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# Ambush Marketing and the Law



# Foreword

Many companies are keenly anticipating the Olympic and Paralympic Games coming to London in 2012. At a hosting and infrastructure cost of £9.298bn, all of which comes from the public purse, it's reasonable to expect that companies will be able to gain some reflective benefit from the presence of the Games in London.

Increasingly, legislation is being brought onto the statute books to protect the investment of sponsors at major cultural and sporting events. The Institute supports this in principle, recognising that companies that have invested heavily in sponsorship, have that investment protected from companies wanting to get free publicity. There are seven 'Tier One' corporate sponsors, each paying £40 million to the IOC.

However, there is a huge grey area when it comes to defining what counts as an 'ambush' – as this paper explores. There is often an assumption, backed by legislation, that ambush marketing is a 'parasitic' process. Ethically, this may not always be the case.

This research paper builds on our 2008 paper *The Event That Dare Not Speak Its Name* and offers a guide to companies about what they can and cannot do during sporting events, with particular focus on the forthcoming Olympics.

To read further papers from the Institute, please visit [www.cim.co.uk/agenda](http://www.cim.co.uk/agenda) where previous papers are available as free pdfs. To engage with the debate on this subject visit [www.cim.co.uk/blog](http://www.cim.co.uk/blog) and add your comments to the live discussions.



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# Ambush Marketing and the Law

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# What is ambush marketing?

**Ambush marketing is when a company that hasn't paid to be a sponsor of an event, gets free publicity by unofficially communicating their brand in places where spectators, cameras or reporters will see them. Additionally, and somewhat more subtly, it is when a company seeks to create an association between their brand and a sporting event, in order to create positive publicity for their own products or services.**

There is no official definition of ambush marketing in UK law, but a useful definition is:

**'...a form of strategic marketing which is designed to capitalise upon the awareness, attention, goodwill, and other benefits, generated by having an association with an event or property, without an official or direct connection to that event or property.'**<sup>i</sup>

Key to whether or not ambush marketing should be countered in law is the value of goodwill. Recognising that goodwill has a custom-raising value means that its theft is potentially illegal. A fit-for-purpose definition of ambush marketing might therefore be:

**Engaging in promotions, advertising or any other form of marketing activity that trades off an event's goodwill when no right to do so has been granted, or indeed exists, explains why bodies with large sums of money invested in sponsorship want to protect that sponsorship by declaring a price to the 'goodwill' that such an event generates. Goodwill has been defined as '...the attractive force that brings in custom.'**<sup>ii</sup>

## What is ambush marketing?

To prove that goodwill has been unreasonably taken advantage of, however, claimants must demonstrate the presence of goodwill through signs that are distinctive to the claimant in the public mind; such as marks, logos, names and well-associated imagery.

The International Olympic Committee's (IOC) definition of ambush marketing for the purposes of the Olympic Games and Paralympic Games is:

**'...any attempt by an individual or an entity to create an unauthorised or false association (whether or not commercial) with the Olympic Games, the Olympic Movement, the IOC, the National Olympic Committee of the Host Country or the Organising Committee of Olympic Games ("OCOG") thereby interfering with the legitimate contractual rights of official marketing partners of the Olympic Games.'**<sup>iii</sup>

**"Key to whether or not ambush marketing should be countered in law is the value of goodwill."**

## Why is it important for marketers to know about it?

In the past, where defined at all, ambush marketing has usually been seen as an irritant at worst for most sporting events. Today, the situation is very different. Legislation is becoming more stringent with regards to what companies can and cannot do. Additionally, the enforcement of this legislation is increasing. In the South Africa World Cup, criminal charges were newly introduced onto the country's statute books to cover ambush offences.

Similarly for the 2012 Olympics, Section 22 of the London Olympic Games and Paralympic Games Act 2006 ('the Olympics Act') gives police the powers to enter 'land or premises on which they reasonably believe a contravention of regulations under section 19 is occurring' and 'remove, destroy, conceal or erase any infringing article' with 'reasonable force'. Section 21 outlines the penalties a guilty person may incur if found guilty of ambush marketing: 'on conviction or indictment, to a fine' or 'on summary conviction, to a fine not exceeding £20,000.'

What this means is that the penalties for marketers found guilty of ambush marketing are, in future, potentially

much more severe than anything previously on record. In the South Africa World Cup case study on page 23 two people believed to be behind the stunt were arrested, had their passports confiscated and at one point were even facing the possibility of a jail sentence.

This is a new development in the history of marketing – that previously acceptable, commercial practices can now be faced with criminal charges because a powerful organiser doesn't approve. The case study explores the fact that in the South African example, the offenders were not even wearing conspicuous logos and nothing that would be objectively described as 'advertising' took place.

