Ambush Marketing: A Critical Review and Some Practical Advice

Dean Crow and Janet Hoek

Event owners and official sponsors have campaigned vigorously against a practice they refer to as "ambush marketing". By this, they have referred to a variety of activities undertaken by rivals of the official sponsor that could confuse the public as to the real sponsor. However, their arguments rest on ethical assumptions that have no standing in court; in fact, the case law to date indicates that many alleged instances of ambushing are quite legitimate. This paper examines a range of activities classified as "ambushing" and argues that marketers need to consider ambushing in legal terms – as either passing off or breach of trademarks. In addition, we suggest more explicit documentation of the rights available to official sponsors, so they are better able to anticipate competitors' likely actions. Finally, we call for a reduction in the range of sponsorship packages, which would reduce the potential for conflicting sponsorship arrangements.

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Introduction

Many researchers have noted the extraordinary growth in sponsorship over the last two decades and its increasingly commercial orientation (Crimmins & Horn 1996; Meenaghan 1998a; Tripoldi & Sutherland 2000). O'Sullivan and Murphy (1998) highlight sponsorship's emergence as a core promotion tool:

> "*The growth of commercial sponsorship has been perhaps the most striking development in marketing communications over the last two decades*" (p349).

As sponsorship's popularity has increased, so too has competition to secure and protect sponsorship rights (Hoek & Gendall 2002). Thus, growth in what has become colloquially described as "ambush marketing" has paralleled the burgeoning growth of sponsorship.

Sandler and Shani (1989) were among the first to discuss ambush marketing, which they suggested occurred when a non-sponsor of an event attempted to pass itself off as an official sponsor. Meenaghan (1994) developed this early definition and described ambush marketing as

> "*the practice whereby another company, often a competitor, intrudes upon public attention surrounding the event, thereby deflecting attention toward themselves and away from the sponsor*" (p79).

Put simply, ambush marketing occurs when non-sponsors attempt to gain benefits available only to official sponsors (Bean 1995; Meenaghan 1996; 1998a).

Although Meenaghan (1994) asked whether ambush marketing was an "*immoral or illegal*" practice, few researchers have actually debated this question. Predictably, event owners and official sponsors have regarded it as immoral, because it threatens their ability to sell events or recoup investments made in these (see Payne 1998, for example). However, this view offers

little practical guidance to prospective sponsors, who cannot assume competitors share their ethical perspective.

Instead, sponsors and event owners must seek legal redress if they believe a competitor has encroached on their rights in some way (Hoek & Gendall 2002b). Given that the courts provide the only remedies available to aggrieved sponsors, it is logical to return to Meenaghan's question and consider whether, and in what circumstances, ambush marketing is illegal. More detailed analysis of the activities that constitute ambushing could help sponsors reduce the opportunities available to ambushers, and provide greater protection of their investment in an event.

In this paper, we begin by outlining the evolution of ambush marketing before examining the specific practices said to constitute ambushing. We consider the legal status of these practices and examine how sponsors could reduce the likelihood that competitors will detract from their expected benefits. Finally, we conclude that the emotionally laden terms "ambush marketing" and "parasite marketing" are more logically viewed as a legal construct, passing off. Sponsors may feel aggrieved by their competitors' behaviour but, unless a breach of trademark or some form of passing off has occurred, their ability to pursue the matter will be limited.

Evolution of Ambush Marketing

Sponsorship's growth occurred for two main reasons: first, researchers have claimed it could break through clutter that affected advertising; this made it an increasingly attractive alternative to mass media advertising (Meenaghan 1998a). Second, event owners became more sophisticated at developing packages that enabled them to obtain higher returns from their events (Altobelli 1997). For example, strategies that developed different levels of sponsorship and that promised exclusivity within each level enabled the IOC to make a profit of over $US200 million on the 1984 Olympic Games. These were also the first Olympics to operate with no public money (Graham, Goldblat & Delpy 1995 p207).

While sponsorship's attractiveness increased, marketers' ability to enter into sponsorship contracts decreased as the cost of securing these and the level of competition for them rose. Ambush marketing thus arose when companies that were formerly able to associate themselves with certain high-profile events (such as the Olympics) became excluded from official sponsorship deals, either by way of increased costs or category exclusivities. Sandler and Shani (1989) suggested that the first instance of ambush marketing occurred when Kodak failed to secure sponsorship rights for the 1984 Olympic Games to Fuji. Undeterred, Kodak became the sponsor of the ABC's broadcasts of those Games and the "official film" of the U.S. track team.

