

The Olympics, Ambush Marketing and Sochi Media

By

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I. Introduction

The purpose of this article is to explore the concept of *ambush marketing* and the legal environment surrounding it. With the advent of the Sochi Olympic Games held in February, 2014, ambush marketing again makes its way to the forefront of national and international attention. Certainly, the discussion of ambush marketing in advertising strategies would be a useful tool at any point in a law course that addresses intellectual property such as trademarks and domain names, and consumer protection issues in general.

While the concept of ambush marketing is nothing new, the biennial Olympic Games once again allows for a discussion of the issues involved when organizations attempt to utilize ambush marketing, also known as *guerilla marketing*, *parasitic marketing*, or simply the *unofficial games*.¹ In sum, ambush marketing is an intentional attempt by an advertiser to associate itself with an event though it did not pay for the right to be associated with it in the first place.² Thus, the organization is not an

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¹ See ADAM EPSTEIN, SPORTS LAW 397-99 (2013) (discussing ambush marketing generally and noting that while ambush marketing is not, per se, a violation of the Lanham Act, it could be considered unfair competition under §43 of the Act).

² *Id.*; see also John Grady & Steve McKelvey, *Ambush Marketing Lessons from the London Olympic Games*, SPORTSBUSINESS J. (Oct. 22, 2012), <http://www.sportsbusinessdaily.com/Journal/Issues/2012/10/22/Opinion/Grady-McKelvey.aspx> (offering that ambush marketing is a “controversial

official sponsor of an event though through advertising a consumer might believe that it is. Examples of ambush marketing events often include the Olympic Games, the Super Bowl, the FIFA World Cup, the Daytona 500, Kentucky Derby, and so on.³

practice whereby businesses that are not official sponsors conduct advertising and promotional activities that seek to capitalize on the event's good will, reputation and popularity." The authors also observe that rarely, however, do ambush marketers actually infringe on the trademarks of the sport organization or event, though they do associate themselves with the event).

³ EPSTEIN, *supra* note 1, at 398 (citing similar examples and noting that MasterCard obtained an injunction against Sprint from issuing credit cards with World Cup '94 trademarks in MasterCard Int'l, Inc. v. Sprint Commc'ns Co., 1994 WL 97097 (S.D.N.Y. 1994); *see also* Joe Daly, *Dutch Brewery Sends in Blondes for World Cup Ambush Marketing Stunt*, HUFFINGTON POST (June 17, 2010), http://www.huffingtonpost.com/2010/06/17/world-cup-ambush-marketing_n_615872.html (discussing the staged event in which Dutch brewery, Bavaria, at a World Cup match in Johannesburg, South Africa in 2010, intentionally had 36 blonde women wearing orange (the color of the Dutch national team) mini-dresses promoting the beer); *see also* Katherine Levy & Daniel Farey-Jones, *FIFA Cracks Down after World Cup Ambush Marketing Stunt*, MARKETING MAG. (June 18, 2010), <http://www.marketingmagazine.co.uk/article/1010807/fifa-cracks-down-world-cup-ambush-marketing-stunt> (noting that FIFA filed a civil case against Bavaria as well as filing criminal charges against the two Dutch women alleged to have organized the stunt and were charged with contravening the South African Merchandise Marks Act as a result of their actions during the Holland-Denmark game. The authors also note that it is against FIFA regulations to promote any brands other than official sponsors during the World Cup games, and South Africa passed laws ahead of the World Cup to prohibit such activity. Similarly, apparently Bavaria utilized a similar stunt in the 2006 World Cup in Germany when a group of Dutch fans supporting Holland wore orange lederhosen despite that fact that Budweiser was the official beer sponsor of both events); *but see* Dickerson M. Downing, Mary R. Bram, Crowell & Moring & Rodrigo Azevedo & Silveiro Advogados, *Ambush Marketing: Coming Soon to a Stadium Near You*, ASS'N CORP. COUNS. (Jan. 22, 2013), <http://www.acc.com/legalresources/quickcounsel/amcstasny.cfm> (discussing the impact that ambush marketing might have related to Brazil's upcoming 2014 FIFA World Cup Brazil™ and the 2016 Summer

II. *Legal Environment and Ambush Marketing*

A. *Lanham Act: The Federal Trademark Law*

In the United States, the foundation for discussion of the legal environment surrounding ambush marketing likely begins with most relevant federal law, the Lanham Act.⁴ This 1946 law, the federal trademark law, prohibits the unauthorized use of a registered trademark in connection with the sale, offering for sale, distribution, or advertising of the ambusher's goods or services, if such use is likely to cause consumer confusion or likely to deceive as to the mark's affiliation, connection, association or origin.⁵ The Lanham Act also prohibits the registration of a mark, such as a trademark or service mark, which is determined to be immoral, deceptive or scandalous.⁶

Olympic and Paralympic Games in Rio de Janeiro will bring an onslaught
[Footnote continues on next page . . .]

ambush marketing attempts that might violate the Brazilian Industrial Property Act, the Copyright Act, the Sports Act and even the Civil Code. However, the article also mentions how attempts by South Africa to penalize the Dutch beer company Bavaria actually brought more attention to the brewery and in essence gave it free worldwide publicity).

