

Ambush marketing



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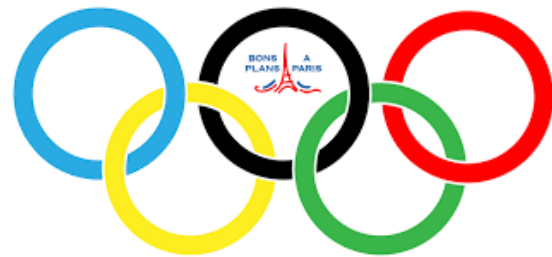
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Speaker (HK and China)

Introduction

What is ambush marketing?



PARIS 2024



The Paris 2024 Olympic Games will be the biggest event ever organised in France

206 nations

28 Olympic sports + 4 additional sports

10,500 athletes + 31,500 volunteers

11.3 million visitors

26,000 accredited journalists (Olympic Games and World Youth Games) + around 8,000 non-accredited journalists

4 billions TV viewers

The International Association for the Protection of Intellectual Property (AIPPI)



Budget: €8,8 billion

96% financed by private revenues

- IOC (International Olympic Committee)
- Games tickets
- ≈ 62 corporate partners
- ≈ 80 licences



Partenaires Mondiaux

airbnb Alibaba Allianz Atos BRIDGESTONE
Coca-Cola 蒙牛 Deloitte intel OMEGA Panasonic
P&G SAMSUNG TOYOTA VISA

Partenaires Premium

GROUPE BPCE H EDF orange sanofi

Partenaires Officiels

All ACCOR-LIVE LIMITLESS CISCO DANONE DECATHLON FDJ
le coq sportif pwc

Supporteurs Officiels

DXC Technology Egis Enedis Myrtha Pools OnePlan
Optic 2000 Ottobock Randstad Salesforce SCC
Sodexo Live!

ATLANTA 1996 OLYMPICS GAMES (Nike's golden shoes ambush strategy)

OFFICIAL SPONSOR



Who is the official sponsor?



16%



22%

LONDON 2012 OLYMPICS GAMES (Beat offered athletes free pair of Beats)

OFFICIAL SPONSOR: Panasonic

£64 million to be sponsor



AMBUSH MARKETING: definition

Promotional / Marketing activities by a non-sponsor entity in connection with an event (sport, cultural, etc.)

To create an association with the event, or to take advantage of the profile of the event, without the event owner's authorization.

Very powerful marketing tool for brand owners, as it attracts consumers at the expense of competitors and at low cost to the brand owner!

However, it also has detrimental effects, not only for the ambushed competitors, but also for the integrity of the event and its potential to attract future sponsors.

Is ambush marketing lawful or prohibited?

Can organizers / competitors sue ambushers?

On which legal basis?

1. LEGAL BASIS

2. CASE LAW

Part I: LEGAL BASIS

1. Sport Legislation
2. IP Rights: Trade Mark
3. Unfair Competition and Free Riding



1. Special Sport Law

after Atlanta NIKE strategy

CONTRACTUAL FRAMEWORK FOR HOSTING THE OLYMPIC GAMES
INTERNATIONAL OLYMPIC COMMITTEE (IOC - 2020)

➤ Part III.3

- What commitments need to be secured during the Targeted Dialogue?

G3.1 The national government and, if applicable, other competent national, regional and/or local authorities need to guarantee the protection of Olympic Properties in the host country through:

- adequate and continuing legal protection of Olympic Properties in the host country in the name of the IOC;
- appropriate legislation to ensure protection of the IOC's rights and interests in relation to the Games (such as, without limitation, regarding protection against unauthorised street trading unauthorized ticket resale, unauthorised live sites and public viewing events, unauthorised broadcast or retransmission of Games images, **ambush marketing** and counterfeit merchandise; and securing of advertising space); and
- procedures and remedies allowing for timely resolution of disputes.

