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SOCIAL MEDIA'S ROLE IN SPORT

KARA LAWSON

It appears there are many lessons to be learned from the recent London 2012 Olympics, the first "Social Media Olympics". Whilst prior to the Games it was anticipated to be the most tweeted, tagged and liked event in the history of world sport to date, it appears that no one was prepared for the extent to which social media would play a part in the London Games. Social media is being targeted as a cause of underperformance of the Australian Olympic team, and particularly our swimming team. This brings to the forefront the difficulties social media poses for not only Olympic organisers, but more generally sporting clubs and associations, sponsors and athletes.

There is no doubt that there is some benefit to be derived from the use of social media, specifically, raising the profile of athletes, sports, specific events and corporate sponsors by increasing the public's interaction. However, it is the negative effects of social media portals such as Twitter and Facebook which are constantly at the forefront of topical discussion. This has prompted critical discussion on the limitations of social media and how its use can be effectively managed in the context of sport.

By recent example, Aussie swimmer, Emily Seebohm's excuse for failing to take gold in an Olympic swimming final, for which she was the favourite - she messed up because she stayed up too long the night before the race responding to messages of encouragement on Twitter and Facebook.

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Australian Olympic athletes were under a contractual obligation not to bring the sport into disrepute, an obligation set out under the Australian Olympic Committees' (**AOC**) "Athlete Participation Agreement" which all the athletes must agree to. It was the AOC's broad discretionary power under the Agreement which saw Aussie swimmers Nick D'Arcy and Kenrick Monk punished for controversial photos posted on Facebook

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of both swimmers posing in a USA gun shop holding guns (whilst in the USA as part of a swimming training camp).

Outside of the control of athletes and sporting organisations is the public criticism athletes are exposed to through social media. Most recently, West Tigers' NRL star, Robbie Farah, was subjected to heartless Twitter abuse. A comment was posted on Twitter by what's referred to as an internet "troll", an individual who engages in online behaviour that is offensive, referencing Farah's late mother who passed away earlier this year.

The Federal Government has been urged to look at some form of regulatory reform to allow those who write defamatory and hurtful comments on such social media sites to be held accountable for their comments and punished. There is some form of protection under the Uniform Defamation Laws, which are similar across all states and territories in Australia, and also the *Commonwealth Criminal Code Act* Part 10.6 can be used to prosecute individuals who are internet "trolls". There are also laws at a State level that may be used to prohibit offensive online behaviour, such as Queensland's Criminal Code, and it is unclear whether stalking legislation can be used within social media for actions in Queensland.

In any event, there are often issues with tracking down the person making defamatory or offensive comments to hold them accountable for their action and issues with compelling social media sites to hand over information where servers are operated offshore.

Sport, like the rest of society, needs to work out the role social media has to play, and how it controls social media to benefit sport and the athletes.

WHERE DO YOUR BOUNDARIES REALLY LIE?

HOLLY WHITCROFT

When a spectator to an event falls and sprains their ankle in a ditch near the field, or in a car park used for overflow car parking, *outside* the boundary of a sporting association's tenure, could that association be responsible for the injury?

Occupiers and organisers of sporting events owe a duty of care to their spectators (*Langham v Connell Point Rovers Soccer Club* [2005] NSWCA 461). To prevent a breach of the duty of care an occupier/organiser must take reasonable steps to stop an injury from occurring, where there is a foreseeable risk.

