

Advertising Association response to the Department for Culture, Media and Sport's consultation on the regulations on advertising activity and trading around London 2012

The Advertising Association

The Advertising Association is the only organisation that represents all sides of the advertising and promotion industry in the UK - advertisers, agencies and the media. In the UK, the advertising industry employs nearly 300,000 people. In 2010, advertising expenditure rose 6.9 per cent to £15.5bn.

We promote and protect advertising. We communicate its commercial and consumer benefits and we seek the optimal regulatory environment for our industry. Our goal is that advertising should enjoy responsibility from its practitioners, moderation from its regulators, and trust from its consumers.

Overview on the Department for Culture, Media and Sport's approach

The Advertising Association supports the core objectives of the DCMS: to ensure the consistent, celebratory look and feel of the games; to prevent deliberate ambush marketing within the vicinity of venues; and to ensure the venues are easily accessible. In particular, we would like to make clear our opposition to deliberate ambush marketing practices; we acknowledge that the sponsors of the Games are entitled to be protected from such practices.

Advertising Association response to specific questions

Question 1: Have we got the definition of advertising right?

DCMS have defined advertising in the broadest possible way so as to effectively protect the games from ambush marketing. We support this broad definition and would suggest that it could be widened to include advertising of an individual's body (e.g. body paint). This all-encompassing definition of advertising will ensure that all forms of deliberate ambush marketing are captured. We support the DCMS's focus on preventing prominent attempts to deliberately ambush market the games.

Question 2: Have we made the right exceptions?

We commend the DCMS for making some positive exceptions in their paper – and we support all the exceptions currently proposed. However, we believe that there are several exceptions which could be expanded or clarified.

- The consultation paper states that advertising activity that involves “distributing or providing a current newspaper” will be exempt provided that it does not “cause undue interference or inconvenience to persons using the street”. Clarification of how “undue interference or inconvenience” will be interpreted would be beneficial. We do not believe that this exception poses a serious ambush marketing threat, and we support a limited interpretation that focuses on health and safety, and security. Such an interpretation would allow a plentiful supply of newspapers, supplements and periodicals around venues – providing analysis of the Games and other news to spectators.

- The “exception for certain wearers of costumes and clothing” should be amended to include an exception for those carrying advertising objects or accessories while being unaware of their being part of an ambush marketing campaign.
- There is the potential under the current definition of “advertising activity” for iPad, laptops and smart-phone users in the vicinity of Olympic venues to be found guilty of an offence. The definition includes “carrying or holding ... an apparatus by which an advertisement is displayed”, which would include mobile devices and iPads which display advertisements in the course of web browsing and other use. The DCMS should amend the Regulations such that “advertising activity” carried out during the ordinary use of personal mobile devices is exempt.

Question 3: Have we got the balance right between protecting sponsors and allowing businesses to operate as usual?

The regulations set out in the consultation document are of sufficient scope to protect sponsors and would seem also to allow businesses to operate as usual. However, it is crucial that a flexible approach to the application and enforcement of the regulations is adopted during the Games to ensure that genuine ambush marketing campaigns are prevented or halted, but that businesses are able to operate as usual and to capitalize on the commercial opportunities presented by the Games. Such an approach is necessary both to allow businesses to operate as usual without fearing sanctions, and to protect the integrity of advertising and the reputations of the sponsors.

Question 6: Do our event timings allow us to adequately deal with rogue trading or advertising?

The event timings should be sufficient to prevent serious ambush marketing campaigns. We believe that the emphasis should be on preventing and punishing deliberate ambush marketing attempts rather than placing sanctions on businesses whose advertising is already in event zones before the Games – particularly when considering the marathon route.

Question 7: The event zone will extend to the water and up into the air. Have we got this right?

This is an appropriate measure to protect sponsors from ambush marketing.

It is important that an appropriate balance is achieved between enforcing the regulations over the length and breadth of Olympic venues and ensuring that prominent ambush marketing locations are suitably protected. In this regard, we believe that the decision not to apply the regulations to the torch relay should be reconsidered.

Question 9: Is the LOCOG approach to advertising authorization reasonable and transparent?