Paying a sponsorship fee does not, one ethical as well as legal argument would run, give you the right to police what people are wearing, or eating, or drinking in the stadium. Yet the laws brought in for the South African World Cup and now the London Olympic and Paralympic Games give Government approval to the idea that they do.

The Institute intends to alert marketers to the fact that the penalties for ambush marketing are

## Why is it important for marketers to know about it?

now potentially extremely severe; for what is often an unclear and dubiously condemned area of commercial practice.

It is the Institute's belief that sponsors and official bodies should only have legitimate cause to cry foul if the ambusher has **misled or confused the public into thinking that they are an official sponsor**. This is what 'passing off' means – presenting yourself in ways that a customer might reasonably believe you are officially representing something or someone, when you are not. If 'passing off' has occurred, then it is correct to say that an offence has been committed. However,

this argument runs, **no offence has taken place if (for example) non-sponsors merely advertise their wares in the vicinity of events that have been sponsored by someone else, without intent to mislead the consumer**. The distinction is subtle, but important. Burton and Chadwick (2008)<sup>1</sup> claim that 'passing-off is precisely the aim of ambushers: to confuse consumers and create the illusion of an association to a property'. However, it is our contention that this is usually simply not true. In many of the cases commonly quoted when ambush marketing is discussed, the ambushers are **not** trying to commit the crime of passing-off; rather, they want to

gain good exposure for their own product or service, without paying the kind of money that sponsors pay. That, it can be argued, is not only legal but exactly how competitive organisations should be enabled to behave. Preventing them doing so is analogous to authorising a cartel or a monopoly to operate, with unfair competitive advantage enabled simply because the cartel or monopoly paid a fee.

There is a further weakness with the argument that ambush marketing should be discouraged with legal authority, which is that some companies who have been ambushed, have themselves been the ambushers on other occasions: such as Visa and Pepsi.

To clarify the muddy waters, the Institute believes that potential litigation against ambush should draw a distinction between whether or not passing-off has been attempted and/or confusion exists in the mind of the customer as to who is the sponsor (illegal) and gaining publicity for a company's own products and services that has not been paid for (legal competitive activity).

In law, any judgement would again come down to whether or not the company has unfairly traded on the goodwill of the event.



# Key points for marketers

In the most recent wave of the Institute's Marketing Trends Survey, 35% of surveyed marketers said their company was likely to undertake some marketing activity around the Olympics.<sup>iv</sup> This enthusiasm may diminish once the impacts of the Olympics Act become fully appreciated; in the same survey, 88% of marketers surveyed admitted that their knowledge of the Act was poor or non-existent.

The Olympics have always had a certain amount of legislative protection, although our observation

is that legislation increases with each successive Games. Trademarks like the rings device and the words 'Olympic', 'Olympian' and 'Olympiad' have also always been registered and cannot be used without permission, as would be expected.

What's new is the way that certain words and expressions, when used in combination, are also now deemed to be illegal as it is argued that by using words in certain combinations, non-sponsors are claiming an association with the Olympics.



Key points from the text that are of most concern to marketers are:

- 1 Penalties against stadium ambush.** According to the Act 'the Secretary of State shall make regulations about advertising in the vicinity of London Olympic events.' (Section 19). The implication from this is that no logos or anything that may be considered to make an 'association' may appear in the vicinity of the London Olympic events, unless the company is an official Tier 1 or Tier 2 sponsor.
- 2 The 'listed words'.** Words such as "gold" or "silver" cannot be used in combination with words such as "London" or "2012". For the full list of restricted words, visit [www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf](http://www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf) We would draw marketers' attention to pages 23 and 25, which include the statements 'An infringing association can be created by the use of any "representation".'
- 3 Anything that appears to create an association where none exists** The guidelines, published since the Olympics Act, emphasise that such representation can be created by any deliberate associative act; it doesn't just have to be by usage of the listed words.
- 4 The registered trademarks which, as is normal practice, are protected.** "London 2012" is a registered trademark. See 'What are the Games' Marks?' section at [www.london2012.com/about-us/our-brand/using-the-brand.php](http://www.london2012.com/about-us/our-brand/using-the-brand.php).

In the past, a cheeky association such as 'Win gold in London next year' might be considered acceptable, but the Olympics Act makes a point of making this kind of creative advertising illegal, by declaring that by doing so, you are making an association with the Olympics where none exists if you are not a sponsor.

## Listed Words

In any marketing communication from non-sponsors it is not permitted to use two of the words in List A or any word in List A with one or more of the words in List B.

