Phillie Phanatic: What Will Become of Philly's Beloved Mascot?

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The Philadelphia Phillies' licensing agreement for the Phanatic is set to expire on June 15, 2020 and the battle over one of the most iconic mascots in sports history rages on in court.

The *Philadelphia Business Journal* spoke with Jordan LaVine, chair of Flaster Greenberg's Intellectual Property Department, about how the Phillies' strategy could play out and what might happen to Philadelphia's furry green mascot if the team loses the case:

The Phillies could argue that the changes they unveiled in February are derivative of the original copyright and are legal to use, even if H/E wins back the character's rights, Kennedy said.

The Phillies are skirting the intent of that section of the Copyright Act, but they have an argument because the "new" Phanatic technically falls under the legal definition of a derivative, according to LaVine.

"*What you have here with the Phillies is some creative lawyering where they have created the derivative work, in this case the slightly altered Phanatic, following the notice of termination but prior to the effective date of termination*," LaVine said.

It's unclear if any court has addressed whether a valid derivative work can be made after the copyright holder receives notice that its license will be terminated, LaVine said. The ambiguity of that section of copyright law could allow this case to set a precedent or take the Phanatic's case to a higher court, which could extend the legal battle by months or even years.

If the Phillies win their suit against H/E, the team would have the option to use either the old costume or the new one. If the Phillies lose and the rights revert back to H/E, their only option might be to continue on with the redesigned Phanatic, but whether the costume changes constitute a derivative work is subjective.

LaVine said the changes to the costume are derivative of the original Phanatic. It doesn't require a complete transformation for a work to be considered derivative, he said.
"*I think anyone that sees the P2, Phanatic 2, identifies it as the Phillie Phanatic from a layman perspective*," LaVine said. "*And from an expert perspective, I think that's the test*."
Phillies fans certainly hope LaVine is right. With time running out and no settlement in sight, it appears likely the Phanatic's fate will be decided by the court.

ATTORNEYS MENTIONED

Jordan LaVine