Economic Realities & Issues Olympic Athletes Encounter

Matthew Lane

Follow this and additional works at: https://via.library.depaul.edu/jslcp

Recommended Citation
Available at: https://via.library.depaul.edu/jslcp/vol8/iss2/2

This Symposium is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Sports Law by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, cmcclure@depaul.edu.
ECONOMIC REALITIES & ISSUES OLYMPIC ATHLETES ENCOUNTER

Matthew Lane*

Using the simplest definition, an “amateur athlete” is someone who does not get paid for the sport they participate in. Steve Prefontaine, a popular track and field athlete in the early 1970s, led a big fight against the AAU, railing against the fact that, if one wanted to participate in the Olympic Games, he or she had to be an “amateur” and could not take any money in endorsements. Amateurs could not get paid to compete. At one point, Prefontaine held the American record in every distance from 2,000 to 10,000 meters. He lived in a trailer with a roommate. This was the reality of an American Olympic athlete in 1972.

Changes resulted because of Steve Prefontaine and others. The Ted Stevens Olympic and Amateur Sports Act (the “Act”), which amended the Amateur Sports Act of 1978, has a different definition of what an amateur athlete is. An “amateur athlete” under the Act is simply an athlete that meets the eligibility requirements of the applicable national governing body for competing in the Olympic Games. If USA Basketball says an athlete is eligible, and that in turn meets with international standards, then that athlete is an “amateur.” Earning, or not earning, money has nothing to do with it. Today, many Olympic athletes are professionals.

One of the big things every Olympic athlete, who is trying to make a living, faces is attempting to earning money through endorsement contracts and prize money. Now the reality is that for Olympic sports athletes, the endorsements they can earn are significantly diluted by IOC rules. The first rule in the Olympic charters, rule 50, states, “[n]o form of advertising or other publicity shall be allowed in and above the stadia, venues and other competition areas which are considered as part of the Olympic sites.” Through this rule, the IOC seeks to

* Matthew E. Lane practices in the Business Law, Sports & Entertainment Law and Litigation Groups at Preti Flaherty. Prior to joining the firm, Mr. Lane was a professional runner, sponsored by Nike, and was a member of two U.S. national teams. As a collegiate athlete, he was an 11-time NCAA Division I All-American and the 2001 U.S. Track Coaches Association Athlete of the Year. This article was originally presented at the DePaul Journal of Sports Law & Contemporary Problems 2012 Symposium.
remove itself from any form of commercialization. The IOC controls sponsorship, including where sponsorships can appear, at all times. Athletes cannot have commercial logos in the wrong places. The IOC controls what goes on uniforms and where.

The IOC has what is called the TOP program, which is The Olympic Partner program. These are the select chosen sponsors that have the highest priority. There are other sponsor programs in which the Olympic sponsors get the right to advertise during the games. TOP companies have some restrictions. For example, they are restricted from advertising under rule 50. Thus, McDonalds, which is a TOP program sponsor, cannot simply put its logo wherever it wants in the stadiums or on the competition fields; it has to comply by IOC rules. Olympic sponsors get priority; most of the restrictions are on their competitors. These restrictions last 17-days or longer (the length of the Olympic Games), in certain instances, of complete lock-out of sponsorships that are not TOP program sponsors. One well-known TOP sponsor is Visa, which is the exclusive card of the Olympic Games; by contrast, a card provided by American Express, which is not a TOP sponsor, cannot be used to pay for anything at any Olympic venue. Only Visa is accepted.

In this context, ambush marketing comes into play. Ambush marketing is a company's intent to associate itself with an event without paying for such association. The evolution of ambush marketing has gone from jealousy to strategy; for example, a company like American Express would want to find a way to market itself at the Olympics. To do this, the company might put forth a campaign in which it tries to associate itself with the Olympics somehow, perhaps in an advertisement or by using a flash mob. Many companies now have some sort of ambush marketing strategy even though the practice is often frowned upon. Certainly, the IOC does not like it, but companies can get really close to the line.

The IOC has had to play defense with this. It can require that broadcasters offer official sponsors a right of refusal, that is, if an company wants to air an ad, the official sponsor can examine that ad and potentially reject it. The IOC has given additional rights to these TOP sponsors. The IOC now requires that the government of a country making a bid guarantee that legislation prohibiting ambush marketing be in place at the time of the Games. The London Olympic Games, via the London Olympic Games Act of 2006 ("London Act"), did just that. The London Act prohibits ambush marketing. It provides the governmental authority with enforcement power to shut these things down. In addition, the London Act went further than what the IOC
required. The governmental authority has specific lists. List A consists of words; if an entity used one or two of the words in combination, it was considered ambush marketing. Some of these words include “games,” “2012,” “London,” — they have the word “London” on the list, which is a big one, including “medal,” “sponsor,” “gold,” “silver,” and “bronze”. If, for example, an entity used the terms “games medals” together in an ad, then it is considered ambush marketing, even if it does not appear that it would on its face. A question arises as to whether, or to what extent, such legislation here in the United States would run afoul of First Amendment protections.

Consider a few examples. In 1992, when the Games were in Barcelona, American Express did an ad campaign. As a precursor, the campaign for Visa is “Visa. The only card accepted at the Olympic Games.” American Express, however, did an ad campaign in which it said, “You can use American Express in Barcelona.” It said, “You can use American Express in Spain.” That is all it said. Visitors were not prohibited from using American Express in Spain, just at Olympic venues. The company, however, could only suggest the former.

