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THE GAME BEHIND THE GAMES*

ANNE M. WALL**

I. INTRODUCTION

A. The Fire Within

During the Olympic Winter Games held from February 8-24, 2002, people from around the world will assemble together in peaceful competition and a celebration of humanity. Embracing the Olympic ideals of peace, fraternity, and the noble contest of sport, athletes from eighty-four countries push themselves to the limits of human endeavor, striving to be the world’s best. The Olympic Winter Games of 2002 showcase the very best in sport, art and culture—the pillars of Olympism. Olympism is a philosophy of life: sport at the service of the harmonious development of man, peace through sport, which is universally non-discriminatory.

In a statement to the press, Mitt Romney, President of the Salt Lake Organizing Committee (SLOC), said that the Olympic Games are “a showcase for [the] great qualities of human spirit: courage, sacrifice, perseverance and determination.” The heroic efforts of athletes participating in the Salt Lake Games have the power to ignite a spark of hope and faith in mankind. This passion in our hearts keeps the spirit of the Olympic Movement alive.

II. THE OLYMPIC MOVEMENT AND SYMBOLS

The interlocking rings that comprise the Olympic emblem symbolize the continents of Africa, the Americas, Asia, Australia, and Europe joining together irrespective of race, nationality, religion or economic differences.

* Presented on October 5, 2001, as part of the National Sports Law Institute conference titled Intellectual Property Issues in Sports: Trademarks, Unfair Competition, and Athletes’ Publicity Rights. A version of this paper was previously published in 91 TRADEMARK REP. 1243 (2001).

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1. News Release, Salt Lake Organizing Committee, Statement from SLOC President and CEO Mitt Romney (Sept. 21, 2001) (on file with author).
During the Olympic Games, the athletes unite for seventeen days to showcase their national pride and athletic talent for the world to see.

The International Olympic Committee (IOC) owns all rights to the Olympic symbols, flag, motto, anthem, and the Olympic Games. The IOC is a non-profit international organization that exists to serve as an umbrella organization for the Olympic Movement. The IOC is primarily responsible for supervising the organization of the summer and winter Olympic Games.

Within the United States, the right to control the use of Olympic marks, images and terminology resides with the United States Olympic Committee (USOC). The United States Congress granted the USOC exclusive control over the commercial exploitation of Olympic-related trademarks, symbols, and terminology through the Amateur Sports Act of 1978. Twenty years later, this Act was amended and recodified as the Ted Stevens Olympic and Amateur Sports Act (OASA). As amended, the OASA also granted the USOC exclusive control over Paralympic-related trademarks. With regard to certain marks specified in the OASA, the USOC no longer has to prove "confusion" as an element of infringement. Evidence of use without authorization is generally enough to establish liability.

Pursuant to the requirements of the IOC set forth in the Host City Agreement, the USOC entered into a Joint Marketing Agreement with the SLOC to market the Olympic Winter Games and Paralympic Winter Games of 2002. In 1997, the SLOC and the USOC formed a limited liability corporation called Olympic Properties of the United States (OPUS). Under this agreement, the USOC and the SLOC granted OPUS the right to license the Olympic and Paralympic marks, images, and terminology to partners, sponsors, and suppliers of and for the Olympic Winter Games of 2002.


4. Id. § 220506(a).
5. Id. § 220506(c).
6. Id.
7. Host City Agreement, drafted by the Int'l Olympic Committee (on file with the author).
arts, and culture logos, just to name a few.

III. THE VALUE OF THE OLYMPIC BRAND

The goodwill value associated with Olympic trademarks and copyrighted works represents the equity value of the brand established by the willingness of corporate sponsors, suppliers, licensees, and broadcast rights-holders to pay for the privilege of associating their products and services with the Olympic Games.

A. Corporate Support

Of the $1.313 billion budgeted for the 2002 Olympic Winter Games and Paralympic Winter Games, approximately 43% will be raised in the form of cash and value-in-kind goods and services from corporate marketing partners. A projected 34% of the revenue will come from broadcast rights fees. An additional projected 2% will come from royalties paid by official merchandise licensees. In exchange for their financial support, corporate marketing partners receive the right to use Olympic symbols and terminology to promote themselves. The extent of these rights depends, among other things, on the level of economic contribution.

Funding is also raised from corporate donors. Corporate donors receive no marketing rights. Instead, they receive a one-time press release acknowledging their generous gift and the right to purchase Olympic tickets.

B. Legacies

The Olympic Games would not be possible in the United States if not for the generous support of corporate marketing partners. It is their financial support and in-kind contributions of technology, equipment and services that enable us to stage the modern Olympic Games in the United States.

Within a period of seven years, the SLOC will have grown from a dream of a few to a billion-dollar, non-profit organization comprised of 29,000 people (3,000 staff and "on-loan" employees and 26,000 volunteers) and 13 competition and major non-competition venues spanning seven counties. After The Games, the SLOC will leave behind the following legacies:

1. a legacy fund of $40 million to finance youth sports and three new sports facilities in Utah: (1) Utah Olympic Park, (2) Utah Olympic Oval, and (3) Soldier Hollow;
2. through the SLOC’s efforts and additional support provided by the federal government, the community will benefit from infrastructure
improvements that include new roads, bridges, and a light rail system;

(3) the University of Utah is already benefiting from a new cafeteria, new student housing, and beautifully restored historic buildings in Fort Douglas, home of the Athlete Village for the Olympic Winter Games and Paralympic Winter Games;

(4) in conjunction with the SLOC, Utah Education Network launched a web-based curriculum program called “One School One Country,” that benefits children in grades K-12;

(5) through the promotion of urban forestry, over one million trees will be planted worldwide, with one hundred thousand trees in Utah, to improve air quality and reduce greenhouse gases.

