

SPORTS AND IP: COMMENTARY ON THE LEGAL AND ENFORCEMENT FRAMEWORK
AGAINST AMBUSH MARKETING FOR THE TOKYO 2021 OLYMPIC GAMES

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INTRODUCTION

The Olympic Games (the Games or the Olympics) is “an organised global sporting event, usually referred to as an ‘athletic festival’ which originated in ancient Greece as far back as 776BC in Olympia”.¹ Over the years, the nature and scope of the Olympics have transcended from a Greek to a global festival, attracting great global attention and diverse participation. The Olympics is presently the largest and most popular sporting and cultural activity in the world and considered a model to many other championship activities based on its structured organisation, regulation and governance.² The goal of the Olympics is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.³

The constituents of the Olympic Movement are; the International Olympic Committee (IOC), the International Sports Federations (IFs) and the National Organising Committees (NOCs).⁴ The Movement, however, also encompasses on a wider scale, the Organising Committees for the Olympic Games (OCOGs) and committees associated thereto, national associations, persons and athletes belonging to the IFs and NOCs, judges, referees, coaches, officials and technicians and other organisations and institutions recognised by the IOC.⁵ Each of these organisations maintain its independence but participate in a mutually reinforcing process in the movement. The Olympic Movement has several partners such as the Court of Arbitration for Sports (CAS), the International Committee of Fair Play and the Paralympics Committee.⁶ The nature of the Olympics invariably demands enormous financial commitment. The Olympics is usually hosted in a pre-selected city/state as decided by the IOC. The Olympic

¹ World Intellectual Property Organisation, ‘Olympic Games’ <www.wipo.int/ip-outreach/en/ipday/2019/intellectual_property_olympics_games.html> accessed 26 November 2019.

² Mark James, *‘Sports Law’* (2nd Edition Palgrave Macmillan 2013) p 319.

³ Preamble to the Olympic Charter 2019.

⁴ Rule 1(2) of the Olympic Charter 2019.

⁵ Rule 1(3) of the Olympic Charter 2019 .

⁶ James Nafziger, *‘International Sports Law’* (2nd Edition Transnational Publishers Inc. 2004) p 19.

Games is privately funded by the designated host state which devises ingenious means to raise these funds with the assistance of the IOC.⁷

There is no gainsaying that successful sponsorship investments have yielded bountiful returns for the sponsors and the host state/country. It has in addition been wielded by sponsors as a business strategy and a rebranding tool to achieve greater popularity and good-will, exclusive advertisement and marketing of their brands and so on, in return for huge financial investments.

Given this relationship, it is paramount that protective polices and regulations are put in place to safeguard the sponsor's economic, financial, marketing interests among others during the Olympic Games. The Olympic Charter in an attempt to protect these interests contain general provisions for the protection of the Olympic movement, whilst urging the National Olympic Committees (NOCs) to make more specific regulations for the effective protection of the Olympian movement. In response, host states have adopted different approaches to ensure optimum protection of these interests. Some host states in addition to existing relevant legislation that protect intellectual property, go a bit further by enacting tailored policies for the regulation of the games and criminalising certain acts which tend to infringe upon the privileges and rights of sponsors. However, some other host states have maintained a subtle approach- such is the case of Japan.

With the international outlook of the Olympics and the significant participation of stakeholders particularly sponsors, the need for rules protecting the rights and interests of these key participants is imperative to ensure a peaceful and successful continuation of the sport. This paper discusses the nature of legal protection afforded to sponsors of the Olympic Games with particular focus (as well as commentary) on the extant policies put in place by the Japanese government to afford protection to sponsors of the Olympics 2020 against ambush marketing.

1. INTELLECTUAL PROPERTY (IP) OF THE OLYMPIC GAMES

As already established, the Olympic Games is privately funded by the designated host state which devises ingenious means to raise these funds with the assistance of the IOC. To

⁷ Marianne Chappuis 'The Olympic Properties' [2012] WIPO Magazine 3/2012
<wipo.int/wipo_magazine/en/2012/03/article_003.html> accessed 28 November 2019.

generate funds for the Games, support is sought from sponsors and partners of the Olympic movement, national and multinational corporations or enterprises.⁸

A major incentive to sponsorship is a seeming assurance of profit on investment consequent upon the success of the Games. Sponsors are usually top branded multinational and national companies and organisations which invest heavily into the games. While sponsorship from these organisations ensures a successful continuity of the Olympics, the sponsors perceive this act of business investment as capable of yielding greater returns and promoting their brand and good will. Hence, in obliging to settle the huge financial obligations that come with organising the Olympics, the sponsors in return, intend to enjoy some sort of exclusive privilege to recoup their investments through exclusive marketing of their products, rebranded popularity and so on during the Olympic Games.

