

# Off-Field Competition at Major Sport Events. Case Study of 2010 FIFA World Cup South Africa™

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## ABSTRACT

Over the past twenty years sponsorship has outperformed all other marketing communication tools in terms of growth. With their massive audiences, major sport events create great opportunity for global companies to showcase their brands and products. Due to rapidly rising costs for securing sponsorship rights, ambush marketing has emerged as a growing option for different kind of companies.

The aim of ambush marketing is to obtain more of the gains associated with an official event sponsorship but without incurring the same extent of its costs. "Ambushers" are becoming increasingly astute at developing ways to circumvent legal attempts to control non-sponsor marketing strategies.

Therefore, the aim of the paper is to introduce and categorize various ambush marketing methods and counter-ambushing strategies. As ambush marketing has shifted over time from broadcast sponsorship campaigns and venue surrounding advertising to more off-site venue marketing, it is also important to analyze how the organizers of major sport event prevent the event itself, the sponsorship rights and how they deal with ambush marketing issue. The case of 2010 FIFA World Cup South Africa has been studied.

## KEYWORDS

sport marketing, ambush marketing, mega events, 2010 FIFA World Cup South Africa

The major growth in commercial sponsorship has occurred over the past three decades as a symptom of the desire of marketing communicators to set up new and cost-efficient ways of reaching audience groups. Commercial sponsorship of sporting, artistic and other events offers an opportunity to marketers to make their voices heard in a cluttered media environment. It also provides an opportunity to develop positioning and branding strategies through association with events of defined status and value (O'Sullivan & Murphy 1998). Thus, it represents one of the most significant and striking marketing developments in recent decades (Crompton 2004, Meenaghan 1998, Tripodi & Sutherland 2000). Up until now, worldwide sponsorship spending has increased to enormous proportions. It grew from estimated \$2 billion in 1984 according to Meenaghan (1991) to \$45 billion in 2009 according to IEG (2009). The year 2008 was full of mega sport events, and of sport sponsorship including Summer Olympics in Beijing, the European Football Championships in Austria

and Switzerland, and other events such as the French Open (Roland Garros) and English Open (Wimbledon) in tennis and the Tour de France in cycling. In 2008, companies were estimated to have spent \$ 43.5 billion on sponsorship worldwide, with \$30 billion (69%) of this amount being devoted to sport sponsorship. This marks an increase of 14.8% over 2007, with a total of \$ 37.9 billion, of which \$26.1 billion went to sport sponsorships (IEG 2008). Figure 1 presents the global sponsorship expenditure spent over the last few years.

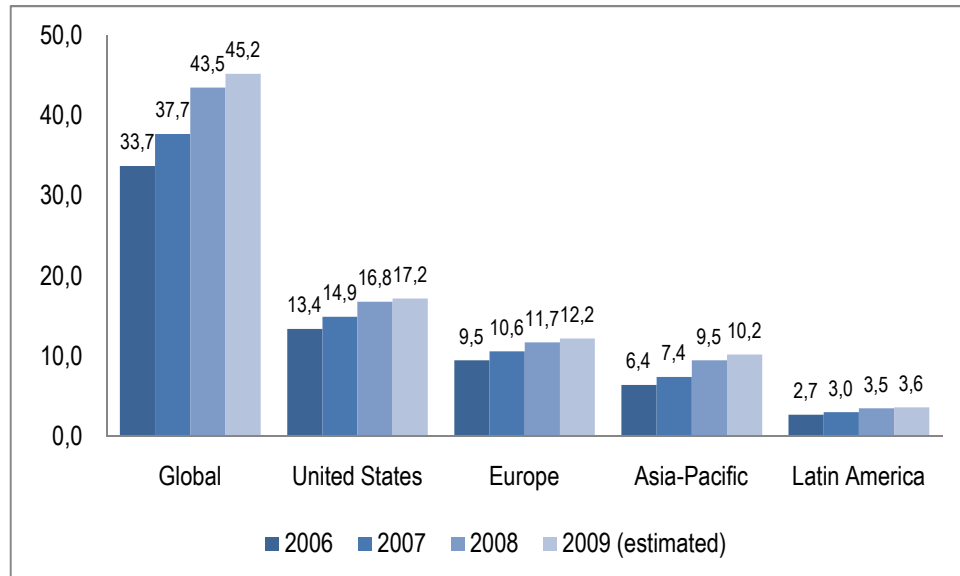


Figure 2. Worldwide sponsorship spend in 2006-2009  
Source: (IEG 2009).

These sums suggest that sponsorship has become an integral part of the communications mix – alongside publicity, public relations, sales promotions and advertising – resulting from its role in supporting an organisation's attainment of its communications objectives.

Commercial sponsorship of sporting events offers an opportunity to marketers to make their voices heard in a cluttered media environment (O'Sullivan & Murphy 1998). It also provides an opportunity to attract large-scale publicity and so develop effective positioning and branding strategies. Hosting mega events is now a complex and expensive undertaking requiring the commercial support of the private sector. J. Rogge (2009), the President of the International Olympic Committee underlined the fundamental importance of the relationship between the Olympic movement and its partners:

*“Without the support of the business community, without its technology, expertise, people, services, products, telecommunications, its financing –the Olympic Games could not and cannot happen. Without this support, the athletes cannot compete and achieve their very best in the world's best sporting event” (p. 52).*

The European Commission underlines that from a sport point of view, sponsorship makes a significant contribution to many sport activities and is an important source of revenue for sport right holders (federations, clubs, teams or individual sportspersons) (EC 2007).

