Journal of Legal Aspects of Sport, **5(1)**, 1995, 28-34

The Economic Impact of Licensing Logos, Emblems and Mascots

Ruth H. Alexander
University of Florida
Gainesville, Florida

The history of emblems, logos, and mascots extend to early intercollegiate football competition with the Ivy League schools choosing such ever popular mascots as the famous Yale Bulldog, known as "Handsome Dan," the Brown University Bruin and the Princeton Tiger. As other public and private universities were established, these institutional mascots became well recognized symbols of their schools, such as the Wisconsin Badger, the University of Florida Gator, the Florida State Seminole, the Duke Blue Devil, the Virginia Cavalier, the Trinity College Bantam and others. Other symbols or marks also became representative of an institution such as the "T" for the University of Tennessee and yet another "T" for the University of Texas. The state is also recognized for the University of Florida and the "S" for St. Lawrence University. Some schools are referred to as colors like the "Big Red" of Cornell University or the "Crimson Tide" of the University of Alabama. All these marks have become very recognizable with whom they represent, whether the "T" for Texas or Tennessee, or the Bulldogs of Yale, Georgia or Mississippi State. The public has learned to quickly identify these precious mascots and symbols of a given institution.

Logos, emblems and mascots are traditional symbols of institutionalized sports in America. Whether these represent professional, collegiate or high school teams, the importance of the identity established by these marks with the organization they represent has increased in the last decade and more specifically, the last five years economically. Even though many of these symbols are more than a century old, not until the legal battles of the National Football League in the late 1970s and the University of Pittsburg, Texas A & M University and the United States Olympic Committee in the early 1980s, did the economic impact become significantly realized. The increased income generated by the licensing of these marks suddenly became staggering. The courts' decisions in these litigations concerning the use of these trademarks, or marks, have become extremely important due to the corresponding economic impact.

The Federal Trademark Act of 1946 (Wong, 1988, p. 512) also known as the Lanham Act, controls the law of trademark registration and the remedies for infringement of registered trademarks. A trademark is defined as "...any word, name, symbol, or device or any combination thereof adapted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others" (Wong, 1988, p. 513). Trademarks refer to goods - not services nor collective marks.

A service mark is "... a mark used in the sale or advertising of services of one person and distinguishes them from services of others" (Wong, 1988, p. 513). A service mark identifies and distinguishes the source and quality of an intangible service while the trademark identifies the source and quality of a tangible product. Collective mark means "... a mark used by members of a cooperative, an association, or other collective group or organization and includes marks to indicate membership ..." (Wong, 1988, p. 513). Trademarks, service marks and collective marks all are involved in sports as these marks designate the source or origin, the quality, distinctiveness from others, symbols of goodwill, substantial advertising investment and protection for the public from confusion and deception.

A trademark, or mark, can be registered in any state where it is used and may also be registered in the United States Patent and Trademark Office in Washington, D.C. The mark must be distinctive and not generic, like the term, cola. Marks may have or can develop secondary meaning. This important characteristic of the mark is the mental recognition in the buyer's mind which associates symbols and designs with goods representing a single source.

Trademark infringement is defined as the reproduction of marks "... in connection with the sale... which likely causes confusion, mistake or deception without consent of the registrant" (Wong, 1988, p. 513). The "likely to cause confusion" element is the key factor in the majority of sports trademark infringement cases involving professional sports leagues and sporting goods manufacturers and sellers.

An important sports trademark case was *National Football League Properties, Inc. v. Witchita Falls Sportswear, Inc.*, (1982). A manufacturing company had produced and sold NFL football jersey replicas which created consumer confusion. NFL Properties, Inc. alleged that its trademark rights were violated when Witchita Falls produced jerseys of the Seattle Seahawks playersin blue and green colors. The court said the NFL Properties had the burden of proving: (1) the secondary meaning of the descriptive term - Seahawks - which relates the jersey to the NFL team, and (2) that Witchita Falls activities created a likelihood of confusion. The NFL Properties, Inc. accomplished that to the court's satisfaction. Eight other cases involving the NFL Properties followed very similar patterns.

