



Question Q210

National Group: United States of America

Title: **The Protection of Major Sports Events and associated commercial activities through Trademarks and other IPR**

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I) Analysis of the current legislation and case law

The Groups are invited to answer the following questions under their national laws:

- 1) *Does your national law provide specific protection for trademarks or other designations relating to Major Sports Events?*

ANSWER:

Generally, trademarks or other designations relating to Major Sports Events are provided the same protections against infringement and dilution under U.S. law as any other trademarks or designations, which are protected under the federal Trademark Act, 15 U.S.C. Sec. 1051 *et seq.* (the "Lanham Act") against infringement (Sec. 1114), unfair competition (Sec. 1125(a)), and dilution (Sec. 1125(c)).

However, a body of case law has developed concerning such marks and designations in which subtle differences arose in the way these marks are treated under the Lanham Act compared to the treatment accorded other marks. In the 1970 and 1980s, a number of courts interpreted the Lanham Act in such a way as to facilitate protection of trademarks or other designations relating to Major Sports Events, mainly by making it easier for plaintiffs to prove likelihood of confusion, which is the linchpin of any trademark infringement case. These rulings effectively began to provide a specific protection for trademarks or other designations relating to Major Sports Events not enjoyed by other trademarks. U.S. courts, starting in the late 1980s, began to retreat from the modified likelihood of confusion standard. More recently, the practice of protecting a broad range of merchandise such as clothing items bearing trademarks or other designations relating to Major Sports Events has become the focus of debate among influential commentators on U.S. trademark law. This will be discussed in detail below.

Trademarks and designations related to the Olympic Games are additionally protected under the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. Sec. 220501 *et seq.* (the "ASA"). The ASA grants the United States Olympic Committee the exclusive right to:

- (1) the name "United States Olympic Committee";
- (2) the symbol of the International Olympic Committee, consisting of 5 interlocking rings, the symbol of the International Paralympic Committee, consisting of 3 TaiGeuks, or the symbol of the Pan-American Sports Organization, consisting of a torch surrounded by concentric rings;

(3) the emblem of the corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief; and

(4) the words "Olympic", "Olympiad", "Citius Altius Fortius", "Paralympic", "Paralympiad", "Pan-American", "America Espirito Sport Fraternite", or any combination of those words.

36 U.S.C. Sec. 220506(a).

Furthermore, the ASA provides that the U.S. Olympic Committee may file a civil action for the remedies provided under the Lanham Act against anyone who, without permission, uses any of these symbols, or any confusingly similar symbols, for the purpose of trade, or to promote any theatrical exhibition, athletic performance, or competition 36 U.S.C. Sec. 220506(b).

The ASA has provided important protection of marks and designations connected with Olympic events, protection that would not have been available under the Lanham Act. This is mainly because under the ASA, the plaintiff does not have to prove likelihood of confusion, use of its marks in commerce, or distinctiveness, in order for its marks to be enforceable.

- 2) *If so, please explain whether - and in the affirmative in what way - the following trademark law requirements differentiate from the corresponding requirements in general rules of trademark law:*
- a) *Requirement of distinctiveness*
 - b) *Use requirement*

ANSWER:

For all trademarks or other designations relating to Major Sports Events that are protected only under the Lanham Act, the owner of the mark must prove both distinctiveness and use in commerce of its mark in order for the mark to be valid and enforceable in court. These requirements, which are precisely the same as for any other trademarks whether or not they are related to sporting events, are as follows. A mark is inherently distinctive, and thus protectable without a showing of secondary meaning, if it is fanciful, arbitrary, or suggestive. *See Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4 (2d Cir. 1976). A descriptive term can be protected only if it has acquired distinctiveness. *See id.*, *see also* Sec. 2(e) of the Lanham Act, 15 U.S.C. Sec. 1052(e). A mark is used in commerce in connection with goods if it is placed in any manner on the goods, their containers, associated displays, or on the tags or labels affixed thereto, or on documents associated with the goods or their sale; the mark is used in commerce in connection with services if it is used or displayed in the sale or advertising of services and the services are rendered in commerce. *See* 15 U.S.C. Sec. 1127.

For the marks and designations enumerated in the ASA (*see* Answer to Question 1(1), *supra*) it is not necessary for the plaintiff to prove either distinctiveness or use of the marks or designations enumerated in the ASA in order for them to be valid and enforceable in court. In 1987, the U.S. Supreme Court held that this difference between the ASA and the Lanham Act was a valid exercise of Congress's legislative power. *See San Francisco Arts & Athletics, Inc., v. U.S. Olympic Committee*, 483 U.S. 522 (1987).