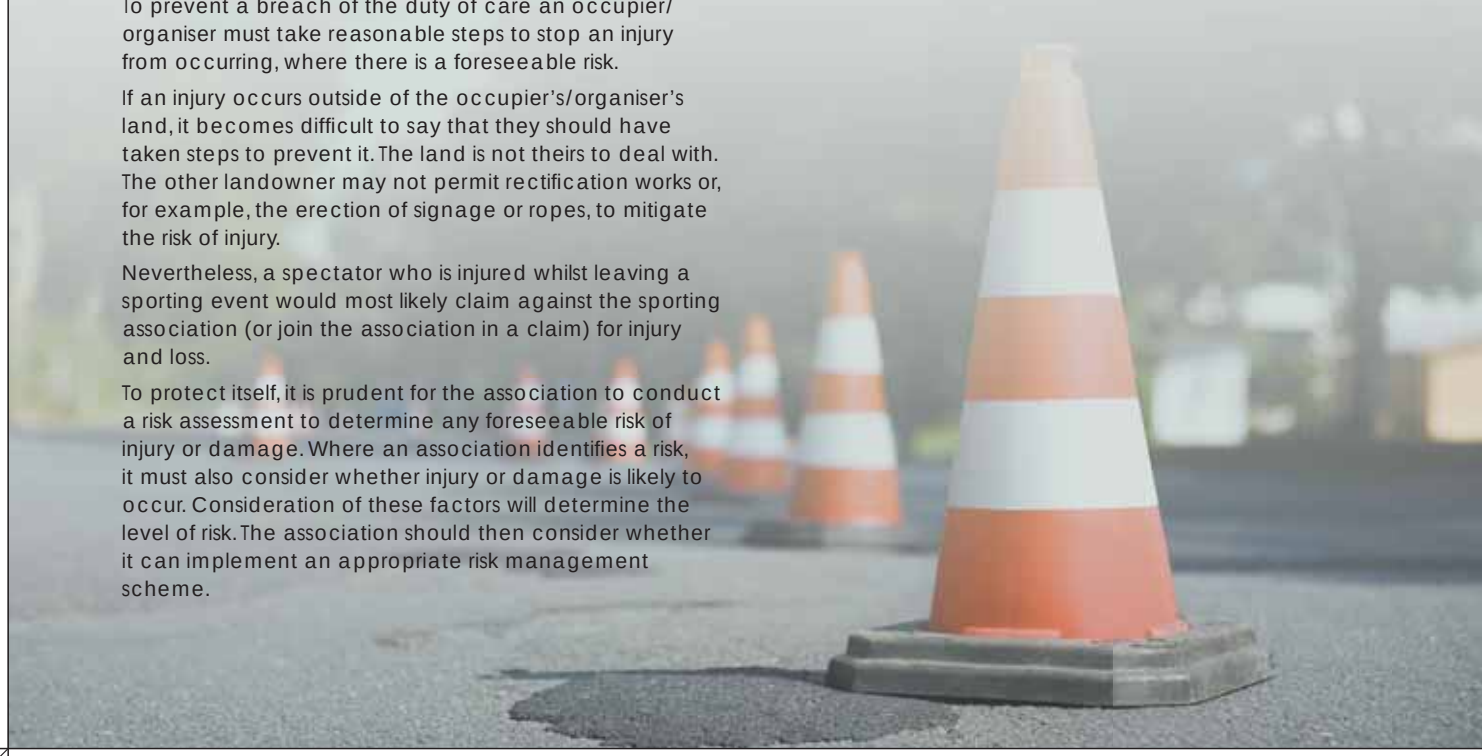
If an injury occurs outside of the occupier's/organiser's land, it becomes difficult to say that they should have taken steps to prevent it. The land is not theirs to deal with. The other landowner may not permit rectification works or, for example, the erection of signage or ropes, to mitigate the risk of injury.

Nevertheless, a spectator who is injured whilst leaving a sporting event would most likely claim against the sporting association (or join the association in a claim) for injury and loss.

To protect itself, it is prudent for the association to conduct a risk assessment to determine any foreseeable risk of injury or damage. Where an association identifies a risk, it must also consider whether injury or damage is likely to occur. Consideration of these factors will determine the level of risk. The association should then consider whether it can implement an appropriate risk management scheme.

Where there remains an unacceptable level of exposure, it is necessary for the association to consider the scope of its public liability insurance. What areas does cover extend to? What events does it cover? The answers are only determined by careful review of the particular policy's terms.

