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# Ambush Marketing : An Ensnare Approach

Nitin Singh\*

*In the 20th century, major sporting events became extremely commercialized mostly through television commercials. Sponsorship is an important revenue source for sport teams and their affiliated organizations. It has provided various promotional advantages to corporations sponsoring sporting events. Increasing disillusionment with traditional television (TV) advertising methods and the capability to reach significant numbers of spectators have been the primary reasons that make corporations invest in sport sponsorship. This trend of increased investments in sport sponsorship has created both positive and negative consequences. The Ambush marketing is one of fields which generated controversies. Ambush marketers have continued to improve their tactics of ambush marketing strategy to gain publicity through mega sports events even without being the official sponsor. This research paper will discuss increasingly prevalent use of ambush marketing to deflect the audience's attention to ambusher and away from the sponsor to examine whether ambush marketing is indeed unethical or merely smart advertising. The paper will through light on the detrimental effect of ambush marketing.*

**Keywords:** *Ambush Marketing, Sport events, Sponsorship, Tactics, Advertising.*

## Introduction

Sandler and Shani were among the first to discuss ambush marketing which they suggested occurred when a non-sponsor of an event attempted to pass itself off as an official sponsor. Meenaghan developed this early definition and described ambush marketing as "The practice whereby another company, often a competitor, intrudes upon public attention surrounding the event thereby, deflecting attention toward themselves and away from the sponsor." Predictably, event owners and official sponsors have regarded it as immoral because it threatens their ability to sell events or recoup investments made in these. Instead, sponsors and event owners must seek legal redress if they believe a competitor has encroached on their rights in some way. A few researchers have actually debated on Ambush Marketing but Meenaghan posited whether ambush marketing was an "immoral

or illegal" practice. Now, given the courts can only provide remedies to aggrieved sponsors. Detailed analysis of the activities that constitute ambushing could help sponsors reduce the opportunities available to ambushers and provide greater protection to the official sponsor's investment in an event.

Ambush marketing was initially defined as a company's intentional effort to weaken or ambush event's official sponsor and the company's competitor. It does this by engaging in promotions and advertising its own product in various ways during the event telecast. This is also intended to confuse the public as to which

**\*Mr. Nitin Singh**

*Strategist - Marketing & Operations  
Ultra Lofts.com*

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company has real official sponsorship rights. With this development of the practice of ambush marketing, much broader definitions have also been suggested. It is a marketing campaign that takes place around an event but does not involve payment of a sponsorship fee to the event. It occurs when a company signs in to sponsor an event as the official sponsor, and a rival hijacks the mind space through backdoor means.

In India, ambush marketing was noticed first in the 1996 Cricket World Cup when Pepsi over shadowed its official sponsor through this strategy. Even in recent Common Wealth Games, the ambush marketing was reported to have taken place. Also, this practice has been observed in other big sporting events-IPL and ICC world cup occurring in India. But Ambush marketing is prevalent in other countries like USA, UK, Australia and China as well. In one or the other sporting event like FIFA, Olympics and Hockey World Cup, ambush marketing is rampant. Hence, it can be seen that intellectual property right provisions and various laws in different countries are unable to curb this.

Today, organizations are concerned about the efficiency of traditional methods of marketing. Marketing communication has adopted a range of alternative media to target audiences. One such medium is commercial sponsorship which has grown significantly in recent years. Sponsorship has been defined as "Supporting an event, activity or organization by providing money or other resources that is of value to the sponsored event. This is usually in return for advertising space at the event or as part of the publicity for the event." Marketing and promotion are used in conjunction with one another to attract targeted customers and increase sales of products. In the marketing mix, promotion is one of the four main components. Some may be more effective than the other depending on what type of business you are in. Many researchers have noted the extraordinary growth in the sponsorship over the last two decades and its increasingly commercial orientation highlight sponsorship's emergence as a core promotional tool. As sponsorship's popularity has increased, so too has competition to secure and protect sponsorship rights. Thus, growth in what has become colloquially described as "ambush marketing" has paralleled the burgeoning growth of sponsorship.

