

## ‘A rose is a rose...’-What about a Red Cross?



By

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What would your nonprofit do if it were forced to give up its logo or tag line because another organization successfully claimed it as their own? The American Red Cross survived such a threat recently when a federal court in New York threw out Johnson & Johnson’s lawsuit attempting to stop the American Red Cross from using the Red Cross emblem on first aid and other health and safety products sold to the public. Johnson & Johnson also claimed that the Red Cross should destroy its inventory of retail products and turn over the proceeds of past sales to Johnson & Johnson, as well as pay damages and court costs for violation of federal trademark laws. The Red Cross survived the attack by demonstrating that its historic use of the red-and-white symbol pre-dated (by six years) the use of the same image by Johnson and Johnson on its own retail products. Could your nonprofit’s brand be vulnerable to such a threat? If so, could it survive the attack?

In our recent travels in the US and Canada to meet with various nonprofits in regional conferences or to conduct risk assessments, we have found numerous instances where a nonprofit’s brand was vulnerable. In some cases the problem is donor confusion because another nonprofit within the same region is using a similar name. In one instance the nonprofit we spoke with had decided that it was better to change its own name than to continue to expend energy attempting to educate the public about who it was and what its mission was all about. In other cases the risk is “brand erosion” because a nonprofit has allowed so many other partners to use its logo or tag line that the symbols or words have lost any association in the public’s mind with the nonprofit’s mission-related activities.

With the ever-increasing use of the internet and computer technology it is easy to cut and paste someone else’s logo into your own documents — but it’s also easy to search for the unauthorized use of your nonprofit’s tag line, logo or name. Use the tools at hand to research and respond when another organization is using (or mis-using) your nonprofit’s identity.

These basic risk management strategies can help protect your brand:

- **Maintain documentation of the historic use of your logo.** It was only because the Red Cross could prove when it started to use the red cross logo in connection with the sale of its retail products that it could defend itself from the recent lawsuit. Do you know what date your nonprofit started using its logo? Do you have correspondence, examples or other documentation to prove it?
- **Vigorously defend your rights and discourage unauthorized use of your logo (or name).** Federal trademark laws require that those with a protected mark “vigorously defend” the mark and exercise their protected rights to the mark’s exclusive use. If you find others are using your nonprofit’s name or mark without authorization, contact legal counsel experienced in intellectual property matters for advice in how best to “defend your mark.” You should consider doing so even if your logo is not trademarked because in such situations, ‘the best defense is a strong offense.’
- **Use written agreements to authorize others to use your name and intellectual property, especially written materials, developed by your nonprofit.** Have you ever searched for something

on an internet search engine only to find a document your nonprofit produced staring you in the face on another organization's web site without any attribution? In some circles that would simply be called, 'theft'! It is in your nonprofit's best interest to protect its resources and good will by controlling how its intellectual property is presented to the public. If your nonprofit does nothing, you may lose the public's respect and you certainly will lose the leverage to protect your intellectual property, your brand, and your reputation. Nevertheless, sharing good stuff is better than reinventing the wheel — and playing in the sandbox nicely is more likely to result from sharing buckets and pails than from throwing sand. Be nice. Collaborate. Share resources but demand respect. And attribution.

## Your Questions Answered by the Center's Staff

### **Q: How can I know what federal employment laws apply to my nonprofits?**

**A:** The U.S. Department of Labor has posted various "elaws advisors" on its web site that provide an overview of federal laws that apply to the workplace. The most recent elaws advisor, [FirstStep Recordkeeping, Reporting and Notices Advisor](#), focuses on recordkeeping, reporting and notice requirements that apply to the workplace. For instance, if your nonprofit is not sure which posters are required to comply with federal law, the *FirstStep Recordkeeper, Reporting and Notices Advisor* is the place to start. Through a series of 'yes' or 'no' questions, the elaws advisor helps you determine which laws apply and provides a printable list, as well as a summary analysis of the employer's federal law obligations.

The Department of Labor offers more than 25 other [elaws advisors](#) that are a great place to start when researching the applicability of a wide range of employment law topics, such as [calculating overtime payments](#), compliance with [federal drug-free workplace law](#), [health benefits](#), and workplace safety and health under OSHA regulations, including rules regarding [fire safety protections](#) at the workplace. For a list of all the elaws advisors, [Click here](#). For more information, visit [www.dol.gov/elaws](http://www.dol.gov/elaws).

*The Nonprofit Risk Management Center welcomes your questions and comments at 703.777.3504 or [info@nonprofitrisk.org](mailto:info@nonprofitrisk.org).*