

Sponsorship Program Protection Strategies for Special Sport Events: Are Event Organizers Outmaneuvering Ambush Marketers?

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Companies invest millions of dollars to become “official sponsors” of major global sporting events. The tremendous publicity and consumer audiences generated by such events provide an attractive marketing opportunity for companies other than the event’s official sponsors who seek to associate themselves in the minds of the public with the goodwill and popularity of these events. This activity, known as ambush marketing, poses significant legal and business challenges for sport event organizers seeking to protect both the financial investment of official sponsors and the integrity of their sponsorship programs. With rising sponsorship stakes, event organizers have become increasingly proactive in their efforts to combat ambush marketing. This article examines the implementation and effectiveness of a variety of evolving sponsorship program protection strategies including: pre-event education and public relations initiatives; on-site policing tactics; contractual language in athlete participation and spectator ticket agreements; and the enactment and enforcement of special trademark protection legislation.

The 1996 Olympic Games in Atlanta will long be remembered for both the good and the bad: Muhammad Ali’s inspiring torch lighting at the Opening Ceremonies, the United States’ finish as the world’s top medal winners, the horrific Centennial Olympic Park bombing, and the marketing activities that made it “the most hyped and over-commercialized [Games] as well” (Brown & Morrison, 2000). Among corporate sport marketers, the company that will be forever linked to the Atlanta Olympic Games is Nike. As one commentator noted:

Nike’s ambush of the 1996 Atlanta Olympics is still seen as the ambush of all ambushes. Saving the US\$50 million that an official sponsorship would have

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cost, Nike plastered the city with billboards, handed out swoosh banners to wave at the competitions and erected an enormous Nike center overlooking the stadium. The tactics devastated the International Olympic Committee's credibility and spooked other organizations such as FIFA into adopting more assertive anti-ambushing strategies. (Sauer, 2002)

Nike's omnipresence at the Atlanta Olympic Games served as an alarming "wake-up call" for organizers of major sporting events to not only acknowledge the potential negative impact of ambush marketers, but also to adopt more vigilant sponsorship program protection strategies that have evolved with each successive major sporting event.

Sponsorship has been defined as "a cash and/or in-kind fee paid to a property (typically a sports, entertainment, nonprofit event or organization) in return for access to the exploitable commercial potential associated with the property" (International Event Group, 2000). The property and sponsor enter into a contract that involves a commercial transaction to transfer defined rights, either exclusively or jointly, to a purchaser. As in any contract, the vendor's [property's] ownership of the rights, the freedom to transfer these rights, and the ability to affect the transfer may all be at issue. In a typical sponsorship package, the sponsor may buy various rights including event title or category rights (e.g., official soft drink), signage rights, rights to specific designated emblems and logos, rights to use the word "official," rights to specific event advertising, promotions, and publication inclusions, and certain first-option rights. The specific rights vary according to the size and nature of the event and the specifics of the contract. In major global events, the rights issue is often complex. (Meenaghan, 1996, p. 105)

Official sponsors invest millions of dollars to affiliate themselves with major sporting events. For instance, official sponsors of the 2006 FIFA World Cup invested an estimated total of \$675 million in sponsorship fees and activation costs (International Event Group, 2006). For the 4-year Olympiad encompassing the 2006 Olympic Games in Turin and the 2008 Summer Games in Beijing, 11 major corporations have invested on average \$80 million to secure the top-tier sponsorship rights (Wharton, 2006). Official sponsors of United States-based annual mega-events such as the Super Bowl, World Series, and NCAA Men's Final Four, pay millions of dollars for the rights to associate themselves with these premier events.

Given the significant financial investments of official sponsors, as well as the tremendous publicity and consumer audiences generated by major sporting events, it has become increasingly important for event organizers to adopt proactive sponsorship program protection strategies for the following reasons: "(1) to protect the integrity and financial viability of the event; (2) to build the event 'brand' and goodwill in it for the future; and (3) to fulfill contractual obligations to sponsors" (Ambush marketing, 2003). Furthermore, one research study, designed to assess the opinions of senior sport marketing executives toward the practice of ambush marketing, revealed that if event organizers consistently fail to protect their investment as official sponsors, official sponsors may ultimately choose not to affiliate with major sporting events or to demand a decrease in fees for sponsorship rights (McKelvey & Gladden, 2006).

Over the past decade, properties have devised, with varying degrees of success, multiple strategies designed to close the many "loopholes" that have been exploited

by nonsponsors. However, the complexity of the rights issues within sponsorship contracts and the legal gray areas of ambush marketing, coupled with the creativity and ingenuity of ambush marketers, make it virtually impossible for event organizers to insure an ambush-marketing-free event. For instance, in conjunction with the 2006 Major League Baseball All-Star Game in Pittsburgh, Pennsylvania-based Consol Energy attached two 100-foot lighted signs on a barge traveling up and down Pittsburgh's rivers; the signs carried the message "This coal creates enough energy to cook every hot dog ever served at baseball's big game" (Lindeman & Sosek, 2006). Before the 2006 Super Bowl, nonsponsors Miller Brewing, Scott Bath Tissues, and ConAgra Foods were among the many companies that used former NFL stars in consumer promotions designed to trade off the event's popularity and goodwill (Petricca, 2006). Although the 2006 Olympic Winter Games in Turin, Italy, were widely touted for effectively limiting ambush marketing, nonsponsor Target negotiated a deal with Trenitalia, the Italian train system, to have its red-and-white bullseye logo, along with pictures of models in red and white winter ice-skating costumes and luge suits, prominently featured on its trains (called "Target Express" trains) taking spectators to various events (Hiskey, 2006). Target employees greeted spectators as they boarded trains and distributed logoed noisemakers and large red and white foam fingers (Hiskey, 2006). By teaming with Trenitalia, "Target skirted the [Italian] federal law . . . that makes it a crime to affiliate a nonsponsor with the Olympics" (Hiskey, 2006).

A myriad other examples could be provided to illustrate the practical and legal challenges faced by event organizers seeking to create an "ambush-proof" event. However, when utilizing the "wake up" call of 1996 Olympic Games as a benchmark, event organizers have arguably made strides in the area of sponsorship program protection. Following an overview of the practice of ambush marketing and its legal parameters, this article examines four over-arching sponsorship program protection strategies increasingly used by event organizers: (1) preevent education and public relations initiatives; (2) on-site policing, which ranges from confiscation of nonsponsor product and signage to the creation of "clean zones"; (3) the use of contractual language in athlete participation agreements and on spectators' tickets; and (4) the enactment and enforcement of special trademark protection legislation (the term "event organizers" is used throughout this article to refer generally to the governing bodies and leagues that, in essence, own and manage the special sport event discussed herein). The current article builds upon prior research examining the effectiveness of ambush marketing prevention measures (Curthoys & Kendall, 2001; Hartland & Skinner, 2005; McAuley & Sutton, 1999; McKelvey & Grady, 2004). Additional research, review of internal documents provided by event organizers, and findings from the 2006 FIFA World Cup, are used to illuminate these sponsorship program protection strategies and provide "best practices" guidance for event organizers of future special sport events.

Overview of Ambush Marketing

The review of the academic literature illustrates the challenges in conceptualizing "ambush marketing," the term that was coined during the 1984 Los Angeles Olympic Games to describe the marketing activities of nonsponsors such as Kodak, which

used a variety of tactics to “ambush” official sponsor Fuji (Sandler & Shani, 1989). The earliest definitions of ambush marketing were pejorative, implying unethical business conduct laden with the evil intent (thus supporting the perspective of event organizers and official sponsors). For instance, the term has been defined as “a company’s intentional efforts to weaken—or ambush—its competitor’s ‘official sponsorship.’ It does this by engaging in promotions and advertising that trade off the event or property’s goodwill and reputation, and that seek to confuse the buying public as to which companies really hold official sponsorship rights” (McKelvey, 1994a, p. 20). Townley, Harrington, and Couchman (1998) stressed the concept of “unauthorized association” in defining ambush marketing, stating that the practice

consists in the sports context of the unauthorized association by businesses of their names, brands, products or services with a sports event or competition through any one of a wide range of marketing activities; unauthorized in the sense that the controller of the commercial rights in such events, usually the relevant governing body, has neither sanctioned nor licensed the association, either itself or through commercial agents. (p. 1)

In this context, ambush marketing has been viewed as not only those activities that are aimed specifically at undermining a competitor’s official sponsorship of an event, but also those activities that seek to associate a nonsponsor with the sporting event itself. Additional literature on ambush marketing has suggested that, beyond this more pejorative definition, ambush marketing can be more broadly defined to describe “a whole variety of wholly legitimate and morally correct methods of intruding upon public consciousness surrounding an event” (Meenaghan, 1994, p. 79).

More recent scholarly research on the topic of ambush marketing has suggested that the term “ambush marketing” is often used inappropriately (Crow & Hoek, 2003; Hoek & Gendall, 2002). For instance, the term “ambush marketing” presents numerous ambiguities: If a nonsponsor’s activity is legal, should it still be deemed to be ambush marketing? If there is no purposeful intent to confuse consumers as to a nonsponsor’s association with an event, is it still ambush marketing? If the nonsponsor is legitimately sponsoring a team within a league, well within the league’s sponsorship guidelines, is it still ambush marketing? Is it ambush marketing only because the event organizer says it is? Furthermore, researchers have suggested that it is unrealistic to expect nonsponsors to make decisions regarding sponsorship differently than they would with regard to other promotional techniques designed to compete in the marketplace (Shani & Sandler, 1998). This conceptual framework serves to acknowledge the practical, ethical and legal ambiguities (often referred to as the “grey areas”) that surround the concept of ambush marketing.

While the practice of ambush marketing has been widely debated, the answer as to whether it is an “immoral or imaginative practice . . . may well lie in the eye of the beholder” (Meenaghan, 1994, p. 85). For instance, event organizers and their official sponsors typically denounce as ambush marketing *any* activity by a nonsponsor that wittingly or unwittingly intrudes upon the property’s or official sponsors’ rights, thus potentially detracting from the sponsor’s “exclusive” association with the sport property. Utilizing this definition, for instance, even a company that

purchases advertising within the telecast of a sport special event could be construed by the event organizer and official sponsor as an ambush marketer regardless of that company's business motives, ethical perspective, or legal rights. Highlighting, on the other hand, the ambiguities surrounding the concept of ambush marketing, such activity engaged in by nonsponsors is typically perceived and defended as nothing more than a part of the "normal 'cut and thrust' of business activity based on a strong economic justification" (Meenaghan, 1994, p. 85).

What has emerged through scholarly research, as well as debate among practitioners, is an evolution in our understanding of the concept of ambush marketing, as well as a fleshing out of the ambiguities that surround the practice. From the earliest definitions of ambush marketing as a pejorative term involving "unauthorized" practices has emerged not only an acknowledgment of the considerable vagueness that surrounds the concept but also a conceptual framework of ambush marketing that more accurately reflects the balancing of sponsors' contractual rights against the rights of nonsponsors to maintain a market presence during an event through legal and competitive business activities. Hence, while at one extreme end of the ambush marketing conceptual debate we have what the Olympic Games have termed "parasite marketing" (Payne, 1993, p. 4), at the other end we have what has been referred to as "parallel marketing" (Glengarry, 2007).

