

Ambush Marketing – Need for Legislation in India

Rukmani Seth†

National Law University, Jodhpur, NH-65, Mandore, Jodhpur, Rajasthan 342 304

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Ambush marketing has emerged in recent years as an effective, though controversial, weapon in the arsenal of marketing departments. Various corporations have indulged in ambush marketing to exploit international events such as the Olympics, Football World Cup, or the Commonwealth Games. This paper seeks to examine ambush marketing as an intellectual property infringement and suitability of the current IP legislations to tackle it. Primary data such as case laws and secondary data such as articles and parallel provisions with regard to IPR have been referred, which show that due to the absence of principle legislations and case precedents, corporations indulging in ambush marketing are able to get away scot-free. To overcome this problem, various countries such as South Africa, New Zealand, Australia, China, England, Brazil and Canada have brought out amendments or legislations defining ‘ambush marketing’ as a specific type of IPR infringement and fixing liability for the same. It is time that India considers introducing such a legislation not just because its peers have taken such a step but because in the light of large scale events being organized in the country, there is a need to protect legitimate sponsors.

Keywords: Ambush marketing, intellectual property infringement, legislation, protected events, official sponsors, unfair competition

Ambush marketing has emerged in recent years as an effective, although controversial, weapon in the arsenal of marketing departments seeking to associate themselves with sporting events without official authorization or endorsement of the event organizer.¹ The most notorious example of ambush marketing was seen at the 1996 Atlanta Olympic Games where Nike bought most of the outdoor billboard sites to display its advertising, handed out free banners to spectators and set up its own Nike Village next to the official sponsors’ village. In doing so, people assumed Nike was an official sponsor, and Nike saved US\$ 50 million in sponsorship fee.²

Various cases have come before courts in an attempt to hold a corporation liable for infringement for activities such as selling merchandise without a licence, passing off one’s brand as the official logo, using one’s limited right of advertising beyond what is permitted, organizing contests in the name of a big event or even misusing the logo of an event *inter alia*. However, affected parties have alleged trademark or copyright infringements or passing-off. Since the act of ambush marketing does not evidently fit into any of the above categories, the defendants are successful in

evading liability. Besides, there are many more cases that never reach courts due to various reasons. For instance, Hindustan Unilever’s so called marketing move to outsmart Procter and Gamble, the constant struggle to be at the top between Pepsi and Coca-Cola or Jet and Kingfisher, Nike’s recent stint of ambush marketing at the football World Cup, have not gone to court for reasons that have been discussed later.³

Countries such as Australia, England and China among others have enacted legislative provisions defining ambush marketing and fixing a liability for those who commit such an act. Such steps should encourage India to introduce similar legislations in light of various international events being organized in the country, where the probability of corporations taking advantage is very high especially in absence of any law to prevent ambush marketing.

What is Ambush Marketing?

Ambush marketing refers to a company’s attempt to capitalize on the popularity of a well-known property or event without consent or authorization of the necessary parties.⁴ It is a marketing strategy in which a competing brand associates itself with major sporting events without paying sponsorship fees.⁵ It is an attempt by a third party to create a direct or indirect association with an event or its participants

† Email: rukmani.seth26@gmail.com

without their approval, hence denying official sponsors, suppliers and partners, part of the commercial value due to their 'official' designation.⁶ This association is without permission of the event organizer or its official partners, and the desire is to deceive the consumer into believing that there is an official association.⁷ Ambush marketers do not use the trademarks of third parties but rather creatively allude to a sporting event and use their own trademarks to suggest a connection or affiliation with that sporting event.⁸

Events such as the Olympics, cricket or football World Cups, Super Bowl, the recent Commonwealth Games, 2010 organized in New Delhi, etc., provide a platform to corporations to showcase their products, facilitating promotion of their products in hundreds of countries and to millions of people. One of the oldest acts acknowledged as ambush marketing dates back to the 1984, Olympics, when Kodak sponsored television broadcasts of the games as well as the US track team despite Fujifilm being the official sponsor.

In general, ambush marketing may be classified as follows:

Activities Equivalent to Piracy

Examples of such activities include unauthorized use of a registered event logo on merchandise, false claims of being official suppliers of a particular team, etc.⁹ These have a clear cut remedy in law as these constitute infringements of the property rights in an event.

