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‘Taking the Shirt Off Your Back’ and Other Desperate Measures Used to Ambush the Ambushers in Sports and Entertainment

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Introduction

Imagine this: while attending a major sporting event, you are asked to turn inside out or remove your favorite logo-laden T-shirt. If you refuse, you are asked to leave the premises. This has already happened in South Africa and Greece, is about to happen in China and the West Indies, and if corporate sponsors have their way, spectators might want to bring an extra set of clothes to their favorite Hollywood film festival.

Ambush Marketing, the controversial guerilla marketing tactic employed by large and small companies alike, has become an international conundrum, causing controversy proportionate to the events where it is practiced. It has become a global phenomenon that typically rears its, some say, ugly head at major sporting events worldwide. However, ambush marketing is not restricted to athletics; a growing number of arts and entertainment-related events have become victims of the creative, unorthodox, and *mostly* legal antics of ambush marketers.

In an effort to combat the problem and punish the perpetrators, sporting event organizers and governing bodies have chosen to adopt strict, sometimes harsh, and often drastic measures to protect the substantial financial investments of their corporate sponsors. The most desperate of these measures involves venue regulations and ticket restrictions aimed at not only the various venue partners and rival companies but at spectators. Whether non-athletic event promoters can, will, or even need to adopt similar methods to control this practice will depend on the continued growth of corporate sponsorship in their industries.

Ambush Marketing

Traditional marketing occurs when a company pays a fee, often millions of dollars, to become an event’s official sponsor. Ambush marketing occurs when a competing company, in an effort to either directly or indirectly associate with the event, or trade off the good will and reputation of

the event, strategically advertises or places marketing materials at or near the event without having paid a sponsorship fee. The practice has increased and become so sophisticated over the years, that it can now be categorized into two types: ambush marketing by association and ambush marketing by intrusion.

Ambush by Association

Actionable, more traditional forms of ambush involve infringing upon an event organizer's exclusive intellectual property rights. Use of an organization's or an event's trademarked name or logo without permission, website domain name theft, and the manufacture, sale, or distribution of unlicensed merchandise are clearly in violation of a host of international, federal, and state laws, remedied by everything from simple cease and desist letters to complicated trademark and copyright infringement lawsuits.

Ambush by association involves an unauthorized affiliation with a sponsored event by a non-sponsoring business. The affiliation is created by attaching the non-sponsor's name, brand, product, or service to the sponsored event through a wide range of marketing activities. Although many of these activities do not rise to the level of trademark or copyright infringement, they may still be illegal or prohibited by statute¹ if they involve any form of fraud, misrepresentation, false advertising, deceptive trade practices, or passing-off.

The purpose of the unauthorized activity, (unauthorized in the sense that the association is neither licensed, sanctioned², or paid for), is to directly or indirectly establish a connection with the event, to cleverly tap into the good will, reputation, or status of an event, or to gain benefit from the exposure and publicity value of an event.

Some skeptics go so far as to say that the actual purpose of the ambush is to mislead and deceive the public into thinking that the intruding company is an official sponsor of, or contributor to, the event when it is not.³ The skeptics also maintain that it is the ambushers intent to deprive official sponsors, suppliers, and partners of much of the commercial value derived from the "official" designation.⁴

Ambush by Intrusion

Contemporary ambush tactics are far more clever, original, outrageous, and for the most part, legal. They can take many forms, ranging from the conspicuous (a non-sponsor advertising a product on a building adjacent to

an event venue, perhaps involving some loose reference to the event or the sport in general) to the more subtle (a non-sponsor giving away event tickets as prizes in a radio or press competition).⁵

These ambushers do not necessarily suggest a link to an event, they simply piggy-back on its spectator and media exposure.⁶ This includes practices such as causing an airplane towing an advertisement for a product to fly over a stadium where a sponsored event is being held; running advertisements making reference to a sponsored sporting event without suggesting that the advertiser is a sponsor of the event; running a promotional competition, contest, or give-away making reference to a sponsored event; and causing a group of spectators attending a sponsored event to wear clothing that will attract the attention of television cameras in order to promote a non-sponsoring product or service, all without suggesting or implying any form of sponsorship or official connection with the event.⁷

