

# **An Analysis of the Ongoing Global Efforts to Combat Ambush Marketing: Will Corporate Marketers "Take" the Gold in Greece?**

STEPHEN MCKELVEY

*University of Massachusetts-Amherst*

&

JOHN GRADY

*Florida State University*

## I. INTRODUCTION

The Olympic Games are not only the grandest stage for the world's athletes. The Games are also arguably the grandest stage for corporate marketers, who typically pay an average of \$40 million in rights fees to secure the Olympics' highest level of corporate sponsorship.<sup>1</sup> As with every Olympics Games since 1984, when Peter Ueberroth, the president of the Los Angeles Olympic Organizing Committee, significantly raised the financial stakes and profile of corporate sponsorship within the Olympics,<sup>2</sup> the sport sponsorship industry and the media that cover the 2004 Summer Games in Athens, Greece will focus not only on the on-field competition, but also on the corporate marketing activities around the Games.

Four months prior to the start of the 2004 Summer Games, the issue of ambush marketing<sup>3</sup> had already begun to garner headlines. For instance, in

---

1. Erinn Batcha, *Comment: Who Are The Real Competitors in the Olympic Games? Dual Olympic Battles: Trademark Infringement and Ambush Marketing Harm Corporate Sponsors – Violations Against the USOC and its Corporate Sponsors*, 8 SETON HALL J. SPORT L. 229, 252 (1998).

2. Robert Davis, *1996 AALS Sport Law Conference: Legal Issues and the Olympic Movement: Ambushing the Olympic Games*, 3 VILL. SPORTS & ENT. L.J. 423 (1996). "Ironically, as the Olympic sponsorship program has become more financially productive, the temptation to ambush a competitor increases." *Id.* at 424. Throughout this article, the word "Olympics" is used broadly to refer, collectively, to the various organizing bodies including the International Olympic Committee, National Governing Bodies, and host city organizing committees.

3. Stephen McKelvey, *Atlanta '96: Olympic Countdown to Ambush Armageddon?*, 4 SETON HALL J. SPORTS L. 397, 401 (1994). Ambush marketing has been defined, in its most offensive form,

April 2004, the United States Olympic Committee (hereinafter "USOC") learned that international athletic footwear and apparel manufacturer Puma was preparing to launch a television advertising campaign in the United States to leverage its official sponsorship of the Jamaican Olympic Track and Field team. Puma's proposed advertising campaign included the word "Olympics." The USOC was concerned that Puma's use of the word "Olympics" in U.S. advertising would create the impression that Puma had some official relationship with the U.S. Olympic movement. Under the threat of litigation, the USOC was successful in getting Puma to remove the word "Olympics" from any advertising appearing in the United States.<sup>4</sup>

The USOC also learned that non-sponsor American Express had invited cardholders to buy tickets and hospitality access to the 2004 U.S. Olympic swimming trials, an event sponsored by Olympic sponsor Visa.<sup>5</sup> The American Express promotion also offered consumers the chance to meet 2000 U.S. Olympic swimming hero Lenny Krayzelburg, who was featured in American Express's promotional materials wearing his Olympic gold medals.<sup>6</sup> As Jim Grice, USOC chief of sales and marketing, remarked: "This is yet another example of a calculated ambush scheme," referring to American Express's well-documented history of similar activities around previous Olympics, to which Visa has long held official sponsorship rights.<sup>7</sup> Based on the circumstances of American Express's campaign, most notably the absence of any Olympic marks, no legal action was taken by the USOC despite its publicized threats.<sup>8</sup>

In May 2004, the USOC became aware of yet another ambush marketing campaign as Choice Hotels began airing a national commercial offering

---

as the "intentional efforts of one company to weaken . . . a competitor's official association with a sport organization, which has been acquired through the payment of sponsorship fees." *Id.* More generally, ambush marketing may refer to an attempt by a company to "capitalize on the goodwill, reputation and popularity of a particular sport to sporting event by creating an association without the authorization or consent of the necessary parties." *Id.*

4. Telephone interview with Kelly Maynard, Assistant General Counsel, USOC (March 15, 2004).

5. Steve Woodward, *AmEx In Hot Water With USOC Over Swim Offer*, SPORTSBUSINESS JOURNAL, Apr. 12, 2004, at 1.

6. *Id.*

7. *Id.* at 25.

8. Steve Woodward, *Showing 'Spirit': IOC-licensed Attraction To Open In August In Toronto*, SPORTSBUSINESS JOURNAL, May 3, 2004, at 13. Although American Express did not publicly acknowledge a cease-and-desist warning it received from the USOC legal department, the company removed the promotion from its website. An executive of USA Swimming stated that the incident will cause closer scrutiny of corporate ticket language in future agreements between Olympic sports federations and the USOC, which owns Olympic trials rights. *Id.*

consumers a chance to "win a trip to the big events in Athens, Greece," an ambush of the USOC's official hotel lodging and timeshare services supplier, Marriott.<sup>9</sup> The tickets were secured through Olympic Games broadcaster NBC, as part of Choice Hotels' purchase of Olympics broadcast advertising.<sup>10</sup>

These incidents illustrate the legal challenges, as well as the practical realities, surrounding the USOC's willingness and ability to challenge alleged ambush marketing activities. More specifically, these incidents point out the distinction between legally challenging unauthorized marketing activity that utilizes registered trademarks (Puma) versus activities that are more ambiguous (American Express, Choice Hotels) and for which a legal remedy is less clear-cut or may not even exist. With the arrival of the 2004 Summer Games in Athens, Greece, the likelihood of ambush marketing will again present a host of legal challenges for the Olympics in its ongoing efforts to protect the value of its corporate sponsorship program.

The difficulty with ambush marketing is that, at present, the law typically favors ambush marketers who have grown increasingly sophisticated in developing marketing campaigns that cleverly and carefully create associations with premier events while at the same time circumventing the use of registered trademarks, tradenames, or symbols.<sup>11</sup> Because of the need for the Olympics to protect the investment of their official sponsors, the Olympics have arguably been the most proactive and successful sport organization in combating what it terms "parasite marketing."<sup>12</sup>

This article "sets the stage" for the Olympics' anti-ambush marketing efforts in conjunction with the 2004 Summer Games in Athens, Greece. Part II

---

9. Steve Woodward, *USOC Checks In On Choice Hotels Promotion*, SPORTSBUSINESS JOURNAL 7(10), June 28, 2004, at p. 1.

10. The purchase of network advertising is a long-standing ambush marketing tactic. For a review of common ambush marketing tactics, see generally, McKelvey, *supra* note 3, at 401-409. The USOC notified Choice Hotels that its advertisements could not imply that Olympic Games tickets were the prize in the promotion. Choice Hotels subsequently agree to delete the reference to the "big events" in its on-line, television and radio advertisements. Telephone interview with Kelly Maynard, Assistant General Counsel, USOC (June 29, 2004).

11. Steve McKelvey, *Sans Legal Restraint, No Stopping Brash, Creative Ambush Marketers*, BRANDWEEK, Apr. 18, 1994, at 20. For review and analysis of the seminal case on ambush marketing (National Hockey League v. Pepsi-Cola Canada, Ltd., 42 C.P.R. (3d) 390 (B.C.S.C. 1992)), see Steve McKelvey, *NHL v. Pepsi-Cola Canada, Uh-Huh! Legal Parameters of Sports Ambush Marketing*, 10 ENT. & SPORT LAW. 5 (1992) (a Canadian court upheld Pepsi-Cola Canada's use of a wide range of ambush marketing tactics in conjunction with the 1990 NHL Stanley Cup playoffs, despite NHL's claims of misappropriation and unfair competition, the latter referred to under Canadian law as the tort of "passing off."). *Id.*

12. Michael Payne, *Ambush Marketing: The Undeserved Advantage*, 15 PSYCHOLOGY AND MARKETING 323, 327 (1998).

discusses special legislation that a growing number of countries have enacted in order to strengthen the Olympics' arsenal against alleged ambush marketers. This section concludes with a more in-depth description and analysis of the special protections afforded the USOC, along with a review of the legislation's exceptions and judicially carved limitations. Part III explores the legal successes, as well as the shortcomings, of the Olympics' anti-ambush marketing efforts during the 2002 Winter Olympic Games in Salt Lake City, Utah, serving to illustrate the types of ambush marketing activity that the Olympics and its sponsors can anticipate in conjunction with the 2004 Summer Games. Part IV explores the specific measures that have been undertaken by the Olympics and by the government of Greece to best insure that ambush marketing is minimized.

