

Ambush marketing risks: Euro 2024 and Paris 2024

Mark Smith, Founder & CEO

6 June 2024



We are about to enjoy a particularly exciting summer of sport in Europe, with the Euro 2024 football tournament taking place in Germany from 14 June 2024 to 14 July 2024, the Olympic Games taking place in Paris from 26 July 2024 to 11 August 2024, and the Paralympic Games also taking place in Paris from 28 August 2024 to 8 September 2024.

These events are three of the largest in world sport and will attract huge international interest. The excitement here in the UK will no doubt be bolstered by both England and Scotland having qualified for Euro 2024, and Team GB having a number of high-profile athletes expected to win medals at the Olympics and Paralympics (a.k.a. “Paris 2024”), including Adam Peaty, Dina Asher-Smith, Katharina Johnson-Thompson, and Tom Daley. Given that Paris is only one hour ahead of British Summer Time, we should see UK TV audiences for Paris 2024 being maximised, with many of the

key finals taking place in prime time, in contrast to Rio 2016 or Tokyo 2020.

Official sponsors of these events, including Booking.com, Lidl, Unilever, and Qatar Airways for Euro 2024, and Airbnb, Samsung, Toyota, and Visa for Paris 2024, are undoubtedly looking forward to the lucrative marketing and PR opportunities that they will provide. Interestingly, Coca-Cola places such importance on partnering with major sporting events that it is an official sponsor of both Euro 2024 and Paris 2024!

Numerous non-sponsor brands are also likely to want to try to get in on the action. The term used to describe brands that try to directly or indirectly associate themselves with an event that they are not an official sponsor of is “ambush marketing”. However, there can be legal risks involved in such behaviour, so care must be taken accordingly.

Official sponsors pay huge sums of money to formally associate with major sporting events like Euro 2024 and Paris 2024, and it can be hugely frustrating for both them and the event organisers when non-sponsor brands engage in ambush marketing. The organisers of these particular events – the Union of European Football Associations (“UEFA”) for Euro 2024, and the International Olympic Committee (“IOC”) and International Paralympic Committee (“IPC”) for Paris 2024 – have of course run many previous editions, and as a result are highly experienced in dealing with the issue.

With that in mind, any businesses looking to engage in ambush marketing in relation to Euro 2024 or Paris 2024 should be very careful to ensure that they stay within the limits of the law, and do not for example commit trademark infringement or materially mislead the public. Otherwise, they may find

themselves on the receiving end of a regulator investigation or costly lawsuit!

Note that this article primarily focuses on UK laws and regulations, although similar issues are likely to arise in other countries too.

Registered trademarks

A number of registered trademarks relating to Euro 2024 are held by UEFA in the UK including UEFA EUROPEAN FOOTBALL CHAMPIONSHIP, THE EUROS, EURO 2024, and various figurative marks including the official Euro 2024 logo and several motifs relating to the different host cities. The tournament slogan, "United by football. Vereint im Herzen Europas", has also been trademarked, as has the tournament's official mascot, a cute cartoon teddy bear called *Albärt!*

On a similar note, the IOC and IPC hold a number of registered UK trademarks relevant to Paris 2024. These include THE OLYMPICS, OLYMPIAN, PARALYMPICS, PARA, and various figurative marks, including the Olympics and Paralympics symbols, and the official Paris 2024 logo.

Use by an ambush marketer of any of these registered trademarks, or the use of a similar mark, could potentially lead to a trademark infringement action.

Copyright

A number of event assets including logos, photographs, other official imagery, and video footage are likely to attract copyright protection. This could likely be relied upon in the event that a non-sponsor business used those assets in any of its activities without permission.

Design rights

Certain assets could also be protected by design rights, whether registered or unregistered, including mascots and logos. For example, it is noted that UEFA has registered UK designs for the Euro 2024 logo, various motifs relating to the host cities of the tournament, and the event mascot *Albärt* in a number of different poses.

