

The Rio 2016 Olympics: Analyzing Rule 40's Moment to Shine

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The International Olympic Committee (IOC) sent shock waves through the Olympic advertising and sponsorship community when it announced in February 2015 that it was relaxing Rule 40 of the Olympic Charter to allow generic (non-Olympic themed) advertising featuring athletes during the Rio 2016 Games (Mackay, 2015). According to the IOC, the purpose of the Rule is to preserve the unique nature of the Games by preventing over-commercialization and to keep the focus on the athletes' performance (International Olympic Committee, n.d.). Notably, while the IOC does not expressly reference ambush marketing in stating its purpose, preserving the Olympics' "sources of funding" is cited (International Olympic Committee, n.d.), referring to Rule 40's critical role in protecting long-standing global partners whose sponsorship dollars fund the Games (Mackay, 2015).

The IOC's announcement was followed up by guidance, published by the IOC in February 2016, and later accompanied by similar guidance from the United States Olympic Committee (USOC), that outlined the process non-affiliated brands could take to apply for a waiver from Rule 40 in order to continue to run generic advertising featuring Olympic athletes during the Games. This set off a frenzied pace, with virtually every competing brand to The Olympic Partner (TOP) sponsors seeking a Rule 40 waiver (Schonbrun, 2016). This result has raised interesting questions surrounding the dynamics of the IOC's waiver process and the role of Rule 40 in minimizing ambush marketing during the Rio Olympic Games.

Background

As a relatively new ambush marketing prevention tool used prominently during London 2012, Rule 40 has restricted athletes from acknowledging their brand endorsements by those that are not Olympic sponsors. Rule 40 prevents athletes from using their image, likeness, or competition in advertising unless it involves an official sponsor (Grady & McKelvey, 2016). Led prima-

rily by American track athletes using the viral rallying cry #wedemandchange during London 2012, criticism of how rigidly the rule had been applied was sharp. By loosening Rule 40 for Rio 2016, Olympic officials are attempting to allay the concerns of athletes while still being able to deliver on the contractual promise of exclusivity made to TOP sponsors.

Current iterations of the rule, even including the relaxed version in place for Rio 2016, specifically seek to limit ambush marketing by imposing an advertising "blackout" period, in which athletes cannot be seen supporting sponsors who are not official sponsors unless granted a waiver (International Olympic Committee, n.d.). Even for those receiving a waiver, non-affiliated brands are still restricted from using Olympic intellectual property, and the IOC and USOC provided a list of traditionally "protected" Olympic words and phrases, such as *Olympics* and *Rio 2016*. Also prohibited are vague words such as *victory*, *performance*, and *summer* when their use in context might suggest an association with the Games. This reserves the use of Olympic intellectual property for Olympic partners alone as part of their official sponsorship rights.

Relaxing the Rule: Finding a Middle Ground

Relaxation of Rule 40 for Rio 2016 was hailed as a "victory for American athletes" (Mackay, 2015). By relaxing the rule, those in charge of marketing and governance of Olympic sport were attempting to find a middle ground that would "address the dissatisfaction of athletes but also protect the rights of the Olympic rights holders," according to USOC's chief marketing officer Lisa Baird (Costa, 2016, para. 13). For ads featuring athletes, the confidential waiver process created by the USOC allowed for brands to submit proposals for review by late January 2016, which the USOC reviewed. Those (non-sponsor) brands receiving Rule 40 waivers were required to have approved ads in-market by March 27. The main caveats were that ads featuring Olympic athletes could not make a direct or indirect connection with the Olympics and could not

use Olympic intellectual property. At the time the waiver process was announced, skeptics wondered just how flexible the national governing bodies would be in granting waivers, which rely upon largely undefined, yet familiar Olympic “legalish” concepts such as indirect association. Yet, according to a USOC spokesman, the majority of ads seeking a Rule 40 waiver were approved (Baker, 2016).

