Penalty shootout ahead

OWEN DEAN

The main objective of Federation Internationale de Football Association (FIFA) for the 2010 World Cup Tournament is to make it a success not only for the players, the football fans and the game of soccer, but also from a financial point of view and in particular for the sponsors of the event.

Sponsorship is an integral and essential part of a world cup tournament and, without the funds provided by sponsors, the enormous costs involved in running the event could not be met. FIFA sets itself the goal of providing value for money so ensuring sponsors will continue to support the event in the future and maintain its viability.

When FIFA signs up a sponsor for a world cup tournament it undertakes to give that sponsor, and sponsors in general, exclusivity in the use of the event as a platform to parade and promote their brands. More particularly, when FIFA signs up a sponsor that operates in a particular field, for instance providing credit card and other financial facilities, it commits itself to exclude that sponsor’s competitors from using the event as a platform from which to promote their brands. It also assumes an obligation to prevent all non-sponsors from seeking to gain promotional benefit from the event and thus from undermining the privilege sponsors obtain from payment of the sponsorship fees.

It follows that FIFA will strictly control and police the use of the Soccer World Cup as a promotional platform. It must ensure that non-sponsors don’t ride on the back of the World Cup and bask in its limelight to the detriment of the sponsors. To this end FIFA has pursued, and is actively pursuing in regard to the 2010 World Cup in South Africa, a rigorous rights enforcement programme to curtail unauthorised use of the event for promotion purposes. The threats that FIFA faces in controlling the use of a World Cup Tournament for promotional purposes come basically from two quarters, namely the distribution of counterfeit merchandise and so-called “ambush marketing.”

Counterfeit goods are spurious items of merchandise which clone authorised products sold under licence from FIFA and in relation to which FIFA’s various insignia denoting the World Cup is used. Ambush marketing, on the other hand, relates to the conduct of trading and/or promotional activities which misrepresent some form of connection, whether by way of licence or sponsorship, with the World Cup. Alternatively they may, without necessarily suggesting a connection with the event, seek to use the event as a means of promoting the traders’ own goods or services, often in competition with an official sponsor.

To forearm itself and to place it in a position to ward off the unwelcome attentions of counterfeiters and ambush marketers, FIFA has for the 2010 World Cup, as it has done with previous World Cups, acquired various forms of protection for intellectual property associated with the event and more particularly its trade marks, designs, artwork and the like. For the 2010 World Cup, FIFA has registered various words and logos, including the official emblem, as trademarks, registered designs, and has sought protection of various marks in terms of s15 of the Merchandise Marks Act. These provide for the Minister of Trade & Industry to declare various trademarks as prohibited marks. It has also arranged for the 2010 World Cup to be declared a protected event in terms of s15A of the Merchandise Marks Act and this measure affords special protection against ambush marketing.

Over and above this, FIFA has placed itself in a position to rely on copyright in various works, the common law of passing-off and unlawful competition and the Trade Practices Act which has a provision criminalising the making of false associations or connections with a sponsored event.

With the 2010 tournament less than three years away, FIFA is launching litigation in the High Court against four transgressors who have infringed its rights. This is the culmination of demands made during the past few years by FIFA against unlawful activities pertaining to the 2010 World Cup and it marks the advent of a new phase of enforcement where it is demonstrating its resolve to deal firmly with recalcitrant wrongdoers.

In mid-November, FIFA issued papers out of the Pretoria High Court against four separate infringers of its rights. The wrongdoers conduct business in, respectively, the trade in key rings, ornaments and the like, restaurant services, accommodation and hospitality services and foodstuffs. Though the nature of the infringing activities brings about variations in the causes of action and claims which FIFA has brought against the transgressors, there is a significant amount of commonality in the various cases.

In general, the four complaints and causes of action rely on a variety of the weapons at FIFA’s disposal and they are aimed at the use of marks such as SOUTH AFRICA 2010, SOCCER WORLD CUP, SOUTH AFRICA WORLD CUP and the use of devices depicting soccer balls in conjunction with 2010 or SOUTH AFRICA 2010.

The cases rely on infringement of several of FIFA’s registered trademarks consisting of or incorporating the aforementioned elements. The trade mark infringement claims are supported by claims of passing-off, relying on the reputation attaching to the 2010 Soccer World Cup Tournament and
Ryan Tucker worked closely with the Department of Health on various programs, disasters and emergencies and South Africa had undertaken to promote and encourage development of the South African Red Cross.

The Minister of Health, and the Red Cross Society. It goes on to state that the Minister must ensure strict compliance with any prescription contained in, or made by virtue of the Geneva Conventions regarding the use of the Red Cross Emblem and the Red Crescent Emblem. The Act also requires the Minister to take appropriate steps to prevent any misuse of the Red Crescent or Red Cross, in particular by disseminating the prescriptions as widely as possible among organs of state and the general public.

Likewise, the Society must co-operate with the Ministers of Health and Defence in the performance of its functions and must inform the respective ministers of any misuse of the emblems. Further, whenever necessary or whenever requested by the relevant minister, the Red Cross Society must assist in criminal, civil or administrative proceedings relating to the use or misuse of an emblem.

The statutory protection of the Red Cross and Red Crescent Emblem of the Red Cross Society provides the legislation with its teeth. In terms of s9(1), use of the emblems is limited to certain circumstances, namely:

- as a sign that persons or equipment fall under the protection of the Geneva Conventions;
- to show that persons or equipment are connected to the International Red Cross and Red Crescent Movement;
- with the authorisation of the Minister of Health or the Minister of Defence in respect of personnel and equipment of the National Defence Force; or
- as otherwise determined in the Geneva Conventions.

The Act also contains what is known as a savings provision, in which the use of the emblem is not considered an offence. This provision reads as follows –

Dean is a partner with Spoor & Fisher