

THE OLYMPICS' RULE 40: AN UNFAIR RESTRAINT ON THE ATHLETES' INTERESTS

*AGNISH ADITYA & AKASH SRINIVASAN

INTRODUCTION

“I am honored to be an Olympian ... but I can’t Tweet about my only sponsor.”¹

Through the course of the XXXI Summer Olympics and the XV Paralympics at Rio, concerns regarding Rule 40 and ambush marketing were raised yet again. Although the International Olympic Committee (IOC) has relaxed the ambit of Rule 40 to a certain extent, it still raises concerns of encroaching the personal freedoms and liberties of the athletes.² Many athletes and organizations have taken to social media to voice their discontent against this over-restrictive rule. Agitation against this rule can be seen not only from participants in the Games, but also from viewers of the Olympics and Paralympics.

The intention behind Rule 40 was to prevent ambush marketing—a clever tactic employed by brands, where they intentionally associate themselves with events sans any agreement or any official association³ in the Olympics and to protect the exclusive advertising rights of the Official Sponsors. It also seeks to prevent “over-commercialization of the Games”⁴ and to retain the focus on the athletes’ performance.⁵ However, doubts have been raised whether Rule 40 is actually fulfilling its intended purpose or whether it acts as an unfair restraint and burden on the athletes by making

¹ Student, 3rd Year, B.B.A., LL.B., National Law University, Odisha.

² Martin Rogers, ‘American Athletes Lead Revolt Against IOC Ban on Social Media Use to Promote Sponsors’, (*Yahoo! Sports*, 30 July 2012), <<http://sports.yahoo.com/news/olympics-u-s-leads-revolt-against-ioc-banagainst-social-media-use-to-promote-sponsors.html>> accessed 22 August 2016.

³ Rosie Duckworth & Annabel Hodge, ‘Rio 2016: IOC’s “relaxation” of Rule 40’, (*Sports IP Focus*) <www.squirepattonboggs.com/~media/files/insights/publications/2016/04/rio-2016-iocs-relaxation-of-rule-40/rio-2016-iocs-relaxation-of-rule-40.pdf> accessed 22 August 2016.

⁴ Adam Epstein, ‘The Olympics, Ambush Marketing and Sochi Media’ (2013-14) 3 Sports & Ent LJ 109.

⁵ *ibid.*

⁶ International Olympic Committee, ‘Rule 40 of the Olympic Charter: What you need to know as a Participant’ <https://inside.fei.org/system/files/Rule_40-Rio_2016-QA_for_Athletes_0.pdf> accessed 22 August 2016.

them focus on adhering to the rule rather than on their performance. It is also argued that Rule 40 inhibits the athletes from commercializing on their hard work during their peak point of visibility. We further argue that the inaction by the NOCs (National Olympic Committees) (particularly focusing on the Indian Olympic Association and the Paralympic Committee of India) has annulled the effect of the IOC's relaxation of Rule 40. This essay attempts to analyze the concerns of the IOC and its official sponsors on one hand and that of the athletes on the other. In essence, this essay argues that Rule 40 is an over-restrictive burden on the athletes and does not serve the intended purpose.

THE UNIQUE NATURE OF OLYMPICS AND RULE 40

The Olympic Games trace their roots to the 8th Century BC.⁶ The Olympic Games were revived in 1896 that witnessed participation from only 14 countries.⁷ The Modern Olympic Games has now become the largest and most participated international sporting event in the world. Many of the symbols and practices that are used today find their roots in the ancient Olympics.⁸ Since then, it has undergone tremendous changes in its structure, governance, conduct and rules.

