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AT THE CORNERS

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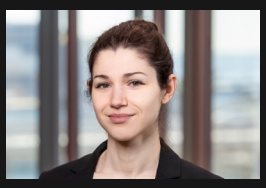
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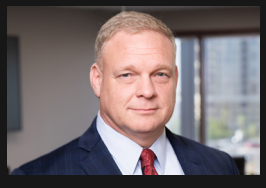
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IS "DOOM BETTING" THE NEW DOOM SCROLLING? WHAT TO WATCH WITH ADDICTIVE DESIGN LITIGATION

MARC WEINTRAUB AND GREG PAYTON

If you've ever caught yourself reaching for your phone to check a live betting line during dinner or found a push notification pulling you back to an app you'd sworn off for the night, you know why regulators and plaintiffs' attorneys are paying attention to how sports wagering platforms are built. In courts across the country, a wave of lawsuits has landed alleging that major sportsbook apps are deliberately engineered to foster compulsive gambling. The legal theory borrows directly from the social media litigation playbook that certain platform design choices, not the act of betting itself, can cross the line from engaging to exploitative.

THE SOCIAL MEDIA PRECEDENT

The foundation for these claims was laid in the ongoing litigation against social media companies over platform design effects on young users. Earlier this year, a California jury returned verdicts totaling $6 million against two major platforms, finding them negligent in designing features (infinite scroll, recommendation algorithms, notification systems) that a plaintiff alleged caused her to become addicted as a teenager. Dozens of state attorneys general have filed parallel actions, and one high-profile federal trial recently ended in a settlement after testimony from company executives.

The core argument in these cases has been that when a company designs a product it knows to be habit-forming, tracks user behavior confirming that pattern, and then doubles down with features that deepen engagement, the company bears responsibility for the resulting harm. Plaintiffs are now applying that same framework to sports wagering, and the industry should be prepared.

WHAT THE COMPLAINTS ACTUALLY TARGET

In August, a Pennsylvania man filed suit against a leading sportsbook operator in Allegheny County, alleging the platform's design intentionally amplifies compulsive gambling. The complaint points to features that will be familiar to anyone in the industry: microbetting on minor in-game events, algorithmically targeted advertising, push notifications, and VIP programs that reward escalating wagers, all while making it easier to deposit funds than to withdraw them.

The suit alleges the operator has "full visibility" into users' betting patterns and can predict when a customer is escalating into dangerous behavior. Rather than intervening, the complaint claims, the platform uses that data to deliver personalized bonuses and incentives.

The complaint also highlights that the operator's parent company implemented betting limits, deposit restrictions, and VIP program safeguards in the United Kingdom following a regulatory action in 2018 but never extended those protections to American users. Plaintiffs are framing that gap as direct evidence that safer alternative designs exist and are already in use, a particularly effective litigation tool that companies operating across multiple regulatory environments must keep in mind.

Since then, over a dozen additional suits have been filed in multiple states, and a separate federal class action has been brought on behalf of a proposed nationwide class, asserting consumer protection, negligence and unjust enrichment claims.

GETTING AHEAD OF THE CURVE

While these cases deserve close attention, no one should panic yet. The legal theories are still being tested, and courts have not yet ruled on the central design-defect claims. Still, operators should consider taking concrete steps now to strengthen their position.

- **Audit your responsible gaming infrastructure**

  Self-exclusion tools, deposit limits, cool-off periods, and session-time reminders are no longer just good corporate citizenship, they are the kind of evidence a company wants in its record if a design-defect claim arrives. Document not only that these features exist, but that they are meaningfully promoted to users and regularly reviewed for effectiveness.

- **Evaluate your cross-border consistency**

  If your organization has implemented user protections in jurisdictions like the United Kingdom or the European Union, consider whether there is a defensible reason those safeguards differ from what you offer in the United States. Plaintiffs are already using that gap as evidence of a known, available safer design.

- **Review your data practices around at-risk users**

  The complaints allege that operators can identify escalating behavior and should intervene. Companies that can demonstrate affirmative, data-driven intervention protocols, reaching out to users who show signs of problem gambling rather than offering more promotions, will be in a far stronger position.

