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Taking names with, and from, Dale Earnhardt Jr.

By Darren Rovell
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This Sunday at Michigan International Speedway, Dale Earnhardt Jr. will drive a "throwback car" painted to look just like one his father drove in 1974. But as he faces his sixth Father's Day without his dad around, Dale Jr. might not be entirely thankful that he bears his papa's name. Because of the fame of his father, Dale Jr. hasn't owned his own name, or the rights to his own signature, for the past three years.

Instead, Earnhardt's stepmother Teresa -- the third and last of his father's wives -- controls those rights, even as Dale Jr.'s name has been featured on everything from cake decorating products to baby bibs.

"She don't want to come off it too easy because she wants to make sure my dad's name is always thought of as the way it is," Dale Jr. told The Charlotte Observer last month. "If I didn't have the same name -- and I kind of wish I didn't sometimes -- I wouldn't have to be worrying about it."

Dale Jr.'s driving contract with Dale Earnhardt Inc. allows him to use his own name on licensing agreements and endorsements, said his older sister, Kelley Earnhardt Elledge, the president of JR (read: Junior) Motorsports, which handles his off-the-course business. But she said that the details of any payments Dale Jr. has to make for use of the name will be kept private, along with the intricacies of the agreement between DEI and Junior's company, and that Dale Jr. would not comment.

DEI spokesman Steve Brown said company officials will not comment on the arrangement.

How did this oddity happen? Apparently, Dale Jr. didn't care much about the business side of racing when he began his NASCAR career in the Busch Series in 1998. Many of those arrangements, including the terms of his insurance and where he banked, were set up by DEI. And his driver's contract, at least through 2002, was somehow a simple handshake agreement.

Dale Sr.'s signature is on the initial trademark filing for his son's name. And perhaps Junior wasn't quite aware of what he signed on April 3, 2002 when he put his name on a one-sentence [consent form](#) required



Junior inherited plenty from Senior, including his name. But that isn't always good.

of any living person who is either trademarking his or her own name or conveying the rights to someone else.

Records from the U.S. Patent and Trademark Office show that soon after Dale Sr. died in a crash at the 2001 Daytona 500, the rights to Dale Jr.'s name automatically were transferred to his father's estate. As the executor of the estate, Teresa then transferred the rights to Dale Jr.'s name to his father's trust and eventually to herself.

Dale Jr. has said he's in the process of getting the rights to his own name back, although that might prove difficult. To date, he has not filed any action against Teresa with the government office.

"It's hard to revoke your consent once you've given it," said J. Scott Evans, a partner of Adams Evans, a Charlotte-based law firm that has registered trademarks for a number of drivers. "If Dale Jr. has a problem with it now, that's between him and DEI."

In the same way that a person can sell a car, he or she also can sell the rights to his or her name. In 1999, Salton, a company that makes kitchen appliances and housewares, paid \$137.5 million to former two-time heavyweight champion George Foreman for the rights to use his name and image on its electric grills. Two months ago, Muhammad Ali sold 80 percent of the rights to his name and image to CKX for \$50 million. That company also owns a majority share in the rights to Elvis Presley's name and image.

It's one thing, though, for an athlete or his family to sell his name and another thing altogether to do it when the athlete is in the prime of his career. It's one thing to own the trademark to your name and sell it as Presley's family and Ali himself did, but another never to have owned the trademark to your name in the first place. And the latter is the case with Dale Jr.

"These rights have significant value, and they are sometimes fought over," said Mark Roesler, chairman and CEO of CMG Worldwide, a firm that manages the licensing rights of Babe Ruth, Jim Thorpe and Vince Lombardi, among others. "It wouldn't be enough for Dale Jr. to just say, 'Please give me my rights back.' There has to be accountants, appraisers and lawyers involved."

Roesler, who notes he is not privy to the agreement, said it's likely that the arrangement means Dale Jr. gets less than a full cut on everything that has his name on it. Instead of the team paying a premium to the driver to be able to license



As the executor of Dale Earnhardt Sr.'s estate, Teresa Earnhardt now controls Dale Jr.'s name.

out his name to sponsors and licensees, Dale Jr. might be doing exactly the opposite.

Of the 20 Nextel Cup drivers whose names are trademarked, Dale Earnhardt Jr. is the only one who does not own his own name. And yet, he (and his name) are among the most marketable commodities on the circuit, with more than \$5 million in endorsement deals off the track. A recent Harris Interactive Poll ranked him as the fifth most popular athlete in the United States.

"With the value that NASCAR merchandise has today, it's extremely important to be able to control your own name," said Cary Agajanian, whose company -- Motorsports Management International -- represents Tony Stewart, Matt Kenseth, Kasey Kahne and Jamie McMurray, among others. "In Dale Jr.'s situation, it's obviously unusual that he doesn't control that."

Apparently, it isn't entirely unprecedented in racing. Geoff Bodine, the NASCAR driver who had 570 starts from 1979 to 2004, says he didn't own his own name for a long time. In the '80s, according to Bodine, a man successfully trademarked his name without his consent, then tried to blackmail him. It's one of the reasons Bodine sometimes was referred to as Geoffrey.



One of the most popular drivers on the circuit, Dale Earnhardt Jr. might not be maximizing his off-the-track earning power.

"It definitely was an inconvenience," Bodine said.

Ruth Crowley, president of Motorsports Authentics, which has contracts to produce Dale Sr. and Dale Jr. licensed die-cast cars and apparel, said the fact that Junior doesn't own his own name doesn't necessarily

NASCAR drivers whose names are trademarked:

- Jeff Burton
- Kyle Busch
- Dale Earnhardt Jr.
- Jeff Gordon
- Denny Hamlin
- Kevin Harvick
- Dale Jarrett
- Jimmie Johnson
- Bobby Labonte
- Jeremy Mayfield
- Joe Nemechek
- Ryan Newman
- Kyle Petty
- Elliott Sadler
- Hermie Sadler
- Reed Sorenson
- Tony Stewart
- Martin Truex Jr.
- Brian Vickers
- Michael Waltrip

make it harder to do business.

"We work collaboratively with DEI and JR Motorsports to try to come up with the best solution for the overall business," Crowley said. "It's really a very balanced process."

The unusual name licensing agreement might not be that troublesome now, as DEI and JR Motorsports already work together on most of Junior's off-the-track deals and the paint scheme of his car obviously is owned by DEI. But should Dale Jr. part ways with DEI when his contract expires in 2007, DEI's presence in his business deals might devalue the money Earnhardt's new team can make off the star.

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