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BAD SPORTS: HAS OLYMPIC BRAND PROTECTION GONE TOO FAR?

*Daniel A. Craig**

I. INTRODUCTION

The Olympic rings are one of the most widely recognized symbols in the world, and “evidence shows that only certain religious symbols are more widely recognized around the world than the logo of the five interlaced rings.”¹ The interlaced rings “represent the union of the five continents and the meeting of athletes from throughout the world at the Olympic Games.”² The Olympic brand is extremely valuable, thus protection of that brand has become much stricter in recent years. According to a study by Brand Finance,³ the Olympic brand is the second most valuable brand in the world, second only to Apple, Incorporated.⁴ In fact, Brand Finance values the Olympic brand at approximately “\$47.6 billion with an 87% increase since the Beijing Olympic Games in 2008 (where it was

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¹ ALEXANDRE MIGUEL MESTRE, T.M.C. ASSER INSTITUUT, *THE LAW OF THE OLYMPIC GAMES* 85 (2009).

² Int’l Olympic Comm., Olympic Charter, pmbl., July 8, 2011 [hereinafter Olympic Charter], available at http://www.olympic.org/Documents/olympic_charter_en.pdf; see also INT’L OLYMPIC COMM., *OLYMPIC MARKS AND IMAGERY USAGE HANDBOOK*, 7–11 (1997) [hereinafter OLYMPIC MARKS HANDBOOK].

³ Brand Finance “is the world’s leading brand valuation consultancy” and has done thousands of brand evaluations for numerous different clients. BRAND FINANCE, <http://brandfinance.com/> (last visited Apr. 16, 2013).

⁴ James Baker et al., *Brand Finance Plc values The Olympics ‘Brand’ at USD \$47.6 billion*, BRAND FINANCE, 1 (2012), http://brandfinance.com/images/upload/brand_finance_olympics_press_release_2012.pdf; see also Sonia Poulton, *Yes, Prime Minister, London 2012 will Generate Billions in Profit. But for Business, not People*, DAILYMAIL (July 12, 2012), <http://www.dailymail.co.uk/debate/article-2172626/London-2012-Olympics-generate-billions-profit-Prime-Minister-But-business-people.html#ixzz2BpXOgVc9> (“According to the Prime Minister’s calculations, the [2012 London Olympic] games are likely to generate an extra 13 billion pounds for the UK economy over the next four years.”).

valued at USD \$25.4 billion).”⁵ This remarkable increase over the last four years demonstrates the value of the Olympic brand and why the International Olympic Committee (IOC) seeks such strict enforcement of brand protection regulations. This article discusses how recent increases in Olympic trademark and brand enforcement are actually harming the value of the brand, rather than protecting it. Since the 2008 Olympic Summer Games in Beijing, enforcement has steadily increased each year. China arguably used the 2008 Games and the protections associated with the Olympic brand to jumpstart intellectual property protection⁶ and the way brand protection is perceived in China.⁷ However, increased enforcement did not end with the Chinese games. Over-enforcement continued during the next two Olympic Games and will likely continue in the future.

This article also explores how trademark and brand enforcement in selected countries is accomplished, especially since the Olympic mark is a uniquely multi-national mark. This article provides a survey of the Olympic mark statutes in nine countries, each of which has been a host of recent Olympic Games or will host in the future: Australia (Sydney, host of the 2000 Summer Games), the United States (Salt Lake City, host of the 2002 Winter Games), Greece (Athens, host of the 2004 Summer Games), Italy (Turin, host of the 2006 Winter Games), China (Beijing, host of the 2008 Summer Games), Canada (Vancouver, host of the 2010 Winter Games), the United Kingdom (London, host of the 2012 Summer Games), Russia (Sochi, future host of the 2014 Winter Games), and Brazil (Rio de Janeiro, future host of the 2016 Summer Games). This article further considers specific examples of brand enforcement taking place within some of the above countries. Based upon the trends in Olympic trademark enforcement, three distinct time periods have emerged: the pre-Beijing years, the strong enforcement years, and the Olympic Games of the future. The discussion of the above countries will be considered during these three periods.

Overall, brand enforcement appears to be far too strict. Protection against impermissible use of Olympic property is left with

⁵ Baker et al., *supra* note 4, at 1.

⁶ See Stacey H. Wang, Note, *Great Olympics, New China: Intellectual Property Enforcement Steps up to the Mark*, 27 LOY. L.A. INT’L & COMP. L. REV. 291 (Spring 2005).

⁷ *Id.*

National Olympic Committees (NOCs),⁸ and the NOCs even seek injunctions against individuals and non-profit organizations that do not seek significant monetary gain from use of the Olympic symbol. This article argues that over-enforcement is hurting the brand, because strict enforcement against companies who are using the Olympic brand or rings without profit-seeking intentions damages the public's perception of the brand. Strict enforcement by the NOCs is taking away from the stated purpose of the Olympics, which according to the Olympic Charter include "creat[ing] a way of life based on the joy of effort [and] the educational value of good example"⁹ while also "promoting a peaceful society concerned with the preservation of human dignity."¹⁰ Many of the examples of over-enforcement below stem far from the ideal of "promoting a peaceful society."¹¹

There are two primary enforcement mechanisms for protection of Olympic property: the multi-national Olympic legislation and the statutes of hosting countries. These mechanisms often overlap in giving NOCs and the IOC the ability to seek legal action against a party that is impermissibly using Olympic property.¹² Part II discusses the variety of Olympic legislation, which consists of various multi-national documents that govern the Olympics. These documents include the *Olympic Charter*, the *Olympic Marks and Imagery Usage Handbook*, and the *Nairobi Treaty on the Protection of the Olympic Symbol*. Part III discusses the Olympic mark protection statutes of the host countries from 2000 to 2016 and how those statutes protect the symbols unique to their Olympic Games. These statutes also permit the country's NOC to enforce the statute and the goals of the *Olympic Charter*. Part IV discusses recent examples of the over-enforcement of Olympic mark and brand

⁸ Olympic Charter, *supra* note 2, BLR 7–14, para. 1.2, at 22.

⁹ *Id.* para. 1, at 10.

¹⁰ *Id.* para. 2, at 10.

¹¹ While many examples of over-enforcement are pursued *infra*, an "extreme example includes an apparent warning issued to an 81-year-old lady who had knitted an outfit for a doll that included the Olympic rings and attempted to sell it at her church for around US \$1.60." Clare Feikert-Ahalt, *The Laws Behind the London Olympics*, IN CUSTODIA LEGIS: LAW LIB. OF CONG., (July 27, 2012), <http://blogs.loc.gov/law/2012/07/the-laws-behind-the-london-olympics/>.

¹² See Olympic Charter, *supra* note 2, BLR 7–14, para. 1.1–1.2, at 22.

protection, specifically in the United States and the United Kingdom. Part V concludes by offering suggestions for change in the future of Olympic mark and brand protection to achieve the ideal of protecting the brand while not harming public perception.

II. OLYMPIC LEGISLATION

In addition to being governed by the laws of the host country, various forms of Olympic Legislation are present throughout all of the games. The *Olympic Charter*, the *Olympic Marks and Imagery Usage Handbook*, and the *Nairobi Treaty on the Protection of the Olympic Symbol* each provide guidance on the appropriate treatment of Olympic property.

The *Olympic Charter* serves as the “codification of the Fundamental Principles of Olympism, Rules and Bye-Laws adopted by the International Olympic Committee.”¹³ The *Olympic Charter* contains the over-arching rules of the IOC, and all NOCs are bound by the IOC and the *Olympic Charter*.¹⁴ The *Olympic Charter* is a particularly fascinating document because it reigns supreme over any other document that may be contrary to its provisions, as it states “[b]elonging to the Olympic Movement¹⁵ requires compliance with the *Olympic Charter* and recognition by the IOC.”¹⁶ This document is unique because the Olympics is one of the only forums whereby such a vast number of countries are subject to one set of rules and one governing body in the IOC.¹⁷ Further, belonging to the Olympic Movement does not consist of ratifying or signing a document. A country joins the Olympic Movement by competing in a sport as a country in the Olympic Games after receiving recognition from the

¹³ Olympic Charter, *supra* note 2, at 8.

¹⁴ *Id.*

¹⁵ *Id.* para. 3, at 10 (“The Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism. It covers the five continents. It reaches its peak with the bringing together of the world’s athletes at the great sports festival, the Olympic Games. Its symbol is five interlaced rings.”).

¹⁶ *Id.* para. 7, at 11 (emphasis added).

¹⁷ See Mestre, *supra* note 1, at 85.

IOC.¹⁸ Therefore, by participating in the Olympic Movement, a country subjects itself to a set of rules and provisions that could impact its national laws, without participating in the formalized process normally associated with the adoption of laws in a country.

The *Olympic Charter* takes great pride in protecting the Olympic mark, devoting *Olympic Charter* Rules 7–14 to ensure protection.¹⁹ Specifically, Rule 7 provides:

The IOC is the owner of all rights in and to the Olympic Games and Olympic properties described in this Rule, which rights have the potential to generate revenues for such purposes. It is in the best interests of the Olympic Movement and its constituents which benefit from such revenues that all such rights and Olympic properties be afforded the greatest possible protection by all concerned and that the use thereof be approved by the IOC.²⁰

Furthermore, Rule 7 of the *Olympic Charter* provides for the definitions of “Olympic property,”²¹ a term often used as an all-encompassing phrase denoting the many different ways one may reference the Olympics.²² The rule provides incredibly strong language that vests broad powers in the IOC for protection of the Olympic mark. The Bye-law to Rules 7–14 of the *Olympic Charter* is essential to understanding the protection that the document has over Olympic properties.²³ Specifically, paragraph 1.2 of Bye-

¹⁸ Olympic Charter, *supra* note 2, r. 1.3, at 13.

¹⁹ *Id.* rr. 7–14, at 19–27; *see also* Mestre *supra* note 1, at 85.

²⁰ *Id.* r. 7.1, at 19.