Outside of any legal obligation, an association should also consider whether it has a moral obligation to take steps to protect its spectators, in or outside the strict boundaries of its leased area.



AMBUSH MARKETING – OLYMPIC GOLD

DAVID CALLAGHAN

Ambush marketing is again on everyone's lips after the recent Olympic Games in London. Despite the London Organising Committee of the Olympic Games successfully establishing advertising restrictions in the *London Olympic Games and Paralympic Games Act 2006* (**the Act**) many instances of ambush marketing slipped through the cracks.

The wording of this legislation does not allow any brand or product to be advertised with any of the words '*Games, Two Thousand and Twelve, 2012, Twenty-Twelve'* or any of these words in conjunction with one or more words like '*London, medal, sponsors, summer, gold, silver or bronze'* without approval or official sponsorship rights.

Despite this, brands around the world have undertaken to cash in on the Olympic fever. Nike introduced an advertising campaign depicting athletes performing and training in 'London' in front of 'London' signs from around the world but not the Olympic venue. Although this particular campaign treads the boundaries of the Act, its use of the word 'London' only, without reference to the other words mentioned in the Act, keeps them outside these boundaries.

In Australia, ambush marketing is caught under the *Australian Consumer Law* (**ACL**) where it prohibits a party from making a representation that is false with respect to an affiliation, sponsorship or association of some kind with an event and furthermore under the general prohibition on misleading and deceptive conduct in trade or commerce. It is arguable that the Nike campaign specifically commencing in line with the Olympic Opening Ceremony was misleading and deceptive under the ACL and therefore, could be caught by these provisions.

It is suggested that the financial penalty under the Act was not a strong enough deterrent for brands like Nike to shy away from taking advantage of an event as big as the Olympics (in some instances as low as £20,000 GBP). In fact, Nike's advertising (plus the cost of the penalty if it were to be imposed) would have been much cheaper than the tens of millions of pounds spent by Adidas for their official sponsor rights.

By comparison, the maximum penalty imposed under the ACL for false representation with respect to being associated or affiliated with an event is up to $1.1 million for a body corporate. This type of penalty may make brands think twice when conducting ambush marketing activities within Australia.

RISKS IN DISMISSING AN EMPLOYEE

JONATHAN MAMARIL

For all sporting organisations it is important to have a clear understanding of what the risk exposure is when dismissing an Employee.

In the Queensland Supreme Court decision of *Joyce v Gold Coast Blaze* [2011] QSC 407 the Gold Coast Blaze (**Blaze**) made a costly mistake in reneging on the terms of a Contract without considering the ramifications.

Brendan Joyce a former coach in the National Basketball League entered into an agreement titled "Summary" with the Blaze. The agreement was meant to represent a document summarising their negotiations. In the negotiations it was agreed that Mr Joyce would be employed as Head Coach and paid $150,000 a year on a four year Contract.

Shortly after the agreement, the Blaze sent out a press release announcing Mr Joyce's appointment as head coach and a press conference was held to confirm the appointment. In response to a question from the media, the Blaze general manager also confirmed that the agreement was a "multi-year deal".

Over a year later the Blaze took steps to terminate the employment of Mr Joyce so they could hire another coach. Upon his employment being terminated Mr Joyce sued for breach of contract.

The case turned on whether a legally binding Contract had been entered into. The Court sided with Mr Joyce and found that the parties had intended to be legally bound by the "Summary".

Justice Lyons wrote: "The signing occurred at a press conference. That rather strongly suggests an intention to show the world at large that a legally binding relationship has been created. The fact that immediately after signing Mr Tomlinson and Mr Claxton shook hands with Mr Joyce provides further support for this conclusion."

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When deciding on the compensation amount to be awarded to Mr Joyce the Court took into account any salary earned by Mr Joyce since his dismissal to mitigate any damages to be awarded.

The Court awarded Mr Joyce compensation of $319,000.00 representing the balance of the fixed term in the contract less salary earned by Mr Joyce since his dismissal of $8,883.52.

