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Can China Protect the Olympics, or Should the Olympics Be Protected from China?

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CAN CHINA PROTECT THE OLYMPICS, OR SHOULD THE OLYMPICS BE PROTECTED FROM CHINA?

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I. INTRODUCTION

China will host the Summer Olympic Games in August of 2008.¹ Historically referred to as an “intellectual property black hole,”² China has increased IP protection over the past two decades.³ While protection has increased, enforcement of intellectual property rights remains a substantial problem.⁴ China’s deficiencies in intellectual property rights enforcement will be an important issue during the 2008 Olympics, as intellectual property protection is necessary to protect the viability of the Olympic Games.⁵ It has been argued that the Olympics will be the much needed impetus to change intellectual property rights enforcement in China,⁶ but the question remains—can China provide the protection the Olympics demands?

This Note examines: (1) the intellectual property rights challenges inherent in hosting the Olympic Games, (2) the history and current state of intellectual property protection in China, (3) the protectionary measures typically employed by the Olympic host country, (4) the protectionary measures China has taken with respect to Olympic intellectual property to date, and (5) the challenges China will face protecting Olympic intellectual property. This Note concludes that due to economic, political, and historical forces, China will find it difficult to sufficiently protect Olympic intellectual property. Moreover, China will have to approach the protection of Olympic intellectual property differently from previous host countries, namely by educating the public about the importance of Olympic intellectual property protection at the local level and by increasing fines for the violation of Olympic intellectual property rights.

¹ Official Website of the Olympic Movement [hereinafter IOC Website], http://www.olympic.org/uk/games/beijing/election_uk.asp (last visited Oct. 28, 2007).

² Stacey H. Wang, Comment, *Great Olympics, New China: Intellectual Property Enforcement Steps Up to the Mark*, 27 LOY. L.A. INT’L & COMP. L. REV. 291, 291 (2005) (stating that “China’s reputation for being an intellectual property black hole is not undeserved”).

³ Jonathan Mark W.W. Chu, *Not Enough? An Examination of China’s Compliance with the Intentions of the TRIPS Accord*, 8 VINDOBONA J. INT’L COMM. L. & ARB. 281, 283 (2004).

⁴ *Id.* at 295.

⁵ See Anne M. Wall, *The Game Behind the Games*, 12 MARQ. SPORTS L. REV. 557, 581 (2002) (“The protection of Olympic marks and copyrights is essential to the preservation of the Olympic Games and the ongoing training and development of the United States Olympic Teams. The marks and symbols of the Olympic Games represent the dreams and aspirations of athletes and people around the world. They kindle a light of hope for humanity by unifying nations, for a brief period of time, through the peaceful celebration of sport, art, and culture.”).

⁶ Wang, *supra* note 2, at 292.

II. BACKGROUND

In order to explore the challenges China will face in protecting Olympic intellectual property, it is beneficial to examine the International Olympic Committee (IOC) and the Olympics themselves, the challenges in protecting Olympic intellectual property, the measures the IOC takes to protect intellectual property, and the history and current state of intellectual property protection in China.

A. THE INTERNATIONAL OLYMPIC COMMITTEE AND THE OLYMPICS

The Olympic Games are an international sporting event occurring every two years, alternating between the Summer and Winter Games.⁷ The Olympics are mammoth in scope; during the most recent Summer Olympics in Athens, Greece in 2004, 10,500 athletes representing 201 countries competed in twenty-eight sports.⁸ The Olympic emblem of five multi-colored, interlocking rings is one of the most recognizable symbols in the world, with research showing unaided brand awareness of 93%.⁹

The IOC is an international, non-governmental, non-profit organization that serves as the umbrella organization for the Olympic Movement.¹⁰ The IOC owns all rights to the Olympic symbols, flag, motto, anthem, and the Olympic Games themselves.¹¹ The primary function of the IOC is to oversee the organization of the Olympic Games, which includes the funding of the Games.¹²

The IOC bills the Olympics as “one of the most effective international marketing platforms in the world, reaching billions of people in over 200 countries and territories throughout the world.”¹³ One commentator has noted that “[t]here are few marketing vehicles in the world, which transcend cultural barriers, geographic borders, and racial and socio-economic differences[,] [and

⁷ See INT’L OLYMPIC COMM., OLYMPIC CHARTER 16–17, 69 (2004), available at http://multimedia.olympic.org/pdf/en_report_122.pdf.

⁸ INT’L OLYMPIC COMM., ATHENS 2004 MARKETING REPORT 6 (2004), available at http://multimedia.olympic.org/pdf/en_report_895.pdf.

⁹ Wall, *supra* note 5, at 581.

¹⁰ IOC Website, http://www.olympic.org/uk/organisation/ioc/index_uk.asp (last visited Oct. 28, 2007).

¹¹ *Id.*

¹² *Id.*

¹³ IOC Website, http://www.olympic.org/uk/organisation/facts/programme/sponsors_uk.asp (last visited Oct. 28, 2007).

even fewer] provide a focal point for global marketing. The Olympic Games provide worldwide sponsors . . . with such a vehicle.”¹⁴

Because the IOC is a non-profit organization, ensuring that the Olympic movement is adequately funded is of utmost importance.¹⁵ Due to the broad participation and global reach of the Games, funding the Games requires greater financial resources than any host country alone can provide.¹⁶ Therefore, the IOC seeks external sources of funding to support the Games.¹⁷ With the sole exception of broadcast rights, the largest component of Olympic funding comes from corporate Olympic sponsorships.¹⁸ Corporate sponsorships represented over \$1.4 billion in revenue for the IOC between 2001 and 2004.¹⁹ Olympic sponsorship is “a relationship between the Olympic Movement and commercial organisations which is intended to generate support for the Olympic Movement and the Olympic Games,”²⁰ and in return, benefit the sponsors. Olympic sponsors profit from the marketing of the Olympic brand and from Olympic goodwill.²¹ There are several different levels of sponsorship, each of which entitles the sponsoring company to different marketing rights in various regions and categories as well as the use of designated Olympic images and marks.²²

The highest sponsorship level, The Olympic Partner Program (TOP), consists of worldwide partners who provide “products, services, technology, expertise, and financial resources” to the Olympic movement via the IOC.²³ The TOP sponsors are the only Olympic sponsors who receive exclusive worldwide marketing rights to the Olympic Games.²⁴ TOP program revenue has exploded in recent years, growing from nine TOP sponsors contributing \$96 million in the 1985–1988 period to eleven sponsors contributing \$866 million for the 2005–2008 period.²⁵ In addition to obtaining exclusive world-wide marketing rights within their

¹⁴ Wall, *supra* note 5, at 560.

¹⁵ Kelly C. Crabb & Xiang Ji, *The Olympic Movement, the Games, and Olympic IPR (The Olympic Movement and the Games)*, 17 P.R.C. L. & PRAC. 31, 31 (2003).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ INT’L OLYMPIC COMM., 2006 MARKETING FACT FILE 16 (2005), available at http://multimedia.olympic.org/pdf/en_report_344.pdf.

¹⁹ *Id.* (this \$1.4 billion is comprised of \$633 million for the TOP program and \$796 million for domestic sponsorships).

²⁰ IOC Website, <http://www.olympic.org/uk/organisation/facts/programme> (last visited Oct. 28, 2007).

²¹ Wall, *supra* note 5, at 561.

²² *Id.*

²³ INT’L OLYMPIC COMM., SALT LAKE 2002 MARKETING REPORT 37 (2002), available at http://multimedia.olympic.org/pdf/en_report_895.pdf.

²⁴ IOC Website, *supra* note 13.

²⁵ INT’L OLYMPIC COMM., *supra* note 18, at 23.

designated category, TOP sponsors are permitted to develop marketing programs with various Olympic organizations, use all Olympic imagery, and place appropriate Olympic designations on products.²⁶ They are also given hospitality opportunities; direct advertising and promotional opportunities; and concession, franchise, and product sale and showcase opportunities.²⁷

The second tier of corporate Olympic sponsorship is the Suppliers, who typically contribute goods and services that support the IOC but usually do not provide direct support for the staging of the Games.²⁸ Suppliers are granted more limited marketing and intellectual property rights than the TOP sponsors.²⁹

In addition to the IOC sponsorship programs, the host country organizing committee and its National Olympic Committee (NOC) develop their own marketing programs, including the granting of various marketing and intellectual property rights to corporate sponsors to generate revenue for the Games and the national Olympic team.³⁰ The IOC and local organizing committee also raise money through licensing programs in which companies pay a royalty to include Olympic emblems or mascots on products sold to consumers.³¹ These companies produce officially licensed products and merchandise for the IOC, the NOCs, and the local organizing committee for the Olympics.³² Licensing revenues during the 2001–2004 period were \$87 million.³³

The TOP program alone generated over \$600 million in the four years culminating with the last Summer Olympics in Athens, Greece.³⁴ Olympic organizers are estimating that the commercial sponsorship revenue for the Summer Games following Beijing, to be held in London in 2012, could reach \$1.5 billion.³⁵ As evidenced by the sponsorship revenue, intellectual property rights are one of the IOC's most valuable assets.³⁶ In order to ensure continued sponsor revenue and to fund the organization and staging of the Games, Olympic

²⁶ IOC Website, *supra* note 13.

²⁷ *Id.*

²⁸ INT'L OLYMPIC COMM., *supra* note 18, at 39.

²⁹ *Id.*

³⁰ IOC Website, http://www.olympic.org/uk/organisation/facts/programme/organising_uk.asp (last visited Nov. 13, 2007).

³¹ INT'L OLYMPIC COMM., *supra* note 18, at 62.

³² IOC Website, http://www.olympic.org/uk/organisation/facts/programme/licensing_uk.asp (last visited Oct. 28, 2007).

³³ See INT'L OLYMPIC COMM., *supra* note 18, at 62.

