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## Marking Disidentification: Race, Corporeality, and Resistance in Trademark Law

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### ABSTRACT

This essay considers two case studies—Andy Warhol's *Mammy* and Marshawn Lynch's Beast Mode®—through the analytic lens of disidentification in order to theorize how embodied resistance reifies and remakes race and gender identities in trademark law. It develops two subcategories of José Esteban Muñoz's classic term: prosopopeic disidentification, which gives face and voice to the mythic figure of the mammy; and (de)proper-tizing disidentification, which refuses white ownership of black bodies while asserting the right of the individual in monetizing corporeal acts. It concludes that disidentification is an important but imperfect means for people of color to intervene in processes of racial formation by reimagining the boundaries of race, gender, and law as well as dominant monopolies on memory and property.

### KEYWORDS

Critical rhetorics of race; disidentification; Marshawn Lynch; mammy; trademark law

In December 2015, the Court of Appeals for the Federal Circuit decided a case in which the all-Asian American rock band, the Slants, argued that the United States Patent and Trademark Office (USPTO) should approve its application to register a trademark for its band name.<sup>1</sup> The court held that the Slants did indeed have a right to federal registration of the trademark and, in the process, found the Disparagement Clause of Section 2(a) of the Lanham Act to be unconstitutional on First Amendment grounds.<sup>2</sup> The same clause of the Lanham Act, has, of course, also been at the center of the decades-long fight to cancel the Washington Redskins trademark. The Federal Circuit's ruling, then, contradicts the recent federal court decision upholding the Trademark Trial and Appeal Board's cancellation of the Washington Redskins trademark on the basis that it is disparaging.<sup>3</sup>

The controversies surrounding the Slants and Redskins highlight the frequent but still under-theorized relationship between trademarks and race. Despite spirited conversations across disciplines about neoliberalism, the politics of branding, and resistance to consumer culture, relatively little attention has been paid to trademark law, particularly vis-a-vis race. Nonetheless, innumerable trademarks and brands—such as Aunt Jemima, Sambo, Rastus, Chief Wahoo, Frito Bandito, Oneida, Uncle Ben, Cherokee, Miss Chiquita, and Mrs. Butterworth—underscore the reality that laws regulating consumer products necessarily operate as mediators of race. In Richard Schur's words, "Circulation of racial imagery is not simply an accidental effect of the current trademark system but a *fundamental element* of its logic."<sup>4</sup> Indeed, trademarks have shaped and continue to shape racial orders in significant ways. They are a visual means through which whiteness is centered, hierarchies of race are normalized, and racial identities circulate as hypervisible/unseen parts of the cultural landscape. Moreover, the legal management of trademarks through the Lanham Act has played and continues to play an integral role in sanctioning particular racialized images and delegitimizing others.<sup>5</sup> As a legal regime that consistently decides when/how to manage images of

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difference circulating in consumer markets, trademark law maintains an important structural relationship with race.

Though often theorized by legal scholars only for their symbolic function as source identifiers, i.e., markers of the origin of products, as Mario Bagioli, Anupam Chander, and Madhavi Sunder argue, “The relationship between the person and the brand has never been a unidirectional flow of information from good to buyer, but rather a dialogic process bordering on co-authorship.”<sup>6</sup> Indeed, even as trademarks shape cultural identities, individuals push back against their racialized representations, using embodied performances to resist the ideologies they advance.<sup>7</sup> In this article, I turn my attention to the co-authorial process that unfolds at the intersections of trademark law and race, specifically examining the role of disidentification in remaking racial stereotypes that are circulated by and through trademarks. Using the examples of Andy Warhol’s *Mammy* and Marshawn Lynch’s Beast Mode® apparel line while drawing upon critical race theory, “theories of the flesh,”<sup>8</sup> and rhetorical theories of social protest, I demonstrate how bodily interventions in and through trademark law offer tools for reconfiguring, rehistoricizing, and reclaiming racially pejorative terms and images even as they reify them. Specifically, I show how the disidentifications here refuse modes of owning and disciplining black bodies and complicate majoritarian understandings of race, memory, and property.

In the case of *Mammy*, jazz singer and model Sylvia Williams physically embodies and recodes the mythical mammy, including her incarnation as Aunt Jemima®, thereby disrupting racialized memories of Southern laborers. Through prosopopeic disidentification, Williams’s embodied performance of mammyhood complicates memories of the archetypal figure circulated in racialized trademarks by giving her a legibly defiant “face” and “voice.” In the case of Lynch, trademarks like Beast Mode®, I’m Just Here So I Won’t Get Fined®, and Bout that Action® assert property rights in the stereotype of the black beast while simultaneously reconceptualizing the figure. Through (de)propertying disidentification, Lynch creates (intellectual) property rights in his embodied performances while denying arrangements through which white bodies attempt to own, manage, and police black bodies.

Bringing the lens of disidentification to bear on these case studies demonstrates some ways in which resistance to trademark law is complicated by structural and ideological obstacles, such as legal prohibitions, power dynamics, and capitalism, but is still nonetheless still possible. Disidentification, which originated with the late José Esteban Muñoz’s study of the ideologically partially compliant and partially resistive public performances of queers of color, is a theoretical tool for understanding the complex and often contradictory ways in which raced, gendered, and classed bodies engage in “acts that...[reformulate] the world *through* the performance of politics.”<sup>9</sup> The disidentifications I consider here retain their character as “survival strategies the minority subject practices in order to negotiate a phobic majoritarian public sphere that continuously elides or punishes the existence of subjects who do not conform to the phantasm of normative citizenship.”<sup>10</sup> Moreover, they operate as a mechanisms through which “[t]he object that is desired is reformatted so that dignity and grace are not eclipsed by racist exploitation,”<sup>11</sup> even in the context of racially problematic images of mummies and black beasts.

Debora Halbert argues that “Small and large resistances to our current intellectual property path are emerging everyday...that could lead to paradigmatic shifts in the way we create and protect work.”<sup>12</sup> In the context of race, co-authorial processes such as the ones enacted by Williams and Lynch operate not only as means of complicating trademarks’ visual rhetoric of racialization but also renegotiating the meanings of common, pejorative stereotypes. In responding to the racial signifiers invoked in the cases here—the mammy and the black beast—“[t]he body is front and center in their arguments for it is the body that is at stake—its meanings, its possibilities, its care, and its freedoms.”<sup>13</sup> Individuals perform, mediate and reimagine familiar iconic images through their bodies, creating new visual rhetorical and cultural meanings through iterative compliance/resistance. In the context of trademarks, “[t]hese political bodies constitute a nascent body rhetoric that deploys bodies as a pivotal resource for the crucial practice of public argumentation.”<sup>14</sup> Through bodily occupations, trademarks are transformed from simple racial stereotypes into occupied figures that speak back to problematic representations of race.

In addition to thickening theoretical understandings of corporeal resistance to intellectual property rights (IPR) and disidentification, this article intervenes in ongoing conversations about consumer culture and branding,<sup>15</sup> engaging trademarks as important visual texts through which racialization occurs.<sup>16</sup> The piece also contributes to conversations about race, law, and rhetoric by examining in detail the role of bodies in rewriting legal regimes such as trademark law. Examining the performances of Williams and Lynch recenters scholarly discussions about embodiment within law, which John Erni points out “always privileged the function of the mind, and therefore... hierarchically undercut the value of the body.”<sup>17</sup> Finally, this article enriches the growing body of critical intellectual property work that links trademarks and questions of identity.

