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Go for the Gold by Utilizing the Olympics

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I. Introduction

This article suggests ways to incorporate legal issues related to the Olympic Games into your business law or legal environment course. As demonstrated in previous issues of the *Journal of Legal Studies Education* and elsewhere, material related to sports law can serve as an engaging supplement to traditional legal subjects.[1] Topics that can be related to the Olympics include constitutional law, jurisdiction, arbitration, gender and disability discrimination, and intellectual property.

Through 1992, both the Winter and Summer Olympics were held during the same year. Beginning in 1994, the Winter and Summer Olympics alternate in even numbered years. For example, the summer 2012 Olympic Games were held in London, England. Two years from now, the 2014 Winter Olympics will be held in Sochi, Russia.[2] At least every two years, then, there are timely opportunities to use Olympics-related examples. The pedagogical

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[1] *See, e.g.*, Adam Epstein, *Teaching Torts with Sports*, 28 J. Legal Stud. Educ. 117 (2011); Adam Epstein & Paul Anderson, *Utilization of the NCAA Manual as a Teaching Tool*, 26 J. Legal Stud. Educ. 109 (2009); Sharlene McEvoy, *The Legal Environment of Baseball*, 12 J. Legal Stud. Educ. 197 (1994); Adam Epstein & Bridget Niland, *Exploring Ethical Issues and Examples by Using Sport*, 13 Atlantic L.J. 19 (2011); Adam Epstein, *Religion and Sports in the Undergraduate Classroom: A Surefire Way to Spark Student Interest*, 21 S. L.J. 133 (2011); Nathanial Grow, *American Needle and the Future of the Single Entity Defense Under Section One of the Sherman Act*, 48 Am. Bus. L.J. 449 (2011); Kenneth L. Shropshire, *Introduction: Sports Law?*, 35 Am. Bus. L.J. 181 (1998) (noting that there is no real distinct area of the law known as "sports law" but that it may be better described as "sports and the law").

[2] *See generally* Official Website of the Olympic Games, http://www.olympic.org/olympic-games (last visited Dec. 29, 2011).

use of current topics and events has a positive and productive influence on the learning environment, and those professors who wish to incorporate current events into the law course may find Olympic-related material to be quite beneficial.[3]

Olympics-related material also provides a way to emphasize the international and political dimensions of legal issues.[4] This article addresses the historical context and political and sociocultural importance of the cases involved. The biannual event operates on an international stage, controlled by an international organization, and far exceeds the jurisdiction and boundaries of American law.[5]

The article first describes the fundamental structure of the United States Olympic Committee (USOC) and then explores relevant statutes and prominent cases involving the Olympic Games.[6] Professors can incorporate these examples to complement coverage and enhance student understanding of constitutional law, jurisdiction, arbitration,

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[3] *See* E. Tammy Kim, *Who's Learning What? Toward a Participatory Legal Pedagogy*, 43 HARV. C.R.-C.L. L. REV. 633, 636 (2008) (noting that inclusion of current events is one of the prescribed "best practices" for faculty to reach more students and teach them in a more comprehensive, well-rounded manner); Laura E. Little, *Teaching Federal Courts: From Bottom Line to Mystery*, 53 ST. LOUIS U. L.J. 797, 799 (2009) (noting that little research on the use of current events in legal education is available, but that studies and articles in other educational fields such as biochemistry and psychology show the beneficial utility of news articles in the classroom).

[4] *See, e.g.*, George J. Siedel, *Six Forces and the Legal Environment of Business: The Relative Value of Business Law Among Business School Core Courses*, 37 AM. BUS. L.J. 717, 733 (noting that contract law, product liability, securities regulation, environmental law, the law of sexual harassment and antibribery law are examples of substantive areas of the law that have been globalized in recent years).

[5] Politics has, of course, influenced the Games. As a gesture of political protest, nations have boycotted the Olympics over the years. Still, the International Olympic Committee (IOC) remains adamant that it is politically neutral and is very protective of its event from outside influence. *See, e.g.,* Scott Rosner & Deborah Low, *The Efficacy of Olympic Bans and Boycotts on Effectuating International Political and Economic Change*, 11 TEX. REV. ENT. & SPORTS L. 27, 28–29 (2009) (noting that the Games were boycotted in 1956, 1976, 1980, 1984, and 1988, and that "the philosophy of *Olympism* states that sport should be free of politics"); Associated Press, *IOC Sends Out Letter Clarifying Protest Rules for Olympics*, ESPN, May 5, 2008, http://sports.espn.go.com/oly/news/story?id=3382975 (noting that IOC Rule 51.3 of the Olympic Charter states, "No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas.").

[6] Throughout this article the terms Olympics, Olympic Games, Games and the Olympic Movement are used interchangeably, just as they are among those involved. This includes the USOC, the coaches, athletes, media, and the official sponsors who collectively often refer to everyone and everything involved as the Olympic Movement.

gender and disability discrimination, and trademark law. The Appendix at the end of this article provides questions that professors might present to students for discussion and further research on Olympic-related topics.

II. The USOC: Constitutional Law and Arbitration

Congress delegated authority for administering the Olympic Movement in the United States to the USOC, which is based in Colorado Springs, Colorado.[7] It plays the important and exclusive role governing U.S. eligibility, selection, and participation in the Olympics, Paralympic Games, and Pan American Games.[8] The USOC is a private organization. Although it was

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[7]Official Website of the Olympic Games, *The United States Olympic Committee History*, http://www.teamusa.org/about-usoc/usoc-general-information/history (last visited Dec. 29, 2011). Originally, the USOC was known as the American Olympic Association (AOA). In 1940 it changed its name to the United States of America Sports Federation and then in 1945 changed it to the United States Olympic Association (USOA). In 1950 it was granted a federal charter. Finally, in 1961, it changed the name to the USOC. *Id.* Prior to the adoption of the Amateur Sports Act of 1978 (ASA) and subsequently the Ted Stevens Olympic and Amateur Sports Act of 1998 (TSOASA), competing organizations, including the Amateur Athletic Union (AAU), had also represented the United States in international competition. Today, the AAU is almost irrelevant with regard to the Olympics in the United States, at least at the highest level of competition. *See* James V. Koch, *The Economic Realities of Amateur Sports Organization*, 61 Ind. L.J. 9 (1985) (noting that the AAU's major efforts are confined to its Junior Olympics and its Masters Sports and Fitness Programs); Dionne L. Koller, *How the United States Government Sacrifices Athletes' Constitutional Rights in the Pursuit of National Prestige*, 2008 BYU L. Rev. 1465, 1536 (characterizing the ASA as creating "a monopoly for Olympic regulation by eliminating the ability of organizations such as the NCAA and the AAU to claim authority to field Olympic Movement teams"); United States Wrestling Fed'n v. Wrestling Div. of AAU, Inc., 545 F. Supp. 1053 (N.D. Ohio 1982) (permanently enjoining the AAU as the national governing body (NGB) for amateur wrestling in the United States and ordering USOC to terminate any recognition that defendant is the NBG for amateur wrestling in the United States).