⁴ 15 U.S.C.A. § 1051 et seq. (2013).

⁵ 15 U.S.C.A. § 1125(a) et seq. (2013) (False Designations of Origin, False Descriptions, and Dilution Forbidden). Note that Subchapter III of the Lanham Act, codified in section 1125, prohibits the use of a false designation of origin or a false or misleading description or representation of fact thereby avoiding a likelihood of confusion among consumers. However, courts often refer to this simply as §43(a) of the Lanham Act. §43(a) of the Lanham Act prohibits the use of a false designation of origin or a false or misleading description or representation of fact.

⁶ *Id.* For example, this is the heart of the issue related to whether or not the name *Washington Redskins* violates federal law and continues to be the subject of lawsuits to enjoin its use. See Ian Botnick, *Honoring Trademarks: The Battle to Preserve Native American Imagery in the National Collegiate Athletic Association*, 7 J. MARSHALL REV. INTELL. PROP. L. 735, 743-44 (mentioning the line of *Harjo* cases in which a group of Native Americans petitioned the U.S. Patent and Trademark Office to

An often cited example of trademark infringement includes association with the NCAA *March Madness* basketball tournament held each spring.⁷ For example, in 2001, the National Collegiate Athletic Association (NCAA) sued Coors Brewing over trademark infringement because the brewer had Coors Light Tourney Time Sweepstakes in its advertisements and giving away four 2001 Final Four tickets.⁸ After a legal battle, Coors paid \$75,000 to the NCAA to settle the case in 2003.⁹

B. "Olympic" and United States Olympic Committee

When exploring ambush marketing, many are unaware that under federal law the United States Olympic Committee (USOC) has the exclusive rights to use the word *Olympic* and *Olympiad* in advertising and promotions, including simulations such as *Olympik*, with few exceptions granted in the U.S.¹⁰ The USOC today governs eligibility, selection and participation in the

cancel six trademarks including the Washington Redskins on the grounds that it was disparaging to Native Americans); *See also* EPSTEIN, SPORTS LAW at 386-87 (exploring the case *Pro-Football, Inc. v. Harjo*, 415 F.3d 44 (D.C. Cir. 2005) case and other potential "immoral, deceptive, or scandalous" matters involving trademarks and Native American nicknames and connotations) and at 390 (discussing the National Collegiate Athletic Association and ethnic-based mascot issues).

⁷ EPSTEIN, *supra* note 1, at 389-90.

⁸ *Id.* at 398 (referencing Nat'l Collegiate Athletic Ass'n v. Coors Brewing Co., No. IP01-1768 (S.D. Ind. filed Nov. 27, 2001); *see also* Rick Callahan, *NCAA Sues Coors for Final Four Promotion*, USA TODAY (Nov. 28, 2001), <http://usatoday30.usatoday.com/sports/college/basketball/men/2001-11-28-finalfour-promo.htm>.

⁹ *See* Duran Inci, *What is Ambush Marketing?*, OPTIMUM7.COM (Nov. 4, 2011), <http://www.optimum7.com/internet-marketing/sem/what-is-ambush-marketing.html>.

¹⁰ The term simulations refers to alternate or similar spellings of *Olympic*. *See, e.g.*, *United States Olympic Comm. v. Tobyhanna Camp Corp.*, 2010 U.S. Dist. LEXIS 117650 (M.D. Pa. Nov. 4, 2010) (issuing a permanent injunction to stop using *Olympik* and the Olympic rings).

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Olympic Games, the Paralympic Games, and Pan American Games.¹¹ The organization was federally chartered (i.e., established) by the U.S. Congress and remains a private, non-profit organization.¹² Still, the USOC has exclusive rights in accordance with authority granted to it by the Amateur Sports Act (1978) and as amended twenty years later by the Ted Stevens Olympic and Amateur Sports Act (1998).¹³ More specifically, under federal law the USOC has the exclusive right to use:

- (1) the name “United States Olympic Committee”;
- (2) the symbol of the International Olympic Committee, consisting of 5 interlocking rings, the symbol of the International Paralympic Committee, consisting of 3 TaiGeuks, or the symbol of the Pan-American Sports

¹¹ TED STEVENS OLYMPIC AND AMATEUR SPORTS ACT OF 1998 (TSOASA), 36 U.S.C. § 220521 et seq. (2011); *see also* Adam Epstein, *Go for the Gold by Utilizing the Olympics*, 29 J. LEGAL STUD. EDUC. 313 (2012) (offering in the pedagogical piece that both the Winter and Summer Olympics were held during the same year through 1992. Then, beginning in 1994, the Winter and Summer Olympics alternate in even numbered years).

¹² *See* Epstein, *supra* note 11, at 315 (offering in note 7 that the USOC was established as a federally chartered organization in 1950 though it had survived under different names until becoming the USOC in 1961). Note that the authority of the federal government to create a private corporation to carry out a public purpose emanates from the Necessary and Proper Clause of the Constitution, U.S. CONST. art. I, § 8, cl. 18 (Congress shall have the power “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”), and the Supreme Court decision in *McCulloch v. Maryland*, 17 U.S. 316, 325-26 (1819).

