

Vegas Hockey Team Faces Off Against The U.S. Army Over Trademark Dispute

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by Kaleb McNeely



The Vegas Golden Knights, an expansion team based in Las Vegas that joined the National Hockey League (NHL) earlier this year, have had a surprisingly successful “rookie year,” both on the ice and at the box office. This month, however, the Golden Knights encountered opposition to their efforts to register the mark “Las Vegas Golden Knights” from an unusual source – the U.S. Army. On January 10, 2018, the Army fired its opening (slap) shot – a Notice of Opposition to the Golden Knights’ trademark application

based upon likelihood of confusion with the U.S. Army Parachute Team Golden Knights’ common law mark. The key issue for the U.S. Patent and Trademark Office to consider (and one our readers may wish to ponder themselves) is whether anyone is likely to confuse an Army parachute team and a professional hockey team.

The U.S. Army’s Golden Knights’ Mark

According to its Notice of Opposition, the U.S. Army has been using its Golden Knights’ mark in connection with its U.S. Army Parachute Team (nicknamed the Golden Knights) since 1969. The U.S. Army claims that it owns common law rights in both the Golden Knights’ mark and in the black+gold/yellow+white color trade dress, which is used by the Army’s West Point Military Academy hockey team (you are likely not alone if you were unaware that West Point had a hockey team). In support of its Notice of Opposition, the Army contends that the Las Vegas hockey team’s registration of the Golden Knights’

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mark would likely cause consumer confusion and suggests a connection between the Army and the Vegas Golden Knights.

The Vegas Golden Knights' Trademark Application

In June of 2016, the NHL awarded an expansion franchise for Las Vegas to a consortium led by Bill Foley, with the team due to hit the ice for the first time in the fall of 2017. In an interesting twist to this story, Foley is a West Point graduate who has been public about his great admiration for the U.S. Army. Indeed, the U.S. Army's Notice of Opposition notes that:

- The Vegas Golden Knights' General Manager commented on that team's use of the Army's colors, stating "Bill Foley is a West Point guy, sort of using those colors. You know his history at West Point. You know about the classmates he had that he lost serving this country. So, those colors mean a lot to us. . ."
- Foley was aware of the U.S. Army parachute team and even tried to get them to appear at a Vegas Golden Knights team event (the attempt was unsuccessful);
- Foley originally wanted to name his hockey team the "Black Knights" but dropped that idea due in part to opposition from the Army (the fact that Chicago's NHL team is named the Blackhawks may have also been a concern); and
- The Vegas GM admitted: "We were going to be the Black Knights, but we already had the Blackhawks in the league, so the league was trying to get us to come up with another name, so another name used at West Point is the Golden Knights for the parachute team."

Despite (or, it appears, because of) the similarity to the Army's parachute team nickname, Foley ultimately settled on the name "Golden Knights" for his team. On August 23, 2017, Foley's ownership group, Black Knight Sports and Entertainment, LLC (Foley seems to have really wanted to call something "Black Knight") filed an application to register the mark Las Vegas Golden Knights, in standard characters, for "Entertainment services, namely, professional ice hockey exhibitions." Vegas did not claim any colors for use with the mark and disclaimed the words "Las Vegas" in the applied for mark.

The Golden Knights' Defenses

Given the admissions of its owner and General Manager, one would think that the Vegas Golden Knights' trademark application is on thin ice. However, the fact that its name was admittedly modeled after the U.S. Army's parachute team's nickname does not necessarily spell defeat for Vegas. Indeed, the Golden Knights offered a preview of some of their main arguments in a witty but strongly-worded public relations statement issued in response to the Notice of Opposition, stating:

We strongly dispute the Army's allegations that confusion is likely between the Army Golden Knights parachute team and the Vegas Golden Knights major-league hockey team. Indeed, the two entities have been co-existing without any issues for over a year (along with several other Golden Knights trademark owners) and *we are not*

aware of a single complaint from anyone attending our games that they were expecting to see a parachute team and not a professional hockey team. (italics added)

In other words, no one is likely to confuse the Vegas Golden Knights with the Army's parachute team and, in fact, there has been no actual evidence of any such confusion to date (because no one goes to a hockey game to see parachuters). Vegas' point about other "Golden Knights trademark owners" is also an interesting one. A search of the USPTO website reveals multiple registrations for that mark, including one by the College of Saint Rose in Albany, New York, whose athletic teams are called the "Golden Knights." Another New York state university, Clarkson University, also uses the name "Golden Knights" for its sports teams. One wonders why the Army apparently is fine with those universities using the mark but not the Vegas hockey team – is the prospect of achieving an advantageous settlement with the Vegas Golden Knights part of the Army's strategy?

Settlement in the Offing?

Indeed, settlement does seem like a distinct possibility. On January 25, 2018, Black Knight Sports and Entertainment LLC filed a consent motion for suspension of the Opposition proceeding, stating that the "parties are actively engaged in negotiations for the settlement of this matter."

Such a conclusion makes sense and would likely benefit both parties. To succeed on its Opposition, the Army faces the difficult challenge of showing a likelihood of confusion. Even apart from the legal issues, however, it's not at all clear what the Army hopes to gain from fighting this to the bitter end. The Vegas Golden Knights have been a great success so far and the Army can surely benefit from the tribute paid to it by the hockey team. The U.S. military has built successful marketing relationships with numerous sports leagues – why not capitalize on the Vegas Golden Knights' success and partner with the team? Perhaps that was the intention all along – and the Notice of Opposition was just a tactic for negotiating a better deal.