

Ambush marketing and the FIFA 2022 world cup

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What is Ambush Marketing?

Precisely what ambush marketing is and whether or not it is contrary to the law are two questions at the heart of the short but storied history of guerilla advertising. Broadly speaking ambush marketing can be thought of as the abuse of publicity surrounding a major event to gain brand recognition or similar benefit despite not having paid for the legal rights to do so. For the purposes of this article, we can consider ambush marketing the attempt, usually by a competitor of a legitimate (i.e. license fee paying) sponsor, to (i) associate an entity or its products with a major event in a manner misleading to consumers ("Ambush by Association") or (ii) interject an entity or its products at or in close proximity to an event in such a way as to gain brand exposure ("Ambush by Intrusion").

Setting aside violations of trademark and/or copyright laws (which are relatively straightforward matters), not all ambush marketing is illegal. Whether or not such an activity is contrary to applicable law will depend on the particular execution of the activity and the specific scope and nature of applicable laws in the relevant jurisdiction.

The reason ambush marketing is most readily found in the sporting context can be attributed to a number of factors. Most poignantly, these include the inherent global appeal of major sporting events and the development and proliferation of various streams of on-demand viewing technologies. This has simultaneously increased the potential audience and diminished likelihood of synchronized viewing for most forms of video entertainment except live sporting events. In short, sporting events stand alone atop ratings charts in their ability to draw immediate and unmatched levels of viewer interest and this means television advertising revenues (and therefore the value of broadcast rights) vastly exceed those available in all other forms of televised entertainment. Live viewership is also key to ambush marketing because what has once been seen cannot be taken back and we might anticipate the level of reward being commensurate to the scope of risk - particularly in an area where we often see sophisticated corporates opting to pursue ambush strategies.

Why should we care?

The World Cup reaches a bigger and more diverse audience than any other single-sport event. For the organizers of any modern FIFA World Cup, revenues generated from advertizing are expected to make up the lion's share of budgeted income. In short, staging the most widely viewed single-sport tournament on the planet and paying for the privilege, are in significant measure premised on the ability to properly market (i) corporate sponsorship packages, (ii) television broadcast rights and (iii) merchandising opportunities.

These commercial rights generate billions of dollars and sponsors are entitled to legal protection for their vital investments. Ambush marketing can compromise the value proposition in any one or all three of those areas. For sponsors who pay millions of dollars for a share of those rights (and, increasingly, in a number of cases significantly more than that initial outlay in the subsequent activation campaigns

designed to optimize exploitation of those rights) ambush marketing jeopardizes that investment. Unchecked, this weakens the product the organizers are offering, dilutes the value of sponsorship and ultimately reduces the ability of an event to attract future sponsors.

What can we expect from recent trends?

Depending on your perspective, ambush marketers could be viewed as contemptible free-riders, undermining the credibility of the advertising world or swashbuckling renegades pushing the bounds of the creative front. The stakes are high and the potential for global exposure has been a temptation many advertisers, including a number of market heavyweights – who arguably should know better – cannot resist. For example, while Coca-Cola will be the official drink of the FIFA 2014 World Cup in Brazil, it is likely that rival Pepsi will be positioning itself and its recently expanded catalogue of top players in a manner that could grasp some glow of association.

In the past, Nike (sportswear – Atlanta 1996/London 2012), Bavaria (beverages – South Africa 2010), Beats by Dr. Dre (audio equipment – London 2012) and Zippo (lighters – Sochi 2014), amongst a long list of others in many market sectors have notably benefitted from public interest in sporting mega-events through ambush marketing. While the trend from organizers is the imposition of more stringent restrictions and flexible but substantial enforcement, this has not necessarily deterred advertising companies who arguably see greater reward for the risk.

2022 - How can Qatar achieve robust preparedness?

- Don't reinvent the wheel. Event-specific local legislation protecting sponsors is now commonplace – even mandatory in the case of any Olympic host nation. FIFA is amongst the best and most effective bodies at protecting sponsors' rights. Incremental improvements in such laws are made before each new mega competition and significant consideration should be given to preparing the best possible statutory solution for Qatar, taking into consideration not only the event but Qatar's unique cultural and legal environment. Solid lessons already learned from experiences in South Africa, London and Sochi should be adopted; and, an eye should be kept on Glasgow and Brazil, amongst others, to incorporate effective developments in law as well as to account for market trends.
- Take advantage of the playing field. The bid process for 2022 capitalized on the compact World Cup (in fact, the close proximity of the playing venues will make Qatar 2022 one of the most geographically compact FIFA World Cups ever). This means that exclusion zones could be policed very effectively to combat Ambush by Intrusion. In respect of Ambush by Association, elements of Intellectual Property expressly including new event-specific legislation (together with regulations, guidelines and any permit requirements), consumer protection statutes as well as the elements of contract and tort law that we have seen used effectively elsewhere can be drawn from within the Qatar Civil Code and used together to defend against these guerilla tactics.
- Task Force. Qatar should have a task force in place to prepare the best possible legal framework to deter ambush marketing is in place well before 2022. As noted, the legal framework can include various tools, which should be selected and handled carefully. This means the applicable legislation must be complimented by a flexible and dynamic ability to read the situation and enforce (or not enforce, as must be determined on a case-by-case basis) the legal rights and restrictions at its disposal to maximize sponsor value and protect the short and long-term value of the event, while taking into account public sentiment.
- Flexibility and responsiveness. The effective use of these complimentary tools should be stress-tested by the task force in coordination with enforcement authorities and in consultation with PR professionals well in advance of the event. For implementation, a dynamic rapid-response team should be able to effectively read and react both on its own initiative to market developments and on sponsor complaints to competitor abuses.

Conclusion

We have seen a continuing trend for opportunistic and creative advertisers to attempt to exploit events and probe any gaps in the legal framework designed to protect licensed advertisers and major events. It is a safe bet that the level of fairness required of competitors on the pitch will not be observed by advertisers off it. Lawyers representing both sides will be expanding their toolboxes in an effort to protect and promote their clients' interests. Keep your eyes on Brazil and keep an eye on the games outside of the games as we look a little further forward to 2022.

Prior to joining Al Tamimi & Company to establish the Sports Law and Events Management practice group Steve served as General Counsel at Abu Dhabi Motorsports Management LLC, where he managed all legal aspects of the iconic Yas Marina Circuit from events management through venue sponsorship and all points in between. He has more than 14 years' corporate commercial experience working around the world, including a number of years in Japan, where he advised the sports division of one of the largest advertising agencies in the world with regards to broadcast rights agreements and sponsorships for the 2002 and 2006 FIFA World Cup events, Major League Baseball broadcast rights in the Far East, Toyota's sponsorship of the X-Games, Princess Cup, and World Football Club Championships and numerous high-profile athlete endorsement and appearance rights deals.