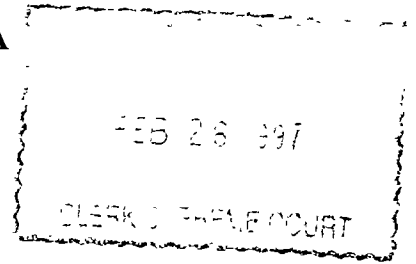


IN THE COURT OF APPEALS OF IOWA

No. 6-530 / 95-1765



**INTERNATIONAL SPORTS MARKETING,
INC. a/k/a INTERNATIONAL SPORTS
MARKETING CORPORATION,**

000184

Plaintiff-Appellant,

vs.

**ROBERT H. HELMICK; JOHN KRIMSKY, JR.;
HARVEY SCHILLER; RONALD T. ROWAN;
CRAIG BROWN; MICHAEL PLANT; EDGAR
HOUSE; EDDIE EINHORN; BELIN HARRIS
LAMSON McCORMICK, A Professional Corporation;
and UNITED STATES OLYMPIC COMMITTEE,
a Nonprofit Corporation,**

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, George W. Bergeson,
Judge.

International Sports Marketing (ISM) appeals from the dismissal of its claims
against the various defendants. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Patrick J. McNulty and Ross H. Sidney of Grefe & Sydney, Des Moines, for appellee Helmick.

David Swinton and H. Richard Smith of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellees Krinsky, Schiller, Rowan, Brown, Plant, House and Einhorn.

Roger T. Stetson, Mark McCormick, and Margaret C. Callahan of Belin Harris Lamson McCormick, A Professional Corporation, Des Moines, for appellee Belin firm.

H. Richard Smith and David Swinton of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, and Peter M. Susemihl of Susemihl & McDermott, Colorado Springs, Colorado, for appellee United States Olympic Committee.

Heard by Habhab, C.J., and Cady and Huitink, JJ.

HUITINK, J.

Plaintiff International Sports Marketing, Inc. (“ISM”) appeals the district court’s dismissal, for lack of personal jurisdiction, of its action for breach of contract, interference with contractual relationships, alleged violations of Iowa’s competition laws, and conspiracy against the defendants John Krinsky, Jr., Harvey Schiller, Ronald T. Rowan, Craig Brown, Michael Plant, Edgar House, and Eddie Einhorn. ISM also appeals the district court’s ruling granting summary judgment in favor of the remaining defendants, United States Olympic Committee (USOC), Belin Harris Lamson McCormick, P.C., and former USOC President Robert J. Helmick. Finally, ISM appeals the district court’s denial of its application to amend its petition to allege additional causes of action. We affirm.

Plaintiff ISM is an Illinois corporation with its principal place of business in Michigan. Its president is J. B. Bonelli. ISM is in the business of promoting and marketing sports-related merchandise and programs. Defendant USOC is a federally chartered non-profit corporation with its principal place of business in Colorado Springs, Colorado, that, among other functions, governs all business and contracts affiliated with the United States Olympic team. Defendant Robert Helmick served as USOC president throughout the parties’ relationship and was also a shareholder in the defendant law firm, Belin Harris Lamson McCormick, P.C., of Des Moines, Iowa. The remaining defendants served in a variety of posts with the USOC during the time

in question: John Krinsky, Jr., USOC Deputy Secretary General; Ronald T. Rowan, USOC General Counsel and Director of Legal Affairs; Harvey Schiller, USOC Executive Director; Craig Brown, USOC Director of Fund Raising Administration; Edward Einhorn, member of the USOC Subcommittee on Television Rights; Michael Plant, member of the USOC Board of Directors and chairperson of the USOC Athletes Advisory Council; and Edgar Jay House, member of the USOC Board of Directors and chairperson of the USOC Public Relations Committee.

The dispute between the parties arose out of a proposal by ISM to market commemorative coins bearing the image and likeness of Olympic diving champion Greg Louganis. Bonelli's original plan was to release these coins in conjunction with the 1988 Summer Olympic Games in Seoul, South Korea. He met with USOC Deputy Secretary General John Krinsky in 1988 in Seoul. At that meeting, Bonelli advised Krinsky of his company's contract with Greg Louganis, his agent, and American Express for engraving, minting, packaging, and marketing the coins. Bonelli did not meet with USOC President Helmick at that time, although Bonelli contends Helmick changed the USOC internal operating rules such that all contracts entered into by the USOC had to receive his written approval.

