

Sport Logo Trademark Infringement and the Christian Apparel Industry: Legal and Managerial Considerations for Sport Organizations

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I. Introduction

Religion and sport have often been thought to share common characteristics. In general, both involve ritual, hierarchy, and people who gather to "worship". However, a relatively new relationship between religion and sport involves corporate advertising. For example, a recent ad for Snickers candy bars features a line of people representing different religious beliefs delivering a pre-game inspirational in a locker room. One Gatorade spot features Michael Jordan running through the Tibetan mountains where an Eastern holy person tells him "Life is a sport - Drink it up". In addition, the San Diego Padres used the theme "Keep the Faith" during a recent rebuilding phase and also incorporated television ads featuring the line "The Gospel of Baseball", capitalizing on values that cross all religious lines, such as faith, loyalty, and hope (Harrison & Heath, 1997). What happens however, when the two sides shift, that is, instead of corporations using religious themes, religious groups or organizations use corporate themes?

A. Size of the Christian Consumer Market

The size of the Christian consumer market indicates it is a force to be reckoned with. For example, The Perrault Co. (TPC), which worked on a media plan for "The Judas Project", a film based on the life of Jesus, estimated the Christian market in the United States at 60 million people (Sharkey, 1995). In addition, in 1995 there were 2500 Christian bookstores, a \$750 million Christian music industry, and 163 Christian television stations ("God's Own Country," 1995). Sales at Christian bookstores have tripled since 1980, to \$3 billion, and the Christian music industry has experienced a 40% annual growth rate ("God's Own Country," 1995; Nussbaum, 1996). Ingram Books, the nation's largest book wholesaler, estimated growth in sales in the adult religious category at 249% in 1994 (Harrison & Heath, 1997).

B. Scope of the Licensed Product Industry

During this same time period, sales of li-

censed sports products have soared. From 1990 to 1994, retail sales of licensed sports products increased from \$5.3 billion to \$10.6 billion (Sporting Goods Manufacturers Association, 1997). In 1996, the four major professional leagues reported United States sales of licensed products as follows: Major League Baseball - \$1.6 billion; the NBA - \$2.7 billion; the NFL - \$3.3 billion; and the NHL - \$1 billion (Sporting Goods Manufacturers Association, 1997). In addition, colleges and universities reported United States sales of \$2.1 billion in 1996 (Sporting Goods Manufacturers Association, 1997). Currently approximately 600 companies have licensing agreements with professional sports leagues while almost 2000 companies have licensing agreements dealing with college or university merchandise (Sporting Goods Manufacturers Association, 1997).

Paralleling the growth in sales of licensed products, is the increased popularity of branded products. For instance, the athletic shoe industry once dominated by Nike has experienced major growth and increased competition. Reebok, Adidas, Fila, and New Balance all report increased sales and are projecting continued growth. Also, non-traditional competitors such as Tommy Hilfiger and Nautica have introduced their own lines of athletic shoes as well as other branded products. Hilfiger and Nautica's entry into the athletic shoe market is possible due to the success and recognition of their brand. Thus, protecting their brands and trademarks is as important for them as protecting sport logos and trademarks is to the traditional sport shoe and apparel businesses.

The use of "trademarks" (words, symbols, logos, or other indicia) to identify, distinguish, or promote products and services is increasing dramatically in corporate America. Trademarks are no longer only used by large multi-national corporations. In today's business market more and more small and even start-up business are creating and seeking trademark protection (Gauthier, 1993). Small businesses recognize the importance of protecting trademarks and have recommended such strategies as hiring press clipping services to search for references to protected trademarks, notifying companies

referring to trademarks generically such as "Coke" and "Kleenex" to use the complete and exact representation of the trademark including the ® symbol, and using cease and desist letters to warn potential infringers of the trademark claim (Gantz, 1995).

Is it any wonder this burgeoning market would act as a temptation to those wishing to profit from it without going through the proper channels and paying the appropriate fees to obtain official licensee status? Given that sport organizations want to safeguard the investment they have made in their marks and logos, what legal protections are available? How and when are marks protected? The lack of certainty and consistency in court decisions leaves many unanswered questions for sport organizations which promote and sell merchandise with protected trademarks and logos.

