

# Trademarks and Copyrights: What you need to know to protect your logos and marks

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# Overview

- Trademarks and Copyrights – what are they?
- Why are these important to your organization?
- What rights do you have to use certain logos?
- How can you protect your organization's logos?
- How can you avoid infringement?



# What is a trademark?

- A word, symbol, or other attribute that identifies and distinguishes the source of certain goods or services from the source of other goods/services
- It is distinctive for the goods/services covered under the mark
- It is a **SOURCE** identifier
- Markings: ®      TM      SM



# Examples

- Word:

APPLE® COCA COLA® US YOUTH SOCCER®

- Tagline/phrase:

JUST DO IT® (Nike)

I'M LOVIN' IT® (McDonald's)

- Design:



- Word and design:

# More Examples

- Sound

The NBC chimes

- Design or shape (if nonfunctional)

The Weber grill



- Color (if nonfunctional)

Pink color used with insulation



# Generally not a trademark

- Descriptive terms
  - Bank (for use with banking services)
  - Association (for use with association services)
  - Soccer (for use with soccer events/activities)
- No exclusive right to descriptive terms
- May be protected as a part of a mark in its entirety



# A mark distinguishes one source of goods/services from another

- Can order a Coca Cola<sup>®</sup> drink or a Pepsi<sup>®</sup> drink
- Can buy a ticket for an AA<sup>®</sup> flight or a Delta<sup>®</sup> flight
- Can make photocopies from a Xerox<sup>®</sup> copier or Canon<sup>®</sup> copier



# How are rights obtained in Marks?

- Use alone (common law protection)
  - First to use in a geographic region
- Registration
  - U.S. Patent and Trademark Office and/or
  - State Secretary of State Office
- Use is required for registration at the state or federal level
- Exclusive right to use in a specific geographic region



# Federally Registered Marks

- Provides nationwide expansion rights
- Cuts off the rights of others
- Provides a presumption of validity – harder to challenge
- Constructive notice to others of your use and ownership of the mark



# Maintaining Rights in a Mark

- Perpetual with continued use
  - May be limited to location of use
- For registered marks, maintenance filings are required
  - Federal: one filing between the 5<sup>th</sup> and 6<sup>th</sup> year of registration and a renewal every 10 years following registration
  - State: renewal (state specific timing – typically every 5 or 10 yrs)
- Policing the mark
- Quality control of licensee use



# Registration vs. Unregistered Marks

- Considerations
  - Short term vs. long term use
  - Plans to modify mark over time
  - Territory of use
  - Cost to maintain



# What is a copyright?

- Protection granted to any original work fixed in a tangible medium
- Examples
  - Books, poems, articles, website text, guidelines, press releases
  - Photographs, paintings, logos, designs, maps, motion pictures, videos
  - Music
  - Choreography
  - Sculpture
  - Computer programs, video game screens and code
- Generally not titles, slogans or taglines



# Rights granted in a copyright

- Gives owner the exclusive right to
  - Reproduce the work
  - Perform the work
  - Distribute the work
  - Publish the work
  - Display the work
  - Make derivative works of the work
- Protects against the copying or reproduction of an exact or substantially similar work

*May not protect against independently created works*



# Who owns the copyright in the work?

- Author/Creator
- If employee creates on behalf of employer, then employer is probably the owner (under work-for-hire theory)
- If independent contractor is hired to create the work, the IO likely owns unless there is an assignment of rights



# Copyright protection

- All under federal law
  - Use or publication not required
  - Nationwide protection once the work is created
- Registration is recommended but not required
  - Required for an infringement suit
  - Early registration allows options with respect to damages
- Length of protection:
  - Not dependent on use
  - General rule: life of author + 70 years
  - Work for hire: shorter period of either 95 years from the year of its 1st publication or 120 years from the year of its creation



# Important questions to ask

- Who created the logo/work/text?
- Who owns the work?
- Is the work original?
- Is the work used as a mark?
- Do you need permission to use?
- Are you allowed to modify the work?
- Are there any restrictions on your use?
- What kind of protection can you obtain?



# Potential risks

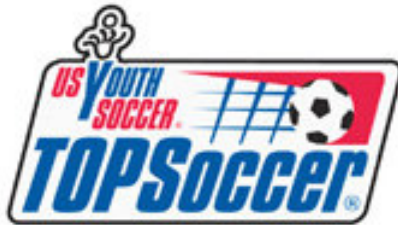
- Using a logo owned by another party without permission
- Hiring third party to design a logo
  - Was there an assignment of rights?
  - Was there a license to use?
- License issues
  - Scope of use
  - Restrictions imposed



# US Youth Soccer Logos



*The Game for All Kids!®*



# US Youth Soccer Logos

- License:
  - USYS has granted its members a right to use its logos
  - USYS retains ownership in the logos and controls use
- Requirements for use
  - Permission and approval required
  - Specific color requirements
- See US Youth Soccer Identity Guidelines



# Possible intellectual property protection available for your own unique logos

- Trademark protection for use as a source identifier
- Copyright protection for the unique design or image incorporated into the logo



# Adopting a new logo/design

- Who created?
- Who owns?
- Is it similar to another?
- Was any clearance searching done?
  - U.S. Patent and Trademark Office
  - Internet searches
- Scope of use
- Length of intended use
- Advice of legal counsel



# Creation and Ownership

- If not created by an employee, the ownership of the work/logo probably needs to be transferred to your organization
- Alternatively, obtain a license or permission to use the logo



# Clearance and Availability

- For logos, consider if anyone else has a registered mark for the same or similar logo
  - Checking state registries and the U.S. Patent and Trademark Office
  - Perform internet searches on a variety of search engines
  - Consider seeking legal advice



# Website issues

- Ask same questions about website
  - Who created the content?
  - Who created the code?
  - Who owns content, code, images?
  - Who owns the domain name?
  - Who manages the website?
  - Is the content substantially similar to another party's?



# Website Issues

- Additional questions
  - Are you collecting personal information from Internet users at the site?
    - If so, are you collecting information from children under the age of 13?
    - If so, do you have a privacy policy posted on your website?



# Children's Online Privacy Protection Act ("COPPA")

- Applies to any website that collects personal information from anyone under age 13
- If under 13, must have prior parental consent – COPPA specific rules
- Prohibiting access to ages 12 and under
  - Age query prior to registration
  - Additional queries to confirm age
- See Federal Trade Commission website



# Helpful Resources

- U.S. Patent and Trademark Office website  
[www.uspto.gov](http://www.uspto.gov)
- U.S. Copyright Office  
[www.copyright.gov](http://www.copyright.gov)
- US Youth Soccer Logo Guidelines  
[www.usyouthsoccer.org/aboutus/DownloadCenter.asp](http://www.usyouthsoccer.org/aboutus/DownloadCenter.asp)
- Federal Trade Commission  
<http://www.ftc.gov/privacy/privacyinitiatives/childrens.html>

