

Commercial rights management in post-legislative Olympic sponsorship

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Abstract

Purpose – The purpose of this paper is to explore the development of preventative counter-ambush marketing initiatives and rights protection strategies, providing an historical view of rights management and the International Olympic Committee's sponsorship protection initiatives through ambush marketing's formative years.

Design/methodology/approach – In examining the antecedents and implications of the Canadian Olympic Committee's (COC) forward-thinking approach to ambush marketing protection, and to explore the development of preventative counter-ambush initiatives, an historical examination of IOC and COC policies and protocols regarding ambushing and sponsorship protection over a 30-year period was undertaken, informing the development of a proposed model of proactive commercial rights management.

Findings – The findings indicate that a progressive shift in the counter-ambush activities of major commercial rights holders may be underway: increasingly, the COC has stressed education and communication as key components of their commercial rights protection strategy, in lieu of enforcing the legal protection provided them by the Olympic and Paralympic Marks Act of 2007. The resultant commercial rights management model proposed reflects this proactive approach, and illustrates the need for events and sponsorship stakeholders to Anticipate, (Re)Act and Advocate.

Originality/value – The study offers a contemporary perspective into counter-ambush strategies within the context of the COC's brand protection measures and industry practice. The proactive approach to commercial rights management explored represents a significant step in ambush marketing prevention on the part of the COC.

Keywords Sponsorship, Ambush marketing, Event marketing, Commercial rights management

Paper type Research paper

1. Introduction

The 2014 Sochi Winter Olympic Games represented a watershed moment in commercial rights management and sponsorship protection. Absent the legislative protection afforded the Canadian Olympic Committee (COC) for the 2010 Vancouver Games, Canadian Olympic marketing officials were confronted with two high profile examples of non-sponsor marketing, illustrative of the challenges posed by non-sponsor marketing to events and of a emergent new approach to rights protection strategy.

In November 2013, British outerwear brand The North Face released a line of winter apparel named "Village Wear" which featured international insignia, overt references to Russia and the year 2014 (including the branding RU/14), and accompanying retailer documentation which detailed the line's Olympic connections and the intentions of the brand (Krashinsky, 2014, 2016; McKelvey, 2016). At the brand's flagship retail location in Toronto, a North Face employee announced the arrival of the "Village Wear" line on sidewalk chalkboard alongside a drawing of the Olympic Rings, used without the COC's or the International Olympic Committee's (IOC) approval (McKelvey, 2016).



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The same year, a more subtle marketing campaign by American brewery Budweiser featured an extension of the brand's National Hockey League and Hockey Night in Canada-themed "Red Light" promotion, targeting the Olympic ice hockey competition. The Budweiser Red Light campaign offered fans the opportunity to buy or win Wi-Fi enabled goal lights which illuminate when the owner's favourite team scores (Martin, 2014). The 2014 Olympic-themed promotion included a national advertising campaign playing on Olympic hockey imagery and Russian visual and linguistic cues, and included the flying of a branded red light-shaped zeppelin in major Canadian metropolitan centres, directly competing with official Hockey Canada and COC sponsors Molson Canadian (Infantry, 2014).

The contrasting responses to these two non-sponsor campaigns by the COC offer a valuable case study for commercial rights management practices. In recent years, the IOC and other major commercial rights holders have consistently stressed legislative protection and enhanced intellectual property rights enforcement in response to non-sponsor marketing efforts (James and Osborn, 2016; McKelvey and Grady, 2008; Scassa, 2011). However, following the expiration of Bill C-47 Olympic and Paralympic Marks Act (2007) upon completion of the 2010 Vancouver Winter Olympic Games, the COC and Canadian Olympic sponsors now operate in a post-legislative sponsorship environment. As such, the COC's right management efforts in 2014 offer insight into sponsorship protection initiatives for sponsors and rights holders in the absence of ambush-specific legislation; the organisation has instead favoured education and corporate community engagement over legislative enforcement and interventionism (Ellis *et al.*, 2016), a potentially valuable approach to ambush marketing prevention moving forward.

This study seeks to examine the antecedents and implications of the COC's approach to commercial rights management, and to explore the development of preventative counter-ambush marketing initiatives. As such, the present research endeavours to address two central research questions:

- RQ1. To what extent have sponsorship development and early counter-ambush marketing tactics informed contemporary commercial rights management practices?
- RQ2. What preventative counter-ambush marketing measures are available to rights holders?

In taking a multi-faceted, longitudinal perspective, an historical examination of IOC and COC policies and protocols regarding ambushing and sponsorship protection over a 30-year period is presented, providing the basis for a proposed model of commercial rights management. This represents a significant step towards better understanding preventative counter-ambush initiatives, and the role *ex ante* sponsorship protection efforts may play in limiting the efforts and effects of ambush marketers, in lieu of existing *ex post facto* counter measures. The study's findings contribute to both the theoretical and practical understandings of ambush marketing and sponsorship protection, and provide a framework upon which to build future research.

2. Theoretical framework

Ambush marketing today represents a significant consideration for sponsorship stakeholders. Defined as "the incursive, obtrusive or associative activities of a brand that yields a range of benefits similar or comparable to those typically achieved by brands that have formal, contractual sponsorship agreements with events" (Burton and Chadwick, 2018, p. 289), ambushing offers brands an alternative means of capitalising on the marketing value of sport and an opportunity to take advantage of the awareness, attention and consumer goodwill typically sought by official sponsors, without an official or authorised association with the primary rights holders (Chadwick and Burton, 2011). Such efforts are of concern for sponsors and events alike: ambush marketing has long been theorised to undermine and potentially

devalue sponsorship by cluttering the marketing environment around sporting events and diminishing the effectiveness of official sponsor marketing efforts (McAuley and Sutton, 1999; Payne, 1998, 2005). The protection of sponsors – and defense against ambush marketing – has therefore become a critical factor in sponsorship relations, and an increasingly important and prominent consideration in sponsorship research.

Historically, ambush research has been driven by a view of ambushing as a potentially detrimental or predatory activity (Meenaghan, 1994; Sandler and Shani, 1989). Whilst more recent studies have emphasised a more strategic and associative perspective of ambush marketing, acknowledging the more legitimised and opportunistic form of ambushing which has emerged over time (e.g. Burton and Chadwick, 2018; Chadwick and Burton, 2011), early conceptualisations of ambushing as a form of parasitic marketing have permeated much of ambush marketing research and sponsorship management practice. Key scholarly considerations reflecting this pejorative view have consequently dominated the extant research, including investigations into the legality of ambush campaigns (McKelvey, 2006; McKelvey and Grady, 2008; Scassa, 2011; Townley *et al.*, 1998), the moral or ethical propriety of ambushing (O'Sullivan and Murphy, 1998; Payne, 1998) and the cognitive and affective implications of ambush messaging for consumers (Humphreys *et al.*, 2010; McDaniel and Kinney, 1998; Meenaghan, 1998; Sandler and Shani, 1989).

This view of ambushing as a threat to sponsorship is perhaps no more evident than in the persistent suggestion and investigation of potential means of protecting official sponsorship rights, or preventing ambush marketing, throughout ambush scholarship. Researchers have sought to indemnify sponsors and events through a variety of means, including myriad legal, marketing and legislative counter-ambush measures (Crompton, 2004; McKelvey and Grady, 2008; Meenaghan, 1994). Burton and Chadwick (2009) categorised those counter-ambush measures proposed into two broad areas: reactive, *ex post facto* activities, intended to retroactively punish ambushers or seek recourse for commercial damages to sponsors and event sponsorship programmes; and proactive counter-ambush initiatives, employed by events to limit or prevent ambush opportunities. Although the measures proposed throughout the literature offer insight into the development of sponsorship protection tactics over time, the tactics discussed and employed in practice have enjoyed limited success in preventing ambush marketing proliferation (Burton and Chadwick, 2009).

2.1 Reactive counter-ambush measures

Amongst the earliest sponsorship protection initiatives employed a strong emphasis on reactionary measures is apparent. Perhaps, most visible of those early reactive practices was the use of public relations and media sentiment to denigrate ambush marketers and attempt to curry favour with consumers, a tactic commonly referred to as “name and shame”. Such efforts relied on consumers upholding an ethical response to ambushing in line with those allegations made by rights holders in the 1980s and 1990s, who denounced ambushers as seeking to confuse fans as to the identity of official sponsors, or to attack and parasitise official sponsors’ associations (Mazodier *et al.*, 2012).

This tactic has ultimately proven unsuccessful, however; consumer views regarding the ethics of ambushing have historically been mixed, and most directly tied to familiarity with event sponsors and consumer interest or involvement in events (Lyberger and McCarthy, 2001; MacIntosh *et al.*, 2012; Mazodier *et al.*, 2012; McKelvey *et al.*, 2012; Portlock and Rose, 2009; Sandler and Shani, 1993; Shani and Sandler, 1998). Rather, the additional media coverage granted to the ambusher by such public relations tactics has merely succeeded in magnifying the ambush campaigns and providing the ambushing brand additional media attention and focus.

More significant in reactive counter-ambushing has been an emphasis on enforcing events’ intellectual property rights and the pursuit of legal remedies. However, those cases

involving the illicit use of protected marks or copyrighted material have most commonly implicated smaller, local businesses attempting to capitalise on the presence of major events (Burton and Chadwick, 2009), and have posed little concern for sponsors or rights holders. By contrast, the success of legal enforcement in preventing larger-scale ambush activities has historically been limited (Hoek and Gendall, 2002); past court rulings have typically favoured ambushers in those few cases to be argued in court, due largely to the absence of direct intellectual property rights infringements (Coulson, 2004; Crompton, 2004; Kendall and Curthoys, 2001).

The precision and care taken by ambushers with respect to intellectual property rights has instead led to suggestions within ambush research that events may be more successful in alleging misappropriation of goodwill – or in common law, passing-off – and in seeking recourse for unfair competition (Retsky, 1996; Scassa, 2011). Passing-off, commonly defined as the act of selling goods or providing services under the intended assumption of connection with another organisation, provides the most directly related legal construct to ambush marketing. However, the plaintiff must successfully argue that the efforts of the ambush marketer unlawfully or illegitimately misguided consumers by misrepresenting an association and incurring damages to the rightful property (Coulson, 2004). Ellis, Scassa and Séguin (2011) noted that efforts to allege misappropriation are likely to enjoy limited success, as ambushers typically avoid misrepresentation of its wares as those of another, sponsoring brand and instead endeavour to leverage their own brands against the marketing value of an event. This is an important distinction in passing-off law: rather than potentially confusing consumers as to who owns or markets a particular good or service, as would be the case in passing-off, ambush marketers align their brands with sponsored events, activities typically outside the parameters of misappropriation laws.

Ultimately, the reactive tactics employed by rights holders have offered little protection from ambush marketers. Given the short timeframes during which most sporting events take place, and the often quick, timely campaigns utilised by ambushers to maximise their association with an event, lengthy legal proceedings and *ex post facto* public relations campaigns provide little protection for sponsors. Moreover, ambush marketing's evolution and proliferation suggests that such measures have had little effect in dissuading ambushing brands from engaging in event-associated or targeted marketing campaigns.

2.2 Proactive counter-ambush measures

As such, commercial rights holders have increasingly adopted more proactive, marketing-oriented counter-ambush measures in place of less effective reactionary tactics (Farrelly *et al.*, 2005; Séguin and O'Reilly, 2008). Amongst those pre-emptive protectionist initiatives implemented have been the implementation of marketing exclusion zones around event host sites and stadia, the inclusion of improved marketing media and leveraging opportunities in sponsorship contracts, and enhanced on-site brand protection policing in and around events (Burton and Chadwick, 2009). Organisations such as the Union of European Football Associations have had success incorporating marketing inventory such as broadcast advertising in their sponsorship contracts, obliging sponsors to leverage their partnerships during telecasts or offering sponsors first right of refusal on advertising inventory, and blocking-out ambushers from potentially valuable marketing time (Mazodier and Quester, 2008; McKelvey, 2000).

Moreover, proactive changes in sport law have seen important developments in counter-ambush strategy. Rights holders have initiated advances in event ticketing regulations and re-distribution, enacted stricter enforcement for on-site fan conduct and involvement in marketing campaigns and incorporated enhanced contractual terminology in sponsorship relations to more clearly assign and communicate the responsibilities of both parties to

monitor and protect against ambushing (McKelvey, 2003; McKelvey and Grady, 2008). Additional restrictions on the marketing activities of participating athletes, teams, nations and sports federations during competition have similarly been included in event marketing programmes and contracts (McKelvey and Grady, 2008; Townley *et al.*, 1998), providing greater protection for sponsors and eliminating potential or known ambush media and opportunities for non-sponsors to exploit.

More prominent, however, has been the enactment and enforcement of anti-ambush marketing legislation in event host countries. The targeted use of trademark and intellectual property rights legislation as a means of deterring and prosecuting ambush marketers began with the Australian Government's adoption of the Sydney 2000 Games (Indicia and Images) Protection Act in 1996 as protection for the 2000 Summer Olympics Games (Kendall and Curthoys, 2001). Sydney organisers and the Australian Government sought to reinforce existing intellectual property rights protections for the 2000 Games and Olympic sponsors in order to limit potential ambush opportunities (Luck, 1998; Townley *et al.*, 1998). Whilst the legislation enacted did little to dissuade major international instances of ambushing (Vassallo *et al.*, 2005), the legislation was well received by Olympic officials and sponsors and has since become a mandatory component of any Olympic host city's bid process.

In the wake of the Sydney Games, the remit of ambush legislations has increasingly widened over time, drawing on and adapting from previous events and ambush campaigns (James and Osborn, 2016). The London Olympic and Paralympic Games Act (2006), for example, included specific provisions governing associative advertising termed the "London Olympic Association Right", which prohibited the use of sporting imagery and terminology during the Games period (James and Osborn, 2016; Scassa, 2011).

The expansion of event-specific ambush legislation to this extent, however, has inspired significant debate and concern amongst citizens, businesses, event stakeholders and the academic community (James and Osborn, 2016; McKelvey and Longley, 2015; Scassa, 2011). The legal and legislative measures enacted have raised concerns over human rights infringements and anti-competitive practices (Louw, 2012), raising doubts over the ethical practices of rights protection. Restrictions imposed on spectators entering venues in South Africa at the 2003 Cricket World Cup, for example, which banned primary school students from bringing non-sponsor beverages and wearing branded t-shirts into the stadium (Kelso, 2003), and legal action which threatened local restaurants for perceived ambush efforts in Canada in advance of the 2010 Winter Olympics (Hume, 2004), have brought attention to the draconian measures in place, and highlighted the rigour with which such means are enforced to the potential detriment of spectators and local businesses.

2.3 Progressing ambush marketing preventative measures

Ultimately, in spite of the advances made in proactive counter-ambush marketing efforts, such tactics have been only moderately effective. Although proactive counter-ambush measures have been intended to limit ambush opportunities and to strengthen sponsors' connection to events, ambushers have consistently identified and exploited new, unregulated opportunities and have successfully circumvented the restrictions created (Burton and Chadwick, 2009). Events have in turn increasingly depended on legislative protection and legal enforcement, with little consideration of their true impact or effectiveness.

Most recently, ambush scholars have explored the value of educating consumers, commercial partners and potential ambush marketers, as to the rights owned and controlled by events and properties around major events and the opportunities and risks available to non-sponsors in activating around sports properties. Ellis, Gauthier and Séguin (2011) highlighted the value of ambush legislation as a communications tool for events in establishing and relating their intellectual property rights. Koenigstorfer and Uhrich (2017) likewise explored that further the proactive role public relations tactics may play in

sponsorship protection, proposing the use of “counter-ambush communications”, comprising of the traditional “name and shame” ethical tactics of the 1990s and more importantly, educational and humour-based responses on the part of rights holders and sponsors. The Fédération Internationale de Football Association (FIFA), amongst others, has embraced such a proactive communications-based approach, following widely publicised and criticised efforts to curb non-sponsor marketing activities by brands such as Bavaria and Beats By Dre (Chanavat *et al.*, 2017).

Unfortunately, there remains a need for greater investigation into practical and viable counter-ambush measures for events in the extant ambush and sponsorship literature. Ambush marketers have consistently demonstrated an ability to circumvent sponsorship protection mechanisms and regulatory frameworks, evolving over time into a more creative, innovative and opportunistic form of associative event marketing (Chadwick *et al.*, 2016). The ambush literature has offered a number of recommendations for sponsors and events to better limit ambush marketing or mitigate its effects; however, those suggestions made by scholars, and counter-ambush measures practiced by commercial rights managers, have yet to be evaluated in any depth in order to better ascertain their value and effectiveness. Moreover, ambush marketing research – and those measures proposed by scholars to protect official sponsors – continues to uphold and maintain ethical biases founded upon the IOC’s earliest conceptualisations of ambush marketing and initial tactics employed to combat offending campaigns (Burton and Bradish, 2018; Nufer, 2016). The continued reliance on ethically based legislation and intellectual property rights protections risk consumer and commercial backlash (Louw, 2012; McKelvey and Longley, 2015), and have to date proven unsuccessful in restricting ambush marketers’ efforts.

As such, this study seeks to explore the potential for proactive sponsorship management and ambush marketing education as alternatives to the existing counter-ambush measures in place. Recent advances in counter-ambush communications and legislation signify the need and possibility for a more proactive approach to ambush marketing prevention and protection. A more forward-thinking, preventative approach to sponsorship protection is needed in order to better safeguard sponsors’ investments and activations, and to more effectively limit the opportunities and media available to ambush marketers. This need is further magnified by advances in social media and digital marketing, which have given rise to new forms of “social” ambushing and have further complicated the protection of sponsors and prevention of ambush marketing for major events rights holders (Chanavat and Desbordes, 2014).

3. Methodology

This study examines sponsorship protection within the context of the Canadian post-legislative environment, offering a preliminary investigation into the development and employment of preventative counter-ambush initiatives. The research comprised two phases, intended to ground the study in industry practice and to explore in-depth the evolution of counter-ambush strategies employed by commercial rights holders internationally. The methods employed took a constructivist, exploratory perspective (Yin, 2009), drawing upon IOC and COC rights documentation and Games records. The examples of the IOC and COC provided a valuable case through which to explore the antecedents and outcomes of ambush marketing prevention and commercial rights management development, affording the study depth and real-world context (Yin, 2009).

3.1 Data collection

Archival materials from the IOC’s Library and Olympic Studies Centre provided the principal source of documentation for Phase 1 of the research. Documents pertaining to Olympic sponsorship, marketing, bid procedures and granting, Games marketing

preparation and Games delivery were used to collect the data, whereupon a content analysis of the IOC's internal records was undertaken. This extensive content analysis provided a comprehensive review of past and current counter-ambush practices internationally, and contributed to an historical, holistic review of the protectionist practices employed at the highest levels of sport. The documentation analysed built upon the theoretical view of counter-ambush practices by providing added detail and context to the regulations and requirements set by the IOC for potential Olympic host cities and nations. This depth and breadth of content provided considerable insight and clarity into *RQ1*, regarding the evolution and impact of sponsorship developments and early counter-ambushing tactics.

Phase 2 consisted of a comprehensive examination of the COC's present policies, strategies and documentation regarding non-sponsor marketing. This analysis was intended to better assess the potential for and implications of preventative right protection efforts, as identified in *RQ2*. The example set by the COC offered unique insight into commercial rights management and brand protection strategy in a post-legislative environment. Whilst the COC retained a number of exceptional protections afforded to them by the OPMA – such as Section 9 Official Marks status under Canadian trademark law – the COC has nevertheless operated post-Vancouver 2010 without ambush-specific legislation following its expiration on 31 December 2010 (Mackin, 2010). Succeeding Olympics in London in 2012 and Sochi in 2014 inspired considerable commercial appeal in Canada, including notable national-level non-sponsor campaigns by the likes of Budweiser, The North Face and Roots Canada. However, without the legislative protection afforded for the 2010 Games, the COC was forced to identify new means of protecting their commercial partners and restricting non-sponsor marketing activities.

Working in collaboration with members of the COC's commercial rights management unit, this second phase of data collection afforded a look into the counter-ambush measures employed by the COC. Emphasis was placed on the COC's practices established for and immediately following the 2010 Vancouver Winter Olympic Games, including documentation pertaining to the COC's proprietary commercial rights management case assessment form, brand use guidelines and case management files.

In total, approximately 2,700 pages of IOC and COC rights management documentation, IOC archival files, memorandums, marketing agreements and confidential Games documents were analysed. Given the Olympic Library's embargo on confidential documentation (20 years for marketing archives, 30 years for executive board documents), the materials collected from the Olympic libraries covered until 1994 and 1984, respectively. These years were important for consideration: Olympic marketing and sponsorship documentation covering the years 1980–1994 ensured the inclusion of the developmental era of contemporary commercial sponsorship practices. These formative years saw substantial changes made to sponsorship sales and delivery for the 1984 Los Angeles Summer Olympic Games, and the enactment of the TOP sponsorship programme in 1985. This period equally covered the preparations for the third iteration of TOP between 1993 and 1996, and importantly, the early development of counter-ambush measures by the IOC.

3.2 Data analysis

Content analysis of the IOC and COC archival material and internal marketing and sponsorship documentation was conducted manually, due to the format of the materials examined and the confidential nature of the contents. Moreover, due to the confidential nature of the files collected and examined from the IOC, a single-coder manual analysis was determined by the research team to be the most efficient approach. In conducting the analysis, a three-stage coding procedure was undertaken. First, an initial open coding of the

data was guided by concepts and constructs identified within the academic literature concerning rights management and protection (cf. Burton and Chadwick, 2009; McKelvey and Grady, 2008), counter-ambush practices and sponsor-sponsee relations. Legal machinations, legislative enactment and enforcement, on-site fan and athlete marketing regulations, and sponsor responsibilities and allowances were examined and explored throughout this stage, in an effort to determine IOC central rights management practices and their development. Throughout this preliminary analysis, data were assigned to a primary open code (e.g. legal, legislation and contracts), or contributed to the development of a new code (e.g. awareness and National Olympic Committee (NOC) conflict) (Miles and Huberman, 1994). Constant comparison throughout this stage of analysis enabled the research team to identify and create new constructs, as well as to assess and expand upon relationships between variables (Creswell, 2003).

Upon completion of this open coding phase, axial coding was conducted in an effort to identify common patterns and relationships within the data (Miles and Huberman, 1994). Open codes were reconciled and collated across the complete data set, establishing commonalities and links between the historical records and accounts of IOC and official Games sponsorship and ambush marketing tactics, and those of the COC. Central constructs such as the legal terminology employed by representatives of the IOC and International Sport and Leisure (ISL) – the IOC's marketing agency during this period – which discussed and attempted to deter ambush marketing (indemnification), the internal discourse from IOC stakeholders and sponsors regarding rights, responsibilities and protections (encumbrance), began to emerge. This axial coding process further afforded the opportunity to establish a timeline of events within Olympic sponsorship management and sponsorship contract development between the IOC and its partners, the evolution of TOP sponsorship programme and the evolution of ambush marketing prevention or interventionism.

Finally, selective coding of the data was undertaken, in order to refine the data into a series of conceptual categories which described the concepts and constructs identified through the open and axial phases. This final coding of the data re-examined the relationships and connections between constructs, wherein legal indemnification, activation and education emerged as central to preventative counter-ambush activities. The resultant analysis provided an important measure of reflection, contrasting past sponsorship protection activities as uncovered throughout the IOC's documentation and policies with the COC's more contemporary and forward-thinking approach to ambush marketing prevention and corporate community engagement.

4. Discussion

The data revealed a number of insights into the development of sponsorship protections and rights management activities over the first decade of ambush marketing's history. The IOC documents examined illustrated and contextualised many of the rights management and counter-ambush practices which today remain commonplace and fundamental to sponsorship protection. Similar to McKelvey and Grady's (2008) analysis of right protection tactics, the enactment and enforcement of legal protections and strengthened on-site policing emerged over the time period studied and continue to be central to contemporary practice. Likewise, the foundations for event-specific ambush legislation and enhanced, extraordinary protections afforded to the IOC in host countries are manifested through the IOC's approach to ambush marketing. These predominantly interventionist, legal mechanisms, however, appear to have made way for a more proactive response on the part of the COC; despite benefiting from similar legislative protections for the 2010 Vancouver Winter Olympics, the example set by the COC in a post-legislative Games environment suggests greater opportunity for prevention is possible.

4.1 *Mapping commercial rights management history*

Many of the developments apparent in the IOC's rights management policies in ambushing's early years illustrate a reluctant move away from predominantly intellectual property rights-focused tactics, towards more marketing-led and management-led protective initiatives. The data revealed that the approach to rights protection fostered by the IOC through the first two cycles of the TOP programme strongly favoured legal protections against ambushing, rather than market-focused remedies intended to prevent or restrict non-sponsor marketing opportunities. Foremost within the IOC's archival materials were major advances in the sophistication of sponsor contracts, and resultant changes in the relationship between sponsors and the IOC. It is notable that through the first TOP sponsorship quadrennial cycle (1985–1988), zero mention of ambush marketing or competitive marketing practices appeared in any IOC documentation or internal messaging. The only rights protection initiatives included in IOC sponsorship contracts stipulated the procedures incumbent on both organisers and sponsors in the event of intellectual property rights infringements encroaching on a sponsor's market exclusivity. The first mention of "ambush marketing" came on 30 June 1989, in a correspondence between the IOC and Coca-Cola regarding potential market challenges to rights protection. This cognisance of ambushing, however, had seemingly little impact on sponsorship practices or relations through the early years of the TOP Programme, as rights responsibilities and protection measures were scarce. Indeed, evidence of the IOC's awareness of ambushing, and the perceived threat posed to their commercial partners, only appeared in the early stages of TOP's second cycle (1989–1992), and the planning for the 1992 Albertville and Barcelona Games.

TOP II in turn saw important developments in the IOC's rights management, including the explicit acknowledge of the perceived threat posed by ambushers internally amongst Olympic stakeholders, and the overt communication amongst sponsorship partners regarding the need for greater Games officials' involvement in confronting the challenges posed. Amongst the changes enacted for the staging of the 1992 Games included on-site policing of official marks usage and brand infringements at Olympic sites, and increased human resources drafted in by the IOC and local organisers to assist in the legal defence against alleged ambushers and merchandise counterfeiters. ISL and the IOC engaged in active monitoring and cataloguing of ambush marketing cases internationally during the inter-Games period and throughout the 1992 Games, demonstrating a growing awareness and appreciation of the activities of non-sponsors around the Games. Such changes reflected the IOC's increased awareness and appreciation of the presence and potential effects of ambush marketing around the event. It is notable, however, that the TOP II sponsorship contracts contained no mention of rights responsibilities incumbent on the IOC. Rather, TOP II sponsorship contracts described the need for sponsors to protect the IOC's marks and ensure fair and responsible usage, and overlooked any assumed responsibility on the IOC's part to protect their sponsors from ambush marketers.

In this respect, the IOC and ISL's approach to rights protection was largely inward facing, and placed significant emphasis on legal protections – namely, the immediate distribution of cease and desist letters to companies perceived to be engaging in ambush activities around the Olympic Games, regardless of whether any intellectual property infringement had been committed, or the presence of legitimate ties to the events or participating athletes, federations or NOCs on the part of the implicated brand.

Perhaps most significant, beginning in 1991 evidence suggests that IOC marketing executive Michael Payne pushed for greater engagement and communication between Olympic officials, ISL and TOP sponsors, in order to educate partnering organisations on the marketing opportunities available to them, as well as the potential challenges faced due to ambushing. Throughout the IOC's preparations for the third TOP Programme (1993–1996),

Payne was vocal in advocating for increased dialogue with the corporate community, and improved communication with Olympic Games Organising Committees (OCOGs), NOCs, and sponsors and non-sponsors alike, regarding the importance of Olympic sponsorship and the purported perils of ambush marketing. Indeed, throughout the IOC's development of TOP between its first three iterations, a progressive evolution in practices and protections is apparent in this respect (see Table I).

The IOC's experiences through the first three iterations of TOP illustrate the complications faced in approving and facilitating sponsorship activation efforts for rights owners. Both Albertville and Barcelona provided significant challenges for the IOC and ISL as a result of sponsors' efforts to maximise their partnerships, most notably in the case of Visa. Despite growing pressure from rivals American Express, internal IOC records indicate that Visa struggled to receive approval on a number of complex leveraging efforts and third-party partnerships, such as French bank Credit Lyonnais. Visa's sponsorship was ultimately undermined by American Express's marketing efforts during the Games, both internationally through their much publicised and popularised "You don't need a visa" campaign (Brennan and Cress, 1992), and closer to home: IOC memos from the 1992 Games document the surprise and indignation of IOC and ISL executives upon their realisation that American Express had agreed an exclusive sponsorship agreement with Barcelona's Hotel Princessa – the host hotel for the IOC executive during the Games. In response, significant debate throughout the IOC policies and memoranda entering TOP III concerned the approvals processes for sponsorship activations, and the creation of sponsorship workshops and internal communications processes to facilitate best-practice discussions and ISL-led advisory presentations.

These developments across TOP's first three iterations help contextualise much of what is known about Olympic counter-ambush marketing tactics and planning, and provide important background to the IOC's internal planning and stakeholder management. As Burton and Chadwick (2009) have noted, many early interventionist activities adopted by rights holders were reactionary and served merely to respond to ambush attempts, rather than to deter. The emphasis placed through TOP I and II on legal protections and intellectual property rights enforcement illustrate the challenge faced by organisers. Entering TOP III, however, the IOC's positioning of ambushing as parasitic in nature and the use of aggressive public relations campaigns to dissuade would-be ambush marketers and to guide public sentiment suggest that a more proactive, albeit only marginally

TOP I	TOP II	TOP III	Post-TOP III
Strict emphasis on sponsor responsibility Protection of Olympic brand, marks expected of partners Little formalized awareness or tracking of non-sponsor activities Delayed, deliberate approvals process recognised by sponsors as prohibitive	Heightened awareness of ambushing Enforcement of intellectual property rights, pursuit of cease and desist On-site policing of protected intellectual property, official marks Scarce contractual obligations for IOC to protect sponsors; responsibility on partners maintained Implementation of marketing workshops across sponsors, suppliers and partners	Strategic positioning of ambushing as "parasitic" Sponsorship contracts include IOC responsibilities for protecting sponsors, sponsor investments Increased legal protections internationally of Olympic marks proposed, framework for legislative approach laid Encumbrance on local organising committees, host National Olympic Committees to reinforce legal protections	Aggressive counter-ambush communications emphasising ethics, attacking ambushers Implementation of event-specific ambush legislation in host countries made mandatory Improved on-site regulations, commercial protections

Table I.
Key advances in TOP ambush marketing responses

effective, approach was emergent. The subsequent enforcement of stricter broadcast marketing rights, on-site regulations for participants and spectators, and securing marketing inventory surrounding event sites and spaces (McKelvey and Grady 2008) further illustrate the importance placed latterly by the IOC on greater planning, preparation and prevention.