- 3) *Also, please explain whether – and in the affirmative in what way - the following differentiate from the general rules of trademark law:*

- a) *Is the scope of protection of trademarks which relate to Major Sports Events narrowed or extended compared to the scope of protection of other trademarks?*

ANSWER:

1. The ASA.

The scope of protection for the marks and designations enumerated in the ASA (see Answer to Question 1(1), *supra*) is substantially broader than the protection offered under the Lanham Act for all other trademarks (including marks and designations relating to Major Sporting Events). Under the ASA, the plaintiff – the U.S. Olympic Committee – can enforce its marks and obtain all remedies provided under the Lanham Act, without having to prove use, distinctiveness, or likelihood of confusion, and without the defendant's being able to allege trademark defenses such as abandonment, lack of secondary meaning, or genericness. As stated by the U.S. Supreme Court in *San Francisco Arts & Athletics, Inc., v. U.S. Olympic Committee*, 483 U.S. 522, 531 (1987), "[t]he protection granted to the USOC's use of the Olympic words and symbols differs from the normal trademark protection in two respects: the USOC need not prove that a contested use is likely to cause confusion, and an unauthorized user of the word does not have available the normal statutory [Lanham Act] defenses."

2. The Lanham Act.

With respect to the marks and designations relating to Major Sporting Events other than those covered under the ASA, the answer is more complex. A rich body of case law has developed concerning the application of the Lanham Act to such marks, encompassing a wide range of issues from standard trademark infringement to the sale of sports emblems unattached to any goods, ambush marketing,¹ appropriation of player names and performance, and the unlicensed broadcasting of Major Sports Events. A discussion of these issues follows.

In 1975, the Court of Appeals of the Fifth Circuit established a standard for the likelihood of confusion element of trademark infringement claims that was specifically adapted to marks and designations relating to Major Sporting Events. The defendant in *Boston Professional Hockey Ass'n, Inc., v. Dallas Cap & Emblem Mfg., Inc.*, 510 F.2d 1004 (5th Cir. 1975), sold embroidered cloth emblems bearing hockey team marks owned by the plaintiff. The court stated that "[t]he difficulty with this case stems from the fact that a reproduction of the trademark itself is being sold, unattached to any other goods or services," *id.* at 1010, noting that the Lanham Act and case law was not geared toward such an unattached use of a mark by itself, *id.* In a famous passage, the court developed a test for likelihood of confusion to accommodate this particular situation:

"The confusion question here is conceptually difficult. It can be said that the public buyer knew that the emblems portrayed the teams' symbols. Thus, it can be argued, the buyer is not confused or deceived. This argument misplaces the purpose of the confusion requirement. The confusion or deceit requirement is met by the fact that the defendant duplicated the protected trademarks and sold them to the public knowing that the public would identify them as being the teams' trademarks. **The certain knowledge of the buyer that the source and origin of the trademark symbols were in plaintiffs satisfies the requirement of the act. The argument that confusion must be as to the source of the manufacture of the emblem itself is unpersuasive, where the trademark,**

¹ Ambush marketing means "all activities not authorised by the right holders in the fields of marketing, promotion and advertising in any form in connection with a Major Sports Event which somehow seek to benefit from the goodwill or general interest in the Major Sports Event."

originated by the team, is the triggering mechanism for the sale of the emblem." 510 F.2d at 1012 (emphasis added).

In other words, consumer confusion is proved simply by showing that "customers recognized the products as bearing a mark of the plaintiff," rather than by proof of likely confusion as to source. 4 McCarthy's on trademarks and Unfair Competition ("McCarthy"), Sec. 24:10. This holding constituted a "radical break with traditional trademark law" and was sharply criticized on that ground in subsequent court decisions. *Id.* (collecting cases).

Nevertheless, the *Boston Hockey* rule, which made proving likelihood of confusion substantially easier for plaintiffs, was applied in a number of subsequent cases. For example, the court in *University of Georgia Athletic Association v. Laite*, 756 F.2d 1535 (11th Cir. 1985), applied the *Boston Hockey* rule in finding that defendant's sale of beer cans bearing the logo for plaintiff's athletic teams (a bulldog in a characteristic shirt emblazoned with a large "G") infringed the plaintiff's mark, affirming the permanent injunction against all sale of the beer cans that had been entered by the trial court. Like *Boston Hockey*, likelihood of confusion was found in *Laite* without the aid of any survey evidence indicating a likelihood of confusion.