## Fleshing out trademark law

The rise of trademarks in the 1900s—culminating with the passage of the Lanham Act in 1946—helped still-developing America interpellate its consumers into emerging capitalist markets and racial hierarchies. Put more succinctly, “[t]he ‘incorporation of America’ was integrally related to the corporeality of others,”<sup>18</sup> specifically racially different others. As Lauren Berlant writes, trademarks connect buyers with particularized understandings of identity and nation, creating connections through which consumer goods acquire affective meaning. By the 1900s, “product consciousness had become so crucial a part of national history and popular self-identity that the public’s relation to business took on a patriotic value.”<sup>19</sup> During this period, trademarks performed the important social task of mediating hierarchies of difference and establishing a “racial order of things.”<sup>20</sup> Images of mammies and black beasts, in particular, did the cultural work of justifying the need for racist social organization that continued to deny the egalitarian treatment of former slaves.<sup>21</sup> Even today, trademarking and advertising function as important forms of identity branding—in both senses of the term—creating and circulating ideologies around commercial products but also in marking certain bodies as different.

Given the ways in which trademarks brand bodies, it follows that bodies have the capacity to rebrand trademarks. As in law, “in the process of privileging a rational, male dominant voice, western rhetoric has in turn focused on the mind to the exclusion of the body.”<sup>22</sup> People of color theorizing, including critical race theory and black feminist thought, have been integral to the process of developing a “deep and embodied understanding not only of the limits and dangers of a legal strategy but of the history of slavery, colonisation and racism which informs the politics and the legality of race in America.”<sup>23</sup> According to Raymie McKerrow, turning to corporeal rhetoric is thus important not only “if we are to broaden the definition of rhetoric to include its practice in the lived experience of those outside what has been termed an administrative rhetoric”<sup>24</sup> but also to make legible the “particular experiences and epistemologies that provide philosophies about reality different from those available to other groups,”<sup>25</sup> here in the context of trademark law. Rhetorical scholars have taken up McKerrow’s call, considering how the body fits into rhetorical theory,<sup>26</sup> the relationships between bodies, social protest, and public argumentation,<sup>27</sup> and the ways in which embodied performances implicate questions of identity.<sup>28</sup>

Disidentification is a useful frame for understanding how minoritarian groups perform within particular ideological constraints—particularly those around race, law, and capitalism—and use embodied modes of resistance to intervene in oppressive regimes of power. Disidentification is “a third mode of dealing with dominant ideology, one that neither opts to assimilate within such a structure nor strictly opposes it...a strategy that works on and against dominant ideology... laboring to enact permanent structural change while at the same time valuing the importance of local or everyday struggles of resistance.”<sup>29</sup> Further, it is an intersectional framework with broad applicability. For instance, a rich and growing body of literature in communication seeks to understand the range of world-making possibilities brought into being by the disidentifying subject.<sup>30</sup> Scholarship theorizing disidentification and citizenship is particularly helpful here as it highlights the ways in which embodied performances can partially rework legal and cultural regimes around group membership.<sup>31</sup>

The examples of disidentification I engage implicate majoritarian definitions of property—including intellectual property—and memory, particularly as they are normalized by and through trademark law. Stereotypical images of mummies and black beasts reinforce narratives of black bodies as property, using trademarked images to create the cultural conditions in which continued oppression of former slaves is culturally and politically possible. In addition to creating a visual hierarchy of race, as Coombe contends, and linking brands with national identity, as Berlant maintains, intellectual property is, as Stephen Best argues, an indirect outgrowth of the logics of slavery. Fugitive slave laws conceptually justified the ownership of intangible human properties, that is, slave labor, thus laying the foundations for the ownership of similarly fugitive products of personhood, such as “voice, countenance, and ideas and thoughts.”<sup>32</sup> In tracing the historical evolution of intellectual property, Best notes that “[j]urists concluded, in short, that the legal relations of property are between people and not, as had earlier been thought, between people and things.”<sup>33</sup> Invoking Best’s analysis offers insight into how trademark law, as part of a larger corpus of intellectual property law, arises from the monetization of the ineffable performances of black bodies. Corporeal performances that highlight (black) bodily autonomy are, then, an important means of interrupting the ideological work of fugitive slave laws, intellectual property laws, and (white) commodification of bodies of color. The two cases that I discuss short circuit the theoretical link that Best identifies, creating space for people of color to respond to the historical memories and narratives reinforced through intellectual property law. Williams’s prosopopeic disidentification becomes a mechanism for disarticulating black women from histories of obedient servitude and asexuality while Lynch’s (de)propertizing disidentification contests narratives of black men as beasts to be owned, policed, and disciplined. As Lovalerie King argues, American law operates as a site of memory and one that necessarily provokes the question “Whose history will prevail?”<sup>34</sup> In the foregoing sections, I examine how Williams and Lynch, while working within the context of trademark law, rework important understandings of property and memory related to blackness.

### **Mammy’s prosopopeic disidentification**

Andy Warhol’s *Mammy* (1981) was not intended to be a representation of just any black woman fitting the mammy stereotype: It was originally meant to translate Aunt Jemima’s likeness into the artist’s pop style. However, Ronald Feldman, Warhol’s friend and gallery owner, reported that because Quaker Oats threatened to take legal action if Warhol used the image, the artist took the piece in a different direction. Warhol ultimately named the piece *Mammy* because “he concluded that the real myth he was painting was represented not only in Quaker Oats’s product but also in the character of Mammy popularized through *Gone with the Wind*.”<sup>35</sup> The portrait Warhol produced for his *Myths* series strongly invokes the stereotypical “controlling image”<sup>36</sup> of the mammy. However, I contend that Williams’s physical occupation of *Mammy*’s mammy complicates the narrative of the image in important ways. When asked to pose for Warhol, Williams enthusiastically accepted, “incensed that any company would claim to ‘own’ Aunt Jemima,” a historical figure in America and a well-known stereotype of blackness.<sup>37</sup> Her identity and performance is one that both invokes and resists the mammy, contributing to complex and polysemic histories of the figure. In making this argument, I contest Muñoz’s claim that *Mammy* is an uncomplicated reproduction of “images that are ingrained in the North American racist imagination” and “[t]here is no challenge or complication of these constructs on the level of title or image.”<sup>38</sup> Rather, *Mammy* visually marks Williams’s disidentifications and metonymically represents competing memories of mammyhood.

The image of the mammy gained popularity in the 1820s through a combination of radio, vaudeville, and minstrelsy acts, amidst national struggle over slavery and equality.<sup>39</sup> The mammy was the non-threatening counterpart to the Jezebel, desexualized through obesity, lack of intelligence, and motherliness. Her loyalty was unparalleled and integral to the continued success of the plantation system.<sup>40</sup> By the 1930s, the nation had embraced the mammy in a number of forms, in novels such as *Uncle Tom’s Cabin* (1852), *The Clansmen* (1905), *Imitation of Life* (1933), and *Gone with the Wind* (1936), films like *The*

*Birth of a Nation* (1915), *Gone with the Wind* (1939), and *Imitation of Life* (1934), and countless trademarked images, including that of Aunt Jemima. The now familiar Aunt Jemima name originated with Billy Kersands's 1875 vaudeville song "Old Aunt Jemima." In 1890, the R. T. Davis Milling Company began selling Aunt Jemima® pancake mix, which it acquired from a struggling flour mill. In 1893, for the World's Columbian Exposition, the flour seller hired former slave, Nancy Green, as the Aunt Jemima performer for the company. In 1889, the company registered a trademark that included Green's image.<sup>41</sup> Green played Aunt Jemima until her death in 1923, when newspapers declared, in a disconcerting conflation of fiction and reality, "Aunt Jemima Is Gone!"<sup>42</sup> Quaker Oats, who acquired Aunt Jemima® in 1923 and still owns her today, registered the trademark in 1937.<sup>43</sup> Over time, the Aunt Jemima image that the R. T. Davis Milling Company—later the Aunt Jemima Mills Company—used to trademark its pancake mix evolved into a post-Civil Rights era woman, dressed in a white collar and pearls to reflect her newly acquired ability to participate in the political and economic life of the nation.