- **Pressure test your consumer disclosures**

  Failure-to-warn claims are a significant component of these suits. Clear, conspicuous, and specific disclosures about the risks associated with sports wagering, particularly features like microbetting and in-play wagering, can help mitigate this exposure.

LOOKING AHEAD

Legalized sports betting has been a remarkable economic success story, generating billions in tax revenue, creating jobs, and building an entirely new entertainment category. None of that is in question. But the companies that thrive long term will be those that treat responsible design not as a regulatory burden, but as a competitive advantage, one that builds user trust, strengthens the brand, and creates a defensible record.

BETTING ON WHAT YOU KNOW: INSIDER TRADING RISKS IN THE PREDICTION MARKET ERA

BRETT SHANKS AND TASNEEM HUQ

Predictions range from the mundane, like tomorrow's weather, to the consequential, such as whether a political leader will be removed from power. While individuals have long profited from correctly anticipating future events, prediction markets now offer a distinct mechanism that allows people to speculate directly on the outcome of an event without any underlying stake in the event itself. For example, according to the Department of Justice, one individual reportedly profited over $400,000 by correctly predicting that Venezuelan leader Nicolás Maduro would be removed from office by a specified date. But what if the individual making the prediction has inside information that makes the prediction more akin to a foregone conclusion? This raises significant legal concerns, particularly whether current insider trading frameworks can adequately address the misuse of non-public information in the rapidly expanding world of prediction markets.

From a technical perspective, predictions are traded as event contracts on prediction markets. Event contracts are binary instruments: individuals pay to take a "yes" or "no"

position on whether a future event will occur, and receive a fixed payout if correct. Trading prices reflect the market's implied probability that an event will or will not occur. Because these contracts can be based on virtually any real-world event, prediction markets have exceptionally broad scope, creating correspondingly broad opportunities for those with advance knowledge to profit from information not yet available to the public.

Legally, event contracts are regulated by the Commodity Futures Trading Commission (CFTC), a federal agency, pursuant to the Commodity Exchange Act (CEA). Because event contracts can encompass real-world occurrences, the novelty of prediction markets and the broad subject matter scope of event contracts have raised questions about how insider trading may be implicated on these markets. Under Securities and Exchange Commission (SEC) Rule 10b-5, 17 C.F.R. § 240.10b-5, trading based on material non-public information is prohibited, and the "classic" theory of insider trading imposes liability on corporate insiders who trade their company's securities based on material nonpublic information (MNPI).

While the classic theory targets insiders, courts have extended liability to outsiders through doctrines like tipper-tippee liability, where an insider shares MNPI with an outsider who then trades on it, and the misappropriation theory, which reaches those who breach a duty of trust to the source of the information. Critically, however, these theories have historically been tethered to corporate information, fiduciary relationships, and the trading of securities. Prediction markets operate largely outside this framework: event contracts can be based on real-world occurrences (political, governmental, athletic, or otherwise), and those with advance knowledge of such events need not owe any fiduciary duty to profit from that information.

The CFTC has responded by asserting that its own anti-fraud rule, Rule 180.1, 17 C.F.R. § 180.1 (modeled after SEC Rule 10b-5), applies to prediction markets and prohibits trading on MNPI obtained in breach of a duty of trust and confidence. Still, the law as applied in this area remains relatively novel and unsettled.

In February 2026, the CFTC's Division of Enforcement issued a formal advisory making clear that MNPI-based event-contract trading constitutes conduct the CFTC can pursue as "insider trading," with CFTC Enforcement Director David Miller noting in a speech that "a myth has spread that insider trading is permissible . . . in the prediction markets," but that is "[n]ot so." Just two months later, the CFTC filed its first-ever insider trading enforcement action involving event contracts, charging a U.S. Army service member who allegedly used classified information about a military operation to profit on prediction market bets. In a press release, Director Miller described this case as signaling that the agency "will not tolerate insider trading in our markets, period."