Companies are able to pay hefty sums of money to be called “official sponsor” of the mega event and to gain the attention of a worldwide audience. For the event organisers and rights holders, such as FIFA and the IOC, it is a multi-billion-dollar business. The major sport events such as the Olympic Games and FIFA World Cup have experienced phenomenal growth over the past 30 years. For instance, the International Olympic Committee (IOC) worldwide sponsorship programme (TOP) has increased income by 900 per cent over a 20-year period (Table 1) (Preuss, Gemeinder & Séguin 2008).

Table 1. Top Programme Evolution

Quadrennium	Games (winter/ summer)	Partners	NOCs	Revenue (US\$ million)
1985-1988	Calgary/ Seoul	9	159	96
1989-1992	Albertville/ Barcelona	12	169	172
1993-1996	Lillehammer/ Atlanta	10	197	279
1997-2000	Nagano/ Sydney	11	199	579
2001-2004	Salt Lake/Athens	11	201	663
2005-2008	Torino/Beijing	12	205	866

Source: (IOC 2010).

Apart from the Olympic Games, the organizers of other major events manage to sign very high sponsorship contracts. Only for the FIFA 2002 World Cup organized in Korea and Japan Gillette spent U.S.\$40 million. In 2008 UEFA expected sponsorship revenues of around CHF 400 million compared with CHF 278 million in 2004 and CHF 81 million in 2000 (SwissInfo 2006). This suggests that the Olympic Games - but also other major sport events - are powerful brands with the ability to provide much benefit to commercial partners.

On the other hand, the value of sponsorship as an effective promotional tool is increasingly being questioned (Shani & Sandler 1998). First, there is a growing concern that the excessive sponsorship linked with marketing activities surrounding Olympic Games, World Championships and other major sport events led to overcommercialization of the events. Second, the increasing variety of official sponsors designations creates confusion in the minds of consumers who consequently have difficulties in identifying sponsors. Third, it is not surprising that despite their exclusive worldwide rights, TOP sponsors are not the only companies seeking to create a cognitive association with sport values. There are a growing number of companies without any official designation that are finding creative ways to associate themselves with the event and engage in the tactic of ambush marketing (Graham 1997). Consequently, it creates an environment of consumer confusion where consumers cannot distinguish between the companies and their level of association with the event. Thus, official sponsors and potential sponsors are beginning to question their return on the sponsorship investment.

The aim of the paper is to outline the evolution of ambush marketing methods and to examine possible ways of anti-ambushing strategies. The case study of 2010 FIFA World Cup organized from 11 June – 11 July 2010 in the Republic of South Africa is taken into account.

### Defining ambush marketing

Over the past 25 years, ambush marketing has become a growing concern not only for sport event organizers and rights holders but for official sponsors as well (Burton & Chadwick 2008). D. M. Sandler and D. Shani (1989) were among the first researchers to raise an issue of ambush marketing which they suggested occurred when a non-sponsor of an event attempted to pass itself as an official sponsor. T. Meenaghan (1994) developed a definition describing ambush marketing as

*“The practice whereby another company, often a competitor, intrudes upon public attention surrounding the event, thereby deflecting attention toward themselves and away from the sponsor (...)”* (p. 79).

N. Burton and S. Chadwick (2008) emphasise the long-term aspect of this tactic by stating

*“Ambush marketing is a form of strategic marketing which is designed to capitalize upon the awareness, attention, goodwill, and other benefits, generated by having an association with an event or property, without an official or direct connection to that event or property”* (p. 2).

Thus, ambush marketing is the attempt to create direct, but what is more important, indirect association with a sport facility, the event being hosted, or even its participants without their approval without official designation. Entities engage in ambush marketing as they are not able to pay the

sponsorship fees, or they are prevented from entering into an association with a sport event due to a contract of exclusivity or long-term association with a competitor (Schwarz, Hall & Shibi 2010).

In regard to the threat that is carried by ambushers, many sport organizations have also stated their point of view to meet their needs (Schwarz 2009). For instance, the Vancouver Organizing Committee at the 2010 Olympic and Paralympic Winter Games has broadly defined ambush marketing as “Only official sponsors, licensees and government partners of the Olympic Movement in Canada are allowed to suggest an affiliation or connection with the Olympic Movement or any Olympic Games. Unfortunately, those exclusive rights can be infringed by “ambush marketing” – marketing that capitalizes on the goodwill of the Movement by creating a false, unauthorized association with the Olympic Movement, Olympic Games or Olympic athletes without making the financial investment required to secure official sponsorship rights” (VANOC 2009). Moreover, the European Sponsorship Association, in its recently released Position Statement on Ambush Marketing, defines the term broadly as encompassing: “Any kind of marketing activity undertaken around a property by an entity that is not a sponsor, where the entity seeks commercial benefit from associating itself with the property” (ESA 2005).