Passing off

In addition, the event organisers may be able to bring an action under the tort of passing off. In order to do so successfully, they would need to establish that (1) the event in question has an established reputation or goodwill that accrues to the event organiser, (2) the ambush marketer has made a misrepresentation that they are associated with the event, and (3) the event organiser has suffered or is likely to suffer damage as a result. The misrepresentation referred to would typically be evidenced by demonstrating confusion amongst the public.



The Olympic Symbol etc. (Protection) Act 1995

The Olympic Symbol etc. (Protection) Act 1995 creates the "Olympics association right" and "Paralympics association right", which confer exclusive rights in relation to the use of the Olympic and Paralympics symbols, mottos, and certain protected words. These rights are exercisable by the British Olympic Association (the "BOA") and British Paralympic Association (the "BPA") respectively.

The Olympics symbol is famously comprised of five interlocking rings, while the Olympics motto is "Citius, altius, fortius", which means "Faster, Higher Stronger". The protected words in relation to the Olympics association right are Olympiad(s), Olympian(s), and Olympic(s). Any translations of the mottos or protected words are covered by the legislation too.

Subject to certain exceptions, a person infringes the Olympic association right if in the course of trade they use: (a) a representation of the Olympic symbol, the Olympic motto, or a protected word relating to the Olympics, or (b) a

representation of something so similar to the Olympic symbol or motto as to be likely to create in the public mind an association with it, or a word so similar to a protected word as to be likely to create in the public mind an association with the Olympic Games or the Olympic movement (in each case a "controlled representation").

The legislation sets out certain activities that will amount to using a controlled representation, which include affixing it to goods or their packaging, offering services under it, and using it in advertising. There are various exceptions to the rules, for example in relation to publishing or broadcasting reports about sporting or other events forming part of the Olympic Games, publishing or broadcasting information about the Olympic Games, or advertising such a publication or broadcast, as well as exemptions for rights that predate the legislation.

Furthermore, it is stated that a person does not infringe the Olympics association right by using a controlled representation in a context which is not likely to suggest an association between a person, product, or service and the Olympic Games or the Olympic movement. It is further clarified that a person does not suggest such an association only by making a statement which: (a) accords with honest practices in industrial or commercial matters, and (b) does not make promotional or other commercial use of a protected word by incorporating it in a context to which the Olympic Games and the Olympic movement are substantively irrelevant.

Equivalent provisions apply to the Paralympics association right. The Paralympics symbol protected by the legislation consists of three asymmetrical crescents, while the Paralympics motto is "Spirit in Motion". The protected words in relation to the Paralympics association right are Paralympiad(s), Paralympian(s), and Paralympic(s).

It is open to the BOA or BPA to bring a civil action in relation to infringement of the Olympics association right and Paralympics association right respectively. They can seek damages,

injunctions, and/or accounts of profits, amongst other remedies. It is also open to Trading Standards to bring an action in relation to various criminal offences that are set out in the legislation, including breaching the association rights in the context of advertising activities.



Consumer law and the CAP/BCAP Codes

Both the Consumer Protection from Unfair Trading Regulations 2008 (“CPUT Regs”) and the CAP and BCAP Codes, which are the self-regulatory codes that govern advertising in the UK, contain a number of rules around misleading advertising. Incidentally, the CPUT Regs are soon to be replaced by the Digital Markets, Competition and Consumers Act 2024, which contains similar provisions in relation to misleading advertising, though this will likely happen after both Euro 2024 and Paris 2024 have taken place.

Any suggestion in marketing materials that a brand has an official connection with an event when that is not the case will potentially be considered misleading. The overall impression of the ad will be taken into account, including any icons, imagery, and symbols used. Misleading marketing of this nature could result in an adverse Advertising Standards Authority (“ASA”) adjudication, or even action by Trading Standards.

Note that there are other rules in the CAP and BCAP Codes that should be taken into account when considering marketing in relation to Euro 2024 or Paris 2024. For example, while both will see nations pitted against each other, marketers should take care not to include offensive racial, cultural, or national stereotypes in their ads. Marketers of age-restricted products or services, such as alcohol and gambling, should consider whether any talent they

are working with or including in their ads might be problematic, given that footballers and athletes are often relatively young and may have significant appeal to children.