[8]TSOASA, 36 U.S.C. § 220521 et seq. (2011); *see also* Lara Krigel Pabst, *Embodying the Olympic Spirit: Why Paralympic Athletes Should Be Entitled to Proportionate Benefits Under the Americans with Disabilities Act*, 76 UMKC L. Rev. 751, 758–59 (2008).

federally chartered by Congress,[9] it is not part of the federal government.[10] Accordingly, the USOC appears not to be a governmental (state) actor, and as state action is lacking, then constitutional claims against the USOC are most likely improper.[11] Based upon my experience, many students mistakenly think that because the words United States are in the organization's title that this elevates its status to that of some sort of governmental body or regulatory agency such as the Securities and Exchange Commission or Federal Trade Commission (FTC).

The USOC oversees the subordinate organizations responsible for the administration of individual and team sports in the United States. Each of these entities is called a national governing body (NGB), and there can only

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[9]Other private entities created by federal charter include the Tennessee Valley Authority (TVA), the United States Postal Service (USPS), and Amtrak, which all operate the same way. *See* Benjamin A. Templin, *The Public Trust in Private Hands: Social Security and the Politics of Government Investment*, 96 Ky. L.J. 369, 395-96 (2007) The authority of the federal government to create a private corporation to carry out a public purpose emanates from the Necessary and Proper Clause of the Constitution, U.S. Const. art. I, § 8, cl. 18 (Congress shall have the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."), and the Supreme Court decision in *McCulloch v. Maryland,* 17 U.S. 316, 325-26 (1819). *Id.*

[10]Analogously, the National Collegiate Athletic Association (NCAA) is not a state actor (even though its name includes the word *National*), and therefore, traditional fifth and fourteenth due process and equal protection discussions are not appropriate in this context either. Of course, a fundamental difference is that the NCAA is not created by federal statute and remains a private, nonprofit 501(c)(3) organization. *See* NCAA v. Tarkanian, 488 U.S. 179 (1988) (holding that the NCAA is not a state actor); NCAA v. Smith, 525 U.S. 459 (1999) (holding that the NCAA does not directly receive federal financial support and so is not a *recipient* of federal funds covered by Title IX, and therefore is not subject to Title IX as an organization as its individual member institutions are).

[11]There exists no definitive, all-encompassing judicial decision that establishes that the USOC is indeed not a state actor, but many cases have made rulings that have involved that query. *See* DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181 (D.D.C. 1980), *aff'd,* 701 F.2d 221 (D.C. Cir. 1980) (noting that the plaintiffs could not demonstrate that the failure to send a team to the 1980 Moscow Olympics constituted state action, and that "the USOC is an independent body, and nothing in its chartering statute gives the federal government the right to control that body or its officers"); San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522 (1987) (noting that the USOC is not a governmental actor to which the Fifth Amendment applies). *But see* Koller, *supra* note 7, at 1469 (proposing greater accountability in the U.S. Olympic Movement in order to prevent alleged "abuses of athletes' constitutional rights in the name of national prestige").

be one NGB per sport.[12] The authority of the NGBs includes recommending which individual athletes should represent the United States in the Olympic Games as well as establishing procedures for determining who is eligible to compete through the Olympic trials competition and individual or team selection processes.[13] In the event of a dispute, federal law mandates that the USOC shall "provide for the swift resolution of conflicts and disputes involving amateur athletes, national governing bodies, and amateur sports organizations, and protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition."[14]

Legal battles involving the USOC, its NGBs, and individual athletes and coaches have covered a wide range of subjects and have provided the judicial system with plenty to ponder. These include claims that an athlete violated his amateur status, having one or more times competed as a professional,[15] results of a drug test that indicate the illicit use of illegal or performance-enhancing drugs (PEDs) or substances resulting in suspension from

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[12]Examples of prominent NGBs include USA Track & Field, USA Gymnastics, and USA Swimming. *See* 36 U.S.C. § 220521-26 (2011); *see also* Adam Epstein, Sports Law 317 (2013).

[13]Selection in some sports, such as gymnastics, figure skating, wrestling, and boxing, involves subjective determinations of performance. Dissatisfied athletes and coaches might complain about the Olympic trials, the selection process, requiring arbitration to settle the dispute, as discussed *infra,* Part III. *See* 36 U.S.C. § 220527 (2011) (Complaints Against National Governing Bodies); 36 U.S.C. § 220529 (2011) (Arbitration of Corporation Determinations); *see also* Jacobs v. USA Track & Field, 374 F.3d 85 (2d Cir. 2004) (supporting arbitration as the means to resolve issues related to positive drug test result in conjunction with rules established and approved by the American Arbitration Association (AAA)); *In re* Gault v. United States Bobsled and Skeleton Fed'n, 179 A.D.2d 881 (N.Y. App. Div. 1992). In *Gault*, the court held that the arbitrator did not exceed his authority when asked to resolve controversy over which 1992 Olympic bobsled team was selected. The arbitrator had, after a hearing, held that the selection process was flawed and ordered that another qualifying competition be held. *Id.*

[14]36 U.S.C. § 374(8), now codified at 36 U.S.C. § 220503(8) (2011).

[15]At one time, only amateurs could compete in the Olympics. Except for boxing, that era has passed. *See* Oldfield v. Athletic Cong., 779 F.2d 505 (9th Cir. 1985) (refusing to grant private right to sue under the ASA for being excluded from participation in the 1984 U.S. Olympic trials, when boxer had signed a professional sports contract in 1972). *See generally* Matthew J. Mitten et al., *Targeted Reform of Commercialized Intercollegiate Athletics*, 47 San Diego L. Rev. 779, 787–88 (2010) (noting that Jim Thorpe was stripped of his two track and field Olympic gold medals in 1913 for playing summertime semiprofessional baseball, although the IOC posthumously restored his medals 70 years later). Olympics-related movies Chariots of Fire (Allied Stars 1981) and Prefontaine (Hollywood Pictures 1997) both demonstrate issues related to participation in the Olympic Movement as amateurs rather than professionals. Students might be encouraged to watch these movies outside class as an extra credit assignment.

competition,[16] and allegations of impropriety in the arbitration process.[17] In fact, one federal lawsuit was forced to determine whether courts had jurisdiction or the power to force the USOC and President Carter to send an Olympic team at all.[18] Partly as a result of the increased litigation involving Olympic athletes, coaches, and NGBs, including inconsistent interpretations by state and federal courts, federal law now mandates arbitration as the appropriate method to deal with legal issues involving athlete eligibility disputes, which NGB governs which sport, and challenges to positive drug tests, though it has taken years for the transition away from litigation to arbitration in the context of the Olympic Movement to evolve in the United States, as demonstrated throughout this article.[19]

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[16]Jacobs v. USA Track & Field, 374 F.3d 85, 87 (2d Cir. 2004) (upholding USOC's suspension of American runner who tested positive for illegal performance enhancing designer steroid tetrahydrogestrinone "THG"); Michels v. United States Olympic Comm., 741F.2d 155 (7th Cir. 1984) (upholding USOC's suspension of the American weightlifter because he athlete tested positive for impermissible levels of testosterone); Foschi v. U.S. Swimming, Inc., 916 F. Supp. 232 (E.D.N.Y. 1996) (upholding the suspension of the American swimmer for testing positive for steroid mesterolone).

[17]Lindland v. United States Wrestling Ass'n, 227 F.3d 1000 (7th Cir. 2000) (upholding arbitrator Burns' decision with regard to who should represent the United States in Sydney as a member of the U.S. Olympic wrestling team, and determining that arbitrator Campbell's competing arbitration decision was *ultra vires* and in violation of the Commercial Rules of the AAA).

