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## [Fair Logo, Fair Use & Fair Politics? The Minnesota State Fair's Trademark-on-a-Stick](#)

Posted on September 3, 2010 by [Steve Baird](#)



The newest fare at the Minnesota State Fair is not [Camel-on-a-Stick](#), [Buffalo-on-a-Stick](#), or any other kind of [Food-on-a-Stick](#), but rather, Trademark-on-a-Stick.

Earlier this week, the [Minnesota State Fair](#) (owned and operated by the Minnesota State Agricultural Society, a Minnesota State Agency) was hot to skewer the unauthorized use of its [nearly three-decade-old](#) and more recently [trademarked](#) logo, by incumbent Republican U.S. Congresswoman [Michele Bachmann](#), in a political ad targeting DFL challenger Tarryl Clark's record on tax policy.

This trademark objection has generated quite a bit of publicity, with coverage being reporting by [MinnPost](#), [The Minnesota Independent](#), the [New York Times](#) (blog), [Politics Daily](#), [MPR News](#), [TPM](#), and [Politico](#). The Bachmann ad referenced the MN State Fair and used its official logo while suggesting that Clark has voted to increase taxes on what foodies covet at the fair, including their favorite corn dogs, deep fried bacon, and beer.

Central in the debate over the lawfulness of the Bachmann campaign's use of the logo is a question we have pondered on DuetsBlog before (e.g., [here](#), [here](#), and [here](#)), namely, whether the use of another's logo crosses the legal line and is likely to cause confusion as to sponsorship, affiliation, approval, or endorsement, or whether it may constitute lawful [nominative fair use](#). So, it should be no surprise to readers of DuetsBlog, that in the end, it is consumer understanding of the use in the ad that controls whether or not it is lawful.



The Minnesota State Fair's objection certainly is not frivolous and is rooted in a common and traditional trademark concern over likelihood of confusion. Bachmann for Congress political ads begin with the statement: "I am Michele Bachmann and I approve this message." According to Minnesota State Fair officials, Bachmann's use of the above Minnesota State Fair logo is likely to lead viewers to incorrectly believe that the Minnesota State Fair approves Congresswoman Bachmann's message or has endorsed her campaign. What do you think, is that what viewers will believe?

Bachmann's campaign denies that the logo use was unlawful, but without explaining why no confusion is likely and without specifically articulating what would likely be a nominative fair use defense, it voluntarily has decided to drop use of the official logo and instead opted to switch to a more "generic" image. Apparently what the campaign means by "generic" is not that it lacks the look of a trademark and/or logo, but rather is one not specifically used or owned by the Minnesota State Agricultural Society.

Bachmann for Congress' revised television advertisement may be viewed [here](#), showing no use of the trademarked official logo, but I'd hardly call the use "generic" -- it remains a logo use, even if it is a fake one that swaps fireworks for a ferris wheel, and alters the color scheme and typeface. Do you think that consumers will notice or recognize the fake logo as being fake or just believe it is an additional logo used by the MN State Fair that they haven't seen before?

Interestingly, the change may not be enough to satisfy the MN State Fair. Apparently, it [continues to have concerns about the revised Bachmann ad](#), and it has asked the Attorney General to look into the question of whether the change is sufficient to avoid confusion as to endorsement of the Bachmann campaign. Having said that, with only a few more days left before the close of the 2010 MN State Fair, one must wonder whether the campaign will move on and moot this lingering concern too, leaving the State Fair ads behind, as it continues to run new ads down the final stretch of the campaign.

Stay tuned, tomorrow I'll attempt to make the case for why the State of Minnesota needs to hire an experienced trademark attorney.

Bonus political speech consideration below the jump:

When you're selling political ideas, First Amendment protections are strong, and may have a limiting effect on the vibrant enforcement of trademark and copyright intellectual property rights, [as I noted last April](#):

[MasterCard](#) certainly has enjoyed [success in enforcing](#) its copyright and trademark rights against infringing uses, but there are limits, as [Ralph Nader](#) demonstrated in 2004, by successfully defending his party's non-infringing use of the PRICELESS service mark and the political parody and non-commercial fair use of the PRICELESS copyrighted advertisements. To view the Nader commercial in question, click [here](#). To obtain a copy of the decision click [here](#).