However, the manifestation of this preventative approach has most visibly and controversially come in the form of ambush-specific event legislation, today a mandatory requirement of the Olympic bidding process for host city candidacy (Scassa, 2011). Entering the third era of the TOP Programme, IOC and ISL officials had begun formally planning for the implementation of bespoke legislation in host countries to further strengthen intellectual property rights protections; internal communications between the IOC and ISL explicitly stressed the need for the IOC to “create a climate hostile to ambush marketing”. TOP III contracts included specific responsibilities detailing the IOC to protect sponsors’ rights and investment, and marked an important shift in accountability on the part of the IOC. Moreover, internal communications between the IOC, ISL, and local organising committees called for the enactment of the necessary legal and legislative protections for Olympic marks and properties in all IOC recognised countries, and additional protections implemented in host countries. Olympic executives appeared particularly concerned regarding the potential commercialisation of the upcoming 1996 Atlanta Summer Olympic Games, and the wealth of ambush marketing attention developing around the Games.

4.2 Education and communication: commercial rights management and the COC

Given these developments, the more recent experiences of the COC offer an interesting case study in commercial rights management. In contrast to the rights management foundations laid by the IOC through TOP’s first three quadrennials, and the move from Atlanta to Sydney towards a more legislative-focused, interventionist approach to ambush marketing protection, the COC has navigated the Vancouver Olympics and subsequent events without requiring legislative enforcement. Rather, the COC has sought to employ existing legal protections and intellectual property rights protections, and has espoused an increasingly preventative, education-based approach to counter-ambush measures. The examples set by the COC’s response to non-sponsor campaigns staged by The North Face and Budweiser thus offer insight into contemporary rights management practices in a post-legislative environment (McKelvey, 2016).

First, in response to The North Face’s “Village Wear” line, the COC pursued legal remediation and sought to establish new precedence in Canadian law regarding non-sponsor marketing and intellectual property rights infringements (Infantry, 2014; Krashinsky, 2014). Whilst the COC retained some extraordinary protections from the OPMA (including Section 9 protected status for Olympic marks) following its expiration, their response to North Face’s “Village Wear” campaign was based upon traditional trademark law as found in most Olympic nations. Furthermore, whereas The North Face example outwardly appeared relatively straightforward – the use of the Olympic Rings in by an unaffiliated or unlicensed entity constitutes standard trademark infringement – the COC’s case extended beyond the erroneous use of the Olympic logo, and contended that the terminology and imagery component to The North Face’s promotional materials and retailer information contained similarly offending references (Krashinsky, 2014).

The COC’s action against The North Face therefore represented a potentially landmark case in ambush marketing law: their pursuit of remediation offered an opportunity to build precedence and re-frame ambushing in legal terms, re-defining the practice as an intellectual property rights concern where previously legal pursuits have proven unfruitful (Burton and Chadwick, 2009). Within the COC, this legal-framing of ambushing and public assertion of its rights and responsibilities was seen as an important means of better protecting their

commercial partners – including Adidas and The Hudson Bay Company – as well as an opportunity to communicate with the Canadian corporate and consumer markets regarding Olympic marks usage. The litigation brought by the COC ultimately resulted in an out-of-court settlement and a “significant” donation made to the Canadian Olympic Foundation by VF Outdoor Canada, The North Face’s parent corporation (Canadian Olympic Committee, 2016a; Krashinsky, 2016).

The COC’s emphasis on education and communication has also seen the organisation embrace “name and shame” public relations efforts, seemingly a return to the IOC’s early counter-ambush activities. In contrast to those early PR campaigns which focused on denigrating ambush marketers and appealing to consumers for support on an ethical basis, however, the COC has instead targeted “name and shame” efforts on communicating the legitimacy of official sponsors, often facilitating sponsor-based communications and public responses to non-sponsor campaigns. This was perhaps best illustrated by the COC’s and Molson’s reply to Budweiser’s “Red Light” Sochi campaign: members of the COC’s rights management and strategic partnerships divisions revealed that discussions with Molson regarding the best and most appropriate course of action resulted in Molson taking a comedic stance in print media and digital advertisements. The brand preferred to highlight the apparent hypocrisy of US Olympic sponsor Budweiser celebrating when rivals Canada scored against the USA. Molson released a series of magazine and newspaper advertisements mocking Budweiser’s marketing in Canada despite their connection to the American national team, which served to illustrate the potential for humour-based counter-ambush communications, an approach advocated by Koenigstorfer and Uhrich (2017).

This collaboration between the COC and Molson further illustrates an important development in sponsorship relations within the COC. Throughout the COC’s marketing policies and rights protection strategies, the role of effective partnership management in ambush marketing prevention is evident. Considerable detail is given to the rights protection responsibilities of the COC in managing the relationship and the fair use of their marks in the industry, as well as the COC’s responsibility to the IOC in protecting and managing the use of Olympic intellectual property in an appropriate manner. This bi-directional monitoring and approvals process constitutes a significant component of the COC’s commercial rights management activities, and reflects an increasingly sophisticated and robust approach aimed at preventing non-sponsor opportunities and better regulating the event marketing environment for official sponsors.

For sponsors, this approach has necessitated greater integration and cooperation with rights holders in order to protect their own investments, setting out expectations of rights holders and more effectively communicating their own association with the event. Sponsors have been required to assume greater responsibility for the protection of their partnerships, creating activation campaigns designed to more fully establish their market presence and better own the event marketing space.