³⁴ INT'L OLYMPIC COMM., IOC FINAL REPORT 2001 – 2004, at 32, available at http://multimedia.olympic.org/pdf/en_report_969.pdf.

³⁵ Vesna Jaksic, *Olympics Games Provide Numerous Legal Hurdles*, NAT'L L.J., July 30, 2007, at 6.

³⁶ See Wall, *supra* note 5, at 581.

intellectual property rights protection is fundamental.³⁷ The IOC intellectual property standards are set forth in the Olympic Charter, which dictates that:

[a]ll rights to any and all Olympic properties, [including the Olympic symbol, flag, motto, anthem, identifications, designations, emblems, flame and torches], as well as all rights to the use thereof, belong exclusively to the IOC, including but not limited to the use for any profit-making, commercial or advertising purposes. The IOC may license all or part of its rights on terms and conditions set forth by the IOC Executive Board.³⁸

B. OLYMPIC INTELLECTUAL PROPERTY PROTECTION CHALLENGES

The most cherished assets of the IOC are the “exclusive rights to the words and symbols of the Olympics.”³⁹ Given the crucial nexus between the protection of intellectual property rights and the financial success of the Games, as well as the profits the Games themselves generate for corporate sponsors, it is not surprising that the IOC places heavy emphasis on protecting Olympic intellectual property. Olympic intellectual property is threatened in several ways, including ambush marketing, counterfeiting, cybersquatting, and trademark infringement.⁴⁰

1. *Ambush Marketing.* Ambush marketing occurs each time a non-Olympic sponsor portrays itself as an official Olympic sponsor⁴¹ in an effort to “capitalize on the goodwill, reputation, and popularity” of the Olympics.⁴² The Olympics have proven to be “perhaps more than any other sporting event . . . [a] fertile ground for ambush marketers.”⁴³ Ambush marketing can occur (1) when companies buy commercial advertising time surrounding the Olympics in order to create an association with the Games, (2) when companies use Olympic event tickets in giveaways or other corporate events, and (3) through the use of advertising such as blimps and billboards near the Olympic events.⁴⁴ By

³⁷ Crabb & Ji, *supra* note 15, at 31.

³⁸ INT’L OLYMPIC COMM., *supra* note 7, at 17.

³⁹ Erinn M. Batcha, Comment, *Who Are the Real Competitors in the Olympic Games? Dual Olympic Battles: Trademark Infringement and Ambush Marketing Harm Corporate Sponsors – Violations Against the USOC and its Corporate Sponsors*, 8 SETON HALL J. SPORT L. 229, 251 (1998).

⁴⁰ Wall, *supra* note 5, at 571–75 (discussing various threats to Olympic intellectual property that the Salt Lake Organizing Committee faced).

⁴¹ See Batcha, *supra* note 39, at 252.

⁴² See Stephen M. McKelvey, *Atlanta ’96: Olympic Countdown to Ambush Armageddon?*, 4 SETON HALL J. SPORT L. 397, 401 (1994).

⁴³ *Id.*

⁴⁴ *Id.* at 403–07.

becoming official Olympic sponsors, corporate sponsors intend to create a link between their product or service and the Olympics, and consumer confusion results from a non-sponsor creating a false association with the Olympics.⁴⁵ Because of the enormous value of the Olympic sponsorships, the Olympic organization is concerned that ambush marketing will negatively impact its sponsorship programs.⁴⁶

2. *Counterfeiting.* Counterfeiting in the Olympic context occurs when a party without a license to use Olympic marks creates products such as clothing or memorabilia containing the Olympic marks or a confusingly similar mark.⁴⁷ The sale of unlicensed merchandise jeopardizes the relationships the IOC and the NOC have with officially licensed suppliers.⁴⁸ The revenues from officially licensed products are substantial, totaling over \$530 million in retail sales and \$86 million in royalties during the 2004 Summer Games in Athens, with 4,000 licensed products on the market.⁴⁹

3. *Cybersquatting.* Cybersquatting is defined in the United States as the “bad faith and abusive registration of distinctive marks as Internet domain names.”⁵⁰ Parasitic companies can use infringing domain names to direct traffic away from official Olympic websites and create consumer confusion.⁵¹ Prior to the Salt Lake City Winter Olympics in 2002, the Salt Lake Organizing Committee (SLOC), the United States Olympic Committee (USOC), and the IOC brought a groundbreaking anti-cybersquatting suit against defendants who had registered more than 1,800 domain names alleged to include trademarks belonging to the plaintiffs.⁵² The case was the single largest cybersquatting lawsuit to date.⁵³ The scope of unauthorized Olympic-related websites is even larger than this case alone, with tens of thousands of websites, most of which were not registered to Olympic bodies, reported in 2000 alone.⁵⁴ The sites in question were controlled by domain name owners in more than fifty-three countries.⁵⁵ The impact to the

⁴⁵ Batcha, *supra* note 39, at 252.

⁴⁶ *Id.*

⁴⁷ *See id.* at 572 (discussing counterfeiting case prosecuted by the Salt Lake Olympic Committee).

⁴⁸ *Id.*

⁴⁹ INT’L OLYMPIC COMM., ATHENS 2004 MARKETING REPORT 96 (2004), available at http://multimedia.olympic.org/pdf/en_report_901.pdf.

⁵⁰ *Summary Judgment Denied In Lands’ End Cybersquatting Case*, MEALEY’S LITIG. REP.: INTELL. PROP., Sept. 18, 2006, at 18. *See generally* 15 U.S.C.A. § 1125(d) (West 2006) (describing cyberpiracy prevention measures).

⁵¹ Wall, *supra* note 5, at 575.

⁵² U.S. Olympic Comm. v. 2000Olympic.com, No. 00-1018-A (E.D. Va. Mar. 15, 2004).

⁵³ Wall, *supra* note 5, at 574.

⁵⁴ Brian McWilliams, *Massive Lawsuit Over Olympic Domains*, INTERNETNEWS.COM, July 12, 2000, http://www.internetnews.com/bus-news/print.php/3_413591.

⁵⁵ IOC Announces Lawsuit Against Internet Sites with Olympic Names, SLAM! SPORTS, July 13, 2000,

Olympic movement was summarized by Dick Pound, then vice president of the IOC, who voiced his concern that the cybersquatters were benefitting from the use of Olympic intellectual property without any return to the Olympic movement.⁵⁶ Pound explained that the IOC's concerns were as follows:

One, we don't want people making profit from Olympic trademarks that does not get returned to the athletes in some way. Two, we don't want consumers duped into purchasing items they think are Olympic-related when they are not. Three, we need to protect the values of the Olympic movement against uses out there that are clearly illicit.⁵⁷

4. *Trademark Infringement.* The USOC's ability to raise money from sponsors, suppliers, and licensees is hampered by the ongoing threat of trademark infringement.⁵⁸ The same threats apply to other NOCs and the IOC. The IOC and USOC have brought numerous lawsuits against trademark infringers.⁵⁹

C. THE IOC'S OLYMPIC INTELLECTUAL PROPERTY PROTECTION MEASURES

As a result of the threats to Olympic intellectual property, the IOC has enacted stringent standards for intellectual property protection. The Olympic Charter states that the IOC "may take all appropriate steps to obtain the legal protection for itself, on both a national and international basis, of the rights over the Olympic Games and over any Olympic property."⁶⁰ Given the fiercely competitive bidding process, the IOC is able to dictate the intellectual property right protections the host country must provide.⁶¹ The Olympic Charter states that the IOC owns "all rights and data relating" to the Olympic Games and Olympic properties, as well as "all rights to the use" of this intellectual property.⁶² The IOC has the right to license "all or part of its rights on terms and conditions

http://slam.canoe.ca/SlamOlympicScandal/jul13_cyb.html.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Noëlle K. Nish, *How Far Have We Come? A Look at the Olympic and Amateur Sports Act of 1998, The United States Olympic Committee, and the Winter Olympic Games of 2002*, 13 SETON HALL J. SPORT L. 53, 53–54 (2003).

⁵⁹ See, e.g., *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522 (1987) (suit to restrain defendants from using term "Olympics" in an athletic competition); *O-M Bread, Inc. v. U.S. Olympic Comm.*, 65 F.3d 933 (Fed. Cir. 1995) (trademark opposition suit against application of bakery to register mark "Olympic Kids" for use on its baking goods).

⁶⁰ INT'L OLYMPIC COMM., *supra* note 7, at 19.

⁶¹ Wang, *supra* note 2, at 301.

⁶² INT'L OLYMPIC COMM., *supra* note 7, at 20.

set forth by the IOC Executive Board.”⁶³ The IOC requires that each NOC prevent the use of any Olympic properties that is contrary to the Olympic Charter and work to obtain protection of the IOC Olympic properties for the benefit of the IOC.⁶⁴ The IOC goes so far as to state that if a “national law or a trademark registration or other form of legal instrument grants legal protection to an NOC for the Olympic symbol or any other Olympic property,” the NOC can only use the resulting rights in accordance with the Olympic Charter and IOC instructions.⁶⁵ The IOC grants the NOCs limited rights to use the Olympic symbol, flag, motto, and anthem for nonprofit activities, but such use is subject to the prior approval of the IOC.⁶⁶

The IOC establishes the intellectual property protection requirements for the host city in the Host City Contract, an agreement which the IOC enters into with the host city and the NOC of the host country.⁶⁷ The IOC requires that the host country and the NOC vigorously defend the IOC’s intellectual property.⁶⁸ The IOC permits the host city to create its own Olympic emblem in conjunction with its NOC; however, the emblem must conform to specific IOC guidelines and must ultimately be approved by the IOC.⁶⁹ The IOC requires that the NOC’s Olympic emblem be legally protected, and the NOC must register the emblem.⁷⁰ The IOC further requires that the NOC take every feasible measure to protect its Olympic emblems and relay the details of such protection to the IOC.⁷¹ The IOC also mandates that the organizing committees protect their Olympic emblems according to IOC instructions.⁷²

For the 2008 Olympics, the five host city candidates were required to enter into a number of agreements related to the protection of the Olympic brand prior to the IOC’s selection of the official host city.⁷³ Among the agreements were those designed to “provide the strongest possible protection for the exclusivity of all Olympic partners, take steps to maximise the promotion of the Olympic brand in the host city, [and] prevent uncontrolled commercialisation and the

⁶³ *Id.*

⁶⁴ *Id.* at 22–23.