[18]DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181 (D.D.C. 1980), *aff'd*, 701 F.2d 221 (D.C. Cir. 1980), discussed further *infra*, text accompanying notes 23–27.

[19]For example, under 36 U.S.C. § 220522 (2011): " (a) An amateur sports organization is eligible to be recognized or to continue to be recognized, as a national governing body, only if it ... (4) agrees to submit to binding arbitration in any controversy involving ... (B) the opportunity of any amateur athlete ... to participate in amateur athletic competition, upon demand of the aggrieved athlete ... conducted in accordance with the Commercial Rules of the American Arbitration Association." *See* Edward E. Hollis III, *The United States Olympic Committee and the Suspension of Athletes: Reforming Grievance Procedures Under the Amateur Sports Act of 1978*, 71 Ind. L.J. 183 (1995); Am. Arbitration Ass'n, *Olympic Athlete Eligibility, NGB Determination and Doping Disputes: An Overview*, ADR.org, *available at* http://www.adr.org/aaa/ShowPDF;jsessionid=kbxxPbvFTQmmP8cycYdvlLjfxmgYV4dLDBNsfjx1gH347bx1GqLL!-1786312740?doc=ADRSTG_008054 (last visited May 24, 2012) *see also* Harding v. U.S. Figure Skating Ass'n, 851 F. Supp. 1476, 1479 (D. Or. 1994) (cautioning that "courts should rightly hesitate before intervening in disciplinary hearings held by private associations. .. Intervention is appropriate only in the most extraordinary circumstances, where the association has clearly breached its own rules, that breach will imminently result in *serious* and irreparable harm to the plaintiff, and the plaintiff has exhausted all internal remedies.").

III. Jurisdiction Over Disputes

For those who are generally unfamiliar with the subtleties and complexities of the Olympic Movement, including its international hierarchical structure, an obvious question for professors and students alike might be, "How do American courts have jurisdiction over the Olympics if the issue involves other countries or competitors?" After all, the International Olympic Committee (IOC) controls the Olympics and is based in Lausanne, Switzerland. The USOC represents only one of over two hundred other nations that are members of the IOC, each having its own National Olympic Committee (NOC) similar to the USOC.[20] The following cases involving American athletes helped to answer such jurisdictional questions, one in 1980, one stemming from an incident in 1990, and the other occurring in 2000.

A. U.S. Courts: DeFrantz, Reynolds, and Lindland

The United States and sixty-four other Western nations including Japan, West Germany, and China boycotted the 1980 Moscow Olympics to protest the Soviet Union's invasion of Afghanistan.[21] The USOC voted to support the boycott, the first in U.S. history.[22] In fact, President Jimmy Carter had threatened to revoke the organization's tax exemption if the USOC would not comply with his request.[23] To prevent the impending boycott, a lawsuit was filed in U.S. district court by a group of twenty-five American athletes led by Anita DeFrantz, a member of the U.S. rowing team, seeking an injunction against the USOC and President Carter.[24] The plaintiffs alleged that the USOC violated the Amateur Sports Act of 1978 (ASA), but the district court concluded that the USOC was a private organization (though a creature of federal statute) and that there did not appear to be a private right of action

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[20] *See* Matthew J. Mitten & Hayden Opie, *"Sports Law": Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 Tul. L. Rev. 269 (2010); *see also generally* James A.R. Nafziger, *Dispute Resolution in the Arena of International Sports Competition*, 50 Am. J. Comp. L. 161 (2002); Daniel H. Yi, *Turning Medals into Metal: Evaluating the Court of Arbitration of Sport as an International Tribunal*, 6 Asper Rev. Int'l Bus. & Trade L. 289 (2006).

[21] Rosner & Low, *supra* note 5, at 46–53.

[22] *Id.* at 49.

[23] DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181 (D.D.C. 1980), *aff'd,* 701 F.2d 221 (D.C. Cir. 1980).

[24] *Id.*

under the ASA, meaning the court did not have jurisdiction to hear the case.[25] In sum, the *DeFrantz* court was powerless to order President Carter to send a team.[26] Still, the court recognized the disappointment that the American athletes would suffer by not sending an Olympic team and opined in carefully crafted language that is worthy of reading aloud to your class:

> At this point, we find it appropriate to note that we have respect and admiration for the discipline, sacrifice, and perseverance which earns young men and women the opportunity to compete in the Olympic Games. Ordinarily, talent alone has

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[25] *Id.* at 1189 (concluding that the decision of the USOC not to send an American team to the 1980 Moscow Olympics was not state action, and it did not give rise to an actionable claim for the infringements of the constitutional rights). Indeed, the issue of whether or not a private right of action exits under the ASA and TSOASA has been quite the subject and challenge for federal and state courts, but it appears that the USOC has exclusive jurisdiction for those matters that are exclusive to the USOC pertaining to participation such as eligibility, competition and team selection matters. *See, e.g.*, Oldfield v. Athletic Cong., 779 F.2d 505, 508 (9th Cir. 1985) (holding that shot put competitor did not have the private right to sue under the ASA for not being allowed to participate in the 1984 Olympic trials, having signed a professional sports contract in 1972); Martinez v. United States Olympic Comm., 802 F.2d 1275, 1281 (10th Cir. 1986) (citing Michels v. United States Olympic Comm., 741 F.2d 155, 157–58 (7th Cir. 1984) ("The legislative history of the Act clearly reveals that Congress intended not to create a private cause of action under the Act. The Act as originally proposed contained an 'Amateur Athlete's Bill of Rights,' which included a civil cause of action in federal district court for any athlete against an NGB, educational institution, or other sports organization that threatened to deny the athlete's right to participate in certain events . . . Congress omitted the bill of rights provision in the Act's final version. Congress thus considered and rejected a cause of action for athletes to enforce the Act's provisions."); Walton-Floyd v. United States Olympic Comm., 965 S.W.2d 35 (Tex. App. 1998) (holding that Congress did not intend to create a private right of action against USOC against appellee regarding her use of a supplement that ultimately caused her to be banned from track and field for four years); Lee v. U.S. Taekwondo Union, 331 F. Supp. 2d 1252 (D. Haw. 2004) (recognizing that the USOC has exclusive jurisdiction over all matters pertaining to participation in the Olympic Games though the TSOASA does not supersede other federal statutes as long as the remedy sought is not within the exclusive jurisdiction of the USOC); Dolan v. U.S. Equestrian Team, Inc., 608 A.2d 434, 437 (N.J. Super. App. Div. 1992) (noting that a private cause of action did not exist under New Jersey state law either). *But see* Akiyama v. U.S. Judo, Inc., 181 F. Supp. 2d 1179 (W.D. Wash. 2002) (finding that Title II of Civil Rights Act of 1964 applied to prevent discrimination on basis of religion at judo competition); Sternberg v. U.S.A. Nat'l Karate-Do Fed'n, 123 F. Supp. 2d 659, 663–65 (E.D.N.Y. 2000) (noting a possible implied right of action in the ASA for gender discrimination by comparing it to Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq.).

[26] DeFrantz v. United States Olympic Comm., 492 F. Supp. 1181, 1194 (D.D.C. 1980) ("We can find no justification and no authority for the expansive reading of the Constitution which plaintiffs urge. To find as plaintiffs recommend would be to open the floodgates to a torrent of lawsuits. The courts have correctly recognized that many of life's disappointments, even major ones, do not enjoy constitutional protection. This is one such instance.").

