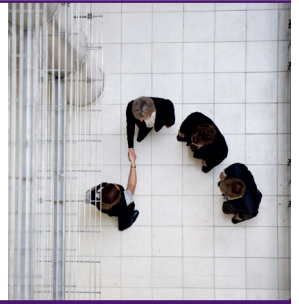


# Ambush Marketing

...how to stay on the right side of the law



Ambush marketing hit the headlines during the recent football World Cup. This note explains what ambush marketing is, why it can sometimes be unlawful and how companies can avoid falling foul of ambush marketing rules when planning marketing activities and campaigns.

## What is ambush marketing?

- Ambush marketing is when an entity that is not an official sponsor of an event (such as a sporting tournament or a music festival) carries out marketing activities in an attempt to create an association with the event, or to take advantage of the profile of the event, without the event owner's permission.
- For instance, if a high street clothing retailer produced an advertisement for "World Cup WAG handbags" or "Olympic Special Offer: 2 for 1 sports gear" this could lead readers to believe that the company was associated with the World Cup or the Olympics.
- Event owners often react aggressively to ambush marketing, both because they need to protect the value of their own commercial rights in the event, and because they may well have appointed official sponsors (possibly direct competitors of the advertiser) who have paid large sums for the exclusive rights to be officially associated with the event.

## Why can ambush marketing be unlawful?

- Ambush marketing can infringe the event owner's trade marks, copyright and other intellectual property rights in relation to the event. This is unlawful and can give the event owner grounds to sue the advertiser.
- In some countries, creating a false or misleading association with an event can also constitute unlawful passing off (e.g. the UK) or unfair competition (e.g. France and Germany), or it can breach advertising regulations.
- Furthermore, it is becoming increasingly common for special laws to be introduced in countries where major events are being held, which give event owners additional protection by making it unlawful to carry out certain ambush marketing activities which would otherwise be permitted under the general law. Sometimes, these laws can even make ambush marketing a criminal offence.
- Even if the advertiser is not sued or prosecuted, ambush marketing can lead to negative publicity for the advertiser if the campaign is reported in the media.

## How to avoid breaching ambush marketing rules

When planning marketing campaigns (e.g. brochures, emails, discount leaflets, special offers, advertising, competitions, special edition products), companies should take the following steps to avoid falling foul of ambush marketing rules:

- Never use any actual names, logos, slogans or branding of events, or anything that might be confusingly similar to these (e.g. "the Glaston-berry Festival Icecream" or featuring five interlocking wedding rings in the shape of the Olympic logo).
- Do not use pictures or words that are clearly suggestive of an event or which are intended to refer to it, even if they do not directly name it (e.g. a drawing of an athlete in national kit, carrying a burning torch that looks like the Olympic flame, running through the streets of London with the slogan "The flame is coming... try our new range of flame-grilled steaks").

Ambush marketing can provoke the event owner to sue the advertiser and can also amount to a criminal offence.

- Do not produce “advertorial” features that refer to an event, but which also promote your products or services (e.g. an email which reviews England’s World Cup performances and goes on to suggest that readers can get away from it all with a discounted weekend break using the attached voucher).
- Never run competitions that give away tickets to events as prizes unless you have the event owner’s express permission to do this.
- Do not use event branding/names/logos etc on product packaging.
- Do not register internet domain names that include any part of the name or slogan of an event (e.g. “championsleaguesofas.com”) or anything similar to it.
- Do not use words such as “Sponsor”, “Partner” or “Supporter” in relation to an event in your marketing unless you have the official right to do so.

Most importantly of all, if there is any doubt as to whether a marketing campaign might constitute ambush marketing, seek legal advice before the campaign is launched. It may be too late (and very costly) to rectify any issues once the campaign is underway.