IV. THE GAME BEHIND THE GAMES

There are few marketing vehicles in the world, which transcend cultural barriers, geographic boarders, and racial and socio-economic differences. Fewer yet provide a focal point for global marketing. The Olympic Games provide worldwide sponsors (TOP Partners) with such a vehicle. The Games are a symbol of world peace and a beacon for hope and opportunity. It is little wonder why so many businesses want to associate their products and services with the Games.

The SLOC anticipates that television viewership will reach an estimated 3.9-4.4 billion worldwide, assuming the telecast is carried in sixty to eighty countries. The listening audience is projected to be around 1.2-1.3 billion, an estimated 30% of the number of television viewers.

During the month of February 2002, the SLOC anticipates there will be ten million visitors to the official website for the 2002 Olympic Winter Games. At the time this paper was presented at the National Sports Law Institute Conference, the SLOC was already experiencing over three hundred thousand hits per month on its site.

At the time this article was authored, the SLOC projected ticketed attendance of an estimated 1.5 million people. The Olympic Torch Relay will travel 13,500 miles across forty-six states, with the Olympic flame transported by 11,500 torchbearers.

Athletes are not the only ones competing for attention and a chance to showcase their best during the Games. Businesses will also compete for media exposure and a chance to promote their products and services in connection with the Games. With a few exceptions, only one company in each product category is granted “exclusivity” through a sponsorship or supplier relationship. Corporate marketing partners earn the right to affiliate with the
Olympic Winter Games and thus may use the Salt Lake 2002 emblem and other marks, designations, and copyrights. This privilege enables them to profit from marketing strategies that leverage brand value and capitalize on Olympic goodwill.

When these efforts are undertaken by companies not officially affiliated with the Olympic Movement, the business practice is known as “ambush marketing.” This is “The Game” behind the Olympic Games. Exposure of the magnitude described above makes the Olympic Winter Games a target for ambush marketers.

V. HOW THE GAME IS PLAYED

A. Offensive Ambush Marketing Strategies

Offensive strategies are “plays” designed to ambush official rights-holders. Through unauthorized use of Olympic-related trademarks and copyrights, and words, marks, symbols, designations, and terminology or insignia confusingly similar to protected marks and copyrighted works, ambush marketers lure unsuspecting consumers away from the products and services of official sponsors and licensees in order to generate a profit from the Olympics without a license. These business practices tend to cause confusion or mistake and deceive consumers as to the source, origin, sponsorship, or affiliation of the products and services.

B. Defensive Ambush Marketing Strategies

Defensive strategies are “plays” designed to combat ambush marketing. Olympic governing bodies, namely the IOC, the SLOC, and the USOC, use preventative measures to deter and strategically block ambush marketing in order to protect the exclusive contractual rights of official marketing partners. Such measures may include the registration of marks and copyrights, development of marks usage policies and guidelines, production of a graphic standards manual, defensive media buys, forbearance agreements to prohibit commercial signage, clean venue policies to limit the size and location of commercial identification within competition venues, control over non-commercial use of the marks, and the development of anti-ambush education and public relations initiatives, to name a few.
VI. RULES OF THE GAME AND PENALTIES FOR NONCOMPLIANCE

A. The Rules

The rules of "The Game" are established by local ordinances, state and federal statutes, regulations, and common law. Legal rules provide the basis for a number of enforcement options to deal with illegal forms of ambush marketing. Voluntary compliance is often the most appropriate and effective method for resolving ambush marketing incidents, except when organized commercial activity is unlawful or conducted with malicious intent. Legal intervention may be needed in situations in which the violator's intent is to confuse the consumer as to the source of origin or sponsorship, to profit without a license, or to defraud the public.

B. Local Ordinances

The application of local ordinances can help deter certain types of illegal "ambush marketing" activities. City and county codes govern the time, place, and manner regarding the display of commercial signage, street vending actions, distribution of handbills, and parking regulations within the local community. Penalties vary by jurisdiction, but typically involve a fine for each day the violation continues. Failure to comply with the ordinances can result in one or more of a number of enforcement options at the discretion of authorities including a warning, a written citation with a fine, or arrest. For example, individuals distributing commercial fliers and businesses displaying commercial banners without a permit may be asked to voluntarily surrender these items in lieu of a citation. If they refuse and enforcement action is taken, local authorities have the legal right to confiscate the illegally posted or distributed materials as evidence. An arrest can be effected in the event the violator is unable to provide proof of identification or local address.

9. See, e.g., id. §§ 21A.46.070(k), 5.65.070.
10. See, e.g., id. § 1.12.050.
11. See, e.g., id. § 18.50.100.
12. See, e.g., id. §§ 1.12.050, 21A.20.040, 21A.46.070, 18.50.100.
In addition to local ordinances, there are a number of state statutes and common law remedies that may be applicable to deter illegal ambush marketing. State statutes, like the following Utah statutes, are designed to protect intellectual property and prevent consumer fraud and deceptive business practices. In addition to preventing theft and misuse of intellectual property, state statutes may help increase enforcement of intellectual property rights arising out of a breach of contract and foul play.

