

Brazilian Olympic Act: a last minute hurdle for ambushers





With the Rio Olympic Games just around the corner, there have been concerns about the country's readiness to play host to the competition, its athletes and scores of fans. Issues around stadium safety and anti-doping policies have been at the forefront of the debate, but there has also been, until very recently, a distinct lack of clarity for brands and sponsors planning marketing activities in Brazil in the lead up to the Games.

We are all hoping that a classic festival-style Opening Ceremony on August 5th will kick off two weeks of incredible sport and that all the recent negative headlines will quickly fade from memory.

But the Rio 2016 organising committee have certainly cut it fine in many regards, including in addressing the perennial thorn in the Olympic side – ambush marketing. Whereas, ahead of the London 2012 Games, the UK government enacted legislation six years in advance to prevent ambush at the Games, similar legislation in Brazil, the "Rio Olympic Act" only took effect in May 2016, to little or no fanfare. There was no official press release and no guidelines issued. At the date of writing, the most [readily available official guide](#) to brand protection at the 2016 Games is dated January 2014 and doesn't reflect the new legislation.

This article seeks to give international businesses planning on marketing their brands in Brazil in the next few weeks an oversight of the new Brazilian legislation.

Summary

Essentially, the new Rio Olympic Act does three key things:

- It provides for **special protection for various Olympic and Paralympic marks**, including the emblems, flags and mottoes of the IOC, IPC and Rio 2016, and the official Games mascots and torches, as well as terminology such as "Rio 2016".
- It **prohibits ambush by association** – this includes the promotion of products or services in a way which creates an unauthorised direct or indirect association with the Games, inducing consumers to believe that products or services are approved by the organisers of the Games.
- It prohibits **ambush by intrusion** - this involves the act of direct marketing within the Games' locales without authorisation or exemption. For example, displaying unauthorised trademarks in stadia or carrying out other promotional activities in nearby areas without permission.

The Rio Olympic Act is very similar to that which was in place for the Brazil 2014 World Cup, and is supplemented by other legislation, such as the Pele Act (which offers broad protection to names and symbols of Brazilian sports associations and athletes) and the Consumer Protection Code (which prohibits misleading or abusive advertising in Brazil).

In practice, the special protection afforded by the Rio Olympic Act to Games related marks doesn't add a great deal to existing protection - so instead we'll focus on the anti-ambush marketing provisions.

Ambush by association

Ambush by association is defined in article 19 of the Rio Olympic Act as the practice of promoting *"trademarks, products or services, for the purpose of obtaining economic or advertising advantages, through direct or indirect association with the Games, without the authorisation of the organising entities, inducing third parties to believe that such trademarks, products or services are approved, authorised or endorsed by the organising entities."* It also covers the unauthorised use of Games tickets, invitations or accreditation in connection with advertising in order to obtain economic or advertising advantage.

Ambush by intrusion

Ambush by intrusion, meanwhile, is defined in Article 20 of the Rio Olympic Act. Essentially it prohibits the display of any advertising (including branding, products or services) or carrying out promotional activities without the authorisation of the organisers where this attracts *"public attention at the official sites in any way, in order to obtain economic or advertising advantage."* As such billboard advertising, distribution of products, consumer 'experiential' advertising, and advertising on vehicles in areas around the official sites (i.e. the venues and villages etc.) will be prohibited.



The areas around “official sites” in which advertising is reserved exclusively for authorised sponsors (subject to exceptions for existing businesses) is determined by relevant District and Municipal authorities. In Rio, the relevant municipal decree provides that this area includes the official sites and areas next to them, together with areas of “Olympic Visual Protection”. Unlike the regulations which introduced similar ‘clean’ zones for London 2012, there are no maps delineating the areas and there is an apparent lack of clarity as to how far the areas will extend. We can assume they will be wider than in London; and it does seem clear that all aerial advertising across the city of Rio will be prohibited during the Games.

Sanctions

The Rio Olympic Act appears to be comparatively hard-line in its approach to punishing ambush marketers. The equivalent provision preventing ambush by association in the UK for London 2012, for example, only created civil sanctions enforceable by the London 2012 organising Committee. Under Brazil’s new legislation, ambush by association is a criminal offence. Further, anyone who suffers damage, including loss of profit, can apparently bring a civil claim. This could in theory include a competing sponsor whose rights are undermined.

Ambush by intrusion is also a criminal offence (as it was in London in 2012, albeit no prosecutions were brought).

Both ambush offences for Rio 2016 are punishable by three months to one year detention or a fine. The fine, though not anticipated to be substantial, will be defined by the judge according to the provisions of the Brazilian Criminal Code at the time of enforcement.

The home straight

Although little has been communicated about the recent Rio Olympic Act and there remains uncertainty around, for example, where the prohibition on ambush by intrusion will apply, brands thinking of taking advantage of the excitement of the Games in Brazil need to be alert to the risks. It is yet to be seen how rigorous enforcement will be, but given the criminal offences created, and the breadth of how ambush marketing is defined, brands would be advised to exercise caution.

It is worth reflecting on how global online and social media marketing could be impacted by Brazil’s Rio Olympic Act. Although you would anticipate enforcement to focus on activities taking place directly in Brazil and targeting Brazilian consumers, there’s nothing to suggest that brands undertaking global ambush campaigns over social media or online would not be guilty of the ambush by association offence. As such, senior brand executives heading to Rio to enjoy some sport, might want to double check that their global online marketing campaigns will not land them in trouble, and even potentially jail!

In reality we suspect that criminal action will be reserved for the most blatant and brazen forms of ambush marketing, and that any action will focus on major competitors of official sponsors. The desire of the organisers to avoid negative headlines (and deny ambushers the media exposure they may crave) means that the full force of the Rio Olympic Act may not be felt. However, given the gravity of available sanctions, brands and their executives may feel that this is a tightrope (or should we say balance beam) which is too risky to walk.

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