

# Beyond the Ambush: Safeguarding Sponsorship Rights Through Intellectual Property Legislation in India

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## Abstract

In today's competitive advertising landscape, ambush marketing has emerged as a contentious strategy whereby companies associate themselves with high-profile events without formal sponsorship, potentially undermining the substantial investments made by official sponsors. This paper critically examines the growing challenge of ambush marketing in India's expanding event sector, highlighting the inadequacy of current intellectual property frameworks to address these sophisticated marketing tactics. Through qualitative analysis of secondary data, including case studies, scholarly publications, and international regulations, the research investigates how ambush marketing erodes sponsorship value and compromises event sustainability. The study reveals significant legislative gaps in India's intellectual property system, particularly evident in landmark cases such as ICC Development International Ltd. v. Arvee Enterprises. Drawing upon successful regulatory models from countries like Australia, New Zealand, and South Africa, this paper proposes tailored legislative solutions for the Indian context. The findings suggest that without specific anti-ambush marketing legislation, India risks diminishing its attractiveness as a destination for international events, potentially hampering economic growth and tourism. This paper contributes to the ongoing dialogue on balancing commercial interests with ethical advertising practices whilst providing practical recommendations for policymakers, event organisers and brand owners seeking to navigate this complex terrain.

## INTRODUCTION

In contemporary advertising, ambushing marketing has become a powerful and controversial instrument. Companies want to use the public awareness of big events to advertise their brand and products by profiting on them without formally sponsoring them, thereby sometimes leading customers to presume an official relationship. Although not absolutely illegal in many countries, this practice raises ethical and financial questions since it compromises the investments made by official sponsors paying large amounts for exclusive rights. Usually, the relationship is established by creative advertising that could gently suggest sponsorship without stating it clearly. This problem has grown more important in recent years as India hosts more and more foreign events such as the Indian Premier League and the Commonwealth Games. There isn't any specific legislation in India right now that addresses ambush marketing, which lets companies profit off the popularity of these events free from legal repercussions. Based on worldwide models and addressing the particular requirements of India's growing event sector, this paper investigates the need of focused regulation to solve ambush marketing.

### **1.1 STATEMENT OF THE PROBLEM**

The main issue with ambush marketing is its propensity to weaken the value of official sponsorships, therefore perhaps reducing the number of firms ready to make investments in these well-publicized events. Expected to improve exposure and consumer loyalty, sponsors commit significant funds to get exclusive branding rights. Ambush marketing compromises this structure by letting non-sponsoring brands get same exposure without paying sponsorship expenses, therefore unfair to legitimate sponsors. By confusing brand affiliations, this behaviour not only disturbs the sponsorship ecosystem but also might undermine customer confidence. Moreover, in India impacted parties have little recourse in the lack of a particular legislative framework to handle ambush marketing. The intellectual property (IP) rules and contract enforcement systems at hand do not adequately address the subdued strategies used in ambush marketing. As India seeks to draw more big-scale events, this legislative void has let ambush marketing to flourish unrestrained, which is quite alarming. Therefore, the study reveals the need of regulation especially aimed at ambush marketing to guard event planners and sponsors against illegal brand linkages.

### **1.2 Objectives of the Study**

This study seeks to investigate and assess how ambush marketing affects event sponsorship, review present legislation in India and other nations, and suggest appropriate remedies to help to solve the problem. The goals specifically are to evaluate how ambush marketing influences official sponsors, examine the restrictions of India's intellectual property system, and find foreign legislative frameworks India would find useful. The study looks for possible areas for change in Indian legislation by looking at case studies from other countries with anti-ambush marketing rules. Another goal is to suggest doable steps India might take to clarify acceptable advertising policies at big events, therefore lowering the possible influence of ambush marketing and promoting a more equitable sponsorship scene. In the end, this study seeks to promote India's expanding event sector by establishing a safer and more enticing surroundings for official sponsors.

### **1.3 Research Hypothesis**

The theory behind this research is that the absence of particular regulation tackling ambush marketing in India has let this practice grow, therefore affecting sponsors' rights and reducing the appeal of event sponsorships. This scenario results from uncertainty in India's present intellectual property rules, which are not designed to address strategies for ambush marketing. Companies can link their brands with major events without paying legal consequences without a committed legal framework. This independence produces a sponsorship environment in which official sponsors may be less eager to commit knowing that non-sponsors might establish brand associations free from paying sponsorship costs. Targeting laws could help to reduce ambush marketing, therefore safeguarding sponsors' rights and guaranteeing a more fair economic environment.

### **1.4 Research Questions**

Several research questions meant to define the nature of ambush marketing, its effects, and possible legislative remedies direct the study. First, which are the main forms of ambush marketing, and how might these strategies affect the apparent worth of event sponsorships? Second, what have been the consequences and how have other nations with significant event sectors—like Australia and New Zealand—legislated against ambush marketing? Third, is India's present intellectual property system sufficient to handle the problems presented by ambush marketing? At last, what legislative actions India could take to prevent ambush marketing and defend the rights of event sponsors? These questions seek to build a thorough framework for comprehending and handling the problem of ambush marketing in India.