If Fuji was the victim of ambush marketing in 1984, it is widely accepted that it exacted its revenge on Kodak in 1988 (Bayless 1988; Fannin 1988). Kodak secured the worldwide category sponsorship for the 1988 Olympic Games, but Fuji aggressively promoted its sponsorship of the U.S. swimming team. In a parallel move, although CocaCola secured official worldwide sponsorship rights to the 1990 Football World Cup, Pepsi sponsored the high profile Brazilian soccer team (Falconer 2003).

The International Olympic Committee (IOC) has expressed strong concern over ambush marketing, however, the Olympic Games are not the only event where confusion over sponsors and their rivals has occurred. Few will have forgotten the failure by the New Zealand Rugby

Football Union (NZRFU) to secure co-hosting rights to the 2003 Rugby World Cup. In announcing their decision to make the Australian Rugby Football Union the sole World Cup hosts, the International Rugby Board (IRB) noted that the NZRFU had been unable to guarantee "clean" stadia. Ultimately, the NZRFU's bid for hosting rights foundered in part because of the IRB's determination to close promotion loopholes that rivals of official sponsors might exploit.

A similar situation arose in early 2003, when the Indian cricket team came close to boycotting the ICC Champions Trophy tournament. Players expressed concern that personal advertising and endorsement contracts they had entered into would conflict with the ICC anti-ambush rules, designed to ensure official sponsors had exclusive promotional rights during the event (Reuters 2002).

These examples provide a brief overview of the relationship between sporting commercialisation and ambush marketing. The status of sportspeople as role models and heroes of young consumers also increases the likelihood of conflict between event, team and individual sponsorship contracts. However, although few would dispute that these conflicts have increased in number and scope, considerable debate over what constitutes ambush marketing still exists. The following section examines specific instances of alleged ambush marketing in more detail and considers the extent to which these breach fair trading and trademark statutes.

Ambush Marketing Strategies

Meenaghan (1996 p106) identified five commonly employed ambush marketing strategies. These include sponsoring media coverage of an event, a sub-category within the event, or contributing to a "players' pool". Meenaghan also noted that advertising coinciding with a sponsored event or other promotion, or deflecting attention away from the event, could also be considered ambushing.

Sponsoring Media Coverage of an Event

In some events, sponsorship rights to the event itself do not include associated media rights. As a result, some sponsors discover their rivals have obtained broadcasting rights and, in some cases, higher profiles than they themselves obtain, despite their official status. The most famous example of this is Kodak's sponsorship of the ABC broadcasts of the 1984 Olympics, noted above (Sandler & Shani 1989 p11).

Payne, an IOC representative, viewed Kodak's behaviour with concern as he considered it attacked Fuji's rights as an official IOC sponsor. He described ambush marketers as

> "*…. thieves knowingly stealing something that does not belong to them*" (Payne 1991 p24)

and later argued that

> "*ambush marketing breaches one of the fundamental tenets of business activity, namely truth in advertising and business communications*" (Payne 1998 p323).

As Fuji had purchased the exclusive category rights to this event from the IOC, Payne considered they had a legitimate right to publicity that might be generated by the event. Kodak infringed upon this right when it purchased the broadcasting sponsorship rights, thereby gaining an association with the event and access to its audience.

However, Welsh, a former marketing executive at American Express, criticised the

> "*weak-minded view that competitors have a moral obligation to step back and allow an official sponsor to reap all the benefits from a special event*" (Meenaghan 1996 p108).

He further stated that competitors had

> "*not only a right, but an obligation to shareholders to take advantage of such events*" and that "*all this talk about unethical ambushing is … intellectual rubbish and posturing by people who are sloppy marketers*" (Meenaghan 1996 p108).

Kodak's behaviour, when viewed from Welsh's perspective, would place more responsibility on the event owner's behaviour. The category exclusivity introduced in 1984 by the IOC prevented Kodak from obtaining any exposure opportunities once Fuji had secured the Games sponsorship. Worse, because the Games drew such a large audience, many of the other promotional options open to Kodak would have afforded a reduced reach over the period of the Games. Kodak simply chose to capitalise on an ancillary promotional opportunity that was legitimately available for purchase.

