The Debating Group

A Parliamentary forum for Media and Marketing Debate

Global sports events

According to Mike Reynolds, Director of the Institute of Sports Sponsorship, the motion of the Debating Group debate on 22 January 'Over-protection of global sports events sponsors crushes the competitive spirit within the host city' was more interesting for the words it omitted than those it included. The debate was held in the Grand Committee Room, off Westminster Hall at the House of Commons. It was sponsored by The Publicity Club of London and chaired by Don Foster MP for Bath, Liberal Democrat Spokesman for Culture, Media and Sport and a member of the Standing Committee that scrutinised the Olympics Bill.

Mike Reynolds was speaking in favour of the motion. "We all know", he said "to what we are referring, but where are the words 'London', 'Olympic' or '2012'?" He went on to point out that this is the event which dares not speak its name, or at least the event which dares others not to speak its name. This is particularly so in the corporate sector "unless they have bunged the required £80 million plus in the direction of the IOC or LOCOG".

Mike Reynolds commented that people in sports sponsorship have become used to over-zealous major sponsors protecting their sponsorship properties – going well beyond normal constraints of contract law e.g. banning paying spectators from carrying particular drinks into stadia because another drink company is sponsoring the event or even stopping them wearing shirts which bear the names of competitive brands. FIFA had the trousers removed from a soccer fan at the last Football World Cup because he was wearing shorts bearing the logo of a rival to Budweiser, one of the official sponsors and at the Cricket World Cup in South Africa spectators were ejected for drinking from cans of soft drinks other than the sponsors Pepsi. Mike Reynolds believes these incidents were ridiculous infringements of personal liberty.

Over-protection of the Olympic Games is something else. It has its own laws – in the case of 2012, the London Olympic Act, as well as additional restrictions imposed by London's contract with the IOC.

Mike Reynolds' objection to the Act and the Bill which preceded it is one of principle, of good marketing practice and a belief in the spirit of competition. The legislation is unnecessary and excessive. Passed into law with minimum debate and feeble opposition it is a copy of legislation previously adopted in Australia and Greece. It is against the interests of those who work in the media. The Government committed itself to this legislation demanded by the IOC when London won the bid. Mike Reynolds quoted "Ah, this England, which was wont to conquer others hath made yet another shameful conquest of itself!".

Whom does this Act protect? "...poor defenceless companies and brands which really need protection. Poor old Coca-Cola, poor little McDonald's, poor, sad, neglected Lloyds TSB, which obviously would find it hard to find the legal counsel to defend themselves under normal legislation".

The motion is not just about the Olympics. When England hosted the Rugby World Cup in 1991, there were a number of official sponsors of the tournament – Sony, Ford, Visa and others. Guinness was not one of them. But at the time of the tournament, Guinness ran some very imaginative advertising and promotional campaigns with a rugby theme. They did not claim to be sponsors and used no logo improperly. But their

brilliant marketing led some people to think they were intrinsically linked with the success of the event. "I say good luck to them". The opposers of the motion would have them penalised, but that is a restrictive view of life.

"Why", asked Mike Reynolds, "does the Olympic protection go so far beyond normal protection?" It is because Olympic sponsors are not given the normal rights of sponsors. No signage at the events, no logos on the athletes' clothes. Nonetheless the IOC gets over £1billion in sponsorship fees from their sponsors – or partners. The benefits for the sponsors are exclusive rights to promote themselves in the host city and near the venues – rights given not by the Olympics but in fact by the host citizens. The rights to these sponsors are at the expense of the host city.

The proposers of the motion have no objection to normal protection of sponsors: Olympic rings and other signs should be protected. But not at the expense of free competition and the free market – all that is best about marketing and which we all cherish.

Competitive spirit

Opposing the motion, Stephen Proctor, Sports Marketing Surveys, agreed that protection is bad and over-protection is worse. However, he believes that the protection surrounding global sports are necessary, they are fair, they amount to no more than a proper commercial contract, they are part of the essence of sponsorship, and without them, these events, with their huge cultural and financial benefits, would be lost.

