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Ambush marketing - Pushing the boundaries or a legitimate sales tactic?

As a method of advertising that can push the boundaries of legitimacy, ambush marketing has for many years provoked widely varying views. Exclusive sponsors of major worldwide events have sought to restrict their competitors from ambushing those events with which they have no financial association.

This article looks at three different types of ambush marketing and examine how it is dealt with around the world. The three examples are ambush marketing by association, ambush marketing by intrusion and ambush marketing using the participants.

Ambush by association

Ambush marketing by association occurs when the 'ambusher' seeks to create an association – either direct or indirect – with a property or event. Extreme examples would be using an event logo without permission or without being an official sponsor, whereas more subtle examples can occur when the ambusher seeks to link its product to the event without actually referring to the event. Examples include:

European Football Championships 2012 - Kit Kat



Kit Kat (chocolate bars) ran a competition in 2012 around the European Football Championships which offered participants the chance to win 2012 Euros (and with the 'O' in Euro replaced by a football). It had no official link to the soccer championships

but clearly made that connection for the consumer.

Ambush by intrusion

Ambush marketing by intrusion usually involves a brand seeking to get exposure during an event either in the background of broadcast coverage outside the event or by a presence inside the event. Examples include:

World Cup 2010 - Bavaria Beer



The most famous example of this was probably the presence of the Bavaria Beer girls appearing at the Netherlands' first match at FIFA World Cup 2010. The dresses had been associated with an ad campaign in the Netherlands, although most of the publicity gained by Bavaria probably came from the decision by FIFA to have the ringleaders removed from the stadium and charged with breaches of the South African laws on ambush marketing.

Golf British Open 2009 - Hugo Boss boat



The British Open in 2009 was played on a links course, meaning each hole had a sea view. This Hugo Boss boat shadowed Tiger Woods and appeared all day in the shots

of Tiger Woods on American network TV cameras without having any official association with the event.

Oscar Pistorius Trial 2014



Ambush by intrusion does not necessarily need to be associated with an event in the traditional sense. In early 2014 the betting company Paddy Power was the subject of widespread complaints in the UK and Ireland when it ran a promotion associated with the ongoing murder trial of Oscar Pistorius in the week before the traditional 'Oscars' ceremony in Hollywood.

Ambush using participants

Finally clever advertisers often use the participant rather than the event itself to advertise their product. This has been an issue for many years, as advertisers who invested heavily in the event watched helplessly as the participants freely advertised a rival product. Famous examples date back at least as far as the 1992 Olympic Games.

Olympic Games 1996 - Linford Christie



At the 1996 Olympic Games, Linford Christie, the defending 100m champion, caused consternation for main event sponsor Reebok when he appeared

wearing Puma contact lenses during a press conference. There was a ban on athletes wearing rival logos, but uncertainty prevailed over whether this could be extended to contact lenses!

European Football Championships 2012 - Paddy Power/Nicklas Bendtner



Danish soccer player Nicklas Bendtner was fined €100,000 and banned for one game for displaying sponsored

underwear during a game against Portugal in the European Championships in 2012.

How does the law deal with this?

In most parts of the world there is a deficit between the law and the more subtle forms of ambush marketing. Many countries do not have specific legislation dealing with ambush marketing and instead try to rely on more traditional consumer protection laws. If the issue relates to a blatant ambush by unauthorised use of an event logo, then traditional intellectual property laws can often offer protection. However, in the modern advertising world traditional laws often fall short when faced with a clever campaign.

Most major sporting events now include requirements as part of the bidding process by host nations or cities. Generally there is a requirement that the host will implement specific laws for that event which will protect the event against ambush marketers. When London hosted the 2012 Olympic Games, specific legislation, The London Olympic Games and Paralympic Games Act 2006, was implemented some years in advance to protect the Olympic symbol and associated branding. Glasgow in Scotland hosted the Commonwealth Games in July 2014 and The Glasgow Commonwealth Games Act 2008 was implemented to prepare for it. Brazil implemented a General World Cup Law in advance of the soccer World Cup this year which specifically referred to and prohibited ambush marketing by association and ambush marketing by intrusion. Football seems to be a fertile ground for ambush marketing and Russia will host the Confederations Cup in 2017 and the World Cup in 2018 and has already implemented specific legislation dealing with the protection of sponsors from ambush marketing.

Other countries such as South Africa and New Zealand have legislation to deal with, among other things, ambush marketing of major events which they hope to host in the

future. Self-regulation within the industry is another way of protecting sponsor interests. In Ireland, one of the main sporting associations, the Gaelic Athletic Association, introduced its own rules dealing with the risk of ambush marketing from its participants.

European Union directives (as implemented throughout the EU member states) can also have an impact on the activities of ambush marketers. The Unfair Commercial Practices Directive 2005 lists 27 commercial practices which are automatically deemed unfair and thereby prohibited.

These include: (i) false claims by a trader that a product has been approved, endorsed or authorised by a public or private body; and (ii) false claims of direct or indirect sponsorship or approval. Under the Unfair Commercial Practices Directive 2005, moreover, rival brand owners can consider bringing a claim in certain countries. In Ireland, for example, the Directive was implemented to allow business rivals to make a complaint and not just consumers.

In supplement to specific legislation, many countries have self-regulatory advertising and marketing codes policed by Advertising Standards authorities, which usually restrict and police ambush marketing.

Conclusion

It would be unfair for this brief article simply to define ambush marketing as entirely negative. For advertisers, it can play an important role in enhancing their brand and in certain circumstances acts as proof of the mantra that 'there's no such thing as bad publicity'. Equally there is little doubt

that, from a sponsor and event holders' point of view, it can be financially damaging as sponsors are unlikely to be willing to pay large sums to sponsor an event which carries a risk of an 'ambush' by a rival. In the example above from the 1996 Olympic Games, Reebok had paid around US\$40m to sponsor the Games only to face various ambush marketing tactics from rivals. If events cannot attract large sponsorship, then the further argument is that the funds have to be raised elsewhere, perhaps through increased ticket prices or reduced prize money.

There can be no doubt, though, that in many cases the ambush provides amusement and talking points for the general public. Given the fact that an ambitious advertiser may generate some cheap publicity, then ambush marketing will continue to push the boundaries of legitimate advertising.

Image sources

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