## 1.5 Review of Literature

1. "Ambush Marketing – Need For Legislation In India" From The Journal Of Intellectual Property Rights.<sup>1</sup>

The paper looks at the legal difficulties ambush marketing presents in India presents. Under the tactic known as "ambush marketing," businesses subtly link their brand to an event without official sponsorship so they may be seen without paying sponsorship charges. The paper examines trademark rules in India and outside instances including National Hockey League v. Pepsi-Cola Ltd., which underline the legal difficulties of ambush marketing. The study highlights in the Indian setting notable shortcomings in the protection provided by present intellectual property rules. The Indian Trademarks Act of 1999 has little power to combat strategies of indirect ambush marketing. For instance, the court decided against the International Cricket Council's claim in ICC Development International Ltd. v. Arvee Enterprises citing no direct usage of its emblem. Nonetheless, copyright rules provide some protection as, in circumstances where event logos were used without permission, copyright infringement results.

2. "Ambush Marketing," From International Journal Of Law Management & Humanities<sup>2</sup>

Emphasizing its philosophical, legal, ethical, and strategic aspects, this paper offers a thorough study of ambush marketing. Often by linking themselves with themes or images that suggest an affiliation, ambushed marketing is defined as a technique wherein businesses profit on the attention of major events without actual sponsorship. The paper separates more subdued indirect strategies from overt linkages made by direct ambush techniques. By means of these concepts, the study provides a framework for comprehending the special ways in which companies make use of events without incurring the exorbitant expenses of sponsorship charges. Regarding the legal side, the article investigates several foreign countries and their policies on control of ambush marketing. It looks at historic situations when businesses had legal issues to show the uneven application of laws throughout nations. For international events specifically, this lack of legal consistency is somewhat troublesome. The study contends that holes in anti-ambush marketing rules seriously affect event planners and sponsors, therefore compromising sponsorship exclusivity. with ethical issues, this topic is also covered since ambush marketing frequently begs issues with fairness and honesty in the corporate operations of sponsors and non-sponsors.

3. "The Evolving Sophistication Of Ambush Marketing: A Typology Of Strategies," From Thunderbird International Business Review<sup>3</sup>

The research proposes a typology based on the evolution of ambush marketing strategies over time and examines the several approaches applied. The writers look at how ambush marketing—which lets businesses link with events without official sponsorship—has evolved and grown even more sophisticated. They classify ambush marketing techniques into numerous categories, looking at the ways companies link themselves with high-profile events, get awareness, and change customer perception without outright violating laws. The typology comprises more overt versions, in which companies create campaigns expressly targeting events in indirect ways, and covert strategies include media coverage or event-adjacent activities. Emphasizing the need of creative protective measures as attacked marketing strategies change, this study also investigates the effects for official sponsors, event planners, and legislators. The study

<sup>1</sup> Seth, Rukmani, "Ambush Marketing – Need for Legislation in India," *Journal of Intellectual Property Rights*, Vol. 15, November 2010, p. 455.

<sup>2</sup><https://www.ijlmh.com/wp-content/uploads/Ambush-Marketing.pdf>.

<sup>3</sup> Chadwick, S., and Burton, N., "The Evolving Sophistication of Ambush Marketing: A Typology of Strategies," *Thunderbird International Business Review*, Vol. 53, No. 6, 2011, pp. 709-719.

offers a framework for appreciating how ambush marketing affects sponsorship expenditures and brand competitiveness, therefore shedding light on both the ethical and legal issues raised by it.

### **1.6 Research Methodology**

Focusing on the examination of secondary data sources like case laws, scholarly publications, and international regulations on ambush marketing, this study uses a qualitative research technique. Examining how other countries have handled ambush marketing helps one to find the legislative weaknesses in India's intellectual property system. This strategy enables the assessment of present legal protections in India as well as the discovery of legislative precedents possibly guiding Indian legislators. Inspired by the achievements and constraints of anti-ambush marketing laws abroad, the paper offers ideas specifically for India's situation. Since there is not much case law on ambush marketing in India, this paper bases legislative proposals on theoretical analysis and international cases.

### **1.7 Rationale of the Study**

The increasing sophistication and prevalence of ambush marketing strategies in India, especially during high-profile athletic and cultural events, serves as the justification for this study. Major events' financial sustainability is seriously threatened by ambush marketing in the absence of legislative action since official sponsors can be hesitant to contribute if they are unable to get exclusive brand association rights. Attracting sponsorship is essential to the success and sustainability of these events for a rising nation like India, which is establishing itself as a major destination for international events. In addition to providing funding for event logistics, sponsorships boost India's reputation abroad, draw tourists, and create jobs, all of which support overall economic growth. In order to ensure that sponsors get a fair return on their investment and that India remains a desirable location for international events, this study attempts to offer insights that can help legislators develop laws that discourage ambush marketing.

### **1.8 Scope of the Study**

The potential for ambush marketing laws in India is the main subject of this study, which also looks at global best practices and the unique requirements of the Indian event sector. The scope of the study includes an examination of the legislation of nations including Australia, South Africa, and New Zealand that have strong anti-ambush marketing frameworks, as well as an analysis of ambush marketing strategies and their effects on intellectual property rights. However, the study only looks at ambush marketing strategies that have the most effects on formal sponsorship rights, not all types of ambush marketing. Furthermore, although references to international case studies are included, the analysis is modified to take into account India's particular legal and cultural setting.

