

## INFORMATION PAPER

MAJA-AL

21 June 2012

### **SUBJECT: USMA Trademark Management**

1. Purpose. To provide general guidance regarding the use of the Institutional Names and Identifying Marks (“indicia”) of the United States Military Academy (USMA) at West Point. Guidelines facilitate compliance with standards for authorized use by personnel assigned to the United States Military Academy, the United States Army Garrison at West Point, and the USMA Preparatory School, as well as by alumni, parent, and private organizations affiliated with West Point.

2. Background.

a. The United States Military Academy at West Point enjoys a reputation as a world’s premier leader development institution, offering unsurpassed training for military officers and leaders of character. This reputation is reinforced by trademark management and marketing, or “branding.” Because unauthorized use ultimately weakens our brand, licensing (including royalty-free licensing) of use by official and closely affiliated entities strengthens our ability to enforce our indicia across a full spectrum of users.

b. The licensing program was formally established in 2003, to protect and license our indicia. These logos, designs, and verbiage, which are registered with the United States Patent and Trademark Office and/or protected under State and common law, are the exclusive property of the United States Army. The indicia are managed locally by the USMA Licensing Director. Through a contracted agreement, the Collegiate Licensing Company (CLC) administers our commercial licensing program. This arrangement supports our mission to ensure proper use and application of our licensed indicia, protects our reputation through consistent reinforcement of our brand, and generates revenue to directly support the United States Corps of Cadets.

3. Trademark Law. Trademarks are words, slogans, symbols, designs, or combinations thereof, which identify and distinguish the goods or services of one party from others. (15 USC §1127). The primary purpose of trademark law is to prevent unfair competition by providing exclusive rights of use to trademark owners. (*Ty Incorporated v. Perryman*, 306 F.3d 509 (7th Cir. 2002)). Infringement occurs when the relevant consuming public for an item is likely to be confused or mistaken about the source of a product or service by the unauthorized use of licensed indicia. (15 USC §1125(a)). Because trademark law requires that trademark owners actively protect their marks at the risk of losing them, USMA must vigorously pursue and, if necessary, take legal action against those who use our indicia without permission or exceed the scope of their authorization. (15 USC §1127).

4. Policy.

a. A license, or express written permission, is required for any individual, organization, or entity to reproduce our indicia, whether for commercial or non-commercial use. This policy applies regardless of status – faculty, staff, or Cadet; directorate or activity; private organization; home-based or local business; alumni or parent organization; commercial enterprise or non-profit organization; State or local municipality; or other non-Federal entity. As a result, there is no organization or entity that is exempt from the licensing program. A limited exception exists in certain uses of our indicia by news media for informational purposes. (*New Kids on the Block v. News America Publishing*, 971 F.2d 302 (9th Cir. 1992)).

b. There is no provision which automatically “grandfathers” the use of our indicia by previously-existing individuals, organizations, or entities. While permission has been granted where there is a substantial history of demonstrated activity and organizational goodwill, approval is considered on a case-by-case basis and requires express, written authorization.

c. USMA reserves the right to deny licensing to any item which is perceived as inconsistent with our image and mission. For this reason, we generally do not license inherently dangerous products, such as firearms, explosives, and fuels; religious items; games of chance; sexually-suggestive products; health and beauty products; or obscene or disparaging products.

d. USMA does not authorize the use of our indicia in any way that promotes discrimination against persons, or groups of persons, based on race, color, national origin, gender, age, or disability. (Army Regulation 600-20, paragraph 6-2). Moreover, the Academy cannot authorize the use of our indicia in any way that promotes, supports, or endorses political activity. (Joint Ethics Regulation, paragraph 3-209).

e. When authorized for use, our indicia must be used properly. They may not be altered or modified in any manner without express, written permission from the Licensing Director, who balances the risk for dilution of trademark integrity against the proposed modification. (15 USC §1127). Modification in any form is considered unauthorized use and includes: distorting, cropping, tilting, and rotating; altering alignment, relative size, typeface, and style; rearranging individual elements; and use of any element in isolation. Modification includes, but is not limited to, use of the Academy’s marks to create a unique logo, symbol, or crest.

f. Proper use includes trademark notice symbols. (15 USC §1111). Because trademark notice symbols alert the general public as to the Academy’s ownership of its indicia, proper notice is a significant factor in our legal requirement to actively protect our marks. Accordingly, trademark notice symbols are required after the first or most prominent use of our indicia in any context.

