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ESSAYS

MARKETING, PROTECTION AND ENFORCEMENT OF NCAA MARKS*

SCOTT A. BEARBY**

INTRODUCTION

Increased popularity of a sports event such as the Final Four also brings aggressive attempts by those who seek to associate their products or services to the event without authorization. In addition, there are others who seek to infringe upon trademark or copyright ownership for other unauthorized, commercial purposes. The National Collegiate Athletic Association (NCAA) takes various preventative and enforcement measures to combat such so-called ambush marketing and efforts to misuse NCAA intellectual property.

The NCAA is an unincorporated membership association of more than 1,000 colleges, universities, athletic conferences and sports and academic organizations, supporting approximately 360,000 student-athletes participating in 22 men's and women's sports. The NCAA administers 87 championships across the NCAA's three membership divisions¹ annually, including the Men's and Women's Division I Basketball Championships, also known as the Men's and Women's Final Four, March Madness, or the Big Dance.

Royalties generated from NCAA championship television, radio, Internet, licensing, marketing, publishing, special events and equipment suppliers are distributed to NCAA members, to fund scholarships, to administer NCAA championships, to student-athlete welfare programs, and to provide member services. Athletic conferences and member institutions each control rights to

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1. The NCAA has three major divisions based on the scope of an institution's athletics program: Division I, Division II, and Division III. Division I is further divided into I-A and I-AA to differentiate the scope of institutional football programs and uses the designation I-AAA for those institutions not offering football.

their regular season and conference tournament events.

The NCAA protects the intellectual property interests of the NCAA's approximately forty United States trademarks and service marks associated with the NCAA and its championships. It also holds various registrations around the world for its main brands. In addition, the NCAA enforces against the unauthorized use of NCAA championship tickets in promotions and contests, against the unauthorized association of products and services with the championships, against the unauthorized use of NCAA championship broadcasts, and against other copyright infringement.

Although the NCAA National Office is not involved with the daily protection of university and collegiate intellectual property, or the unauthorized use of student-athlete likenesses, it does assist institutions in protecting these interests as they relate to their participation in NCAA championships.

PROTECTING ASSOCIATION INTERESTS THROUGH CONTRACT

Bundling licensing rights

Prior to September 1, 2002, the NCAA's various television, radio, Internet, licensing, marketing, publishing and special events rights were each contracted separately. In preparation to renegotiate its rights agreements for a contractual period beginning September 1, 2002, the NCAA believed that the various rights held greater value if they could be held by a smaller number of contracting parties. This belief was borne out by the marketplace and a significant increase in rights fees during the NCAA's negotiations with interested parties in 1999.

The result is that CBS holds television rights to sixty-four of the NCAA's championships, including the Men's Division I Basketball Championship, as well as all radio, Internet, licensing, marketing, publishing, and basketball Hoop City rights. ESPN, through an agreement reached with the NCAA over the 2001 summer, shall continue to have television rights to the Women's Division I Basketball Championship and twenty other championships.²

Even though CBS has subcontracted a number of its NCAA obligations to

2. Both the ESPN and CBS contracts have a fixed term of eight years beginning September 1, 2002, and ending August 31, 2010. The NCAA, in its sole discretion, has the option to exercise its right to continue the agreements for an additional three years, the terms of which have already been negotiated. Although some international television and radio rights were granted to CBS and ESPN, certain other rights to international television and radio broadcasts were not included. In addition, the NCAA retained its role in administering its official ball and supplier agreements.