Other Activities

These are far more subtle practices of ambush marketing for which remedies are less clear-cut and often do not exist. Typical examples of this include unauthorized or unofficial merchandise, publications, sales promotion activities, broadcasts, virtual advertising, web sites, live screenings, films, video, photography, telephone commentary, information lines, pager services, unofficial corporate sponsorship.¹ Some specific instances are as follows:

- a Sponsor broadcast of the event: This turns out to be advantageous to the ambush marketer as the television audience out number the in-stadium audience.
- b Sponsor subcategories within the event and exploit the investment aggressively: It is a cost-effective method of associating with an event of huge public interest. For example, while the official sponsor sponsors the entire event, the ambush marketer sponsors just one team in the event.¹⁰

- c Purchase advertising time around transmission of the competitor's event: This refers to buying advertising time in slots around television relays of the event. For example, Qantas and Adidas were not sponsors of Sydney Olympic Games in 2000 but purchased television advertisements which were shown during the games telecast.
- d Engage in major non-sponsorship promotions to coincide with the event: This may involve organizing contests to send consumers to the event, placement of hoarding or booths at strategic locations during the event, etc.¹⁰
- e Pourage agreements: This refers to an agreement to buy the rights to sell beverage products at a licensed venue/event. Pourage rights usually involve some form of rebate.¹
- f Corporate hospitality and ticketing: This refers to buying tickets for the events and offering hospitality packages, which are not sanctioned by the rights owners.¹¹

Need of Legislation to Prevent Ambush Marketing

There is no doubt that the practice of ambush marketing is an unethical business practice¹², and the past two decades have shown how important it is to have more stringent intellectual property protection besides what is provided for in the current regime. While it may be argued that it is each corporation's free right to advertise during such international events which involve national pride, it is unjust to a corporation that enters into agreements with the event organizers and pays millions to acquire exclusive rights to advertise on the one hand and corporations that have not paid a single penny also enjoy the same benefits on the other hand. It is only fair to put a cost on acquiring a right of association especially when the benefits accrued far exceed the initial cost.¹³

Another issue of concern to event organizers is that the practice of ambush marketing has jeopardized their ability to fund events due to their inability to retain top sponsors.¹⁴ Ambush marketing affects event organizers considerably and poses a substantial threat to their economic interests.¹⁵ Sponsorship costs for London Olympics that are to take place in 2012 are estimated to be £ 2 billion, which forms a substantial portion of the funds required to organize the event. With such astronomical costs at stake, ambush marketing poses a huge threat of losing out on sponsorship resulting in an enormous dent on the budget.¹⁶

While there are various acts of ambush marketing that come within the ambit of trademark, copyright infringements or passing off, they are not threatening, since they can be resolved through legal means. However, the other acts of ambush marketing which corporations resort to by circumventing the above mentioned IP protections, are the ones that are of major concern.

Reasons for Existence of the Practice of Ambush Marketing

There are primarily four reasons¹⁷ as to why ambush marketing, despite being an intellectual property infringement has survived, as discussed below:

1 Most ambush marketing campaigns are short-lived: Sporting events such as the world cup, super bowl, Olympics, etc. occur within a short period of time, likewise, corporations' efforts to ambush events usually occur within a very limited time period. For example, where a corporation uses an event which only lasts for two or three days, to market its products, it becomes very difficult for the event organizers to exercise their legal options to curtail such activity.

2 Existence of limited case laws: Though laws exist which may have a general application to the problem of ambush marketing, only a handful of cases have actually progressed through the judicial system. This is particularly true for challenges to ambush marketing using the theory of misappropriation. Legal battles require much time and effort, and so far very few promoters or sponsors have brought suits against ambush marketers, for instance, misappropriation of the league property.

3 Success of Corporations in defending themselves: Corporations have been extremely adept at protecting themselves from legal challenges against ambush marketing. For example, in the case of *NHL v Pepsi Cola, Canada*, the popular strategy of using disclaimers such as 'the company is not an official sponsor and has not paid to affiliate with the event' was successful in helping Pepsi get away scot free. Besides, since the two products were not similar, Pepsi wriggled out of the allegation of trademark infringement and passing-off.¹⁸ The problem is that always at least one condition of any of the above mentioned claims or any other potentially applicable claims remains unfulfilled thereby leading to a failed action by the claimant.