¹³ The AMATEUR SPORTS ACT OF 1978 was codified at 36 U.S.C. §§ 371-396. It has since been re-codified and modified by the TED STEVENS OLYMPIC AND AMATEUR SPORTS ACT OF 1998, 36 U.S.C. § 220521 et seq.; *see generally* Noelle K. Nish, *How Far have We Come? A Look at the Olympic and Amateur Sports Act of 1998, the United States Olympic Committee, and the Winter Olympic Games of 2002*, 13 SETON HALL J. SPORTS L. 53 (2003).

Organization, consisting of a torch surrounded by concentric rings;

(3) the emblem of the corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief; and

(4) the words "Olympic," "Olympiad," "Citius Altius Fortius," "Paralympic," "Paralympiad," "Pan-American," "America Espirito Sport Fraternite," or any combination of those words.¹⁴

However, it is also important to recognize that the use of the word *Olympic* has a "grandfather clause" for those businesses or organizations who used *Olympic* prior to September 21, 1950.¹⁵ There is also an exemption for the use of the word *Olympic* when it refers to the naturally occurring mountains or geographical region of the same name that were named prior to February 6, 1998, as long as such business, goods, or services are operated, sold, and marketed in the State of Washington west of the Cascade Mountain range and operations, sales, and marketing outside of this area are not *substantial*.¹⁶

C. Internet Issues

As expected, the advent of the Internet has created numerous challenges which have revealed trademark and consumer protection issues generally. As a result, Congress amended the Lanham Act by passing the Anticybersquatting Consumer Protection Act (ACPA) in 1999 to prevent a cybersquatter from registering a web domain name in order to profit from the name or mark in

¹⁴ 36 U.S.C. § 220506 (a) (2013).

¹⁵ 36 U.S.C. § 220506 (d) (1) (2013).

¹⁶ 36 U.S.C. § 220506 (d) (3) (B), (C) (2013).

bad faith and to prevent the likelihood of consumer confusion.¹⁷

Issues related to the use of the word *Olympic* have also required that the World Intellectual Property Organization (WIPO), based in Geneva, intervene to resolve Internet domain name disputes including cybersquatting.¹⁸ For example, in *United States Olympic Committee v. MIC*, WIPO ordered a private company that registered the domain name *usolympicstore.com* to be surrendered to the USOC.¹⁹ Similarly, the 2012 London Organising Committee for the Olympic Games (LOCOG) and Paralympic Games Limited brought a complaint seeking the transfer of the domain name *mylondon2012.com*.²⁰ A WIPO Panel held that the Complainants had rights in the *London 2012* trademark, the registration of the name had been done in bad faith, and utilization without permission constituted a violation.²¹

¹⁷ 15 U.S.C. § 1125(d) (2013) Meanwhile, typosquatting is a form of cybersquatting in which an owner speculates that someone will misspell an otherwise legitimate domain name and purchases that variation on the name in order to make a profit. For example, registering the domain name Goggle.com (a misspelling of Google.com) with the hope that someone making a typo will be driven to that website; *see also* EPSTEIN, *supra* note 1, at 398.

¹⁸ EPSTEIN, *supra* note 1, at 399.

¹⁹ London Organising Comm. of the Olympic Games & Paralympic Games limited v. H&S Media Ltd, WIPO Case No. D2000-0189, *available at* <http://www.wipo.int/amc/en/domains/decisions/text/2010/d2010-0415.html>.

²⁰ *Id.* H&S Media Ltd. had registered the domain name *mylondon2012.com* on 6 July 2005, the same date as the International Olympic Committee announced that London's bid to host the Games in 2012 had been successful.

²¹ *Id.* When the Complainant learned about the registration, it sent a demand letter to the Respondent, seeking the transfer of the domain name to it on the basis that only the London Organising Committee and entities licensed by it were permitted to use representations likely to suggest an association between traders and their goods and services and the London

III. *Olympic Environment*

A. *Infringement Examples: U.S.*

The USOC has been quite proactive in protecting its exclusive rights and marks, and the USOC annually protects its intellectual property rights over the exclusive *commercial* use of the word *Olympic* by sending cease and desist letters to alleged violators.²² In *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, the Supreme Court of the United States affirmed an injunction against the use of the word Olympic as part of the Gay Olympic Games.²³ San Francisco Arts & Athletics, Inc., a nonprofit California corporation, had promoted the Gay Olympic Games in 1982 by using Olympics on its letterheads and mailings and on merchandise.²⁴

Olympics, under the *London Olympic Games and Paralympic Games Act 2006*.