On the intercollegiate scene, a prominent case was the *University of Pittsburgh v. Champion Products, Inc.*, (1982). Here the United States District Court did not extend the Witchita Falls holding to intercollegiate athletics by reversing on remand an appeals court decision. Manufacturers and sellers had enjoyed an unrestricted use of sports trademarks of educational institutions for years. After the University of Pittsburgh registered 29 marks, they brought legal action. However, the University of Pittsburgh failed to show confusion as to whether the company or the university was producing the goods. None of the demand to receive retroactive relief for the sale of products was awarded; however, future negotiations could be differently handled. Despite Champion's success in the case, a licensing agreement with the university was executed because of the future opportunity for Champion to continue doing business with hundreds of colleges and universities.

In another intercollegiate situation, a prominent case was *Texas A & M University System v. University Book Store, Inc.* (1983) University Book Store, Inc. lost the decision in the court of appeals when the court ruled Texas A & M University to be the owner of the service marks (as well as possessing sovereign immunity since Texas A & M University is a state institution).

On the national/international scene, Section 110 of the Amateur Sports Act of 1978 grants the United States Olympic Committee (USOC) the right to prohibit (without its consent) any person from using the word "Olympic" for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition. In *San Francisco Arts and Athletics, Inc. v. United States Olympic Committee*, International Olympic Committee, (1987), the district court, at the request of the USOC, enjoined the use of the word "Olympic" in the description of the planned "Gay Olympic Games" in 1982. The Supreme Court affirmed. Justice Powell said Congress intended to provide the USOC with broader protection than normal trademark protection because the USOC has exclusive control of "Olympic" without regard to whether confusion exists or not. This exclusivity extends to promotional uses of the term "Olympic" even when not used to induce the sale of goods. However, this exclusivity was in effect only when "Olympic" related to an athletic or theatrical event. In another case, *Stop the Olympic Prison v. USOC*, (1980), the use of the five interacting rings and the Olympic torch on a poster was upheld since the symbols did not fit the commercial or promotional definition of uses in Section 110 of the Amateur Athletic Act of 1978.

The results of these court rulings have produced substantial economic value to the legal owners as well as those companies or businesses who have bought into the franchise with the institutions. Professional sport leagues and more than 250 colleges and universities currently operate some sort of licensing programs. Some collegiate athletic programs handle this effort completely for the institutions while some institutions manage it with athletic departments just being involved.

To look closely at the income now being generated by this "new" business within the traditional business of sport reveals that Major League Baseball retail merchandise sales since 1988 alone has increased from $650 million to $2.4 billion in 1992. This represents almost a 30% increase in four years. The top selling teams as of December, 1992, were the Chicago White Sox, the Atlanta Braves and the New York Yankees (*Team Licensing Business*, 1993, p. 15).

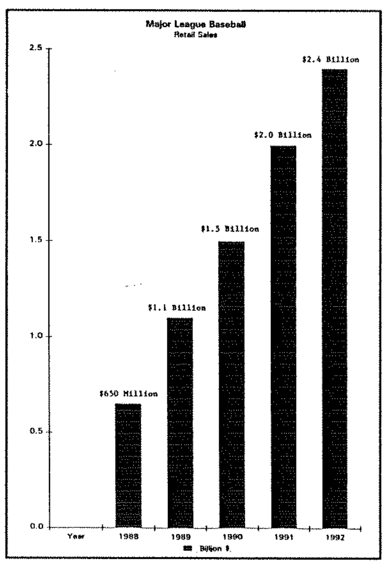

Table 1 shows growth in retail sales in licensed products in Major League Baseball from 1988-1992.

The National Basketball Association thought its sales in logo merchandise would fall with the retirement of Larry Bird and Magic Johnson; however, Michael Jordan and Charles Barkley smoothly moved into the spotlight and the NBA's sales continued to grow. Newcomer on the block, Shaquille O'Neal, is doing his share to keep the American public positioned in this retail business, especially since "I like Mike" exited. Bill Marshall, general manager for licensing in the NBA Properties indicates that children's licensing products have grown more than 170 percent in a single season - from 8% to 15% - at the end of the calendar year on December 31, 1992. The Chicago Bulls is the top selling team followed by the Charlotte Hornets and the Los Angeles Lakers. Interestingly, the Orlando Magic was sixth in sales even though the Magic finished tenth in league standings (*Team Licensing Business*, 1993, p. 16).

