

ENTERTAINMENT, MEDIA & SPORTS

>> **ALERT**

WAIT, THERE'S A CATCH — RULE 40 PERSONAL SPONSOR COMMITMENT ISSUED AHEAD OF 2020 TOKYO OLYMPICS

Following the revision of the Rule 40 Advertising Guidelines (Guidelines), the United States Olympic & Paralympic Committee (USOPC) has issued the Personal Sponsor Commitment, which binds a U.S. Olympic athlete's personal sponsors to the Guidelines and provides the USOPC with new and substantial enforcement powers.

RULE 40 ADVERTISING GUIDELINES

The USOPC introduced a newly revised set of Rule 40 Guidelines in October 2019, to govern personal sponsorships of athletes. Based on revisions to the International Olympic Committee (IOC) Rule 40 Bylaws, the updated Guidelines revised a prior set of Rule 40 updates implemented in 2015 for the 2016 Rio Games and are intended to offer more flexibility and opportunities for U.S. athletes and their personal sponsors in U.S. advertising campaigns. For more information on the current guidelines, read our [previous alert](#).

A key change in the updated Guidelines was the introduction of a Personal Sponsor Commitment that prospective personal sponsors must agree to in order to activate their sponsorships during the 2020 Olympic Games Period from July 14, 2020 through August 11, 2020. Since

THE BOTTOM LINE

The Personal Sponsor Commitment, part of the revised Rule 40 Guidelines, creates a contractual relationship between athlete personal sponsors and the USOPC, which poses challenges and risks for sponsors. Marketers seeking to leverage Olympic athletes during the 2020 Tokyo Games should keep in mind that:

- >> Many of the rights and obligations under the Guidelines are unclear;
- >> Sponsors will be directly liable to the USOPC if they violate the Personal Sponsor Commitment;
- >> Sponsors risk relationships with all Olympic athletes for the current and future Olympic Games if they breach the Personal Sponsor Commitment for any athlete; and
- >> The Personal Sponsor Commitment applies only to advertising disseminated in the U.S., while IOC permission is required for international campaigns.

the Personal Sponsor Commitment was not released with the updated Guidelines, many sponsors remained cautious about the impact of the changes in the Guidelines. In January 2020, the Personal Sponsor Commitment was finally released.

PERSONAL SPONSOR COMMITMENT

Implementing the Guidelines

The USOPC has established a portal through which athletes must notify the USOPC of any prospective personal

sponsors. Athletes can do this on a rolling basis at any time prior to the date advertising from the sponsor appears in the marketplace. Once the athlete has registered the personal sponsor, the sponsor receives a link to the Personal Sponsor Commitment.

For better and for worse, the Personal Sponsor Commitment tracks the principles outlined in the updated Guidelines. Personal sponsors can:

- 1) Disseminate generic advertising using one or more athletes that does not reference and has no connection to the Olympics other than the fact that it features athletes will be competing in the Olympics;
- 2) Issue one piece of athlete-focused advertising via the sponsor's official social media and/or corporate website which congratulates or recognizes the athlete (and no other athlete); and
- 3) Retweet or repost one "thank you" message that comes directly from the athlete on his or her personal social media channel.

The restrictions contained in the Guidelines have also made their way into the Personal Sponsor Commitment, such as prohibitions against the use of the words and phrases, including Olympics, Tokyo 2020 and Team USA, as well as prohibitions against the use of Olympic medals and iconic Olympic imagery, such as a torch, flame, laurel, wreath or podium.

Unresolved Ambiguity

However, the Personal Sponsor Commitment does not resolve the vagueness and ambiguity of many aspects of the Guidelines. Both athletes and sponsors maintain many social media accounts (Facebook, Twitter, Instagram, etc.), yet it is unclear whether a sponsor can disseminate an athlete-focused advertisement across all of its social media channels or just one, or whether an athlete post on Instagram can be reposted on another social media channel, such as Twitter, by the personal sponsor.

Similarly, athlete personal sponsors face the challenge of interpreting vague, and sometimes conflicting, obligations that carried over from the Guidelines. Sponsors must commit to not making any "negative" claims in their advertising or include any content that "in any manner may be deemed embarrassing" to the USOPC, the IOC or the Olympics movement. Sponsors may not imply that their products or services enhanced the athlete's performance, a particular challenge for any sponsor in the footwear, athletic apparel, health or dietary product categories.

Personal sponsors are also prohibited from using the phrase "Go for the Gold" or "gold medal" yet may be able to use "#gold." So, sponsors are forced to guess where the lines should be drawn, while the ramifications of guessing incorrectly could lead to dire consequences.

Severe Penalties

If an athlete's personal sponsor were to violate these uncertain obligations in the Personal Sponsor Commitment, the USPOC will have the right to:

- 1) Terminate the agreement and require the sponsor to immediately cease using the athlete during the Olympic Games Period and remove all advertising materials;
- 2) Cancel all other Rule 40 permissions granted to that sponsor for any other athlete and require removal of all advertising; and
- 3) Prohibit the sponsor from obtaining Rule 40 permission for any athlete for the next two Olympic Games (2022 Winter Games in Beijing and 2024 Summer Games in Paris).

Given the investments that sponsors make in these campaigns, the financial implications of a breach could be disastrous.

FOR MORE INFORMATION

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