

Who Owns the "Triumph of the Human Spirit"? The Dispute Over Ownership of the 1996 Atlanta Paralympics Mascot "Blaze"

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■ PARALYMPIC BACKGROUND INFO

In the Summer of 1996, the greatest athletes will be coming to Atlanta - twice. While everyone is aware that the Games of the XXVIth Olympiad will be held in Atlanta, not all are aware of the fact that less than two weeks later, from August 16 - 27, Atlanta will play host to the Tenth Paralympic Games. The Paralympics were an outgrowth from a project started at Stoke-Mandeville Hospital in Aylesbury, England, Sir Ludwig Guttman, a neurosurgeon, organized an International Wheelchair Games which coincided with the 1948 London Olympics (Shepherd Spinal Clinic, 1994). The first official Paralympic Games were held in Rome in 1960, and in each Olympic year since then, usually in the same city which hosted the Olympic Games. The 1988 Games in Seoul marked the first time the Paralympics immediately followed the Olympic Games and shared common facilities (Atlanta Paralympic Organizing Committee, 1993). The 1992 Paralympic Games in Barcelona drew more than 1.5 million spectators and extensive international media coverage, including accreditation of over 1,500 national and international professionals from the communications sector (Mezquida & Alos, 1993).

The scope of the event in Atlanta promises to be immense, with 10 days of competition in 17 sports and 2 demonstrations sports. There will be over 4,000 athletes (including 1,000 wheelchair users), 1,250 coaches and team staff members and 1,500 officials, technical personnel and Paralympic Family members. Over 100 community organizations, 20 federal agencies, 50 local governments and regulatory agencies as well as over 8,000 volunteers and 2,000 journalists and photographers will be on hand for the event (Mushett, 1993). The event has also become quite costly, with estimates running at \$90 million for staging the Atlanta Paralympics (Thomas, 1994). Andy Fleming, President and CEO of APOC, is confident that the 1996 Games will take in \$100 million from corporate sponsors, private foundations,

and licensing deals, which were not significant at Barcelona. Coca-Cola, Home Depot and Sunrise Medical have already agreed to pay \$4 million to be official sponsors of the Games (Ringel & Dawley, 1994).

■ THE PLAYERS

In this particular issue, there are many players, and a number of vital documents which need to be identified and defined. The players in this dispute include the following:

1. IPC - International Paralympic Committee - international governing body which governs the Paralympic Movement and owns all rights over the Paralympic Games. This group is parallel to the IOC, the International Olympic committee, for the Olympic Games (International Paralympic Committee, 1992).
2. APOC - Atlanta Paralympic Organizing Committee - a Georgia non-profit corporation entrusted by the IPC with the organization of the 1996 Paralympics. This group is parallel to ACOG, the Atlanta Committee for the Olympic Games (Marketing Agreement, 1994).
3. USDAF - United States Disabled Athletes Fund - formed to fill a void in the education and training of disabled athletes, and to maintain and carry on the legacy and momentum for the disabled athlete movement that will be enhanced by the successful implementation and completion of the 1996 Paralympic Games (USDAF and APOC v. USOC, Petition, 1994).
4. DSOs - Disabled Sports Organizations, which include the Dwarf Athletic Association of America, the United States Cerebral Palsy Athletic Association, National Handicapped Sports, Wheelchair Sports USA, and the U.S. Association for Blind Athletes. Most of the United States participants in the Paralympic Summer Games come from these organizations.
5. Paralympic Marks - the word "Paralympic", a trademark belonging to the IPC and licensed to the USOC, or any other mark, emblem, symbol or designation containing the word "Paralympic" and variations thereof used or adopted by APOC (Marketing Agreement, 1994). The Paralympic marks are licensed to the USOC by the IPC for the 1996 Summer Paralympic Games. The Starfire mark shown in Figure 1 is an example of a Paralympic mark for the 1996 Summer Games.



6. Venture (ACOP) - ACOG and USOC formed Atlanta Centennial Olympic Properties (the Venture) to conduct a joint marketing program with respect to the Olympic Games (Sponsorship Agreement, 1994).

■ BLAZE'S HISTORY

On March 22, 1994, the Paralympic mascot was unveiled. The multi-colored phoenix was named Blaze (see Figure 1), and its creators tell the story that Blaze came from the mythical planet Pyra, emerging from the flames. The analogy to the city of Atlanta's rise from fiery destruction during The War Between The States is quite evident. Blaze has no visible disability, but by rising from the flames represents overcoming adversity and represents the strength, inclusion, performance, and triumph of all Paralympic athletes. Unlike Petra, the mascot at Barcelona which had no arms, after tests with focus groups over a two year period, the Atlanta organizers intentionally decided Blaze would not have any visible disability (Hill, 1994a).