Companies engage in ambush marketing for a variety of reasons. First, the company may view the official sponsorship rights as too expensive. Second, the company may be excluded from becoming an official sponsor because of a sport organization's restrictions on the number of sponsors or specific product or service categories. Third, the company may be blocked from becoming an official sponsor because of a sport organization's preexisting exclusive deal with a competing company. Various scholars have identified frameworks for categorizing a broad range of methods, or tactics, available to nonsponsors seeking to align with a sports event. Meenaghan (1998), in suggesting that ambush marketing is a "continuum of activities that vary in the extent to which both legal and ethical limits are infringed" (p. 310), has identified the following ambush strategies: (1) sponsorship of the media coverage of the event; (2) sponsorship of a subcategory within the event coupled with aggressive promotions; (3) sponsorship-related contributions to the "Players Pool" (relevant to sport systems located outside the U.S.); (4) engagement in advertising that coincides with the sponsored event; and (5) use of miscellaneous ambushing strategies that serves as a catch-all for a wide range of "highly imaginative strategies (allowing nonsponsors) to associate themselves with particular events" (p. 112). Other researchers have elaborated upon or expanded the avenues of ambush marketing tactics (Crompton, 2004; Crow & Hoek, 2003; McAuley & Sutton, 1999). Event organizers and official sponsors typically position such tactics as unethical, without acknowledging that they are not illegal. As suggested by Crow & Hoek (2003), "sponsors may feel aggrieved by their competitors' behavior but, unless a breach of trademark or some form of passing off has occurred, their ability to pursue the matter will be limited" (p. 2). The ambush marketing tactics discussed below, while by no means exhaustive, serve to illuminate the practical and legal implications for event organizers in seeking to prevent such tactics.

Use of Generic Phrases

Event organizers have become increasingly vigilant in protecting their intellectual property through the registration of marks and symbols associated with their events. Even phrases that incorporate the name of the host country or city have been granted trademark protection (e.g., “The Road to Indianapolis” for the NCAA Men’s Basketball Championships, “The Games in Salt Lake City” for the Olympic Games). However, ambush marketers often use generic phrases that refer to the event. For example, although the NFL owns trademark registrations for the phrases “Super Bowl,” “Super Sunday,” and their corresponding logos, the most popular way for nonsponsors to refer to the event is “The Big Game” (Petricca, 2006). For example, in conjunction with the 2005 Super Bowl, IGA promoted its “Big Game Blowout”; Sears promoted its “Big Game Sale” in print and broadcast advertising; and RadioShack advertised that “there’s still time to go to RadioShack before the Big Game” (cf. McKelvey, 2005). As discussed in greater detail below, the principles of trademark law provide scant protection from such use of generic phrases, thus presenting an ongoing challenge for event organizers.

Purchase of Advertising Time Within the Event Broadcast

The purchase of advertising within a sporting event telecast is one of the most common and popular tactics of ambush marketing (McAuley & Sutton, 1999; McKelvey, 1994b; Meenaghan, 1996). This tactic was also deemed to be the most effective form of ambush marketing, according to a survey of senior marketing executives of corporations actively engaged in sport sponsorship (McKelvey & Gladden, 2006). The highly publicized advertising campaigns of Wendy’s restaurants featuring founder Dave Thomas participating in a variety of Olympic sporting events alongside famous former Olympians (ambushing Olympic Games official sponsor McDonald’s) and American Express (ambushing Visa) serve to illustrate this tactic in the Olympics context (Sauer, 2002). Given its worldwide audience, telecasts of the Super Bowl have also provided numerous well-known illustrations of ambush marketing via event broadcasts. For example, for a decade beginning in the late 1980s, Anheuser-Busch annually aired its highly-publicized “Bud Bowl” commercials during Super Bowl telecasts, serving to ambush the NFL’s then-official beer sponsor Miller Brewing (Khermouch, 1998).

Because event organizers for major sporting events typically sell their event broadcast rights to broadcasting companies, they relinquish a measure of control over the advertisers as well as the advertising content. Consequently, although event organizers negotiate contractual language with their broadcast partners that provides their official sponsors the “right of first refusal” to purchase advertising within the event telecast, they are not in a bargaining position to prohibit their broadcast rightsholders from selling advertising to nonsponsors or even competitors of official sponsors. Such restrictions would put the rightsholders in an untenable position in their attempts to sell advertising to recoup the costs of broadcast rights fees. Event organizers can also contract with their broadcast partners to prevent nonsponsors’ advertising from using phrases associated with the event (e.g., “official sponsor of

the Olympics *telecast*”) and to obtain approval rights on advertising content. The latter was an effective tactic for the NCAA, which was able to prevent the Hooters restaurant chain from airing a basketball-themed advertisement within the 2007 NCAA Final Four telecasts that featured noted basketball announcer Dick Vitale in a sexually provocative dialogue with a Hooters waitress (S. Bearby, personal communication, April 24, 2007). Furthermore, the ability of nonsponsors to purchase advertising through local network affiliate stations remains beyond the control of event organizers. The purchase of commercials within the broadcast cannot be assumed to be an attempt to ambush market, because it may be simply the most cost-effective way to reach key audiences. Furthermore, unless the content of the advertisement rises to the level of a legal claim of unfair competition or passing off, it may be impossible for an event organizer to prevent this marketing tactic. Hence, it is incumbent upon event organizers to negotiate broadcast contracts that provide as much control as possible over advertising content, as well as over which companies can advertise. It has been argued that event organizers concerned over ambush marketing should consider reducing their broadcast rights fees in exchange for broader contractual protection aimed at thwarting ambush marketing (Shani & Sandler, 1998).

Presence in and Around the Event Venue

Another popular form of ambushing marketing is for nonsponsors to secure a presence in and around the sporting event venue. In the early days of ambush marketing, companies would employ blimps and airplanes with trailing banners to ambush a major sporting event, but event organizers long ago closed this ambush opportunity by working closely with the Federal Aviation Administration and with host cities to enact air traffic restrictions during such events. Granted, aggressive and clever ambush marketers have continued to use other tactics for on-site presence, including securing strategically-placed billboards, erecting tents and inflatables in high-traffic locations, and distributing literature and samples to consumers attending the event. The Olympic-themed ambush marketing activities of Nike and Target cited above serve to illustrate these types of activities. Event organizers have, over the years, achieved some measure of success in combating ambush marketers through more aggressive on-site policing and the establishment of “clean zones” in cooperation with host cities. However, as event organizers have sought to minimize such activity through host city contracts and legislation, they have, as discussed in more detail below, fueled the tension between free enterprise, the rights of fans, and the needs of event organizers to deliver ambush marketing-free environments to their official sponsors. Such activity also raises issues regarding the level of protection, contractual and otherwise, that has been promised to official sponsors, particularly in venues where nonsponsors have preexisting contracts for permanent signage. Hence, as suggested by Hoek and Gendall (2003a), event organizers need “to provide transparency as to the actual rights purchased” by official sponsors, as well as “tighter sponsorship contracts that better define event owners’ responsibilities and sponsors’ rights as providing more grounds for action and a greater range of remedies” (p. 10).

Conducting Consumer Promotions

Another popular ambush marketing tactic is to conduct consumer promotions that associate the ambush marketer with popular sporting events. Such promotions typically are offered at retail locations and are supported by point-of-sale displays that feature visuals “themed” to the particular sporting event that use words that generically refer to the sporting event. For instance, a company intent on associating itself with the NCAA Final Four may conduct an in-store promotion offering consumers a free basketball in exchange for proofs-of-purchase or inviting consumers to enter to win “a trip for 2 to the College Hoop Championships.” While purposely avoiding the use of any registered trademarks, the displays are intended to lure consumers through an implied association with the NCAA Final Four. Such use of consumer promotions, typically conducted in concert with generic phrasing, continue to pose significant legal hurdles for event organizers in that they do not rise to the level required to bring a legal claim of unfair competition or passing off. Scholars have suggested that the extent to which official sponsors aggressively activate their sponsorship rights through consumer promotions can serve as a deterrent by overshadowing nonsponsors’ promotional activities (Meenaghan, 1998; Shani & Sandler, 1998). If a nonsponsor knows, or expects, that the official sponsor within their respective product or service category is going to aggressively leverage their promotional rights, that company may be less inclined to commit valuable marketing funds in an attempt to overshadow the rights of the official sponsors of that event.

Congratulatory Messages

In an attempt to create an association with a particular event, companies will often create advertisements offering “congratulations” to participating teams or players. For instance, only days after the 2003 Super Bowl, the National Dairy Council, although not an official sponsor of the NFL, ran a full-page advertisement in *USA Today* congratulating the game’s two MVPs in their “Got Milk?” moustache campaign. The one-time nature of such advertisements, coupled with the protections afforded by the First Amendment (Vassallo, Blemaster, & Werner, 2005), makes this tactic difficult to stop, particularly if the congratulatory message is not tied directly to the sale of a product or service. However, while research has shown the efficacy of this tactic to be limited (McKelvey & Gladden, 2006), event organizers and official sponsors should consider jointly implementing their own congratulatory advertisements. The pre-event education and public relations strategies discussed below also provide event organizers the opportunity to state their position regarding the use of congratulatory advertisements by nonsponsors.

The Legal Landscape of Ambush Marketing

The debate over ambush marketing is further clouded by questions regarding its legality, because “purely defined, [it] does not involve traditionally illegal activities as trademark infringement or manufacturing of counterfeit goods” (Vassallo et al.,

2005, p. 1340). In addition to the historical difficulties of relying on trademark law to combat ambush marketing in the United States, event organizers face additional hurdles when staging events in countries with even less developed trademark protection legislation and policy, such as China.

The Olympic Movement within the United States, governed by the United States Olympic Committee (USOC) has, because of the protections afforded by special legislation, been able to be extremely vigilant in its pursuit of ambush marketers (McKelvey & Grady, 2004). The Olympic program within the United States was created by Congress through Section 110 of the Amateur Sports Act of 1978. This act, which today exists in its amended form as the Ted Stevens Olympic and Amateur Sports Act of 1998 (hereinafter "OASA"; 36 U.S.C. 220506 (2000)), grants the USOC the power to govern amateur athletic events pertaining to the Olympic Games, to exercise exclusive jurisdiction over all matters pertaining to the United States' participation in the Olympic Movement, and to maintain exclusive control, pursuant to §220506(a) of the OASA, over the use of Olympic marks, symbols, and technology within the United States. Control over the Olympic symbols is especially important because the United States is one of the few countries in the world whose National Olympic Committee does not receive direct monetary support from the government. In addition to the protections afforded the USOC marks and symbols via the OASA, the USOC also owns approximately 120 active federally registered trademarks, with another 15–20 pending applications (K. Maynard, personal communication, August 28, 2006). This control enables the USOC to attract the corporate sponsors, suppliers, and licensees that are critical to the funding and ultimately the success of the U.S. Olympic Movement and its athletes. The OASA also provides the USOC with additional ammunition with which to fight alleged infringers. The express language of the OASA lessens the USOC's burden of proof by prohibiting any combination or simulation of the specified words "... *tending* to cause confusion or mistake, to deceive, or to falsely suggest a connection with the corporation or any Olympic, Paralympic, or Pan-American Games activity;" (emphasis added; 36 U.S.C. § 220506(c)(3); 2000)). Thus, the OASA provides the USOC much stronger legal grounds upon which to prevent the misuse or misappropriation of its protected words and symbols and imagery (Moorman, 2002). As a result of this broader protection, the USOC has achieved unprecedented success in combating ambush marketers through the use of legal action (McKelvey & Grady, 2004). In addition, as discussed in more detail below, the Olympic Movement has been successful in gaining broader trademark protection (similar to that of the Ted Stevens Amateur and Olympic Sports Act) in countries outside the United States, often as a condition to hosting the Games (McKelvey & Grady, 2004).