Further complicating an already confusing issue is the growing Christian apparel market. Now many items are available nationwide at large retail Christian bookstores which openly sell T-shirts and hats bearing registered trademark names and logos belonging to well known brands such as Pepsi, Coca Cola, Tommy Hilfiger, and Reebok. No longer are knock-offs only available at flea markets, before big games, or through other secondary markets. As a result, issues of protecting trademarks and curtailing trademark infringement are great concerns to all parties involved.

II. Protecting Trademarks

A. Federal Registration under the Lanham Act

As previously mentioned, the use of trademarks to identify, distinguish, or promote products and services is increasing dramatically in corporate America. Companies seek protection for their marks by registering them with the United States Patent and Trademark Office pursuant to the Federal Trademark Act of 1946, commonly referred to as "The Lanham Act" (15 U.S.C. §§ 1051-1127, 1946). If registration is successfully secured it is indicated by the famil-

iar ® symbol appearing as part of the trademark. While registration is not required to protect trademarks, federal registration does strengthen the protection afforded the mark (Gauthier, 1993; *Nike, Inc. v. Just Did It Enters.*, 1992). If registration is pending or is not sought, a company can still claim a mark as a trademark with the indicia TM.

The Lanham Act defines a trademark as "any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others" (15 U.S.C. §§ 1050-1127, 1946). A "service mark" is a mark "used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others" (15 U.S.C. § 1050-1127, 1946).

Just as corporate America has increased its efforts to develop and protect brand identity, each of the professional sport leagues, most colleges, and many high school and recreational sport organizations have created divisions specifically to handle licensing of official merchandise. Since the 1970's when the courts recognized sport teams had protectable property interests in team names and logos, leagues have scurried to register team names and logos of trademarks and have even registered helmet designs and uniform patterns and colors (Cohen, 1992). Universities and professional sport leagues make substantial investments to develop marks and logos and create awareness among consumers to help them properly identify the mark or logo with the appropriate league or team. Brand identification and awareness are often recognized as a company's most important and valuable asset (Nike, personal communication, February 10, 1998). Thus, the licensing professional not only has to be concerned with monitoring the activities of licensees, but also those activities of counterfeiters and others who offer products with either the identical protected marks or very similar marks.

B. Trademark Infringement Actions

One remedy available to a trademark owner is to commence a trademark infringement action against the person or company using the

mark without authorization. Often just the threat of a trademark infringement action will cause a company to cease using the mark or alter the mark enough to satisfy the trademark owner (Auge, 1998; Bookstore manager, personal communication, February 19, 1998 and March 4, 1998). However, for the persistent infringer, the trademark owner may have no choice but to commence legal action.

The Lanham Act defines "trademark infringement" as "the reproduction, counterfeiting, copying, or imitation, in commerce, of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive without consent of the registrant" (15 U.S.C. § 1127, 1982). The Act affords several remedies for infringement including injunctive relief and damages for lost sales and dilution or devaluation of the mark. In order to prevail in a trademark infringement action, it must be shown that (a) the suing party is the owner of the mark, and (b) the use of the trademark is likely to cause confusion among consumers as to the source or origin of the goods sold (15 U.S.C. § 1127, 1982). Proving the first element is rarely too difficult for most companies especially if they have registered the mark and actively monitored its use. The second element, which is commonly referred to as "likelihood of confusion", is not so simple.

1. Likelihood of confusion & the Polaroid test

In defending trademark infringement actions, an alleged infringer often simply disputes that there is any likelihood of confusion between its use of the marks in question and the consumers' identification of the source of the goods. This often occurs in commercial cases where the alleged infringer is engaging in a commercial enterprise clearly motivated by profit. Several courts have examined this second element of a trademark infringement action and developed a number of factors which should be considered when evaluating alleged trademark infringement. These factors were first established in *Polaroid Corp. v. Polaroid Electronics Corporation* (1961) and are commonly referred to as

the "Polaroid test." The central inquiry is whether ordinary prudent purchasers are likely to be misled or simply confused as to the source of the goods in question. The Polaroid factors are:

- (1) the strength of plaintiff's mark;
- (2) the degree of similarity between plaintiff's and defendant's mark;
- (3) the proximity of the products or services;
- (4) the likelihood that plaintiff will bridge the gap;
- (5) evidence of actual confusion;
- (6) defendant's good faith in adopting the mark;
- (7) the quality of defendant's product or service; and
- (8) the sophistication of the buyers (Polaroid, 1961).