²² See Epstein, *supra* note 11, at 330 (referencing in note 75, *United States Olympic Comm. v. Intelicense Corp., S.A.*, 737 F.2d 263 (2d Cir. 1984) (affirming a permanent injunction against Intelicense, a Swiss corporation, and its sublicensee, International Sports Marketing, Inc. (ISM), a Vermont corporation, to use, market, and sublicense within the United States the official pictograms of the International Olympic Committee (IOC) without the consent of the USOC); *compare* *Stop the Olympic Prison v. United States Olympic Comm.*, 489 F. Supp. 1112 (S.D.N.Y. 1980) (holding that plaintiffs who designed and distributed a poster without charge in order to oppose state plans to convert the Olympic Village in Lake Placid into a prison after the winter games did not violate USOC's trademark rights because it was not used for the purpose of trade, or to induce the sale of goods and services); *referencing* Anita M. Moorman & T. Christopher Greenwell, *Consumer Attitudes of Deception and the Legality of Ambush* [Footnote continues on next page . . .]

Marketing Practices, 15 J. LEGAL ASPECTS OF SPORT 183, 190 (2005) (noting that the USOC is often an active litigant when protecting its rights)).

²³ *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522 (1987).

²⁴ *Id.*

After noncompliance with a cease and desist request, the USOC brought suit in federal district court sought and received a permanent injunction.²⁵ The U.S. Supreme Court held that Congress granted the USOC exclusive use of the word Olympic, and the USOC's property right in the word and its associated symbols and slogans can be protected.²⁶ This event is known today as the *Gay Games*.²⁷

In recent years, the USOC appears to have turned up its efforts to protect its intellectual property rights and prevent the unauthorized use of its marks but particularly the commercial use of the word *Olympic*. It has been noted that Oregon's *Ferret Olympics* (2005),²⁸ the rock band *Olympic Hopefuls* (2005),²⁹ and a comedy club in Chicago called the *ImprovOlympic*³⁰ were forced to change their name.³¹ The city of Seattle no longer has an *Oyster Olympics* (2007)³² eating contest, nor are there *RobOlympics* in San Francisco (a robotics competition),³³ or the *Redneck Olympics*.³⁴

While the USOC battles potential infringers, the International Olympic Committee (IOC) appears to focus its attention more on ambush marketers who attempt to

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Epstein, *supra* note 11, at 331.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 332.

³⁴ *Id.* Apparently the Redneck Olympics have changed their name to the *Redneck Games*. See SUMMER REDNECK GAMES, <http://summerredneckgames.com/2012-schedule-of-events/> (last visited Nov. 24, 2013) (offering that the events took place in East Dublin, Georgia, and included Watermelon Seed Spitting, Bobbin' for Pig Feet, Mudpit Belly Flop, and Hubcap Hurl, among other things).

associate themselves with the biennial event related to the host city of the Olympic Games. This might be due to the fact that the IOC could be more concerned with the multi-million dollar investments its sponsors pay for the rights to associate themselves with the Games.³⁵

B. International Examples: Ambush Marketing

The IOC has exclusive rights to the five interlocking rings under the Nairobi Treaty of 1981.³⁶ This treaty allows the IOC to have exclusive rights to the Olympic symbol, flag, motto, anthem and the games themselves.³⁷ Associating oneself with The Olympic Partners program (TOP) grants exclusive marketing rights for summer and winter Olympic Games for a hefty fee averaging around \$25 million per year.³⁸ Today, the IOC requires host countries and cities such as Sochi, Russia, for example, to enact special-event legislation to curtail ambush marketing and illusory association with the Games.³⁹

³⁵ See Tripp Mickle, *IOC Ready to Raise Price of joining its TOP Program*, SPORTSBUSINESS J. (Sept. 23, 2013), <http://www.sportsbusinessdaily.com/Journal/Issues/2013/09/23/Olympics/IOC-TOP.aspx> (offering that the IOC is considering double the 4-year (quadrennium) sponsorship fee from \$100M to \$200M but also reducing the number of partners in The Olympic Partnering (TOP) program).

³⁶ EPSTEIN, *supra* note 1, 391.

³⁷ *Id.*

³⁸ *Id.*; see also Mickle, *supra* note 35.

³⁹ See, e.g., Steve McKelvey, *As Games Approach, Time to Reconsider Ambush Marketing*, SPORTSBUSINESS J. (Jan. 18, 2010), <http://www.sportsbusinessdaily.com/Journal/Issues/2010/01/20100118/Opinion/As-Games-Approach-Time-To-Reconsider-Ambush-Marketing.aspx> (discussing how the ambush marketing “orgy” that took place in Atlanta’s 1996 Olympic Games led to subsequent Olympic host sites, in this instance the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC), and questioning how extreme and obsessive measures to attempt to prevent ambush marketing might do more harm than good).

For decades, non-official sponsors of the Olympic Games have found ways to use the Olympic event platform to generate interest in its own product or service. The concept of ambush marketing and the Olympics, however, appears to have emerged from the exposure of the 1984 Los Angeles Olympics.⁴⁰ Fuji won the rights to be an official sponsor, but competitor Kodak purchased “extensive advertising” during the broadcast of the Games themselves giving the impression that Kodak was affiliated with the Games.⁴¹ Additionally, Nike aired television ads during the same Olympic Games with athletes and used the Randy Newman song *I Love L.A.*⁴² Subsequent marketing research found more consumers thought Nike was the official sponsor than Converse, the actual sponsor of the Los Angeles Olympic Games.⁴³

In 1988, Visa was the paid sponsor of the Seoul, Korea Olympic Games, but American Express used the Olympic stadium in its advertising and Visa subsequently accused American Express of ambush marketing.⁴⁴ The

⁴⁰ See Inci, *supra* note 9.

