



PRIVATE & CONFIDENTIAL

The British Olympic Association
101 New Cavendish St
London
W1W 6XH

Our Ref: 586.2

15 November 2019

By: Post and Email (shahab.uddin@teamgb.com)

Dear Sirs

1. We write to you in relation to the unlawful rules you have placed on athletes and your general anti-competitive behaviour including, in particular, the rules set out in the draft Team Member's Agreement ("**TMA**") for the XXXII Summer Olympic Games in Tokyo (the "**Games**") which you sent to the athletes identified as proposed Claimants (the "**Athletes**") last month (a copy of which is enclosed with this letter). These rules will govern the Athletes' membership of Team GB and their relationship with you (the British Olympic Association ("**BOA**")) in the build up to and during the Games. Our clients propose to seek injunctive and/or declaratory relief, damages and/or other relief in the event that you decline to take the steps identified below.
2. This letter constitutes a Letter Before Claim for the purposes of the general Pre-Action Protocol found in Annex A to the Practice Direction on Pre-Action Conduct found in the Civil Procedure Rules ("**CPR**"). We draw to your attention the terms of paragraph 4 of the CPR Practice Direction dealing with Pre-Action Conduct and in particular to the Court's powers to impose sanctions for failures to comply with the Practice Direction.

A. The proposed Claimants

3. We act for a group of top British athletes, namely Meghan Beesley, Andrew Butchart, Beth Dobbin, Sir Mo Farah, Cameron Fillery, Adam Gemili, Charlie Grice, Matthew Hudson-Smith, Abigail Irozuru, Katarina Johnson-Thompson, Eilish McColgan, Laura Muir, Andrew Osagie, Andrew Pozzi, Shara Procter,

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Michael Rimmer, Martyn Rooney, Lynsey Sharp, Laura Weightman and Jake Wightman. We understand that many of the Athletes are likely to be picked to represent Great Britain ("**Team GB**") at the Games next year. We are also in the process of onboarding further athletes as clients of this firm to participate in any legal action which may be necessary to enforce our clients' rights.

4. Our address for service is Old Pump House, 19 Hooper Street, London E1 8BU.

B. The intended Defendant

5. The intended Defendant is the British Olympic Association, an unincorporated association of undertakings comprising the national governing bodies of a large number of organised sports that participate in the Olympic Games. It is the National Olympic Committee for Great Britain and Northern Ireland. Please confirm in your Pre-action Protocol Response where you would wish to receive any legal proceedings that may be instituted in due course.

C. Summary of the Claim

6. Prior to instructing this firm, the Athletes were expectant that the changes you were going to make to the TMA would mean that a fair balance would be struck between the rights of all GB athletes and the commercial rights of the BOA. The contents of the "new" guidelines were, to say the least, disappointing for the Athletes. They amount to no more than window dressing and for the reasons set out in this letter do not add to the rights of the Athletes in any meaningful way. Your behaviour and your rules are in breach of Articles 101 and 102 TFEU. They also restrict the free provision and/or receipt of services contrary to Article 56 TFEU. The position is also manifestly unfair and an unreasonable restraint of trade (following Bradley v Jockey Club [2007] L.L.R. 543, per Richards J and [2006] L.L.R. 1, CA).
7. The income which the BOA receives from marketing activities (predicated on the Athletes' success) far exceeds the remuneration given to those Athletes. The failure to redress the gross imbalance has left the Athletes with no choice but to instruct this firm to commence legal proceedings if the steps identified below are not taken.

D. Relevant background to the claim

(1) The TMA and Rule 40 of the Olympic Charter

8. By signing the TMA, the Athletes agree that their selection as a member of Team GB will be conditional upon complying with the obligations set out within the TMA. Clause 2.1 of the TMA states that each Athlete agrees "*to comply with all provisions of the Olympic Charter*" and that the provisions of the Olympic Charter

are incorporated into the TMA. The Olympic Charter is the codification of the fundamental principles of Olympism, and the rules and bye-laws adopted by the International Olympic Committee (“**IOC**”). It governs the organisation, actions and functioning of the Olympic movement and establishes the conditions for the celebration of the Olympic Games. The Athletes have no ability to negotiate any of the terms of the TMA.

