

## **ISLJ BOOK REVIEW ON AMBUSH MARKETING**

**AMBUSH MARKETING AND THE MEGA-EVENT MONOPOLY ANDRE M. LOUW 2012 TMC ASSER PRESS THE HAGUE THE NETHERLANDS HARDBACK PAGES 761 + XII ISBN 978-90-6074-863-7**

Opinion is divided amongst sports bodies and administrators and sports marketers and their advisers alike on whether ‘Ambush Marketing’, where a company or a commercial organisation claims unfairly an association with a sports event, which they do not have and for which they have not paid a penny, is clever marketing or plain theft, as claimed by the International Olympic Committee.

In such a case, the official sponsors do not get value for the considerable sums - often hundreds of millions of dollars - that they have expended on a particular sports sponsorship. It is argued that ‘Ambush Marketing’ not only adversely affects sponsors; it also dilutes the value of sports events; and, furthermore, causes confusion to consumers and fans.

Sports bodies and administrators – not surprisingly – take a dim view of this practice and argue that they need to take measures to protect their sponsors from what they regard as unfair marketing practices.

Once such measure is to put in place an extensive so-called ‘brand protection programme’ to fight ‘Ambush Marketing’ and the organising committee of the 2012 London Olympic Games (‘LOCOG’) established and enforced such a programme. In fact, the LOCOG ‘Anti Ambush Marketing Programme’ was a very detailed and all-embracing one, leaving very little room for manoeuvre, especially amongst small East End of London traders and shopkeepers in localities bordering the Olympic Park. So much so, that the Programme was widely criticised, especially by the advertising industry, who considered that the right of free commercial speech was being unjustifiably eroded, resulting in Dr Jacques Rogge, the President of the International Olympic Committee, calling for common sense and reasonableness to be applied by LOCOG in its execution!

From the sub-title to this Book, namely ‘How Laws are Abused to Protect Commercial Rights to Major Sporting Events’, it is evident which side of the argument Andre Louw, the author of this excellent and well-researched study, finds himself on.

Louw, the first person in South Africa to be awarded a Doctorate in Sports Law and the first person to undertake a comprehensive and critical review of the subject of this Book, is very much against elaborate legal measures being taken against ‘Ambush Marketing’ not only in the venues themselves, but also in the areas surrounding them (the Salt Lake City Winter Olympic Games arrangements were quite far-reaching in this respect). He argues his case very convincingly with many examples of recent ‘Ambush Marketing’ cases at major sporting events, including, of course, the 2010 FIFA World Cup in South Africa, in relation to which some 750 legal actions were taken against ‘offenders’!

Perhaps the high water mark of these actions involved the so-called ‘Bavaria Babes’ ambush on behalf of a rival beer company, which, in the event and in line with common sense, were

abandoned by FIFA, to limit the PR damage caused by them. Louw wryly sums up the brouhaha stirred up by this celebrated case in the following way:

“In this day and age.... it appears that the colour of one’s dress could augur a lengthy jail term; one might be forced to exchange an orange mini-skirt for an orange prison jumpsuit because Budweiser happens to have a multimillion dollar contract with FIFA.”

Whilst arguing strongly against excessive Anti ‘Ambush Marketing’ measures, Louw also recognises that, of course, the legitimate rights of sports event organisers and their sponsors need to be protected and taken into account. In his Conclusions, he observes:

“The clumsy and blatantly illegal classic ambush tactic of deceiving the public into believing that an ‘ambusher’ is an official sponsor justifies aggressive steps by event organisers to take legal action. I have nowhere in this Book denied the rights of event organisers to protect their property such as trademarks against such conduct. However, as we have seen, these organisers claim extremely wide protection from lawmakers to extend the scope of what they call the ‘intrusion ambush’, namely marketing campaigns which simply grab the public’s attention surrounding an event. Here the organisers are on much less solid ground. As shown, most legal systems provide no property right to the spectacle that is the sports mega-event. The organisers have no proprietary claim based on misappropriation (misappropriation of *what*, exactly?) and can, and I would submit, not raise the public good justification of protection of the consumer public against deception if one considers that the *sui generis* event legislation generally does not require such deception or an intention to deceive in order to criminalise or otherwise outlaw conduct of these ‘ambushers’. We have also seen that such legislation does not require event organisers to prove harm in order for liability to follow for the ‘ambusher’. This raises the question whether they can in fact prove such harm, even if not called upon to do so in terms of these special laws.”

And he goes on to add perceptively:

“Yes, ambushing is by definition not good for sponsors (at least from the perspective of their having had to pay for certain privileges while others do not), but special laws require stronger justification than simply having been upstaged by clever marketers.”

This is a very thought-provoking, information-packed and timely Book, particularly when one considers that many major multi-national corporate sponsors are tied up in multi-billion dollar deals with major international sports bodies until 2020 and need to know how far their investments can be legally protected; and it is one that I would unhesitatingly commend to all those involved in sports events organisation, management and promotion, as well as their legal and marketing professional advisers.

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