> determined whether an American would have the privilege of participating in the Olympics. This year, unexpectedly, things are different. We express no view on the merits of the decision made. We do express our understanding of the deep disappointment and frustrations felt by thousands of American athletes. In doing so, we also recognize that the responsibilities of citizenship often fall more heavily on some than on others. Some are called to military duty. Others never serve. Some return from military service unscathed. Others never return. These are the simple, although harsh, facts of life, and they are immutable.[27]

The seasoned professor recognizes the historical and political significance of that decision by President Carter not to send a team to Moscow.[28] Note that in a return gesture, the Soviet Union did not send a team to the 1984 Los Angeles Games.[29] In other words, a legal battle was waged over a political decision, and the federal courts recognized that they had no legal authority to intervene in this international political game. Today's students may find discussion of the boycott of the 1980 Moscow Olympic Games so far removed from their virtual reality that at this point utilizing Olympic-related YouTube to incorporate videos might add some life to the lecture and discussion.[30]

Ten years after the *DeFrantz* decision, another U.S. court was involved in international litigation in *Reynolds v. International Amateur Athletic Federation,* which should win a medal for being one of the most varied, lengthy,

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[27] *Id.* at 1195.

[28] Rosner & Low, *supra* note 5, at 46–53. The Soviet Union, however, did participate in the 1980 Lake Placid Winter Olympics, the background for the movie Miracle (Walt Disney Pictures 2004).

[29] Rosner & Low, *supra* note 5, at 53–58.

[30] *See generally* Epstein, *supra* note 1, at 118 (finding support for the use of videos in the classroom to engage the "MTV/Google" Generation). For example, entering "Dave Wottle" into the YouTube search engine provides an inspiring video of the ABC television broadcast in which the American wins the 800 meter final, coming from last place, during the 1972 Munich Olympic Games. The instructor can draw students' attention to the fact that as a tribute to the eleven Israeli athletes and coaches who died as a result of terrorist acts at those Games, ABC replaced the real-time tenth-of-a-second decimal place point, which had appeared throughout the second (and final) lap of the race in the upper right-hand of the video, with a small Star of David symbol (like that found on the Israeli flag). The video of the race leaves many students (and instructors alike) in awe of the race, the era, and the tragedy at these Olympics. For further research, see Randy Harvey, *Spain '92/A Medal Year: Postscript: '72 Olympics: Where Tragedy, Victory Clashed : Six Athletes Recall Traumatic Munich Games Where 11 Israelis Were Slain*, L.A. Times, July 14, 1992, *available at* http://articles.latimes.com/1992-07-14/news/wr-4012_1_gold-medal (discussing the 1972 *Munich Massacre*, devastating the Games that had been advertised as *The Serene Games*).

and convoluted decisions involving an American athlete, American jurisprudence, and the IOC. The dispute stemmed from a positive drug test.[31] Harry "Butch" Reynolds was an American world record holder in the 400 meter and silver medalist in the 1988 Seoul, Korea, Olympic Games.[32] Reynolds ran in a meet in Monte Carlo, Monaco, on August 12, 1990, and he was randomly tested for PEDs by the International Association of Athletics Federation (IAAF), the international federation for track and field competition.[33] His drug test was positive for the illegal, anabolic steroid nandrolone, and the IAAF immediately suspended him for two years, which resulted in his automatic disqualification from the next Summer Olympics to be held in Barcelona, Spain, in 1992.[34]

Reynolds contested the suspension and brought a lawsuit against TAC (The Athletic Congress), the former name for the national governing body of track and field in the United States (now known as USA Track & Field), in the U.S. District Court for the Southern District of Ohio, in order to compete in the U.S. Olympic trials.[35] The injunction was granted, but subsequently reversed by the Sixth Circuit Court of Appeals. The Supreme Court reversed

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[31] Reynolds v. Int'l Amateur Athletic Fed'n, 841 F. Supp. 1444 (S.D. Ohio 1992).

[32] *Id.* at 1447.

[33] *Id.* at 1447–48.

[34] *Id.* at 1448. Unless you are quite familiar with the language, its myriad of acronyms involving PEDs and the history of regulation nationally and internationally, I do not recommend exploring the finer details or authority of the World Anti-Doping Agency (WADA) and its *List of Prohibited Substances and Methods*, also known as the *Prohibited List*, other than that competitors must consent by contract to be tested both in-competition (IC) and out-of-competition (OOC) for the illicit use. The discussion of PEDs and substances can become quite technical and is highly weighted toward acronyms such as WADA, USADA, CAS, HGH, THG, EPO, CERA, BALCO, just to name a few. *See, e.g.*, Richard H. McLaren, *WADA Drug Testing Standards*, 18 Marq. Sports L. Rev. 1 (2007); Shayna M. Sigman, *Are We All Dopes? A Behavioral Law and Economics Approach to Legal Regulation of Doping in Sports*, 19 Marq. Sports L. Rev. 125 (2008). On the other hand, it is worth noting that not only is the *Prohibited List* readily available on the web, but there is an iPhone app for WADA's list. This will likely amuse students who will then undoubtedly reach for their smartphones to verify. World Anti-Doping Agency, WADA Prohibited List 2012, http://itunes.apple.com/us/app/wada-prohibited-list-2011/id408057950?mt=8 (last visited Dec. 30, 2011). Still, the instructor could suggest as an extra credit assignment watching the movie Bigger, Stronger, Faster (BSF Film 2008), a documentary exploring drug use in the United States, PEDs in general, the role of federal agencies such as the FTC regarding labeling issues involving nutritional supplements, and specific examples of Olympic-related drug scandals.

[35] *Reynolds*, 841 F. Supp. at 1448.

again, ultimately allowing him the opportunity to compete in the U.S. trials despite the suspension.[36]

Reynolds made the U.S. Olympic team as an alternate for the 400-meter relay, but the IAAF still refused to let him compete in the 1992 Olympics and demanded that he be removed from the U.S. Olympic team roster.[37] In response, Reynolds filed a supplemental complaint in the Southern District of Ohio. That court awarded Reynolds $27.4 million in compensatory and punitive damages, finding the IAAF acted with "ill will and a spirit of revenge" toward Reynolds.[38]

When Reynolds attempted to collect the judgment, the IAAF appealed to the Sixth Circuit Court of Appeals.[39] That court reversed the $27.4 million judgment, citing the lack of personal jurisdiction over the IAAF in the first place, and the case ended swiftly thereafter, but not until after a war had been waged.[40] This case had dragged on for four years, involving some fifteen stages of litigation and arbitration.[41] The *Reynolds* case represented one of the last American decisions to address international drug testing policies, procedures, and penalties involving the Olympic Movement, as courts finally recognized and accepted that arbitration was the required method of Olympics dispute resolution under federal law and in accordance with the establishment and policies of the Court of Arbitration for Sport (CAS) as the ultimate arbiter for these types of decisions, not U.S. courts.[42]

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[36] Reynolds v. Int'l Amateur Athletic Fed'n, 505 U.S. 1301 (1992).