Aunt Jemima retains significance in the American imaginary in no small part because she emerged as a symbol of post-Reconstruction era nostalgia for slavery and a commitment to retaining existing racial orders.<sup>44</sup> She signified a modernization, not a mere replication, of the mammy: the humble pancake maker conveyed the message that, even in post-Emancipation and post-Civil Rights America, black women were happy, even jubilant, in the kitchen looking after white children. "Aunt Jemima cooked for the national family...she is attributed with awakening a remembrance of Southern domesticity,"<sup>45</sup> offering a visual shorthand for the longing for the loyal-to-a-fault black slave who would never abandon her masters.

Despite being a mainstay in the racist American imaginary, the mammy displays remarkable malleability, evolving to reinvent faithful slave mythology. "The mammy problem" became, and remains, an explicit as well as implicit part of the struggle for racial equality.<sup>46</sup> Micki McEyla identifies the mass refusal of black women to be "live in" help,<sup>47</sup> the systematic rejection of the mammy title,<sup>48</sup> and the dominance of black domestic servants in the Civil Rights Movement<sup>49</sup> as examples of the diversity of performative resistance to the stereotypes associated with the myths of mammydom and black labor in the United States more generally. More contemporarily, artists such as Betye Saar, Emory Biko, and Kara Walker have reworked the mammy image in ways that invite critique of her post-Reconstruction identity. Rewritings of the mammy such as these, because they necessarily call on and reject the archetype, can involve processes of disidentification. E. Patrick Johnson, for instance, traces how his grandmother, Mary, a black, Southern, domestic servant, simultaneously "performs and obliges"<sup>50</sup> the image of the mammy that is expected of her while contesting that same stereotype "by drawing on black cultural performance traditions that reposition and ground her authority as a 'black' subject."<sup>51</sup> Warhol's *Mammy* reflects similar disidentificatory process, both in its production and final text.

When asked whether she would pose as Warhol's model despite the possibility of a lawsuit from Quaker Oats, Williams exclaimed "Are you kidding? You put *me* on the stand [in a court trial]! They cannot own my heritage!"<sup>52</sup> Though her outburst is ultimately represented through the image of a mammy as imagined by a white artist, Williams's defiance is also a disidentificatory rejection of Quaker Oats' ownership of Aunt Jemima® and her attendant racist histories. In essence, Williams repudiates trademark law's authority to control certain raced and gendered content. She defines visual images as part of her "heritage" and outside of the domain of IPR. Her performance exemplifies prosopopeic disidentification; while occupying Aunt Jemima, Williams embodies and animates the archetypal mammy while asserting the rights of marginalized groups to assert resistive counter(ownership) of their histories, bodies, and labor.

Muñoz reads the film *Looking for Langston* through the frameworks of disidentification, prosopopeia, and mourning. "Prosopopeia," he writes, "was understood by [Paul] de Man as the trope of autobiography, the giving of names, the giving of face: 'the fiction of an apostrophe to an absent, deceased, or voiceless entity, which posits the possibility of the latter's reply and confers upon it the power of speech.'"<sup>53</sup> Rhetorical scholars Johanna Hartelius and Megan Foley define the term in similar ways, for instance, as "an absent or fictional person is presented as though speaking and/or acting."<sup>54</sup> Like Muñoz, they use the term to understand how citizenship is



negotiated in democratic spaces and, specifically, how those individuals who do not have a voice are made legible. Foley writes that “the contemporary rhetoric of democratic citizenship increasingly relies on...prosopopeic maneuvers to invest bare life with sovereign rights.”<sup>55</sup> The conceptual framework she describes is useful for thinking about how prosopopeia is a productive mechanism for claiming “a prosopopeic form of citizenship.”<sup>56</sup> Though the cases here certainly implicate questions of citizenship, I am more directly concerned with the how they speak to the negotiation of resistance within oppressive ideological and material structures. Prosopopeic disidentification offers a theoretical framework for understanding how giving face and voice within otherwise constraining contexts can serve as a means of interrupting racist stereotypes, oppressive histories, and assertions of memory and property.

*Mammy*'s production mirrored that of other Warhol pieces: Warhol took a series of Polaroid portraits of Sylvia Williams in costume, which are now housed in the galleries and archives of museums, and subsequently went to work drawing the image.<sup>57</sup> Though Warhol photographed Williams from a variety of different angles, *Mammy* represents her in an assertive, straight on pose that is consistent with her desire to reclaim her history (see Figure 1). The photographic inspiration for *Mammy*—which portrays Williams in a patriotic, bright red bandana and blue and white dress—does not suggest transgressiveness. Yet, Williams's expression in the Polaroid reveals a self-assuredness that belies the often exaggerated expressions of Aunt Jemima and Mammy. Further, Williams's makeup, particularly her bright red lipstick and rouged cheeks, and gold hoop earrings sexualize her in a manner that breaks with the asexuality of Hattie McDaniel's Mammy in *Gone with the Wind* and the respectability of Aunt Jemima. Further, and notably, Warhol's photographs are not simply posed images but representations of the personalities of his models. Commentary on Warhol's Polaroids from Emison Museum notes:

A wealth of information about Warhol's process and his interactions with his sitters is revealed in his Polaroid photographs. Strikingly evident is the intense...emotional engagement he had with these individuals. While some figures display relative ease in front of the camera, others present a stiff and studied countenance that appears unaffected by Warhol's instructions...Warhol positioned his sitters in a variety of similar, classical poses, over and over again, striving to obtain the perfect composition that matched their personalities...By shooting at length, more about the sitter was exposed.<sup>58</sup>



**Figure 1.** Andy Warhol, *Mammy* (Sylvia Williams), 1981 (Copyright held by The Andy Warhol Foundation for the Visual Arts, Inc./Artists Rights Society).

Williams's disidentifications are at least partially legible in completed versions of *Mammy*, of which I will discuss two: one in which Williams's black face recedes into a black background and one in which her facial features are accentuated. In these images, the mammy is both an anonymous figure in the American cultural imaginary with no name and no face and a specific black woman, Williams, who embodies and resists the stereotypical controlling image.