9. The Olympic Charter (in force as from 26 June 2019) stipulates at rule 40, bye-law no. 3 (“**Rule 40**”) that *“Competitors, team officials and other team personnel who participate in the Olympic Games may allow their person, name, picture or sports performances to be used for advertising purposes during the Olympic Games in accordance with the principles determined by the IOC Executive Board”*. This wording was amended from the previous wording [pre 26 June 2019] which stated that *“Except as permitted by the IOC Executive Board, no competitor, team official or other team personnel who participates in the Olympic Games may allow his person, name, picture, or sports performances to be used for advertising purposes during the Olympic Games”*.
10. We also note the Rule 40 Guidelines which were issued by you in updated form in October 2019 (the “**BOA Rule 40 Guidelines**”). The TMA stipulates that the Athletes, save for any waivers which may be granted by the BOA pursuant to the BOA Rule 40 Guidelines, shall not authorise or knowingly permit any third party (save for official Team GB or Games partners) to use their image rights for advertising or promotional purposes during the Games and a so-called frozen period starting nine days before the opening of the Games and continuing until three days after the closing ceremony (together the “**Games Period**”). In essence, no athlete participating in the Games may allow his or her image, person, name, picture or sporting performance to be used for advertising purposes during the Games Period unless permitted under the narrow scope of the BOA Rule 40 Guidelines.
11. Any breach of Rule 40 or the BOA Rule 40 Guidelines will result in the Athletes breaching the TMA. Any culpable breach of the TMA will give you the right to impose sanctions, which may include excluding the relevant Athlete from Team GB and the Games, withdrawal of accreditation, remedial action, financial sanctions and/or the withdrawal of benefits. The financial sanctions may include the reimbursement of delegation costs and re-charging contractual penalties from equipment suppliers of Team GB.


(2) IOC and BOA Partnerships

12. The IOC and the BOA (and accordingly Team GB) have entered into a number of lucrative partnerships with some of the world’s biggest brands, which are set to activate around the Games. Those sponsorship deals are split into two tiers. The domestic Team GB partners (for example Adidas, Aldi and Mcvitie’s) engage with

the BOA directly, whilst the IOC 'Worldwide TOP partners' (such as Coca Cola, Samsung and Toyota) engage directly with the IOC (all those partners together the "**Olympic Brands**"). We are aware that the financial benefit to the BOA of some of those agreements with partners is directly affected by the medal success of the team and individual athletes.

13. Under the TMA and the BOA Rule 40 Guidelines, Athletes are freely permitted to enter into personal partnerships with the Olympic Brands before and during the Games Period. Indeed, you actively encourage such partnerships and many of the Olympic Brands will look to engage directly with the most high-profile athletes in order to maximise their exposure and sponsorship rights around the Games. By way of example, Adidas is the official sportswear partner of Team GB and will once again provide the Team GB kit for the Games. Some Team GB athletes have existing endorsement deals with Adidas. They can therefore undertake marketing activities associated with that specific brand during the Games Period because of Adidas's status as an Olympic Brand and in doing so increase their income. However, many of our clients do not have a sponsorship deal with Adidas. Instead, they are sponsored by other sportswear brands. Outside of the Games Period, many of the Athletes rely on those endorsement deals as their primary source of income given the relative paucity of prize money and funding in their respective Olympic sports. However, those personal endorsement deals with other sportswear brands preclude the Athletes from entering into a personal endorsement agreement with Adidas because those brands deem Adidas a rival sportswear brand.
14. Furthermore, a direct consequence that flows from your partnership with Adidas is that the Athletes have (by virtue of not being Adidas sponsored athletes), in the past, been indirectly blocked from taking part in any commercial deals with other Olympic Brands (not just Adidas), including brands such as Aldi, Toyota, Samsung, Fitness First, Dreams, Haven and DFS. Indeed, we understand that many of the Olympic Brands know that they should actively avoid engaging with the Athletes (because of their endorsement arrangements with rival sportswear brands) and instead enter into personal partnerships with Adidas endorsed athletes. This has been made clear to our clients' representatives and will be made good in evidence (should the need arise).
15. Additionally, we understand that you have entered into agreements with non-Olympic Brands relating to and restricting the marketing activities of their endorsed athletes (including some of the Athletes) with the Olympic Brands. Those agreements have a clear anti-competitive effect by preventing the relevant athletes from entering into potentially lucrative personal partnerships with the Olympic Brands.