**Potentially Applicable Utah State Statutes and Common Law Remedies**

1. Utah’s civil trademark statute\(^\text{13}\)
2. Statutes prohibiting the use of counterfeit trademarks and use of registered marks without consent\(^\text{14}\)
3. Criminal Simulation\(^\text{15}\)
4. Unfair Practices Act\(^\text{16}\)
5. Truth in Advertising\(^\text{17}\)
6. Uniform Trade Secrets Act\(^\text{18}\)
7. Statutes regarding tortious interference with existing and potential business relations\(^\text{19}\)
8. Breach of contract\(^\text{20}\)
9. Breach of implied covenant of good faith and fair dealing\(^\text{21}\)
10. Unjust enrichment\(^\text{22}\)

**D. Federal Statutes and Regulations**

There are also a number of federal statutes and regulations that players

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\(^{13}\) UTAH CODE §§ 70-3-1 to 70-3-17 (2001).
\(^{14}\) Id. §§ 76-10-1002, -1003, -1007.
\(^{15}\) Id. § 76-6-518.
\(^{16}\) Id. §§ 13-5-1 to 13-5-18.
\(^{17}\) Id. §§ 13-11a-1 to 13-11a-5.
\(^{18}\) Id. § 13-24-3 (providing injunctive relief for actual or threatened misappropriation).
\(^{19}\) See generally Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982).
must follow. The statutes prohibit people from making unauthorized use of trademarks and copyrights and from engaging in other acts of unfair competition.

**Potentially Applicable Federal Statutes and Regulations**

(1) Ted Stevens Olympic and Amateur Sports Act

(2) Trademark Act of 1946 (Lanham Act)

(3) Trademark dilution

(4) Anticybersquatting Consumer Protection Act

(5) Copyright Act of 1976

(6) Criminal infringement of copyrights

(7) Trafficking in counterfeit labels

(8) Communications Act of 1934

(9) Trafficking in counterfeit goods and services

(10) Fraud by Wire, Radio or Television

(11) Mail fraud

(12) Merchandise Bearing American Trademark

(13) "Selling or offering for sale any merchandise or conducting any kind of work... or service [on land under the jurisdiction of the Forest Service] unless authorized by Federal law, regulation, or special-use authorization."

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25. Id. § 1125(e).
26. Id. § 1125(d).
28. Id. § 506.
32. Id. § 1343.
33. Id. § 1341.
35. 36 C.F.R. § 261.10(c) (2001).
(14) “Commercial distribution of printed material [on land under the jurisdiction of the Forest Service] without a special use authorization.”

Those who violate the law are subject to a variety of sanctions available under the federal statutes. In civil matters involving trademark and copyright infringement, a judgment in favor of the plaintiff may result in any one or more of the following: injunctive relief, recovery of the plaintiff’s damages, disgorgement of the defendant’s profits in the amount of three times that which was attributable to the infringement, recovery of the plaintiff’s costs of suit, recovery of the plaintiff’s attorney’s fees from the defendant, seizure and impoundment of infringing articles, or statutory damages.

In addition to the aforementioned civil penalties, an infringer may also be in violation of criminal law. Criminal penalties are quite severe, depending on the magnitude and nature of the offense. For example, anyone who intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark in connection with such goods and services, if convicted, is subject to a sentence of ten years imprisonment and $2 million in fines, $5 million for a second offense or any entity other than an individual, or $15 million and twenty years for a second offense of or by a business.

VII. SURVEILLANCE, PREVENTION AND ENFORCEMENT MEASURES

A. The Protection of Olympic & Paralympic Marks

The SLOC and the USOC endeavor to protect the rights and privileges granted to sponsors and licensees by protecting Olympic and Paralympic marks and copyrights. Within the SLOC, the primary responsibility for Brand Protection resides within Legal Services. Its mission is to protect the organization’s intellectual property assets, and the contractual rights of sponsors and licensees, in order to preserve the concomitant cash flow from sponsorship agreements and the revenue flow derived from licensed merchandise royalties. Trademark and copyright owners have a duty to enforce their rights. There is always a risk of an infringer defending its illegal actions through the legal theory of abandonment.

36. Id. § 261.10(g).
40. J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 17:1
Brand protection has five objectives that are achieved through the implementation of prevention, surveillance, reporting, investigation, and enforcement strategies:

1. to ensure Clean Venues, fundamentally free of commercial messaging in compliance with Rule 61 of the Olympic Charter;\(^4^1\)

2. to combat ambush marketing through sponsor protection;

3. to prevent the distribution and sale of counterfeit goods by protecting licensees and the SLOC’s royalties;

4. to license the SLOC marks to non-commercial entities in order to extend the “look” and spirit of the Games into the community and create new sales opportunities for merchandise licensees; and

5. to provide support along the Olympic Torch Relay route by protecting presenting sponsors and merchandise licensees.

Brand Protection works with law enforcement authorities and Olympic governing bodies to achieve its objectives. Game-time operations are fully integrated with other functions within the organization. Within each venue team, the general manager and Brand Protection personnel oversee the enforcement of clean venue guidelines and sponsor protection activities. “Anti-ambush” and “anti-counterfeit” efforts of the SLOC, the USOC and the IOC are centrally coordinated at the Functional Area Command (FAC) at the SLOC Headquarters.