## II. LEGISLATIVE PROTECTION OF OLYMPIC MARKS

The Olympics hierarchy begins with the International Olympic Committee (hereinafter "IOC"), a non-profit organization based in Switzerland that oversees the Olympic Movement and is primarily charged with supervising the Olympic Games.<sup>13</sup> The Olympic Charter sets forth the international practices and rules necessary to govern the Olympic Games and authorizes each country to create its own "national governing body" ("NGB") to administer the Olympics within that country. The Olympic Charter states that "all rights to the Olympic symbol, the Olympic flag, the Olympic motto, and the Olympic anthem belong exclusively to the IOC."<sup>14</sup> Under the Olympic Charter, each country's NGB is responsible for protecting the Olympic marks and related symbols on behalf of the IOC.

### A. Olympic Mark Protections in Foreign Countries

In addition to the United States, whose legislation is discussed in detail below, a growing number of major countries have enacted special legislation designed to provide wider trademark protection for Olympic marks and related symbols than its typical trademark laws, in support of the Olympic Charter.<sup>15</sup> This section reviews the legislation of these foreign countries, beginning with

---

13. Anne M. Wall, *The Games Behind the Games*, 91 TRADEMARK REP. 1243, 1244 (2001).

14. INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC CHARTER at [http://multimedia.olympic.org/pdf/en\\_report\\_122.pdf](http://multimedia.olympic.org/pdf/en_report_122.pdf) (in force as from July 4, 2003).

15. Kellie L. Pendras, *Comment: Revisiting San Francisco Arts & Artists v. United States Olympic Committee: Why it is Time to Narrow Protection of the Word "Olympic"*, 24 HAWAII L. REV. 729, 744-745 (2002).

China, the most recent country to enact such special legislation. Of particular interest is the manner in which the various countries address marketing activities that create, in the mind of consumers, some association between a product/service and the Olympics – the hallmark of ambush marketing campaigns.

### 1. China

As a condition of hosting the Olympics, shortly after having been awarded the 2008 Summer Games the Beijing government passed local regulations protecting the Olympic intellectual property rights (hereinafter "IPR"),<sup>16</sup> followed several months later by the enactment of the Protection of Olympic Symbols Regulations (hereinafter "the Regulations") which extended the broad protections of Olympic intellectual property rights at the national level.<sup>17</sup>

While consistent with that of the other countries discussed below China's legislation also appears to break new ground with respect to the issue of ambush marketing. The Regulations identify six categories of Olympic IPR, mirroring the requirements of the Olympic Charter and the Beijing Host City Contract.<sup>18</sup> The Regulations define the "Olympic Symbols" to include "not only words, signs and other things normally trademarked, but also those objects customarily protected by copyrights, such as medal designs, databases and statistics relating to the Games."<sup>19</sup> Article 4 of the Regulations states that no third party can use the Olympic Symbols "for commercial purposes (including potential commercial purposes. . .) without the consent of the rights-holders [IOC, Chinese Olympic Committee (COC), and the Beijing Organizing Committee of the Olympic Games (BOCOG)]."<sup>20</sup> Commercial use of the Olympic Symbols is defined in Article 5, which lists six primary categories of usage including production, sales, advertising and services.<sup>21</sup> While the Regulations explicitly require the consent of the rights-holders, the

---

16. Fraser Mendel & Chao Yijin, *Protecting Olympic Intellectual Property*, 17 CHINA LAW & PRACTICE 33-34, May 1, 2003.

17. *Id.*

18. *Id.*

19. *Id.*

20. Protection of Olympic Symbols Regulations, Art. 2, issued by the State Council (2002) (China), available at [http://www.ccpit-patent.com.cn/references/Regulations\\_Protection\\_Olympic\\_Symbols.htm](http://www.ccpit-patent.com.cn/references/Regulations_Protection_Olympic_Symbols.htm).

21. *Id.* Art. 5.

Regulations also limit non-commercial use.<sup>22</sup> Protection of the Olympic Symbols is automatic under the Regulations and no further action is required by the rights-holders to perfect those rights, although Article 7 provides that the rights-holders must file the various Olympic Symbols for publication with the Administration of Industry and Commerce (hereinafter "AIC").<sup>23</sup> The Regulations do include a "grandfather clause" whereby any Olympic Symbols that were being "legally used prior to the promulgation of the Regulations can continue to be used within their original scope of use."<sup>24</sup>

The Regulations also address "implied commercial purposes" as an attempt to address marketing activity that would fall within the ambit of ambush marketing.<sup>25</sup> Although this is a critical issue, the Regulations only address this indirectly by including a broad reference to "activities that might be deemed by others as an existing sponsorship or other supportive relationship."<sup>26</sup> Based on this broad and ambiguous language, "it is expected that there will be a significant amount of discretion on the part of the AIC as it enforces the Regulations."<sup>27</sup> The Regulations also provide for enforcement and remedies, such as a mechanism to determine the amount of compensation that a rights-holder may seek that references the licensing fee of the relevant Olympic Symbol.<sup>28</sup> Since the licensing fees of Olympic Symbols are typically substantial, "this is potentially a very severe penalty to a perpetrator and establishes a level of protection beyond that available under the Trademark Law."<sup>29</sup> Based upon a review of other countries' special legislation, Beijing's legislation appears to provide the most comprehensive Olympic mark protections and remedies to date.

## 2. Australia

Australia's most recent amended legislation also serves as a best-practices model, based upon an analysis of its Olympic Insignia Protection Amendment

---

22. Mendel & Yijin, *supra* note 16, at 33.

23. *Id.* "It is our understanding that the intent of the drafters of the Regulations was that filing of the Olympic Symbols not be a pre-requisite for protection, but simply a means of identifying the Olympic Symbols in order to allow more efficient enforcement" by putting people on notice. *Id.*

24. Protection of Olympic Symbols Regulations, *supra* note 20, at Art. 9.

25. *Id.*

26. *Id.*

27. Mendel & Yijin, *supra* note 16, at 34.

28. Protection of Olympic Symbols Regulations, *supra* note 20, at Art. 13.

29. Mendel & Yijin, *supra* note 16, at 34.

Act of 2001.<sup>30</sup> The 2001 Act's stated purpose is "(1) . . .to protect, and to further, the position of Australia as a participant in, and a supporter of, the world Olympic movement" and "(2) . . .to be achieved by facilitating the raising of licensing revenue through the regulation of the use for commercial purposes of certain expressions associated with the world Olympic movement."<sup>31</sup>

The Act prohibits a range of commercial uses of "protected olympic expression,"<sup>32</sup> including any expression "so closely resembling a protected olympic expression . . . as to be likely to be mistaken, by a reasonable person, for such a protected olympic expression. . . ." <sup>33</sup> Of the various legislation analyzed, Australia's Act is the only one that incorporates the "reasonable person" standard in seeking to determine if unauthorized marketing activity rises to the level of Olympic trademark infringement under its Act. The Act is very specific, as well, in identifying "certain uses not alone sufficient to suggest sponsorship or sponsorship-like support,"<sup>34</sup> The Act also includes a novel provision making liable any person who has "aided, abetted, counseled or procured a person"<sup>35</sup> to violate the Act, thus extending the onus of Olympic trademark protection to sports marketing agencies and law firms that typically counsel and assist companies in designing and executing marketing campaigns that may be deemed to constitute ambush marketing activities. Finally, the Act includes an exhaustive remedies section, including provisions for injunctions, corrective advertisements (at the infringer's expense), monetary damages, accounting of profits, and destruction of goods, among others.<sup>36</sup>

### 3. Canada

Canada, whose Olympic movement is governed by the Canadian Olympic Committee (hereinafter "COC"), was among the earliest of countries to enact

---

30. Olympic Insignia Protection Amendment Act 2001, No. 156, 2001, ch. 3 (2001) (Austl), amending the Olympic Insignia Protection Act of 1987 (Austl).

31. *Id.* ch. 3, part 3.1.

32. *Id.* The act identifies the following expressions as "protected Olympic expression:" Olympic; Olympics; Olympic Games; Olympiad; and Olympiads. Interestingly, "to avoid doubt . . . the expressions 'Olympian' and 'Olympians' are taken not to resemble a protected Olympic expression. . ." *Id.* ch. 3, part 3.1, Div. 1, § 24(3). The Act also includes an exemption for "statement about past participation of Olympians" provided that, *inter alia*, the statement "would not suggest, to a reasonable person, that any person is or was a sponsor of" the Olympics. *Id.* § 31.

33. *Id.* § 24(2).