²¹ *Id.*

²² *Id.* (“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 below, may, for convenience, be collectively or individually referred to as ‘Olympic properties.’ All rights to any and all Olympic properties, as well as all rights to the use thereof, belong exclusively to the IOC, including but not limited to the use for any profit-making, commercial or advertising purposes. The IOC may license all or part of its rights on terms and conditions set forth by the IOC Executive Board.”).

²³ *Id.* rr. 7–14, at 19–27.

law to Rules 7–14 provides the right of each country to pass laws enabling the country's NOC to enforce the protections sought by the *Olympic Charter*.²⁴ It also provides the basis of the discussion below, regarding each country's Olympic mark statute. It states:

Each NOC is responsible to the IOC for the observance, in its country, of Rules 7–14 and BLR [Bye-law to Rules] 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.²⁵

NOCs are supposed to use the ability to enforce protection of Olympic properties only “in compliance with the *Olympic Charter*” and for the benefit of the IOC.²⁶ The remaining Bye-law to Rules 7–14 vests ultimate power in the IOC to control the ability of the NOCs to perform any action with regards to Olympic property.²⁷

While protection within a country's borders by its Olympic marks statute is discussed below, the *Olympic Charter* also serves as the enforcement mechanism of a particular host country's Olympic emblem outside of its borders. The charter gives ultimate power over a host country's Olympic emblem to that country, such that other NOCs must get permission for use from the NOC of the host country.²⁸ The *Olympic Charter* states:

All contracts or arrangements, including those concluded by an OCOG [Organizing Committee of the Olympic Games], shall be signed or approved by the NOC concerned and shall be governed by the following principles:

The use of an NOC Olympic emblem shall only be valid within the country of

²⁴ *Id.* BLR 7–14, para. 1.2, at 22.

²⁵ *Id.*

²⁶ *Id.* BLR 7–14, para. 1.3, at 22 (emphasis added).

²⁷ *Id.* rr. 7–14, at 19–27.

²⁸ *Id.* BLR 7–14, para. 4.10, at 26.

the said NOC; such emblem, as well as any other symbols, emblems, marks or designations of an NOC which refer to Olympism, may not be used for any advertising, commercial or profit-making purposes whatsoever in the country of another NOC without the latter's prior written approval.²⁹

In addition to the *Olympic Charter*, the *Olympic Marks and Imagery Usage Handbook* provides guidance on the "use of the marks and imagery of the IOC, and general guidelines for using the marks of" NOCs.³⁰ The IOC has legal rights to "the Olympic Symbol, the Olympic Flag, the Olympic Creed, the Olympic Motto, the Olympic Flame, the Olympic Medals, and the Historical Olympic Marks."³¹ Generally, many of these protected items are easily recognizable; however, the phrase "Historical Olympic Marks" serves as protection for "posters, official emblems, mascots and pictograms [of a particular Olympic Games]."³² Following the conclusion of each Olympic Games, the IOC takes ownership of the various Olympic imagery used for those Games.³³ Therefore, regardless of the reach of an individual country's Olympic mark statutes, as described below, the default rule is that any Olympic property relating to a particular games becomes property of the IOC.³⁴ This includes the popular and often bizarre mascots.³⁵

²⁹ *Id.* BLR 7–14, para. 4.10.2 continues with an analogous provision for the symbol of the organizing committee of an Olympic Games. ("Similarly, the Olympic emblem of an OCOG as well as any other symbols, emblems, marks or designations of an OCOG which refer to Olympism, may not be used for any advertising, commercial or profit-making purposes whatsoever in the country of an NOC without the prior written approval of such NOC.")

³⁰ OLYMPIC MARKS HANDBOOK, *supra* note 2, at 4.

³¹ *Id.*

³² Generally the mascots and marks that are specific to a particular Olympic Games relate to the host country and its culture. Olympic Charter, *supra* note 2, BLR 7–14, para. 4.1–4.4.1, at 24 ("An Olympic emblem may be created by an NOC or an OCOG subject to the approval of the IOC. . . . The emblem must be designed in such a way that it is clearly identified as being connected with the country of the NOC concerned.").

³³ *Id.* r. 50.4, at 93.

³⁴ *Id.*

Finally, the *Nairobi Treaty on the Protection of the Olympic Symbol* has been incorporated into the statutes of some host countries.³⁶ The *Nairobi Treaty*, adopted on September 26, 1981, serves as an additional layer of protection that a country may rely on in its efforts to protect the Olympic symbol. For instance, if a party to the *Nairobi Treaty* receives authorization to the use of the Olympic symbol from the IOC, that country's NOC has rights to any resulting revenue the IOC obtains from such authorization.³⁷ As of 2013, fifty countries are parties to the *Nairobi Treaty*³⁸ including host countries Brazil, Greece, Italy, and the Russian Federation.³⁹ The treaty provides:

³⁵ See *London 2012 Olympic Mascots*, THE IMPORT, <http://www.theimport.co.uk/2010/05/london-2012-olympic-mascots/> (last visited Apr. 16, 2013) (discussing past mascots and displaying the images below); see also *Making the Mascot*, LONDON 2012, <http://www.london2012.com/paralympics/about-us/our-brand/making-of-the-mascot/> (last visited Apr. 16, 2013).



³⁶ Nairobi Treaty on the Protection of the Olympic Symbol, Sept. 26, 1981 [hereinafter *Nairobi Treaty*], available at http://www.wipo.int/export/sites/www/treaties/en/ip/nairobi/pdf/trtdocs_wo018.pdf; see also Contracting Parties for the Nairobi Treaty on the Protection of the Olympic Symbol, WORLD INTELLECTUAL PROP. ORG., http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=22 [hereinafter Contracting Parties] (last visited Apr. 16, 2013) (listing the contracting states).

³⁷ WORLD INTELLECTUAL PROP. ORG., SUMMARIES OF CONVENTIONS, TREATIES AND AGREEMENTS ADMINISTERED BY WIPO 22 (2011), available at http://www.wipo.int/freepublications/en/intproperty/442/wipo_pub_442.pdf.

³⁸ Treaty Statistics for the Nairobi Treaty on the Protection of the Olympic Symbol, WORLD INTELLECTUAL PROP. ORG., http://www.wipo.int/treaties/en/statistics/StatsResults.jsp?treaty_id=22 (last visited Apr. 16, 2013).

³⁹ Contracting Parties, *supra* note 36.

Any State party to this Treaty shall be obliged, subject to Articles 2 and 3, to refuse or to invalidate the registration as a mark and to prohibit by appropriate measures the use, as a mark or other sign, for commercial purposes, of any sign consisting of or containing the Olympic symbol, as defined in the Charter of the International Olympic Committee, except with the authorization of the International Olympic Committee.⁴⁰

Therefore, while the *Nairobi Treaty* may not have many adjudicatory teeth, it does serve as an additional layer of protection for the IOC to protect revenue from Olympic property.

III. OLYMPIC MARK STATUTES

The Olympic mark statute of each host country controls enforcement of the Olympic mark and permits the Olympic Committee of that country to seek protection of the Olympic mark and brand. Each country discussed below has passed a similar version of an Olympic mark statute for protection within its borders. Since each country and its NOC are bound by the decisions of the IOC, much of the language is similar to either Rules 7–14 of the *Olympic Charter*, or the accompanying bye-law. This section explores the Olympic mark statute of each country and how enforcement of each statute is accomplished, typically through the host country's NOC. The countries will be considered in three distinct time periods: the pre-Beijing Years, the strong enforcement years, and the Olympic Games of the future.⁴¹

⁴⁰ Nairobi Treaty, *supra* note 36, art. 1.

⁴¹ However, the necessity for enforcement may have started as early as the 1988 games in Seoul, South Korea. Ira Boudway, *Don't Mess with the Lord of the Olympic Rings*, BLOOMBERG BUSINESSWEEK (June 14, 2012), <http://www.businessweek.com/articles/2012-06-14/dont-mess-with-the-lord-of-the-olympic-rings#p1> ("Before then, hundreds of companies signed Olympic marketing deals in every country where they wanted to advertise. That branding muddle frustrated global companies such as Coca-Cola (KO). So the International Olympic Committee created a worldwide sponsorship program, a one-stop shop for rights to Olympic logos and symbols.").

A. THE PRE-BEIJING YEARS

1. AUSTRALIA

Sydney, Australia was host of the XXVII Olympic Summer Games in 2000.⁴² Olympic property protection in Australia is accomplished through the Olympic Insignia Protection Act of 1987,⁴³ which was further amended for the Sydney 2000 Games by the Olympic Insignia Protection Amendment Act of 1994.⁴⁴ Copyright of the Olympic symbol is protected by Section 5 of the Act, which provides protection through an expansion of Australia's Copyright Act of 1968.⁴⁵ The statute is limited in its scope, focusing most of its attention on "the Olympic Symbol."⁴⁶

⁴² *Sydney 2000*, OLYMPIC.ORG, <http://www.olympic.org/sydney-2000-summer-olympics> (last visited Apr. 16, 2013).

⁴³ *Olympic Insignia Protection Act 1987* (Cth) (Austl.).

⁴⁴ *Olympic Insignia Protection Amendment Act 1994* (Cth) (Austl.).

⁴⁵ *Olympic Insignia Protection Act 1987* (Cth) s 5 (Austl.). Section 5 states:

- (1) For the purposes of the *Copyright Act 1968*—
 - (a) the olympic symbol shall be taken to be an original artistic work in which copyright subsists; and
 - (b) the Federation shall be taken to be the owner of the copyright in the olympic symbol.
- (2) Notwithstanding anything in the *Copyright Act 1968*—
 - (a) copyright in the olympic symbol subsists indefinitely; and
 - (b) a fair dealing with the olympic symbol does not constitute an infringement of the copyright in the olympic symbol if it is for the purpose of, or is associated with, the giving of information (including the reporting of news) —
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film.
- (3) An expression used in this section and in the *Copyright Act 1968* has the same meaning in this section as it has in that Act.
- (4) The Federation does not have the capacity to bring an action or proceeding under the law of a foreign country for an infringement of copyright in the olympic symbol.