⁶⁵ *Id.* at 23.

⁶⁶ *Id.* at 24.

⁶⁷ INT’L OLYMPIC COMM., MANUAL FOR CANDIDATE CITIES FOR THE GAMES OF THE XXIX OLYMPIAD 2008, at 6 (2000), available at http://multimedia.olympic.org/pdf/en_report_296.pdf.

⁶⁸ *Id.* at 19–20.

⁶⁹ INT’L OLYMPIC COMM., *supra* note 7, at 24.

⁷⁰ *Id.* at 25.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Int’l Olympic Comm., *Marketing Matters*, July 2001, at 7, available at http://multimedia.olympic.org/pdf/en_report_273.pdf.

problems faced with the city of Atlanta in 1996.”⁷⁴ Each of the five candidate cities was required to:

- Enter into a single marketing programme agreement with its NOC, whereby all marketing rights of the NOC and the Olympic team are ceded to the OCOG [Organizing Committee for the Olympic Games] for the period 2001 through 2008. . .
- Obtain a binding option for the IOC and the OCOG to purchase all outdoor advertising throughout the city, and at the main transportation access points, for the two-month period surrounding the Games. . . [and]
- Review with the government the necessary steps to further improve the protection of Olympic marks and rights.⁷⁵

Given the stringent requirements the IOC places on the host city with respect to intellectual property rights protection, the question remains whether China is able to successfully protect Olympic intellectual property. In order to further address the question, Subpart D of this Note will examine the history and current state of intellectual property protection in China.

D. INTELLECTUAL PROPERTY PROTECTION IN CHINA

1. *The History of Intellectual Property Protection in China.* China has been identified as the “world’s major intellectual property infringement culprit.”⁷⁶ China is responsible for nearly two-thirds of the world’s counterfeit goods and has a copyright piracy rate of over 90%.⁷⁷ These figures are representative of the fact that intellectual property protection is relatively new in China.⁷⁸

The lack of intellectual property protection in China historically has been attributed to an economy that emphasized agriculture over commerce.⁷⁹ The Cultural Revolution of 1966–1976 nearly destroyed the legal system in China.⁸⁰ The judicial system is now under the control of the Communist party (the Party), which has the power both to reopen a case after judgment and to exercise control

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Eric Priest, *The Future of Music and Film Piracy in China*, 21 BERKELEY TECH L.J. 795, 797 (2006).

⁷⁷ *Id.*

⁷⁸ Chu, *supra* note 3, at 283.

⁷⁹ Priest, *supra* note 76, at 802.

⁸⁰ *Id.* at 805.

over judicial appointments and salaries.⁸¹ Mediation was historically favored over litigation, which together with the Party's influence on the judiciary led to inconsistent judicial results.⁸² Historically, the Confucian ideal stressed "imitation and exact copying as the ultimate form of flattery and respect."⁸³ Chinese society placed little social value on proprietary intellectual property rights, and accordingly Chinese citizens did not see the worth of intellectual property protection.⁸⁴

2. *The Modern Era and Accession to the World Trade Organization.* Following the Cultural Revolution, during the 1980s and 1990s China realized the "birth and incremental development of intellectual property related legislation."⁸⁵ However, when China passed trademark and patent legislation in the 1980s, the legislation did not create private property rights but instead was used by the Party to differentiate between the intellectual property holders' products and the quality of their products.⁸⁶ Trademark protection for business and service names was not established in China until 1993.⁸⁷ Customs enforcement of intellectual property rights at China's borders did not begin until 1994, and applicable customs intellectual property rights regulations were not enacted until 1995.⁸⁸

The international community has begun to call for improvements in the enforcement of intellectual property rights in China as a result of the influx of infringing products within and outside of China.⁸⁹ Foreign companies lose millions of dollars as the result of infringing products that originate in China.⁹⁰ For example, in 2003, 75% of the United States' \$286.8 billion market for counterfeit goods was comprised of goods originating in China.⁹¹ Also in 2003, the Chinese government confiscated nearly 40 million sets of illegal logos, over 280,000 molds and press plates used in the production of infringing goods, and over 5,600 tons of items used for infringing purposes.⁹² Losses resulting from copyright piracy, excluding entertainment software, were estimated to be \$2.8 billion in 2002, while losses from software piracy alone were estimated to be \$1.7

⁸¹ Wang, *supra* note 2, at 294.

⁸² *Id.* at 295.

⁸³ *Id.*

⁸⁴ *Id.* at 296.

⁸⁵ Chu, *supra* note 3, at 288, at 283 (citation omitted).

⁸⁶ Wang, *supra* note 2, at 296.

⁸⁷ *Id.*

⁸⁸ STATE COUNCIL INFO. OFFICE, WHITE PAPER: NEW PROGRESS IN CHINA'S PROTECTION OF INTELLECTUAL PROPERTY RIGHTS (2005), available at <http://www.china-embassy.org/eng/XW/5912663.htm>.

⁸⁹ Chu, *supra* note 3, at 285.

⁹⁰ *Id.* at 286.

⁹¹ Priest, *supra* note 76, at 798.

⁹² STATE COUNCIL INFO. OFFICE, *supra* note 88.

billion in 2001.⁹³ The Chinese government confiscated 154 million copies of audio and video works in 2004.⁹⁴ Beijing police stated that they seized 4.8 million illegal publications such as books, music, and video products in 2005.⁹⁵ China's General Administration of Customs (GAC) reported that in the first six months of 2006, 39 million counterfeit items were confiscated, with a total value of more than \$8.5 million.⁹⁶

Amendments to China's trademark, patent, and copyright laws were passed in 2001⁹⁷ in large part to prepare China for accession to the World Trade Organization (WTO) and to bring China's laws in line with the Trade Related Agreement on Intellectual Property Rights (TRIPS).⁹⁸ China has taken additional steps to solidify its intellectual property rights regime in the last few years now that a fundamental intellectual property legal framework is in place.⁹⁹ For example, China has begun focusing on enforcement of intellectual property rights as opposed to legislation.¹⁰⁰ In late 2004, the Chinese government announced a one-year campaign to protect intellectual property.¹⁰¹ Also in 2004, China declared April 20–26th of every year a week to highlight the importance of protecting intellectual property rights.¹⁰² Public education on intellectual property is carried out through print media, TV, radio, the internet, public interest advertisements, seminars and knowledge contests.¹⁰³ China also has joined more than ten international treaties, conventions, agreements, and protocols on IPR protection since acceding to the WTO.¹⁰⁴

It has been argued that “China views intellectual property law reform through a broad socio-political framework, in which intellectual property law advancement is used to modernise the nation, and secure its protection and prosperity in the world market economy.”¹⁰⁵ At the same time, China's history of widespread counterfeiting and intellectual property infringement makes many scholars skeptical that the new, WTO-motivated intellectual property laws will lead to a

⁹³ Chu, *supra* note 3, at 288.

⁹⁴ STATE COUNCIL INFO. OFFICE, *supra* note 88.

⁹⁵ *Beijing Issues IPR Policy for Companies*, CHINA DAILY, Apr. 14, 2006, available at http://www.gov.cn/english/2006-04/14/content_254112.htm.

⁹⁶ *China's Customs Reel in 1,076 IPR Infringement Cases*, XINHAU NEWS AGENCY, Aug. 9, 2006, available at <http://www.china.org.cn/english/2006/Aug/177374.htm>.

⁹⁷ Chu, *supra* note 3, at 283.

⁹⁸ *Id.* at 284.

⁹⁹ See STATE COUNCIL INFO. OFFICE, *supra* note 88.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Chu, *supra* note 3, at 285.

sudden transition to WTO compliance and intellectual property law enforcement.¹⁰⁶ The argument has also been made that if the Chinese public were denied access to counterfeit products they would be hurt economically, as the price of counterfeit products is exponentially less than the price of the original product.¹⁰⁷ The continuation of this argument is that it would be more reasonable to enforce the laws at a “slowburn” rate to enable the Chinese population to become accustomed to the higher-priced, non-infringing products.¹⁰⁸

As an indication of where China stands on intellectual property protection, the Beijing Copyright Administration announced in April 2006 that the city of Beijing was going to require city enterprises to use authentic computer software in new computers.¹⁰⁹ The Beijing municipal government was the first government entity in China to use authentic computer software, and this change only occurred at the end of 2005.¹¹⁰ China’s conflicted views regarding the development of its intellectual property regime can be seen in the 2004 State Council Information Office White Paper on IPR Protection. In adjacent sentences within the paper, China’s IPR system is referred to as having been both “developed rapidly” and “gradually established.”¹¹¹

3. *Enforcement Concerns.* In recent years, courts in China have been handling more intellectual property cases, and specialized intellectual property courts have been created.¹¹² However, enforcement of intellectual property laws remains a problem.¹¹³ Enforcement is lacking, and penalties for infringement are weak even where intellectual property laws have been revised to provide criminal penalties for violations. This environment has led to continued violations.¹¹⁴ One study attributed the lack of enforcement of intellectual property laws in China to “‘lack of co-ordination among Chinese government ministries and agencies, local protectionism and corruption, high thresholds for criminal prosecution, lack of training and weak punishments.’”¹¹⁵ Adding to the enforcement challenge, China has a bifurcated intellectual property enforcement system, consisting of both an administrative and judicial arm in which rights holders can bring their claims.¹¹⁶

¹⁰⁶ *Id.* at 290.