Early Insights: Testing the Waters

The number and names of brands requesting Rule 40 waivers was indeed shocking. As reported by *Reuters*, dozens of brands applied, including Gatorade, Adidas, and Red Bull (Baker, 2016). Many brands seeking waivers were direct competitors of long-standing official Olympic global partners such as Coca-Cola and Visa, who thought they had purchased exclusive rights to the Olympic marketing space surrounding Rio 2016.

Under Armour was first to test the boundaries of the newly relaxed Rule with its video ad highlighting Michael Phelps’ grueling pre-Rio training regimen. Developed as part of Under Armour’s “Rule Yourself” global campaign, not-so-subtle references to Phelps’ Olympic finale included ominous music titled “The Last Goodbye” and a scene with Phelps entering the pool deck to flashing cameras (Baker, 2016). The Olympic connection is undeniable. To be fair, any advertisement featuring Phelps, recipient of 28 Olympic medals following the Rio Games, regardless of how generic the content, would make an easy Olympic connection for viewers. Under Armour has stated that this advertisement will run during the Games, confirmation of a Rule 40 waiver by the USOC. Yet, is this the kind of generic ad that the IOC had in mind?

Under Armour’s innovative marketing team wasn’t alone in its efforts to seize the new opportunities to show the connection between their endorser athletes and their brands. GoPro soon followed with an original video series titled “Finding Missy,” featuring swimmer Missy Franklin (Scott, 2016). Local Chicago-area bank Wintrust also utilized the waiver process to design a red, white, and blue themed campaign featuring local Chicago athletes, all with aspirations of Rio 2016 (Ecker, 2016).

The Current Forecast

The dynamics of ambush marketing continue to change and sponsorship protection plans must evolve to meet these changes. While Rule 40 may be seen by some as a new tool in this battle, this creates constant pressure for the IOC and national governing bodies to find the proper balance in which official partners are guaranteed a level of exclusivity that incentivizes them

to pay escalating rights fees, while allowing athletes to capitalize on their short window of visibility on an international stage. Moreover, with the shift toward much of ambush marketing now occurring via social media, especially since London 2012’s “Twitter Games,” policing Rule 40 in real time becomes incredibly difficult, as social media often defies regulation.

According to Lisa Baird, the USOC Chief Marketing Officer, the Rule 40 waiver process “allows for companies to continue to use athletes in their endorsements. There’s almost no reason now to ambush” (Costa, 2016). Yet, others have openly questioned whether the rule change has effectively sanctioned or licensed what would otherwise be perceived by some as ambush marketing (Fischer, 2016; Schonbrun, 2016). One could argue the new waiver process redefines what is permitted by non-sponsors during the otherwise-restricted Games period as well as alters a historically pejorative view of the marketing activities labeled as “ambush marketing” toward a more neutral stance as brands that received waivers “legally” enter the field.

While acknowledging that this was the first cycle of a relaxed Rule 40, what has occurred is very few Olympic stakeholders seem totally satisfied with the new relaxed system. Official sponsors, too, are withholding judgement, waiting to weigh the true impact of the change until the Games period, when the “blackout” would have been enforced against all non-sponsor brands. For sponsorship practitioners, the key to determining the effectiveness of Rule 40 for Rio 2016 will be to identify those campaigns granted waivers in order to gauge what qualified as generic advertising. This will help clarify vague concepts such as direct and indirect association and set a baseline by which future ads will be judged. Seeing the content of the campaigns granted waivers will also shed light on the changing Olympic sponsorship landscape to see if there are indeed new sponsorship opportunities for athletes. Will the relaxed rule help capture a “wider net of endorsements” as predicted and expose Olympic sports to new audiences as Olympians hope (Fischer, 2016)? The USOC seems confident in this revised approach.