## **Ambush Marketing Strategies**

### **Ambushing Sponsor Media Coverage of the Event**

When the event is broadcast via electronic media such as radio, TV, or video streaming on the Internet, it is typically the sale of advertising that pays the costs associated with the broadcast. In most cases, the event does not control the broadcast; consequently, it may have little influence over which companies are allowed to advertise during its transmission. Ambushers can purchase time to broadcast their own advertisements during the broadcast. While the advertisers do not reach the spectators at the venue, they do reach the media audience. For major events, sports or otherwise, the media audience is much larger than the live audience. The reality is that the ambusher may care very little about the attendees at the venue because the media audience represents the more important target for the marketer. Efforts of this type are legal; therefore, they are deemed by many to be legitimate competitive responses that attempt to overcome a competitive advantage held by an official sponsor of a particular event. While Fuji Film was a sponsor of the Los Angeles Olympics, a major competitor (Kodak) purchased time and ran advertisements during the TV broadcast of the event. The Carlton and United Breweries' sponsorship of the Australian Football League (AFL) was legally ambushed by the rival brewer, Lion Nathan which aired commercials during the broadcast of games over the course of the season. It is important to note that ambush marketing is not just a sports-related phenomenon.

### **Sponsor Subcategories: an Ambush Marketing Strategy**

Examples are abounding how the company sponsors a subcategory of mega events. Adidas sponsored the most recent World Cup of Soccer. Nike sponsored several of the top teams that were competing in the same event. Nike's sponsorship of a lower category of the event emerged from a legitimate marketing decision. In a similar scenario, Reebok sponsored the U.S. men's basketball team in the Barcelona Olympics at a lower level while Nike sponsored several of the players on the team including Michael Jordan, the most noteworthy. This strategy is sometimes referred

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as ambushing up. Again, for the ambushing to take place, there is no need for the marketer to be targeting a direct competitor. Many events today have multiple levels of sponsorship. For example, a firm might choose to be an official supplier of the World Cup or the Olympics but it might try to create the impression that it is a sponsor at the highest level. Some people question whether the Sydney Olympics' official service provider TNT Delivery diminished the consumers' ability to recognize UPS delivery as a TOP sponsor. This issue highlights the need to negotiate broad category exclusivity in the early stages of establishing the terms of the sponsorship contract.

### **Making a Sponsorship-Related Contribution to the Players' Pool**

Changing rules regarding amateurism have led to a broader use of ambushing marketing strategy. It is commonly used for both team sports and individual sports especially those that have international appeal. Examples are supplementing contributions to players' salaries for which the contributor may be acknowledged via logos on uniforms or recognition in TV interviews, such as bonus pools or prizes for winning. For example, world-class swimmer Michael Phelps is sponsored by Speedo. While this relationship best fits the previous strategy of sponsoring a subcategory of an event, there is one key point of differentiation. Speedo designated a total of \$1 million to be awarded to Phelps if he were to win seven gold medals in either the 2004 or 2008 Summer Olympics. Though he did not achieve this standard at the 2004 Games, the potential for this payout generated considerable discussion and publicity.

### **Purchase Advertising Time during the Rebroadcast**

Events are often rebroadcast after the initial live broadcast. The original broadcast may have been on free-to-air TV, pay-per-view, or a premium cable or satellite networks such as ESPN, Fox and Sky Sports. These initial broadcasts are often very expensive for advertisers and access may be limited by the category of exclusivity agreements. Subsequent broadcasts access to those events may not be limited, thus potentially opening up opportunities for non-sponsors previously excluded. Additionally, the cost of advertising time may be greatly reduced. Mega Events

such as the NFL's Super Bowl, Premier League soccer matches, Super 14 rugby matches, and Formula 1 races are usually aired well after the live competition.

### **Engaging in Advertising to Coincide with the Timing of the Event**

Advertising designed to fit this description falls into one of two categories e.g. themed or traditional. Themed advertising is represented by creative components that are related to the property or event being ambushed. One of the strategies used by Wendy's in its effort to ambush McDonald's Winter Olympics sponsorship was to feature former Olympic ice skating champion Kristi Yamaguchi in a series of advertisements that aired prior to, during and after the Olympic competition. Similarly, the part of the aforementioned Nike strategy when it ambushed Reebok was to feature a number of athletes including former Olympic champion Carl Lewis. Themed ads do not necessarily feature famous athletes. They may instead focus on similarities with the event. If the ambush effort is directed toward a golf tournament or its sponsors, the creative aspects of the advertising could feature golf situations. Efforts directed toward the Olympics could feature competition similar to the popular events. A second component of the aforementioned Wendy's campaign was to feature the company's president in advertisements making fun of his lack of skills in his presumed efforts to ski, play hockey or drive a bobsled. Consumers saw Wendy's advertisements with a winter sports theme broadcast during times that coincided with the Olympic Games and many erroneously assumed a relationship between the company and the event.