ISM contends these discussions resulted in an oral contract with the USOC under which the USOC agreed to promote, support, and implement the Louganis coin program. The oral agreement was never reduced to a writing. Bonelli contends the

details of the mailing were to be worked out at a later time.

Bonelli, Helmick, and defendant Harvey Schiller eventually entered into a written contract in May 1990. The contract was negotiated at a personal meeting held in Colorado and during follow-up calls. The terms of the agreement provided that the USOC would provide a mailing list of up to 10,000 persons who had “previously purchased coins commemorating or associated with the Olympic Games” or who had “contributed money to the USOC within the past four years.” The USOC was to be responsible for providing envelopes and an introductory letter and also for assembling the mailing. ISM was to assume the postage expenses and guarantee product availability. Under the terms of the contract, the USOC had the option to participate in a larger “roll-out” mailing contingent on its sole determination if the test mailing was successful.

The 10,000 brochures were mailed in June 1990. After 110 days, the USOC had received a mere thirteen orders generating a gross revenue of \$1513. Defendant USOC official Craig Brown notified Bonelli that the response rate, .13%, was unacceptable and the USOC thereby would be exercising its option per the May 1990 agreement to terminate its participation in the Louganis coin program.

In September 1993, ISM filed a petition in the Iowa District Court for Polk County asserting several claims against the USOC and individual defendants.¹ The

¹ ISM initially filed suit against the defendants in the Circuit Court for Wayne County, Michigan in July 1992. The Michigan court determined it lacked personal jurisdiction over certain individual defendants and the suit was eventually dismissed

individual defendants, with the exception of Helmick, moved to dismiss ISM's petition based on a lack of sufficient contacts to confer personal jurisdiction. In February 1994, the district court granted the motion. ISM unsuccessfully sought an interlocutory appeal of the decision.

Discovery deadlines were later set by the court for June 1995 with trial to commence on August 14, 1995. On June 16, 1995, ISM filed a motion to compel the production of two file cabinets of documents located in Des Moines belonging to Helmick. The district court granted ISM's motion to continue the trial until May 1996 and also to continue the discovery deadlines.

In May and June of 1995, the remaining defendants filed motions for summary judgment. Prior to ruling on ISM's motion to compel, the district court granted the defendants' motion for summary judgment in September 1995.

ISM appeals the district court's ruling dismissing its claims against the individual defendants for lack of personal jurisdiction. ISM also asserts the district court erred in granting the remaining defendants' motion for summary judgment and in denying its petition to allege additional causes of action. We will first address the issues pertaining to the order of dismissal.

altogether.

I. Personal Jurisdiction.

ISM argues the district court erred in dismissing its complaint against Krimsky, Schiller, Rowan, Brown, Plant, House, and Einhorn for lack of personal jurisdiction.² ISM contends, under Iowa law, the defendants' attendance at a series of meetings held May 31 through June 4, 1989, in Des Moines concerning USOC business meets the minimum contacts standard. ISM contends it hand-delivered literature to Helmick and Krimsky in Des Moines during the course of these meetings. ISM also alleges Krimsky and Helmick maintained contact regarding the coin program by way of copies of correspondence with ISM and others. Moreover, ISM alleges Helmick's veto power over all contracts with the USOC established his Des Moines office as the "focal point" of the alleged conspiracy between the defendants to breach the oral contract and also to restrain trade. ISM maintains that had it been afforded the opportunity to conduct thorough discovery by way of depositions of the individual defendants, it could have established the facts necessary to satisfy the minimum contacts test.

In reviewing a district court's ruling on a challenge to its personal jurisdiction, we accept the allegations of the petition as true. *Robert Half of Iowa v. Citizens Bank*, 453 N.W.2d 236, 238 (Iowa App. 1990). The plaintiff has the burden

² The USOC itself is subject to the jurisdiction of any state in the United States pursuant to 36 U.S.C. § 381.

to sustain the requisite jurisdiction, but when a prima facie case is established, the defendant has the burden to overcome it. *Id.* A distinction is made between allegations of a petition which go to the merits of a claim and other allegations of a petition. The latter may be contradicted by affidavits, testimony, and other evidence; the former are taken as true for special appearances purposes. *Martin v. Ju-Li Corp.*, 332 N.W.2d 871, 874 (Iowa 1983). When reviewing a jurisdictional issue, the trial court's findings of fact have the force of a jury verdict. *See Robert Half of Iowa*, 453 N.W.2d at 239.

