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# TESLAW

## THE STATE BAR OF TEXAS ENTERTAINMENT & SPORTS LAW SECTION

May 15, 2018

### TESLAW Tidbits:

*A Little Taste of TESLAW*

May 15, 2018

Issue No. 28

Dear TESLAW Members,

Welcome to the latest issue of the TESLAW newsletter, which we hope is a valuable tool for you in your entertainment and sports law practice. Please be sure to mark your calendars for some upcoming events as well, starting with the TESLAW program at this year's State Bar of Texas Annual Meeting in Houston. TESLAW's program will take place on the afternoon of June 21, with three hours of CLE that I'm sure you'll find interesting. Then, save November 8-9 for the Entertainment Law Institute, which always offers two full days of helpful programming. Stay tuned for more information on ELI later.

Sincerely,

Mike Farris, Chair

[Entertainment and Sports Law Section](#)

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Dear TESLAW Members,

I would like to introduce Dena Weaver and Erin Rodgers, the new editors for TESLAW *Tidbits*. I have greatly enjoyed serving as your editor-in-chief these past five years. When our organization started this newsletter, our goal was to provide up-to-date information on our industry in an easily digestible and usable format. From our Case Notes to our Practice Documents, we hope you find this quarterly newsletter of great use to your practice. And, in case you were worried, I won't be going far... starting in June, I'll be serving as chair for our section. I hope to connect with all of you in person at one of our CLE events.

Sincerely,

Victoria Helling, Chair Elect

[Entertainment and Sports Law Section](#)

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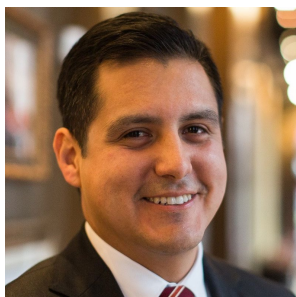
### Events Calendar

State Bar of Texas Annual Meeting, TESLAW Program  
*Entertainment Law Institute*, TESLAW

Houston, TX --- June 21, 2018  
Austin, TX --- November 8-9, 2018

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### Spotlight on Sergio Selvera



**Sergio Selvera** has been licensed to practice law in Texas since 2009. He graduated from the University of Texas at Austin in 2005 and graduated from Texas Southern University Law School in 2009. He is currently completing a master's degree in International Sports Law from St. John's University School of Law in New York. He has extensive experience dealing with corporate sponsorships, venues, and live events (including nationally competitive bids such as the Super Bowl). Sergio has represented clients at film, music, and technology festivals and conferences.

In addition to his legal career, Sergio has also produced documentaries, albums, and tours. The son of a school teacher and police officer, Sergio is also very passionate about his community. He has volunteered countless hours to various mentor, college outreach, and educational programs, and also serves on the Board of Directors for his local Redevelopment Authority (East Downtown-Houston). In his lifetime, Sergio hopes to witness the Summer Olympics in his hometown of Houston. Sergio can be reached [here](#).

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## JUST DID IT! Nike prevails in Jordan Brand Logo dispute

By Adam R. Villanueva

### [Rentmeester v. Nike, Inc., No. 15-35509 \(9<sup>th</sup> Cir. 2018\)](#)

In February, the 9<sup>th</sup> Circuit Court of Appeals, sitting in a three-person panel, dismissed a lawsuit against Nike for copyright infringement relating to the Jordan Brand Jumpman logo and an image previously used by Nike by holding that the images, as a matter of law, were not substantially similar. The panel ruled 2-1 and explained that images and pictures are entitled to a prominent level of protection when expressing an original idea, but the use of different poses and differing background elements can differentiate a new image enough to avoid infringement. The party with the burden of proof must show a substantial similarity when evaluating an image based on the extrinsic test but this test is only used after filtering through all the non-protectable elements of each image and comparing only those original elements that are left.

The original image in question was taken by Jacobus Rentmeester in 1984 for Life magazine, which shows Michael Jordan from his college days at North Carolina, and the image depicts Jordan in a ballet-inspired pose, the grand jeté on a grassy knoll while propelling himself horizontally to a basketball hoop. The Nike images were the Jordan Brand Jumpman logo, which has been used to sell billions of dollars of shoes and apparel, and an image created by Nike that shows Jordan in similar ballet-style pose as the Rentmeester image. However, the court found that Nike's image, which incorporated a similar pose, was not substantially similar because Nike used several different elements to differentiate the images. The Nike image shows Jordan soaring above the Chicago skyline, instead of a cloudless sky as in Rentmeester's image, and the grand jeté pose from the Nike image shows Jordan with rigid or stiff limbs, meanwhile Rentmeester's image uses more bent limbs. Lastly, Jordan's pose in the Rentmeester image combined with the background and foreground elements show a horizontal propulsion towards the hoop; on the other hand, the Nike image and elements depict more vertical propulsion up to the hoop.

The panel upheld the lower court's original ruling. Further, the panel stated that "a photographer's copyright is limited to the particular selection and arrangement of the elements as expressed in the image." The panel eventually held that there was no infringement, as a matter of law, because each of the photographers used their own original selection in the distinct elements of the original images. Lastly, the court held that the 2-D Jumpman logo on a black background copied none of the original expressions from Rentmeester's image. In conclusion, photographers should claim infringement of an image only if the alleged infringing image copies all of the original elements expressed in the infringed image, more than simple poses and general

photography techniques.

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*Licensed in Texas, based in Dallas, Adam's primary focus of practice is intellectual property and entertainment law, with a focus on representing athletes and entertainers in the protection of their intellectual property and brand. Adam can be reached by [email](#).*

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## Practice Document

The [practice document](#) is a work-for-hire agreement for musicians. Tyler McConnell graduated from Thomas Jefferson School of Law in 2011, and immediately moved back to Houston where he began practicing entertainment law at the Law Office of Tyler McConnell. He currently specializes in music licensing and administration. Tyler can be reached by [email](#).

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*Send questions, comments, and submissions for TESLAW Tidbits*

*to Dena Weaver at [dgweaver@arlingtonlawfirm.com](mailto:dgweaver@arlingtonlawfirm.com) or*

*Erin Rodgers at [erin@music-lawyer.com](mailto:erin@music-lawyer.com) .*

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