From a legal point of view, it is clear that Kodak's behaviour did not breach the contract Fuji held with the IOC. Rather, the IOC, in its eagerness to maximise its revenue from both sponsors and broadcasters, failed to protect its sponsors sufficiently. If Fuji believed they had purchased an entitlement to broadcast rights as part of its contract with the IOC, the dispute was a matter between Fuji and the IOC. If Fuji had not expected to obtain broadcast rights as part of the sponsorship contract, they were either remiss in not obtaining these or naïve in believing that a competitor would not take advantage of opportunities legitimately open to it.

Sponsoring a Sub-Category within an Event

In 1988, the roles were reversed: Kodak secured the worldwide category sponsorship for the 1988 Olympic Games, while Fuji obtained sub-sponsorship of the U.S. swimming team, which it promoted aggressively (see Fannin 1988 pp64-70; Bayless 1988 pB1). In this instance, the IOC had conferred official sponsor status on Kodak and viewed Fuji as usurping this arrangement. However, from Fuji's point of view, they had not retained their official sponsor rights and so took advantage of other opportunities that remained available. It is possible that Kodak did not foresee this possibility, though this would be surprising, given their own behaviour in 1984. Alternatively, the costs of Kodak's sponsorship may have reflected the fact that competitors could purchase sub-category rights. In this case, the IOC arguably placed more emphasis on ensuring its own revenue streams than it did on safeguarding sponsors' interests.

A recent Canadian case also illustrates the potential problems generated by sub-category sponsorship. The National Hockey League (NHL), which represented 21 ice hockey teams,

generated a substantial proportion of its income by selling licences to manufacturers who could then use the NHL logo, or the logos of its member teams. CocaCola entered into a contract with the NHL to become official soft drink supplier. However, PepsiCo obtained advertising rights through Molson Breweries, which held broadcast sponsorship rights to the NHL. As well as advertising, Pepsi ran a competition where certain bottle lids featured statements linked to NHL outcomes. The statements did not name specific NHL teams, but refereed to the cities where the teams were based to avoid using registered trademarks.

The NHL sued Pepsi for passing themselves off as official sponsors or as having an official association with the NHL, neither of which were true. However, because Pepsi had used disclaimers in their advertising, which stated that they were not official NHL sponsors, the Court ruled that there was no evidence to support the allegation of passing off (*NHL v Pepsi 92 DHR 4th 349)*.

Although the NHL could not prevent Pepsi from running its competition, a more robust contract with CocaCola would have included broadcast rights or some provision that prevented the holder of these from on-selling them to CocaCola's competitors. A restraining provision such as this would have reduced the exposure Pepsi were able to obtain for their competition. McKelvey (2003) notes that *NCAA v Coors*, a very similar case to *NHL v Pepsi* but to be heard in the US, is likely to provide an important precedent in determining the extent to which themed promotions run by non-sponsors constitute behaviour that is likely to mislead consumers.

Making a Sponsorship-Related Contribution to a Players' Pool

As well as purchasing mass media sponsorship rights, rivals of official sponsors can also sponsor teams or individuals competing within specific events. Examples of this form of sponsorship include adidas' sponsorship of Ian Thorpe when Nike was the official clothing supplier for the Australian Olympic team. Curthoys and Kendall (2002) noted that Thorpe was photographed with his towel draped over Nike's logo at a medal presentation ceremony (para 69), a gesture they suggest was necessary to protect his personal contract with adidas.

Curthoys & Kendall also note Cathy Freeman's appearance in advertisements for Telstra, an official Olympics sponsor, and Optus, a rival of Telstra who held no official sponsorship rights. They ask

> "*Should Cathy Freeman have been prohibited from appearing in advertisements for non-official sponsors for a period before the Sydney 2000 Games? While the IOC Charter (binding all athletes) restricts athletes from engaging in marketing activities during the Games period, would it have been fair, even ethical, to limit her activities prior to the Games? Equally, should Optus, the sponsor of athletics in Australia for over 5 years, have been prevented from sponsoring her?"* (para 73).

These questions focus attention on the difficulty of defining ambush marketing, and the need to consider where and when an activity breaches relevant statutes. Although the appearance of individuals wearing apparel from a rival would undoubtedly have irked official apparel suppliers, engaging in sub-category sponsorship may be a legal activity. As Curthoys & Kendall point out, many individual or team sponsorships would have been entered into well before bidding for event sponsorships commenced.