The due process clause of the Fourteenth Amendment operates to limit the power of a state to assert in personam jurisdiction over a nonresident defendant. *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408, 413-14, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404, 410 (1984). It protects an individual's liberty interest in not being subject to the binding judgment of a forum with which he or she has no meaningful contacts, ties, or relations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 2181, 85 L. Ed. 2d 528, 540 (1985). The "constitutional touchstone" in determining jurisdiction is whether the defendant has purposefully established minimum contacts in a forum state, and whether the defendant's conduct and connection are such that the defendant should have reasonably anticipated being haled into court in a forum state. *Id.* at 474, 105 S. Ct. at 2183, 85 L. Ed. 2d at 542.

The minimum contacts test requires us to consider five factors, the first three being most important:³

- (1) the quantity of the contacts;
- (2) the nature and quality of the contacts;
- (3) the source and connection of the cause of action with those contacts;
- (4) the interest of the forum state; and
- (5) the convenience of the parties.

See Omaha Cod Storage Terminals v. Cunningham, 417 N.W.2d 254, 255 (Iowa App. 1987) (quoting *Larsen v. Scholl*, 296 N.W.2d 785, 788 (Iowa 1980)). Certain minimum contacts with the state forum must exist in order that the maintenance of the suit does not offend the “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945).

We conclude the district court was correct in determining ISM’s allegations were insufficient to establish minimum contacts. It is undisputed that at all times relevant to the litigation none of these defendants resided in Iowa, owned property in Iowa, or had any office or registered agent in Iowa. The district court found, based

³ Courts employ a two-prong test in resolving jurisdictional questions regarding non-resident parties: first, does a statute authorize assumption of jurisdiction of the defendant; and second, would assumption of jurisdiction offend constitutional due process of law? *Martin v. Ju-Li Corp.*, 332 N.W.2d 871, 874 (Iowa 1993). The defendant USOC officers’ motion to dismiss did not challenge jurisdiction under Iowa’s long-arm statute, Iowa Code section 617.3, nor has the plaintiff ISM alleged jurisdiction under the statute. Accordingly, we will not consider the long-arm statute on appeal but rather will limit our analysis to the issue of the minimum contacts necessary to satisfy the due process requirement.

on the affidavit of Krimsky and Rowan, that the contractual activities of the individual defendants, other than former president Helmick, were conducted out of the USOC's principal office in Colorado Springs, Colorado. ISM was unable to refute these facts as set forth in the defendants' affidavits or allege facts to demonstrate the meetings in Des Moines had a direct relation to the contract with ISM. We conclude, given these circumstances, the district court properly declined to infer that the allegations urged by ISM established the defendants availed themselves of an Iowa forum by meeting once in Des Moines.

Finally, we also reject ISM's contention that had it been permitted the opportunity to conduct further discovery by deposing the defendants, it could have established the number of times the individual defendants met in Des Moines and what transpired during those meetings. Jurisdictional discovery is generally permitted before a court rules on a motion to dismiss for lack of jurisdiction. *See Behm v. John Nuveen & Co., Inc.*, 55 N.W.2d 301, 304 (Minn. App. 1996). However, it is not mandated and is unnecessary where the discovery is unlikely to lead to facts establishing jurisdiction. *Id.*

ISM asserts it was denied the opportunity to depose the individual defendants or to cross-examine them at the hearing on the motion. ISM was afforded the opportunity to serve interrogatories on the individual defendants. ISM has not shown that additional discovery would have uncovered material facts to establish minimum

contacts. It has merely alleged a subjective belief that deposing the defendants will confirm their attendance at meetings in Des Moines and the significance of these meetings. We find these assertions insufficient to warrant further discovery by ISM. The court was correct in not permitting ISM to engage in a “fishing expedition” by allowing further jurisdictional fact discovery.

II. Summary Judgment.

ISM appeals the district court’s order granting summary judgment in favor of all remaining defendants on each of ISM’s substantive claims.

