

## PEARLS OF LAW

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# The Rio 2016 Olympics and Intellectual Property Protection

## Background

The Olympics are here again after a four-year wait, bringing with it a good measure of excitement. Before the event, the media was inundated with a variety of reports creating more anticipation.

Due to the excitement and euphoria surrounding the Olympics, businesses often seek to associate their brands with the Olympics through various categories of sponsorship. There are worldwide Olympic partners which include well-known companies such as Coca Cola, Atos, Bridgestone, McDonalds and Visa. Some of the Official sponsors include Bradesco, Bradesco Seguros, Correios, Net. Other businesses that cannot pay high sponsorship fees often take advantage of the unique marketing opportunity the Olympics presents through ambush marketing.

## Ambush Marketing

There are two forms of ambush marketing namely: ambush marketing by association and ambush marketing by intrusion. Ambush marketing by association is characterised by companies leading the public to believe they are the official sponsors of the event by using the name, trademark or symbols of the event, for the Olympics that includes the Olympic circles, torch or the mascots, without paying the required sponsorship fees. Ambush marketing by intrusion uses a more subtle approach, as marketers try to gain exposure at the event with the aim of obtaining broadcast or media coverage. Sadly, ambush marketing has become a common feature at the Olympics. It is unethical and diminishes the revenue generated by commercial partnerships which accounts for more than 40% of the Olympic Games revenues.

The first case of ambush marketing was observed at the 1984 Olympics. In that year, Fuji was the official sponsor of the event but Kodak ran a lot of advertising campaigns suggesting that Fuji and Kodak were official sponsors of the event. American Express also used ambush marketing techniques in 1992 when it ran advertisements with this message "You don't need a visa to visit Spain". A very clever approach was used by Subway for the Vancouver Winter Olympics in 2010, there was an advert campaign with Michael Phelps the most decorated Olympian of all time swimming across North America to "where the action is this winter". McDonalds was reported to have paid close to \$200 million for the eight-year sponsorship deal. A very interesting campaign was launched by Paddy Power at the London 2012 Olympics when it erected a bill board with the words "Official sponsor of the largest athletics event in London this year! There you go, we said it". They went on to disclose that the sponsorship was of an egg and spoon race to be held in the town of London in France. Although the London Organising Committee of the Olympic Games ordered the campaign be taken down for infringing strict rules on ambush marketing of the event by brands that were not official sponsors. Surprisingly, Paddy Power was allowed to continue



its campaign.

## Intellectual property Law Protection for the Olympics

Olympic marks and symbols are protected by both local and international legislation. International legislation includes the Olympic Charter, the Nairobi Treaty, while local laws include the Olympic Act 2009, Brazilian Industrial Property Law (Law n° 9,279/96), Copyright law (Law n° 9,610/98), Consumer Defence Code (Law n° 8,078/90) and Sports Law (Law n° 9,615/98), also known as the Pelé Law, Articles 15 and 87, protect Olympic signs, and puts them under the exclusive control of the Brazilian Olympic Committee (COB).

Rule 7 of the Olympics Charter provides that: "The IOC is the owner of all rights in and to the Olympic Games and Olympic properties described in this Rule, which rights have the potential to generate revenues for such purposes. It is in the best interests of the Olympic Movement and its constituents which benefit from such revenues that all such rights and Olympic properties be afforded the greatest possible protection by all concerned and that the use thereof be approved by the IOC."

Athletes participating in the Olympics are also prevented from being used by companies for marketing purposes. Rule 40 of the Olympic Charter prohibits athletes from engaging in advertising during the games and fifteen days before or after the games.

The Nairobi Treaty also enjoins state parties to protect the Olympic symbol (five interlaced rings – against use for commercial purposes – in advertisements, on goods, as a mark, etc. – without the authorization of the International Olympic Committee) was ratified by Brazil by Decree Law 90,129/84.

As soon as Brazil won the bid to host the Olympics, it enacted specific laws to protect the marks and symbols associated with the Olympics through the Olympic Act (Law 12,035/09 of October 1, 2009). Under Article 6, federal authorities are responsible for monitoring, investigating and suppressing any unlawful acts that

violate the rights in the Olympic symbols in connection with the Rio 2016 Games. The Act broadly defines the symbols as:

- all graphically distinctive signs, flags, mottos, emblems and anthems used by the International Olympic Committee (IOC);
- the names "Olympic Games," "Paralympic Games," "Rio 2016 Olympic Games," "Rio 2016 Paralympic Games," "XXXI Olympic Games," "Rio 2016," "Rio Olympics," "Rio 2016 Olympics," "Rio Paralympics," "Rio 2016 Paralympics" and other abbreviations and variations, and also those equally relevant that may be created for the same purposes, in any language, including those in connection with websites;
- the name, emblem, flag, anthem, motto and trademarks and other symbols of the Rio 2016 Organizing Committee; and
- the mascots, trademarks, torches and other symbols in connection with the XXXI Olympic Games, Rio 2016 Olympic Games and Rio 2016 Paralympic Games.

Furthermore, the Act expressly states that unless previously and expressly authorised by the Rio 2016 Games Organising Committee or the IOC, the use of any symbols in connection with the Rio 2016 Games, whether or not for commercial use, is forbidden.

Article 8 specifically targets ambush marketing, by prohibiting campaigns carried out by non-sponsors which invoke an undue association of any products and services whatsoever, or even any company, transaction or event, with the Rio 2016 Games or Olympic Movement.

The Host Country also released the Rio 2016 Brand Protection Guidelines which states the underlying principle behind the protection of the Olympic brand as follows: "The official partners that associate themselves with the Games, mainly due to their belief in the philosophy contained in the Olympic and Paralympic ideals, will add great value to the construction and strengthening of the brands, products and services. Accordingly, it is extremely important to ensure the partners the right to associate themselves with the Games and preserve

the emotional and commercial value of the brands."

According to the guidelines businesses are not allowed to use the 2016 Olympic symbols "in association with any kind of propaganda, whether partisan, religious, political and, especially, advertising with the purpose of promoting the sale of products and services." It further provides that Olympic symbols cannot be used for promotions, competitions, merchandising, countdown clocks, websites, stores, tradenames and events.

The restrictions against ambush marketing are not limited to traditional forms of marketing. Non-official sponsors of the game are not allowed to tweet about the event or risk legal action by the IOC. Words such as "Olympic," "Olympian" and "Go for the Gold," cannot be used by non-sponsors. Harmless terms such as "summer," "gold," "games," "effort," "victory," "Rio" and "2016" are not permitted as well especially if they are used in connection with the games. Hashtags such as #Rio2016 or #TeamUSA — any reference to Olympic results and all pictures taken at the Olympics are also banned.

Not all forms of association with the Olympic are prohibited, Olympic symbols could be used for editorial and journalistic purposes so far as they are not being used for commercial purposes. However, if advertisements by non-Olympic sponsors are placed in the editorial sections according to the 2016 Brand protection guidelines special precaution should be taken, for example it should be moved away from Olympic brands and a note should be inserted stating that "The advertisers gathered here have no relation to the Rio 2016 Games and only sponsor this special section."

## Conclusion

It is a well-known fact that major sporting events such as the Olympics generate a lot of excitement and camaraderie. However businesses must be careful not to use symbols associated with the Olympics if they are not official sponsors of the event.