B. The Role of Law Enforcement

Illegal acts perpetrated by ambush marketers are destructive. They threaten the Olympic Movement and the long-term viability of the Games by undermining corporate financial support. Within the Utah venue communities of Salt Lake City, Park City, Ogden, Provo, Heber, and West Valley, the SLOC works closely with local law enforcement and the designated Community Olympic Coordinator, representative of each of the Mayors’ offices.

Incidents of ambush marketing thought to be in violation of local ordinances, state, or federal law may be communicated directly to law enforcement agencies authorized to act on these matters, for example, the local police, the FBI and the United States Customs Service. Alternatively, as a first line of defense, Brand Protection may request back-up support through

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the Agency Command Center (ACC) within the venue community. If theater-wide resources are needed, the ACC will relay the request to the Olympic Coordination Center (OCC).

The Utah Olympic Public Safety Command (UOPSC or the Command) was created in 1998 by the Utah State Legislature to manage public safety and law enforcement planning and operations for the Olympic Winter Games and Paralympic Winter Games of 2002.42

Within the Olympic theater, the coordination of law enforcement activities is centralized. The OCC is responsible for coordinating public safety, security, and criminal justice matters. During the Games, a representative from each member agency will staff the OCC at the Command. Representatives from the United States Attorneys Office, the Department of Justice, and the Utah Attorney General’s Office will be providing counsel regarding counterfeiting and intellectual property offenses. Matters brought before the Court will be assigned to a United States Magistrate with back-up available from the United States District Court.

An Olympic Legal Affairs Handbook has been prepared by the Command to provide uniform enforcement guidelines. The three-volume set is comprised of 1) Prosecution Guidelines, 2) Law Enforcement Strategy, and 3) Operations Plans for the OCC and each of the Designated Olympic Courts (DOC).

Eleven DOCs have been designated, one within each district (each within forty-five minutes of a venue) to handle projected and quick demand imposed by the Games in the seven-county Olympic theater.43 During the period of the Games, the District Court and Justice Court will be combined.44 Both criminal and civil legal processings are being streamlined and are expected to be completed within twenty-four hours.45 “All crimes and other [court] matters during the Olympic period, whether Olympic related or not, . . . will be handled” by the DOC.46 Under the criminal justice plan prepared by the Legal Affairs Subcommittee Working Group of UOPSC, each DOC team will be comprised of: 1) a District Judge, 2) a Justice Court representative, 3) a Juvenile Court representative, 4) a Court Executive, 5) a County or District

44. Id. at 13.
45. Id. at 13-14.
46. Id. at 14.
Attorney, 6) a City Prosecutor, 7) a Legal Defender or criminal defense representative, 8) a Victim Services representative, 9) a Detention or Corrections representative, 10) venue commanders for Olympic venues or sites within the jurisdiction of the court, 11) a representative from the UOPSC, and 12) a representative of the Administrative Office of the Courts.47

Counterfeiting and intellectual property offenses are among the sixteen categories of offenses specifically being addressed by the Command. State and federal statutes and common law regulate the use of intellectual property.

During the Olympic Games, United States Customs and FBI agents will work in tandem with the SLOC Brand Protection in and around the venue communities. Surveillance teams will monitor and investigate unlawful activities and take the necessary measures to combat illegal ambush marketing. The two federal agencies anticipate allocating the resources of forty-six agents to protect intellectual property. In addition, the SLOC has assigned forty specialists from Brand Protection to provide surveillance in and around each venue and in the surrounding commercial districts.

C. Joint Enforcement Worldwide

The IOC serves as an umbrella organization building brand awareness and overseeing prevention and enforcement efforts for the Olympics, with help from the National Olympic Committees across the territories that form the Olympic Movement. For example, in order to protect exclusivity and the unique nature of the Olympic broadcast, the IOC monitors television broadcasts in over thirty countries during the Games. It also monitors moving images on the Internet to protect Olympic broadcast rights-holders. The IOC works closely with the National Olympic Committees to develop enforcement strategies within each country.

Within the United States, the SLOC and the USOC work together to protect Olympic related marks and imagery. Within the past two years, the SLOC has investigated more than 431 cases of infringement of intellectual property rights in advertising and promotions (30%), counterfeiting (20%), cybersquatting (36%), trade names (3%), and other matters (11%). The USOC investigated an additional 246 cases, in the two quarters prior to presentation of this paper at the National Sports Law Institute Conference. More than half of these cases have been successfully resolved.

Either the SLOC or the USOC may enforce its intellectual property rights separately or jointly. Under a joint agreement, the USOC retains the right to determine whether any enforcement action should be taken pursuant to the

47. Id. at 13.
OASA regarding any use or activity involving the USOC Marks, the Olympic symbol, the words “Olympic” or “Olympiad” or any derivative thereof. The SLOC retained the right to determine whether any enforcement action should be taken if the use or activity involved the SLOC marks.

If a sponsor or supplier learns of any apparent or actual misuse or unauthorized use of the SLOC marks in connection with products or services substantially similar to their products or services, the marketing partner will almost certainly notify the SLOC or the USOC. Marketing partners cannot act independently to enforce Olympic or Paralympic intellectual property rights. They may, however, take preventive measures. Such measures include defensive media buys, strategic targeting and converting of competitive accounts, running national consumer promotions, and conducting sales incentive programs that leverage the contractual rights to use the marks.

