The Washington Redskins: Controversy and Potential Issues on Your Campus
Todd Hambidge, Attorney, Intellectual Property Litigation

Challenges to the use of potentially objectionable terms by organizations has hit the headlines once again with the recent U.S. Patent and Trademark Office decision to cancel certain federal trademark registrations held by the Washington Redskins. Native American groups have also recently threatened legal action to address the Cleveland Indians team name and mascot, “Chief Wahoo.” Names, logos, and terms perceived as objectionable, however, are not limited to professional sports teams and their mascots. Other organizations have confronted similar challenges, and the challenges presented are often more complicated than they first seem.

Many schools have addressed progressive perceptions in the context of school mascots by retiring more controversial mascots; one need look no further than the litany of southern schools that have over the years retired mascots associated with the Confederacy. However, the complexity associated with addressing controversial terms or names may be more likely to arise in higher education in connection with campus buildings. In 2012, following reports of sexual assault by an assistant football coach, many called for Penn State to remove head football coach Joe Paterno’s name from the university’s Paterno Library. Penn State did not. In 2010, following revelations that William Simkins had been involved with the Ku Klux Klan, many called for the University of Texas to change the name of a dormitory named for him. It did. In 2005, many called for Middle Tennessee State University to rename Forrest Hall, based on controversy surrounding its namesake, Nathan Bedford Forrest, and his purported involvement with the Ku Klux Klan. It did not. In all of these circumstances, institutions weighed the controversial nature of a particular name and the historical context in which the name was adopted, and made varying conclusions on how to address it. The latitude to make this assessment, however, is not always as broad as an institution might prefer, as many in Middle Tennessee likely remember.

In 2003, Vanderbilt University sought to rename Confederate Memorial Hall simply “Memorial Hall.” The dormitory, however, was partially funded by the United Daughters of the Confederacy, which conditioned its gift on the naming of the building “Confederate Memorial Hall.” Rather than repay these funds to the United Daughters of the Confederacy, Vanderbilt retained the name on the building, but refers to it as “Memorial Hall” in campus maps and publications.

These various situations highlight the public relations issues that an institution may confront based on its use of a controversial name, logo, or term. Objectionable names and terms may raise other issues as well. Employees of the institution who feel marginalized may point to the name or term as relevant background evidence for employment claims under Title VII. Terms perceived as marginalizing women may additionally give rise to student concerns under Title IX. Regardless of the administration’s sensibilities, however, it may feel hamstrung by the historical or nostalgic preferences of alumni and supporters of the institution.

So what should an institution presented with a brewing concern over a controversial name or term on campus do to address and mitigate its exposure?

- With respect to the prospective naming of buildings, programs, or scholarships, thoroughly research the individual (or cause) at issue before naming something in his/her/its honor. Evidence indicates that the individual who recommended naming a University of Texas dormitory after William Simkins would not have done so had he known of Simkins’ KKK involvement.
- With respect to current buildings, programs, and scholarships, thoroughly research the individual (or cause) for which they are named and determine if such naming could be objectionable. If such name is potentially objectionable, determine what rights the school has to change the name.
Understand that societal views change. Something deemed inoffensive today may be considered objectionable in the future - as has been seen most recently with the Washington Redskins.

Keep in mind that even if the university does not deem an individual (or cause) objectionable, others might, and those others are the ones that may create bad publicity that damages your institution.

Taking these steps allows a college or university to assess potential risks and act proactively, rather than having to react in response to negative media coverage. Even if an institution decides not to make a change, a proactive risk assessment provides an organization with the relevant facts and an opportunity to develop a strategy to respond should a controversy arise.

If you have additional questions about this Note, please do not hesitate to contact the author or any member of Waller.

Waller is pleased to have partnered with TICUA to bring you this series of Legal Notes. If you have questions or suggestions for future topics, please contact Claude Pressnell (pressnell@ticua.org) or Waverly D. Crenshaw, Jr. (waverly.crenshaw@wallerlaw.com).

The opinions expressed in this article are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance.