

# Paris Olympics & Paralympics – Part 2: What Could Possibly Go Wrong?

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Having [recently examined](#) some of the legal issues that have overshadowed the lead-up to the 2024 Paris Olympics and Paralympics, in this article I will consider what could keep contentious/regulatory lawyers (and journalists) busy once the Games formally begin on 26 July 2024.

With ten days still to go before the Opening Ceremony, it is difficult to predict with any certainty what will happen during (or outside) the competition venues when things get underway. However, as with any Olympiad, controversy is guaranteed and legal proceedings will be inevitable, including before specialist tribunals set up in Paris to resolve disputes arising during (and immediately prior to) the Games...

## Protest (Rule 50)

Rule 50 of the [Olympic Charter](#) prohibits any “*kind of demonstration or political, religious or racial propaganda...in any Olympic sites, venues or other areas*”. An amendment prior to the Tokyo Games gives athletes more freedom to express political views (e.g. in mixed zones, during interviews, on social media, etc), however, it remains prohibited during the official ceremonies and on the field of play. Updated [Guidance](#) was issued by the IOC Athletes’ Commission in December 2023 regarding the purpose and scope of Rule 50 (and the potential consequences of non-compliance), which reiterates that it is “*a fundamental principle that sport at the Olympic Games is neutral and must be separate from political religious or any other type of interference*”.

Back in October 2020, IOC President Thomas Bach [said](#) that “*the Olympics are about diversity and unity, not politics and profit*”. Whilst these ideals are commendable, the reality is very different. History has shown the Olympics to be one of the most politicised global events there is. When one considers the complexities and divisiveness of current geo-political environment, including the devastating ongoing conflicts in Ukraine and Gaza, it would be surprising if the Paris Games were not used as a platform for protests to be made. If athletes chose to do this during competition, official ceremonies (including on the medal podium) or in the Olympic Village, they (and their NOC) run the very real risk of being charged with a breach of Article 50 and being subject to the IOC’s disciplinary proceedings.

“The Olympics are about diversity and unity, not politics and profit”

## Commercialisation of image (Rule 40)

Rule 40 of the Olympic Charter (which sets out how competitors, team officials and support personnel can engage in, and benefit from, commercial activities around the Games) was updated in 2019 in light of a decision in the German courts that held the previous provision was too restrictive. Individuals may use personal sponsors provided it is “*in accordance with principles determined by the IOC Executive Board*”[1] – however, the use of an athlete’s image (which encompasses any reference to their appearance, image, name or performance) is strictly regulated in an effort to protect the exclusivity and financial investment of official Olympic sponsors/partners.

This does, however, remain a rather grey area and the risk of having sanctions imposed [by either the IOC or National Olympic Committees] for breaching Rule 40, particularly in an age of social media, is a real one. It might explain why the IOC has published specific [Social and Digital Media Guidelines](#) for the Paris Games, covering athletes and “accredited individuals” (being coaches, team officials, entourage and volunteers). Amongst other things, they will not be permitted to share posts that are “commercial” in nature, which would include paid advertisements and marketing, or endorsing or promoting third parties or products/services.

The approaches of NOCs (in shouldering the responsibility for advising their athletes, if at all) has differed tremendously in recent Games, with many athletes unclear or disgruntled as to what they could do or say in terms of leveraging their economic rights. In the case of Team GB, prior to the Tokyo Games a group of athletes (led by sprinter Adam Gemili) commenced legal action against the British Olympic Association (“**BOA**”) on the basis the sponsorship rules were “unjust and unlawful”. A [settlement](#) was subsequently reached between the parties in relation to their respective interpretation of Rule 40, allowing the athletes more freedom regarding acknowledgment of personal sponsors (and removing the requirement for prior approval of all marketing materials). The BOA has issued its own [guidance about complying with Rule 40](#) ahead of the Paris Games in an effort to mitigate the risk of any inadvertent breaches, but not all NOCs will have done this and there is no guarantee that participants will heed such advice in any event.

