



OLYMPIC BRAND AND AMBUSH MARKETING IN ITALY

Abstract - The livelihood of the International Olympic Committee, owner of the Olympic Games, depends on the protection of its brand against ambush marketing which has the potential to compromise future contracts with official partners and reduce the economic return and the effective possibility of hosting the games and to finance the Organizing Committee. This need leads to potential imbalances between public and private law, with measures aimed at protecting the specific interests of the IOC. The further criticality is given by the interference on the whole society of otherwise unnecessary legislative interventions that have social, economic and political repercussions on the host country with the IOC that requires long and anticipated planning within the bid process. Following the assignment of the 2026 Winter Olympic Games, the introduction in Italy of a special law highlights the critical issues of the legislator's intervention to counter the threat of ambush marketing. The examination of the law decree n. 16 of 11 March 2020 of the Italian Republic, the documents that deal with the foundation of Italian law and the positions of scholars, aim to verify how Italy has handled the requests of the IOC. It will be concluded that this legislative intervention is characterized by minimal measures that guarantee the hosting of the Games but leave almost unchanged the need for the IOC to develop its own autonomous defense strategies. There will be food for thought to consider whether it is possible to satisfy the IOC's request in a manner consistent with legal codes or if it poses an unfair threat to other private and public interests.

Keywords: Olympism; brand; ambush marketing; WOG 2026; Italy.

MARCA OLÍMPICA E MARKETING DE EMBOSCADA NA ITÁLIA

Resumo - A subsistência do Comitê Olímpico Internacional, dono dos Jogos Olímpicos, depende da proteção de sua marca contra o marketing de emboscada que tem o potencial de comprometer futuros contratos com parceiros oficiais e reduzir o retorno econômico e a possibilidade efetiva de sediar os Jogos e financiar o Comitê Organizador. Essa necessidade leva a potenciais desequilíbrios entre direito público e privado, com medidas voltadas para a proteção de interesses específicos do COI. A criticidade adicional é dada pela interferência em toda a sociedade de intervenções legislativas desnecessárias que têm repercussões sociais, econômicas e políticas no país anfitrião com o COI que requer planejamento longo e antecipado dentro do processo de licitação. Após a atribuição dos Jogos Olímpicos de Inverno de 2026, a introdução na Itália de uma lei especial destaca as questões críticas da intervenção do legislador para combater a ameaça de marketing de emboscada. O exame do decreto-lei n. 16 de 11 de março de 2020 da República Italiana, os documentos que tratam da fundamentação do direito italiano e das posições dos estudiosos, visam verificar como a Itália tem tratado as solicitações do COI. Conclui-se que esta intervenção legislativa se caracteriza por medidas mínimas que garantem a realização dos Jogos, mas deixam quase inalterada a necessidade de o COI desenvolver suas próprias estratégias autônomas de defesa. Haverá que pensar se é possível satisfazer o pedido do COI de forma consistente com os códigos legais ou se representa uma ameaça injusta a outros interesses públicos e privados.

Palavras-chave: Olimpismo; marca; marketing de emboscada; WOG 2026; Itália.

MARCA OLÍMPICA Y MARKETING DE EMBOSCADA EN ITALIA

Resumen - El sustento del Comité Olímpico Internacional, propietario de los Juegos Olímpicos, depende de proteger su marca contra el marketing de emboscada que tiene el potencial de poner en peligro futuros contratos con socios oficiales y reducir el retorno económico y la posibilidad efectiva de albergar los Juegos y financiar al Comité Organizador. Esta necesidad conduce a posibles desequilíbrios entre el derecho público y el privado, con medidas destinadas a proteger intereses específicos del COI. La criticidad adicional la da la interferencia social de intervenciones legislativas innecesarias que tienen repercusiones sociales, económicas y políticas en el país anfitrión con el COI que requiere una planificación larga y anticipada dentro del proceso de licitación. Tras la adjudicación de los Juegos Olímpicos de Invierno de 2026, la introducción de una ley especial en Italia destaca los problemas críticos de la intervención del legislador para contrarrestar la amenaza del marketing de emboscada. El examen del decreto-ley n. 16 de 11 de marzo de 2020 de la República Italiana, los documentos que tratan sobre el razonamiento de la ley italiana y las posiciones de los académicos tienen como objetivo verificar cómo Italia ha tratado las solicitudes del COI. Se concluye que esta intervención legislativa se caracteriza por medidas mínimas que garantizan la realización de los Juegos, pero dejan casi inalterada la necesidad de que el COI desarrolle sus propias estrategias de defensa autónoma. Será necesario considerar si es posible cumplir con la solicitud del COI de manera consistente con los códigos legales o si representa una amenaza injusta para otros intereses públicos y privados.