¹⁰⁷ *Id.* at 290–91.

¹⁰⁸ *Id.*

¹⁰⁹ *Beijing Issues IPR Policy for Companies*, *supra* note 95.

¹¹⁰ *Id.*

¹¹¹ STATE COUNCIL INFO. OFFICE, *supra* note 88.

¹¹² Chu, *supra* note 3, at 283–84.

¹¹³ *Id.* at 295.

¹¹⁴ *Id.*

¹¹⁵ *Id.* (quoting a 2002 U.S. Chamber of Commerce report on China’s compliance with WTO requirements).

¹¹⁶ Priest, *supra* note 76, at 815.

This bifurcated system has been criticized as “confusing administrative and judicial functions, undermining judicial independence, and causing overlap and conflict among administrative authorities.”¹¹⁷ Additionally, the sheer number of state organizations involved in coordinated IPR protection in China is unwieldy; the 2004 State Council Information Office White Paper on IPR Protection cited twelve primary state organizations involved in intellectual property protection.¹¹⁸

The enforcement of intellectual property rights is also negatively impacted by local protectionism.¹¹⁹ Local protectionism occurs because although central authorities pass laws and regulations, local authorities are responsible for implementing them.¹²⁰ Local authorities often do not want to regulate any activity that has a positive impact on their local economy, even if the activity to be regulated is illegal.¹²¹ In some areas illegal activity such as piracy makes up a large segment of local commerce by employing local residents, providing taxes to local governments, and sometimes even driving the entire local economy.¹²² Additionally, while international complaints are made to central Chinese authorities in Beijing, local officials are often appointed by local politicians, and the officials frequently follow the local politicians’ directives rather than those from Beijing.¹²³

Lack of judicial training has also been cited as a reason for lagging intellectual property rights enforcement in China.¹²⁴ The first intellectual property related trial in China did not occur until 1981.¹²⁵ While judges in larger Chinese cities have improved their knowledge and understanding of intellectual property matters, poor legal training is an issue in more rural areas.¹²⁶ Bringing legal training up to par in the relatively new area of intellectual property law will take time given China’s size, the number of judges who must be trained, and the fact that intellectual property is only one of many areas in which legal training is needed.¹²⁷

Many commentators contend that China’s fines and sanctions for intellectual property infringement are currently too low to serve as a deterrent, with the current statutory maximum award to a successful plaintiff set at 500,000 yuan or

¹¹⁷ *Id.*

¹¹⁸ STATE COUNCIL INFO. OFFICE, *supra* note 88.

¹¹⁹ Priest, *supra* note 76, at 822.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 822–23.

¹²³ *Id.* at 823.

¹²⁴ *Id.* at 826–27.

¹²⁵ STATE COUNCIL INFO. OFFICE, *supra* note 88.

¹²⁶ Priest, *supra* note 76, at 826–27.

¹²⁷ *Id.* at 827.

approximately \$62,500.¹²⁸ Under Chinese law, damages for intellectual property infringement can consist of the infringer's profits or the plaintiff's sustained damages plus the cost of the action.¹²⁹ However, Chinese courts rarely choose to award the typically higher damages sustained by the plaintiff.¹³⁰ In 2000, the average fine paid by a counterfeiter or infringer in China was \$794, and the average award to a brand owner from an administrative agency was \$19.¹³¹ Only one in every 489 intellectual property infringement cases in China was sent to the judicial authorities for criminal prosecution.¹³² From April 2005 through April 2006, Beijing's trademark supervision and management division investigated 1,791 cases of trademark infringement and assessed nearly \$500,000 in fines.¹³³ This equates to roughly \$280 per case if a fine were assessed in each case.

On April 10, 2007, the United States began dispute settlement proceedings over what it perceived as shortcomings in the Chinese legal system's protection and enforcement of trademarks and copyrights.¹³⁴ After initial consultations with China in June, the United States asked the World Trade Organization to establish a dispute settlement panel to address the United States' concerns.¹³⁵ The United States claims that China has high thresholds that must be met under its criminal laws before criminal prosecution can begin, and that this legal standard ultimately allows violators to operate without fear of criminal liability.¹³⁶ Additionally, the United States is concerned because China permits the release of infringing items into commerce after the removal of fake labels or infringing features, a practice that is contrary to WTO rules.¹³⁷ The United States also contends that China appears to deny copyright protection for works waiting to enter the Chinese market until Chinese censorship approval is granted.¹³⁸

¹²⁸ Jessica C. Wong, *The Challenges Multinational Corporations Face in Protecting Their Well-Known Trademarks in China*, 31 BROOK. J. INT'L L. 937, 973 (2006).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Daniel C.K. Chow, *Why China Does Not Take Commercial Piracy Seriously*, 32 OHIO N.U. L. REV. 203, 212 (2006).

¹³² *Id.* at 212–13.

¹³³ *Famous Foreign Trademarks Protected*, CHINANEWS.CN, Apr. 14, 2006, available at http://www.chinadaily.com.cn/bizchina/2006-04/14/content_568296.htm.

¹³⁴ Press Release, The Office of the U.S. Trade Representative, United States Requests WTO Panel in Case Challenging Deficiencies in China's Intellectual Property Rights Laws (Aug. 13, 2007), available at http://www.ustr.gov/Document_Library/Press_Releases/2007/August/United_States_Requests_WTO_Panel_in_Case_Challenging_Deficiencies_in_Chinas_Intellectual_Property_Rights_Laws.html.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

Some scholars have argued that lagging intellectual property rights enforcement makes sense for developing countries such as China, because “without access to science, technology, and information it is difficult for any developing country even to keep up with developed ones.”¹³⁹ According to this argument, China’s own interests may be best served by a lower standard of intellectual property rights protection because its interests lie in imitation and adaptation as opposed to innovation.¹⁴⁰ These scholars maintain that access to technology is crucial to modernization, industrialization, and increasing the standard of living in China, and the coveted technology is usually in the form of protected intellectual property.¹⁴¹ Counterfeiting and other forms of intellectual property infringement provide substantial economic benefits to China.¹⁴²

It has been argued that the 2008 Olympics are in a unique position to drive changes in China’s intellectual property rights enforcement framework and that the Games will “provide the ‘electricity and water pipes’ in . . . the Chinese intellectual property regime.”¹⁴³ This raises the question whether such reform will occur in time for the Olympics themselves. Indeed, many scholars argue that China cannot accomplish such large-scale change in such a short period of time.¹⁴⁴

III. FORMER HOST CITY EFFORTS TO PROTECT OLYMPIC INTELLECTUAL PROPERTY

Olympic host cities typically must go to great lengths to protect Olympic intellectual property. The Host City Contract requires that the host city take far-reaching measures to protect Olympic intellectual property, and to accomplish this, host cities pass laws and take extensive extrajudicial actions to ensure the necessary protectionary measures are put in place.¹⁴⁵ An overview of the protectionary measures taken in the host cities of Atlanta, Sydney, Salt Lake City, and Athens is provided below in Subparts A-D.

¹³⁹ Chu, *supra* note 3, at 299.

¹⁴⁰ *Id.*

¹⁴¹ Chow, *supra* note 131, at 205.

¹⁴² *Id.* at 204.

¹⁴³ Wang, *supra* note 2, at 293 (quoting Marcus W. Branchli & Joseph Kahn, *Intellectual Property: China Moves Against Piracy as U.S. Trade Battle Looms*, ASIAN WALL ST. J., Jan 6, 1995, at 1).

¹⁴⁴ See, e.g., Wong, *supra* note 128, at 973 (“China cannot fundamentally change the political ideology of the nation in a short time.”).

¹⁴⁵ See Jeremy Curthoys & Christopher N. Kendall, *Ambush Marketing and the Sydney 2000 Games (Indicia and Images) Protection Act: A Retrospective*, MURDOCH U. ELECTRONIC L.J., June 2001, ¶¶ 8–9, <http://www.murdoch.edu.au/elaw/issues/v8n2/kendall82nf.html> (describing some of the protections and legislation put in place by Australia as required by the Host City Agreement for the 2000 Olympic Games).

A. ATLANTA

For the 1996 Summer Games in Atlanta, the Atlanta Committee for the Olympic Games (ACOG) trademarked emblems, marks, symbols, and terminology referring to the Atlanta Olympics.¹⁴⁶ The ACOG enacted a sponsor protection program, which combated ambush marketing attempts by presenting the “ambusher” with market research demonstrating that its advertising was deceiving the public and issuing press conferences to announce the ambushing activities if the ads were not immediately removed.¹⁴⁷ The ACOG also ran ads in print media and major publications attacking the ambushing companies for exploiting the Olympics without paying sponsorship fees that support training Olympic athletes.¹⁴⁸

B. SYDNEY

For the Summer Games in 2000 in Sydney, Australia, the Australian Senate asked the Australian Senate Committee on Legal and Constitutional Affairs to investigate and report on the protection of Olympic-related words and symbols in Australia and whether additional laws should be passed beyond those already in existence.¹⁴⁹ Australia also enacted the Olympic Insignia Protection Act 1987 (which was amended in 2001), which protects the Olympic rings, and the Sydney 2000 Games (Indicia and Images) Protection Act 1996 (the Sydney Act), to supplement existing intellectual property rights legislation.¹⁵⁰ A further purpose of the Sydney Act was to regulate the commercial use of Olympic indicia and images to enable the raising of licensing revenue for the Sydney 2000 Games.¹⁵¹ Moreover, one of the practical measures recommended by the Senate Committee was a publicity campaign to identify Olympic sponsors to the public, which the Sydney Organizing Committee instituted in 1997.¹⁵²

C. SALT LAKE CITY

For the Winter Games in Salt Lake City, Utah in 2002, the Salt Lake Organizing Committee (SLOC) took extensive measures to combat intellectual property infringement. United States Customs agents and FBI agents worked

¹⁴⁶ McKelvey, *supra* note 42, at 439.