Within the context of Olympic Games but also other major sport events, H. Preuss, K. Gemeinder and B. Séguin (2008) suggested that the most common aims of ambush marketing are:

- to benefit from the image of being a sponsor without paying for it,
- to counterbalance the Olympic (or other major sport event’s) commitment of market competitors,
- to correct ‘misleading’ campaigns of sponsors,
- to benefit from Olympic Games (or other major sport event) if sponsorship rights are too expensive or the category is blocked,
- to benefit by saving the money that would have been spent for the sponsoring rights in order to spend it on advertisements.

### **Ambush marketing literature review**

As far as the academic research is concerned, the related studies mainly focus on three aspects. The first one encompasses the impact of ambush efforts on consumer recognition and recall of sponsors (Lyberger & McCarthy 2001, McDaniel & Kinney 1996, Meenaghan 1998, Preuss 2004, Sandler & Shani 1989, Séguin, Lyberger, O'Reilly & McCarthy 2005, Stotlar 1993). Authors indicate that consumers had considerable difficulties naming official sponsors versus ambushers. The results gathered from different countries and events underline the effectiveness of ambush marketing campaigns.

The related academic research also focuses on the ethical considerations and implications of ambushing (Ettorre 1993, Meenaghan 1994, O'Sullivan & Murphy 1998, Payne 1998). The question of whether ambush marketing is an immoral or imaginative practice is one that has been widely debated within the sponsorship industry. In truth the answer may well lie in the eye of the beholder. Of course, ambush marketing is regarded as an immoral practice by event owners who see the non-sponsoring companies deriving benefit from their events without payment. Similarly official sponsors are also likely to regard ambushing as an immoral practice. In spite of these attitudes, there are many companies which persist with their ambushing activity, believing that such activity is part of the normal “cut and thrust” of business activity based on a strong economic justification. They simply can’t afford sponsorship fees so they regard these practices as a legitimate form of defensive, competitive behaviour and perhaps even deny that what they are doing is ambush marketing.

Ambushers have taught both event owners and sponsors many important lessons regarding the adverse effects of “ambushing” and the need to devise strategies to counter such possibilities. Therefore, numerous studies also concentrate on the legal framework surrounding ambush marketing

along with potential defenses against it (Crow & Hoek 2003, Farrelly, Quester & Greyser 2005, Schwarz 2009, Schwarz et al. 2010, Townley, Harrington & Couchman 1998).

### **The evolution of ambush marketing campaigns. Methods of ambush marketing**

Ambush marketing has been first recognized in 1984 with the Los Angeles Olympic Games as a consequence of changes introduced by the IOC (Shani & Sandler 1998). Before that time, Olympic Game sponsorship was an open market, where any company without any limitations wishing to finance the Games could have become an “official” sponsor of the event. As a result, the 1976 Olympic Games in Montreal gained 628 sponsors and with it confusion around the awareness of the “official” sponsors. In order to provide higher financial benefits for both sponsors and Olympic organizers, IOC decided to grant exclusivity to its partners and implemented three categories (official sponsors, suppliers, licensees) in the sponsorship platform and limited the number of sponsors in each category. As for the financial profits, the strategy turned out to be very effective: the event, without any public funding, generated over \$200 income. But on the other hand the “exclusivity” effect gave birth to the tactics of ambush marketing.

“Ambushers” have been becoming increasingly astute at developing ways to circumvent legal attempts to control non-sponsor marketing strategies. Several methods could be identified (Meenaghan 1994, 1998):

#### **1. Sponsor the broadcast of the event**

The benefits of this method are obvious when one considers the media audience for most events is much larger than the on-site audience. In such an instance the ambusher is seeking perfectly legitimate sponsorship opportunity in its own right.

The first instance of ambush marketing and perhaps the most famous occurred at Los Angeles Olympic Games in 1984 when Kodak lost its attempt to secure sponsorship rights for the 1984 Olympic Games to Fuji which became the official sponsor of the Games. Kodak decided to become the sponsor of the ABC’s broadcasts of those Games, gained rights to the network’s own set of symbols and then proceeded to use these logos to merchandise the buy. As for Fuji’s return on investment, its market share increased from 11% before the Olympic Games to 15% in 1988, the company was not overly impressed with the contribution from their Olympic involvement (Fannin, 1988).

A similar example occurred at the Calgary Olympic Winter Games in 1988 between McDonald’s – an official sponsor - and Wendy’s which became the proud sponsor of ABC’s broadcast of the Games. Wendy’s was very successful in undermining the branding efforts of rivals by stealing the attention through printing Olympic stories on its tray liners and by slapping the broadcast sponsorship logo on napkins, bags and signs in all its restaurants (Fannin 1988).

#### **2. Sponsor subcategories within the event and exploit this investment aggressively**

The ambusher manages to catch the audience’s attention by sponsoring some lesser element (such as a sport federation or team) attached to the overall event and exploits this association through major promotional effort.

