

Advertising + Marketing

Going for Olympic Gold: Marketers Hope to Reach the Podium in Paris, even if not on the “Official” Team

The Bottom Line

- While ambush marketing presents challenges for brands seeking to capitalize on major events like the Olympic Games, it also offers a unique opportunity to showcase creativity and innovation on a global stage.
- Brands can navigate these challenges and unlock the benefits of the world’s focus on Paris, keeping in mind the following: (1) Plan carefully to steer clear of avoidable mistakes; (2) Trust your audience to make connections for you; and (3) It is never too early to start thinking about LA28.

Just about everyone dreams of participating in the Olympics – walking among the parade of nations, being draped with a bronze, silver, or maybe even gold, medal. Most learn at an early age that we possess neither the skill nor the single-minded discipline necessary to fulfill this dream. So, we watch and vicariously live through the triumphs and heartbreaks of the dedicated athletes who have devoted their lives to reaching this point.

For brands, the desire to be a part of the Olympics is just as strong. The obstacles for marketers, however, mainly consist of large sacks of sponsorship cash and an available sponsor category. It leaves many searching for alternative paths to join the conversation and be part of this global event. With nearly 40 days left before the Opening Ceremonies along the Seine, brands are finalizing plans for marketing campaigns derided by organizers as “ambush.”

What is Ambush Marketing?

Ambush marketing is a strategic approach to leverage the audience and visibility of a prestigious event, such as the Olympics, to gain brand exposure without formally associating with the event, often through creative and unconventional means. Common tactics include advertising in close proximity to event locations; adopting themes and color palettes similar to the event, stunts and activations at or near the event; and real-time social media marketing.

The International Olympic Committee (IOC) takes a more skeptical view and defines ambush marketing as [a] planned attempt by a third party to associate directly or indirectly with the Olympic Games to gain the recognition and benefits with being an Olympic partner... [without being an Olympic partner].” Brands participating in ambush marketing campaigns should familiarize themselves with Olympic committee guidance and take steps to mitigate risk in order to win at the Games this summer.

Risks Presented by Olympic Ambush Marketing

The risks of engaging in ambush marketing for any large-scale event are significant, but the Olympics pose a unique set of challenges. For most events, non-affiliated brands focus their concerns on trademark and false association claims under the Lanham Act in the U.S., passing off claims in the UK, parasitic advertising claims in France, and similar regulations in other countries. The Olympic movement is protected by an additional layer of statutory protection for brands to consider.

In the U.S., the Ted Stevens Olympic and Amateur Sports Act grants the U.S. Olympic and Paralympic Committee (USOPC) exclusive rights to use a variety of Olympic-related names, images, and phrases. In France, article L.141-5 of the French Code of Sport provides that any “...registration, reproduction or imitation of the National Olympic motto, anthem and emblem, or of the words “Olympic games” or “Olympiad”...” without the French Olympic Committee’s authorization is punishable by up to 4 years of imprisonment and by a fine of up to 400,000 Euros. Like many of the USOPC’s protections in the U.S., neither proof of a likelihood of confusion nor proof of damage caused to the Olympics is required. Given this, risks for advertisers exist whether they are planning a campaign in the U.S. or near the Eiffel Tower.

With the benefit of local laws in their favor, the IOC and national governing bodies aggressively protect against unauthorized association with the Olympics, using all of the tools in their arsenal – demand letters, administrative actions, litigation, and injunctions. Yet, there is still room for the strategic marketer to take advantage of the world’s attention on the Games.

Tips for Paris 2024

Brands and marketers seeking to join the international conversation surrounding the Olympics need to be careful and thoughtful in their execution to avoid the kinds of mistakes that can be costly, both financially and reputationally.

1. **Avoid use of USOPC Intellectual Property (IP).** Examples include:
 - a. Olympic, Olympian and Future Olympian;

- b. Go for the Gold and Gateway to Gold;
 - c. Let the Games Begin;
 - d. Olympians Made Here;
 - e. Paralympic;
 - f. Paris 2024;
 - g. Road to Paris;
 - h. Team USA; and
 - i. Logos and graphics related to the U.S. Olympic teams and the Games themselves.
2. **Avoid use of IP similar to Olympics IP.** Derivations of “Olympics” (e.g., “Radiolympics,” “Mathlympics,” etc.) could falsely imply a connection to the Olympic Games or the USOPC.
 3. **Avoid showing athletes in “national” uniforms.** Even if not the official uniform, this suggests a connection to Team USA.
 4. **Avoid imagery uniquely associated with Olympics.** A cauldron of flame, a torch, and any Olympic venue (even if the venue used for other competitions) are elements associated with official sponsors.
 5. **Focus on sports and competition generally without reference to the Olympics.** There are many sports associated with the Olympics that can be used without referencing USOPC IP or USA uniforms (including gymnastics, track & field, swimming, and new sports such as break dancing), leveraging the peak in interest in these sports that occurs during the Olympics.
 6. **Leverage a brand’s patriotism and support of the U.S. without using Olympic references.** Use of advertising that uses patriotic themes and colors, promoting the brand’s longstanding support of the country, offers opportunities to connect to fans without referencing the Olympics.
 7. **Create activations that allow others to connect the brand with the Olympics.** A well-timed and creative activation without any direct association with the Olympics can create media and viral conversation that connects a brand with the events.
 8. **Avoid combinations of attributes that suggest an association with the Olympics.** Use of flag imagery or athletes or Paris landmarks may be low risk on their own, but combining multiple generic elements can suggest a connection, which increases risk.

For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

James Johnston

Partner

212 468 4867

jjohnston@dglaw.com

Andrew Richman

Associate

212 468 4804

ajrichman@dglaw.com