Not all federal courts have adopted the Polaroid test, however, with slight variation each federal court which has addressed this issue has adopted a similar step by step analysis. Thus, the Polaroid test is a useful guide to use to evaluate alleged trademark infringement activities.

2. Permissive uses of trademarks

Unfortunately for the trademark owner, not every use of a protected registered mark is impermissible. The purpose of The Lanham Act is to protect the consumer from confusion as to the source or origin of a product or service, not to secure a business advantage for corporate America. Accordingly, duplication of an exact trademark is permissible in certain situations. For example, using an actual registered team name or logo in a disclaimer notifying the consumer that the product offered for sale does not have any association with the team in question is permissible (N.F.L. v. Delaware, 1977). Courts permitting the use of trademarks in disclaimers concluded it was only reasonable that in order to distinguish one product from another a company must be permitted to identify the product which it is not.

Moreover, First Amendment protection of speech and expression also permits the use of trademarks. Trademark law is based on the Commerce Clause of the Constitution; however, the protection afforded trademarks is not superior to the First Amendment protection for freedom

of expression (Cliffs Notes v. Bantam Doubleday Dell Pub. Group, 1989). Generally, it is permissible for an individual or a company to use a registered trademark belonging to another for expressive purposes such as comedy, commentary, criticism, news reporting, or parody. Litigation provoked by unauthorized use of trademarks often involves an alleged parody, thus, most court decisions discuss the special protection afforded a parody (Yankee Publishing v. News America Pub. Inc., 1992). The discussion which follows regarding the parody defense is not intended to suggest that it is a favored defense or would receive any greater protection than other expressive uses of trademarks. However, parody is a good example of an expressive purpose or content which receives special First Amendment protection.

a. The parody defense

The parody defense has been used in one notable sport case involving the Dallas Cowboy Cheerleaders. Pussycat Cinema produced an X-rated adult movie featuring a woman wearing a cheerleading uniform very similar to the official Dallas Cowboy Cheerleader uniform. The film was entitled "Debbie Does Dallas" and was marketed with posters stating "Starring Ex Dallas Cowboy Cheerleader Bambi Woods" (Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 1979, p. 203). The court of appeals easily concluded that the confusion standard was satisfied if the public believes the Dallas Cowboy Cheerleaders sponsored or otherwise approved of the use of the mark. Although the court seriously questioned whether the parody and fair use defense were appropriate in trademark cases; subsequent courts have recognized the use of the parody defense in trademark cases and defined the scope of such use.

A parody is a comment on some aspect of a protected mark or its owner (Rogers v. Koons, 1992). A mere joking reference to a mark is not a parody since an effective parody must implicate some element of ridicule or mockery (Yankee Publishing, 1992). "A parody must convey two simultaneous - and contradictory - messages: that it is the original, but also that it is not the original and is instead a parody. To the extent that it only does the former but not the

latter, it is not only a poor parody but also vulnerable under trademark law, since the customer will be confused" (Cliffs Notes, 1989, p. 494).