In the former version of *Mammy*, Williams's face is framed by glitter, or diamond dust as Warhol refers to it, offset by slightly open, smiling lips covered in bright red lipstick, a bright red headwrap, roughly outlined blue and yellow eyes and eyelashes, and huge hoop earrings (see Figure 2, left). Williams literally has a black face, "the emphasis on eyes, lips, and hair (here a bandana) nearly obliterate her image."<sup>59</sup> This "obliteration" is consistent with Williams's critique of race in America: The "garish and vulgar" outline of Williams's face exists, the rest of her history fading into the black canvas.<sup>60</sup> Williams's identity is erased by and through racist American culture; she is significant only for the archetype she embodies and the labor she performs. Here, her disidentifications are barely visible, overwhelmed by Warhol's black canvas. She is a means of production, a depersonalized form of work exploited for her labor. Yet, when read in conjunction with the latter version of *Mammy*, Williams's erasure becomes even more evident by way of contrast.

In the second version of *Mammy*, Williams's face is clear and sharp, bringing her identity to the fore, her face visible against a neon background, and her expression of self-confidence unmistakable (see Figure 2, right). This piece highlights Williams's prosopopeic disidentifications by representing her identity as coextensive with *Mammy*. In 1980, Williams was playing the role of Bertha in the hit musical *One Mo' Time*, which tells the story of an all-black vaudeville show in 1920s New Orleans. A review of the show in *New York Magazine* notes that "Bertha is Sylvia 'Kuumba' Williams, an immense woman...[t]o her songs, already laden with sexual allusions, she adds her own load of innuendo, and the effect is both intense and aloof, like an invitation to an orgy on Sirius."<sup>61</sup> Meanwhile, *Billboard* compared Williams to jazz great Bessie Smith.<sup>62</sup> Even from the reviews of the show, it is evident that the plot of the musical and Williams's performance channels the subversiveness of African American jazz traditions and a sexuality that is contrary to mammy stereotypes. As Jennifer Fuller puts it, "Singers like Ma Rainey and Bessie Smith railed against male infidelity and violence, demanded sexual satisfaction, and by singing about these topics, 'had broken out of the boundaries of the home and taken their sensuality and sexuality out of the private sphere and into the public sphere.'"<sup>63</sup> Williams's performance of 1920s jazz thus fits within a larger, well-establish resistive tradition. *New York Magazine* explains, *One Mo' Time*'s reference to that tradition successfully "conjures up an atmosphere so thick with spunk and mischief that the past is re-created with refreshing irony rather than with the usual nostalgic treacle."<sup>64</sup> The voice that Williams brings to *Mammy* is a multilayered one, which invokes memories of jazz singers, black



Figure 2. Andy Warhol, *Mammy* 1981, left, and one of many trial proofs of the piece, right (Copyright held by The Andy Warhol Foundation for the Visual Arts, Inc./Artists Rights Society).



female empowerment, sexual expression, and professional success, all of which were denied to the archetypal mammy, at least the stereotypical one.

Williams is thus not simply “the faithful slave” version of the mammy but a subversive trickster who is “able to covertly insert her own language (e.g., black vernacular) and pursues motives that are not necessarily those of her employer,”<sup>65</sup> here contesting *Gone With the Wind*’s archetypal Mammy and Quaker Oats’s ownership of the history of Southern black labor through Aunt Jemima. Williams uses disidentification to embrace a double-voicedness that contests the racial and gender ideologies embodied in the image of the mammy, foregrounding her own motives and identity. Both of Warhol’s representations of Williams as mammy interrupt the work of “constructing a common discourse to bind the subject to the nation and its markets,”<sup>66</sup> which unmakes the relationship between trademark, consumer, and commodity and engages in a “transformative restructuration”<sup>67</sup> of the figure. In the next section, I contrast Williams’s repudiation of the Aunt Jemima® trademark with Lynch’s creation of property rights in his own performances, highlighting how both undermine racial stereotypes even as they relate to trademark law in distinct and different ways.

### Marshawn Lynch’s (de)propertizing disidentification

In 2013, Marshawn Lynch, running back for the Seattle Seahawks, trademarked his nickname Beast Mode, a moniker that he earned in high school where his breakaway running style distinguished him from other players. In a list of the 10 best NFL nicknames of all time, the blog the biglead commented: “What else does one think about when they imagine a hard running tailback other than a beast? Lynch is just that, a beast on the field, and he can turn it on when his team needs him to.”<sup>68</sup> The biglead’s question highlights a central racial issue with the nickname Beast Mode: That it invokes the specter of black men as monstrous beasts. In the context of sports, the notion of being able to “turn it on” connotes both the desirability and marketability of bestial sports prowess, with the caveat that players, particularly black ones, will “turn it off” when they leave the field. As Crunk Feminist Collective writer rboylorn points out, “The NFL is unique in its glamorization and acceptance of hypermasculinity and aggression...[t]hey want you to be a ‘beast’...when you play, but a ‘choir boy’ in the press room.”<sup>69</sup> Game playing and interviews are forums for creating valuable properties, that is, players and teams, and building property relations with fans. The NFL operates smoothly when black players abide by the rules of the money-making game, performing wild bestiality in the game and domesticated bestiality off the field.

Lynch’s out-of-game corporeal performances—including his refusal to answer questions in press conferences—have been much discussed because they disrupt NFL business-as-usual, particularly with respect to norms of blackness and respectability. I read these acts in combination with Lynch’s decision to trademark Beast Mode®, I’m Just Here So I Won’t Get Fined®, and Bout that Action® as (de)propertizing disidentifications. I invoke the term propertization to describe moves to conceive of a category of items, often intellectual properties, in real property terms.<sup>70</sup> Propertization is a process that occurs in the NFL, a system that others have observed bears “striking similarity”<sup>71</sup> to the Old South’s labor system. Though well paid and rewarded with fame, “black athletes occupy lowly stations providing fodder and one-dimensional performance art for viewers.”<sup>72</sup> I also use propertization to describe a parallel process whereby Lynch claims ownership in his own embodied performances, specifically through trademarks referencing his nickname and catch phrases.<sup>73</sup> I use depropertization to contrastingly refer to the process whereby Lynch, through his disidentifications, combats the policing of black bodies in the NFL and asserts his own agency. Through (de)propertizing disidentifications, Lynch defies the fugitive-slave-to-(intellectual)-property narrative that Best tells, redefining the black beast not as a laboring figure to be owned and exploited in a system of “racial capitalism”<sup>74</sup> but rather as a commodity producer to be respected and emulated.<sup>75</sup>

Since their arrival on slave ships to American shores, black men were portrayed as unintelligent, physically capable, and inferior. Yet, the image of the black beast (alternately the black brute)—associated with unbridled animality, criminality, brutishness, sexual predation, and threats of

miscegenation—developed over time. Andrew Leiter writes: “White men were quick to exercise their patriarchal prerogative to keep black men away from white women...sexual policing revolved around the image of the African American male as a ‘black beast,’ an enduring image of the segregation era characterizing black males as sexually aggressive, only slightly removed from savagery.”<sup>76</sup> Works such as Charles Carroll’s *The Negro A Beast* (1900) and Thomas Dixon Jr.’s *The Clansman*, later adapted into D. W. Griffith’s *The Birth of the Nation*, perpetuated representations of the bestial black man. The linkages of blackness with bestiality have continued to the present day through cultural texts including news media, Blaxploitation films, 1980s action flicks, crime dramas, and, as discussed here, professional sports.<sup>77</sup> Suzanne Enck highlights how, in the context of sports, black men are represented as uniquely masculine and bestial, thus “legitimizing the racist notion that blacks are naturally superior physically.”<sup>78</sup>

As in the case of the mammy, the trope of the black beast calls for continuing white supremacy and subjugating black men. However, also as in the case of the mammy, combatting the image of the black beast was and remains central to the struggle for racial equality. Authors of the Harlem and Southern Renaissances, for example, used the figure of the black beast in their attempts to seek equality and to redefine black masculinity.<sup>79</sup> In order to demonstrate that black men pose no risk to American citizens, particularly white women, “African Americans had to engage the myth of the black beast in their unsuccessful attempts to return national attention to the realities of white violence.”<sup>80</sup> In a contemporary context, critiquing the figure of the bestial black man is central to ongoing conversations about police brutality in the United States. Darren Wilson’s descriptions of Michael Brown after his death, in particular, portrayed him as dangerous, superhuman brute.<sup>81</sup> Lynch’s (de)propertizing disidentifications work to rewrite the black beast in the context of sports.