The Olympic Games today is more than just a sporting event: they've progressed to become a cultural, political and economic phenomenon. It has become the perfect media event for opportunists to harness the tremendous potential that the Games offer in terms of marketing and tourism, as a catalyst for development and as a source of inspiration for the youth.⁹

The International Olympic Committee (IOC) was one of the creations of Pierre de Coubertin in 1884. It is legally constituted as an International non-governmental, non-profit organization and is the governing body of the Olympic movement.¹⁰ At the domestic level, there are National Olympic Committees (NOCs) which are organizations appointed by the IOC to "develop, promote and protect the Olympic Movement in their respective countries."¹¹

⁶ University of Pennsylvania Museum of Archaeology and Anthropology, 'The real story of the Ancient Olympic Games' (Penn Museum) <<http://www.penn.museum/sites/olympics/olympicorigins.shtml>> accessed 28 October 2016.

⁷ Heather Whipps, 'How the Olympics Changed the World', (*Live Science*, 7 July 2012) <www.livescience.com/2733-olympics-changed-world.html> accessed 22 August 2016.

⁸ Andy Miah and Beatriz Garcia, *The Olympics: The Basics* (Routledge 2012) 16.

⁹ Kristine Toohey and AJ Veal, *The Olympic Games: A Social Science Perspective* (CABI 2009).

¹⁰ Battonnier Rene Bondoux, 'The Legal Status of the International Olympic Committee' (1992) 4 Pace YB Int'l L 97.

¹¹ The International Olympic Committee, 'The Organisation' (*Olympic Games*) <www.olympic.org/ioc-governance-national-olympic-committees> accessed 22 August 2016.

The Olympics has always strived to be a non-political and non-commercial movement. Bye-law 3 to Rule 40 of the Olympic Charter is one of the measures which seeks to preserve the Olympics as a non-commercial movement by preventing over-commercialization. Rule 40 restricts competitors in the Olympics from advertising any brand apart from the Official sponsors.

The IOC's regulation of the athletes' advertising activities can be traced to Rule 26 of the Eligibility Rules of the International Olympic Committee, 1962. It states that "*...if an athlete is paid for the use of his name or picture or for a radio or television appearance, it is capitalization of athletic fame...*"¹² This rule was made with the intention of ensuring that the athletes always maintained their amateur status, thus preserving the sanctity of the Olympics. This eventually lead to the incorporation of Rule 40 into the Olympic Charter in 1991¹³ with the aim of protecting the official sponsors of the Games, who invest astronomical amounts to gain exclusive global rights to be associated with it, from ambush marketing.

THE CONTROVERSY BEHIND RULE 40

The purpose of Rule 40 is, not surprisingly, about the money. The purpose behind it is to prevent ambush marketing while the Games take place and granting the official sponsors' exclusive advertising rights. Rule 40 was incorporated with the purpose of limiting the number of companies that free-ride on the popularity of the Games.¹⁴

The essence of Rule 40 is that before and during the Olympics (the blackout period), no non-official sponsors are allowed to use the following words – “2016”, “Rio/Rio de Janeiro”, “Gold”, “Silver”, “Bronze”, “Medal”, “Effort”, “Performance”, “Challenge”, “Summer”, “Games”, “Sponsors”, “Victory”, “Olympian”, “Olympic”, “Olympics”, “Olympic Games”, “Olympiad”, “Olympiads”, “Citius, Altius, Fortius” (and any translation of it). They are not even allowed to associate their brand with the Olympic athletes, which includes wishing them on social media, and re-tweeting Olympic related tweets that feature them.

¹² Olympic Charter, 'Eligibility Rules of the International Olympic Committee' <www.olympic.org/Documents/Olympic%20Charter/Olympic_Charter_through_time/1962-Eligibility_rules_of_the_IOC.pdf> accessed 22 August 2016.

¹³ International Olympic Committee, 'Olympic Charter 1991' <www.olympic.org/Documents/Olympic%20Charter/Olympic_Charter_through_time/1991_Olympic_Charter.pdf> accessed 22 August 2016.

¹⁴ Michael Sol Warren, 'Rule 40: An Olympics Advertising Explainer' (*Paste*, 18 July 2016) <www.pastemagazine.com/articles/2016/07/rule-40-an-olympics-advertising-explainer.html> accessed 22 August 2016.

