



Legal Trends and Pitfalls in Sports Advertising

April 24, 2025



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The Future of Sports – Key Trends to Watch

- Leagues and Competition Growth
 - FIFA and the Olympics
- College Sports Transformation
 - The NIL and Women's Sports Boom
- Digital Takeover
 - Gambling and E-Sports



Basic Principles to Keep in Mind

Truth in Advertising

False or Misleading Advertising

FTC Guides Concerning Endorsements and Testimonials

Celebrity Endorsements

Disclosure Requirements

Responsibility of Advertisers

Copyright and Trademark Restrictions

FIFA



- FIFA Club World Cup 2025
 - FIFA has agreed to a \$1 billion broadcast agreement with a UK streaming company to broadcast its inaugural event this summer.
 - The event is being held in the United States and will feature the 32 best club soccer teams from around the world.
- FIFA World Cup 2026
 - The WC Final in 2022 garnered 1.5 billion global viewers, dwarfing the Super Bowl worldwide.
 - In 2026, the WC will be held in North America, expanding the exposure of the U.S. market.
- The 2026 WC will be the first time with a new, expanded format.
 - 48 teams, 1,200 players, in 104 matches.

FIFA Advertising Guidelines

- “The protection of FIFA’s commercial rights, including the Official Intellectual Property, is crucial for staging the Tournament, and FIFA asks that non-affiliated entities/individuals respect FIFA’s rights and conduct their activities without commercially associating with the Tournament.”
- Examples of Guidance:
 - Official Intellectual Property may not be used together with, or in proximity to, a company logo or commercial reference such as “Brought to you by”, “Presented by” or “Sponsored by” etc.
 - The use of Official Intellectual Property by fans, without commercial intent, is generally accepted. However, excessive use of Official Intellectual Property may create the impression of an association and therefore should be avoided.
 - Editorial/Descriptive use of the event is permissible as long as the use does not create a risk of confusion that the service is in any way connected to the Tournament.
 - Generic football or country-related in-store decorations do not create an unauthorized association and are generally accepted.

FIFA Enforcement

“Our approach to brand protection focuses on education and guidance, rather than on enforcement by means of legal threats and sanctions. We prefer to engage in direct personal contact to bring infringing situations to an end by speaking to the business in question, explaining why the specific situation is problematic and seeking their cooperation to resolve the issue.”

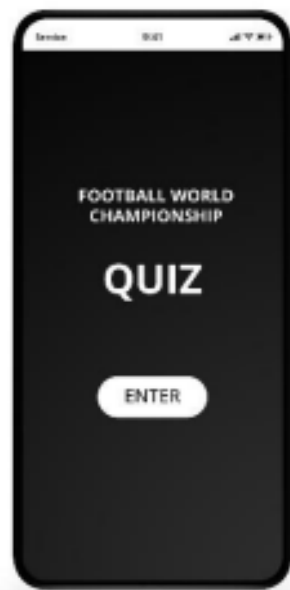
Types of Commercial Affiliates

1. FIFA Partners- global commercial rights to all FIFA competitions
 - a. Adidas, Coca Cola, Hyundai, Qatar Airways
2. FIFA World Cup Sponsors Plus- global commercial rights in relation to men's national team competitions.
3. FIFA World Cup Sponsors- global commercial rights only in relation to the World Cup
 - a. Budweiser, McDonalds, Rexona
4. FIFA World Cup Tournament Supporters- regional rights in relation to the tournament.
5. Host Committee, Host City Supporters, and Host City Donors

Branded Official Licensee: official products may bear Official intellectual property of FIFA and the Licensee's marks. This indicates association with the tournament.

Unbranded Official Licensee: official products may only bear Official intellectual property of FIFA. May not contain marks of Licensee.