Payments to individuals or teams raise the question of whose rights should prevail – those of individual athletes or teams, or those of sporting associations and event owners? The brand endorsement contracts held by members of the Indian cricket team clearly illustrate the potential for conflict between event sponsors and individual sponsors. Team members' lucrative endorsement contracts generate considerable personal revenue and run counter to the International Cricket Council (ICC) ruling that bars players from endorsing the products of companies who are the rivals of ICC sponsors for 30 days either side of ICC events.

These examples suggest that companies involved in sub-category sponsorship have not necessarily engaged in illegal behaviour. Although official sponsors may see the appearance of rivals' insignia at an event as likely to create confusion, this argument overlooks the fact that rivals have the right to promote their sponsorship associations. Disputes between Reebok, who was official apparel supplier to the US team at the 1992 Olympics, and Nike, who contracted the US track and field team to wear Nike clothing when competing, illustrate this problem.

Reebok considered Nike guilty of stealing exposure and publicity they believe they had purchased when they obtained the apparel sponsorship for the entire U.S. team. However, Nike argued they simply exploited a legitimate sponsorship opportunity open to them. Moreover, Nike's contracts with some of the athletes, for example Michael Johnson, existed well before the 1992 Olympics. Overall, Reebok's involvement with the U.S. Olympic team did not prevent Nike from finding ways to publicise its relationships with athletes and athletics. The ability to exploit these relationships was constrained only by the legally binding agreements that existed between individual athletes, teams, associations, governing bodies and event owners.

Conflicts between event owners and stadium owners also have the potential to disrupt sponsorship arrangements. For example, Wadell (1995) reports a confrontation between the National Football League (NFL) and the owner of the Dallas Cowboys, Jerry Jones, who also owns the Texas Stadium. The NHL holds a sponsorship contract with Coca Cola, which also entitles Coca Cola to use logos of NFL teams. However, Jones entered into a separate contract with Pepsi, who obtained sole pouring rights in the Texas Stadium. He argued that his team was worth more than the revenue obtained through NFL shares, and that only independent marketing enabled the team's potential to be realised.

The existence of earlier sponsorship contracts questions the level of exclusivity that event owners can offer prospective sponsors and may require a reconsideration of the benefits "exclusive" sponsorship can actually deliver. In particular, the fact the event owners do not own media, venues, or competitors, means they cannot exert full control over all other contracts that may exist. Contracts that specify the contingences within and outside the control of event owners would clarify sponsors' expectations and make them more alert to their competitors' likely behaviour. This, in turn, could provide a stronger basis from which to take any legal action, should a rival's actions breach the contract.

Engaging in Advertising that Coincides with a Sponsored Event

As well as entering into other contracts, within the event or with athletes or teams, rivals of official sponsors can also purchase normal advertising time and space. Event owners and official sponsors have viewed intense advertising by a competitor during or around a sponsored event as another form of ambush marketing. Large international sporting events,

such as the Olympic Games or Football or Rugby World Cups attract very large audiences, at least some of whom will see or hear advertising that screens during interval periods.

Official sponsors have expressed even more concern about themed advertising that features competitors from sponsored events. For example, during the 1992 Winter Olympics, McDonald's were the official sponsors of the U.S. team, yet Wendy's featured Kristi Yamaguchi, an Olympic champion figure skater, in its advertising (see Jensen 1995 p3). Yet while McDonald's viewed Wendy's behaviour as ambushing, Wendy's argued they had a right to maintain the saliency of their brand during the Olympic Games, using airtime available to all advertisers.

Rivals of the official sponsors have engaged in many different advertising and promotion activities. During the 1992 Barcelona Olympics, Nike held press conferences for Olympic athletes it sponsored and displayed large murals of members of the US basketball team on buildings in Barcelona, even though they were not the official sponsors. As Lyberger & McCarthy (2001) noted:

> "*…the sheer magnitude of* [Nike's] *presence at the venues effectively deflected attention from official sponsors* (p132).

Davis (1996) reports that Nike manager Mark Pilkenton rationalised these actions by stating:

> *"…we feel like in any major sporting event, we have the right to come in and give our message as long as we don't interfere with the official proceedings".*

Pilkenton's comments suggest that ethical considerations do not form part of Nike's decision criteria; instead, they focus on the legality of their actions to ensure they do not breach relevant statutes.

