



Bundeskartellamt



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Bundeskartellamt / Sports

German Athletes and their sponsors obtain further advertising opportunities during the Olympic Games following Bundeskartellamt action - IOC and DOSB undertake to change the advertising guidelines

Bonn, 27 February 2019: German athletes and their sponsors will have considerably enhanced advertising opportunities during the Olympic Games in future. The German Olympic Sports Confederation (Deutscher Olympischer Sportbund, DOSB) and the International Olympic Committee (IOC) committed to the Bundeskartellamt to ease the advertising restrictions pursuant to Rule 40 No. 3 of the Olympic Charter.

Andreas Mundt, President of the Bundeskartellamt: *"We ensure that the advertising opportunities of German athletes and their sponsors during the Olympic Games, which the DOSB and IOC significantly restricted in the past, are extended. While athletes are the key figures of Olympic Games, they cannot benefit directly from the IOC's high advertising revenue generated with official Olympic sponsors. However, as the games mark the height of their sporting careers, self-marketing during the games plays a very important role. Our decision grants German athletes more leeway when it comes to marketing themselves during the Olympic Games, for example as far as the use of certain "Olympic" terms or their pictures taken in sports events, or social media activities are concerned. Sports associations pursuing economic activities are also subject to competition law."*

In 2017 the Bundeskartellamt initiated administrative proceedings for suspected abuse of a dominant position against the DOSB and the IOC. As a result both organisations made initial improvements to the advertising guidelines in December 2017 prior to the Olympic Games in Pyeongchang. While the Bundeskartellamt preliminarily accepted these changed guidelines, it also

announced that it was going to analyse them in more detail ([see press release of 21 December 2017](#)). A survey conducted among a large number of athletes and sponsors in Germany early in 2018 showed that the initial adjustments did not eliminate the advertising restrictions to a sufficient extent. For this reason the Bundeskartellamt initiated further investigations in April 2018 and negotiated with the IOC and the DOSB on how to improve and specify its commitments.

According to the Bundeskartellamt's preliminary assessment, the DOSB and the IOC have a dominant position on the market for organising and marketing the Olympic Games. Pursuant to the case-law of the European Court of Justice the guidelines of a sports association are subject to competition law insofar as they refer to economic activities. Restraints of competition may be justified by legitimate aims provided that the restraints required to achieve the aims are proportionate. As a legitimate aim for the advertising restrictions the Bundeskartellamt basically acknowledged the regular event of the Olympic Games by preventing illegal forms of advertising. However, the authority's preliminary assessment is that the restrictions of advertising opportunities arising from the current application of Rule 40 of the Olympic Charter are too far-reaching and thus constitute abusive conduct. In that respect especially the case-law of the Federal Court of Justice regarding the German "Olympiaschutzgesetz" (Act on the Protection of the Olympic Emblem and the Olympic Names) was taken into account.

Athletes nominated for the Olympic Games must undertake towards the DOSB and the IOC to observe the Olympic Charter in order to be admitted to the Games. Pursuant to Rule 40 No. 3 of the Olympic Charter, no athlete participating in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the games and several days before and after the games. This advertising restriction comprises all marketing and social media activities and applies during the so-called "frozen period" (starting nine days before the opening of the Olympic Games and continuing until three days after the closing ceremony). The current DOSB guidelines on Rule 40 provided that exceptions had to be applied for three months before the event, the advertising campaign had to be ongoing already and could not contain any Olympic or Olympic-related terms.

The DOSB and the IOC have now undertaken to considerably enhance advertising opportunities for German athletes and their sponsors, i.e. the administrative proceedings could be concluded with a so-called commitment agreement. The Bundeskartellamt is going to monitor the compliance with the commitment agreement. A new DOSB guideline defines the changes and the conditions under which German athletes and their sponsors can carry out advertising activities in the future. The IOC has agreed that these new guidelines take priority over the IOC rules with regard to Germany. The agreement contains the following improvements:

- Procedure: Advertising activities to take place during the Olympic Games no longer have to be notified to and cleared by the DOSB beforehand. Athletes or companies wishing to have legal security with regard to the activities can continue to notify the DOSB.

- Advertising activities: Not only ongoing, but also new advertising activities will be admissible in future. The same applies to messages of greeting and congratulations.
- Terminology: It is now allowed to use terms like “medal, gold, silver, bronze, winter or summer games”. The catalogue of Olympic terminology which must not be used is now considerably smaller and, unlike before, conclusive.
- Photographs of athletes competing: It is now permitted to use certain competition pictures and non-competition pictures taken during the Olympic Games. For example, pictures of competitions not showing any Olympic symbols may be used.
- Social media: Athletes are allowed to use social media more freely during the Olympic Games. Some content may be shared and combined with messages of greeting or thanks to the sponsor.
- Sanctions and jurisdiction: Sporting sanctions must not be applied in the event of disputes on whether an advertising measure is admissible or not, and sports arbitration courts no longer decide on such disputes. Instead, such cases can be taken to ordinary civil courts.

The appellant in the proceedings was the Federal Association of the German Sports Goods Industry (Bundesverband der Sportartikelindustrie, BSI); further parties to the proceedings were the association of German athletes (Athleten Deutschland) and two athletes. The Bundeskartellamt coordinated the proceedings with the European Commission.

The decision will be published on the website of the Bundeskartellamt in a few weeks following the elimination of business secrets from the document.

Background:

Abuse proceedings can be concluded by agreeing on a commitment. The Bundeskartellamt can provide a preliminary assessment on a specific company, stating that it holds a dominant position and that a specific conduct is deemed abusive. The parties can then make commitments to avoid further investigations and lengthy court proceedings and dispel the abuse accusation. In its commitment decision, the Bundeskartellamt declares the commitment as binding and monitors compliance.