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Use Caution when Advertising Around the Olympics

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As the anticipation for the Olympics grows, companies big and small look to grab the attention of these fans by associating themselves with the games. For the Olympics, the host organizing committee, individual country committees, and television partners this means big business by selling sponsorships and licensing use of their intellectual property.

Marketing and advertising as a sponsor of the Olympics offer huge potential benefits for companies, and large companies pay millions of dollars to associate themselves with the games.

For advertisers that venture into this area of advertising and marketing, there are significant inherent legal risks in associating your company with Olympic indicia, trademarks and slogans and other intellectual property without permission.

Companies thinking of entering this arena will want to take proper steps to ensure they are adequately protected. Companies that operate outside the rules could find themselves on the wrong end of a legal action.

In the United States, the U.S. Olympic Committee ("USOC") and the International Olympic Committee ("IOC"), sells sponsorships and licenses use of their intellectual property, which is big business for these Olympic Committees. While most of the headlines about Olympic marketing and advertising are focused on the impact of these large sponsorships on company bottom lines and in advancing the events, what has received less coverage has been that behind the Games, many well-known companies have tussled with the USOC regarding guerrilla marketing techniques.

Every two years, many companies that seek to associate themselves with Olympic trademarks to advertise their products and services find out the hard way that if Olympic indicia are used, both the advertiser and product or service provider may face statutory liability from the USOC, which is granted the rights to such marks in the United States.

Since the 1950s, a special act of the U.S. Congress gives the USOC the exclusive rights to any symbol consisting of five interlocking rings as well as other "Olympic" mark rights. The law grants the USOC the ability to seek an injunction and treble damages in a civil action for any "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" of the above terms and emblems without the consent of the Committee.

Unlike typical infringement claims, a claim of likelihood of confusion is not necessary for the USOC to prevail. In addition, the Trademark Counterfeiting Act of 1984 includes special provisions for counterfeit uses of the Olympic trademarks. These provisions include criminal penalties, right of seizure by ex parte application, and award of attorneys' fees and wrongful profits. In addition, there may be liability under other federal and state statutes and exposure for lost profits and attorneys' fees depending upon the cause of action. Further, other rights holders may be able to assert claims depending on the alleged infringement.

In years of policing its marks, the USOC, along with affiliated local host committees and the IOC, has sent out hundreds of cease and desist orders and has filed lawsuits alleging trademark infringement of Olympic symbols. For the 2012 Games, the London Organising Committee of the Olympic Games also has special legal protections and also has aggressively protected its intellectual property.

In light of the aggressive position taken by the USOC to protect its statutorily-protected marks and other related marks, and other protections afforded the Olympics, the key to minimizing risk in this area is to understand the protection afforded Olympic indicia and to steer clear of potential uses unless authorized.

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