The history of ambush marketing has recorded numerous instances of this category. Returning to the previous example: when Fuji was the victim of ambush marketing in 1984, the company decided to exact its revenge on Kodak in 1988. Kodak sponsored the media coverage of the 1988 Olympic Games, but Fuji aggressively promoted its sponsorship of the U.S. swimming team. Such an arrangement allowed Fuji to get the Olympic association far less expensively with the opportunities to use the athletes in promotions.

A similar case was present at the 1992 Summer Games in Barcelona between the competing companies Reebok and Nike. Reebok had exclusive rights to produce warm-up outfits and other apparel for American athletes whereas Michael Jordan and other members of the USA basketball team had contracts with Nike. The U.S. team refused to bare the Reebok logos and covered the Reebok logo by draping themselves in the American flag when they accepted their gold medals.

The subcategory method is also visible during FIFA World Cups as football attracts large audience all over the world. For instance, during the 1990 FIFA World Cup in Italy, Coca-Cola was the official worldwide sponsor of the tournament while Pepsi sponsored the Brazilian team (Kelehar 1990). As one of the best teams, the Brazilians provided a good target for ambushers. During the 1998 FIFA World Cup in France, Adidas was the official sponsor of the sports manufacturer category of the event, whereas Nike had a great deal of success through sponsorship of the Brazil National Football Team (Masterman 2009). According to a sport and market study, Adidas achieved a sponsor recognition rate of 35%, yet Nike managed a rate of 32% without a purchase of event rights<sup>1</sup>.

### 3. Make a sponsorship-related contribution to the “players pool”

As the ground rules regarding the athletes’ payment and contracts have changed, this practice is today regarded as a legitimate way of achieving promotional objectives.

In this case one may identify one of the most striking and most innovative tactics. At the 1996 Olympic games in Atlanta, Linford Christie, the defending 100 m champion, appeared at a press conference wearing electric blue contact lenses with the Puma logo clearly visible in the centre of each eye. Reebok was the official sponsor, but Linford Christie got more coverage that day than any of the medal winners.

Similarly, the sponsorship of Ian Thorpe at the 2000 Sydney Olympic Games provided headaches for Nike – the official clothing supplier for the Australian Olympic team, as Thorpe individually was sponsored by Adidas (Curthoys & Kendall 2001). At a medal presentation ceremony, the swimmer had his towel draped over the Nike logo on his official team tracksuit. His photo subsequently appeared throughout Australia. Thorpe and Adidas have denied that this was done deliberately. Nonetheless, one can understand Nike’s concern that the public might not see it as the official Olympic sponsor.

### 4. Purchasing advertising time around relays of the competitor’s event

This practice has been successfully used by many ambushers in the past. Now it is definitely less prevalent as the organisers cooperate with the broadcasters and either only give the opportunity to carry out promotional campaigns to the official sponsors or refuse to allow any competing advertising slots in media.

### 5. Engage in major non-sponsorship promotions to coincide with the event

Due to the development of numerous promotional techniques this category is very broad. It includes intense advertising done by a competitor during or around a sponsored event. For example:

<sup>1</sup> As a matter of fact, Nike is considered the benchmark when formulating and implementing successful ambush marketing strategies. Nielsen’s study, conducted between May 7th to June 6th 2010, looked at English language World Cup-related messages on blogs, message boards, social networking, video and image sites (Flickr, YouTube, Facebook, and Twitter) that mentioned at least one of the 10 official FIFA partners and sponsors with a global footprint or two of their top competitors (30 brands in all). Despite not being an official sponsor of the 2010 FIFA World Cup in South Africa, Nike gained a 30,2% share of online buzz and was ranked at the first position (Nielsen Company 2010). M. Shank (Shank 1999) maintains that the company holds the position of the ambush marketing director.



organize contests to send consumers to the event, placement of advertisement hoarding or booths at strategic locations during the event etc.

Such forms of advertising were resorted to in the Winter Olympics held in Lillehammer, Norway in 1994, where Visa was one of the official sponsors for the Olympic Games. American Express (Visa's counterpart) launched an advertising campaign with the slogan: "If you are traveling to Lillehammer, you will need a passport, but you don't need a visa". A survey later found that 52% of the respondents thought that American Express was the official sponsor of the Games. Although it was lower than Visa's 72%, American Express had a reason to be pleased since it had not paid a penny for the event while Visa paid \$40 million to gain official sponsor status.

Nike's ambush of the 1996 Atlanta Olympic Games is still seen as the ambush of all ambushes. Saving the U.S.\$50 million that an official sponsorship would have cost, Nike constructed a Nike store outside the athletes' village with billboards, handed out swoosh banners to wave at the competitions and erected an enormous Nike centre overlooking the stadium. The complex was highly visible throughout coverage of the Games, and became a visitor attraction around the venue (Burton & Chadwick 2008).

The new examples of ambush campaigns show that this kind of marketing evolves mainly towards below-the-line promotions to achieve its communications objectives during the course of the event.

During 2006 FIFA World Cup in Germany, Lufthansa managed to catch audience attention by painting soccer balls on the nose of its planes, to the annoyance of FIFA, and to Air Emirates, which paid a lot of money to FIFA for the right to tell consumers that it paid a lot of money to FIFA (Carvajal 2006).