Ticketing terms and conditions

The standard terms and conditions for tickets to Euro 2024 and Paris 2024 feature extensive protections against ambush marketing. These include strict limitations on the transfer and resale of tickets, which can generally only be transferred via the official ticketing app and resold via official resale channels. There is a prohibition on tickets being offered as prizes, and a requirement that any photos and recordings taken by the ticketholder at the event will be for private use only.

In addition, specific rules intended to prevent ticketholders participating in ambush marketing stunts have been incorporated. For example, the standard terms applying to Euro 2024 tickets state that ticketholders shall not “exploit any marketing or promotional opportunities in relation to the Ticket(s)”, while those applying to Paris 2024 tickets state that ticketholders are not allowed to “orchestrate or participate to the propagation or dissemination of commercial messages which constitute ambush marketing activities”, amongst other relevant provisions.

Breach of the ticketing terms and conditions could result in the ticket being cancelled, the ticketholder being ejected from the venue, or even legal action.

One of the most infamous incidents of ambush marketing took place during a game at the FIFA World Cup in South Africa in 2010, when thirty-six (36) women who were sat together in the stands all wore identical orange outfits as part of a stunt by Dutch brewer Bavaria. Apparently, the block of tickets the women used was provided by football pundit Robbie Earle, who was sacked by ITV as a result. The women were thrown out of the stadium, and two of them were later charged under the Contravention of Merchandise Marks Act in relation to the incident. However,

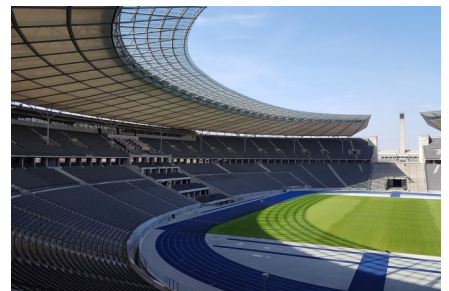
it was reported that FIFA and Bavaria later settled the dispute.

Do not forget players, athletes, and teams!

Players, athletes, and teams participating in Euro 2024 and Paris 2024 have official sponsors too, and will also potentially be able to rely on registered trademarks, copyright, design rights, and/or passing off to protect their assets and goodwill.

For example, the BOA holds registered trademarks for TEAM GB and the official Team GB logo, while the Football Association (the “FA”) holds registered trademarks for THREE LIONS and the official England logo.

Any marketing that misleadingly suggests an official association between a brand and particular player, athlete, or team where no such association exists could also potentially be attacked under consumer law and/or the CAP/BCAP Codes, just like creating a false association with Euro 2024 or Paris 2024.



Brands that are official sponsors of players, athletes, or teams will of course need to take care to ensure that they do not inadvertently suggest an official association with Euro 2024 or Paris 2024 rather than the player, athlete, or team they are sponsoring. They should also be very mindful of relevant rules that sponsored players, athletes, or teams may need to comply with.

A famous example of ambush marketing took place during a match at Euro 2012 when Danish striker Nicklas Bendtner lifted his shirt as he celebrated scoring a goal against Portugal to reveal Paddy Power branded underwear. UEFA fined him €100,000 for breaching rules that banned advertising on players’ kits during the tournament, which Paddy Power decided to pay on Bendtner’s

behalf. Bendtner was also banned for one World Cup qualifying match.

However, the most famous example of a rule that players or athletes must comply with that relates to marketing activities is undoubtedly Rule 40 of the Olympic Charter (“Rule 40”).



Rule 40

Rule 40 regulates how competitors, coaches, trainers, and officials (the “participants”) taking part in the Olympics can use, and allow their personal sponsors to use, their name and image in any advertising materials during a specific period, which for the Paris Olympics is 18 July 2024 – 13 August 2024 inclusive (the “Games Period”).