¹⁴⁷ Curthoys & Kendall, *supra* note 145, ¶ 77.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* ¶ 38.

¹⁵⁰ *Id.* ¶¶ 9, 18.

¹⁵¹ *Id.* ¶ 9.

¹⁵² *Id.* ¶ 42, 75.

with the SLOC's Brand Protection organization within and around the Olympic venues to investigate unlawful activities and combat illegal ambush marketing.¹⁵³ The SLOC worked with the USOC to protect Olympic marks and images, investigating over 430 cases of Olympic intellectual property infringement in advertising and promotions, counterfeiting, cybersquatting, trade names, and other intellectual property infringement issues.¹⁵⁴ The SLOC negotiated the rights to place graphics on buildings and buses located near the venues in Salt Lake City, wrapped a number of conspicuous buildings in the SLOC "Look of the Games" artwork and created a "clean zone" around Olympic venues to prevent unlicensed businesses from advertising and obtaining exposure.¹⁵⁵ These measures were taken in part because the IOC itself regularly places limitations on the amount of commercial presence that can be inside Olympic venues to maintain a focus on sports and the "Look of the Games."¹⁵⁶ The SLOC granted licenses to a number of organizations for non-commercial use of the SLOC mark, and the license controlled the use of the SLOC mark.¹⁵⁷ Licensees had to agree not to include any third party marks on any materials that included the SLOC mark.¹⁵⁸

The SLOC and the USOC also embarked upon an initiative to educate the public about the licensing requirements to use Olympic-related marks and copyrights, including running print advertisements in both trade and consumer publications to educate the public and raise awareness.¹⁵⁹ Additionally, the SLOC produced a video entitled "The Protection of Olympic and Paralympic Marks" and a press kit, both of which were released to the media, and publicized legal actions taken against Olympic mark infringers in order to deter future infringement.¹⁶⁰

The SLOC also cracked down on counterfeiting after a 1999 investigation revealed that half of the shops on Main Street in Old Town Park City visited by SLOC "mystery shoppers" appeared to be carrying unlicensed merchandise using Olympic-related marks.¹⁶¹ In an effort to maintain relationships with retailers of licensed products and to fight against counterfeit goods, the SLOC sent an educational letter discussing brand protection to retailers in Park City and ran an article in the local newspaper.¹⁶² The SLOC asked the Chamber of Commerce to

¹⁵³ Wall, *supra* note 5, at 568.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 569.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 570.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 571.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 572.

¹⁶² *Id.*

inform its members of the SLOC's concerns and obligations to protect Olympic intellectual property.¹⁶³ The SLOC also filed actions against clothing retailers that were selling infringing merchandise.¹⁶⁴ The defendants in these actions surrendered their profits, paid the SLOC's attorneys' fees, and handed over their infringing merchandise and sales records.¹⁶⁵

With respect to cybersquatting, the SLOC, the USOC, and the IOC brought a suit against defendants who had registered over 1,800 domain names that allegedly included the plaintiffs' registered marks, making it the single largest cybersquatting suit ever.¹⁶⁶ As a result of the suit, ownership of dozens of domain names was transferred from the defendants to the SLOC and the USOC.¹⁶⁷

D. ATHENS

To prepare for the most recent Summer Games in Athens, Greece in 2004, Greek officials took a number of measures to protect against ambush marketing, including passing laws, educating the public, undertaking enforcement initiatives, and restricting athletes' marketing activities.¹⁶⁸ The Greek government enacted Law 2598/1998, which contains provisions used in previous Olympic-related laws and novel provisions targeting ambush marketers.¹⁶⁹ The law specifies penalties and enforcement processes for infringing uses of Olympic marks.¹⁷⁰ The law also provides for injunctions to protect against the unauthorized use of Olympic symbols and signs.¹⁷¹ Additionally, it permits confiscation and seizure of infringing products regardless of whether or not the defendant is ultimately convicted for producing and selling the infringing products.¹⁷² The city of Athens also agreed to pay \$10 million to secure advertising space as required by the IOC.¹⁷³

Athens also undertook "prevention, surveillance, reporting, investigation, and enforcement strategies" similar to those taken in Salt Lake City to prevent ambush

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 574.

¹⁶⁷ *Id.* at 574–75.

¹⁶⁸ Stephen McKelvey & John Grady, *An Analysis of the Ongoing Global Efforts to Combat Ambush Marketing: Will Corporate Marketers "Take" the Gold in Greece?*, 14 J. LEGAL ASPECTS SPORT 191, 208 (2004).

¹⁶⁹ *Id.* at 210.

¹⁷⁰ *Id.* at 211.

¹⁷¹ *Id.* at 211–12.

¹⁷² *Id.* at 212.

¹⁷³ *Id.*

marketing.¹⁷⁴ The Athens Organizing Committee (ATHOC) promoted education about ambush marketing through its website, educational campaigns, videos, workshops, and ads in consumer and trade publications.¹⁷⁵ The ATHOC also publicized legal actions related to alleged infringement of Olympic marks, used its website as a venue for reporting sales of non-licensed merchandise, and employed mystery shoppers to hunt down unlicensed Olympic merchandise.¹⁷⁶

IV. CHINA'S EFFORTS TO PROTECT OLYMPIC INTELLECTUAL PROPERTY

As detailed in Part III, host cities typically employ a variety of legal and administrative measures to protect Olympic intellectual property. Part IV of this Note examines China's efforts to safeguard Olympic intellectual property and addresses whether such efforts will be adequate.

A. LEGISLATION TO PROTECT OLYMPIC INTELLECTUAL PROPERTY IN CHINA

The Beijing Host City Contract requires protection of both the IOC's trademarks and the Beijing Organizing Committee for the Olympic Games' (BOCOG's) trademarks.¹⁷⁷ As a result, when Beijing was awarded the 2008 Summer Olympic Games, the BOCOG took action to protect Olympic intellectual property.¹⁷⁸ The Beijing government enacted a local regulation to protect Olympic intellectual property rights, the Protection of Olympic Intellectual Property Provisions by the Beijing Municipality.¹⁷⁹ Shortly thereafter, the State Council issued the Protection of Olympic Symbols Regulations (Regulations), a national regulation effective April 1, 2002, which protects Olympic intellectual property rights at the national level.¹⁸⁰

The Regulations mirror the requirements in the Olympic Charter and the Host City Contract.¹⁸¹ Thus, the IOC retains ownership of the rights to (1) the Olympic rings, flag, motto, emblem, and anthem; (2) the terms "Olympic," "Olympiad," "Olympic Games," and any abbreviations thereof; (3) the name, emblem, and symbol of the Beijing Olympic bid committee; (4) the BOCOG's

¹⁷⁴ *Id.* at 212–13.

¹⁷⁵ *Id.* at 213.

¹⁷⁶ *Id.*

¹⁷⁷ Wang, *supra* note 2, at 301–02.

¹⁷⁸ Laura Misener, *Safeguarding the Olympic Insignia: Protecting the Commercial Integrity of the Canadian Olympic Association*, 13 J. LEGAL ASPECTS SPORT 79, 89 (2003).

¹⁷⁹ Wang, *supra* note 2, at 302.

¹⁸⁰ Fraser Mendel & Chao Yijun, *Protecting Olympic Intellectual Property*, 17 CHINA L. & PRAC. 33, 33 (2003).

¹⁸¹ *Id.*

name and emblem; (5) the anthem and slogans of the Beijing Olympics and their abbreviations; and (6) other symbols related to the 2008 Olympics as detailed in the Olympic Charter and Host City Contract.¹⁸² The BOCOG is given rights to use items 3–5 above, although it must assign them to the IOC after the conclusion of the Games.¹⁸³ The definition of “Olympic Symbols” in the Regulations is quite broad, covering “not only words, signs, and other things normally trademarked, but also those objects customarily protected by copyrights, such as medal designs, databases, and statistics relating to the Games.”¹⁸⁴ Additionally, the Olympic Symbols will be protected under existing Chinese laws applicable to the protection of intellectual property, including the Copyright Law of the People’s Republic of China, Trademark Law of the People’s Republic of China, Patent Law of the People’s Republic of China, and Regulations on the Administration of Special Signs.¹⁸⁵

The Regulations establish the Administration of Industry and Commerce (the Administration) as the enforcement agency for Olympic intellectual property.¹⁸⁶ The Administration is granted broad powers to question and investigate parties under suspicion of infringement of Olympic intellectual property; to access contracts, books and records of the investigated parties; and to sequester infringing goods.¹⁸⁷ In the event of alleged infringement, the rights-holder can bring an action in the People’s Court or submit the dispute to the Administration for handling through administrative channels.¹⁸⁸ If the infringement is proven, the Administration has the right to stop the infringing activities, confiscate the infringing goods and tools used to produce them, seize illegally obtained funds, and assess fines.¹⁸⁹ The Administration can also bring a civil action before the People’s Court and institute criminal proceedings in the event of fraudulent or illegal acts.¹⁹⁰ Additionally, if imported or exported items are suspected to be counterfeit, the infringement will be addressed under the Custom Law of the People’s Republic of China and the Regulations on the Custom Protection of Intellectual Property Rights of the People’s Republic of China.¹⁹¹

¹⁸² Regulations on the Protection of Olympic Symbols [hereinafter Regulations] (promulgated by Decree No. 345 of the State Council of the People’s Republic of China, Feb. 4, 2002, effective Apr. 1, 2002), available at <http://www.chinaiprlaw.com/english/laws/laws21.htm>.

¹⁸³ See Regulations, *supra* note 182; see also Mendel & Yijun, *supra* note 180, at 33.

¹⁸⁴ Mendel & Yijun, *supra* note 180.