### **Other Dilution Strategies**

A final category is comprised of an array of activities undertaken in an effort to dilute the advantage held by the sponsor. These strategies are often combined with the above five preceding categories. A non-sponsor may purchase tickets for an event to distribute them to customers, employees or as prizes in contests so that benefitted persons perceive an association with the company and the event. One of the strategies used by Wendy's in its effort to ambush McDonald's Winter Olympics sponsorship was to feature former Olympic ice skating champion Kristi Yamaguchi in a

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Non-sponsors often give free T-shirts to fans in the hope that they will wear them to the event. In addition to clothing, the ambush strategy may call for the distribution of flags, signs or other items that display the logo of a non-sponsor. Ambushers have been known to orchestrate the display of their brand names and logos by, in effect, hiring fans to wear their shirts and wave their flags. The controversy arises when a fan is confronted and the offending items are confiscated. What organizers perceive as an ambush marketing strategy may simply be a fan's decision. Should a fan wearing a Heineken T-shirt to an event where Budweiser is the sponsor be subject for having clothing confiscated or perhaps being denied admission to the event?

### **Indian Experience of Ambush Marketing**

Example of one campaign in the Indian context is worth mentioning. During the 1996 World Cup, though the official sponsor of International Cricket Council (ICC) World Cup were Coca-Cola but the advertisement of its arch-rival Pepsi caught the imagination of people. Featuring star players from the Indian cricket team, the ads were accompanied by the cheeky catchphrase: "Pepsi – nothing official about it."

In 2003, the ICC World Cup was held in South Africa. On this occasion, Philips (a non-sponsor) ran a marketing campaign offering its customers the chance to win travel to South Africa and tickets to watch matches, thereby suggesting that it was associated with the event. Legitimacy of Phillip's action was contested in the Court. However, the High Court of Delhi opined that Philips' campaign did not fall foul of the law. The court went on to hold that although Philips' actions might draw the attention of the public towards the ICC event, nowhere had Philips claimed to be a sponsor. The ICC's claims rested on its applications to register the trademark "ICC CRICKET WORLD CUP SOUTH AFRICA 2003" in India. On the basis of these, the ICC objected to Philips using the term "world cup" in the advertisement e.g. in slogans such as "Buy a Philips audio system – win a ticket to the World Cup" and a pictorial representation of a ticket with an imaginary seat and gate number stating "Cricket World Cup 2003". Philips argued and the court agreed that

the words "world cup" are generic and are used in the context of several international sporting events, such as the FIFA World Cup and the Hockey FIH World Cup. Thus, their use is descriptive and not proprietary to the ICC. According to the court, the ICC's mark had not been misappropriated, confusion among the public was not established and thus a claim of passing-off was untenable. The ICC also pleaded that Philips' ticket distribution scheme was reserved for sponsors and that in depriving sponsors of this exclusive right, Philips was preventing the ICC from fulfilling its contractual obligations. However, the court's preliminary ruling was once again in favour of Philips, on the ground that the ICC had failed to provide material evidence to show that Philips had the notice of the terms and conditions set out in the contracts between the ICC and its sponsors. Also, additional plea of ICC was that it owned publicity rights in all ICC events which had commercial value and that Philips was wrongfully exploiting the ICC's persona. This plea was also rejected because in the court's opinion, non-living entities are not entitled to publicity right protection for an event.

ICC sought court support to restrain similar actions by other companies and injunctions were sought against other entities running similar contests. However, a relief was denied in all cases except one which was on account of unauthorised use of the ICC's logo and consequent breach of copyright.

### **Successful Ambush strategies**

#### **Nike : Bleed Blue**

While a handful of brands paid millions to be associated with the ICC Cricket World Cup 2011, some brands had their fair share of high decibel campaigns – Pepsi's Ad Changed the Game, for instance. And then there were others who force fitted their business association in Ads (Moneygram) and some who simply treated this as an opportunity to create chest thumping Ads (Hyundai). What really worked was the mantra of Nike. Simple, yet evocative – the 'Bleed Blue' mantra captured the imagination of a nation. In just two words it conveyed so much. No wonder we had 'Bleed Blue' tweets and statements when someone wanted to convey their support for the team. Nike campaign started 6 months ahead of the World Cup. Just as sporting teams planned to peak at the right time in a

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tournament, this campaign too peaked up at the right time – contributed by an early start.