(1) The following are properly annotated by the registered trademark symbol (®): the images of the WEST POINT CREST, ATHENA HELMET, WEST POINT WORD MARK, WEST POINT SWORD, ARMY SWORD, BLACK KNIGHT – CAPE MAN, KICKING

MULE, and DCA CREST; and the verbiage WEST POINT, UNITED STATES MILITARY ACADEMY, USMA, ARMY, DUTY HONOR COUNTRY, LONG GRAY LINE, and BLACK KNIGHTS.

(2) The following are properly annotated by the common law trademark symbol (™): the images of the CLASSIC A, SWISS A, BLACK KNIGHT – HORSEMAN, BLACK KNIGHT – HELMETS, and FIGHTING MULE; and the verbiage U.S. MILITARY ACADEMY, GO ARMY, BEAT NAVY, and ALL FOR THE CORPS.

g. Because the USMA colors are a powerful distinguishing feature of our identity, their use must conform to the Pantone Matching System. The official colors are Army Black (Pantone Process Black), Army Gold (Pantone 467), and Army Gray (Pantone Cool Gray 5).

h. Items bearing the indicia must be produced by a licensed vendor. Such activity is considered commercial in nature, regardless of whether a profit is realized. Although it is typically easier to work with an established licensee, any individual or company may apply for a license at [www.clc.com](http://www.clc.com).

i. Prior to use, designs must be submitted for review and approval. The following standards are applied when approving use: designs must be of high quality and appropriately portray the image of the United States Military Academy; mark selection is appropriate to use; marks shall not be incorporated into, or dominated by, the marks of others; and use and placement of marks do not create an appearance of the Academy's endorsement of a non-Federal entity.

j. USMA asserts all rights, title to, and interest in its Institutional Names and Identifying Marks, including logos, designs, verbiage, colors, mascots, or any other indicia that are associated with, or refer to, the United States Military Academy at West Point. Use of our indicia inures solely to the benefit of the United States Military Academy.

## 5. Guidance.

### ***a. Academy Staff, Faculty, and Cadet Use***

(1) Academy users are generally authorized to use the indicia and West Point Colors in furtherance of official business and operations. Official use is defined as use which indicates West Point ownership, sponsorship, or participation. Official use includes publications and other documents; stationery; uniforms, gear, and equipment; signage; certificates and awards; course materials and projects; and websites. The following policies apply to internal use of the Academy marks by staff, faculty and cadets:

(a) The WEST POINT CREST is authorized for any use that represents the United States Military Academy.

(b) The ATHENA HELMET is authorized for Academics.

(c) The BLACK KNIGHT – CAPE MAN, CLASSIC A, SWISS A, and the word mark BLACK KNIGHTS are authorized exclusively for intercollegiate athletics.

(d) The KICKING MULE is generally authorized as a traditional mark for intercollegiate athletics, but may also extend to club sports.

(e) While the ARMY SWORD is approved for use by intercollegiate athletic teams and academic departments, the WEST POINT SWORD is approved for use by Directorate of Cadet Activities-sanctioned clubs and the Preparatory School. Variation to the text which appears in the body of the sword is limited. Teams, departments, Centers of Excellence, clubs, organizations, or other activities which wish to use non-standard text within the body of the sword must receive express, written permission from the Licensing Director prior to use. Absent express authorization, the following standard text is approved for all routine, non-commercial use: BLACK KNIGHTS in the body of the ARMY SWORD, and CADET ACTIVITIES in the body of the WEST POINT SWORD.

(2) Academy users must obtain express, written permission from the Licensing Director prior to any commercial use. Commercial use includes the offer or sale of any item bearing our indicia, regardless of whether a profit is realized. The following are considered commercial use:

(a) Any item offered or sold to staff, faculty, and Cadets, that is not an official use item, at wholesale cost;

(b) Any item offered or sold outside to a person, who is not staff, faculty, or Cadet, at wholesale cost;

(c) Any item offered or sold within the West Point community for more than wholesale cost, including fundraising and related charitable activities; and

(d) Any item offered or sold outside the West Point community for more than wholesale cost, including fundraising and charitable activities.