The National Football League's retail sales went from $1.1 billion to $3 billion from 1988-1989 to 1993-1994. This, of course, is a "triple" increase with the Los Angeles Raiders, Dallas Cowboys, and Washington Redskins being the top three selling teams. Interestingly, the Raiders sold 17.3% of the total while the Dallas Cowboys sold 14.5%. The third place team, the Washington Redskins, dropped to 8.9% of total sales and everyone else gradually decreased thereafter (*Team Licensing Business*, 1993, p. 17).

Some new and innovated twists to the NFL marketing efforts are its expanding retail programs such as the "Spirit for Women" - a domestic home furnishing thrust; "Fitness with Jake" from "Bodies by Jake"; "Cross Training" and the "Country Western" line. NFL Rock and Country videos are also in demand along with its footwear line called "Apex One" (*Team Licensing Business*, 1993, p. 18).

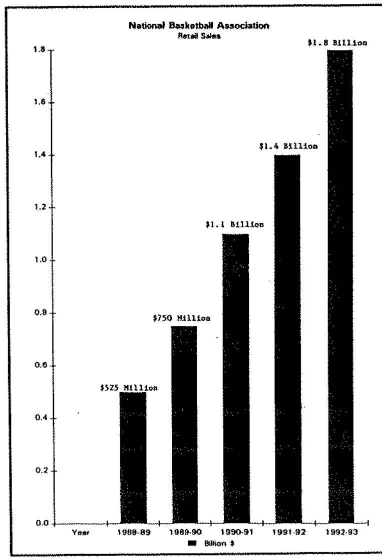

Table 2 shows growth in retail sales in licensed products in the National Basketball Association from 1988/89 to 1992/93.

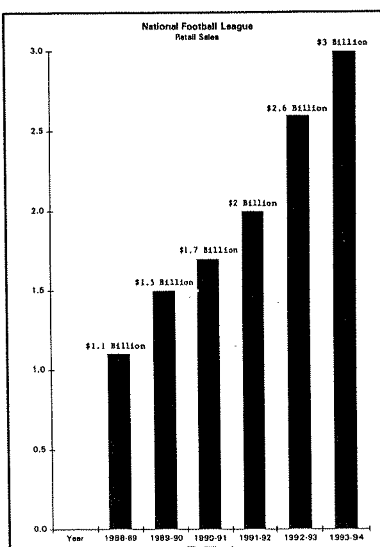

Table 3 shows growth in retail sales in licensed products in the National Football League from 1988/89 to 1993/94

The National Hockey League has the lowest retail sales in comparison to the other professional sport leagues, but even so, the growth has been tremendous from $100 million in 1988 to $800 million in the 1993 season. The most substantial growth occurred from 1991 to 1992. The Ottawa Senators and the Tampa Bay Lightning influenced much of this growth. Ottawa was no surprise, but what happened in Tampa was beyond expectations. The team leading in sales was the San Jose Sharks, followed by the Chicago Blackhawks and the Los Angeles Kings. Tampa Bay Lightning came in sixth in sales of the 24 teams (*Team Licensing Business*, 1993, p. 19).

On the collegiate scene, the Collegiate Licensing Company from Atlanta handles much of the domestic college licensing and Crossland Enterprises Inc. focuses on American Collegiate licensed products overseas. Retail sales have grown from $221 million in 1987-1988 to $700 million in $1991-1992. The University of Michigan, Georgetown University, Florida State University and Duke University are the top selling schools who belong to the Collegiate Licensing Company. However, some institutions independently market their own retail logo products and are leaders in this area. These schools include Notre Dame University, University of Miami, UCLA, Ohio State University, University of Florida and University of South Carolina to name a few. The University of Miami and the University of Florida have realized an increase in sales from $18,000 in 1982-1983 to $3.5 million for the University of Miami and $1.2 million for the University of Florida in 1992-1993.

On an annual basis, collegiate logo merchandise sales for all institutions have reached close to a $2 billion industry as institutions realize from several thousand to several million dollars annually.

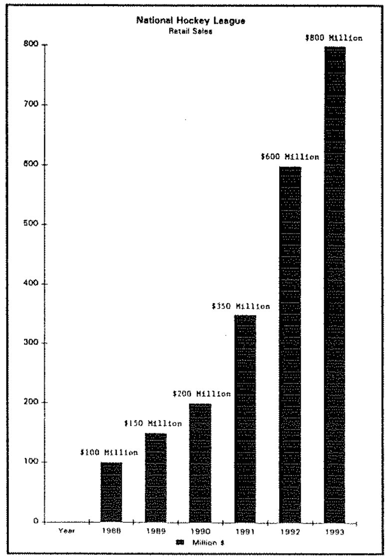

Table 4 shows growth in retail sales in licensed products in the National Hockey League from 1988-1993.

