

FIFA scoring copyright goals

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FIFA places a high priority on protecting its own intellectual property rights and the rights of the official event sponsors in connection with the 2010 FIFA World Cup.

To this end it has established, and is implementing, a comprehensive and far-reaching Rights Protection Program. The success of the 2010 FIFA World Cup will be gauged partly on the extent to which FIFA's Rights Protection Program has achieved its goals. The financial outcome of the Soccer World Cup will be significantly influenced by the extent to which the programme can be satisfactorily implemented.

Among the array of weapons FIFA has at its disposal in implementing

specialfeature

its Program is copyright. Copyright synchronises well with the other weapons in its armoury, namely registered trademarks, registered designs, common law protection under the laws of passing-off and unlawful competition, anti-counterfeiting measures, and last, but not least, the rights arising from the state of the art South African anti-ambush marketing legislation.

The Copyright Act

Under the Copyright Act, 1978, copyright subsists automatically in all works eligible for copyright which were made by a person who is a subject of a country which is a member of the Berne Convention, or were first published in such a country. For practical purposes, the members of the Berne Convention comprise virtually all the countries in the world. Accordingly, as a rule of thumb, it can be accepted that all works relating to the 2010 FIFA World Cup enjoy copyright protection in South Africa (and throughout the world) and, as a general proposition, FIFA owns the copyright in most such works. Copyright protection co-exists with the other various forms of intellectual property and, depending on the circumstances, a work can enjoy multiple protection, for instance under copyright, as a registered design, as a registered trade mark and under the common law.

In the context of the Soccer World Cup, works of significance that can be protected under copyright are literary works (works expressed in a verbal form), artistic works (works expressed in a pictorial or visual form, including photographs), cinematograph films (advertisements and recordings of soccer matches), television broadcasts (live broadcasts of the tournament's matches) and programme carrying signals (signals carrying renditions of matches transmitted by a satellite to a terrestrial broadcaster).

Infringement of protected works

Probably the most important categories of works for the present purposes are artistic works, cinematograph films and broadcasts. The principal artistic works are the official 2010 World Cup logo, the mascot, known as Zakumi, and the official poster. Both the categories cinematograph films and broadcasts encompass viewings of matches, both live and recorded.

Copyright is infringed when one or more of the so-called "restricted acts" that fall within the ambit of the copyright in a particular work are carried out without the authority of the copyright owner. For present purposes these restricted acts include reproduction in any manner or form, making an adaptation of a work, and broadcasting or publically exhibiting a work. Infringement occurs not only when the work as a whole is dealt with without appropriate authority, but also when any substantial part of that work is involved. This means that, for instance, the unauthorised broadcast of any part having substance of a work will constitute infringement. The question of what constitutes a substantial part of a work is a vague and flexible concept and will be determined by the circumstances of each particular case. The guiding principle is that the assessment that must be made in regard to the part of the work utilised is a qualitative assessment, and not a quantitative one.

Control of copyright

The copyright owner in respect of each of the relevant works can grant licences, including exclusive licences, to other parties to exercise all or some of the rights comprised within the copyright in a particular work. The own-

ership of the copyright in a work can also be assigned by the initial owner to another party.

In the case of some of the works enjoying copyright pertaining to the 2010 FIFA World Cup, the ownership or control of the rights in question does not necessarily vest with FIFA and may be held by another party. When a third party wishes to exercise any rights in a particular work, it is incumbent on that party to ascertain the identity of the relevant rights holder and to seek authority to use the work from that rights holder. For instance,

the broadcasting rights in respect of the matches comprised in the 2010 FIFA World Cup are held by the SABC. In regard to the preponderance of relevant works, the rights will be held by FIFA. This is particularly true of the insignia pertaining to the 2010 FIFA World Cup, that is, the official logo, the official mascot and the official poster.

Consequences of infringement

In the event that rights in a copyright work are infringed, the infringer can face civil copyright infringement proceedings in which the copyright owner can claim an interdict restraining the unlawful conduct, delivery of all offending copies of the work in question to the copyright owner, damages, penal damages imposed at the discretion of the court, and/or costs of suit. Certain forms of copyright infringement, for instance making reproductions for purposes of trade or knowingly distributing infringing copies of a work, can also constitute a criminal offence and an infringer can be liable to prosecution at the instance of the state and face severe penalties. These penalties can be as much as R5 000 or three years imprisonment, or both, for each offending article, in the case of a first offence, while in the case of a second or further offence, the amount of the penalty can be increased to R10 000 and the term of imprisonment to five years. An infringer could simultaneously face civil copyright infringement proceedings in the high court as well as a criminal prosecution for the same infringement.

It will be clear that copyright can be a potent weapon in the hands of FIFA for enforcing its Rights Protection Program. This situation is compounded by the fact that a claim of copyright infringement in respect of the misuse a work can be brought simultaneously with other forms of intellectual property infringement claims. FIFA has in the past shown its willingness and resolve to deal severely with intellectual property rights infringers and successful claims have already been pursued here in the high court. Consequently, there is every reason to believe that FIFA will not be reticent in pursuing copyright infringement claims in the future.

FIFA has shown itself to be a competent goal scorer when infringements of its copyright and other intellectual property rights occur. ♦

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