Curthoys & Kendall (2002) discussed Qantas' campaign in the period preceding the 2002 Sydney Olympics, which involved a series of advertisements featuring famous Australian athletes and posters with slogans such as *"Australia Wide Olympic Sale"*. Although Ansett sued Qantas, the issue settled, though not before nearly 60% of the public believed Qantas was the official Olympic airline (compared with the 38% who correctly identified Ansett as the official sponsor). While the Australian public appeared confused, it is difficult to attribute their confusion to the advertising campaign alone, which did not appear either to breach any trademarks or imply official associations that did not exist.

Although event owners clearly resent these activities, Welsh challenges their thinking:

> *"The…notion, that non-sponsors have a moral or ethical obligation to market themselves away from the thematic space of a sponsored property, is nonsense. Smart marketers have long recognised that view as a commercial non-starter and an intellectual affront"* (Reported in *Marketing Week*, p15).

Non-sponsors' rights, according to this reasoning, extend to everything not specifically prohibited by law or by a legally enforceable contract.

Development of Other Imaginative Ambush Strategies

As marketers make greater use of new media such as text messaging and event merchandising, so ambush marketing strategies have also become more creative. Fosters allegedly ambushed the official England sponsors, Steinlager, when they ran a campaign in Britain during the 1992 Rugby World Cup with the tag line "Swing low sweet carry-out". This was an obvious play on the words of the English rugby anthem "Swing low sweet chariot" and an alleged attempt to obtain benefits that an association with the English team might bring (Meenaghan 1996 p107).

McKelvey (1994) noted a range of other possible promotions.

> "*… non-sponsors handing out coupons and caps to spectators, hanging banners from tall buildings, running 'good luck' and 'congratulations' ads, purchasing billboards around the venue, using World Cup tickets in consumer sweepstakes etc.…*" (p20).

Rivals to official sponsors have often provided spectators of an event with the type of merchandise McKelvey lists as a means of ensuring their brand imagery is featured at the event. McKelvey (2003b) later noted the use of temporary tattoos, or "body billboards" on athletes as presenting another challenge to event owners wishing to preserve the exclusivity of official sponsorship rights.

Increasing awareness of the use of merchandise to promote a rival's brand has seen event officials screen spectators and prohibit entry to those who wear apparel that bears a rival's logo. A South African newspaper reports that schoolchildren with Coca Cola in their lunch boxes had to peel off the can labels and scrape off Coca Cola logos from bottle tops and lids before they could enter a World Cup cricket match (*Natal Witness* 2003). However, it is not clear whether Coca Cola deliberately provided children with their products in an attempt to deflect attention from Pepsi's sponsorship, or whether the products' presence was coincidental.

A recent New Zealand case, *NZRFU vs Canterbury International Limited,* raised questions about the extent to which ex-sponsors could feature past sponsorship alliances in their advertising. CIL, a former NZRFU sponsor that supplied apparel to the All Blacks for over 70 years, produced a range of rugby jerseys that featured a stylised silver fern logo and the word "Invincibles" (see Hoek & Gendall 2002a p384). The NZRFU objected to CIL's use of the word "Invincibles" since this referred to a former All Black team and, according to the NZRFU, had the potential to mislead the public into believing CIL still had an official association with the All Blacks. In other words, the NZRFU alleged that CIL had ambushed the new apparel contract that they had entered into with adidas.

This case was complicated by the fact that the NZRFU did not own the "Invincibles" trademark. The registered proprietor, Gary Cunningham, had licenced CIL to use his mark, which differed in several respects from the current All Black logo owned by the NZRFU. Justice Doogue declined the NZRFU's application for an interim injunction and concluded that stylistic differences between the jerseys and logos meant the CIL and adidas jerseys were most unlikely to be confused under normal circumstances. The case was later settled before a full trial, with CIL agreeing not to use the Invincibles mark in the future.

From one perspective, once CIL's arrangement with the NRFU ended, CIL was no longer entitled to promote any aspect of its former association with the All Blacks. The rights to all such promotions would have passed to the new NZRFU sponsors, adidas. However, questions about the NZRFU's ownership of the 70-year history when CIL had supplied apparel to the All Blacks remain.