Athletes have vehemently voiced their frustration against Rule 40's restrictive nature and stringent enforcement. The London 2012 Olympics witnessed the rise of the #WeDemandChange campaign spearheaded by Olympic gold medalist Sanya Richards-Ross. This year, Emma Coburn registered her protest against Rule 40 by taking to the social media and thanking her sponsor just a day before the commencement of the 'blackout' period.¹⁵ Sportswear manufacturer Brooks Running Co. has initiated a campaign titled "Rule 40" which consists of social media posts opposing Rule 40. In another instance, Dawn Harper, an athlete from the United States, tweeted an image of herself with her mouth covered by a duct tape which read "Rule 40," making her opinion of Rule 40 amply clear.¹⁶

Amidst all the negative response Rule 40 is stirring up, this year's Rio Olympics gives us an opportunity to revisit the issue.

THE CONFLICTING INTERESTS

Rule 40 creates a conflict between the interests of athletes and non-official sponsors on one hand, and the rights of the IOC and the official sponsors on the other hand. While the official sponsors need protection from ambush marketing, the athletes should be enabled to commercialize and promote themselves during the Games. It is important to understand the conflicting rights and interests and strike a balance between them.

THE NEED TO PREVENT AMBUSH MARKETING

The IOC, being a non-profit NGO, heavily relies on funds from various sponsors, to make the Olympic Games happen. This year, the total funds secured from sponsors reached \$1.3 Billion¹⁷ and their official sponsors are indispensable to the organization of the event. Companies like Nike and Coca-Cola invest millions of dollars every year to procure such sponsorship contracts.¹⁸ The reason why the sponsors shell out such

¹⁵ Lori Shontz, 'Rio Runners Finding Creative Ways Around Olympic Rule 40' (*Runner's World*, 19 August 2016) <www.runnersworld.com/olympics/rio-runners-finding-creative-ways-around-olympic-rule-40> accessed 22 August 2016.

¹⁶ Adam Shergold, 'US Athletes Launch 'Gag' Protest Against Olympic Rule that Bans Them from Promoting Their Sponsors' (*Mail Online*, 31 July 2012) <www.dailymail.co.uk/news/article-2181501/London-2012-US-athletes-launch-gag-protest-Olympic-rule-bans-promoting-sponsors.html> accessed 22 August 2016.

¹⁷ Ben Chapman, 'Rio 2016: The richest Games in 120 years of Olympic history' (*Independent*, 4 August 2016) <www.independent.co.uk/news/business/analysis-and-features/rio-2016-olympic-games-richest-ever-usain-bolt-mo-farah-a7171811.html> accessed 22 August 2016.

¹⁸ Daniel Kaplan, 'Nike Spending Billions for Endorsements and Sponsorships' (*Portland Business Journal*, 17 April 2008) <www.bizjournals.com/portland/stories/2008/04/14/daily39.html> accessed 22 August 2016.

generous amounts for the Olympic Games is because of the enormous marketing opportunity it gives them. In terms of media coverage, the Olympics are one of the world's largest sporting events. The London 2012 Olympic Games, for example, garnered 3.6 billion unique viewers throughout the games.¹⁹ Also, brands feel that Olympic casts over them a 'halo effect' which increases their credibility and this is why they find Olympics sponsorship to be a really good marketing strategy apart from the monetary benefits they get during the games.²⁰

With such huge investment, the sponsors of the Games have a vested interest in ensuring that they extract maximum possible returns out of such sponsorship arrangements. The downside here is the continuing threat to the sustainability of these sponsorship arrangements, and failure on part of the IOC to address these concerns may lead to, these corporations becoming reluctant to invest in future editions of the Games. That threat is ambush marketing. Ambush marketing tends to 'devalue' the exclusive rights granted by the IOC and other International Sporting Organizations, such as the National Basketball Association (NBA), International Federation of Association Football (FIFA), National Football League (NFL), etc. Brands do this to 'free-ride' on the popularity of the event to create positive publicity for their own products or services.²¹

At first glance, the practice of ambush marketing appears no different from competitive marketing. However, ambush marketing discourages the companies to invest huge amounts on sponsorship agreements as they could achieve equivalent returns by engaging in ambush marketing and spending a fraction of the amount.