The real issue raised in *Boston Hockey* and *Laite*, which was elided in both decisions, is the question of the proper reach of the Lanham Act. What is actionable consumer confusion in the context of Major Sports Events? It appears to be true that many consumers believe all merchandise bearing the emblems of sporting teams or events must necessarily be sponsored by the teams or event organizers. The issue was diagnosed with great clarity in *National Football League v. Governor of the State of Delaware*, 435 F. Supp.1372, 1381 (D. Del. 1977): "Apparently, in this day and age when professional sports teams franchise pennants, teeshirt's, helmets, drinking glasses and a wide range of other products, a substantial number of people believe, if not told otherwise, that one cannot conduct an enterprise of this kind without NFL approval."

McCarthy describes this correctly as the "'chicken-and egg' conundrum." *McCarthy* at Sec. 24:9. McCarthy explains, as quoted with approval in *Boston Athletic Ass'n v. Sullivan*, 867 F.2d 22, 33 (1st Cir. 1989), "[i]f consumers think that most uses of a trademark require authorization, then in fact they will require authorization because the owner can enjoin consumer confusion caused by unpermitted uses or charge for licenses. And if owners can sue to stop unauthorized uses, then only authorized uses will be seen by consumers, creating or reinforcing the perception that authorization is necessary."

The facts in *Sullivan* were quite similar to those in *Boston Hockey*. Plaintiff was the sponsor of the famous Boston Marathon. Defendant sold t-shirts emblazoned with plaintiff's BOSTON MARATHON mark and associated logo – a typical ambush marketing scenario. While the *Sullivan* court repudiated the lessened confusion standard applied in *Boston Hockey*, it, too, realized the difficulty of conceptualizing consumer confusion in this factual context. The court solves the problem by *presuming* actionable consumer confusion because "(1) defendants intentionally referred to the Boston Marathon on its shirts, and (2) purchasers were likely to buy the shirts precisely because of that reference." *Sullivan*, 867 F.2d at 34. Therefore, the court found the defendant liable for trademark infringement and imposed a permanent injunction against any further sale of the infringing t-shirts.

However, the *Sullivan* presumption – though intended to correct the *Boston Hockey* approach – was viewed as still too lenient a confusion test in light of the traditional requirement that likely consumer confusion as to the source of the goods or services be actually proved. Only two years after *Sullivan*, the Court of Appeals for the First Circuit clarified that in its *Sullivan* decision, it "did not intend to depart from ordinary principles of federal trademark law that make a finding of a 'likelihood of confusion' essential to a conclusion of "violation." *WCVB-TV v. Boston Athletic Ass'n*, 926 F.2d 42, 45 (1st Cir. 1991). In that case, the plaintiff (the same party as in *Sullivan*) sought to enjoin a local television station from televising the Boston Marathon and using the words "Boston Marathon" in connection with the broadcast.

Relying on *Sullivan*, the plaintiff had not submitted a consumer confusion survey as evidence of likelihood of confusion. The district court denied entry of a preliminary injunction against defendant, and the Court of Appeals affirmed, holding that defendant's use of the BOSTON MARATHON mark was "primarily as a description," minimizing any "real likelihood of confusion." *Boston Athletic Ass'n*, 926 F.2d at 46.

In summary, after the likelihood of confusion test was substantially changed starting in 1975 in cases involving marks and designations relating to Major Sports Events, the traditional test – requiring proof of likely consumer confusion as to source, and doing away with presuming such proof – has gradually been reinstated.

That leaves open the "chicken-and-egg" question raised by McCarthy. Should a defendant be liable for trademark infringement based on consumers' apparently near-universal belief that all uses of well-known sports marks or designations must be sponsored, authorized, or licensed by the owner of the marks? In a highly influential article entitled *The Merchandising Right: Fragile Theory or Fait Accompli*, 54 Emory L.J. 461 (2005), Professors Mark Lemley and Stacey Dogan have complained that this belief is essentially becoming a self-fulfilling prophecy, arguing "that the fact that consumers may believe trademark owners have a right to control merchandise bearing their brands does not itself justify a merchandising right," and that instead "the law should act as a norms creator, setting aspirational goals rather than responding to current consumer expectations." *Id.* at 488-89. McCarthy disagrees, arguing that "if a significant number of consumers think that permission is needed, then permission is needed." *McCarthy*, Sec. 24:9. McCarthy points out, however, that plaintiffs in such cases are "well advised to have empirical evidence in the form of a reliable consumer survey." *Id.* at Sec. 24:12.