To ensure that the ultimate concerns of these sponsors are met, the intellectual property protection system of a country plays a pivotal role in achieving this success.⁹ A good IP legal framework must seek to effectively protect the Olympic movement and particularly the Olympic properties such as the Olympic symbol, emblems, flag, torch, anthem, slogans and so on.¹⁰ This enables the Olympic Movement leverage its reputation and attract more commercial partners into its worldwide sponsorship program- *The Olympic Partner (TOP) Programme*.¹¹ This programme creates long-term relationships with partners in exchange for the grant of exclusive global marketing rights and opportunities within a given product/service category.¹² The IOC in turn ensures that the NOC of a host city gives effect to the provisions of the Olympic Charter on protection of properties, among others. With the rising cost in staging an Olympic Games, the need for greater protection of exclusive privileges to be afforded the sponsors of the Olympics have become more imperative and an attractive incentive on sponsorship investments. This is why organisers frown upon acts of illicit business practices by companies or businesses trying to create an association between its products and services in a bid to draw a commercial benefit from the reputation of the event, without obtaining prior authorization from the organizer - a churned practice more commonly referred to as *Ambush Marketing*.

⁸ Marianne Chappuis 'The Olympic Properties' [2012] WIPO Magazine 3/2012

<wipo.int/wipo_magazine/en/2012/03/article_003.html> accessed 28 November 2019.

⁹ World Intellectual Property Organisation, 'The Olympic Games' <www.wipo.int/ip-sport/en/olympic.html> accessed 28 November 2019

¹⁰ Rule 7 Olympic Charter 2019

¹¹ Marianne Wuthrich, 'Protecting the Olympic Properties' WIPO Magazine 4/2016 (August 2016)

<www.wipo.int/wipo_magazine/en/2016/04/article_0004.html> accessed 28 November 2019

¹² *Ibid.*

2. AMBUSH MARKETING

Ambush marketing generally refers to marketing and promotional activities by third parties unaffiliated to a sports organisation, promoter, sponsor or a sporting event (such as the Olympic Games) that seek to misappropriate or capitalise on the goodwill, excitement and popularity generated by the sport, promoter, sponsor or event.¹³ It has also been defined as a term used to describe various strategies adopted by a corporation or an individual (the ambusher), whereby they achieve significant marketing and advertising objectives and benefits without paying the premium associated with an official sponsorship.¹⁴

For the purpose of this discourse, ambush marketing is the act of riding on the goodwill of the Olympics for personal gain referred to as unauthorised marketing by way of suggesting association with the Games, usually with the use of Olympic properties. It is fraudulent representation in which case items- most times substandard, are sold under the pretence of the Olympics. One of the major effects it has on the Games is the potential to destroy sponsorship of the Games, resulting in huge losses such as the Montreal Games in 1976 which saddled the city with debt for 30 years.¹⁵ Therefore, the prevention of ambush marketing at the Games is a major concern of Olympic organisers. It is difficult to describe the scope of activities referred to as ambush marketing because ambushers consistently devise new means to escape the law. However, certain activities are common place in ambush marketing such as sending congratulatory advertisements, purporting to publicly comment on the Olympics in a manner that suggests a connection with the Olympics, ticket touting and so on.

Often time enterprises who do not possess the requisite sponsorship rights will attempt to take a free ride with the Olympic sports festival. By doing so, they intend to raise their enterprises' profiles or increase the market share of their relevant goods or products by misleading the public into believing that they legally obtained the sponsorship rights from the Olympic Games. Using the Olympic marks for market development is explicitly prohibited by existing laws and regulations.¹⁶ As a result, these enterprises which engage in ambush marketing activities do not commit such obvious infringements but adopt indirect approach(es) and make concerted efforts to hide their intent by taking advantage of time, space and the opportunity which the Olympic Games bring.

