

# Planning a 'March Madness' Promotion for Your Business? Beware the NCAA's Wrath.

An intellectual property lawyer breaks down why you should think twice before using the annual tournament in your marketing or promotions.



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It's that time of year again -- fans of collegiate basketball are following closely the games leading up to and part of the National Collegiate Athletic Association's (NCAA) tournament in March, an experience known widely as "March Madness."

Perhaps you have seen office pools using the team brackets and allowing each participant to select a potential winner of the tournament, then paying the winner a portion of the pool collected. Perhaps you have observed companies get into the spirit of the season by running commercial promotions to their customers playing off the names March Madness or Final Four.

Any such activities, however, come with some risk. The NCAA vigorously enforces its exclusive right to use these names in connection with collegiate basketball and, particularly, in connection with the NCAA Tournament in March. Such enforcement covers not only to the NCAA's March Madness registered mark, but also extends to unauthorized uses of its other registered marks, such as Final Four, Elite Eight, Midnight Madness, NCAA Basketball and the NCAA Experience. A full list of the NCAA marks can be found on the [NCAA's website](#).

The NCAA also [strongly discourages uses of its marks](#) being associated with sweepstakes, contests, office pools or "other gambling activities."

When it pursues infringers, the NCAA appears to use all of the tools at its disposal, including cease and desist letters, oppositions to registration of potentially infringing marks and petitions for cancellation of already-issued federal registrations as well as federal lawsuits asserting [trademark](#) infringement, unfair competition or cybersquatting, among other claims.

Despite its vigilance in protecting March Madness from infringement, the NCAA wasn't the first owner of the mark. Rather, the Illinois High School Association (IHSA) was the first to use the phrase, documented by a 1942 poem that was dedicated to the IHSA's boys' high school basketball tournament played in Indiana annually since 1908. The poem was essentially an ode to the tournament, which it associated with the "Madness of March." Some evidence suggests that the phrase may have been used in connection with this tournament as early as 1939.

In contrast, the NCAA's use of the mark started in 1982, when a CBS broadcaster, Brent Musberger, apparently described the NCAA Tournament as "March Madness." At this time, the NCAA began to make broad use of the mark on a variety of goods and services associated with the annual basketball tournament, but it did not start registering its marks until more recently.

Despite the NCAA's consistent and aggressive efforts to police the unauthorized use of its March Madness marks, some still try to get away with slight variations on the mark used with different services. Indeed, some have argued that the mark is generic and thus not entitled to protection. In a 2003 Texas case, *March Madness Athletic Association, LLC v. Netfire, Inc.*, the defendant registered a domain name "marchmadness.com" and proceeded to develop a website centered around the NCAA Tournament on which the defendant sold advertising for its own benefit. Ultimately, the court held that March Madness, while descriptive, had acquired secondary meaning and found that the defendant had infringed the mark.

Last month, the NCAA filed an opposition to [an intent-to-use application by The Big Ten Conference, Inc.](#), for registration of the mark "March Is On!" in connection with promotional and financial sponsorship of athletic events, TV transmission and internet streaming of athletic events and entertainment services related to producing and distributing the games. This case is still [pending](#).

Other examples of marks the NCAA has objected to are: [April Madness](#) (for entertainment services), [Markdown Madness](#) (for auto sales services) and [Mojo Madness](#) (for prepared potatoes). The proceedings against April Madness and Markdown Madness are still pending, but Mojo Madness registered after the applicant amended its description of goods to clarify that the source of its prepared potatoes was a specific restaurant.

Similarly, its oppositions to [March Matness](#) (for entertainment services), [Live the Madness](#) (for clothing), [Skate Madness](#) (for skateboarding competitions) and [FREESTYLE Madness](#) (for various entertainment services), among others, have resulted in abandonment of the allegedly infringing applications.

Given the NCAA's vigorous enforcement regime, any company considering using March Madness or a variation in connection with its business should consider seeking a license to do so. A license is not for the faint-hearted either: The NCAA's licensing body, the Collegiate Licensing Company (CLC), warns that "[more than 50 percent of all new collegiate licensees](#)" cannot hold their licenses beyond 18 months, some citing the inability to maintain the distribution levels or the revenue stream necessary to justify the cost of the license.

If a company cannot afford the license, neither can it afford the litigation. Rather than tempting fate and hoping the NCAA will not notice an unauthorized commercial use of its marks, such a company should simply choose another mark.



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