⁴¹ *Id.*

⁴² See Michael Hiestand, *Nike, Famed for Ambush Marketing, Tries New Track*, USA TODAY (July 25, 2012), <http://content.usatoday.com/communities/gameon/post/2012/07/nike-famed-for-olympic-ambush-marketing-tries-new-tack/1#.UpInWcRwq6U>.

⁴³ *Id.*

⁴⁴ See Tripp Mickle, *Visa Goes for Gold: Behind the Company's Acclaimed Program*, SPORTSBUSINESS J. (July 23, 2012), <http://www.sportsbusinessdaily.com/SB-Blogs/Olympics/London-Olympics/2012/07/visaJuly23.aspx>. (offering that the 1988 Olympics (both the Winter Games in Calgary, Alberta and the Summer Games in Seoul, Korea) also paid off nicely for Visa with its advertising campaign, “bring your Visa card, because the Olympics don’t take American Express.”); see also Rebecca Hobson, *Seven Best Olympic Ambush Marketing Ploys*, LONDON LOVES BUSINESS.COM (July 5, 2012), <http://www.londonlovesbusiness.com/business-news/london-2012-olympics/seven-best-olympic-ambush-marketing-ploys/2884.article> (offering that after American Express (Amex) lost its rights to Visa beginning in 1984, an all-out war began between the two companies that

1992 Barcelona, Spain Olympics is noted as the Olympics in which NBA star Michael Jordan had to cover up official sponsor Reebok with an American flag since he had a personal endorsement deal with Nike.⁴⁵ In 1996, Reebok paid \$40M to be the official sponsor of the Atlanta Games, but Nike bought up billboards around Atlanta thereby associating itself with the event at a much cheaper cost and becoming known as the “ambush of all ambushes.”⁴⁶

In 2010, Verizon and Subway television commercials appeared to show legitimate sponsorship of Vancouver Olympic Games, but in fact neither were official USOC sponsors.⁴⁷ In the Subway commercial, Michael Phelps swims all the way to an unnamed city in Western Canada which appears to be exactly where Vancouver is located and was characterized as ambush marketing.⁴⁸

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carried over to Barcelona (1992) and Lillehammer, Norway (1994) in which Amex fought back in its advertising by offering that American’s did not need visas to travel to Spain and Norway, respectively.

⁴⁵ See, e.g., Jared Wade, *How the Dream Team Foreshadowed the Olympics’ Sponsorship Controversy*, RISK MGMT. (Aug. 22, 2012), <http://www.rmmagazine.com/2012/08/22/how-the-dream-team-foreshadowed-the-london-olympics-sponsorship-controversy/>; see also Peter Hartlaub, *The Top-8 Olympic Marketing Screw-ups*, NBC NEWS.COM (Aug. 6, 2008), <http://www.nbcnews.com/id/26001006/#.UpJWDMRwq6U>.

⁴⁶ See Abram Sauer, *Ambush Marketing: Steals the Show*, BRAND CHANNEL (May 27, 2002), http://www.brandchannel.com/features_effect.asp?pf_id=98.

⁴⁷ See, e.g., Stuart Elliott, *Subway Takes Ambush Marketing Complaints in Stride*, N.Y. Times (Feb. 11, 2010), http://mediadecoder.blogs.nytimes.com/2010/02/11/subway-takes-ambush-marketing-complaints-in-stride/?_r=0.

⁴⁸ *Id.* One wonders if it mattered to consumers that swimming is a summer Olympic event and not a winter sport.

More recently, in 2012, Nike utilized an effective television advertisement campaign *Find Your Greatness* which praised the efforts of anonymous athletes in other towns named London around the world, thereby associating Nike with London towns though Nike had no sponsorship with the London Games themselves.⁴⁹ Meanwhile, Nike competitor Adidas had paid millions for its *official* status for the London Games.⁵⁰ Nike's ambush marketing advertising campaign proved extremely successful.⁵¹

However, in order to crack down on ambush marketing, special legislation was enacted by the British government as part of its bid requirement to host the Games entitled *The London Olympic Games and Paralympic Games Act 2006* and contained provisions to attempt to restrict ambush advertising at the 2012 Summer Olympics through the efforts of the London Organising Committee of the Olympic and Paralympic Games (LOCOG).⁵² For example, it demanded the removal of advertisements for the betting company Paddy Power which announced that it was "The Official sponsor of the largest athletics event in London this year! There you go, we said it (ahem, London France that is)," referring to an egg-and-spoon race in London, a village in France.⁵³ LOCOG subsequently

⁴⁹ See Mark Sweney, *Olympics 2012: Nike Plots Ambush Campaign*, GUARDIAN (July 25, 2012), <http://www.theguardian.com/media/2012/jul/25/olympics-2012-nike-ambush-ad>.