¹³ Aaron Wise and Bruce Meyer, *'International Sports Law and Business'* (Vol 3 Kluwer Law International 1997) p 1965.

¹⁴ Bartlett Peter, 'Ambush Marketing' (2007) 3 *Convergence* 31.

¹⁵ Mark James, *'Sports Law'* (2nd Edition, Palgrave Macmillan 2013) p 324.

¹⁶ Rules 7-14 and Bye laws to Rules 7-14 of the Olympic Charter, 2019.

In other words, ambush marketing practices could take two forms; the *direct* use of Olympic symbols without authorization for market development or indirect use of Olympic symbols in marketing activities which *indicate or suggest* certain links with the Olympics. The former is most often curtailed by the prevalence of IP legislations and contractual agreements. The latter form is the grey area and the grouse of this paper.

3. RELEVANT PROVISIONS OF THE OLYMPIC CHARTER ON PROTECTION OF OLYMPIC PROPERTY

The *Olympic Charter* is a codification of the principles of Olympism, rules and bye-laws adopted by the IOC. The Olympic Charter makes express provisions of obligation on the Olympics Movement to ensure the protection of the Olympic properties. The Olympic Charter is constantly updated to reflect sporting, ethical and legal developments and the most recent version was published in September 2019.¹⁷ The Charter begins with a preamble and statement of Fundamental Principles of Olympism and is divided into six chapters dealing with the Olympic movement. *Rule 24* provides that the IOC collects revenues from the exploitation of any of its rights, including but not limited to television rights, sponsorships, licences and Olympic properties as well as from the celebration of Olympic Games (such as ticket sales). For this to be achieved there is the need to protect Olympic properties. In response to this, the Charter requires the IOC and by extension the NOCs of host cities to protect Olympic properties and the interests of Olympic partners and sponsors. The relevant provisions of the Charter are reproduced hereunder.

Rule 7(4) of the Charter provides that the Olympic symbol, flag, motto, anthem, identifications (including but not limited to "Olympic Games" and "Games of the Olympiad"), designations, emblems, flame and torches, as defined in Rules 8-14 and any other musical works, audio-visual works or other creative works or artefacts commissioned in connection with the Olympic Games by the IOC, NOCs and/or the OCOGs, may for convenience, be collectively or individually referred to as "*Olympic properties*". Bye law to Rules 7-14 provide for legal protection and (1.2) specifically stipulates that each NOC is responsible to the IOC for the observance, in its country, of Rules 7-14 and Bye laws to Rules (BLR) 7-14. It shall take steps to prohibit any use of any Olympic properties which would be contrary to such Rules or their Bye-laws. It shall also endeavour to obtain, for the benefit of the IOC, protection of the Olympic properties of the IOC. NOCs are addressed in detail under Rules 27 (mission and role of NOC) and 28 (composition of NOC) of the Charter. The NOCs are

¹⁷ *Ibid* 322.

charged to develop, promote and protect the Olympic movement as well as ensuring the observance of the Olympic charter in their respective countries among others. A further step is taken under Bye laws (2.4) to Rules 27 and 28 of the Charter requiring the NOC of a host country to assist the IOC in the protection of Olympic properties in its territory.

Nature of protection required- Although the Charter imposes obligations of protection on the IOC, NOCs and other affiliated organisations, the nature of the protection expected is not stipulated. From the wordings of the provisions reproduced above, the NOC of a host country is mandated to register and protect Olympic properties.¹⁸ However, the *standard* of this protection or of its enforcement appears to be a question of consideration by the host city. The city is at liberty, bearing in mind its peculiar circumstances, to determine the standard of protection or enforcement to be employed. In the past, the approaches adopted by host cities have differed. While some cities enact laws (hard law approach) such as was the case of London 2012 with the enactment of the London Olympic Games and Paralympics Games Act (LOPGA) 2006,¹⁹ others have preferred a rather subtle approach by the use of Rules and Guidelines as shall be considered hereunder.

