What's in a Name?

A look at the NCAA's difficult task of regulating potentially offensive team nicknames and mascots

by Bob Latham

Throughout history, the mascot has been a symbol of the qualities that those who adopt it would like to possess, if only for the span of a sporting event. Lions and tigers and bears are a natural choice, and even less ferocious animals like horned frogs (TCU) and spiders (Richmond) have been claimed. For sheer terror in the hearts of opposing teams, surely nothing beats the name adopted by Hickman High in Columbia, Missouri—the Kewpies.

As long as animals or inanimate objects have been adopted as nicknames and mascots, they have served as a harmless way to identify a team. However, when Native-American names are involved, controversy has followed. In August of last year, the NCAA approved a seemingly pragmatic process by which it would review the use of Native-American mascots, nicknames and/or imagery at NCAA championships on a case-by-case basis. If a Native-American mascot is deemed offensive, it is barred from display at any NCAA championship event and the school the mascot represents is barred from hosting any NCAA championship event.

In determining whether a mascot is offensive, the NCAA expressed its belief that the stereotyping of Native Americans is wrong, but recognized that Native-American tribes are distinct political communities. If a particular tribe allows an institution to use its name and imagery, the NCAA will extend deference to the judgment of that tribe. Thus, schools that use a "namesake tribe" have a more identifiable route to acceptance than institutions that use a more generic nickname, such as Indians. Mississippi College was allowed to use its nickname, Choctaws, because it received the approval of the Mississippi Band of Choctaw Indians. In perhaps the most publicized acceptance by the NCAA, Florida State received a blessing to retain the use of Chief Osceola as its mascot from Max Osceola, current chief and general council president of the Seminole Tribe of Florida.

The matter also gets a little tricky when a mascot may or may not be viewed as making reference to Native Americans. Such was the saga of the Fighting Illini of the University of Illinois. Does the mascot refer to a Native-American tribe or to the State of Illinois? The NCAA went back and forth on the issue but concluded that it referred to a Native-American tribe and was therefore subject to restriction, in the absence of any approval from the namesake tribe. Conversely, Merrimack College was allowed to retain its "Warrior" nickname because the image it used was that of a Spartan, as opposed to a Native American. There was no opposition from Sparta, nor is there likely to be, at least in the absence of a DNA experiment gone terribly wrong. Similarly, Bradley University was allowed to retain the nickname "Braves" on April 28 of this year, but only because it removed any Native-American imagery associated with the name.

For sheer terror in the hearts of opponents, surely nothing beats the Kewpies.

The NCAA's implementation of its policy on this potentially divisive issue has not been without its challenges. In the case of Florida State, the Seminole Tribe of Florida approved the use of "Seminoles," but the Seminole Nation of Oklahoma expressed its disapproval. The NCAA deferred to the Seminole Tribe of Florida. Since the NCAA's policy applies to national championships, the question can certainly be asked as to whether the NCAA should look to the "namesake tribe" solely within the home state of the institution that uses it.

In another confusing case, the NCAA received conflicting opinions regarding the University of North Dakota's use of the "Fighting Sioux" nickname from two different officials of the Standing Rock Sioux Tribe. Though some supported the use of the name, ultimately the view of those who opposed the use carried the day. Perhaps UND could have satisfied the wishes of all parties by changing its nickname to the "Fighting Sue," thereby risking rebuke only from the estate of Johnny Cash.

Without in any way diminishing the importance of the NCAA's efforts to address this very real issue, the academic question does arise as to whom deference might be shown for mascots not associated with Native-American groups. What if there were conflicting viewpoints, for instance, on Rhode Island College's use of the nickname "Anchormen?" To whom would the NCAA turn? Katie Couric? For other mascots, there are obvious arbiters. In the case of the Furman University Purple Paladins the responsibility would surely fall to the most prominent member of purple nobility: the artist formerly and now again known as Prince. The Sweet Briar College Vixens? How about Ann Coulter? The Cal Poly and/or Hawaii Hilo Vulcans? Leonard Nimoy. The Whittier College Poets? Maya Angelou. And the Akron Zips (short for "zippers")? A certain former president comes to mind.

Finally, no discussion of nicknames would be complete without mention of the Rhode Island School of Design hockey team, the "Nads." Ah, what better way to spend an afternoon than going to a hockey game and hearing supporters of the home team chanting "Go Nads!" Life would have been so much simpler if only we had stuck with lions and tigers and Kewpies. ■

Bob Latham is a partner in the Texas-based law firm of Jackson Walker, L.L.P. He can be reached at blatham@jw.com.