

# Government Contracts Blog

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## Use of Government Personnel, Uniforms and Insignia in Promotional or Advertising Materials

The Department of Homeland Security recently updated its website to identify agency intellectual property that should not be used without prior authorization from the agency. The website identifies a long list of agency related trademarks including those applicable to well known agency programs. Whether all of the claimed trademarks would prove enforceable if challenged remains to be seen. The agency's asserted blanket "no use" prohibition without prior consent also is legally suspect. Regardless, the newly published [list](#) serves as a reminder that contractors must use the government identifiers with care in connection with any promotional or advertising materials.

Even absent such a trademark designation, federal, state and foreign laws and regulations restrict the use in promotional or advertising materials of government personnel images, uniforms and insignia without specific, prior authorization. Indeed, applicable laws, in many cases, impose civil or criminal sanctions for such misuse.

Federal restrictions require that promotional or advertising materials not include any content that could be interpreted to imply affiliation with, or endorsement by, any agency, branch, office or other instrumentality of the United States.[\[i\]](#) Generally the prohibition includes:

- *Identifiable personnel employed by federal entities ("Federal Personnel")*[\[ii\]](#)
- *Official insignias or other identifying symbols used by federal entities*[\[iii\]](#)
- *Authentic uniforms, markings or other designations used by Department of Defense entities*[\[iv\]](#)

Nor should promotional or advertising material use the name or initials of a federal entity in a manner that could be interpreted to imply affiliation with that federal entity or endorsement by that federal entity of a company or its products or services.[\[v\]](#)

To ensure compliance with applicable laws and regulations, contractor personnel should obtain legal review, prior to release or publication, of any promotional or advertising materials that contain content related to federal entities. Examples of images that may be used without prior consent, but that require careful consideration, include the following: [\[vi\]](#)

- ***Federal Personnel carrying out their official duties*** [\[vii\]](#)

- Ø Such images may be included only in communication media that are solely informational in nature, and are not directly or indirectly associated with a marketing, advertising or self-promoting activity.
- Ø Compliant uses may include the depiction in news stories located on a company's website of Federal Personnel visiting its facilities or participating in government-sanctioned roll-out ceremonies showcasing the company's capabilities.

- ***Fictional portrayals of Federal Personnel***

- Ø Such images may not, however, include authentic military uniforms, insignia or other identifying features, *e.g.*, branch of service, awards, badges, buttons, ribbons, etc.
- Ø Compliant results may be achieved by using unadorned camouflage attire or fictional military insignias.

- ***Federal materiel that does not include distinctive markings, designations or other features that may connote endorsement by a federal entity***

- Ø Examples of prohibited designations and markings include "United States Navy," "F-18" and "Apollo." Prior approval should be sought prior to use of such official designations and markings in marketing or promotional material.
- Ø Compliant results may be achieved by airbrushing, or positioning images to obscure, distinctive markings or designations.

Because the applicable laws and regulations vary by agency and context, we suggest that company counsel and management should review and approve promotional or advertising materials related to federal entities on a case-by-case basis.

## **State Restrictions**

Laws and regulations governing the permissible use in promotional or advertising materials of state personnel, uniforms, insignia and materiel vary from state to state. Before using such data, you should consult with someone expert in the laws of the state involved. Of course, any data marked with a copyright, trademark, or service mark requires consent prior to its use in marketing or advertising material.

## **Foreign Restrictions**

Laws and regulations governing the permissible use in promotional or advertising materials of foreign government (or international organization) personnel, uniforms, insignia and materiel vary from country to country. In addition, the use of these materials may be restricted based upon foreign customs and practice. Accordingly, a company is well advised to not release or publish such promotional or advertising materials without obtaining the prior review and approval of experts in the particular country.

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[i] In many cases, images may be used with the prior *approval of authorized* agency personnel. For Department of Defense entities, such approval must be obtained from the Office of the Assistant Secretary of Defense, Public Affairs based upon consideration of the following factors:

- Would the interests of the Government and the DoD be enhanced?

- Is the advertising or promotion in good taste?
- Is all implication of DoD endorsement avoided?
- Does the material contain a disclaimer, if appropriate?
- Is there any possibility that claims made or implied in the material could be misleading?

[DOD Instruction 5410.20, Public Affairs Relations with Business and Non-Governmental Organizations Representing Business](#) § 7.1.

[\[ii\]](#) See 5 C.F.R. § 2635.702 (prohibiting federal personnel from endorsing products, services or enterprises); [DoD Directive 5500.7-R, Joint Ethics Regulation](#) § 3-209 ("Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated or implied by DoD or DoD employees . . . .") [DoD Directive 5500.7-R, Joint Ethics Regulation](#) § 3-300 ("DoD employees may not use or allow the use of their official titles, positions or organization names in connection with activities performed in their personal capacities . . . ."). In addition, depictions of identifiable federal personnel without their consent may violate the common law right to privacy/publicity.

[\[iii\]](#); For statues establishing criminal penalties for the unauthorized use of seals, insignia and other emblems, *see, e.g.*, 18 U.S.C. § 701 (federal entities generally); 18 U.S.C. § 705 (veterans organizations); 18 U.S.C. § 706 (Red Cross); 18 U.S.C. § 713 (United States, President, Vice President, Senate, House of Representatives and Congress); 18 U.S.C. § 715 (Department of Interior); 31 U.S.C. § 333 (Department of Treasury and related entities); 42 U.S.C. 1320b-10 (Department of Health and Human Services); 42 U.S.C. § 2459b (National Aeronautics and Space Administration); 50 U.S.C. § 403m (Central Intelligence Agency). For regulatory prohibitions, *see, e.g.*, 10 C.F.R. § 1002.31 (Department of Energy) 27 C.F.R. § 27.3 (Department of Treasury and related entities); 38 C.F.R. § 1.9 (Department of Veterans Affairs); 41 C.F.R. § 128-1.5007 (Department of Justice); [DoD Instruction 5410.20](#) § 7.1 (Department of Defense).

[\[iv\]](#) See 10 U.S.C. § 771 (criminalizing unauthorized use of military uniforms, distinctive parts thereof and anything similar to distinctive parts thereof); 18 U.S.C. § 702 (criminalizing unauthorized use of military or Public Health Service uniforms, distinctive parts thereof or anything resembling distinctive parts thereof); 18 U.S.C. § 704 (criminalizing unauthorized use of military medals and decorations); [DoD Instruction 5410.20](#) § 7.1 (restricting use of Department of Defense materiel, including uniforms).

[v] *See, e.g.*, 18 U.S.C. § 709 (Department of Housing and Urban Development, Federal Bureau of Investigation, United States Secret Service, United States Mint, Drug Enforcement Agency, United States Marshal Service and others); 31 U.S.C. § 333 (Department of Treasury and related entities); 31 C.F.R. § 27.3 (Department of Treasury and related entities); 42 U.S.C. § 1320b-10 (Department of Health and Human Services and related entities); 42 U.S.C. § 2459b (National Aeronautics and Space Administration).

[vi] In general, neither agency approval nor use of a disclaimer is required prior to publishing the categories of images listed in the text in promotional or advertising materials. As a matter of sound practice, however, many contractors: (1) review proposed fictional portrayals of federal personnel, insignia and materiel with the cognizant federal entity prior to publication and (2) incorporate disclaimers that the images depicted are not personnel, uniforms or insignia of actual federal entities.

[vii] *See* The Copy Desk, *Use of Department of Defense personnel, uniforms and insignia in commercial products and in marketing promotional or advertising material*, Vol. I, No. 5 (September 2003), available at <http://www.tradoc.army.mil/pao>.