⁵⁰ *Id.*

⁵¹ *Id.*; see also Mallory Russell, *Nike Ambushes Adidas on World Stage...Again*, AD AGE (July 21, 2012), <http://adage.com/article/the-viral-video-chart/nike-ambushes-adidas-world-stage/236400/> (demonstrating that the Nike advertisement led the online video views).

⁵² See Esther Addley, *Olympics 2012: Branding 'Police' to Protect Sponsors' Exclusive Rights*, GUARDIAN (Apr. 3, 2012), <http://www.theguardian.com/sport/2012/apr/13/olympics-2012-branding-police-sponsors>.

⁵³ See Grady & McKelvey, *supra* note 2.

relaxed its position.⁵⁴ Still, LOCOG “police” did force a real estate agency to remove a window display from simulating Olympic rings, and also a butcher’s sausages that were shaped in the form of the Olympic rings had to be removed as well.⁵⁵

D. Rule 40

One way in which the Olympic Games attempts to curtail ambush marketing is through Rule 40 of the Olympic Charter which actually forbids athletes from taking part in advertising for anyone except sponsors during a Games.⁵⁶ Rule 40 of the Olympic Charter reads,

“Except as permitted by the IOC Executive Board, no competitor, coach, trainer or official who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games.”⁵⁷

In fact, the discussion of Rule 40 appeared to reach a new high during the London Olympics. With the advent of social media such as Twitter and Facebook, Olympic athletes in London expressed their disappointment and

⁵⁴ See Maisie McCabe, *LOCOG U-turns Over Paddy Power ‘London’ Ads*, MARKETING MAG.(July 25, 2012), <http://www.marketingmagazine.co.uk/article/1142903/locog-u-turns-paddy-power-london-ads>.

⁵⁵ See Grady & McKelvey, *supra* note 2. One wonders if attempts to curtail Olympic-related ambush marketing really only affects those who do not have the financial means to fight in court such as small sausage-business owners.

⁵⁶ OLYMPIC CHARTER, http://www.olympic.org/Documents/olympic_charter_en.pdf (in force as from 9 September 2013) (last visited Nov. 24, 2013).

⁵⁷ *Id.*

disagreement with the International Olympic Committee (IOC) policy.⁵⁸

The impact of Rule 40 is that Olympic athletes who have sponsorship deals with non-official sponsors are prohibited from publicly acknowledging or endorsing their personal sponsors during the time period immediately surrounding the Games.⁵⁹ For the London Olympics, Rule 40 was in place from July 18th until three days after Closing Ceremonies, August 15th.⁶⁰

The stated reason for requiring Rule 40 was to “protect against ambush marketing; prevent unauthorized commercialization of the Games; and to protect the integrity of athletes’ performances of the Games.”⁶¹ However, in London 2012, was it realistic in the second decade of the 21st century to attempt to prevent the Olympic athletes themselves from being featured in advertisements during the time of the Olympic Games? A penalty for a violation could have been disqualification

⁵⁸ See, e.g., Ryan Quinn, *With ‘Rule 40,’ Greedy IOC Shows It Cares More About Its Sponsors Than Olympic Athletes*, SB NATION (Aug. 1, 2012), <http://www.sbnation.com/london-olympics-2012/2012/8/1/3213875/with-rule-40-greedy-ioc-shows-it-cares-more-about-its-sponsors-than>; see also Staff Reports, *Athletes Tweet Demands for Change to IOC Rule*, USA TODAY (July 30, 2012), <http://usatoday30.usatoday.com/sports/olympics/london/story/2012-07-29/olympic-athletes-tweet-demand-for-change/56581574/1> (noting that as a matter of outrage, numerous popular athletes tweeted, “I am honored to be an Olympian, but #WeDemandChange2012.” Including U.S. track runners Sanya Richards-Ross, Nick Symmonds, Lauryn Williams, Marquise Goodwin, Trey Hardee and numerous others).

⁵⁹ See, e.g., Kelly Whiteside, *After London, Athletes Still Pushing for Rule 40 Change*, USA TODAY (Aug. 23, 2012), <http://usatoday30.usatoday.com/sports/olympics/london/story/2012-08-23/olympics-rule-40-michael-phelpso-lashinda-demus/57225924/1>.

⁶⁰ See Matt Harvey, *What is Rule 40 and How will it Affect Skiers in 2014?*, FREESKIER.COM (Feb. 13, 2013), <http://freeskier.com/stories/what-is-rule-40-and-how-will-it-affect-skiers-in-2014>.

⁶¹ *Id.*

from the Games themselves.⁶² Taking the Rule to a higher level, the most recently updated *IOC Social Media Guidelines* (“Guidelines”) now declare that Olympic athletes cannot promote any brand, product or service within a posting, blog or tweet or otherwise on any social media platforms or on any websites without prior written approval of the IOC or National Olympic Committee (NOC).⁶³

IV. Sochi 2014

A. Ambush Marketing Concerns Revisited

The 2014 Winter Olympics start February 7 in Sochi, Russia and are officially known as the XXII Winter Olympics.⁶⁴ The Sochi Winter Olympics have ten

⁶² See Martin Rogers, *American Athletes Lead Revolt Against IOC Ban on Social Media Use to Promote Sponsors*, YAHOO SPORTS (July 30, 2012), <http://sports.yahoo.com/news/olympics--u-s--leads-revolt-against-ioc-ban-against-social-media-use-to-promote-sponsors.html>.