While Lynch’s performances in games comport, in part, with the stereotype of the black man as beast, his out-of-game performances and related trademarks deviate from postgame scripts, disrupting the property and marketability relations established by major league football. Lynch’s behavior at press conferences, on the one hand, confirms the racist stereotype of the unruly black beast. Lynch, after all, refuses to abide by the “rules of the game,” choosing instead to respond to questions at press conferences with answers like “yeah,” “nope,” “maybe,” “I’m grateful,” and, of course, “I’m just here so I won’t get fined.”<sup>82</sup> On the other hand, Lynch’s actions and words advance a critique of the NFL that uses “[t]he intentionality of his silence, the consistence of his stubbornness, his refusal to ‘give in’ and his ‘unbossed and unbought’ attitude”<sup>83</sup> to question the norms of postgame performance imposed on black players.

While Lynch’s refusal to act in “respectable” ways depropertizes his body, his trademarks create commodity value in his moments of resistive agency, propertizing his performances. The logo for Beast Mode® imprinted on Lynch’s clothing line intervenes in the narrative of the black beast by creating new meanings for the term. The Beast Mode® logo does not depict Lynch or even a black man. Instead, Beast Mode is signified by a minimalist, stylized, green and white letter “B” with sharp, mountaineer triangles and the words “Beast Mode” frequently written nearby (see [Figure 3](#)). The logo turns the black beast into a mark of athleticism, perseverance, and character. Lynch’s website explains: “There is only one BEASTMODE and it isn’t in the way you play the game, hit the ball, or score a touchdown. It’s who you are, it’s how you’re built, it’s part of your genetic makeup—it’s a lifestyle.”<sup>84</sup> Lynch’s logo thus operates as “a mode of *recycling* or re-forming an object that has already been invested with powerful energy.”<sup>85</sup> Even as descriptions of Beast Mode link beastliness with qualities that come out in particular moments and even biological imperative, they do so in a way that is separate from race. In an interview about Beast Mode, Lynch states: “I’m from there, so I got a different view, but what Oakland taught me, what I really hold on to, is my personality. Loud in what I do, and quiet in what I say.”<sup>86</sup> Lynch describes his character here, particularly the ways in which he lives by the values his community taught him. By way of contrast between beastly performative excess and un-beastly performative minimalism, he complicates the understanding of black masculinity as always already aggressive and adversarial. Lynch’s performative excess—through his performance of Beast Mode—and performative minimalism—in the quietness of his actions and



Figure 3. One version of the Beast Mode logo (Trademark registered by Marshawn Lynch).

the visual rhetoric of his logo—come together to recode the black beast as an abstract image that connotes the qualities of passion, determination, grit, and athleticism.

Writing about artist Jean-Michel Basquiat, Muñoz notes that trademarks and similar symbols “remind the viewer that the history of consumer culture that Basquiat is signifying upon is an economy that was, in no small part, formulated on the premise that the ownership of other human beings was entirely possible.”<sup>87</sup> Lynch’s trademarks—like Basquiat’s artistic riffs—adamantly refuse the notion that black bodies can be owned and establish the value, in concrete monetary terms, of black corporeal performances. Committed to supporting his hometown of Oakland and known for his refusal to spend any of the salary paid to him by the NFL, Lynch embodies a form of capitalism that nonetheless retains a sense of responsibility to self and community.<sup>88</sup> In trademarking descriptions of his corporeal performances, he creates counterweights to the racialized trademarks that define black masculinity.

I’m Just Here So I Won’t Get Fined® also marks Lynch’s resistive corporeal performances, memorializing the moments in which he asserts agency through “selective silence” and simultaneously complies with and resists the rules imposed on him by the NFL. For Lynch, “the boundaries of his own comfort [are] his way of achieving/enacting his agency, and refusing to be controlled.”<sup>89</sup> In a recent example of Lynch’s minimalistic refusal to engage, “Lynch stayed at his designated podium for 4 minutes, 51 seconds—over an hour less than all his teammates and coaches—and was asked 29 questions. At the 4:51 mark, he said ‘time,’ stood up and walked away from the microphone.”<sup>90</sup> Despite criticism of his refusal to answer questions in interviews, Lynch maintains the quietness that he characterizes as part of his personality.<sup>91</sup> Selling apparel with the phrase “I’m just here so I won’t get fined” signals Lynch’s technical completion of his job in ways that refuse the policing of black men’s personalities while also asserting boundaries on labor requirements in the NFL. Similarly, Bout that Action® points to Lynch’s refusal to engage in activities other than the job for which he was hired, namely playing football. Lynch refuses to perform in some of the ways most highly valued by the NFL while creating value in himself and his corporeal acts by and through the trademarks he owns.

The moments in which Lynch speaks explicitly about the stereotypes imposed upon black athletes support the notion that his trademarks remake racialized representations. In one of his rare interviews, Lynch demonstrates his thoughtfulness about links between race, bestial stereotypes—here being described as a thug—and sports. He comments:

I would like to see them grow up in project housing authorities, um, being racially profiled growing up, sometimes not even having nothing to eat, sometimes having to wear the same damn clothes to school, for the, for a whole week, then all of a sudden a big ass change in their life...to the point where they’re starting their career at 20 years old...I would like to see some of the mistakes that they would make.<sup>92</sup>

Lynch offers a framework for understanding the realities of urban spaces and opens possibilities for reading his actions and those of other football players in culturally contextual ways. Between his direct resistance to the stereotypes imposed upon him and his quiet but complicated personality—evident in postgame interactions, witty and irreverent sketches about his love of Skittles and the final play of Super Bowl XLIX, affinity for animals like puppies and raccoons, and commitment to his hometown of Oakland—Lynch forces a rethinking of the attributes ascribed to black men, particularly black athletes.<sup>93</sup> Taken together, Lynch’s embodied performances and trademarks disarticulate understandings of black men as property and assert control over the ways in which his body is propertized. When fans put on Beast Mode apparel, they invoke the black beast but they do so in a manner that highlights

Lynch's complex embodiment of the figure, along with the notion that "Beast Mode is an ecosystem," not the figure imagined by white supremacy.<sup>94</sup> In doing so, they also divorce blackness from bestiality, affirming that anyone can—and should—operate in Beast Mode.