The nature of sporting events, such as the Olympics, makes them an obvious target for ambush marketing. Moreover, sports spectatorship is increasing²² and that, in turn, generates opportunities for corporations that seek to advertise during sporting events.²³ That same popularity, though, makes sports advertising very expensive, which creates

¹⁹ Sponsorship Intelligence, 'London 2012 Olympic Games Global Broadcast Report' <https://stillmed.olympic.org/Documents/IOC_Marketing/Broadcasting/London_2012_Global_%20Broadcast_Report.pdf> accessed 22 August 2016.

²⁰ John A Davis, *The Olympic Games Effect: How Sports Marketing Builds Strong Brands* (Wiley 2012) 33.

²¹ The Chartered Institute of Marketing, 'Ambush Marketing and the Law' <www.cim.co.uk/media/1979/cim-insights-ambush-marketing-and-the-law.pdf> accessed 22 August 2016.

²² Simon Hendery, 'Drink up, It's Time to Cash in on the Cup' *New Zealand Herald* (20 November 2003) <www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=3535083> accessed 22 August 2016.

²³ Brian Stelter, 'NBC Making the Most of Its Super Bowl Coverage' *New York Times* (29 January 2009) <www.nytimes.com/2009/01/29/business/media/29adco.html?_r=0> accessed 22 August 2016.

the incentive to engage in ambush marketing.²⁴ The cost of hosting a modern Olympic Games imposes an astronomical burden on the host country. Sponsorship agreements are probably the best way to offset the costs that go into organizing the event. For the Olympics to attract sponsors, it needs to ensure a certain degree of protection with regards to these exclusive sponsorship rights while fending off competitive advertising.²⁵

One of the pertinent concerns for the IOC, this time around, is the ambush marketing campaigns taking place in social media platforms. Social media has been cleverly used for ambush marketing by various brands including Nike, Pepsi and Google.²⁶ Social media platforms have become extremely difficult to monitor due to a shift towards video based social networking platforms.²⁷ This makes the task of tackling ambush marketing in the social media, a herculean one.

In order to protect the official sponsors from such ambush marketing, the IOC has taken several measures which include facilitating enactment of national legislations in host countries as well its own rules and codes of conduct.²⁸ The NOCs are also extremely important for protecting the Olympic trademarks in their respective countries. Rule 40 is one of the measures which address this issue.

ATHLETES' RIGHTS TO COMMERCIALIZE ON THEIR PERFORMANCE

Even though the IOC does not require the competitors to be amateurs, the athletes who participate in the Olympics often struggle to make the ends meet. Even in countries like

²⁴ John A Tripodi and Max Sutherland, 'Ambush Marketing- 'An Olympic Event'' (2000) 7 J Brand Mgmt 412.

²⁵ David Vinjamuri, 'U.S. Athletes are Right about Twitter: Rule 40 Exposes The Flaw in Olympic Thinking' (*Forbes*, 1 August 2012) <www.forbes.com/sites/davidvinjamuri/2012/08/01/the-athletes-are-right-about-twitter-rule-40-exposes-the-paradox-at-the-core-of-the-olympic-games/#2eee51991016> accessed 22 August 2016.

²⁶ 'Ambush Marketing at the Olympics: Driven by Social Media and Online Video' (*Knowledge Vision*, 20 August 2012) <www.knowledgevision.com/ambush-marketing-at-the-olympics-driven-by-social-media-and-online-video> accessed 22 August 2016.

²⁷ Max Willens, 'Rio Olympics Advertising Problems: Snapchat and Ambush Marketing Has IOC Throwing up Hands' (*International Business Times*, 29 June 2016) <www.ibtimes.com/rio-olympics-advertising-problems-snapchat-ambush-marketing-has-ioc-throwing-hands-2385395> accessed 22 August 2016.