Host Communications, Inc. (Host) with the approval of the NCAA, the NCAA expects that the integration of its rights and collaboration commitment by its contracting partners will minimize the number of potential conflicts that can arise during the activation of contractual rights (e.g., NBC's refusal to provide on-air mention of Lowe's, the home improvement chain, as the name of the speedway during a NASCAR race if Lowe's refused to buy advertising during the race broadcast).³ There are now a number of examples of leagues and conferences streamlining rights elements for a more integrated outcome and for additional value.⁴

Defining the scope of media rights

In this day and age when technology is evolving almost hourly, it is important to define the scope of the rights being granted. As television, radio, and the Internet as we presently know them converge, and wireless technology advances, a rights grantor must be mindful whether it is conveying rights to all media technology, now known and to be developed in the future, or whether so-called "new media" has been reserved for later licensing. The close attention to media and technology definitions is important regardless of the term of the contract, but it is particularly important in long-term contracts, considering the rapid access consumers have to advanced technology.

Protecting copyright

An entity should also identify its hold on a copyrighted work completed by a licensee on the rights owner's behalf. A rights owner is at risk of having ceded copyright of creative work created by a licensee and all sublicensees unless the licensing agreement specifies that the owner has retained the copyright. If a rights grantor has leverage in the negotiations, it should seek to retain full copyright ownership in order to be eligible for residual royalties and to control against later ambush of intellectual property by a licensee or sublicensee. In any event, the licensing agreement and any sublicensing agreement involving creative work should spell out exactly which rights each party holds to a license or a re-license of the copyrighted material.

The vast array of media distribution platforms makes copyright protection of broadcasts more important than ever as an entity considers the re-licensing

3. Andy Bernstein & Erik Spanberg, *Naming Beef Creates Value Questions*, SPORTS BUS. J., Oct. 15-21, 2001, at 1.

4. For example, the NBA is believed to have offered courtside rotational signage to its network's sales inventory as part of its newly-negotiated network agreements. Andy Bernstein, *NBA Throws in Enticements to Match Previous TV Money*, SPORTS BUS. J., Jan. 7-13, 2002, at 1.

of broadcast footage and as the re-broadcast of entire sporting events becomes more common. If a rights grantor is going to cede this copyright to the licensee, the rights grantor should be certain that it is adequately compensated to account for this potentially valuable right.

In addition to royalties that an entity may earn in the future through contractual arrangements, a rights owner of broadcasts aired via cable or satellite may entitle the owner to royalty distributions by the United States Copyright Office (USCO) through federal laws and regulations.

Defining the scope of licensing rights

Of course, licensees serve very different purposes and hold different rights based on their level of commitment to an organization. Through its current licensing and marketing structure, the NCAA has approximately thirty-five merchandise licensees, sixteen corporate marketing partners, and ten official ball licensees. In the NCAA's case, merchandise licensees and official ball licensees—those using NCAA marks on apparel, equipment, and goods—may not use NCAA marks in advertising to promote the manufacturer's brand. Rather, the marks must be used to promote the sale of the licensed product. NCAA marketing corporate partners, on the other hand, may associate their products and services directly with NCAA marks and championships and promote the corporate partner brand in keeping with strict NCAA guidelines and approvals.

PROTECTING ASSOCIATION INTELLECTUAL PROPERTY

Trademark and service mark protection from traditional marketing ambush

The NCAA engages in annual educational efforts with the general public to explain why the unauthorized use of trademarked phrases such as "Final Four" places the NCAA in situations where the organization must protect its valuable intellectual property rights. For the 2000 to 2001 Men's and Women's Division I Basketball Championships, the NCAA sent more than 4000 letters to businesses and organizations requesting their cooperation. Still, the NCAA must engage in a variety of cease and desist practices to stop those from attempting to capitalize on the goodwill associated with NCAA championships. The NCAA learns of trademark ambush through its member institutions, the National Office staff, licensing partners, and sometimes even through members of the public who understand that an unauthorized promotion is being conducted.

Advertising ambush can be as simple as handing out sample products in

the city where an NCAA championship event is located, or as sophisticated as print or television advertising with enough collegiate basketball references and graphics to lead a consumer to mistakenly believe that there is a relationship between the event and the company conducting the ambush. At the Men's Final Four city, and starting this year at the Women's Final Four location, the NCAA will have the host city designate a "clean zone" designed to limit the amount of commercialism that will take place in the streets surrounding the championship venue. The clean zone will ease congestion by removing persons handing out flyers or products, and hopefully prevent attending fans from being hassled on their way to and from a venue.

