

RIO 2016 - ADVERTISING AND MARKETING WITH ATHLETES

Couchmans' Associate, Daniel Alfreds, provides a 'Q & A' on the issues facing athletes at Rio 2016 with regard to the IOC's: Rule 40 (advertising); Rule 48 (reporting); and the Social and Digital Media Guidelines.

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A. RULE 40

1. Definition

1.1. Rule 40 of the International Olympic Committee's ("IOC") Olympic Charter states:

"To participate in the Olympic Games, a competitor, team official or other team personnel must respect and comply with the Olympic Charter ... including the conditions of participation established by the IOC, as well as with the rules of the relevant IF as approved by the IOC ..."

1.2. Bye-law 3 of Rule 40 further states:

"Except as permitted by the IOC Executive Board, no competitor, team official or other team personnel who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games."

2. What Does Rule 40 Do?

2.1. Rule 40 has the effect of prohibiting current athletes (together with others who are accredited for the Games, see 3.1) from agreeing to appear in forms of advertising during the "Games Period" (being **27 July 2016 – 24 August 2016**), without the permission of the IOC.

2.2. This prohibition includes the use of an athlete's image, name or Games performance in any advertising including print, online and digital (such as social media and in mobile apps (see C)) as well as broadcast or any personal appearances.

3. Who Does Rule 40 Apply to?

3.1. During the Games Period Rule 40 applies to:

- i. current Olympic athletes;
- ii. coaches; and
- iii. officials.

3.2. Rule 40 does not apply to:

- i. Olympians who have competed in previous Olympic Games but have no competitive involvement in Rio 2016; and
- ii. Paralympians (though other restrictions may apply).

4. What Does it Apply to?

4.1. Rule 40 applies to all Games venues including:

- i. the Olympic stadium;
- ii. the Barra Olympic Park;

- iii. other competition venues;
- iv. preparation grounds; and
- v. the athlete village.

5. Relaxation of Rule 40

- 5.1. In July 2015 the IOC approved a relaxation of the interpretation of Rule 40 to “allow generic (non-Olympic) advertising during the period of the Games”. It was left to each National Olympic Committee (“NOC”) to decide how to implement the change to Rule 40.
- 5.2. In respect of a worldwide campaign, a commercial partner will need to consider the position of the NOC applicable to each athlete if it wishes to feature them in advertising (see 7.4 and 8.1).

6. Athletes and Rule 40

- 6.1. Rule 40 is binding upon all Olympic athletes by virtue of the participation agreement with their respective NOC.
- 6.2. The British Olympic Association’s (“BOA”) Athlete Team Member Agreement for 2016 states:

“The BOA is recognised by the International Olympic Committee (“IOC”) as the National Olympic Committee responsible for selecting, leading and managing Team GB at the Games. The BOA is therefore bound to observe and comply with the Olympic Charter, and all Team Members are automatically bound by the Olympic Charter. You must therefore comply with all applicable provisions of the Olympic Charter ...”

7. BOA Rules

- 7.1. In December 2015 the BOA issued its guidelines on Rule 40 in respect of advertising featuring members of the British team (“Team GB”). Non-Olympic partners will only be permitted to use athletes for advertising during the Games Period if they have:
 - i. ‘deemed consent’ (see 7.2); or
 - ii.a Rule 40 waiver (see 7.3).

However, statements of fact such as the athlete being at the Games or is an Olympic medallist/champion are permitted without the need for deemed consent or a waiver.

Deemed Consent

- 7.2. This allows non-Olympic partners to continue using materials featuring an athlete if the advert:
 - i. has been in continuous use prior to **27 March 2016**;
 - ii. does not conflict with the general purpose of Rule 40;
 - iii. does not create an association with Team GB or the Games (examples of associations include using Olympic or Team GB intellectual property or hashtags, retweeting Team GB tweets or sending congratulatory messages including tweets); and
 - iv. has been notified to the BOA by **27 January 2016**.

Rule 40 Waivers

- 7.3. In general the waivers will only be granted if a request has been made prior to **27 January 2016** and the request is for:
 - i. “famous face” advertising which makes no reference to sport and has been used consistently prior to **27 March 2016**;

- ii. non-commercial advertising; or
- iii. advertising for a sporting event taking place shortly after the games in which the athlete will compete.

Non BOA Athletes

- 7.4. The BOA may grant waivers for international athletes featuring in UK advertising but the athlete must also receive a waiver from their own NOC.

8. Other NOCs

- 8.1. Whilst each NOC can interpret Rule 40 as they wish many, including the USA and Canada, have adopted very similar stances to the BOA. However, there are some NOC's including Japan's (the host of the 2020 Games), that have not issued any rules at all. This has generally been interpreted as the relevant NOC maintaining a strict view of Rule 40.

9. Sanctions for Getting it Wrong

- 9.1. Subject to any separate rights it may have under passing off, trade mark or Olympic symbol legislation, there is no way for the IOC or relevant NOC to directly penalise the advertiser for a Rule 40 violation. The IOC and/or the NOC, however, can take action against the athlete.

