

Negotiate dispute over red cross

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Few trademark disputes generate much public interest, but the one at the center of the lawsuit filed in federal court by Johnson & Johnson against the American Red Cross certainly does.

The red cross, at the heart of the dispute, has been shared amicably, for the most part, as both the symbol associated with Red Cross relief efforts and J&J's commercial products for the greater part of a century.

What's at the heart of the dispute? To Johnson & Johnson, it is commercializing the use of the trademark it has held since 1876 by others in the for-profit arena, specifically the use of the red cross symbol on products (e.g. medical examination gloves, emergency preparation kits) licensed to commercial partners of the American Red Cross, some of which appear to compete directly with products sold by J&J. For the American Red Cross, it is maintaining and expanding those licensing arrangements in order to generate needed revenue. The commercial partnerships have produced some \$10 million annually to the organization since 2004.

The history is a bit sketchy and legal claims are disputed but, essentially, what it comes to is that an inverted Swiss flag, used first in 1863 in Geneva by the International Conference of the Red Cross as a symbol for its relief work, was picked up by Clara Barton in 1887 when she founded the American Red Cross and subsequently adopted by J&J at the time of its incorporation. Various skirmishes over the use of the symbol occurred and limits were placed on its use, including an agreement in 1895 between J&J and the American Red Cross. The lawsuit seeks to enforce the terms of this agreement.

If the lawsuit continues to gain steam, the relationship between the corporate giant and the relief agency is threatened. And, if the issue is framed as "who holds the greater claim to the symbol," the answer will be a victory for one and a defeat for the other.

And yet, preserving the relationship appears to be valuable to both parties. It has yielded benefits both ways — certainly to the Red Cross, as J&J contributed \$5 million to it over the last three years and to Johnson & Johnson, too, by its use of a trademark that, associated with the good works of the Red Cross, boosts its image and enhances its stature. The mutual benefit ought to provide incentive to seek a negotiated resolution.

The adversarial positions of the parties, however, are not encouraging. Johnson & Johnson, asserting that the American Red Cross has violated the agreement that gives exclusive rights to J&J to use the red cross "on chemical, surgical and pharmaceutical goods of every description," wants all the Red Cross licensed goods to be destroyed and the profits from the goods, along with costs and punitive damages, to

be awarded to the company. The American Red Cross accuses J&J of wanting to take products away from consumers, products that help Americans get prepared for life's emergencies and is having a close look at J&J's use of the symbol for possible violations of the agreement.

The public does not expect to see the state's beacon of corporate integrity and the premier aid organization fighting — and using significant sums of money — to control use of a symbol that, after all these years, has become more than a mere trademark.

J&J has indicated that it tried to resolve the dispute with the Red Cross, unsuccessfully. It should try again, this time with the aid of a mediator who can help both parties find a means to satisfy them on the use of the symbol they share. Too much is at stake to accept a win-loss outcome in court. Indeed, there is far more to be gained by taking a contemporary look at the needs and interests of the corporate giant and the relief agency so that they can develop, once again, the common ground that has carried them through more than a century.

Albert Einstein said that "one cannot simultaneously wage war and prepare for peace." Accordingly, J&J and the American Red Cross should turn away from adversarial positioning in court (and in the press) and find a way to resolve their differences. The public, which contributes to the organization and buys the corporation's products and pays to support the justice system, has more than a passing interest in the process and the outcome of this unfortunate dispute. Negotiations are essential.

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