

German Challenge Further Thaws Olympics “Rule 40” Advertising Restrictions

5th Edition: Trends in Marketing Communications Law

The International Olympic Committee's (IOC's) “Rule 40” has long restricted athletes from appearing in advertising for companies that are not official sponsors of the Olympics. The restricted blackout period extends from nine days prior to the opening ceremonies of each Olympic Games until three days after the closing ceremonies. Following closely on the heels of a relaxation of Rule 40 for the 2016 Summer Games in Rio, Germany's Federal Cartel Office (the Bundeskartellamt) has filed an action against the IOC and the German Olympic committee, the Deutscher Olympischer Sportbund (DOSB), over what it describes as an unfair restriction on trade that significantly curtails athletes' earning power. Though the outcome of the case is still pending, history may look back on 2017 as the turning point for Olympics advertising and athlete endorsements.

The Bundeskartellamt noted that, because of procedural complexity and a lengthy required review period, the waivers to Rule 40 allowed for the first time during Rio 2016 were insufficient to help any but the most famous of athletes increase the value of their Olympics-related endorsements. Instead, the Bundeskartellamt sought to have the advertising guidelines come under the purview of German statutory and common law. In response, the IOC and DOSB granted several specific concessions to German athletes, most significantly the ability to interact with their sponsoring brands on social media in the form of congratulatory, greeting or “thank you” messages without the need to seek DOSB approval, provided that the non-sponsors do not make any direct reference to the Olympics or a myriad of Olympics-related terminology, such as “Gold,” “Silver” or “Bronze.”

While this resulted in a notable uptick in non-sponsor interaction with German athletes during the 2018 Winter Games in PyeongChang, the German government has indicated that it will conduct a more comprehensive review in the coming months to determine whether the changes led to an acceptable result. If not, Germany may continue its case against the IOC and the current enforcement of Rule 40 in an attempt to provide more lucrative options for its athletes.

Regardless of the outcome of the German challenge, other countries are certain to follow suit and seek a relaxation of Rule 40 as it relates to their athletes. While this will certainly provide opportunities for non-sponsor entities to increase their exposure during future Olympic Games, marketers and their agencies should take care to conform to what will undoubtedly be a patchwork of regional or country-specific rules and restrictions.

Key Takeaways

- The ground-breaking case brought by Germany's Federal Cartel Office against the IOC has already lead to significant concessions related to non-sponsor advertisements involving Olympic athletes during the Games.
- Marketers and their agencies should anticipate a further relaxation of these rules in numerous countries.

- If there are additional relaxations of Rule 40 restrictions for 2020 and beyond, marketers and their agencies should analyze how best to take advantage of the new rules, while also staying abreast of regional and country-specific requirements.
-

Related People

James Johnston

Partner

212 468 4867

jjohnston@dglaw.com