However, U.S.-based events such as the Super Bowl, World Series, and NCAA Final Four face much higher legal hurdles in combating ambush marketers. Obviously, if a company uses a trademarked name, symbol, or logo that is identical or confusingly similar to that owned by the event organizer, a lawsuit can be brought for trademark infringement under the Lanham Act ((15 U.S.C. §1114; 2000)), provided that the event organizer can also demonstrate that the alleged infringing mark is likely to cause consumer confusion. Such was the case before the 2006 Super Bowl, when the NFL successfully halted an Illinois state lottery promotion offering tickets to "The Super Game XL," a mark quite similar to the NFL's "Super Bowl XL" trademark (Finke, 2005). Most ambush marketers are, however, careful to

avoid blatant trademark infringement, instead using more generic phrases (e.g., “The Big Game”). Furthermore, the Lanham Act requirement that the event organizer demonstrate a likelihood of consumer confusion, most often achieved through the use of consumer surveys, creates a time consuming and costly hurdle for event organizers. The Lanham Act also provides a cause of action, based on the theory of unfair competition, for false designation of origin, which is designed to prevent the use of similar marks that cause confusion as to affiliation or sponsorship (15 U.S.C. 1125(a); 2000)). Although not governed in the U.S. under federal law, another possible avenue of legal recourse is a state-law-based claim of misappropriation of goodwill (commonly referred to outside the U.S. as the tort of “passing off”). Neither of these claims has historically provided event organizers with a firm footing against companies that are able to navigate the legal gray areas of ambush marketing (Vassallo et al., 2005). Although one recent U.S. lawsuit (*NCAA v. Coors Brewing Co.*, 2002) provided a novel opportunity to establish the legal parameters of ambush marketing with respect to the unauthorized use of NCAA Final Four tickets in a consumer sweepstakes, the lawsuit, alleging state law-based unfair competition and misappropriation theories, was subsequently settled out of court. Hence, in the U.S., there remain no adjudicated cases applying federal or state laws directly to the practice of ambush marketing, resulting in a historical reluctance of event organizers to challenge the practice using the courts. Furthermore, because any potential legal claims are tied to the trademark rights of the event organizers, only the event organizer and not the sponsor could pursue such a legal claim.

Another reason that event organizers have been reluctant to bring suit against ambush marketers is the fear of an adverse court ruling. Such was the case in 1992, when a Canadian court upheld the legality of a host of ambush marketing tactics in *NHL v. Pepsi Cola Canada* (McKelvey, 1992). As illustrated by the *NHL v. Pepsi-Cola Canada* case, courts beyond the United States have historically also been unsympathetic to the concerns of event organizers toward ambush marketing. For instance, in *New Zealand Olympic and Commonwealth Games Ass’n, Inc. v. Telecom New Zealand* (1996), the event organizer alleged a Telecom advertisement constituted unfair trading and passing off. The event organizer argued, unsuccessfully, that Telecom’s advertisement, featuring the word “ring” in positions similar to those of the five Olympic rings, suggested an association between the Olympic Games and Telecom. Indicative of the legal challenges in combating ambush marketing, the court held that the typical newspaper reader would not be misled by the advertisement (Hoek, 1997).

Despite the dearth of legal victories against ambush marketers, event organizers who are willing to aggressively pursue legal action may, on occasion, find a court willing to enforce their trademark rights against ambush marketers. For instance, in one of the few legal victories in the annals of ambush marketing, FIFA, before the 2006 FIFA World Cup, successfully obtained an injunction and mandatory order of the Tel Aviv-Yafo District Court forcing Burger King Israel to cease the use of FIFA trademarks and World Cup tickets in a website promotion (OC FIFA World Cup, 2006). Notwithstanding such rare victories, the trademark laws currently available in most countries, including the U.S., have proven largely ineffective against the creativity of companies seeking to maintain a market presence during an event. Furthermore, the unwillingness of courts to restrict or prohibit the practice of ambush marketing reflects the ongoing tension between protecting the interests

of event organizers and their sponsors, and preserving the ability of companies to engage and compete in free and lawful enterprise.

Sponsorship Program Protection Strategies

While use of the courts has provided event organizers with limited recourse against ambush marketers in the past, the conclusion of each successive major sporting event—arguably beginning with the 1996 Olympic Games in Atlanta—has provided an evolving roadmap to new and arguably more effective sponsorship program protection strategies. This sponsorship program protection roadmap can be divided into four overarching avenues, discussed in turn below: (1) pre-event education and public relations initiatives; (2) on-site policing, which ranges from confiscation of nonsponsor product and signage to the creation of “clean zones”; (3) the use of contractual language in athlete participation agreements and on spectators’ tickets; and (4) the enactment and enforcement of special trademark protection legislation. In particular, those organizers whose events are bid out to host countries or cities (e.g., the Olympic Games, World Cup, Super Bowl, NCAA Men’s Final Four) have capitalized on their leverage in awarding hosting rights by requiring the host venues to “guarantee” ambush marketing protection.

However, while event organizers have developed arguably more effective strategies for addressing what they define as ambush marketing, it is critical to acknowledge that nonsponsors have legal rights and ethical obligations to shareholders to maintain the salience of their brands during sports events. Furthermore, event organizers need to be careful about overpromising on their protection strategies and raising unreasonable expectations. One study of corporate marketers, for instance, found that event organizers act concerned about ambush marketing at the time of contract negotiations but seem to have little power to stop it when it actually occurs (McKelvey & Gladden, 2006).

Pre-Event Education and Public Relations Initiatives

When event organizers are confronted by ambush marketing campaigns, particularly those that impact upon their official sponsors, they have typically reacted (if they publicly react at all) by denouncing the ambushing company through press releases and the occasional press conference. Drawing attention to an alleged ambush marketer can be a double-edged sword, however, by providing the nonsponsor with media exposure while the event organizer can be perceived to be whining. Furthermore, when event organizers believe that they have valid legal grounds for a trademark infringement claim, they will issue cease-and-desist letters to alleged ambushers, threatening potential legal action if the company refuses to cease its unauthorized promotional activity.

However, many event organizers are adopting a more proactive approach toward the practice of ambush marketing through pre-event education and public relations initiatives implemented well in advance of the event. These initiatives are designed to ensure that both consumers and companies engaged in sport marketing understand the differences between official sponsors and ambush marketers, as well as the legal rights of the event organizer. One measure that some, but arguably not enough,

event organizers take is to post their “rules” on ambush marketing on their official Web site (e.g., ICC Cricket World Cup, n.d.). Other pre-event education measures used by more proactive event organizers include the production and dissemination of video news releases to the media, designed to generate stories about event organizers’ intellectual property rights protection programs, as well as initiatives to publicize legal actions. Event organizers are also increasingly conducting “sponsor brand protection workshops” designed to educate sponsors about what they can do to assist in the ambush marketing protection process (Wall, 2001).

The NCAA’s proactive initiatives with respect to its Men’s and Women’s Basketball Championships provide insight into the pre-event education and public relations strategy that a growing number of event organizers have adopted. It also provides guidance for other event organizers seeking to better protect the value and integrity of their sponsorship programs. Several months before these premier events, the NCAA conducts a mail campaign targeting various constituencies who have an influence over ambush marketing activity. For instance, before the 2006 Men’s Basketball Championship tournament hosted by the city of Indianapolis, the NCAA mailed letters to local businesses to inform them of the NCAA’s trademark rights and to urge local businesses not to ambush the Final Four (NCAA Memorandum, 2006a). This letter, couched in very nonthreatening language, provided four guidelines that local businesses should be cognizant of in their marketing efforts relating to the Final Four: (1) use of NCAA logos and marks; (2) temporary signage; (3) special events; and (4) “clean zone” definition and requirements.

The letter began by stating that “many of the items addressed in this document are mandated by city ordinance and regulations” (NCAA Memorandum, 2006a). The letter was also accompanied by a document entitled “Guidelines for Local Companies/Businesses” that more specifically addressed the NCAA’s protected trademark rights. With respect to “Use of NCAA Logos and Marks,” the letter stated in pertinent part:

Federal and state law protect against the unauthorized use of those trademarks such as Final Four® and March Madness® [the Guidelines provide a much more comprehensive list of protected marks]. . . . In your advertising and marketing plans, we ask that you avoid any such usage or reference to the NCAA’s championships, tickets or marks/logos unless you have obtained prior written consent from the NCAA. The NCAA’s efforts to protect the goodwill associated with its championships are the same as your efforts to protect your business’ name and logo. (NCAA Memorandum, 2006a)

The second section (“temporary signage”) prohibited temporary signage and activity on or from private property within the so-called “clean zone,” discussed below, as well as any unauthorized use of its logos and marks on signage and décor, whether temporary or permanent, unless the individual had first secured a permit from the city (NCAA Memorandum, 2006a).

The third section (“special events”) focused primarily on logistics of securing permits for businesses seeking to conduct such events on public rights-of-way. It did, however, notify businesses that “viewing parties of the Championship” (i.e., display of the telecast by any means) must comply with the United States

Copyright Act and be authorized in writing in advance by the NCAA (NCAA Memorandum, 2006a).

Finally, the NCAA addressed the “clean zone” authorized by city ordinance and designed to “support the objectives of the NCAA. Specifically, it is intended to minimize commercialism; create a clean, safe, and vibrant environment; and provide limited recognition for the NCAA corporate partners” (NCAA Memorandum, 2006a). In addition to specific boundaries of the clean zone, the letter further states, in pertinent part:

Within the NCAA Clean Zone, all non-permanent signs and décor are restricted to official NCAA tournament and Final Four signs and materials, or programs approved by the NCAA . . . [or the local host organizing committee]. Other prohibited activity within the Clean Zone includes: (1) unauthorized commercial activity on public property or into the public right-of-ways; (2) unauthorized activity geared to the general public promoting a brand, product, or service that extends into or is visible from public right-of-ways, and (3) any unauthorized association with the NCAA or its tournament. (NCAA Memorandum, 2006a)

This section also specifically stated that the clean zone is not targeted to private, tented events or hospitality where signage is limited to discreet placards identifying the sponsor of the event. Nor is it directed at permanent, fixed-signage locations. Again indicative of the NCAA’s soft-handed approach to the topic, the letter concluded by providing a list of NCAA contacts with phone numbers and e-mail addresses. It is arguable that this softened tone, more intended to educate than to threaten, may be better received by its audience and therefore more effective.

