



The Letter of the Law

With millions on the line, the UW plays hardball on trademarks.

TEAM PLAYER

Katrina Rundhaug

Five things you should know about UW distance runner **Katrina Rundhaug x'08**:

- A native of Dodgeville, Wisconsin, Rundhaug initially chose to run at the University of Minnesota, but, she says, “wearing a Minnesota jersey just didn’t feel right. Being from Wisconsin, I wanted to run for the Badgers.” She transferred to the UW her sophomore year.
- After nearly sitting out this season as a redshirt, she is helping the UW hit a record pace. In the fall, she finished twenty-third at the NCAA cross-country championships, leading Wisconsin to fourth place, the team’s highest finish since 1999.
- Competing on three Badger teams — cross country, and indoor and outdoor track and field — requires year-round training. During cross-country season, she runs eighty to ninety miles a week.
- Rundhaug finds room to run at the UW Arboretum, where, she says, there are “no distractions, really. It’s all soft ground, and you don’t notice how long you’re running.”
- Her best event is the 10K, but ultimately, she’s looking to go farther. She hopes to compete in next year’s Olympic Trials as a marathoner.



Bucky Badger enjoys tormenting opposing mascots on the court of play, but what about in a court of law? That’s what some are saying about the university’s efforts to stop other schools from using its trademarked logos for their own sports teams.

UW’s enforcement efforts drew ire in Waukee, Iowa — where the high school’s purple uniforms bore a “Motion W” similar to the one trademarked by UW-Madison — and propelled the story into the national media. That prompted alumni around the country to rat out other high school teams that are using the logo in states including New Jersey, Ohio, Texas, and West Virginia.

But the controversy is not the classic David versus Goliath match-up it’s been made out to be. UW officials say it’s a matter of picking smaller battles to protect a valuable trademark and avoid losing rights to it altogether.

A host of former trademarks — kerosene, aspirin, yo-yo, and zipper, to name a few — fell into the public domain because the owners didn’t do a good job of protecting them from use by others. The Motion W could meet the same fate if the university doesn’t protect it as a trademark, says **Cindy Van Matre ’83**, the UW’s director of trademark licensing.

“It could be considered to become a generic mark so that any third party could use the logo any way they wanted,” she says.

Other would-be users of the logo, Van Matre adds, “could turn around and say ‘Well, you let all these high schools use it, and you didn’t seem to care.’ ”

There’s precedent for that concern, explains **Craig Fieschko ’89, MS’91, JD’94**,



Picking their battles: UW officials say that going after entities that are using the trademarked Motion W protects it from falling into the public domain — and costing nearly \$2 million in lost royalties.

an intellectual property attorney with Dewitt, Ross & Stevens in Madison who also teaches UW law students about trademarks and copyright.

“If you don’t enforce your marks — even in questions like this, where there are arguments on both sides as to whether the marks are truly infringed — if you don’t try to enforce your mark and stomp that out, you could lose rights to it,” Fieschko says.

Take the phrase “March Madness,” which was first adopted by the Illinois High School Basketball Association in the 1940s. It took hold as a marketing tool for CBS’s tele-

vision coverage of the NCAA Basketball Tournament in 1982 after announcer Brent Musburger referred to the Final Four games as “March Madness” on the air. The Illinois organization did nothing to challenge the network’s use of the catchphrase for a decade, and a federal appeals court ultimately ruled in 1996 that CBS and the association jointly owned the trademark.

“Basically, the university is a bit afraid of a similar situation here,” Fieschko says.

If the UW doesn’t police how high schools are using the logo, he says, those teams could legally tie their own identity to

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it, including selling merchandise such as clothing or class rings that bear the Motion W.

"If the horse bolts the stable, it's hard to bring it back," he says.

UW ranks fifteenth for merchandise royalties among the more than two hundred colleges and universities represented by the Collegiate Licensing Company, which helps schools handle legal issues connected to trademark infringement.

Wisconsin generated nearly \$2 million in royalties from its trademark licensing program in 2005-06, the highest total in the program's history.