What seems certain for now is relaxing the rule has offered marquee athletes increased commercial opportunities to promote their individual sponsorships as part of sharing their Rio Olympic story (Grady & McKelvey, 2016). What is less clear is how lesser-known athletes, who need Rule 40’s flexibility to help them secure more personal sponsorship deals, stand to benefit, if at all, from the rule change? The waiver process’s strict deadlines did not coincide well with when Olympic athletes qualify for the Games, which made developing a successful waiver application for a national marketing campaign uniquely challenging. Non-

sponsor brands also seem disenchanted with the waiver process, arguing that developing a nationwide marketing campaign for athletes who may not even qualify and the additional financial requirements to run that campaign continuously since late March 2016 is cost prohibitive and mainly benefits global brands with advertising budgets that rival those of TOP sponsors.

Is Rule 40 Rio's Game Changer?

Rio 2016 offers a fresh slate for Rule 40's evolution since London 2012's false start. Called a "radical change" for an organization known for fiercely protecting its brand ("Olympics open up ad rules," 2015, para. 2), should Olympic officials have foreseen that almost all rival brands would take advantage of Rule 40's new-found flexibility? Perhaps, in hindsight, they should have, given how contentious the application of Rule 40 had been at previous Games. Yet, by announcing the rule change 16 months ahead of the Games, it was clearly a strategic "olive branch" extended to athletes to avoid another negative public relations response during the Rio Games. Additionally, with social media likely to pose the biggest enforcement challenge for national teams who must ensure athletes adhere to Rule 40's mandate, it seems likely that different countries' Olympic teams may take markedly different approaches to policing Rule 40, making judging the ultimate success (or failure) of revising the rule difficult.

TOP sponsors remain committed to seeing the process unfold and seem reassured by the USOC's promise of vigilant enforcement and strict brand protection similar to what was in place for London 2012. While policing the rule may become a delicate balancing act conducted behind closed doors (or via email) between athletes' agents and National Olympic Committees' legal teams, creative marketers will undoubtedly find legal loopholes that still exist in the nuances of the relaxed rule. In the lead-up to the Games, for example, non-sponsor brands have already found clever ways into the social space, such as using hashtags for their global marketing campaigns, and by congratulating athletes as they qualify for Rio 2016. By using vague Olympic references such as "the Big Event in the Southern Hemisphere," non-official brands no longer need to use the laundry list of restricted Olympic words and phrases to create an Olympic connection for fans. In turn, look for official partners to highlight these protected words and phrases in their advertisements and on social media to make the connection clear for fans and consumers between their endorsed athletes and the Olympic rings.

As the Olympic marketing space continues to become more cluttered, the challenge of creating new interest in the Olympic movement, especially during

non-Olympic years, becomes paramount (Costa, 2016). Beyond the imminent task of policing Rule 40 during the Games, the ongoing issues of how best to balance the needs of longstanding corporate sponsors with those of fresh-faced Olympic athletes are likely to remain long after Rio's Olympic Flame is extinguished.