4. JAPAN'S APPROACH TO DEALING WITH POTENTIAL AMBUSH MARKETING IN OLYMPIC GAMES 2021

The Olympic Games 2021 will be hosted by Tokyo (to be referred to as *Tokyo 2021* owing to the postponement). Japan as a host country with Tokyo as its designated city pledges to observe the Olympic Charter and *suitably* protect the intellectual properties of the Olympic and Paralympics Games. However, unlike the express legislations made in the UK and Rio in anticipation of the 2012 and 2016 London Games, the Japanese government is of the view that its existing IP legal framework sufficiently protects sponsors and the IP rights of the IOC.²⁰ As such, there is no provision of any law, regulation or policy dealing *specifically* with the regulations of the Olympics. To this effect, the Japan Trademark Act 1959, Unfair Competition Prevention Act 1993 and Copyright Act 1970 among other national IP laws will be generally employed to protect the Olympic properties. Nonetheless, the organising

¹⁸ In addition to the Charter, at an international level, countries Member State to the Nairobi Treaty on the Protection of the Olympic Symbol 1981 is obliged to refuse any attempt to register the Olympic symbol in its country by any person without the authority of the IOC.

¹⁹ This was the legislative basis on which London 2012 was organised and which gave the guarantee of the requisite protection required to the IOC. It was passed to amend the Olympic Symbols etc. (Protection) Act 1995 and regulates advertising and street trading near the Games by the Secretary of State. It is worth noting that this Act is no more law in the UK following the conclusion of the Games in 2012.

²⁰ Martin Szarkiszjan and Janice Denoncourt 'Japanese Trade Mark Law and *Benrishi*: Preparing for Tokyo 2020' (2019) 14 Journal of Intellectual Property Law and Practice 854.

committee churned out guidelines for protection of Olympic properties and prevention of any anticipated ambush marketing action by unlicensed parties.

The *Tokyo Brand Protection Guidelines* provides an overview of the protection standards for Olympic and Paralympics Games Intellectual Properties which is managed by the Tokyo Organising Committee (TOC) and includes marks associated with the Tokyo 2020 Games (emblems, logos and slogans) and so on. The relevant provisions of the Guidelines in relation to the protection of Olympic Properties and ambush marketing will be discussed hereunder.

Rule 1 lays out the reasons for the protection of Olympic Intellectual Properties in compliance with Rule 7 of the Olympic Charter. The aim of the Guidelines is to reassure stakeholders and clarify the legal position with relation to the use of Olympic properties, branding and advertisement in the context of Tokyo 2020 Games. It expressly states the need to protect the financial interests of sponsors and the IOC and prohibits infringement of Olympic properties and ambush marketing in whatever form.

Rule 4 provides for the protection of Olympic properties as intellectual properties which may not be used freely. In addition to the Olympic properties protected, are marks associated with the Japan Organising and Paralympics Committees (JOC and JPC) such as the Japan flag, JOC/JPC emblems, JOC slogans, Tokyo 2021 terms including names of the Tokyo 2021 Games and so on. A list of terms, abbreviated terms and other terms in relation to the Games are also not to be freely used. These include Games of the XXXII Olympiad, Tokyo 2021 Paralympics Games, Tokyo 2021 Olympic Games, Tokyo 2021 Olympic and Paralympics Games, Tokyo 2021 Games, Tokyo 2021, Olympic, Olympism, Olympian, Olympiad, 'faster, higher, stronger' (also in Japanese), spirit in motion, '*Gambare! Nippon!*' slogan and so on. It is a non-exhaustive list and these may not be used freely.

The *Guidelines* is directive on what constitutes IP infringement by linking prohibited acts to the correlating provisions of existing IP legislation and adopting the stipulated punishments. Hence, Rule 5 expressly states that legal protection of these intellectual properties will be by existing IP laws as follows:

a. TRADEMARK (TM) ACT 1959

The Olympic and Paralympics symbol, mascots, emblems slogans are registered by the JOC, IOC, JPC or other organising committee for an extensive range of designated goods and/or services. Articles 25, 37 and 38 of the Trademark Act provide that the use of a TM identical or similar to a registered TM constitutes an infringement and is subject to a demand for injunctions and claims for damages. However, Article 78

further provides that an infringer is punishable by imprisonment with work for a term not exceeding 10 years and/or a fine not exceeding 10,000,000 yen. In the case of aiding and abetting an infringing act, such person is liable to imprisonment not more than five years and/or a fine not exceeding 5,000,000 yen. Finally, Article 4, paragraph I(vi), (vii) provides that TM identical or similar to a famous TM indicating the state, Local Government, an agency or non-profit organisation undertaking a business for public interest may not be registered as trademarks. The Guidelines provide that this applies to Trademarks that indicate the Olympics, JOC, JPC, IOC such as *Olympic*, *IOC*, *Olympic symbol* and so on.