Blaze has met with instant success, and so Paralympic officials are hoping to capitalize on income from the same sort of licenses, fees and other goods and services as the Olympic Games. Plans have been made by APOC to market Blaze on every item conceivable. At a workshop held in April 1994 for potential manufacturers and distributors, APOC received firm commitments from 15 organizations to market Blaze merchandise and pay APOC royalties (Hill, 1994b). In addition to being sold at retail outlets, Blaze merchandise will be available through direct mail as well.

In addition to merchandise, Blaze will soon be hitting television. As part of a new deal with 20th Century Fox, Blaze will be doing television spots promoting the Paralympics. Beyond that, the DESIGNefx company which designed Blaze, is working up storyboards for a potential Saturday morning cartoon series. The Paralympic Agreement with 20th Century Fox Licensing and Merchandising could open additional television opportunities for Blaze (Turner, 1994). Fox will pay the Paralympics royalties in excess of \$5 million dollars. Blaze and the Paralympics will appear on the Fox channel for kids, on its sports channel, in TV Guide and in Rupert Murdoch's chain of newspapers - all free (Campbell, 1994).

Interestingly, Blaze is not the first Paralympic mascot. As with the Olympic Games, the Paralympics have had mascots for its event as well. However, it has become apparent that Blaze is the first Paralympic mascot with the potential to bring in revenues in excess of \$25 million dollars in licensing fees. In the past, sales of merchandise with Paralympic mascots have generated less than \$1 million. Blaze's licensing potential has become so great that the United States Disabled Athletes' Fund (USDAAF) has undertaken the task of marketing the mascot after the Atlanta Paralympics are over (Ringel & Dawley, 1994). This was done because of the potential and financial support for the disability movement in the United States and abroad. Blaze has been licensed to APOC by USDAAF to function, *inter alia*, as the mascot for the 1996 Atlanta Paralympic Games. However, Blaze is not tied solely to the 1996 Paralympic Games or to any other single event or activity. Rather, Blaze is intended to function as an enduring symbol of the triumph of the human spirit by

disabled persons (*USDAF and APOC v. USOC*, Petition, 1994). It is here where a good portion of the dispute over who truly owns the rights to Blaze begins.

■ THE DOCUMENTS

The key contractual agreements for the 1996 Paralympic Games consist of (1) a Marketing Agreement among APOC, USOC, and ACOG forming a joint marketing program, (2) a Trademark Licensing Agreement whereby the USOC grants APOC the right to use the word "Paralympic", (3) a \$5 million ACOG Sponsorship Agreement with APOC (Committee on Sports for the Disabled, 1995), and (4) an Agreement among APOC and the DSO's.

The timeline for these Agreements is clearly laid out in Section 5.1 of the Marketing Agreement (1994) which states that the term of the Marketing Agreement extends from when the Agreement was signed until the close of business on December 31, 1996. The Trademark Licensing Agreement (1994) further states that "APOC and USOC agree the Agreement is designed to address the 1996 Paralympic Games to be held in Atlanta, Georgia, and provides for the use of the "Paralympic" trademark only through December 31, 1996".

The Sponsorship Agreement (1994) between ACOG and APOC explains USOC's licensing of Paralympic marks in Section 2.2, stating "USOC shall grant APOC a license for use in the United States of the terms 'Paralympic' and 'Paralympics' in connection with promotion of APOC and the Paralympic Games". This clearly delineates that this Agreement covers use of these marks only in the United States.

The fact that APOC must get prior approval from USOC for use of Paralympic marks is outlined in Sections 2.4 and 2.5 of the Trademark Licensing Agreement (1994). Section 2.4 states "The trademark shall not be used by APOC or any APOC sponsor or licensee in association, combination or conjunction with any other name, mark, logo or emblem without prior written approval of USOC, which approval shall not be unreasonably withheld". Section 2.5 states "The trademark (Paralympic) shall not be used by APOC, its sponsors or licensees to induce the sale of any goods or services, including combination sales or premiums, without the express advance approval of the USOC".

Finally, royalty payments are outlined in the Marketing Agreement (1994) in Section 4.7, "Royalty payments in the amount of 2.5% of net sales on all licensed products and premiums shall be paid to the USOC by APOC or Paralympic Sponsors as the case may be".