Once the parody defense has been asserted and the constitutional protection of the First Amendment implicated, the question is raised whether the Constitutional issue can be resolved simultaneously with the trademark infringement issue using an analysis similar to the Polaroid test. It appears that the Polaroid test alone may not adequately resolve the Constitutional fair use question (Yankee Publishing, 1992). The likelihood of confusion test under the Lanham Act has been construed narrowly when the trademark has been used for expressive purposes. In these cases, rather than rely solely on a Polaroid type test, courts have adopted a balancing test where the rights of the trademark owner are weighed against the interests of free speech (Yankee Publishing, 1992). Consequently, the Lanham Act will only be used to prevent the expressive use of the trademark where the public interest in avoiding consumer confusion outweighs the public interest in free expression (Rogers v. Grimaldi, 1989).

b. Recent court decisions

Hormel Foods Corporation v. Jim Hensen Productions, Inc., (1996) provides a recent example of how the parody defense has been applied to trademark cases where the alleged infringer had a clear profit motive. The Second Circuit Court of Appeals utilized certain factors from the Polaroid test together with a balancing approach to determine whether Jim Hensen's new Muppet character "Spa'am" was a violation of Hormel's protected trademark "SPAM". The similarity between the names was not at all accidental. Spa'am was the high priest of a tribe of wild boars who worshipped Miss Piggy. Hensen hoped to poke fun at Hormel's famous luncheon meat by associating the processed, gelatin covered block of meat with a ridiculously funny wild beast. Hormel feared sales of SPAM would decline if it were linked to Hensen's character because Spa'am was "evil in porcine form" and that the character was grotesque which may call into question the purity and quality of the SPAM meat product (Hormel, 1996, p. 501). The parties agreed that the use of the character in

the film would result in neither trademark infringement nor dilution, however, Hensen also proposed to use Spa'am's likeness, with and without the actual name, on movie related merchandise. Hensen planned to depict scenes or characters on candy, cereal boxes, clothing, books, and a CD-ROM computer game. Hormel also merchandised SPAM on products such as clothing, watches, golf balls, and toy cars. In addition, Hormel marketed its luncheon meat using a character called "SPAM-man" which is a giant can of SPAM with arms and legs.

Using the Polaroid test, the court of appeals concluded that Hensen's planned activities would not create confusion among consumers. First, the strength of Hormel's SPAM mark was undisputed. However, the strength of the mark also strengthened Hensen's use of the Muppet character. If a mark is being used as part of a jest or commentary and both parties' marks are strong and clearly associated in the consumer's mind with a specific source then confusion is avoided. Indeed, to be effective the parody itself depends on the lack of confusion. Hensen's Muppet characters are well known for a particular brand of humor, thus, consumers of Hensen's merchandise which displays the words "Muppet Treasure Island" are likely to understand the joke as it was intended.

The court of appeals further concluded that the marks were not so similar as to be confusing, that Hormel had not indicated any intention to enter into the puppet entertainment field, and that no actual confusion existed. The court further observed that Hensen had not acted in bad faith since the parody depended on consumer recognition of the character as a Muppet lampoon and not a relative of the SPAM-man. Overall Spa'am was a positive character, thus the court doubted it would call into question the quality of the SPAM product. Lastly, the court concluded that consumers were sophisticated enough to recognize the difference and any consumer purchasing Spa'am merchandise would do so because they like the Muppets not because they had mistaken it for a SPAM product.

Several other cases dealing with merchandise sales are also instructive. For example, in

Anheuser-Busch, Inc. v. L & L Wings (1992), the sale of T-shirts with Anheuser-Busch's familiar logo was permitted even though Anheuser-Busch also sold T-shirts as a promotional tool. Hogg Wyld, Inc. was permitted to continue its sale of jeans with a logo similar to the logo owned by Jordache (Jordache Enters. v. Hogg Wyld, Ltd., 1987). Conversely, Gemini Rising, Inc. was forced to cease its sale of posters with Coke's logo and unique script bearing the words "Enjoy Cocaine" rather than "Enjoy Coca Cola" (Coca Cola Co. v. Gemini Rising, Inc., 1972) and Just Did It Enterprises' T-shirts bearing the logo "MIKE" instead of "NIKE" were found to constitute trademark infringement (Nike v. Just Did It Enterprises, 1992).