[3] The Rule 40 Guidelines

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16. The BOA Rule 40 Guidelines set out how an athlete may activate sponsorship deals with non-Olympic Brands (in other words partners or brands who sponsor an athlete directly and are not the Olympic Brands (i.e. not via National Governing Body sponsorship)). Separate Guidelines have been provided for: (a) Athletes; and (b) Brand (Non-Olympic) & Agents. Each set of Guidelines was updated in October 2019.
 17. Each National Olympic Committee ("**NOC**") is able to set its own Rule 40 guidelines provided those guidelines stay within the general parameters of Rule 40. Over the years, Rule 40 and the NOC guidelines have been a source of great frustration and controversy for competing Olympic athletes because they serve to restrict athletes from supplying marketing and promotional services around the Olympic Games.
 18. According to the BOA Rule 40 Guidelines (published in October 2019), Non-Olympic Brands who sponsor an athlete directly are only permitted to use an athlete in advertising during the Games Period, if:
 - a. they have obtained the prior consent of the athlete;
 - b. they have sought approval from the BOA in writing by supplying its marketing/advertising/usage plans (with detail around nature, frequency, duration and location of usage) by no later than 14 May 2020 and have received such approval;
 - c. the advertising is generic and does not contain any references to or intellectual property (e.g. logos, images) of the Games, the Olympic movement or Team GB (including in retweets of official Team GB or Olympic posts which may suggest a commercial association); and
 - d. the advertising has been in-market for a period of at least 90 days prior to the Games Period (prior to 14 April 2020), and is run consistently in both nature and frequency during this time (with no spike in usage prior to or during the Games).
 19. In addition to the above, the BOA Rule 40 Guidelines make it clear that congratulatory messaging by non-Olympic brands is strictly prohibited during the Games Period.
 20. The advertising restrictions detailed in the BOA Rule 40 Guidelines apply to all marketing and social media activities.

(4) Rule 40 Interpretation: Outside GB and Recent Changes


21. The IOC relaxed Rule 40 earlier this year following a landmark decision by the Bundeskartellamt (Germany's competition and markets authority) which deemed that the rules governing the marketing ability of members of the German Olympics team were too restrictive and anti-competitive. Since that decision was

published, the United States, Australian and German Olympic Committees (amongst others) have all significantly loosened their respective Rule 40 guidelines to allow their athletes more scope in what they are able to do to offer and perform marketing and promotional services around the Games. This in turn will allow those athletes the opportunity to maximise the value of their image rights during the pinnacle moments of their careers at the Games. Our clients were therefore extremely disappointed when you published the BOA Rule 40 Guidelines (outlined above) last month and discovered that you had done comparatively very little to relax your own Rule 40 guidelines.

22. The principal change to or 'relaxing' of the BOA Rule 40 Guidelines was to introduce the ability to 'thank' personal, non-Olympics Brand sponsors. As a result, our clients will now be able to post one generic message of thanks to each of their sponsors during the Games Period. The Games Period runs from 14 July 2020 to 11 August 2020. Thank you messages will be limited to: *'Thank you to [sponsor] for all your support'*.
23. Further you have pushed back the notification date for BOA approval by around a month (from April to May 2020), yet crucially, the date for notifying you still falls before any of our clients (or the brands they wish to engage with) will know for certain that they are going to be part of Team GB at the Games.

E. Details of the Claim to be advanced

24. The changes to the BOA Rule 40 Guidelines are insufficient to address the unlawful restrictions they place on the Athletes. The Athletes contend that Rule 40 as it is intended to be implemented in accordance with your Guidelines is unlawful because:
 - a. It is an unlawful restriction of competition in the relevant market for athletes' marketing and sponsorship activities, contrary to Article 101 TFEU;
 - b. It imposes unfair trading terms and conditions, contrary to Article 102 TFEU;
 - c. It unduly restricts the freedom of the Athletes to provide commercial services, contrary to Article 56 TFEU;
 - d. It sets restrictions which are an unreasonable restraint of trade and which are accordingly void at common law; and
 - e. It amounts to a disproportionate interference with the Athletes' ability to carry on a trade and/or their commercial freedom of expression, contrary to Articles 16 and 11 respectively of the Charter of Fundamental Rights ("CFR").
25. As a result of your failure sufficiently to relax the BOA Rule 40 Guidelines, our clients will lose out on potentially vital revenue with their partners and potential



partners during the most profitable period of their careers. The net effect is that the commercial value of athletes sponsored by non-BOA sportswear brands (which includes some of our clients) is depressed as they are significantly limited in terms of Games activations as their own sportswear deals may prevent them from being featured in BOA partner sportswear, and you will not let them be featured in other brand clothing.