The Guidelines document included with this letter focused specifically on the NCAA’s trademark rights and provided guidance on the “do’s and don’ts” of affiliating with the Final Four without infringing on the NCAA’s intellectual property rights. The Guidelines began by stating that the businesses are prohibited from the use of NCAA logos and marks:

Such use and references to the championship, *no matter how vague and distant* (emphasis added), create a non-permissible association between the event and the business. [NOTE: Please keep in mind that names, logos, and mascots of NCAA colleges and universities are protected by intellectual property laws as well.]. (NCAA Memorandum, 2006a)

In addition to providing a litany of protected trademarks (e.g., “Final Four,” “Final 4,” “March Madness,” “The Big Dance,” “Elite Eight,” “NCAA Sweet 16,” “The Road to the Final Four,” and “The Road to [name of host city],” among others), the Guidelines also, interestingly, provided, a list of “permissible phrases” and the permissible items on which these phrases could appear. These phrases included: “Welcome to (host city), college basketball fans,” “Welcome hoop fans,” and “Come to XYZ store to help celebrate/enjoy the big basketball event,” which may be used in marketing materials limited to table tents, napkins, cups, menus, pennants and banners (NCAA Memorandum, 2006a). Conspicuous by its absence was the ability

of companies to use these permissible phrases in print or broadcast advertisements. By providing these generic options, the NCAA was able to not only better educate local businesses, but also to strengthen their position with respect to enforcement of their trademarked phrases.

To address potential ambush marketing on a national level, the NCAA also sent a second, separate memorandum to “Selected Newspapers and Radio and Television Stations; Selected Advertising, Marketing and Promotion Agencies; and Selected Other Businesses/Corporations” (NCAA Memorandum, 2006b). This letter took a similarly soft-handed approach:

Through this memo, we are once again enlisting your assistance in following certain policies related to the upcoming 2006 Men’s Final Four. . . . The NCAA’s efforts to protect the goodwill associated with its championships is no different than the efforts that you undertake to protect your business’ name or logo. Just as you want to be able to determine who uses your name commercially, so does the NCAA. (NCAA Memorandum, 2006b)

This letter, also accompanied by the Guidelines document, primarily addressed the use of NCAA intellectual property in advertising and marketing campaigns: “We ask that you refrain from any direct or indirect usage of the NCAA’s championships, tickets or marks/logos unless and until you have obtained the prior written consent of the NCAA and specifically our corporate alliances staff” (NCAA Memorandum, 2006b). This letter also arguably “stretched the truth” in stating that:

Federal regulations support the NCAA’s effort to prohibit . . . any use of NCAA championship tickets in sweepstakes, promotion, or contests, or any other unfair attempt to associate with or exploit the goodwill of any NCAA championship event. This includes a prohibition against the display of any commercial identification within an NCAA championship bracket. (NCAA Memorandum, 2006b)

While such statements may be effective in discouraging some of those less savvy marketers and media outlets, those companies consulting legal counsel are less apt to comply, given that the NCAA’s legal claim regarding “federal regulations” is reaching. As discussed earlier, the law with respect to unauthorized use of event tickets remains unsettled. Second, there has been no adjudicated U.S. case that suggests that companies who “attempt to associate with or exploit the goodwill” of an event would be liable. Third, media outlets typically stand behind the First Amendment as well as the nominative fair use doctrine in defending their right to incorporate their advertisers into the NCAA bracket. As for the effectiveness of its pre-education campaign, the NCAA’s associate general counsel explained:

Our view is that the educational campaigns are helpful as a deterrent, but also to help explain our position from a public relations standpoint. I can’t say one way or the other about whether general basketball imagery ads have decreased. We can only go so far as what trademark law allows. We cannot prevent former student-athletes, basketball personalities, or coaches from offering endorsements so long as our marks are respected. Do I consider these

techniques ambush marketing? Absolutely. But, probably not much can be done under present law. (S. Bearby, personal communication, May 24, 2007)

Hence, companies and media outlets intent on associating with the Final Four are likely to continue to find ways to do so within the parameters of the law, particularly since the NCAA does not enjoy the broader trademark protections afforded the USOC through the Ted Stevens Olympic and Amateur Act of 1998.

Another tactic employed by event organizers is to run advertisements in trade journals and newspapers designed to educate the industry and consumers about the rights of official sponsors and the evils of ambush marketing. For example, the NCAA regularly places advertisements in trade publications that are designed to educate and warn the industry (including marketing and promotion agencies) about engaging in ambush marketing. One such advertisement, titled "How to avoid a blocked shot," emphasizes that advertisers should not ambush the Final Four:

If you're thinking of scoring marketing points through use of NCAA references, please remember that the unauthorized association with the championship or use of NCAA trademarks and tickets are violations of the NCAA's property rights. Only official NCAA corporate partners have the right to use NCAA marks, logos, references and championship game tickets in advertising, marketing and promotions. (Advertisement, 2006).

A more aggressive tactic of event organizers is to use the threat of a high-profile public reprisal as a means of deterring nonsponsors, as well as their promotion or advertising agencies (the theory is that agencies may be reluctant to create a campaign that could expose their client to public ridicule). This tactic dates back to the 1996 Olympic Games in Atlanta, when the International Olympic Committee threatened to publicly expose the CEOs of nonsponsors through press conferences and newspaper ads (McKelvey, 1994b). Obviously, however, the proven willingness to follow through on such threats ultimately determines the effectiveness of this tactic. One recent example occurred during the 2006 Olympic Winter Games, when Canada-based Imperial Oil initiated a "Cheer on Canada/Torino, Italy" consumer sweepstakes offering a trip to watch the Canadian men's and women's ice hockey team (Ski Press, 2005). Imperial Oil was an official sponsor of Hockey Canada (the country's governing body for ice hockey), although it did not have any official sponsorship rights to the Olympic Games itself.

After two weeks of unsuccessful attempts to contact the CEO of Imperial Oil, the CEO of the Vancouver Olympic Organizing Committee (VANOC), host for the 2010 Olympic Winter Games, held a press conference near the corporate headquarters of Imperial Oil to denounce the company's actions as that of "an Olympic pretender" (Bridge, 2005). Following that public reprisal, VANOC's CEO flew back to Vancouver and held a second press conference to again publicly denounce the actions of Imperial Oil. Imperial Oil subsequently modified its campaign to be in compliance with VANOC's request (Bridge, 2005). As stated by VANOC's senior vice-president of revenue, marketing, and communications: "It was unfortunate that it had to go to that step to make it public, but as a result of it, we got people's attention. And people are a little bit more careful now to make sure they're respecting the parameters that we need to follow" (McArthur, 2006, p. B4). This

situation, an example of “sub-sponsorship” (Meenaghan, 1998), exposes one of the ambiguities of ambush marketing that often arises when a company has purchased sponsorship rights to a particular team within a sport organization’s hierarchy of sponsorship opportunities. As an official sponsor of Hockey Canada, Imperial Oil has a legitimate right to leverage its sponsorship rights without being labeled an ambush marketer. Absent restrictions on the ability of companies to engage in subsponsorship, it is arguably unreasonable for event organizers such as the IOC and VANOC to classify such activity as “ambush marketing.”

On a broader scale, pre-event education and public relations initiatives, while well-intentioned, have several limitations in terms of effectiveness. First, these initiatives are premised upon a pliant and cooperative media that typically has little if any vested interest in protecting the sponsorship rights of event organizers. Second, research studies have consistently found that the public (i.e., consumers) is largely uninformed or unaware about the classification, identification and recognition of sponsors (McDaniel & Kinney, 1998; Sandler & Shani, 1989, 1993; Shani & Sandler, 1998), do not care about ambush marketing (Lyberger & McCarthy, 2001; Shani & Sandler, 1998), and do not consider ambush marketing to be unethical (Shani & Sandler, 1998). Third, companies that understand the conceptual ambiguities of ambush marketing, and the extent of their legal rights are less likely to be swayed by the self-serving efforts of event organizers. These factors serve to limit the effectiveness of event organizers’ pre-event education and public relations initiatives.

Onsite Policing

As discussed earlier, nonsponsors can get clever in creating a presence in and around event venues. The overall strategy of onsite policing includes numerous tactics: (1) patrolling of venue areas to remove ambush marketing activity; (2) covering of nonsponsor logos, which has even been extended to the removal of corporate stadium names on competition venues; (3) securing of commercial inventory (e.g., billboards) for event organizers and their official sponsors; (4) controlling access to ticket blocks and hospitality opportunities, and (5) establishment of clean zones, usually through temporary ordinances enacted by local governments as a condition for hosting the event.

Ambush Marketing Patrols

Perhaps no tactic of sponsorship program protection has seen a more proactive and arguably aggressive approach than onsite policing of venues. Several high-profile examples serve to illustrate this practice. At a 2003 cricket match between Australia and India, a South African businessman who was drinking Coca-Cola and refused to surrender another three unopened Coca-Cola cans was removed from the stadium. Pepsi was an official sponsor of the Cricket World Cup although the company distanced itself from this unfortunate episode (Ward, 2006). Similar onsite policing occurred during the 2004 Olympic Games in Athens when security guards, seeking to protect the rights of official sponsor Coca-Cola, confiscated cans of Pepsi when patrons tried to go through entrance gates to competition venues (Gibson, 2004).

While such ambush control measures may help protect official sponsors, they can run the risk of not only drawing negative publicity to official sponsors and the event itself, but also may alienate the very fans who are the reason for sponsoring the event in the first place. Thus, event organizers need to be sensitive to these issues. This delicate balancing act was highlighted at the 2006 FIFA World Cup when hundreds of Dutch fans were asked, as they entered the World Cup venue in Germany, to take off orange pants which featured a special lion's tail (Sports Illustrated, 2006). A Dutch beermaker, Bavaria NV, tried to market the orange lederhosen with its name printed on it as an advertising gimmick trading off the World Cup (Heineken served as the official sponsor of the Dutch Football Association). The ambush marketing stunt was stopped by FIFA's "censors" who insisted that the Dutch fans remove the pants before entering the stadium (Sports Illustrated, 2006). Commenting on why such an aggressive move had to be taken to contain the marketing ploy, FIFA spokesman Markus Siegler noted, "We are not going to tell individuals what to wear, everyone is free to wear what they want. But if we have evidence there is a company behind this, and 100,000 people are being equipped accordingly, and there is a visible ambush on the television screens, then we have to take action" (Sports Illustrated, 2006). Media scrutiny of the incident forced event organizers to defend their actions, which resulted in some spectators having to enter the venue in their underpants (Johnson, 2006c). One reporter noted that the incident "is evidence of the extraordinary lengths to which Fifa (sic) has gone to protect the interests of World Cup sponsors—at the expense of ordinary fans" (Ward, 2006). This incident highlights the challenges for event organizers in protecting their sponsors at the risk of potentially violating consumers' civil rights and freedom of speech, and thus themselves becoming subject to legal action. For instance, are 15 fans attending an event wearing shirts bearing the logo of their employer (a nonsponsor) cause for refusing their admittance? Or is the threshold 50 fans, or 500 fans? The discretion afforded to event organizers seeking to implement such tactics indeed raises its own set of legal concerns.