4 Avoidance of legal recourse by event organizers: Affected parties often do not take legal help since there is a paucity of case laws regarding ambush marketing, and a court decision in favour of an ambushing company could set a precedent that could be used by every other company implementing an ambush campaign.

Organizations behind sporting events are reluctant to sue due to fear of alienating the large corporations, who although not current sponsors might want to sponsor the event in future.¹⁹ Also, the corporations that are wronged by the acts of ambush marketing by other corporations have resorted to or will at some point of time resort to similar means.

A more feasible strategy for event sponsors rather than lengthy legal battles would be to buy up the advertising space surrounding the event stadia and resell only to official sponsors; oblige stadia owners via contract negotiations to clear all advertising from the ground and its vicinity so as to offer them only to official sponsors; enter into contracts with major media organizations obliging them to offer first rights of advertising in intervals in broadcasts of the event, to official sponsors and publishing media and public information packs to raise awareness of the rights owned by the event organizer and the action likely if those rights are infringed.

Status of Current Intellectual Property Regime with respect to Statutes and Case laws

With respect to the first category of ambush marketing, namely, piracy; the law of trademark and copyright provide adequate protection. Here, not only consumers are protected from deception but also business goodwill remains protected.²⁰

As far as infringement of copyright is concerned, there are certain instances of ambush marketing that clearly fall under the category. For instance, commercial use of rights, benefits and privileges without authorization, explicit attempt to associate with an event without a licence, use of words, symbols or pictorials confusingly similar to the event, producing or selling counterfeit merchandise, registering website domain names with the Internet to profit using famous names, downloading copyrighted satellite feed of the official event broadcast and transmitting it via the Internet without proper authorization, unauthorized use of athlete appearances, images or likeness for advertising purposes during the event are all examples of either trademark and/or copyright infringement or passing off.²¹

In the case of *National Hockey League v Pepsi-Cola Ltd*¹⁸, the first case in the world to deal with ambush marketing, NHL, an affiliated service company with 21 ice-hockey teams, had an agreement with Coca-Cola that it would be the official drink of the tournament. An amount of US\$ 2.6 million was paid by Coca-Cola to NHL for this purpose.²² However, the advertising rights were given to another company which tied up with Pepsi-Cola, Coca-Cola's main competitor to advertise during the broadcasts. Thus, in between the broadcasts, Pepsi-Cola broadcasted a show with a well-known celebrity thereby reflecting that Pepsi was the official drink of the tournament. Contests were also organized using the show itself. At the trial court, NHL contended that such broadcasts portrayed that Pepsi was the official drink approved by NHL. Thus, Pepsi was liable for passing-off. Pepsi on the other hand argued that it was doing nothing more than aggressive advertising and promotional campaign which was legitimate. The court held that not every kind of connection claimed can be called to be passing off. There must be a representation that the defendant's goods are connected with the plaintiff in such a way as would lead people to accept them on the faith of the plaintiff's reputation. Thus, what the court thought fit to examine was the extent of advertising by Pepsi as to whether it misrepresented to the public that one or more of the plaintiffs approved, authorized or endorsed the contest, and thereby, by implication, the defendants products, or that there was some business connection between the plaintiffs and the defendant. The court held that though this was a clear case of ambush marketing; there was nothing that could be done to protect NHL or Coca-Cola. This may also be a case of trademark misappropriation though not recognized by the court.²³

In the case of *MasterCard International Incorporated v Sprint Communications Co & ISL Football AG*, MasterCard (sponsor of the World Cup, 1994) received exclusive right before and during the competition for use of the world cup logos on and in association with 'all card based payment and account access devices'. Sprint Communications, an official partner did not have as many rights as the official sponsor and was allowed to advertise only in the field of long distance communications. However, Sprint also started advertising in pre-paid telephone calling cards using world cup logos despite strong objections from MasterCard. A claim of dilution under the

Federal Trademark Dilution Act was also brought against Sprint with the contention that the continued acts of Sprint would gradually erode the distinctiveness of MasterCard. In the Federal Court, MasterCard established that Sprint has infringed on its right to use the logo. The Court held that the consumers would, on seeing the Sprint card bearing a world cup logo, mistakenly assume that Sprint had rights in a category that, in fact belonged exclusively to MasterCard. Therefore, an injunction was granted against the act of ambush marketing.²⁴

