



## **PROTECTING AGAINST AMBUSH MARKETING**

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Prior to the Cricket World Cup, South Africa's organizing committee mobilized government support to counter the kind of market hijacking that dogged the 1996 World Cup and the Atlanta Olympic Games. The South African government passed legislation that could lead to fines of up to US \$4,000 and even prison sentences of as long as two years for company officials if they engaged in 'ambush marketing'. With these measures, the government sought to ensure that this event, watched by 1.2 billion viewers, would be protected as never before seen at major events.

Ambush marketing takes many forms and commonly occurs during popular sporting and cultural events where an advertiser that is not an official sponsor seeks to associate itself with the event, or share the event's publicity, without paying the event organizer for the right to do so. Two main forms are identified:

- (i) **Association ambushing** - the non-sponsor gives the impression of being an official sponsor by using words or symbols associated with the event; and
- (ii) **Intrusion ambushing** - the non-sponsor piggy-backs on the media and spectator exposure of the event by, for example, advertising near event venues.

Association ambushing typically involves an element of deception. Specific legislation is often not necessary to counter this activity as it is usually caught by existing intellectual property laws. Intrusion ambushing, however, hardly ever infringes intellectual property rights and so requires specific legislation.

South Africa targeted association ambushing by amending its 1976 Trade Practices Act to prohibit the making or displaying of statements or advertisements that falsely suggest a connection between a non-sponsor and a sponsored event. Intrusion ambushing was targeted by

amending the 1941 Merchandise Marks Act to prohibit the use of a non-sponsor's trade mark in relation to a designated event, where such use is "calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit" from the event.

The Acts made it a criminal offence to imply an association with an event without paying for it, and probably unlawful to engage in any of the following:

- conducting an advertising campaign with a slogan associating a non-sponsoring brand with the event;
- advertising a non-sponsoring brand on billboards or anywhere close to the event stadium during the event;
- distributing free samples of a non-sponsoring branded product or items such as t-shirts or flags displaying the brand at the event.

**The legislation even suggests that spectators wearing such t-shirts may also be acting unlawfully, resulting in the confiscation of the shirt or ejection from the venue.**

While not as far-reaching, Australia also has laws targeting ambush marketing, particularly in event-specific statutes such as the Sydney 2000 Games (Indicia and Images) Protection Act 1996 which prevented the registering of Olympics-related images as trade marks and prohibited the commercial use of certain words and expressions, such as the 'Sydney Games'.

The effectiveness of these overt and concerted measures to tackle the problem has been questioned. What is beyond doubt is that with or without government intervention, event organizers and sponsors can curb ambush marketers by:

- < publicly identifying event sponsors;
- < using event regulations and participation agreements to restrict the rights that participants can grant their own sponsors (e.g., what athletes may wear or carry when they compete);
- < sponsors entering into additional sponsorship contracts with or securing exclusive rights from key participants and major stakeholder groups (athletes, teams, event organizers and

- broadcasters);
- < imposing conditions on tickets restricting what purchasers may wear and carry when entering the venue (e.g., prohibiting flags, t-shirts or banners promoting non-sponsors);
- < organizers negotiating the right to restrict or veto broadcast sponsors in broadcast licence agreements, or imposing an obligation on the broadcaster to give a right of first refusal to official sponsors;
- < event sponsors becoming broadcast sponsors and/or advertising in coverage breaks;
- < blanketing billboard spaces in the vicinity of the venue to circumvent ambush marketing - where not feasible, broadcast licence agreements and press accreditations could require cameramen and photographers to shoot from positions obscuring ambush advertising;
- < controlling the use of photographic images in general - press accreditation could be conditional on images not being sold to non-sponsors for promotional purposes;
- < controlling the manufacture and distribution of licensed merchandise.

Most critically, sponsors and organizers should:

- register all trade marks (where necessary, design new marks to be registered);
- carefully control their licensing;
- be vigilant about infringements; and
- enforce their rights in the courts.

To forestall the loss of key sponsors, prudent event organizers should allocate funds for anti-ambush activity. Similarly, sponsors should budget for protective steps to prevent sponsorships being rendered worthless. With the approaching 2007 Cricket World Cup in the Caribbean, our governments maybe prepared to act. However, strictly constraining marketing activity and free competition is invariably repugnant. As in Australia, legislative intervention is likely to be sparing, and should be complemented by practical protective measures.

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