¹⁸⁵ Regulations, *supra* note 182.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Mendel & Yijun, *supra* note 180, at 34.

¹⁸⁹ Regulations, *supra* note 182.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

As written, the local and state laws in China break new ground with respect to protecting against ambush marketing.¹⁹² The Regulations state that a third party cannot use Olympic Symbols without the consent of the rights holders (the IOC, Chinese Olympic Committee (COC), and the BOCOG).¹⁹³ The law also limits both commercial and noncommercial uses of the Olympic symbols.¹⁹⁴ No action is required on the part of the rights holders to protect their Olympic Symbols rights; however, rights holders have to file the Olympic Symbols with the Administration to be published.¹⁹⁵ The Regulations also addresses “implied commercial purposes” in an attempt to counter ambush marketing activities by including “any other activities [that] may make the third parties believe that there are sponsorship or other support relationships between the users and the right owners of the Olympic Symbols” within the definition of “for business purposes.”¹⁹⁶ Given the nature of the language, it is anticipated that the Administration will have great discretion in the enforcement of the regulations.¹⁹⁷

The Regulations also include provisions for enforcement and remedies for violations.¹⁹⁸ The amount of compensation that a rights holder may seek is tied to the typically substantial license fee for the use of the Olympic Symbol, meaning that the penalty is potentially very severe.¹⁹⁹ This provision establishes greater protection than is available under the Trademark Law.²⁰⁰ Commentators have noted that Beijing’s Olympic-related laws establish the most thorough Olympic mark protection and remedies to date.²⁰¹

B. ENFORCEMENT OF OLYMPIC INTELLECTUAL PROPERTY RIGHTS IN CHINA

China appears to be taking enforcement of Olympic intellectual property rights seriously, which is not surprising given the amount of money China has spent getting ready for the Games, the extensiveness of the IOC requirements, and the fact that Beijing will lose substantial Olympic subsidies in the event of lack of enforcement.²⁰² In addition to implementing new laws aimed at the protection of Olympic intellectual property, China is making tremendous financial

¹⁹² McKelvey & Grady, *supra* note 168, at 195.

¹⁹³ *Id.* at 195.

¹⁹⁴ *Id.* at 195–96.

¹⁹⁵ *Id.* at 196.

¹⁹⁶ Regulations, *supra* note 182.

¹⁹⁷ Mendel & Yijun, *supra* note 180, at 34.

¹⁹⁸ McKelvey & Grady, *supra* note 168, at 196.

¹⁹⁹ Mendel & Yijun, *supra* note 180, at 34.

²⁰⁰ *Id.*

²⁰¹ McKelvey & Grady, *supra* note 168, at 196.

²⁰² See Wang, *supra* note 2, at 302.

investments in anticipation of the 2008 Olympics, with a substantial non-organizing committee budget (covering investments in environment, infrastructure, transportation, and Olympic venues to ready China to host the Games) of \$14.256 billion.²⁰³ As of 2004, total Olympic expenditures in China were projected to be \$37 billion by the end of the Games, and even that number is subject to adjustment given unforeseeable conditions such as necessary increases in the security and health arenas as a result of the September 11 terrorist attacks and SARS.²⁰⁴

The BOCOG has taken significant steps towards protecting the logos, emblems, and symbols for the Beijing Olympics. In 2003, the BOCOG applied for trademark registration, special mark protection, and copyright protection in China for the "Dancing Beijing,"²⁰⁵ the logo for the 2008 Games,²⁰⁶ which is estimated to have a commercial value of at least \$1 billion.²⁰⁷ The IOC registered the Beijing logo worldwide.²⁰⁸ In the first two years after the implementation of the Regulations, thirty-eight Olympic emblems were registered with the State Administration for Industry and Commerce Trademark Office.²⁰⁹

In order to better protect Olympic intellectual property, the BOCOG established a legal affairs department, which is the first such department in the history of Chinese sports.²¹⁰ In 2002, a senior member of the department stated that this department was "unprecedented, underlining a new high [China's] legal awareness has reached."²¹¹ The role of the department is to combat intellectual property infringement and to protect the IOC's interests.²¹²

In addition to creating a legal affairs department, the BOCOG has also established a Brand Protection department to actively tackle the issues of

²⁰³ INT'L OLYMPIC COMM., REPORT OF THE IOC EVALUATION COMMISSION FOR THE GAMES OF THE XXIX OLYMPIAD IN 2008, at 63 (2001), available at http://multimedia.olympic.org/pdf/en_report_299.pdf.

²⁰⁴ *Beijing to Reap US\$16 Million from Running Olympics: Official*, Xinhua News Agency, Apr. 17, 2004, available at <http://www.china.org.cn/english/BAT/93263.htm>.

²⁰⁵ *Logo Dances Out of Controversy*, CHINA DAILY, Dec. 10, 2003, available at http://www.chinadaily.com.cn/en/doc/2003-12/10/content_288852.htm.

²⁰⁶ *Olympic Logo's Rights Stir Debate*, CHINA DAILY, Dec. 6, 2003, available at <http://www.china.org.cn/english/2003/Dec/81714.htm>.

²⁰⁷ *Beijingers Go Mad Over Souvenirs*, CHINA DAILY, Aug. 5, 2003, available at http://www.chinadaily.com.cn/en/doc/2003-08/05/content_252166.htm.

²⁰⁸ *Committee Pledges Effort to Protect Beijing Olympic Logo*, CHINA DAILY, Aug. 14, 2003, available at http://www.chinadaily.com.cn/en/doc/2003-08/14/content_254636.htm.

²⁰⁹ *Lei Lei, IPR Protection for 2008 Games Stressed*, CHINA DAILY, Apr. 3, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-04/03/content_320336.htm.

²¹⁰ *Beijing Moves to Assure Rights of IOC Patrons*, CHINA INTERNET INFO. CTR., Jan. 14, 2002, available at <http://www.china.org.cn/english/2002/Jan/25220.htm>.

²¹¹ *Id.*

²¹² *Id.*

intellectual property infringement and ambush marketing.²¹³ The Brand Protection department has found that often when ambush marketing occurs, the infringing parties believed they were entitled to associate themselves with a public event like the Olympics and appeared to be acting in good faith.²¹⁴ When companies are found to be intentionally violating Olympic intellectual property rights, the BOCOG will ask them to terminate their activities and then refer the issues to the government enforcement agencies if the infringement continues.²¹⁵ The more challenging situations for the BOCOG are those in which companies are not clearly infringing upon the intellectual property of a sponsor but are still engaging in ambush marketing activities.²¹⁶ In these instances, the BOCOG will hold a press conference if the questionable activity continues to ensure that the company will not achieve its promotional objectives.²¹⁷

In late 2001, the mayor of Beijing signed a municipal government decree protecting Olympic-related intellectual property such as the Olympic logo and brand.²¹⁸ The director of the Beijing Municipal Bureau of Intellectual Property stated that "Olympic[] intellectual property rights protection is one of the basic factors to ensure a successful Games" and that "[t]he decree will provide a solid guarantee for the success of the Games."²¹⁹ The Beijing Municipal Bureau of Intellectual Property stated that their first step would be to launch a campaign to educate the public about the importance of protecting Olympic intellectual property rights.²²⁰

China is making its enforcement efforts very public in order to demonstrate its commitment to protecting Olympic intellectual property.²²¹ For example, in 2001, shortly after China was awarded the Games, the BOCOG established phone hotlines for reporting intellectual property violations.²²² In early 2002, a group of municipal government departments, including the intellectual property office, the industrial and commercial administration bureau, the copyright bureau, and the public security bureau, joined together to check for Olympic intellectual

²¹³ Telephone Interview with Chen Feng, Deputy Director of Brand Protection, Beijing Organizing Committee for the Olympic Games, in Beijing, China (Oct. 27, 2006).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Beijing Launches Decree to Fight Ambush Marketing*, EASTDAY.COM, Nov. 2, 2001, available at <http://www.china.org.cn/english/BAT/21504.htm>.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Wang, *supra* note 2, at 314.

²²² *Beijing Guards Olympic Logo*, CHINA DAILY, Nov. 1, 2001, available at <http://www.china.org.cn/english/2001/Nov/21434.htm>.

property violations in Beijing.²²³ The group checked areas such as billboards and other outdoor advertisements; radio, television, and newspaper advertisements; souvenirs; and promotions, performances, and other Olympic-related activities.²²⁴ On World Intellectual Property Day in April 2002, the vice-director of the State Intellectual Property Office stated that China would shift from focusing on intellectual property legislation to law enforcement and supervision.²²⁵ Accordingly, China's General Administration of Customs and State Administration for Industry and Commerce were asked to be on the lookout nation-wide to prevent the unauthorized use of Olympic intellectual property.²²⁶ When the Beijing Olympic Games logo was released in 2003, the BOCOG's President urged "Olympic citizens around the world who care and support the Olympic Movement to respect and abide by international guidelines [for the protection of intellectual property rights]."²²⁷ In August 2003, the BOCOG stated in a press conference that the local authorities in the area of industry and commerce would perform inspections of shops, printing companies, tourist locations, and various advertisements in efforts to protect intellectual property rights related to the Olympic logo.²²⁸

Two years after the Regulations were passed, an Olympic Intellectual Property Rights Protection Forum was held in Beijing with the purpose of encouraging more protection of Olympic items such as emblems and the mascot.²²⁹ At the Forum, BOCOG officials stated that they would continue their protection efforts through "ongoing promotion about rights protection as part of the Olympic cultural festivals and youth education campaign, a marketing plan that includes only certified products, customer service, enhancing the rights protection on retail markets, advertising and export markets, and severely punishing violators."²³⁰

Finally, in an attempt to protect Olympic intellectual property, Olympic-licensed products are being sold during the Beijing Games only in licensed, certified stores that have consistent decoration.²³¹ All licensed products contain anti-counterfeiting labels, which use advanced anti-counterfeiting technology.²³²

²²³ *Beijing Moves to Assure Rights of IOC Patrons*, *supra* note 210.