26. The combination of this side-effect, Rule 40, the TMA and the BOA Rule 40 Guidelines permits you to set your own rules and deadlines for, or to prohibit altogether, the Athletes' advertising campaigns with personal sponsors or non-Olympic brands during the Games Period that celebrate their profile and exposure around the Games.

(1) Claim under Article 101 TFEU

27. The IOC is an association of undertakings for the purposes of Article 101 TFEU. The BOA is also an association of undertakings. See Case C-519/04 P *Meca-Medina and Majcen* [2006] ECR I-6991, CJEU at [38]. Pending the finalisation of their expert evidence, the Athletes provisionally contend that the relevant market is the market for the organisation and commercial exploitation of Olympic sports during the Olympic Games, which also has a necessary impact on the marketing and sponsoring activities by athletes who are eligible to qualify for Team GB's participation in the Games. The geographical scope of that market is Great Britain, which is a significant part of the Internal Market.
28. The IOC and BOA through Rule 40 and the BOA Rule 40 Guidelines impose a series of regulatory and contractual restraints on athletes and sponsoring brands. The BOA has also entered into a network of agreements with Olympic and non-Olympic Brands. Those restraints and overall network of arrangements have, as their object and/or effect, the prevention, restriction or distortion of competition in the relevant market, producing an actual or potential effect on trade in the Internal Market, contrary to Article 101 TFEU. The restraints limit or control markets and directly or indirectly fix trading conditions. They are not necessary to give effect to a purely sporting rule. Nor are they necessary or proportionate in the protection of the integrity of the sport. Other NOCs have been able to put in place far less restrictive measures under Rule 40.
29. The Bundeskartellamt deemed that the rules governing the marketing ability of members of the German Olympics team were restrictive and anti-competitive. The investigation led by the Bundeskartellamt resulted in the significant relaxation of Rule 40 (at the IOC level), and in the Rule 40 guidelines at NOC level for a number of countries, including Germany. Whilst we acknowledge that the case in Germany is not a binding precedent in this jurisdiction, we believe that the decision will be extremely persuasive should your behaviour be scrutinised by the Courts or the Competition and Markets Authority ("**CMA**") in this jurisdiction.

30. The apparent objective of Rule 40 and the BOA Rule 40 Guidelines is to preserve the economic benefits which the BOA (and IOC) derive from being able to offer exclusive marketing and sponsorship arrangements with Olympic Sponsors. In Case AT.40208 *International Skating Union's Eligibility Rules* (Decision dated 8 December 2017), the EU Commission found at recital (220) the protection of the economic or financial interests of a sport's national governing body did not constitute a legitimate objective that can justify a restriction of competition. The Commission cited extensive case-law from the Court of Justice of the European Union ("**CJEU**") in support of the proposition that imperative requirements justifying restrictions on competition (or free movement) can only be of a non-economic nature.
31. In so far as it has been suggested by you that another objective might be to prevent ambush marketing during the Olympic Games, that does not amount to a proportionate or necessary justification either. Ambush marketing can be defined as advertising measures which violate legal provisions by using logos, symbols, trademarks or other characteristics of the event organiser or misleading information regarding the advertiser's sponsoring status. In the German case, the Bundeskartellamt deemed the German Olympic Sports Confederation's ("**DOSB**") Rule 40 guidelines to be disproportionate and remarked that the provisions to prevent ambush marketing in Germany during the Games Period inherently restricted the advertising options of athletes and their (potential) sponsors. In this case, the IOC and Team GB have sufficient intellectual property rights to protect against any ambush marketing or passing off attempts in Great Britain.
32. The BOA Rule 40 Guidelines are disproportionate in the following ways:
- a. the obligation imposed on the athletes to notify individual advertising plans by 14 May 2020 and not to carry out those plans unless approval has been granted by the BOA goes far beyond what is necessary to prevent ambush marketing;
 - b. the restriction of possible authorisation to so-called ongoing advertising activities is disproportionate, depriving athletes of new sponsorship opportunities as they reach the peak of their physical training. Indeed in the German case the Bundeskartellamt could find no objective reason why athletes should not be able also to launch individual advertising activities with their sponsors during the Games Period, and in particular why it should not, depending on the course of the Games for the athlete, be possible to send messages of greeting and congratulations;
 - c. the prohibition on the use of certain unregistered Olympics-related terms specified in the BOA Rule 40 Guidelines is disproportionate. These terms are commonly used in everyday language. They are not subject to

