
INTERVENTION

Predicting the Future for Rio 2016: Legal Issues in Sponsorship, Ambush Marketing, and Social Media

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Against the backdrop of London 2012's highly successful brand protection efforts, Rio 2016 promises to add additional layers of legal uncertainty, with strict Brazilian Olympic laws and a relaxed version of Rule 40 to bolster their Games-time enforcement efforts. Predicting the future for these Olympic legal issues is based on seeing similar marketing campaigns and tactics used at previous Games and by observing how previous organizing committee's relied upon the host country's special legislation to respond to ambush marketing efforts. The author outlines how these legal issues in sponsorship are likely to be managed at Rio 2016.

Keywords: Intellectual property; Ambush marketing; Olympic legislation; Social media; Sport Law; Sport Marketing and Sponsorship

With the 2016 Summer Games in Rio de Janeiro coming into focus, the epic battle over marketing and sponsorship rights is just heating up. Against the backdrop of London 2012's highly successful brand protection efforts, Rio 2016 promises to add additional layers of uncertainty, with strict Brazilian Olympic laws and a relaxed version of Rule 40 bolstering their game-time enforcement efforts. What is most interesting in predicting how Rio's Games will play out in the advertising and social media space is how early marketing campaigns have helped form initial insights and impressions about how the 'look' of the Games in terms of enforcement and brand policing will be viewed from different perspectives by official (TOP) global sponsors, event organizers, athlete endorsers, and, of course, non-affiliated brands (whom many Olympic officials would deem 'ambush marketers'). Each Olympic stakeholder group has different measures of success in mind for Rio 2016 and initial examples have provided a window into their strategies to create increased awareness for both brands and athletes. Yet, just as intense as the competition on the field of play is the marketing competition off the field for a legal leg up in creating an association (whether paid for or not) with the vaunted Rings. The purpose of this intervention, therefore, is to predict how the legal and sponsorship issues will play out during Rio 2016 by analyzing the laws in place as well as published guidelines relating to marketing issues and social media, and compare how early marketing campaigns by TOP sponsors and non-official brands are utilising the nuances of the published rules to their own advantage. Once the Games are underway and the marketing and legal battle unfolds, a follow-up piece can investigate the effectiveness of Rio's legal and regulatory efforts to protect their commercial rights.

The academic challenge in this predictive endeavour, however, is two-fold: the predictions that follow are based on seeing similar marketing campaigns and tactics used time and again at previous Games, most recently at London 2012 and Sochi 2014, and by observing how previous organizing committee's relied upon the host country's special legislation to respond to ambush efforts (Ellis, Scassa, & Seguin 2011). Notably, each Olympics comes with a new set of laws put in place in the host country for that city's Games. While similar to previous iterations, including prohibitions against ambush marketing and reserving the exclusive use of the IOC's intellectual property for official sponsors, the enforcement approach for each Games differs enough, making it difficult to predict how vigilant the brand protection efforts will be until the Games begin and marketing efforts get underway. This variance occurs despite event organizer's ubiquitous assurances of aggressive enforcement to protect the Olympic brand and preserve the essential revenue from official sponsors. The second challenge in making such predictions is a bit more fluid: forecasting how the local culture of the host country and its residents will influence the legal response, to either reign in or tolerate on-site (or near on-site) marketing efforts by non-sponsors trying to associate with the Games. Thus, there are both legal and cultural dimensions. The ultimate question for Rio 2016 is: with strict laws in place, will global brands choose to stay 'clearly within the lines' or exploit new legal gray areas where ambush marketers typically thrive?

Evolution of Olympic Legal and Sponsorship Issues

The Olympic Games have become 'the premier event in terms of attractiveness for sport sponsorship and ambush marketing' (Chavanat & Desbordes 2014: 155). Ambush marketing occurs when businesses that are not official sponsors conduct advertising and promotional activities that seek to capitalize on the event's goodwill, reputation and popularity (Grady & McKelvey 2008). Pejoratively referred to as 'guerilla marketing,' ambush marketing in the context of the Olympic Games and the resulting prevention efforts are not new phenomena. What has evolved over time, however, is 'the nature of ambush marketing seems to have changed from a direct assault on the event, to more subtle ambushing techniques, also more difficult to predict' (Vigar-Ellis & Hall 2014: 379). Given the Olympic marketing landscape shift, social media has helped to create the perfect storm to fuel ambush marketing activity at an amplified level. Historically, with each successive Olympic Games, event organizers have implemented stricter measures to ensure Olympic sponsors are protected from ambush activities (McKelvey & Grady 2008). Now integrated as part of the host city bid requirements to protect the commercial rights of the Games, event organizers and Olympic host countries increasingly rely upon enacting event-specific legislation to close any newfound legal loopholes. Whilst enactment and applicability of such legislation has often proved to be contentious (James & Osborn 2011), the most recent Olympic host cities' marketing and legal departments seem undeterred in pursuing legal avenues and remedies integrated with consumer and community education efforts as part of a comprehensive brand protection plan. Yet, as social media adoption continues to advance at rapid pace and tech-savvy millennials turn to mobile devices to consume Olympic sports in real-time, event organizers continue to face an uphill battle.

