

FIFA WORLD CUP 2010 - YOU MAY SAY “2010” BUT THAT IS ALL!

FIFA has been active on the trade mark registration front in South Africa, filing some 776 trade mark applications since 1993. Initial protection focused on marks such as FIFA, FIFA WORLD CUP and WORLD CUP.

With South Africa being awarded the 2010 FIFA Soccer World Cup, the application pace accelerated with applications in numerous classes for 2010 (stylized), SOUTH AFRICA 2010, WORLD CUP 2010, SOUTH AFRICA 2010 WORLD CUP, amongst others.

Unfortunately, perhaps, for FIFA the South African registrar of trade marks guards descriptive matter passionately and soon instilled a serious bout of “disclaimeritis” in FIFA’s marks. The different registrations for WORLD CUP had to be endorsed with a somewhat unusual disclaimer reading as follows: “Registration of this trade mark shall give no right to the exclusive use of the words “WORLD CUP” except in relation to goods/services connected with the FIFA Football World Championship being the football competition held every four years under FIFA’S authority.”

As there is no “standard” fit- for-all disclaimer insisted on by the trade marks office applicants tend to get creative, seeking to ensure that the disclaimer eventually endorsed against the mark means as little as possible to avoid a serious limitation of rights. FIFA’s registrations for WORLD CUP, suitably endorsed with the disclaimer, imply that FIFA enjoys exclusivity in the words WORLD CUP in South Africa only as far as its own World Cup is concerned. Of course, as can be read elsewhere in this feature, for the duration of the 2010 World Cup and a period of six months thereafter, the words “World Cup” are prohibited from use absolutely and in any context through other legal mechanisms and FIFA will not have to resort to its somewhat weakened trade mark registrations for WORLD CUP.

Contrary to popular misconceptions in some circles FIFA does not own exclusive rights in “2010”. FIFA’s registrations for a somewhat stylized 2010 mark consist of the numeral 2010 with the two zeros represented by soccer balls. They are all endorsed with a renunciation of exclusive rights to the numeral 2010. Thus, 2010 remains free for use (hopefully) as FIFA was also not successful in banning the year 2010 through the prohibited mark mechanism described elsewhere in this feature.

In FIFA’s SOUTH AFRICA 2010 registrations again “SOUTH AFRICA” and “2010” were disclaimed with FIFA’s registered rights vesting in the combination “SOUTH AFRICA 2010” only, and of course in anything confusing similar, such as 2010 SOUTH AFRICA or SOUTH AFRICA TWENTYTEN.

South Africa’s disclaimer practice is generally sneered at and, admittedly, often appears ridiculous with applicants being required to disclaim words in which no exclusive rights can obviously vest. The upshot of the practice though is that it does clarify upfront what is claimed, and what not, leaving little room for argument.

Thus, we now know that FIFA does not own “2010” absolutely and we may say, without fear of persecution, that the World Cup will be held in South Africa in “2010”. But that is about all.

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