## Anti-Doping

In 2019, the IOC delegated the responsibility for organising and managing of doping control to a specialist independent authority, the [International Testing Agency](#) (“**ITA**”), who will therefore oversee the anti-doping programme for the Paris Olympics.[2] The run-up to any Olympics brings a surge in testing and within the framework of the [ITA’s Paris 2024 Pre-Games Programme](#) is a special focus on potentially “high-risk athletes”. [3] Interestingly, since the Tokyo Games, the ITA has used artificial intelligence to develop a “[performance passport](#)” to measure and detect extraordinary improvements in performance. Where a rise in performance level has been sufficiently meteoric, it could raise suspicions of doping, such that the athlete involved could be subject to targeted testing and increased surveillance.

The ITA reportedly plans to conduct tests on up to 4,000 athletes participating in Paris[4] and, to the extent that anti-doping disputes arise that impact Olympic participation, the CAS Anti-Doping Division (“**ADD**”) will operate as a first-instance decision-making authority.[5] One would hope that the Paris Games will not be blighted by the doping scandals that emerged in the wake of Sochi 2014, particularly in relation to state-sponsored programmes, but “cheating to win” will always be a major

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integrity threat. As discussed in my [previous article](#), WADA is already under huge scrutiny for its handling of the Chinese swimmers case (with 11 of the 23 athletes who were cleared to compete in the Tokyo Games, despite testing positive for Trimetazidine shortly beforehand, now set to compete in Paris) so the demand for a “clean” competition will be stronger than ever.

Not all positive tests will be “intentional”. Indeed, to avoid potential inadvertent Adverse Analytical Findings (“**AAFs**”), athletes will need to take extreme care of what goes into their bodies. The Paris Games may not have some of same risk factors as Beijing did (e.g. Chinese meat products have historically been known to contain low levels of the banned steroid clenbuterol, and the Chinese supplement market is largely unregulated) but, depending on the rate of metabolism, substances can remain in the body for weeks or even months.[6] Carelessness or naivety will be no defence given the strict liability nature of the anti-doping and the ramifications can potentially be career-ending.

## Disputes before the CAS Ad Hoc Division

For the period 16 July 2024 to 11 August 2024, the CAS Ad Hoc Division (“**CAS AHD**”) will operate from a temporary office in Paris, alongside the CAS ADD. The CAS AHD, which has operated since every edition of the Olympic Games since 1996, will resolve any legal “*disputes covered by Rule 61 of the Olympic Charter insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony*”[7] and all athletes consent to this dispute resolution method in the entry form they are required to sign. One of its unique characteristics, given the need for expedited decision-making during compressed competition schedules, is the requirement that the Panel “*give a decision within 24 hours of the lodging of the application*”[8] (unless exceptional circumstances apply).

In addition to anti-doping disputes that fall outside the ambit of the CAS ADD (most notably the *Valieva* case[9]), during the last two iterations of the Games the CAS AHD rendered decisions in relation to:

- **Qualification and selection** – Rule 44 of the Olympic Charter sets the requirements that must be met in order for an athlete to be accepted to attend the Games. Challenges relating to qualification and selection can sometimes still be active right up to the start, or during, the Games and will only succeed if the excluded athlete can demonstrate the decision was arbitrary, unfair or unreasonable. Applications to the CAS AHD have, for example, related to (i) allegations of racial discrimination[10], (ii) challenges to withdrawn IOC accreditation[11], (iii) alleged exclusion on political grounds[12], (iv) challenges to qualification criteria, quotas or rankings,[13] and (v) apparent failure to meet anti-doping testing requirements.[14]
- **Field of play** – participants may, in very limited circumstances, contest the application and interpretation of rules by referees, umpires or officials during a competition. However, so-called “field of play” decisions enjoy qualified immunity, meaning (i) the merits (e.g. whether the decision was irrational or made in error) will not be open to review, and (ii) the CAS AHD will only interfere in the event a decision is tainted by fraud, bias, bad faith, arbitrariness or corruption.[15] In the Tokyo Games, there were three unsuccessful field of play challenges[16], re-affirming the importance of finality and that competition officials are better placed to decide on technical rules/standards than arbitral panels.