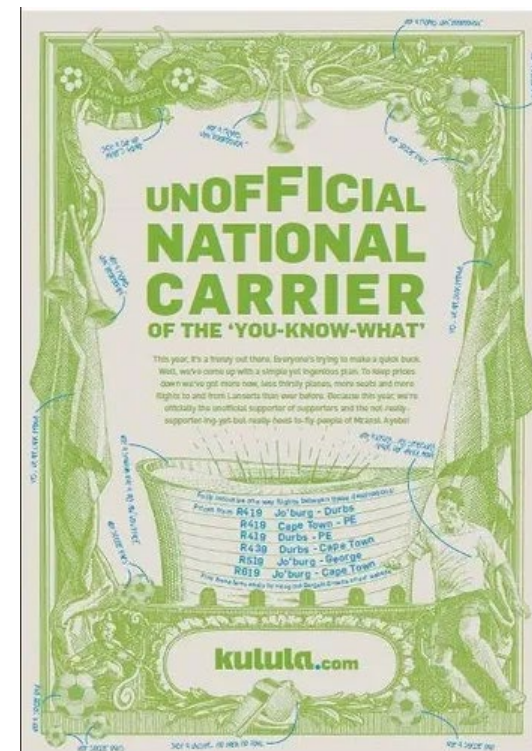
Examples of Use





FIFA Case Examples

- In 2010, in the leadup to the World Cup in South Africa, FIFA sent a cease-and-desist letter to the airline Kulula.
- In 2014, in the leadup to the World Cup in Brazil, FIFA took similar action against Brazilian travel company Decolar's tagline, "Viva o Mundial."
- While never directly mentioning the tournament or FIFA, the organization took issue with these ads because they created an unauthorized association.



FIFA Guidance

- 2026 may be a new world for FIFA World Cup Advertising: U.S. Host = U.S. Law
- FIFA's guide provides ways to celebrate without creating an association:
 - Generic soccer references
 - Generic country-related images
 - Terminology that does not incorporate FIFA IP
- How to stay off FIFA's radar?
 1. Get a branded license
 2. Avoid direct association
 3. Generic advertising



The Olympic Games

- The 2024 Olympic Games in Paris
 - Averaged 30.6 million viewers across all platforms
 - 82% increase from Tokyo 2020
- 2028 Olympic Games are set to take place in Los Angeles
- Much like the 2026 World Cup, this will bring a worldwide market and attention to the U.S.



Rule 40

✓ PERMITTED



WHY?

- Generic advertisement and tagline, specific to athlete's relationship with personal sponsor.
- No implied association with the Games or Team USA.

✗ NOT PERMITTED



WHY?

- Uses Olympic IP (Rings and tagline "Made for an Olympian")
- Athlete personal sponsors are not permitted under any circumstances to use Olympic, Paralympic or Team USA trademarks.

Rule 40 is a by-law of the Olympic Charter that provides what official Olympic sponsors can do with their advertising. Additionally (maybe more importantly), it explains what non-partners cannot do.

Rule 40 states only approved sponsors can reference Olympic Properties:

- Olympic Symbols
- Mascot
- Host City and year
- Etc.

However, Rule 40 is different from FIFA rules, as it applies only during a "Games Period."

A non-partner can run related campaigns during a Games Period if:

- They have the permission of the athlete
- No Olympic properties are used
- Respects policies of IOC
- General in nature

Olympic Partners

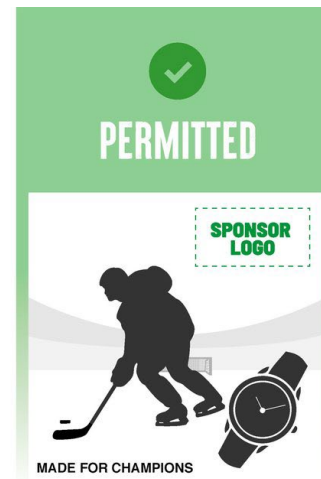
- Olympic Partners are those brands or companies that have sponsorship or official merchandise licensing contracts with the IOC or local governing bodies.
- **Olympic Partners** are permitted to use Participant Images and Olympic properties for advertising subject only to-
 - Obtaining Participant consent;
 - Terms of the Partners contract with the IOC; and
 - Respecting the supplementary guidelines for Olympic Partners.
- **Non-Olympic Partners** are permitted to use Participant Images only when:
 - They obtain participants consent;
 - They are subject to policies of the IOC;
 - They do not use any Olympic properties;
 - And the images are used in Generic Advertising.

Generic Advertising

3 Requirements for what the IOC defines as *Generic Advertising*:

1. Where the only connection to the Games is the fact that the advertising uses a Participants image;
2. Which has been in the market for at least 90 days before the Games Period; and
3. Which is run consistently and not materially escalated during the games period.

- Congratulatory Advertising- support and congratulatory messages directed at a participant.
 - Congratulatory advertising is not regarded as generic advertising because of the intrinsic connection with the Games.



WHY

- Generic Advertisement, specific to athlete's relationship with personal sponsor.
- No implied association with the Games or Team USA.



WHY

- Uses Olympic IP (Rings and tagline "Made for an Olympian").
- Athlete personal sponsors are not permitted under any circumstances to use Olympic, Paralympic or Team USA trademarks.

