

ANA LEGAL AFFAIRS CONFERENCE

WASHINGTON, DC - MARCH 2013

THE WIDE WORLD OF SPORTS SPONSORSHIP AND BRAND PROMOTION

Wednesday, March 20, from 11:30 AM to 12:25 PM

Interested in brand promotion and protection in major sporting events such as the World Cup, Olympic Games, and the Super Bowl? Up for consideration in this session are the competing perspectives of sponsored and non-sponsored companies in access to ticket holders and nearby consumers, the legal implications of clean zones, limited duration licenses and other cooperative arrangements between host and organizing committees, law enforcement, venue organizations and featured businesses, and protections and policies afforded by trademark, anti-counterfeiting and consumer protection laws. These topics will be explored in domestic, international, and comparative law contexts.

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POTENTIAL SPECIFIC TOPICS/QUESTIONS

- 1) Numerous media outlets criticized the 2012 London Olympics brand protection/anti-ambush marketing policies—which included 300 standard trading officers having substantial power under the 2006 London Olympic Act—as “creepy”, among worse characterizations. Are these criticisms valid? If not, how can these policies be more effectively “sold” to media and public?

- 2) During 2012 London Olympics, Nike – not an official Olympic sponsor (Adidas was) – aired a YouTube ad that promoted athletes in towns around the world named “London.” Did that cross the line as ambush marketing or was it all in good fun?
 - a. Same question re: Nike’s yellow-green neon shoe.

- 3) Courts have generally held that broadcasts of sporting events, though not the events themselves, are protected by copyright law. Does the increasing ability of spectators to easily record and distribute videos from live sporting events (e.g., record on iPhone and then upload on YouTube) threaten the exclusivity of television and other media contracts to broadcast those games? What impact might that have on brand protection?

- 4) On “clean zones” in the Super Bowl—three critiques: a) do they undermine a key rationale for a city hosting a Super Bowl (i.e., to generate money for local business) because beneficiaries of clean zones tend to be multinational corporations while local businesses can be restricted in advertising?; b) is it appropriate for the NFL or other venue sponsors coordinate enforcement activities with local police – does that raise questions of police/private actor enforcement?; c) are clean zones even necessary given presence of state consumer laws + federal Trademark Counterfeiting Act of 1984 and the Anticounterfeiting Consumer Protection Act of 1996?

- 5) In the 2010 World Cup, while Budweiser, Anheuser-Busch was the official sponsor for malt beverages, most people associate the event with Bavaria, an ambusher marketer that was very effective in spite of anti-ambush marketing policies. How did that happen and was the use of criminal charges to initially detain the marketers wise or counter-productive?

- 6) How confident should sponsors be in brand protection/prevention of counterfeit sales at the 2014 World Cup in Brazil? Has the Brazilian government done enough and do they have a credible record of enforcement?
- 7) Despite enhanced testing, performance-enhancing drugs and steroids remain a major problem in competitive sports. How do brands protect themselves when athletes are implicated as using PEDs? Are so-called “morals clauses” effective?
 - a. Same question re: athletes implicated using recreational drugs (e.g., Michael Phelps/marijuana bong photo/Kelloggs-Wheaties)
- 8) Former UCLA basketball player Ed O’Bannon is suing the NCAA and Electronic Arts in a class action arguing that former NCAA men’s basketball and football players should be paid for the commercial use of their image and likeness. O’Bannon succeeded in getting the lawsuit past dismissal and the case is now in discovery. Do you believe the lawsuit has merit? If O’Bannon v. NCAA succeeds in the case or extracts a favorable settlement, how might that impact the brand relationship between companies and the NCAA and its member institutions?
- 9) By 2024, it will have been 28 years since the United States hosted the Summer Olympics in Atlanta in 1996. U.S. cities have lost out repeatedly since 1996 – NYC lost to London for 2012 Summer Olympics; Chicago lost to Rio de Janeiro for the 2016 Summer Olympics. The U.S. didn’t even bid for the 2020 Summer Olympics and the USOC recently said it won’t bid for the 2022 Winter Olympics. What role, if any, has brand protection in the U.S. versus that found in other countries played in the U.S. not landing the Olympics? Does the U.S. stand a shot of landing either the 2024 Summer Olympics or 2026 Winter Olympics? Do U.S. laws/enforcement need to be strengthened?
- 10) As U.S. pro sports leagues contemplate expansion or at least increased business activities in other parts of the world, how will their corporate sponsors be sure sponsorships will be protected?

A LEGAL CONSIDERATIONS CHECKLIST:

Some thought starters & questions to ask, consider, and ponder during your sponsorship discussions and negotiations.