References

- Baker, L.B. (2016, June 29). Under Armour leads Olympic marketing shake-up after 'rule 40' changes. *Reuters*. Retrieved from <http://www.reuters.com/article/us-olympics-rio-under-armour-insight-idUSKCN0ZF1NI>
- Costa, B. (2016, Feb. 21). The woman on the Olympics marketing hot seat. *Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/the-balancing-act-of-olympics-marketing-1456110317>
- Ecker, D. (2016, July 14). Wintrust dives into Olympics, thanks to new ad rules. *Crain's Chicago Business*. Retrieved from <http://www.chicagobusiness.com/article/20160714/BLOGS04/160719925/wintrust-dives-into-olympics-thanks-to-new-ad-rules>
- Fischer, B. (2016, March 14). Olympic trials arrive for looser Rule 40. *Street & Smith's SportsBusiness Journal*. Retrieved from <http://www.sportsbusinessdaily.com/Journal/Issues/2016/03/14/Olympics/Rule-40.aspx>
- Grady, J., & McKelvey, S. (2015). The IOC's Rule 40 changes and the forecast for Rio 2016. *SportsBusiness Journal*. Retrieved from <http://www.sportsbusinessdaily.com/Journal/Issues/2015/05/18/Opinion/Grady-McKelvey.aspx>
- International Olympic Committee. (n.d.). Use of a participant's image for advertising purposes during the Rio 2016 Olympic Games. Retrieved from <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Protecting-Clean-Athletes/Athletes-Space/Rule-40-Rio-2016-QA-for-Athletes.pdf>
- Mackay, D. (2015, February 26). Victory for American athletes as IOC agree to relax Rule 40 for Rio 2016. *Inside the Games*. Retrieved from <http://www.insidethegames.biz/articles/1025851/victory-for-american-athletes-as-ioc-agree-to-relax-rule-40>
- Olympics open up ad rules that prevent against over-commercialization. (2016, June 14). *Sportcaster*. Retrieved from <http://www.sportscastermagazine.ca/amateur-sports/olympics-open-ad-rules-protect-commercialization/1003411744/>
- Schonbrun, Z. (2016, July 3). Olympics ease an ad blackout, and brands flood the field. *New York Times*. Retrieved from http://www.nytimes.com/2016/07/04/business/media/olympics-ease-an-ad-blackout-and-brands-flood-the-field.html?_r=0
- Scott, R. (2016, March 28). Missy Franklin brings fans along for Olympic ride with GoPro. *USA Today*. Retrieved from <http://www.usatoday.com/story/sports/olympics/2016/03/28/missy-franklin-brings-fans-along-olympic-ride-gopro/82335156/>

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Rio 2016 Olympics has been a series of amazing wins and heart-warming moments. Here's our pick of best #Rio2016 moments yet:

1) Just when you thought supermodel Gisele Bündchen had retired, she came back to own the opening ceremony. She officially completed the longest runway walk ever – 500m, in case you wanted to know – to “Girl From Ipanema”™ in a stunning gown by Brazilian designer Alexandre Herchovitch. Zum anderen stellt die Rule 40 die Wahrung des Olympischen Geistes im Sinne einer Sportveranstaltung ohne kommerziellen Fokus sicher. Durch die fortschreitende Digitalisierung der Sportkommunikation und die damit einhergehende Menge an Posts, die u. a. durch Athleten und Unternehmen publiziert werden, wird die Kontrolle dieser Regel zunehmend erschwert. Mit einem Mixed-Methods-Ansatz quantifiziert die Untersuchung (1) die Nutzung sozialer Medien seitens der Athleten mit Hilfe eines Social-Media-Monitoring Tools während der Olympischen Winterspiele 2018 und evaluiert (2) qualitativ die Einhaltung der Rule 40.

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OLYMPIC CHARTER in force as from 15. Rule 40 is a by-law in the Olympic Charter stating that only approved sponsors may reference "Olympic-related terms". [1] It was introduced by the International Olympic Committee (IOC) to prevent so-called ambush marketing by companies who are not official sponsors and to sanction links between athletes and unofficial sponsors during a blackout period starting nine days before the opening of the Olympic Games and continuing until three days after the closing ceremony. [2][3].

"The Rio 2016 Olympics: Analyzing Rule 40's Moment to Shine" (PDF). *Sports Marketing Quarterly*. 25: 182–184. Words such as '2016', 'effort' and 'Olympian' - or even a picture of a medal - cannot be used by non-approved sponsors in any sort of advertising. The punishment could mean athletes losing medals, although a reprimand would be the more likely outcome. The Olympics' Rule 40 means athletes must cut ties with non-official partners until three days after Rio. The by-law states only approved sponsors may reference "Olympic-related terms" from 27 July until midnight on 24 August, so personal sponsors such as kit suppliers are not even allowed to re-tweet athletes. While the by-law, which is contained in the Olympic Charter, is not new, it has been picked up on since the International Olympic Committee chose not to impose a blanket ban on Russian competitors at the Rio Games.