Games Period

- Rule 40 only applies during the “Games Period” for each Olympic Games
- The IOC states the “Games Period” is:

**Opening of the
Olympic Village**



Two days after the Closing Ceremony

- The 2028 games period is not finalized as the IOC has not announced the opening of the Olympic Village. However, the games themselves run from July 14, 2028 to July 30, 2028.

EXAMPLE 1 GENERIC ADVERTISING



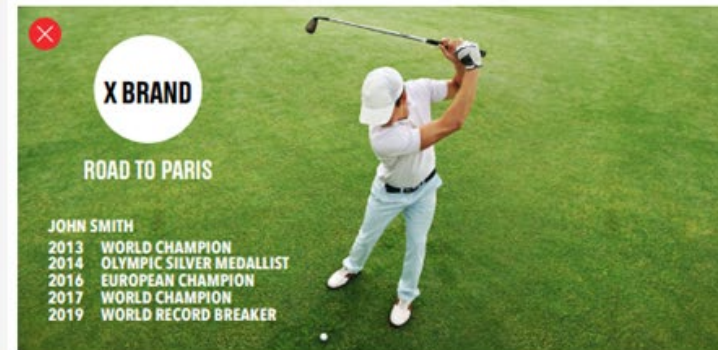
No connection with the Olympic Games other than use of an image of an Olympian.

The brand has demonstrated that the campaign has been in the market before 18 April 2024.

The athlete's Olympic achievements are listed factually and not more prominently than other achievements.

No Olympic Properties are used.

EXAMPLE 2 CONNECTION WITH THE OLYMPIC GAMES



Despite the campaign being in the market for over 90 days, and no Olympic Properties being used, a connection with the Olympic Summer Games is made using the "Road to Paris" reference.

Olympics Example Case

- In 2024, Prime Hydration faced problems with their advertisement with NBA and Team USA star Kevin Durant.
- The company's advertisements using Kevin Durant used trademarks like “Olympics” and “Olympian”, as well as Team USA colors.
- The timing of the ad, right before the start of the Olympic Games in Paris and the Rule 40 black out period, drew specific attention.
- Additional arguments included the potential infringement of the rights of the official beverage sponsor Coca-Cola.
- Prime removed the advertising before the case proceeded.



Reminder: The requirement is on the Participant!

- American Olympic Snowboarder Julia Marino was forced to withdraw from the 2022 Big Air competition due to her board.
- The Olympics allow exceptions to Rule 40 for participants whose equipment bears the branding of traditional sportswear brands, even if they are not an Olympic Partner.
- However, Marino's snowboard was ruled non-compliant due to its Prada branding on the bottom of the board.
- The IOC determined that Prada did not primarily deal in sporting goods and therefore her board was an advertisement in violation of Rule 40.



Ambush Marketing

- Prohibited marketing activities which try to take advantage of the huge interest in and high profile of an event by creating a commercial association and/or seeking promotional exposure without the authorization of the event organizer.
- **Ambush by association-** attempted association that consequently misleads the public into thinking the ambusher is somehow connected.
- **Ambush by intrusion-** gaining exposure at the events targeting the audience in the stadium and through broadcast media.
- **Opportunistic ambush-** capitalizing on newsworthy moments from an event to gain exposure for a product.



NCAA and the Rise of Women's Sports

- The NCAA reported record-breaking revenue of \$1.38 billion in 2024.
- The \$1.38 billion in revenue was largely funded by two contracts
 - CBS/Turner for March Madness = \$1.1 billion
 - ESPN = \$65 million
- The introduction of NIL
 - The Supreme Court ruling in *Alston* against the NCAA did away with the NCAA's previous amateur model to allow for student athletes to receive compensation for their name, image, and likeness.
 - The practical shift and application of NIL rights have allowed advertisers to capitalize on the increased notoriety and influence of student athletes.
- Women athletes have had the ability to capitalize on their increased status and popularity, some of which has resulted in seven-figure deals.



How did we get here? *Alston and House*

- In *Alston v. NCAA*, the Supreme Court ruled in a 9-0 unanimous decision, the NCAA had been in violation of federal antitrust law through its unreasonable restraint on competition.
- In the opinion, Justice Gorsuch unraveled the NCAA's previous stance that it maintained special status as a protector of amateurism. Instead, the opinion sent a warning message to the NCAA instructing the institution to cease its anti-competitive behavior.
- *Alston* paved the way for student athletes to receive education related benefits, aside from their scholarship. Additionally, the language of the opinion forced the NCAA to, for the first time, allow student athletes to profit from their Name, Image, and Likeness.
- In 2024, the NCAA reach a settlement agreement in a class suit titled *House v. NCAA*.
- *House* is a federal anti-trust class action lawsuit filed by athletes against the NCAA and its major conferences. The athletes allege damages due to the NCAA's previous anti-competitive behavior.
- The parties have reached a \$2.8 billion settlement which will allow schools to pay players directly through a revenue sharing model and compensate former student athletes who competed before the NIL era.
- If given final approval, this settlement could change the entire landscape of student athlete compensation.