### **1.9 Limitations of the Study**

Because there is a dearth of significant case law on ambush marketing in India, this study's main drawback is its dependence on secondary data. The study makes extensive use of theoretical frameworks and international precedents, which could not adequately represent the real-world difficulties associated with putting anti-ambush marketing laws into effect in India. Furthermore, the suggestions are predicated on observations from nations with well-established event sectors, which might have distinct legal specifications and customer demands. Although the comparative research offers valuable insights, it should be emphasized that foreign examples might need to be modified to fit India's unique legal and cultural context. Primary data gathering, such speaking with industry stakeholders, could help future studies by adding context and honing legislative proposals.

## Ambush Marketing

In response to increasing competition and media fragmentation, contemporary firms are seeking alternative media to distinguish their products and services. Sponsorships exemplify this medium. Companies are finding sponsorships increasingly costly; hence, they are exploring alternative strategies that allow them to minimize sponsorship expenditures while simultaneously deriving value from the event. One of these tactics is referred to as ambush marketing. Ambush marketing can be defined as a strategy wherein advertisers associate themselves with a specific event, hence leveraging that event without incurring sponsorship expenses. From a theoretical perspective, a corporation can acquire the goodwill and popularity associated with an event without incurring any costs related to the event itself.<sup>4</sup> The consent of the interested parties is disregarded. The English term "ambush" derives from the French verb "embuscher." Its definition is "to situate within a forest." Jerry Welsh was the individual who introduced the term. Another risk associated with ambush marketing is that the official sponsor, having invested a substantial sum in the event, may lose its recognition, so diminishing the intended effectiveness.<sup>5</sup> The essay examines the various issues related to ambush marketing and offers comprehensive discussion of these challenges. The investigation will primarily focus on the concepts, their classifications, their present relevance in the marketing landscape, and the associated threats that currently threaten them. Additionally, focus will be placed on the contemporary approaches that companies are employing in response to ambush marketing, along with the ramifications these strategies hold for both the sponsor and the target audience. McCarthy defines ambush marketing as a marketing strategy employed by a corporation that is not an official event sponsor but yet disseminates advertisements using the event to capture consumer attention.<sup>6</sup> Ambush marketing occurs when a firm establishes a connection with a specific event without the requisite authorization or approval, theoretically representing an effort to leverage the goodwill, reputation, and popularity of that event. The inaugural occurrence of ambush marketing transpired in 1984 during the Olympic Games in Los Angeles. Fuji served as the official sponsor of the games, although Kodak sponsored the ABC coverage of the event and the official film of the United States track team, leading to Kodak's competitive maneuver against Fuji.<sup>7</sup>

## The History Of Marketing Through Ambush

The expansion of the sponsorship was mostly produced as a consequence of the following factors:

1. In order to raise the level of public recognition and, if at all feasible, to make it possible for some sponsors to make direct investments.
2. They made the decision to utilize a more complex approach in the development of the packages in order to achieve larger returns from their events.

The official sponsors of the event generally obtain exclusive rights to promote their brand via advertising opportunities, including the placement of brand banners during the event, product promotion through designated channels such as television, radio, and the internet, serving as the official provider of a team's uniforms or footwear, and offering VIP tickets for sale. This is executed in place of remitting sponsorship

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<sup>4</sup>Townley, Stephen, Dan Harrington, and Nicholas Couchman. "The Legal and Practical Prevention of Ambush Marketing in Sport." *Psychology and Marketing*, vol. 15, no. 4, 1998, pp. 333-348..

<sup>5</sup>Gradauskaita, Jurga. *Law Journal*, vol. 8, no. 1, 2010.

<sup>6</sup> <http://economictimes.indiatimes.com/news/news-by-industry/services/advertising/Ambush-marketing-HULs-last-minute-surprise-foxes-PG/w/6230194.cms>

<sup>7</sup>Sandler, D. M., and D. Shani. "Olympic Sponsorship vs 'Ambush' Marketing: Who Gets the Gold?" *Journal of Advertising Research*, vol. 29, no. 4, 1989, pp. 9, 11..



payments.<sup>8</sup> Here are contemporary instances of ambush marketing: Kodak served as the official sponsor for the television broadcasts of the 1984 Olympics, but Fuji was the official sponsor of the event itself. Kodak sponsored the United States track and field squad. In exchange for the favor, Fuji broadcast the 1988 Olympic Games in Seoul, which Kodak had sponsored as the event's official provider. During the 1992 Olympic Games, Reebok served as the official sponsor; nevertheless, Nike conducted news conferences via Ambush Marketing to promote its brand.<sup>9</sup>

In what is widely considered to be the most successful ambush marketing campaign in history, Michael Jordan, who is sponsored by Nike Air, proudly displays the gold medal he won in basketball while simultaneously concealing the Reebok insignia on his uniform. The Winter Olympics were held in Lillehammer, Norway, in 1994.<sup>10</sup> In response to Visa's assertions that American Express is not recognized at the Olympic Village, American Express launched an advertising campaign that effectively guaranteed that Americans did not need to worry about obtaining "visas" in order to travel to Norway. The issue of Visa and American Express that was published in 1994 was a continuation of a piece that had been published in 1992 and highlighted the exact same topic.

