

## AMBUSHING EVENT PIRACY

### INTRODUCTION

A major sporting event like the 2010 FIFA World Cup, which took place in South Africa under the auspices of Federation Internationale de Football Association (FIFA), is a significant marketing opportunity for producers of goods and services to promote their business activities and the brands or trade marks by which they are identified. A limited and select group of producers use the occasion by becoming sponsors of the event or licensees of the trade marks and other insignia by which the event is characterised. In general, sponsoring such an event, or becoming a licensee of the insignia, is a costly endeavour<sup>1</sup>. Nevertheless, sponsors and licensees clearly believe that they obtain value for their money in what is spent on sponsorship and licence fees as these events are invariably fully subscribed by sponsors and licensees.

Other producers or suppliers use the promotional opportunities provided by such an event by freeloading on it and thereby using it to promote their goods and services without assuming any financial obligations towards the event organiser. These producers or suppliers are commonly known as "ambush marketers" and their endeavours in taking free advantage of the event is commonly referred to as "event piracy" or "ambush marketing". Ambush marketing has become a significant phenomenon in modern marketing, and controlling it has become a major preoccupation of event organisers<sup>2</sup>. The very existence and commercial success of major sporting events are called into question by ambush marketing and, if unchecked, it has the capacity to undermine or even destroy the viability of major sports events. This is so because such events rely to a significant extent on sponsorships and licence fees in order to cover the costs of the events and to make them financially rewarding<sup>3</sup>. Sponsors and licensees would be disinclined to pay the large sums of money involved to the events organisers if their competitors are able to achieve the same exposure for their brands through the event without paying for the privilege. Paying sponsorship or licence fees is only justifiable if in return the payers receive a large measure of exclusivity or patronage in using the event and its insignia in return. There is thus strong pressure on an event organiser to be able to provide the required measure of exclusivity and protection to its clients and thereby provide value to those clients.

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<sup>1</sup> See *Federation Internationale de Football Association (FIFA) v Metcash Trading Africa (Pty) Ltd* 2009 BIP 457 (GNP) at paragraph 1. Evidence was lead in that case that it cost in excess of R5 Billion to stage the 2006 FIFA World Cup, held in Germany. See also R Kelbrick "Ambush Marketing and Protection of the Trade Marks of International Sports Organisations – a Comparative View" XLI CILSA 2008 24, where it is stated that sponsors paid FIFA more than EUR 700 Million to be associated with the 2006 FIFA World Cup in Germany.

<sup>2</sup> See the description of the phenomenon of ambush marketing in P Johnson "Ambush Marketing: a Practical Guide to Protecting the Brand of a Sporting Event" Book 1 2007 EIPR Practice Series, at paragraph 1-14 at page 6.

<sup>3</sup> See *Federation Internationale de Football Association (FIFA) v Metcash Trading Africa (Pty) Ltd*, *supra*, at paragraph 1. See also O. Dean "Ambush Marketing and the FIFA 2010 World Cup" 2003 (June) DR 17 and R Kelbrick, *op cit*, at page 25.