Whose competitive spirit is crushed? Not the sponsors – they compete hard and long to be part of the event. Not the public – the opportunity to see sport at the highest level encourages the competitive spirit. Competition is at the very heart of the Olympics. "Who doesn't care how we fare in the World Cup; who doesn't want our athletes to win the maximum number of medals?"

Stephen Proctor saw his role as convincing the audience that global sports events are valuable. They are beneficial to the host country and its population; they foster the spirit of competition. These events are made possible by sponsorship and sponsors reasonably require a measure of protection. In talking about the Games, Stephen Proctor hoped he would not fall foul of over-protection, but he had never seen action taken against small companies in this context.

He presented some statistics indicating the popularity of the London Olympic bid:

- 79% of the population agree or strongly agree with London hosting the 2012 Olympic Games;
- For the south support is 80%;
- Even in Scotland it is at 66%;
- Less than 10% of the population actively disagrees or strongly disagrees.

Global sports events bring huge benefits. The economic benefit to the Sydney Olympics was some £3 billion. In London it will be greater because of inflation and because the benefit will be to a much larger economy.

Stephen Proctor pointed out that we know from research that sponsorship is seen as a beneficial service. 80% of people can distinguish sponsorship and advertising. Sponsors are seen as progressive and serious companies and 14% of the public say they are more inclined to buy a product from companies that sponsor.

The 2002 World Cup is estimated to have benefited the Japanese economy to the tune of £8 billion. An early forecast for London 2012 puts the figure very conservatively at £2 billion. Add to that the value of worldwide exposure a host city receives on television and in the press.

Global sports events generate huge revenues, to the host city and they also benefit sport generally around the world.

How does this benefit the population? 53% of people think that hosting the Games in 2012 will positively transform British sport and 59% feel that winning the Olympic and Paralympic Games is already encouraging children to play more sport.

Why do we need sponsors and why do they need protection? The total cost of staging London 2012 is now being put at around £6 billion. Of this £4 billion is infrastructure – which is the role of ODA and public and lottery funding. The cost of staging the games is around £2 billion; about one third of this will come from sale of broadcast rights, with the balance of over £1 billion coming from Olympic sponsors. They will pay up to £100 million and they will not get any exposure at the Games or on television for that. Olympic stadia and broadcast screens are 'clean'. No banners, no perimeter boards, very restricted on screen credits for a maximum of two sponsors and branding on clothing limited to 5 square centimetres. So these sponsors need to spend more money telling people they are there. And that is a major reason for the restrictions and controls. It is inconceivable that, for example, Lloyds Bank would contribute that £100 million to the 2012 Games if their competitors could advertise alongside them using similar wording and campaigns.

Stephen Proctor went on to discuss the population benefit for the Games in terms of improving the quality of life of individuals and communities. Sport promotes social inclusion, counters anti-social behaviour and instils discipline and a competitive spirit. It also improves health and the latest research shows that health – improved by relatively modest levels of sports activities – could save our country in excess of £10 billion each year. The athlete Daley Thompson has said, "The greatest thing to come out of the Olympics will be many generations of healthy children".

Stephen Proctor stressed that support from sponsors would not be forthcoming without protection.

In addition to the huge benefits the Games bring to the population in tangible terms, they also create a great legacy – certainly in physical assets such as new sports facilities, urban regeneration etc but also emotionally and spiritually.

Stephen Proctor concluded by asking the audience to agree, first that we need sponsors, that selection of sponsors is on an open and competitive basis and that protection of those sponsors' rights is an absolute necessity, and secondly that, by encouraging sports participation, global events promote, rather than stifle, healthy competitiveness amongst the population.