The NCAA also guards against the unauthorized use of NCAA trademarks on apparel and goods, particularly in and around NCAA championship venues. The NCAA and the Collegiate Licensing Company (CLC) work closely with local law enforcement in cities where championship events are held to guard against counterfeit goods. Although the NCAA is not involved in policing at collegiate post-season football bowl games, during the Rose Bowl alone police had written 18 citations, made three arrests and confiscated more than 5000 pieces of counterfeit goods, roughly valued at \$20,000.00.⁵

Trademark and service mark protection from cybersquatters

The NCAA, like other organizations whose intellectual property has been taken by others for use on the Internet by so-called cybersquatters, has taken reasonable steps to slow the train wreck created by a domain name registration process that offers little protection to a trademark owner. Registrars generally disavow any responsibility for trademark infringement when someone accesses their service to register a domain name containing another's trademark. Yet, these same registrars now encourage persons to register variations of a requested domain name that still may be available, even though those domain names, too, may constitute an act of cybersquatting and trademark infringement.

The NCAA has registered and received the transfer of approximately 200 different domain names. No different from other organizations, the NCAA has had to balance finite resources against the need to strategically protect its intellectual property from the multitude seeking to capitalize on the NCAA's goodwill. The NCAA mark has been attacked by a variety of individuals and entities, including sports marketing companies, gambling web sites and betting pool organizers, ticket brokers, and .com retailers, among others.

5. *Outside the Lines* (ESPN television broadcast, Jan. 6, 2002) (interviewing Collegiate Licensing Co. personnel).

When the Internet Corporation for Assigned Names and Numbers (ICANN) authorized the registration of .info and .biz domain names, the NCAA took the initiative to register those domain names consistent with the NCAA's trademarks. It has also registered an assortment of domain names using popular country codes such as .tv,⁶ used by some to represent television-related sites, and .ws,⁷ sometimes used as shorthand for "web site." However, an organization with multiple trademarks may not have the resources to register all domain names containing variations of its marks.

Settlement agreements with cybersquatters

The NCAA's policy has been to not purchase domain names from cybersquatters. It has on occasion, however, agreed to compensate registrants for their registration fees and to cover transfer fees, in exchange for the registrant's complete cooperation in transferring all offending domain names, an agreement not to register domain names containing NCAA trademarks, and an agreement to jurisdiction in the State of Indiana, where the National Office is located, if the NCAA must take action against the cybersquatter to enforce the terms of settlement.

Persistence in completing transfer of domain names

Registrars operate with great reliance on technology, automatic e-mail responses, and other automated approaches to keep track of the patchwork of domain name registrations. Many of these systems are not fool-proof and will require persistence and diligence to ensure that registration or transfer is complete. Domain name owners should periodically check registrations to ensure that the information remains accurate, calendar the expiration of domain names to avoid registration lapses, and keep a log of persons spoken to who represent the registrar in order to track where the registrar's administrative glitches may have occurred.

Use of arbitration and litigation in domain name disputes

Arbitration using the Uniform Domain Name Dispute Resolution Policy (UDRP) has been recognized as a cost-effective, more immediate process to get the remedy that most trademark owners want: transfer of the domain name.

6. The Tuvalu Islands, a nation in the South Pacific, has licensed ".tv Corporation" in the United States to act as its registrar.

