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The London 2012 Olympic and Paralympic Games

Introduction

With the Vancouver Winter Olympics over, all eyes are turning to the London Olympics which will be held in the summer of 2012.

Businesses will undoubtedly be keen to become involved in the surge in excitement surrounding this great event, but there are several serious difficulties which advertisers and agencies, big and small, face if they wish to run a campaign tied into the Olympics. This is so, despite the fact that the organisers are loudly calling for businesses to help generate that excitement and to sponsor individual teams and athletes.

This Guide sets out some of the issues for advertisers and agencies to be aware of when developing marketing campaigns which have some connection with the London Games. There are many restrictions, even for sponsors of the Games, and non-sponsors in particular need to be extremely careful. Sponsorship and the necessary associated matched advertising costs each sponsor approximately £100 million. The Olympic Games also has a clean venue policy which means even official sponsors have limited rights. Sponsors have primary rights to advertise during commercial television breaks and on prime sites, over which LOCOG has pre-option rights, around the main areas. Non-sponsor street vending and advertising around the Olympic sites is not permitted.

Given the Olympic Games will be broadcast on the BBC broadcast advertising is also limited. So all these restrictions mean official sponsors must utilize every available opportunity to get value from their investment as official sponsors. It inevitably means they will themselves, and expect LOCOG, to vigorously clamp down on any ambush marketing, i.e. an attempt by a brand owner to associate itself with the Games without the sanction of LOCOG and without contributing to the event.

Any advertiser seeking to associate itself in any way with the Games should take legal advice before doing so.

The Olympic Rings

The Olympic Games logo is the most protected logo in the world. It is, amongst other things registered as a trademark in every one of the 45 categories of goods and services of the EU trade mark registry.

The logo is also protected by two separate Acts of Parliament: the Olympic Symbol (Protection) Act 1995 (the 1995 Act) and the London Olympics Act 2005 (the 2005 Act). The trademark rights belong to the International Olympic Committee (IOC), but are enforced in the UK by the British Olympic Association (BOA) and, from now until the end of 2012, by the London Organising Committee for the Olympic Games (LOCOG).

The provisions of these Acts make it an offence to reproduce the symbol or to reproduce something so similar that it is “likely to create in the public mind an association with it”. What this really means is that non-sponsor advertisers should never use the Olympic rings without permission from the IOC and they should also avoid recreating or using the rings in different styles or made up of different materials, or parodying the logo.

Official Partners and Sponsors of the Games will, however, have specific rights to use this symbol (see below).

The word “Olympic” and the Olympic motto

The two Acts also give protection to the words “Olympic”, “Olympiad” and “Olympian” (and their equivalent pluralities) and to the Olympic motto (“Citius, altius, fortius”) – collectively known as “protected words”. The word “Olympiad” is also a registered European Community trademark in every category.

It is a breach of the rights provided by the Acts to use the motto or the protected words or, again, to use a similar representation which is “likely to create in the public mind an association

with it.” As for the rings, non-sponsor advertisers are therefore advised to avoid using the word “Olympic” or “Olympics” or similar in any advertising.

There are, however, some exceptions to the rule. If, prior to the 1995 Act, a company had registered the word “Olympic” as a trademark or if their company name incorporated the word “Olympic”, such as the Greek airline Olympic Airways, then these companies may continue to use this word in association with their products. However, such rights holders still need to avoid creating an association with the Games themselves.

Also, the words can be used a factual context. A building development company could for instance state in an advertisement that a new housing development is “5 minutes from the Olympic park”. Again, however, advertisers need to avoid extrapolating a factual statement by suggesting there is any other association with the Games. Calling the housing development “Olympic Estates”, for example, would infringe LOCOG’s rights – see the next section below.

The London Emblem and Mascots

The emblem of the London Olympic Games shown above is protected by copyright and is also a registered trademark and cannot be used without the permission of the LOCOG. A controversial design when it was first introduced, it is now ubiquitous, and the Official Partners and Sponsors, who alone had the right to use the emblem, are sensibly adorning it across their merchandise and marketing.

There will be official mascots for the Games as well, although currently these have not been revealed. These will be protected by copyright and trademark, and again should not be used without permission. Advertiser’s agencies should avoid using these mascots or, importantly, creating characters which closely resemble these mascots.

