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Puma backs down on aggressive challenge to Olympic trademarks

If there was ever any doubt, the trademark for “Tokyo 2020” belongs to the U.S. Olympic and Paralympic Committee (USOPC). So does “Beijing 2022” and “Paris 2024.” German sportswear giant Puma conceded as much when it withdrew four actions it filed with the U.S. Patent and Trademark Office’s (USPTO) Trademark Trial and Appeal Board (TTAB) to void the USOPC’s registrations.

Despite that concession, however, Puma, which is not currently an Olympic sponsor, took an unusually aggressive approach in trying to use the upcoming Olympic location and year combinations for its own purposes when it recently asked the TTAB to invalidate the USOPC’s trademark registrations.

The USOPC and other sports organizations find themselves balancing their rights and the rights of their sponsors with the interests of the sports community. Puma’s legal attempts to expand its branding rights brings new attention to the lower-key concept of ambush marketing and how far brands that are not official Olympic sponsors can — and will — go to associate themselves with the Olympic Games.

In March 2020, organizers announced the Tokyo Games would be pushed back to 2021 due to the growing COVID-19 pandemic, although it would still be called the “2020” Games. The move stunned the sports world — the Olympics had never been postponed before. While the modern Olympics Games were canceled in 1916, 1940 and 1944, it took two devastating World Wars to force those decisions.

On the same day that the postponement was announced, Puma surprised many by filing an application to trademark “Puma Tokyo 2021,” and later applied to register “Puma Beijing 2022” and “Puma Paris 2024” for bags, clothing and sports equipment. The USPTO rejected the applications just one month later based on likelihood of confusion and false connection with the USOPC’s marks, but Puma doubled down by filing four cancellation actions with the TTAB challenging the USOPC’s trademarks. The USOPC hit



SPORTS MARKETING PLAYBOOK

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back in Feb. 2021 by suing Puma in a Colorado federal court alleging violation of The Ted Stevens Olympics and Amateur Sports Act, trademark infringement, unfair competition and false designation of origin, and deceptive trade practices, requesting both a jury trial and a declaratory judgment that its marks are valid.

The USOPC has a long history of protecting its intellectual property — with the federal government’s blessing. Unlike other countries, the USOPC receives no government funding to train and send Team USA athletes to the Olympic Games and the Paralympic Games every two years. But in 1998 Congress passed the Ted Stevens Act, which gives the USOPC broad control over how its trademarks are used commercially.

The USOPC brings in a lot of funding from corporations, ranging from Airbnb to Visa, through sponsorship and licensing fees to use its trademarks. The organization, which in 2019 changed its name from the U.S. Olympic Committee to the USOPC, reported in 2018 that sponsorships and licensing fees

netted the Olympics and Paralympics \$145 million, nearly half (46%) of the organization’s total revenue that year. So, it’s no wonder that the USOPC fiercely guards its highly lucrative IP.

The U.S. Supreme Court has also upheld the USOPC’s trademark rights. When the organization sued San Francisco Arts & Athletics for promoting its multi-day athletic event as the “Gay Olympic Games” without permission, the high court concluded in 1987 that the Amateur Sports Act of 1978 (the predecessor to the Ted Stevens Act), granted the USOPC exclusive use of the word “Olympic.”

Under the Amateur Sports Act, the USOPC was not required to prove that the unauthorized use was confusing, the Supreme Court held. It also found that the USOPC could enforce its rights to the word “Olympic” and its associated symbols and slogans without running afoul of the First Amendment.

The strong statutory and judicial support for the USOPC’s trademark rights makes Puma’s actions all the more surprising.

Puma asserted that it wanted to trademark its company name with the upcoming Olympic location and years to promote the Olympic athletes it sponsors and that it should legally be permitted to let consumers know that these athletes would be wearing the company’s footwear and apparel while participating in the games. In support, the company argued that the “location year” marks such as “Paris 2024” were descriptive and could not be trademarked. But the USPTO explained in its April 24 preliminary ruling that “Puma Tokyo 2021” and other phrases combining the Puma name with future Olympic years and locations would mislead the public into thinking Puma was more connected with the event than it actually is. In other words, Puma was trying to associate itself with the Olympics without paying for the right to do so.

Despite its initial aggressive stance, Puma quietly dropped its trademark challenges in April, and the USOPC followed suit by

voluntarily dismissing its Colorado lawsuit. At the same time, Puma also withdrew similar bids for the right to use the Federation Internationale de Football Association (FIFA) trademarks related to the World Cup and certain Union of European Football Associations (UEFA) trademarks.

Puma's attempt to straight up void the USOPC's trademarks is a significant departure from the ways brands usually try to skirt trademark and licensing rights for big sports events, sometimes referred to as ambush marketing.

For example, like the USOPC, the National Football League is highly protective of its Super Bowl intellectual property. The league sends cease-and-desist letters to broadcast and print advertisers who use "Super Bowl" or other NFL indicia. This hasn't stopped savvy marketers from making creative (but still lawful) use of words like "super" "game" and "party" and stock images of footballs and

team colors to associate their brands with the Super Bowl in consumers' minds.

The organizations behind the biggest sports events like the Olympics, Super Bowl and World Cup, undoubtedly have intellectual property laws on their side, but they must also balance their sponsors' rights with fan goodwill.

The International Olympic Committee (IOC) pulled in a reported \$1.03 billion between 2013 and 2016 from its top-tier sponsors, including Coca-Cola, Toyota and Intel. Protecting its trademarks ensures the IOC's biggest sponsors will keep paying for the privilege of being associated with one of the most iconic sports brands in the world. Alienating fans over perceived David-and-Goliath disputes often isn't worth it, however.

In a somewhat humorous attempt to safeguard its intellectual property, the USOPC sent a cease-and-desist letter to Ravelry, an

online community of knitters, crocheters and fiber artists in 2012 for calling a competitive creative event "Ravelympics." Angry members of the Ravelry community bombarded the USOPC website, Facebook page and Twitter account with complaints about the letter until the USOPC apologized for the letter's tone, according to NPR. Ravelry members reportedly weren't particularly happy with the apology, either.

Although Puma ultimately dropped its legal challenges to the USOPC's trademarks, the company decisively moved its Olympic branding ambitions out of the gray area of ambush marketing and into the courtroom. Will other lawsuits be filed to test the boundaries of Olympic intellectual property law? Puma's attempt to void USOPC's trademarks could be either the beginning or the end of such confrontations — or could leave the USOPC waiting to see what approach the next challenger takes.