List A:		List B:		
Games	Two Thousand and Twelve	Gold	Silver	Bronze
2012	Twenty-Twelve	London	Medals	Summer
		Sponsor/s		

## Key points for marketers

The current assumption that ambush marketing is ipso facto a 'bad thing' needs to be addressed. In the early 1990s, Jerry Welsh, former Global Marketing Head of American Express, stated that:

**'...ambush marketing, correctly understood and rightly practiced, is an important, ethically correct, competitive tool in a non-sponsoring company's arsenal of business- and image-building weapons.'**<sup>v</sup>

Welsh's credentials in expressing this view are perhaps confirmed by the fact that it was Welsh who coined the expression 'ambush marketing'.

This is in distinct contrast with the IOC's view of ambush marketing, which is expressed as:

**'A dishonest, parasitic and illegal way to do business. Companies that practice it deceive the customer, threaten sport and discredit themselves. We combat ambush marketing to preserve and promote the Olympic spirit.'**<sup>vi</sup>

These words would seem noble if it were not for the fact that official sponsors to the 2012 Olympics are paying a total of £930 million, none of which is returned to the public purse which is funding the entire £9.298bn cost of hosting the Olympics.<sup>vii</sup> If there is an 'Olympic spirit', surely it is tarnished at least as much by official commercialisation than ambush marketing. The literal reading of the IOC's view is that a company does not 'discredit' itself and does not 'threaten sport' as long as it pays sums of money that most companies would only dream of as their total marketing budget, to the organising body. However, marketers need to work within these parameters, and this is why this paper is being published.

**Note:** Tier One income (7 x £40 million) goes to the IOC, whilst Tier Two and Three income goes to LOCOG, as part of the £2 billion budget to stage the games. The £2 billion staging budget consists of £650 million anticipated final income from Tier 2 and 3 sponsors, £350 million from ticketing and merchandising, and £1 billion from the IOC.<sup>viii</sup>

## The current legal situation

### London 2012's UK statutory marketing rights

April 2010

Section 4.12 of the **London Olympic Games and Paralympic Games Act 2006** defines the Authorised Users who are entitled to advertise and to use the emblems.

#### 4.12.1 London 2012 Sponsors and Official Suppliers etc

London 2012 Sponsors and Official Suppliers, and the IOC's TOP Sponsors which have signed up until 2012, (ie all companies which have paid, in cash or value in kind, for the right to associate with the 2012 Games), are able to advertise their association with the 2012 Games within the terms of their sponsorship agreements with LOCOG or the IOC (as appropriate). For a full list of London 2012 sponsors in the UK see [www.london2012.com](http://www.london2012.com)

#### 4.12.2 Non-commercial partners

LOCOG has/will authorise its key non-commercial partners (eg Central Government departments, local boroughs hosting the Games, and the National Lottery) to use the London 2012 emblems and otherwise associate with the 2012 Games in a variety of ways. LOCOG has also

established the London 2012 Inspire programme to allow other non-commercial organisations to apply to associate with the 2012 Games through use of the London 2012 Inspire mark. [This is detailed in section 4.11 of the same report]

#### 4.12.3 Register of authorised users

LOCOG is obliged under the 2006 Act to maintain a register of all people authorised to create an association with the 2012 Games. A list of all official London 2012 sponsors and suppliers is publicly available via this register. The register also includes details of rights granted to non-commercial partners, and will include class exemptions (for example if all UK schools are authorised to hold a London 2012 themed event).

<http://www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf>

<http://www.london2012.com/documents/brand-guidelines/statutory-register.pdf>

Full text of the London Olympic Games and Paralympic Games Act 2006: <http://www.legislation.gov.uk/ukpga/2006/12/contents> or pdf available at <http://www.legislation.gov.uk/ukpga/2006/12/data.pdf>

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## The current legal situation

### Statutory marketing rights

Being a supplier to the Olympics does not entitle you to use the emblems or to advertise your association with the Olympics in any way.

Companies who are awarded tenders need to be aware that they cannot gain any further benefits to their company, because of a clause that prevents you promoting your association with the Games unless you are an official sponsor. It's worth pointing out to companies who want to tender that further marketing along the lines of 'supplier to the Olympics' is forbidden.

The full rules for this are laid out in the No Marketing Rights Protocol for suppliers, consultants and contractors, available from <http://www.london2012.com/publications/no-marketing-rights-protocol-for-suppliers-consultants-a.php>

“Official sponsors to the 2012 Olympics are paying a total of £930m, none of which is returned to the public purse which is funding the entire £9.298bn cost of hosting the Olympics infrastructure”



## What's not affected – and some other consequences

Products, services or brands that were already in place before the Act became law in 2006 are not affected. So the Little Chef 'Olympic Breakfast' will not be banned, nor will 'Olympus' cameras (Olympus, Olympic and Olympian are registered trademarks of the LOCOG).