D. Prevention Strategies

The SLOC has taken a number of preventive measures to protect corporate marketing partners. For example, the SLOC has negotiated the right to place its own graphics on buildings and buses located near venues in Salt Lake City. A number of buildings will be wrapped in “Look of the Games” artwork featuring athlete images. The SLOC has obtained forbearance agreements with other properties to prohibit commercial signs on the exterior of their buildings. The “Cityscape Program” will enhance the city skyline and help to create a “clean zone” around Olympic venues, thus helping to prevent unlicensed businesses from gaining commercial exposure in view of television cameras during the official broadcast of the Games.

E. Restrictions on Commercial Identification Within Olympic Venues

The IOC places restrictions on the amount of commercial exposure inside Olympic venues. Unlike most international sporting events, commercial activity is limited in an effort to maintain the focus on sports, and to preserve the “look” and pageantry of the Games. The “Look of the Games” continues inside the Olympic venues in harmony with the look within the communities surrounding those venues.

Contained in Rule 61 of the Olympic Charter are strict restrictions on the size and frequency of commercial marks.\(^48\) Clean venue guidelines fundamentally limit the amount of propaganda and commercial advertising

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\(^{48}\) **Olympic Charter**, *supra* note 41, at Rule 61.
within the seating bowl, camera view and seated spectator line of site.\textsuperscript{49} This rule applies to sponsors too.\textsuperscript{50} For example, commercial identification on equipment cannot exceed 60cm\textsuperscript{2} or 10\% of the total surface area of the equipment (the smaller of the two).\textsuperscript{51} Only the IOC Executive Board can grant exceptions to Rule 61.\textsuperscript{52}

\textbf{F. Noncommercial Rights}

The SLOC has granted licenses to a number of venues, venue communities, government agencies, schools, and nonprofit organizations (for example, Visitor Information Services, Utah Olympic Public Safety Command, Joint Task Force Olympics, University of Utah, State of Utah, Salt Lake City, Park City, etc.). There is no fee for noncommercial use of the SLOC marks, but a license is required. It controls the terms and conditions under which the marks can be used. Each application in which the marks are used is subject to review and approval by the SLOC.

In exchange for a noncommercial license, licensees agree not to permit any marks denoting or identifying any third party or any third party’s event, product or service to be affixed to or form any part of any materials that display or include the SLOC marks. When using the SLOC marks, the licensee shall not participate in the promotion of a product or service of any third party, except an Olympic Marketing Partner, and only then with written permission from the SLOC. Neither the licensee nor its constituent organizations shall make any private commercial use of its relationship to the SLOC, the Olympic Games or the Paralympic Games. In this regard, the licensing agreement precludes noncommercial licensees from being used as conduits for ambush marketing by entities attempting to associate their products and services with the Games.

\textbf{G. Commercial Appearances by Olympic Athletes}

Under Rule 45 of the Olympic Charter, athletes are precluded from making commercial appearances during the period of the Olympic Games, without first obtaining a waiver of the rule from their National Olympic Committee (NOC).\textsuperscript{53} Athletes are contractually bound by this rule under the Athlete Agreement, which prevents competitors from gaining access to

\begin{thebibliography}{99}
\bibitem{49} Id.
\bibitem{50} Id.
\bibitem{51} Id. at Bye-law 1.2 to Rule 61.
\bibitem{52} Id. at Rule 61, para. 2.
\bibitem{53} Id. at Rule 45; \textit{see also} id. at Bye-law to Rule 45, para. 3.
\end{thebibliography}
Olympians for commercial exploitation. Athletes further agree not to act as journalists during the Games, thus preventing competitors' radio, television, and internet broadcasters from implying an association with the Olympics by using current Olympians as commentators.54

H. Anti-Ambush Education Initiatives

Many people are unaware that a license is required in order to use Olympic-related marks and copyrights, and that during the Games waivers are required in order to feature Olympians in commercials. As a part of an ongoing initiative to educate the public, the SLOC and the USOC have run print advertisements in trade and consumer publications to raise public awareness. Competitors of Olympic sponsors, licensees, NOCs, National Paralympic Committees (NPCs), National Governing Bodies (NGBs), athlete agents, and retailers have been targeted in a series of mailings alerting them to the rules.

The SLOC produced a video in cooperation with federal law enforcement agencies. The video, "The Protection of Olympic and Paralympic Marks," and a related press kit were released to the media. There have been a number of television and newspaper stories about the protection of Olympic marks.55 Legal actions filed against those allegedly using Olympic-related marks and copyrights for commercial gain without authorization have been publicized to deter others.56

Brand Protection has also hosted workshops and given talks to business groups to raise awareness.

I. Surveillance Efforts

As mentioned earlier, the SLOC Brand Protection maintains a surveillance program that monitors how marks and images are used in the marketplace. Brand protection specialists peruse the media, Internet and local retail stores at random. This technique of making random unannounced visits to e-commerce sites and retail stores is called "mystery shopping." It is very effective in spotting misuse and infringement of Olympic-related marks and copyrights.

54. Id. at Rule 59, see also id. at Bye-law to Rule 59, para. 5.
56. See, e.g., Felicity Barringer, Leery of the Web, Olympic Officials Set Limits on News, N.Y. TIMES, Sept. 25, 2000, at 1A.
In spring 1999, the SLOC became concerned about possible trademark infringement in Park City, Utah. Mystery shoppers visited shops along Main Street in Old Town Park City. Approximately half of the shops visited appeared to be carrying unlicensed merchandise such as caps, sweatshirts, t-shirts, key chains and other memorabilia bearing Olympic-related marks and marks confusingly similar thereto.