We review for errors of law. Iowa R. App. P. 4. Summary judgment is only appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The moving party has the burden to demonstrate the nonexistence of a material fact. *Farm Bureau Mutual Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). If the motion is properly supported, however, the resisting party must set forth specific facts showing that there is a genuine issue for trial. Iowa R. Civ. P. 237(c). A party may not rely on the hope of the subsequent appearance of evidence generating a fact question. *Prior v. Rathjen*, 199 N.W.2d 327, 330-31 (Iowa 1972). The court considering a motion for summary judgment is required to view the evidence in the light most favorable to the resisting party. *Thorp Credit Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986).

A. Discovery.

ISM argues the district court abused its discretion by granting summary judgment on its substantive claims prior to the time sufficient discovery could be completed by ISM. ISM filed its petition in September 1993. In November 1994, the court entered a scheduling order setting discovery deadlines for June 1995. In May and June of 1995, the remaining defendants filed their motions for summary judgment. ISM did not file its motion to compel the production of documents located in Des Moines until June 16, 1995. Although the record contains a discussion between the court and counsel concerning a continuance of the trial, there is nothing in the transcript of those proceedings indicating disposition of the pending summary judgment motions would be delayed for purposes of additional discovery. The motions for summary judgment were granted in favor of the defendants on September 27, 1995, before any ruling had been issued on the motion to compel.

From the time ISM filed its petition to the time the summary judgment ruling was entered, ISM had three years to complete discovery. ISM had ample time to conduct a thorough investigation prior to the filing of the motions for summary judgment. Given the potential delay involved by allowing further discovery, we find the district court did not abuse its discretion in granting the motion for summary judgment prior to granting ISM's motion to compel.

B. *Breach of Contract.*

In its petition, ISM alleged the defendants breached an oral contract negotiated between the parties in 1988 in Seoul by unjustifiably delaying the mailing campaign and by conspiring to orchestrate the campaign's ultimate failure. On appeal, ISM argues the district court erroneously limited its summary judgment analysis of the breach of contract claim to the subsequent 1990 written contract between the parties.

An oral contract may exist even though the parties intended to reduce it to writing at a later date. *Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 420 (Iowa 1977); Restatement (Second) of Contracts § 26 (1979). If the oral agreement is complete as to its terms and has been finally agreed to, it will generally be enforceable. *Elkader Cooperative Co. v. Matt*, 204 N.W.2d 873, 875 (Iowa 1973). Under these circumstances, the writing is merely an expression of a previously completed contract.

The principal consideration in determining the existence of an oral contract is evidence of the parties' intent to be bound:

Whether the parties intended the oral agreement to be binding prior to the execution of a written document is the decisive issue. *Elkader Cooperative Co. v. Matt*, 204 N.W.2d 873, 875 (Iowa 1973); 17A Am.Jur.2d *Contracts* § 38 (1991). Factors to be considered in making this determination include whether: the contract is of a class usually found to be in writing; it is of a type needing a formal writing for its full expression; it has few or many details; the amount is large or small; the contract is common or unusual; all the details have been agreed upon or some remain unresolved; and the negotiations show a

writing was discussed or contemplated. *Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 421 (Iowa 1977).

Employee Benefits Plus v. Des Moines General Hospital, 535 N.W.2d 149, 154 (Iowa App. 1995).

The district court's order referred to several factors gleaned from the deposition of Bonelli, his answers to USOC's interrogatories, and correspondence exchanged by the parties that demonstrated the meetings in Seoul produced nothing more than preliminary negotiations. Bonelli conceded that certain important details related to the mailing were left undetermined following the Seoul meeting, including the date for the mailing. In September 1988, Bonelli advised Krinsky to contact him if there was anything else he could do to facilitate the review of the coin program and also sought to renew negotiations with the USOC after the Seoul meeting. Furthermore, Bonelli stated in a 1989 letter to Louganis' publicist/manager that ISM would not conduct the test mailing until the USOC signed a written agreement.

We agree with the district court's assessment that Bonelli's own words and actions demonstrate neither party intended to be bound by the 1988 Seoul negotiations. We also note that in October 1988 Krinsky wrote Bonelli declining to participate in the program at the present time due to potential conflicts with the USOC's existing coin program. Krinsky wrote again in October 1989 requesting more data from Bonelli on previous campaigns. These letters demonstrate the USOC's intention to review the program further before committing to the project. We

find ISM failed to affirmatively respond to the summary judgment motion with facts supporting the existence of an oral agreement. Accordingly, we affirm on this issue.