What does this mean?

- Before 2021, student athletes were not allowed to profit off their own name, image, and likeness.
- This was thought to violate the amateur status of an athlete. Amateur status which was a requirement for NCAA competition.
- After decades of proxy battles between the NCAA and groups challenging the system, *Alston* opened the flood gates and forced the NCAA to move on from its previous amateur model.
- Before 2021, NCAA student athletes could not accept anything of value based on their status as a student athlete. No endorsements, no sponsorships, not even a free meal from the local restaurant.
- Now, student athletes, like the rest of society, are able to use value of their own name, image, and likeness for profit.

NIL Regulations

- The NCAA has very minimal restrictions in terms of commercial NIL payments.
 - Players must follow their state laws if there is a law in place.
 - Athletes should report NIL activities to their school/conference as required.
 - Must be a quid pro quo arrangement. Pay-for-play is still forbidden.
- State Laws
 - 32 states have passed NIL laws. Largely modeling after the California Act.
 - State laws vary in detail, scope, and applicability.
- The Fair Pay to Play Act
 - Passed in 2019, with an effective date of 2023, made it illegal for universities and colleges in California to deny student-athlete the ability to profit from their NIL.
 - Allows collegiate athletes to hire agents and other representatives to help negotiate and secure commercial deals.
 - Also allows California colleges to directly enter into NIL deals with athletes and recruits.

NIL Regulations (cont.)

- Other Examples:
 1. Arizona's NIL law prohibits collegiate athletes from entering into contracts that conflict with their teams' current contracts.
 2. Illinois prohibits NIL deals relating to gambling, sports betting, controlled substances, cannabis, nicotine, adult entertainment, or any product that could reasonably be considered to be inconsistent with the value of the institution.
 3. The Maryland NIL law includes language that allows student athletes to obtain representation and requires disclosure. But also imposes health and wellness requirements on its universities.

NIL Deals can be HUGE



Player	School	Sport/Position	NIL Valuation (Estimated)
Arch Manning	Texas	Football - Quarterback	\$6.5 million
Cooper Flagg	Duke	Basketball - Forward	\$4.8 million
Carson Beck	Miami	Football - Quarterback	\$4.3 million
Livvy Dunne	LSU	Gymnastics	\$4.1 million
Jeremiah Smith	Ohio State	Football - Wide Receiver	\$4 million
AJ Dybantsa	BYU	Basketball - Forward	\$3.8 million
DJ Lagway	Florida	Football - Quarterback	\$3.8 million
LaNorris Sellers	South Carolina	Football - Quarterback	\$3.7 million
Garrett Nussmeier	LSU	Football - Quarterback	\$3.6 million
Cade Klubnik	Clemson	Football - Quarterback	\$3.3 million

Digital Takeover

- American Sports betting industry recorded \$13.71 billion in 2024. 30% of which comes from online sources.
- Esports are the new frontier of sports entertainment with a projected revenue of \$4.8 billion in 2025.
- Regulatory Landscape
 - Sports Betting
 - Federal ban on Sports betting repealed in 2018.
 - State laws govern in the absence of federal legislation.
 - E-Sports
 - FTC Advertising Guidance- Influencers and Endorsements
 - E-Sport at the Collegiate Level
 - E-Sports and Kids