Covering of Nonsponsor Logos

In addition to policing nonsponsor activity in and around the venues, event organizers are taken an increasingly aggressive approach to the presence of any nonsponsor logos or identification in—and even *on*—the venues. For example, before the 2000 Olympic Games in Sydney, the IOC, upon realizing that food service company, Aramark, had supplied 30,000 uniforms to the food service workers with its visible logo on the chest, required that patches be placed over the logos in deference to official marketing partner McDonald's (Payne, 2005). More recently, during the 2006 Olympic Winter Games in Turin, the IOC, to protect the exclusive sponsorship rights of computer equipment sponsor Lenovo, required that the Dell logos on news reporters' laptop computers be covered with black electrical tape to conceal the Dell brand name (Associated Press, 2006). Even more bizarre, tape was placed over the brand name of the toilets at the curling site in Turin (Wharton, 2006)!

In an unprecedented move before the 2006 World Cup, FIFA, backed by the terms of its agreement granting Germany the rights to host the World Cup, was able to remove the corporate names of host stadia not named by FIFA official sponsors for the duration of the World Cup competition, including physically removing the

large outdoor signage in some cases (Wilson, 2006). Seven of the 12 stadiums were renamed the “Fifa WM Stadion” (translated, FIFA World Cup stadium). FIFA’s efforts resulted in each stadium being “handed over to Fifa in ‘neutral’ condition, with all signs of advertising and sponsorship removed” (Wilson, 2006). Such unprecedented action on the part of FIFA was met with opposition in some German host cities, with one FIFA representative calling the action “a culture shock” for many cities (Wilson, 2006). Having broken new ground in the area of sponsorship program protection, FIFA has already required that competition venues for the 2010 World Cup being held in South Africa also be renamed during the event (Webb, 2006). A South African Deputy Sport and Recreation Minister stated that “FIFA was within its rights to change the stadiums’ names to reflect those of its official sponsors” (Webb, 2006). FIFA’s ability to control stadium names is part of a more comprehensive 2010 FIFA World Cup South Africa Special Measures Bill (B13–2006, 2006)). The legislation, which was approved by South Africa’s parliament in August 2006, “give[s] effect to the Organising Association Agreement between FIFA and SAFA and to the guarantees issued by the [South African] Government to FIFA for hosting and staging of the 2010 FIFA World Cup South Africa” (2010 FIFA World Cup South Africa Special Measures Bill, B13–2006, 2006).

Securing Commercial Inventory

Securing the commercial inventory (e.g., advertising space) in and around competition venues is another measure increasingly used by event organizers to thwart would-be ambushers. Before the Olympic Games in Athens, event organizers spent 750,000 Euros clearing 10,000 billboards from areas in and around Athens (Gibson, 2004). Described by experts as “unprecedented,” the Greek government’s efforts to control advertising space before and during the Games “include[d] provincial towns and the areas along national motorways” and also applied to bus-side advertising and billboards on bus stops (Gibson, 2004). Commenting on the leverage that event organizers have over a host country’s efforts to control advertising space, one commentator noted, “Intellectual property rights lawyers say the IOC has managed to persuade successive governments to pass draconian laws giving them authority over advertising and marketing inside and outside stadiums because they are so keen to host the Olympics” (Gibson, 2004). This trend seems likely to continue as London and Beijing have already enacted measures to control advertising space during their hosting of the Games. In Beijing, for example, “organisers have promised to control advertising not only around competition venues but on all public transport, at airports and on the city’s streets” (Gibson, 2004).

Controlling Access to Ticket Blocks and Hospitality Opportunities

The ability to gain access to tickets and hospitality suites at special sports events can provide significant marketing benefits for a nonsponsor. For instance, the NFL does not prohibit competitors of official sponsors from purchasing tickets to its pre-Super Bowl hospitality area, thus enabling companies like Coca-Cola (a competitor to official sponsor Pepsi) to entertain key retail clients and create an implied association with the event. Thus, another tactic event organizers can use

is to prohibit nonsponsors from purchasing large blocks of event tickets or suites and access to hospitality opportunities. The NCAA is one event organizer who has implemented this policy. For example, at the 2006 Final Four, companies competing in product or service categories in conflict with official sponsors were “not eligible to purchase the tickets and entertain potential clients in the hospitality suite or at the game” (Rovell, 2005). The USOC also moved quickly to protect its official sponsor Visa upon learning that nonsponsor American Express was providing elite cardholders with poolside seat access to the 2004 U.S. Olympic swimming trials (Woodward, 2004). Obviously, supply and demand, as well as operational logistics, will often dictate whether this tactic is feasible; however, for event organizers intent on closing as many ambush marketing loopholes as possible, it is an important policy to consider adopting.

Establishment of “Clean Zones”

Event organizers are increasingly using the host site bid process to ensure that host countries and cities enact special legislation establishing “clean zones.” Although ordinances establishing clean zones are publicly positioned by event organizers as a means of controlling excessive commercialism (and sometimes providing for public safety), the underlying purpose is to protect event organizers and their official sponsors from unauthorized businesses’ ability to engage in ambush marketing. For instance, as part of the Olympic bid process, the bidding city must provide detailed answers to questions relating to measures that will be taken to prevent ambush marketing. Among other application requirements, the “Candidate City” must demonstrate that it has “obtained unconditional commitments from all public or private entities (e.g., government authorities, advertising space owners, etc.) within the territory, to protect the Olympic image and prevent ambush marketing” (IOC, 2004, p. 120).

The actions of the NFL and the NCAA serve to illustrate the use of clean zone ordinances at the sites of the Super Bowl and Final Four, respectively. These initiatives also often evidence the tensions between the interests of the event organizer in protecting their sponsors and the interest of the local businesses in preserving their property rights as well as freedom to engage in free enterprise and entrepreneurship. The clean zone ordinance enacted before the 2001 Super Bowl in Tampa Bay is illustrative of issues that arise when event organizers attempt to “cleanse” the site of all potential ambush activity. Despite opposition from a handful of local residents who cited concerns over “property rights and a stifling of entrepreneurship,” the Tampa City Council unanimously approved the clean zone ordinance to restrict commerce and advertising around Raymond James Stadium for a 13-day period surrounding the event (Goffard, 2000, p. 3B). Highlighting the importance of enacting a clean zone as part of the host city bid process, the City Council’s vote came after the director of the Tampa Bay Super Bowl Task Force reminded Council members that the city “promised the NFL it would create such a zone when it bid for the Super Bowl” (Goffard, 2000, p. 3B). The ordinance banned inflatable ad balloons, open-air cooking, and required vendors to operate out of stores or in approved tents, but did also set aside a “First Amendment Area” for people to assemble and speak out (Goffard, 2000).

The issue of ambush marketing surrounding a venue also came to the forefront before the 2006 Super Bowl in Detroit. In November 2005, the Detroit City Council unanimously approved a temporary ordinance allowing building owners and marketers to put up signs that encompassed up to 40% of a building's façade (the ordinance however prohibited the placement of signage on vacant buildings; King, 2005). The ordinance was effective January 2 to February 10, 2006. The ordinance specified that 90% of the signage space must have a Super Bowl theme while the remaining 10% could include the advertiser's logo and name (King, 2005). The NFL, in conjunction with Detroit's Super Bowl Host Committee, had adamantly opposed the ordinance to protect the rights of the NFL's corporate sponsors (King, 2005). The conflict between the NFL and the Detroit City Council illustrates the challenges that event organizers have, and may continue to face in efforts to create clean zones at the expense of a host city's desires to protect its own business community.

The NCAA has been among the forerunners in understanding the importance of clean zones as a strategy for sponsorship program protection. The NCAA's clean zone initiatives date back as early as 1999. After contentious negotiations between the NCAA and the host city of St. Petersburg, Florida, which sought to protect the interests of its local businesses, a compromise clean zone was established around Tropicana Field for the 1999 Final Four (Cronan, 1999). With each successive Final Four event, the NCAA has been able to use its leverage in the host city bidding process to ensure the establishment of clean zones. For example, the NCAA, working in conjunction with the Boston Local Organizing Committee, successfully negotiated for the city of Boston to enact a clean zone for its 2006 NCAA Women's Final Four at TD Banknorth Garden. The clean zone included "the NCAA and WBCA headquarters, hotels, team hotels and the Hynes Convention Center that shall be free from temporary promotion and commercial activities" (NCAA, 2006, p. 1). The document establishing the clean zone stated:

The clean zone is meant to address (1) unauthorized commercial activity on public property, (2) unauthorized activity targeted to the general public promoting a brand or service that extends into or is visible from public right-of-ways, regardless of its place of origin (public or private) and (3) outdoor temporary signage, décor and activity promoting a brand, product or service on private property in areas of high traffic because of the Women's Final Four. (NCAA, 2006)

The document required that the City of Boston prohibit the following within the clean zone: "temporary, non-NCAA authorized banners, flags, inflatables or other promotional devices; temporary sale or complimentary distribution of food, beverage, literature or merchandise not authorized by the NCAA, and temporary unauthorized entertainment" (NCAA, 2006, p. 1). The NCAA provided the following as a guideline for determining what activity would be prohibited within the clean zone:

A general rule of thumb to consider: Is the activity or advertising/promotion/marketing in question within the clean zone meant to draw public/fan attention to a product, brand or service where a reasonable person might imply an

association between the Women's Final Four and the activity or advertising/promotion/marketing, or otherwise benefit from the goodwill and intellectual property of the NCAA or the Women's Final Four? (NCAA, 2006)

Essentially, the NCAA was expressing its definition of ambush marketing. Police were assigned to monitor the clean zone to make sure that companies abided by the ordinance. The NCAA's clean zone document did, however, include the recognition that "there may be legal requirements to accommodate first amendment expression, including non-profit advocacy" (NCAA, 2006).

The NCAA guidelines cited above raises the issue of how event organizers can determine what a "reasonable person" might imply as constituting an association between a product or service of a nonsponsor of the NCAA tournament and the NCAA. The answer to this question is rather complicated. The "reasonable person" standard is a legal fiction that originated in the development of the common law. The "reasonable person" is a hypothetical, rational, reasonably intelligent individual who is intended to represent an "average" citizen. In adopting this standard, the NCAA is essentially saying that if a reasonable person, after seeing the promotion or activity, believes that there is a connection between the promotion and the NCAA tournament, such that the nonsponsor is effectively able to "piggyback" on the event's reputation and goodwill, this would constitute ambush marketing (except in cases where the First Amendment or other legal defense could be established). The NCAA's reasonable person standard is a more simplistic analysis of the hypothetical "reasonable person" viewing the promotion and making a determination if such promotion implies an association between the product or service and the event. As discussed in greater detail below, the "reasonable person" standard has also been incorporated into Australia's special legislation designed to protect major sporting events in that country.