Other consequences include uncertainty about whether advertising and franchises of non-sponsors will need to be covered up for the period before, during and after the Games in the specified vicinities around stadiums and other event locations. There will be zones around Olympic venues which will be clean from branding, and the extent to which this applies, and to who, needs clarity. For example, Olympic venues

which have branded names – such as The O2 – will be re-named for the Games as 'The North Greenwich Arena'<sup>viii</sup>. The fact that O2 is not a sponsor is incidental, as this 'clean branding' applies to sponsors and non-sponsors alike. As an interesting comparison, in Germany in the 2006 FIFIA World Cup, Hamburg's AOL Arena was renamed 'FIFA World Cup Stadium Hamburg' for the duration of the tournament.<sup>ix</sup>

**“Products, services or brands that were already in place before the Act are not affected.”**

## What is the Institute doing about the implications of the Olympics Act?

The Institute has met with LOCOG and urged them to communicate clearly how far they intend to exercise their rights in relation to the Olympics Act. We cannot get the details of the Act changed, but we can request assurance that companies will not be prosecuted under the strict letter of the law where what was previously common marketing practice might be employed.

Defining what creates 'association' is a sticking point. The Institute believes that current ambush legislation is loaded unfairly against legitimate marketing on four counts:

1. Companies should be able to make reasonable levels of association with the presence of a major sporting event, especially when public and business money is being used to fund that event and/or where that event is highly profitable for the event organiser(s).
2. It unfairly penalises small companies in particular, who will be surprised to discover that they cannot use certain words in certain orders. Whilst the threat of large fines may not necessarily prevent ambush attacks by large companies, as they may see the cost of the fine as good value for

money, the threat of punitive fines will make small companies avoid the event altogether.

3. The small-time association by companies, to which in the past a blind eye would have been turned, does not adversely affect the interests of sponsors in the ways that are claimed. Customers understand the difference between a company associating itself proximally with the presence of a major global event, and the official corporate sponsors.
4. Sponsors pay for a particular product. They do not 'own' the surrounding infrastructure and should not be protected from what people are eating, drinking or wearing in the defined spaces near the sponsorship.

There is also a level of confusion about what will happen to existing brands within the defined areas of the sporting events. The legislation states that the 'Secretary of State shall make regulations about advertising in the vicinity of London Olympic events'. These regulations are currently under consultation through the Department for Culture, Media and Sport. The wording of the Act relates to "events" so includes stadiums and the route of



## What is the Institute doing about the implications of the Olympics Act?

the Marathon, and any other places where events are taking place. We would like LOCOG to assure us, where companies operate within these areas, that common sense will prevail and they will not be fined or prosecuted if (to take a realistic example) vans displaying logos are parked in the vicinity. There must be a proven intent to ambush before the legislation is used and in addition, it should be reasonably asserted that the ambusher intended to create confusion in the mind of the consumer – and not merely because the ambusher was gaining some publicity for their own product or service.

The Institute argues that the legislation maybe unenforceable in the way it is represented in the text. A judgement call has to be made on whether a contravention is (a) a deliberate ambush that creates confusion in the mind of the customer and so should be prosecuted, (b) a coincidental appearance of brand or logo, or (c) a level of association that is intended, but does not harm the official sponsor. It is in (c) that we would argue there should be some leeway, especially for small companies, and we would like to see LOCOG define the extent to which

it will exercise its legislative powers. The judgement call is on whether the interests of the sponsors have been reasonably damaged and/or whether goodwill has been appropriated.

We would also like to see the distinction drawn between small companies making a reasonable level of connection between their business and the presence of the Games, and a case of ambush marketing that is severe enough to negatively affect official sponsors. As the text of the Act stands, both are seen as equitable in the eyes of the law and we believe this is wrong.

The Institute would prefer to see an approach similar to that taken by the organisers of the Wimbledon tennis championship, which makes statements such as: ‘we... have no issue with spectators who bring their own branded food and beverages into the grounds... similarly, branded clothing purchased for normal personal use, with no obvious ‘ambush’ potential, is entirely acceptable.’<sup>x</sup>

Current ambush legislation could be used to remove spectators wearing, or consuming, branded products that are not sponsor-branded products.

This has happened in previous major events, such as when attendees at the 2004 ICC Champions Trophy were told they could not bring in mineral water that was not Abbey Well (belonging to sponsor Pepsi). We would like LOCOG to assure us that this will not be the case. A recent report highlighted that ‘1 in 5 meals at the Olympics will be served by McDonald’s’.<sup>xi</sup> The Institute understands why the event is largely sponsored by companies such as McDonald’s and Coca-Cola, as they are among the only corporates large enough to afford the Tier 1 sponsorship fees. However, we believe it is inappropriate and perhaps even unethical to forbid people from eating or drinking other brands, considering that the event is meant to be one celebrating health, fitness and activity, as these are qualities which are not always associated with the main sponsors’ products.