²²⁴ *Id.*

²²⁵ *Nationwide Checks Set on Intellectual Property Rights*, CHINA DAILY, Apr. 27, 2002, available at <http://www.china.org.cn/english/2002/Apr/31675.htm>.

²²⁶ *Id.*

²²⁷ *2008 Beijing Olympic Emblem Unveiled*, BEIJING-2008.ORG, Aug. 3, 2003, available at <http://www.china.org.cn/english/2003/Aug/71475.htm>.

²²⁸ *Committee Pledges Effort to Protect Beijing Olympic Logo*, *supra* note 208.

²²⁹ *Lei*, *supra* note 209.

²³⁰ *Id.*

²³¹ *Lei Lei, Pilot Stores for Olympic Products to Start*, CHINA DAILY, Aug. 4, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-08/04/content_357354.htm.

²³² *Id.*

C. CHALLENGES IN ENFORCING OLYMPIC INTELLECTUAL PROPERTY RIGHTS IN CHINA

Although the BOCOG continues to take proactive efforts to protect Olympic intellectual property, ongoing enforcement challenges remain.

1. *Pre-existing Infringement.* China has faced challenges in enforcing Olympic intellectual property since being awarded the Games. Prior to the launch of the BOCOG's marketing organization, more than 600 Chinese companies were automatically disqualified from working with the BOCOG on the 2008 Olympics as a result of their previous infringement of the IOC's intellectual property rights.²³³ This disqualification was the result of a "blacklist system" between the IOC and the BOCOG, whereby any company found to be infringing upon the IOC's intellectual property rights was automatically banned from working on the 2008 Olympics.²³⁴ Examples of such infringing activities include

open and illegal use of the Olympic emblem; using the name of "designated products of Beijing Olympic Games[.]" collecting money in the name of the BOCOG; advertising by copying images similar to the Olympic emblem; and engaging in sales activities, hinting at the Olympics, which are opposed strongly by the International Olympic Committee (IOC).²³⁵

2. *Continued Infringement.* In the first two years after the implementation of the Regulations, there were 144 violations of the Regulations that led to an assessment of \$101,000 in fines.²³⁶ In April 2002, the IOC sent an open letter to the BOCOG, suggesting that the BOCOG ask the Chinese people not to use Olympic-related property without authorization and not to purchase product containing Olympic-related intellectual property unless the products have been approved by the BOCOG.²³⁷ At the Second Global Conference on Counterfeiting and Piracy held in late 2005, the Secretary General of the World Customs Organization (WCO) stressed the importance of the Beijing Olympics being a "clean" Games—that is, free from counterfeit goods.²³⁸ The Secretary General stated that the WCO would aid China in making the Olympics clean and

²³³ Zheng Guihong, *600 Enterprises Lose Out on 2008 Olympic Market*, CHINA.ORG, Aug. 29, 2003, <http://www.china.org.cn/english/2003/Aug/73717.htm>.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Lei, *supra* note 209.

²³⁷ *Nationwide Checks Set on Intellectual Property Rights*, *supra* note 225.

²³⁸ *Beijing Olympics to be 'Clean' Games, Says WCO*, XINHUA NEWS AGENCY, Nov. 16, 2005, available at <http://www.china.org.cn/english/sports/148875.htm>.

complimented China on its cooperation with the WCO.²³⁹ However, he recounted reports that Olympic-related counterfeit goods had been sold and stated that if the practice became widespread, it would severely damage the Olympics themselves and China's image.²⁴⁰

The Beijing Municipal Bureau of Industry and Commerce confiscated more than 130,000 items with unauthorized Olympic symbols in April 2002.²⁴¹ The first reported infringement of intellectual property rights in the customs arena occurred in August of 2002, when Shanghai customs officials seized 650 boxes of padlocks illegally bearing the phrase "Olympic" as well as the five rings.²⁴² This event pushed customs officials in Shanghai to send letters to local exporters instructing them to stop illegal use of Olympic symbols.²⁴³ Additionally, 112 billboards were illegally using the Beijing 2008 bid slogan by April 2003, and customs officials intercepted approximately thirty shipments of goods for export that were illegally using Olympic symbols between April 2002 and April 2003.²⁴⁴

Just over a week after the launch of the 2008 Olympic emblem, fines for infringing uses of the emblem on 134 clothing items were collected.²⁴⁵ Four months before the launch of the 2008 Olympic emblem, more than 130,000 unauthorized IOC Olympic symbols were confiscated, including clothes, sporting goods, industrial products, and textiles.²⁴⁶ After the unveiling of Beijing Olympic mascots, the "Five Friendlies," illegal use of their images increased dramatically.²⁴⁷ In May 2004, 672 clothing items and 4,150 school bags alleged to contain illegal Olympic mascots were seized in the Chinese city of Xiamen.²⁴⁸ During the first half of 2007, 30,000 counterfeit Olympic products were seized, the majority of which contained the Olympic mascots.²⁴⁹

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Lin Li, *Olympic Symbols Receive Protection*, CHINA DAILY, Apr. 1, 2003, available at http://www.chinadaily.com.cn/en/doc/2003-04/01/content_160212.htm.

²⁴² Zhang Yong, *Customs Nips First Games IPR Violation*, CHINA DAILY, Aug. 13, 2002, available at http://www.chinadaily.com.cn/en/doc/2002-08/13/content_131838.htm.

²⁴³ *Id.*

²⁴⁴ Li, *supra* note 241.

²⁴⁵ Wang, *supra* note 2, at 312.

²⁴⁶ *Id.*

²⁴⁷ *Famous Foreign Trademarks Protected*, *supra* note 133.

²⁴⁸ *China's Customs Reel in 1,076 IPR Infringement Cases*, *supra* note 96.

²⁴⁹ *Beijing Police Seizes Nearly 30,000 Fake Olympic Products*, XINHUA NEWS AGENCY, June 18, 2007, available at <http://www.china.org.cn/english/olympic/214253.htm>.

V. ANALYSIS

The continued extensive infringement of Olympic intellectual property raises the question of whether China will be able to adequately protect Olympic intellectual property.

Although the BOCOG has instituted many of the same programs enacted by previous Olympic host cities and China appears to have sufficient laws in place to protect Olympic intellectual property, infringement in China continues at a rapid pace. The continuing violations suggest that the traditional means of host city intellectual property protection will not be sufficient for China. Part IV of this Note analyzes potential explanations for the continued Olympic intellectual property infringement and concludes with recommendations on additional measures that will need to be taken to adequately protect Olympic intellectual property in China.

A. LACK OF EDUCATION PROVIDED TO THE CHINESE PUBLIC AND LEGAL COMMUNITIES ABOUT INTELLECTUAL PROPERTY LAWS

Additional education of the Chinese legal, business, and public communities is required in order to reduce Olympic intellectual property infringement in China. In 2002, the vice-director of the Beijing Intellectual Property Offices stated that “[m]any people are unaware that their goodwill actions of promoting the Olympic Games have actually hurt the interests [of the IOC and that] the majority of the public [has] no idea competitors in the same business with IOC patrons are not allowed to be connected with Olympic-related intellectual property.”²⁵⁰ However, the vice-director acknowledged that some individuals do purposely infringe upon Olympic intellectual property to promote their own products, and the Beijing municipal government has stated that it will take action to stop these intentional infringements.²⁵¹ Similarly, Liu Yan, a Chinese law expert who was involved in drafting one of the Beijing municipal regulations, noted that “[s]ome unauthorized usages are unconscious and arise out of people’s good wishes,”²⁵² which indicates that there is a strong need for public education on the importance of Olympic intellectual property protection. Moreover, an official with the General Administration of Customs stated that many Chinese manufacturers are just fulfilling orders from overseas clients use Olympic symbols.²⁵³

²⁵⁰ *Beijing Moves to Assure Rights of IOC Patrons*, *supra* note 210.

²⁵¹ *Id.*

²⁵² *Beijing Guards Olympic Logo*, *supra* note 222.

²⁵³ *Li*, *supra* note 241.

Furthermore, a Chinese consulting company recently wrote an article encouraging Olympic intellectual property infringement.²⁵⁴ The article stated that “[a]ll brands have an opportunity to create a blue ocean in Olympic marketing through innovative, intensive, ambush, or invisible marketing.”²⁵⁵ Ambush marketing remains one of the IOC’s and the BOCOG’s major concerns. Despite BOCOG’s education efforts, domestic companies are still writing articles encouraging such practices less than a year before the Games.²⁵⁶ This situation is indicative of a strong need for education on the importance of Olympic intellectual property protection in China.

It is evident that there will be challenges in educating the Chinese public and legal and business communities about the importance of protecting intellectual property rights. China is uniquely situated in that it is a country comprised of 1.3 billion people, the majority of whom do not live in major cities.²⁵⁷ This will make the means by which prior host cities have traditionally educated the public, such as television and print media, much less effective in China because the majority of the population does not have exposure to these mediums.²⁵⁸ Instead, dissemination of information pertaining to Olympic intellectual property protection can best be accomplished through local governments, as continued educational efforts at the national level have proven less effective than desired.²⁵⁹

Chinese government officials recognize that there is a need to better educate the legal community on intellectual property rights. In late 2001, after Beijing was awarded the 2008 Olympics, the vice president of the Beijing High People’s Court, Wang Zhenging, acknowledged that Beijing still needed to improve its foreign investment environment and that “judges and judicial officers of the capital should ‘get prepared’ through studying the rules of the WTO, especially the TRIPS.”²⁶⁰ Wang additionally noted that the patent regulations enacted in 2001 would allow Beijing to serve as a good example for other Chinese cities with respect to the protection of intellectual property rights.²⁶¹ Thus, it appears that

²⁵⁴ See Ma Ruiguang & Jia Bingwei, *How to Make Olympics Work for Your Firm*, CHINA DAILY, Aug. 2, 2007, available at http://www.chinadaily.com.cn/bizchina/2007-08/02/content_6009794.htm.

