



# Nike: the brand of champions

Nike has won global fame not only for its iconic product lines and sponsorship deals with some of the world's biggest – and sometimes baddest – sporting heroes, but also for its clever, controversial ad campaigns and alternative branding strategies. Senior trademark counsel Jaime Lemons reveals how she and her colleagues navigate these issues, and more, for the world's leading sportswear brand

Swoosh: a simple logo dreamed up by Portland State University graphic design student Carolyn Davidson back in 1971 has today become instantly recognisable as one of the world's most lucrative brands. Valued by InterBrand at more than \$15 billion, the Nike portfolio encompasses everything from traditional word marks, logos and taglines to less conventional marks, such as the trade dress registration for its Air Force I trainer.

Managing the brand worldwide from offices in Beaverton, Oregon and North Andover, Massachusetts is a team that includes assistant general counsel trademarks Jaime Lemons. "We have a practice group called the IP Centre of Excellence that focuses on all aspects of IP, including trademarks, designs and utility patents, copyright and litigation," she explains. "We support both the Nike brand and our two affiliate brands, Converse and Hurley." All told, the combined portfolio extends to almost 10,000 pending and registered trademarks in more than 180 countries.

## Going global

As any multinational can attest, working on a truly global basis is not without its difficulties. Navigating the hazards presented by foreign tongues and trademark regimes can be a complex and time-consuming job – a fact not lost on Lemons. "In recent years we have encountered a few challenges on the clearance side," she acknowledges. "Our team conducts tens of thousands of clearance searches each year, and a large percentage of requests are for global clearance. As more trademarks are registered each year, we see the process becoming an even bigger part of our work."

When it comes to clearing marks in local languages, external advisers play a vital role in helping the trademark team get to grips with all of the particularities and peculiarities. "Over the years, we have developed strong partnerships with outside counsel both in the US and around the world," says Lemons. "The main qualities we

look for in outside counsel are deep legal expertise in trademark law, the ability to provide strategic business advice in the context of business objectives, and an understanding of and interest in our business." These relationships have been instrumental in facilitating the successful roll-out of the brand in new and untapped markets.

Further fuelling Nike's rise to global dominance is the ubiquitous Swoosh mark, which transcends all language barriers. "The benefit of having a globally recognisable logo without the use of any additional terms is that we can use it across multinational borders and consumers immediately recognise our products and stores," explains Lemons. "Translation is not necessary and variant meanings don't come into play." Fortunately for Lemons and her team, protecting the logo around the globe has proved relatively stress free, thanks to its immediate distinctiveness and consistent usage, and the team's assertive enforcement efforts from day one.

## Weighing up the alternatives

Today, the Nike brand protection strategy remains under constant revision to reflect the needs of the business and explore creative alternatives to the traditional methods of defence. "Protecting our brands is a critical focus of the company and something we continuously evaluate," confirms Lemons. "As a result, we consider non-traditional trademarks, copyright, Community designs and other forms of protection, as appropriate." A prime example of this alternative thinking is the trade dress protection secured for the Air Force I trainer – something which Lemons mentions with pride. "It's gratifying when an iconic footwear style is accorded trade dress protection as it has developed a sufficient amount of recognition to act as a source identifier without any additional logo or word marks," she states. However, while this progressive strategy has paid dividends for Nike in the United States, it has not been so effective in other jurisdictions with less sophisticated IP regimes: "We still face challenges in some countries where there is limited recognition of non-traditional rights, and we remain focused on continuing to assert our rights."

Special vigilance is also needed in the borderless online marketplace, where trademarks are easily infringed, counterfeits sold and brands hijacked, and where opportunities for consumer engagement are continually emerging and evolving. "With the expansion of the digital space, companies are constantly changing how they connect with consumers online," says Lemons. "As a result, the IP industry has to stay abreast of the latest developments and the changing law to best protect their brands."



Nike's world headquarters in Beaverton, Oregon

### Collaboration's the key

In Lemons' view, a collaborative, industry-wide approach is the smartest way to meet these challenges head-on. "We believe it is extremely important to keep lines of communication open with other in-house counsel at global brands, both within our sector and beyond," she explains. "To do so, we periodically reach out to other companies to share experiences and identify what's working and what's not, discuss the issues of working in different geographies, identify best-in-class foreign counsel and strategise on emerging issues."

Equally, at an internal level the Nike trademark team works hard to integrate with the rest of the business, to ensure that its pivotal role and the guidance it can offer are fully understood. "We believe that it is essential to be partnered with the business from the earliest stages of development, to provide the best possible support," she continues. "Therefore, we continually endeavour to ensure that our business partners are aware of our role, which is to help clear the path for their critical business objectives and prevent possible or unexpected issues from arising down the road." The team has made it its mission to be "highly responsive, clear and strategic", and as a result has won crucial buy-in and support from various divisions across the company, including the marketing, brand and product groups.

### A sporting chance

One area in which seamless cooperation between the trademark and marketing functions is essential is advertising. While Lemons would not be drawn on the specifics of how the teams collaborate outside official sponsorship initiatives, Nike certainly knows how to make a splash with its innovative promotional strategies – most recently in evidence during last year's Olympic Games. Its clever and compelling Find your Greatness campaign featured everyday athletes competing in other locations around the globe named London – including Little London in Jamaica and London, Ohio in the United States.