[37] *See* David B. Mack, *Reynolds v. International Amateur Athletic Federation: The Need for an Independent Tribunal in International Athletic Disputes*, 10 Conn. J. Int'l L. 653, 672–81 (1995) (discussing the circuitous and litigious *Reynolds* case, and noting that the IAAF had threatened all U.S. competitors at the Olympic trials with its *contamination rule,* which would have declared anyone who competed against an ineligible runner (Reynolds) suspended as well. The IAAF ultimately backed away from that stance); *see also* Yi, *supra* note 20, at 302–05 (discussing *Reynolds* and the unsuitability of using domestic courts to resolve the issues).

[38] Reynolds v. Int'l Amateur Athletic Fed'n, 23 F.3d 1110, 1114 (6th Cir. 1994).

[39] *Id.* at 1114; *see also* Mary K. FitzGerald, *The Court of Arbitration for Sport: Doping and Due Process During the Olympics*, 7 Sports Law. J. 213, 216–20 (2000).

[40] *Reynolds*, 227 F.3d at 1114.

[41] *Id.*; *see also* Nafziger, *supra* note 20, at 173 (noting deficiencies of litigation as a means to resolve Olympic disputes).

[42] *See generally* Richard H. McLaren, *Twenty-Five Years of the Court of Arbitration for Sport: A Look in the Rear-View Mirror*, 20 Marq. Sports L. Rev. 305 (2010); *see also* Slaney v. Int'l Amateur Athletic Fed'n, 244 F.3d 580 (7th Cir. 2001) (holding it had no jurisdiction to overrule an

Though the *Reynolds* case demonstrated that American courts were the inappropriate forum to address Olympic disputes particularly with regard to international jurisdiction, arguably the most egregious example of the clash between jurisdiction (and alternative dispute resolution) occurred over the selection of the men's wrestling team for the Sydney Olympic Games in 2000. In *Lindland v. United States Wrestling Association*, the selection of who would represent the United States in the 167.5 (76 kilogram) weight class of Greco-Roman wrestling turned into an example of arbitration gone wild.[43] Both Keith Sieracki and Matt Lindland believed they were entitled to represent the United States. Lindland lost to Sieracki in the U.S. Olympic trials in Dallas in June 2000, by a score of 2-1.[44] Lindland protested the results of this match, alleging an illegal wrestling move by Sieracki, commencing arbitration against USA Wrestling, the NGB.[45]

An arbitrator (Burns) ordered a rematch, which Lindland won by a score of 8-0. USA Wrestling did not accept the results of this rematch and instead presented Sieracki as its nominee to the USOC, which in turn sent Sieracki's name to the IOC as its representative in that class.[46] The refusal to comply with the arbitrator's decision (Burns) by the USOC (because it already sent Sieracki's name) coupled with a subsequent arbitrator's decision (Campbell), who held for Sieracki, prompted judicial review of the entire matter. Ultimately, the U.S. District Court for the Northern District of Illinois ordered the USOC to request the IOC to substitute Lindland for Sieracki, supporting the original Burns decision. The USOC complied, and the IOC

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arbitration decision upholding ban on runner's failed drug test which revealed a testosterone to epitestosterone (T/E) ratio greater than the allowable maximum, even if allegedly due to birth control pills); Foschi v. U.S. Swimming, Inc., 916 F. Supp. 232 (E.D.N.Y. 1996) (holding action did not satisfy the amount in controversy requirement for diversity of citizenship jurisdiction under 28 U.S.C. Section 1332); Barnes v. Int'l Amateur Athletic Fed'n, 862 F. Supp. 1537 (S.D. W. Va. 1993) (granting IAAF's motion to dismiss the athlete's complaint for lack of personal jurisdiction).

[43] Lindland v. United States Wrestling Ass'n, 227 F.3d 1000 (7th Cir. 2000).

[44] *Id.* at 1001–03.

[45] *Id.*; *see also* Jay E. Grenig, *Arbitration of Olympic Eligibility Disputes: Fair Play and the Right to Be Heard*, 12 Marq. Sports L. Rev. 261 (2001) (noting, however, that Sieracki was not notified of the original arbitration hearing and did not participate in it, likely the cause of the subsequent arbitration-litigation mess in the first place).

[46] *Lindland*, 227 F.3d at 1001–03.

made the substitution official.[47] In the end, Lindland represented the United States and earned a silver medal after his loss 3-0 to a Russian for the Olympic gold medal.[48]

In sum, the *Lindland* case represented the ultimate clash between litigation and arbitration. The Seventh Circuit Court of Appeals reminded the parties emphatically that even a letter written by Ted Stevens himself as to how to decide the case by vacating the order to a rematch reflected "a misunderstanding of the difference between legislative and judicial functions."[49] Thus, even with the advent of the ASA (1978) and the TSOASA of 1998, American courts did not appear to recognize that they are essentially shut out of Olympic-related disputes altogether, which led to the *Lindland* debacle.

B. Cross-National Disputes: CAS

Partly due to the history of American state and federal lawsuits related to the Olympics, including the *DeFrantz* case, the IOC established CAS in 1983 to resolve issues under its jurisdiction in order to assist the process of litigation by athletes and countries for numerous disputes arising out of the Olympic Movement.[50] In fact, CAS was designed to "bring order to the chaotic and inconsistent world of international sports adjudications."[51] CAS is a sport-specific forum and today is the only means for Olympic athletes and international sports federations to resolve their cross-national disputes through this

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[47] *Id.*

[48] *Id.; see also* Karl Vogel, *Q&A with Matt Lindland*, Lincoln J. Star, Jan. 19, 2007, *available at* http://journalstar.com/sports/football/college/q-a-with-matt-lindland/article_8cd4150c-e152-50e3-a46e-bae4c850a9fa.html (noting that Lindland earned the nickname Matt *The Law* Lindland due to the legal struggle).

[49] *Lindland*, 227 F.3d at 1008. The court of appeals further noted, that Senator Ted Stevens (Alaska), though he obviously played a leading role in establishing the TSOASA, had no role in adjudicating the *Lindland* matter, and he and other members of Congress should not "pester the courts with their latest views about how laws should be implemented and cases decided. It is best, we think, for each institution to hew to its constitutional function." *Id.*

[50] *See* Yi, *supra* note 20, at 292–93 (noting that the International Council for Sports Arbitration (ICAS) was established in 1994 to oversee the CAS to avoid perceived conflicts of interest. There are three venues to resolve disputes under the CAS: Lausanne, Switzerland, Sydney, and New York).

[51] Michels v. United States Olympic Comm., 741 F.2d 155, 159 (7th Cir. 1984) ("there can be few less suitable bodies than the federal courts for determining the eligibility, or the procedures for determining the eligibility, of athletes to participate in the Olympic Games").

final, neutral decision-making arbitration body.[52] CAS also has an ad hoc division that deals with issues at the Olympic Games themselves for on-site, final, and binding arbitration.[53] CAS hears three types of disputes: commercial disputes, disciplinary matters, and disputes over the results of a competition.[54] Students can be encouraged to visit CAS's Web site which provides the latest news and decisions.[55]

IV. Discrimination: Gender and Disability

Notwithstanding the foregoing, American courts have exercised jurisdiction in several types of cases involving the Olympics, including claims related to gender and disability discrimination.[56] For the professor who emphasizes discrimination-related topics, these cases provide an opportunity to demonstrate the evolution of women's rights in the Olympics.[57] For example, students may be unaware that it was not until the 1972 Munich Olympic Games

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[52] Yi, *supra* note 20, at 300.

[53] *Id.* at 292–93.