Perhaps most important in the COC’s efforts, however, has been the extension of the Vancouver Olympic Games Organising Committee’s (VANOC) brand protection practices and OPMA educational commitments to day-to-day strategic partnership planning and delivery. VANOC and the COC’s rights protection efforts emphasised education and collaboration with sponsorship stakeholders across the corporate community, whilst the organisation adopted a less forceful approach to spectator restrictions and on-site brand policing than previous Games. Entering the 2010 Vancouver Games, organisers were aware of potential public backlash to overly draconian counter-ambush measures, particularly following criticisms over the perceived heavy-handed approach taken to rights protection in the run-up to the Games (Hume, 2004). As such, VANOC and the COC sought to enable greater sponsor activation and fan engagement in lieu of more forceful traditional on-site

marketing restrictions. Highly popular and visible sponsor sites such as the Molson Canadian Hockey House were designed to offer national-level and COC sponsors greater opportunity to establish their presence, and to encourage fans to engage directly with sponsors (Semansky, 2009).

Most significant, the COC developed a publicly available series of “Brand Use Guidelines” for consumers, public institutions, media, sponsors, competitors and members of the corporate community (Canadian Olympic Committee, 2016b). The guidelines, which have evolved over time from detailing specific rights usages and regulations to a more instructional focus on brands’ and organisations’ allowances, represent an important internal and external resource for the COC. The documentation shared with interested parties provides a scorecard template by which the COC evaluates non-sponsor marketing activities and ascribes a point value in order to determine the best course of action in a rights management capacity. Externally, the COC has used these guidelines as a means of dissuading potential ambushers from engaging in activities which might disrupt sponsors’ activities or infringe on Olympic marketing rights, and instead educating brands on what is allowable for non-sponsors in order to facilitate a more positive and open corporate community around the Games.

4.3 *Towards a new model of rights management practice*

Based on the example set by the COC, and the progressive evolution in commercial rights management practices witnessed throughout the IOC’s early encounters with ambush marketing and international sponsorship rights management, a number of important directions can be drawn. These include: the management of rights holders’ legal, contractual and legislative involvement; the management of rights holders’ own internal practices, including the strategic awareness and decision-making behind sponsorship management and protection; and the management of sponsorship-linked marketing activities to maximise the value and activation of sponsorship and prevent potential ambush marketing opportunities. The core rights holder competencies and activities identified here reveal an increasingly proactive and strategic approach on the part of the COC in preparing for and addressing the challenges posed by ambush marketers, and provide a potentially valuable template upon which to build future commercial rights management processes. Building on these core concepts, a model has been created to illustrate the managerial implications of ambushing for sport sponsorship (see Figure 1).

Importantly, the model proposed emphasises the need for shared awareness and protection on the part of sponsors and rights holders, and encourages greater cooperation and interaction in building successful sponsorship-linked marketing campaigns and



Figure 1.
Modelling proactive
commercial rights
management

sponsorship protection activities. Contemporary ambush marketing presents a collective challenge for sponsorship programmes and stakeholders, and necessitates a more collaborative approach to sponsorship management, relations and protection. This collaborative perspective of sponsorship strategy follows previous suggestions throughout the sponsorship literature for the need for increased involvement and integration on the part of sponsors in event sponsorship programmes. Chanavat *et al.* (2009) argued, for example, that: “a sponsorship program might be more efficient when managers and marketers know the combination, aggregation, and influence of multiple entities to maximise the perceived value of sponsorship” (p. 666). Greater synergy in sponsorship programmes, and improved co-sponsor relations which engage brands and sponsors in multiple tiers and secure assets within the same property, present the opportunity for sponsors to establish a more significant association with an event, and to communicate more effectively with their target audiences (Chanavat *et al.*, 2009). Such extension of a sponsor’s official ties to an event would equally benefit the defense against non-sponsor marketing by limiting the available ambush opportunities and the threat posed, as well as providing the sponsor with additional legitimacy in communicating their association to consumers.

In this respect, the manner in which rights holders Anticipate, (Re)Act and Advocate is imperative to the successful management of sponsorship agreements and rights protection activities. Properties must understand ambush marketing and be aware of potential non-sponsor marketing opportunities, and should embed within their practices and agreements protections intended to limit non-sponsor access to events. The IOC’s evolution through the preliminary phases of the TOP Programme highlighted the importance placed on the indemnification of sponsorship rights, strengthening sponsorship contracts to include responsibilities on the part of both sponsor and sponsee regarding rights protection. Currently, though, much of the onus for ambush marketing prevention lies with sport properties; however, within partnership contracts should be included the requirement for sponsors to effectively activate their partnerships and to occupy available media in order to block-out would-be ambushers. Moreover, the terms and conditions negotiated by sponsorship stakeholders present significant human resources considerations for both rights holders and sponsors: staff to adequately police potential ambush campaigns and to effectively promote sponsor associations must be considered and included in sponsorship agreements in order to effectively integrated and enforce rights management activities.

The study’s findings therefore provide impetus for host NOC’s and the IOC to work in tandem to better protect Games partners, and to move towards a more synergistic and collective rights management approach. As James and Osborn (2016) noted, the institutionalisation and internationalisation of Olympic law and ambush legislation has led to succeeding Games’ legal frameworks building on and adapting those of previous events, in order to plug perceived holes in the legislations and to account for opportunities exploited by non-sponsors.

The cooperation and collaboration between host NOC’s, OCOG’s and the IOC must extend further than this, however; greater integration between all sponsorship stakeholders implicated in rights management and the delivery of major events is required. Sponsors, NOC’s and the IOC must align and ensure that responses taken to counter non-sponsor marketing attempts are reflective of the sponsor’s wishes and communications strategy, akin to the approach Molson and the COC took. Examples such as FIFA’s draconian efforts to counteract Bavaria’s marketing at the 2006 and 2010 FIFA World Cups, which necessitated official sponsor Budweiser to distance themselves from the event’s rights protection activities (*Play The Game*, 2009), place sponsors in an unenviable position. By improving the strategic integration and interaction between host organisers, the IOC and event- and national-level sponsors from anticipation through advocacy, the model proposed here may afford events and rights holders a more effective and synergistic approach for future Games.

Where ambush campaigns cannot be prevented through anticipation and preparation, the reaction of rights holders in appropriately enforcing legal or legislative protections or publicly condemning an ambusher's attempt is integral. Irrespective of the presence of bespoke ambush marketing legislation, existing intellectual property rights in host countries provide a measure of protection against minor infringements; it is imperative that rights holders enforce such legal protections responsibly and strategically and avoid overtly draconian or heavy-handed approaches. Legal recourse in the form of cease and desist letters, court-ordered injunctions and litigation exist, but should follow education and improved communication with potential ambushers and members of the corporate community.