Unsurprisingly, the ad – which made its television debut during the Olympics opening ceremony – caught the attention of the games' organising committee, a body notorious for its zero-tolerance brand policing and aggressive enforcement of advertising rules. However, while Nike may have sailed close to the wind, the campaign did not infringe the London Olympic Games and Paralympic Games Act 2006 and thus escaped censure. At the time of the launch, Nike's brand chief Greg Hoffmann defended the campaign in convincing terms: "The idea is to simply inspire and energise everyday athletes everywhere and to celebrate their achievements, participate and enjoy the thrill of achieving in sport at their own level."

While it is safe to assume that the campaign will have made no fans among the Olympic committee or official sponsors, it clearly struck a chord with the general public. The London games saw a considerable backlash against the severe advertising restrictions imposed by the organisers, as threatened infringement suits against independent retailers who were unaware of any potential wrongdoing made mainstream headlines. Selecting everyday athletes for its 2012 campaign and featuring straplines such as "Greatness doesn't need a stadium" and "Greatness doesn't need its own anthem" not only indirectly linked the brand with this celebrated sporting event, but also firmly established it as a champion of the people.

In the final analysis, the decision to eschew the role of official sponsor – a deal which would have cost Nike tens of millions of dollars – in favour of this more imaginative lateral approach proved inspired. According to research carried out by BrandWatch, 7.7% of online conversations about the Olympics in the lead-up to the games were associated with Nike, compared to 0.49% for official sponsor Adidas.

Indeed, this is just the latest in a series of campaigns timed to coincide with key sporting events sponsored by its sportswear rivals. For example, during the Olympic handover from Beijing to London in 2008, Nike ran a series of ads featuring hopefuls for the



Nike has a long history of sponsoring sports superstars such as world record marathoner Paula Radcliffe



2012 games; and during the 2010 FIFA World Cup in South Africa it launched its Write the Future campaign, in which footballing stars such as Wayne Rooney and Ronaldinho imagined their future lives.

#### Celebrity perils

Indeed, Nike has a long history of sponsoring sports superstars of this calibre, and today the brand is linked to a number of high-profile international teams and individual athletes. But while such affiliations with some of the best-known and loved sporting heroes of recent decades have doubtless boosted the Nike brand, they are not without risk.

#### 60-second interview

##### What aspects of your job do you find the most challenging?

Our business moves at an extremely fast pace. We work hard to make sure that, despite time pressure, we are proactive in spotting possible issues and developing creative, innovation solutions that benefit the brand.

##### What aspects do you find the most rewarding?

It is very gratifying to see product or campaigns that you worked on come to life in the marketplace. Also, Nike is constantly innovating and, as a result, we are constantly tackling new issues. The constantly changing work keeps things interesting.

##### Who has been the greatest influence on your career?

I would have to say the paralegals I have worked with over the years have been the greatest influence. Whether it is starting out as a first-year associate at a firm or working in-house, the paralegals I have worked with have been experts. At Nike, we have paralegals who have been with the business since the very beginning, know the history of the company and our brands, and have great connectivity with our business.

##### What career do you think you would have followed if not law?

That's a tricky one – I can't remember a point when I did not want to go into the law. If I were to do something different now, I would think about writing or teaching.

In recent years several of Nike's brand ambassadors have been embroiled in scandals that have seriously undermined their reputations and dented their brand value, to a lesser or greater extent. Back in 2009, the golfing world was rocked by allegations that long-term Nike endorser Tiger Woods was entangled in a web of extramarital affairs. Unlike several other sponsors, Nike chose to stick by the player throughout the turmoil and just this month confirmed a new contract with the now resurgent Woods. In a statement to the press, Nike Golf president Cindy Davis said: "We are thrilled to continue our partnership with Tiger. He is one of Nike's most iconic athletes and has played an integral part in Nike Golf's growth since the very beginning."

While both Woods and Nike may have managed to ride out the turbulence, the more recent falls from grace of fellow sportsmen have proved fatal to their relationships with the sportswear giant. Last year Nike ended its sponsorship of Lance Armstrong in the wake of revelations of performance-enhancing drug use by the record-breaking cyclist. A statement released by Nike unequivocally set out its position: "Due to seemingly insurmountable evidence that Lance Armstrong participated in doping and misled Nike for more than a decade, it is with great sadness that we have terminated our contract with him. Nike does not condone the use of illegal performance enhancing drugs in any manner."

Nike has also distanced itself from South African Paralympian Oscar Pistorius while he awaits trial for the murder of his girlfriend in February this year. "Nike has suspended its contract with Oscar Pistorius," reads a statement on the company's website. "We believe Oscar Pistorius should be afforded due process and we will continue to monitor the situation closely."

Lemons declined to comment specifically on the dropping of either Pistorius or Armstrong, or the potential repercussions for Nike of being associated with tarnished celebrity brands. However, she is certain that while unexpected bumps such as these will inevitably occur along the road, the Nike brand – supported by its trademark team – is committed to promoting and reinforcing the positive side of sport. "We believe in the power of sport," she concluded. "We sponsor thousands of athletes every day and strongly believe in their ability to inspire people to reach their full potential. When issues do arise, we take them seriously and evaluate them on a case-by-case basis." <sup>WTR</sup>

Sara-Jayne Clover, *World Trademark Review*