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## Protecting iconic sports trademarks benefits everyone

When the International Olympic Committee made the difficult decision to postpone the 2020 Tokyo Games until 2021 due to the COVID-19 pandemic, it also decided to keep the name of the event intact — “Tokyo 2020.”

The move recognized the reality that the Olympics is much more than a global sporting event, it's a sponsorship and marketing opportunity on a worldwide playing field — one that official sponsors, as well as athletes and their sponsors, had already spent a lot of money to capitalize on.

German sportswear giant Puma lost no time in attempting to monetize the decision for its own benefit, applying to register “Puma Tokyo 2021” as a trademark for a long list of sports apparel, footwear and accessories, as well as sports equipment and other sporting goods, on the same day as the IOC's March 24 announcement.

But it didn't take long for the U.S. Patent and Trademark Office to shoot down the effort. The USPTO issued a preliminary order April 24 rejecting Puma's application on the grounds that “Puma Tokyo 2021” was both likely to cause confusion with marks for “Tokyo 2020” already registered by the U.S. Olympic Committee and that the applied for mark falsely suggested a connection with the Olympics and USOC.

The examining attorney found that “the marks share nearly identical common wording (i.e., ‘TOKYO 2020’ vs. ‘TOKYO 2021’) and create a highly similar overall commercial impression. The goods as listed are identical and/or highly related. Therefore, the similarities that exist among the marks and the goods are so great as to create a likelihood of confusion among consumers.”

Citing to a 1999 Trademark Trial and Appeal Board case, *In re Urbano*, in which the TTAB rejected the registration of SYDNEY 2000 for falsely suggesting a connection with the 2000 Olympic Games, the examining attorney concluded that “the



### SPORTS MARKETING PLAYBOOK

**DOUGLAS N. MASTERS and SETH A. ROSE**

*DOUGLAS N. MASTERS is a partner at Loeb & Loeb LLP, where he litigates and counsels clients primarily in intellectual property, advertising and unfair competition. He is co-chair of the firm's intellectual property protection group. dmasters@loeb.com*  
*SETH A. ROSE is a partner at the firm, where he counsels clients on programs and initiatives in advertising, marketing, promotions, media, sponsorships, entertainment, branded and integrated marketing, and social media. srose@loeb.com*

use of the wording ‘TOKYO 2021’ contained in the proposed mark would be clearly seen by the general public as referring to the TOKYO 2020 Olympic games that have been rescheduled to 2021 because of the COVID-19 pandemic, and thus to the widely known organization that comprises the Olympic games (i.e., the United States Olympic Committee).” It was also noted in the decision that PUMA filed the application on the same day as the announced rescheduling of the Tokyo Olympics.

PUMA has six months to challenge the decision or the USPTO will consider the application abandoned.

While the USOC did not intervene to object to PUMA's application — the application was rejected by the examining attorney without any input from the organization — it's well known that the IOC rigorously protects its intellectual property and the rights of its sponsors

around the world, some of which pay hundreds of millions of dollars for the global rights to use the Olympic marks. The IOC uses two effective weapons in particular — legislation and blackout periods — to head off attempts at ambush marketing and to ensure that only official sponsors benefit from the vast portfolio of Olympic intellectual property, including trademarked words, phrases and symbols.

Since 2000, host countries of the Olympic Games have agreed to enact specific legislation to protect the IOC's trademarks and to prevent brands' outright unauthorized usage or subtle efforts to associate themselves with the Olympic events by using related language. The IOC also banks on its Rule 40, which limits the way in which athletes and their non-Olympic sponsors may use of Olympic athletes' images and Olympic-related language during a blackout period before, during and after the games.

Like the Olympics, the brands of many sports organizations are built on decades of tradition, history and even generational fan loyalty. Symbols become iconic, recognizable to fans and non-fans alike, which makes protecting those symbols all the more important.

Earlier this year, organizers of the Masters Tournament, one of golf's four major championships, trademarked the green sports jacket bestowed on the tournament's winner every year since 1949. The winner's green jacket is based on the jacket worn by members of Georgia's Augusta National Golf Club, the tournament's host, and although Augusta National Inc. had already registered a trademark for the words “green jacket,” it didn't apply for trademark protection until 2019 for the three-button garment.

Last year, Augusta National also confronted a local business to protect a lesser-known symbol. Augusta National accused a garden center of trying to associate itself

with the golf course's famous azaleas after it applied to register the name "Augusta Echo" as a trademark for its own azalea varieties. The 13th hole of the Augusta National court is called Azalea, the flowers for which Augusta National is most well-known and which are planted there, according to the club.

Universities are also known for trying to protect the rituals, mascots and symbols used to rally their sports fans.

The Ohio State University challenged a Texas marketing company's bid to trademark the name of the 1965 song, "Hang on Sloopy," played by the OSU marching band at football games and other events for 50 years, for use on merchandise like mugs, T-shirts and sneakers, among other items, that featured the schools official colors of red and gray. While OSU does not have any registered trademark in the name, it maintains that the song, which is the official state rock song of Ohio and is also played at home games for the Cleveland Indians, Cleveland Browns and Cleveland Cavaliers, has a special place in Buckeye history and is synonymous with the university. OSU asserted that the company's application was a "transparent" attempt to associate with the school.

This isn't the first time that OSU has challenged attempts to encroach on its branding. The university has filed a number of challenges at the TTAB to protect its

"Buckeyes" name, and "The Shoe" — the school's football stadium. It has wrangled repeatedly with other "O" institutions, including Oklahoma State University, the other "OSU," over the acronym and University of Oklahoma, over the use of a block-letter "O" on the shirt of a marching drum major in an image the school tried to register. OSU recently attempted to trademark the word "the" when used in connection with the school's name on merchandise, but registration for "the" was denied.

As for the dispute over "Hang on Sloopy," the applicant failed to respond to OSU's challenge, effectively abandoning the application.

For the University of Arkansas, whose mascot is the Razorback, a sound is synonymous with its brand. In particular, the school has a sound trademark for its "Hog Call" of "Wooo Pig Sooie!" The Hog Call is shouted by fans at sports events and by students and alumni at other gatherings. It's hard to imagine another organization infringing on the unique trademark, but the university registered the Hog Call trademark nonetheless.

Syracuse University has tried to trademark the color orange for years, both as its school color and its actual mascot — Otto the Orange. But other universities that have orange as a school color, including the University of Tennessee and the

University of Florida, have objected.

While few sports organizations can rival the IOC's international reach when it comes to preserving and monetizing its institutional brand identity, sports leagues in the U.S. have charted their own courses to protect increasingly global events that have turned into cultural phenomena. The National Football League, the organizers of the Super Bowl, are as zealous as the IOC when it comes to protecting Super Bowl-related trademarks. From policing would-be ambush marketers from using a slew of words and phrases to shutting down game-day viewing parties that charge admission, the NFL takes a hard line against non-sponsors. Likewise, the National Collegiate Athletic Association has trademarked all things "March Madness," from logos and phrases including "the Final Four" to the design of the NCAA championship bracket that defines the event.

Of course, the COVID-19 pandemic and the resulting shut down of sports across the globe has upended the marketing plans of every sports organization. As sports organizations consider what the "new next" might look like, and how to implement marketing strategies in a post-pandemic world, engaging fans and consumers will continue to require preventing brand confusion, sanctioning infringers, and imbedding iconic symbolism in the collective cultural consciousness.