C. Specific Efforts to Protect Sport Logos

Licensors invest substantial resources in policing the marketplace to stop the sale of unauthorized merchandise, and leagues and independent companies use internal legal departments and publicity campaigns in the mainstream media (Hums & Covell, 1998). There is also cooperation between these entities, as demonstrated by the formation of CAPS (the Coalition to Advance the Protection of Sports Logos). "Formed in 1992 by MLB, Inc; NBAP, Inc; NFL, Inc; NHLE, LP; and CLC, CAPS seeks to attack the counterfeiting problem by conducting collective civil and criminal seizures of counterfeit merchandise and campaigning for stricter anti-counterfeiting legislation in jurisdictions throughout the US" ("CAPS Retailer Questionnaire," 1997, p. 1). As of 1996, this organization had confiscated unauthorized merchandise and equipment valued in excess of \$60 million ("NBA, NHL Looking," 1996). However, the counterfeit products actually confiscated as opposed to actually for sale remain two different things, and some officials estimate there is as much unauthorized as authorized product available to the public.

D. Examples of Products and Store Policies

A search of the Internet, local Christian bookstores, and local flea markets revealed a number of products using sport-based religious

themes. Some examples of this merchandise includes T-shirts with Bible quotations or inspirational messages such as "What would Jesus do" and "Soccer is My Game, but Jesus is My Life". Obviously, these products pose no threat of trademark infringement.

However, a search of the same locations also revealed a number of products which were much more questionable. T-shirts were observed bearing slogans such as "God's-Wise-Er" with three frogs in a swamp. The most popular Christian T-shirt at the moment is the Tommy Hilfiger knock-off which uses Hilfiger's red, white, and blue background but uses the words "TODAY HE FORGIVES" rather than "TOMMY HILFIGER" (Bookstore manager, personal communication, February 19, 1998). During an interview with a manager of a local Christian bookstore, the manager indicated the Tommy Hilfiger shirts were the fastest selling shirts he had ever handled and for the first time he had made sweat shirt sales bearing the Tommy knock-off logo (Bookstore manager, personal communication, February 19, 1998). Calvin Klein appears to be next in line. Christian bookstores have knock-offs with the exact CK logo used by Calvin Klein; but have replaced the words "Calvin Klein" with "Christ Kids." Yet other examples come from a 1998 Christian merchandise catalog featuring the year's new styles, including knock-offs on Reeses, Crest, and Coca Cola as well as the Tommy apparel. Figure 1 provides examples of various questionable Christian themed products easily located and purchased on the Internet or currently available for purchase at various retail locations.

E. Trademark Owners' Reactions and Existing Policies

The authors contacted several companies to gather information about their trademark infringement policies and procedures. Companies were specifically asked whether they had any particular policies concerning potential trademark infringement by religious organizations.

Nike, Pepsi, and Coca Cola were contacted concerning their efforts to protect and police their trademarks. None of the companies had any formal policies, however, they each ex-

pressed that their logos and trademarks were their most valuable asset and they would take all necessary measures to protect their use. Nike emphasized its long standing policy to not grant permission to others to use its marks (Nike, personal communication, February 10, 1998). Nike bases this policy on the difficulty encountered in enforcing a trademark, if the trademark owner has previously allowed others to use the marks. Furthermore, allowing use of the trademarks by others suggests that Nike is sponsoring, endorsing, or in some manner supporting the entity (Nike, personal communication, February 10, 1998).

Similarly, Pepsi and Coke had no formal policy, but both assured the authors that they actively and aggressively pursue any infringement (B. Bilus, personal communication, January 28, 1998; Coca Cola, personal communication, January 29, 1998). Each of these corporations also indicated that the religious would not be reluctant to send a cease and desist letter or commence a trademark infringement action against any company infringing on their protected marks, including companies manufacturing, distributing, and selling religious apparel. However, none of these companies reported any actions taken to restrict or police the Christian apparel market.

III. Formulating a Response to Trademark Infringement

Sport managers must choose which, if any, course of legal action they will take when potential infringement by a Christian merchandise company occurs. In addition to choosing this course of action, sport managers must be aware of the ramifications of their decision to pursue a Christian merchandise company. A good method to examine this question is to look at the issue in terms of the social, economic, and political outcomes of a sport organization's legal responses and actions.