7. The domain name ".ws" is also the country-code for Western Samoa, which is in the South Pacific.

The odds are on the side of a trademark owner asserting rights against a cybersquatter based on statistics from a significant arbitrator of domain name disputes, World Intellectual Property Organization (WIPO). Through March 2002, 2002, from 3364 completed arbitrations, transfer has been ordered in 2159. Eighteen names were cancelled and 667 cases were terminated or withdrawn. Five hundred twenty complaints were denied.⁸ The typical UDRP arbitration, completely done through electronic and written communication and filings, lasts a few months from start to finish. The filing fee depends on the number of domain names at issue, but generally costs between \$1000.00 and \$2000.00. One panelist selected at random decides the typical arbitration, but there is a provision by which the respondent may request a three-person panel. All registrants of top-level domain names have agreed to UDRP jurisdiction, which can be very useful when dealing with foreign defendants.

Even though the NCAA has enjoyed success through arbitration using the UDRP, arbitrators also have reached "arbitrary" conclusions contrary to traditional principles of trademark law. An arbitrator is not required to rule using precedent and may actually reach two different conclusions based on virtually identical fact patterns, as has happened with the NCAA. In *National Collegiate Athletic Ass'n v. Pitkin*,⁹ one of the arbitrators signed on to a panel opinion that ruled that domain name registrations such as "finalfourseats.com" were not in violation of the UDRP and thus not transferable to the NCAA. Just a few months earlier that same arbitrator had reached the opposite decision in *National Collegiate Athletic Ass'n v. Freedman*,¹⁰ involving the domain name "finalfourmerchandise.com." With "finalfourseats.com" and other domain names held by a ticket broker, the arbitrator found "in the abstract" that the use of "Final Four" was at the outset confusingly similar with an NCAA trademark.¹¹ However, because the ticket broker disclaimed any affiliation with the NCAA on the web site, the arbitrator found that there would not be a likelihood of confusion that "finalfourseats.com" was an official NCAA ticket site once a consumer accessed the site.¹² The registrant of "finalfourmerchandise.com" desired to use the site to sell NCAA products, just as the ticket broker sought to sell NCAA tickets.¹³ Unlike the

8. *Case Results: gTLDs*, WIPO.INT, at <http://arbiter.wipo.int/domains/statistics/results.html> (last visited Apr. 12, 2002).

9. No. D2000-0903 (WIPO Arb. Mar. 9, 2001) (Smith, Creel, Page, Arbs.), available at <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0903.html> (last visited Apr. 12, 2002).

10. No. D2000-0841 (WIPO Arb. Nov. 10, 2000) (Creel, Arb.), available at <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0841.html> (last visited Apr. 12, 2002).

11. *Pitkin*, No. D2000-0841, at *7.

12. *Id.*

13. *Freedman*, No. D2000-0903, at *3.

“finalfourseats.com” decision, the arbitrator’s opinion in “finalfourmerchandise.com,” found that respondent’s registration was in bad faith, in part because he knew of the NCAA’s interest in the phrase “Final Four” and sought to profit from that interest.¹⁴ Prior to the “finalfourseats.com” case, and cited by the NCAA in its complaint, the NCAA received a favorable outcome against another ticket broker in *National Collegiate Athletic Ass’n v. Halpern*.¹⁵ Here, the arbitrator ruled that initial confusion of interest was enough to establish bad faith by the respondent.¹⁶ This precedent obviously was not followed by the “finalfourseats.com” panel despite virtually identical facts.

Another arbitrator in an NCAA case ruled against the NCAA in cases using association trademarks in connection with gambling terms. In *National Collegiate Athletic Ass’n v. Giancola*,¹⁷ the arbitrator found gambling to be a legitimate business purpose and refused to find that the registrant engaged in bad faith under the UDRP with respect to registration of twelve domain names such as “ncaabasketballodds.com.” In the same case, the arbitrator had no trouble finding “bad faith” with respect to the registration of twenty domain names incorporating NCAA trademarks without gambling references (e.g., “ncaamensbasketball.com”).¹⁸ The NCAA filed suit after the arbitration losses and in each case ultimately received control of all of the domain names.¹⁹ Although most of the NCAA’s arbitrations were conducted through WIPO, the NCAA also received a favorable result through the National Arbitration Forum (NAF), another UDRP arbitration service.²⁰

One of the NCAA court victories included the award of damages and attorney fees. In *National Collegiate Athletic Ass’n v. BBF International*,²¹ the court entered an injunction against BBF’s use of NCAA trademarks in domain names and on web sites related to gambling.²² The court also

14. *Id.* at *4.