⁶³ 2013 INFORMATION FOR ATHLETES, THEIR AGENTS AND NGBs, *USOC* (June, 2013), available at <http://www.teamusa.org/For-Athletes/Athlete-Ombudsman/Games-Information> (last visited Nov. 24, 2013) (hereinafter collectively “Guidelines” in text or GUIDELINES in footnotes and discussed further, *infra*. Under “Frequently Asked Questions,” for example, the GUIDELINES state, “Q: Can I post about my sponsors during the Olympic Games? A: NO; Unless they have obtained the prior written approval of the IOC or their NOC, Participants must not, either promote any brand, product or service on their social media pages, blogs or personal websites, or use social media and internet in a manner that creates or implies any association between the Olympic Games or the IOC and a third party, or its products and services. All competitors, coaches, trainers and officials must [Footnote continues on next page . . .] ensure that their activities on the internet and social media comply with the requirements of Rule 40 of the Olympic Charter and the related instructions issued by the IOC, Sochi 2014 and their respective National Olympic Committees.”).

⁶⁴ See ORGANIZING COMMITTEE OF THE XXII OLYMPIC WINTER GAMES AND XI PARALYMPIC WINTER GAMES 2014 IN SOCHI, <http://www.sochi2014.com/en/> (last visited Nov. 24, 2013) (noting that the Paralympic Games are March 7-16).

Worldwide Olympic Partners including Atos, Coca-Cola, Dow Chemical, General Electric (GE), McDonald's, Omega, Panasonic, Procter & Gamble (P&G), Samsung and Visa, and it appears that general concerns over ambush marketing are once again warranted.⁶⁵

For example, in the *Sochi 2014 Ambush Marketing Report* by the Global Language Monitor (GLM), the company found that many non-affiliated brands are among the top rated on GLM's Brand Affiliation Index (BAI) which measures the perceived relationship between the Olympics and the particular brand. In its September 2013, report, GLM noted that 10 of the top 15 spots were occupied by non-affiliated (i.e., non-official) marketers.⁶⁶ The company analyzed how often brand names were linked to the Olympics in global print and electronic media including Twitter.⁶⁷

In October 2013, Pennsylvania-based lighter company Zippo became involved in the ambush marketing discussion after it was revealed that it had to remove an image from its Facebook page in which a picture of a Zippo product was shown being used to reignite the Olympic Flame for Sochi 2014 after it went out in Russia.⁶⁸ Zippo

⁶⁵ See *The Ambush Marketing Race to the Sochi Olympics is On!*, GLOBAL LANGUAGE MONITOR (Aug. 30, 2013), <http://www.languagemonitor.com/olympics/the-ambush-marketing-race-to-the-sochi-olympics-is-on/>.

⁶⁶ *Id.*

⁶⁷ See Alan Baldwin, *Sponsors in Branding Battle for Sochi*, GLOBAL POST (Aug. 30, 2013), <http://www.globalpost.com/dispatch/news/thomson-reuters/130830/sponsors-branding-battle-sochi>.

⁶⁸ See Duncan Mackay, *Zippo Drop Cheeky Olympic Torch Facebook Campaign after Accused of Ambush Marketing*, INSIDE THE GAMES (Oct. 8, 2013), <http://www.insidethegames.biz/olympics/winter-olympics/2014/1016390-zippo-drop-cheeky-olympic-torch-facebook-campaign-after-accused-of-ambush-marketing>.

was warned by Sochi officials that this violated ambush marketing rules involving Olympic marketing.⁶⁹

B. Sochi and Social Media: IOC Guidelines

As mentioned, as of June, 2013, the IOC published its most recent Guidelines for athletes, all participants and other accredited persons at the Olympic Games.⁷⁰ The guidelines apply from the “opening of the Olympic Villages on 30 January 2014, until the closing of the Olympic Villages on 26 February 2014.” Naturally, the Guidelines remind these same individuals that postings, blogs and tweets “should at all times conform to the Olympic spirit and fundamental principles of Olympism as contained in the Olympic Charter, be dignified and in good taste, and should not be discriminatory, offensive, hateful, defamatory or otherwise illegal and shall not contain vulgar or obscene words or images.”⁷¹

The Guidelines also, however, also demonstrate that the IOC has concern-and apparently control-over its intellectual property such as the Olympic symbol (the five interlaced rings),⁷² the word Olympic and Olympic-related words.⁷³ Guideline 6 (Accredited Media) and 7 (Olympic Properties) establish that as long as the rings and words related to Olympic are used as a factual reference only, then there is no violation of the Guidelines. However, the word Olympic and other Olympic-related words may not be “associated with any third party or any third party’s

⁶⁹ *Id.* (noting that Zippo apparently also started #ZippoSavesOlympics on Twitter as well).