Contractual Prohibitions in Participant Agreements/Spectator Tickets

Another way in which event organizers have limited the potential for ambush marketing activity is through contractual prohibitions inserted in participant agreements and more recently, in spectator ticket back language. An often relied upon loophole by ambush marketers has been the commercial use of athletes with whom the companies have individual endorsement deals. These deals often conflict with the event's official sponsors. Event organizers have, however, become increasingly savvy in closing this loophole through language in participant agreements. From the sponsor's perspective, the impetus for such contractual restrictions is a concern is that if nonsponsors of the event are able to use past and future Olympic athletes in their marketing campaigns, this "will lead to an assumption on the part of public that those using them are in fact official sponsors" (Curthoys & Kendall, 2001, p. 31). Similarly, from the perspective of the event organizers, there is a need for restrictions on athletes "because even where there is an implicit association of endorsement by an . . . athlete of a non-official sponsor, the return on investment for the official sponsor is likely diminished" (McKelvey & Grady, 2004, p. 213–214).

The ability of individual athletes to provide an ambush marketing avenue for nonsponsors has been most prevalent during high-profile events such as the

Olympic Games. However, with each successive games, the Olympic Movement has strengthened its resolve in this area. For example, in response to athletes appearing in nonsponsor advertising during the Games (dating back to the Nike activity during the Atlanta 1996 Games), the IOC enacted a by-law to its Olympic Charter that restricts competitors, coaches, trainers, and official who participate in the Games from “allow[ing] his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games” (Olympic Charter, 2007). This rule is designed to prevent ambush marketers from “capitalizing on their endorsement deals with participants during the period of the Games” (McKelvey & Grady, 2004, p. 214).

The New Zealand Olympic Committee (NZOC) also saw fit to impose restrictions on athletes participating in their 2006 Commonwealth Games. The organization held firm in its position to “vigorously protect its own sponsors against ‘ambush marketing’ and unauthorized use of athlete association with non Commonwealth Games sponsors” (NZOC, n.d.). One such restriction imposed by the Commonwealth Games Federation in London as well as Games organizers in Melbourne required that participating athletes “not allow their person, name, picture, or sports performance to be used for advertising purposes at or during the Games” (NZOC, n.d.). Defending its position on athlete advertising restrictions, NZOC Secretary General Barry Maister stated, “the NZOC is totally dependent on our partners and sponsors to support the organization. . . . When our financial survival and our ability to deliver the Games experiences are at stake, we will take appropriate action to protect our partners who fund the entire team” (NZOC, n.d.).

Another ambush marketing avenue that event organizers have sought to control is the apparel worn by athletes during their premier events. Professional team sports leagues have historically had few incidents in this area, since onfield appearance is strictly monitored through terms of collective bargaining agreements and league rules. Athletes who violate such rules are subject to heavy penalties. For instance, Chicago Bears linebacker Brian Urlacher was fined \$100,000 by the NFL for wearing a cap during the 2007 Super Bowl media day that promoted a sponsor not authorized by the league (Biggs, 2007). Such unauthorized commercial activity has also been largely halted within the Olympic Games by participation agreements that prohibit athletes from displaying any commercial markings on their uniforms other than those authorized by the IOC (Augustine-Schlossinger, 2003).

Those Olympic athletes found in violation of such participation agreements have been subject to serious consequences. In 2005, U.S. speed skater Shani Davis was dropped from the U.S. Speedskating’s national training program after wearing the logo of his individual sponsor, DBS Bank of Europe, rather than that of Qwest, the official sponsor of the U.S. Speedskating team (Tatko-Peterson, 2005). After being warned to stop wearing the logo of DBS Bank, Davis asserted that “[m]y obligation is to my sponsor. I signed a contract with them first” (Tatko-Peterson, 2005). Because of Davis’ unwillingness to wear the Qwest logo, his contract with U.S. Speedskating was terminated (Tatko-Peterson, 2005). The contracts of Olympic speedskaters Derek Parra and Chad Hedrick were also terminated in the past by U.S. Speedskating for similar instances of noncompliance (Tatko-Peterson, 2005).

In addition to the restrictions placed on participants and coaches, an increasingly common practice to combat ambush marketing is the placement of restrictions on the spectators attending the event. For instance, event organizers of the

Sydney 2000 Olympics broke new ground by stating in their ticket conditions that attendees could not

engage in ambush marketing . . . display commercial or offensive signage . . . sell any goods or services . . . wear or give away political, advertising or promotional materials . . . [or] engage in any other activities which [the Sydney Organizing Committee for the Olympic Games] considers dangerous or otherwise inappropriate (Ambush Marketing, 2003).

Similarly worded provisions have subsequently been included in ticket conditions for events including the Cricket World Cup in 2004 and the 2006 FIFA World Cup. One interesting note is that the term "ambush marketing" is not defined, arguably leaving it up to the event organizer to determine what is and is not to be deemed ambush marketing activity regardless of the legality of such activity.

The episode involving the Dutch soccer fans at the 2006 FIFA World Cup, discussed above, provides a good illustration of how the use of ticket back language, while imposing restrictions on spectators, is ultimately aimed at preventing ambush activity from taking place inside the competition venues. "The ticketing terms and conditions for the 2006 World Cup include a provision requiring ticket holders to consent to the confiscation of 'prohibited items,'" such as pyrotechnics, weapons, and illegal drugs (Johnson, 2006c). The terms on the back of the ticket also stated that "all promotional, commercial, political or religious items of whatever nature, including but not limited to, banners, signs, symbols and leaflets are prohibited and may not be brought into the Stadium if the [Organizing Committee] reasonably believes that any such items may be used for display purposed [sic] within the Stadium" (Johnson, 2006c). While some marketing law experts have debated whether FIFA had the authority to prohibit spectators from wearing the pants of their choice into the venue, the episode demonstrates how even the most clever ambush marketing play involving a mass of spectators can be stopped through aggressive on-site policing by event organizers.

The on-site policing measures discussed above, while illustrating the extremes to which event organizers have gone to protect their official sponsors, suggest the importance of this issue to event organizers, as well as the increasing level of demand and expectations being placed upon event organizers by official sponsors in today's highly competitive sponsorship marketplace. However, they also raise important issues regarding the acceptability and legality of such measures. As event organizers seek to enact stricter controls over the activities of nonsponsors and fans, one is now seeing a backlash among those advocating the need for a balance to be struck between the commercial rights of local businesses and civil rights of fans versus the desires of event organizers and their official sponsors. This tension is currently being played out in the debate over proposed ambush marketing legislation (titled the Major Events Management Bill) for the 2011 Rugby World Cup to be hosted by New Zealand, in which the government "appears to be taking a belted and braced approach to the running of the Rugby World Cup . . . that has the potential to infringe on public rights" (Glengarry, 2007). The potential loss of civil liberties and private property rights, as well as the rewriting of laws already in place to address potential infringement that would include criminal penalties, should raise serious concerns about the extent to which local governments are "prepared to go

in its bid to attract events, and whether anyone other than the sponsors (are) to be permitted to share benefits?" (Glengarry, 2007). Ultimately, it is the responsibility of advocates of local businesses and its citizens to lobby against ambush marketing legislation that would seek to impinge the rights of these constituents while balancing the reasonable desires of event organizers to protect the investment of their official sponsors.

Ambush Protection in the Bid City Process

The importance of including protections from ambush marketing in the host city process was highlighted during New York City's bid for the 2012 Olympic Games, coordinated by a private, nonprofit corporation entitled NYC2012. To successfully bid for the Olympic Games, a city needs to comply with rules established by the IOC. Each city is thus required to provide its strategy for preventing ambush marketing. As part of its bid, New York City Mayor, Michael Bloomberg, signed an Executive Order establishing the Mayor's an Enforcement Board on Olympic Brand Protection to coordinate efforts to prevent ambush marketing (NYC2012 Candidature File, 2004). The Board's role included, *inter alia*, the following tasks:

Manage a comprehensive enforcement program with trained officers regularly inspecting key routes and signage; . . .

Create and enforce vendor-free zones surrounding Olympic venues and other key locations; . . .

Coordinate closely with the International Olympic Committee (IOC) and USOC to ensure protection for all international and domestic sponsors; and Work with the Federal Aviation Administration and the NYPD to control airspace and prevent illegal advertising. (NYC2012 Candidature File, 2004, p. 126)

In addition to the Mayor's Enforcement Board, NYC2012 was able to secure 95% of the signage in New York City by entering into option contracts with each of New York City's major outdoor signage companies (NYC2012 Candidature File, 2004). NYC2012 also received binding commitments that all signage on subways, buses, and transit platforms and in the city's three major airports would be made available to NYCOC from the four weeks preceding the Games to the two weeks following (NYC2012 Candidature File, 2004). Although the 2012 Games were eventually awarded to London, NYC2012's initiatives to prevent ambush marketing illustrate the various measures that prospective countries and cities must commit to in their efforts to secure the rights to host special sport events.

Enactment of Trademark Protection Legislation

An increasingly important tactic used to strengthen an event organizer's arsenal against ambush marketing is the passage of special trademark protection legislation by the host country or city. Such legislation is the result of conditions that are incorporated into an event organizer's documents dictating the terms under which a prospective country or city may be awarded the event. This tactic has been most often associated with host countries of Olympic Games (McKelvey & Grady, 2004;

Vassallo et al., 2005). However, enacting special trademark legislation is not a phenomenon unique to the Olympic Games. In fact, "it is now common practice for organizers of major events to require appropriate ambush marketing protections to be implemented as a condition for hosting the event (Mallard, 2007, p. 1). For instance, specific legislation to deal with ambush marketing has been adopted by South Africa for the 2003 Cricket World Cup, Portugal for the 2004 UEFA Euro, Germany for the 2006 FIFA World Cup, and introduced by South Africa for the 2010 FIFA World Cup. "Increasingly, the sports authorities are pressing countries seeking to play host to international games to pass restrictive legislation enforcing bans not only on trademarked names like FIFA World Cup but also in a vague area of 'associated' words and symbols" (Carvajal, 2006, p. 1). The ban on associated words and symbols has typically involved specifically enumerating the banned words and phrases in the special legislation, as was done in the London 2012 legislation, discussed below. By listing the "banned" words and phrases in the legislation itself or in the legislation's implementing guidelines, this provides some level of clarity to potential advertisers, such that in crafting a message that might otherwise imply an association with the event, the advertiser can avoid use of the words in such a way that might trigger a violation of the legislation.

This growing trend toward the enactment of special trademark legislation is the result of "global sports organizations demanding to erect towering walls around their brands and word associations when host cities come courting" (Carvajal, 2006, p. 1). However, event organizers who exert their influence to require host countries or cities to enact special legislation can find themselves at odds with advertising and marketing associations concerned over striking a fair and proper balance between freedom of expression and protection of official sponsors (Dore, 2005). While the requirement to enact special legislation in an effort to secure the hosting of a mega sport event may seem to be an excessive request, one commentator noted, "Countries are so desperate to get these events that they will sign almost anything even if it impacts their own . . . laws" (Carvajal, 2006, p. 1). The International Cricket Council, for example, pressured nine Caribbean islands to pass legislation which would make ambush marketing during the 2007 Cricket World Cup both a civil and criminal offense (Carvajal, 2006).