The Marketing Agreement contains a number of fund raising hurdles for the Paralympics. For example, Paralympic promoters are barred from approaching non-Olympic sponsors without permission. Therefore, while McDonald's (an official Olympic sponsor) may be approached to become the Paralympics' official fast-food sponsor, if McDonald's says "No", APOC not turn to Burger King as an alternative. The Marketing Agreement also forbids selling of merchandise on a national basis until after January 1, 1995. Limited local selling had been allowed within the Atlanta area prior to that date. By the time this date passes, the Atlanta Olympic Organizers will have already sold in excess of \$75 million worth of

merchandise. Finally, while two of the 16 commemorative Olympic coins represent the Paralympics, the Marketing Agreement contains a clause stating that only 5% of the multimillion dollars in revenues from the sale of the Olympics 16 commemorative coins will go to the Paralympics (Thomas, 1994). All of these factors are pivotal when considering the very small window of time which the 1996 Paralympics has to market its products and raise money to offset the cost of the Games.

Of major importance in this issue is the time line covered by the Marketing and Licensing Agreements. These Agreements are set to expire on December 31, 1996. After that date, the ownership of Blaze remains with USDAF. The current challenge is over the rights to Blaze up until that date. With high hopes for the 20th Century Fox contract, it will be interesting to see what action will be taken for control after the expiration of the current Agreements.

■ THE DISPUTE

Currently, the USOC and APOC and USDAF are locked in a custody battle over Blaze. The disabled athlete movement believes it should not have to share royalties not directly linked to the 1996 Paralympic Games. Blaze, the USDAF contends, stands alone, not directly attached with any other Paralympic marks. APOC takes the position that because the character Blaze does not include, incorporate or contain the word "Paralympic", then its use is not subject to the Licensing Agreement.

Claiming broad ownership of "Paralympic" marks, the USOC wants to share in Blaze's profits. The USOC is disputing the Paralympics' claim to the mascot, and wants the right of approval for Blaze's use plus a 2 1/2% royalties on all sales of Blaze merchandise. The USOC has now asserted and is asserting that APOC's use of Blaze, even when such use is totally separate from and not in conjunction with the Paralympic trademark, is subject to the provisions of the Licensing Agreement, and that such use therefore requires prior approval from, and royalty payments to, the USOC (USDAF and APOC v. USOC, 1994a). APOC, while agreeing the USOC has rights to control the use of Blaze during the Games, claims those rights end when all the signed Agreements expire on December 31, 1996. USOC is not pleased with the suit, contending that some of the cash advance it gave to APOC to help fund the Paralympic Games is now being used to fund a suit against USOC. However, the cash advance came as part of agreement whereby APOC was restricted from selling sponsorships to rivals of Olympic Games sponsors (Ringel & Dawley, 1994). While this may seem like power bargained away by APOC, the agreement was signed under some duress, as APOC was also tied to ACOG by virtue of issues such as the Paralympic sharing venues constructed for the Olympic Games.

This is not the first dispute between these organizations over funding. prior to the 1994 Paralympic Games in Lillehammer, the USOC has not financially covered the total costs of the United States Paralympic Team or its athletes during competition in the Paralympic Games. (USDAF and APOC v. USOC, 1994a). The United States Paralympic teams have felt underfunded in the past, and see this dispute as one more action to control the disabled athletes movement attempts to generate its own funds. As part of this dispute, APOC is also claiming that despite

APOC's adherence to USOC's pre-approval requirements, the USOC has engaged in a pattern and practice of unreasonably delaying approval of APOC's requests, often for many months. These delays, APOC claims, have seriously impeded its abilities to engage in the marketing activities it needs to perform in order to raise sufficient funds to put on the 1996 Paralympics (USDAF and APOC v. USOC, Petition, 1994a). Examples of delays were cited by Edwards (1994). In November 1993 APOC submitted a Letter of Intent with Coca-Cola Company for approval. After 11 months, APOC had received no response from USOC. In November 1993, APOC submitted a sponsorship agreement with Sunrise medical for approval, and the final agreement was not in place until June 1994. In addition, other sponsorship possibilities have been held up pending the resolution of the "mascot controversy". These delays again impinge on the very narrow window of time which is available for sale of licensed product before the Paralympic Games in 1996.