⁴⁶ *See id.*

Furthermore, the design, or ability to reproduce the symbol belongs to the Federation. “Federation” refers to the “Australian Olympic Federation,”⁴⁷ which serves as Australia’s NOC. The 1994 Amendment Act replaced the former term⁴⁸ in favor of the latter.⁴⁹ The Act also repealed section 6 of the 1987 Act, and replaced it with:

6. The Committee is taken to be the owner of:

(a) the design of the olympic symbol; and

(b) any registered olympic design that was registered under this Act immediately before the commencement of the *Olympic Insignia Protection Amendment Act 1994*.⁵⁰

While this is a subtle change to an otherwise basic statute, the change serves as early evidence of the Australian Olympic Committee preparing for increasing problems protecting the Olympic brand.

2. UNITED STATES

In 2002 the United States hosted the XIX Olympic Winter Games in Salt Lake City, Utah.⁵¹ The United States Olympic

⁴⁷ *Id.* at s 2.

⁴⁸ *Olympic Insignia Protection Act 1987* (Cth) ss 6–7 (Austl.). Sections 6 and 7 provide:

6. The Federation shall be taken to be the owner of a protected design.

7. (1) The Federation has a monopoly in a protected design.

(2) The rights of the Federation with respect to a protected design are personal property and, subject to this Act, the laws applicable to ownership of personal property apply in relation to the monopoly in the design as they apply in relation to other choses in action.

⁴⁹ *Olympic Insignia Protection Amendment Act 1994* (Cth) (Austl.).

⁵⁰ *Id.* s 5 (Austl.).

⁵¹ *Salt Lake City 2002*, OLYMPIC.ORG, <http://www.olympic.org/salt-lake-city-2002-winter-olympics> (last visited Apr. 16, 2013).

Committee (USOC) has the right to enforce protection of the Olympic mark in the United States. As a part of the Olympic and Amateur Sports Act,⁵² the USOC has the exclusive right to use the following:

- (1) the name "United States Olympic Committee";
- (2) the symbol of the International Olympic Committee, consisting of [five] interlocking rings, the symbol of the International Paralympic Committee,⁵³ consisting of [three] TaiGeuks, or the symbol of the Pan-American Sports Organization,⁵⁴ consisting of a torch surrounded by concentric rings;
- (3) the emblem of the corporation,⁵⁵ consisting of an escutcheon having a blue chief and vertically

⁵² 36 U.S.C. § 220506 (2006).
⁵³



⁵⁴



⁵⁵

extending red and white bars on the base with [five] interlocking rings displayed on the chief; and

(4) the words “Olympic”, “Olympiad”, “Citius Altius Fortius”, “Paralympic”, “Paralympiad”, “Pan-American”, “America Espirito Sport Fraternite”, or any combination of those words.⁵⁶

Furthermore, the USOC is able to

file a civil action against a person for the remedies provided in the Act of July 5, 1946 (15 U.S.C. 1051 et seq.) (popularly known as the Trademark Act of 1946) if the person, without the consent of the corporation, uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition –

(1) the symbol described in subsection (a)(2) of this section;

(2) the emblem described in subsection (a)(3) of this section;

(3) the words described in subsection (a)(4) of this section, or any combination or simulation of those words tending to cause confusion or mistake, to deceive, or to falsely suggest a connection with the corporation or any Olympic, Paralympic, or Pan-American Games activity; or

(4) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic



⁵⁶ *Id.* § 220506(a).

Committee, the International Paralympic
Committee, the Pan-American Sports
Organization, or the corporation.⁵⁷

The statute also provides for exceptions for the use of the word "Olympic," if the word was used before September 21, 1950 or if the term refers to a geographic region.⁵⁸ This minor exception provides relief to businesses that may have used terms consistent with the Olympics for many years or that use a geographic region sharing a commonly used Olympic phrase.⁵⁹ Additionally, § 220506(c) provides that the USOC may file suit if the person or organization "uses [Olympic property] for the purposes of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition."⁶⁰ This statute severely proscribes use of Olympic property in the United States. Part IV below discusses enforcement of this statute in the United States and gives numerous examples of when the USOC has been successful in seeking an injunction against a party wrongfully using Olympic property.

3. GREECE

Athens, Greece was host of the XXVIII Olympic Summer Games in 2004.⁶¹ The Greek law provides a special reference to the *Annex of the Treaty of Nairobi*⁶² while also protecting the phrases

⁵⁷ *Id.* § 220506(c).

⁵⁸ *Id.* § 220506(d).

⁵⁹ For example, Squaw Valley, California is now commonly referred to as Olympic Valley, California after it played host to the 1960 Olympic Winter Games. See *Squaw Valley 1960*, OLYMPIC.ORG, <http://www.olympic.org/squaw-valley-1960-winter-olympics> (last visited Apr. 16, 2013).

⁶⁰ 36 U.S.C. § 220506(c) (2006).

⁶¹ *Athens 2004*, OLYMPIC.ORG, <http://www.olympic.org/athens-2004-summer-olympics> (last visited Nov. 19, 2012).

⁶² Nomos (1998:2598) *Prostasia ton Olympiakōn sýmvola kai simeia* [Protection of Olympic Symbols and Signs], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 1998, Art. 3, para. 3 (as amended) (Greece). Paragraph 1 provides:

1. The Olympic Symbol, as specified in the Annex of the Treaty of Nairobi, ratified by 1347/1983, the terms "Olympiakos," "Olympiad," and the indicative Olympic

“Athens 2004,” “Olympic Games—Athens 2004,” “Olympic Games 2004,” “Olympic Games—Greece,” and “any other relevant terms in Greek or any language.”⁶³ The Greek law is unique because it specifically provides for preliminary injunctions in its Olympic mark statute.⁶⁴ The Greek games were generally seen as a success internationally; however some suggest it was a failure for the country, suggesting that hosting the games may have contributed to Greece’s current state of economic disrepair.⁶⁵

Despite the poor economic impact on the country, the Organising Committee for the Olympic Games of Athens (OCOGA) was active in protecting the Olympic brand.⁶⁶ In November of 2000, a blogger for the website *kiat.net* received a cease and desist letter from the OCOGA, asking the blogger to remove any reference to the Olympics from the blog.⁶⁷ The OCOGA cited many different reasons why it sought to protect the Olympic brand, including “[p]revention of the deceiving association, which may be created to the public, between the Olympic Games and the services and/or goods of an unauthorised provider.”⁶⁸ The author of the blog

motto (motto: Citius-Altus-Fortius, Faster-Higher-Stronger), both in Greek and in any language, as well as the symbols and trademarks of the Olympic Committee are protected according to the provisions of Law 2239/1994.

⁶³ *Id.* para. 7.

⁶⁴ *Id.* para. 10(d).

⁶⁵ Nick Malkoutzis, *How the 2004 Olympics Triggered Greece’s Decline*, BLOOMBERG BUSINESSWEEK (Aug. 2, 2012), <http://www.businessweek.com/articles/2012-08-02/how-the-2004-olympics-triggered-greeces-decline>.

⁶⁶ See also Stephen McKelvey & John Grady, *An Analysis of the Ongoing Global Efforts to Combat Ambush Marketing: Will Corporate Marketers “Take” the Gold in Greece?*, J. LEGAL ASPECTS OF SPORTS, Winter 2004, at 191.

⁶⁷ KIAT.NET, <http://www.kiat.net/olympics/letter.html> (last visited Apr. 16, 2012).

⁶⁸ *Id.* The different reasons included:

According to the above, the following are of outmost importance:

Protection of the authenticity of the Olympic marks and the prevention of any unauthorised use;
Distribution of authorised and valid information;

responded that the blog was not intended for commercial purposes and only as a means for the blogger to remain in contact with family and friends. The blogger, in a response letter to the OCOGA states:

I find it ironic that even though the purity of the Olympic flame should be strongest at its homeland in Greece, your Organising Committee chooses to pollute that purity of ideals by killing off all the informational Olympic fan sites who promote greater understanding of the incomparable and larger-than-life event of the Olympic Games.⁶⁹

This strong language indicates that perceived over-protection of the Olympic brand and unnecessary enforcement may date back to the Athens games.

4. ITALY

Turin, Italy hosted the XX Olympic Winter Games in 2006.⁷⁰ The law that protects the Olympic symbol in Italy was enacted August 17, 2005, and reads:

Article 1. Protection of the Olympic Symbol

1. The Olympic symbol, defined in Annex A of the Treaty of Nairobi, 26 September 1981, ratified under Law 24 July 1985, n. 434, cannot be subject to registration as a trademark, for any class of goods or services, except in cases required or expressly authorized in [the]

Prevention of the deceiving association, which may be created to the public, between the Olympic Games and the services and/or goods of an unauthorised provider; Protection of the distinctiveness of the said terms, with a view to strengthen their commercial value for ATHOC and their use as means of financing the staging of the Games.

⁶⁹ *Id.*

⁷⁰ *Turin 2006*, OLYMPIC.ORG, <http://www.olympic.org/turin-2006-winter-olympics> (last visited Apr. 16, 2013).

form written [by] the International Olympic Committee (IOC).

2. The prohibition referred to in paragraph 1 shall also apply to signs that contain, in any language, words, or direct references however, to recall the Olympic symbol, the Olympic Games and related events or to their objective characteristics, may indicate a connection with the organization or holding of Olympic event.

3. The prohibition referred to in paragraph 2 shall apply in any case the words "Olympic" and "Olympiad" in any ending.

4. Recordings made in contravention of this article are zero [sic] for all purposes of the law.⁷¹

Additionally, the statute's notes to Article 1 state that the *Treaty of Nairobi* was enacted as a statute in Italy.⁷² This law is unique in that it makes no reference to the Italian Olympic Committee as an enforcer of this statute, and instead relies on the *Treaty of Nairobi* to enforce trademark infringements of the Olympic symbol. Typically, a country's enforcement statute makes reference to either the organizing committee for a country or Olympic Games, or to the country's Olympic committee when discussing enforcement of its statute.