A. Legal Responses

A sport organization could choose a num-

ber of options for a legal response. Most often the sport organization simply sends a letter to the alleged infringer and demands that it cease its infringing activities. This response has been used widely by the USOC to monitor the various Olympic trademarks and logos. Many, if not all, small companies will succumb to the demands of large corporations who undoubtedly have superior financial and legal resources.

In addition, the owner of a mark or logo can establish a procedure whereby other companies can submit artwork and promotional materials for approval in advance. This open door type of policy encourages companies to seek approval prior to investing in a promotional campaign that may later be the object of a cease and desist demand letter or other legal action. ACOG's licensing division used this type of procedure during the 1996 Centennial Olympic Games (Bernstein, 1997; D. Cashman, personal communication, November 24, 1997). Even if prior approval is not sought, some companies upon discovering identical or similar artwork used on another company's products, have demanded modifications to the artwork. Presumably, these modifications help to avoid confusing artwork and establish an element of control for the trademark owner (Bookstore manager, personal communication, March 4, 1998).

Ultimately, however, it may be necessary to pursue legal action for trademark infringement. A strict application of the Polaroid test to a Christian themed T-shirt such as the Tommy Hilfiger/Today He Forgives shirt or Reebok/Reeborn shirt may not result in consistent decisions. The intent of the infringer and actual confusion will most likely be the critical elements of the action. For example, an infringer who is engaged in a clearly for profit activity and who uses identical marks belonging to another may be liable for trademark infringement. Conversely, a not-for-profit organization which modifies its artwork slightly, or changes a word here or there would very possibly prevail in a trademark infringement action using the Polaroid factors.

At first glance it may appear that companies engaging in the unauthorized use of trademarks can easily escape trademark infringement

by arguing expressive use, such as parody, thereby benefiting from a more liberal standard used by courts when the First Amendment is implicated. It seems entirely likely that companies manufacturing and distributing Christian apparel with a replica or similar mark to that of other well known trademarks such as Nike, Reebok, and Tommy Hilfiger could make a strong case for permissive use for the purpose of parody. However, the owners of the protected marks have had some success at arguing that in order for a parody to be a true parody it must not have any commercial purpose. Otherwise, the true motive is profit and parody is merely the means used to achieve the larger purpose (*Nike v. Just Did It Enters*, 1992). How the courts would resolve this issue is uncertain since the Christian apparel market is clearly profit oriented; however, the knock-off T-shirts may simply represent a clever play on words for the purposes of expressing one's devotion to God.

This potential for inconsistent and unpredictable litigation outcomes is troublesome for sport managers who are responsible for creating, promoting, and policing trademarks, logos, and brand awareness. In fact, from a review of the pertinent case law, the majority of cases vigorously and successfully pursued by owners of trademarks involve infringers who represent or promote negative, derogatory, or otherwise objectionable messages. For example, in *Coca Cola v. Gemini Rising* (1972) Gemini's poster associated Coca Cola with cocaine an illegal narcotic; and in *Dallas Cowboys Cheerleaders v. Pussycat Cinema* (1979) promoters for an adult X-rated film falsely claimed that the film starred a former Dallas Cowboy Cheerleader.

In other cases which did not involve such negative messages, the outcome has been quite different. In *Jordache Enters. v. Hogg Wyld* (1987) Hogg Wyld, Ltd. sold designer jeans with a pig emblem on them and the words "lardashe"; in *Anheuser-Busch, Inc. v. L & L Wings, Inc.* (1992) T-shirts featured the Budweiser can emblem and said "Myrtle Beach" "This Beach is for You!"; and in *Hormel Foods*

Corp. v. Jim Hensen Productions (1996) a fictional muppet character named "Spa'am" was featured in Jim Hensen's Muppet Treasure Island movie and subsequent merchandising activities. In these cases the owners of protected trademarks were not successful.