If these views are not seen as acceptable as they might damage profits, for future Olympic events the Institute would like to suggest a change to the rule preventing in-stadium advertising. Presently the stadiums are ‘advertising-free’ because the Games

are meant to be non-commercial. As this is patently no longer the case, and we are seeing restrictive legislation brought in to protect official sponsors, surely it would be a logical step to allow major sponsors to advertise in the stadiums, and then the impact of any potential ambushing is less damaging to the interests of the sponsors. One of the reasons given for anti-ambush legislation is that sometimes consumers are unsure exactly who are the sponsors; for example in the 1992 Winter Olympics, more people thought Wendy’s was an official sponsor when it was McDonald’s, after Wendy’s had achieved an effective ambush.<sup>xii</sup> In-stadium advertising would help reduce this confusion and thus make the threat of ambush less of a problem.

“We would like to propose a change to the rule preventing in-stadium advertising.”

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## What can marketers do?

There are supplier opportunities for companies in areas such as construction, leisure and tourism, transport, security and logistics. Many of these contracts are being awarded to small or medium sized companies, and interested companies are directed to [www.competefor.com](http://www.competefor.com).

Outside of contracts, for companies wanting to gain some benefit from the Games, the key is for marketers to find creative and innovative ways around the strictures of the legislation. Non-specific associations with health, fitness and athleticism will not infringe the Act. LOCOG has published a guide 'Business – What you need to know' which outlines some examples of what would and would not be against the law. This guide is available from <http://www.london2012.com/documents/brand-guidelines/guidelines-for-business-use.pdf>. The Institute's earlier paper *The Event that dare not speak its name: Marketing and the Olympics* also covers this in some depth. This is freely available at <http://www.cim.co.uk/resources/emergingthemes/home.aspx>.

It's the Institute's hope that the legislative powers will only be exercised when there is a clear intent to directly ambush one of the events in the Olympics, and that the broader implications of the associative restrictions will not be used to penalise companies wanting to gain benefit from the presence of the Games. We would like to see LOCOG confirm this is the case. Otherwise, the only safe option for most companies, particularly smaller ones, will be to steer clear of any mention of the Olympics at all. Small companies are, it could be argued, in a no-win situation: they cannot afford to be a sponsor; being a supplier does not give any exemptions; and few will be able to afford the risk of litigation.

**“The key is for marketers to find creative and innovative ways around the strictures of the legislation.”**



## What other events in the future are likely to include legislation restricting associative practices?

England's recent bid for the 2018 World Cup was unsuccessful, but legislation at least as strict as that for the Olympics Act, and possibly as strict as the South Africa World Cup, is likely to be brought in for the 2018 and 2022 events. We would question why the penalties are so severe when the events are so profitable. The 2010 World Cup, for example, is forecast to have brought Fifa profits of \$2.5 billion (£1.7 billion). Despite this, the South African government takes no share of merchandising, ticketing or television rights income. It does not tax Fifa on merchandising and match day events. It has paid Fifa a premium to secure the

hosting of the event; and paid for the new sports stadia and infrastructure itself. On top of this, Fifa has tax-free status in Switzerland and insists host countries waive taxation as part of the 'right' to host the World Cup. The final cost to the South African government for hosting the event was estimated to be over \$4 billion.<sup>xiii</sup>

Other events which will be subject to similar ambush marketing legislation include the Glasgow 2014 Commonwealth Games and the Isle of Man Commonwealth Youth Games 2011. Interested marketers may find the following links useful.

The Glasgow Commonwealth Games Act 2008 gives details about the 2014 Games: <http://www.legislation.gov.uk/asp/2008/4/contents> and pdf available at <http://www.legislation.gov.uk/asp/2008/4/data.pdf>

Commonwealth Games candidate city manual: See page 39 <http://www.thecgf.com/games/future/glasgow2014.asp?yr=2014> and pdf available at [http://www.thecgf.com/media/games/2014/ccm\\_v72.pdf](http://www.thecgf.com/media/games/2014/ccm_v72.pdf)

European Athletic Association organisational manual 2003

12.1.1 Clean venue

12.1.4 Ambush marketing protection

<http://www.european-athletics.org/european-athletics-organisational-manual.html>

## Thematic space

Arguments in favour of ambush marketing are increasingly academic because the legislative environment becomes more and more loaded in favour of bodies such as Fifa and the IOC. However, it's worth pausing to consider what it actually is that companies buy when they pay for sponsoring an event, as this can lead us to interesting conclusions about whether ambush marketing (where there is no attempt to mislead) does, or does not, actually infringe the assumed rights of sponsors that are now being routinely supported in law.

Jerry Welsh is again lucid on this area. For Welsh, the point to understand is that 'in buying a sponsorship, a company buys only that specific packaged product [...] the company does not thereby purchase the rights to all avenues leading to the public's awareness of that property; and, more importantly, [...] does not buy the rights to the entire thematic space in which the purchased property is usually only one resident'.