protection under any intellectual property rights of the parties. Indeed, no such protection would conceivably be conferred. For example, there is no reason why advertisements should not include a reference to the respective location of the Games;

- d. it is disproportionate that members of Team GB are generally prohibited from using their own photos taken at Olympic locations, e.g. during competitions or in other situations, for individual advertising measures, if these photos were taken during the course of the Games. This applies in particular to photos which do not picture any Olympic symbols, logos or designations protected by registered intellectual property or where these could be rendered unrecognisable. The same applies to the prohibition on the use of videos in a promotional context which show athletes during the Games outside the competition venues. Here, too, the Bundeskartellamt found that a prohibition that also extends to recordings on which no Olympic symbols, logos or designations are to be seen or where these could possibly be made unrecognisable, is likely to be too far-reaching; and
- e. the prohibition on individual advertising measures carried out via the Athletes' social media accounts is disproportionate as it also covers advertising measures which do not show any designations or symbols protected in favour of the parties or any pictures or videos which have not been released for use in advertising. This prohibition is likely to prevent individual advertising measures by the Athletes closely linked to the Games in terms of time. Following the "*Olympia-Rabatt*" judgment (German Federal Court of Justice, judgment of 15 May 2014, I ZR 131/13, available at <https://lexetius.com/2014,3770>), such a temporal connection is not sufficient grounds for considering Olympics-related advertising to be inadmissible.

33. Further, the Bundeskartellamt held that the option to impose sports-related sanctions is entirely disproportionate. It found that "*Such sanctions could have significant effects on the athletes' sports careers and the exercise of their professions. Sanctions could, for example, give rise to the extraordinary termination of existing sponsorship contracts or the exclusion of athletes from promotion programmes, which would threaten the continued funding of their sports activities. A ban from competitions leads to athletes being expelled from their national teams and losing their training opportunities. Depending on the duration of the ban and the athlete's age, this can mean the end of a sporting career*". In the preliminary view of the Bundeskartellamt, "*the mere possibility that such a sanction might be imposed can have a deterrent effect on athletes and even make them refrain from using the option of individual advertising activities*".

34. On that point, it is also important to consider the European Commission's ruling

in *International Skating Union's Eligibility Rules* which deemed that the International Skating Union's ("ISU") rules restricted competition to enable the ISU to pursue its own commercial interests, to the detriment of the athletes and of organisers of competing events. The European Commission found that a professional skater could not take the risk of receiving a suspension lasting several years or even a life ban (which was within ISU's sanctioning powers). The unnecessarily punitive penalties were disproportionate in such circumstances.

35. In addition to the above, and as mentioned earlier in this letter, you are not scheduled to pick the Team GB athletes who will take part in the Games until after 14 May 2020 (the date by which Athletes or non-Olympic Brands must inform you of their marketing plans around the Games). It will therefore be impossible to plan with a sufficient degree of certainty any campaigns around the Athletes' participation in the Games. Some individual sponsors, especially small and medium-sized companies or brands that do not have a sophisticated marketing department, will not be willing to plan advertising and social media activities with the Athletes by 14 May 2020, which means that in some cases it will not be possible for the Athletes to receive sponsorship from or provide marketing activities to such companies and comply with the BOA Rule 40 Guidelines.
36. The Bundeskartellamt ruling and the subsequent relaxation of the DOSB's Rule 40 guidelines show how (at the very least) more proportionate measures could be imposed. The DOSB's Rule 40 implementation will allow German athletes greater latitude during the Games. Advertising activities to take place during the Games Period no longer have to be notified to and cleared by the DOSB beforehand. Some examples of the changes made by the DOSB include:
 - a. advertising activities to take place during the Games Period no longer have to be notified to and cleared by the DOSB beforehand;
 - b. not only ongoing, but also new advertising activities, are now permitted;
 - c. messages of greeting and congratulations from Non-Olympic Brands are now permitted;
 - d. it is now permitted 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 (i.e. exhaustively defined);
 - e. it is now permitted to use certain competition pictures and non-competition pictures taken during the Games. For example, pictures of competitions not showing any Olympic symbols or registered intellectual property may be used;
 - f. German athletes are now allowed to use social media more freely during the Games. Some content may be shared and combined with messages of greeting or thanks to the sponsor;
 - g. sporting sanctions cannot 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 the ordinary civil courts.