The example set by the COC in emphasising education and outreach over enforcement thus provides a valuable template for events and rights holders to follow. The legislative protections afforded to the COC through Canada's OPMA served as a valuable educational tool for Vancouver organisers and the COC during the 2010 Games preparations. Internal communications between the COC and National Sport Organisations evidenced consistent dialogue between sponsorship stakeholders describing the rights allowances and restrictions under the new legislation, in an effort to limit NSO-sponsor ambush activations around the Games. Ellis, Gauthier and Séguin (2011) argued that the OPMA served as a useful educational tool for the federations and their commercial partners; the authors rightly suggested that the key to ambush legislative effectiveness may be as a tool to facilitate communication with sponsorship stakeholders regarding their rights and allowances, as well as those areas restricted to official Olympic sponsors, rather than in the strict enforcement of the law.

This focus on education and communication should to be central to contemporary rights management programmes moving forward, alongside improved advocacy and the promotion of official partners. The potential benefits for sponsors and rights holders of this approach are manifold: as well as serving to deter non-sponsors from operating in specific spaces or media (and thus subtly guiding their activities into non-invasive, non-impactful territory), greater engagement with the corporate community potentially opens the door to new partnerships with brands currently operating outside of the official sponsorship programme. Such open communication with consumers and commercial stakeholders may further yield specific advantages for sponsorship returns. Advocacy to consumers about sponsors' identities, roles and importance to the event or property has been theorised as a means of mitigating the deleterious effects of ambushing on sponsorship (Lyberger and McCarthy, 2001). Indeed, education and communication may reinforce the credibility and legitimacy of sponsors and the sponsorship programme overall, and could thus improve the cognitive effects of sponsorship activation (Berger-Walliser *et al.*, 2012; Humphreys *et al.*, 2010). Such positive outcomes are important to the continued success and viability of preventative counter-ambush initiatives.

5. Conclusion

This research has sought to examine the influence of early IOC-led counter-ambush marketing practices on contemporary commercial rights management, and to identify potential future counter-ambush initiatives in a post-legislative sponsorship environment. As such, the study presents a contextualised perspective of Olympic sponsorship protection efforts over a 30-year period, and offers new insight into the internal policies and practices of the IOC during ambush marketing's formative years and the COC's current efforts to contemporise counter-ambush practices and employs preventative initiatives. This represents an important step in understanding and articulating the developments and opportunities facing commercial rights holders in combating ambush marketers. The study's findings therefore make a valuable contribution to both the theoretical and practical understandings of ambush marketing and sponsorship protection, and provide a framework upon which to build future research.

The findings presented here suggest that a progressive shift in the counter-ambush activities of major commercial rights holders is underway: increasingly, the COC has stressed education and communication as key components of their commercial rights protection strategy. This represents a significant step towards ambush marketing prevention for commercial rights holders, but remains a largely untested approach. The historical reliance of major events and sports properties on intellectual property rights legislation and legal protection suggests an over-emphasis on the legality of ambushing, and a lack of awareness or concern for the myriad examples and opportunities which fall outside the parameters of the law. Rather, a consistent rise in the volume and scale of ambushing over time at major events is apparent, as ambushing brands have successfully identified new, unregulated ambush opportunities and have successfully circumvented the restrictions put in place (Burton and Chadwick, 2018; Chadwick and Burton, 2011).

As a result, commercial rights holders and event organisers have been forced to increase their own involvement in sponsorship, both in facilitating sponsorship-linked marketing and in protecting sponsors from offending campaigns. Major advances in contractual sophistication, on-site regulation and interaction between stakeholders across the Olympic sponsorship industry, have provided the basis for much of the contemporary measures employed in commercial rights management. However, as the example set by the COC demonstrates, sponsors and commercial rights holders must embrace a more strategic, relational approach to sponsorship agreements, and continue to build upon the processes and protocols developed over the past 25 years.

For upcoming and future events, as well as official sponsorship stakeholders and event managers, the model of commercial rights management proposed here thus offers a template upon which to build preventative rights protection and to improve strategic relations between event sponsorship stakeholders. Governing bodies such as the IOC and FIFA, as well as event hosts and organising committees, must take greater steps towards engaging with local, regional and national corporate communities in host cities and countries, and must seek to create more positive relations with event stakeholders. These relationships – and local organisers and host committees and federations – represent important means of preventing potential ambush attempts, and reflect an increasingly important proactive component of rights management in the COC mould. The recent 2018 FIFA World Cup and preparations for the 2020 Tokyo Summer Olympic Games offer some encouragement that such a proactive, preventative approach is near, as domestic sponsors have taken greater prominence and local markets have earned greater awareness. These developments must be contrasted against the continued rise of social ambushing, and the complex and complicated digital environment now facing sponsors and rights holders (Chanavat and Desbordes, 2014). An evolution in rights protection practices is therefore essential.

5.1 Limitations and future research

The IOC's embargo policies on internal documentation and executive meetings do represent an important delimitation of the present research; it would be informative and beneficial to revisit the IOC's documents to include the 1996 and 2000 Summer Olympic Games in the future, in order to further interpret the IOC's rights protection policies as they evolved through subsequent iterations of the TOP Programme. Furthermore, the practical effectiveness of the measures described must be examined in order to better ascertain the long-term viability and value of preventative counter-ambush activities. Considerable research to date has identified and described potential rights protection activities (e.g. Burton and Chadwick, 2009; McKelvey and Grady, 2008), yet there has thus far been a dearth of research into the actual effects and relative success of those tactics and strategies identified.

Given the dynamic nature of ambush marketing, continued advancement and adaptation on the part of commercial rights holders and official sponsors is imperative. The measures

presented here therefore represent a preliminary view of the preventative measures available to sponsors and rights holders in dealing with ambush marketers and illustrate the changes and adaptations ambush marketing has demanded of sponsorship stakeholders. Continued development on the part of both sponsors and rights holders is required, as ambush marketers have consistently demonstrated a willingness and ability to circumvent the commercial rights management activities employed by events. Nonetheless, the initiatives presented here, and the adoption of a more preventative approach to sponsorship protection, represent an important step in sponsorship management, away from the reactive, archaic tactics still employed by many organisers and rights owners today, and towards a more strategic and purposeful rights management policy.

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