As discussed earlier, Olympic host cities in the U.S. can rely on the stronger trademark protections afforded by the Ted Stevens Olympic and Amateur Sports Act of 1988. Legislation similar to that of the United States has also been enacted by other countries to provide event organizers with a legislative means to thwart ambush marketing of events hosted in their countries. The trademark legislation of Australia and China is often cited as model legislation that can aid event organizers when pursuing acts of ambush marketing involving infringement of the event's protected marks and symbols.

The stated purpose of Australia's Olympic Insignia Protection Amendment Act of 2001 is, in part, to regulate "the use for commercial purposes of certain expressions associated with the world Olympic movement" (Olympic Insignia Protection Amendment Act 2001, No. 156, 2001, ch. 3, part 3.1 (2001). Australia's Act incorporates a "reasonable person" standard to determine if unauthorized marketing activity rises to the level of infringement under the Act (McKelvey & Grady, 2004). As mentioned above, the adoption of a "reasonable person" standard does not require some threshold number of people to assess whether the activity rises

to the level of violation of the legislation, a difficult standard to even imagine, but instead relies on a more workable standard which asks whether a reasonable person feels that the activity rises to the level outlined in the legislation. In addition to this trademark legislation, Australia also passed the Olympic Arrangements Act (Act No. 1, 2000) which prohibited the sale of any unauthorized merchandise within a certain radius of the Olympic competition venues, as well as placed temporary restrictions banning skywriting and flying banners in the airspace over Olympic sites (Ambush Marketing, 2003).

Similar to Australia's legislation, China enacted the Protection of Olympic Symbols Regulations (2002), to meet its obligation to protect the Olympic intellectual property under the Host City Contract for the 2008 Olympic Games in Beijing. The legislation affords broad protection of Olympic intellectual property (Mendel & Yijin, 2003) by protecting Olympic names and symbols, but also includes an ambush marketing clause (Vassallo et al., 2005). The legislation prohibits the use of Olympic names and logos for "implied commercial purposes" (Protection of Olympic Symbols Regulations, Art. 2, 2002). This language suggests that would-be ambushers cannot create a false or unauthorized association with the Olympic movement without running afoul of the regulations (Vassallo et al., 2005). The legislation appears to target ambush marketing practices by prohibiting "activities that might be deemed by others as an existing sponsorship or other supportive relationship" (Protection of Olympic Symbols Regulations, Art. 9, 2002), in effect, an external sponsorship relationship. The legislation does not make clear, however, what kind of evidence would be required to be presented before a finding that the marketing activities violated the law. This apparent gap in the legislation would make enforcement by event organizers somewhat of an ad hoc process. Despite the ambiguity in the wording of the ambush marketing provision, China's legislation "appears to provide the most comprehensive Olympic mark protections and remedies to date" (McKelvey & Grady, 2004, p. 196).

The host country and city's obligations to vigorously protect the Olympic marks arises from provisions set forth by the IOC in the Host City Contract. The Host City Contract is the "primary means of ensuring Olympic mark protection throughout the pre- and post- Olympic period" (Wang, 2005, p. 301). Wang (2005) noted that "as an international organization, the IOC's intellectual property standards are its own, separate and apart from the nation that happens to host the games in any given year" (p. 300). The IOC is able to dictate necessary intellectual property protection in the respective host countries, thus allowing the IOC to achieve "a standard of international protection for its own trademark through the Host City Contract" (Wang, 2005, p. 301). For example, "the Beijing Host City Contract requires protection of two main categories of Olympic marks: the IOC's marks and the Beijing Organizing Committee of the Olympic Games' (BOCOG) marks" (Wang, 2005, p. 302). These marks include, for example, China's Olympic mark logo, mascot, names, and symbols (Protection of Olympic Symbols Regulations, Decree 345), as well as the slogan "New Beijing Great Olympics" (Li, 2003). China has also sought protection for over 100 phrases including "Faster, Higher, Stronger," "Olympiad," and "Beijing 2008" (Hutzler, 2005). Likely motivated by historically weak protection of intellectual property in China, the IOC has strengthened international protection of the Beijing Olympic logo more than for any previous Games (Jen-Sui, 2003). The success (or failure) of Beijing's efforts to protect Olympic

intellectual property could also have a lasting financial legacy as the failure to fulfill provisions of the Beijing Host City Contract related to intellectual property protection means that “Beijing could lose certain subsidies that are contingent on enforcement results” (Wang, 2005). These promised subsidies include \$118 million for sustainable development and \$400 million for healthcare improvements in Beijing, among other subsidies (IOC Evaluation Report, 2001).

Similar to Beijing’s pre-event legislative efforts, the organizers of the 2012 Summer Games in London are getting an ambitious 6-year head-start in their efforts to protect against would-be Olympic ambush marketers. In 1995, London passed the Olympic Symbol Protection Act which gave the British Olympic Association (BOA) the right to control the use of the Olympic rings, phrases such as “Citius, Altius, Fortius” and words such as “Olympic,” “Olympiad,” and “Olympian.” (Olympic Symbol etc. (Protection) Act, 1995). Under the Olympic Symbol Protection Act, the “Olympic association right” would be infringed if a person in the course of trade used “a representation” of any of the words or phrases listed above or used “something so similar to the rings or motto as to be likely to create in the public mind an association with it” (Groom, n.d.). The difficulty in defining the concept of “association” and in determining what evidence is needed to establish the requisite “association” to trigger a violation is often rather ambiguous, or in some cases completely absent in cases of required evidence, in many of the legislative models that have been proposed and adopted. Determining “association” depends largely upon an assessment of the degree or extent to which consumers are confused about the nature of the relationship between the nonsponsor and the event. This requires that the plaintiff present evidence of consumer confusion. However, as pointed out by Hoek and Gendall (2003b), typically plaintiffs seek to establish the confusion element through consumer survey evidence that is often faulty in its research methodologies including coverage, measurement and sampling, and non-response errors. Furthermore, the suspect manner in which courts currently assess the validity of survey evidence, coupled with the absence of a “benchmark level of confusion, accepted as providing evidence of deception,” leads to survey evidence that is highly vulnerable in court (Hoek & Gendall, 2003b, p. 117). This results in significant challenges for event organizers seeking to establish the “association” element were it to pursue a lawsuit.

The Act also contained several exemptions including “use in accordance with honest practices in individual or commercial matters. . . .” as well as “use of any of the protected words which is not such as to ordinarily create an association with the Olympic Games movement or a quality ordinarily associated with them” (Groom, n.d.). However, Groom (n.d.) noted that there are no reported cases assisting with interpretation of these exemptions.

The Olympic Symbol Protection Act of 1995 was viewed as not stringent enough to prevent ambush marketing, however. Therefore, a new Olympic Bill was drafted by the Department for Culture, Media, and Sport “to establish the legal framework for London to stage the Games” (Fraser, 2005). London Olympics organizers insisted the new legislation was necessary to “safeguard the investment of official sponsors” of the Games (Fraser, 2005). In October 2005, Schedule 3 was proposed which established the London Olympics Association Right (LOAR). This act “give[s] LOCOG special statutory rights against advertisers who use Olympic references without permission” (Johnson, 2005, p. 1). Whereas a previous version

of the legislation would have “create[d] a presumption of infringement of the LOAR (in a reversal of the usual burden of proof)” (Smith, 2005) when one uses phrases from column A in connection with phrases from column B or in tandem with other phrases from column A below (see Table 1), the final version of the bill now considers use of these word combinations in the Act “guidance for the courts” in determining if the LOAR has been infringed (Johnson, 2006b).

The London Olympics Association Right states:

[T]here shall be a right, to be known as the London Olympics Association Right, which shall confer exclusive rights in relation to the use of any representation (of any kind) in a manner likely to suggest to the public that there is an association between the London Olympics and goods or services, or a person who provides goods or services. For the purpose of this Schedule the concept of an association between a person, goods or a service and the London Olympics includes, in particular any kind of contractual relationship, any kind of commercial relationship, any kind of corporate or structural connection, and the provision by a person of financial or other support for or in connection with the London Olympics. (London Olympic Games and Paralympic Games Bill, 2005)

“Under the new wording, the London Olympics association right is now about representations that suggest some kind of external association (e.g., an official sponsorship relationship)” (Johnson, 2006a), an attempt to clarify the ambiguity surrounding the concept of “association” found in previous versions of the legislation. The final version of the Olympic Bill also provides a defense where a person would not infringe the LOAR by suggesting an association merely by making a statement which “(i) accords with honest practices in industrial and commercial matters, and (ii) does not make promotional or other commercial use of a representation relating to the London Olympics by incorporating it in a context to which the London Olympics are substantively irrelevant” (Johnson, 2006b). The provisions related to the LOAR are now in effect (Johnson, 2006b).

In addition, the Bill proposed the equivalent of a clean zone. The British Secretary of State has the authority to specify “no advertisement zones” surrounding the Olympic venues. The regulations specify the clean zone as “the place in respect of advertising in which the regulations apply, the nature of the advertising in respect to which the regulations apply, and what is, or is not, to be treated for the purposes of

Table 1

Column A	Column B
‘games’	Gold
‘Two Thousand and Twelve’	Silver
‘2012’	Bronze
‘twenty twelve’	London
	Medals
	Sponsor
	Summer

the regulations as advertising in the vicinity of a place” (London Olympic Games and Paralympic Games Bill, H. Bill 52, 19(3), 2005). Furthermore, the bill appears to prevent billboard owners from selling the prime city signage to nonsponsors as “the regulations may impose obligations on persons who own, occupy or have responsibility for the management of land, premises, or other property.” (London Olympic Games and Paralympic Games Bill, H. Bill 52, 19(8)(c), 2005).

Many advertising practitioners have criticized previous versions of the bill as being overly restrictive. In England, the Institute for Practitioners in Advertising’s legal director Marina Palomba called the bill “unreasonable” and stated, “It’s absolutely right that official sponsors are protected, but there has to be a balance” (Fraser, 2005). Palomba further noted that the new legislation gives the event organizer “unparalleled power” (Fraser, 2005). A London 2012 spokesman dismissed criticism that the new Olympic Bill would prevent local businesses from becoming involved in the Games. He stated, “There is absolutely no intention of stopping businesses from becoming involved in the Games, quite the reverse” (Fraser, 2005). Despite such assurances from event organizers, advertising practitioners worry that the current version of Olympic Bill will “rule out any sort of 2012 ‘halo effect’ for businesses in the UK” (Fraser, 2005).

