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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## To Avoid Trademark Headaches, Olympics Must Be Off-Limits

By **Ryan Davis**

Law360, New York (July 24, 2012, 8:00 PM ET) -- While it may be tempting for businesses to tie their promotions to the upcoming Olympics, the organizers of the games are so fiercely protective of their marks that the only way to avoid trouble is to simply steer clear of any mention of the games, attorneys said.

The U.S. Olympic Committee has the exclusive right to use the word "Olympic" and other terms in the U.S. under a 1978 law, and it has not been shy about enforcing that right. Any company that is not an official sponsor of the games but makes use of the Olympic marks is all but certain to get a cease-and-desist letter.

"It's clear that the Olympics are not messing around," Jonathan Pompan of Venable LLP said. "They may be as aggressive or more aggressive than the biggest of companies, including many of their sponsors. It's extreme."

Unless a company has paid the USOC or the International Olympic Committee for the right to be an official sponsor of the games, the legal advice regarding just about any reference to the Olympics is simple, according to Sally Abel of Fenwick & West LLP.

"It is dangerous to do anything around the symbols of the Olympics," she said. "The best advice is to focus on something else."

Under the Amateur Sports Act of 1978, Congress granted the USOC the exclusive right to use the words "Olympic," "Olympiad" and "Citius Altius Fortius," (the Olympic motto "Faster, Higher, Stronger" in Latin), as well as the interlocking rings logo, and it zealously guards that right.

"I always point clients to the law," Jennifer Mikulina of McDermott Will & Emery LLP said. "It's not just the Olympic committee being difficult; it's part our laws."

Unlike in traditional trademark law, under the ASA there's no need for the USOC to prove a use of the words and images creates any likelihood of confusion, so the mere use of them creates liability, according to Elisabeth Moriarty of Greenberg Glusker Fields Claman & Machtinger LLP.

"It effectively creates a monopoly on the Olympic brand and how the words and images associated with it can be used," she said.

The IOC is just as aggressive about enforcing its brand around the world, and there have been widespread reports in recent weeks of "trademark police" out in force in London to ferret out any use of the marks by British businesses large and small. Both organizations

maintain that because official sponsors pay billions of dollars to be associated with the games, no one should be able to do so for free.

In the U.S., the extent of the USOC's enforcement efforts is exemplified by an incident last month in which it sent a cease-and-desist letter to the online knitting group Ravelry, which planned to hold a competition called the Ravelympics, in which members attempt to complete projects in events called "scarf hockey" and "afghan marathon."

The USOC demanded the group change the name to the Ravelry Games, saying that calling it Ravelympics "tends to denigrate the true nature of the Olympic Games" and "is disrespectful to our country's finest athletes."

The letter provoked an outcry on social media sites and the USOC later apologized for the "denigration" language, but reiterated the demand to change the name.

Also last month, the USOC demanded that a Greek restaurant in Philadelphia, which had operated for decades under the name Olympic Gyro, change its name as well. The proprietor agreed to change the name to Olympia Gyro.

"We've got a situation where anything you can remotely think of is off-limits or at least subject to a cease-and-desist letter," Pompan said.

While the threatening letter about the Ravelympics generated some bad press for the USOC, there's no indication that it plans to back off its campaign of aggressive enforcement, Moriarty said. And given how hard the USOC has come down on the use of the Olympic name, any unauthorized advertisement with a more direct connection to the actual games is certainly going to get the USOC's attention.

"People obviously want to capitalize on the excitement of the games, and you'd think that's good for the Olympic brand, but they're so protective of their sponsors [that] it seems like it's almost been taken to an extreme," Moriarty said.

Any use of the Olympics marks without permission is "fraught with peril," Pompan said, especially as the sponsorship money at stake increases with each Olympics and technology keeps making policing efforts easier.

"The Olympics clearly has the resources and scope to make what might otherwise be allowable very difficult," he said.

And although the demand letters seem to indicate that the USOC is more comfortable with competitions or other uses of the word "games" as a marketing tool or more generic phrases that don't include the word "Olympics," that's no guarantee companies that do so are in the clear, attorneys said.

If a company were to say something like, "We congratulate our athletes competing in London," Abel said, "I'd think a court would be hard-pressed to say that runs afoul of the law. But other than that, if you use Olympics, you're going to get into trouble."

The vast majority of cases involving the unlicensed use of Olympic marks never gets beyond the cease-and-desist stage, given the daunting prospect of challenging the full force of a major international sporting institution, Moriarty said.

"People often have little choice but to accede to [the committees'] demands," she said. "Whether or not they've been using [the mark] for years, they're forced to change it in the face of the statute and the political power of the USOC."

A rare exception was a lawsuit by the USOC against the organizers of an event once known

as the Gay Olympics, which went the U.S. Supreme Court in 1987.

The high court rejected the Gay Olympics' First Amendment defense and its claim that there was no likelihood of confusion, and concluded that under the 1978 law, the USOC has exclusive rights to the word "Olympics." The event is now known as the Gay Games.

Still, most companies faced with cease-and-desist letters lack the resources needed to stand up to the powerful committees, according to Pompan.

"If you don't have the money for a sponsorship, you don't have the money to fight," he said.

--Editing by Elizabeth Bowen and Lindsay Naylor.

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