The LOCOG approach to advertising authorization seems reasonable but perhaps not as transparent as industry would like. The primary goal of LOCOG should be to prevent deliberate ambush marketing and to protect sponsors, while allowing businesses to operate as usual. Businesses require greater clarity as to what they are able to do and would urge clearer guidance to be provided by LOCOG to businesses, particularly those already operating within event zones.

Question 10: Is the ODA approach to enforcement reasonable and proportionate?

As mentioned above, the fundamental challenge of enforcement is protecting sponsors and preventing deliberate ambush marketing while avoiding over-zealous enforcement which would be likely to have a negative effect on the reputation of the sponsors, the advertising industry and the Games themselves. The aggressive application of regulations in South Africa during the World Cup 2010 damaged the reputation of the host nation, the event and its corporate sponsors. We do not want the same mistake to be repeated in London 2012.

Although we support a broad definition of “advertising activity” in order to bring all attempts at ambush marketing within the scope of the Regulations, we oppose the use of that broad definition to target advertising activity which does not constitute a deliberate ambush marketing campaign. We are therefore supportive of the commitment in the consultation paper to a “light touch approach” for minor infringements. We support the desire of LOCOG, the DCMS and the ODA to prevent and/or sanction deliberate ambush marketing but would warn against any enforcement that could bring additional media attention to the ambush marketing campaign or harm those involved in minor or unintentional infringements.

We are very concerned that the regulations reverse the burden of proof. We do not feel that it is fair or proportionate for a presumption of guilt to be introduced regarding the “control of advertising activity”. Requiring an individual to prove “that he or she took all reasonable steps to prevent the activity from occurring” is unjust and will not have a significant effect upon ambush marketing. We believe that the regulations should be altered to reflect these points, such that LOCOG are required to prove that an individual is responsible for ambush marketing.

There should be an extremely strict standard for reversing the burden of proof, a standard that is not met in this case: the reversal will have limited effect on ambush marketing activity, and ambush marketing activity – while being highly undesirable – does not constitute grounds for suspending a key provision of our legal system. Indeed, the impropriety of reversing the burden in the context of advertising around the Games was recognised in the passage of the 2006 Olympic Act: a presumption of guilt on those alleged to have breached the association right was removed from the Act.

Conclusion

The Advertising Association is broadly in agreement with the core objectives of the DCMS: to ensure the consistent, celebratory look and feel of the games; to prevent deliberate ambush marketing within the vicinity of venues; and to ensure the venues are easily accessible. We reiterate our opposition to deliberate ambush marketing practices and acknowledge that the sponsors of the Games are entitled to be protected from such practices.

However, it is essential that the regulations are applied and enforced in such a way that, while sponsors are protected from concerted ambush marketing campaigns, crude or inflexible enforcement does not damage the reputation of the sponsors, the advertising industry or the Games. Similarly, we would like the ODA to be aware when enforcing the regulations of the possibility of generating increased media exposure for ambush marketing campaigns. A flexible approach would defend sponsors against ambush marketing while allowing other businesses to capitalize on the trade brought to London by the Games.

Finally, we at the Advertising Association would like to restate our position on the statutory and regulatory regime that has been constructed for the Games. While we broadly support the goals of the DCMS and recognise that their intention is not to unduly limit advertising freedoms or

inhibit businesses, the cumulative effect of the regulations and the association right created under the 2006 Olympic Act is very likely to have a detrimental effect whereby UK businesses which are not sponsors of London 2012 will be severely restricted from gaining any legitimate benefit from London's opportunity to host the Games, despite the fact that many of them, particularly those in London, are paying a significant portion of the costs.

The additional legal framework that has been introduced (ie: the 2006 Act and the proposed regulations) is unnecessary and should not become a precedent for future events held in the UK. Official sponsors, in our view, do not require additional protection as IOC requirements would be more than adequately complied with by the appropriate enforcement of UK law as it existed prior to the additional framework. The 2006 Olympic Act and associated regulations, although we broadly support their aims, are overly prescriptive and unnecessarily disadvantageous to UK businesses.

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