



Ambush marketing on and off the pitch

Ambush marketing remains an issue for sporting events on a global scale, says Roxana Sullivan of Dennemeyer & Associates

The commercial opens—a sweeping view of the familiar Rio de Janeiro coastline and a conversation between Neymar Sr and his son, current Brazilian soccer star, Neymar Jr. “Today is another important day in our lives,” says Neymar Sr. What day is this? As Neymar Jr and other athletes go through their pre-game rituals: washing their feet, practicing with the soccer ball, praying, and of course, listening to music on their Beats By Dre headphones. The assumption is that this “important day” is the start of the 2014 FIFA World Cup in Brazil, but the commercial never mentions the event specifically.

During the 2010 FIFA World Cup in South Africa, specifically the Netherlands versus Denmark game, a group of three dozen young women were escorted out of the stadium and two were arrested. Why? The women violated the South African Contravention of Merchandise Act, a law that prohibited ambush marketing. They were part of the Bavaria, a Dutch beer company, campaign and were there dressed in matching orange dresses to promote the brand at one of the world’s largest sporting events.

Both marketing campaigns are examples of ambush marketing. The World Cup Law, passed in Brazil to govern the FIFA Confederations Cup 2013 and FIFA World Cup 2014, identifies these as “ambush marketing by association” and “ambush marketing by intrusion”.

The Brazilian World Cup Law defines ambush marketing by association as activities where a party utilises “trademarks, products or services, with the purpose of obtaining economic or marketing advantage, by means of direct or indirect association with [e]vents or [o]fficial [s]ymbols...”

Ambush marketing by intrusion refers to activities that are meant to attract public attention inside the official venues of events.

Recently, ambush marketing has appeared at a variety of sporting events, from the Olympic Games to World Cup matches, Super Bowls, and billboard advertisements around stadia. The purpose is to capitalise on the millions of people watching these events. According to Forbes, the 2014 FIFA World Cup was expected to attract the attention of 3.2 billion people

worldwide. Forbes estimated that “with 64 matches and assuming that 3.2 billion people watch one entire game, the whole tournament will garner 770 billion minutes of attention”. These are valuable minutes and companies plan elaborate advertising campaigns to capture the attention of this broad audience.

However, not every brand wants to pay the expensive fees to be an official sponsor. Sources say that the cost to be a major partner of the World Cup ranges from \$25 to \$50 million. Companies such as McDonald’s are said to have paid close to \$200 million for an eight-year Olympics sponsorship. As a result, many companies find creative ways to still advertise during high profile sporting events, while avoiding liability under the rules.

The organisations putting on the sporting events, of course, are against ambush marketing. For them, ambush marketing campaigns devalue official sponsorships. FIFA explains: “Companies engaging in prohibited marketing fail to appreciate that the FIFA World Cup is the result of FIFA’s significant efforts to develop and promote the tourna-



ment, something which would not be possible without the financial support of FIFA's Commercial Affiliates.”

For some brands, the reward for ambush marketing is well worth the risk. The Beats commercial referenced, for example, received more than 23 million views on YouTube and was widely shared across multiple social media platforms.

Many of the subtly crafted advertisements don't clearly fall within the definitions of ambush advertising. Leading brands wisely choose to stay away from using actual trademarks or symbols of the International Olympic Committee or FIFA, since these actions are clearly prohibited.

As a result, enforcing special laws put in place during these sporting events, such as the Brazilian World Cup Law, or the rules of the organising associations themselves, are often difficult to enforce. Brazil, for example, criminalised these types of activities and included penalties that ranged from three months to one-year detention or fines. However, the global reach of the ambush marketing campaigns both ex-

tends the viewership of the advertisement and extends beyond the borders of what laws, like the Brazilian World Cup law, are able to preside over. Additionally, organisations such as FIFA or the International Olympic Committees may be hesitant to enforce these rules against potential would-be sponsors.

In the US, the law has largely been on the side of ambush marketers. Traditional legal remedies furnished under trademark infringement cannot always be applied because ambush marketers stay away from unauthorised use of trademarks or the manufacture of counterfeit goods. More often, a successful remedy can be found if a party asserts a claim of breach of contract based on certain terms of ticket sales, for example. Certain cases that were brought under breach of contract or unfair competition claims have settled before reaching precedent on the issue of ambush marketing.

Although other countries have addressed ambush marketing and have passed legislation to control the degree to which non-sponsoring brands are able to benefit from an event, ambush marketing remains an issue

for sporting event(s) on a global scale. While local laws can control the types of advertisements physically around a stadium, air time on local television spots can still be bought and creative campaigns drafted to associate with, and benefit from, the millions of viewers for these high-profile events. [IPPro](#)



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