Simultaneously, competition was also running between the rivals – Budweiser (ambushee, official sponsor of 2006 FIFA World Cup) and Bavaria Brewery (ambusher) (Burton & Chadwick 2008). Bavaria Brewery provided orange leather trousers to fans attending games, stadium officials made them remove the trousers before entering the stadium. Obviously fans attracted enormous media attention by disrobing and watching the game in their underwear. As this campaign turned out to be very successful, Bavaria Brewery decided to reenact this tactic during 2010 FIFA World Cup in South Africa. 36 female fans wearing orange mini-dresses provided by Bavaria were engaged in the promotional campaign. They cheered their team on during the Netherlands-Denmark match and as a consequence were accused of being part of an ambush campaign to promote a Dutch brewery ("World Cup 2010: Women arrested over 'ambush marketing' freed on bail" 2010).

As it shown in different cases, ambush marketing has shifted over time from broadcast sponsorship campaigns and the venues surrounding advertising, to more off-site venue marketing and greater creative efforts, to even more bold and aggressive strategies such as using spectators or fans as promotional tools (Burton & Chadwick 2009).

### **Counter-ambushing strategies**

Ambushers have taught both event owners and sponsors many important lessons regarding the adverse effects of ambushing and the need to devise strategies to counter such possibilities (Meenaghan 1994). Therefore, studies also concentrate on the legal framework surrounding ambush marketing and potential defenses against it. Throughout the evolution of ambush tactics, two main categories of counter-strategies emerge (Figure 2) (Burton & Chadwick 2008).

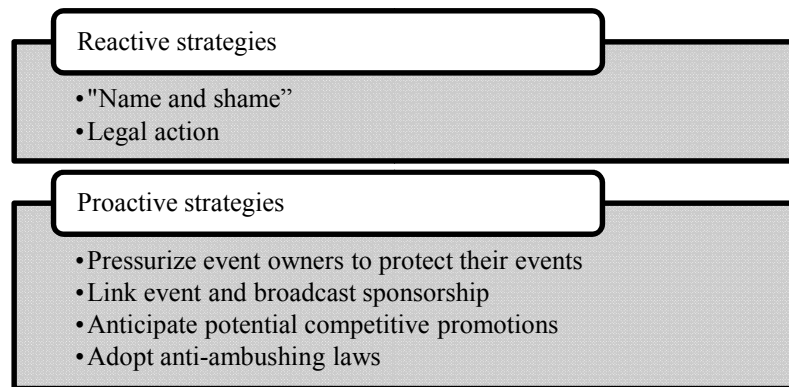


Figure 3. Anti-ambushing strategies  
Source: (Burton & Chadwick 2008).

Reactive strategies are aimed at countering ambush attempts and compensating for the damages caused. The majority of ambush defense strategies of the very early cases have been of a reactive, and typically defensive, nature. One of the most common reactive strategies used over time is "name and shame" which refers to speaking out in the media about the unethical, inappropriate, or unlawful marketing attempts by a sponsor's competitor (Burton & Chadwick 2008). Sports properties are aware of the added media attention given to ambushers by naming and shaming, thus this technique might provide added promotional benefit to the ambusher.

Legal action as a valuable tool in protecting sponsorship is a further example of the reactionary measures identified throughout the database in countering ambush marketing efforts (Burton & Chadwick, 2008). Of the over 300 cases examined by CIBS (Centre for the International Business of Sport), approximately 10% have resulted in lawsuits or legal action taken by sponsors or rights holders. These cases included mostly intellectual property rights cases; dealing with issues of trademark or copyright infringement, or unauthorized distribution of tickets; and issues of passing-off or misappropriation, defined as the act of selling products (goods or services) under the intention of connection with another organization. The percentage is so low as it is very problematic to prove the "ambush" attempt as an illegal action.

Proactive attempts focus mainly on anticipating, deterring and preventing ambush marketing campaigns. T. Meenaghan (1994) identifies a few tactics in this area.

The first one considers pressurizing event owners (or organizers) to protect their events. Dissatisfied sponsors of major events can demand protection from event owners for the rights they have purchased in the sponsorship contracts. An example of such protection is provided by the International Olympic Committee and FIFA World Cup organizers, both of which are aware of potential damage to their products and, responding to sponsor concern, have gone on the offensive against ambushers by creating their own regulations against ambush marketing. The regulations must be observed by the countries or regions hosting the events.

Linking the event and broadcast sponsorship is another tactic carried out against potential ambushers. However, it seems to be a very expensive strategy to sponsor both the event and the broadcast of the event. Indeed many major event organizers offer combined packages of event sponsorship, broadcast of the event, and in some instances even advertising time around television broadcasts of the event. UEFA was again among the first to regulate broadcast advertising for its events, along with the IOC, further offering such combined promotional opportunities and eliminating other easy opportunities for ambushers. Unfortunately, while both of these strategies successfully limited ambushers use of such attempts, the creativity of ambush marketers, as well as the continuous growth and development of new marketing opportunities, has meant that to a large extent, ambush marketing has grown and developed, rather than decreased in effectiveness or frequency (Burton & Chadwick 2008). Moreover, the International Cricket Council (ICC) instituted ambush marketing protection



contracts with sponsors, and has encourage individual boards to have their players follow an approved agreement for tournaments (Schwarz & Hunter 2008). The National Football League (NFL) now has also requirements for Super Bowl bids that require host cities to address ambush marketing (Schwarz 2009).