- **SPONSORSHIP RIGHTS – HOW EXTENSIVE ARE THEY?**
 - Are your rights global or domestic?
 - If domestic only, is the sponsorship one that extends internationally?
 - If so, who else is in your category that may try to activate globally?
 - Do your rights include access to the sponsorship launch activities and celebrations?
 - Do you have rights of first refusal/negotiation for any extended term?
 - Do your rights include any kind of “special” or “signature” event that is branded or owned only by your company?
 - What rights have been reserved?

- **EXCLUSIVITY – NEGOTIATING YOUR “BUBBLE”**
 - Do you have category exclusivity?
 - How broad is your category exclusivity?
 - Is the sponsorship entity familiar with your category?
 - Do any other sponsors’ categories come close or cross into your exclusivity bubble?
 - Have you affirmatively excluded your competitors?

- **HOW MANY OF YOUR BRANDS WILL YOU USE?**
 - Will your company focus on a core brand or leverage all its brands?
 - Are all your subsidiary brands included in the rights package?
 - Does your agreement take into account future acquisitions and mergers for the purpose of brand names?

- **TICKETING & HOSPITALITY**
 - Do you get tickets + hospitality with the sponsorship?
 - If not, do you get any first rights to purchase tickets prior to the public and competitors?
 - What category of tickets are you entitled to?
 - Are you locked into using a specific ticket vendor?
 - How limited is the hotel and hospitality inventory for the venue?
 - How far in advance do you need to lock down hotels and hospitality?
 - What considerations for FCPA and OFAC reporting are there in the handling of tickets and hospitality?

- **AMBUSH MARKETING – HOW TO PROTECT YOUR BRAND**
 - What contractual protections do you have against ambush marketing?
 - Does the sponsorship entity include legal remedies for ambush?

- What are the procedures and take-down process for ambush marketing?
- Is the sponsorship aware of your competitors?

- **SIGNAGE – LED RIGHTS – CONTINGENCIES**
 - Is there any on-field display or advertising at the venues?
 - If so, what rights do you get to that signage?
 - Will there be LED boards or Jumbotrons be used at any venues?
 - If so, what rights do you get to the signage? What is the duration of your messaging?
 - Will you have venue access for testing signage, especially LEDs?

- **TELEVISION RIGHTS**
 - Do any networks or broadcasters have exclusive broadcast rights?
 - Will the sponsorship entity facilitate broadcast rights?
 - Do you have any right of first negotiation for TV rights/exclusivity?
 - Will broadcast coverage include guaranteed minutes of LED signage (if any)?
 - Have your competitors previously used TV rights for ambush marketing?

- **USE OF ATHELETS, ASSETS & COLLATERAL**
 - Does your contract include rights to use or access training facilities or training camps?
 - Do you have access to athletes or their related associations?
 - Do you have access to other sponsors for cross-marketing opportunities?
 - What is the sponsorship’s approval process (if any) for use of collateral?
 - Must all internal and external uses of collateral and communications be approved?
 - If so, what is the approval timeframe? Is there a “deemer” provision?
 - Are there published marketing/use of marks guidelines?

- **EMPLOYEE ENGAGEMENT – WHAT CAN THEY USE?**
 - Are your rights different internally and externally?
 - What rights do you need to foster employee engagement?
 - Will the sponsorship entity assist with launch activities?

- **WEBSITES & SOCIAL MEDIA – ARE THERE GUIDELINES?**
 - Does the sponsorship have a website?
 - If so, do all sponsors get equal placement on the website?
 - Is the sponsorship entity involved in social media?
 - Does it restrict sponsors’ use of social media?
 - Are there any social media guidelines?

- **PREMIUMS – LICENSEES & SUPPLIERS**
 - Does the sponsorship entity have premium suppliers and licensees?

- Are you required to use these suppliers for your collateral?
- Can you acquire collateral from third parties?
- If so, do you need to pay any royalties?

- **PRODUCT AND SERVICES PROCUREMENT BY THE SPONSORSHIP**
 - Does your category (industry) permit the procurement of your products or services by the sponsorship entity or by other sponsors?

- **ACCESS TO MEMBER LISTS**
 - Does your sponsorship include rights to the entities' members for marketing purposes?
 - Are there joint-marketing provisions and responsibilities for CANSPAM compliance?

- **CONTINGENCIES & MAKE GOODS – THE BOBBLE HEAD REPLACEMENT**
 - Does your contract include rights to event-day premiums or gifts?
 - If so, what contingencies are in place if the premium or gift is unavailable or must be replaced?
 - What “make-goods” are available if the sponsorship event is changed or cancelled?