More than four hundred companies pay for licenses to sell items featuring Wisconsin logos — provided university officials don't find them to be in bad taste. That means die-hard fans can buy everything from dog collars to windshield ice scrapers to rubber duckies to toilet seats with Wisconsin logos. Officials did reject a proposal to use the Motion W on casket liners, something other schools have approved.

Before Bucky Badger was licensed in 1988, Van Matre says, the mascot could be found on everything from condoms to obscene T-shirts, which have popped up on eBay.

Licensing royalties are divided equally between the Athletic Department and the Bucky Grants scholarship program, which provides financial assistance to low-income students, many of whom are the first in their families to attend college. Since 1994, the program has provided \$6.5 million to 2,800 students.

When it comes to "On, Wisconsin," the university's fight song, it's a distinctly different situation. Rumors once abounded on campus that Paul McCartney or Michael Jackson owned the rights to the song, but it has been in the public domain since 1984. It is performed by thousands of high

school bands, according to the UW Marching Band's Web site.

Waukees school officials thought their choice of the purple W, which bears striking similarity in font and design to UW's logo, would be just as innocuous. The school adopted the logo after dropping an image of an Indian warrior to be sensitive to Native Americans. "The irony is we were trying to do the right thing," says Waukees Superintendent David Wilkerson. The community, he says, was dismayed that using a letter of the alphabet — not Bucky Badger himself — was under dispute.

"I kept telling people this is a learning experience for everybody," he says. "We have people who think we should

have fought it and people who stepped up and said it's no different than pirating software and pirating music."

Meanwhile, the university is allowing Waukees to phase out use of the logo to avoid any financial burden, and the school district has asked the Collegiate Licensing Company to review its proposed new W before moving ahead with ordering new uniforms or other equipment.

Wilkerson says the ordeal, without a doubt, has alerted more schools and the public to protected trademarks.

"You're not just free to grab them willy-nilly as you see fit," he says.

— Jenny Price '96

IN SEASON Softball

With five seniors and four juniors on the sixteen-woman roster, the UW softball Badgers can rely on experience to improve upon last year's 22-22 mark. But they can also turn to youth: freshman infielder **Katie Soderberg** is coming off an experience with the Canadian Junior National Team, which placed fourth at last year's Pan American championships.

Circle the dates: March 27, Badgers play their first home game of the season against Loyola College at Goodman Diamond; May 10, Big Ten Tournament.

Keep an eye on: Senior **Eden Brock**, who pitched a no-hitter against UW-Parkside to win the UW-Green Bay Fall Invitational in October.

Think about this: Only two Wisconsin pitchers have thrown a no-hitter during the regular spring season: **Ashley Fauser '99**, in 1999, and **Andrea Kirchberg '03**, who threw two no-hitters, including a perfect game during the 2001 season.



Eden Brock's thirty starts in the 2006 season put her in a second-place tie in the Big Ten.

Some in the college basketball world were scratching their heads and wondering, "Where did these guys come from?" But any Kohl Center denizen could tell you that the **Badger men's hoops** team has made a long and steady climb to national prominence, capped by an enviable 2006-07 season. The path to March Madness has been strewn with accolades for coach Bo Ryan's Badgers, who spent the season jostling for poll rankings with perennial powers such as UCLA and North Carolina. The numerical benchmarks were all there: national player of the year candidate Alando Tucker surpassed 2,000 career points; for the fifth time in six seasons, the Badgers won at least ten Big Ten games; and, as of mid-February, Wisconsin had been ranked in the top ten for thirteen weeks, something that had happened for just six weeks previously in school history.

Senior offensive tackle **Joe Thomas** received the Outland Trophy in December, becoming the first UW player to earn the honor as college football's top interior lineman. He also was named to the first-team offense on AP's All-American Team, joining eight fellow Big Ten players on the team roster. The Badgers finished the season with a 12-1 record and captured a 17-14 win over Arkansas in the Capital One Bowl on January 1. The Badgers' twelve wins — the most in a season — came under the direction of first-year head coach Bret Bielema.

The **women's cross country** team finished fourth at the NCAA championship race in Terre Haute, Indiana, capturing its first NCAA trophy since 1999. Meanwhile, at the same venue, the **men's cross country** Badgers came up just short in their attempt to defend last season's NCAA championship, finishing second to Colorado.

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