[54] *Id.* at 294–96 (noting that drug-related or doping disputes are common as are field of play disputes involving referee decisions); *see also* Bennett Liebman, *Reversing the Refs: An Argument for Limited Review in Horse Racing*, 6 Texas Rev. Ent. & Sports L. 23, 37–39 (2005) (noting that at the Salt Lake City Olympics in 2002, the Korean Olympic Committee appealed the disqualification of skater Kim Dung-Sung who crossed the finish line first in the 1,500 meter short-track speed-skating finals, for "impeding" (blocking) U.S. skater Apolo Anton Ohno, who was awarded the gold medal and upheld by CAS. Also, at the Athens Olympics (2004), Korean gymnast Yang Tae Young was awarded the bronze medal in the all-around gymnastics competition by the International Gymnastics Federation and contested the judging and scoring that resulted in the American, Paul Hamm, receiving the gold medal. CAS held in favor of Hamm). *See also* Kristin L. Savarese, *Judging the Judges: Dispute Resolution at the Olympic Games*, 30 Brooklyn J. Int'l L. 1107 (2005) (discussing the CAS in relation to the scandalous judging improprieties at both the 2002 Salt Lake City and the 2004 Athens Olympic Games).

[55] Court of Arbitration for Sport, http://www.tas-cas.org/ (last visited Mar. 24, 2012).

[56] Actually the issue of gender is quite a hot topic in the study of sports law at the moment due to the issue of what actually constitutes a man or a woman for competition and eligibility purposes. *See, e.g.*, Shawn M. Crincoli, *You Can Only Race if You Can't Win? The Curious Cases of Oscar Pistorius & Caster Semenya*, 12 Tex. Rev. Ent. & Sports L. 133 (2011) (discussing the issues involving South African runners Pistorius, who uses prosthetics to run, and Semenya, who has been characterized as having an intersex condition that required gender testing to determine if she is a man or a woman).

[57] *Compare* 36 U.S.C. § 220503(12) (2011) ("to encourage and provide assistance to amateur athletic activities for women; . . . "), *with* Lafler v. Athletic Bd. of Control, 536 F. Supp. 104 (W.D.

that women were allowed to compete in the 1500 and 3000 meter track races.[58] The 1984 Los Angeles Olympics was the first to allow women to compete in the marathon.[59] The 5,000 and 10,000 meter women's races did not make their appearance until 1992 in Barcelona,[60] and women's steeplechase was added for the 2008 Beijing Olympics.[61] Some students, especially those who regularly compete in local and regional 5 kilometer road races (i.e., 5,000 meter races), might find this simply outrageous and shocking. This allows the professor to reinforce how merely a generation ago, the perception of women was remarkably different than it is today, and how law and policy changes as society changes, and vice-versa.[62]

In the 1984 decision *Martin v. International Olympic Committee*, numerous women runners (both American and non-American) and runners' organizations filed suit in a California state court against various Olympic organizations, directors, and officials, seeking to require the organizers of the 1984 Los Angeles Olympic Games to include the 5,000 and 10,000 meter track events for women, claiming gender-based discrimination in violation of the equal protection rights under the Fifth and Fourteenth amendments to the Constitution and California's Unruh Civil Rights Act.[63] The trial court denied a request for a preliminary injunction to require the inclusion of the events, and the Ninth Circuit Court of Appeals held that state law did not compel

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Mich. 1982) (holding that a female boxer did not suffer discrimination when she was prevented from competing against men in a Golden Gloves boxing tournament and that she would not suffer irreparable harm).

[58] Jonathan Little, *Running Against the Wind: Sex Discrimination in High School Girl's Cross Country*, 76 UMKC L. Rev. 711 (2008).

[59] *Id.*

[60] *Id.*

[61] *Id.*; *see also* Jay Weiner, *Despite Recent Progress, Olympic Gender Equity Issues Linger*, ESPN, May 13, 2008, http://sports.espn.go.com/oly/columns/story?id=3394741.

[62] Epstein, *supra* note 12, at 200–03. Most recently, the IOC added women's boxing to the schedule for the 2012 London Olympics. Therefore, all twenty-six summer Olympic categories of sports have male and female competitors. Today's students might find an exploration of the history of disparate treatment involving women in running races to be a worthwhile exercise. To provide greater historical perspective, the instructor might mention that when the modern Olympics began in 1896, women were not allowed to compete at all. *See* Graham Dunbar, Baseball, Softball Weight Merger for Olympic Bid (Nov. 15, 2011), http://www.teamusa.org/news/2011/11/15/baseball-softball-weigh-merger-for-olympic-bid/45466 (noting that rugby and golf are new while baseball and softball have been removed).

[63] *See* Martin v. Int'l Olympic Comm., 740 F.2d 670 (9th Cir. 1984).

the creation of separate but equal track events for women, but it expressed concern regarding its jurisdiction over the Olympic Games, reminiscent of the *DeFrantz* decision four years earlier in 1980.[64]

Discussion of disability discrimination might be tied to an examination of the Paralympic Games in general.[65] The first Paralympic Games were held in 1960 in Rome.[66] This event follows the Olympic Games, usually one to two weeks later in the same host city, and it is the second largest international sporting event next to the Olympic Games themselves.[67] The Paralympic Games are sponsored by the USOC in accordance with the TSOASA.[68] The International Paralympic Committee (IPC), the international representative organization of elite sports for athletes with physical disabilities, was established in 1989.[69]

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[64] *Id.* at 677 ("[W]e find persuasive the argument that a court should be wary of applying a state statute to alter the content of the Olympic Games. The Olympic Games are organized and conducted under the terms of an international agreement-the Olympic Charter. We are extremely hesitant to undertake the application of one state's statute to alter an event that is staged with competitors from the entire world under the terms of that agreement."); *see also* Burton v. United States Olympic Comm., 574 F. Supp. 517 (C.D. Ca. 1983) (deciding that it did not have either diversity of citizenship or federal question jurisdiction over the USOC, though it is federally chartered, and remanded back to the California state court).

[65] Some students will be unaware of the difference between the Paralympics and the Special Olympics. The Special Olympics were founded for persons with intellectual disabilities and was founded in 1968 by Eunice Kennedy Shriver, President John F. Kennedy's sister. Interestingly, the IOC in 1971 gave the Special Olympics permission to use the word *Olympics* in its name. *See* Special Olympics, Eunice Kennedy Shriver, http://www.specialolympics.org/eunice_kennedy_shriver_biography.aspx (last visited Dec. 30, 2011).

[66] Epstein, *supra* note 12, at 273. The instructor might also recommend the movie documentary Murderball (Paramount Pictures 2005) which showcases competitors from the U.S. Quad Rugby Team who compete in the 2002 World Championships and 2004 Paralympic Games in Athens, Greece.

[67] *See, e.g.*, Peter White, *Combining the Paralympics and Olympics Would Be a Disaster. Here's Why* . . . , Guardian, Dec. 9, 2011, *available at* http://www.guardian.co.uk/commentisfree/2011/dec/09/peter-white-paralympics-separate-ol ympics.

[68] One of the purposes of the TSOASA is "to encourage and provide assistance to amateur athletic programs and competition for amateur athletes with disabilities, including, where feasible, the expansion of opportunities for meaningful participation by such amateur athletes in programs of athletic competition for able-bodied amateur athletes." 36 U.S.C. § 220503(13) (2011).