This latter section has examined activities that, although more imaginative, still draw on opportunities legitimately available to advertisers. Overall, opinions over the ethics of these activities remain sharply divided. Many, like Payne, see these promotions as an unfair erosion of the benefits only official sponsors should obtain, and a threat to the sponsorship revenue that event owners can obtain (see also Townley, Harrington & Couchman 1998).

However, these arguments do not consider the commercial rights of the official sponsor's competitors or the legal status of their actions. Closer analysis suggests that the rival promotions undertaken were all legally available. For example, Fuji had not, as part of its sponsorship package with the IOC in 1984, purchased the rights to the ABC broadcasts. If Fuji held these rights, it would not have been legally possible for Kodak to purchase them from ABC. Similarly in 1988, Kodak's sponsorship arrangement could not have included rights to the U.S. swimming team or Fuji would have been unable to arrange the team sponsorship contract they entered into. Overall, all advertisers have a right to promote their brands using media opportunities that have not previously been ceded to sponsors or event owners.

The fact that many alleged ambushes used media opportunities open to all advertisers suggests a need for greater co-ordination between media and event owners. In addition, event owners may need to be more circumspect in the levels of exclusivity they promise to sponsors. The following section analyses these and other remedies that may be open to event owners and sponsors.

Possible Remedies

Commercial pragmatism may, over time, overcome some of the emotion currently associated with the issue of ambush marketing. Meenaghan (1996 p108) pointed out that many of the activities previously labelled ambush marketing, competitive advertising during and around sponsored events for example, are now seen as legitimate activities. This suggests that event owners have accepted that the level of brand competition that exists in other media is also likely to occur in sponsorship and associated activities.

However, aside from adopting a more realistic perspective, event owners could implement other options. First, they could reduce the number of sponsorship categories they sell. As the revenue from sponsorship has increased, the temptation to increase the number of sponsorship levels and classes has also grown. While this practice increases income for the event owner, it clearly also heightens the chance that rivals will both secure rights to the event. Shani & Sandler (1999) reported that more than two thirds of the people they interviewed were unable to differentiate between different sponsorship levels. This suggests that event owners need either to reduce the range of packages sold or undertake detailed promotions that increase the public's knowledge of these packages' status. The former option, although likely to prove less popular, would also reduce the likelihood that conflicting sponsorship agreements could be entered into.

Given the inconsistencies that have emerged between event sponsorship and broadcast sponsorship, event owners need to manage the sale of these rights carefully. As Shani & Sandler (1999) noted, event owners can generate considerable revenue by accepting bids for telecast rights. However, broadcasters must also recoup the expense of securing rights, which may entail selling more advertising space and offering sub-sponsorship rights within event telecasts. Shani & Sandler reported that over a third of respondents in their research thought only official sponsors could advertise during an event telecast. Thus, the sale of advertising space to rivals appears to create considerable confusion among the public. Shani & Sandler suggested event owners should reduce the cost of broadcast rights in return for obtaining more control over who these are sold to.

Event owners have also moved to develop legal protection of the rights they sell to official sponsors. The organising committee for the Sydney 2000 Olympic Games successfully lobbied for new legal protections as part of a comprehensive brand protection strategy (see Roper-Drimie 2001 pp151-153). The Sydney 2000 Games (Indicia and Images) Protection Act 1996 formed part of a carefully orchestrated strategy to reduce the incidence of ambushing at the 2000 Olympic Games (though Curthoys & Kendall question the strength of the provisions this Act introduced). Similarly, the introduction of the Merchandise Marks Amendment Act 2002 by the South African government was a response to the International Cricket Council's call for support to reduce ambushing at the 2003 ICC World Cup. This latter legislation contains provisions to jail directors of companies that engage in ambushing activities.

Before the introduction of specific legislation to address the potential for ambush marketing, event owners and sponsors had to rely on trademark and fair trading statutes. However, very few ambushers use the exact logos or insignia of the event owner; instead, ambushers typically create alternative devices that connote the event or team without breaching registered trademarks. The New Zealand "Ring Ring" case illustrates the imaginative use of a visual device that, on close reading clearly refers to the Olympic Ring symbol (Hoek 1997). Similarly, Pepsi's use of NBL teams' home towns, instead of the team names themselves, avoided breaching trademarked names.