APOC and USDAF filed a Petition for Declaratory Judgement and Request for a Speedy Hearing in Federal Court in Atlanta on August 23, 1994, asking the court to rule that the USOC may not require prior approval of uses of Blaze by APOC, and that USOC is not entitled to receive royalties from APOC for uses of the Blaze design. Due to assertions of the USOC with respect to APOC's use of Blaze, APOC is faced with a dilemma with respect to how to proceed in producing promotional products which will be a major source of revenue for the disabled athletes movement and the Paralympic Games. Due to the short time period before the Games during which to market Blaze, APOC needs to know as soon as possible whether prior USOC approval is needed for any Blaze products. For the reason USDAF and APOC sought a declaration of rights and duties of the parties under the Trademark License Agreement, and also requested the Court order a speedy hearing (USDAF and APOC v. USOC, 1994a). Interestingly, USDAF and APOC are seeking only a declaration of rights, and no monetary damages (USDAF and APOC v. USOC, 1994b).

On September 12, 1994, USDAF and APOC filed a Memorandum in Opposition to the Respondent's Combined Motion to Dismiss and Application to Compel Arbitration. This action was based on APOC and USDAF's contention that the Marketing Agreement specifically excludes from its Arbitration Provision controversies relating to the Trademark License Agreement. Section 12 of the Marketing Agreement (1994) reads as follows:

The parties agree that any dispute arising in connection with the interpretation of this agreement or the performance of any party under this Agreement or otherwise relating to this Agreement, excluding the *Trademark License Agreement*, shall be treated in accordance with the procedures set forth in this Section, prior to the resort by any party to arbitration or litigation in connection with such dispute.

Disputes between APOC and USOC under the Trademark License Agreement are specifically excluded from the arbitration provisions of the Marketing Agreement. The dispute, APOC and USDAF contend, should not be settled by binding arbitration, but rather may be pursued in federal district court. Even if the parties decide to arbitrate other claims, the non-arbitrable claims of petitioners must be decided in federal district court (*USDAF and APOC v. OSOC*, Civil Action File No.

1:94-CV-2213-ODE,1994d).

In the most recent action in the case, on January 18, 1995, Judge Orinda Evans denied the USOC's Motion to Dismiss. The USOC's Application to Compel Arbitration was denied in part, and dismissed in part as moot (USDAF and APOC v. USOC, 1995). On the issue of royalties, APOC has initiated arbitration action under the terms of the Marketing Agreement.

■ THE FUTURE

There seems to be little doubt that the core issue in this dispute is one of control and specifically in this case, control over a percentage of the profits of a potentially very prosperous licensing property. What is at stake, however, is much more fundamental than a domestic argument between USOC and USDAF/APOC over the profits of the mascot of the Xth Paralympic Summer Games (Hiestand, 1994). For the first time in history, there seems to be a serious commercial interest in leveraging the value of the Paralympic Games as a sports marketing property with respect to corporate sponsorship, merchandising and licensing (Thomas, 1994). With millions of dollars at stake, the primary players in this legal action, the USOC and the USDAF, have little incentive to passively accede to each other's demands. The playing field of this struggle, however, cannot be limited to the United States, Atlanta or be linked to the duration of the ACOP Marketing or Licensing Agreements. As athletes with disabilities press for broader inclusion in the international sports mainstream, a parallel effort has evolved regarding the support and underwriting of these efforts through inclusion of disabled sports events into the marketplace (Doll-Tepper & vonSelzam, 1993). The Paralympic Games have emerged as a viable international sports marketing property. At stake now is who retains or gains control of the sale and benefits of the Paralympics, complete with its marks, mottos, and mascots (Price, 1993).

It is more than a little ironic that Blaze is derived in part as a symbol of Atlanta's rebuilding after the War Between the States. The dispute at hand does resemble a war in some respects, with the battle lines being drawn over who controls the corporate sale and benefit of the Paralympic marks. The stakes in this conflict have significantly appreciated from being worth in the hundreds of thousands of dollars in 1992 in Barcelona and in 1994 in Lillehammer to being valued in the millions of dollars in Atlanta in 1996 (International Paralympic committee, 1994). It is clear that Paralympic Games have matured to a point that they are being perceived as having sufficient market value to enjoin previously disinterested heavyweights involved in only the Olympic side of the equation. It remains to be seen whether or not this dispute over a mascot is a peculiarly American phenomenon or a broader and more fundamental issue requiring substantive negotiation and resolution between the IOC and the IPC and their respective local organizing committees (Doll-Tepper & vonSelzam, 1994). Will the 21st century usher in a new era of cooperation and collaboration between these organizations, or will the turf struggles escalate?

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