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Indians Sacking 'Wahoo' Logo Puts Squeeze On Redskins

By **Andrew Westney**

Law360, New York (January 30, 2018, 9:31 PM EST) -- The Cleveland Indians' decision to stop using the "Chief Wahoo" logo on uniforms next year shows the power of social pressure to curb use of a controversial trademark and dials up the heat on Washington's NFL team to abandon its "Redskins" marks despite recent legal wins backing their use.

Major League Baseball Commissioner Rob Manfred **announced Monday** that the Indians franchise, at his urging, would quit using its "Chief Wahoo" logo on team uniforms starting in 2019. Manfred said the logo, which is a cartoon of a grinning, red-skinned man wearing a feather, is "no longer appropriate for on-field use" in the league.

"The Washington NFL team and Chief Wahoo were probably 1 and 1A" on the list of logos and team names viewed as offensive to Native Americans that activists are seeking to have removed, said Change the Mascot and Oneida Nation spokesman Joel Barkin.

Now, as the Cleveland team shies away from its logo in a social climate increasingly demanding action on controversial issues, the Washington franchise is left as the most prominent proponent of a controversial Native American nickname and mascot — with the U.S. Supreme Court striking down the federal government's ban on "disparaging" trademarks that had threatened the "Redskins" trademark registrations.

"It was never going to be the courts that ultimately solved this issue," said Barkin, whose group led opposition to both teams' marks. "It was going to be what we see with MLB, that they take an action because it's in the best interest of the league."

After the Cleveland Indians' World Series run in 2016 turned a spotlight on the team's trademarks, Manfred said the following April that he was **in talks with the team** to get it to move away from the "Chief Wahoo" logo.

However, while the National Congress of American Indians and others praised the team's move this week to take the logo off the field as a watershed moment in the fight against offensive imagery, Cleveland's action wasn't a complete win, as the team said on its website that it would continue to sell merchandise with the logo in northeast Ohio and at its spring training site in Goodyear, Arizona.

The team also said that the decision to keep selling the merchandise stemmed from "the connection many in the Cleveland community have with Chief Wahoo" and a desire to keep its trademark rights in the logo, and added that the Indians had the league's support not to change their name.

"It's more than a symbolic gesture. It is meaningful what they're doing, but it's not a home

run for progressiveness," said sports attorney Glen A. Rothstein of Rothstein Law APC. "It's maybe a double."

The team has a legitimate concern about losing its marks and having others step in to use and sell merchandise with the logo, so "they're kind of still keeping a foot in the door," according to Alexandra J. Roberts, a professor at the University of New Hampshire School of Law.

Still, the change came after many years of protests of the mark, which may reflect an increased sensitivity to demands for accountability on social issues, like the #MeToo movement that emerged from the Harvey Weinstein scandal and later intensified around USA Gymnastics team doctor Larry Nassar's sex abuse conviction, experts say.

"Things that were kept very hushed, whether it be Harvey Weinstein or Nassar, leads to debate about other things kept quiet, including things like cultural insensitivity when it comes to sports teams and logos, and people are more empowered to speak up about it now," Rothstein said.

While Cleveland has staved off legal challenges to the use of the Indians name and the "Chief Wahoo" logo, activism and the influence of Commissioner Manfred appear to have succeeded in forcing a move after years of grassroots opposition — begging the question of whether the NFL team will finally cave in to similar pressure, experts say.

But Washington may prove a tougher nut to crack, as owner Dan Snyder has vowed not to change the team's name, and the team's position was bolstered by the **Supreme Court's decision in Lee v. Tam** in June that ultimately preserved the team's right to register its controversial marks, as well as by the Fourth Circuit's **subsequent shutdown** of a Native American activist's suit over the marks.

"To date, the Redskins have not seemed overly concerned about negative feedback, and whether that comes from their ownership or something else, they have seemed to want to protect their team name despite any potential negative feedback they may get," said Gregory L. Skidmore of Robinson Bradshaw & Hinson PA.

Manfred's role in turning the tide with the Indians shows that NFL Commissioner Roger Goodell and his own sensitivity to public criticism may play a pivotal role in whether the Washington team forsakes its marks, attorneys say.

While Manfred actively encouraged the Indians' change — and is providing something of a scapegoat for fans upset with the move — Goodell on Tuesday defended the Redskins name and said that polls showed that Native Americans largely aren't offended by it.

Also militating against a change by Washington is that the team simply has more at stake economically than the Indians, since abandoning the Redskins name would require a complete rebranding of the team instead of merely sidelining a particular logo, experts say.

Still, while "it's a huge investment when things have to change, it's not something that can't be done, and there's no reason it can't strategically be effective," according to Lori Landew of Fox Rothschild LLP.

In the end, it might take an extraordinary circumstance to force Snyder's hand, like a star player or top draft pick refusing to play for the team until it changes its name, according to Rothstein.

"It's going to be a combination of economics and conscience," he added. "If [Snyder] was losing money and losing talent, then maybe he'd think about it."

In the meantime, with the Indians logo moving out of the public eye, the "Redskins" marks will attract even more attention.

"For decades, the strategy for those who wanted to keep these names like the Washington team name was to just ignore it, ignore the issue, don't talk about it and we'll win," Change the Mascot's Barkin said. "But as soon as you get people to talk about it, we've already won."

A spokesman for the Washington Redskins declined to comment on the Indians' announcement.

--Editing by Philip Shea and Jill Coffey.

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