²⁸ Suzan Ryan, 'Ambush marketing and the Rio Olympics' (*Mumbrella*, 11 March 2016) <<https://mumbrella.com.au/ambush-marketing-rio-olympics-stephen-von-muenster-352277>> accessed 22 August 2016.

the United States most athletes earn a living by taking up odd jobs.²⁹ A great number of athletes survive on incomes below the poverty line, which is mostly made up of the prize money, sponsorships and part time jobs.³⁰ India has the worst Olympic record in terms of medal per head, and it is attributed to meagre spending on athletes.³¹ Stories of Indian athletes ending up in poverty are not uncommon.³² Even the IOC officials are compensated much more than the athletes, who only get to enjoy a minuscule fraction of what the Olympics earns.³³

The plight of the Paralympians is also a major concern. This year, the Indian Paralympians have brought laurels for the country by outshining their Olympics counterparts.³⁴ However, their situation is far worse than that of the Olympians. Not only are they socially discriminated and ignored, but they are also subjected to day to day institutional barriers.³⁵ The Paralympics are a very important event for them to get noticed and bring a change in the outlook towards physically challenged people. Rule 40 not only obstructs them from appearing in the limelight, but also impairs their chances of being recognized by potential sponsors.

Since, the Olympics and Paralympics give amateur athletes a platform to exhibit their skills and years of hard work and perseverance, it is natural for them to expect monetary gains through it. The athletes' have often lamented that Rule 40 inhibits their right to commercialize on their performance by acknowledging their sponsors during their

²⁹ 'How Olympic Athletes Make a Living' (*Sports Management Degree Hub*) <www.sportsmanagementdegreehub.com/olympic-athletes-salaries/> accessed 22 August 2016.

³⁰ Rule40, 'Facts, reasons to join the fight' (*rule40*) <<http://rule40.com/>> accessed 23 August 2016.

³¹ Kumar Vikram, 'Meagre Spending On Players Behind India's Poor Olympic Show' (*Business Today*, 12 August 2016) <www.buisnesstoday.in/current/world/meagre-spending-on-players-behind-indias-poor-olympic-show/story/236077.html> accessed 23 August 2016.

³² Mail Today Bureau, 'Athletes Who Brought Laurels to the Nation Are Languishing in Poverty, Thanks to Centre's Apathy' (*India Today*, 21 April 2013) <<http://indiatoday.intoday.in/story/athletes-in-poverty-centre-negligence/1/266857.html>> accessed 23 August 2016.

³³ Will Hobson, 'Olympic Executives Cash in on a 'Movement' That Keeps Athletes Poor' *The Washington Post* (30 July 2016) <www.washingtonpost.com/sports/olympics/olympic-executives-cash-in-on-a-movement-that-keeps-athletes-poor/2016/07/30/ed18c206-5346-11e6-88eb-7dda4e2f2aec_story.html> accessed 23 August 2016.

³⁴ Karan Deep Singh, 'India's Paralympians Are Winning More Medals than Their Olympic Colleagues' *The Wall Street Journal*, (14 September 2016) <<http://blogs.wsj.com/indiarealtime/2016/09/14/indias-paralympians-are-winning-more-medals-than-their-olympic-colleagues/>> accessed 28 October 2016.

³⁵ Firstpost.com, 'India's Paralympians want to know why their achievements are ignored' (Firstpost, 23 March 2015) <www.firstpost.com/sports/discriminated-and-ignored-the-sad-story-of-indias-paralympians-2053495.html> accessed 28 October 2016.

peak point of visibility. Sponsorships and endorsements are the main source of income for most athletes and it is imperative that they build strong relationships with their sponsors and give them a good image.

IS RULE 40 STRIKING A BALANCE?

The purpose behind Rule 40 was to prevent ambush marketing. However, as can be seen, it also places unfair restraints on the athletes' interests. Apart from the fact the rule does not further the objective of preventing ambush marketing, it also exceeds its scope by restricting the athletes' personal rights.