Prior to the Tokyo Games, the CAS AHD has also previously heard cases relating to national eligibility, athlete misconduct and conduct detrimental to sponsors, which are all areas that could conceivably rear their heads during Paris.

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## Other integrity matters: competition manipulation, illegal betting and technological doping

Ahead of the Paris Games, the IOC announced a number of [initiatives](#) to help protect the integrity of events, including the [monitoring of betting](#) on all events. This will be managed by the Olympic Movement Unit on the Prevention of the Manipulation of Competitions, using its [Integrity Betting Intelligence System](#) and working alongside partners to monitor betting 24/7 on all competitions during the Games.

Thankfully, competition manipulation is rare in Olympic competition (where the eyes of the world are looking on) but temptation will always be there to manipulate or fix results for money, particularly when Olympic athletes (and officials) are typically paid less than in more mainstream professional sports. Under the current [IOC Code of Ethics](#), all athletes, coaches and officials at the Games are prohibited from participating in any form of betting on Olympic events.

It is not always about money though. In the 2012 London Olympics, eight women's badminton players from three countries were embroiled in a match-fixing scandal for deliberately underperforming in a round-robin match so that they could face weaker opponents in the knockout stages. This type of manipulation, also known as “tanking”, could lead to athletes/teams being ejected – as they were in that instance.

Another integrity issue where athletes/teams have previously faced scrutiny is the permitted use of certain technology or equipment. For instance, during the 2018 Winter Olympics allegations of “technological doping” surfaced when US skeleton athlete Katie Uhlaender accused Great Britain of making illegal skinsuits that increase aerodynamics. Ultimately the suits were ratified by the [IBSF](#) as within the rules, but where medals can be determined by a hundredth or thousandth of a second, seeking marginal gains is a constant. It's also a growing issue in Paralympic competition, not least where the use of advanced technology and specialised/adapted equipment is what enables certain para-athletes to compete.

## Ambush marketing

Given the prestige and global coverage of the Olympic and Paralympics (for example, the Tokyo Games had a global television broadcast audience of [approximately 3.05 billion](#)), the Paris Games will be a marketing goldmine. The corollary of this is that it will almost certainly be the target of ambush or “parasitic” marketing activities. These are essentially attempts by an unauthorised party, through the marketing of its name, brand, products or services, to associate itself with the Games and benefit from the inherent goodwill in the event, without paying any rights fee for the privilege.[17]

Official partners and sponsors will pay significant fees to be granted certain intellectual property (“IP”) and marketing rights, but other brands will likely seek to exploit real or apparent loopholes in legal protection. Ambush marketing can take various forms, scales and guises but the two principal types of “ambush” are by:

- **Association:** where there is an intentional strategy by a third party to align itself with an event without authorisation, aiming to create the perception that is connected with the event. Examples include brands using Olympic athletes in their advertisements (potentially in breach of Rule 40 too) and having “Olympic” promotions.
- **Intrusion:** where an “intruder” directly targets official events to gain brand exposure, often

aimed at gaining “live” exposure in the stadia/venue and through broadcast media. Examples include erecting highly visible signage in strategic locations<sup>[18]</sup>, distributing free branded merchandise and performing eye-catching stunts.

Ambush marketing is unlikely to involve direct infringement of proprietary rights (unlike, say, the counterfeiting of official merchandise). Rightsholders may therefore need to rely on a smorgasbord of legal rights and recourse, both pre-emptive and reactive, to protect themselves during the Games. In terms of bringing an action, this will depend on the activities deployed and the relevant jurisdiction/forum, but we could potentially see claims for copyright or trademark infringement, passing off (or equivalent), contractual breaches (including ticketing terms and conditions), and/or violations of Games-specific local legislation, competition laws, advertising codes and consumer protection regulations.

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[1] Bylaw 3 to Rule 40 of the Olympic Charter

[2] Note, the IPC has direct responsibility for the anti-doping programme for the Paralympics.

[3] The risk is determined by several variables, including the NOC to which the athlete belongs and the sport in question.