(2) Claim under Article 102 TFEU

37. The BOA holds a dominant position in its regulation of the relevant market. Alternatively, the BOA and the IOC together hold a position of joint dominance. Athletes are not permitted to take part in the Games unless they comply with Rule 40 and the BOA Rule 40 Guidelines. The restraints and network of arrangements set out above unfairly set trading conditions on the commercial arrangements between the Athletes and both Olympic and non-Olympic Brands. They limit the free provision of services in the relevant market. They impose discriminatory trading conditions between Olympic and non-Olympic Brands. They make the conclusion of the agreement between the BOA and Athletes subject to the acceptance of disproportionate and unnecessary supplemental conditions. Such conduct constitutes an abuse of your dominant (or jointly dominant) position in the relevant market.
38. In commercial terms, the IOC and the BOA entirely control and regulate the marketing of the Olympic Games. Together they guarantee the Olympic Brands exclusive advertising and broadcasting rights. By signing the TMA, the Athletes will transfer essential image rights to the IOC and the BOA as the rights' holders of the Games. The trading conditions imposed on the Athletes are discriminatory, disproportionate and unfair.
39. In the German case, the Bundeskartellamt deemed that the members of the Olympic Movement (which would include the IOC and the BOA in this jurisdiction) have a dominant position on the market for the organisation and marketing of the Olympic Games within the meaning of Art. 102 TFEU and abused their position to unfairly impede German athletes and their (potential) sponsors on a sports sponsoring market. The Bundeskartellamt also deemed that the Olympic Games have a special significance and are probably even unique because consumers will see limited or no opportunities to substitute the Olympic Games with other major international sports events, and providers will see limited or no incentive to switch to sports events other than the ones they previously organised.
40. Indirectly blocking athletes from entering into commercial deals with the Olympic Brands is anti-competitive and the BOA Rule 40 Guidelines impede the Athletes' opportunities to find new sponsors and thus to market their sports performance during the Games Period, the value of which normally increases considerably once they are selected to participate in the Games.

(3) Breach of Article 56 TFEU

41. For the same reasons as are set out above, the BOA Rule 40 Guidelines, in

conjunction with Rule 40, significantly impede the provision of commercial marketing services by the Athletes and restrict their ability to receive sponsorship services from non-Olympic Brands. That constitutes a breach of Article 56 TFEU. Without assuming the burden of establishing the same (which lies with the BOA), the Athletes contend that no objective justification for such measures exists or can be established.

(4) Breach of the common law doctrine of restraint of trade

42. The Athletes also contend that the restraints put in place by the BOA, in conjunction with the network of arrangements described above, constitute an unreasonable restraint of the Athletes' trade: see Bradley v. Jockey Club [2004] EWHC 2164 (QB), per Richards J at para 37, approved by the Court of Appeal in [2005] EWCA Civ 1056. The English Courts have the jurisdiction to grant declarations and injunctions in respect of a decision of the BOA that affects an athlete's right to participate in his or her sport or provide related services. For all the reasons set out above, the restraints imposed by the BOA are an unreasonable interference with the Athletes' economic activity. The restraints are accordingly void and cannot be imposed. The Athletes are entitled to declaratory and/or injunctive relief accordingly.

