

Qatar! 2022!

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March 2011

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Doubtless, ambush marketers will be ever more nimble and clever in manoeuvring the laws if the events of yesteryear are anything to go by.

Who would have forgotten the women in orange at the FIFA World Cup 2010. Women in a highly distinctive shade of orange in the match between The Netherlands and Denmark made news when they were accused by FIFA as ambush marketers for allegedly advertising for BAVARIA, a Dutch beer brand. BAVARIA did give out those dresses. Never mind that the women were South African. But seriously, what's to stop a South African woman from barracking for The Netherlands anyway?

Nonetheless, Budweiser, an official FIFA sponsor and the only beer company allowed to advertise within official FIFA venues was not amused.

What is at stake?

The FIFA World Cup is the most watched sporting event in the world – every four years, billions of spectators across the world put their lives on hold regardless of time zone differences to watch the football extravaganza that is the FIFA World Cup.

Clearly, this translates into an advertising bonanza for brand owners. The FIFA World Cup provides an unparalleled opportunity for brand owners to expose their brand to a worldwide audience transfixed with an attention span of an intensity, which only FIFA World Cup fans can muster.

For the FIFA World Cup organisers, the advertising dollars is one of the most important sources of revenue necessary for staging such a monumental event. Typically, at least 75% of the budgets of such events are derived from corporate marketing sponsors, broadcast rights fees and royalties from official merchandise licensees. Corporations expect to pay millions of dollars for the privilege of being Tier One corporate partners of the FIFA World Cup.

Event organisers need to protect the attractiveness of sponsoring events and the resulting dollars.

Enter the ambush marketers, those engaging in marketing practices which draw an unauthorised association with the high profile event without having paid for an official designation as an authorised partner.

In the above example, BAVARIA ambushed BUDWEISER. When effectively employed, ambush marketing is very difficult to prevent and a creative ambush marketer well advised by a savvy IP lawyer can be a legitimate sponsor's greatest marketing nightmare.

Clearly, pursuing a well advised and determined ambush marketer is a challenging task. An ambush marketer who develops a creative advertising campaign around the event by never ever

using the event indicia such as its logo, trade mark, trade name or anything similar thereto but cleverly using images or indicia, which is commonly associated by the consuming populace with the event, is a tricky customer who could potentially test the law to its limits. E.g. The use of images of the French Alps, winter fun and games in advertising in the lead up to the 1992 Olympic Winter Games by American Express where VISA was the official credit card sponsor.

Event Organisers

Certainly, FIFA is no stranger to taking on ambush marketers. It has published an exhaustive and extremely strict code of what it considers to be unacceptable marketing practices surrounding its event and the list is a long one with a wide reach. Basically, any marketing practice, which draws a commercial association with the FIFA World Cup is banned unless it has FIFA's authorisation.

A rights holder's options in pursuing an ambush marketer depends on the law in the country in which the ambush takes place. It remains to be seen whether Qatar will be enacting legislation specific to the FIFA World Cup to combat ambush marketing as did South Africa as hosts in 2010.

If past enforcement efforts are anything to go by, the following could be key features of the event organiser's program in the combat ahead with ambush marketers:

- Charge a special purpose vehicle with the authority to investigate and sue ambush marketers and infringers.
- Embark on an education campaign on the basics of intellectual property and ambush marketing including advertisements in consumer and trade publications targeting the public, retailers, potential sponsors, suppliers, licensees and athlete agents.
- Publicise legal actions filed alleging IP infringements.
- Conduct market surveillance of unlicensed merchandise and infringements.
- Put in place strict regulations at the official venues regulating the rules of entry such that non sponsor merchandise is banned.

Sponsors

Generally, sponsors should at the very least be armed as follows:

Implement full trade mark protection in respect of the relevant goods and services.

- Enter into a comprehensive sponsorship agreement.
- Ensure prominent trade mark and copyright notices are placed on all official merchandise and hoardings.
- Adopt a zero tolerance approach by being vigilant and ensure swift and decisive action against all infringers.
- Collaboratively with a legal enforcement program, pursue non-legal alternative solutions such as a publicity campaign designed to identify and endorse official sponsors.

Clever marketers, moneyed sponsors, watchful event organisers, responsible government, other stakeholders and their IP lawyers are gearing up for the off site competition. Let the games begin!

Companies big and small engage in ambush marketing. Creative ambush marketers who successfully ambush their competitors who are the official sponsors can save their companies millions of dollars.

EXAMPLES INCLUDE:

1992 Olympics

Coca Cola paid \$33 million to be an official sponsor of the 1992 Olympics but Pepsi ambushed Coca Cola by airing a commercial featuring Magic Johnson, a member of the US Olympic basketball team

1996 Olympics

Reebok was the official footwear sponsor and Nike went on a campaign buying up blocks of billboard space around the venues, handed out merchandise bearing its famous swoosh, built a NIKE Village next to the athletes' village. In surveys, a greater proportion of TV audiences mistakenly recalled Nike as an official sponsor rather than Reebok, thus confirming Nike's successful ambush.

1998 Olympic Winter Games

McDonalds was an official sponsor. Wendy's responded by sponsoring ABC's broadcast of the Games, featuring ski racing posters in its storefronts emblazoned with "We'll Be There!", printing Olympic inspired stories on their trayliners and inscribed what appeared to be Olympic like rings on its napkins.