

**The “Social” Evolution of Olympic Legal and Brand Protection**

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**(including questions)**

The Olympic Games have become “the premier event in terms of attractiveness for sport sponsorship and ambush marketing” (Chavanat & Desbordes, 2014, p. 155). As ambush marketing has evolved, however, “digital disruption” (Madill, 2016) continues to threaten official sponsors’ rights and confounds event organizer’s best efforts to protect sponsors’ contractually-promised exclusivity which underpins these legal rights. As the practice has largely shifted toward social media, known as “social ambush” (Chavanat & Desbordes, 2014), ambush marketing has become more sophisticated and harder to stop. With each successive Games, innovative marketers are finding new digital ways to associate their brands and athletes with the event without paying sponsorship rights fees (Scassa, 2011). Thus, “brand protection necessarily must evolve as well as adjust to the legal setting within the host country,” and also necessitates that Olympic officials create new legislative and administrative “tools” to protect the Olympic brand (Grady, in press). Olympic officials must simultaneously address the ongoing policy and fairness concerns raised by athletes, specifically the need for added commercial flexibility to promote their personal sponsors during the Olympic period. For Rio 2016, this flexibility came in the form of a little-known Olympic bylaw known as Rule 40 of the Olympic Charter. The purpose of this presentation is to assess how changes made to Rule 40 at Rio 2016 impacted Olympic brand protection and to further examine the marketing policy issues to determine whether recent changes adequately address concerns raised by key Olympic stakeholders.

**Rule 40**

Rule 40 explicitly restricts how Olympic athletes can be used in sponsorship if their personal sponsor is not also an official Olympic sponsor and sets up an Olympic “blackout” period where advertisements by non-affiliated brands cannot use the name, image, or athletic performance to create an association with the Olympic Games (International Olympic Committee. n.d.). While ambush marketing prevention and brand protection strategies traditionally have been grounded in intellectual property laws, Rule 40 provides Olympic officials with a new legal tool. Because Rule 40 is a relatively new phenomenon in Olympic sponsorship, having been applied only since the London 2012 Games, it is important that legal scholars and practitioners in the field of sport marketing and sport management continuously evaluate the rule for its effectiveness in ensuring continued financial viability of the Olympic sponsorship model. While recent iterations of applying Rule 40’s advertising restrictions during the London 2012 and Sochi 2014 Games were rigid yet effective in limiting the content of advertising campaigns featuring individual athletes (i.e., no Olympic connection was made between the Games and non-official brands), the rigid approach to how athletes could be used in advertising during the Games created significant dissatisfaction among athletes. As a result, athletes became far less commercially valuable to brands that were not Olympic partners, due primarily to the fact their performance and Olympic connection could not be highlighted during the Games period. A tweak to Rule 40 was needed.

**Relaxing Rule 40 for Rio 2016**

Recognizing the concerns discussed above, the IOC announced plans ahead of Rio 2016 for a relaxed interpretation of the Rule 40 bylaw (Mackay, 2015; Grady, 2016). The relaxed approach would allow athletes to continue their individual sponsorship deals throughout the blackout period, even if those sponsors were not official sponsors, so long as no direct or indirect association with the Olympics was created (IOC, n.d.). The IOC and National Olympic Committee’s published guidance that outlined the process non-affiliated brands could take to apply for a waiver from Rule 40 in order to continue in-market “generic” advertising (International Olympic Committee, n.d.). “At the time the relaxation was announced, many questioned how such a drastic change would alter the legal and business complexities of the Olympic sponsorship model at the upcoming Games” (Grady, in press, para. 2). Considering the

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impact of the rule change, prominent global marketing campaigns who received Rule 40 waivers, including Under Armour's "Rule Yourself" featuring athlete Michael Phelps, demonstrated that revising the rule created increased tangible commercial opportunities for athletes to be marketed during the Games period. These opportunities would have otherwise been restricted during the blackout period under previous interpretations of the rule. Interestingly, the change also allowed Olympic organizers to exert better control and have a collaborative role in the creative process by which anticipated marketing campaigns who received waivers would come to fruition. From a strictly legal perspective, brands who received a Rule 40 waiver were also less likely to stray beyond what Rule 40 permitted, into the so-called gray areas where ambush marketing historically has thrived. In this way, Olympic officials were seen as effective in helping non-sponsor brands ensure Rule 40 compliance while also helping meet overarching brand protection goals. On social media during Rio 2016, there was much more variety in term of approach and brands were seen as being more aggressive in pushing Rule 40's boundaries (Grady & Carson, 2016). Major global brands tweeted about their athletes before every performance, clearly creating the unauthorized Olympic connections for fans and straying closer to the edge of what Rule 40 permitted.

### Impact of Rule 40 on Future Olympic Brand Protection Efforts

While application of Rule 40 has been effective for the most part in minimizing the presence of non-affiliated brands attempting to associate with the Games, two confounding problems have persisted. First, since much of the Olympic marketing activity by non-official brands has shifted toward social media, "policing Rule 40 in real time becomes difficult, as social media often defies regulation" (Grady, 2016, p. 183). Second, there has been persistent criticism by Olympic athletes and occasionally by their personal sponsors who have shared concerns that, because of Rule 40, the athletes are unable to adequately market themselves at the peak of competition when their personal brand is most valuable. This has also raised questions about the continued role and relevance of Rule 40 in managing the Olympic sponsorship digital space. Similar "enforcement" concerns were leveled by global sport marketing practitioners Cole (2015) noted that "continued ambiguity on Rule 40 in particular is creating much uncertainty, and sadly will open the doors further to ambush marketing. This will become detrimental to the interests of sponsors" (Cole, 2015, para. 5). Providing clear guidance to sponsors about Rule 40 now had become "more a case for the legal profession rather than the marketing experts to follow through with" (Cole, 2015, para. 10). Moreover, with the same waiver process for Rule 40 announced to be used for PyeongChang's Games (Fischer, 2017), the IOC may have found the proper balance in providing official sponsors with exclusive, while also providing individual athletes opportunities to capitalize on their short window of visibility on an international stage (Grady, Carson, & Ballouli, 2016). This oral presentation will provide a comprehensive analysis pertaining to the aforementioned issues.

### References

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