In India, the Delhi High Court refused to accept ambush marketing as a plea for infringement of intellectual property when the International Cricket Council brought a suit against Britannia during the World Cup.²⁵ In *ICC Development International Ltd (ICCDIL) v Arvee*, the subject of dispute was a contest was organized by Arvee to win tickets to the World Cup. The catch phrase used to publicize the contest was the same as what the ICC had got registered. Arvee was therefore, sued on grounds of passing off and ambush marketing. Again, the claim of ambush marketing was not recognized by the Court and acts of the defendant were not considered misuse.²⁶

In the case of *ICC Development v EGSS*, an injunction was granted against the defendant for misuse of the world cup logo only because there was a copyright infringement as the logo was held to be an artistic work under the Indian Copyright Act.²⁷

In the case of *NCAA v Coors Brewing Co*, filed in the US, the grounds on which the suit was filed were breach of revocable licence and unfair competition. Since the ground of ambush marketing was not recognized by the law, NCAA used other means to ensure that they got a favourable judgment.^{28,29}

The above case laws show that in absence of specific legislation for ambush marketing, defendants get away thereby leaving the plaintiff with no guaranteed remedy. The most successful ground against a defendant in instances of ambush marketing has been that of passing off.²⁹ Thus, the current intellectual property regime though not completely powerless, is not adequate to counter the issues of ambush marketing and there is a need to develop a specific law for the same.

Claims that can be Brought Against Ambush Marketers

Most countries do not have a specific legislation to bring an action against ambush marketers. The

affected parties have to take recourse to some form of intellectual property law such as trademark, passing off, copyright or design rights and prove that there has been violation of some statutory provision. Following are some claims that may be used to favourable effect against ambush marketers:²⁹

Passing off

In order to have a legitimate claim against ambush marketers, the event organizer would need to show that: (i) it has an established reputation or goodwill with reference to the event in question (ii) the third party has made a misrepresentation by way of its marketing, which has led the public to believe that there is a connection with that party and the event organizer (iii) it has suffered or is likely to suffer damage as a result of this confusion.

Trademark Infringement

If the event organizer has a registered trademark, and that registered trade mark or similar mark is used by an unauthorized sponsor, then the event organizer can commence proceedings for trademark infringement and if successful, he will be entitled to restrain any further infringement and/or to a payment of damages or an account of profits arising from the infringement.

Copyright Infringement

Where an event organizer has a logo created in connection with a specific event, that logo may be sufficiently original to attract copyright. Any unauthorized replication of that logo shall infringe the copyright subsisting in the logo.

Registered Design Right Infringement

Emblems and logos can also be registered as designs and where a logo or emblem is registered, any unauthorized replication, unauthorized 'dealing' in articles of that design or in articles that do not produce a different 'overall impression' on an 'informed user' amount to infringement. If successful in an action for design right infringement, the event organizer can stop any further infringement and claim damages or an account of profits arising from the infringement.

Reverse Confusion

Reverse confusion theory has been observed to closely resemble ambush marketing. According to one authority, reverse confusion may occur when a junior user saturates the market and overwhelms the senior user, rather than trying to profit from the senior user's

mark. However, this doctrine has never been applied in the US. Ambushers, generally do not use third parties' marks, instead they merely try to associate their own marks with a large event for personal gain. However, reverse confusion doctrine is highly fact-specific and its application depends on the existence of certain critical key facts. When these facts vary from that model, reverse doctrine is no longer applicable. Its application to ambush marketing may be case specific.¹⁸

In absence of statutory provisions with respect to ambush marketing, it becomes difficult for the plaintiffs to fit their case in any of the above grounds thereby leading to a failure to claim a remedy against the defendant.

Initiatives by Event Organizers

In the absence of requisite legislative provisions in countries, the event organizers have taken it upon themselves to curtail the practice of ambush marketing by imposing their manual of rules and regulations for the tournament.³⁰ Private contracts are drawn up between event organizers and sponsors, which often consist of anti-ambush marketing clauses.