However, while the introduction of new laws may afford additional protection, the onus is still on event owners to prove that a breach occurred or that confusion was a likely outcome of a rival trader's behaviour. Thus, although the courts will enforce sponsors' and event owners' rights if a rival breaches trademark or copyright legislation, or when their actions constitute passing off under the law, event owners still need to demonstrate that a breach occurred. Both parties may thus rely increasingly on consumer evidence to support the presence (or absence) of deception. As Hoek & Gendall (2003) have noted, adducing robust and persuasive consumer evidence is more difficult than marketers may recognise.

Even general commercial protection may not afford the level of insulation from ambushing desired by sponsors. There must also be a concerted effort by event owners to provide transparency as to the actual rights purchased. In addition, these rights should be protected via tighter contractual provisions with all parties. Hoek and Gendall (2002b p88) point to tighter sponsorship contracts that better define event owners' responsibilities and sponsors' rights as providing more grounds for action and a greater range of remedies. Shiu (2002) outlined specific points that ought to be made clear in contracts, including the rights licenced, the terms of the licence, prohibited uses, and rights regarding signage, trademarks and hospitality (p16).

An IOC report on the Salt Lake City 2002 Winter Olympic Games also set out several measures used to reduce the incidence of ambush marketing. These included full registration of trademarks and copyright material at state and federal levels, and internationally. In addition, the IOC undertook close monitoring of the manner in which Olympic marks were used and prohibited unauthorised use of these, including suing companies they considered had breached their trademarks. They also instituted audit programmes, together with photo audits of commercial activity within the Olympic venues and mystery shopper programmes to detect unauthorised merchandise. Finally, the IOC designed an education programme aimed at all sectors to increase knowledge of ambush marketing and to discredit alleged ambushers.

Shani & Sandler (1999) recommend the use of an education programme, designed to ensure consumers are aware that not all advertisers are official sponsors of an event. The IOC has developed aggressive advertising campaigns that castigate alleged ambushers as cheats that deserve public approbation. These advertisements suggest that ambushers are attempting to dupe the public and freeload on the values of the official Olympic movement by undermining the rights secured by their competitors. However, it is not clear whether this advertising clarifies the status of the official sponsors; ironically, it could actually reinforce awareness of the rival.

Meenaghan (1998b) noted the need for sponsors to purchase mass media time and space to promote their sponsorship and suggested that sponsors may need to spend two to three times the cost of the sponsorship rights to promote their association with an event. Strong and obtrusive supporting advertising could diminish the effects any rivals' promotions may have, although this suggests the logical means of combating ambush marketing is to purchase all the media and sub-category sponsorship rights to the event. Shiu (2002) summarises this view when he suggested controlling ambush marketing involved buying up all

> *"rights to all the teams, or all the broadcast rights, or all the space for 10 miles around… if you won't or can't do that, then you open the door to* [ambushers]" (p. 17).

Conclusions

The creative use of ambush marketing tactics will probably always be a source of irritation to event owners and their official sponsors. As Curthoys & Kendall noted:

> *The law as it now stands seems unable to accommodate the concerns of official corporate sponsors. There is no limit to human ingenuity. As such, ambush marketing at the margins will arguably always occur* (Curthoys & Kendall 2002 para 78).

Clarification of the actual rights purchased by sponsors will help minimise the negative impact of these activities on both sponsors and event owners.

To maximise the protection sponsors might receive from ambushing activities of all types, the normal commercial protections provided by trademark, copyright and passing off laws need to be supplemented by tighter contractual provisions between all of the parties involved in the sponsorship of an event. If event owners and sponsors develop tighter sponsorship contracts, they could foster more pragmatic expectations about what sponsorship can achieve. Activities not prohibited by law or the terms of the contract, would be legitimate marketing tactics;

however, their potential effect should be more explicitly recognised during negotiations between event owners and prospective sponsors.

To assist the development of more specific contracts, event owners could also reduce the range of sponsorship options they offer. Increasing the exclusivity of sponsorship rights also represents an important means of minimising the potential for conflicting arrangements.

Ultimately, however, potential sponsors need to recognise that they will never be able to control rivals' actions. If competitors embark on a campaign that could confuse consumers, marketers need also to recognise that any recourse they might have will be determined through the relevant legal systems.

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Janet Hoek is a Professor in the Department of Marketing, Massey University, and Dean Crow is the General Manager of PROMOTUS ADVERTISING LIMITED, Auckland.