### **Hindustan Unilever Limited (HUL) : Dove ad campaign**

The story starts on July 23, when Mumbai woke up to hoardings that screamed: 'A Mystery Shampoo!! 80% women say is better than anything else'. P&G, it was later found, was planning to unveil the new Pantene on August 1<sup>st</sup>. When at HUL found out, they saw an opportunity to score a point. They ambushed P&G. On July 28, even as the P&G hoardings stood tall on its skyline, Mumbai woke up to another hoarding that was upfront and suggestive of its source of inspiration. It said, 'There is no mystery. Dove is the No.1 shampoo'. Dove is one of the four brands in HUL's shampoo portfolio. The HUL national campaign took just one day to go from brief to execution and was handled by Ogilvy & Mather India. Says a senior official who was involved in the campaign: "This was the quickest advertising turnaround in the company's history."

### **Nestle India : Munch Ad Campaign**

When Nestle Munch has challenged CDM's (Cadbury Dairy Milk) campaign 'Aaj pehli tarikh hai' with its tagline 'Khao Bina Tarikh Dekhe', Nestlé's 'combative advertising' campaign directly mocks Cadbury's brand proposition. With this Ad, Nestle India wants to dilute the brand proposition of Cadbury, tickling its viewers & stealing the sweetness from Dairy Milk. Munch is a vibrant brand with a personality that is clearly associated with fun. Its advertising has always highlighted the 'fun in consumption'.

### **Legal Options Available Against Ambush Marketing**

It appears that existing law in India does not provide any guide line on ambushed entity or an event organiser with a ready remedy. Of course, when a campaign uses trademarks registered to a rival or the event organiser, an infringement action and/or a passing-off action may be brought under the Trademarks Act 1999. Similarly, if the copyright is encroached upon, the Copyright Act 1957 prescribes suitable remedies. However, given that most ambushers rely on suggested associations, these

statutes may not be applicable for this type of advertisements.

The Code of Regulations for the Advertising Standards Council of India (a self-regulatory body) is also worth mentioning. However, while this seeks to curb misleading advertisements, most ambush campaigns are likely to fall under the purview of creative marketing. One strategy to counter the threat of ambush campaigns in any event is to secure trademark and copyright registrations for all marks, logos and images associated with an upcoming event in all active markets. FIFA is a body with an aggressive registration policy and in fact, during the last football World Cup, it was able to stop many entities in India from free-riding on its goodwill on the strength of its statutory rights. A publicity campaign informing the public of an entity's rights, with the warning that strict action will be taken against misuses and has also acted as a deterrent.

### **Trade Marks Act**

Trademark of a product or service distinguishes it from other similar products and services. Trademarks are used for brand building and advertisements. They play a significant role in the market driven economy which operate with world economy. It has been often observed that large shares of markets are owned by few leading brands. This results in monopoly. In countries that have weak trademark laws, the market may be flooded with foreign brands that give tough competition to domestic brands. Some of the famous foreign trademarks in India are Pizza Hut, McDonalds, Volvo, Mercedes Benz and Coca-Cola. Registration of trademarks in India was earlier governed by the Trade Marks Act enacted by the British Government in 1940. The Act was later replaced by the Trade and Merchandise Marks Act, 1958. At present, the trademark registration in India is regulated by the Trade Marks Act, 1999.

Commonwealth Games Federation and the Organizing Committee of the Delhi Games filed a trademark applications for various marks and logos including "COMMONWEALTH GAMES", "CGF", the bar (the official emblem), the host city logo and the lion mascot as well as the domain name [www.cwgdelhi2010.org](http://www.cwgdelhi2010.org). A cautionary notice has also been issued warning against unauthorized use.

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## Copyright Act

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994 and 1999 with the amendment of 1994 being the most substantial. Even the Copyright Act, 1957 borrowed extensively from the new Copyright Act of the United Kingdom of 1956. The Copyright Act, 1957 continues with the common law traditions. Developments elsewhere have brought about certain degree of convergence in copyright regimes in the developed world. The copyright can be claimed only in original artistic work produced by natural persons by the expenditure of his/her skill and labor. In this sense creative advertisement is also copyrighted.

## Protection against Unfair Competition

Protection against unfair competition has been recognized as one of the main objectives of intellectual property system. It does not grant exclusive rights to the owners with respect to the subject concerned like in the case of patents, trademarks, etc. In fact, it prohibits any act of competition that is contrary to honest practices in industrial or commercial matters, referred as "unfair competition". The acts of unfair competition not only adversely affect the competitors which tend to lose their customers and market share but also affect consumers as they are likely to be misinformed and misled and tend to suffer economic and personal prejudice.