In Atlanta, Linford Christie, the British track star, wore Puma contact lenses in a press conference. His eyes were clearly the Puma logo. Another example was the 2010 Phelps land swimming ad where he is swimming in the pool then he breaks out of the pool and is swimming through a street, a parking lot, and a farm. A voice then says ‘Phelps, headed to where the action is this winter.’ A map of his trail appears, he is going right across Washington State. Clearly, he is heading to where the action is this winter, Vancouver. Then it was ‘on to London.’ Subway was making the association between the Olympics and Phelps and promoting during the games.

There can be a great deal of tension between the various sponsors. The IOC has its TOP sponsors and other associations. The local organizing committee in this case, London, also has its sponsors. The United States Olympic committee has its own sponsors. Below the U.S. Olympic committee in the U.S. are the national governing bodies for each sport. Each has its own sponsors. At the very bottom of the ladder are athletes, who may have their own sponsors and affiliation. Many of these groups have sponsors that overlap, but many sponsors may be direct competitors of each other.

Michael Phelps is probably one of the few athletes making a lot of money through endorsements. During the Olympic Games, in London 2012, the 14-time gold medalist will have sponsorships with companies like Subway. Subway, however, will not be allowed to run an ad during the Olympic Games, which is the most valuable time for
Michael Phelps. It is the most valuable time for any Olympic athlete. Phelps is valuable away from the Olympics because he is immensely popular and his athletic performances transcend sport and the Olympic Games. But imagine those athletes who are not Michael Phelps; someone who has no hope of a medal. This is his or her Olympic moment, the most marketable time ever. This athlete is never more marketable before or after. The reality, then, is that restrictions have the effect of reducing the amount any one company is willing to spend to endorse such athletes—they cannot take full advantage of the Olympic advertising space—even in their own local media market back home.

What is left for the athletes? Can a track and field athlete place a logo anywhere on his body—just put logos all over? That raises a sort of “NASCAR” question; Dale Earnhardt, Jr. had many logos on his racecar. Nick Simmons, a track and field star, has been the U.S. champion at 800 meters for several years now. Nick placed advertising space on his arm for sale on eBay and sold that space for $11,000. Nick, however, will have to cover the logo in any IAAF or USOC sanctioned event. Race executives at the New York City Marathon used rubbing alcohol to remove a Picky Bars logo from runner Lauren Fleshman’s arm. How will Olympic officials respond at the first and second offense? They could disqualify the athlete, there is nothing prohibiting them from doing so.

Yet another example is Mo Farah from Great Britain who is the world silver medalist in 10,000 meters and World Champion at 5,000 meters. He is one of the big medal hopes for the British. Mo has to wear the jersey for Great Britain’s Olympic and world teams. Adidas sponsors Great Britain’s teams and its logo is on the jerseys. Mo, however, has a Nike sponsorship. During his most iconic moment to date, a World Championship at 5,000 meters, his sponsor’s logo was nowhere to be seen (except the shoes).

The International Association of Athletics Federations (IAAF) has strict uniform rules. It regulates logo space and size on jerseys. It sets specified rules regarding placement of logos for club and individual sponsorship. In January 2012, the IAAF changed its rule to allow athletes to put a second commercial logo on their jerseys. Thus, athletes could replace their club logo with a commercial sponsor. This was seen as a significant athlete-friendly move by an international federation often accused on exactly the opposite. This rule, however, has caused significant issues between the athletes and USA Track and Field. USA Track and Field’s rules are slightly different, so it has caused some confusion as to what uniform rules are going to be en-
forced, which actually led to uniform rules being suspended at the USA indoor championships. Going forward, there is some confusion as to what the uniform rules will be.

But, who really controls that second jersey spot the IAAF just opened to athletes? Is it the IAAF? Is it USA Track and Field? In reality, it is the sponsors that ultimately control the jerseys. Sponsors like Nike value exclusivity over everything. The endorsement contracts that track and field athletes sign have exclusivity clauses. In exchange for sponsorship money, sponsors are able to buy space on athletes' jerseys. The economic reality is that the primary manufacturer or sponsor controls the spaces on jerseys. For athletes with shoe contracts, the IAAF's rule change may not be worth anything.

Other primary sponsors in track and field include "bib sponsors." One of the reasons the IAAF strongly enforces its uniform rules is because they are attempting to sell bib sponsorship. TDK, for example, pays large sums of money to own the sponsor space on the competitors numbers pins to the front of the athletes' jerseys. This sponsorship is so valuable because it is the only sponsorship in track and field that can be sold with a guarantee that the picture of the person winning will be wearing a bib, and they will be wearing a bib showing that logo. It is by far the most valuable logo in track and field. This is why the IAAF strongly restricts the spaces that can be sold because they do not want dilute that sponsorship. Track and field is a sport that is on a very delicate balance. It is not exactly a high revenue sport, nor is it a high revenue endeavor for shoe companies or sports agents. Companies like Nike want to be major players in the Olympic Games and so sponsoring athletes in track and field, a marquee event at the Games, is part of an overall Olympic marketing strategy. I would argue though that it is the association with events and the sport itself that is of far more value. Similarly, some major sports agencies may only represent track and field athletes because of the sport's status in the Olympic space, not because the athletes generate large revunes.

Thus, for the sport to survive, the bib sponsorship is hugely important. Olympic athletes are paid primarily through endorsements and prize money. Where does the prize money come from? For example, Jamaica's relay team won $100,000 for setting a world record, which seems like a rather paltry sum for such a feat. Most of the prize money paid out comes from sponsorships - primarily TDK's bib sponsorship. Last year, IAAF paid out over $70 million in prize money. Thus, the idea that the athletes would want to cover themselves with logos to the detriment and dilution of the primary sponsors is a ques-
tion open for debate. At the end of the day, the restrictions and rules that some rail against so strongly may be the very things that make it possible to be a professional athlete in a sport driven by endorsements and competition results; indeed, they may be all that is keeping sports like track and field alive.