Palabras-clave: Olimpismo; marca; marketing de emboscada; WOG 2026; Italia.

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Introduction

The term ‘ambush marketing’ was first used in the 1980s and refers to a company’s strategic choice to gain a commercial advantage by stimulating an association with a third-party brand to improve the appeal of customers to its product¹ through ‘backdoor means’².

By brand we mean the name or symbol that identifies and differentiates a product through specific characteristics, and which is associated with the benefits, services and experiences of the consumer³. The characteristic of the brand exposed to the attack of ambush marketing is brand awareness which is “the ability of a potential buyer to recognize or recall that a brand is a member of a certain product category (p. 3)”⁴.

Many studies concerning ambush marketing refer to the Olympic Games (OGs) and other mega-events⁵.

The Olympic brand includes some intangible assets such as excellence, friendship and community⁶. The owner of the OGs is the International Olympic Committee (IOC). It manages independently or in concert with the Organizing Committee of OGs all its partners and transfers, for a fee, the rights to use the logos and slogans it owns⁷.

Most of the IOC’s income comes from brand management⁸. Ambush marketing has the potential to reduce the attractiveness of sponsors to sign onerous commercial contracts by giving competitors the opportunity to exploit alternative ways. For this reason, it is a threat both for the sponsors⁹ and for the owners of the event¹⁰ and therefore the contrast strategies are a priority of the IOC¹¹. The official partner could claim against the IOC and withdraw from the contract if its interest has not been protected; likewise, the IOC may withdraw accreditation from its partners who resort to marketing measures that do not comply with the contract or are illegal¹².

Although taking legal action as a countermeasure to ambush marketing should not be the responsibility of the IOC (see below), it must protect its partners. Trademark protection has been structured since Sydney 2000¹³ and uses forms of education, advertising control and requests for intervention by the government of the city that hosts the OGs¹⁴. It is a form of preventive defense also implemented with contractual clauses that subordinate the assignment of OGs to the promulgation, by the host governments, of *ad hoc* laws¹⁵. The greater goal would be the availability of a legislative umbrella at the international level¹⁶ through the extension of intellectual property rights⁶.

A very recent legislation is the one that Italy adopted in March 2020 to protect the brand of the Milano Cortina 2026 Olympic and Paralympic Winter Games and the 2021-2025 Turin ATP Finals¹⁷.

Literature review

The most studied topics are the classification of the phenomenon, the influence on consumers, counter measures⁵.

Among the strategies carried out voluntarily, planned and which aim to affect the same sphere of action of the official competitor, the scholars have identified: ambush by association; ambush by intrusion¹⁸; opportunistic ambush¹⁹; insurgent ambush; saturation ambush; contribution to the 'Players' Pool'; sponsoring a sub-category within an event; other strategies, i.e., creative methods^{2,5,10,12,20}.

A distinction is made between direct ambush marketing, which goes beyond the limits of legality by resorting to false or misleading statements, from indirect one, which uses forms of sponsorship of sub-categories of the main event and creative campaigns.

The following are the main countermeasures to ambush marketing reported in the literature:

- Active protection by anticipating ambush actions, controlling places, covering unauthorized logos and encouraging the collaboration of partners, establishing 'clean zones', using the platform provided by the event, concluding clear exclusive agreements²¹⁻²⁶.
- Linking sponsorship and television rights^{22,23,25,27}.
- Take legal action²¹⁻²³, request that a trademark protection law be enacted from the start of the bid to host the games^{23,24} and claim compensation for damages caused by those who resort to ambush marketing^{21,23}.
- Control of intellectual property through trademark registration and their unique use^{26,27}.
- Management of tickets and sales channels^{21,24,25}.
- Use of technological controls²⁵.
- Prohibition of sub-leasing of rights²⁵.
- Availability of a committee of legal advisors²⁶.