In the year 1996, Burger King was the official sponsor of the United Kingdom's national Olympic team, and McDonald's was the official sponsor of the Olympic Games. "The Spirit of Australia" is the trademark of Qantas Airlines, and it sounds eerily similar to the motto of the diversions, which is "Offer the Spirit."<sup>11</sup> The 1999 Sydney Olympics were held in Australia. In response to the sound of authority sponsor Ansett Air weakly smashing its clenched hands into the conference room table, Qantas asserts that the event is nothing more than a fortunate coincidence.

Nike secures victory at the Boston Marathon for the second time in 2002. Runners sponsored by Adidas receive spray-painted "swooshes" commemorating the race day upon exiting the course. Nevertheless, the "swooshes" do not signify the actual race itself. In the 2007 International Cricket Council World Cup, Sachin Tendulkar was observed endorsing products of Reliance Communications, a telecommunications business. An official from Hutch stated that players participating in the World Cup are prohibited from endorsing the organizations supporting the event. The significant event was sponsored by Hutch, a multinational corporation. The Financial Times reports that Samsung is investing over \$100 million in marketing to support its Olympics sponsorship. About two-thirds of that capital is being allocated to the United Kingdom. This is a 20% increase from the expenditure incurred by Samsung during the 2008 Beijing Olympics.<sup>12</sup> The Vancouver Organizing Committee for the Olympic and Paralympic Winter Games in 2010 announced that it has acquired over \$720 million in sponsorship fees for the 2010 Winter Olympics.

The London Olympic Games and Paralympics Games Act 2006 has regulations aimed at curtailing ambush advertising during the 2012 Summer Olympics. The London Organizing Committee of the Olympic and Paralympic Games (LOCOG) has declared its intention to combat the emerging phenomenon of internet keyword ambush marketing.<sup>13</sup> A study by the Global Language Monitor (GLM) reveals that certain unaffiliated corporations, such as Subway, Red Bull, and Sony, rank highly on the Brand Affiliation Index

<sup>8</sup><https://www.ijlmh.com/wp-content/uploads/Ambush-Marketing.pdf>

<sup>9</sup><https://old.rhimrj.co.in/wp-content/uploads/2020/09/RHIMRJ20150204002.pdf>

<sup>10</sup><https://www.taylorfrancis.com/books/mono/10.4324/9781351667630/advanced-theory-practice-sport-marketing-jason-hunter-eric-schwarz>

<sup>11</sup> <https://www.smithsonianmag.com/history/ten-famous-intellectual-property-disputes-18521880/>

<sup>12</sup> <https://classic.austlii.edu.au/au/journals/MurUEJL/2001/10.html>

<sup>13</sup> [http://news.bbc.co.uk/2/hi/uk\\_news/politics/6453575.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/6453575.stm)

(BAI) established by GLM. The Brand Awareness Index (BAI) quantifies the proximity of public perception regarding London 2012 to a certain brand.<sup>14</sup> In 2015, during the Cricket World Cup, New Zealand was apparently ready to implement legislation to mitigate ambush marketing, according to Trevor Mallard, the former Minister of Sports.

### **Impact Of Ambush Marketing**

In this day and age, there has been a significant increase in the use of ambush marketing, and there has been a great deal. There are a number of companies that have made indications regarding it, but the evidence that it actually exists is extremely limited.<sup>15</sup> A significant amount of harm has been caused to the rights of the sponsor as a consequence of the occurrence of these activities those responsible for organizing the event

### **Impact On Sponsorship**

The extent of sponsorship an event obtains is crucial to its overall success. It generates a substantial supplementary income, provides technical assistance to event organizers, and promotes the event through several methods to attract attendees. It benefits not just the sponsors but also several other individuals, such as event organizers and the general public. The basic objective of sponsorship is to enhance visibility and capture public interest in a specific brand or event to generate profit. Sponsorship costs are escalating in the contemporary landscape; the company is expending considerable funds to obtain sponsorship. When firms invest a substantial sum in sponsorship, they predominantly demand a return on their investment and exclusive rights.<sup>16</sup> Ambush marketing undermines product exclusivity and leads to substantial losses for the firm. The event organizers have lost sponsorship due to ambush marketing executed by unofficial sponsors. Sponsorship represents a method through which a firm can create significant cash; yet, this endeavour might prove challenging. In recent years, multiple occurrences of ambush marketing have been observed. One incident pertains to Adidas, which, soon after the 1988 Football World Cup, sought to maintain its status as the official sponsor of the 2002 World Cup. Nike, by employing ambush marketing, undermined Adidas' exclusive sponsorship, leading to substantial losses for the latter.<sup>17</sup>

### **Impact On Sponsors**

The sponsors are able to establish a direct connection with the customers through the means of sponsorship. It is necessary to present a valid identity in order to determine who the true sponsor of the event is. Consumers have a more difficult time recognizing the official sponsors of an event when ambush marketing is included. This is true regardless of the type of event. There is a great deal of uncertainty that is caused in the minds of the Consequently, the official sponsors of the event suffer a significant loss as a consequence of the consumers.