34. *Id.* § 35(1) (allowing for the use of protected Olympic expressions for the purposes of, or in connection with, the provision of information or for the purposes of criticism or review). *Id.*

35. *Id.* § 37.

36. *Id.* ch. 3, part 3.4.

special legislation affording the Olympic marks a wider protection than the typical trademark. Canada's Act does not include any reference to the Olympics, the Olympic trademark protections are implied in Canada's Trade-marks Act which states, *inter alia*, that

[n]o person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for . . . any badge, crest, emblem or mark . . . adopted and used by any public authority, in Canada as an official mark for wares or services, in respect of which the Registrar has, at the request of Her Majesty or of the university or public authority, as the case may be, given public notice of its adoption and use. . . .<sup>37</sup>

The COC is a public authority within the meaning of this statute, as is the Vancouver Organizing Committee, which in July, 2003 was awarded the 2010 Winter Games.<sup>38</sup>

#### 4. England

In comparison to normal trademark protection in England, the Olympic Symbol etc. (Protection) Act is viewed as conferring wider protection for Olympic marks.<sup>39</sup> England's act provides, *inter alia*, that: (1) A person infringes the Olympics association right if in the course of trade he uses- (a) a representation of the Olympic symbol, the Olympic motto or a protected word, or (b) a representation of something so similar to the Olympic symbol or the Olympic motto as to be likely to create in the public mind an association with it. . . .<sup>40</sup> However, England's Act includes exceptions for a range of non-commercial uses of the word "Olympic"<sup>41</sup> and also allows infringers a defense

---

37. Trade-marks Act, Unfair Competition and Prohibited Marks, R.S.C., ch. T-13, § 9 (2001) (Can.). As one of the older Olympic trademark protection acts, Canada's legislation lacks the specificity of the China's and Australia's acts with regard to remedies and the addressing of ambush marketing concerns.

38. In conjunction with being awarded the 21010 Winter Games, the Vancouver Organizing Committee (VANOC) issued a document entitled "Brand and Logo Rights and Usage Guidelines," which identifies a host of trademarked phrases specific to the 2010 Winter Games and states that "use of these symbols and trademarks for branding or commercial purpose or implied commercial association with the Olympic Movement or the Games is strictly forbidden." Vancouver 2010, *Brand and Logo Rights and Usage Guidelines* (March 15, 2004), at <http://www.spiritof2010mission.com/forum/viewtopic.php?p=31>.

39. Olympic Symbol etc. (Protection) Act, 1995, c. 32 (Eng.).

40. *Id.* § 3. The Act also provides guidelines to determine when an infringement has occurred and sets forth potential defenses an infringer can use. *Id.*

41. *Id.* § 3.



if one "reasonably believes that one's use of the word 'Olympic' is not infringing on the right of the Olympic Association."<sup>42</sup>

### 5. *New Zealand*

The Olympic marks have also received wider protection in New Zealand.<sup>43</sup> However, unlike previously discussed legislation, New Zealand's legislation allows a potential user of the word "Olympic" to prove that there would be no confusion as to sponsorship.<sup>44</sup> This was illustrated in a 1996 New Zealand case in which a telecommunications company advertised using the word "ring" five times in blue, black, red, yellow and green with the phrase "with Telecom mobile you can take your own mobile phone to the Olympics."<sup>45</sup> The New Zealand Olympic Committee objected, complaining that the ad conveyed an association or connection to its Olympic team and the Olympic movement.<sup>46</sup> Focusing on the potential effects on the consumer, the court found that there was not a "significant likelihood of presumption by readers that Telecom [was] connected with or a sponsor of the Olympics," and that "[t]hose who notice the five coloured 'ring' words, then drop their gaze to the next line picking up the reference to the Olympics . . . and then make an association with the five circle Olympic symbol, will be mildly amused."<sup>47</sup> The court reasoned that "it is a long way from that brief mental process to an assumption that this play on the Olympic five circles must have been with the authority of the Olympic organization, or through sponsorship of the Olympics."<sup>48</sup>

### 6. *Other Countries*

Argentina has also enacted specific Olympic trademark protection legislation that covers a broad range of Olympic marks and words, as well as the Olympic Torch, logos and pets as symbols which identify each Olympic

---

42. Pendras, *supra* note 15, at 748.

43. *Id.* at 749-750.

44. Fair Trading Amendment Act 1994, No. 124, An Act to amend the Fair Trading Act 1986 (N.Z.).

45. *Id.* at 749, citing *New Zealand Olympic & Commonwealth Games Ass'n v. Telecom New Zealand Ltd.*, [1991] F.S.R. 757 (N.Z.).

46. *New Zealand Olympic & Commonwealth Games Ass'n*, [1991] F.S.R. 757.

47. *Id.* at 763

48. *Id.*

Game.<sup>49</sup> Argentina's act also grants sole ownership of "any other word or words which will unmistakably reveal the activity developed (sic) by the International Olympic Committee," as well as the Argentina Olympic Committee, which serves as their implied reference to ambush marketing.<sup>50</sup>

As in the case of Canada, discussed above, both France and Japan have general trademark protection legislation to incorporate protection of Olympic trademarks within their respective countries. France's protection of Olympic trademarks is found in its Intellectual Property Code, although at least one lawsuit has granted alleged infringers much more leeway in the use of the word "Olympics."<sup>51</sup> Likewise, in Japan, although there is no specific reference to the word "Olympics," its Trademark Law legislation has been read to incorporate Olympic marks.<sup>52</sup>

### B. Olympic Mark Protection in the United States

The Olympic program within the United States is governed by the USOC, which was created by Congress through Section 110 of the Amateur Sports Act of 1978.<sup>53</sup> This act grants the USOC the power to govern amateur athletic events pertaining to the Olympics and empowers the USOC to exercise exclusive jurisdiction over all matters pertaining to the United States' participation in the Olympic Movement.<sup>54</sup> Through the enactment of this Act, which today exists in its amended form as the Ted Stevens Olympic and Amateur Sports Act of 1998 (hereinafter "OASA"),<sup>55</sup> the USOC holds exclusive rights to control the use of Olympic marks, symbols and technology within the United States. The protection of the Olympic symbols is especially important in the United States because it is the only country that does not

---

49. Symbols and Olympic Insignia Protection Act, Act N°24.664 (1996) (Argentina). Argentina's legislation includes a grandfather clause exception, and automatic filing for all trademark classes. *Id.* at § 4

50. *Id.* at § 3-4.

51. Law No. 92-597 of July 1, 1992, on the Intellectual Property Code (legislative part), Art. L. 713-5 (France).

52. Trademark Registration and Applications Therefor, Law No. 220, ch. II (December 1999), amending Law No. 127 (April 13, 1959) (Japan).

53. 36 U.S.C. 371-396 (1978).

54. *United States Olympic Comm. v. Intelicense Corp.*, 737 F.2d 263, 266 (2d Cir. 1984), (wherein protection of the value of the Olympic symbol was listed as a substantial factor in enabling the Act).

55. 36 U.S.C. § 220506 (2000).

receive government funding for its Olympic program.<sup>56</sup> It is this control, enabling the USOC to grant exclusive rights to the Olympic marks and symbols, that enables the USOC to attract the corporate sponsors, suppliers and licensees who are so critical to the funding and success of the U.S. Olympic movement and its athletes.

The OASA provides the USOC with exclusive control over the Olympic marks within the United States, and creates a civil action if the person, without the consent of the USOC, uses for "the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition" the Olympic words, symbols and emblem.<sup>57</sup> The OASA also provides the USOC with additional ammunition with which to fight ambush marketers. While non-Olympic related trademark infringement claims are typically based upon section 43(a) of the Lanham Act,<sup>58</sup> requiring the plaintiff to demonstrate a "likelihood of consumer confusion,"<sup>59</sup> the express language of OASA lessens the USOC's burden of proof by prohibiting any combination or simulation of the specified words "tending to cause confusion or mistake, or to deceive, or to falsely suggest a connection with the corporation or any Olympic, Paralympic or Pan-American Games activity; . . ."<sup>60</sup> The OASA also does not allow infringers to utilize the fair use defense.<sup>61</sup> Thus, the OASA, as well as U.S. Supreme Court's interpretation,<sup>62</sup> provides the USOC much stronger legal grounds upon which to prevent misuse or misappropriation of its protected words and symbols. Thus, the USOC is armed with a powerful means of combating unauthorized use of their protected words and marks.<sup>63</sup>

---

56. 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, 56 (2003).

57. 36 U.S.C. § 220506(c) (2000).

58. 15 U.S.C. §§ 1051-1129 (2001).