Every reasonable means has been attempted to curb the growth and effect of ambush marketing by intrusion. Unfortunately, these innovative, unorthodox tactics cannot be adequately combated by traditional legal means because there is generally no misrepresentation or deception taking place and there is nothing overtly or otherwise illegal about the ambusher's activities. Categorizing the marketer's conduct as being "wrongful" is much more difficult.⁸ Therefore, event promoters are left to employ alternative methods. They are encouraged to educate the public on the importance of supporting official sponsors while denouncing the ambushers.⁹ Event promoters are also urged to use local littering and peddling laws to prevent outside-the-venue ambush positioning, to exercise pre-emptive purchases of surrounding area billboard and advertising space,¹⁰ and to secure right of first refusal of broadcast rights. In addition, event organizers and the governing bodies that regulate them have been forced to develop and adopt their own innovative, highly restrictive, and often heavy-handed regulations to protect the interest and investments of their multimillion dollar corporate sponsors.

ICC Venue Regulations

The International Cricket Council (ICC) is the governing body that oversees and regulates the sport of cricket, its tournaments, championships, and its coveted Cricket World Cup. The World Cup is one of the largest, most prestigious sporting events in the world, overshadowed only by the FIFA World Cup of Soccer and the Olympic Games. In the spring of 2003,

South Africa played host to the Eighth Annual ICC Cricket World Cup. Fifty-four matches were played between February 9th and March 23rd in at least twelve different venues across the country. It was announced that “an estimated 1.3 billion viewers will watch 210 men attempt to prove that they are the best cricketers in the world.”¹¹

Leagues participating in the event agreed to a number of sponsorship and personal endorsement restrictions in exchange for US\$550 million for the commercial rights to ICC events through 2007. The country of South Africa received tens of millions of dollars to stage the tournament, including the funding for ground redevelopment, infrastructure, and additional venues.¹²

Each of the participating venues, in exchange for the right to host the tournaments, agreed in advance to certain restrictions in order to protect the integrity of the event and the rights of its official commercial partners. The ICC’s website plays host to their Media Information Service (MIS) where venue regulations are made available to the media and the public. These rules are also printed on the back of each spectator’s ticket:

Entry into the venue and demarcated areas will not be allowed to persons bearing:

1. [...] placards or other banners or commercial signs and/or leaflets which refer to or otherwise promote any party and any objects or clothing containing political or commercial identification which may be deemed in the discretion of Management to be “ambush marketing” (ambush marketing is an activity by a party which utilizes the publicity value of an event without having any official involvement or connection with the event)
2. Products including food, beverages, clothing, posters, etc. with branding of competitors of the official Event sponsors will not be permitted into the venue. Management reserves the right to confiscate or replace with product of an equivalent quality and value any non alcoholic beverages or other products including branded food and non alcoholic beverage products which, in its opinion, the importa-

tion of which will or may infringe any party's rights or any party's safety or security.

3. No person shall engage in any form of "ambush marketing" and shall not breach or infringe the rights of any sponsors, suppliers, broadcasters or other parties commercially associated with the Match, nor conduct unauthorized promotions or other commercial activity.¹³

The effect that these regulations have on spectators is that the ICC can literally "take the shirt off your back" if that shirt displays the name or logo of a non-sponsoring company. Fans who do not comply with the rules run the risk of having their personal property seized or of being physically ejected from any World Cup venue.¹⁴ Clifford Green, an attorney representing the interest of the Cricket World Cup's Anti-Infringement Program states, "If a fan is wearing a Coca-Cola T-shirt while our official sponsor is Pepsi, then that item could be confiscated."¹⁵ Spectators are warned to read and abide by the rules printed on the back of their tickets. They are urged to avoid a breach of those rules, no matter how inadvertent or unintentional it may be.