In other words, 'when you own and license Kermit, you have only given the rights you own to one specific frog – not to all frogs, and maybe not even to all green ones'. Anything not specifically licensed in this way 'is up for commercial grabs.' For Welsh, 'that's as it should be in sponsorship and as it is in the larger world of both commerce and life.'

It's possible that in the future, we will see challenges to the legality of preventing ambush marketing. In the meantime, we need to be aware of the restrictive detail of legislation for sporting events, and find other ways to compete on a playing field that has become distinctly less level in recent years.

**“It's worth pausing to consider what it actually is that companies buy when they pay for a sponsorship.”**

## Case study: Bavaria

The Dutch brewing company Bavaria has achieved fame of sorts for several high-profile ambush events in recent years. The most prominent was in 2006 when the company gave orange lederhosen to Dutch fans at Fifa World Cup matches in Germany. Orange is a colour associated with the brewery; and the trousers were deemed to be creating an ambush, so the fans were forced to part with them (leaving some of them to watch the match in their underwear).

In Johannesburg in this year's World Cup, 36 Dutch fans were ejected from the game between Denmark and the Netherlands, because they were dressed entirely in orange. Fifa had the fans removed, believing they were not fans at all but hired models, and brought charges against the two women they believed to have planned it.

The impacts of the Bavaria cases are interesting. Firstly, can it really be the case that simply wearing orange creates an ambush? In neither example were the people concerned flaunting conspicuous logos; the clothes did not have 'Bavaria' written in large letters across them,

which would have been a clear breach of the rules. Whilst Fifa wants to protect the rights of the official sponsor (Budweiser in the case of the World Cup) does wearing a particular colour count as an act of ambush marketing?

Looked at more closely, it can be seen that there is a small label on each item of clothing, albeit not significant enough to get picked up by the TV cameras. This would mean that it's technically against the rules. However, plenty of fans arrive at sports events wearing clothes with small logos on them that most of the time, will not be that of the official sponsor.

The take-out is that, as in this case, it must be the intent to ambush that triggers usage of the legislation – there are no objective distinctions between what is, or isn't, an ambush in terms of actual actions. Furthermore, as this paper has argued, it should be intent to pass-off, create confusion in the mind of the customer about who the sponsor is, and/or to imply a connection between the company and the event, that constitutes an illegal ambush.

## Final thoughts

Getting the judgement right between protecting investment, and unnecessarily penalising business, is a balancing act. Thirty years ago, cities had to be persuaded to host the games: at the time of the 1980 Moscow Olympics, the IOC was on the verge of financial collapse. The situation is very different today; but this comes at the risk of alienating businesses and the public by an over-commercialised nature that is perceived to benefit only major corporations.

It's arguable that the sponsors who will be investing up to £650 million for 16 days' worth of exposure are protected from ambush marketers seeking to gain publicity for nothing, but another thing entirely to assert that the likes of Coca-Cola and McDonald's need protecting from small companies merely wishing to trade relatively harmlessly on the back of what is, by definition, a cultural event, not a protected brand. How stringently the law will be applied in the case of small companies will become apparent over the next couple of years; but how many firms will want to take the risk of being accused of contravening the legislation?

The regulations for the South Africa World Cup are stricter than those for the London Games because as far

as we can tell, there is no threat of jail action for ambush marketers in 2012. However there are many cases in the text of the Act where it states that regulations will be brought in to determine how the details of the Act are enforced. These details have not been published yet and we would like the UK Government to declare its intentions.

We would hope that the legislation is only used when there is clear intent to ambush which attempts to mislead the customer (ie passing off), rather than exercising powers for an apparent breach of the rules. Defining the difference is complex. Yet if the public is to support the investment of £9.298 billion of public, lottery and business money, the least our businesses should be able to gain from the show coming to town are some associative benefits for what will be a highly profitable event for the organisers.

We would like to see the distinction drawn between ambushing that attempts to mislead (which we agree should be stopped) and ambushing that gains publicity for a company's own products and services from the presence of the event (which should be allowed), where no goodwill has been unfairly traded on.

## Key points for marketers

Being an official supplier does not entitle you to advertise your association with the Olympics nor use any of the registered symbols.

You cannot use any of the listed words in the declared combinations (see page 9) in your marketing communications.

Ambushing an event does not have to involve explicit advertising. LOCOG are entitled to decide whether or not an 'associative' ambush has taken place and can exercise rights to prosecute.

“Ambushing an event does not have to involve explicit advertising.”



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## Glossary

IOC – International Organising Committee of the Olympic and Paralympic Games. The IOC manages broadcast partnerships and the worldwide sponsorship programme.