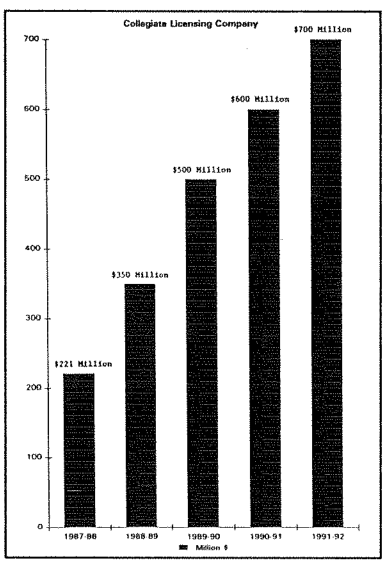

Table 5 shows growth in retail sales in licensed products within colleges and universities represented by The Collegiate Licensing Company.

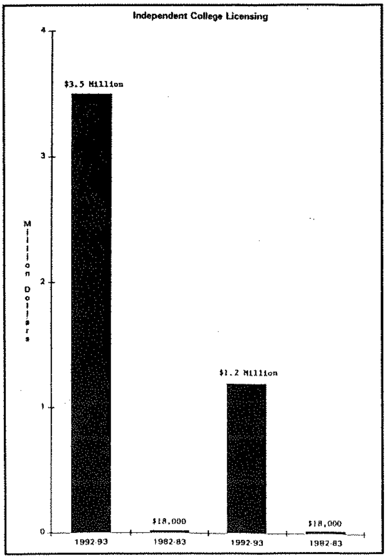

Table 6 shows growth in retail sales in licensed products within two independent licensing universities from 1982/83 to 1992/93.

The first several steps for licensing products involve: (1) conducting a thorough analysis of the current environment on campus and in the community; (2) contacting bookstores, businesses, etc., that would be interested in selling the licensed products; (3) becoming familiar with trade and business facts through publications; (4) attending educational meetings, trade shows, etc., (5) and communicating about the sale of products with other schools or leagues.

Once a mark or logo is registered,a manufacturer applies to a university or league for permission to use the "mark." The "owner" charges a one-time fee, typically $75 - $200. The design is then approved. The royalties earned are from 7% to 10% of the cost. If a licensing company represents the institutions, the amount earned would be from 3% to 6% of the cost.

Enforcement is the key as many parties try to use the mark without permission and paying the fee. An institution must monitor this misuse of the mark, or join with a licensing group that does the monitoring for the institution. A number of licensing agents handle licensing programs for collegiate institutions as the NFL Properties, Inc. does for professional football. The International Collegiate Enterprises represents over 50 universities and football bowl games. As mentioned previously, The Collegiate Licensing Company handles equally as many members while a significant number of institutions are independent in these licensing efforts.

Some of the advantages of using a licensing agent include the following services provided by the company: 1) registering the marks, 2) negotiating the licensing agreements with the manufacturers, 3) policing licensed manufacturers for quality control, 4) policing for mark infringers, and 5) litigating when necessary. Two potential disadvantages are that the institution may prefer to control the selection of the manufacturers and the quality of the products. When the university operates its own licensing program, the university maintains flexibility in agreements and control of fees and other factors. A university that contracts with a licensing agent pays 40% to 50% of the royalty revenues generated which means the net royalty revenues for the university may be reduced from 6% to 10% to 3% to 4%. Regardless of choice, the financial gain is substantial.

The business of licensing logos, emblems and mascots is actually quite new even though the history of their use extends nearly two centuries. Spoort leaders have just begun to realize the money to be gained through the licensing and sale of their marks. Little did anyone realize the impact of the litigation of the late 1970s and early 1980s regarding sport marks.

References

"1993 Annual Industry Report," *Team Licensing Business* May 1993: 15-20.

Rotunda, Ronald D. (1989). *Modern Constitutional Law, Cases and Notes*, Third Edition. St. Paul: West Publishing Co.

Wong, Glenn M. (1988). *Essentials of Amateur Sports Law*. Dover,Massachusetts: Auburn House Publishing Company.