The purpose of these drastic measures is to protect the interests of Cricket World Cup's associated partners and sponsors. The ICC takes its duty to ensure that its sponsors are not compromised very seriously.¹⁶ If a sponsor's exclusivity and financial investment are not guaranteed, the prospect of future sponsorship is severely jeopardized.

The practicality of these measures is a whole other matter. When asked whether the police department was suddenly thrust into the T-shirt confiscation business, Superintendent Charmaine Muller, police spokesperson for the Cricket World Cup, said that police would do their job to ensure that "law and order was maintained" in general, but that they would not engage in "tracking down brand offenders."¹⁷ Therefore, in order to enforce these regulations, each venue must employ dozens, if not hundreds, of private security personnel to patrol the stadium in search of unauthorized placards, banners, and flags as well as food, water bottles, and T-shirts. Patrons caught with restricted items will be asked to either conceal them or take them back to their vehicles.¹⁸

IOC Clean Venue Policy

In the summer of 2004, Athens played host to the biggest, most expensive Olympic Games in history. The \$8.5 billion price tag served 11,000 athletes from 202 countries competing in twenty-eight sports. Corporate partners and sponsorships represented \$685 million, over twenty-nine percent of the organizer's budget.¹⁹

The International Olympic Committee (IOC, the Olympic Games' governing body) with the cooperation of the Greek government, instituted what was popularly known as the "Clean Venue Policy." The essence of the policy was to ensure the integrity of the games by creating an environment free of commercial, political, religious, or ethnic influence and publicity. The result: a ban on direct advertising. All Olympic venues were advertisement free, including advertisements from official sponsors regardless of how many millions of dollars they paid for the privilege.²⁰

Fortunately, the sponsors were given many other opportunities to promote their brands at the level of exposure that only the prestige of being associated with the biggest sporting event in the world can buy. Therefore, the real ramifications of the policy fell on the stewards, the volunteers, and the fans. Stewards and volunteers were supplied with uniforms but were required to purchase their own shoes. They were "urged" not to wear shoes bearing large, bright logos of any shoe vendor that competed with the official sponsor Adidas. As for the fans, strict regulations printed on the back of each ticket dictated that spectators might be refused admission to events if they carried food or drinks made by any company that was not an official financial supporter of the games.²¹

For example, it is common for spectators to bring bottles of water into outdoor stadiums. Coca-Cola paid more than \$60 million to become one of the event's primary sponsors, and because Avra Water is a Greek subsidiary of Coca-Cola, fans were prohibited from carrying any brand of bottled water other than Avra into the venue. Staff security was under strict orders not to allow in rival brands of water unless their labels were removed.²²

The restrictions even extended to a spectator's clothing. 70,000 private security guards and 45,000 Olympic volunteers were charged with the responsibility of monitoring not only security threats, but also possible breaches of the Clean Venue Policy.²³ They were hired and trained to spot patrons wearing merchandise from rival companies hoping to catch the eyes of television audiences.²⁴ T-shirts, hats, handbags, and any other items displaying the unwelcome logos of non-sponsoring marketers were subject

to inspection. One exasperated fan with a front-row ticket to an Athens match was asked at the entrance to turn his shirt inside out because its logo was so large it would have undoubtedly been picked up by television cameras.²⁵

And just in case the over 100,000 extra security guards didn't catch you in the act, not to worry, the ICC's Brand Protection Office set up an "ambush marketing incident reporting process," that official sponsors, employees, and even patrons could use to instantly and efficiently document any violations of the Clean Venue Policy:

Documenting Observations – Please follow these guidelines when submitting a Brand Protection Incident Report:

1. Fill out a Brand Protection Incident Report form.
2. Describe factually the alleged incident in as much detail as possible.
3. Identify when and where the incident occurred.
4. Identify the parties involved.
5. Identify the medium used.
6. Specify what trademarks and/or copyrighted works were infringed.
7. Identify any laws or policies allegedly violated.
8. Describe what, if any, action was taken.