In order to preserve relationships with retailers of officially licensed merchandise and to combat efforts to sell counterfeit goods, an educational letter containing information about Brand Protection was sent to Park City retailers. An article ran in the Park Record, a local newspaper. The Chamber of Commerce was asked to alert members to the Olympic Committee’s concerns and its commitment to protect its intellectual property. Retailers were encouraged to inspect inventory and remove goods bearing words, symbols or images associated with the Olympic Games that appeared on unlicensed merchandise. They were instructed on how and where to obtain a listing of official licensees.

Within two weeks, mystery shoppers descended on Park City again. This time roughly seventy-five percent of the stores previously suspected of displaying and selling counterfeit merchandise no longer carried infringing products. Two small retail chains were believed to be carrying approximately three-quarters of the remaining suspect merchandise. The SLOC and the USOC filed suit against one retailer that had violated a settlement agreement. The SLOC settled with the other retailer out of court.

In separate actions filed against three different clothing retailers, the defendants surrendered infringing merchandise, sale records, turned over profits and paid the plaintiff's attorney’s fees. Rather than be named as parties to the suit, their suppliers settled out of court. Civil complaints filed against local merchants have led to the discovery of dozens of manufacturers suspected of producing and selling counterfeit goods bearing Olympic-related marks including well-known sportswear manufacturers.

As an example, in one of their first joint enforcement efforts, the

60. Id.
Plaintiffs, the USOC and the SLOC, brought suit in the District of Utah on May 29, 1999 against Park City Shirt Company, Paula Henry, and Does 1-25 (collectively “Park City Shirt”). Plaintiffs alleged that Park City Shirt had made unauthorized use of Plaintiffs’ marks in the sale of clothing and apparel. Such infringements included depictions of a torch and a torch runner, as well as use of the 2002 Olympic Games and 2002 Winter Games marks. The complaint recited the Plaintiffs’ rights in these and other Olympic-related marks including a combination of over fifty registered trademarks. Plaintiffs asserted that such use of their marks diminishes the value of the marks, confuses the public, and diminishes Plaintiffs’ goodwill in the marks.

In light of the Defendants’ use of the 2002 Olympic Games mark, the Plaintiffs first sought relief under the OASA. Plaintiffs further sought relief under the Lanham Act for federal trademark infringement. The complaint included a number of additional claims for relief under federal and state law, including federal counterfeiting. Plaintiffs argued that Park City Shirt used protected, colorable imitations of a federally registered mark. Plaintiffs maintained that the marks had acquired distinctiveness with a high degree of consumer recognition and that Park City Shirt’s use of such marks had the effect of diluting the quality and fame of the marks.

The Court then extended the OASA to cover the SLOC registered trademark, 2002 Winter Games. This marked the first time that the OASA was recognized to also protect the additional trademarks of the SLOC’s separately owned marks.

Plaintiffs sought relief in the form of a temporary restraining order, and preliminary and permanent injunctions ordering Defendants to cease all use of the SLOC’s and the USOC’s marks. The Court entered a temporary restraining order against Defendant Paula Henry on May 28, 1999 in which the court ordered Henry to cease use and sale of all items bearing the Olympic marks, unless previously purchased from an official licensee, and ordered the

63. Id.
64. Id.
65. Id.
66. Id.
67. Park City Shirt Co., No. 2:99-CV-0380C.
68. Id.
69. Id.
70. Id.
71. Id.
72. Park City Shirt Co., No. 2:99-CV-0380C.
Defendants to deliver all such items to Plaintiffs' counsel. On July 13, 1999, the Court entered a permanent injunction against Henry containing essentially the same terms.

The SLOC and the USOC discovered the identity of the Henry's supplier and pursued him as well. Plaintiffs entered into a settlement agreement with Kevin Murphy, Henry's supplier, dated November 2, 1999, the terms of which are confidential. The court also entered a separate permanent injunction against Murphy prohibiting him from using Olympic-related marks and, among other things, requiring him to turn over all merchandise in his possession, custody, or control bearing such marks.

K. Cybersquatting

In a groundbreaking action the SLOC, the USOC and the IOC brought suit in the United States District Court for the Eastern District of Virginia. Named defendants included over 1800 domain names that allegedly included registered trademarks of Plaintiffs, foreign equivalents, and simulations thereof, making it the single largest cybersquatting suit. The complaint was filed on June 20, 2000 seeking relief under the ACPA as well as under the Lanham Act.

This precedent setting case was possible because of the United States' unique jurisdiction laws. Jurisdiction over the Defendants was proper as an in rem action. The ACPA provides that an in rem action against domain names may be proper if those names infringe upon protected marks and in personum jurisdiction cannot be obtained over the person who would be the defendant. Jurisdiction of this court was proper, as the names were registered with Network Solutions, located within the Eastern District of Virginia.

Actions under this new piece of legislation have helped deter registrants and shut down sites registered in bad faith with the intent to profit from unauthorized use of famous trademarks. Ownership of literally dozens of

73. Id.
74. Id.
75. Id.
77. Id.
78. Id.
79. Id.
80. Id.
81. 2000Olympic.com, No. CV-00.1018A.
82. Id.
domain names, for example, those using words that incorporate Salt Lake 2002, Olympic, Olympic Winter Games, SLC 2002 and any other protected marks, have been transferred to the SLOC and to the USOC, as defendants rush to settle without financial penalty. These particular marks pose the greatest concern because these sites direct traffic away from the official Olympic sites. Use of these marks as metatags poses a similar challenge. The metatags provide the HTML codes that search engines use to seek out sites.