While companies have had decades to develop robust compliance measures, training programs, and internal controls focused on traditional securities-based insider trading, they have not had comparable time to address the relatively new world of prediction markets. The case law, regulatory guidance, and industry best practices that underpin securities compliance programs do not yet exist for prediction market activity. This creates both uncertainty and heightened risk: uncertainty because the legal contours of how insider trading doctrines apply to event contracts remain unsettled, and risk because prediction markets offer exceptionally broad scope (covering everything from corporate earnings to regulatory approvals to executive departures) and have experienced explosive growth.

According to The Block's 2026 Digital Assets Outlook Report, prediction market trading volume has reportedly increased approximately 130-fold between early 2024 and late 2025, with first quarter 2026 trading volume roughly 40 percent larger than all of 2025 combined. The result is a compliance gap: many existing insider trading policies were drafted for securities markets and may not cover event contracts or prediction market platforms, leaving companies and their employees exposed to enforcement risk, reputational harm, and potential civil liability.

Despite these uncertainties, companies can take proactive steps to mitigate prediction market-related insider trading risks. Existing insider trading policies may be insufficient because they typically apply only to officers, directors, or employees traditionally expected to handle MNPI, leaving a significant portion of the workforce unaddressed. Yet in the prediction market context, any employee (from the chief executive all the way down to a warehouse associate or entry-level

analyst) with advance knowledge of a material event (a product launch, a regulatory decision, an executive departure) could potentially exploit that information. To close this gap, companies should consider broadening the scope of their insider trading policies or codes of conduct to cover all employees and to expressly address prediction market activity. Companies may also adopt disclosure requirements obligating employees to report involvement in prediction markets, particularly those tied to the company's industry, or prohibit participation in specific event contract markets altogether. Finally, employee training is essential: many employees may not recognize that trading on prediction markets based on workplace knowledge could constitute misconduct, even if traditional securities are not involved. Updating training materials to address prediction markets and the potential legal and disciplinary consequences of misusing confidential information can help ensure that employees understand the boundaries.

Prediction markets have moved from the fringes of financial innovation to the mainstream, with trading volumes that have grown exponentially in a remarkably short period. While regulators have made clear that insider trading laws apply (as evidenced by the CFTC's February 2026 advisory and enforcement priorities), the legal landscape remains unsettled, and the compliance infrastructure that companies have built over decades for traditional securities markets does not yet extend to this new frontier. The risks are real and immediate: event contracts can be tied to virtually any corporate development, and employees at every level of an organization may possess information that, while immaterial to a company's stock price, could be highly valuable on a prediction market.

Companies that wait for regulatory clarity before acting may find themselves exposed to enforcement risk, reputational harm, and civil liability. Those that act now, by broadening insider trading policies to expressly cover prediction markets, extending coverage to all employees, adopting disclosure or prohibition requirements, and updating training programs, will be better positioned to navigate this rapidly evolving area and protect both their organizations and their employees from the consequences of misusing confidential information in a world where betting on what you know has never been easier.

ALL'S FAIR IN LOVE AND WAR, BUT IS ALL "FAIR USE" IN A WAR OVER NAME, IMAGE AND LIKENESS?

RUTH RIVARD AND APRIL PETROSINO

Washington Commanders quarterback Jayden Daniels has called into question the limits of his name, image and likeness (NIL) rights in his recent efforts to prohibit Louisiana State University (LSU) from continuing the use of his identity. On his departure from LSU, the 2023 Heisman winner requested that LSU retire his No. 5 jersey in recognition of his accomplishments on the field. LSU has set procedures and criteria for retiring jersey numbers.

There seems to be a question about what exactly was promised to Daniels and his family, by whom, and who was responsible for following through with the promise and necessary procedures. Based on the reports of a cease-and-desist letter sent by Daniels' attorneys to LSU, Daniels appears to be attempting to tie into his NIL agreement with LSU the use of the No. 5 jersey by another player.

NIL rights are not the same as ownership of a jersey number, but dangling those NIL rights may serve as persuasive leverage. More importantly, the dispute has brought to the forefront critical legal questions about the limitations on an individual's rights in their image.