## Conclusion

The case studies examined here—*Mammy* and Beast Mode®—demonstrate the potential for bodies to simultaneously reify and reject racist stereotypes in the context of trademark law. Despite structural and ideological obstacles to completely reappropriating racist trademarks and tropes, Williams and Lynch perform embodied defiance in ways that push against racist historical memories and associations of blackness with property. As Muñoz writes, "There are limits to the strategies, tactics, and performativities...material and psychic forces working against the disidentifying subject."<sup>95</sup> The power of Williams's and Lynch's performances derives not from their complete and unproblematic efficacy but from the ideological resistance they effect. New realities are not simply created through disidentifications, "they are suggested, rehearsed and articulated."<sup>96</sup> Here, disidentifications push against racialized images, complicating their meanings, and conceive of a trademark regime that does anti-racist work for people of color.

In *Mammy*, Williams uses her constrained agency to reimagine the mammy through her own eyes. By way of her acts of prosopopeic disidentification, she occupies the mammies envisioned by Margaret Mitchell, Quaker Oats, and Warhol, giving her face and voice that complicates racist representations of the Southern laborer. Williams refuses to accept trademark law's definition of (intellectual) property rights in the bodies of black servants or the histories and images through which they are represented. In the analogous but also opposing example of (de)propertizing disidentification, Lynch uses trademark law to claim property rights in his body and performances in a manner that rewrites the narrative of the black beast and subverts the smooth operation of the NFL's money-making apparatuses. Unlike Williams, who contests the scope and authority of trademark law, Lynch uses it as tool of resistance, simultaneously asserting his ability to make money from his own actions and denying the NFL's capacity to force him to perform labor in particular ways.

Both of these examples highlight the importance of the embodied performances of people of color in renegotiating conceptions of identity, property, and memory in trademark regimes. As King argues, "Whether deliberately or not, individual or group memory selects certain landmarks of the past—places, artworks, dates; persons, public or private, well known or obscure, real or imagined—and invests them with symbolic and political significance."<sup>97</sup> As demonstrated by their historical embeddedness in processes of racial formation, trademarks are the types of sites of memory King describes. Williams and Lynch use corporeal rhetoric, specifically complex and nuanced disidentifications, in order to invoke and deny racist representations of blackness, thereby creating possibilities for reworking collective understandings of familiar stereotypes.

## Notes

1. *In Re: Tam*, No. 14-1203 (Fed. Cir. 2015).
2. The Disparagement Clause is contained in 15 U.S.C. §1052 (2)(a) (2006).
3. *Pro-Football, Inc. v. Blackhorse et al.*, No. 1:2014cv01043 - Document 161 (E.D. Va. 2015).
4. Richard Schur, "Legal fictions: Trademark discourse and race," in *African American Culture and Legal Discourse*, ed. Lovalerie King and Richard L. Schur (New York: Palgrave Macmillan, 2009), 191 (emphasis added).
5. *Ibid.*, 192. For a critique of trademark law's inconsistent policing of morality, see Christine Haight Farley, "Stabilizing Morality in Trademark Law," *American University Law Review* 1019 (2014): 63.
6. Mario Bagioli, Anupam Chander, and Madhavi Sunder, "Brands R Us," in *The Luxury Economy and Intellectual Property: Critical Reflections*, ed. Haochen Sun, Barton Carl Beebe, and Madhavi Sunder (New York: Oxford University Press, 2015), 79.

7. Rosemary Coombe uses examples of sports mascots, liquor branding, and campy enactments of celebrity personas to demonstrate that bodies and their attendant performances are integral to confronting trademark law's problematic articulations of racial difference; Rosemary Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham, NC: Duke University Press, 1998), 113–200.
8. Cherrie Moraga and Gloria Anzaldúa, eds., *This Bridge Called My Back: Writings by Radical Women of Color*, Fourth edition (Albany: State University of New York Press, 2015).
9. José Esteban Muñoz, *Disidentifications: Queers of Color and the Performance of Politics* (Minneapolis: University of Minnesota Press, 1999), xiv.
10. Ibid., 4.
11. Ibid., 72.
12. Debora J. Halbert, *Resisting Intellectual Property* (New York: Routledge, 2006), 6.
13. Kevin DeLuca, “Unruly Arguments: The Body Rhetoric of Earth First!, Act Up, and Queer Nation,” *Argumentation and Advocacy* 36, no. 1 (1999): 17.
14. Ibid., 10.
15. Christine Harold, *OurSpace: Resisting the Corporate Control of Culture* (Minneapolis: University of Minnesota Press, 2007); Ross Singer, “Anti-Corporate Argument and the Spectacle of the Grotesque Rhetorical Body in *Super Size Me*,” *Critical Studies in Media Communication* 28, no. 2 (2011): 135–152; Phaedra C. Pezzullo, “Contextualizing Boycotts and Buycotts: The Impure Politics of Consumer-Based Advocacy in an Age of Global Ecological Crises,” *Communication and Critical/Cultural Studies* 8, no. 2 (2011): 124–145.
16. Sarah Banet-Weiser, *Authentic TM: Politics and Ambivalence in a Brand Culture*, Critical Cultural Communication (New York: New York University Press, 2012); Roopali Mukherjee and Sarah Banet-Weiser, eds., *Commodity Activism: Cultural Resistance in Neoliberal Times* (New York: New York University Press, 2012).
17. John Nguyet Erni, “The Reconstituted Body in Law,” *International Journal of Communication* 4 (2010): 226.
18. Coombe, *The Cultural Life of Intellectual Properties*, 173.
19. Lauren Gail Berlant, *The Female Complaint: The Unfinished Business of Sentimentality in American Culture* (Durham: Duke University Press, 2008), 116.
20. Roopali Mukherjee, *The Racial Order of Things: Cultural Imaginaries of the Post-Soul Era* (Minneapolis: University of Minnesota Press, 2006).
21. Coombe, *The Cultural Life of Intellectual Properties*, 185. Anne McClintock makes a similar argument, identifying links between the rise of advertising of soap and the maintenance of colonial and gender hierarchies in Victorian England; Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (Routledge, 1994).
22. Raymie E. McKerrow, “Corporeality and Cultural Rhetoric: A Site for Rhetoric’s Future,” *Southern Communication Journal* 63, no. 4 (1998): 316.
23. Pheng Cheah, David Fraser, and Judith Grbich, eds., “Introduction: The Body of the Law,” in *Thinking Through the Body of the Law* (New York: New York University Press, 1996), xiv.
24. McKerrow, “Corporeality and Cultural Rhetoric,” 317.
25. D. Soyini Madison, “That Was My Occupation: Oral Narrative, Performance, and Black Feminist Thought,” in *Exceptional Spaces: Essays in Performance and History*, ed. Della Pollock (Chapel Hill: University of North Carolina Press, 1998), 319.
26. Debra Hawhee, *Bodily Arts: Rhetoric and Athletics in Ancient Greece* (Austin: University of Texas Press, 2004); Jack Selzer, “Habeas Corpus,” in *Rhetorical Bodies*, ed. Jack Selzer and Sharon Crowley (Madison: University of Wisconsin Press, 1999), 3–16.
27. Phaedra C. Pezzullo, “Resisting ‘National Breast Cancer Awareness Month’: The Rhetoric of Counterpublics and Their Cultural Performances,” *Quarterly Journal of Speech* 89, no. 4 (2003): 345–365; DeLuca, “Unruly Arguments.”
28. Christine Harold and Kevin Michael DeLuca, “Behold the Corpse: Violent Images and the Case of Emmett Till,” *Rhetoric & Public Affairs* 8, no. 2 (2005): 263–286; Darrel Enck-Wanzer, “Tactics of Puerto Rican Cultural Production in East Harlem: Casitas, Gardens, Flags, Murals and Rhetorical Agency,” *Communication Theory* 21 (2011): 344–367; Kelly E. Happe, “The Body of Race: Toward a Rhetorical Understanding of Racial Ideology,” *Quarterly Journal of Speech* 99, no. 2 (2013): 131–155.
29. Muñoz, *Disidentifications*, 11–12.
30. E. Patrick Johnson, *Appropriating Blackness: Performance and the Politics of Authenticity* (Durham: Duke University Press, 2003); Karma R. Chávez, “Remapping Latinidad: A Performance Cartography of Latina/o Identity in Rural Nebraska,” *Text and Performance Quarterly* 29, no. 2 (2009); Shane T. Moreman and Dawn Marie McIntosh, “Brown Scriptings and Rescriptings: A Critical Performance Ethnography of Latina Drag Queens,” *Communication and Critical/Cultural Studies* 7, no. 2 (2010): 115–135; Kathleen M. de Onís, “Lost in Translation: Challenging (White, Monolingual Feminism’s) <Choice> with *Justicia Reproductiva*,” *Women’s Studies in Communication* 38, no. 1 (2015): 1–19; Shinsuke Eguchi and Godfried Asante, “Disidentifications



