

Combating Ambush Marketing: what changed between the 15th Asian Games Doha 2006 and the FIFA World Cup 2022

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Ambush marketing is one of the inseparable subjects to any major sports event. It may be argued to be one of the most challenging subjects considering the level of creativity associated with such infringing activities, and the new methods used by infringers trying to exploit any potential gaps within the applicable laws.

However, with the issuance of new improved laws, and the correct interpretation and enforcement of both new and previous laws, many ambush marketing activities can be stopped, and right owners may be adequately compensated.

FIFA Laws:

Hosting the FIFA World Cup 2022 is definitely the biggest sports event in the history of Qatar. In preparation for this event, Qatar issued Law No. 10 of 2021 Concerning the FIFA World Cup Qatar 2022 Hosting Arrangements (Law No. 10 of 2021) and Law No. 11 of 2021 Concerning the Protection of FIFA Trademarks, Copyright and Related Rights (Law No. 11 of 2021), both published in Official Gazette number 10 of 2021 dated 8 August 2021 (FIFA Laws).

The FIFA Laws provide additional solid basis for combating ambush marketing, in addition to the general legal basis already provided under the previous laws, including Law No. 9 of 2002 with respect to Trademarks, Trade Indications, Trade names, Geographical Indications and Industrial Designs and Templates (Trademarks Law), Law No. 7 of 2002 on the Protection of Copyright and Neighbouring Rights (Copyright Law), and the unfair competition rules as included within Commercial Code no. 27 of 2006.

A comparison between the Asian Games Law and the FIFA Laws:

In 2004, Qatar set a positive example on providing a legal basis for combating ambush marketing when Law No. 27 of 2004 on the Protection of Signs, Logos, Compilations and Neighbouring Rights of the Fifteenth Asian Games in Doha 2006 was issued, as published within Official Gazette number 12 of 2004 dated 29 August 2004 (Asian Games Law).

By comparing the Articles of Asian Games Law with the Articles of the FIFA Laws, it would be fair to say that the FIFA Laws provide a significantly improved basis for combating and preventing ambush marketing. Such basis does not only protect the interests of FIFA, it may also benefit the FIFA contractors, including the FIFA commercial partners, goods suppliers, works contractors and service providers, by preventing any unauthorised competition from other contractors through enforcing the rights granted by FIFA.

The Asian Games Law considered any attempt in bad faith to imply in an advertisement that the goods or services provided by a trader is linked or connected to the Organising Committee for the Asian Games in Doha 2006, or any of the Intellectual Property Rights related to the Games to be a criminal offense punishable by an imprisonment of a maximum term of two years and/or a maximum fine of hundred

thousand (100,000) Riyals (Article 9/9 of the Asian Games Law).

On the other hand, the FIFA Laws, mainly Law No. 10 of 2021, provides a more detailed basis in relation to combating ambush marketing.

Law No. 11 of 2021 provides a clear wide protection of the FIFA Intellectual Property, considering the FIFA registered and unregistered Trademarks to be well-known trademarks. Any unauthorised use of FIFA Intellectual Property is prohibited according to Article 16 of Law No. 10 of 2021.

Furthermore, Article 18 of Law No. 10 of 2021 prohibits any type of public or commercial activity, which could lead to the false belief that the products or services being marketed are issued or approved by FIFA. The prohibition also includes using the tournament tickets for any advertising purposes, including holding lotteries, competitions, games, and advertising procedures, or even including the cost of tickets within the cost of other accommodation or services, without the written consent of FIFA.

Article 28 of Law No. 10 of 2021 also prohibits advertising in the “Controlled Commercial Area” unless approved by FIFA. The “Controlled Commercial Area” are mainly the area adjacent to any stadia or any of the places of activities determined by FIFA, with a diameter not exceeding 2 km, including its airspace.

Violating those prohibitions may constitute a criminal offense punishable by an imprisonment for a period not exceeding one year and/or a fine not exceeding 500,000 Qatari Riyals (Article 38 of Law No. 10 of 2021).

Further basis provided by previous laws:

The basis of combating ambush marketing is not only limited to the FIFA Laws. The Commercial Code no. 27 of 2006 which was published in 13 November 2006 in Official Gazette number 10 of 2006, confirmed the unfair competition rules previously included within Law No. 16 of 1971 issuing the Law of Civil and Commercial Articles, with some improvement.

Articles 69 and 70 of the Commercial Code confirmed Articles 243 and 244 of the Law of Civil and Commercial Articles, providing further significant basis for combating ambush marketing. The two mentioned Articles do not only cover cases where the infringer is attempting to

make a connection or claim to be authorised by the right holder (such as FIFA). Article 69 also covers cases where the infringer is misleading the public to sell his/her products or market his/her services, or publishing any data with the purpose of harming a competitor’s interest. While Article 243 of the Law of Civil and Commercial Articles stated that such data should be “false”, Article 69 of the Commercial Code removed the term “false”, which may be considered a higher level of protection against unfair competition including ambush marketing. Furthermore, Article 70 prohibits any misleading claim for the purpose of competing with another trader and attracting his/her clients.

Conclusion:

The current applicable laws in Qatar including the recent FIFA Laws provide a strong solid basis for combating ambush marketing. However, the aim of such laws cannot be achieved without a fast proper implementation of provisions of the law.

FIFA and the Supreme Committee for Delivery & Legacy are playing a significant role in preventing ambush marketing, especially after the issuance of the new FIFA Laws. This includes awareness messages and announcements issued by FIFA to the public in Qatar clarifying the FIFA Intellectual Property Rights and the possible consequences of any unauthorised use. We are yet to see how the Qatari Courts will address ambush marketing cases in the near future, if such cases are raised before the courts, and

whether the Qatari Courts will rely on the various basis as provided within the Qatari Law. However, judges, lawyers, traders, and all interested persons are more keen to enjoy the upcoming FIFA World Cup 2022!

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