Specific Sports Law

United Kingdom (UK)

➤ **London Olympic Games and Paralympic Games Act 2006:**

- extends infringement to representations that could likely create in the public's mind an association with the Olympic Games (paragraph 3, Schedule 3, 2006 Act);
- Court may, in particular, take account use of such expressions: (a) "games", (b) "Two Thousand and Twelve", (c) "2012", and (d) "twenty twelve". *The following expressions form the second group (...) (a) gold, (b) silver, (c) bronze, (d) London, (e) medals, (f) sponsor, and (g) summer"* (paragraph 3, Schedule 4, 2006 Act).

Specific Sports Law

France

- “Sports federations, as well as the organizers of sporting events, **own the right to exploit the sporting events or competitions they organize**” (art. L. 331-5 of the French Sports Code).
- Specific monopoly
- Potentially very broad
- WHO act? Organizers of the event

Specific Sports Law

France

- *The French National Olympic and Sports Committee (CNOSF) is the holder of:*
 - *the Olympic emblems, flag and symbol; the logo, mascot, slogan and posters of the Olympic Games;*
 - *the year of the Olympic Games "city + year"; the terms "Olympic Games", "Olympism" and "Olympiad" and the acronym "JO" (Jeux olympiques).*

The act of registering as a trade mark, reproducing, imitating, affixing, deleting or modifying the elements and terms above-mentioned or their translations, without the authorization of the French National Olympic and Sports Committee, is punishable by the penalties set out in articles L. 716-9 to L. 716-13 French Intellectual Property Code (art. L. 141-5 of the French Sports Code).

- Who can take legal action? Only organizer (owner/holder of the trademarks)

Specific Sports Law

Italy

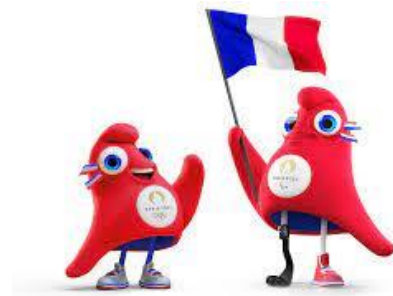
“Parasitic, fraudulent, deceptive or misleading advertising and marketing activities carried out in connection with the organisation of sporting events or trade fairs of national or international importance that have not been authorised by the organising entities and are aimed at gaining an economic or competitive advantage” (art. 10(1) of Law Decree 16/2020).

Specific Sports Law

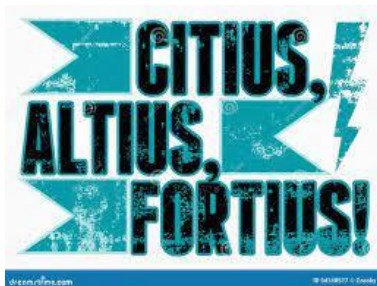
China

Specific Sports Law

Singapore



2. Trademark Law



Reproduction / imitation

2. Trade mark law (China)

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2. Trade mark law (Singapore)

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3. Unfair competition and free riding

3. Unfair competition and free riding

France

Free riding is based on tort liability

- Fault = intention to promote own commercial activity by benefiting freely and without risk from the efforts and investments of others

WHO act? Organizers of the event AND/OR Competitors

3. Unfair competition and free riding

China

3. Unfair competition and free riding

Singapore

Part II : CASE LAW



French Supreme Court (17 January 2017)

FROGPUBS, a bar company, reproduced the Olympic rings symbol on 200,000 beer coasters for the London 2012 Olympic Games.

FROGPUBS has reproduced without authorization the well-known trade mark of the Organizing Committee for the Olympic and Paralympic Games

→ **trade mark infringement.**

Paris Court (29 May 2020)

French National Olympic and Sports Committee v. Sixt

In 2018, SIXT organized a game on Twitter to win a clock radio to follow 2018 PYEONGCHANG Olympic games.

Use of references to Olympic symbols for commercial communication operations is authorized *in return* for investments made by economic operators, within the framework of onerous partnerships guaranteeing them exclusivity

→ Olympic properties infringement – sanction: 20.000 €



C'est parti pour les Jeux Olympiques!

#PyeongChang2018 #jeux Olympiques #JO2018

Une simple question: quels sont les athlètes que vous souhaitez voir gagner ? ▼

"It's off to the Olympic Games!"

"#PyeongChang2018",

"#jeux Olympiques",

"#JO2018".