B. RULE 48

10. Definition

- 10.1. Rule 48 of the IOC's Olympic Charter states:

"1. The IOC takes all necessary steps in order to ensure the fullest coverage by the different media and the widest possible audience in the world for the Olympic Games.

2. All decisions concerning the coverage of the Olympic Games by the media rest within the competence of the IOC."

- 10.2. Bye-law 3 of Rule 48 further states:

"Only those persons accredited as media may act as journalists, reporters or in any other media capacity. Under no circumstances, throughout the duration of the Olympic Games, may any athlete, coach, official, press attaché or any other accredited participant act as a journalist or in any other media capacity"

11. What Does Rule 48 do?

- 11.1. Rule 48 has the effect of prohibiting current athletes (together with those accredited for the Games, see 3.1) from acting "as a journalist" during the Games Period.

- 11.2. Whilst 'journalist' is not defined in the Olympic Charter, it has been interpreted that this refers to any form of reporting that sits outside of the IOC Social and Digital Media Guidelines ("SDMG") (see C). The likely intention of Rule 48 is to prevent the commercial exploitation by an athlete of their experiences during the Games Period.

12. Athletes and Rule 48

- 12.1. As per 5.3 above, Rule 48 is binding on all athletes through their participation agreements.

- 12.2. The BOA's Athlete Team Member Agreement for 2016 states:

"Pursuant to bye-law 3 to Rule 48 of the Olympic Charter, you agree that you will not;

- (a) *be accredited or act as a journalist or in any other media capacity on the television, on the radio, in newspapers or in or on any other broadcast or other medium (including the internet or mobile phone networks and providing any media articles or interviews in the first person) at any time during the Games Period; or*
- (b) *save for any interview or press conference referred to in clause 7.2(c) below [press conferences on behalf of the BOA], provide exclusive interviews, commentaries or appearances to the exclusion of other broadcasters or written or electronic media at any time during the Games Period.*

For the avoidance of doubt, you may post blogs during the Games Period in accordance with the guidelines set out at Clause 7.4 [BOA specific rules] of this Agreement and subject to any additional rules imposed by your NGB from time to time.”

13. Exceptions

- 13.1. There is no deemed consent or waivers akin to Rule 40. Athletes may, however, blog and post on social media if they comply with the SDMG (see C below).

14. Sanctions

- 14.1. Sanctions may be brought against the individual by the IOC and/or their NOC if they are found to be acting as a journalist.
- 14.2. There is a question as to whether there may be sanctions brought against an accredited media organisation found to be using an athlete as a journalist.

C. THE IOC SOCIAL AND DIGITAL MEDIA GUIDELINES

15. What Does the SDMG Do?

- 15.1. The SDMG provides guidelines for athletes who wish to share the experience of the Games via social and digital media with members of the public during the Games Period.

16. Who Does the SDMG Apply?

- 16.1. As with Rule 40 and Rule 48, it applies to the people listed at 3 above.

17. Athletes and the SDMG

- 17.1. The BOA's Athlete Team Member Agreement for 2016 states:

“The use of social media platforms (including but not limited to, for example, Facebook, Twitter, Google Plus, Vine and Instagram) provide a unique opportunity to share your Olympic experience. You may participate in posting, blogging or tweeting (or similar) during the Games Period in accordance with the IOC Social Media, Blogging and Internet Guidelines, including that posts, blogs or tweets (or similar)”.

18. What can Athletes do?

- 18.1. In order to share their experience of the Games an athlete may:
 - i. provide a first person diary style blog of their involvement at the Games;
 - ii. post *still* photos taken within Games venues (see 4.1), though not for any commercial reason;
 - iii. capture audio or video of events, competitions or anything else that happens at Games venues for purely personal reasons. These cannot be shared on social or digital media without the IOC's consent;

- iv. take still photos, audio or video outside of the Games venues; and
- v. use the word “Olympic” or other Games related words in a factual context and not associated with a third party’s products or services.

18.2. Restrictions on athletes include:

- i. making sure any post “conform with the Olympic values of excellence, respect and friendship”;
- ii. not making a demonstration of any form of political, religious or racial propaganda;
- iii. posting in good taste and not be discriminatory, hateful, defamatory or illegal;
- iv. not using vulgar or obscene language or images;
- v. not taking photos in the designated “no picture areas”;
- vi. not using the Olympic symbol;
- vii. not using any social or digital media for advertising other than within the Rule 40 guidelines (see A above); and
- viii. not using domain names, URLs and social media handles that include the word “Olympic” or other Games related words, though there are specific exemptions.

19. Sanctions for Getting it Wrong

19.1. Sanctions may be brought against the individual by the IOC and/or their NOC if they are found to be breaching the SDMG.

19.2. As with 14.2 above, if they are found to be posting for an accredited media organisation there may be further ramifications.

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