⁷¹ Legge 17 agosto 2005, n. 167 (It.), available at <http://gazzette.comune.jesi.an.it/2005/194/2.htm> (translated with Google Translate).

⁷² *Id.* (explaining that the Nairobi Treaty was adopted as law in Italy and "was published in the Ordinary [Supplement to the] Official Gazette of August 22, 1985, n. 197").

B. THE STRONG ENFORCEMENT YEARS

1. CHINA

Beijing, China was host to the XXIX Olympic Summer Games in 2008.⁷³ The Beijing Games are widely viewed as changing the landscape regarding Olympic mark protection, primarily due to the large increase in revenues.⁷⁴ Piracy and counterfeiting issues in China likely led to the increased enforcement.⁷⁵ Additionally, as explained above, China used the 2008 Beijing Games to both strengthen its intellectual property enforcement and showcase to companies that their brands are capable of being protected in China.⁷⁶ However, the Beijing Games has served as the model that later host countries have followed, and there is little sign that over enforcement will slow down in the coming years.

In 2002, the Chinese government enacted the *Order of the State Council on Issuing the Provisions on the Protection of Olympic Symbols*,⁷⁷ which states “[t]he Chinese law provides protection through statute, no one may use the Olympic symbols for commercial purposes . . . without the permission of the right holders of the Olympic symbols.”⁷⁸ The statute also defines the scope of “Olympic symbols”:

1. The Olympic five-ring symbol, Olympic flag,
Olympic motto, Olympic mark and Olympic
Anthem;

⁷³ *Beijing 2008*, OLYMPICS.ORG, <http://www.olympic.org/beijing-2008-summer-olympics> (last visited Apr. 16, 2013).

⁷⁴ See, e.g., Baker et al., *supra* note 4, at 1.

⁷⁵ Cf. Joff Wild, *The Truth About China*, INTELLECTUAL ASSET MANAGEMENT MAGAZINE, Jan./Feb. 2009, at 29, available at <http://www.iam-magazine.com/issues/article.ashx?g=c8daa7b7-6c60-43ce-b976-749c9d5d709d> (discussing intellectual property problems in China and the law in place to combat those problems).

⁷⁶ See Wang, *supra* note 6.

⁷⁷ Order of the State Council on Issuing the Provisions on the Protection of Olympic Symbols (promulgated by St. Council of China, Feb. 4, 2002, effective Apr. 1, 2002), available at <https://hk.lexiscn.com/law/order-of-the-state-council-on-issuing-the-provisions-on-the-protection-of-olympic-symbols.html?eng=0> (Lexis China Online).

⁷⁸ *Id.* art. 4.

2. The exclusive names such as "Olympic", "Olympia", "Olympic Games" and the abbreviations thereof;
3. The name, sign and symbol of the China Olympic Committee;
4. The name, sign and symbol of the Beijing 2008 Olympic Games Bid Committee;
5. The name and sign of the Organizing Committee of the 29th Olympic Games; the mascots, game anthem and slogan of the 29th Olympic Games; "Beijing 2008", the 29th Olympic Games and the abbreviations thereof;
6. The other symbols related to the 29th Olympic Games as provided by the *Olympic Charter* and the Contract of the Host City of the 29th Olympic Games.⁷⁹

Additionally, the mayor of Beijing passed an ordinance of the People's Government of Beijing Municipality (No. 85) titled *The Rule concerning the Protection of Olympic-Related Intellectual Property Rights*,⁸⁰ which provides additional protection of Olympic symbols in the city of Beijing. The Ordinance states in pertinent part:

The Olympic intellectual property rights mentioned in these Provisions refers to the proprietary rights of the Olympic intellectual property rights proprietors over any trademarks, special symbols, patents, works and other creations related to the Olympics as stipulated in the Olympic Charter and any agreements concluded by the Beijing Municipal People's Government and the Chinese

⁷⁹ *Id.* art. 2.

⁸⁰ The Rule concerning the Protection of Olympic-Related Intellectual Property Rights (promulgated by the People's Government of Beijing Municipality, Oct. 2001, effective November 1, 2001), *available at* <http://210.75.211.75:81/capinfo/html/info/1011011434539491.html>.

Olympic Committee . . . with the International
Olympic Committee⁸¹

Both China passing a regulation and the city of Beijing passing an ordinance serve as evidence of the country's concern over potential problems regarding trademark infringement of Olympic property. China was likely being overprotective in its efforts, as the Olympics presented an opportunity to display to the world its growing strength as a national power.

⁸¹ *Id.* art. 2. In addition, the ordinance describes how one might gain approval to use Olympic property and also provides remedies for infringement:

The Olympic intellectual property rights specified in Items (1), (3), and (4) of Article 3 hereof may only be used after has been approved and authorized by the BOCOG [Organizing Committee of Games of the XXIX Olympiad] or organizations authorized by the IOC; the Olympic intellectual property rights specified in Item (2) of Article 3 hereof may only be used after it has been approved and authorized by COC [Chinese Olympic Committee]. (Article 6)

. . . .

In the event of any violation of these Provisions and infringement of Olympic intellectual property rights, the administrative departments of industry and commerce, intellectual property right, copyright, etc. may take the following measures:

(1) order the discontinuation of such infringement activities and eliminate its impact;

(2) Seal up any relevant article of property or material, that may be transferred, concealed or destroyed; (3) remove from the existing objects any counterfeit trademarks, special symbols, patent marks, works and other creations;

(4) seize and destroy the infringement trademarks, patent signs and special symbols;

(5) seize the [molds], printing plates and other tools directly used for infringement activities; or

(6) order and monitor the destruction of infringement trademarks, special symbols, patents, works and other creations that are difficult to be separated from the objects. (Article 12)

Finally, the Chinese statute is consistent with other countries and the *Olympic Charter*, calling for China's organizing committee, as host country, to enforce the law with guidance from the IOC.

2. CANADA

Vancouver, Canada hosted the XXI Olympic Winter Games in 2010.⁸² The Canadian Olympic and Paralympic Marks Act⁸³ created a series of prohibited actions that include:

No person shall adopt or use in connection with a business, as a trade-mark or otherwise, an Olympic or Paralympic mark or a mark that so nearly resembles an Olympic or Paralympic mark as to be likely to be mistaken for it.

No person shall use in connection with a business, as a trade-mark or otherwise, a mark that is a translation in any language of an Olympic or Paralympic mark.

. . . .

No person shall, during any period prescribed by regulation, in association with a trade-mark or other mark, promote or otherwise direct public attention to their business, wares or services in a manner that misleads or is likely to mislead the public into believing that

(a) the person's business, wares or services are approved, authorized or endorsed by an organizing committee, the COC [Canadian Olympic Committee] or the CPC [Canadian Paralympic Committee]; or

(b) a business association exists between the person's business and the Olympic Games, the

⁸² *Vancouver 2010*, OLYMPIC.ORG, <http://www.olympic.org/vancouver-2010-winter-olympics> (then follow the "More About" tab) (last visited Nov. 19, 2012).

⁸³ Olympic and Paralympic Marks Act, S.C. 2007, c. 25 (Can.).

Paralympic Games, an organizing committee, the COC or the CPC.⁸⁴

Additionally, the Canadian law provides for remedies, including injunctions or monetary damages, while also giving the Canadian Olympic Committee or the Canadian Paralympic Committee the right to bring an action under the jurisdiction of the Canadian Federal Court.⁸⁵ The commentary to Bill C-47, which became the statute above, explained that the Bill “clearly strengthens the ability of the COC, CPC, and Organizing Committee to seek injunctions against any marks presumed to be encroaching on the Olympic brand.”⁸⁶

Interestingly, the bill’s commentary also references an example from the 2006 FIFA World Cup where German fans were “forced to relinquish their orange lederhosen [that] . . . were stamped with the name ‘Bavaria,’ although Bavaria Brewery (Netherlands) was not an official World Cup sponsor.”⁸⁷ A sporting event that closely resembles the grandeur of the Olympics, the FIFA World Cup, has also been confronted with multinational trademark enforcement issues. However, the FIFA World Cup does not have a mark or image that is used consistently across numerous games over several decades like the Olympic Rings for the Olympic Games.⁸⁸

The Vancouver Games was the most recent Winter Olympics, and thus provides the most current example of enforcement surrounding Winter Olympics. Canada’s attempt to trademark the very common word “Winter” made news headlines.⁸⁹ While the trademark of the term “Winter” would only last for a limited period of time, Michael Gist, a University of Ottawa law professor criticized the proposed law for creating “the prospect of a David and Goliath

⁸⁴ *Id.* art. 3–4.

⁸⁵ *Id.* art. 5(1)–5(2).

⁸⁶ The Olympic and Paralympic Marks Act, Bill C-47, L.S. 555E (2007) (Can.) [hereinafter Bill C-47], *available at* http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c47&Parl=39&Ses=1.

⁸⁷ *Id.*

⁸⁸ 2014 FIFA World Cup Brazil, FIFA.COM, <http://www.fifa.com/worldcup/index.html> (last visited Apr. 16, 2013).

⁸⁹ Ian Austen, *Canada to Trademark 'Winter' for 2010 Olympics*, N.Y. TIMES, Apr. 2, 2007, <http://www.nytimes.com/2007/04/02/technology/02iht-olympics.1.5109262.html>.

fight over free speech.”⁹⁰ If the COC had the right to seek injunctions for use of the term “Winter,” it would create problems when a corporation or individual used the word in a common context that did not relate to the Olympics, sparking concern that protection of commonly used words should not fall under Olympic mark statute protection. Bill C-47 also provided Schedule 3 in its footnotes, providing a list of prohibited words, including the terms “gold,” “silver,” “bronze,” and “sponsor.”⁹¹ Although associated with the Olympics here, everyday use of these common words also leads to overprotection concerns.

3. UNITED KINGDOM

The most recent games were held in London, as the United Kingdom hosted the XXX Olympic Summer Games in 2012. The Olympic Symbol etc. (Protection) Act 1995⁹² provides the basis for Olympic mark enforcement in the United Kingdom. Article 2 of the Act provides for the Olympic association right,⁹³ which was further

⁹⁰ *Id.*

⁹¹ Bill C-47, *supra* note 87.