Groom (n.d.) noted that another industry criticism is that the presumed combinations of infringing expressions from Columns A and B mentioned above are “arbitrary and unnecessarily restrictive.” In the most recent version of the Bill, however, there is greater clarity about the “concept of an association” such that if the use is not likely to suggest an association, this will constitute a defense to infringement of the LOAR (Groom, n.d.). The advertising industry recommended three key revisions that would improve the current version of the Olympic Bill: adding “intent to create a false or misleading association,” distinguishing “unfair association” from “mere reference,” and changing the language of the Bill to “avoid prohibiting legitimate reference to individual sponsorship or merchandising deals with teams and stars” (Groom, n.d.). Despite the concessions made at the request of the advertising industry found in the final version of the legislation, “many still question whether the Act strikes the right balance between the commercial interests of the Olympic Movement and its sponsors on the one hand and advertisers’ rights of freedom of commercial expression on the other” (Johnson, 2006b, p. 1).

While any special legislation enacted often contains “safeguards” to protect ordinary citizens and local businesses, striking the proper balance is often difficult. However, if one considers the basic “sponsorship protection” rationale that is the impetus behind enactment of the event-protection legislation, the concepts seem straightforward: “[Official] sponsors do not want others to free-ride on their investments and trade off the goodwill and publicity surrounding an event, thereby undermining the value of their official sponsorship and the viability of obtaining sponsorship for future events” (Mallard, 2007, p. 1). Thus, the legislation necessarily must address situations “when companies or advertisers make representations through advertising or other publicity that draw a connection in the public’s mind with themselves and major events—without the authorization of the event organizers” (Mallard, 2007, p. 1). The ongoing challenge in drafting such legislation is to properly and fairly achieve this objective without unduly impinging upon the rights of those parties not officially associated with the event.

Judicial interpretation of the trademark legislation used to protect special sport events has been the subject of recent litigation brought by FIFA before the 2006 World Cup. In November of 2005, in a victory for FIFA and its official sponsors, the European Trademark Office (OHIM or Office for Harmonization in the Internal Market) ruled that only FIFA's official sponsors could use marks such as "WM 2006," "World Cup 2006," "World Cup Germany," "Germany 2006," and "World Cup 2006 Germany" for commercial purposes (FIFA, 2005). Ferrero, an Italian confectionary company, had argued that FIFA trademarks were not valid since they did not possess distinctive character (FIFA, 2005). In April 2006, however, FIFA suffered a major setback when the German federal supreme court revoked protection of the "Fussball WM 2006" (Football World Cup 2006) mark using the rationale that the slogan "referred to a sports event and not to a body such as FIFA" (Noticias.info, 2006). The ruling is significant because it means that FIFA is no longer able to grant assurances to official sponsors that they have the exclusive right to use such a slogan in connection with advertising for the event (Noticias.info, 2006). Despite the supreme court's ruling, FIFA can still protect the "Fussball WM 2006" mark as a "community trademark" in Europe (and consequently in Germany during the 2006 World Cup; Noticias.info, 2006). Commenting on the decision and the continued importance of protecting an event's intellectual property, FIFA Secretary General Urs Linsi stated:

Safeguarding the exclusive rights of our partners is an essential requirement for this, the world's largest privately financed sports event, which generates costs of more than 600 million Euros for FIFA alone. Companies that seek to profit from the FIFA World Cup without making a contribution (jeopardize) the financing of the event through commercial partnerships. Protecting our trademarks is therefore of fundamental importance to developing football as a whole. Our trademarks are still protected but today's decision does not augur well for the growth of our sport or for (organizers) of major sports events. (Noticias.info, 2006, paragraph 4)

This landmark decision by the German Supreme Court will significantly impact the strategies employed by future event organizers to protect the intellectual property of their special sport events. If event organizers cannot rely on the protections afforded to them by their domestic trademark legislation, as appears to be the case, it is believed that during the host country bid process, event organizers will need to be even more aggressive in demanding the enactment of special trademark legislation to supplement existing protections under the laws of the host country, as is currently the trend for the London 2012 Olympic Games.

Future Research

The business and legal ambiguities inherent in the concept of ambush marketing, as well as the practical implications of event organizers' sponsorship program protection strategies, suggest numerous avenues for future research. First, future research should more broadly examine the rights of all parties with regard to the complex marketing, management, and legal issues raised by ambush marketing.

The analysis thus far provided in the literature has largely focused on the rights of sponsors and event organizers. The scope of this inquiry must be extended to analyze the rights of nonsponsors to maintain a market presence during an event, as well as analyze the commercial rights of local businesses while being cautious not to suggest an unauthorized association with the event. Two critical issues in need of further inquiry and analysis are (1) What rights, if any, should special event legislation carve out for nonsponsors (i.e., "honest practices" exemptions or safe harbor provisions)? and (2) Do provisions in the host city contract or in any special legislation enacted provide adequate safeguards such that nonsponsors and local businesses are able to market their goods and services during the event? For example, determining how far to extend the radius for a "clean zone" would necessarily implicate the rights of nonsponsors and local businesses.

Future research should also address how to best measure the effectiveness of the aforementioned sponsorship program protection strategies used by event organizers of mega sporting events. While anecdotal evidence from event organizers currently provides limited insight in this regard, empirical analysis would provide event organizers and official sponsors with a more accurate assessment of the success of such strategies in providing adequate protection for the event organizers and its official sponsors. It would also better inform local legislators and future host cities as to the efficacy of current ambush marketing legislation and the need for more, or less, stringent measures in the future as it seeks to balance the rights of its constituents with the needs of event organizers.

Future research should also continue to explore why, in the presence of special event legislation with substantial remedial provisions, event organizers have largely been hesitant to use the courts to seek a remedy when instances of ambush marketing occur at their events.

Conclusion

With each successive special sport event, arguably beginning with the 1996 Olympic Games in Atlanta, new lessons have been learned and new strategies have emerged to enable event organizers to better protect their sponsorship programs from the negative impacts of ambush marketing. Concurrently, official sponsors have developed heightened expectations of event organizers to take increasingly aggressive measures to protect their financial investments.

The examination of sponsorship program protection strategies undertaken in this article suggests several overarching conclusions. First, event organizers' use of the event hosting bid process has become of growing significance, although it should be noted that this strategy is not available to event organizers whose special events are not subject to a bid process (e.g., Major League Baseball's World Series, NBA Championships). During this highly competitive bid process, event organizers are seeking to use their negotiating leverage to obtain stronger sponsorship program protection through measures that include enactment of special trademark legislation, creation of clean zones, and commitments to aggressive on-site policing of ambush marketing activity. As seen in the case of Beijing's hosting of the 2008 Olympic Games, making certain payments to the host country or city contingent upon enforcement results signals yet another proactive step in event organizers'

efforts to ensure the commitment of host countries and cities toward the protection of sponsorship programs. Although such a measure raises a host of evidentiary issues, it is one that other event organizers will likely consider imposing in future negotiations with prospective host countries and cities.

It is, however, unrealistic and naïve to assume that assurances or “guarantees” in the contracts between event organizers and host countries or cities can provide a “silver bullet” against the legal marketing activity of nonsponsors. Special trademark legislation may provide some measure of assurance for event organizers and their official sponsors, as well as viable legal recourse for the most blatant violations of such legislation. However, particularly in countries that value the concept of free enterprise, courts are likely to continue to view the practice of ambush marketing through a lens of “commercial pragmatism” (Hoek & Gendall, 2003a, p. 9), while placing a heavy onus on event organizers to prove the illegality of such.

Second, although event organizers have achieved a measure of success in securing special trademark legislation, the judicial interpretation of such legislation is still subject to the vagaries of the courts in which ambush marketing-related lawsuits are filed. As witnessed in the recent litigation involving the use of the term “Fussball WM 2006,” courts, when faced with the decision of protecting the intellectual property rights of event organizers and their official sponsors to the detriment of the free enterprise rights of local businesses, are just as likely to side with the latter. It is therefore incumbent upon event organizers to exert as much leverage as possible during the bid process to ensure that special trademark legislation and other forms of advertising restrictions anticipate and address, as specifically as possible, the legal gray areas of ambush marketing that could result in unfavorable judicial interpretation.

The need for increased specificity of the language used in special trademark protection legislation and other forms of advertising restrictions is further illustrated by the intense debate surrounding enactment of the London Olympic Games Bill. Event organizers will likely continue to face debate in the efforts to achieve a proper balance between the protection of their interests versus those of the local business community and its citizens. As representatives of the latter contingent have argued, it has historically not been the responsibility of public authorities such as local governments to protect and enforce the trademark interests of event organizers and their official sponsors. Thus, the efforts of event organizers to lay much of the onus for sponsorship program protection on host country and city governments, arguably at the expense of the legal rights and interests of the local business community, will likely continue to be a source of contention for event organizers.

Third, the sponsorship program protection strategies discussed throughout this article reveal that the nature of the event may have some bearing on the success of some of the strategies employed. For instance, organizers of special sport events predominated by amateur athletes, such as the Olympics or NCAA, have historically positioned the mission of their organizations in a sympathetic light. These event organizers have, for instance, effectively used pre-event education and public relations initiatives to communicate the message that ambushing its events jeopardizes funding for its amateur athletes and programs (it remains to be seen whether the effectiveness of such sympathetic appeals may be eroded as these and other amateur athlete based sport organizations become increasingly commercialized). Obviously, this type of emotional appeal to potential ambush marketers is not applicable to

professional athlete based sport organizations. Furthermore, consumers' general lack of knowledge of sponsorship benefits and concern over ambush marketing weakens any potential appeal by event organizers and official sponsors.

Finally, organizers of special sport events should consider the potential impact and implications that can be derived from a proven willingness to resort to legal action against ambush marketers. For instance, over the past few decades the USOC, while admittedly aided by the broader of the Ted Stevens Olympic and Amateur Sports Act (2000), has developed a reputation through the sport marketing industry for aggressively pursuing ambush marketers through legal action (McKelvey & Grady, 2004). This reputation often serves to dissuade potential ambush marketers from engaging in ambush marketing activity at the risk of being sued by the USOC. The proven willingness to bring legal action against ambush marketers has also benefited the NCAA, which directly attributed a decrease in Final Four-related ambush marketing activities to its highly publicized lawsuit against Coors. Although the case was settled, it enabled the NCAA to send a clear message to the sport marketing industry that it was willing to aggressively pursue legal action against ambush marketers. (S. Bearby, personal communication, September 13, 2004). The deterrent effects of bringing a highly publicized lawsuit against an ambush marketer may seem self-evident. However, whether for reasons of lack of internal resources, the difficulties in proving consumer confusion, or the fear of an adverse court ruling, the majority of event organizers, and the major U.S. professional sport leagues in particular, have historically declined to aggressively pursue legal action against ambush marketers as evidenced simply by the dearth of lawsuits filed on claims relating to ambush marketing.

While the four overarching strategies examined in this article provide organizers of special sport events with some measure of sponsorship program protection against nonsponsors, the legal gray areas and practical loopholes that surround the practice of ambush marketing make it impossible for event organizers to ever entirely eradicate it. Ultimately, and ironically, it is the mere threat of ambush marketing that serves to benefit event organizers by keeping them vigilant in their efforts to protect the investments of their official sponsors.

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