Murphy v. National Collegiate Athletic Association

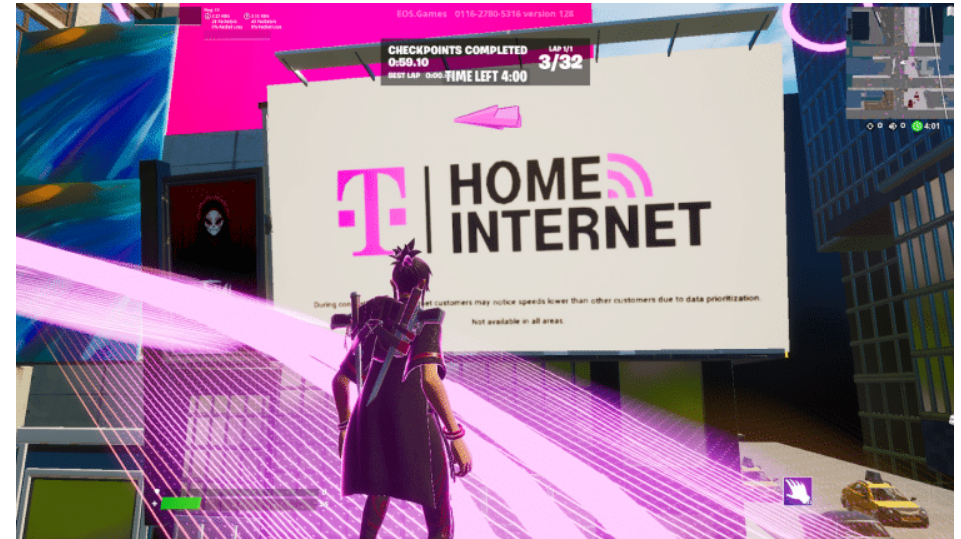
- In 2018, the Supreme Court issued a decision in *Murphy v. NCAA* where the court struck down the federal ban on state authorization of sports betting.
- The opinion, written by Justice Alito, repealed the federal *Professional and Amateur Sports Protection Act* which prohibited states from sponsoring, operating, advertising, promoting, licensing, or authorizing betting schemes based on competitive sporting events.
- The Court ruled in favor of the state of New Jersey stating the act violated the anti-commandeering rule of the Constitution.
- This decision permitted states to authorize sports betting in their jurisdictions.

Gambling Advertising

- After the repeal of the federal Professional and Amateur Sports Protection Act of 1992, regulation of sports betting is subject to state law.
- Every state and jurisdiction has its own regulatory licensing schemes:
 - Some require marketers to advertise on a flat-rate basis for gambling.
 - Others allow advertising on an equity or bounty basis.
- State regulations often include language reiterating fair advertising standards, advertising to individuals under 21, and displaying the approved gambling assistance message.
- There has been a regulatory emphasis on misleading advertisements by state AGs.
 - New Jersey and Maryland have both brought and settled false or misleading advertising claims against sports betting companies.

E-Sports/Gaming Advertising

- E-sports is the new frontier of sports entertainment.
- The advertising and sponsorship opportunities are abundant, much like for its non-virtual counterpart.
 - Player or team sponsorships
 - Influencer and endorsement deals
- Games like Fortnite and EA College Football have made deals with companies to advertise within the games.
 - Virtual ads have created an entirely new medium for product advertising.
- E-sports must nonetheless comply with FTC requirements around online endorsements, celebrity endorsements, and all other advertising requirements and guidance of the FTC.



The Federal Trade Commission and Esports

- ***Esports influencers and the Endorsements Rule***
 - **CS:GOLotto, Inc.** – Two popular YouTubers, Trevor Martin and Tom Cassell were tagged by the FTC for failing to disclose that they were owners and officers of the company
 - Paid influencers posted videos advertising their use of CS:GO Lotto that did not include a sponsorship disclosure, or included it “below the fold”
 - ***Multiple gaming companies have been investigated by FTC for similar violations***
- Corporate sponsorships are pivotal in eSports, and many companies use well-known players to advertise on their social media
- Young esports players may have a limited understanding of their responsibilities under this rule and require guidance
- Sponsors may be liable for their failure to disclose and cannot simply contract liability away
- Potential for additional liability for deceptive claims/lack of substantiation under Section 5 of the FTC Act/state laws

Agreements with Esports Influencers and the FTC

- Player/influencers must disclose the receipt of compensation or any other “material connection” that would not be expected by the consumer in any social post, tweet or other advertising
 - Examples of a material connection: payment, free product or services, travel, employer/employee relationship
 - Disclosure must be clear and conspicuous—must be made early in the post or tweet and must be repeated every time. Examples of compliant disclosures = #ad, #paid, #free, #[Brand]Ambassador, #[Brand]partner, but not #thanks or #partner (without Brand)
 - Brand/sponsor must **monitor** for disclosures and **enforce**/ask player to fix if the disclosure was not made and terminate if necessary, as sponsor may be liable for violations, too
- Sponsorship agreement should at minimum include reps and warranties re: compliance with FTC rules, but likely need to include some guidance as well

Wrap-Up

- The sports industry is an ever-growing market for advertising.
- Each venue and medium for advertising may come with distinct rules for who, what, and how advertisements can be run.
- Sports stretch across a vast swatch of our society. Advertisers can identify specific areas where they could benefit from the demographics a certain sport reaches.
- Before running any sports advertising campaign:
 - Check sport- or competition-specific rules
 - Check specific state laws
 - Check FTC advertising guidance
 - Consult with counsel

Questions?



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