Supply Evidence – Use good judgment and legitimate means for gathering solid evidence that will withstand the scrutiny of the courts. For example:

- Purchase samples of infringing merchandise and obtain a dated sales receipt.
- Obtain samples of infringing brochures and print ads.
- Photograph infringing billboards and transit ads.
- Photograph point-of-purchase materials or gather sample coupons, promotional offers and free "take-one" brochures.

- Obtain transcripts of on-air announcements and radio commercials, or make a written statement of the infringing copy.
- Get media clips, a videotape or a written statement of infringing television ads.
- Obtain samples of presentation materials used in fundraising.
- Print hard copies of infringing web pages with date and web address.

The rationale behind the restrictions and the reporting is a result of the intensive television and print media exposure the games generate. The ICC and its official sponsors must effectively protect and exploit their rights by working to ensure that no photographs or panning camera shots reveal non-sponsored products.

Messages On Hold Australia

Messages On Hold Australia (MOHA) produces tailor-made audio productions for businesses to play to callers while on hold. They also specialize in ambush marketing through the strategic placement of their corporate logo at events that attract media attention.²⁶ Ambush marketing has secured MOHA more than \$500,000 in free advertising and promotion since the company was founded in 1988 and has even won them recognition (in 1996) as Western Australia's fastest growing private company.²⁷

Ambush tactics are more than just a passing fancy for MOHA; they are the company's primary marketing tool. MOHA spends a great deal of time and energy in the design and implementation of bigger, better, more daring ambush strategies. They perform extensive research to determine whether an event is likely to attract media attention and how they can incorporate the company logo into the media coverage.²⁸ "Pick a celebrity, sports team, politician, protest march, or any person, team, or event that will attract a throng of television camera crews and newspaper photographers, then be there with your logo as large as life. It's aggressive marketing and involves bluff and a dash of courage," says MOHA owner and founder Kym Illman.²⁹

Some of their bold and clever tactics include a blonde model dressed in a white bikini with tire tread marks and the MOHA logo painted across her body at a Formula One racing grand prix event; large white golf um-

rellas bearing the MOHA logo positioned in the sight line of television cameras covering the action at key golf course holes; giant hands featuring the MOHA logo positioned behind the goal posts and at key television camera angle sites at Australian Football League games; and strategically placed spectators bearing MOHA logo-laden T-shirts at Wimbledon and the Olympic Games.³⁰

Although ambush marketing is generally a sporting event phenomenon, it is by no means restricted to athletics. Companies like MOHA will target *any* event that is expected to have a certain level of media exposure. Opponents of ambush marketing, such as event sponsors, promoters, and governing bodies, have suggested that companies like MOHA are the real targets of these stinging venue regulations and ticket policies. They say that spectators have nothing to worry about so long as they understand why the regulations are in place, comply with the printed ticket restrictions, and recognize the potential seriousness of their failing to do so.

Ambush at Sundance

In 1981 Robert Redford established the Sundance Institute, dedicated to the support and development of emerging screenwriters and directors of vision, and to the national and international exhibition of new, independent dramatic and documentary films. A nonprofit corporation, Sundance Institute's \$10.6 million budget is met by thirty-five percent earned income from ticket sales, fees, and government grants. The remaining sixty-five percent is comprised of contributed income from corporate and private sponsorships and donations.³¹ The Institute is responsible for the Sundance Film Festival, held for ten days each January in Park City, Utah. One of the premier film festivals in the world, Sundance is a showcase for the best and latest work of independent American and international filmmakers. A diverse group of over 36,000 patrons attend the festival each year, including directors, actors, film industry executives, and film lovers.³²

Like most major, multiple-day events, the festival attracts a bevy of corporate sponsors in search of opportunities to showcase their products, services, and brands. Sundance attracts more sponsors than the Emmys or Oscars. Many sponsors even use the festival as a client retreat.³³

Sundance 2005's top three official corporate presenters were Entertainment Weekly, Volkswagen, and Hewlett-Packard. The top three unofficial ambush marketers were Heineken, Yahoo!, and Mercedes-Benz.³⁴ Ambush Marketing at Sundance has been occurring since the festival's in-

ception—but on a much smaller scale. As the event has grown in popularity (and in revenue generation) the concern over the protection of sponsors' rights has increased as well.

