

# OLYMPIC FEVER

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In the mid-1980s, the Idaho Legislature authorized the sale of a commemorative 'centennial' license plate bearing the "Centennial Design." In October 1987, this Centennial Design was registered by the Idaho Centennial Commission with the Idaho Secretary of State as a state trademark. The special license plate fees collected from motorists who wanted to use the commemorative centennial license plate funded a good deal of the expenses of the Centennial Commission organizing the centennial celebration. The residual funds were transferred to the Idaho Heritage Trust for later use in preserving some of Idaho's historic sites. In 1992, this commemorative plate was officially adopted by the Legislature as the state's standard license plate design, the red-white-blue design typically seen on the road today.

As an additional source of funds, the Centennial Commission issued licenses to various businesses for use of the Centennial Design. To protect its licensing rights, the Centennial Commission aggressively policed unauthorized uses of the Centennial Design. Individuals and businesses who used the mark without a license from the Centennial Commission typically received a stern letter demanding either immediate cessation of use or the payment of a license fee.

While some of the unlicensed users of the Centennial Design were using the design to turn a quick profit (e.g., selling inexpensive souvenirs), many others were just proud Idaho businesses wanting to participate in the celebration of the State's Centennial. Since the Centennial Commission couldn't initially differentiate between the two classes of unlicensed users, both received the same stern demand letters. One example of such a situation occurred when one Treasure Valley business, at a cost of several thousands of dollars, repainted its commercial trucks with a design similar to the Centennial Design. They were obviously upset when they received a cease-and-desist letter from the Centennial Commission demanding they pay a few thousand more dollars for a license fee for what they felt was actions they had taken promoting and celebrating the Centennial.

With Idaho being selected to host the 2009 Special Olympics World Winter Games this coming February, and the Games of the XXIX Olympiad in Beijing (the "Summer Olympics") taking place this month, many Idaho businesses will be tempted to catch Olympic fever. As these two events take place, be sure to keep watch over your clients' businesses, watching for unlicensed use of Olympic trademarks that could result in "Centennial Design" type issues.

## TYPES OF INFRINGEMENT

While it is possible that an Idaho business might engage in the practice of making counterfeit goods, the most likely way they would run afoul of Olympic trademarks would be through infringing advertising or promotional campaigns. For instance, advertising an "Olympic Games" sale, or repainting a corporate vehicle with an Olympic themed paint job. Both of those examples would be problematic.

The use of Olympic symbols or terminology, such as the Olympic rings, or any other words implying an association with the United States Olympic Committee (USOC) or the International Olympic Committee (IOC) cannot be done without first obtaining formal approval and a licensing agreement. As such, any unlicensed use in advertising by a client of the word "OLYMPICS" should be met with caution.

Interestingly, Special Olympics International is the only sports organization given authorization by the IOC to use the word OLYMPIC in its name. Special Olympics International also has a federal trademark registration covering their logo (See Figure 1). Idaho businesses should thus also avoid use of any of the Special Olympic marks without prior approval.

In 1998, when Salt Lake City hosted the Winter Olympics, according to the Salt Lake Organizing Committee (SLOC), Olympic sponsors and licensees were expected to be a source of nearly 75% of the revenue needed to organize and put on the Games, and are expected to be a source of nearly \$70,000,000.00 in revenue for the Beijing Olympics. In order to protect sponsorship and licensing rights, thereby making them more valuable, the Beijing Organizing Committee (along with the USOC and IOC) carefully regulates the use of Olympic trademarks, designations and graphic designs. This regulation takes place through approving all proposed uses of the Olympic marks, as well as in licensing the use of the Olympic marks for use by licensees, sponsors and suppliers.



Figure 1: Special Olympics Registered Trademark

## BASES AND REMEDIES FOR INFRINGEMENT

The Olympic Organizing Committees tend to very aggressively protect their trademarks. A number of trademark infringement cases were litigated by the SLOC over Olympic marks back in and around 2002, the cases being brought under the Ted Stevens Olympic and Amateur Sports Act (36 U.S.C. § 220501), the Lanham (Trademark) Act (15 U.S.C. § 1127), the Federal Trademark Dilution Act of 1995 (15 U.S.C. § 1125(c)(1)), Utah's Civil Trademark Statute, Utah's Truth in Advertising Act, the Federal Copyright Act (17 U.S.C. § 102), and/or the Anticybersquatting Consumer Protection Act of 1999 (15 U.S.C. § 1125(d)).

Several points of interest lie with respect to the Amateur Sports Act. Under the Act, traditional defenses such as fraudulent registration, abandonment, and fair use cannot be asserted by the defendant. Furthermore, the Plaintiff (e.g., Beijing Organizing Committee), need not prove a "likelihood of confusion"

(Lanham Act) but need only satisfy the lesser burden of “tending to cause confusion” (Amateur Sports Act §380). The Amateur Sports Act also authorizes parties to be found guilty of criminal law under 18 U.S.C. §2320 (d)(1)(B) for trafficking in counterfeit goods if they have intentionally trafficked or knowingly used counterfeit goods or services and a likelihood of confusion among the marks can be proven to a preponderance of the evidence. Although parties may assert all federal trademark defenses in a criminal prosecution, penalties for violation of this statute can be as high as \$5,000,000 or 20 years in prison or both for an individual and as high as \$15,000,000 for a corporation.

Outside of the Amateur Sports Act, potential exposure for trademark infringement includes recovery of (1) a portion or all of the Defendant’s profits; (2) a portion of the Plaintiff’s entire lost profits; (3) a portion or all of the Plaintiff’s actual business damages and losses; (4) punitive damages in addition to actual damages; and (5) attorneys’ fees. In regard to counterfeit goods (goods that have a mark that is a counterfeit of a registered mark) penalties can also include the forfeiture (including seizure and destruction) of the infringing items, as well as treble damages if the infringement is found to be a knowing intentional use of a registered mark.

While this article stresses the potential for trademark infringement, if copyrighted works are copied, damages related to that infringement may also be at issue, including injunctions, monetary damages (the Defendant’s profits or the Plaintiff’s losses), costs, attorney’s fees, and/or statutory damages of not less than \$750 or more than \$150,000 per infringing type of goods sold. If the infringement is found to be willful, the penalties increase to up to \$150,000 per infringing use.



Figure 2: The Beijing 2008 Official Emblem

censed users, regardless of the intent of the unlicensed. Thus, Idaho attorneys need to be diligent in monitoring how our clients celebrate the Special Olympics and the Summer Games of 2008.

#### ABOUT THE AUTHOR

**Stephen M. Nipper**, is an Idaho native. He is a Registered Patent Attorney and partner with Dykas, Shaver & Nipper, LLP in Boise. His practice includes patents, trademarks, copyrights, licensing and litigation. He is the author of *The Invent Blog®* ([www.inventblog.com](http://www.inventblog.com)). It covers intellectual property news and information relevant to independent inventors, small businesses, and the attorneys that serve them.

**CONCLUSION**—How can you protect your clients?

1. Become familiar with the Olympic marks. Aside from the traditional trademarks (e.g., OLYMPIC GAMES, OLYMPICS, the five rings logo), other trademarks exist, including “BEIJING 2008” and the official emblem of the Beijing 2008 Games (entitled “Chinese Seal-Dancing Beijing”) (See Figure 2).
2. Second, counsel your clients about the Olympic marks, reminding your clients of the strong protection afforded the Olympic marks and cautioning against their use.

Sadly, trademark owners, in order to protect their trademarks, must enforce their rights against unli-