59. Robert N. Kravitz, *Trademarks, Speech and the Gay Olympics Case*, 69 B.U.L. REV. 131, 134-135 (1989).

60. 36 U.S.C. 220506(c)(3) (2000).

61. Pendras, *supra* note 15, at 737.

62. *San Francisco Arts & Athletics, Inc. v. USOC*, 483 U.S. 522, 528-535 (1987) (holding that 1) the statute authorizing the USOC's exclusive use rights in "Olympic" trademarks did not require the USOC to prove that the unauthorized use caused confusion; traditional Lanham Act defenses not applicable to Amateur Sports act; and 3) the word "Olympic" is not a generic word and is thereby within the protections of trademark law). *See also* Pendras, *supra* note 15, at 735-742, and accompanying notes.

63. Anita Moorman, *Olympic Trademarks: Citius Altius Fortius – Faster, Higher And Stronger Trademark Protection For The USOC And Its Protected Marks*, 11 SPORT MARKETING Q. 59 (2002).

The biggest difference between the Ted Stevens Act and the protection of the Olympic trademarks and symbols in other countries is the distinction between commercial and non-commercial uses.<sup>64</sup> The countries discussed above provide broader trademark protection for the word "Olympic" but only for uses that are primarily commercial in nature.<sup>65</sup> In the United States, however, the protection has been extended to include a broad range of non-commercial uses of the word as well.<sup>66</sup>

### C. Exceptions and Limitations of the OASA

Although extensive, the exclusive rights granted to the USOC for the use of Olympic marks do include some exceptions built into the OASA, as well as judicially carved limitations,<sup>67</sup> including a grandfather provision which states that persons using the protected words lawfully prior to September 21, 1950 may continue to do so without violating the status in certain circumstances.<sup>68</sup>

Several lower courts have additionally carved out permissive uses of the word "Olympics." For instance, in *Stop the Olympic Prison v. United States Olympic Comm.*,<sup>69</sup> the use of the word "Olympic" and the Olympic symbol (superimposed over five vertical steel-grey bars representing the proposed prison) on posters distributed by a citizen's group named "Stop the Olympic Prison," in protest of the conversion of the former Lake Placid, NY Olympic facilities into a prison, was held not to violate the Act. The court held for the plaintiffs on the grounds that their posters were not sold or distributed commercially, and were not likely to be confused as an endorsement by the

---

64. Pendras, *supra* note 15, at 760.

65. *Id.*

66. *Id.*

67. Nish, *supra* note 55, at 59-64.

68. 36 U.S.C. §§ 371-396. Section 380(a)(4), the grandfather clause, grants substantially the same rights as 36 U.S.C. § 220506(d) (2000). For a federal court decision interpreting the extent of the grandfather clause, see *O-M Bread, Inc. v. USOC*, 67 F. 3d 933 (Fed. Cir. 1995). The court found that a company's efforts to trademark the mark "Olympic Kids" on a bakery product, in further extension of its grandfathered rights to "Olympic Meal" and "Olympic Meal Special Formula" marks, violated the Act. *Id.* The United States Court of Appeals for the Federal Circuit applied a two-part test. *Id.* at 937-38. First, in considering whether the marks "Olympic" and "Olympic Kids" were distinct, the court noted that the likelihood of consumer confusion test was not applicable to this case and held the two marks to be entirely different. The court thus concluded that "Olympic Kids" mark was not a reasonably permissible extension of O-M Bread's grandfathered rights to the Olympic mark. *Id.* at 938. Second the court found that the two marks lacked continuity because they did not create the same commercial impression. *Id.* at 939.

69. 489 F. Supp. 1112 (S.D.N.Y. 1980). The plaintiffs also sought declaratory relief on First Amendment grounds. *Id.*

USOC.<sup>70</sup> The court determined that, despite the broad language contained in the Act, the exclusive use provision was designed, not as a blanket prohibition of all uses whether commercial or non-commercial, but to prevent registration of the Olympic words and symbols as trademarks or service marks in connection with any types of goods or services, by anyone other than the USOC.<sup>71</sup> In other words, the court found a strong legislative intent to "establish strong protection for the Olympic symbols, in part to ensure the market value of licenses for their use."<sup>72</sup> Furthermore, because the USOC offered absolutely no evidence of public confusion, the court found in favor of the plaintiffs on the issue of trademark infringement.<sup>73</sup>

Based on its interpretation of the OASA and the Supreme Court's decision in *San Francisco Arts & Athletics, Inc.*, a lower court also determined that the Act does not apply to certain non-commercial speech. Prior to the 2000 Olympic Games, the USOC sued American Media, Inc., for publishing a preview magazine entitled "OLYMPICS USA."<sup>74</sup> The USOC argued that the use of the word "Olympic" and the Olympic symbol without its permission constituted unauthorized use "for the purpose of trade and to induce the sales of goods."<sup>75</sup> The USOC further claimed that the activity amounted to illegal ambush marketing because it was an attempt to "pass off" OLYMPICS USA magazine as if it were authorized by the USOC in "a manner calculated to deceive USOC's customers and members of the general public."<sup>76</sup> The court first addressed whether the Act could be applied to anything other than commercial speech, and second, whether "OLYMPICS USA" constituted commercial or non-commercial speech. On the first issue, the court held that the application of the OASA to uses contained in 220506(c), namely for the "purpose of trade" or to "induce the sales of goods or services" was commercial speech, and concluded that the USOC's alleged violation "does not apply to the use of protected Olympic marks in non-commercial speech."<sup>77</sup>

---

70. *Id.* at 1114.

71. *Id.* at 1120-1121.

72. *Id.* at 1120.

73. *Id.* at 1122.

74. *United States Olympic Comm. v. American Media, Inc.*, 156 F. Supp. 2d 1200 (D. Colo. 2001).

75. *Id.* at 1203.

76. *Id.*

77. *Id.* at 1205. "To characterize all or any part of OLYMPIC USA as commercial speech would go against nearly every attempt to define commercial speech." *Id.* at 1209. The court cited *United States Olympic Comm.*, 737 F.2d at 267, and *Stop the Olympic Prison*, 489 F.Supp. at 1120-1121, in support of its claim that it applied only to commercial speech.

On the second issue, the court found "OLYMPICS USA" to be non-commercial speech, and that to apply the commercial speech doctrine to a publication would raise serious issues regarding the First Amendment protection afforded news media organizations.<sup>78</sup> Accordingly, American Media's motion to dismiss was granted.<sup>79</sup>

These limited exceptions and permissive uses notwithstanding, the USOC is recognized as having arguably the broadest and most effective legislation in the world to protect against unauthorized trademark use and association with the Olympic Games,<sup>80</sup> thereby providing the USOC with a powerful arsenal against alleged trademark infringers. However, as experience illustrates, companies seeking to secure an unauthorized association with the Games will likely always find a legal avenue.

#### PART IV: AMBUSH MARKETING AND THE 2002 WINTER GAMES

Leading up to and during the 2002 Winter Olympic Games in Salt Lake City, Utah, Olympic officials charged with protecting the Olympic marks faced a host of legal challenges, ranging from blatant trademark infringement to ambush marketing activity.<sup>81</sup> Generally, when confronted with alleged ambush marketing activity, the Olympics have been successful in negotiating business settlements with infringers who, more often than not, are simply unaware that their activities are in violation of the Olympics' broad trademark rights. Of the nearly 700 cases of alleged intellectual property infringement that were investigated by the Olympics between 1999 and 2001, more than half of the cases were "successfully resolved" by the end of 2001.<sup>82</sup> Thirty percent of the infringement cases were related to advertising and promotions, twenty percent related to counterfeiting; three percent related to names, eleven percent designated as "other."<sup>83</sup>

One of the Olympics's most active areas of trademark enforcement involved cyber-squatting,<sup>84</sup> a clear indication that tech-savvy marketers are moving their ambush tactics to cyberspace in order to reach consumers online.

---

78. *Id.*

79. *Id.* at 1210.

80. For a critical argument that the word "Olympic" can be protected without the monopoly one finds in the United States, under *San Francisco Arts & Athletics*, see Pendras, *supra* note 15, 741-744.

81. Nish, *supra* note 55, at 67.

82. *Id.* at 68.

83. Anne Wall, *The Game Behind the Games*, 12 MARQ. SPORTS L. REV. 557, 568 (2002).

84. Wall, *supra* note 13, at 1255. Cybersquatting refers to an infringing use of a company's trademark in a competitor's Internet domain name.

