

Sochi 2014: An analysis of ambush marketing

On the eve of this year's Sochi Winter Olympics (the "Games"), the International Olympic Committee ("IOC"), its national affiliates and event-associated marketers, broadcasters and sponsors have begun to brace themselves for the inevitable wave of ambush marketing that will accompany the event. Indeed, it has already been reported by Global Language Monitor, a leading media-tracking company, that in the six months leading up to the Games, 10 of the top 15 companies ranked by brand affiliation with Sochi are non-Olympic Partners.¹ So, we must ask, what safeguards have been put in place to clamp down on brands looking to take advantage of the Olympics' popularity, and, despite these safeguards, what attempts have already been made by brands to affiliate themselves with the event?

Concept

Ambush marketing is, in short, an attempt by non-official sponsors to capitalise on an event by deriving commercial benefit from an association with it. By doing so, such non-official sponsors are able to obtain much of the brand equity of the event without contributing to its costs. The benefits are obvious, Paul JJ Payack, President of Global Language Monitor noting in a recent interview that events such as

*"the Olympics have the ability to make, break, energize, or hasten the decline of global brands. Successfully affiliating one's brand with the Olympics can result in billions of dollars in revenue differential."*²

It is therefore not surprising that the IOC and its affiliates have sought to protect true Olympic sponsors by introducing safeguards that limit ambush marketing opportunities.

National safeguards

Olympic host cities are required to guarantee that, before the start of their Olympic Games, legislation is passed to reduce the opportunity for ambush marketing as far as possible and to provide effective response mechanisms and the ability to impose appropriate sanctions against those indulging in it.

To this end, a Sochi-specific statute was enacted in Russia in December 2007, elaborately entitled (in translation):

"Federal Law No. 310-FZ on the organization and holding of the XXII winter Olympic games and XI winter Paralympics games of 2014 in the town of Sochi, on the development of the town of Sochi as a mountain climate health resort and on amending certain legislative acts of the Russian Federation" (the "2007 Law").

In order to combat the threat of ambush marketing, the 2007 Law includes³:

- a ban on unauthorised advertising within a one kilometre radius of Olympic venues during a period beginning one month before the Games' opening ceremony and ending one month after the Paralympic Games' closing ceremony (the "Restricted Period");
- a ban during the Restricted Period on any "advertising on sports-wear, accessories or sports equipment to be used by athletes or other participants in the Olympic Games and the Paralympic Games", save to the extent permitted by the IOC's Olympic Charter;
- a statement that any material that gives the false impression that a brand is associated with the Olympics or Paralympics will constitute unfair competition and be challengeable under Russian "antimonopoly legislation"; and

- a list of terms and symbols, the use of which by an unauthorised business will be deemed unlawful if that use creates an "impression that [the business is] associated with the Olympic Games and/or the Paralympic Games". These protected terms and symbols include the words "Olympic", "Olympiad", "Sochi 2014", "Olympian" and "Olympic Winter Games".

Supranational safeguards

Alongside Sochi-specific legislation, the Olympic movement is also protected in the Black Sea coast city by existing supranational regulation, in particular Rule 40 of the Olympic Charter.

Rule 40 is a restriction specifically designed to protect against ambush marketing and prevent unauthorised commercialisation of the Olympic Games. The provision prevents athletes competing in the Olympics (as well as coaches, trainers and officials) from appearing in advertising shortly before, during and after the Games:

*"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 performance to be used for advertising purposes during the [Restricted Period]."*⁴

Importantly, "advertising purposes" for the purposes of Rule 40 includes all forms of commercial exploitation and goes as far as to ban athletes from mentioning their individual sponsorship deals on social media platforms and wearing kit branded by anyone other than their team's official sponsor. Athletes who do not comply with Rule 40 face IOC and/or National Olympic Committee sanctions, potential penalties including fines and/or disqualification from the Games.

It should be noted, however, that the Rule 40 prohibition is not absolute; the IOC allows official sponsors, broadcasters and licensees to use participants and competitors in advertising during the Games. What is more, Rule 40 does not apply to Olympians who have competed in previous Olympics but are not participating in the Games at hand.

Campaigns

Russian officials will undoubtedly have been tasked with monitoring Sochi advertising in the lead-up to and during the Games. Indeed, monitoring is likely to emulate that at the London Olympic Games in 2012, when over three-hundred "brand police" were reportedly charged with combatting ambush marketing.

Nonetheless, despite brands' awareness of such monitoring and the threat of enforcement action, they and their agencies continue to be imaginative in their advertising methods and have already managed to gain a degree of publicity in relation to the Games. Of particular note are the 2013 campaigns of the Zippo Manufacturing Company and Nike, neither of whom are official sponsors of the 2014 Winter Olympics.

(a) Zippo

In October 2013, Zippo launched a social media campaign declaring "#ZippoSaves Olympics", after the publication of photographs and video shorts showed the relighting of the Olympic Torch using a Zippo lighter. The Torch had reportedly been extinguished by a gust of wind whilst being carried through the Kremlin, despite being designed to survive freezing temperatures and stay alight under water.⁵ Following contact from Olympic officials, Zippo removed the campaign.

(b) Nike

Nike has long been known for its creative marketing strategies when it comes to international sporting events. For instance, during the 1996 Athens Olympics, the brand bought up a significant proportion of the billboard space around the venues and built a Nike Village alongside the athlete's village. Nike also handed out branded flags to spectators, which ultimately had a greater visual impact than the footwear of official sponsor Reebok.

In November 2013, some three months before the opening ceremony, Nike launched its "Play Russian" campaign, depicting Russian winter sports stars Alexander Ovechkin, Denis Leontyev, Egor Kaldikov and Adelina Sotnikova overcoming the harsh Russian winter for the love of their sports.⁶ The timing of the launch and its theme seemed set to provoke suspicions that Nike could be construed as attempting to associate itself with the Games.

Indeed, even though the campaign made no reference to Olympic marks or terminology, it did make use of potential participants and depicted high profile sports taking place as part of the Winter Games, including ice hockey and skating.

Comment

Zippo's campaign appeared to be a good-hearted attempt to make light of an unfortunate incident. However, the brand's unauthorised and direct reference to the Games in a commercial context was inevitably considered by Sochi officials to constitute ambush marketing and a breach of Games legislation. Whether the same view would have been taken if no express reference to the Games had been made in the campaign is open to debate; the photograph and video shorts do not in themselves give the impression that Zippo is associated with the Olympics and careful editing could have ensured no "protected" marks appeared in shot.

Such an approach has proved enough for the authorities to confirm that there is no issue with Nike's campaign; the IOC has recently issued a statement to the effect that

*"there is no use of Olympic marks or terminology [in the campaign] and we do not consider [it] an infringement."*⁷

This strict, rather than purposive, interpretation of the Sochi restrictions on ambush marketing echoes the approach taken by officials to Nike's "Find Your Greatness" campaign at the London 2012 Olympics (see this author's analysis of that campaign in *Sports Law Administration & Practice*, October 2012 (Volume 19, No. 5)). Plainly a brand as sophisticated as Nike appreciates the fine line between permissible advertising and ambush marketing and, with the use of good creative campaigns, manages to consistently fall on the right side of it.

It shall be an interesting wait to see whether Russian authorities adopt the same "no reference, no breach" approach throughout the Games, or whether nods to the event in mainstream advertising, serious or in good humour, will be censured as they were at the London Olympics (see this author's analysis of the 2012 Paddy Power campaign in *Sports Law Administration & Practice*, October 2012 (Volume 19, No. 5)). Watch this space.

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