Thus, it is now clear that plaintiffs in cases involving marks and designations relating to Major Sports Events are likely to prevail only if they put forth solid evidence supporting a finding of likelihood of consumer confusion.

b) *Does use as a mark constitute a precondition for infringement of trademarks which relate to Major Sports Events or is the requirement of use as a mark not applied in relation to infringement of those trademarks?*

ANSWER:

The marks and designations enumerated in the ASA are protected even without being used in commerce. Thus, for these marks, use in commerce is not a precondition for enforcement.

All other trademarks, including any marks and designations relating to Major Sports Events, and regardless of whether they are registered with the U.S. Patent and trademark office or not, must be validly used in U.S. commerce in order to be enforceable in court. Thus, for these marks, use in commerce is a precondition for infringement or dilution of these marks.

A separate question is whether the *defendant* makes actionable use of its allegedly infringing or diluting mark in order to infringe or dilute the plaintiff's mark. The Lanham Act generally requires that a defendant use the infringing or diluting mark in commerce. See 15 U.S.C. §§ 1114(1) (infringement of registered mark); 1125(a) (infringement of unregistered mark); 1125(c) (dilution). This question, which pertains to all trademarks including those relating to Major Sports Events, becomes relevant under U.S. law in two specific and very different contexts: (1) freedom of speech and (2) keywords and sponsored online advertisements.

(1) Freedom of speech: The First Amendment to the U.S. Constitution protects freedom of speech. If a defendant makes use of a plaintiff's mark – including a mark relating to a Major Sports Event, or one of the marks enumerated in the ASA – for the purposes of criticism, news reporting, parody, art or another purpose recognized under the First Amendment, then such use does not form the basis of liability for infringement or dilution under the Lanham Act. For a detailed discussion, see U.S. Group Report on AIPPI Q188 ("conflicts between trademark protection and free speech"). Furthermore, the U.S. Trademark Dilution Revision Act, 15 U.S.C. Sec. 1125(c), contains a number of specific exemptions from dilution liability for uses such as comparative advertising, parody, and noncommercial speech. These exemptions apply fully to any famous marks and designations relating to Major Sports Events that may be sought to be protected under the Dilution Act.

It should be noted that even in situations where the defendant's commercial use of the plaintiff's mark or designation is established, the free speech clause of the First Amendment can still bar the plaintiff's assertion of trademark and related intellectual property rights related to Major Sports Events. In a landmark decision, *C.B.C. Distribution and Marketing, Inc., v. Major League Baseball Advanced Media, L.P.*, 505 F.3d 818 (8th Cir. 2007), the Court of Appeals for the Eighth Circuit held in 2007 that the defendant's First Amendment rights superseded the rights of Major League Baseball and the players represented in the Major League Baseball Players Association. The defendant sells fantasy sports products, including fantasy baseball, "incorporat[ing] the names along with performance and biographical data of actual major league players." *Id.* at 820.² The court held that the plaintiffs had stated a cause of action for violation of the players' right of publicity by (1) using their names as symbols of their identities, (2) without consent, and (3) with the intent to obtain a commercial advantage. *Id.* at 822-23. Nevertheless, the court found that "CBC's first amendment rights in offering its fantasy baseball products supersede the players' rights of publicity."

This case shows that the First Amendment can act as a bar to the assertion of legitimate interests in protecting marks and designations relating to Major Sports Events (here, Major League Baseball games) against commercial exploitation by unauthorized third parties.

² Fantasy baseball is "a game where players manage imaginary baseball teams based on the real-life performance of baseball players, and compete against one another using those players' statistics to score points." http://en.wikipedia.org/wiki/Fantasy_baseball.