b. UNFAIR COMPETITION PREVENTION ACT 1993

This is another legislation relied on to protect Tokyo 2020 Games. Article 17 of this Act prohibits the commercial use of a mark of an international organisation. Suffice it to say that the IOC and International Paralympics Committee (IPC) are recognised international organisations. Hence, the Olympic symbols may not be used without authorisation of the IOC. A violation of this Article results in criminal charges and an infringer is punishable by imprisonment with work not more than five years and/or a fine not exceeding 5,000,000 yen.²¹ Also, the use of indications of a well-known brand such as name, trade name or trademark resulting in confusion and are considered acts of unfair competition and are subject to a demand for injunction²² and/or damages,²³ as well as criminal charges punishable by imprisonment with work for not more than five years and/or a fine not more than 5,000,000 yen.²⁴

c. COPYRIGHT ACT 1970

Article 112 of the Copyright Act provides for claims for compensation and demands for injunction as remedies for copyright infringement of copyrightable works owned by other persons. The Guidelines cite the mascot of Tokyo 2021 as an example of a copyrightable work under the Act. Infringement includes the use; transfer, reproduction, adaptation, public transmission and so on of copyrightable works. By Article 119, paragraph 1 infringement is punishable by imprisonment with work for not more than 10 years and/or a fine of 10,000,000 yen.

²¹ Article 21 paragraph 2(vii) Unfair Competition Prevention Act 1993.

²² Article 3 Unfair Competition Prevention Act 1993.

²³ Article 4 Unfair Competition Prevention Act 1993.

²⁴ Article 21 paragraph 2(i), (ii) Unfair Competition Prevention Act 1993.

Of course, laws and regulations are the first frontier to combating the acts of ambush marketing. For the Tokyo games existing legislation as has been outlined in earlier paragraphs, and other relevant laws, regulations and its judicial interpretation constitute the legal basis of the anti-ambush marketing campaign. However, it is submitted that these provisions do not in themselves effectively cater for the indirect (and quite frankly more worrisome) form of ambush marketing. It is important at this point to consider the strategies employed in previous summer Olympic Games by its host organisers.

For the 2008 Beijing Olympics, the Beijing Organizing Committee for the Olympic Games of the XXIX Olympiad ("BOCOG") in addition to existing legislative measures put extra measures in place to combat the latent (non-infringing) forms of ambush marketing by employing *administrative coordination and supervision tactics*. In order to exercise unified management over the market development activities related to the Olympic Games, the BOCOG jointly established an Olympic legislation and publicity coordination mechanism with the relevant institutions, groups, athletic teams and administrative authorities managing athletes (including the State Administration of Radio, Film and Television and the State Administration of Sport) which might be taken advantage of by the enterprises engaging in ambush marketing.²⁵ The organising committee also implemented a *City Operation Plan*. Under this plan, BOCOG controlled all activities of advertising over the relevant venues in the host cities through administrative assistance during the period of the games and for a certain period after the games.²⁶ Also, through the conclusion of agreements, it managed to bring under control all activities of advertising around the stadiums and gymnasiums, billboard advertising at bus stops and airports and all street promotional columns in the host city and co-host cities to fully guarantee the exclusive right of advertising by the official Olympic sponsors in these areas.²⁷ In addition, the BOCOG also monitored visual advertising aired during particular time slots in efforts to prevent and restrict the occurrence of advertisements by ambush marketers during particular time slots or on particular TV channels.

At the 2012 London Games, the organising committee (LOCOG) in tandem with the state took a different approach from that of the BOCOG. They enacted an *ad hoc* legislation

²⁵ Anti- ambush Marketing Measures for the Beijing 2008 Olympic Games.

<<https://www.chinalawinsight.com/2008/08/articles/corporate-ma/antiambush-marketing-measures-for-the-beijing-2008-olympic-games/>> accessed 25 July 2020.