[69] Official Web Site of the Paralympic Movement, http://www.paralympic.org/IPC/ (last visited Dec. 30, 2011). The Paralympic Games have six classifications: amputee, cerebral palsy, spinal cord injuries, intellectual disabilities, visual impairment, and a group for all other conditions. *See also* Ted Fay & Eli Wolff, *Disability in Sport in the Twenty-First Century: Creating a New Sport Opportunity Spectrum*, 27 B.U. Int'l L.J. 231 (2009).

Domestically, there has been some criticism for not providing equal funding to Paralympic athletes as compared to Olympic athletes, yet there has been almost no litigation over alleged discriminatory practices by the USOC. This might have something to do with the decision in *Hollonbeck v. United States Olympic Committee*, in which several wheelchair athletes (i.e., *wheelers*) alleged that the USOC should be giving Paralympians the same health insurance, grants, living expense stipends, and opportunities as able-bodied Olympians.[70] The Tenth Circuit Court of Appeals determined that that federal law does not require the USOC to afford Paralympic athletes equal access to certain athlete support programs that are available to Olympic and Pan American athletes as the court rejected the claims and found no statutory support.[71] However, it is nice to know that during the lawsuit's duration, from 2003 to 2008, funding to Paralympic athletes from the USOC had nearly tripled.[72]

V. Intellectual Property

Finally, U.S. courts have jurisdiction over cases brought by the USOC to defend its intellectual property rights against alleged infringement. The USOC has exclusive rights to the words Olympic and Olympiad in the United States in the commercial context in accordance with authority granted to it by the ASA (1978) and as amended twenty years later by the TSOASA (1998).[73]

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[70] Hollonbeck v. United States Olympic Comm., 513 F.3d 1191 (10th Cir. 2008) (holding that the plaintiffs' claims failed under both Title III of the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act. Even though the USOC made health care benefits available to a smaller percentage of Paralympian athletes, provided smaller quarterly training stipends and paid smaller financial awards for medals won at a Paralympics, that such discrepancy in funding was due to the fact that the USOC did not receive any government financial support and had the right to allocate its finances to athletes at different rates.).

[71] *Id.*

[72] *See* Alan Schwarz, *Paralympic Athletes Add Equality to Their Goals*, N.Y. Times, Sept. 5, 2008, *available at* http://www.nytimes.com/2008/09/06/sports/othersports/06paralympics.html?adxnnl=1&adxnnlx=1325260905-uc46UgSfXQwgpD68GL93NA (mentioning that in 2008 $11.4 million was earmarked for Paralympic athletes, up from $3 million in 2004).

[73] The ASA of 1978 was codified at 36 U.S.C. Sections 371-396. It has since been recodified and modified by the TSAOSA of 1998, 36 U.S.C. Section 220521 et seq.; *see* Noelle 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. Sports L. 53 (2003);

Students are often amazed that an organization can have the exclusive use of a word. Under federal law, the USOC has the exclusive right to use

1. the name "United States Olympic Committee";
2. the symbol of the International Olympic Committee, consisting of 5 interlocking rings, the symbol of the International Paralympic Committee, consisting of 3 TaiGeuks, or the symbol of the Pan-American Sports Organization, consisting of a torch surrounded by concentric rings;
3. the emblem of the corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief; and
4. the words "Olympic," "Olympiad," "Citius Altius Fortius," "Paralympic," "Paralympiad," "Pan-American," "America Espirito Sport Fraternite," or any combination of those words.[74]

The USOC has been quite proactive in protecting its exclusive rights and marks, and the USOC continually protects its monopoly over the exclusive commercial use of the word Olympic by sending cease and desist letters to violators and in some cases filing lawsuits.[75]

Christopher T. Murray, *Representant Les Etats-Unis d'Amerique: Reforming the USOC Charter*, 7 Vand. J. Ent. L. & Prac. 233 (2005). The use of the word Olympic and the Olympic emblem for commercial purposes has a "grandfather clause" for those who used prior to September 21, 1950. 36 U.S.C. § 220506(d)(1) (2011). TSOASA also allows exemptions in subsection (d)(3)(B) when the "use of the word 'Olympic' refers to the naturally occurring mountains or geographical region of the same name that were named prior to February 6, 1998, and not to the corporation or any Olympic activity; and (C) such business, goods, or services are operated, sold, and marketed in the State of Washington west of the Cascade Mountain range and operations, sales, and marketing outside of this area are not substantial."). 36 U.S.C. § 220506(d)(3)(B) (2011).

[74]36 U.S.C. § 220506(a)(1)–(4) (2011). TSOASA added the Paralympics, which was not addressed in the ASA, and is now codified at 36 U.S.C. Section 220503(3), (4) (2011).

[75] *See* United States Olympic Comm. v. Intelicense Corp., S.A., 737 F.2d 263 (2d Cir. 1984) (affirming a permanent injunction against Intelicense, a Swiss corporation, and its sublicensee, International Sports Marketing, Inc. (ISM), a Vermont corporation, to use, market, and sublicense within the United States the official pictograms of the IOC without the consent of the USOC). *But see* Stop the Olympic Prison v. United States Olympic Comm., 489 F. Supp. 1112 (S.D.N.Y. 1980) (holding that plaintiffs who designed and distributed a poster without charge in order to oppose state plans to convert the Olympic Village in Lake Placid into a prison after the Winter Games did not violate USOC's trademark rights because it was not used for the purpose of trade or to induce the sale of goods and services). *See also* Anita M. Moorman & T. Christopher Greenwell, *Consumer Attitudes of Deception and the Legality of Ambush Marketing Practices*, 15 J. Legal Aspects of Sport 183, 190 (2005) (noting that the USOC is often an active litigant when

In *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, the Supreme Court of the United States affirmed an injunction against the use of the word Olympic as part of the Gay Olympic Games.[76] San Francisco Arts & Athletics, Inc., a nonprofit California corporation, had promoted the Gay Olympic Games in 1982 by using *Olympics* on its letterheads and mailings and on merchandise.[77] After noncompliance with a cease and desist request, the USOC brought suit in federal district court seeking a permanent injunction, which was granted. Ultimately, the Supreme Court held that Congress granted the USOC exclusive use of the word Olympic, and the USOC's property right in the word and its associated symbols and slogans can be protected without violating any provisions of the Lanham Act or the First Amendment.[78] As a result, the event is known as the Gay Games today.[79]

The USOC has defended its trademark rights in other notable cases. In 1996, the USOC's efforts caused a restaurant in Tonawanda, New York, to change the name of its particular brand of salad dressing from Olympic Specialty Foods to Olympus Specialty Foods.[80] Others forced to change their names include the Ferret Olympics (2005),[81] the rock band Olympic Hopefuls (2005),[82] and a comedy club in Chicago called the ImprovOlympic.[83] Seattle no longer has an Oyster Olympics (2007) eating contest;[84] nor are

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protecting its rights); Patrick Donohue Sheridan, *An Olympic Solution to Ambush Marketing: How the London Olympics Show the Way to More Effective Trademark Law*, 17 Sports Law. J. 27 (2010).

[76] San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522, 528 (1987).

[77] *Id.* at 525.

[78] *Id.* at 528–41.

[79] Federation of Gay Games, http://www.gaygames.com/ (last visited Dec. 29, 2011).