LOCOG – London Organising Committee of the Olympic Games. The Organising Committee oversees the planning and development of the London Olympic and Paralympic Games 2012.

## Further information and useful resources

The full text of the London Olympic Games and Paralympic Games Act 2006 is available at <http://www.legislation.gov.uk/ukpga/2006/12/contents> or pdf available at <http://www.legislation.gov.uk/ukpga/2006/12/data.pdf>

The full text of the Olympic Symbol etc. (Protection) Act 1995 is available at <http://www.legislation.gov.uk/ukpga/1995/32/contents> or pdf available at <http://www.legislation.gov.uk/ukpga/1995/32/data.pdf>

Link to the restricted words  
<http://www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf>

Link to the guides for business, and small business, that LOCOG has published  
Business – What you need to know  
<http://www.london2012.com/documents/brand-guidelines/guidelines-for-business-use.pdf>

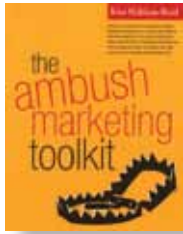
Non-commercial organisations – What you need to know  
<http://www.london2012.com/documents/brand-guidelines/guidelines-for-non-commercial-use.pdf>

Using the London 2012 brand and brand protection information  
<http://www.london2012.com/about-us/our-brand/using-the-brand.php>

No Marketing Rights Protocol for suppliers, consultants and contractors  
<http://www.london2012.com/publications/no-marketing-rights-protocol-for-suppliers-consultants-a.php>

Statutory register of authorisations granted by the London Organising Committee of the Olympic Games Limited ("LOCOG")  
<http://www.london2012.com/documents/brand-guidelines/statutory-register.pdf>

## Related reading



### **The Ambush Marketing Toolkit**

(Kim Skildum-Reid)

£14.99

There is a myth that it's only major sponsors of huge events that get ambushed. The truth is that ambush marketing goes on at all levels of the sponsorship industry, from small charities to industry associations, festivals and the FIFA World Cup.

In a world first, bestselling author Kim Skildum-Reid puts her more than 20 years of sponsorship marketing experience into the topic of ambush marketing.

The Ambush Marketing Toolkit (with accompanying CD) provides sponsors, events, and prospective ambushers with a no holds barred, strategic approach to ambush prevention and the mounting of a successful ambush.



### **Sports Sponsorship**

(Rob Owen)

£12.99

This book examines what sponsorship really is, why it is significant, and examines what it really can offer the enlightened marketer – are they really sweating their assets. Brands are increasingly reliant on sponsorship, using famous faces to advertise their wares and celebrity endorsements which seem to be the new 'Holy Grail'. One in five advertisements in the UK now features a face, voice or testimony of a sponsored celebrity (Millward Brown). Strategic sponsorship, therefore, appears to be an area of great importance to the Marketing Mix; and yet, as we have noted, it is relatively under-researched or commented on. This book looks at the complex Marketing conditions in which we are currently operating; the opportunity that sponsorship offers to build brand loyalty, increase sales and deliver real returns versus other methods; and the ways in which this might be achieved successfully. Ultimately the overall objective of this book is to emphasise how sponsorship may be leveraged to better effect as a marketing tool.

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## Related courses

### Making the Most of the Olympic Opportunity

**It's a great opportunity – make sure you get it right!**

The Government has moved swiftly to bring in legislation preventing the use of Games-related words and images by non-official advertisers. Does this mean that the 2012 Olympics offer no opportunities to organisations unless they pay a huge licence fee to use the symbols? We explore the law in this area and take a sanguine look at the likely opportunities and how best to develop them.

This course presents a thorough understanding of new Olympic Marketing legislation. This is your chance to develop your knowledge base and personal-worth and learn how to prevent costly marketing errors. Enhancing compliance knowledge in marketing teams speeds up the process of campaign development as individuals learn to take more responsibility for their input. Agency selection and service agreements are more rigorous and costly mistakes are avoided.

**A one day workshop, more information at [www.cim.co.uk/1313](http://www.cim.co.uk/1313)**

### Sponsorship Essentials

**Buying, selling and measuring with confidence**

Sponsorship can deliver great results, but can be challenging to select, negotiate, manage and evaluate. This programme shows you how to understand the world of sponsorship, and how to approach the right partners, whether you are a buyer or seller. It will also show you how to evaluate sponsorship, and negotiate the win-win deals that all parties seek.

This course is for marketers and managers who are responsible for buying, selling or managing sponsorship arrangements within their organisation.