⁷⁰ GUIDELINES, *supra* note 63.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

products or services.”⁷⁴ Clearly, this is an attempt to curtail ambush marketing efforts by sponsors (through athletes) or by athletes (for their sponsors) during the Olympic Games themselves.

Guideline 9 (Domain Names/URLs/Page Naming/Applications) attempts to restrict how internet domain names can be utilized by mandating that the word Olympic or Olympics (and similar words) may not be used with prior approval by the IOC.⁷⁵ Meanwhile Guideline 10 (Links) actually encourages participants and other accredited persons to link their own blogs, websites and other social media to the official site of the Olympic Movement (www.olympic.org), the Sochi Olympic Games (www.sochi2014.com) and the official site of the relevant NOC such as the United States Olympic Committee (www.usoc.org).⁷⁶

In the event the IOC believes there has been a violation of its social media policies, the possible penalties are found under Guideline 12 (Infringements). In sum, the IOC may withdraw the accreditation of any person accredited at the Olympic Games and without notice.⁷⁷ Guideline 12 goes further by stating,

“The IOC reserves all its right to take any other appropriate measures with respect to infringements of these Guidelines, including issuing a Take Down Notice, taking legal action for damages, and imposing other sanctions. Participants and Other

⁷⁴ *Id.* Guideline 7 also states, “Participants and Other Accredited Persons must not use other Olympic Properties such as NOC [National Olympic Committee] and/or Sochi 2014 emblems or mascots on their postings, blogs or tweets on any websites, unless they have obtained the prior written approval of their relevant NOC and/or Sochi 2014.”

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

Accredited Persons may also be subject to additional guidelines and sanctions in respect of social media, blogging and internet, from their relevant NOC.”⁷⁸

One wonders how Guideline 12 will actually be enforced. For example, would an Olympic medalist have their medal revoked if they post a tweet thanking their non-official, third-party sponsor? Only time will tell.

C. USOC Athlete Endorsement Guidelines

The USOC in its *USOC Athlete Endorsement Guidelines* (“Endorsement Guidelines”) reminds U.S. participants that it “will not tolerate ambush marketing by companies that are not Sponsors.”⁷⁹ It states under *Endorsement Contract with Unaffiliated Third Party*,

“In order to ensure that unaffiliated third parties (those who have no official relationship with the USOC or “Non-Sponsors”) do not create the false impression that they are a Sponsor of the Games and/or Team USA, athletes endorsing Non-Sponsors should make certain that advertising, web sites, promotions, etc. focus on the athlete and his/her achievements rather than on the Olympic or Paralympic Games (“Games”). The USOC will not tolerate ambush marketing by companies that are not Sponsors. Non-Sponsors may not use

⁷⁸ *Id.*

⁷⁹ 2013 INFORMATION FOR ATHLETES, THEIR AGENTS AND NGBs, *USOC* (June, 2013), available at <http://www.teamusa.org/For-Athletes/Athlete-Ombudsman/Games-Information> (last visited Nov. 24, 2013) (hereinafter collectively as “Endorsement Guidelines”). “The USOC will not tolerate ambush marketing by companies that are not Sponsors.” Note that this information is found in the same pdf file as GUIDELINES discussed *supra* note 63.

OLYMPIC, PARALYMPIC, SOCHI 2014, RIO 2016 or other Marks in any commercial context without the USOC's permission before, during or after the Games.”⁸⁰

These Endorsement Guidelines also discuss similar rules related to non-official sponsors for fundraising,⁸¹ web sites,⁸² Olympic and Paralympic Footage,⁸³ and even Philanthropy efforts.⁸⁴ The phrase ambush marketing is actually used.⁸⁵ Finally, if there are any questions or concerns, the USOC encourages athletes to contact John Ruger, the Athlete Ombudsman, who is authorized to advise athletes of their rights in accordance with the Ted Stevens Olympic and Amateur Sports Act.⁸⁶

V. Conclusion

The purpose of this article was to present the fundamental legal environment surrounding the concept of ambush marketing in the particular context of the Olympics. In the U.S., the Lanham Act is the primary law used in the context of ambush marketing and trademark issues in the real world. The World Intellectual Property Organization (WIPO) has been important in the fight against those who register domain names in bad faith in the virtual world. The United States Olympic Committee (USOC) has been effective in curtailing the use of the word *Olympic* without prior authorization.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

The London Olympics of 2012 presented new challenges in attempting to prevent ambush marketing efforts, but when Olympic athletes took their sponsorships and ideas to social media platforms such as Twitter, it became apparent that Rule 40 of the Olympic Charter might be a bit ambitious yet out of step with the real world of quickly changing times and technology. It remains to be seen how effective both the USOC is with regard to potential infringements by its athletes and how the Sochi Olympic Games enforce the IOC's Rule 40 policy against ambush marketing whether it appears print, on television, or on the world wide web of instantaneous commentary in 140 characters or less. One wonders if the price to be paid to enforce the Social Media Guidelines and Athlete Endorsement Guidelines is really worth the price.