RULE 40 DOES NOT HELP PREVENT AMBUSH MARKETING

Although the main purpose of Rule 40 is to prevent ambush marketing, it is difficult to argue it has succeeded in doing so. Even if athletes are not involved, organizations can still engage in clever ambush marketing tactics and hijack the event. The classic example of Nike's ambush needs mention to this effect. Even though Michael Johnson's golden spikes incident occurred, it could be treated as an unintentional ambush.³⁶ The real strategy was in the highly creative commercials which were visible all around Atlanta, distributing Nike flags and the opening of a Nike showroom in the vicinity of the Olympics Village.³⁷

Constraints tend to make people more creative and "strike the innovation fire".³⁸ This increases their ability to innovate and find new ways to circumvent the rule, and yet enjoy the benefits which they are not entitled to. Moreover, how difficult is it for a person to do a Google or Wikipedia search on a player and find out which brand he or she endorses? The more the IOC restricts and make athletes do absurd things like forcefully making them paste tape on their apparels or even skin to cover nearly invisible logos of Normal Operating Procedures (NOPs)³⁹, the more it makes spectators curious about the controversy, which ultimately reveals the corporation endorsed by the player.

³⁶ Derrick Wright, 'The Danger of Ambush Marketing in the Olympic Games, and Balancing the Interests of the Athlete's Sponsors with the Olympics' Official Sponsors' (2013-14) 3 *Sports & Ent LJ* 109.

³⁷ Epstein (n 3).

³⁸ Tom Jacobs, 'Constraints Can Be a Catalyst for Creativity', (*Pacific Standard*, 25 April 2016) <<https://psmag.com/constraints-can-be-a-catalyst-for-creativity-d5997d2030f7#.ertdfk8nh>> accessed 22 August 2016.

³⁹ Abe Sauer, 'London 2012 Watch: Olympic #Rule40 Backfires as Fans Embrace Non-Sponsors' (*Brand Channel*, 6 August 2012) <<http://brandchannel.com/2012/08/06/london-2012-watch-olympic-rule40-backfires-as-fans-embrace-non-sponsors/>> accessed 22 August 2016.

It can, thus be argued that Rule 40, by itself, fails to curb ambush marketing; since brands will often come up with creative campaigns which need not involve athletes. The IOC's endeavors to generate a positive image of their sponsors and acknowledge their efforts are thwarted by creative ambush marketing campaigns.⁴⁰ It makes it disastrous for the IOC.

IT UNFAIRLY RESTRICTS ATHLETE'S RIGHT TO FREE SPEECH AND TO COMMERCIALIZE ON THEIR PERFORMANCE

Rule 40 has been enforced against seemingly harmless social media posts by athletes. It deprives the athletes of their opportunity to acknowledge their sponsors and endorsers. This subsequently deprives them of their right to commercialize on their hard work and enjoy the fruits of their labour. While it is a matter of honor and prestige to represent one's nation, from another perspective it can also be said that athletes tend to be unpaid entertainers.⁴¹ In a world which is getting increasingly competitive, this restriction seems unnecessary and unfair.

Athletes have taken to social media and other forms of media to express their disappointment with this rule, which has led Rule 40 to backfire. For instance, U.S. Star Runner Nick Symmonds has criticized the IOC's measures vehemently, lamenting that sponsorship agreements are the only way to keep training and pursue their Olympic dreams. Dominique Blake, a United States track star, also tweeted: "Trying out my new Headphones from my sponsor that I cannot name SMh #rule40." The IOC fails to understand that with the social media trend, one such tweet will lead to many others probing the matter, and ultimately revealing the NOP. It imposes a burden on the athletes to be overcautious before using social media and impinges on their free speech rights. Even though free speech rights might not be enforceable against the IOC or NOCs, this is a universal right that the IOC must give deference to.⁴²

Moreover, Rule 40 puts an unnecessary burden on the athletes, coaches, officials, etc. to prevent their non-official sponsors from using their name, person, picture, etc. in advertisements during the blackout period of the Games. Ironically, the IOC proclaims the goal of Rule 40 to ensure the focus to remain on the athletes' performance. But what the IOC fails to understand is that by imposing such a burden on the athletes, they (the

⁴⁰ ibid.