A plethora of non-legal strategies have also been employed in an attempt to curb ambush marketing. One method used by official event sponsors is to monopolize the advertisements. For example, in 1996, the International Olympic Committee announced that any city bidding to host the Olympics must secure all advertising space within city limits for official sponsors for the entire month in which games are to be held, or the bid would be denied. Athens, the host for 2004, reportedly agreed to do so despite the US\$ 10 million it was to cost the city.³¹ Similarly, sponsors buy all the advertising time on the network televising the relevant event, to prevent competitors from buying time, though this is not the best strategy.³² Another strategy followed is carefully policing the event which includes putting restrictions on sale of tickets to the event, to prevent them from being given away as prizes in commercial promotions without authorization.³³

Anti Ambush-Marketing Legislations in Different Countries

In the light of serious repercussions of ambush marketing, some countries have taken pro-active steps and enacted legislations to counter the same. These are:

South Africa

Section 9(d) of the Trade Practices Act, 1976 states that 'no person shall, in connection with a sponsored event, make, publish or display any false or misleading statement, communication or advertisement which represents, implies or suggests a contractual or other connection or association between that person and the event or the person sponsoring the event, or cause such statement, communication or advertisement to be made, published or displayed'.³⁴ Thus, during the FIFA 2010 World Cup which qualified as a sponsored event, any 'association' that would have suggested ambush marketing would have breached the Trade Practices Act.

The Merchandise Marks Amendment Act, 2002 defines 'event' and 'protected event' and authorizes the Minister of Trade and Industry to protect certain events. The 2010 FIFA World Cup was designated a 'protected event' under Section 15A of the Merchandise Marks Act, 1941. Under this section 'for the period during which an event is protected, no person may use a trademark in relation to such event in a manner which is calculated to achieve publicity for that trademark and thereby to derive special promotional benefit from the event without the prior authority of the organizer of such event'.

As a precaution, FIFA had applied to have all its official marks declared 'prohibited marks' under Section 15 of the Merchandise Marks Act, 1941 as a result of which the use of any such mark would be an offence. Offences under both the Trade Practices Act and Merchandise Marks Act carry fines and prison terms.

Australia

Australia has taken the lead in its attempt to control ambush marketing. When the 2000 Summer Olympics came to Sydney, the Australian government passed the Sydney 2000 Games (Indicia and Images) Protection Act, 1996, and the New South Wales government passed the Olympic Arrangements Act, 2000. A significant part of both laws was Games-specific legislation enacted to prevent ambush marketing and provide for clean Games venues to equip New South Wales and Australia for future sporting and large marketing programs. Even after completion of the Games, the Australian government has enacted similar laws for hallmark sporting events, the most recent being the Melbourne 2006 Commonwealth Games Protection Act 2005 (ref. 35).

The Act contains a provision that the Registrar shall not register under the Trademarks Act, 1995 a trademark that contains or consists of any of the marks of the Olympic motto, symbol, torch and any other design related to the Olympics registered as an artistic work. Also, a protected Olympic expression is not permitted to be used for commercial purposes except by the Australian Olympic Committee (AOC).

New Zealand

New Zealand has passed legislation to protect sponsors of important events from ambush marketing i.e., the Major Events Management Act, 2007. The purpose of the anti-ambush marketing portion of the law is to prevent unauthorized commercial exploitation at the expense of either a major event organizer or a major event sponsor. Specifically the law prohibits, (i) representations that suggest persons, brands, goods, or services have an association with a major event when they do not; (ii) advertising from intruding on a major event activity and the attention of the associated audience; and (iii) the use of certain emblems and words relating to Olympic Games and Commonwealth Games (and other designated events) without appropriate authorization.³⁶

China

After being selected as the host of the 2008 Summer Olympic Games, the Chinese government passed the Protection of Olympic Symbols Relations, 2002 (ref. 37). Like the US Amateur Sports Act and the Australian legislation, this law not only protects Olympic symbols and names, but also includes an anti-ambush marketing clause. However, ambush marketing is vaguely defined as activities that might be deemed by others as an existing sponsorship or other supportive relationship.²⁹