### **Impact On Event Organizers**

At the point in time when the Ambushers will join the market, the exclusive right of the sponsor will extend beyond its current boundaries. If the ambushers appear in advertising, the amount of money that a sponsor can win will reduce to more than ten million dollars, despite the fact that sponsorship can be exclusive. This may cause sponsors to question whether or not they should invest resources into sponsoring, which will ultimately have an effect on the amount of money that any event brings in, and to

<sup>14</sup> *MARKETING BULLETIN*. (n.d.). [https://marketing-bulletin.massey.ac.nz/marketing\\_bulletin\\_articles.html](https://marketing-bulletin.massey.ac.nz/marketing_bulletin_articles.html)

<sup>15</sup> Gardiner, Simon. *Sports Law*. 2nd ed., Cavendish Publishing, 2001, pp. 509-11..

<sup>16</sup> Arul George Scaria, *Ambush Marketing: Game Within a Game* (Oxford University Press 2008)

<sup>17</sup> [http://blogs.sun.ac.za/plawfiles201208AmbushMarketing-Virtue orVice.pdf](http://blogs.sun.ac.za/plawfiles201208AmbushMarketing-Virtue%20or%20Vice.pdf)

a large extent, the event's reputation may also suffer as a result. During the 2010 FIFA World Cup, Nike, which had not been an official sponsor prior to the event, created a three-minute advertisement featuring a number of heroes, including Ronaldo, Drogba, Cannavaro, Rooney, and Ribery.<sup>18</sup> The promo was broadcast on television and YouTube, and around 14 million people saw it. This advertisement did not include any images or signs that were associated with the event; but, due to the fact that it was of the same nature, it was able to attract individuals, which influenced the exclusive right of the event's actual sponsor. The official sponsor would have been prompted to consider additional sponsorship opportunities for the FIFA World Cup as a result of this.

### **Impact On Consumers**

Companies engaging in ambush marketing operations typically aim to develop their organizational structure. Consumers are encouraged to identify a favorable image with a brand, leading them to reference and connect with it, ultimately transferring the positive perception of the event to the brand. The method employed by the assailants is the picture transfer technology process. This method is employed to engage target demographics with appealing sports-themed ambushes.

### **Impact On Ipr Right Holder**

The ambusher who engages in ambush marketing not only violates the intellectual property rights of the owners (sponsors and event organizers) while also infringing against intellectual property rights for the purpose of maximizing acquired goodwill through an event setting. The organizers of the event resort to using the registered emblems of the event, which frequently results in significant financial losses.

### **Need Of Legislation To Prevent Ambush Marketing**

Without a doubt, ambush marketing is an immoral business strategy<sup>19</sup>, and past twenty years have illustrated the necessity for more stringent intellectual property protections than those now permitted by the existing framework. It is unequivocal that both assertions are accurate. While it can be argued that corporations have the intrinsic right to advertise during international events that inspire national pride, it is unjust for a corporation that invests millions to obtain exclusive advertising rights through contracts with event organizers to receive the same benefits as those corporations that contribute nothing financially. Imposing a fee for the acquisition of a right of association is justifiable, particularly when the ensuing benefits greatly exceed the initial cost<sup>20</sup> Event organizers are increasingly concerned that ambush marketing jeopardizes their ability to secure funding, as it undermines their capacity to keep premier sponsors. Ambush marketing significantly affects event organizers and poses a considerable danger to their financial interests.<sup>21</sup> The sponsorship's expenses of the London Olympics, set for 2012, are projected to reach two billion pounds, representing a substantial fraction of the necessary revenues for event organization. Given the exorbitant costs involved, ambush marketing presents a considerable threat of forfeiting sponsorship, leading to a substantial decrease in the budget.<sup>22</sup>

### **Status Of Current Intellectual Property Regime**

In the course of engaging in ambush marketing methods, ambush marketers may, either directly or indire-

<sup>18</sup> Trade Practices Amendment Act No 26 of 2001, <http://www.info.gov.za/view/DownloadFileAction?id=86468>

<sup>19</sup> <http://www.bonham.com/inside/glossary.html>.

<sup>20</sup> <https://www.semanticscholar.org/paper/Sponsorship%3A-from-management-ego-trip-to-marketing-Crimmins-Horn/62a2a43cdb1d3a6e476bd8976fb037acabea60b3>.

<sup>21</sup> <https://old.rhimrj.co.in/wp-content/uploads/2020/09/RHIMRJ20150204002.com>

<sup>22</sup> [http://news.bbc.co.uk/2/hi/uk\\_news/politics/6453575.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/6453575.stm)