⁹² Olympic Symbol etc. (Protection) Act 1995, 1995, c. 32 (Eng.) [hereinafter 1995 Act], available at http://www.legislation.gov.uk/ukpga/1995/32/pdfs/ukpga_19950032_en.pdf.

⁹³ *Id.* § 2.

(1) The Olympics association right shall confer exclusive rights in relation to the use of the Olympic symbol, the Olympic motto and the protected words.

(2) Subject to sections 4 and 5 below, the rights conferred by subsection (1) above shall be infringed by any act done in the United Kingdom which—

(a) constitutes infringement under section 3 below, and

(b) is done without the consent of the person for the time being appointed under section 1(2) above (in this Act referred to as “the proprietor”).

(3) The proprietor may exploit the rights conferred by subsection (1) above for gain, but may not make any disposition of, or of any interest in or over, them.

(4) This section shall not have effect to permit the doing of anything which would otherwise be liable to be prevented by virtue of a right—

expanded after the 2006 Amendment. In anticipation of the London 2012 games, the United Kingdom enacted the London Olympic Games and Paralympic Games Act 2006.⁹⁴ The intent of the 2006 Act was to amend the 1995 Act to include specific London Games language. In particular, “Schedule 3 Olympic Symbol Protection” provides amendments specific to the 1995 Act, which serves as evidence of the trend in increased enforcement and Olympic property protection.⁹⁵ Section 3(1) of the 1995 Act provides:

3.—(1) A person infringes the Olympics association right if in the course of trade he uses —

(a) a representation of the Olympic symbol, the Olympic motto or a protected word, or

(b) a representation of something so similar to the Olympic symbol or the Olympic motto as to be likely to create in the public mind an association with it. . . .⁹⁶

Schedule 3, section 3(1) of the 2006 Act adds to the 1995 Act: “At the end of section 3(1)(b) (infringement: similar symbols and mottos)

(a) subsisting immediately before the day on which this Act comes into force, or

(b) created by—

(i) the registration of a design under the [1949 c. 88.] Registered Designs Act 1949 on or after the day on which this Act comes into force, or

(ii) the registration of a trade mark under the [1994 c. 26.] Trade Marks Act 1994 on or after that day.

(5) Consent given for the purposes of subsection (2)(b) above by a person appointed under section 1(2) above shall, subject to its terms, be binding on any person subsequently appointed under that provision; and references in this Act to doing anything with, or without, the consent of the proprietor shall be construed accordingly.

⁹⁴ London Olympic Games and Paralympic Games Act, 2006, c. 12 (Eng.) [hereinafter 2006 Act], *available at* http://www.legislation.gov.uk/ukpga/2006/12/pdfs/ukpga_20060012_en.pdf.

⁹⁵ See 1995 Act, *supra* note 92, sched. 3.

⁹⁶ *Id.* § 3(1).

add 'or a word so similar to a protected word as to be likely to create in the public mind an association with the Olympic Games or the Olympic movement.'"⁹⁷ This expansion to include words similar to protected words under the act is an unnecessary and over-protective measure by the government to give the United Kingdom's Olympic Committee the ability to bring an action against infringers at its discretion. Words that are close to that of the Olympic Games or Olympic movement would be better suited for a court to decide, rather than automatically banned by statute. The language continues the intent of previous NOCs' to protect general terms like "gold," "silver," and "bronze," such as Canada above. However, certain words that NOCs seek to assert protection over have legitimate use outside of an Olympic context. The desire to ban use of such words often leads to overprotection of the Olympic mark that can be frustrating to both the public and the economy.

London also created an additional statutory protection, The Olympics, Paralympics and London Olympics Association Rights (LOAR),⁹⁸ which serves as "an exclusive right preventing any entity from referring or associating itself with the Games without permission."⁹⁹ The LOAR provides remedies and means of enforcement by the London Organising Committee of the Olympic Games (LOCOG), whereby the committee can seek a court order to have the products containing Olympic property "erased, removed or obliterated from any infringing goods, material or articles . . . in the person's possession, custody or control."¹⁰⁰ An explanatory memorandum to the LOAR explains that the United Kingdom seeks to enforce Olympic property protection in order to make a sponsorship of the Olympics a protected and worthwhile investment.¹⁰¹ The memorandum also provides an interesting public

⁹⁷ 2006 Act, *supra* note 94, sched. 3, § 3(1).

⁹⁸ The Olympics, Paralympics and London Olympics Association Rights (Infringement Proceedings), 2010, S.I. 2010/2477 (U.K.) [hereinafter LOAR], *available at* http://www.legislation.gov.uk/uksi/2010/2477/pdfs/uk_si_20102477_en.pdf.

⁹⁹ Mark Armitage, *The Olympic Brand Clampdown is Justified*, THE INDEPENDENT (Feb. 1, 2012) <http://blogs.independent.co.uk/2012/02/01/the-olympic-brand-clampdown-is-justified/>.

¹⁰⁰ LOAR, *supra* note 98, § 2(1)(a).

¹⁰¹ Explanatory Memoranda to the Olympics, Paralympics and London Olympics Association Rights (Infringement Proceedings) Regulations, 2010,

policy explanation, which states that “the London Olympics, Olympics and Paralympics Association Rights recognise the need for a balance to be struck between securing sponsors’ and other authorised users’ rights and potentially competing values, such as freedom of expression.”¹⁰² However, as provided below in the section IV.B, the rights of the sponsors must be seen as far more important than the freedom of expression of the public. With the perception that enforcement abuses are increasing, the rights of sponsors and the interests of the LOCOG in obtaining funds may be more important than the fundamental principles of the Olympics stated in the *Olympic Charter*.¹⁰³

C. THE OLYMPIC GAMES OF THE FUTURE

1. RUSSIA

Sochi, Russia has been selected to serve as the host city of the XXII Olympic Winter Games in 2014.¹⁰⁴ The Russian Federation Council approved a law on November 23, 2007 in preparation for the games.¹⁰⁵ As with previous Olympic laws, the law includes a

No. 2477, § 7.2, available at http://www.legislation.gov.uk/uksi/2010/2477/pdfs/ukxiem_20102477_en.pdf.

¹⁰² *Id.* § 7.4.

¹⁰³ See also Mark James & Guy Osborn, *London 2012 and the Impact of the UK's Olympic and Paralympic Legislation: Protecting Commerce or Preserving Culture?*, 74(3) MOD. L. REV. 410, 425–27 (2011), available at http://www.academia.edu/1165891/London_2012_and_the_impact_of_the_UKs_Olympic_and_Paralympic_legislation_protecting_commerce_or_preserving_culture (arguing that the LOCOG extended protection beyond its Host City Contract). Additionally, James and Osborn argue that the overall change should come from the IOC as the supreme authority over the Olympic Movement, instead of one host country attempting to make a shift away from increased enforcement.

¹⁰⁴ *Sochi 2014*, OLYMPIC.ORG, <http://www.olympic.org/sochi-2014-winter-olympics> (last visited Apr. 16, 2013).

¹⁰⁵ Fyedyeral'neye zakon ob organizatsii i o provyedenii XXII olimpiyskikh zimnikh igr i XI paralimpiyskikh zimnikh igr 2014 goda v gorode Sochi, razvitiy goroda Sochi kak gornoklimaticheskogo koororta i vnyeseniye izmeneniye v otdeleye zakonodatel'niye akti Rossiyskoy fyedyeratsii [Federal Law on the organization of the XXII Olympic Winter Games and XI Paralympic Winter Games of 2014 in

provision to protect general Olympic property; however, this statute furthers the growing concern for protection by continuing to expand the number of protected phrases. Olympic mark statutes, like the Russian statute and those that follow it, list specific, protected phrases when referring to protected Olympic property, instead of referring to general provisions. For example, Article 7 presents a provision, which states:

Article 7. Use of Olympic and Paralympic Symbols

1. For the purposes of this article, Olympic symbols shall mean the terms "Olympic", "Olympiad", "Sochi 2014", "Olympian", "Olympic Winter Games", "Olympic Games", and the words and expressions derived from them, as well as the Olympic symbol, fire, torch, flag, anthem, motto, emblems, and historical symbols of any previous Olympic Games

2. The use of Olympic and/or Paralympic symbols, including for identification of legal entities and individual entrepreneurs or goods, works or services produced, performed, or rendered by them (in trade names, commercial signage, trademarks, service marks, appellations of places of origin) or otherwise, as long as such use creates an impression that such persons are associated with the Olympic Games and the Paralympic Games, shall be permitted only provided that an agreement to this effect has been concluded with the International Olympic Committee and/or the International Paralympic Committee or organizations authorized thereby.

Sochi, the Development of Sochi as a mountain resort and Amendments to Certain Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [Russian Federation Collection of Legislation], Nov. 23, 2007, *available at* http://sochi2014.blob.core.windows.net/storage/games/legal/folder/olympic_law_eng_new.pdf.

3. Any use of Olympic and/or Paralympic symbols in violation of requirements of part 2 of this Article [are] unlawful.¹⁰⁶

The law of the Russian Federation is surprisingly simple and straight forward, other than the addition of more specific phrases. It defers to the necessity of a contract with the IOC before a party can use an Olympic symbol. It is not unlikely that the Russian Olympic Committee and the IOC closely monitored the continuing and growing challenges of Olympic property protection during the London 2012 games in order to make amendments to the Russian law if needed.

2. BRAZIL

Rio de Janeiro, Brazil will serve as the host city of the XXXI Olympic Summer Games in 2016.¹⁰⁷ By decree of its President on October 1, 2009, Brazil passed a law by which it sought to protect the "symbols related to the Games 2016."¹⁰⁸ Interestingly, the country passed the law one day before the official IOC announcement that Brazil won the bid.¹⁰⁹ The law, in pertinent part, states:

Federal authorities, under their statutory duties, shall act to control, surveillance and repression of illicit acts which infringe the rights of the symbols related to the 2016 Games.

For purposes hereof, the term "symbols related to the Games 2016" refers to:

¹⁰⁶ *Id.* art. 7, §§ 1–2.