Intellectual Property Rights

Seconding the motion John Groom, Partner, Groom Wilkes and Wright LLP, pointed out that he loves brands. He cares for them and advises on them. The proposers have no complaint about protection of sponsors' logos. The current Community Trade Mark and the UK Trade Marks Act 1994 provide protection and the status of Olympic symbols are separately protected by the Olympic Symbol (Protection) Act 1995.

The contract with the Host city demands protection. The Bill was designed 'to meet the requirements of the IOC to effectively reduce ambush marketing, eliminate street vending and control advertising during Games time'.

The real bone of contention is not the use of the Olympic symbols, the official Games logo that is covered by the laws of Trade Marks and Copyright, but creating a new form of Intellectual Property that has few, if any of the checks and balances in the previous laws.

John Groom stressed that he needs to know what his clients can and cannot do in respect of Intellectual Property Rights. He maintained that the Olympic legislation is unprecedented, disproportionate and unconstitutional. Its terms are vague. The way in which the Act will operate will get in the way of people going about their work.

A Fact Sheet has been put out to dispel concerns, but concerns remain. John Groom differentiated myth, fact and truth about the legislation.

Myth: The legislation is unprecedented;
Fact: Very similar legislation was introduced in Australia prior to the Sydney Olympics;
Truth: The Australian legislation came into being after considerable consultation and had all the checks and balances that are missing. The Australian legislation only had to deal with Australian law and it did not put the burden of proof on the defendant.

Myth: You won't be able to say 'Come to London in 2012';
Fact: The Act only prevents association with the Games;
Truth: The Australian Olympic committee took action against a Chinese national selling a travel and tour package that advertised Sydney 2000. It was a contractual dispute over ticket supplies but the case went to court where it was held that the use of Sydney 2000 was in breach of the Act.

Myth: Only official sponsors can use words like 'games' and 'gold';
Fact: The Act does not prevent mere use of words like 'games' or 'gold'; the infringement is only when they are used in certain combinations in advertisements. You can use them with the proviso that they are not associated with the Olympic Games.

The UK LOG Act overlooks Community Trade Marks and John Groom pointed out that there are 5 million Trade Marks which have been registered as Community Trade Marks in this country.

The Australian legislation did not stop ambush marketing. Qantas used an Australian athlete in its advertisement and Ansett, an official sponsor, failed to stop this.

John Groom believes the Act is giving big boys small tools. It is a new form of Intellectual Property Rights. Companies may find themselves in court when registering a Trade Mark which could infringe these Rights. The Act requires honest people to look over their shoulders. We don't need to give advice to big companies to over-protect themselves. "This is about the big boys having more rights to clobber their competitors".

John Groom quoted Law Lord Viscount Simmonds in the House of Lords on the appeal of a famous trade mark case to register 'Yorkshire': "Essentially the reason for this is that the privilege of a monopoly should not be conferred where it might require honest men to look for a defence".

Sponsorship

Seconding the opposition, David Stone, Partner, Howrey LLP, reported that the Chancellor of the Exchequer offered our services as host of the Soccer World Cup in 2018 at a cost of £700 million or £10 per person.

Without sponsorship Britain has two choices: pay for it from the public purse or not have the World Cup.

To have a World Cup that costs less than £700 million we could save money by:

- Billeting the players with local families
- Have scouts and guides staff the security detail
- Transport the WAGS by second class rail and the Northern Line if it's raining and
- Cut the teams from 32 teams to 6.

And we would still need sponsorship.

Sponsorship is now an integral part of major sporting events. Sponsorship has enabled major events to be presented safely, professionally and to the standard competitors, officials and spectators now demand.

The motion is scaremongering. The new 'right' of sponsors worked in Sydney, it worked in Athens. It will work in Beijing and London. One cannot say it is unconstitutional, because Brtitain has no written constitution! David Stone's contention is that the Act is a proportionate and legitimate response to the sort of activity favoured by ambush marketers. Sponsorship accounts for more than 40% of Olympic revenue. For the 2012 Games, this represents around £2 billion in financing to come from the private sector of which £1 billion is commercial sponsorship here in the UK. So if £1 billion is needed for sponsorship and there are 7.5 million people in London, they would have to pay £130 each for the Games if the sponsors pulled out. Londoners are already paying 38p per week in extra Council Tax to fund Ken Livingstone's share of the bill. If there were no sponsorship you would have to add £2.40 per week for everyone in London. If we don't have sponsorship we have to fund it some other way.

