



The news that New Zealand was to host the 2011 Rugby World Cup was met with much jubilation by most New Zealanders. Following the announcement, the New Zealand Rugby Football Union (“NZRFU”) and other associated bodies have commenced preparations for hosting the third largest sporting event in the world. However, one area that must be addressed immediately is the protection of the rights of the official sponsors from ambush marketing. Without certain controls in place to manage ambush marketing, official sponsors will not view the 2011 Rugby World Cup as an attractive event to invest sponsorship funds. Without such funding, the funding burden will be left to the New Zealand taxpayer. The complex, subtle and sophisticated ways in which an ambush marketer undertakes its activities makes ambush marketing difficult to eliminate. Event organisers need to ensure that official sponsors are protected by multi – layered protection from Parliament, and arrangements between event organisers and the official sponsors themselves.

Sponsors pay large sums of money to gain exclusive legal access to become the official sponsor of major international events. In return, they expect to receive considerable financial benefit from the recognition of being attached to such exclusivity. Ambush marketing erodes the exclusivity. Ambush marketing or parasitic marketing is the unauthorised attempt by a third party to associate itself directly or indirectly with an events that a significant amount of exposure such as the Rugby World Cup, the Olympic Games, the Soccer World Cup. The outcome of ambush marketing is that it deprives the official sponsors and suppliers of any commercial value that is derived from being associated with such events by weakening the public perception of who is the official sponsor of the event. For example, Visa was the official sponsor of the Winter Olympics at Lillehammer yet American Express ran an advertising campaign that carried the slogan “If you are travelling to Lillehammer this winter, you will need a passport, not a visa”. Or it can be as simple as parking a Pepsi vehicle outside the venue of an event sponsored by Coca Cola and distributing free product.

In the past, the NZRFU has been unable to prevent ambush marketing. In 2002, New Zealand was bracing itself to take advantage of its close proximity to Australia in agreeing to co-host the 2003 Rugby World Cup with Australia. The NZRFU was offered the right to co-host the event on terms that were no less favourable than those offered to Australia. In order to successfully win the co-hosting rights, the NZRFU had to agree that each venue hosting the allocated game would be free of all sponsorship, advertising and pre-booked seating (including all corporate box space) so as to prevent ambush marketing. These venues are otherwise known as “clean venues”. Australia agreed to provide clean venues for the matches it was hosting but, after months of negotiation, the invitation to the NZRFU had to be withdrawn after the NZRFU refused to agree to the clean venue policy due to prior contractual obligations with corporate box-holders.

The lessons learned from the 2003 World Cup should have alerted the NZRFU and Parliament to establish a legislative framework to address ambush marketing. Within 8 days of London being awarded the 2012 Olympic Games, the London Olympic Games and Paralympic Games Bill 2005 received its first reading in Parliament, and, as at 31 March 2006, the Bill became legislation. The London Olympic Games and Paralympic Games Act 2006 (“the Act”) provides the framework for the enactment of regulations to control advertising and trading in the vicinity of the Olympic event venues in order to fulfil obligations imposed by the International Olympic Committee (“IOC”). Further, the Act gives official sponsors exclusive rights in relation to the use of any representation that may create an association between the official sponsor and the London Olympics. Any person who is not an authorised person who makes a representation

that may create an association between that person or company and the London Olympic Games in the mind of the public will be in breach of the Act which is punishable by a fine.