(2) Keywords and sponsored online advertisements: There is currently a disagreement among the U.S. Courts of Appeals as to whether a defendant's use of a trademark as a search engine keyword to trigger the display of sponsored advertisements on the search results page does or does not constitute use in commerce sufficient to expose that defendant to Lanham Act liability. This issue pertains to all trademarks protected under the Lanham Act and therefore applies also to any marks and designations relating to Major Sporting Events. Briefly stated, the Second Circuit, in *1-800 Contacts, Inc. v. WhenU.com, Inc.*, 414 F.3d 400 (2d Cir. 2005), has held that keyword use is not use in commerce, and thus not actionable under the Lanham Act, while most courts outside the Second Circuit have found that using a trademark as a keyword to trigger sponsored advertisements does constitute use in commerce. See, e.g., *Google, Inc. v. Am. Blind & Wallpaper Factory, Inc.*, 2007 WL 1159950, *6 (N.D. Cal. Apr. 18, 2007) (finding that Google's sale of trademarked terms in the AdWords program is a use in commerce for purposes of the Lanham Act); *J.G. Wentworth S.S.C. LP v. Settlement Funding LLC*, 2007 WL 30115, 85 U.S.P.Q.2d 1780, 1785 (E.D. Pa. 2007) (finding that participating in Google's AdWords program constitutes trademark use).

The keyword issue has not been considered with respect to any marks or designations enumerated in the ASA. However, since the ASA does not contain a use in commerce requirement, the issue may not apply to marks enumerated under the ASA.

c) *Is the protection period for trademarks which relate to Major Sports Events the same as the protection period for other trademarks?*

ANSWER:

Under U.S. trademark law, and in contrast to U.S. patent and copyright law, the protection of trademarks is not limited in time. The protection ends only if the mark in question is abandoned or becomes generic. This is also true for any trademarks or designations relating to Major Sports Events.

Protection of the marks and designations enumerated in the ASA (see Answer to Question 1(1), *supra*) is not limited in time. However, and in contrast to "ordinary" trademarks protected only under the Lanham Act, protection of the ASA marks and designations does not end if the marks are abandoned or become generic. In other words, these marks remain protected for as long as the ASA remains in force, and the only way in which their protection would cease would be for Congress to repeal the ASA or for a court to declare the ASA to be invalid. It should be noted in this regard that the U.S. Supreme Court has specifically held that the ASA is valid and constitutional. See *San Francisco Arts & Athletics, Inc., v. U.S. Olympic Committee*, 483 U.S. 522 (1987).

d) *Is the determination of third party traders' legitimate interest in fair use different for trademarks which relate to a Major Sports Event than for other trademarks?*

ANSWER:

Under the Lanham Act, there is not difference. The Lanham Act's fair use defense is applied in the same way to marks and designations relating to Major Sports Events as it is to any other trademarks.

In contrast, the ASA, which is designed to provide strict protection for all marks and designations relating to the Olympic Games, does not provide for a fair use defense.

- 4) *Does your national law provide for a specific registration procedure for trademarks relating to Major Sports Events?*

ANSWER:

No. In general, there is no requirement under U.S. law that trademarks be registered to be valid and enforceable. Unregistered marks can be enforced in court as long as they are distinctive and are being used in commerce. Many marks and designations relating to Major Sports Events are registered with the U.S. Patent and Trademark Office. Those registrations are no different than those of any other trademarks.

Likewise, there is no registration requirement for the marks and designations enumerated in the ASA in order for the protection of the ASA to apply to them.

- 5) *What are the possible remedies in respect of infringements of trademarks relating to Major Sports Events? Do they differ from the remedies applicable to other trademark infringements?*

ANSWER:

The remedies for infringements of trademarks which relate to Major Sports Events are the same as those applicable to other trademark infringements. This is also true for the marks and designations enumerated under the ASA, since the ASA provides no remedies of its own but instead incorporates all remedies available under the Lanham Act. For a full discussion of the remedies available under the Lanham Act, please see the AIPPI Report on Question Q203 in the Name of the U.S. Group.

- 6) *What are the possibilities under your national law of reacting against non-official sponsors' use or registration of trademarks which take place before a Major Sports Event and which relate to the Major Sports Event?*

ANSWER:

Such conduct would be evaluated no differently from any other potentially infringing conduct. In order to prevail at court, the plaintiff must prove, at a minimum, that its mark is distinctive and that it is actually being used in commerce. Plaintiff must also prove that the defendant's actions are causing a likelihood of consumer confusion.

If the plaintiff has not yet used the mark in U.S. commerce, then the mark cannot be enforced in a U.S. court. This is true even if the plaintiff has filed an intent-to-use application for its mark, or has registered its mark under Sections 44 or 66 of the Lanham Act (these Sections permit registrations to issue without proof of actual use of the mark in commerce).