England

In 2006, England passed the London Olympic Games and Paralympic Games Acts, 2006 with a provision to reduce ambush advertising at the 2012 Summer Olympics. The law provides the framework for the enactment of regulations to control advertising and trading in the vicinity of the Olympic event venues in order to fulfill obligations imposed by the IOC, and 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. The law also states that any person who is not authorized to make 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 and is punishable by fine.³⁸

Brazil

In coordination with the Brazilian National Institute of Industrial Property, the government is seeking to implement preventative measures to combat ambush marketing. While Brazil does not currently have a legislation specifically aimed at either prohibiting or allowing the practice of ambush marketing, the Civil Code and the Industrial Property Law generally prohibit any act that may cause unlawful enrichment or unfair competition practice, which includes undue association of a non-sponsor to a sport or cultural event. It is anticipated that this rule may be modified to prevent ambush marketing at the FIFA World Cup in 2014 (ref. 39)

Canada

In anticipation of the 2010 Vancouver-Whistler Olympic Games and with the objective of ensuring protection of trademarks related to the Olympic Games and protection against certain misleading business associations, the government of Canada has introduced Bill C-47, which is to be known as the Olympic and Paralympic Marks Act. The provisions of this Act are on the lines of its Australian and South African counterparts.⁴⁰

Conclusion

Ambush marketing is a controversial and infrequently litigated issue. Brand owners are tempted to ambush market because it is a relatively cheap way of attracting consumers to their products. However, by ambush marketing, brand owners jeopardize the viability of major sporting events. This and various other reasons that have been discussed in the article, undoubtedly warrant the need to legislate to prevent the practice of ambush marketing. If ambush marketers are allowed to continue unhindered, hardly any incentive remains for official sponsors to pay the huge sponsorship fees without which these events simply cannot take place. However, ambush marketing cannot be seen just a marketing jargon or a commercial irritant. It needs to be recognized in law to enable parties to bring the requisite action against those who commit the act. In India too, there have been several cases of ambush marketing especially during the Indian Premier League in cricket as well as before the commencement of the Commonwealth Games in New Delhi.

Unless a decision is taken by the courts or legislature, ambush marketing will continue to flourish and instances will only increase. However, it is encouraging that the Indian Judiciary has shown an inclination to penalize or at least injunct those who indulge in this practice can be seen by an order passed by the Delhi High Court.⁴¹ There was also a proposal for a draft legislation which did not see the light of day. These can be seen as positive steps by the executive as well as judiciary to take action against those indulging intellectual property infringements through ambush marketing.

As far as whether ambush marketing is ethical or simply smart business practice remains debatable. In absence of legislative provisions or precedents, the aspect of morality is often highlighted. Critics call ambush marketing parasitic marketing, claiming that companies are deliberately looking for ways to piggyback on their rivals' sponsorship of major events despite protests from sponsors and event organizers.⁴² The ambusher that gives the impression of involvement without payment is merely serving its own narrow self-interest and, in doing so, engages in behavior that is harmful to the greater good of sport.

It is important to not only maintain a zero-tolerance policy towards ambush marketing, but create awareness of this practice so that third parties are deterred from engaging in such a practice. This act of publicizing can be done by publishing public information sheets that would include what the official mark is, etc. thereby generating awareness about what would amount to a trademark, copyright or design infringement would be with respect to that event.

Also, the need for a legislation cannot be over-emphasized. Reliance on alternate claims under trademark or copyright infringement, passing off, reverse confusion or unfair competition can only be a stop-gap arrangement, not a permanent solution. The provisions in legislations passed in various countries such as the wide object provided by the legislation of New Zealand, powers given to requisite ministries under the South African legislations and specific laws enacted in China, United Kingdom can be used as a benchmark to draft a distinct legislation to curb the menace. If not a special legislation, provisions for ambush marketing should be incorporated in the trademark and copyright legislations itself by amendments. The case for legislation must be made on rational economic grounds in the public interest and in specific Indian context.

