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Andre M. Louw

# Ambush Marketing and the Mega-Event Monopoly

How Laws are Abused to Protect  
Commercial Rights to Major  
Sporting Events

T · M · C · A S S E R P R E S S

 Springer

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*For my father, the biggest sports fan ever,  
with all my love  
Thanks for everything*

# Preface

My homeland was invaded by a foreign power 2 years ago, amidst much fanfare, publicity and excitement. The world sat watching with avid interest to see events unfold, although few spectators were even mildly concerned about these developments and, ultimately, boredom over the resultant spectacle appeared to be the order of the day. The invader was expected (had been invited, in fact), it brought no tanks or guns (although quite a few private jets were to be seen), and its uniform was more bespoke three-piece suits than combat camouflage. While the operation had taken longer to plan than the D-Day landings (more than 6 years in the making), the invasion and subsequent regime change lasted only a month. FIFA had come to South Africa, and my country would never be the same again.

This book started as the germ of an idea that festered amid some interesting debates with postgraduate students in seminars on intellectual property law, where we explored the fascinating world of ‘ambush marketing’ (well, I found it fascinating, it’s mostly impossible to divine the thoughts of a student). From subsequent reading on ambush marketing and IP rights in sport I developed an interest in the commercialisation of sport in its various guises; in the sometimes extremely interesting ways in which businesses have managed to ‘unofficially’ market their products and services in relation to major sports events and the likewise intriguing ways in which rights holders have proceeded to protect their often considerable investment in these events by means of recourse to the law. Fascination, however, gradually blossomed into disbelief, caused mainly by one specific aspect of ambush marketing: The ways in which the law—specifically in the form of domestic legislation in the countries that have hosted recent major events—has been used, or abused, in order to protect the privately ‘owned’ commercial rights of event organisers and sponsors at the expense of the rights of just about everyone else.

Upon further reading I found more, and ever more blatant, examples of this, and started to see a pattern of significant economic and political power at work in the world of sport. I have come to the conclusion (and I am not alone in this respect) that those governing world sport and those who plough millions of dollars into major events as sponsors and ‘commercial partners’ in order to put on the biggest

shows on earth have for some time now been hard at work behind the scenes creating very powerful and influential cliques, and have often rabidly protected their power and financial interests by various means involving the law. I am no conspiracy theorist, and I am not suggesting that some dark forces or *illuminati* are at work here. I just believe that the modern political economy of international sport has assumed dimensions which may require urgent intervention in the public interest, and in the interests of sport. As a lawyer and a teacher of law I have found them extremely worrying.

Following FIFA's brief but tempestuous invasion of my country I felt the need to take up arms. The pen is mightier than the sword, and the laptop is mightier still. So I did what academics are wont to do. I wrote a paper, which was published as a series of articles in a local South African law journal, on the legal implications of commercial monopolies in events such as the FIFA World Cup, and on the (what I view to be) deplorable legislation that my country's democratically elected law-makers have passed and which has been employed in order to protect and maintain one such monopoly. These articles have formed the basis for this book, and I wish to thank the publishers of the *Obiter* journal, at the Law Faculty of the Nelson Mandela Metropolitan University in Port Elizabeth, for their kind permission to use some of that material in this attempt to expand the discussion and to include other jurisdictions and other events in the purview.

Further reading on the subject in researching this book has surprised me into finding that very little work has been done to date by the legal fraternity, *from a critical perspective*, in respect of assessing the legitimacy of the current state of affairs regarding commercial rights to sports mega-events and how the law is employed to protect such rights. In trawling the Internet I have found literally hundreds of articles, opinion pieces and blog postings on ambush marketing, from across the world. The reader is encouraged to search for these, there's some very interesting stuff out there. From this bounty of source material I have tried to piece together what I hope is an interesting if possibly rather long-winded exploration of the nature and implications of the commercial juggernaut that is the modern sports mega-event, and of the activities of those involved in staging and financing these spectacles. While I also found a number of examples of scholarly writing on the subject emanating from both the legal and marketing fraternities, a definitive and all-encompassing critical treatise on the legal and other issues involved has eluded me. This book is not such a work, although I fervently hope that, while not providing a comprehensive and all-encompassing source on the subject, it might serve at the very least to provoke further thinking, reading, writing and debate in the interests of development of the law for purposes of its application to such events in future.

I wish to sincerely thank my colleague, mentor and friend, Tanya Woker, who first suggested that I should write this book (although I am constantly looking for ways to get back at her for the months of hard work that her suggestion inspired).

A number of persons either expressed very flattering interest in the work, assisted me in writing it, or provided helpful information which I managed to use in the process. I wish to express, in no particular order, my sincere gratitude to

Nandan Kamath, Phillip Johnson, Dalton Odendaal, Tim Burrell, Ari Sliffmann, Brian Pelanda, Susan Corbett, Joe Cobbs, Simon Boyes and Kim Skildum-Reid, most of whom offered to assist me although my own busy academic schedule unfortunately prevented me from doing their offers justice. My thanks go also to Kadephi Majola and to Christopher Rodel (for helping me find some of the research material, which turned out to be very helpful); to the good folks at Google; and to Jo-Anne Du Plessis for her extremely thoughtful comments early in the process. Thanks also to Dawn Southgate and the UK's Chartered Institute of Marketing for providing me with material. A special and heartfelt word of thanks goes to Willene Holness, for her tireless and invaluable assistance in compiling the index for the book.