The Salt Lake Organizing Committee, the USOC and the IOC brought an action for cybersquatting against the registered owners of over 1800 domain names that were alleged to include registered Olympic marks, making it the single largest cybersquatting suit.<sup>85</sup> The case resulted in the transfer of ownership of dozens of domain names, including those using words that incorporated Salt Lake 2002, Olympic, Olympic Winter Games, and the phrase SLOC 2002.<sup>86</sup>

SLOC was, however, only marginally successful in negotiating a halt to an ambush marketing campaign by a local brewery, Schirf Brewing, the makers of Wasatch Beer. Anheuser Busch, maker of Budweiser beer and originator of the slogan "Whassup," paid \$50 million for the rights to use the word "Olympic" and the five-ring logo.<sup>87</sup> The Olympics, as well as Anheuser-Busch were ambushed by a micro-brewery that painted its trucks with the words "Wasatch Beers. The Unofficial Beer of the 2002 Winter Games."<sup>88</sup> Under threat of litigation, the USOC was successful in getting Schirf Brewing to remove the reference to the trademarked phrase, "2002 Winter Games" although the company continued to engage in other blatant ambush marketing activities.<sup>89</sup> For example, Schirf Brewing began distributing T-shirts with a red circle with a line through it superimposed over the word "2002" and the word "Unofficial Beer" above it.<sup>90</sup>

When alleged ambush marketers are not amenable to settlement, the Olympics have been vigilant in resorting to the courts. There were several high profile ambush marketing efforts in Salt Lake City which resulted in lawsuits. In one such case, the USOC filed a claim against Discount Tire Company alleging that the tire company knowingly violated the OASA through the unauthorized use of Olympic imagery in an advertising campaign that implied a sponsor relationship with the USOC and the Olympic Games.<sup>91</sup> At issue was a billboard advertising campaign that depicted tires in the form of the Olympic Rings.<sup>92</sup> In addition, the billboard welcomed visitors to the Games in several

---

85. Wall, *supra* note 83, at 574. The Olympics sought relief under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d) (2004) and the Lanham Act 15 U.S.C. §§ 1051 (2001).

86. *Id.* at 574-575.

87. Emiko Terazano, *Ambush Marketing Tactics To Be Kicked Into Touch*, FINANCIAL TIMES LTD., Sept 2, 2003, at 9.

88. *Id.*

89. Telephone interview with Kelly Maynard, Assistant General Counsel, USOC (June 8, 2004).

90. *Id.*

91. United States Olympic Comm. v. Discount Tire, No. 2:02cv17 (D. Utah 2002).

92. Jeff Howard, *USOC Files Complaint Against Discount Tire Co. for Olympic Marks Infringement* (Jan. 8, 2002), at <http://www.usocpressbox.org> (last visited May 25, 2004).

languages, which the USOC alleged "shows an intent to use Olympic terminology and Olympic Games imagery to inaccurately suggest a commercial affiliation with the Olympic Games and the Olympic Movement."<sup>93</sup> The complaint was filed after Discount Tire failed to remove the billboards as they had promised.<sup>94</sup>

In a second complaint, the USOC brought suit against Brighton Ski Resort, located near Salt Lake City.<sup>95</sup> The ski resort created a logo with five linked snowflakes resembling the five Olympic rings and, in addition, used the word "games" in an advertising campaign and in the resort's web site address, [www.Brightonupthegames.com](http://www.Brightonupthegames.com).<sup>96</sup> The USOC sought an injunction in federal court to stop Brighton Ski Resort from using the word "games" as part of its Internet domain name.<sup>97</sup> The USOC also demanded that the ski resort remove billboard advertising at the Salt Lake City airport that showed five overlapping snowflakes logo, similar to the Olympic's trademarked use of the five interlocking rings.<sup>98</sup> In a letter to Brighton ski resort, USOC legal counsel Scott Blackmun requested that the resort cease its "humorous" ads, including one saying, "Proud Host of Zero Olympic events."<sup>99</sup> Blackmun suggested that "without stopping even 'humorous' ads, other unauthorized ads might pop up and Olympic symbols could lose 'distinctiveness' and even 'all commercial value.'"<sup>100</sup> The ski resort eventually agreed to comply with all of the USOC's requests.<sup>101</sup>

A third significant case involved Nabisco's attempt to ambush PowerBar, an official Olympic sponsor.<sup>102</sup> PowerBar notified the USOC of Nabisco's attempt at ambush marketing in advertisements for Nabisco's Fig Newton cookies.<sup>103</sup> The advertisements depicted an ancient Olympic athlete throwing a discus and contained the following text: "The ancient Olympians worshipped

---

93. *Id.*

94. *Id.* Discount Tire eventually agreed to remove the billboards. Telephone interview with Kelly Maynard, title, USOC (March 7, 2004).

95. John Manasso, *USOC Puts The Heat On Utah Resort*, ATLANTA J. & CONST., Nov. 22, 2000, at 2C.

96. *Id.*

97. Curt Baltzley, *Copyright Disputed*, HOUSTON CHRONICLE, Nov. 1, 2000, at 12.

98. *Id.*

99. Michael Hiestand, *USOC Not Laughing Off Ads*, USA TODAY, Dec. 15, 1999, at 1C.

100. *Id.*

101. *Id.*

102. Wall, *supra* note 13, at 1261.

103. *Id.*



the fig and used it for energy during training."<sup>104</sup> The USOC filed suit alleging that Nabisco unlawfully used the USOC's trademarks in an attempt to create an association in consumer's minds between the Fig Newton cookies and the Olympic Movement.<sup>105</sup> Nabisco eventually settled the case for a confidential amount and ceased its advertising campaign.<sup>106</sup>

A fourth case involved a lawsuit against Quiksilver, Inc. for allegedly selling Olympic-themed T-shirts, sweatshirts, pins and key chains without permission in its Park City and Salt Lake City stores.<sup>107</sup> Quiksilver's designs included the company's logo (a wave and a mountain inside a circle) in five interlocking circles similar to the Olympic rings, with the words "Salt Lake City – Winter 2002" superimposed over the design and the word "Olympian" printed above it.<sup>108</sup> The USOC alleged that the references to the upcoming Games were meant to "mislead and deceive consumers," and was again successful in getting Quiksilver to cease the sale of the infringing merchandise.<sup>109</sup>

There were, however, numerous ambush marketing campaigns that the Olympics did not to pursue through legal channels, deciding that they did not fall within the legal protections afforded by the OASA. These incidents, several of which are described below, also illustrate some of the practical loopholes that are available to those companies that elect to engage in ambush marketing tactics. One common loophole is for a company to secure and aggressively leverage an association with an Olympic athlete. For instance, although AT&T and Qwest had official sponsorship relationships with the USOC and SLOC, Sprint PCS, in an attempt to promote their wireless services, signed high-profile Olympic athletes such as Jimmy Shea and Jonny Moseley a year in advance of the 2002 Games, and featured them in Olympic-themed ads before and after the actual Games.<sup>110</sup> Furthermore, because Olympic rules ban athletes from appearing in non-sponsors' ads during the Games, ads for those two weeks were shot with actors in snowy settings

---

104. *Id.*

105. *Id.*, citing United States Olympic Comm. v. Nabisco, Inc., Case No. C 00 3086 (N.D. Cal. 2000).

106. *Id.*

107. *USOC, SLOC settle suit with Quiksilver*, DESERT NEWS AND KSL COVERAGE OF THE 2002 SALT LAKE WINTER OLYMPIC GAMES, at <http://www.deseretnews.com/oly/view/0,3949,70000206,00.html> (Feb. 9, 2002).

108. *Id.*

109. Telephone interview with Kelly Maynard, Assistant General Counsel, USOC (June 8, 2004).

110. Theresa Howard, *Sprint Ads Capture Olympic Feel*, USA TODAY, March 18, 2002, at 6B.

utilizing the tagline "Sprint: Proud sponsor of everything fast, new and really quite amazing."<sup>111</sup>

Numerous other companies engaged in thematic advertising that did not rise to the level of trademark infringement, but which arguably traded off the goodwill of the Olympics and was designed to create an impression of an association. For instance, Post-It Notes brand ran newspaper advertising that featured the letters "U," "S," and "A," on gold-colored post-it notes, followed by the tagline "Go for the Gold, America."<sup>112</sup> Non-sponsor RCA, a division of Thomson, Inc., also capitalized on the Olympics with a promotion, advertised nationally, offering consumers a free USA jacket with the purchase of selected RCA television sets.<sup>113</sup> Given that the letters "USA" are not trademarked, this activity was within RCA's rights, again illustrating the challenges facing the Olympics to thwart companies that are clever and determined to conduct promotional activity during the time of the Olympic Games.

