associated with the horse. In this particular instance, I'm sure everyone saw the Wheels Up name on the jockey's pants and collar as well as on the hats worn by the owners in the owners circle at the belmont.

With a Triple Crown win, there are opportunities for ongoing sponsorships, particularly if, as here, the horse is going to be racing again.

There's also the potential for movies, books, artwork and more expensive collectibles. Finally, and unfortunately, we have the task of ensuring that third parties aren't trying to trade off of the goodwill of the horse by using its name, likeness and related trademarks for their own products without authorization. Unfortunately, we have to go after those infringers. It's amazing how many people think they can just use the name and likeness of the horse without any authorization.

This is the same type of work I do for corporate clients day in and day out, but it's compressed in a very short period of time, basically five weeks, so that makes everything a bit more exciting. Also, with national TV and the risks of racing, it's an awful lot more exciting. We have a group of attorneys who do this work for our corporate clients every day, but you get to watch a race and root for the client, or its horse – so it's not like the typical launch of a new product or service. You get very excited about the client's success, and it creates camaraderie in the office. Everyone at McNeese was watching TV and rooting for Justify to win. In the office, we have Justify Triple Crown hats that we were wearing. It makes practicing law more fun.



Aside from the Triple Crown win and the undefeated record, how has this representation been different from other horses or owners?

This is a corporate ownership mix, so they are a little bit more professional. WinStar Farm has had horses that have won the Kentucky Derby and other races over the years, so they have an understanding of what's involved and what people are going to be requesting during the run for the Triple Crown. Then, obviously, there have been many more business opportunities. Significant sponsorship, movie and book opportunities have and will continue to present themselves, so that's exciting. In other years, as soon as there is a loss in one of the Triple Crown races, our work is over almost immediately, so it's a pleasure having the work continue, perhaps indefinitely.

How do you see legalized gambling impacting this industry?

Gambling in general, and certainly casino gambling, has helped the horse racing business. In Pennsylvania, at least, horse racing on its own was struggling before casino gambling came along to support the industry. The sport is funded a great deal by taxing casinos. ■