## Contracts

The contract is one of the most effective ways to prevent ambush marketing. Through the contract with the stadium owners, organizers of the event can block out unauthorized advertising in the event premises. The organizer may demand the stadium to be handed over "clean site" i.e. cleared of all advertising by companies that are not official sponsors. The organizer may also demand to control access to the stadium grounds including the airspace above the premises. Organizers may even impose "dress-codes" on the spectators, leaving out those wearing shirts or caps which deliberately display the logos of nonsponsors. For e.g. The International Cricket Council (ICC) stopped the players of participating nations from promoting the brand of competitors of

the official sponsors a month before, during and a month after the event. This created a row between the organizers (ICC) and the players. The terms of contract were then settled that during the event and 17 days after the event no player was allowed to advertise for any rival company of the sponsor.

## Ethical consideration of Ambush Marketing

While the practice of ambush marketing has been widely debated particularly around premier sporting events such as the Olympics and World Cup events, the answer to whether it is an "immoral or imaginative practice, may well lie in the eye of the beholder". For instance, sport property owners and their official sponsors typically regard as immoral or unethical any activity by a nonsponsor that wittingly or unwittingly intrudes upon the property's and/or sponsors' rights thus potentially detracting from the official sponsor's "exclusive" association with the sport property. On the other hand, non-sponsors engaged in such activity typically perceive and defend as nothing more than a part of the "normal 'cut and thrust' of business activity based on a strong economic justification". Former American Express marketing executive Jerry Welsh has been a noted defender of ambush marketing. Quoting from him, "In explaining the practice of ambush marketing, there is no need to discuss ethics or morality. Companies routinely compete – mostly, we hope and expect, honestly and hard – and ambush marketing, correctly understood and rightly practiced, is an important, ethically correct and competitive tool in a non-sponsoring company's arsenal of business and image-building weapons. To think otherwise is either not to understand – or willfully to misrepresent – the meaning of ambush marketing and its significance for good – and winning – marketing practice."

On the other hand, former International Olympic Committee (IOC) head of marketing Michael Payne, who coined the term "parasitic marketing" to refer to ambushers of the Olympic Movement, has stated, "Ambush marketing is an attempt by corporations to mislead the public into believing that they are supporting a sports event. This deception contravenes a basic premise of the ethical business practice that of truth in advertising and business communications. It is in the interests of sport that ambush marketing activity be positioned in the public mind as unethical and deceptive and that offenders be subject to public

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exposure and embarrassment. It is only by making ambush marketing unattractive to potential offenders that the sport can continue to protect its revenue base."

It is important to consider ambush marketing within an ethical framework. Ambush marketing, although usually legal, has often been criticized as deceptive and unethical. Doust suggests that ambush marketing can be viewed within the ethics paradigm of marketing in general and "the degree to which a company agrees to 'back off a bit' will to a large extent be determined by its own code of ethics and by whether that the company views ambush marketing practices as unethical or simply good business sense". Dickson further argues that companies need ethical guidelines because the letter of the law is generally considered to be only a minimum ethical standard, "the law is a floor and must not serve as the only basis for individual and corporate ethics". While most corporations have a general code of marketing ethics (some written, others not), the need to meet performance goals results in ethical stresses being placed on marketers' personal codes of ethics. As Meenaghan has rightly concluded, ambush marketing raises "complex issues in an area with diametrically contrasting perspectives and varying rights claimed by shareholders and stakeholders. Such considerations are valuable for judging issues on a case by case basis".

## Conclusion

Despite the growing phenomenon of ambush marketing, research on this subject has been minimal. It is controversial and infrequently implemented. The creative use of ambush marketing tactics will probably always be a source of irritation to event owners and their official sponsors. To maximize the protection, sponsors should codify all types of normal commercial protections provided by the trademark, copyright and laws passed from time to time against ambushing activities. And this needs to be supplemented by tighter contractual provisions between all of the parties involved in the sponsorship of an event. Ambush marketing will only ever be a commercial irritant because it has no status outside of marketing jargon. By contrast, misappropriation of trademarks, breaches of contract, and infringement of fair-trading statutes could provide the basis for action. Marketers and event owners would be well

advised to concentrate on the legal issues raised by a competitor's behavior and avoid self-referential marketing terms lest these create further confusion. Eventually, however potential sponsors need to recognize that they will never be able to control actions of the rival who will always find some loop holes here and there in the company's strategy. Marketers also need to recognize that any recourse will be determined through the relevant legal systems.

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