Currently there is no specific legislation in New Zealand that controls ambush marketing. In order to make the 2011 Rugby World Cup attractive to sponsors, some level of legislation should be enacted to provide some protection to potential official sponsors or to act as a deterrent. At present, if a sponsor believes they have been the victim of ambush marketing, they may be able to seek redress through the Fair Trading Act 1986. Section 9 of the Fair Trading Act states that a person shall not engage in conduct that is misleading or deceptive or is likely to mislead or deceive ("person" is defined to include an incorporated company). If an ambush marketer creates a connection between itself and an event that is likely to mislead or deceive the public into believing that the company is an official sponsor, then it is arguable that they may be in breach of the Fair Trading Act. However, these avenues are cumbersome

Another possible method of redress against ambush marketing is to pursue the ambush marketer through the intellectual property protection channels such as trademark and copyright infringement. The grounds required for a successful argument are that the registered trademarks that are registered prior to the event have been used by a party who does not have legal access to the trademark. Alternatively, if a logo has been created that represents the event and the logo has been registered, the use of the logo by an unauthorised person may amount to copyright infringement.

New Zealand, like Australia, affords some protection to specific events, organisations and alliances under the Flags, Emblems and Names Protection Act 1981. This Act protects not only the events with significant commercial value such as the Olympic Games, Commonwealth Games and their associated symbols and materials but extends to high profile New Zealand names, emblems and flags, such as ANZAC, RSA, the New Zealand flag and the protection of names and uniforms such as the "Girl Guides Association". The Act states that every person in a business, trade or occupation commits an offence who displays or carries on activities under any word, name, title, style, or design that includes any words or emblems or closely resembles any word, emblem or name as to be likely to mislead or deceive. Penalties imposed under the Act range from \$5,000 to \$50,000. As it is currently drafted, this Act is not broad enough to include the official sponsors of the 2011 Rugby World Cup.

In the event that Parliament does not enact specific legislation for the 2011 Rugby World Cup, or amend current legislation to protect the official sponsors from ambush marketing, event organisers may be obliged to take it upon themselves to ensure that certain controls are put in place to enable them to act quickly upon discovering ambush marketing. Often, event organisers will have a 'best endeavours' clause in the sponsorship agreement requiring them to ensure that exclusivity is preserved. In light of this, event organisers may (amongst other things) limit the items that people bring into the venues such as food, drink, and branded clothing. They may also seek to remove competing advertising from the venue, buy up billboard space around the venues in advance of the event and negotiate restrictive broadcasting arrangements. Equally however, the event organiser could require the official sponsor to put in place certain controls to limit the impact of any ambush marketing.

The variety of ways in which a sophisticated ambush marketer can carry out ambush marketing makes ambush marketing a difficult activity to restrict and legislation difficult to draft or enforce. In light of this, official sponsors may have to protect themselves by ensuring that they have a carefully drafted sponsorship agreement in addition to any relevant legislation. The agreement may contain clauses that:

- restrict the rights of the personal sponsors of individual athletes to advertise during the event period (sometimes 8 weeks either side of the event). If the sponsorship agreement between the event organiser and the official sponsor is not tightly drafted, the official sponsor may fall prey to ambush marketing by the personal sponsor of individual athletes. The sponsorship

agreement could state that, prior to execution of the sponsorship agreement, the personal sponsors of each athlete competing in a high profile event must be instructed on their rights before, during and after the event.

- the sponsorship agreement includes a clause that secures all advertising rights within a specified radius of the event venue.
- broadcast agreements may be negotiated to ensure non official advertisers cannot advertise throughout the duration of the event or prohibit shots from being used that show any competing advertising.

The official sponsor must ensure that their legal representation is ready to quickly react to bring to an end ambush marketing of any form. If the behaviour is misleading and deceiving under the Fair Trading Act, or if there is a breach of any of the official sponsors intellectual property rights, injunction documentation must be prepared and ready for filing immediately to restrict the impact of the ambush marketer.

Although it must be recognised by official sponsors and event organisers of the 2011 Rugby World Cup that advertisers must be entitled to continue business as usual (which includes advertising) regardless of the staging of any event, this must be balanced against the strict controls required to prevent advertisers who deliberately undertake ambush marketing and financially undermine the event. Controls over ambush marketing must be addressed sooner rather than later to ensure all the issues are ironed out prior to the staging of the event so there is not a repeat of the 2003 World Cup situation.

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