STATE RIGHT OF PUBLICITY

The right of publicity—the legal protection behind NIL agreements—is governed by state law. Generally, the law of the state where the plaintiff resides controls on which state law to apply in a dispute, although this general rule can be overridden when there is a contract involved with its own choice-of-law provision. NIL rights are implicated when an individual's name, image, or likeness is used for commercial purposes. Louisiana recognizes a statutory right of publicity under the Allen Toussaint Legacy Act (La. Rev.

Stat. §§ 51:470.1–470.6), effective Aug. 1, 2022. The law protects an individual's name, voice, signature, photograph, image, and digital replica when used for commercial purposes. Here, the key statutory language is "for commercial purposes." While LSU may be prohibited from using Daniels' NIL commercially after the agreement ended—for example, in marketing material or online promotional content—LSU is not required to cease all use of Daniels' identity. For example, if LSU can show a use of Daniels' identity is non-commercial, such as use in a team photo or a narrative account of LSU's accomplishments, those uses may well be allowed.

FEDERAL INTELLECTUAL PROPERTY LAWS

The use of one's name, image, or likeness can also implicate federal trademark or copyright laws. Trademark rights come into play when an individual's identity is used to identify the source of a product or service—essentially, when used as a brand. Examples include Michael Jordan's Steakhouse and the George Foreman Grill. Copyright is involved when an individual's identity appears in a creative work, such as a photograph or sculpture.

Intellectual property rights come with limitations. One of the most notable principles is that of "fair use," which aims to strike a balance between the competing interests of intellectual property rights and free speech rights guaranteed under the First Amendment. "Fair use" has different applications depending on whether the IP right at issue involves copyright or a trademark.

COPYRIGHT FAIR USE

Fair use is embedded into copyright law as a First Amendment safety net. The preamble to 17 U.S.C. § 107 identifies a non-exhaustive list of purposes under which use of a copyrighted work may be considered "fair use": namely, criticism, comment, news reporting, teaching, scholarship and research.

More broadly, § 107 provides that whether the use is "fair use" depends on factors such as: (1) the purpose and character of the use (e.g., commercial versus non-profit); (2) the nature of the copyrighted work; (3) how much of the copyrighted work was used; and (4) the effect on the value and/or market of the original copyrighted work. The more recent court rulings primarily focus on two factors: nature of the copyrighted work and the effect of the alleged infringing work on the value of the original. Generally, if the user will gain some economic value from using the work and a license would have been reasonably available, courts are less likely to find fair use.

TRADEMARK FAIR USE

Trademark uses that courts have allowed under the doctrine of fair use include descriptive fair use, nominative fair use, fair use in expressive works, and parody.

Descriptive fair use allows others to use a trademark's ordinary, descriptive meaning to describe their own goods or services. For example, describing a juice flavor as "sweet-tart," or describing an airline company as an "American" airline.

Nominative fair use allows a third party to refer to a trademark when needed to describe the third party's own goods or services. The reference may be a comparison, or it may be a reference to a brand partner. If the good or service cannot be reasonably identified without the trademark, and the trademark is not used any more extensively than is reasonably necessary, then courts are more likely to find "fair use." For example, advertising that a phone charger works for an iPhone may be nominative fair use. Similarly, expressive works (i.e., artistic works such as books, movies, and songs) that use a trademark in their title may be seen as "fair use" as long as consumers are not likely to think the trademark owner sponsored or authorized the third party's work.

Parody is perhaps the most (in)famous example of fair use. The punchline works only if the audience can recognize the original mark, but the use cannot cross into genuine misappropriation.

STRIKING THE BALANCE

All of these laws protect intangible rights, and all require a balancing act. As NIL rights continue to evolve and become entwined in college sports, universities such as LSU will need to balance the NIL terms they are obligated to follow by contract, legally permitted uses of NIL and other intellectual property rights, and public perception. After all, a fumble on the football field is costly, but a legal or public relations fumble is on another field entirely.

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