[80] *See* Bernhard Warner, *Cybersquatters Face Olympic-Sized Lawsuit*, Industry Standard, July 12, 2000, *available at* http://www.networkworld.com/news/2000/0712olympic.html.

[81] Associated Press, *USOC Forces New Name for Ferret Competition*, USA Today, Aug. 13, 2005, http://www.usatoday.com/news/offbeat/2005-08-13-ferretagilitytrials_x.htm.

[82] *Id.*

[83] *Id.*

[84] *See* Susan Paynter, *Cracking Down on Oyster Contest Gives Olympics a Bad Name*, SeattlePI.com, Feb. 1, 2007, http://www.seattlepi.com/news/article/Cracking-down-on-oyster-contest-gives-Olympics-a-122 7098.php#ixzz1hlIPWNDT.

there RobOlympics in San Francisco (a robotics competition),[85] or Redneck Olympics.[86] However, in the 1982 Supreme Court decision *United States Olympic Committee v. International Federation of Bodybuilders,* the Court supported the conclusion that there would be no likelihood of confusion between the Mr. Olympia bodybuilding contest and the USOC's right to control the Olympic trademark.[87] This might provoke the instructor to strike a pose when discussing this case.

Naturally, with the advent of changing times and technology, issues related to the use of the word Olympic have required that the World Intellectual Property Organization (WIPO) intervene to resolve Internet domain name disputes including cybersquatting. For example, in *United States Olympic Committee v. MIC*, WIPO ordered a private company that registered the domain name usolympicstore.com to be surrendered to the USOC since the USOC has exclusive rights to the word Olympic and its simulations.[88] Most recently, the London Organising Committee for the Olympic Games and Paralympic Games Limited brought a complaint under the Uniform Domain-Name Dispute-Resolution Policy (UDRP) seeking the transfer of the

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[85] *See* Richard McKeethen, "*USOC Threatens SF State over Name Olympics*", Golden Gate XPress, Mar. 5, 2005, http://xpress.sfsu.edu/archives/breaking/003031.html.

[86] *See* Tony Reaves, *Redneck Olympics Faces Lawsuit over Name*, Sun J., Aug. 9, 2011, http://www.sunjournal.com/oxford-hills/story/1071616.

[87] United States Olympic Comm. v. Int'l Fed'n of Bodybuilders, 1982 U.S. Dist. LEXIS 10278, 219 U.S.P.Q. (BNA) 353 (D.D.C. Dec. 1, 1982); *see also* Stephen M. McKelvey, *Atlanta 96: Olympic Countdown to Ambush Armageddon?*, 4 Seton Hall J. Sports L. 397, 419 (1994) (noting that the USOC's protections were strengthened when the court held that there could be no likelihood of confusion between the USOC's use of the mark "Olympic" and use of the mark "Mr. Olympia," but also issuing a permanent injunction preventing use of any Olympic designations or simulations). *But see* O-M Bread, Inc. v. United States Olympic Comm., 65 F.3d 933 (Fed. Cir. 1995) (holding that even though the word Olympic for bakery products were grandfathered in, USOC had the right to oppose enlargement of a new mark with different meaning, *Olympic Kids*, for new bakery products); United States Olympic Comm. v. Toy Truck Lines, Inc., 237 F.3d 1331 (Fed. Cir. 2001) (holding it was incorrect to dismiss opposition to registration for use of words Pan American on toy trucks).

[88] WIPO Case No. D2000-0189, *available* at http://www.wipo.int/amc/en/domains/decisions/text/2010/d2010-0415.html. The term simulations refers to alternate or similar spellings of Olympic. *See, e.g.*, United States Olympic Comm. v. Tobyhanna Camp Corp., 2010 U.S. Dist. LEXIS 117650 (M.D. Pa. Nov. 4, 2010) (issuing a permanent injunction to stop using Olympik and the Olympic rings).

domain name mylondon2012.com.[89] After noncompliance with a cease and desist request, the WIPO panel held that the complainants had rights in the London 2012 trademark, that the registration of the name had been done in bad faith, and utilization without permission constituted a violation.[90]

VI. Conclusion

Incorporating a discussion of the Olympic Games can be an engaging way to supplement coverage of fundamental legal principles in business law and legal environment courses. The various legal issues and subjects surrounding the Olympic Movement provide opportunities to offer the Olympics as an additional way to enhance the study of law. This article provided background on the USOC and federal statutes surrounding the Olympics in the United States. With its hierarchy of rules and regulations, Olympic disputes have been a challenge for American courts, particularly when jurisdiction and international issues and politics are involved. This article also reviewed the relevant historical and political context of the discussion.

Today, the expanded role of the CAS has essentially eliminated American courts from the international dispute resolution playing field, but the USOC is still involved in settling domestic disputes through arbitration in conjunction with the guidelines as established in the ASA and the TSOASA of 1998. American courts now recognize that it is arbitration–not litigation–which is the sole method to resolve most disputes among the various USOC participants, though it took many years to affirm this principle through a roller-coaster ride of decisions.

Incorporating the Olympics in your course as a small reading or research assignment may prompt an appreciation for the study of American law from an angle that students may not have considered before. It may be particularly appropriate in Olympic years. Thus, go for the gold by incorporating cases in this article, perhaps raising questions for discussion as suggested

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[89] WIPO Case No. D2000–0189, *supra* note 88. H&S Media Ltd. had registered the domain name mylondon2012.com on July 6, 2005, the same date the IOC announced that London's bid to host the Games in 2012 had been successful.

[90] *Id.* When the complainant learned about the registration, it sent a demand letter to the respondent seeking the transfer of the domain name to it on the basis that only the London Organising Committee and entities licensed by it were permitted to use representations likely to suggest an association between traders and their goods and services and the London Olympics, under the London Olympic Games and Paralympic Games Act 2006.

in the Appendix. You certainly do not have to be athletically inclined or an expert in sports law to do so. Remember, however, that the USOC is always watching when the word Olympic is involved.

Appendix: Possible Questions Related to the Olympics for Further Discussion or Research

1. What legal decisions and federal statutes support the interpretation that the USOC is a private entity rather than a state actor and therefore it is not subject to a claim by athletes and coaches for the infringement of constitutional rights?
2. How has the Paralympic Games provided opportunities for elite athletes to compete in an organized way?
3. Do you think that South African sprinter Oscar Pistorius should be entitled to compete directly against able-bodied athletes, though he uses carbon-fiber prosthetics?
4. Discuss the international landscape of the Olympics and how politics has provided infamous examples of improprieties with regard to judging at the Games and even host city selection.
5. What are the similarities and differences between the federal Amateur Sports Act of 1978 and the Ted Stevens Olympic and Amateur Sports Act of 1998, and why were they enacted in the first place?
6. Why is arbitration thought to be a more effective way of resolving most Olympics-related disputes than litigation? Do you agree?
7. Why was the Court of Arbitration for Sport instituted and how has it affected the Olympic Games?
8. Provide some examples of cease and desist efforts made by the USOC involving the word Olympic.
9. Do you think that the USOC should invest equal amounts of money for the Paralympic Games as it does for the Olympic Games?
10. Why do you think it has taken over a century for the Olympic Movement to allow women to participate in almost all the same events as the men in both the Summer and Winter Olympic Games? Does this reflect changing perceptions of women in society and in the workplace? Could Title IX, an American law enacted in 1972, have impacted universal views on women as athletes around the world?