Another strategy undertaken, as suggested by T. Meenaghan (1994), has been anticipating potential competitive promotions. It is very important to discover the environment of other official sponsors of the event and answer questions such as whether as a sponsor an entity is the sole sponsor or merely a co-sponsor, which sector the “other competitors” operate in, and how to come in the front. The potential official sponsors should identify all potential avenues for competitive promotion and search, where economically feasible to close these off. Obviously due to multiplicity of opportunities involved in major events the ambushers are becoming more and more creative.

Event organizers have also moved to develop legal protection for the rights they sell to official sponsors. Before the introduction of specific legislation to address the potential for ambush marketing, event owners and sponsors had to rely on trademark and fair trading statutes (Crow & Hoek 2003).

For many municipalities around globe, it became necessary to ensure sponsor protection during hallmark events. However, it must be emphasized that very few ambushers use the exact logos or insignia of the event owner. On the contrary, it is typical for ambushers to create alternative devices that recall the event without breaching registered trademarks (Crow & Hoek 2003). Australia has been at the forefront of controlling ambush marketing (Schwarz et al. 2010). With the 2000 Summer Olympic Games coming to Sydney, the Australian government passed the Sydney 2000 Games (Indicia and Images) Protection Act 1996, and the New South Wales government passed the Olympic Arrangements Act 2000. A significant part of both laws enacted prevent ambush marketing and provide for “clean” Games venues to equip New South Wales and Australia for future sporting and large marketing programs.

Since these Olympics, other host countries or regions have adopted anti-ambushing laws (Table 2). As given in the examples, there are two main streams as far as the implementation of the legal acts are concerned. The ambush laws can be divided into those that consider ambush marketing as a legal issue (specific law) and as a business issue (entrepreneurial law).

Table 2. Global anti-ambushing legislation

Country/ Region	Year	Event	Anti-ambushing legislation
Australia	2000	Sydney 2000 Summer Olympic Games	Sydney 2000 Games (Indicia and Images) Protection Act 1996
New South Wales	2000	Sydney 2000 Summer Olympic Games	Olympic Arrangements Act 2000
New Zealand	2007	FIFA U- 17 Women’s Football World Cup 2008 Rowing World Championships 2010 2011 Rugby World Cup 2015 ICC Cricket World Cup	Major Events Management Act 2007 (MEMA)
China	2002	2008 Summer Olympic Games in Beijing	Protection of Olympic Symbols Relations 2002
England	2006	2012 Summer Olympic Games in United Kingdom	London Olympic Games and Paralympic Games Act 2006
South Africa	2002 (amended)	2003 Cricket World Cup in South Africa 2010 FIFA World Cup South Africa	Merchandise Marks Act 1941 South African Trade Practices Act 1976
Canada	2007	2010 Winter Olympics in Vancouver	Olympic and Paralympic Marks Act

Source: (Schwarz et al. 2010).

### Case of 2010 FIFA World Cup in South Africa – 11th June to 11th July 2010

The 2010 FIFA World Cup had a gripping effect on the ever-increasing world audience. RSA

hosted 32 teams across the globe with an average of 50 people per team, 500 match officials and 10,500 members of the media. In the case of the South Africa games, 14,500 VIPs and dignitaries were expected to see the opening and closing ceremonies while a projected number of half a million foreign tourists were expected to visit and stay an average of 15 days (Nwosu 2010).

The case of the 2010 FIFA World Cup in South Africa shows a very strong determination by both the hosting country and the sport governing body to counter-act ambush marketing tactics.

From a country's point of view, there is considerable merit and benefit to be gained from putting in place effective laws to deal with ambush marketing. The fact that such laws exist in a potential host country for a major international sporting event is a strong positive factor making that country an attractive candidate for the staging of such an event (Dean 2010).

The South African Parliament enacted wide-ranging ambush marketing legislation to create boundaries for the sport marketing industry (Schwarz et al. 2010). The restrictions were ready before the Cricket World Cup in 2003. The legislation, which amends the Merchandise Marks Act 1941 and South African Trade Practices Act 1976, enabled South Africa's government to designate the Cricket World Cup in 2003 and the FIFA World Cup in 2010. The law prohibits the use of any brand in relation to a designated event in such a manner that is calculated to achieve publicity for that trademark and thereby derive promotional benefit from the event without the prior authority of the organiser.

As for the protective activities of the sport governing body, FIFA launched The FIFA Rights Protection Programme prior to the 2010 FIFA World Cup South Africa. It was aimed primarily at tackling organised ambush marketers, counterfeiters and unauthorized traders, all of whom seek to profit from an event to which they have not contributed (FIFA 2010). In this way, the organiser wanted to ensure not only that its official trademarks and other intellectual property rights are properly protected and enforced, but also wanted to guarantee official sponsors exclusive marketing association with the event.