15. No. D2000-0700 (WIPO Arb. Dec. 10, 2000) (Plant, Arb.), available at <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0700.html> (last visited Apr. 12, 2002).

16. *Id.* at *18.

17. No. D2000-0836 (WIPO Arb. June 25, 2001) (Thompson, Arb.), available at <http://arbiter.wipo.int/domains/decisions/html/2000/d2000-0836.html> (last visited Apr. 12, 2002).

18. *Id.* at *5-*7.

19. Nat’l Collegiate Athletic Ass’n v. NCAABasketballodds.com, No. 01-374-A, 2001 U.S. Dist. LEXIS 20794 (E.D. Va. Aug. 7, 2001); Nat’l Collegiate Athletic Ass’n v. Desire, Inc., No. IP01-C-1142-M/S (S.D. Ind. filed Aug. 6, 2001).

20. Nat’l Collegiate Athletic Ass’n v. Universal Internet Tech., Inc., No. 97295 (Nat’l Arb. Forum June 25, 2001) (Buchelee, Arb.), available at <http://www.arb-forum.com/domains/decisions/97295.htm> (last visited Apr. 12, 2002).

21. No. 01-422-A, 2001 U.S. Dist. LEXIS 11774, at *1 (E.D. Va. May 4, 2001).

22. *Id.* at *4-*5.

prohibited BBF's depiction of student-athletes on the sites.²³ Although BBF was organized and operated as an off-shore entity, the NCAA was able to trace assets to the United States, and the court ordered a freeze of those assets.²⁴ The court also ordered monetary damages and attorney fees under the Anticybersquatting Consumer Protection Act (ACPA),²⁵ which became United States law in late 1999.²⁶

Use of student-athlete likenesses and team names

Enforcement against unauthorized use of student-athlete likenesses, including names and photos, and collegiate intellectual property falls within the province of the individual member institutions. Although NCAA Bylaws permit very limited use of student-athlete likenesses in advertising (*i.e.*, for a charitable or educational program, or as part of an advertisement congratulating an athlete's or team's performance),²⁷ such use must be approved by the student-athlete's member institution.²⁸

NCAA Bylaws prohibit the use of student-athlete names or photos in connection with commercial "fantasy" games because the commercial entity is in some measure profiting off of the student-athlete's identity. The prohibition against profiting from a student-athlete's likeness extends even to the sale of his or her autograph while the athlete still has eligibility to compete at the collegiate level.²⁹ Auction sites such as eBay already warn persons that the sale of autographs may violate states' right of publicity statutes or other laws since the person signing the autograph may have had no intention for persons to profit from the sale of that signature. Therefore, the student's institution must take measures to intervene and stop the offending conduct when a student-athlete's likeness is used contrary to NCAA Bylaws.³⁰

23. *Id.*

24. *Id.* at *3.

25. Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d) (2000). Although not passed until late 1999, the ACPA offers recovery for domain names registered before the law was enacted. It also provides for in rem actions in those cases where jurisdiction otherwise might not be available. For domain names registered after the law was enacted, monetary damages and attorney fees are available.

26. *BBF Int'l*, 2001 U.S. Dist. LEXIS 11774, at *6.

27. NAT'L COLLEGIATE ATHLETIC ASS'N, 2001-02 NCAA DIVISION I MANUAL, art. 12.5.1.1 (2001).

28. *Id.* at art. 12.5.1.1(a).

29. *Id.* at art. 12.5.2.1.

30. *Id.* at art. 12.5.1.1.

