

“March Madness”: Protect Your Business From The NCAA

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The NCAA Tournament is here, and many local businesses will want to capitalize on this exciting time for basketball fans by using the well known “March Madness” slogan to advertise March specials. Think twice before your business uses that phrase. We’ve all heard those ads where they refer to the “Big Game” rather than the Super Bowl. That’s for a reason: because businesses can get themselves in trouble if they falsely suggest that their events or products are sponsored by or affiliated with the NFL. Businesses run into the same problem this month with the “Big Basketball Tournament.”

You may not think the NCAA will care about a website or sign in your town that includes a basketball-related picture and a “March Madness” deal. But if the NCAA comes across your advertisement, your company could receive a cease and desist letter demanding that you stop using “March Madness” because it might falsely suggest that your event or deal are somehow approved by or affiliated with the NCAA’s.

Our trademark laws do not prohibit using existing trademarks outright, but the law does forbid using a mark in a way that is likely to create customer confusion. That is, the NCAA can object to using “March Madness” in an advertisement where the context suggests that the subject of the advertisement was somehow connected to the NCAA. As a technical matter, for the NCAA to prevail in a trademark claim, it would need to be able to show a likelihood of confusion, which is generally established by looking at different factors such as the similarity of the marks, whether the goods and services being offered are the same or comparable, or whether the intended consumer audience is the same or similar. None of those factors alone would win or lose a claim for the NCAA, but because the NCAA has licensed the “March Madness” mark on a variety of goods, services and events targeted at a nationwide audience, trying to use the “March Madness” phrase for your own promotion is a risky move.

Whether a business’ use of “March Madness” does or does not infringe on the NCAA’s trademark is not a slam dunk. The point is, be careful, and consider the potential business risks of using an appealing catch phrase associated with the NCAA Tournament, or any other organization or event. It is potentially an expensive game to play.

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