ISM has also argued it presented evidence entitling it to recover under the theory of promissory estoppel.⁴ Bonelli insisted throughout his deposition testimony that he had been assured by the defendants that the parties had a contract to sell the Louganis coins. Based on these assurances, ISM spent \$1.4 million dollars in preparation for the marketing campaign and then lost the opportunity to market the coins at a time when the program would have been the most successful.

The elements of promissory estoppel are as follows:

1. A clear and definite agreement;
2. Proof that the party seeking to enforce the agreement reasonably relied upon it to his detriment; and
3. A finding that the equities support enforcement of the agreement.

Amana Society v. Colony Inn, Inc., 315 N.W.2d 101, 117 (Iowa 1982) (citing *In re Estate of Graham*, 295 N.W.2d 414, 418-19 (Iowa 1980)).

We conclude ISM has also failed to generate a genuine issue of material fact on its promissory estoppel claim. We have already noted the negotiations in Seoul did not result in a clear and definite agreement between the parties. Furthermore, the substance of the correspondence between Krinsky and Bonelli following the 1988

⁴ ISM has appealed from the district court's denial of its application to amend its petition to add a cause of action for promissory estoppel. However, we note the district court implicitly allowed the amendment by considering the merits of the claim in its order granting summary judgment in favor of the defendants.

meeting is in direct contradiction to Bonelli's assertions that he relied on assurances made to him by the defendants. ISM has not set forth evidence supporting any of the elements of its promissory estoppel claim. We affirm on this issue.

C. Tortious Interference with Contract and Prospective Business Relationships.

ISM asserts it pled facts upon which it could establish the defendants interfered with contracts ISM had with the USOC, Louganis, American Express, and others involved in the engraving, minting, and packaging of the coins. In the alternative, ISM argues it could have sought leave to amend its pleadings to allege a claim of tortious interference with prospective business relationships.

A claim for intentional interference with a contract consists of four elements: existence of a valid contractual relation; knowledge of the relationship; intentional and improper interference inducing or causing a breach or termination of the relationship; and resultant damage to the party whose relation has been disrupted. *Irons v. Community State Bank*, 461 N.W.2d 849, 857 (Iowa App. 1990). A binding contract is not necessary to support a claim of intentional interference with a prospective business advantage; such claim may be based upon a prospective business relationship that has not yet been reduced to contract. *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 651 (Iowa 1995).

We agree with the district court that the failure of ISM's oral contract claim defeats its interference claim based on an alleged contractual relationship with the USOC. *See Irons*, 461 N.W.2d at 857 (existence of valid contractual relationship is a necessary element of a tortious interference with contract claim). We also agree ISM has failed to present evidence in support of its claim for tortious interference by the defendants with its contracts with third parties. Based on the findings of a 1991 investigation conducted by New York lawyer Arthur I. Burns of Helmick's conduct during his tenure as USOC president, ISM has inferred that the defendants intentionally interfered with its contracts with third parties. However, we conclude ISM has been unable to come forward with any facts linking Helmick's alleged misconduct to ISM's relationships with any third parties.

Under the 1990 written agreement, the USOC retained the right to terminate its relationship with ISM if the USOC determined the initial mailing to be unsuccessful. The USOC exercised that right under the contract and by doing so did not tortiously interfere with ISM's contractual relationships with third parties. *See Preferred Mktg. Assoc. v. Hawkeye Nat'l Life Ins. Co.*, 452 N.W.2d 389, 396 (Iowa 1990) (party does not improperly interfere with another's contract by exercising its own legal rights in protection of its own interest). Accordingly, we affirm the summary judgment ruling on this claim.

We also reject ISM's alternative claim for tortious interference with prospective business relationships. In its ruling, the district court did not consider this claim, nor did ISM seek leave to timely amend its petition to plead the claim. Accordingly, ISM cannot assert such a claim for the first time on appeal. *See Donald Newby Farms, Inc. v. Stoll*, 543 N.W.2d 289, 292 (Iowa App. 1995) (issues must ordinarily be presented to and passed upon by trial court before they may be raised and decided on appeal).