The IOC opposes the ambush by association and the contribution to the ‘Player Pool’ by limiting the freedom of athletes to use, with unofficial sponsors, words such as ‘medal’ and images of OGS²⁸ as also established by rule 40 of the Olympic Charter²⁹. The exclusivity in Olympic storytelling may conflict with the direct interest of national Olympic committees, athletes and federations. It limits the possibility of promoting one's activities through broadcasts, interviews, books, as they are equated with ambush marketing initiatives⁶. Companies that are not Olympic partners and that sponsor a federation or athletes see limited use of the results of their marketing strategies. The same restrictions can result in unfair and harmful restrictions on the freedom of athletes³⁰. Ultimately, the rules imposed by the owners could themselves constitute a form of ambush marketing both for sponsors who already have contracts with athletes, and for national federations and committees⁶. Education is a tool available to the IOC to make the whole Olympic family aware and supportive in preventing the damage that could result from ambush marketing.

Insurgent ambush and saturation ambush are countered through media rights. Although consumers have different opinions on ambush marketing, their predisposition to purchase/consumption is mainly linked to the quality of the product¹ and to the credibility and reliability that derive from the good governance of the brand⁶. Despite the perception of the responsibility of marketers to have to ‘do the right thing’, many companies can see opportunities in mega-events to promote their brand^{31,32}. Therefore, a contrast strategy is based on reinforcing the perception that ambush marketing is a form of unfair competition, reducing the appeal of those who use it due to the increased risk of disappointing the expectations of its customers and not reaching new ones⁵.

The protection of a brand over time and in different places makes the products associated with it recognizable, distinguishing them from the others³³ and corresponds to a strengthening of brand equity that avoids dilution of the brand¹⁸ through a coordinated marketing management. In fact, “[...] clutter and ambush marketing are closely related (p. 500)”⁶ and companies cannot limit themselves to displaying their own brand together with the Olympic logos but must adopt coordinated activation strategies to make so that their association by consumers with OGS is perceived as functional added value to the whole brand. The commissions paid to the IOC to become an Olympic partner are only a part of their investment and the IOC supports its partners in further strategic choices³⁴.

From a perspective of economic operators and local people, the limitation on the possibility of referring to the event suppresses elements of commercial communication, with possible loss of opportunities for the organizers themselves and possible lack of support from the local community to host the event⁶.

Despite drawbacks, the request for a legislative umbrella remains an option that the IOC will rely on for the 2026 Winter Olympics.

Italian Law

The law decree no. 16 of 11 March 2020 of the Italian Republic will be applicable from 90 days before and after the date of the OGs. This is a sign of restriction and lack of general validity of the rule that limits its impact on the marketing rights already recognized and on the possible advantages of the official partners of the events³⁵. In the Italian jurisprudence in March 2020 there were 3* cases initially classified as ambush marketing which were then judged as unfair competition³⁶. The novelty is the protection of the owners of events that the regulatory system does not materialize, by not introducing new crimes, and by prohibiting only the cases already previously punished, with discrepancies in terms of time and sanctions. This is potentially counterproductive resulting in suggestions for forms of avoidance³⁷. Prohibited practices are subject to interpretation while the effects of actions that cross national borders cannot be regulated³⁸.

Examining Article 10, it is noted that actions that constitute a clear and intentional infringement of intellectual property rights or a misleading attempt to generate false beliefs in consumers are denied. There are no bans that could openly counter creative forms of ambush marketing and that extend traditional intellectual property rights. This is consistent with the court's recognition of the legitimacy of business initiatives contested by event owners³⁹. Legal restrictions could be a further challenge for the development of creativity and therefore a way to encourage legal forms of ambush marketing⁴⁰.

Although there is a reference to the construct of unfair competition, the sanctioning of the ambusher is made even more difficult by the fact that the injured party who must bring the legal action is the official sponsor of which the ambusher is a competitor. Furthermore, there remains the difficulty of ascertaining, in the case of

* Tribunale Milano, 14.08.2003; Tribunale Roma, 11.01.2012; Tribunale Milano, 18.01.2018

deceptive practices, that the consumer has actually been misled⁴¹. The rule does not introduce measures to restrict the freedom of enterprise and competition that contrast ‘saturation ambushing’ practices and safeguards the activities that derive from regular sponsorship contracts distinct from those of the owner of the event⁴².

Forti et al.³⁸ analyzed the legal aspects of ambush marketing from the perspective of private, administrative and penal code.