¹⁰⁷ *Rio de Janeiro 2016*, OLYMPIC.ORG, <http://www.olympic.org/rio-2016-summer-olympics> (last visited Apr. 16, 2013).

¹⁰⁸ Lei No. 12.035, de 1 de Outubro de 2009, Diário Oficial da União [D.O.U.] de 1.10.2009 (Braz.), available at http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L12035.htm (translated with Google Translate).

¹⁰⁹ See *Rio to Stage 2016 Olympic Games*, BBC SPORT, http://news.bbc.co.uk/sport2/hi/olympic_games/8282518.stm (last updated Oct. 2, 2009).

I - all graphically distinctive signs, banners, slogans, emblems and anthems used by the International Olympic Committee - IOC;

II - The names "Olympic Games", "Paralympics", "2016 Olympic Games", "Rio 2016 Paralympic Games", "XXXI Olympic Games", "2016", "Rio Olympics", "Rio 2016 Olympics" "Rio Paralympics", "Rio Olympics 2016" *and other variations and abbreviations and those yet also related that, perhaps, will be created within the same goals*, in any language, including those in electronic domain web sites;

III - the name, emblem, flag, the anthem, the motto and the marks and other symbols of the Organizing Committee for the 2016 Games, and

IV - the mascots, brands, torches and other symbols related to the XXXI Olympic Games, Rio 2016 Olympic Games and Paralympic Games Rio 2016.¹¹⁰

Article 7 provides the standard language that one must seek permission from the Brazilian OCOG or the IOC before the Olympic symbol can be used for commercial purposes.¹¹¹ The Brazilian law is unique because it fails to mention specifically the Brazilian Olympic Committee. However, in Article 6 it refers to the "federal authorities" and in Article 7 the "Organizing Committee," therefore it should operate like any of the other statutes mentioned above.¹¹² Protection of the Olympic marks of the Rio de Janeiro Games may

¹¹⁰ Lei No. 12.035, *supra* note 108, art. 6 (emphasis added).

¹¹¹ *Id.* art. 7. ("[It] is forbidden to use any of the symbols related to the 2016 Games mentioned in art. 6 for commercial purposes or not, except with the prior written permission of the Organizing Committee for the 2016 Games or the IOC.").

¹¹² Brazil however, has a National Olympic Committee. *See National Olympic Committees Brazil*, OLYMPIC.ORG, <http://www.olympic.org/national-olympic-committees> (last visited Apr. 16, 2013).

become important, especially when the image of the 2016 Games has allegedly already been subjected to copyright infringement.¹¹³

Brand enforcement of the Olympic Games in Brazil may be more established and easier to predict in the latter part of 2014. Brazil is host to the 2014 FIFA World Cup,¹¹⁴ so Brazil may use the event as an opportunity to learn brand enforcement lessons with regard to the World Cup logo¹¹⁵ and subsequently as a chance to prepare for the 2016 Olympics. The FIFA World Cup's analogous stature as a multinational sporting event will allow Brazil the opportunity to fully prepare for all ambush and deceptive marketing strategies that may be attempted during the Olympics.

IV. ENFORCEMENT OF OLYMPIC MARK STATUTES

Enforcement of a host country's Olympic mark statutes by NOCs has become increasingly popular over the last five years. Not only are statutes being drafted and amended to protect more Olympic phrases and symbols,¹¹⁶ or even phrases and symbols that mimic Olympic property, but statute enforcement is rising. With China's rise as an economic power player in the last five years, the Beijing

¹¹³ The image of the 2016 Rio games was allegedly copied by the Mayor of a town, Huatabampo, Sonora, in Mexico. Post Discussing Rio 2016 Logo Copyright Infringement, 25HORAS (Sept. 19, 2012), <http://25horas.com/plagian-el-logo-de-rio-2016-para-el-gobierno-de-huatabampo-sonora/>. See the images below for a comparison of the symbols.



¹¹⁴ 2014 FIFA World Cup Brazil, FIFA.COM, <http://www.fifa.com/worldcup/index.html> (last visited Apr. 16, 2013).

¹¹⁵ Official Emblem, 2014 FIFA World Cup Brazil, FIFA.COM, <http://www.fifa.com/worldcup/officialemblem/index.html> (last visited Apr. 16, 2013).

¹¹⁶ See generally *infra* Part III.

Games four years ago served as the start of this surge in Olympic mark enforcement.¹¹⁷

Many countries seek strict brand enforcement due to ambush marketing strategies by companies who attempt to associate themselves with the Olympics.¹¹⁸ Despite the more recent attempts to prevent ambush marketing and association with the Olympics, the technique has been present in the Olympics for many years.¹¹⁹ While the above statutes and legislation deter smaller businesses from ambush marketing, the legislation is often ineffective against large, wealthy corporations who use clever marketing to circumvent the rules.¹²⁰ In the *Sport Business Journal*, Professors John Grady and Steve McKelvey explain that “the overzealous approach to its brand protection efforts arguably served to tarnish the Olympic brand, given the amount of negative publicity that surrounded these efforts.”¹²¹ Often, this overzealous protection can be seen as contrary to the fundamental principles from the *Olympic Charter* that the games are based upon.¹²²

¹¹⁷ See generally Aileen McGill, *How China Succeeded in Protecting Olympic Trademarks and Why This Success May Not Generate Immediate Improvements in Intellectual Property Protection in China*, UNIVERSITY OF PENNSYLVANIA – BIOSTATISTICS (Jan. 2010), available at http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=aileen_mcgill.

¹¹⁸ John Grady & Steve McKelvey, *Ambush Marketing Lessons from the London Olympic Games*, SPORTS BUS. J. (Oct. 12, 2012), <http://www.sportsbusinessdaily.com/Journal/Issues/2012/10/22/Opinion/Grady-McKelvey.aspx>.

¹¹⁹ See Charles Loyd & David Brooks, *A Non-Runner for 2012: Ambush Marketing and the 2012 London Olympics*, TRADEMARK WORLD #188, June 2006, Box 2, http://www.taylorwessing.com/uploads/tx_siruplawyermanagement/IP_AmbushMarketingOlympics.en.pdf.

¹²⁰ Grady & McKelvey, *supra* note 118. Some of the companies who used such strategies to associate themselves with the London Olympics, many without legal recourse, included Nike, Red Bull, Virgin Media, Puma, and Mizuno.

¹²¹ *Id.*

¹²² See Olympic Charter, *supra* note 2, para. 1–2, at 10.

A. ENFORCEMENT IN THE UNITED STATES

A series of U.S. federal cases from 1980 to the present have interpreted the U.S. statute pertaining to Olympic brand protection.¹²³ Each of these cases discuss whether the USOC was successful in its efforts to obtain an injunction against the party who it alleged was wrongfully using Olympic property and applies the statutes to the facts of the particular case. *Stop the Olympic Prison v. U.S. Olympic Committee*¹²⁴ is one of the first cases to interpret the statute. In *Stop the Olympic Prison*, an organization filed suit against the USOC seeking a declaratory judgment that the organization be allowed to print a poster with the words “STOP THE OLYMPIC PRISON” along with the Olympic rings, in protest of the plan to convert the Olympic Village of the 1980 Lake Placid Games into a prison.¹²⁵ The court, applying 36 U.S.C. § 380,¹²⁶ an earlier law consistent with § 220506(c), found that the “poster was not used ‘for the purpose of trade,’ or ‘to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition.’” None of the posters have been sold or distributed commercially, and they are available free of charge.”¹²⁷ While the reasoning is consistent with current law, it seems a court today might be much more protective of the use of the Olympic symbol. Ultimately, the court decided that the organization could continue printing the posters, an atypical result for the USOC.¹²⁸

Stop the Olympic Prison is a unique case for two distinct purposes. First, it is the only case referencing language analogous with § 220506(c) in which the USOC is unsuccessful in obtaining an order from the court to stop using Olympic property.¹²⁹ Second, it is the only case where the defending organization filed a declaratory

¹²³ 36 U.S.C. § 220506 (2006); *see also infra* Part III.A.2.

¹²⁴ *Stop the Olympic Prison v. U.S. Olympic Comm.*, 489 F. Supp. 1112 (S.D.N.Y. 1980).

¹²⁵ *Id.* at 1114–15.

¹²⁶ *See* 36 U.S.C.A. Disp Table.

¹²⁷ *Stop the Olympic Prison*, 489 F. Supp. 1112, at 1121.

¹²⁸ *See e.g.*, *U.S. Olympic Comm. v. Intelicense Corp.*, S.A., 737 F.2d 263 (2d Cir. 1984); *U.S. Olympic Comm. v. Olympic Supply, Inc.*, 655 F. Supp.2d 599 (D. Md. 2009); *U.S. Olympic Comm. v. Tobyhanna Camp Corp.*, Civil Action No. 3:10 CV 162, 2010 WL 4617429 (M.D. Penn 2010).

¹²⁹ *See Stop the Olympic Prison*, 489 F. Supp. 1112, at 1126.

judgment action against the USOC,¹³⁰ typically the USOC seeks an injunction against an organization to stop using Olympic property, as the statute provides.¹³¹

While the plaintiff in *Stop the Olympic Prison* was allowed to continue printing this poster, there are numerous other situations where organizations have not been permitted to use the Olympic symbol or name in similar instances. For example, during the London 2012 games, a large group of knitters belonging to the website Ravelry¹³² was asked to stop participating in a knitting competition that borrowed part of the Olympic name.¹³³ “The U.S. Olympic Committee has sent a cease and desist letter to a knitting-based social network for hosting a knitting ‘olympics.’ Now, knitters are in revolt.”¹³⁴ While this website reaches a large audience of approximately 400,000 active users,¹³⁵ a knitting competition featuring events such as “afghan marathon” and “scarf hockey” are likely not threatening to the USOC. A portion of the cease and desist letter follows, and can be seen as nothing more than laughable.