An event of an international scale plays a very important role in invigorating economies and sports systems as well as promoting tourism, ultimately impacting the economic growth of a state as well as relations with other states. Major events need sponsors because they cannot be held solely with public tax money. Sponsors do seek their pound of flesh in exchange for their contribution and are unlikely to make the sponsorship commitment unless they trust the organizer. If the organizers' are unable to put to rest the threat of ambush marketing, it shall scare sponsors away from such events in future. Prospective sponsors must be able to trust the organizer and the environment in which the event is held. To assure the sponsors safety in this regard alone, special legislation focusing on specific events of national importance is justified. The eventual success of the law will reflect in the success of events protected and fostering of an environment that promotes many more similar events in India. Importantly, if one is to reconcile the public interest with limits on freedom and curbs on creativity and innovation engendered by an anti-ambush marketing law, the protected event should not lose the spirit of the staging in trying to enforce laws with hyper-technical precision.⁴³

References

- 1 Townley Stephen, Harrington Dan & Couchman Nicholas, The legal and practical prevention of ambush marketing in sport, *Psychology and Marketing*, 15 (4) (1998) 333-348.
- 2 Gradauskaita Jurga, The advertising appeal of sports and the legal limits of the incorporation of sports in advertising, *Entertainment and Sports Law Journal*, 8 (1) (2010).
- 3 Kala Vijayraghavan, Ambush marketing: HUL's last-minute surprise foxes P&G, <http://economictimes.indiatimes.com/news/news-by-industry/services/advertising/Ambush-marketing-HULs-last-minute-surprise-foxes-PG/articleshow/6230194.cms> (15 April 2010).
- 4 Sandler D M & Shani D, Olympic sponsorship vs 'ambush' marketing: Who gets the gold? *Journal of Advertising Research*, 29 (4) (1989) 9, 11.
- 5 Macmillan English Dictionary, <http://www.macmillandictionary.com/spellcheck/british/?q=ambush+marketing> (11 April 2010).
- 6 Cran David & Griffiths Simon, Ambush marketing: Unsporting behaviour or fair play? *Entertainment Law Review*, 21 (8) (2010) 293-297.
- 7 Schwarz E C & Hunter J D, *Advanced theory and practice in Sport Marketing*, (Oxford, UK: Butterworth-Heinemann/Elsevier), 2008.
- 8 Miller Nancy A, Ambush marketing and the 2010 Vancouver-Whistler Olympic Games: A prospective view, http://www.imakenews.com/iln/e_article000867643.cfm (12 April 2010).
- 9 Verrelli Anthony, Survey of recent developments in sport, *Seton Hall Journal of Sports*, 4 (1994) L726, <http://www.bakerbotts.com/news/printpage.asp?pubid=13511711191999> (12 April 2010); *Host Communication v Kellogg* in 1994 (unreported); *Mastercard International Inc v Spirit Communications Co*, (1994) 30 USPQ 2d WL (US Dist).
- 10 Gardiner Simon, *Sports Law*, 2nd edn (Cavendish Publishing, London), 2001, p. 509-511.
- 11 Golder Tim & Burnett Wendy, Intellectual property protection and enforcement at major events: Practical lessons learnt from the Melbourne 2006 Commonwealth Games, *Journal of Intellectual Property Law and Practice*, 2 (1) (2007) 19-22.
- 12 <http://www.bonham.com/inside/glossary.html>; Bhattacharjee Sudipta, Ambush marketing – The problem and the projected solutions vis-à-vis intellectual property law – A global perspective, *Journal of Intellectual Property Rights*, 8 (5) (2003) 375-388.
- 13 Crimmins J & Horn M, Sponsorship: From management ego trip to marketing success, *Journal of Advertising Research*, 36 (1996) 11-21.
- 14 Sue Landau, Budweiser seeks curbs on World Cup ambush marketing, Reuter News Service, 15 July 1999.
- 15 As stated by the Marketing Director of International Olympic Committee. Also, the worldwide sponsorship programme has increased the income of the IOC by 900 per cent over a period of 20 years which makes the risk of losing sponsors colossal; Preuss Holger, *et al.*, Ambush marketing in China: Counterbalancing Olympic sponsorship efforts, *Asian Business and Management*, 7 (2008) 243-263.
- 16 Olympics budget rises to 9.3 billion pounds, BBC News, 15 March 2007.
- 17 McDonald Mark A & Milne George R, *Cases In Sport Marketing*, (Jones and Bartlett Publishers Inc, Sudbury), 2003, p. 190.
- 18 *National Hockey League v Pepsi Cola Ltd*, 92 DLR 4th 349.
- 19 Lipman Joanne, Olympic ambush strategies spur debate, *Wall Street Journal*, 7 February 1992, B6.
- 20 Bainbridge David, *Intellectual Property*, 4th edn (Financial times, Pitman Publishing, London), 1999, p. 521.
- 21 Bhattacharjee Sudipta, Ambush marketing – The problem and the projected solutions vis-à-vis intellectual property law – A global perspective, *Journal of Intellectual Property Rights*, 8 (5) (2003) 375-388.
- 22 Hoek Janet & Gendall Philip, Ambush marketing – More than just a commercial irritant? *Entertainment Law*, 1 (2) (Summer 2002) 72-91.
- 23 Misappropriation theory rests on the premise that persons should not be able to appropriate the benefits of another's investment without a similar investment of their own, Barnes David W, Misappropriation of Trademark, *North Carolina Journal of Law and Technology*, 9 (2) (2008) 171-186.
- 24 *MasterCard International Incorporated v Sprint Communications Co & ISL Football AG*, 30 USPQ 2d 1963 (SDNY 1994).
- 25 <http://www.rediff.com/cricket/2002/dec/04/reject.htm> (14 April 2010).
- 26 *ICC Development International Ltd (ICCDIL) v Arvee*, (2003) 26 PTC 245(Del).
- 27 *ICC Development v EGSS*, (2003) 26 PTC 228 (Del).