David Stone reviewed the new Law, which he pointed out was in response to the demands of the IOC as set out in the Host City Contract signed by London as host of the Games. We had no choice if we wanted the Games. He outlined some of the provisions:

- Physical control of advertising at all stadia and transport connected to the Games. This would include posters in the Olympic village, an air balloon hovering over London or a person with a sandwich board at an Olympic station. In addition, there are provisions for security and safety; prevention of ambush marketing; and crowd control.
- There is also a new London Olympic Association Right preventing association with the Olympics in the use of certain words: 'games'; '2012', 'gold', 'summer' etc. Fair comment and press reports are allowable (this debate is not restricted!).

David Stone went on to discuss the case in Australia where Ansett, the official airline objected to Qantas' sponsorship of Olympic athletes and lead-up to events, although Qantas was not an Olympic sponsor. In July 1999, 58% of Australians thought that Qantas was an official sponsor when they had not paid for the privilege. This, he believes, devalued sponsorship.

The new Act also makes ticket touting illegal.

Why is the Act necessary? People think that ambush marketing hurts the Olympics. As association to events has become more attractive, ambush marketers have tried harder. Strong protection is necessary. David Stone quoted an extract form *The Cyber-Journal of Sport Marketing*:
'People think ambush marketing hurts the Olympics? Good! Who cares? Are the Olympics going to disappear from the planet? I don't think so. This isn't religion or virginity here, it's business. Marketing is a form of warfare and the ambush is a helluva weapon". Legislation in Sydney, Athens and Beijing has been proportionate, realistic and appropriate. Trademark legislation is not enough because it is not an issue of confusion.

The new Act helps to deliver a Games which is clear, uncluttered and professional as well as delivering financial stability through long-term relationships and a Games on budget.

Discussion from the floor

For the motion

- The contributor believed the Act provides disproportionate restriction. Because we were desperate for the Games to take place in this country, the Government introduced the Bill. But this Intellectual Property Law goes beyond anything in legislation. Local businessmen are paying for the privilege of having the Games, but cannot refer to them on their own doorstep.
  The Act is anti-competitive: Coca-Cola has the sponsorship until 2020.
  The contributor also objected to a Swiss operation imposing a law in our country.
- The contributor thought it had been a little unfair to describe the Parliamentary scrutiny that the Olympic Bill underwent as enjoying only 'cursory opposition', given that the Lib Dems and Tories in the Commons and then the Lib Dem, Tories and Government backbenchers in the Lords had brought pressure to bear to bring around a number of important improvements. In the original version of the Bill, for example, were a business to use 'gold' or 'games' in a marketing communication, they would automatically be presumed to have infringed the London Olympics Association Right. By the time the Act reached the stature book, however, the use of such words could only be regarded as an indication of an infringement. In other words the burden of proof would be placed back on the London organising committee of the Olympic Games, as the prosecuting authority, to prove that an infringement had in fact taken place.
  The contributor agreed with the point made by John Groom that the Olympics legislation created an atmosphere of uncertainty and noted that the London Olympics Association Right was already in place and would remain so until 31 December 2012.
  It was suggested that the protection in the legislation was necessary to get the sponsors in place, but it seems back in 2005, and 2006 during the passage of the Bill in the UK that the Winter Olympics in Vancouver, scheduled for 2010, had been having little trouble in attracting sponsors, despite the absence of any specific legislation protecting them, with by inference the IOC happy to rely on the existing body of Canadian law, which was not unlike our own in terms of misleading advertising,

passing-off, trade-marks and the like. The advertising business in the UK has probably done their Canadian friends a disservice by drawing attention to this point during the Parliamentary scrutiny of the Olympics legislation in the UK, as it was now understood that legislation offering additional protection to sponsors is in the offing in Canada.