Lessons Learned from London 2012

In the run up to London 2012, LOCOG's heavy-handed efforts to sanction butchers (Longman 2012) and flower shops were skewered by critics in the legal and advertising industries and mocked in the global press, all the while competitors to TOP sponsors, notably Nike, seemed to continue their efforts largely unfettered. Yet, as the Games approached, LOCOG set the tone that infringement of Olympic intellectual property laws, no matter how trivial, would not be tolerated, which likely created a strong deterrent effect for brands still debating about creating a marketing campaign that may be perceived as ambush marketing. In fact, still somewhat astonishingly, two LOCOG lawyers accompanied the torch relay, on the lookout for possible infringements and ambush marketing. While some top-name brands, such as Nike managed to 'Find Greatness' (Sweney 2012) during London 2012, LOCOG's efforts were viewed as effective in controlling ambush marketing. Many speculated as the Games concluded what key learnings the Rio 2016 organizers would take away from London's no-nonsense approach and wondered openly whether such a heavy-handed approach to brand policing could succeed in Brazil?

Rio 2016 Legislation

Brazil recently amended its 2009 Olympic Act to protect official event sponsors from ambush marketing and give broad enforcement powers to organizers ('Brazil ready for Olympics. . .,' 2016). The changes took effect on 10 May 2016 and provide organizers with remedies for the two main types of ambush marketing: ambush marketing by association and ambush marketing by intrusion. In the Olympic context, ambush marketing by association occurs when advertisers attempt to create a link directly or indirectly that implies an association between the event and the brand, although this type of ambushing does not require the consumer to be misled as to sponsorship status (Johnson 2011). London 2012's Olympic law which created a right of association is perhaps the best example regulating the modern Olympic marketing space. Most ambush activity is of this type because it is conducted off-site, on social media, or through television or print advertising. Ambush marketing by intrusion, on the other hand, focuses on attracting additional publicity to the ambusher's brand beyond what ordinary promotional efforts would achieve (Johnson 2011). This type of ambush marketing is less likely to occur because of proper on-site brand policing efforts, such as prohibiting promotional giveaways near Olympic venues in public spaces. Like London 2012's version, the new Olympic law criminalizes ambush marketing and is expected to be heavily enforced. However, the main effect of the law is likely deterrent, serving as the legal basis for 'cease and desist' letters. Based on previous Games, one can expect the Brazilian Olympic law to be rarely invoked, if at all, in any judicial proceedings once the Games have begun and the focus shifts to the competition.

What's Changed (And Why it Should Matter)

A confluence of factors has seemingly changed the Games and the ambush marketing outlook for Rio 2016. The key themes identified below create new opportunities for ambush activity and make legal regulation of the practice more of a challenge than at previous Games. While many of the Olympic brand protection goals remain largely unchanged from one Games to the next, for Rio 2016, look for unexpected influences, such as vocal athletes on social media, to shift how event organizers respond to suspected ambush marketing activity in real time. The following themes will likely help shape Rio 2016's roadmap.

Increased Athlete Activism and Continued Resistance to Sponsorship Restrictions

London 2012 saw many American track athletes use the #wedemandchange2012 (From staff reports 2012) to protest what they believe was an unfair rule that limited how and when they could be marketed if their sponsor was not an official sponsor. IOC Rule 40 created an Olympic 'blackout' period to ensure that only TOP sponsors could feature