²⁶ *Ibid.*

²⁷ On July 3 2008, BOCOG's marketing department and the China Advertising Association jointly issued an official "Anti-Ambush Advertising Initiative" <<http://www.chinaipmagazine.com/en/journal-show.asp?id=381>> accessed 25 July 2020.

known as the *London Olympic and Paralympic Games Act ('LOPGA' or 'the Act')*. Through this legislation, the LOCOG created a peculiar approach to protecting intellectual property of the Olympics through what they termed - *Association Rights*. This right of association specified that implying a commercial or contractual association with the Olympics would violate the Act, albeit still making sure to draw a distinction and provide a safe space for honest business practices so as not to fall foul of unreasonable anti-competition practices. The Act was thorough, as it also expressly stated prohibited expressions classifying them under two lists- A and B, whereby list A contained expressions such as Two Thousand and Twelve, 2012, Games, Twenty Twelve and List B contained the words London, Gold, Medals, Silver, Bronze, Summer, Sponsor and the use of any word in list A with one or more of the words in list B was not permitted.²⁸ Furthermore Section 39 of the Act dealing on offences expressly stated and conferred the right to arrest without warrant anyone who the constable believed was committing or had committed unauthorised advertising, trading and ticket-sales. These offences pursuant to Section 38 LOPGA were *criminal* offences. Hence, in enforcing the precepts of LOPGA, the *Olympics Delivery Authority* and *Trading Standard Officers* were charged to help curtail any act falling foul of the provisions of the Act.²⁹

The 2016 Rio Olympics followed a similar approach with its predecessor by enactment of *the Olympic Act (Law 12,035/09)*, which concisely sets special rules including infringement issues as well as civil and criminal penalties for breach of its provisions. *Association rights* were also adopted by the hosts to protect the interests of sponsors of the Games as was the case in London as provided by LOPGA. The legislation expressly sought to curtail latent ambush marketing practices by prohibiting the use of expressions and symbols which were '*sufficiently similar*' to the related symbols described in the Act, to the extent that the sufficiently similar symbol is "*able to invoke an undue association of any product(s) and service(s) whatsoever, or even any company, transaction or event with the Rio 2016 Games and Olympic Movement*". The organising committee also put out its *Brand Protection Guidelines* which directed that the use of Olympic and Paralympic brands for commercial purposes were restricted to organisers and their official commercial partners and went ahead to give illustrative examples of practices which amount to an infringement of the license holder's IP rights.

²⁸ Section 3, Schedule 4 London Olympic Games and Paralympics Games Act, 2006

²⁹ BBC News-Olympics: Tackling ambush marketing at London 2012 <<https://www.bbc.com/news/business-18628635>> accessed 25 July 2020.

As regards Tokyo 2021 games, the Government of Japan and the Tokyo Organizing Committee for the Olympic Games have covenanted in the *Host City Contract* and the *Marketing Plan* that they will take all necessary measures to prevent and combat ambush marketing in any form. This position was also reinforced in the released Brand Guidelines which referred to relevant provisions in existing Japan Intellectual Property laws canvassed above. Hence, the only specific document (at the moment) in the public domain which speaks to anti-ambushing measures is the *Brand Guidelines* last updated in February 2020. The purpose of the Guidelines being to protect the Olympic sponsors and by extension the IOC's financial interests by deterring ambush marketers and IP infringement.³⁰

Precedent events have shown that Ambush marketing goes beyond the outright use of similar or identical marks to the display at or around the Olympics venue. As the years progress the Ambush Marketing community devise ingenious ways to perpetrate non-infringing acts that reward them and invariably have a commercial detriment on the official sponsors. How these kinds of ambush marketing tactics are dealt with are not expressly provided for in the Guidelines or the relevant IP laws and could raise some cause for concern considering the reputation of the events. The provisions of the Guidelines on Ambush marketing is contained majorly in Rule 6 and 7. Rule 6 define Ambush Marketing as *the use of intellectual property associated with the Olympic and Paralympic Games or the misappropriation of images associated with the Olympic and Paralympic Games by organizations or individuals, without authorization from the IOC, IPC, and the organising committee, which are the rights holders of the intellectual property of the Olympic games-* it need not be intentional as unintentional acts as well which contravene any of these laws stipulated above will be subject to the same penalties.³¹ Rule 7 of the Guidelines made an extensive expression of acts which are considered problematic and deemed ambush marketing. The list is non-exhaustive and some expressions notably quite trivial, for instance the use of '*Countdown to 2020*' is considered problematic.