Unauthorized use of NCAA championship tickets

Many corporations attempt to create a false association with the NCAA by offering NCAA championship tickets as a part of contests or promotions promoting that corporation's brand. Although the NCAA grants limited permission for its corporate sponsors to offer championship tickets in such a manner, it attempts to limit the amount of commercialism associated with the championships.³¹

The NCAA clearly states in its ticket application forms and on the tickets themselves that its championship tickets are revocable licenses. Case law from a variety of jurisdictions confirms the common sense viewpoint that tickets to sporting events are considered revocable licenses issued by the sponsoring organization and subject to the terms and conditions stated on the tickets.³² Typically, a corporation or its advertising agency will acquire tickets sold to ticket brokers by those originally purchasing the tickets from the NCAA. There is authority supporting the NCAA's position that conditions may be attached to revocable licenses that are binding not only upon the initial purchaser, but also upon any subsequent purchaser. *Transworld Airlines, Inc. v. American Coupon Exchange, Inc.*,³³ involved a challenge to the transferability of frequent flyer airline coupons. The airline coupons were held to be revocable licenses.³⁴ The court upheld the condition imposed on frequent flyer coupons against an agency that was in the business of purchasing coupons from Transworld flyers and reselling to third parties.³⁵ Among the cases reviewed in the *Transworld* opinion, the Ninth Circuit cited the United States Supreme Court's opinion in *Bitterman v. Louisville & Nashville Railroad Co.*,³⁶ and concluded the following: It is well settled that conditions stated on tickets are "not only binding upon the original purchaser but upon any one who acquired such a ticket and attempted to use the same in

31. The NCAA filed suit against Coors Brewing Co. on November 27, 2001, in part contesting Coors' 2001 use of NCAA Final Four tickets in various Coors branded promotions and seeking an injunction against Coors' use of NCAA tickets in 2002. The NCAA also makes other allegations against Coors regarding Coors' use of NCAA marks and attempt to associate itself with NCAA championships. *Nat'l Collegiate Athletic Ass'n v. Coors Brewing Co.*, No. IP01-1768 (S.D. Ind. filed Nov. 27, 2001).

32. *Soderholm v. Chicago Nat'l League Ball Club*, 587 N.E.2d 517, 520-21 (Ill. App. Ct. 1992); *Jacksonville Bulls Football, Ltd. v. Blatt*, 535 So. 2d 626, 629-30 (Fla. Dist. Ct. App. 1988); *Bickett v. Buffalo Bills, Inc.*, 472 N.Y.S.2d 245, 247 (N.Y. App. Div. 1983).

33. 913 F.2d 676 (9th Cir. 1990).

34. *Id.* at 698.

35. *Id.*

36. 207 U.S. 205 (1907), *quoted in Transworld*, 913 F.2d at 686.

violation of its terms. . . .”³⁷

There can be no question that the use of event tickets in a contest or promotion is a direct attempt to promote a company’s brand, product or service by associating it with the goodwill and value of the event and its sponsoring organization. Even without referring to the specific trademark or common name for an event—such as promoting the prize as a trip to the “Final Four”—referring to the event generically (e.g., “collegiate basketball championships”) does nothing to lessen the consumer’s association of the company offering the prize to the NCAA.

PROTECTION OF THE DIVISION I BASKETBALL CHAMPIONSHIP BRACKET

Many companies attempt to create a perceived relationship to the NCAA Men’s and Women’s Division I Basketball Championship through use of the championship bracket or championship information.³⁸ The typical argument is that the bracket itself, or a bracket containing team names, without use of NCAA logos or marks, is not subject to copyright or trademark protection. In the alternative, others have constructed “fair use” defenses. However, the unauthorized identification of NCAA championships with a product or service is actionable and something which the NCAA enforces diligently. The NCAA has prohibited the use of a company’s logo or identification within the bracket itself. It also will seek a halt to other uses of the bracket capitalizing on the goodwill of the NCAA championships in such a way that the public perceives a relationship. These NCAA enforcement efforts are directed in part against companies sponsoring so-called “bracket contests” in which consumers compete for prizes based on accurate prediction of championship games.