D. Conspiracy.

ISM alleges the defendants conspired to intentionally delay and undermine the marketing campaign for the Louganis coin program. ISM asserts the defendants sought to retaliate for ISM's decision not to retain Helmick and the Belin law firm's services in negotiating the contract. In support of these contentions, ISM cites to Helmick's comments in a September 1991 article in *U.S.A. Today* in which he admits he and his law firm had been reimbursed for consulting services in connection with Olympic-related contracts. ISM argues these comments generated a material issue of fact as to whether a conspiracy existed to undermine the ISM-USOC agreement. He further alleged the officers and agents of the USOC had been receiving improper payments in exchange for their influence in connection with Olympic-related matters.

The district court's order limited its discussion of ISM's common law conspiracy claim to the Belin law firm. The USOC argues ISM failed to preserve

error on its conspiracy claim against the other defendants by filing a rule 179(b) motion. We agree and will therefore limit our consideration of ISM's conspiracy claims to the Belin law firm. *See Smith v. Air Feeds, Inc.*, 519 N.W.2d 827, 832 (Iowa App. 1994) (issues must ordinarily be presented to and passed upon by trial court before they may be raised and adjudicated on appeal).

A conspiracy is established when two or more persons combine "to accomplish an unlawful end or to accomplish a lawful end by unlawful means." *Countryman v. Mt. Pleasant Bank & Trust Co.*, 357 N.W.2d 599, 602 (Iowa 1986). The principal element of a conspiracy is an agreement or understanding to commit a wrong against another. *Adam v. Mt. Pleasant Bank & Trust Co.*, 387 N.W.2d 771, 773 (Iowa 1986). A conspiracy itself is not actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy which give rise to the action. *Basic Chemicals, Inc. v. Benson*, 251 N.W.2d 220, 233 (Iowa 1977), *accord Lindaman v. Bode*, 478 N.W.2d 312, 317 (Iowa App. 1991).

Based on the information detailed in the *USA Today* article, the Burns report, and an affidavit concerning Helmick's misconduct, Bonelli has theorized that Helmick and the Belin law firm engaged in a purposeful campaign to destroy the Louganis coin program. However, Bonelli's speculation and conjecture are insufficient to sustain his burden in resisting the summary judgment motion on these claims. We conclude the district court correctly determined ISM has not come

forward with any facts establishing a connection between the alleged misconduct of Helmick or the law firm and ISM's relationship with the USOC. Thus, ISM's claims fail to allege any underlying acts of wrongdoing on behalf of the Belin law firm that caused an injury to ISM. *See Basic Chemicals, Inc.*, 251 N.W.2d at 317. Accordingly, we affirm the district court's ruling on this issue.

E. Iowa's Competition Law.

ISM asserts a claim against the defendants for conspiracy to restrain and monopolize trade or commerce in violation of Iowa Code section 553.4⁵ and price fixing in violation of Iowa Code section 553.5.⁶ ISM claims the USOC violated these laws when it improperly utilized its control over the use of Olympic symbols, names, and trademarks by breaching its oral agreement with ISM and by tortiously interfering with ISM's contracts.⁷

⁵ **Iowa Code section 553.4. Restraint prohibited.** A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market.

⁶ **Iowa Code section 553.5. Monopoly prohibited.** A person shall not attempt to establish, maintain, or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing, or maintaining prices.

⁷ Pursuant to 36 U.S.C. § 380, the use of Olympic symbols, emblems, trademarks, and names to induce the sale of any goods or services is prohibited without the consent of the USOC.

We have already determined ISM failed to generate a fact issue on its claim for breach of oral contract and for tortious interference. Accordingly, we reject its claim under the Iowa competition laws based on these assertions and affirm on this issue.⁸

We affirm both the order dismissing ISM's claims against the individual defendants and the order granting summary judgment in favor of the remaining defendants.

AFFIRMED.

⁸ We note the district court, citing Iowa Code section 553.6(4), determined the USOC, acting as a regulatory body under the authority of the federal government, as well as Helmick, acting as an officer of the USOC, were entitled to immunity from the operation of sections 553.4 and 554.5. At this time we decline to affirm the summary judgment decision on this basis and instead affirm based on ISM's failure to produce any evidence the defendants conspired to maintain a monopoly or restrain trade. We are obligated to affirm an appeal where any proper basis appears in the record for the trial court's judgment, even though it is not one upon which the court based its holding. *See Rouse v. Union Township*, 530 N.W.2d 714, 717 (Iowa 1995).