First Amendment free speech rights also presented challenges for the USOC and SLOC. For instance, a religious organization published and distributed a pamphlet that included five colored fish in the format of the Olympic rings, with the words "Sowing the Seed in Salt Lake City – The New Testament Souvenir – Winter Games Salt Lake City, Utah."<sup>114</sup> Given First Amendment freedoms, the USOC and SLOC opted not to pursue a legal challenge against this religious organization.<sup>115</sup>

#### PART IV: SECURING THE 2004 SUMMER GAMES AGAINST AMBUSHERS

With each successive Olympic Games, the IOC, host Olympic Committee and host cities have added additional measures designed to protect against ambush marketing. In anticipation of the 2004 Summer Games, a variety of measures have been undertaken, including: legislative action; education and enforcement initiatives; and athlete restrictions, each discussed in more detail below. Such is the case in Athens. In an interview with the President of

---

111. *Id.*

112. Advertisement in NEWARK STAR-LEDGER, Feb. 7, 2002, at 43.

113. Advertisement in USA TODAY, Feb. 22, 2002, at 8D.

114. Dan Perini, Assistant General Counsel, United States Olympic Committee, *Protecting Olympic Intellectual Property*, presentation at the "Intellectual Property Issues In Sports: How They Have Affected The Modern Sports Industry and Its Business Practices" Conference, National Sports Law Institute of Marquette University Law School, Marquette University Alumni Memorial Union (October 25, 2002).

115. *Id.*

Athens 2004 Organizing Committee for the Olympic Games (hereinafter "ATHOC"), it was suggested that the Athens sponsorship program is unique in that "it is a strategically important communications tool that enables sponsors to achieve their most important marketing goals. It is designed to build a strong partnership with the business community securing the best possible return of sponsorship investment, safeguarding the Olympic Ideals (through strict control of the commercial aspect of the Games) and providing high quality marketing activities."<sup>116</sup>

ATHOC has offered both qualitative and quantitative rights to its official sponsors.<sup>117</sup> The qualitative rights include the fact that the sponsorship program "combines the Olympic Ideals with the latest technological developments," as well as provides only a limited number of sponsorship categories.<sup>118</sup> By limiting the number of sponsorship categories, ATHOC can provide better service to its sponsors, as well as increased benefits, more powerful partnerships, and "broader exposure with less message clutter."<sup>119</sup> The quantitative rights for Athens 2004 sponsors are perhaps considered more typical protections that corporate marketers would expect from the Olympic organizers. However, ATHOC's sponsorship protections are expected to provide "the strongest foundations compared to any other Organising Committee."<sup>120</sup> The list of quantitative rights, as it relates specifically to anti-ambush marketing initiatives, includes the following: "(a) Pro-active protection of the Olympic marks; . . . (c) Billboard control in Athens; . . . [and] (e) Advanced ambush marketing control system. . . ."<sup>121</sup>

By controlling especially vulnerable areas where Olympic ambush marketing has frequently occurred in the past, such as infringing use of Olympic marks as well as billboard advertising in the host city, ATHOC is being proactive in combating any activity that can diminish the value of an official sponsor's affiliation with the 2004 Games. This comprehensive plan also provides official sponsors with an additional sense of security regarding the courses of action taken by ATHOC and the IOC when incidences of ambush marketing are discovered.

---

116. Interview with Gianna Angelopoulos-Daskalaki, President of Athens 2004 Organizing Committee for the Olympic Games SA (ATHOC), INVEST IN GREECE.COM, at [http://www.invgr.com/olympics\\_sponsorship.htm](http://www.invgr.com/olympics_sponsorship.htm) (Retrieved June 9, 2004).

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

### A. Legislative Protection and Registration of Terms and Symbols

As a condition of hosting the 2004 Summer Games, the Greek government enacted Law 2598/1998,<sup>122</sup> its version of the broader Olympic trademark protection legislation discussed in Part II above. The law contains several boilerplate provisions used in previous Olympic-specific laws but also contains some novel provisions to deal with innovative Olympic ambushers. Much of the content of this law addresses protection and registration of the various names, and symbols associated with the Olympics and ATHOC. The relevant provisions regarding Olympic terms and symbols are provided below:

1. The Olympic Symbol, as set forth in the Schedule of the Nairobi Treaty, ratified by L. 1347/1983, the terms "Olympic", "Olympiad" and the Olympic motto (Citius – Altius – Fortius), both in Greek and in all foreign languages, as well as the emblems and signs of the Hellenic Olympic Committee shall be protected pursuant to the provisions of Law 2239/1994.
2. The Olympic Symbol, the terms, the motto, the emblems and signs referred to in paragraph 1 of this article are deemed to have been automatically registered with the competent department of the Ministry of Commerce, without previous examination of the satisfaction of requirements for their registration.
3. The emblem and the mascot of the Organizing Committee for the Olympic Games-Athens 2004 shall enjoy the protection of paragraphs 1 and 2 of this article.
4. The Hellenic Olympic Committee or the Organizing Committee for the Olympic Games – Athens 2004 shall be the sole bodies entitled to exercise the rights deriving from the provisions of paragraphs 1, 2 and 3 of this article. The use of the terms "Cultural Olympiad" and "Cultural Olympic Games" shall be allowed after the granting of a special permission by the Ministry of Culture in consultation with the Hellenic Olympic Committee.
5. The emblems, symbols and signs referred to in this law shall enjoy protection both as regards classes of goods and products and as regards classes of services.

---

122. Protection of Olympic Symbols and Signs, Art. 3, Law 2598/1998, as amended (1998) (Greece).

6. The protection of emblems and symbols referred to in this article shall be continuous."<sup>123</sup>

Other relevant provisions include extending protection to the name and distinctive title of the Company established by article 2 of this law (i.e. the organizing committee for the Olympic Games (hereinafter "ATHOC"), the names and distinctive titles of its subsidiary companies, including but not limiting to the terms "Athens 2004," "Olympic Games –Athens 2004," "2004 Olympic Games," "Olympic Games-Greece," and any other relevant term in Greek or in any other foreign language.<sup>124</sup> The scope of protection also extends to the use of these terms on the Internet, a clear indication that the Olympic organizers are wary of cybersquatters.<sup>125</sup> Pursuant to paragraph 9, all the protected "Symbols and Signs" shall be deemed to be 'Olympic Symbols and Signs.'<sup>126</sup>

Olympic Symbols and Signs were already protected under an existing Greek trademark law.<sup>127</sup> The special protection given to Olympic Symbols and Signs also extends to the marks of

the Paralympic Games, by the motto of the Paralympic Games (Mind, Body, Spirit), and by the terms 'Paralympic', 'Paralympiad', '2004 Paralympic Games', '2004 Paralympics', 'Athens 2004 Paralympic Games', 'Athens 2004 Paralympics', 'Paralympic Games – Greece' and any other similar expression in Greek and in any other foreign language, and by the emblems, marks and mascots of the 2004 Paralympic Games.<sup>128</sup>

Greek Law 2598/1998 also specifies the penalties and enforcement procedures for infringing uses of the Olympic symbols. Provisions for filing a civil action to prohibit the use of the Olympic symbol and or damages are also provided.<sup>129</sup> The penalties for each unauthorized use of the Olympic symbols and signs is a court-ordered fine of not less than three hundred thousand drachmas (GRD 300,000) "in reparation for moral damage to the plaintiff."<sup>130</sup> Provisions are also provided for seeking an injunction to protect the use of

---

123. *Id.* ¶¶ 1-6.

124. *Id.* ¶ 7.

125. *Id.*

126. *Id.* ¶ 9a.

127. Trademark Law No. 2239 of September 16, 1994 (Greece).

128. Protection of Olympic Symbols and Signs, Law 2598/1998, Art. 3, ¶ 11.

129. *Id.* citing Trademark Law No. 2239, Art. 26, ¶ 2.

130. *Id.* at ¶ 9c.