It is interesting that Rule 6 of the Guidelines expresses the organising committee's intention to put *anti-ambush marketing measures* in place as a necessary tool to protect the intellectual properties of the Olympic and Paralympic games. However, there is no mention in existing documents as to how the TOC plans to execute these policies or publicly available information to show any new developments in this regard. If anything is certain, it appears

³⁰ Ibid (n 23).

³¹ Rule 6, Brand Protection Guidelines 2019.

the TOC does not intend to toe the line of its predecessors by enacting an ad hoc legislation for the Olympic Games. Bearing in mind that the guidelines is just that – *a guide*, and does not have the force of law one could surmise that the subtle approach adopted by Japan, although relieving the country of the burden associated with enacting a legislation, does not as such provide sufficiently convincing protection to sponsors of Tokyo 2021 Games. Put differently, it is deducible from a legal standpoint that the Olympic properties are adequately protected by the existing IP laws which, in turn, are insufficient in the prevention of ambush marketing and protection of sponsors' rights which may require more stringent principles such as the '*Association Rights*' employed for the 2012 and 2016 Games and practical enforcement elements for purposes of efficiency.

The non-existence of a special legislation with a force of law poses a seeming loophole that could be exploited. For perspective, a scenario occurred during the London Games. An online betting company - *Paddy Power* was popular for creatively and indirectly linking itself to the London Games events by putting up a billboard which read; "*Official sponsors of the largest athletic event in London this year. There you go we said it (ahem, London France that is)*". Granted they were sponsoring an event, it was not the Olympics but an egg and sack race held at a place called London in France.³² They were clever to avoid infringing by using any of the Olympic properties which make them liable under public IP laws, but the IOC was able to approach the company to desist on the ground of breach of the *Association Rights* as contained in the special legislation - LOPGA. In other words, the association rights could help in curtailing such indirect ambushing methods where traditional laws may not reach.

CONCLUSION

Ambush marketing remains a major concern of the IOC and NOCs in the Olympics. One of the major effects it has on the Games is the potential to destroy sponsorship of the Games, resulting in huge losses occasioned on sponsors and the Olympic movement at large. To combat this, countries or host cities have taken to various methods of combating ambush marketing such as the enactment of hard or soft laws and enforcement agencies.

It appears the TOC could be toeing the Beijing (BOCOG) line that also disregarded the need for a special legislation. Such a situation is understandable because reports and precedent

³² The Guardian (July 25 2012) <<https://www.theguardian.com/media/2012/jul/25/london-2012-paddy-power>> accessed 25 July 2020.

events at the games have proven that legal contribution to the prevention of ambush marketing does not effectively eschew its practices if used solely. An effective approach is more a method of reasoning and balance which demands close collaboration of all relevant groups such as lawyers, law makers, advertising executives, compliance officers, the event organizers and its sponsors. It is a lost cause when carried out by only one sect of the aforementioned- a consensus is necessary to produce the most *appropriate legal cum contractual technique* as well as the *most effective actions in the field*.³³

The legal and contractual technique would require the Organising Committee binding its partners to a tight web of precise obligations such as, the Japan IP laws and regulations, Host City Contract, Brand Guidelines among others in a bid to protect all aspects of its marketing programme. It will also consist of developing a set of legal texts that set out the rights of sponsors and precise marketing obligations, which are then adopted by the Tokyo for implementation.

The field action that complements the legal and contractual provisions would entail that the organisers secure their priority in all existing marketing space within the location of the Olympic events. Finally, it is necessary to set up sufficiently trained officers (*a dedicated task force*) akin to the special task force that was deployed at 2012 London Games, whose principal role would be to ensure that the contractual obligations contained in the tickets sold to spectators are complied with both inside and around the competition venues.

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³³ Jean-Michel Marmayou, MAJOR SPORTS EVENTS: HOW TO PREVENT AMBUSH MARKETING? African Sports Law and Business Journal, African Sports Law and Business Journal, 2013, pp.29-60. hal-01310578.