

It's A Grand Old Flag

By Reg P. Wydeven
May 21, 2011

My senior year of college, five buddies and I went on spring break in Panama City, Florida. When there were no NCAA basketball tournament games on, we would wander down to the beach. On one hot, sunny day, a local club held a bikini contest.

Just to be polite, we decided to attend. There were several viable candidates, but the frontrunner was (barely) donning an American flag bikini. I think her suit had less material than a handkerchief. Needless to say, when the MC asked the crowd who should be the winner, there was little doubt when they began chanting, "U.S.A.! U.S.A.! U.S.A.!"

While the winner's swimwear choice may have contributed to her victory, it violated the National Flag Code. On Flag Day, June 14, 1923, the Code was adopted by the National Flag Conference, which was attended by representatives of the Army, Navy and 66 other national organizations. On June 22, 1942, Congress adopted the National Flag Code into law and made it part of the U.S. Code.

The Code is the guide for the handling and display of Old Glory. Its main message is, "No disrespect should be shown to the Flag of the United States of America." The Code covers everything from prohibiting the flying of the flag upside down to preventing it from touching the ground to how to dispose of a worn flag. The Code also precludes the flag from being used as an article of personal adornment. So 'Ms. Bikini 1995' violated the Code by wearing the flag as a swimsuit.

It is also forbidden to use the flag as a costume. This summer, 'Captain America: The First Avenger' will hit theaters. It's hard to imagine that Cap' would break the law. One of the reasons why he might is because the Code does not impose any penalties for violating the rules or otherwise misusing the U.S. Flag.

That's probably why a swimwear company would make a U.S. Flag swimsuit in the first place. In addition to barring the use of the flag for apparel, the Code also states that the flag should never be used for advertising purposes in any manner whatsoever. The U.S. Supreme Court has held that the states may restrict use of pictures of the flag on commercial products. There is a federal law making it a crime to use the flag for advertising purposes in the District of Columbia.

It's not just the flag that can't be used in advertising or commercial enterprises. There is a federal law that imposes a \$250 fine or up to 6 months of prison or both for displaying or using the U.S. coat of arms or the seals of the President or Vice-President, "for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency or instrumentality thereof." The emblems and insignia of U.S. departments, bureaus and agencies are also protected by law. Finally, trademark law explicitly disallows the registration of a design incorporating the coat of arms of the U.S., a state, municipality or any foreign nation.

The emblems and insignias of the various branches of the U.S. armed forces is also generally prohibited. For example, federal law prohibits any use of the Marine Corps insignia "that implies any official or unofficial connection between the Marine Corps and you/your company." Without the law, the Marines feel the use of their insignia could "create the impression that you/your company are affiliated with or endorsed by the USMC in some way."

So if you hire the Navy SEALs to install a waterproof coating on your basement floor, the company's name may give the Secretary of the Navy a sinking feeling.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. ©2011 McCarty Law LLP. All rights reserved.