I wish to specifically single out a few individuals who assisted me greatly in preparing the manuscript, mostly by reading draft sections or chapters before its submission to the publisher. First, my heartfelt thanks to Jon Heshka, professor of law at Thompson Rivers University in Kamloops, British Columbia. Jon not only provided me with copies of some of his own writings on ambush marketing and expressed an avid interest in this project from the time of our first correspondence in late 2010, he also went way beyond the call of duty and agreed to read through advanced drafts of some of the chapters of this book to help save me embarrassment upon releasing it on unsuspecting readers. Jon will always be welcome for a beer or two at my place if he's ever in the neighbourhood, if only so I can apologise for mentioning his name here. My thanks go also to Wim Alberts, and to Roshana Kelbrick (for sacrificing her well-deserved beach holiday) for their thoughtful comments on the contents of [Chap. 5](#).

I wish to also sincerely thank David Becker, at the time of writing the head of legal services for the International Cricket Council and someone with an intimate knowledge of both the law and practice of ambush marketing, from both 'sides of the fence'. David took time out of a busy schedule to provide me with extremely valuable information (unfortunately at the eleventh hour in my preparation of the manuscript; we had planned to meet earlier but my own commitments unfortunately did not allow for this). David was instrumental in assisting me to inject some much-needed objectivity into the analysis and also, specifically, in informing me of some of the most prominent characteristics of the 'modern ambush' from his experience particularly in respect of the 2011 ICC Cricket World Cup event (which I've tried to discuss briefly in the concluding chapter).

In particular I also wish to thank Felipe Dannemann Lundgren, whose avid interest in the project and extremely generous and selfless assistance in updating me on recent developments in Brazil will always be greatly appreciated. He did so much more than just guide me through impenetrable Portuguese-language texts. In light of the scope of the project and the way in which some chapters simply snowballed into near unmanageable Tolstoy-like ramblings, my inability to do real justice to the relevant Brazilian law in the short section as contained in [Chap. 4](#) is in no way attributable to Felipe. I hope that he will not be too disappointed in the result.



Finally, I also wish to thank Philip van Tongeren and Marjolijn Bastiaans at Asser Press, and, of course, Rob Siekmann, for their interest in and support for the project (and, especially, for the much-appreciated hands-off approach and the significant trust placed in me to finish the manuscript, substantially on time if a little ‘warts and all’).

As always, a heartfelt word of thanks and of immense love to my family, especially my long-suffering parents (I love you dearly), brothers, sisters-in-law, nephew, and the little ones. Thanks also to my friends (especially Dave and Willene, Hugo and Eloise and Martin and Claudia).

I hope, for once, that more people will read this book than have assisted me in writing it or have supported me along the way. Despite all their assistance, the mistakes, omissions and no doubt glaring errors are, of course, my own.

Durban, South Africa, Summer 2012

Andre M. Louw

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Andre is also the author of *Sports Law in South Africa* (Kluwer Law International, 2010).

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# Abbreviations

AIPPI	International Association for the Protection of Intellectual Property
BCCI	Board of Control for Cricket in India
BCCLA	British Columbia Civil Liberties Association
BOA	British Olympic Authority
BOCOG	Beijing Organising Committee for the 2008 Beijing Olympic Games
CBF	Brazilian Football Federation (Confederação Brasileira de Futebol)
CIM	Chartered Institute of Marketing (United Kingdom)
COC	Canadian Olympic Committee
CONAR	Brazilian Advertising Standards Authority
FIFA	Federation Internationale de Football Associations
ICC	International Cricket Council
ICCDIL	ICC Development International Ltd
INTA	International Trademark Association
IOC	International Olympic Committee
IP	Intellectual Property
IPC	International Paralympic Committee
IPL	Indian Premier League (cricket competition)
IRB	International Rugby Board
ISL	International Sports and Leisure (sports marketing rights agency)
LOAR	London Olympics Association Right
LOC	Local Organising Committee (2010 FIFA World Cup South Africa)
LOCOG	Organising Committee for the 2012 London Olympic Games
MEMA	Major Events Management Act, 2007 (New Zealand)
MMA	Merchandise Marks Act, 1941 (as amended) (South Africa)
NFL	National Football League (United States)
NOC	National Olympic Committee
NZRFU	New Zealand Rugby Football Union
OCOG	Organising Committee for the Olympic Games
ODA	Olympic Delivery Authority (for the 2012 London Olympic Games)
OHIM	Office for Harmonisation in the internal market
OSPA	Olympic Symbol etc (Protection) Act, 1995 (United Kingdom)

SROC	Sports Rights Owners Coalition
TOP	The Olympic (Partner) Programme
UEFA	Union of European Football Associations
USOC	United States Olympic Committee
VANOC	Organising Committee for the 2010 Vancouver Winter Olympic Games