Paris Court of Appeal (14 Oct. 2009)

French Tennis Federation v. Unibet

During the 2007 Tennis French Open (ROLAND GARROS), UNIBET (a platform for sports betting) published on its website a home page stating:

"Roland - Garros - men's semi-finals"

"Bet on the French Open [...] Follow this new day of the French Open with attention. Bet today on the 2 men's semi-finals between R. Federer and N. Davydenko and N. Djokovic and R. Nadal".

→ Free riding: 500.000 €

→ Trade mark infringement: 700.000 €

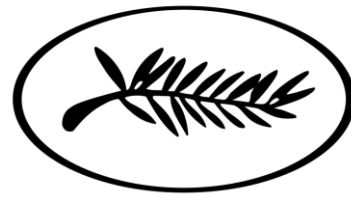


Paris Court (31 May 2019)

UEFA has entrusted the EURO 2016 company with the exclusive marketing of UEFA EURO 2016 tickets, through a single ticket sales platform.

A few days before the start of UEFA EURO 2016, tickets for various matches were put on sale on VIAGOGO website, with the mention “UEFA Euro 2016”.

→ trade mark infringement – sanction: 300.000 €.



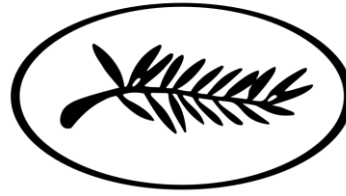
FESTIVAL DE CANNES

Official sponsor: DESSANGE (hairdresser)



Ambusher: FRANCK PROVOST (hairdresser)





FESTIVAL DE CANNES

Paris Court of Appeal (8 June 2018)

Promotional activities by a non-sponsor hairdresser (Frank Provost) during the Festival:

- Association of the slogan “official ladies' hairdresser” + “Festival de Cannes” on advertising media;
- Messages on social networks (“a fabulous love story between Franck P. and the Festival de Cannes”, etc.);
- Use of the festival poster and logo (palm).

➤ suggest the existence of a partnership, whereas Frank PROVOST is NOT an official sponsor

→ Free riding: 120.000 €.



Paris Court of Appeal (15 Dec. 2010)

Amaury Sport (organizer) v. Eurocycler

Shortly before the Tour de France 2006, a company organizing sports tours (EUROCYCLER) published on its website tour packages associated with the expression “Le Tour de France” and the official map of the Tour de France 2006.

By referring to “Le Tour de France” and publishing an official map of France with an itinerary on its website, EUROCYCLER wanted to create a link with the Tour de France organizer and has clearly intended to profit from the notoriety of the sporting event, without authorization

→ Free riding – sanction: 20.000 €

→ Trade mark infringement – sanction: 10.000 €



Italy



Italian Competition Authority (29 March 2022)

In June 2021, Zalando had placed, in the square in Rome hosting the UEFA Euro 2020 “Football Village”, a large billboard clearly referring to the football competition:

- the sentence "Who will be the winner?“(translation);
- the 24 national flags of the participants; and
- a white football t-shirt with the Zalando logo.

Zalando NOT an official sponsor

→ ambush marketing – sanction: 100.000 €.



**FRANCE
13
ANGLETERRE
24**

La Fiat 500 félicite l'Angleterre pour sa victoire et donne rendez-vous à l'équipe de France le 9 mars pour France-Italie.

**ITALIE
500**



www.fiat.fr

French Supreme Court (20 May 2014)

French Rugby Association (FFR) v. Fiat

"FRANCE 13 ANGLETERRE 24"

"Fiat 500 congratulates England on their victory and invites the French team to France-Italy on March 9"

"ITALIE 500"

merely reproduces a current sporting result, acquired and made public on the front page of the sports news paper, and refers to a future meeting also known as already announced by the newspaper in a news article.

It is therefore NOT established that the economic activity of Fiat can be considered as the unjustified capture of an economic flow resulting from sporting events organized by the FFR, constituting direct unlawful exploitation, as unauthorized, of such events

Conclusion

Ambush marketing is always prohibited if you reproduce the official signs /trademarks/slogan / etc. of the Olympics games!