Private law deals with intellectual property. The events use images, place names and symbols that cannot be registered for exclusive use and, even, when possible, this leads to a significant increase in costs without guaranteeing protection. In fact, ambush marketing does not resort to the use of registered logos but to practices of usurpation of notoriety, falling into the case of unfair competition. The punishment of the alleged ambusher requires that the official sponsor, as a potentially injured party, simultaneously demonstrate the guilt of the ambusher and the damage suffered. The owner can guarantee his partners forms of protection with contracts which, in exchange for accreditation to participate, bind the behavior in the event of the organizers, federations, athletes, spectators, agencies that issue tickets and manage the media. However, even these contracts, which are private, have no effect on third parties. *Ad hoc* laws, which introduce the principle of specificity and go beyond the general law in a defined context, could be an effective option to reinforce specific trademark protection criteria. However, the decree recalls the applicability of pre-existing rules and consequently the principle of specificity could lapse before a court³⁸.

From a publicist point of view, the relevance of the event for the city or nation may require protection from the legislator. This places the person responsible for damages in contrast with a public entity and not with other competitors and justifies the introduction of administrative sanctions (fines) as a deterrent tool for public protection, which can be imposed by police and law enforcement officers. The amount of the fines, related to ascertainable and proportional public damage, remains small and ineffective: ambusher may be willing to run the risk of paying them. In fact, the fines cannot be raised indefinitely and can sanction punishable behaviors in line with the general framework of the code. In the penal code, ambush marketing finds no basis other than that of special legislation. This jeopardizes the existence of the crime and the punishment also of conduct capable of causing damage. The punishable behaviors are only those that harm

fundamental and primary aspects of the human person and of the organization of the state. The legislator is not currently oriented towards introducing new types of crimes to protect intangible assets and which escape the criteria of measurability and repression. Any form of commercial competition can cause damage to the competitor without this being considered a crime when it does not fall into unfair competition. The use of non-violent and non-fraudulent techniques prevents ambush marketing from being associated with an attempt to perturb the public interest, as would happen in the case of false behaviors that affect the consumer. Advertising that is linked to an external media appeal does not change the product that is sold, does not make it a counterfeit, and is carried out as a common activity of presentation to the consumer of both the concrete and intangible values of the product³⁸.

Ambush marketing in the European Community has no applicable directives and remains within the boundaries of intellectual property, without urgency in the community agenda and in the White Paper on Sport⁴³.

The owner of the event himself carries out a ‘lobby’ activity with his partners, becoming an actor capable of influencing the market. For this he could incur criminal sanctions according to the law and paradoxically invokes protection against alleged aggressors. The dominant position in the market is punishable when it puts at risk the possibility that others make room for themselves, and the prevailing collective interest consists in the defense of non-dominant positions to guarantee a ‘free’ market. Allen⁴⁴ proposes an incomplete event ownership model due to excessive costs and the direct uncontrollability of any form of use. However, the owner would like to have full ownership, invoking *ad hoc* laws, and take away from the availability of the competitors of his sponsors even what is not his property. If there is public utility in protecting the owner of the event, the legislator should intervene. On the contrary, exclusive management normally requires proportionate efforts on the part of those who want it to internalize the costs and guarantee the consequent benefits. When the owner cannot bear these costs and optimize the process, public utility comes from the availability of what is left for the community. The paradoxical effect would occur if a resource, constituted by the event, were exploited in an uncoordinated way by anyone, compromising the overall value that can derive in favor of the community. This circumstance does not occur even if the exploitation of the event by the owners and organizers involves additional effort

and expense such as running a college of legal experts. These expenses are not, at the moment, capable of justifying the indefinite defense of private interests through *ad hoc* laws that would have presuppositions of unconstitutionality by placing the private interest before the collective one.

Conclusion and perspectives

The contrast to the creative strategies of the ambusher could require huge investments and not have a legal umbrella with the risk that it is precisely the countermeasures that draw the attention of customers to competitors.

For this reason, the IOC exerts pressure on local authorities to ban specific forms of advertising in conjunction with the event. The laws introduced in Italy for the Winter Olympics do not introduce significant changes and seem to satisfy these pressures with minimal effort. This is a consequence of the absence of references in the civil and penal code. The introduction of aggressive laws could recognize and defend unfair privileges with the effect of triggering aversion and negative results⁶ to the point of being constitutionally groundless because they are aimed at unjustifiably defending private interests over collective ones.

Among its strategies, the IOC has that of imposing behavioral constraints on participants and education programs that aim to discredit ambushers, but which are potentially in conflict of interest and harmful to federations and athletes. The other available strategic countermeasure options are centered on brand defense, collaboration between sponsors and the management of event spaces and media rights. Although perfectible, they meet the need for self-protection in a system regulated by competition and based on the credibility and reliability of good governance. The absence of consent to the introduction of extensive laws on intellectual property rights leaves the IOC in the need to independently protect its interests and to refine the strategies already available.

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