I. Trademark Infringement

The USOC became concerned when PowerBar, a supplier in the sports nutrition category, reported an incident of potential ambush marketing by a well-known packaged goods manufacturer. Nabisco's advertising campaign for the Fig Newton product line included a depiction of an ancient Olympic athlete throwing a discus, with text stating, "the ancient Olympians worshipped the fig and used it for energy during training." The campaign also included a caption stating that Nabisco's product was the "Official energy food of USA Cycling." The ads ran in US Rowing, Outside Magazine and a number of other sports publications.

The USOC brought suit in the United States District Court for the Northern District of California against the Defendant, Nabisco, Inc. The complaint sought relief under the OASA and under the Lanham Act. The USOC asserted that Nabisco engaged in an advertising scheme wrongfully employing the use of the USOC's protected marks, and as such, Nabisco created an association between themselves, and their product and the USOC, and the Olympic Movement. As a result of the suit, Nabisco discontinued the ad campaign and settled for an undisclosed sum.

M. Copyright Infringement

Following up on an incident report, the SLOC investigated a music store in Salt Lake City that was reportedly conducting a print campaign that made direct reference to "The 2002 Olympic Mascots" and the "2002 Winter Olympics." The ad carried pictures resembling the official Olympic mascots "Powder," "Copper," and "Coal," along with the phrase "Proud not to be sponsors of the 2002 Winter Olympics." After receipt of a cease and desist letter from the SLOC, the advertiser pulled the ad and acknowledged that he had photocopied the mascots from a newspaper article announcing the names

84. Id.
85. Id.
and images to the public.

N. Olympic & Amateur Sports Act

In an effort to produce humorous and memorable ads, a local ski resort ran a radio ad campaign in December 1999 that included a sixty-second spot entitled, “Free Bribe.” While the association was clear, there was no direct mention of the Salt Lake Organizing Committee. Instead, the text referred to “Salt Lake Olympic Headquarters,” “Salt Lake Olympic,” and the “Olympic Downhill.”

The ski resort also ran ads on billboards and buses in Salt Lake City. One ad in the series carried the tagline “Proud Host of Zero Olympic Events.” Commercial use of the word “Olympic” without express permission is a violation of the OASA. At the SLOC’s request, the USOC requested that the ski resort cease and desist its unauthorized use of the word “Olympic.” The SLOC spoke with the general manager of the resort. Shortly thereafter, the ad agency responded with a letter agreeing to withdraw the ads.

A year later, another ad campaign was launched which allegedly infringed on the USOC’s exclusive right to control the commercial use of Olympic marks in the United States. This time the ads featured five circular snowflakes in the shape of the Olympic rings accompanied by a web address with the domain name “brightonupthegames.com.”

The USOC responded by filing a complaint and issuing a press release concerning Brighton’s use of the logo and domain name. After the complaint was filed, Brighton agreed to transfer ownership of the domain name to the USOC and to stop using the five-ring logo.

O. Enforcement Options

As illustrated in the aforementioned cases, there are a variety of ways to resolve incidents of ambush marketing and unauthorized use of protected marks and copyrights. As these matters escalate, so do the enforcement options and costs associated with resolution. In addition to legal tactics, there are other means of obtaining compliance. They range from educational contacts to contractual leverage to creative means such as withdrawing privileges or strategically blocking potential ambush activities. Most cases can be settled amicably. Relatively few reach the level that requires legal intervention through civil and criminal court action.

VII. SCORE BY LEVERAGING RIGHTS AND PREEMPTING COMPETITION

In "The Game," defensive players run marketing, communications, and corporate hospitality programs that leverage contractual rights. Offensive players score points against the competition by increasing exposure, product sampling, promotion, and sales opportunities without infringing on protected marks or copyrights, and without causing confusion or deceiving consumers.

Tactics that are in compliance with "the rules" do not imply a false commercial association with the Olympic Games or Paralympic Games or any marks, words, phraseology, or images related thereto. Instead, they employ ethical business practices. The following are several scenarios that, depending on the circumstances, do not imply a commercial association with the Games as long as they do not confuse the public as to the source of origin, sponsorship or event:

(1) sponsoring an athlete, National Olympic Team, National Paralympic Team, Training Facility, National Governing Body or
Sports Federation;

(2) becoming a broadcast sponsor by purchasing ads on official radio and TV broadcasts of the Games;

(3) entertaining corporate clients at the Games;

(4) ramping up normal sales and marketing programs during the Games;

(5) targeting key accounts along the route of the Olympic Torch Relay and in the Olympic theater of operations;

(6) buying billboards, bus, and fleet advertising within venue communities if available;

(7) buying ads and display space at the airport if available;

(8) running ads in local tourism guides, city magazines, and Chamber of Commerce literature distributed outside Olympic venues;

(9) distributing samples and premiums on private property with no reference to the Olympic Games, provided these items do not enter an Olympic venue;

(10) running fleet advertising on vehicles along routes leading up to Olympic venues without reference to the Olympic Games;

(11) obtaining a permit to install a sign to promote brands sold within a store.