Association with the event but without any reproduction = assess by courts on a case by case basis

Olympic Charter (Rule 40, bye-law 3)

“Competitors, team officials and other team personnel who participate in the Olympic Games may allow their person, name, picture or sports performances to be used for advertising purposes during the Olympic Games in accordance with the principles determined by the IOC [International Olympic Committee]”.

- **Key Principles – Advertising by NON-Olympic partners** (applying during the Game Period):
 - The advertising must not use any Olympic properties (emblem, mascot, city + year, etc.).
 - No connection/association with Paris 2024.
 - The advertising must have been in the market for at least 90 days before the Game Period.

- **Purpose of Rule 40:** To preserve sources of funding and prevent ambush marketing by entities that are not official sponsors.

EXAMPLE 1 GENERIC ADVERTISING



No connection with the Olympic Games other than use of an image of an Olympian.

The brand has demonstrated that the campaign has been in the market before 18 April 2024.

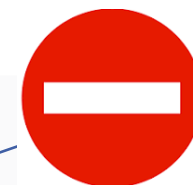
The athlete's Olympic achievements are listed factually and not more prominently than other achievements.

No Olympic Properties are used.

EXAMPLE 2 CONNECTION WITH THE OLYMPIC GAMES



Despite the campaign being in the market for over 90 days, and no Olympic Properties being used, a connection with the Olympic Summer Games is made using the "Road to Paris" reference.



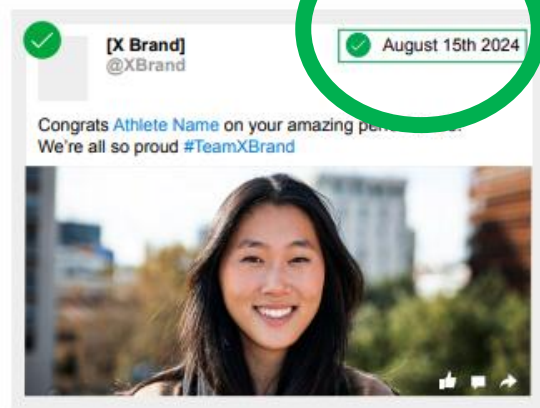


EXAMPLE 5
CREATION OF A CONNECTION WITH THE OLYMPIC GAMES

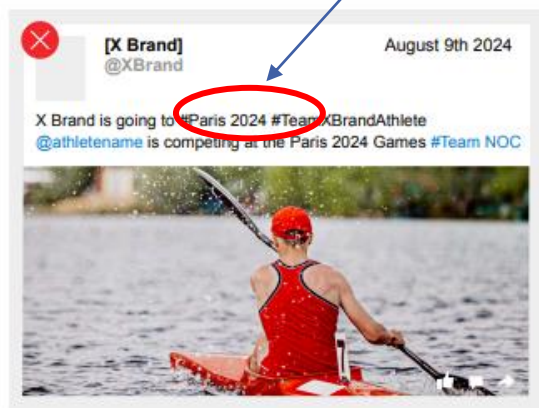


Use of iconic Paris imagery means that there is a connection with the Olympic Games beyond simply the use of an image of an Olympian. The campaign therefore does not meet the first criteria of Generic Advertising.

EXAMPLE 10
CONGRATULATORY ADVERTISING BY NON-OLYMPIC PARTNERS



✓
This congratulatory ad from a Non-Olympic Partner is posted after the Games Period, and does not use any Olympic imagery or Olympic Properties.
A similar message of support posted before the Games Period is also possible.



✗
These congratulatory/support ads are posted in the Games Period and use Olympic Imagery and Olympic Properties. They are not in line with the Key Principles.



✗
Non-Olympic Partners cannot publish Congratulatory Advertising during the Games Period. This also covers other messages of support and commiseration for athletes competing at the Olympic Summer Games.
Note that these kinds of messages can be posted by sponsors **before and after the Games Period**, without using Olympic Properties or creating any connection with the Olympic Summer Games.

THANK YOU!

See you in Hangzhou for AIPPI World Congress!

19-22 October 2024

For the IP O..... Games!