- The Olympic Committee has made itself incredibly open to ambush marketing. It is desperate to get sponsorship. The benefits for sponsors are very little. The Olympics need to offer real benefits for sponsorship.
- Looking at the financial arguments it appears that the tail is wagging the dog. Of the £6 billion required, £4 billion is from the public purse, £2 billion from profit and £1 billion from sponsorship.
  The contributor asked how sponsorship for burgers and colas would promote the health and healthy lifestyle put forward by Mr Proctor as a benefit of the Games.
- In the spirit of this House, the contributor suggested that restriction on competitive advertising represents an anti-competitive, anti-British spirit.
- At most recent sports events, it is quite clear that the ambush industry can find ways to get round restrictions. Some such campaigns, using clever associations, are bigger then regular sponsorship. Over-protection does not crush inevitable ambush marketing.
  The contributor was in favour of the motion in principle, but did not believe that ambush marketing would be crushed.
- The contributor pointed out that the sponsors are paying for the right to be associated with the event. They are not sponsoring the city. We are staging the Olympics for the city, but all the money is going to the IOC, not to London. The legislation is restricting business. There is too much over-protection of this event.
- The contributor believed that small companies should be exempt from the Draconian law.

Against the motion

- Most of the concern was coming though criticism of the IOC and the power it wields. But if you want the Games, you have to go with the IOC.
  The top sponsors pay an entry fee, but they have to spend much more on PR therefore they need protection. Ambush marketing will find ways around the restrictions, but the Government should stand up for them.
  All parties voted for this Act and accepted it as fair and reasonable because they wanted the Olympics.
  There are many ways for local companies to take part, e.g. Qantas supported the local team.
  Companies would hesitate to put up so much money for sponsorship in addition to the price of associated events if they didn't have protection. For instance sponsors have to pay to be at the opening ceremony.
  There has to be protective sponsorship in some form or other.
  If you don't like it, talk to your MP.

Summing-up

Summing up for the opposition Stephen Proctor pointed by that we are governed by the Swiss organisation. What the Act tries to do is prevent passing-off. It seeks to define particular issues.

Sponsorship reduces costs. The public understand this and appreciates the contribution of sponsors.

The Olympics are vulnerable to ambush marketing. Sponsor benefits are reduced by not having banners, so they have to spend the money in other ways. Sponsors are, in fact, very loyal.

Staging the Games using sponsorship and broadcast rights leads to an infrastructure of prosperity.

Stephen Proctor believes that it is unlikely that action will be taken against a small trader allegedly infringing the Act.

He went on to enthuse about the Games. "When the Games come here, those who attend and are in London at the time will be knocked out by the experience. Do we want the Games? Yes! Do we need the Games in London? Yes!" He contended that it would do a huge amount for London's infrastructure. The Act is the

price we have to pay in order to stage the Games in London. This is the deal. It works. "I'm excited that it will work in London and nothing in the legislation will reduce the competition."

Summing up for the motion Mike Reynolds re-iterated that the proposers were not against the Olympics. They are against excessive use of particular legislation. He believes it is a sad day for English Law. Excessive legislation is bad legislation. This Act is now enshrined in criminal law. We know that to have the Games, we have to have the legislation, but that does not make it good legislation.

He concluded, "We are not against the Olympics. I rejoiced with my colleagues at the success of the London bid. We are for the Games. We are against legislation which restricts innovative marketing and competition. Strike a blow for freedom. Vote for the motion".

The result

The motion was overwhelmingly carried by a show of hands.

Next Debate

The next debate will take place on Monday 19th March 2007, sponsored by The Chartered Institute of Marketing. Details from Debating Group Secretary, Doreen Blythe (Tel: 020 8994 9177) e-mail: dblythe@varinternational.com