- Revisited: Queer(y)ing Intercultural Communication Theory: Disidentifications Revisited,” *Communication Theory* 26, no. 2 (2016): 171–189.
31. Megan E. Morrissey, “A DREAM Disrupted: Undocumented Migrant Youth Disidentifications with U.S. Citizenship,” *Journal of International and Intercultural Communication* 6, no. 2 (2013): 145–162. Though he does not invoke disidentification in detail, Isaac West makes a similar argument in the context of transgender persons, contending that “[w]hen citizenship is viewed as performatively produced relationalities among families, friends, and strangers, legal recognition is transformed as it is practiced”; Isaac West, *Transforming Citizenships: Transgender Articulations of the Law* (New York: New York University Press, 2014), 35.
  32. Stephen Michael Best, *The Fugitive's Properties: Law and the Poetics of Possession* (Chicago: University of Chicago Press, 2004), 16.
  33. *Ibid.*, 15.
  34. Lovalerie King, *Race, Theft, and Ethics: Property Matters in African American Literature* (Baton Rouge: Louisiana State University Press, 2007), 6–7.
  35. David Bollier, *Brand Name Bullies: The Quest to Own and Control Culture* (Hoboken: J. Wiley, 2005), 52.
  36. Patricia Hill Collins, *Black Sexual Politics: African Americans, Gender, and the New Racism* (New York: Routledge, 2004).
  37. Bollier, *Brand Name Bullies*, 52.
  38. Muñoz, *Disidentifications*.
  39. Kimberly Wallace-Sanders, *Mammy: A Century of Race, Gender, and Southern Memory* (Ann Arbor: University of Michigan Press, 2008), 2.
  40. Hill Collins, *Black Sexual Politics*.
  41. Maurice M. Manning, *Slave in a Box: The Strange Career of Aunt Jemima* (Charlottesville: The University Press of Virginia, 1998), 68.
  42. *Ibid.*, 77.
  43. “Our History,” *Aunt Jemima*, 2016, [http://www.auntjemima.com/aj\\_history/](http://www.auntjemima.com/aj_history/). Due to the passage of the Trademark Act of 1881, the number of trademarks registered in the US rose from 100 in 1870 to 50,000 in 1920; Coombe, *The Cultural Life of Intellectual Properties*, 185.
  44. Wallace-Sanders, *Mammy*, 59.
  45. *Ibid.*, 62.
  46. Micki McElya, *Clinging to Mammy: The Faithful Slave in Twentieth-Century America* (Cambridge, MA: Harvard University Press, 2007), 223–237.
  47. *Ibid.*, 211.
  48. *Ibid.*, 230.
  49. *Ibid.*, 243.
  50. Johnson, *Appropriating Blackness*, 129.
  51. *Ibid.*
  52. Bollier, *Brand Name Bullies*, 52.
  53. Muñoz, *Disidentifications*, 65.
  54. Johanna Hartelius, “Face-Ing Immigration: *Prosopopeia* and the ‘Muslim-Arab-Middle Eastern’ Other,” *Rhetoric Society Quarterly* 43, no. 4 (2013): 313; Michael Leff and Gerald Mohrmann use the term in a classical manner to describe Abraham Lincoln’s rhetorical constitution of the silent but nonetheless existent Southern enemy, as do John Murphy and James Jasinski in their discussions of how voice get invoked; Michael C. Leff and Gerald P. Mohrmann, “Lincoln at Cooper Union: A Rhetorical Analysis of the Text,” *Quarterly Journal of Speech* 60, no. 3 (1974): 346–358; John M. Murphy, “Inventing Authority: Bill Clinton, Martin Luther King, Jr., and the Orchestration of Rhetorical Traditions,” *Quarterly Journal of Speech* 83, no. 1 (1997): 71–89; James Jasinski, “Constituting Antebellum African American Identity: Resistance, Violence, and Masculinity in Henry Highland Garnet’s (1843) ‘Address to the Slaves,’” *Quarterly Journal of Speech* 93 (2007): 27–57.
  55. Megan Foley, “Voicing Terri Schiavo: Prosopopeic Citizenship in the Democratic Aporia between Sovereignty and Biopower,” *Communication and Critical/Cultural Studies* 7, no. 4 (2010): 383.
  56. *Ibid.*, 395.
  57. “Andy Warhol @ Christie’s: Instant Andy,” *Christies.com*, 2015, <https://onlineonly.christies.com/s/andy-warhol-christies/mammy-sylvia-williams-32/128>.
  58. “Emison Museum Features ‘Andy Warhol: Faces and Names,’ September 3 - December 14,” *Depauw*, August 27, 2008, <http://www.depauw.edu/news-media/latest-news/details/21978/>.
  59. Ian M. Thom and Andy Warhol, *Andy Warhol: Images* (Vancouver: Douglas & McIntyre, 1995), 45–46.
  60. *Ibid.*, 11.
  61. John Simon, “Four Plays, Four Sexualities,” *New York Magazine*, August 4, 1980.
  62. Joe Radcliffe, “‘One Mo’ Time’ Show Nostalgic,” *Billboard Magazine*, November 17, 1979.
  63. Jennifer Fuller, “The ‘Black Sex Goddess’ in the Living Room: Making Interracial Sex ‘Laughable’ on *Gimme a Break*,” *Feminist Media Studies* 11, no. 3 (2011): 269. Fuller extends Hazel Carby’s classic analysis of the 1920s



jazz scene to the 1980s television show *Gimme a Break*, starring Nell Carter, who performed in a hit musical, *Ain't Misbehavin'*, which debuted one year before *One Mo' Time*.