This case demonstrates the importance of sporting organisations understanding that they will be judged by their conduct as well as any terms of the agreement reached.

USE OF TESTIMONY AS EVIDENCE OF ANTI-DOPING VIOLATIONS

MATTHEW BRADFORD

The recent decision of the United States Anti-Doping Authority (**USADA**) to charge cycling champion Lance Armstrong with anti-doping violations largely based on evidence from his former teammates – despite him never failing a drug test – has drawn a spotlight on the types of evidence that anti-doping organisations can use when investigating doping allegations.

The World Anti-Doping Agency (**WADA**) is the international organisation that coordinates and monitors doping in sport. Most major sporting organisations and national sporting bodies seek to comply with WADA's World Anti-Doping Code (**the Code**) and its model rules and regulations when implementing anti-doping policies, investigations and sanctions.

The Code imposes the burden of proving an anti-doping violation on the relevant organisation, which must establish a standard of proof that doping occurred greater than a mere balance of probability, but less than proving it beyond reasonable doubt. The Code provides that facts relating to violations may be established by any reliable means, including not only analytical data (drug tests), but also through admissions, documentary evidence and the testimony of other parties. So whilst the majority of anti-doping violations are established from a positive drug test result in a blood or urine sample, anti-doping organisations do have the power to establish a violation based on other evidence.

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It is on this basis that USADA has proceeded against Armstrong by relying on the testimony of his former teammates – although USADA also claims to have analytical data that indicates blood manipulation by Armstrong during his 2009 Tour de France comeback.

An interesting observation from USADA's actions in this case is the significant reliance on the testimony of Armstrong's former teammates versus the numerous negative drug test results from throughout Armstrong's lengthy career. The use of testimony as evidence over independent scientific analysis – with the obvious risk of such testimony being untrue – is controversial in this matter because many of the witnesses that provided testimony were also accused of, or had admitted to, anti-doping violations themselves. Some of these witnesses received reduced sanctions in exchange for providing this testimony, which has prompted some people to question the motive and truth behind this testimony.

The Code allows an organisation to reduce the sanction imposed on a doping offender if that person provides substantial assistance to the anti-doping organisation or to a criminal authority in discovering or establishing an anti-doping violation by another person. Whilst there is obviously some merit in encouraging people to report anti-doping violations to help clean up drugs in sport, where the witnesses will directly benefit from their testimony by receiving a reduced sanction, organisations will need to be very careful to substantiate the testimony with corroborating evidence to ensure it is credible before relying on it.

JOHN MULLINS
EDITORIAL

I said to some colleagues this week that I think the Lance Armstrong story might be the biggest story in sport ever.

I question why I would make a statement like that because rather than being the biggest story in sport ever, it might just be a story about a cheat, and surely a story about a cheat could not be the biggest story in sport.

Big stories in sport should be about remarkable victories, iconic performances and people of such skill, talent and commitment that they are globally admired. Perhaps that is why this may be the biggest story in sport because it is a story about a person regarded as one of the greatest athletes in history, and that person may have achieved all that they achieved through cheating.

There is an endemic and systematic aspect to this cheating which leaves most fair minded people agog with amazement. The fact that those who perpetrated this lie were able to maintain such secrecy over such a period of time is also quite remarkable.

It causes you to think about who is the cause. Is it the athlete? Is it the team owners? Is it the sponsors? Is it the fans as suggested by the then president of the UCI that the fans were causing a problem because they had expectations that the speed of the race would be so much higher? Is it the administrators who failed to put an end to this? Is it simply human nature? And what does this say about the future of sport, the future of cycling, the future of our heroes? When someone is truly extraordinary do we need to consider their feats with great skepticism? Can we trust what we see? Can we trust who we believe in?

And there is one final statement to make about this whole sorry situation and that is that the man Lance Armstrong continues to steadfastly deny that he has done anything wrong. We live in interesting times.

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