Penalties are levied for illegal business practices that violate laws and interfere with contractual agreements. The following are hypothetical scenarios of activities for which participants may incur penalties:

(1) running advertising or promotions that infringe on the SLOC’s or the USOC’s intellectual property rights and/or cause confusion as to the source of origin or sponsorship, thereby violating federal and state trademark and copyright statutes;

(2) unauthorized use of Olympic words, symbols, or images that violate the OASA;

(3) merchandising Salt Lake 2002 products with other memorabilia in a way that is intended to imply that both are officially licensed products, thereby employing false and deceptive advertising practices;

(4) causing the manufacturing, distribution or sale of fake merchandise bearing Olympic symbols, words and imagery or symbols, words and imagery that are confusingly similar, thereby
trafficking in counterfeit goods and services;

(5) unauthorized use of Olympic-related marks in domain names with the intent of generating a profit, thereby violating the ACPA;

(6) unauthorized use of Olympic-related marks in metatags directing traffic away from official Olympic web sites, thereby employing false and deceptive advertising practices;

(7) distributing product samples, premiums and commercial literature within Olympic venues, thereby violating the ticketing agreement;

(8) distributing commercial literature on national forest land (for example, the alpine venues) without a special use permit, thereby violating federal regulations;

(9) hanging temporary banners in view of an Olympic venue, thereby violating local sign ordinances;

(10) serving as a subcontractor to an Olympic Marketing Partner or noncommercial rights holder with the intent of gaining commercial exposure for products and services inside an Olympic venue, thereby causing a breach of contract by those bound by the Olympic Charter; and

(11) sponsoring Olympic athletes and national teams, and encouraging them to wear excessive commercial markings on uniforms or equipment during competition, thereby causing a violation of the athlete agreement and the risk that such athletes and teams will be pulled from Olympic competition.

IX. HOW IS THE GAME WON OR LOST?

A. Caught in the Ambush

Those who infringe on intellectual property rights are subject to all remedies available under the law. The severity of an incident in question, the extent to which it was willful, and the potential damage are factors that are taken into consideration when undertaking an investigation. Before acting, it is helpful to find out if the incident was "casual," "provoked," or "deliberate" in nature. Was the infringement willful? Casual incidences are often the result of ignorance of the law. In a situation where the party was "provoked," factually, an infringement may exist, although the party involved may be unaware of his infringement. For example, an embroiderer or silk-screener could have fulfilled an order from a manufacturer or retailer for a specific
design without checking or realizing that the design incorporated a registered trademark or copyrighted work. A deliberate act of infringement is characterized by a bad faith intent to profit from the commercial exploitation of someone else’s property. These are the most egregious incidents and the ones that often require legal intervention.

Assessing the Threat

- **Observe Violation**
  - Gather Facts, Collect Evidence & Submit Incident Report
  - Insufficient Evidence Monitor
  - Pre-Enforcement Investigation
  - Non Violation Close

- **CASUAL**
  - Perceived Threat LOW
    - Educational Contact
    - Voluntary Compliance Reached; Infringing Activity Ceased
    - Confirmation Letter (Optional)
    - Monitor
    - Case Closed

- **PROVOKED**
  - Perceived Threat MODERATE
    - Cease & Desist Notice
    - Voluntary Compliance Reached; Infringing Activity Ceased
    - Request & Verify Records
    - Out of Court Settlement Agreement Reached
    - Accept Stipulated Injunction & Voluntary Relief
    - Case Closed

- **DELIBERATE**
  - Perceived Threat HIGH
    - Demand Letter
    - Voluntary Consent Agreement Reached; Infringing Activity Ceased
    - File Civil Complaint; Obtain Temporary Injunction (Optional)
    - Litigate
    - Settle
    - Permanent Injunction
    - Stipulated Injunction
    - Case Closed

No: Compliance Efforts Unsuccessful
Yes: Compliance Efforts Successful
X. POTENTIAL FOR HARM OR INJURY

Although intangible, intellectual property assets are among the most valuable assets owned and licensed by the organizers of the Olympic Winter Games. Ambush marketing activities pose a serious threat to corporate supporters and the long-term viability of the Olympic brand. The unauthorized use of intellectual property rights has the potential to dilute the brand and erode brand equity and goodwill value. These activities could result in the loss of corporate sponsors and licensees. Additionally, there may be missed opportunities to generate royalties from licensed merchandise when sales are lost to counterfeiters. Moreover, consumers may be confused as to the source of origin or sponsorship if false and deceptive business practices are allowed to continue. Left unchecked, business practices like ambush marketing steer business away from legitimate sponsors, suppliers, and licensees and away from the merchants and e-commerce sites that carry products and services bearing authentic marks.

XI. CONCLUSION

The Olympic emblem, comprised of five interlocking rings, is one of the most highly recognized symbols in the world. According to consumer research underwritten by the IOC in eleven countries and conducted in 1998, 1999, and 2000, unaided brand awareness for the Olympic Rings was 93%. Of the respondents participating in the study, 86% agreed that the Rings represented the world’s top sporting event. Furthermore, 74% associated the Rings with success and high standards.

The protection of Olympic marks and copyrights is essential to the preservation of the Olympic Games and the ongoing training and development of the United States Olympic Teams. The marks and symbols of the Olympic Games represent the dreams and aspirations of athletes and people around the world. They kindle a light of hope for humanity by unifying nations, for a brief period of time, through the peaceful celebration of sport, art, and culture.

88. Id.
89. Id.