Olympic athletes in ads. This exclusivity came at a high public relations price as top Olympic officials were forced to defend the rule during the peak of competition in London. For Rio 2016, Rule 40 has been relaxed to give athletes more freedom to continue marketing efforts by non-official sponsors through the Games period, as long as no direct or indirect Olympic connection is created (Team USA 2015). The goal in relaxing Rule 40 for Rio 2016 was, in part, to provide new sponsorship flexibility for Olympic stars and create new opportunities for athletes in need of sponsors. What has occurred, instead, is the proliferation of early advertising campaigns by well-established global brands closely linked to the high-profile athlete endorsers. For example, while Under Armour ran a very sophisticated advert (Nudd 2016) showing Michael Phelps' training regimen pre-Rio, neither Under Armour nor Phelps needs additional brand awareness in the global sport marketplace. Instead, it is the lesser known athletes, for which a gold medal in Rio will be their commercial launching point, that relaxed Rule 40 is most needed. Furthermore, come Games time, will these new 'young' faces who are always connected to social media be able to acknowledge and thank those sponsors who helped them get to this point? The Rule 40 guidelines, as published for athletes in the United States (Team USA 2015) and Great Britain (Team Great Britain 2015), seem to largely foreclose this opportunity. Similar to enforcement efforts at London 2012, the immediate public relations risk for Rio 2016 organizers is addressing the issue of athletes using the Olympic pulpit to again protest that perceived unfairness of Rule 40. This also has the potential to put the spotlight back on increased commercialism of the Games, likely an unpopular topic among Olympic purists.

Social Media Will (Still) be the Battleground for Ambush Marketing

Ambush marketing via social media, known as 'social ambush' (Chavanat & Desbordes 2014) poses the most obvious threat, as it is the hardest to monitor and control. Advertising laws, such as those in place to regulate Rio 2016 billboards and digital marketing have geographic boundaries within the host country, yet social media reaches a global audience and is incredibly difficult to regulate. The ability of the IOC and NOCs to enforce these laws and Olympic laws and IOC bylaws regarding adverts that appear well beyond the borders of Brazil seems futile and challenges even the most stringent policy enforcement. With on-site social media policies that place strict prohibitions on competing athletes and accredited personnel from using social media for commercial purposes (except seemingly when that brand is a TOP sponsor), there is an implied expectation that athletes will follow the rules or else risk facing potentially severe sanctions that ultimately could jeopardize their eligibility. Yet, the potential for a 'thank you' tweet by Michael Phelps acknowledging Under Armour's role in his success is perhaps the one thing that might keep the Olympic marketing team up at night. While rival brands (to TOP sponsors) likely will not risk their athletes' eligibility by running afoul of clear social media prohibitions such as through congratulatory tweets, the Olympic rules clearly don't apply to the casual fan who can use their social media posts to help reinforce Olympic connections between athletes and global brands. Perhaps most unpredictable and hardest to manage, expect social media-savvy Olympians to push the envelope and test the Rule 40 boundaries through tweets, Snaps, or Instagram posts. It is the athletes, not their sponsors, who will find any loopholes that may exist in these newfangled rules and exploit the loopholes in the thriving social media space.

TOP Sponsors Initial Responses Will Help Drive the Overall Enforcement Approach

Once Rio's Games are underway, if ambush activity is beginning to infringe on official sponsors' exclusive space, look for TOP sponsors to exert pressure on Rio organizers to clamp down on the associations being created. In light of concerns about Rule 40 implementation, what might seem benign to the casual fan when seeing an Under Armour advert featuring Phelps is likely to cause TOP sponsors to immediately demand a more stringent approach if they feel Olympic associations are being made. Timing of the adverts will be key to determining whether sponsors feel a timing advantage is being achieved by allowing adverts to run during the Games period by those who didn't purchase official sponsorship rights. The current 'wait and see' approach pre-Games likely shifts to one of urgency if TOP sponsors feel the thematic space has now become free for all to take advantage.

Keeping all Olympic Stakeholders Satisfied Continues to be a Challenge

The Olympics faces a persistent challenge: balancing the rights and interests of all Olympic stakeholders, many of whom have divergent needs. Whilst TOP sponsors continue to exert pressure for 'more' enforcement, now using special laws enacted for each event, other stakeholders, such as local businesses, cry foul. If Olympic athletes, the best ambassadors for the Olympic brand, are implicitly (and bizarrely) accused of helping foster ambush marketing, this will create renewed backlash and fuel new criticisms about Olympic over-commercialization. As each Games approaches, the big-picture law and policy issues seem to blend with real-time business decisions, ultimately shaping that city's overall success (or failure) and resulting Olympic legacy. Watching how Rio 2016's organizers strike the proper balance in managing these delicate competing interests is perhaps the best show around this summer.

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Competing Interests

The author declares that they have no competing interests.

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