ctly, violate a variety of intellectual property rights that are linked with the event. Because of this, ambush marketing has garnered a significant amount of interest from academics and attorneys who work in the field of intellectual property rights.<sup>23</sup> For the purpose of preventing ambush marketing, the event organizers have typically adopted a number of significant legal steps, which will be briefly discussed in this next part. Additionally, we will examine some of the significant limitations that are associated with the typical legal actions that are taken against ambush marketing. Taking legal action for trademark infringement is one of the most essential strategies that can be taken against ambush marketing. Prior to the event, the majority of the event organizers will make an effort to register the different logos and marks that are associated with the event at various national trademark registers. They will make an effort to register the marks in a variety of classes in order to cover a broad spectrum of products and services for registration. As an illustration, prior to the 2018 FIFA World Cup, FIFA might make an effort to register trademarks such as "FIFA World Cup 2018," "World Cup 2018," and "2018 Games," amongst others, in several national registries for various categories of products and services.<sup>24</sup> It is totally dependent on the national trademark rules as to whether or not those applications for registration are successful, and the procedures that are followed by various trademark registries might vary quite a little in this regard. In the case that an ambush marketer makes use of the registered marks of the event while engaging in ambush marketing, the event organizer has the right to launch a trademark infringement action against the ambush marketer. When it comes to analysing trademark infringement, various nations use strategies that are distinct from one another. Factors such as the identity or resemblance of the trade marks, the identity or similarity of products and services, and the possibility of confusion resulting from the claimed infringing use of the mark are typically taken into consideration when determining whether or not a trademark has been infringed upon. The action of trademark infringement occurred. Despite this, it is important to remember that, at least in some ambush marketing scenarios, a trademark infringement lawsuit might be advantageous. For example, if the Indian Premier League has successfully registered the term "IPL" as a trademark for a specific category of goods and services, and a company uses that mark on the same category of goods or services for which the IPL has obtained registration, the IPL may be able to sue the company on the grounds of trademark infringement. The possibility exists that all marks associated with the event may be granted the supplementary protection of a "well-known mark." The concept of "well-known marks" has been extensively examined in one of the other modules of this course. One of the most substantial advantages of being recognized as a "well-known mark" in a specific country is that the scope of protection in that country will be expanded to encompass products and services that are not comparable to the one being protected. For example, the Indian Premier League will have the ability to prohibit the use of its mark on commodities or services that are not included in the classes in which it has already obtained registration if it is feasible to establish "IPL" as a "well-known mark" in India. In other words, the protection that well-known marks receive is substantially more extensive than that of smaller marks. Nevertheless, it is imperative to have a thorough understanding of the substantial constraints that are linked to the use of trademark infringement actions to combat ambush marketing. The primary obstacle is that, in the majority of cases, ambush marketers will not utilize or display the event's registered trademarks. This is a significant issue. For example, American Express utilized the slogan "And remember, to visit Spain, you don't need a visa" in its advertising campaign during the Olympic Games in Barcelona, despite not being a sponsor. In this context, it was clear that the slogan in issue did not incorporate any of the

<sup>23</sup> Bainbridge David, Intellectual Property, 4th edn (Financial times, Pitman Publishing, London), 1999, p. 521.

<sup>24</sup><https://old.rhimrj.co.in/wp-content/uploads/2020/09/RHIMR20150204002.pdf>.

event's associated marks, which rendered a trademark infringement complaint largely unfavourable.<sup>25</sup> For example, trademark infringement lawsuits would offer minimal or no support in addressing a variety of common ambush marketing strategies, such as the purchase of commercial airtime during events, the negotiation of independent agreements with athletes and teams, the organization of parties and other gatherings in host cities prior to, during, and after the principal event, the acquisition of advertising space in and around the event venue, and the insistence that individuals wear apparel featuring the ambusher's mark and bring products, signage, or accessories emblazoned with the ambusher's mark to the event location. The scope of trademark infringement litigation available is reduced as a result of the difficulty in demonstrating the "likelihood of confusion" in the majority of ambush marketing cases. Lastly, it is imperative to recognize that numerous national trademark registries may consider event names such as "World Cup" to be generic terms, which would render it impossible to obtain trademark registration for them. In "ICC Development (International) Ltd. v. Arvee Enterprises and Anrvee", the Delhi High Court determined that the term "World Cup" constitutes a dictionary word, defined as "a tournament or event in which multiple nations participate."<sup>26</sup> The court additionally determined that the phrase lacks the capacity to bestow any exclusive rights upon event organizers. The action for copyright infringement remains a significant traditional remedy that is still employed. A diverse array of things related to an event is safeguarded by copyright. This includes the logo(s) created by the event organizers, together with various documents related to the event, such as those detailing information about the event, attendees, venue, and schedule, among others. An essential aspect of copyright, as you may have previously heard from copyright law studies, is that registration of a work is not necessary to secure copyright protection. While the examination of copyright infringement cases is not included in this module, it is essential to acknowledge that legal action for copyright infringement might be advantageous in mitigating some instances of ambush marketing.<sup>27</sup> Some logos linked to events may be protected by copyright law as artistic works, and using these logos without authorization may lead to copyright infringement. If the ambush marketer utilizes logos linked to an event, a copyright infringement lawsuit may be initiated. It is crucial to recognize the limitations imposed on copyright infringement actions concerning ambush marketing techniques. Ambush marketing may fail in copyright infringement claims for several reasons. These factors resemble those that undermine trademark infringement prosecutions. As previously stated, most ambush marketers refrain from utilizing or displaying logos or other copyrighted items directly associated with the event. Moreover, it is highly difficult to incorporate numerous ambush marketing techniques within the confines of a copyright infringement complaint. The previously discussed advertising by American Express exemplifies the potential application of limitations on copyright infringement actions.<sup>28</sup> If American Express uses the tagline "And remember, to visit Spain, you don't need a visa" during the Olympic Games in Barcelona, the corporation will not breach any copyrights, as it will not infringe upon any copyrighted materials owned by the event organizer.<sup>29</sup> Like trademark infringement allegations, copyright infringement cases will generally offer limited assistance against prevalent ambush

<sup>25</sup> [http://www.apaaonline.org/pdf/APAA\\_55th\\_council\\_meeting/India\\_Anti-Counterfeiting\\_Group.pdf](http://www.apaaonline.org/pdf/APAA_55th_council_meeting/India_Anti-Counterfeiting_Group.pdf)