The athletes of Team USA have usually spent the better part of their entire lives training for the opportunity to compete at the Olympic Games and represent their country in a sport that means everything to them. For many, the Olympics represent the pinnacle of their sporting career. Over more than a century, the Olympic Games have brought athletes around the world together to compete at the Olympic Games and represent their country in a sport that means everything to them.

¹³⁰ See *id.* at 1112.

¹³¹ See 36 U.S.C. § 220506 (2006) (“The corporation may file a civil action against a person for . . . remedies.”).

¹³² RAVELRY, <https://www.ravelry.com> (last visited Apr. 16, 2013).

¹³³ Adrian Chen, *Knitters Outraged After U.S. Olympic Committee Squashes Knitting Olympics – and Disses Knitters*, GAWKER.COM (June 20, 2012, 5:44 PM), <http://gawker.com/5920036/us-olympics-committee-is-mad-at-knitting-olympics-for-denigrating-real-athletes>.

¹³⁴ *Id.*

¹³⁵ Farhad Manjoo, *A Tight-Knit Community*, SLATE.COM (July 6, 2011, 5:31 PM), http://www.slate.com/articles/technology/technology/2011/07/a_tightknit_community.html.

....

We believe using the name "Ravelympics" for a competition that involves an afghan marathon, scarf hockey and sweater triathlon, among others, tends to denigrate the true nature of the Olympic Games. In a sense, it is disrespectful to our country's finest athletes and fails to recognize or appreciate their hard work.¹³⁶

While the statute does claim to protect the use of Olympic phrases "for the purpose of . . . competition,"¹³⁷ analogizing a friendly knitting Ravelympics to an Olympic sport is an unnecessary and unrealistic stretch. As evidence that the USOC went too far in this case, they have since apologized to the Ravelry users twice.¹³⁸ The USOC "admitted it was a bit harsh to say that knitting 'denigrated' Olympic athletes."¹³⁹ The USOC's retraction shows that enforcement has simply gone too far.

The broad powers granted to the USOC are evident in *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Committee*, where the U.S. Supreme Court affirmed the decision of a lower court granting a temporary restraining order on behalf of the USOC.¹⁴⁰ In this case, the USOC sought action against San Francisco Arts & Athletics, Incorporated (SFAA) after they promoted an event as the "Gay Olympic Games."¹⁴¹ Interestingly, SFAA had "originally sought to incorporate under the name 'Golden Gate Olympic Association,' but was told that the word 'Olympic' could not appear in a corporate title."¹⁴² This case is especially important because it

¹³⁶ Chen, *supra* note 134.

¹³⁷ 36 U.S.C. § 220506(c) (2006).

¹³⁸ Adrian Chen, *U.S. Olympic Committee Apologizes to Knitters, But Knitters Will Not Be Appeased*, GAWKER.COM (June 21, 2012, 6:41 PM), <http://gawker.com/5920315/us-olympic-committee-apologizes-to-knitters-but-knitters-will-not-be-appeased> ("In an effort to repair relations with the powerful (and frighteningly quick-to-anger) online knitting community, the U.S. Olympics Committee has apologized—twice!").

¹³⁹ *Id.*

¹⁴⁰ *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 527–28 (1987).

¹⁴¹ *Id.* at 525.

¹⁴² *Id.*

went all the way to the Supreme Court to analyze the first amendment issues with giving such broad power over a phrase to the USOC.¹⁴³ The Supreme Court adopted the Ninth Circuit Court of Appeals position that “the USOC’s ‘property righ[t] [in the word ‘Olympic’ and its associated symbols and slogans] can be protected without violating the First Amendment.’”¹⁴⁴ The Supreme Court explained, “[o]ne reason for Congress to grant the USOC exclusive control of the word ‘Olympic,’ as with other trademarks, is to ensure that the USOC receives the benefit of its own efforts so that the USOC will have an incentive to continue to produce a ‘quality product,’ that, in turn, benefits the public.”¹⁴⁵ The mimicking of the Olympics with hosting a “Gay Olympics” is an example that rises to the level where enforcement is necessary. The Gay Olympics, where gay athletes compete in actual Olympic events, is certainly distinguishable from a group of individuals participating in knitting, which is far from an Olympic event. Since the Gay Olympics awards participants on achievements associated with athletic activity, Olympic property enforcement was more appropriate here than against a knitting club.

However, the USOC has not stopped at these more frequently publicized events. A series of other presumably innocent uses of the Olympic name have been disallowed after a lawsuit was threatened by the USOC.¹⁴⁶ The USOC, citing its reason as protection from ambush marketing, has threatened several small and large organizations including a Eugene, Oregon ferret shelter for the use of “Ferret Olympics,”¹⁴⁷ now referred to as the “Ferret Agility Trials”; a group who tests dogs and other pets for the use of “Olympets,”¹⁴⁸ now referred to as the “National Pet Games”; a toymaker who attempted to trademark a game for kids as the “Nose Olympics,”¹⁴⁹ now known as “Nose Aerobics”; and Nebraska Wesleyan University

¹⁴³ See *id.* at 528.

¹⁴⁴ *Id.* at 527–28.

¹⁴⁵ *Id.* at 536.

¹⁴⁶ Aldous Supernova, *US Olympic Committee’s history of lawsuits against non profit organisations*, NOWPUBLIC (Aug. 1, 2008, 4:03 AM), <http://www.nowpublic.com/sports/us-olympic-committees-history-lawsuits-against-non-profit-organisations>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

in its use of “Rat Olympics”¹⁵⁰ for an event held for over thirty years by the psychology department to test lab rats, forcing the school to change the name to “The Xtreme Rat Challenge.”¹⁵¹ The University’s public relations director stated, albeit unsuccessfully: “[w]e tried to demonstrate to them that this wasn’t a profit-making event, it was truly an academic event.”¹⁵² Many of these activities or events have little to do with the Olympics, other than using a portion of the Olympic name to reflect the competitive element of the event. However, the public is not likely to get any of these events or activities confused with the actual Olympics, and the element of competition in these events is often vastly different from the athletic competition of the Olympics. Enforcement in these examples is fundamentally different from an ambush marketing campaign by a corporation. In the examples above, the groups using the word “Olympics” in their title are not doing so with any profit-making intentions or goals to undermine the sanctity of the Olympics.

The USOC was in the courts again in 2010 to seek to enjoin the Tobyhanna Camp Corporation from using the name “Camp Olympic,”¹⁵³ forcing it to change the name of the camp to “Camp Olympik” after a request from the USOC.¹⁵⁴ Camp Olympik is a camp for kids that “offer[s] a range of athletic activities, with an emphasis on sports featured in the Olympic Games, such as basketball, tennis, hockey, judo, archery, and soccer.”¹⁵⁵ As if the above examples were not enough, here, the USOC sought an order for destruction of all property bearing the Olympic name:

The USOC further requests that the camp be ordered to destroy all advertisements, promotional and administrative materials (or similar) that use the word ‘Olympic’ or its simulations or depict the Olympic symbol or its simulations. When the USOC’s rights have been infringed, 15 U.S.C. §

¹⁵⁰ *Id.*

¹⁵¹ *Id.* The list doesn’t end there. It also includes “Biblelympics, Caveman Ughlympics, and Olympigs,” amongst others.

¹⁵² *Id.*

¹⁵³ U.S. Olympic Comm. v. Tobyhanna Camp Corp., 2010 WL 4617429, *1 (2010).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

1118 provides that ‘the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the . . . word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation . . . shall be delivered up and destroyed.’ The decision whether to order the camp to ‘deliver[] up and destroy’ these materials bearing the offending words and symbols is committed to the court’s discretion. *See* 15 U.S.C. § 1118 (‘the court *may* order’ the destruction of such materials).¹⁵⁶

The U.S. District Court for the Middle District of Pennsylvania did not order destruction in this case, but it did award attorney’s fees in favor of the USOC pending further proof of the amount of fees.¹⁵⁷ This case is simply another example of over-enforcement by the USOC. A camp, regardless of whether it is for profit or not for profit, that accomplishes a worthwhile goal of promoting healthy living for our nation’s youth does not pose a threat to the USOC or the integrity of U.S. athletes. Many of the Olympic athletes would likely be in favor of such a noble cause, which would contribute to the healthy living of our nation’s youth.

Historically, protection of the Olympic trademark has been higher in the United States than in other jurisdictions.¹⁵⁸ The U.S. Court of Appeals for the Second Circuit explained, “[b]ecause the USOC is the only NOC that does not receive formal financial assistance from the Government, financing the United States Olympic team poses unique obstacles.”¹⁵⁹ This historical perspective provides an interesting backdrop to the preceding discussion on increased enforcement across all countries. While this may have been the USOC’s motivation many years ago, this is no longer the case. Increased protection of the Olympic symbol is now aimed to protect the corporate sponsors that donate millions of dollars to

¹⁵⁶ *Id.* at *4.

¹⁵⁷ *Id.*

¹⁵⁸ U.S. Olympic Comm. v. Intelicense Corp., S.A., 737 F.2d 263 (2d Cir. 1984).

¹⁵⁹ *Id.* at 266.

associate their corporate emblem with the valuable Olympic rings.¹⁶⁰ Attorneys for the USOC have been described as “look[ing] like Tinkerbell on Ritalin” with their overzealous enforcement of Olympic property protection.¹⁶¹ This increase in enforcement will soon cause the public to make sure their cereal does not form a shape consistent with the Olympic rings.¹⁶² The motivations of the USOC have shifted from protection to accomplish sufficient funding for U.S. athletes to protection to please the USOC’s corporate partners. Some of the above examples of enforcement in the United States have simply gone too far.

B. ENFORCEMENT IN THE U.K. FOR THE 2012 LONDON GAMES

Olympic brand protection was one of the hot issues surrounding the 2012 Olympic Summer Games. The Official London 2012 website¹⁶³ provided the public with a document that included a general overview to the words and symbols to be protected in the London 2012 games.¹⁶⁴ It states “[a]ll of the following names, words, marks, logos, and designs relating to London 2012 and/or the Olympic and Paralympic Movements (collectively known as the Protected Games’ Marks) are legally protected marks owned by or licensed to The London Organising Committee of the Olympic Games and Paralympic Games Limited.”¹⁶⁵ The pictures and phrases¹⁶⁶ protected are as follows:

¹⁶⁰ See, e.g., Maria Saporta, *Coca-Cola Nurtures Close Ties with Greek Olympics*, NEWSBANK (Oct. 26, 2003), <http://iw.newsbank.com>.