²⁵⁵ *Id.*

²⁵⁶ Interview with Martin Benson, Manager of Business Development, International Olympic Committee, in Beijing, P.R.C. (Oct. 13, 2006).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Zhang Yong, *Better Protection of Rights Ensured*, CHINA DAILY, Oct. 11, 2001, available at http://www.chinadaily.com.cn/en/doc/2001-10/11/content_87890.htm (quoting Wang Zhenging).

²⁶¹ *Id.*

some Chinese officials recognize that there is the need to educate judges and judicial officers not only in the rural areas but also within Beijing itself.

B. CONFLICTING VIEWS OF THE VALUE OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

An official with the General Administration of Customs acknowledged that it is “difficult to balance protection of Olympics-related intellectual property rights with the interests of domestic manufacturing companies.”²⁶² Similarly, some economists are concerned that China will face financial difficulties if it tries to outlaw counterfeiting all at once, as counterfeiting has become such a large part of the Chinese economy.²⁶³ Although Olympic merchandise clearly does not constitute all of the potential merchandise to be counterfeited in China, if manufacturers do not understand why they should not produce counterfeited goods in general, they will likely seize upon the relatively substantial market for counterfeit Olympic goods. Additionally, the fact that it may be in China’s best interest as a developing nation to allow unencumbered use of inflowing intellectual property and technology to further the country’s own development²⁶⁴ is potentially in conflict with the concept of squashing Olympic counterfeiting. These pre-existing economic factors contribute to the many unique difficulties China faces in its attempt to protect Olympic intellectual property.

C. NEWNESS OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

China’s preexisting and continued infringing activities, challenges in public and judicial education, and conflicted views on intellectual property protection can all be attributed in part to the newness of the intellectual property regime in the country. At the Olympic Intellectual Property Rights Forum, the Vice President/Secretary General of the BOCOG declared that “[i]mplementing the Regulation meets usual international practices and is a great accomplishment [for China].”²⁶⁵ The Secretary’s statements allude to the great disparity between China’s intellectual property protection regime and that of countries with more developed intellectual property protection and suggests that meeting usual international practices is a substantial feat for China. In 1994, the Chinese government itself stated that it was aware that “in a large developing country with a population of 1.3 billion, relatively backward economy and low level of science

²⁶² Li, *supra* note 241.

²⁶³ Chu, *supra* note 3, at 290.

²⁶⁴ *Id.* at 299.

²⁶⁵ Lei, *supra* note 209.

and technology, a complete IPR system cannot be developed overnight.”²⁶⁶ The newness of the concept of intellectual property rights protection certainly is not helping in the quest to protect Olympic intellectual property in China.

D. WEAK ENFORCEMENT PENALTIES

Enforcement penalties for intellectual property violations are weak in China and do not serve as a deterrent. Given the inherent difficulties and time required to (1) educate China’s large and dispersed population, (2) resolve the conflicted views of intellectual property protection, and (3) alleviate the newness of the intellectual property enforcement regime, increased penalties for intellectual property violations, particularly in the Olympic arena, may be the most efficient means by which to tackle China’s Olympic intellectual property enforcement issues. Increasing the penalties for intellectual property violations will serve to hasten the pace of public education about the importance of intellectual property protection by demonstrating how serious the Chinese government is about punishing violators. Currently the fines for infringers are nominal, and until they are increased, companies are not likely to understand that Olympic intellectual property violations are a significant problem. Increasing penalties for violations will help to alleviate the sense of conflict and ambiguity that appears to surround the protection of intellectual property in China by sending a clear message that intellectual property violations will not be tolerated.

E. LEGAL SYSTEM STRUCTURAL ISSUES

China’s bifurcated system of administrative and judicial forums in which infringement claims can be brought,²⁶⁷ as well as the innumerable primary state organizations involved in intellectual property right enforcement,²⁶⁸ have contributed to China’s difficulties protecting Olympic intellectual property. The judiciary’s ability to reopen cases,²⁶⁹ the inconsistency of judicial results,²⁷⁰ and local protectionism²⁷¹ have played a significant role in China’s Olympic intellectual property enforcement issues. As these structural issues cannot likely be resolved or even addressed in any significant manner prior to the 2008 Games, they are outside the scope of the recommendations in this Note. However, these

²⁶⁶ STATE COUNCIL INFO. OFFICE, *supra* note 88.

²⁶⁷ Priest, *supra* note 76, at 815.

²⁶⁸ See STATE COUNCIL INFO. OFFICE, *supra* note 88.

²⁶⁹ Wang, *supra* note 2, at 294.

²⁷⁰ *Id.* at 295.

²⁷¹ Chu, *supra* note 3, at 295.

structural issues remain real concerns for intellectual property protection and enforcement in China.

F. TIMING OF EFFORTS

In many areas it appears that the BOCOG is taking the right steps to protect Olympic intellectual property. However, these efforts may be just a little too late to reap the benefits in time for the Games. For example, just over a year before the Games, the BOCOG was still working to put an incentive system in place to reward citizens for reporting infringement of Olympic symbols to the government.²⁷² Similarly, the government opened a Beijing Service Center for IPR Protection in mid-2006, five years after being awarded the Games.²⁷³ The BOCOG intends to raise public awareness of the center in 2007, only one year before the Games.²⁷⁴ As of late April 2007, the Beijing Municipal Copyright Bureau was working on an electronic system to capture online infringement of Olympic audio and video products.²⁷⁵ Additionally, the Beijing Administration for Industry and Commerce announced that it would make small markets a priority in fighting Olympic counterfeiting in 2007, again only a year before the Games.²⁷⁶ While it is certainly far better to start these laudable activities late than not at all, beginning these efforts this late in the planning for the Games will not produce the desired results before the Games.

G. PROPOSED SOLUTIONS

Although there are many solutions China could implement to improve intellectual property protection and the enforcement of violations in general, time is of the essence with respect to Olympic intellectual property protection. The two solutions that would be the most effective to improve China's protection of Olympic intellectual property in the remaining time before the 2008 Games are (1) increasing education efforts related to Olympic intellectual property at the local level, and (2) increasing the penalties for Olympic intellectual property violations. These two strategies will reinforce one another. Increased penalties, if properly implemented, will lead to education about the importance of the protection of Olympic intellectual property. Likewise, the local educational

²⁷² *Olympic Battle Fires Up*, CHINA DAILY, Apr. 28, 2007, available at http://www.chinadaily.com.cn/2008/2007-04/28/content_862793.htm

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

component should clearly convey the negative ramifications, including penalties, that will result from Olympic intellectual property violations.

To increase its education efforts, China should take measures similar to those taken by the ACOG in Atlanta and (1) present ambushing companies with market research showing they are deceiving the public and (2) run ads in print media (especially at the local level) clarifying that ambushing companies are exploiting the Olympics without paying sponsorship fees that support the athletes and the Games. Additionally, China should launch a publicity campaign publicly identifying Olympic sponsors along the lines of the campaign undertaken by the organizers of the Sydney Games. China should also implement educational efforts comparable to those of the SLOC, such as running print advertisements in trade and consumer publications (again focusing on the local level), releasing press kits related to the importance of protecting Olympic intellectual property, publicizing legal actions against infringers, and educating and informing local retailers about brand protection and the obligation to protect Olympic intellectual property. Finally, China should also implement a mystery shopper program to identify and curtail the sale of infringing Olympic merchandise akin to the programs implemented by the organizers of the Salt Lake and Athens Games.

VI. CONCLUSION

Jacques Rogge, the president of the IOC, said to the Chinese people upon the unveiling of the Beijing Olympic logo: "As you open the gates and invite the world in, the Olympic Movement is highly honored to be counted among your first guests."²⁷⁷ In 2008, the Olympics will provide the world a window into both a stellar athletic competition and what is perhaps the most exciting and rapidly developing country in the world.

China has made impressive strides in intellectual property legislation and enforcement over the last twenty-five years. The Director of the Beijing Intellectual Property Office noted that, "it took China 20 years to build an IPR system that took developed countries at least a hundred years [to create]."²⁷⁸ However, he concluded that "we still have a long way to go to raise public IPR awareness and standardize business activities concerning IPR."²⁷⁹ As a result of (1) the challenges in educating the Chinese public and legal communities, (2) opposing incentives to welcome investment yet gain technological knowledge, (3)

²⁷⁷ Jacques Rogge, President, International Olympic Committee, Video Message from Beijing 2008 Emblem Unveiling (Aug. 3, 2003), available at http://multimedia.olympic.org/pdf/en_report_739.pdf.

²⁷⁸ *Beijing Issues IPR Policy for Companies*, *supra* note 95.

²⁷⁹ *Id.*

the relative newness of the intellectual property regime in China, (4) weak enforcement penalties for intellectual property violations, and (5) structural issues within the existing legal system, China will likely struggle to provide adequate Olympic intellectual property protection for the 2008 Olympic Games. This Note recommends educating Chinese citizens on the importance of intellectual property protection at the local level and increasing penalties for intellectual property violations as a joint solution to China's Olympic intellectual property enforcement challenges.

Regardless of the difficulties China faces while attempting to protect Olympic intellectual property, it is expected that the experiences gained in enforcing the Olympic regulations "will lead to stronger enforcement of intellectual property rights generally in [China] . . . leav[ing] a legacy that extends beyond the sports and cultural arena."²⁸⁰ Perhaps in the end such a legacy is the perfect embodiment of the Olympic Movement.

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²⁸⁰ Mendel & Yijun, *supra* note 180, at 34.

