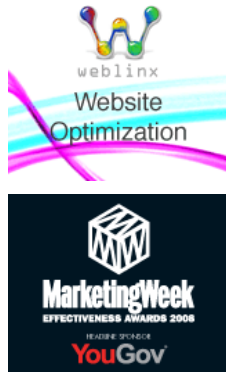


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**Increasingly stringent laws to combat ambush marketing hit a whole new level last week when it emerged that the organisers of the 2010 World Cup in South Africa have proposed a new by-law that could result in prison sentences for offenders (MW.co.uk August 13).**

**While the proposal before the legislature of South African capital city Johannesburg may be an extreme example, laws that aim to tackle ambush marketing are becoming more common, more onerous and, say some observers, close to infringing basic rights to freedom of speech.**

Legislation is being enacted worldwide: New Zealand plans to introduce laws ahead of the 2011 rugby World Cup, while Brazil and France already have similar laws in place. In the UK, the London Olympic Games Act 2006 (LOGA) was enacted soon after the city won the bid for the 2012 Games.

The most robust ambush marketing laws of all relate to the Olympics – the International Olympics Committee (IOC) guards its property so zealously that any potential host city is required to commit to enacting legislation to protect sponsors as part of its bid.

Octagon head of Olympic Games marketing Bob Heussner points to the dramatic escalation in rights fees as the reason behind the increasingly tough legislation. When the IOC's Olympic partners scheme was first implemented in 1988, entry level was about £8m, now it is over £53m, and a multiple of that to activate, he says.

Heussner adds that because the IOC is selling the rights to intellectual property, a collection of symbols and words, rather than advertising units and signage, it has to do everything possible to protect its partners' considerable investment.

But that hasn't stopped the ambushers. The Beijing Olympics has triggered a rash of activity, for example, Budweiser's placing of international print ads promoting its sponsorship of Beijing 2008. The brand is a local sponsor and forbidden from such activity outside China.

Other famous examples from the past include British sprinter Linford Christie's appearance at a Reebok-sponsored press conference during the 1996 Atlanta Olympic Games wearing blue contact lenses emblazoned with a white Puma logo. And the 2006 World Cup in Germany fell victim to a brand stunt when hundreds of Dutch fans showed up at a match wearing orange lederhosen displaying the name of the Dutch brewery Bavaria.

While ambush marketing is not welcomed by official partners, which have invested large amounts of cash for an association with an event such as the Olympics, there is little compelling evidence that such activity harms sales for official partners.

Furthermore, Heussner says that in a sophisticated market like the UK, consumers often see ambush activity as "me too" marketing for a "lesser" brand and that such brands are viewed as "imposters".

Nevertheless, event organisers are under pressure to demonstrate that they are capable of protecting their sponsors' investment. Along with legislation, event organisers also aim to offer commercial advantages such as, in the case of London 2012, taking an option on almost all of London's outdoor advertising sites for three months before and for the duration of the Games.

Tim Crow, chief executive of sponsorship specialist Synergy, says: "Protection is one of the top priorities when it comes to negotiating deals." However, he points to an IOC waiver granted to Nike to use Olympic athletes in its advertising during the Adidas-sponsored Beijing Olympics as being "extraordinary".

The IOC says an exception was made in Nike's case as the company is a member of the World Federation of the Sporting Goods Industry and, as such, can seek a waiver from what many see as a fundamental principle of the Olympics – that no one other than official sponsors can use Olympic athletes in advertising during the Games.

Crow says: "There is no point in having demonstrations of protection at bid stage if, when the event happens, competitors get waivers anyway."

Still, legislation exists and nowhere is it more heavy-handed than in the UK's LOGA 2006. Advertisers railed at the time the laws were enacted but were reassured that it was "event-specific" legislation and "only for the Olympics". Yet, proposals for the Glasgow Commonwealth Games in 2014 are similar and any other major sporting event is likely to seek comparable restrictions.

Examples of possibly illicit activity under the wide scope of LOGA 2006 include local businesses displaying a sign saying "Watch the Olympics here". Although many claim the law is intended only for "bigger fish", the fact remains the legislation covers it.

Dan Smith, advertising and marketing law specialist from Wragge & Co, says: "There are some exceptions for statements made in accordance with honest practices but the London Organising Committee of the Olympic Games is paying little regard to those and stamping down on anyone using the word Olympic, whatever the context."

#### Brand protection

Locog commercial director Chris Townsend says its approach to brand protection has three strands and that, together with legislation, it aims to "create an atmosphere in which companies do not want to ambush" by "increasing understanding of the need to protect the brand".

One source reveals that earlier versions of LOGA 2006 were even more Draconian and it was suggested that if certain combinations of words were used, a presumption of guilt would be applied, reversing 1,000 years of English legal practice.

Other observers point out that residents and businesses in London are effectively prevented from doing any kind of promotion. Brinsley Dresden, head of media, brands and technology at law firm Lewis Silkin, says: "It seems to be getting to the point where the danger is ordinary people and small businesses are going to feel alienated."

He adds: "One of the main justifications that pertains to the Olympics is that the IOC says the venues are clean and it's a non-commercial event. I'm not so sure that's true. Maybe we should accept the reality of the situation and allow advertising in venues, allow competitors to be sponsored and accept there will be an amount of unauthorised marketing around the event."

All intellectual property rights involve striking a balance between freedom of expression and protecting legitimate economic interest. While it is easy to understand the logic of rights holders and organisers in their need to prevent ambush marketing, there are those who question whether the balance is right.

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