The London Olympic Association Right

The 2005 Act, which was introduced after London won the right to host the 2012 Games, created a new intellectual property right: the London Olympic Association Right (LOAR). This is an exclusive right (belonging to LOCOG) preventing any entity from referring to or associating themselves with the London Games without the permission of LOCOG. Only sponsors are allowed this right to associate themselves with the Games, and even then, only with LOCOG’s permission.

The 2005 Act sets out a list of certain words, used in some cases by themselves and in some cases in combination with other words, which would be taken into account by courts as suggestive of an association. These words include seemingly innocuous combinations such as “summer 2012” or “London 2012” and may catch some advertisers out.

LOCOG has produced guidance notes on advertising and the rights which LOCOG has acquired under the 2005 Act. These are available at the following link:

<http://www.london2012.com/about/our-brand/using-the-brand.php>

Fuller versions are also available at

<http://www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf>

and

<http://www.london2012.com/documents/brand-guidelines/guidelines-for-business-use.pdf>

These guidance notes provide detailed information about the Games and the associated legislation and also contain details of sponsorship opportunities. Also, helpfully, examples are given as to what type of advertisement will be acceptable under the new law and which will not.

Infringements

As this note has explained, unapproved use of the emblems, symbols, mascots and protected words by non-sponsor advertisers may amount to copyright or trademark infringement or a breach of the LOAR.

In addition, claiming that an advertiser is a sponsor when it is not would also amount to passing off, since this is an intentional attempt to confuse consumers into thinking that the advertiser is officially associated with the goodwill of the Games, when this is not the case. However, a passing off action is unlikely to be taken when LOCOG is able to claim an infringement of LOAR instead, much easier claim to prove successfully in these circumstances.

Furthermore, the advertising codes (CAP and BCAP Codes) prevent misleading advertising. Advertisements which suggest an association when there is not one will amount to misleading advertising. These rules can be used to prevent advertisers from using straplines such as “the unofficial sponsor of the Games”, which technically may not amount to passing off, but it will be misleading. Again, however, LOCOG is likely to invoke the provisions of the LOAR to protect its rights.

Enforcement and Sanctions

Infringement of some of the rights granted is a criminal offence. In particular, the sale or advertisement of goods which bear a controlled representation. However, civil claims can also be brought and remedies include: injunctions; damages; delivery up of infringing materials and goods and/or on account of profits.

A brand should be aware of potential reputational damage of being shamed as an Olympic ambush marketer. The food chain Subway was singled out by US Olympic Committee in January 2010 as an ambush marketer for using Michael Phelps in a campaign. Subway denies wrongdoing but any company trying to create a false impression that it is an official partner of the Games or creates a false association is "cheating Olympic athletes, Olympic Games' organisers and Olympic fans" said IOC.

Protecting the Sponsors

A list of official partners, sponsors and suppliers of the London Olympics can be found at the link below:

<http://www.london2012.com/about/the-people-delivering-the-games/international-and-uk-partners/index.php>

The main companies are:

Worldwide partners

Acer
Atos Origin
Coca Cola
GE
McDonald's
Omega
Panasonic
Samsung
Visa

Official LOCOG partners

Adidas
BMW
BP
British Airways
BT
EDF Energy
Lloyds TSB
Nortel

The official Partners and Sponsors are entitled to use the Olympic protected words and logos (including the Olympic rings in accordance with their sponsorship agreements) including the ability to offer tickets and hospitality opportunities. Official sponsors pay very significant sums for their sponsorship, and therefore justifiably demand in return, protection from ambush marketing.

Ambush marketing is an activity by a third party to associate itself with an event without the sanction of the event holder and without paying. This sort of activity has become increasingly common since the Atlanta Games of 1996, and host cities of the Olympic and Paralympic Games are required to introduce legislation to prevent ambush marketing. Despite the UK having existing protective legislation the government introduced LOAR in order to comply with IOC requirements.

LOCOG is already vigorously pursuing those who either intentionally or unintentionally infringe Olympic rights in order to protect the sponsors.