<sup>26</sup> <https://indiancaselaw.in/icc-development-international-ltd-v-arvee-enterprises-and-anr/>

<sup>27</sup> <https://indiancaselaw.in/icc-development-international-ltd-v-arvee-enterprises-and-anr/>

<sup>28</sup> Seth, R., †. (2010). Ambush Marketing – Need for Legislation in India. In *Journal of Intellectual Property Rights: Vol. Vol 15* (p. pp 455-463). <https://docs.manupatra.in/newslines/articles/Upload/2D2FC7AC-D89E-485D-9E76AA9CE99AF.pdf>

<sup>29</sup> [https://padletuploads.blob.core.windows.net/prod/237740022/b457839988b73fa10ae0bd4e5d33edf9/Ambush\\_Marketing.pdf](https://padletuploads.blob.core.windows.net/prod/237740022/b457839988b73fa10ae0bd4e5d33edf9/Ambush_Marketing.pdf)

marketing tactics. These practices include purchasing commercial airtime during event broadcasts, forming independent contracts with athletes and teams, organizing parties and events in host cities before, during, and after the main event, obtaining advertising spaces in and around the venue, persuading individuals to wear apparel displaying the ambusher's logo, or coordinating the distribution of products, signage, or accessories marked with the ambusher's emblem to attendees.

A conventional legal strategy sometimes employed to counter ambush marketing is the action for passing off, a remedy grounded in common law. An action of passing off allows trader "A" to prohibit competitor B from misrepresenting their goods as those of "A". This is the clearest elucidation of what an action for passing off entails. Commonly known as the "classical trinity," it consists of three essential components for a passing off action. The elements include reputation or goodwill, misrepresentation, and harm resulting from such misrepresentation.<sup>30</sup> Although the essential elements of passing off actions have been thoroughly examined in another module of this course, it may be advantageous to ascertain the ease of establishing these elements in the context of different forms of ambush marketing. Goodwill is a proprietary legal right associated with each organization, often seen as the appealing element that attracts customers.<sup>31</sup> This is knowledge that one may have previously acquired from the module dedicated to passing off actions. In the context of significant events like the Olympics or the FIFA World Cup, it may not be very challenging to exhibit goodwill. To establish the second element of deception, it is imperative to show that the defendant, by acts or statements, may have conveyed the impression that the defendant's goods or services originate from or are economically associated with the plaintiff. Demonstrating this within the framework of ambush marketing is notably difficult. The challenge in establishing the third component of damage due to such deception parallels the challenges in evidencing any other aspect. A tangible and credible likelihood of harm is sufficient to establish that damage ensued from misrepresentation. This may still present significant challenges due to the numerous sorts of ambush marketing scenarios. This is a significant case that clearly illustrates the limitations of passing off actions in relation to ambush marketing. The case at hand is "ICC Development (International) Ltd. v. Arvee Enterprises and Anr." The primary defendant in this litigation was an authorized reseller of the consumer electronics firm Philips. Additional defendants comprised other individuals. A number of advertisements were developed by the responders prior to the 2003 Cricket World Cup. These advertising had slogans like "Philips: Celebrate Diwali, Attend the World Cup" and "Purchase a Philips Audio System, Win a Ticket to the World Cup." Furthermore, they employed a visual representation of a ticket that displayed a creative seat and gate number inscribed with "Cricket World Cup 2003." The defendants lacked the jurisdiction to provide tickets to the plaintiff, as they were not official sponsors of the event. The plaintiff contended in court that the defendants' utilization of those terms and visual representation amounted to ambush marketing and misrepresentation.<sup>32</sup>

The Court stated that the primary question that needed to be considered was whether or not a sufficient number of customers of the defendant's goods are unmistakably likely to be confused about the source of the defendant's goods or to infer that the defendants have some relationship with the official sponsors of the event. The court made the observation that the defendants have excluded the use of the plaintiff's mascot, Dazzler, as well as the plaintiff's emblem from any of their commercials or promotional

<sup>30</sup> <https://casetext.com/case/national-collegiate-athletic-v-coors-brewing-company>

<sup>31</sup> <https://www.schwimmerlegal.com/2004/12/ambush-marketing-of-days-gone-by-official-sponsor-v-official-partner-at-the-94-world-cup.html>

<sup>32</sup> <https://link.springer.com/article/10.1057/abm.2008.3>.

campaigns. The only thing that they had done was put a pictorial depiction of a ticket that had an imaginative seat and gate number that said "Cricket World Cup 2003." This was executed to capture the interest of the consumer audience regarding the Event. The court determined that the plaintiff failed to present adequate evidence to establish a reasonable likelihood that the defendants are oblivious to their status as either licensees or sponsors of the event. From the court's perspective, the phrases merely indicated that purchasers of the defendants' products had the chance to win a ticket and travel package to attend the World Cup competition. The court concluded that the essential criteria for a passing off action were not satisfied in this case. As an additional point of interest, the Court took note of the fact that the term "ambush marketing" is a word that is utilized by marketing professionals and is distinct from an action for passing off.<sup>33</sup> The court has indicated that a component of explicit or implicit dishonesty exists in a passing off case, whereas ambush marketing is characterized as the opportunistic commercial exploitation of an event with the aim of deriving profit from it. The ambush marketer does not intend to suggest any connection between the event and the marketing strategy; instead, the goal is to enhance the visibility of their brand or symbol to event attendees without obtaining permission from the event organizer. The judge and the court determined that there was no proof of fraud, and that the defendant's acts were neither unlawful nor contrary to the public interest. The court has determined that an advertising campaign lacking the plaintiff's name or mark, which gives tickets to an event as prizes, cannot be deemed unlawful.<sup>34</sup> Furthermore, the court has stated that the passing off action is not relevant in situations like these. When it comes to combating ambush marketing, even the passing off action has a very restricted area of application, as the case law that was discussed before demonstrates. Because of this, the event organizers and sponsors have been compelled to look for more creative legal methods to combat ambush marketing.