- 28 *NCAA v Coors Brewing Co*, 2002 US Dist LEXIS 21059.
- 29 Vassallo Edward, Blemaster Kristin & Werner Patricia, An international look at ambush marketing, *The Trademark Reporter*, 95 (6) 2005) 1338 -1356.
- 30 Anti-Counterfeiting Committee Report, Asian Patents Attorney Association, 55th Council Meeting, http://www.apaaonline.org/pdf/APAA_55th_council_meeting/anticounterfeitingcommittee/Special_Topics_Report_of_India_Anti-Counterfeiting_Group.pdf (14 April 2010).
- 31 Rana Vikrant, A case of ambush marketing in India, *International Trademark Association Bulletin*, 58 (15) (2003) 53.
- 32 Goldman Kevin, No 'ambush' campaign here, Atlanta Olympics organizers vow, *Wall Street Journal*, 3 November 1994, B10.
- 33 Ambush marketing: Open warfare on sponsorship, Mishcon de Reya Brands & Rights Group, <http://www.mishcon.co.uk/inp/inp-b/brandbrief/bra031201.htm> (14 April 2010).
- 34 Trade Practices Amendment Act No 26 of 2001, <http://www.info.gov.za/view/DownloadFileAction?id=86468> (14 April 2010).
- 35 Harbottle and Lewis, http://www.legal500.com/devs/uk/en/uken_065.htm (14 April 2010)
- 36 Ironside S, Major events management act 2007, *Managing Intellectual Property*, (184) (2008) 122, <http://www.managingip.com/Article/2041356/Major-Events-Management-Act-2007.html> (15 April 2010).
- 37 Decree No 345 of the State Council of The People's Republic of China effective 1 April 2002.
- 38 Collett P & Johnson N, Don't be ambushed in 2012, *Brand Strategy*, 199 (2006) 34-35.
- 39 Lacaz R, Answers of the Brazilian group: Question B – Ambush marketing, http://www.ligue.org/files/2007_report_b_brazil.pdf (15 April 2010).
- 40 <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Chamber=N&StartList=A&EndList=Z&Session=14&Type=0&Scope=I&query=4921&List=staT> (15 April 2010).
- 41 An ex-parte ad interim injunction order dated 16 April 2010 was given by Justice S Ravindra Bhat of the Delhi High Court restraining the defendants from using the website www.commonwealthgamesdelhi2010.org as well as from using the common wealth games logo and the mark or any other mark deceptively similar thereto amounting to passing off of their goods or services as those of the plaintiff.
- 42 McKelvey Stephen, An analysis of the ongoing global efforts to combat ambush marketing: Will corporate marketers 'take' the gold in Greece? *Journal of Legal Aspects of Sport*, 14 (2004) 191, 193.
- 43 Kamath Nandan, Should we legislate on ambush marketing, *The Hindu Business Line*, <http://www.thehindubusinessline.com/catalyst/2008/05/08/stories/2008050850110300.htm> (15 April 2010).