### What about marketing around the 2012 London Olympic Games?

- The UK Government has passed several pieces of legislation that provide extra protection for the commercial rights in the 2012 London Olympic Games. This means that even stricter restrictions apply to marketing activities and campaigns that might suggest an association with the Games, or which might be confusing or misleading as to the relationship between the advertiser and the Games.
- It is generally forbidden for a person to use the following words and symbols in advertising (and note that the use of these on goods packaging or advertising is a criminal offence punishable by a fine of up to £20,000):
  - The Olympic symbol (i.e. the five interlocking rings)
  - The Olympic Motto (‘Citius Altius Fortius’ / ‘Faster Higher Stronger’)
  - The words: ‘olympic(s)’, ‘olympiad(s)’, ‘olympian(s)’ (or anything similar to them, or translations of them)
  - The Paralympic Symbol (i.e. the three ‘agitos’)
  - The Paralympic Motto (‘Spirit in Motion’)
  - The words: ‘paralympic(s)’, ‘paralympiad(s)’, ‘paralympian(s)’ (or anything similar to them, or translations of them).
- It is also forbidden to create an unauthorised association with the 2012 London Olympics or Paralympics by means of any representation in a marketing activity.
- In particular, the use of certain words and phrases in marketing activities have been designated as being particularly likely to fall foul of these rules. To be on the safe side, no marketing campaign should use any two of the words in List A below, or any word in List A below plus any word from List B below, unless the campaign has been reviewed and approved by your legal advisers:
  - List A: Games, 2012, Two Thousand and Twelve, Twenty Twelve.
  - List B: Gold, Silver, Bronze, London, Medals, Sponsor, Summer.
- Furthermore, marketing campaigns should not include any of the following:
  - An Olympic-style torch/flame;
  - A combination of the five colours of the Olympic symbol;
  - Designs which reproduce or closely resemble the official designs of the 2012 Games;
  - Images of venues to be used for, and closely associated with, the 2012 Games such as the Olympic Stadium or Aquatics Centre in Olympic Park;

If in doubt,  
seek legal  
advice before  
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otherwise it may  
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- The depiction of Olympic and/or Paralympic sports;
  - Words which capture the essence of the 2012 Games and/or qualities associated with Olympism (e.g. spirit, endeavour, friendship, winning, determination) – if there is any doubt here, seek legal advice;
  - “XXX” or “30th” (the 2012 London Olympic Games will be the Games of the XXX Olympiad).
  - Olympic tickets must never be used in product promotions (e.g. as prizes in competitions) as this would be likely to result in the Olympic rights holders suing your company and it could also constitute a criminal ticketing offence.
  - Do not create any association with the Olympics via any website, for example, by including any Olympic branding or trade marks in the content of the website, or registering a domain name incorporating such trade marks in the title.
  - The endorsement of a product by an Olympic athlete, or the appearance of an Olympic athlete in a marketing campaign, does not by itself breach these rules (for instance, signing up Steve Redgrave and Matthew Pinsent to promote a special offer could in itself be permitted). However, doing this in combination with any of the activities listed above is still forbidden. Also, the extent to which current Olympic athletes may allow their image to appear in advertising during the period of the Olympic Games may be restricted by the International Olympic Committee.

#### What about marketing around the football World Cup and other tournaments?

- FIFA, football’s governing body, is also extremely protective of its commercial rights in the World Cup. In the recent 2010 World Cup in South Africa, it persuaded the South African Government to introduce criminal penalties for ambush marketing. The offences were very broadly defined, and they prevented:
  - any use of any trade mark in relation to the World Cup in a manner calculated to achieve publicity for the trade mark and derive special promotional benefit from the World Cup;
  - any commercial activities (e.g. advertisements, announcements, publicity stunts or handing out product samples) within the bounds of World Cup stadia or other restricted areas. The Bavaria brewery organised a publicity stunt at the Holland v Denmark match which involved a group of women wearing orange clothing that was associated with their brand, even though it did not show any obvious trade marks. The organisers were threatened with prosecution for a criminal offence.
- It is probable that similar legislation will be introduced in respect of the 2014 World Cup in Brazil, and potentially also for other forthcoming major sporting events. For example, New Zealand has passed new laws against ambush marketing at major events such as the 2011 Rugby World Cup and 2015 Cricket World Cup.
- FIFA is also likely to react swiftly to campaigns, promotions and competitions which use or give away World Cup tickets. To be on the safe side, never give away tickets to any event in a competition or promotion without the permission of the event owner.
- Note that other tournament and event owners (e.g. UEFA in relation to the Champions League and European Championships, the Premier League in relation to the football Premiership and the event owners of the IPL cricket tournament) are likely to be similarly protective of the commercial rights in those events. If in doubt, seek legal advice before running any campaign which refers to an event.

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There are very severe restrictions on marketing campaigns that create an association with the Olympics.

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Never give away tickets to an event in a competition or promotion without the permission of the event owner.

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#### FURTHER INFORMATION

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