**A one day workshop, more information at [www.cim.co.uk/0512](http://www.cim.co.uk/0512)**

### Must Know Law for Marketers

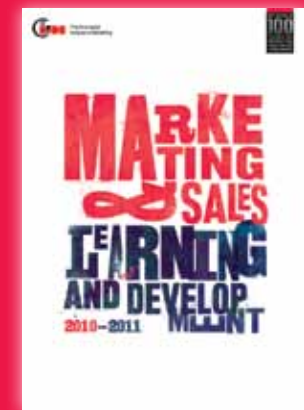
**Protect yourself in a complex legal and regulatory world**

This workshop is about the practical application of the law as it affects marketers and sales professionals in their day-to-day activities. It is designed to show you how common marketing practice can easily fall foul of both the law and the regulators and what you can do to prevent this.

Gain the confidence to write legal marketing copy, understand how and why others have got it wrong, 'step-up' to a more rewarding role where you work closely with legal and compliance teams. Build a marketing team that understands the credible threats to your organisation, the real risks of non-compliance including fines, prosecutions and brand/reputation damage.

This course is for any marketer, at any level, who wants to develop their knowledge and understanding of how law shapes the marketing role, and how to develop their personal worth in a compliant marketing team.

**A one day workshop, more information at [www.cim.co.uk/1152](http://www.cim.co.uk/1152)**



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## Sources

- i. Burton, N. and Chadwick, S. (2008) Ambush marketing in sport: an assessment of implications and management strategies. In: The CIBS working paper series – no. 3. Coventry University. Available from: <http://www.coventry.ac.uk/researchnet/CIBS/Pages/Workingpaperseries.aspx> [Accessed 24 January 2011]
- ii. per Lord MacNaughton in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217, H.L.(E).
- iii. Department for Culture, Media and Sport (2009) Freedom of Information request for 'copies of the technical manuals that form part of the Olympic Host City Contract for the London 2012 Olympics. Case Number 106119. [online] Available from: [www.culture.gov.uk/about\\_us/freedom\\_of\\_information/foi\\_requests/5804.aspx](http://www.culture.gov.uk/about_us/freedom_of_information/foi_requests/5804.aspx) [Accessed 24 January 2011]
- iv. Marketing Trends Survey, Spring 2010. Cookham, The Chartered Institute of Marketing.
- v. Welsh, J. (2002) Welsh on ambush marketing IEG Sponsorship Report, Vol 21(11), p4.
- vi. Michelmores LLP (2006) The Olympics are coming. Technology and Intellectual Property Law bulletin, Spring. [online] Available from: [www.michelmores.com/Technology-and-Intellectual-Property-Law-Bulletin-\(Spring-2006\)-News.htm](http://www.michelmores.com/Technology-and-Intellectual-Property-Law-Bulletin-(Spring-2006)-News.htm) [Accessed 24 January 2011]
- vii. Department for Culture, Media and Sport (2010) London 2012 Olympic and Paralympic Games Quarterly Report November. [online] Available from: <http://www.culture.gov.uk/publications/7535.aspx> [Accessed 14 March 2011]  
and  
Rajan, A. (2008) Cadbury to sponsor London 2012 Olympics. Independent, Tuesday 21 October. [online] Available from: <http://www.independent.co.uk/news/uk/home-news/cadbury-to-sponsor-london-2012-olympics-967688.html> [Accessed 14 March 2011]
- viii. London 2012 Olympic and Paralympic Games (2010) North Greenwich Arena. [online] Available from: <http://www.london2012.com/games/venues/north-greenwich-arena.php> [Accessed 26 January 2011]
- ix. World News Network (2010) Imtech Arena Hamburg. [online] Available from: [http://wn.com/Imtech\\_Arena\\_Hamburg](http://wn.com/Imtech_Arena_Hamburg) [Accessed 26 January 2011]  
and  
FIFA (2009) FIFA World Cup: venues. [online] Available from: [http://www.fifa.com/mm/document/fifafacts/mencompwc/51/97/64/fs-201\\_05a\\_fwvenues.pdf](http://www.fifa.com/mm/document/fifafacts/mencompwc/51/97/64/fs-201_05a_fwvenues.pdf) [Accessed 26 January 2011]
- x. Source: [http://www.wimbledon.org/en\\_GB/about/guide/ambushmarketing.html](http://www.wimbledon.org/en_GB/about/guide/ambushmarketing.html) [Accessed 8 February 2011]
- xi. London 2012 Olympic and Paralympic Games (2009) Food vision for the London 2012 Olympic Games and Paralympic Games. [online] Available from: <http://www.london2012.com/documents/locog-publications/food-vision.pdf> [Accessed 26 January 2011]
- xii. Meenaghan, T. (1996) Ambush marketing – a threat to corporate sponsorship. *Sloan Management Review*, Vol 38(1), pp103-113.
- xiii. Goldblatt, D. (2010) Footing South Africa's World Cup bill, BBC News 4 June. [online] Available from: <http://news.bbc.co.uk/1/hi/8718696.stm> [Accessed 26 January 2011]

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