Team Sponsors and Conflicting rights

There are some unexpected outcomes of these anti-ambushing provisions. It would be reasonable to presume that, say, the sponsor of the British sailing team would be entitled to state in its advertising that they are the sponsor of the sailing team for the Olympics. In fact, this is often not the case. Sponsors of individual national teams (whether British team or not) need to check what rights they have under their sponsorship agreements. An individual team (or athlete) sponsorship agreement may not grant the right to refer to or to portray the entire British team or the British team's logo in an advertisement, and, almost certainly, it will not allow the sponsor to use the Olympic symbols or the protected words.

Another issue which frequently arises during the Olympics is the problem of conflicting rights. Many individual athletes have sponsorship arrangements with brands, often sportswear

brands. Unfortunately, the IOC enforces a strict clean venue policy. Athletes will not therefore be permitted to wear sports kit or hats which carry any branding other than that of the official sports kit sponsor – in this case Adidas: in an exception to the clean venue rule, sports kit incorporating Adidas' branding is permitted in the arenas.

The IOC will usually prevent an athlete from wearing any item which carries their individual sponsor's logo during the trials, the events themselves and any pre- or post-race interviews. If an athlete breaches these rules, the IOC can prevent them from participating in the Games, so the sanction is quite strict. Actions such as Linford Christie's use of Nike contact lenses in a post-event interview in 1996 would not be permitted now.

Featuring athletes

Advertisers should avoid using images of athletes or coaches without their permission. Although under UK law, in certain circumstances, there is no need to seek permission to feature individuals in advertisements (if there is no suggestion of endorsement of the advertiser's products or services - see the ReactS Ad Guide "Using Celebrities"), there is a distinct possibility that using competing Olympic athletes, or even old Olympic champions, and teams may infringe the London Olympic Association Right. LOCOG is certainly likely to see it that way.

This raises the question which has not clearly be answered by LOCOG, as to their reaction when advertisers run one-off tactical advertisements featuring a triumphant UK athlete, particularly where the photo has been taken outside the arenas, say in the marathon or off the coast of Weymouth. LOCOG is likely to argue that this still infringes the London Olympic Association Right, but it may be regarded as a negative and curmudgeonly approach to take.

Advertisers who may be thinking about paying an athlete to endorse the advertisers products or services should be aware that, under the rules of the competition, competing athletes are not allowed to endorse any products at all during the period of the Games, and even then subject to restrictions. If an advertiser decides that it does wish to sign up an athlete to endorse its products or services, it will only be permitted to publish those ads before or after the competition, and not at all during the Games. It is important to bear this in mind, as athletes who do appear in advertising campaigns during the period of the Games may be prevented from participating in the Games.

The IOC rules do not, however, prevent advertisers from featuring well known former athletes who are not competing, such as Dame Kelly Holmes or Sir Steve Redgrave. It is likely that such individuals will be much in demand during this period, but advertisers should still remember that the advertisements featuring these sports stars should not cause an association to be made with the London Games: as this would infringe the London Olympic Association Right.

Suppliers to the Games

Many suppliers to the Games will have been surprised to find that they too cannot refer to their involvement with the event in any promotional material. Because it would be a legitimate defence to agree that a reference to supplier status is fair dealing in a commercial practice LOCOG has required all its suppliers to sign separate side agreements under which most suppliers have undertaken to make no such reference. If your business is a supplier to the Games do not forget to check what contracts were entered into and what restrictions there are regarding association with the Games.

Footage

The IOC owns the copyright in the footage of all previous Games, not the broadcasters. The Olympic Television Archive Bureau manages and markets the IOC's archive. It is possible for advertisers to use the footage, but such use is only likely to be open to official sponsors and partners.

Final Thoughts

The London Games will be a one off national celebration. Everyone will be caught up in the event, not just those businesses and consumers who are in London in the summer of 2012, but people across the country.

Despite the desire of the government and the organisers to involve the country in the Games, however, the association right severely hampers non-sponsors from being too involved in the build up to the Games, or indeed during the Games themselves. LOCOG is already assiduously enforcing its rights, and this will increase as more advertisers jump on the band wagon.

Advertisers who want to reap some benefit from the event taking place on their doorstep will need to be cautious in their approach, and are advised to seek legal advice.

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