Olympic symbols and signs.<sup>131</sup> Penalties for infringing use of the Olympic symbols and signs, are also subject to "a minimum of three months imprisonment and a fine of at least two hundred thousand drachmas (GRD 200,000)."<sup>132</sup> The criminal offense "shall be deemed to be in flagrante delicto" and will be heard before the One Member Magistrates Court.<sup>133</sup> The law also provides for the confiscation and seizure of the infringing products, "whether or not the defendant is eventually convicted."<sup>134</sup> The statute of limitations for claims relating to the protection of Olympic symbols and signs is "two years from the date when the claimant became aware of the act and the wrongdoer, and in any event after five years of the act."<sup>135</sup>

Additionally, as part of the strategy to combat Olympic ambush marketing, the IOC announced in 1997 that any future Olympic bid cities "must secure all advertising space within the city limits of the Games for the entire month in which the Games are to be held," essentially giving control of all advertising within the host city to Olympic organizers.<sup>136</sup> New South Wales, the host state for Sydney 2000 Summer Games, followed the IOC's advertising mandate by enacting the Olympic Arrangements Act, prohibiting "advertising on buildings and structures, aerial advertising and broadcasting."<sup>137</sup> A similar agreement was reached in Salt Lake City whereby Olympic organizers negotiated with three of that city's largest outdoor media owners to secure billboards along a 70-mile stretch through the city which would then be reserved for official sponsors.<sup>138</sup> In furtherance of this anti-ambush marketing initiative, Athens agreed to secure the city's advertising space at a cost to the city of Athens of \$10 million.<sup>139</sup>

#### B. Anti-ambush Marketing Education and Enforcement Initiatives

Similar to the measures undertaken by the SLOC in anticipation of the 2002 Salt Lake City Games, ATHOC will use a multi-pronged approach to prevent ambush marketing during the 2004 Summer Games. Coordinated by the ATHOC's Brand Protection Department (hereinafter "BPD"), these actions

---

131. *Id.* at ¶ 9d.

132. *Id.* at ¶ 9e.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

will include "prevention, surveillance, reporting, investigation, and enforcement strategies" similar to those used in Salt Lake City.<sup>140</sup> The BPD uses education as an ambush prevention strategy through its website as well as educational campaigns, videos, workshops, and advertisements in trade and consumer publications.<sup>141</sup> Similar to the SLOC, ATHOC will also publicize legal actions alleging trademark infringement of the Olympic marks.<sup>142</sup> The BPD will utilize the official ATHOC website to allow people and businesses to report incidents of sales of unlicensed merchandise.<sup>143</sup> It is somewhat ironic that while the Internet has become a new venue for ambush marketing through the sales of unlicensed merchandise or infringing domain names, it has also become a tool that the BPD can use in combating infringement.

The BPD takes a proactive role to reduce the sale of unlicensed Olympic merchandise through a "mystery shopping" surveillance operation.<sup>144</sup> Brand Protection agents will survey retail shops in and around Athens as well as e-commerce sites.<sup>145</sup> This process proved successful in Salt Lake City in reducing the sale of unlicensed merchandise such that approximately 75% of the suspected stores discontinued sales of the unlicensed items within two weeks of the mystery shopping visit.<sup>146</sup>

### C. Restrictions on Athlete Commercial Activity

In addition to these measures, the IOC has also sought to close ambush marketing loopholes by restricting the commercial activity of participating athletes. The rationale for these restrictions is based on the notion that "because athletes often tend to represent or be the Olympic ideal, it is understandable that some might assume Olympic sponsorship from those who use Olympic athletes in their advertising campaigns."<sup>147</sup> From the Olympic organizing committee's perspective, this situation must be prevented because even where there is an implicit association of endorsement by an Olympic athlete of a non-official sponsor, the return on investment for the official

---

140. Wall, *supra* note 13, at 1252.

141. *Id.* at 1257.

142. *Id.*

143. Nish, *supra* note 55, at 69.

144. *Id.*

145. *Id.*

146. *Id.*

147. Jeremy Curthoys & Christopher N Kendall, *Ambush Marketing and the Sydney 2000 Games (Indicia and Images) Protection Act: A Retrospective*, 8 MURDOCH UNIVERSITY ELECTRONIC J. OF L. 31 (June 2001), at <http://www.murdoch.edu.au/elaw/issues/v8n2/kendall82nf.html>.

sponsor is likely diminished. In addition, laws to restrict the contents of advertising by ambush marketers have been especially difficult in cases of implicit association between a non-sponsor and a major sporting event.<sup>148</sup>

Generally speaking, during the Olympic Games, athletes cannot have any commercial markings on their uniforms.<sup>149</sup> By-Law 3 to Rule 45 of the Olympic Charter states: "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."<sup>150</sup> Although exceptions are sometimes made for individuals endorsing official sponsors, this provision restricts ambush marketers from capitalizing on their endorsement deals with participants during the period of the Games.

Perhaps the most well-known example of Olympic ambush marketing involving Olympic athletes occurred at the 1992 Summer Games in Barcelona.<sup>151</sup> In that case, Nike, the official sponsor of the United States basketball team known as the "Dream Team" was ambushed by the Dream Team members themselves, who avoided showing the Reebok logo on their official team suits by draping the United States flag over it.<sup>152</sup> In addition to the Dream Team fiasco, Nike, the official clothing supplier for the Australian Olympic team, suffered another blow at the Sydney Games when Ian Thorpe, an Australian Olympic team swimmer who was sponsored by Adidas, had his towel draped over the Nike logo on his official team tracksuit at the medal ceremony for all of the Australian media to see.<sup>153</sup> Such examples show that, although often claimed to be accidental on the part of the athlete, Olympic athletes with financially lucrative endorsement deals will often find creative ways to avoid implying an endorsement relationship with one of their sponsor's direct competitors. The ability of Olympic athletes to subvert the Olympic organizations' best efforts to prevent ambush marketing through athlete endorsement restrictions poses a real concern for both the Olympics and official sponsors because there is always a chance that at the last minute, typically during the media-intense medal ceremony, some action by the athlete

---

148. *Id.* at 37.

149. Leigh Augustine-Schlossinger, *Legal Considerations for Sponsorship Contracts of Olympic Athletes*, 10 VILL. SPORTS & ENT. L. FORUM 281, 286-287 (2003).

150. INTERNATIONAL OLYMPIC COMMITTEE, *supra* note 14, at Rule 45, By-Law 3.

151. Curthoys & Kendall, *supra* note 143, at 69.

152. *Id.*

153. *Id.*



will cause the official sponsor's logo not to be seen by the worldwide viewing audience.

Furthermore, despite these restrictions, companies intent on utilizing athletes in ambush marketing campaigns can find alternative avenues as illustrated by Sprint's effective use of Olympic athletes in advertisements appearing prior to the Games, and its use of actors in clever thematic advertising during the actual Games.<sup>154</sup>

### CONCLUSION

With the advent of each Olympic Games, arguably the most-publicized concern of the IOC and the host organizing committee is the desire and need to protect the investments of the official sponsors of the Games. These Olympic organizations fear that by not vigorously protecting the exclusive marketing rights granted to their official sponsor, the perceived value of their sponsorship packages will ultimately be diminished.

In order to protect the value of its sponsorship program, the Olympic organizers have sought to strengthen the protection of Olympics-related intellectual property. The IOC has been aggressive in encouraging countries to enact specific legislation that not only explicitly grants trademark protection for a wide range of Olympic marks, but that also addresses the concerns of the Olympic movement regarding marketing activity that can be perceived as ambush marketing.

Such legislative measures have now become a condition of being awarded the opportunity to host the Games. As a result, a growing number of countries have enacted legislation that specifically addresses protection of Olympic marks and, through a variety of clauses, also seeks to encompass marketing activity deemed to confuse or deceive the public into believing non-sponsor companies have an association with the Games. However, as discussed above, none of the legislation adopted by other countries has been as broad as that in the United States which, in the form of the Ted Stevens Olympic and Amateur Sports Act, continues to serve as the IOC's model for legislation that protects the Olympic movement.

With each subsequent Olympics, the IOC and the host organizing committees have also been vigilant in attempting to close various loopholes that are revealed by clever ambush marketers. Such measures have included restrictions on advertising around the Olympic venues (again, as a condition to hosting the Games); restrictions upon participants' involvement in advertising

---

154. Howard, *supra* note 110, at 6B.

campaigns; and a continual strengthening of the Olympics' education and trademark enforcement strategies.

The Olympic organizations have demonstrated a proven track record in their legal challenges to more blatant trademark infringements, most notably within the United States. However, despite these admirable efforts, companies without official sponsorship rights remain active in their attempts to associate themselves with the goodwill of the Olympic Games through a variety of ambush marketing activities that circumvent the legislation of the various countries. Thus, while the Olympic athletes who take the field in Greece will be competing to win Olympic gold, the ongoing competition among companies off the field will also continue as ambush marketers themselves strive to "take" the Olympic gold.