The above considerations do not apply for marks relating to the Olympic Games. These marks are protected under the ASA, which does not require distinctiveness, use, or likelihood of confusion.

- 7) *Does your national law provide for protection against Ambush Marketing? In the affirmative, is such protection set out in the law protecting trademark rights, in the laws against unfair competition, or both?*

ANSWER:

Yes.

Marks and designations relating to the Olympic Games are strongly protected under the ASA against ambush marketing and any other forms of infringement.

For all other marks and designations relating to Major Sports Events, such protection is contained in the infringement, dilution, and unfair competition sections of the Lanham Act and the cases interpreting it. Please see the Answer to Question 3 for a more detailed discussion.

- 8) *Does your national law provide for specific trademark protection or protection against unfair competition relating to other major events, such as film, art or music festivals, World Expos and other similar events?*

ANSWER:

No. In fact, in *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003), the U.S. Supreme Court invalidated such protection. At issue in the case was unfair competition protection under the Lanham Act relating to the film and theater industry. A number of courts – mainly in California (Hollywood) and New York (Broadway) – had long interpreted the Lanham Act as preventing the appropriation of artistic content by a party who did not create that content, in effect creating a cause of action for plagiarism. See *Dastar*, 539 U.S. at 36. The Supreme Court held that the Lanham Act applies only to the physical origin of goods, but not to their creative origin, and that any other holding would "create a species of mutant copyright law." *Id.* at 34.

In short, the rule under U.S. law is that marks and designations relating to Major Sports Events and other events such as the ones listed in Question 8 are treated like any other trademarks. The ASA, which does provide such special protection to the marks and designations relating to the Olympic Games, is the sole exception.

II) **Proposals for substantive harmonisation**

The Groups are invited to put forward their proposals for adoption of uniform rules, and in particular consider the following questions:

- 1) *Are particular rules on trademark protection desirable for trademarks or signs which relate to Major Sports Events? In the affirmative, why is that the case?*

ANSWER:

The U.S. Group does not view such special rules as desirable and advocates that cases involving trademarks and designations relating to Major Sports Events be adjudged according to the same rules as other trademark and unfair competition cases.

- 2) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the registration of such trademarks?*
- a. *Would it be reasonable to adopt a registration procedure which is shorter than the general registration procedure?*

Answer:

No.

- b. *Would it be reasonable to change the classification system in respect of registration of trademarks which relate to Major Sports Events?*

Answer:

No.

- c. *Would it be reasonable to adopt a narrowed requirement of distinctiveness for trademarks which relate to Major Sports Events or alternatively not to require distinctiveness at all?*

Answer:
No.

- 3) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the use requirement?*
a. Would it be reasonable to adopt a use period of e.g. 8 or 10 years for trademarks which relate to Major Sports Events?

Answer:
No.

- b. Would it be reasonable to apply a use period of e.g. 8 or 10 years if the period from registration of the trademark to the actual event is shorter than 8 or 10 years?*

Answer:
no.

- 4) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the scope of protection? Would it be reasonable to give trademarks which relate to Major Sports Events a broader scope of protection than the scope of protection given to other trademarks, and in particular in relation to other trademarks which have a low degree of distinctiveness?*

ANSWER:

Giving a broader scope to such marks has been tried in U.S. law and has not been found desirable (see discussion above).

- 5) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of infringements of those trademarks?*
a. Should the requirement of use as a mark as a precondition for trademark infringement apply to alleged infringements of trademarks which relate to Major Sports Events or should it be possible to infringe such trademarks even when the use in question can not be characterised as use as a mark? Why is that the case?

Answer:

Use in commerce should be required in order for a mark to be enforceable in court because use in commerce is necessary for consumer confusion to exist.

- b. Should the remedies available against infringements of such trademarks be different from the remedies available against infringements of other trademarks? In the affirmative: Why is that the case?*

Answer:
No.

- 6) *Are specific measures protecting against Ambush Marketing relating to Major Sports Events necessary or justified? In the affirmative, why is that the case and what should the contents of such measures be?*

ANSWER:

No.

- 7) *Are other measures protecting against unfair competition relating to Major Sports Events necessary? In the affirmative, why is that the case?*

ANSWER:

No.

8) *Does your group have any other views or proposals for harmonisation in the area?*

ANSWER:

No.