

#Rule40GB #OneTeamGB

Executive summary

A group of British Olympic athletes are taking legal action against the British Olympic Association (“BOA”) over the restrictive nature of the BOA’s Rule 40 guidelines around marketing at next summer’s Olympics Games due to take place in Tokyo which were updated last month (October 2019).

The International Olympic Committee’s (“IOC”) controversial Rule 40 limits athletes’ ability to work with their own sponsors during the Olympic Games. The BOA’s Rule 40 guidelines stipulate that Team GB athletes shall not allow any sponsor or partner (save for official Team GB or Tokyo 2020 partners) to use their image rights during the Tokyo games and a so-called “frozen period” starting nine days before the opening of the Tokyo games and continuing until three days after the closing ceremony.

Team GB athletes argue that the BOA’s behaviour and rules are a clear breach of competition law and believe the position is manifestly unfair. The Rule 40 guidelines restrict Team GB athletes who lose out on potentially huge and crucial revenue with potential sponsors and partners during the most profitable period of their short careers whilst the BOA’s income is maximised. Most Olympic sports only experience a spike in popularity once every four years: during the Olympic Games. 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 rugby. The games period (when athletes are restricted) is therefore a crucial time for Team GB athletes as it is the moment when they can maximise the value of their status and reputation. Unfortunately, due to the Rule 40 guidelines many athletes are unable to do so.

The IOC relaxed Rule 40 earlier this year following a landmark decision by 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. The German authorities relaxed the rules allowing their athletes to obtain and support personal sponsors during the games period. Since that decision was published, other National Olympic Committees have followed suit and have also 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. Many Team GB athletes were therefore extremely disappointed when the BOA published their updated Rule 40 Guidelines last month and discovered that they had done comparatively very little to relax them. Team GB athletes were expectant that the BOA’s changes to their Rule 40 guidelines would mean that a fair balance would be struck between the rights of all GB athletes and the commercial rights of the BOA.

Committing to partaking in the 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 which serve to contribute to the athlete’s ordinary living costs and their personal sporting costs. Depending on the likelihood of medaling at the Games, athletes will receive an APA of between £21,500 and £28,000. Team GB athletes, particularly those who are less well-known or who may qualify for the team late in the day, are reliant on endorsement or sponsorship agreements to supplement that income.

The average BOA wage dwarfs the amount given to athletes by a factor of at least 3 to 1. When an athlete wins a medal, the BOA benefits but the athlete does not. The BOA generates tens of millions

of pounds from sponsorship but does not pay its members and essentially stops them from earning a living elsewhere. These imbalances are not justifiable on any level. The athletes have asked the BOA to relax the Rule 40 Guidelines in line with the Rule 40 guidelines recently published by the German Olympic authority failing which the matter will go to Court. The Team GB athletes believe that this demand (which goes no further than the German Olympic authority's Rule 40 guidelines and does not ask for money per medal as per the German team) will significantly contribute to the positive development of the socio-economic conditions for all British athletes.

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