## Conclusion

Ambush marketing is a contentious issue that is rarely challenged but is a source of controversy. There is a strong temptation for owners of brands to engage in ambush marketing because it is a relatively inexpensive method of drawing customers to their products. On the other hand, the owners of brands put the viability of major sporting events in jeopardy by involving in ambush marketing. There is no doubt that there is necessity for enacting legislation to restrict the practice of ambush marketing is warranted by this, in addition to the numerous other reasons that have been highlighted in the essay. If ambush marketers are permitted to continue without any restrictions, there will be very little incentive for official sponsors to pay the enormous sponsorship payments that are required for these events to take place. However, ambush marketing is not merely a marketing phrase or a commercial irritation; it is not merely a marketing strategy. For the purpose of enabling parties to take the necessary legal action against those who commit the conduct, it is necessary for it to be recognized in the law. There have been multiple instances of ambush marketing in India as well, particularly during the Indian Premier League in cricket and prior to the beginning of the Commonwealth Games in New Delhi. These instances have occurred in both of these contexts.

Without a ruling from the government or the judiciary, ambush marketing will persist and the frequency of incidents will only escalate. The Indian judiciary has demonstrated a willingness to punish or, at the very least, limit those who engage in this behaviour, which is positive. This is demonstrated by a Delhi

<sup>33</sup> Barnes, D. W. (2007). Misappropriation of trademark. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1010172>

<sup>34</sup> <https://nopr.niscpr.res.in/bitstream/123456789/10688/1/JIPR%2015%286%29%20455-463.pdf>

High Court ruling.<sup>35</sup> Furthermore, a suggestion for draft law was never actualized. These might be seen as proactive measures implemented by both the executive and judicial branches to address ambush marketing that infringes upon intellectual property rights. The ethicality of ambush marketing as a commercial activity remains contentious, with opinions divided on whether it constitutes a legitimate corporate strategy. In the absence of legislative regulations or precedents, ethical considerations often emerge prominently. Critics label ambush marketing as parasitic marketing, contending that firms deliberately seek to exploit the sponsorship of significant events by their rivals, despite objections from sponsors and event organizers.<sup>36</sup> The ambusher, who appears to participate without compensation, is solely pursuing its own limited self-interest, thereby engaging in actions that harm the overall welfare of sport.

It Maintaining a zero-tolerance policy for ambush marketing is essential, as is raising awareness of the tactic to discourage third parties from engaging in it. Distributing public information sheets that include the official mark and other facts is one way to accomplish this act of distribution. This would result in learning more about what, in connection with that incident, qualifies as a trademark, copyright, or design violation. It is impossible to overestimate the importance of putting legislation into effect. The use of alternative claims about unfair competition, passing off, reverse confusion, or trademark or copyright infringement serves only as a temporary remedy and cannot be considered a permanent solution. Laws passed in several nations that contain the following provisions including the overarching objectives established by New Zealand's legislation, The powers granted to necessary ministries under South African law, as well as the particular laws in place in China and the UK, can be used as a model for creating unique laws. aimed at safeguarding against the threat. In the absence of specific legislation, it is advisable to make the required changes to trademark and copyright laws to immediately include provisions for ambush marketing. Laws must be justified by logical economic considerations, promote the general welfare, and be appropriate for India.

An international event has a crucial role in enhancing tourism, as well as invigorating economies and sporting infrastructures. This, thus, influences the economic progress of a state and its interactions with other states. Sponsorship is essential for significant events, as they cannot be fully financed by public contributions alone. Sponsors indeed seek a return on their investment in exchange for their contributions, and without confidence in the organizer, it is highly unlikely they will honour their sponsorship commitment. If the organizers cannot mitigate the risk of ambush marketing, it will deter sponsors from engaging in comparable events both historically and prospectively. Potential sponsors need to have faith in the event planner and the setting in which it will take place. It is justified to implement particular laws aimed at events of national significance in order to protect sponsors. The success of protected events and the development of an atmosphere that makes it possible to conduct multiple similar events in India will serve as indicators of the law's ultimate effectiveness. The nature of the protected event must not be sacrificed in the name of too stringent regulatory enforcement in order to successfully strike a balance between the public interest and the restrictions on freedom and the limitations placed on creativity and invention by anti-ambush marketing laws.

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<sup>35</sup> [www.commonwealthgamesdelhi2010.org](http://www.commonwealthgamesdelhi2010.org).

<sup>36</sup> <https://journals.indianapolis.iu.edu/index.php/jlas/issue/view/1317>