FIFA's rights protection panel, working together with local law enforcement authorities, customs officials and external legal advisers, used these legislative tools to combat ambush marketing issue. The strategy encompassed (Dean 2010, FIFA 2010):

- registered trademarks – FIFA has registered an extensive portfolio of trademarks under the Trade Marks Act 194 of 1993. The most important trademarked terms included 2010 FIFA World Cup South Africa; 2010 FIFA World Cup; FIFA World Cup; World Cup; World Cup 2010; Football World Cup; SA 2010; ZA 2010; South Africa 2010; Ke Nako – Celebrate Africa's Humanity; Soccer World Cup; Zakumi. In terms of section 34 of the Trade Marks Act, the use of any of these trademarks without FIFA's authority (or marks that are confusingly similar to them) may constitute trademark infringement.
- registered designs – The federation registered the official emblem, the appearance of the official mascot, Zakumi, and other designs as designs under the Designs Act 195 of 1993.
- copyright – the official logo and the appearance of the mascot Zakumi - owned by FIFA - constitute artistic works in terms of the Copyright Act 98 of 1978.
- Trade Practices Act – section 9(d) of the Trade Practices Act 76 of 1976 stands out  
*“No person shall – in connection with a sponsored event, make, publish or display any false or misleading statement, communication or advertisement which represents, implies or suggests a contractual or other connection or association between that person and the event, or the person sponsoring the event, or cause such statement, communication or advertisement to be made, published or displayed.”*

- Merchandise Marks Act (section 15) gives the legal right to the Minister of Trade and Industry to prohibit the use of any mark in connection with any trade, business, profession, occupation, or event, or in connection with a trademark, mark or trade description applied to goods.
- Advertising Standards Authority (ASA) promulgated a Sponsorship Code, article 11 of which corresponds broadly to section 9(d) of the Trade Practices Act. Accordingly, recourse can be had in appropriate circumstances to the mechanisms provided by the ASA to enforce its code.

Although strong anti-ambush strategies were taken, the FIFA World Cup in South Africa attracted a few ambushers from different sectors that carried out promotional campaigns without the official designation. S. I. Ironside (2010) and O. Dean (2010) identified at least three cases in the High Court of South Africa in which civil law causes of action have been pursued on the ground of ambush marketing attempt. FIFA lawyers have filed 2,519 other cases globally against parties it accuses of so-called ambush marketing (Panja & Cohen 2010). Some of the instances are presented below.

1. The Tavern Case – Federation Internationale de Football Association (FIFA) v Eastwood Tavern (GNP) (unreported case no. 52309/07, 12-15-2009)

The first case involved FIFA's action brought to Northern Gauteng High Court against a restaurant in Pretoria, located close to the Loftus Stadium, one of the venues that hosted matches of FIFA World Cup. The fascias of the restaurant included signs containing World Cup 2010, the national flags of competing nations in the FIFA tournament, Twenty Ten South Africa and South Africa 2010 next to its own branding. FIFA obtained a judgment with costs against Eastwood Tavern over a year before the main tournament itself. The organisation claimed infringement of the registered World Cup 2010 trademark; passing-off; and unlawful competition based on contraventions of section 9(d) of the Trade Practices Act and section 15A of the Merchandise Marks Act. The parties settled the matter before it proceeded to Court but the High Court of South Africa issued an order that prohibited Eastwood Tavern from, inter alia, obtaining special promotional benefit from, or associating its business with, the 2010 FIFA World Cup. An order granting all the relief sought was made in the Pretoria High Court.

2. The Lollipop Case - Federation Internationale de Football Association (FIFA) v Metcash Trading Africa (Pty) Limited (unreported case no. 53304/07, 1-10-2009)

In this case, Metcash Trading Africa, a major distributor in South Africa, was selling "Astor 2010 Pops" – lollipops which were packaged in wrappers featuring its trademark with imagery depicting a soccer ball, the South African flag and the date 2010, with the zeros of the date taking the form of soccer balls, which are trade mark registered by FIFA. Once again, the organisation claimed trademark infringement, passing-off and unlawful competition based on the contravention of section 15A of the Merchandise Marks Act and section 9(d) of the Trade Practices Act. The court handed down a written judgment that upheld FIFA's claims unequivocally, and in particular, upheld FIFA's unlawful competition by deriving special promotional benefit from the tournament without the organiser's approval. Costs were also awarded against Metcash Trading Africa.

3. The Keyring Case - Federation Internationale de Football Association (FIFA) v Executive Trading Cc and the Registrar of Designs (Case No 52308/07)

FIFA issued proceedings against Executive Trading and the Registrar of Designs in relation to the use and registration of a design depicting a vuvuzela trumpet, with a football and 2010 written beside it. Executive Trading used the design in relation to a key holder that had been registered in the Department of Trade and Industry's Registry of Designs in December 2004. FIFA was trying to prevent the use of the design by Executive Trading on ambush marketing grounds – infringement of its trademark or intellectual property rights in terms of the Merchandise Marks Act and Trade Practices.