⁴¹ David Vinjamuri, 'U.S. Athletes Are Right about Twitter: Rule 40 Exposes the Flaw in Olympic Thinking' (*Forbes Magazine*, 1 August 2012) <www.forbes.com/sites/davidvinjamuri/2012/08/01/the-athletes-are-right-about-twitter-rule-40-exposes-the-paradox-at-the-core-of-the-olympic-games/#2eee51991016> accessed 22 August 2016.

⁴² Alexander Larry, 'Is Freedom of Expression a Universal Right?' (2013) 50 San Diego L Rev 707.

athletes) would not be able to focus on their own performance, and would have to additionally keep an eye on Rule 40's restrictions. Why should the burden be on the athletes? The authors believe that this burden must be transferred onto their respective sponsoring corporations, considering that they are the ones who want to be promoted, and they should be carrying out their promotional activities within the reasonable bounds of Rule 40.

It is for these undue restrictions that athletes have vehemently criticized Rule 40 and in turn attracted negative attention for the Olympics movement. Commentators have noted that such negative sentiments must be avoided in order to reach the younger generation who are active on social media platforms.⁴³ Unfairly restricting the athlete's right to use social media and to commercialize on their performance only brings contempt towards the Olympics movement, which itself generates huge revenues but deprives the athletes of it.

THE SPONSORS OF THE ATHLETES NEED TO GET RECOGNIZED TOO

An argument supporting athletes' right to commercialize on their performance cannot be separated from the argument that the non-official sponsors of the athletes need their recognition too. Many small sponsors do not get the recognition they deserve for training, nurturing and endorsing athletes for the Olympics. For instance, Oiselle, a small size woman's running and athletic apparel company sponsors 32 elite athletes. They claim that such sponsorship payments are a significant part of their budget. There's zero visibility for such companies and there's zero visibility for their Olympic athletes to talk about them. For bigger companies, such as Under Armour, going through the waiver process might not have a significant impact on their budget. Oiselle ultimately did not pursue the waiver to get their proposed advertising campaigns approved.⁴⁴ These smaller companies tend to see such sponsorships as unworthy of their money, and ultimately withdraw, having a consequent negative impact on the athletes.

It can fairly be argued that non-official sponsors should be prevented from advertising in the Olympic venue to prevent ambush marketing. But even then commentators have argued that ambush marketing should not be viewed as an immoral or disgraceful

⁴³ Megan Ormond, '#WeDemandChange: Amending International Olympic Committee Rule 40 for the Modern Olympic Games' (2014) 5 Case W Res JL Tech & Internet 179.

⁴⁴ Kelly O' Mara, 'What is the Fight over Rule 40 and Why You Should Care' (*Competitior.com*, 1 July 2016) <http://running.competitor.com/2016/07/features/what-is-the-fight-over-rule-40-about-and-why-should-you-care_150052> accessed 22 August 2016.

tactic, considering that the IOC itself is a highly commercialized and political entity.⁴⁵ Creative marketing tactics employed by various brands are often viewed as clever and get positive response and may even dilute the effect of the official sponsors. Allowing certain amount of advertisements, especially in the social media, might counter that effect as those sponsors would not feel the need to antagonize the IOC or the official sponsors.

RECOMMENDATIONS

The primary issue, which Rule 40 gives rise to, is the issue of balancing the rights of the athletes and that of the IOC and its official sponsors. The official sponsors' and the IOC's rights cannot be undermined due to the huge transactions involved, however the athletes are the Olympics viewers' primary concern. The IOC has moved past its origins to become an increasingly profit-oriented commercial entity. The 'unique' nature it seeks to preserve is leading to absurd restrictions. The IOC's focus now should be towards betterment of the athletes.