#### ABOUT THE AUTHORS

STEPHEN M. MCKELVEY is an Assistant Professor in the University of Massachusetts-Amherst Sport Management department. He teaches courses in sport law, sport marketing and sport policy. His research interests focus on the intersection of sport marketing and the law, with a special emphasis on intellectual property issues. He received his J.D. from Seton Hall School of Law, his M.S. in Sport Management from the University of Massachusetts-Amherst, and his B.A. in American Studies from Amherst College.

JOHN GRADY, J.D. is a doctoral student in the Florida State University Sport Management program. Mr. Grady earned his J.D. from the Florida State University College of Law and a B.S. in Management with Honors in Finance from Penn State University. His research interests focus on ADA compliance in sport and entertainment facilities as well as Intellectual Property issues in sport.

#### REFERENCES

- Advertisement (2002, February 2). *Newark Star-Ledger*, p. 43.
- Advertisement (2002, February 22). *Usa Today*, p. 8D.
- Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d) (2004).
- Baltzley, C. (2000, November 1). Copyright disputed. *The Houston Chronicle*, p. 12.
- Batcha, E. (1998). Comment: Who are the real competitors in the Olympic Games? Dual Olympic battles: Trademark infringement and ambush

marketing harm corporate sponsors – violations against the USOC and its corporate sponsors. *Seton Hall Journal of Sport Law*, 8(1), 229-259.

- Curthoys, J., & Kendall, C.N. (2001). Ambush marketing and the Sydney 2000 Games (Indicia and Images) Protection Act: A Retrospective. *Murdoch University Electronic Journal of Law*, 8(2). Retrieved May 15, 2004, from <http://www.murdoch.edu.au/elaw/issues/v8n2/kendall82nf.html>.
- Davis, R. (1996). AALS sport law conference: Legal issues and the Olympic movement: Ambushing the Olympic Games. *Villanova Sports & Entertainment Law Journal*, 3(2), 423-442.
- Fair Trading Amendment Act 1994, No. 124, An Act to amend the Fair Trading Act 1986 (N.Z.).
- Hiestand, M. (1999, Dec. 15). USOC not laughing off ads. *USA Today*, p. 1C.
- Howard, J. (2002, Jan. 8). USOC files complaint against Discount Tire Co. for Olympic marks infringement. Retrieved May 25, 2004, from <http://www.usocpressbox.org>.
- Howard, T. (2002, March 18). Sprint ads capture Olympic feel. *USA Today*, at 6B.
- International Olympic Committee (2003, July 4). *Olympic charter*. Retrieved June 22, 2004 from, [http://multimedia.olympic.org/pdf/en\\_report\\_122.pdf](http://multimedia.olympic.org/pdf/en_report_122.pdf).
- Kravitz, R. (1989), Trademarks, speech and the Gay Olympics case. *Boston University Law Review*, 69(2), p 131-184.
- Lanham Act, 15 U.S.C. §§ 1051 (2001).
- Law No. 92-597 of July 1, 1992, on the Intellectual Property Code (legislative part), Art. L. 713-5 (France).
- Manasso, J. (2000, Nov. 22). USOC puts the heat on Utah resort. *The Atlanta Journal and Constitution*, p. 2C.
- McKelvey, S. (1994). Atlanta '96: Olympic countdown to ambush Armageddon? *Seton Hall Journal of Sport Law*, 4(2), 397-445.
- McKelvey, S. (1994, April 18), San legal restraint, no stopping brash, creative ambush marketers. *Brandweek*, 35(16), p. 20.
- McKelvey, S. (1992, Fall). NHL v. Pepsi Cola Canada, Uh-huh! Legal parameters of sports ambush marketing. *Entertainment & Sports Lawyer*, 10(3), 5-18.
- Mendel, F. & Yijin, C. (2003, May). Protecting Olympic intellectual property. *China Law & Practice*, 7(4), 33-34.

- Moorman, A. (2002). Olympic trademarks: Citius Altius Fortius – faster, higher and stronger trademark protection for the USOC and its protected marks. *Sport Marketing Quarterly*, 11(1), 59-60.
- National Hockey League v. Pepsi-Cola Canada, Ltd., 42 C.P.R. (3d) 390 (B.C.S.C. 1992).
- New Zealand Olympic & Commonwealth Games Ass'n v. Telecom New Zealand Ltd., [1991] F.S.R. 757 (N.Z.).
- Nish, N. (2003). 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. *Seton Hall Journal of Sports Law*, 13(1), 53-72.
- Olympic Insignia Protection Amendment Act 2001, No. 156, 2001 (Austl.).
- Olympic Symbol etc. (Protection) Act, 1995, c. 32 (Eng).
- O-M Bread, Inc. v. United States Olympic Comm., 67 F.3d 933 (Fed. Cir. 1995).
- Payne, M. (1998). Ambush marketing: the undeserved advantage. *Psychology and Marketing*, 15(4), 323-331.
- Pendras, K. (2002, Summer). Comment: Revisiting San Francisco Arts & athletics v. United States Olympic Committee: Why it is time to narrow protection of the word 'Olympic.' *Hawaii Law Review*, 24(3), 729-762.
- Perini, D. (2002, October 25). *Protecting Olympic intellectual property*. Presentation at the Intellectual Property Issues In Sports: How They Have Affected The Modern Sports Industry and Its Business Practices Conference, Milwaukee, WI.
- Protection of Olympic Symbols and Signs, Art. 3, Law 2598/1998, as amended (1998) (Greece).
- Protection of Olympic Symbols Regulations, issued by the State Council (2002, February 4) (China). Available: [http://www.ccpit-patent.com.cn/references/Regulations\\_Protection\\_Olympic\\_Symbols.htm](http://www.ccpit-patent.com.cn/references/Regulations_Protection_Olympic_Symbols.htm).
- San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522 (1987).
- Schlossinger, L. (2003). Legal considerations for sponsorship contracts of Olympic athletes. *Villanova Sports & Entertainment Law Forum*, 10(2), 281-296.
- Stop the Olympic Prison v. United States Olympic Comm., 489 F. Supp. 1112 (S.D.N.Y. 1980).
- Symbols and Olympic Insignia Protection Act, Act N°24.664 (1996) (Argentina).

- Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501 (2000).
- Terazano, E. (2003, Sept. 2) Ambush marketing tactics to be kicked into touch. *Financial Times Limited*, p. 9.
- Trademark Law No. 2239 of September 16, 1994 (Greece).
- Trademark Registration and Applications Therefor, Law No. 220, ch. II (December 1996), amending Law No. 127 (April 13, 1959) (Japan).
- Trade-marks Act, Unfair Competition and Prohibited Marks, R.S.C., ch. T-13, § 9 (2001) (Can.).
- United States Olympic Comm. v. American Media, Inc., 156 F. Supp. 2d 1200 (D.Colo. 2001).
- United States Olympic Comm. v. Discount Tire, No. 2:02cv17 (D. Utah 2002).
- United States Olympic Comm. v. Intelicense Corp., S.A., 737 F.2d 263 (2d Cir. 1984).
- United States Olympic Comm. v. Nabisco, Inc., Case No. C 00 3086 (N.D. Cal. 2000).
- United States Olympic Comm. v. Park City Shirt Company, 2:99 CV-0380C (D. Utah 2000).
- USOC, SLOC settle suit with Quiksilver (2002, February 9). *Desert News and KSL Coverage of the 2002 Salt Lake Winter Olympic Games*. Retrieved May 10, 2004, from, <http://www.deseretnews.com/oly/view/0,3949,70000206,00.html>.
- Vancouver 2010, *Brand and Logo Rights and Usage Guidelines* (March 15, 2004), at <http://www.spiritof2010mission.com/forum/viewtopic.php?p=31>.
- Vancouver 2010 (2004, March 15). *Brand and Logo Rights and Usage Guidelines*. Retrieved June 24, 2004, from <http://www.spiritof2010mission.com/forum/viewtopic.php?p=31>.
- Wall, A.M. (2001). The games behind the Games. *Trademark Rep.*, 91, 1243-1268.
- Wall, A.M. (Spring, 2002). The game behind the Games. *Marquette Sports Law Review*, 12(2), 557-581.
- Woodward, S. (2004, April 12). AmEx in hot water with USOC over swim offer. *SportsBusiness Journal*, 6(5), p. 1.
- Woodward, S. (2004, May 3). Showing 'Spirit': IOC-licensed attraction to open in August in Toronto. *SportsBusiness Journal*, 7(2), p. 13.

Woodward, S. (2004, June 28). USOC checks in on Choice Hotels promotion. *SportsBusiness Journal*, 7(10), p. 1.