

From Beijing 2008 to London 2012: A comparative analysis of recent Olympic sponsorship protection legislation – Does it fairly balance the rights and interests of all stakeholders?

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Legal aspects

May 28, 2009

25 minute oral

Abstract 2009-011

8:30 AM

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Given the significant financial investments of official sponsors, as well as the tremendous publicity and consumer audiences generated by mega sporting events such as the Olympics, it has become increasingly important for event organizers to adopt proactive sponsorship protection strategies to combat against the practice of ambush marketing (Ambush marketing, 2003). Having "emerged over the past twenty years as a key concern of sponsors and rights holders" (Burton & Chadwick, 2008, p. 96), ambush marketing is increasingly being addressed by event organizers using four major overarching strategies: pre-event education and public relations initiatives, on-site policing, use of contractual language in athlete participation agreements and on spectator tickets, and the enactment and enforcement of special trademark protection legislation (McKelvey & Grady, 2008).

The relatively recent strategy of enacting protective legislation has been the source of increased commentary and, in some cases, criticism by academicians, practitioners and representatives of local businesses within host countries and cities (McKelvey & Grady, 2004). It has been noted that while "governments are playing an active role in protecting the commercial interests of the IOC by passing laws ... the ultimate responsibility to enhance the Olympic Brand and to provide commercial value to partners remains with the IOC" (Seguin, Ellis, Scassa, & Parent, 2008, p. 100). Seguin et al. (2008) have argued that "in seeking to protect the sponsorship rights of certain companies (i.e. legislation in place of proper brand protection), the government is, in fact, causing more harm than good" (p. 100).

Furthermore, one can question whether it should be within the purview or responsibility of the host country's government to provide protection for sport organizations and their sponsors beyond what already exists under the country's respective trademark and unfair competition laws (McKelvey & Grady, 2008). As a result, scholars have begun to acknowledge the need to affect a balance between the demands of sport organizations for legislation-based sponsorship program protection and the rights and business interests of non-sponsors to maintain a competitive market presence when a major sporting event is hosted within their community (McKelvey & Grady, 2008). As a result of the prevalence of ambush marketing and its potential to diminish the value of official sponsorship, "[i]t is now common practice for organizers of major events to require appropriate ambush marketing protections to be implemented as a condition to hosting the event" (Mallard, 2007, p. 1).

Within the Olympic Movement, most notably beginning with the Sydney 2000 Games and followed by Athens in 2004, recent successive Games have seen an effort on the part of the IOC to increase both the specificity and the extent of restrictions built into the special event legislation specifically enacted by the host country to provide protection for the event and its sponsors. In advance of the 2008 Beijing Games, for example, Chinese authorities adopted state and municipal legislation to address misuse of the Olympic symbols and protected words for a commercial purpose (Smith, 2005).

This legislation resulted in protection for Olympic symbols and over 100 Olympic-related phrases (Hutzler, 2005). In anticipation of the 2010 Vancouver Games, the Canadian government has passed the Olympic and Paralympic Marks Act of 2007 (Bill C-47), providing an unprecedented level of protection for the Olympic marks despite their already extensive protection found in the Trade-marks Act (Scassa, 2008). Seguin et al. (2008) have noted that "[t]he primary goal of such legislation is to render illegal a wide range of previously legal activities and words, broadly described as ambush marketing" (p. 100). The London Olympic Games and Paralympic Games Act 2006 (amending the Olympic Symbol etc. (Protection) Act 1995), enacted specifically for the 2012 London Games, creates a new intellectual property right in the form of a London Olympics Association Right ("LOAR"). This legislation creates a presumption of infringement of the LOAR where, inter alia, a non-sponsor uses any combination of "protected" words and phrases.

Of equal concern, London's Act makes it easier for the IOC to prove ambush marketing by shifting the burden of proof to the defendant to demonstrate a lack of intent to create an association with the Games (Smith, 2005). The London Act serves to further illustrate the issues and concerns that frame the need for balancing the competing demands of the Olympic Movement with the rights and business interests of non-sponsors, including local businesses, to maintain a competitive market presence when a major sporting event is hosted within their country. The restrictive nature of the London Act has resulted in criticism by Smith (2005) that the "protectionist approach" taken by the British government has resulted in an "unnecessarily draconian"

2009 North American Society for Sport Management Conference (NASSM 2009)

piece of legislation. In sum, the IOC, which is able to require countries to enact special legislation in exchange for hosting the Games, is increasingly finding itself at odds with the business community of host countries whose constituents are not in a financial position or simply not able due to exclusive contracts to become one of an elite handful of official sponsors of the Olympics. Such legislation that circumvents a country's established trademark law principles, is arguably overly-restrictive, and is enacted solely to protect the business interests of official sponsors, raises legitimate legal concerns with respect to striking a fair and proper balance between all interested stakeholders.

During this presentation, the researchers will first provide a comparative analysis of the legislative acts designed to protect the IOC and its official sponsors with respect to the Beijing, Vancouver and London Games. A critical assessment of the arguments of local business associations with respect to whether the London Act does, in fact, provide a fair and balanced approach will then be provided. Recommendations on how future legislation might better achieve a more fair and equitable balance to protect the commercial rights of local businesses in cities and countries hosting the Olympics as well as suggestions for future research will also be forwarded.