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Will I Infringe Playboy's Trademark If I Use Their Logo Without Permission?

[Kristie Prinz](#)

Q. A partner and I purchased an airplane for demonstration purpose in air shows. My partner wants to paint the airplane to replicate a Navy fighter aircraft that has the Playboy bunny on the tail. He wrote a letter to Playboy asking permission to use the paint scheme but they didn't answer it. The aircraft may also be used in a television show, and I am afraid that Playboy may not approve. What advice do you have for me?

*-- Noel***A.**

You are right to be concerned about using the Playboy trademark without permission. It is never a good idea to use someone else's trademark except pursuant to a trademark license, which specifically gives you the right to use the trademark for your intended use.

Moreover, in the case of the particular logo in question, I can tell you that I attended a conference in the last few years where Hugh Hefner's daughter, Christine Hefner, the current Chairman and CEO of Playboy Enterprises, Inc., spoke on protecting the Playboy brand. There was little doubt from her presentation that the company's current leadership takes protecting the Playboy brand very seriously.

Having said this, you are most likely to run into problems if your use of the Playboy trademark is deemed to a "use in commerce." While a navy fighter aircraft is probably not going to be deemed to fall within such a definition, the uses you describe are not so clearly outside the scope of a "use in commerce" definition.

The Section 1114 of the U.S. Trademark Act, codified at Title 15 of the U.S. Code, states that:

"Any person who shall, without the consent of the registrant

- a. use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

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- b. reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action by the registrant for the remedies hereinafter provided.

Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive."

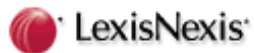
In your case, a reasonably compelling argument could be made that the unlicensed use of the Playboy trademark falls within the scope of Section 1114. Thus, it is possible that you could potentially be held to have infringed Playboy's trademark, depending on how exactly you ultimately use the trademark.

Your safest course of action would be to approach Playboy again about entering into a license to use the trademark for the particular purposes you are seeking. An [intellectual property attorney](#) in your jurisdiction specializing in negotiating intellectual property licenses should be able to advise you on the terms of the license and the negotiation.

In the alternative, you may want to consider hiring someone to create a new logo for you, which would uniquely distinguish your plane. Perhaps you could obtain your own trademark on the logo, so that you can license it to others. If the logo is adequately unique and distinctive, then it may be prove to have a market as well.

-- *Kristie Prinz*

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