Bracket contests are troublesome not only because of the unauthorized association between products and the championships, but also because of the perception that bracket contests promote gambling based on the outcome of the games. Bracket contests conducted by NCAA partners must not award prizes based entirely on the accurate prediction of the games’ outcome. Authorized bracket promotions involving prizes are based on random drawings or only partially on the accuracy of completed brackets.³⁹

37. *Transworld*, 913 F.2d at 686 (citing *Bitterman*, 207 U.S. at 221 (citing *Mosher v. St. Louis, Iron Mountain & Southern Railway Co.*, 127 U.S. 390, 396 (1888))).

38. The NCAA uses 64-team brackets with participating team names and geographic regions for the Men’s and Women’s Division I Basketball Championships. Beginning with the 2001 Men’s Championship, a 65th team was added and thus two teams play an “opening round” game before the first round of the championship begins. The NCAA uses a variety of other bracket sizes for other championships.

39. For example, the top 10% of the most accurate brackets are entered into a random drawing for the grand prize.

Audio, video and Internet infringement.

The NCAA also guards against the unauthorized broadcast of NCAA championship events or footage of events on television, radio, and the Internet. The NCAA issues credentials to qualifying media to cover the events under specific terms and conditions. Typically, however, problems arise as a result of those who are not credentialed and who, perhaps, are not even in the vicinity of the championship venue. Relying on the NCAA's broadcast partners and credentialed media reporting the events, the NCAA still must guard against bootlegged video, live streaming audio, and use of real-time data and graphics in a manner that suggests an official reporting relationship with the NCAA. With respect to streaming audio and video, case law has been favorable to copyright owners, including professional leagues.⁴⁰ Courts have had more difficulty with the conveyance of information, such as real-time statistics.⁴¹ Those transmitting such information are well served to avoid terms such as "official," "exclusive," or other adjectives that would lead a consumer to believe that there is an association with the event sponsor, if there, in fact, is not such an agreement.

Other copyright matters

The NCAA produces a large number of publications designed to educate prospective student-athletes, parents, member institutions, the media, as well as the general public. Much of this information is now contained on various NCAA web sites, including www.ncaa.org. In most cases, requests will be welcomed to reprint NCAA material with proper attribution and consistent with the NCAA's mission to provide information about collegiate athletics. Similarly, links to NCAA web sites as part of resource web pages also should not pose a problem if the person or entity respects copyright law. Objections arise when a web site operator attempts to pass off NCAA web sites and content as its own, such as through "framing" NCAA web sites within that operator's site instead of linking the visitor to the NCAA web site, or where the link to the NCAA site is positioned in such a way to lead a visitor to believe that there is a relationship between the NCAA and the web site or its

40. *Nat'l Football League v. TVRadioNow Corp.*, 53 U.S.P.Q.2d 1831, 1837 (W.D. Pa. 2000).

41. *Compare Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 855 (2d Cir. 1997) (finding that National Basketball Association (NBA) statistics and scores were facts within the public domain and not subject to federal copyright protection), *with Morris Communications Corp., Inc. v. PGA Tour, Inc.*, 117 F. Supp. 2d 1322, 1331 (M.D. Fla. 2000) (holding that the PGA had a proprietary method to distribute golf scores and statistics during PGA tournaments). A news publisher in this case sought to gather and publish "real-time" scores over the Internet, but was prevented from doing so by PGA rules. *Morris Communications Corp., Inc.*, 117 F. Supp. 2d at 1325.

advertisers.

CONCLUSION

Increasingly sophisticated ambush marketing and technology will continue to challenge existing intellectual property law. Even as new law is developed and existing law is applied, the significant increase in the number of information, media, and marketing platforms makes an intellectual property owner's task far more daunting in protecting against infringement. An organization's limited resources and the increasing number of ways for infringement to occur require a strategic plan with respect to all information, media, and marketing platforms.