In short, any advertising by a participant sponsor during the Games Period is generally heavily restricted, and subject to pre-notification requirements. The restrictions will typically cover usage of a participant’s name, image, or performance in any kind of advertising, including but not limited to print, TV, radio, online, social media, in-app, and outdoor advertising, as well as PR activities such as personal appearances by the participant. Note that if a participant sponsor also happens to be a sponsor of the Olympics or a National Olympic Committee (“NOC”), or an official broadcast partner, then a different, more relaxed approach will apply.

The idea behind the restrictions is that they safeguard the Olympics funding model by protecting the exclusive rights of Olympic sponsors for a brief period. There is a similar rule in the IPC’s Paralympic Handbook that applies to participants at the Paralympics.

If the advertising in question is on a multi-territory basis, then the participant

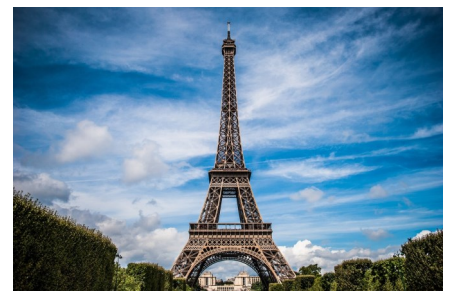
sponsor will be expected to engage with the IOC, which will generally need to be notified of any multi-territory advertising plans by 18 June 2024 through its advertising notification portal. Later notification is possible for advertising featuring participants who are selected for the Olympics after 18 June 2024. One of the exemptions available is for “generic advertising” which is defined as advertising where the only connection between the Olympic movement and the relevant advertising activity is the inclusion of the participant, the advertising has been in the market before 18 April 2024, and is planned to run consistently and not be materially escalated during the Games Period.

If the advertising will only be targeted at one territory – usually a specific country – then the participant sponsor should engage with the relevant NOC, which for the UK is the BOA, unless stipulated differently by the NOC. Advertising is regarded as targeted at a territory if: it (a) uses a participant who represents the NOC of that particular territory, and (b) is in the local language of that territory and/or in the case of paid media, published in media outlets targeted at that territory. Note that the NOCs have some flexibility in their implementation of Rule 40, and the position can vary considerably from country to country.

Guidance from the BOA states that sponsors of athletes and other participants will typically only be able to use the participant’s name, image, or performance in advertising during the Games Period if all of the following conditions are met: (a) they have obtained the prior consent of the participant, (b) the advertising is generic and does not contain any references to or intellectual property (e.g. logos or images) of Paris 2024, the Olympic movement, or Team GB, and (c) the brand has notified the BOA – and the advertising has been in-market – by 4 July 2024 (or by 18 July 2024 if the participant depicted is selected after 4 July 2024), and is run consistently in both nature and frequency during the Games Period.

Interestingly, it is specifically flagged that re-tweets of official Olympic or Team GB posts which may suggest a commercial association would be in breach of limb (b) above, and that congratulatory and good luck messages posted during the Games Period would also breach the guidance. Whilst the guidance indicates that there is more flexibility for athletes to post thank you messages to their sponsors, there are various maximum limits on what the BOA is willing to allow in this regard (e.g. one message for each personal sponsor per event). In addition, there are restrictions around the content of those messages (e.g. no Olympic branding or references and no endorsement of specific products or services).

If an advertiser is featuring a participant who is not a member of Team GB in a UK advert, then the BOA has indicated that approval of both the relevant NOC and the BOA will be required.



The BOA will consider exemptions to its guidelines on a case-by-case basis, which might for example cover where athletes are competing in other sporting events around the time of the Olympics, the advertising is of a charitable nature, or the brand can show that the usage proposed is in accordance with their “business as usual” marketing plans (e.g. “back to school” launches).

While it is ultimately the responsibility of participants to comply with Rule 40, clearly businesses working with them will want to avoid putting a participant in breach. Potential sanctions for the participant can include monetary penalties, and even removal of accreditation for Paris 2024 or disqualification. They are also likely to be required to seek the withdrawal or amendment of the advertising at issue,

which may lead to wasted costs and negative publicity.