Ambush marketing at Sundance took a slightly different form than it did at the South Africa's Cricket World Cup or the Olympic Games in Athens. Yahoo!, Heineken, and several other non-sponsoring companies converted a three-story shopping complex into a spa and VIP retreat called "Village at the Lift." They also hosted celebrity parties, press events, and gift lounges at other houses, lodges, and storefronts in the area. These "perimeter" venues provided food, drinks, internet access, spa services, and live entertainment—all complimentary to festival attendees.³⁵

Crown Royal, a "Village at the Lift" sponsor for three consecutive years, said it never heard any complaints from Sundance organizers. As a matter of fact, complaints seem to be the current extent of the festival's anti-ambush campaign. Sundance representatives claim that the unofficial activities are responsible for the commercialization of the festival, stealing the limelight from paying sponsors, creating noise, confusion, and a very chaotic atmosphere, taking advantage of a nonprofit organization, and distracting from the festival's core purpose of showcasing independent films.³⁶

But despite all of the recent attention and publicity showered on the guerrilla marketing tactics perpetrated at Sundance, organizers insist they have not yet experienced the most serious concern associated with ambush marketing: trouble attracting or keeping official sponsors. According to Elizabeth Daly, Director of Strategic Development for Sundance, this year's sponsorship return rate was seventy to eighty percent. There were twenty-two sponsors this year, compared to twenty-one in 2004, with only four new brands on board.³⁷

The Ultimate Price

Ambush marketing has been referred to as "one of the biggest threats to the future of major sporting events [or any sponsored event for that matter] because it strikes at the deals that finance them."³⁸ Clearly, loss or devaluation of official sponsorship is not yet an issue for Sundance. Presenting sponsors paid up to \$500,000 each for exclusive presenter and marketing rights. The festival itself generated upwards of \$41 billion dollars in economic activity for the state of Utah in 2004 with international exposure (including attendees, print, radio, and television) estimated at 420 million people.³⁹

The numbers are impressive, but minimal compared to those generated by the 2004 Olympic Games. For example, Coca-Cola alone paid \$40 million for global Olympic sponsorship rights. They, in addition to other sponsors, also paid millions of dollars to activate and exploit those rights. Coca-Cola spent an additional \$200 million worldwide on advertising, television broadcast rights, merchandise, an amusement park, and hospitality suites for press, VIP guests, and athletes. The games generated over \$700 million in revenue and were exposed to an audience of five billion worldwide.⁴⁰ The difference in the figures is the difference between how vigorously the ICC/IOC and The Sundance Institute clamp down on the activities of ambush marketers.

Supporters of the Cricket World Cup and the Olympic Games pay almost one hundred times more in sponsorship fees than do supporters of the Sundance Film Festival. Sundance ambushers, although a nuisance to official presenters, might successfully argue that their activities enhance, support, and contribute positively to the overall success and media exposure of the event. Major sporting event ambush marketers, who impose and infringe upon the exclusivity and profit-making potential of multi-billion dollar companies, would find it difficult to make that same claim.

Conclusion

Having plagued major international sporting events for years, ambush marketing has become an undeniably effective means for getting a message across without paying millions of dollars in sponsorship fees. However, it's a practice seen in many circles as being parasitic, unethical, and immoral as it tends to undermine an event's integrity by affecting its ability to attract future sponsors. In an attempt to promote exclusive sponsorship and to protect the rights of commercial partners, event organizers and governing bodies have developed event regulations and lobbied governments for strict legislation to ensure that unwelcome competitors cannot associate with, or benefit from, their events nor reduce the benefits and value of official sponsorship.

Ambush marketing is not limited to sporting events and film festivals; it is found throughout the entertainment industry. When an entertainment event reaches a level of international significance that can attract multiple corporate sponsors at \$40-\$60 million each, the competitive marketing climate takes on a more serious tone leading to more desperate mea-

tures and fierce legal battles. Unfortunately, it is the fans and the spectators who get caught in the cross-fire.

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