Christian themed merchandise which carries religious, spiritual, and uplifting messages are far different than the negative and objec-



Figure 1. Sample Christian themed merchandise available for internet and retail purchase.

tionable messages often featured in trademark infringement actions. Despite these obvious differences, Christian themed merchandise does still attempt to capitalize, benefit, and even profit from the popularity and recognizability of protected trademarks. It is reasonable to assume that every sport organization which is successful in creating brand awareness and identity through the promotion and use of trademarks and logos could be a likely target for a Christian themed knock-off. The Atlanta Braves, Seattle Mariners, NASCAR, and Kansas City Chiefs logos, color schemes, and images are already featured on Christian themed merchandise; however, a legal remedy may not be an available or even the best response. Many other considerations must be evaluated in order to develop an appropriate and effective response. Figure 2 pro-

vides examples of Christian themed merchandise bearing marks or logos of sport organizations.

B. Social Considerations

How would society perceive sports organizations if they aggressively pursue what are often, small, religiously themed companies? If sport managers choose any of the above mentioned legal options, they must carefully consider how various publics may react. First, there are those who may ask the rhetorical question, "Who sues God?". It may be that in the eyes of some, pursuing these religious organizations is an affront to God and religion, a seemingly lose-lose situation. There would also be the voices which ask why large organizations like Nike or Coca-Cola would go after "the little guy". Do companies want to risk potential negative publicity? A large corporation such as a Calvin Klein or Reebok taking legal action against a small, seemingly insignificant private, Christian enterprise will most likely be newsworthy. An organization like Nike which has come under fire for alleged unethical labor and marketing practices may run up against additional public resentment for going after a small Christian merchandiser. Sport managers must be prepared to answer critics by carefully explaining the legal bases for their actions, and must be able to show that potential infringement by any organization will be treated consistently according to corporate policy. If the organization's policy states that trademark infringement will be investigated, cease and desist orders requested, etc., then similar incidents should be handled similarly, and Christian merchandisers could not claim they are being singled out unfairly. While sport managers must, above all, treat others fairly, they do have the right to use the legal system to protect what is rightfully theirs.

C. Economic Considerations

Economically, sport organizations must determine if it is financially worth the effort to pursue these small companies. How much impact would a small company have on the sales of a Nike or Reebok? How much would it cost



Figure 2. Sample Christian themed merchandise bearing marks or logos of sport organizations.

to have the sport organization's legal department fight this battle? Is it worth the negative publicity which may result? There was backlash in Atlanta over the Olympics aggressive approach towards small businesses and their use of anything remotely resembling an official Olympic mark (Frank, 1995). Financial officers need to examine the potential effects of legal action on organizational profits and losses in terms of legal department costs as well as potential sales losses.

D. Political Considerations

Politically, if a sport organization's pursuit became public knowledge, would religiously based political action groups decide to make a stand against that sport organization? Nike has become a recent target for boycotts because of alleged overseas labor practices (Greenhouse, 1992; Hentoff, 1997). Certain religious-based organizations have called for a boycott of Disney Corporation because of Disney's policy which provides domestic partnership benefits for its employees. While this particular boycott has proven unsuccessful, it does illustrate how religious organizations can mobilize and publicly rally for a cause important to them ("Human Rights Campaign", 1997).

VI. Summary

Will trademark infringement by Christian merchandisers grow? As indicated earlier, the Christian market is large and expanding. Clearly, potential customers exist. Similarly, the licensed product market remains strong. With the increased use of the Internet, any person or company could offer merchandise for sale with relative ease. Companies which only operate through the Internet can easily come and go, making money for a short time before being discovered and ordered to cease and desist. There really are few barriers to starting up such an operation. Flea markets exist all across the country, and, due to sheer volume, are difficult to police. Established Christian merchandise companies are offering more merchandise in their catalogs with sport-based or brand-based religious themes. At this point in time, the trend is that those items are popular, profitable purchases, a trend which seems to be continuing.

With the ever-increasing value of sport organizations' trademarks and logos in today's market, sport managers must protect their valuable marks. Anyone attempting to infringe on a sport organization's protected marks must be aware of the potential legal consequences. Sport managers must be prudent in developing policies which fairly respond to companies which seek or are entitled to make permissive use of protected marks and logos while also actively pursuing any organizations blatantly and illegally infringing on protected marks for profit.

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