Other potential risks

Finally, it is worth bearing in mind that the risks involved in ambush marketing campaigns can vary from country to country, including within Europe. For example, in Germany and France, where Euro 2024 and Paris 2024 will be held respectively, there are broad unfair competition laws that could potentially be invoked, which are not an option in the UK.

Other jurisdictions, including France, Germany, and the majority of US states, also offer broad protection to image rights, which are sometimes referred to as personality rights or the right of publicity. These rights allow individuals to more easily control the commercial use of their identity, such as their name, image, or likeness, and can for example be relevant to cases where an athlete's image is used in advertising without their consent. By contrast, in the UK the athlete would usually have to rely on the tort of passing off in such circumstances.

In addition, some overseas regulators may take a harder line with respect to enforcing consumer or other laws in this area. In April 2022, the Italian Competition Authority fined online retailer Zalando €100,000 in relation to a billboard ad it had displayed in a square in Rome during Euro 2020 – held in 2021 due to the COVID-19 pandemic – where UEFA had set up an official football village for the tournament. The billboard featured the text “Who will be the winner?” and “zalando”, flags for each of the teams competing in Euro 2020, and a white T-shirt featuring a Zalando logo. Zalando was not an official sponsor of Euro 2020, and was held to have violated Italian Law Decree No. 16/2020, which regulates ambush marketing.

What should businesses do?

Given the huge interest in Euro 2024 and Paris 2024 in the UK and around the world, we will likely see a number of examples of ambush marketing during the course of this summer. However, with the risk of potential legal issues on several fronts, non-sponsor brands should be wary of pushing the envelope too far with their marketing activities.

Following the below hints and tips should reduce the likelihood of problems occurring:

- Avoid using words that have been registered as trademarks such as THE EUROS, EURO 2024, THE OLYMPICS, and PARALYMPICS, as well as any other slogans, taglines, or phrases that are associated with Euro 2024 or Paris 2024.
- Do not use imagery or footage that may be protected by trademarks, copyright, or design rights, such as official logos, tournament trophies, mascots, or photos or videos of matches or events.
- Remember to take into account the Olympic Symbol (Protection) Act 1995 and avoid referring to the official Olympic or Paralympic symbols or mottos or the protected words, unless you are confident that your proposed use will benefit from an exception.
- Do not use colour schemes that are associated with Euro 2024 or Paris 2024, their organisers, or official sponsors.
- In addition to avoiding the suggestion of an official connection with Euro 2024 or Paris 2024, be careful not to suggest an official association with a particular player, athlete, or team where one does not exist, as this too can lead to legal issues.
- In the event you are a sponsor of a participant at Paris 2024, ensure that Rule 40 (or the similar rule for the Paralympics) is complied with, and that any deadlines set by the IOC, IPC, BOA, and/or other NOCs are met.

- Generic images of sports or references to watching them are unlikely to create problems in isolation, but the overall impression of the advertising should be considered.
- Ensure that your marketing team, including those managing your social media accounts, are briefed about the potential risks prior to Euro 2024 and Paris 2024.
- If you are running an international campaign, be aware that the legal risks involved may be different in other markets, and consider seeking input from local counsel.

Clearly ambush marketing is a complex area where there can be a fine line between mentioning or alluding to a particular event appropriately, and misleadingly creating the impression of an official association.



If you need advice about this area in general, or in relation to a specific ambush marketing concept or campaign, then you are welcome to get in touch by e-mailing me at mark.smith@purdysmith.com.

Mark Smith is the Founder & CEO of Purdy Smith, an exciting and dynamic boutique law firm based in London, England. Purdy Smith is recommended as a leading law firm in the Media & Entertainment: Advertising & Marketing category of The Legal 500 UK 2024. Mark is recommended as a “Leading Individual” in that category as well as being recommended in the equivalent category in Chambers UK 2024.