[4] Sam May, ‘Paris 2024: Anti-doping services ready for thousands of tests’ (Inside the Games, 15 June 2024) <https://www.insidethegames.biz/articles/1146035/paris-2024-anti-doping-tests-wada-ready#:>

[5] For example, in the Beijing 2022 Games, the CAS ADD determined the case of 2022/ADD/43(OG) *International Olympic Committee & Fédération Internationale de Ski v Hossein Saveh Shenshak*.

[6] During Tokyo 2020, the CAS ADD determined the consolidated cases of CAS OG 20/06 *World Athletics v Alex Wilson, Swiss Anti-Doping & Swiss Olympic* and CAS OG 20/08 *WADA v Alex Wilson, Swiss Anti-Doping & Swiss Olympic*. In that instance, the Swiss sprinter had argued that he inadvertently ingested trenbolone when he ate beef at a Jamaican restaurant in Las Vegas, a few days before his positive test. A first instance panel (of the Disciplinary Chamber of the Swiss Olympic) had accepted Mr Wilson’s evidence that contamination was possible and lifted his suspension as a result. However, following an appeal by World Athletics and WADA, and having considered expert evidence regarding the likelihood of contamination, the CAS ADD reinstated the mandatory provisional suspension, meaning that Wilson was unable to compete in the 100m and 200m.

[7] Article 1 of the [Arbitration Rules applicable to the CAS Ad Hoc Division for the Olympic Games](#)

[8] Article 18 of the Arbitration Rules applicable to the CAS Ad Hoc Division for the Olympic Games

[9] CAS OG 22/08 *International Olympic Committee v Russian Anti-Doping Agency*; CAS OG 22/09 *WADA v Russian Anti-Doping Agency & Kamila Valieva*; CAS OG 22/10 *International Skating Union v Russian Anti-Doping Agency, Kamila Valieva & Russian Olympic Committee*

[10] CAS OG 20/03 *Jennifer Harding-Marlin v St Kitts & Nevis Olympic Committee & International Swimming Federation*



[11] CAS OG 20/04 *Maxim Agapitov v International Olympic Committee*

[12] CAS OG 20/13 *Krystsina Tsimanouskaya v National Olympic Committee of Belarus*

[13] CAS OG 20/05 *Oksana Kalashnikova & Ekaterine Gorgodze v International Tennis Federation, Georgian National Olympic Committee & Georgia Tennis Federation*; CAS OG 22/01 *Megan Henry v International Bobsleigh and Skeleton Federation*; CAS OG 22/04 *Adam Edelman and Bobsleigh & Skeleton Israel v International Bobsleigh and Skeleton Federation*; CAS OG 22/05 *Irish Bobsleigh & Skeleton Association v International Bobsleigh and Skeleton Federation and International Olympic Committee*; CAS OG 22/07 *Jazmine Fenlator-Victorian v International Bobsleigh and Skeleton Federation*

[14] CAS OG 20/12 *Nazar Kovalenko v World Athletics & Athletics Integrity Unit*

[15] Adam Lewis KC & Jonathan Taylor KC, 'Sport: Law and Practice' (Fourth Edition, Bloomsbury, 2021), at para D2.138

[16] CAS OG 20/10 *NOC Belgium v World Athletics & US Olympic and Paralympic Committee & NOC Dominican Republic* and CAS OG 20/11 *NOC Netherlands Sports Federation v World Athletics and US Olympic and Paralympic Committee & NOC Dominican Republic*; CAS OG 20/15 *Yuberjen Martinez & Colombian Olympic Committee & Colombian Boxing Federation v IOC Boxing Task Force*; CAS OG 20/14 *Mourad Aliev & Fédération Française de Boxe & Comité National Olympique et Sportif Français v IOC Boxing Task Force & Frazer Clarke & British Olympic Association*.

[17] Adam Lewis KC & Jonathan Taylor KC, 'Sport: Law and Practice' (Fourth Edition, Bloomsbury, 2021), at para H1.23

[18] At the 1996 Atlanta Olympics, Nike (who was not an official sponsor and had no marketing rights) famously rented billboard space near event venues and sponsored high-profile athletes, creating a strong association with the Olympics.

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