¹⁶¹ Mark Saal, *Life at the Top: USOC is leading us around by the rings in our noses*, NEWSBANK (Jan. 12, 2002), <http://iw.newsbank.com>.

¹⁶² *Id.*

¹⁶³ OFFICIAL SITE OF THE LONDON 2012 OLYMPIC AND PARALYMPIC GAMES, <http://www.london2012.com> (last visited Apr. 16, 2013).

¹⁶⁴ *The Protected Games’ Marks*, LONDON ORGANISING COMM. OF THE OLYMPIC GAMES AND PARALYMPIC GAMES LTD (2010), <http://www.london2012.com/documents/brand-guidelines/guide-to-protected-games-marks.pdf>. (Similar documents could not be located for other Olympic Games.)

¹⁶⁵ *Id.* at 1.

¹⁶⁶ *Id.*

Protected trade marks and designs:

The words: London 2012 – 2012 – LOCOG – Javelin
Team GB – Get Set – Games Maker

The official London 2012 website also provides over thirty Frequently Asked Questions regarding usage of the London 2012 Olympic mark.¹⁶⁷ The large volume of information regarding what words and symbols are protected has not been as widely available in previous Olympic Games. The London 2012 brand is described as “fundamental to the games . . . [and as] the London 2012 Organising Committee’s most valuable assets.”¹⁶⁸ In order to protect the Olympic brand, the London Olympic Committee set out so-called “brand police” to “enforc[e] sponsors’ multimillion-pound marketing deals.”¹⁶⁹ An article in the U.K.’s *The Independent* states that these police are out “to ensure [that other businesses] are not staging ‘ambush marketing’ or illegally associating themselves with the Games at the expense of official sponsors such as Adidas, McDonald’s, Coca-Cola, and BP.”¹⁷⁰ This bizarre plan to send out

¹⁶⁷ Using the Brand, LONDON2012.COM, <http://www.london2012.com/about-us/our-brand/using-the-brand/> (last visited Nov. 18, 2012).

¹⁶⁸ *Id.*

¹⁶⁹ Martin Hickman, *Britain Flooded with ‘Brand Police’ to Protect Sponsors*, THE INDEPENDENT (July 16, 2012), <http://www.independent.co.uk/news/uk/home-news/britain-flooded-with-brand-police-to-protect-sponsors-7945436.html>.

¹⁷⁰ *Id.*

almost 300 enforcement officers made headlines around the globe, both for the act of sending the brand police out and also for some of the businesses targeted. Some argue that the large corporate sponsors deserve as much help as needed in protecting the Olympic brand, especially when “three out of five (59%) people in the U.K. were unable to name a single Olympic sponsor.”¹⁷¹ However, this statistic indirectly proves the central point of this paper. Over-enforcement is actually hurting the brand and not helping it. Instead of associating the Olympics with the few corporate sponsors that pay large sums of money to be official sponsors, the public associates its excitement of the Olympics with the small shops that seek to channel the buzz surrounding the host city. Whenever the public think of the Olympics, the first things that come to mind are the Olympic rings and athletes representing their countries, not McDonald’s and Coca-Cola.

Dennis Spurr, owner of a butcher shop in London, channeled his inner excitement that the Olympic Games were coming to his hometown by creating a sign of the Olympic rings made out of sausages.¹⁷² The brand police asked Spurr to remove the sign, so he replaced it with another sign “featuring five squares made of sausages.”¹⁷³ He was asked to take down this sign as well, because it was too similar to Olympic property. According to Spurr, however, he did not believe “the sign helped [him] sell one more pound of sausage” and was “just trying to celebrate the Olympics.”¹⁷⁴ Other examples of strict brand enforcement in the United Kingdom include a café that “was forced to quit serving its flaming torch baguette,” another café which was forced to take down bagels in the shape of the Olympic rings, and a florist shop which had tissue paper fashioned in the Olympic ring design.¹⁷⁵ In addition, a chief Olympic organizer said people probably would not be allowed into the

¹⁷¹ Mark Armitage, *Olympic Brand Clampdown is Justified*, THE INDEPENDENT (Feb. 1, 2012, 12:00 AM), <http://blogs.independent.co.uk/2012/02/01/the-olympic-brand-clampdown-is-justified/>.

¹⁷² Jeré Longman, *Where Even Sausage Rings are Put on the Chopping Block*, N.Y. TIMES, July 24, 2012, <http://www.nytimes.com/2012/07/25/sports/olympics/2012-london-games-even-sausage-rings-alarm-marketing-police.html>.

¹⁷³ *Id.*

¹⁷⁴ *Id.* (also noting that Spurr faced up to a \$30,000 fine).

¹⁷⁵ *Id.*

Olympics as spectators if they were wearing a Pepsi t-shirt, because Coca-Cola is a primary sponsor.¹⁷⁶

Finally, a former IOC marketing director, Michael Payne, said the reputation of the Games could be damaged from London's "over-zealous enforcement" of the brand regulations. He noted that "the rules never intended to shut down the flower shop that put its flowers in Olympic rings in the window, or the local butcher who has put out his meat in an Olympic display."¹⁷⁷ Payne wondered whether strict enforcement by the LOC might cause the unintended effect of making exclusive brand rights less valuable, rather than more.¹⁷⁸ He believed that the public understands who has paid to use the Olympic mark and who has not.¹⁷⁹ "Stories of the overzealous behaviour of the Locog's [London Organizing Committee of the Olympic Games] brand-protection team have dogged the torch relay and created much ill feeling towards the Games."¹⁸⁰ Overall, the LOC took a hard stance against Olympic mark and brand protection, possibly to the detriment of its intended purpose and the stated goals of the *Olympic Charter*.

V. SUGGESTIONS FOR CHANGE & CONCLUSION

In order to more accurately reflect the intended purpose of the Olympic mark statutes—in particular for the United States—there should be clarification of the "promoting competition"¹⁸¹ element of the statute. Many of the examples above hinge on this element—it is the reason the USOC seeks an injunction. Right now this element is simply too broad. The competition element the USOC often seeks to protect against often has very little in common with the athletic

¹⁷⁶ *Id.*

¹⁷⁷ Tom Peck, *Father of Olympic Branding: My Rules are Being Abused*, THE INDEPENDENT (July 21, 2012), <http://www.independent.co.uk/sport/olympics/news/father-of-olympic-branding-my-rules-are-being-abused-7962593.html>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* Payne discusses the difference between Coca-Cola as a paying sponsor and Pepsi as a non-sponsor, and argues that these companies are vastly different from the small one store shops in London.

¹⁸⁰ *Id.*

¹⁸¹ 36 U.S.C. 220506(c) (2006).

competition associated with the Olympic Games. For example, the “promoting competition” element could have been clarified to distinguish the knitting competition of the Ravelympics from the athletic competition associated with Olympic sporting events.

The second suggestion for change would include adding a *de minimis* exception to the statutes of NOCs. Much of the negative publicity from enforcement during the London Olympics related to small cafés, floral shops, or butchers. Enforcement against individual businesses is inconsistent with the Fundamental Principles of Olympism stated in the *Olympic Charter*.¹⁸² If each host country would include a *de minimis* exception in its statute, the negative publicity associated with over-enforcement against small shops or individuals would not be as prevalent in the media.

Many of the examples above consist of organizations that are small, reach a limited number of individuals, have little to do with athletic competition, operate as a non-profit, or are unlikely to cause confusion. The harm caused to the Olympic brand is minimal, if it even exists. From lab rats,¹⁸³ to knitting,¹⁸⁴ to a camp intended to promote healthy living in young children,¹⁸⁵ to a floral shop and a butcher shop,¹⁸⁶ the negative publicity associated with bringing these lawsuits far outweighs any harm to the Olympic brand that might have occurred. With the caveat that some instances of ambush marketing overreach and the NOCs should be active in protecting the Olympic brand, many of these instances relate to deep-pocket corporations seeking to use such strategies. The IOC and NOCs have been far too aggressive towards small and non-profit businesses. The IOC must step in and establish a balance.¹⁸⁷

¹⁸² Olympic Charter, *supra* note 2, para. 1, at 10.

¹⁸³ Supernova, *supra* note 147.

¹⁸⁴ Chen, *supra* note 139.

¹⁸⁵ U.S. Olympic Comm. v. Tobyhanna Camp Corp., 2010 WL 4617429, *1 (2010).

¹⁸⁶ Longman, *supra* note 173.

¹⁸⁷ Erin Bourke, ‘Olympic Brand Insanity’: Striking the Balance, BUTLER SCHOLARLY J. (Jan. 23, 2013), <http://jbscholarlyjournal.wordpress.com/2013/01/23/olympic-brand-insanity-striking-the-balance/>.

Restrictions have gone far beyond what was imposed in the past and maybe more than is totally necessary, but with the difficulty in policing new forms

With all of the egregious examples above, the question still remains: When will the NOCs stop? What will it take for the IOC to realize that the over-enforcement is not protecting the brand, and that it is instead harming the public perception of the Olympics? While the sanctity of Olympic property is important, enforcement should not leave a sour taste in otherwise innocent parties' mouths. Increased enforcement and more overbearing statutes are not the answers to protecting the Olympic brand. If enforcement does not become more reasonable, you may indeed actually need to start looking over your shoulder to see if Tinker Bell is watching your Fruit Loops.¹⁸⁸

of social media which are constantly evolving, coupled with the current economic climate where substantial investments from corporate brands for sponsorship are critical to prevent excessive use of tax-payers money, taking such precautions to guarantee a high degree of exclusivity is not only fundamental but also enables the Committee to keep their promise and establish good relationships with corporate brands.

Striking a balance in terms of enforcing the copyright laws is essential

¹⁸⁸ See Saal, *supra* note 162.