(3) Although internal use is typically royalty-exempt, Academy users must always use a licensed vendor when coordinating the production of any item bearing the indicia. LogoBranders (<http://logobranders.com>) is the Academy's primary vendor for internal use items, such as uniforms, gear, equipment, and organizational apparel. Internal use is different from sales in West Point gift shops and bookstores, which are subject to royalties in the same manner as non-affiliated retail establishments. Royalty-exempt goods may never subsequently be distributed through a retailer, the internet, or any other commercial venue.

(4) Staff, faculty, and Cadets may use the Institutional Names in making true and accurate statements of their relationship with the Academy. However, our indicia may not be used in furtherance of personal activities, or in a manner which suggests or implies the Academy's

support or endorsement. In circumstances where there is potential for an appearance of such support or endorsement, legal review and the use of a disclaimer is required.

(5) Unauthorized use of our indicia by Academy users may result in disciplinary or adverse administrative action.

***b. Alumni, Parent, and other Private Organization Use***

(1) Alumni organizations typically receive permission to use the Institutional Names, WEST POINT, UNITED STATES MILITARY ACADEMY, and USMA; the Identifying Marks, WEST POINT CREST and KICKING MULE; the verbiage, DUTY HONOR COUNTRY, and LONG GREY LINE; and the West Point Colors.

(2) Parent organizations typically receive permission to use the Institutional Names, WEST POINT, UNITED STATES MILITARY ACADEMY, and USMA. Authorization is contingent upon current registration of the organization with the Directorate of Public Affairs.

(3) Private organizations authorized to operate on the West Point Military Reservation may receive permission to use the Institutional Name, WEST POINT, and the West Point Colors. The use of the name WEST POINT must accurately reflect the organization's relationship to the installation, such as the "West Point Community Club" or "Club at West Point." Authorization is contingent upon current registration of the organization with the Office of the Garrison Commander, in coordination with the USMA Licensing Director and the OSJA.

(4) Once alumni, parent, or other private organizations receive written authorization from the Licensing Director, permission is not required for routine, non-commercial use of the licensed indicia specified in their letters of authorization. Requests for exceptions, such as the use of other marks in connection with specific events or activities, will be considered by the Licensing Director. The permissions authorized in these authorization letters may not be delegated, assigned, or transferred in any way.

(5) Alumni, parent, and other private organizations must obtain express, written permission from the Licensing Director prior to any commercial use. Commercial use includes the offer or sale of any item bearing our indicia, regardless of whether a profit is realized. The following are considered commercial use:

(a) Any item offered or sold at wholesale cost; and

(b) Any item offered or sold for more than wholesale cost, including fundraising and charitable activities.

(6) Authorization does not extend to use of the CLASS CRESTS, which are licensed for the exclusive use of their respective classes. Permission for use of the CLASS CRESTS should

be directed to the respective classes. Use of a CLASS CREST in combination with another Academy mark requires permission from the Licensing Director.

(7) Authorization never extends to the use of the indicia in such a way as to create an appearance of West Point endorsement of a non-Federal entity. This prohibits, for example, use of the West Point Crest in promotional materials for an event which includes commercial sponsorship, fundraising, or membership recruitment activity. For this reason, a disclaimer is frequently required on non-Federal entity use of the indicia.

(8) Authorization typically does not permit the offer or sale of any items bearing the indicia. Express, written permission is required for such activity, which is considered commercial in nature, regardless of whether a profit is realized. Alumni, parent, and other private organizations are not necessarily exempt from royalties owed pursuant to the requirement to use a licensed vendor; however, the payment of royalties is the vendor's responsibility, not the responsibility of the individual organization.

(9) The unauthorized use of our indicia automatically terminates any prior authorization upon notice and failure to satisfactorily remedy the infringement. Unauthorized use may also be subject to civil and criminal penalties.

6. Conclusion. This information paper contains general guidance about trademarks to facilitate understanding of this complex area of the law; it does not provide legal advice. Legal advice can only be obtained in direct consultation with counsel, based upon a fact-specific inquiry of the circumstances involved in a specific instance. Non-Federal entities are not entitled to direct legal support from the Office of the Staff Judge Advocate.

Office of the Staff Judge Advocate/(845) 938-3205