(5) Infringement of Articles 11 and 16 of the CFR

43. The restraints identified above also substantially interfere with the ability of the Athletes to conduct their trade, contrary to Article 16 CFR, for the same reasons given above. Alternatively, the Athletes also face restrictions on their commercial freedom of expression, contrary to Article 11 CFR, since they are not able freely to associate their image with particular categories of brand or sponsor. While such restrictions could in principle be justified (see Article 52 CFR), the BOA is unable to discharge its burden of doing so here, since the measures are disproportionate (as explained above).

(6) The likely measure of loss

44. Athletes worldwide receive only a negligible share of the marketing profits of the IOC, even though they provide substantial and commercially important image rights and entertainment value. The Athletes do not receive any contribution at all from the large sums generated by the BOA. The net result of your unlawful conduct is that our clients will lose out on potentially large and crucial revenue streams with potential sponsors and partners during the most profitable period of their short careers, whilst your income is maximised. Their commercial value is depressed because they are unable fully to exploit their status or success with non-Olympic and Olympic Brands and cannot be featured in activations around the Games. Athletes only have a very short window to maximise their economic worth, in the context of careers which are inevitably limited in time due to

performance problems that come with ageing.

45. Although many of the Athletes we represent are household names, the stark truth is that committing to partake in the Olympic Games comes with huge economic risks. The vast majority of athletes who will make up Team GB at the Games will have to work in jobs alongside their training for the Games. UK Sport provides grants to athletes in the form of Athlete Performance Awards (“**APA**”) which serve to contribute to the athlete’s ordinary living costs and their personal sporting costs. APAs are allocated where there is the greatest ‘financial need’ and are subject to a means testing exercise. UK Sport has set a maximum income threshold of £65,000 (including their APA) above which an athlete’s APA will begin to be deducted pound for pound. Depending on the likelihood of obtaining a medal at the Games, athletes will receive an APA of between £21,500 and £28,000. The Athletes we represent are reliant on endorsement or sponsorship agreements to supplement that income.
46. The Athletes will receive no financial remuneration from you or the IOC. That does not represent a fair or proportionate allocation of the income derived from the marketing deals struck with the Olympic Brands. In particular, it is manifestly unfair that when a GB athlete wins a medal, you benefit but the Athletes receive nothing.
47. The sports in which our clients compete (particularly sports such as athletics and swimming) are extremely popular every four years; during the Games Period. The interest in those sports outside of the Games Period is negligible when compared to the interest taken in professionalised sports such as football, cricket and baseball. The Games Period is therefore a crucial time for many of our clients as it is the moment when they can maximise the value of their status and reputation. However, due to your anti-competitive behaviour, our clients (and other athletes) are unable to do so.

F. Expected steps from the BOA

48. Our clients require a change to the current unfair parameters set by the BOA Rule 40 Guidelines, failing which they reserve their right to bring proceedings against the BOA or, in the alternative, to make a formal complaint to the CMA.
49. The Athletes accordingly request that you relax the BOA Rule 40 Guidelines in line with the Rule 40 guidelines recently published by the DOSB within the next 21 days. The changes required are as follows:
- a. remove the requirement for prior written approval from the BOA and the need to supply marketing/advertising/usage plans (with detail around nature, frequency, duration and location of usage) to the BOA in advance;
 - b. permit not only ongoing, but also new advertising activities;

- c. permit messages of greeting and congratulations from Non-Olympic Brands;
- d. permit the use of terms like "medal, gold, silver, bronze, winter or summer games";
- e. permit the use of competition pictures and non-competition pictures taken during the Games. For example, pictures of competitions not showing any Olympic symbols or registered intellectual property;
- f. permit the use of social media more freely during the Games and permit some content to be shared and combined with messages of greeting or thanks to the sponsor;
- g. remove sporting sanctions in the event of disputes on whether an advertising measure is admissible or not and permit ordinary civil courts to decide on such disputes.

50. The Athletes believe that these demands (which go no further than the DOSB's Rule 40 guidelines) will significantly contribute to the positive development of the socio-economic conditions for all British athletes.

51. Furthermore, you will be aware that in Germany the German athletes are paid money if and when they win a medal. Our clients are not requesting exact parity of treatment. They are simply asking for parity to allow them to exploit their rights at the most valuable time of their careers.

52. Given the Games commence in less than nine months, we would ask that you give urgent attention to the contents of this letter. We respectfully request a substantive response within 21 days and by no later than **6 December 2019**.

Yours faithfully



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