Moreover, the event organiser was applying for an order against the Registrar of Designs to cancel the registration of the design. The case is yet to be heard by the Courts.

#### 4. Comair Ltd case

FIFA objected to Comair Ltd (a British Airways franchise), owners of the Kulula.com airline. Kulula using an advertisement, which while not specifically referring to the 2010 FIFA World Cup, used terms that, in the organiser's view, alluded to the event and otherwise comprised all the elements of ambush marketing by intrusion. The company launched the advertisement "Unofficial National Carrier" of the "You-Know-What" depicting the Cape Town Stadium, soccer balls, the date 2010, vuvuzelas and other items associated with soccer. It did not however contain any direct reference to the tournament. FIFA served a cease and desist letter to kulula.com alleging that the sum of the elements contained in the advertisement brought to mind the 2010 FIFA World Cup. As reported in the media, Kulula immediately complied with FIFA's demands and discontinued the use of the contentious advertisement.

#### 5. Bavaria Brewery case

This case has already been described while presenting the "Engage in major non-sponsorship promotions to coincide with the event" ambush strategy. Two Dutch women were arrested on over alleged ambush marketing for organising 36 women to wear short orange dresses with small Bavaria emblems made by a Dutch brewery to a World Cup match between the Netherlands and Denmark. They appeared at a Johannesburg magistrate's court and were released on bail of 10,000 rand (£900) each. Bavaria scored a direct ambush marketing campaign on Budweiser Beer, the official beer sponsor of the 2010 FIFA World Cup. It was reported in media that the Bavaria website was the fifth most visited beer website in the United Kingdom the week after the stunt, which also caused international headlines for several days as the world watched and waited for the outcome of the case. S. I. Ironside (2010) regards this case as the most successful counter attack against FIFA and South Africa's ambush marketing laws in terms of gaining international exposure for a very successful ambush marketing event.

### Conclusions

The growth in sponsorship expenditure worldwide has been accompanied by a parallel growth in the practice of ambush marketing. The case of 2010 FIFA World Cup South Africa shows the very strong determination of both hosting country and the sport governing body to combat tactics of ambush marketing which might be regarded as a threat to future sponsorship market and mega sport events at the same time. In South Africa the counter-acting ambush strategies are well visible, not only reactive ones but especially proactive ones. The organisers took much effort in order to protect its brand and official partners of the event and in consequence stop illegal and unethical practices. However, companies will always find creative and - what is more important - legal ways to carry out ambush marketing campaigns if they feel they can benefit from it. It is advisable to clarify the actual rights purchased by sponsors that may help minimise the negative impact of these practices on both sponsors and event managers.

The issue of ambushing sponsored properties is of increasing concern not only for sponsors and right-holders, but also the European Commission, which has expressed its anxiety. In the White Paper on Sport (EC 2007) it is underlined that in most countries the notion of "ambush marketing" is undefined and there is little legislation in this area. Where protection is offered, it has been developed through case law as an extension of the applicability of rules on intellectual property, unfair competition and, to a lesser extent, advertising and consumer protection. As a general rule, protection against ambush marketing tactics used within the stadium where a sport event occurs is most

efficiently obtained through a well-drafted contract between the sponsor and the event organiser. However, protection against such tactics used outside the physical location under the control of the event organiser is much more difficult to obtain.

Therefore, it becomes clear that strong anti-ambushing policies need to be adopted, preferably at legislative level. The examples of legal acts might be regarded as best practice for both future organizers and hosting countries. However, the real problem is the consumer's lack of knowledge and confusion about the sponsors and their contribution to the sponsored event. It must be taken into account that this confusion will not disappear through various legal efforts that event organisers have been taking.

Additional control is needed over issues such as media coverage of events. For example a large percentage of consumers believed that anyone advertising during the telecast is an official sponsor. The problem is created by the need for the media to cover their rights fees to the organizers. Perhaps a new arrangement should be developed to limit non-sponsor advertisers are not associated with any sponsorship agreement of the event.

Organisers should focus more direct effort on educating and providing information to consumers. In order to raise the awareness of the consumers, an educational program covering messages could be run before, during and after the event. Public relations is becoming one of the best ways to control ambush marketing and even deter it from happening in the first place. Educating opinion leaders, the media, and consumers can affect how the activity is perceived and reported. Most ambush marketers are not actually breaking the law. They pursue a narrow path, skirting as close as possible to the law without actually breaching it. In such cases, public exposure may well be the best deterrent. Effectively this involves telling the consumer how the ambusher is trying to deceive them into believing that they too are supporting the event, when they clearly are not.

Implementing such steps can go a long way toward removing the incentive for companies to use ambush marketing and preventing problems caused by these unethical practices.

Despite the growing phenomenon of ambush marketing, research on this subject has been minimal in the context of sport marketing. There is a need for more studies conducted to examine the effects of ambush marketing that are primarily focused on consumers' attitudes, recall and recognition. Moreover, scientists ought to concentrate on the effectiveness of existing anti-ambush strategies on the basis of major sports events. Thus, the authors issue a call for further research into the phenomenon of ambush marketing.

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