64. Simon, "Four Plays, Four Sexualities."
65. Johnson, *Appropriating Blackness*, 109.
66. Coombe, *The Cultural Life of Intellectual Properties*, 170.
67. Muñoz, *Disidentifications*, 39.
68. Michael Shamburger, "Marshawn Lynch's Nickname, Beast Mode, Has Become a Fan Favorite," *thebiglead*, January 20, 2015, <http://thebiglead.com/2015/01/20/marshawn-lynchs-nickname-beast-mode-has-become-a-fan-favorite/>.
69. rboylorn, "What Marshawn Lynch and Richard Sherman Teach Us About Respectability & Black Masculinity," *Crunk Feminist Collective*, February 3, 2015, <http://www.crunkfeministcollective.com/2015/02/03/what-marshawn-lynch-and-richard-sherman-teach-us-about-respectability-black-masculinity/>.
70. See, e.g., Coombe, *The Cultural Life of Intellectual Properties*.
71. Jenn M. Jackson, "Slavery Much? On Racism in the NFL, Richard Sherman, and Hypocrisy," *Water Cooler Convo*, January 22, 2014, <http://watercoolerconvo.com/2014/01/22/slavery-much-on-racism-in-the-nfl-richard-sherman-and-hypocrisy/>.
72. Ibid.
73. Peter Odell Campbell brought my attention to the rhetoric around Lynch's performances at the Race and Media Conference in 2015. The paper he presented there engaged with Lynch as a resistive labor figure, a thematic that I have taken up here. Peter Odell Campbell, "Marshawn Lynch's Labor Actions," Paper Presented at the Race and Media Conference, Albuquerque, New Mexico, September 2015, <http://www.peterodellcampbell.com/marshawn-lynch-labor-action/>.
74. Nancy Leong, "Racial Capitalism," *Harvard Law Review* 126, no. 8 (2013): 2153.
75. Timothy Geigner, in discussing whether Lynch should be able to trademark short phrases, attributes another history to the black beast: "Delightful, especially considering the origins of 'Beast Mode' don't exactly start with Marshawn Lynch (it almost certainly was used in conjunction with video game *Altered Beast* as well as the cartoon *Beast Wars*); Timothy Geigner, "Marshawn Lynch, Anti-Authority Hero, Loves to Trademark His Phrases," *TechDirt*, February 26, 2015, <https://www.techdirt.com/articles/20150224/10545830126/marshawn-lynch-anti-authority-hero-loves-to-trademark-his-phrases.shtml>. While Geigner is correct that there are other, previous uses of the term beast in popular culture, the history I tell here accounts for issues of race and racial justice both in the invocation of the name Beast Mode and the complex workings of trademark law that he does not take into account.
76. Andrew B. Leiter, *In the Shadow of the Black Beast: African American Masculinity in the Harlem and Southern Renaissance* (Baton Rouge: Louisiana State University Press, 2010), 2–3.
77. "Jim Crow Museum of Racist Memorabilia," *Ferris State University*, 2014, <http://www.ferris.edu/jimcrow/brute/>. In a contemporary example of the narrative of the black beast, police officer Darren Wilson, in his testimony describing the circumstances under which he shot and killed black teenager, Michael Brown, invoked the racist image of the superhuman black beast, a Hulk-like demon who grew stronger and more aggressive each time he was shot; Janelle Bouie, "Michael Brown Wasn't a Superhuman Demon," *Slate.com*, November 26, 2014, [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/11/darren\\_wilson\\_s\\_racial\\_portrayal\\_of\\_michael\\_brown\\_as\\_a\\_superhuman\\_demon.html](http://www.slate.com/articles/news_and_politics/politics/2014/11/darren_wilson_s_racial_portrayal_of_michael_brown_as_a_superhuman_demon.html).
78. Suzanne Marie Enck-Wanzer, "All's Fair in Love and Sport: Black Masculinity and Domestic Violence in the News," *Communication and Critical/Cultural Studies* 6, no. 1 (March 2009): 9.
79. Leiter, *In the Shadow of the Black Beast: African American Masculinity in the Harlem and Southern Renaissance*, 6.
80. Ibid., 35.
81. Janelle Bouie, "Michael Brown Wasn't a Superhuman Demon," *Slate*, November 26, 2014, [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/11/darren\\_wilson\\_s\\_racial\\_portrayal\\_of\\_michael\\_brown\\_as\\_a\\_superhuman\\_demon.html](http://www.slate.com/articles/news_and_politics/politics/2014/11/darren_wilson_s_racial_portrayal_of_michael_brown_as_a_superhuman_demon.html).
82. Stav Ziv, "Marshawn Lynch Gets Trademark Approved for 'I'm Just Here So I Won't Get Fined,'" *Newsweek*, December 31, 2015, <http://www.newsweek.com/marshawn-lynch-gets-trademark-approved-im-just-here-so-i-wont-get-fined-410657>.
83. rboylorn, "What Marshawn Lynch and Richard Sherman Teach Us About Respectability & Black Masculinity." See also Jenée Desmond-Harris, "Marshawn Lynch's Selective Silence is a Power Move for Black Athletes," *Vox Media*, January 1, 2015, <http://www.vox.com/2015/1/31/7956685/marshawn-lynch-media-race>.
84. "About Beast Mode," *Beast Mode Apparel: Lifestyle and Athleisure Brand of Marshawn Lynch*, 2016, <https://www.beastmodeonline.com/pages/about-beastmode>
85. Muñoz, *Disidentifications*, 39.
86. E:60, "Marshawn Lynch: Beast Mode," *ESPN.com*, December 2, 2013, <http://espn.go.com/video/clip?id=9927540>.
87. Muñoz, *Disidentifications*, 44.

88. Geoffrey C. Arnold, "Seahawks' Marshawn Lynch Hasn't Spent Any Salary Money: Report," *The Oregonian: Oregon Live*, February 26, 2016, [http://www.oregonlive.com/nfl/index.ssf/2016/02/seahawks\\_marshall\\_lynch\\_hasnt.html](http://www.oregonlive.com/nfl/index.ssf/2016/02/seahawks_marshall_lynch_hasnt.html).
89. rboylorn, "What Marshawn Lynch and Richard Sherman Teach Us About Respectability & Black Masculinity" (citing Jenée Desmond-Harris).
90. Jeff Legwold, "Lynch: 'I'm Here So I Won't Get Fined,'" *ESPN*, January 28, 2015, [http://espn.go.com/nfl/playoffs/2014/story/\\_/id/12237417/marshawn-lynch-seattle-seahawks-uses-same-answer-repetition-super-bowl-media-day-here-get-fined](http://espn.go.com/nfl/playoffs/2014/story/_/id/12237417/marshawn-lynch-seattle-seahawks-uses-same-answer-repetition-super-bowl-media-day-here-get-fined).
91. Kenneth Arthur, "What Marshawn Lynch's Silence Says About the NFL," *Rolling Stone*, December 2, 2014, <http://www.rollingstone.com/culture/features/the-quiet-man-marshawn-lynch-is-still-just-bout-that-action-20141202>.
92. E:60, "Marshawn Lynch: Beast Mode."
93. Lynch's mother referred to Skittles as "power pellets," presumably after the video game Pac Man, feeding them to her son to encourage him to perform at his best. Lynch now owns a trademark in her reference to Skittles; Kevin Patra, "Marshawn Lynch Applies for 'I'm Just Here' Trademark," *Around the NFL*, February 24, 2015, <http://www.nfl.com/news/story/0ap3000000473718/article/marshawn-lynch-applies-for-im-just-here-trademark>.
94. Lonnae O'Neal, "36 Hours in Beast Mode," *The Undefeated*, May 17, 2016, <https://theundefeated.com/features/marshawn-lynch-oakland-beast-mode/>.
95. Muñoz, *Disidentifications*, 161.
96. *Ibid.*, 179.
97. King, *Race, Theft, and Ethics*, 6–7.