It is suggested that restricting athletes from appearing in advertisements in traditional media can be seen as a reasonable restriction.⁴⁶ However, regulating expression on social media encroaches upon personal liberty of the athletes, especially the freedom of speech and expression. Such stringent regulations are not viewed favorably by either the athletes or the viewers; but are rather subject to strong criticism. This has made the IOC subject to animosity and widespread criticism. Going beyond control of advertising in the Olympic venue, and trying to regulate the conduct of athletes in their social media handles and their public interaction sponsors, who have invested in them, will ultimately antagonize the Olympic Games. Further, the relaxation of this rule will not harm the official sponsors adversely.

Closer home in India, the NOCs for India, i.e., the Indian Olympic Association (IOA) and the Paralympic Committee of India (PCI) need to endeavor to support our athletes in every manner possible. The dormancy of the Indian NOCs has severely influenced the Indian Olympians and Paralympians throughout the years. Particularly this year, the IOA and the PCI have thwarted the chances of Indian athletes getting a Rule 40 exemption by not establishing clear procedural guidelines in this regard.⁴⁷

⁴⁵ Arthur Solomon, 'The Case for Ambush Marketing' (O'Dwyer's, 31 December 2013) <<http://www.odwyerpr.com/story/public/1650/2013-12-31/case-for-ambush-marketing.html>> accessed 22 August 2016.

⁴⁶ Ormond (n 43).

It is no secret that the athletes are often deprived of institutional support from the government during the most valuable period where they can leverage and foster long-term associations with potential sponsors. In such cases, a Rule 40 exemption would at least allow them to harness the tremendous coverage the Olympics provide.

CONCLUSION

Authors have made extreme arguments that Rule 40 should be done away with.⁴⁸ However, we believe this will not be a cogent solution as the application of Rule 40 in traditional media is a reasonable restraint. We suggest that posts of acknowledgment and thanks should not be treated as advertising. The sanctions should also be reduced, as disqualifying an athlete or stripping her of her title is too harsh for just a tweet or blog post. Rule 40 must make clear demarcations between what is a legitimate post and what is not and must not use sweeping general terms, which confuses the athletes and in effect chills their thoughts.

Further, it is not enough for the IOC to relax Rule 40 and allow for exemptions. Inaction by the NOCs thwarts all such efforts. In such cases, the IOCs must see to it that the NOCs are aware of such developments and act upon it. The ultimate burden in this regard is, however, on the NOCs themselves to ensure that the athletes who toil to bring laurels to their nation receive adequate support.

Although Rule 40 was framed with legitimate intentions of protecting the official sponsors' valuable investments, the IOC lost track of how social media operates and thereby lead it to its backfire. Rule 40, as it exists now, is by no means a measure that is effective and is helping in preserving the 'unique nature' of the Olympics. The Olympics must take into account the hardships the athletes face and realize how unfair and restrictive Rule 40 is. The social media backlash, which Rule 40 is facing, has already brought disrepute to the games. The IOC must recognize that the athletes are the most important part of the Olympics. Regulating technology or social media is not an exercise that the IOC should indulge in as such regulations have never been successful in the past.

⁴⁷ The Sports Law & Policy Centre, 'Rule 40: A Lost Opportunity for Indian Olympians and Paralympians' (*Sportslaw.in*, 3 August 2016) <<http://sportslaw.in/home/wp-content/uploads/2016/08/SLPC-Note-on-IOA-and-Rule-40.pdf>> accessed 28 October 2016.

⁴⁸ Breeanne Nicole Glaviano, 'Ambush Marketing in Mega-Sporting Events: Drawing the Line with Freedom of Expression' (Thesis, The University of Arizona 2013) <http://arizona.openrepository.com/arizona/bitstream/10150/297615/1/azu_etd_mr_2013_0082_sip1_m.pdf> accessed 22 August 2016.