

## Business Law & Tax Review

# Ambush players' game plan

Unofficial brand-holders will rely on innovative advertising ploys to gain a slice of the Soccer World Cup pie

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**L**ET THE games begin. This is probably the most over-used phrase when launching sporting spectaculars, ranging from the Olympic Games to any number of other competitions. However, introducing the Soccer World Cup for the first time on the African continent also introduces another sport — the international pastime of brand-holders beating Fifa at its own game.

The game is ambush marketing, the players are any number of multinational companies who did not fork out the prescribed sponsorship money, and the field of play remains to be seen.

As in the past, whether at any soccer, rugby or cricket world cups or an Olympic Games, the world will once again be intrigued and fascinated by the marketing games played behind the scenes and sometimes in public.

Fifa is only too aware of the ingenuity displayed by the official “unofficial” commercial partners and sponsors of their showpiece.

One would have to look at who did not make the list of Fifa partners, 2010 sponsors and 2010 national supporters, to realise that Fifa is probably up against the cream of the crop of international brands and their creative and ingenious marketing teams. These brand-holders probably cannot wait to get their slice of the proverbial pie and put one past the goalie.

Adidas, Coca-Cola, Emirates, Kia/Hyundai, Sony and Visa, Fifa partners for the 2010 World Cup, have all been on the receiving end of ambush marketing by their traditional rivals. Nike, Pepsi and American Express have been prominent in the past thanks to their creative ambushing tactics.

As a result of these often widely publicised exploits, one has to ask whether the enormous sponsorships

paid by the official partners give them any better exposure than the ambush marketers.

It is almost an industry fact that Nike does not want to become official, probably because of the aggressive and very successful ambush marketing campaigns it has had in the past.

One only has to consider what Fifa has put in place from a legislative point of view to protect its partners, sponsors and supporters to realise that the casual, unsophisticated ambush marketer is in for a rough ride.

It is interesting to refer to some lesser-known instances of “legitimate” ambush marketing that has taken place in the past, illustrating how ambush marketers achieved association with the event by relying almost exclusively on the reputation of their own brands.

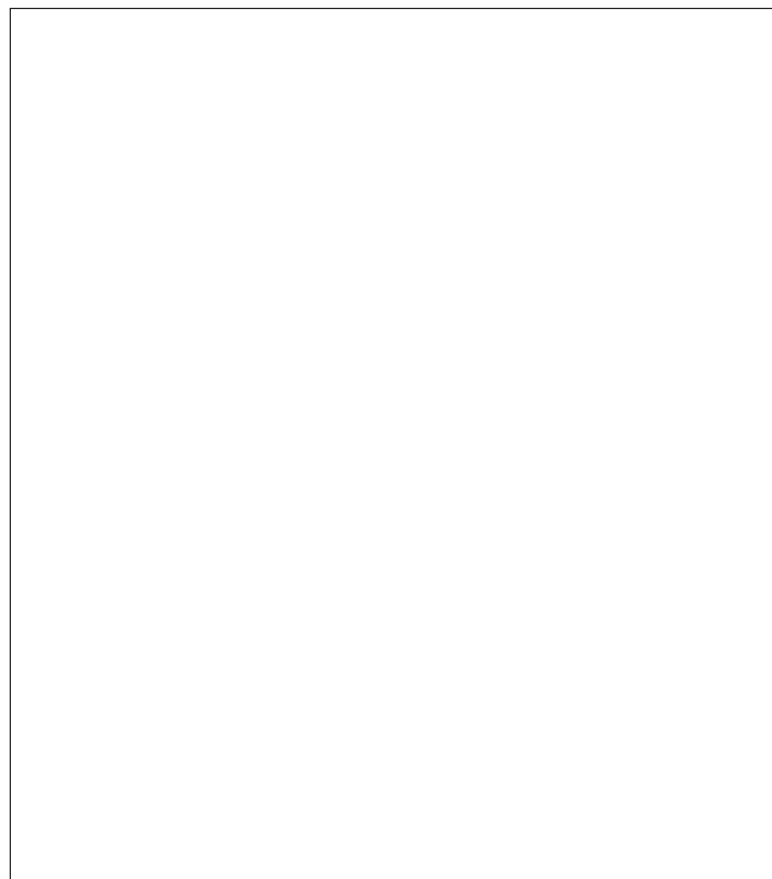
During the lead-up to the 2008 Beijing Summer Olympics Nike made considerable use of the number 8, a symbol of luck and fortune in China, and incorporated the design pattern on items of clothing and footwear.

During the 2008 Open Championship held at Royal Birkdale, Bentley set up a row of cars outside an adjacent golf club, attracting obvious interest in their own brand and detracting attention from the official sponsor, Lexus.

At the Summer Olympics in 2008, Speedo received substantial media attention because of their technologically advanced swimming suits worn by several medal winners.

In the run-up to and during the Summer Olympics in 2008, Lucozade, aggressively promoted their brand through all the media.

It is clear that SA's ambush marketing legislation will undoubtedly be tested during 2010. Apart from the usual remedies available under the Trade Marks Act, Copyright Act, Counterfeit Goods Act, the common law and the Advertising Standards Authority,



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SA has enacted very specific anti-ambush marketing legislation that has already been used successfully against ambush marketers.

The effect of well-orchestrated campaigns on the official sponsors and partners is far greater than the occasional infringement of the Fifa trade marks, prohibited marks of imagery. Normally, the latter is easily dealt with by sending strongly worded cease-and-desist letters.

The recent public spat between Fifa and Kulula regarding the airline's unofficial national carrier add is a case in point. The contested ad was withdrawn

on receipt of one of these letters.

However, a campaign where only internationally well-known trade marks are used would be difficult to stop. At the very best the organisers of such mega events can only hope to close loopholes as and when they are encountered. Examples are the efforts of Uefa, who bought all broadcast advertising during matches, only making it available to sponsors.

The same goes for marketing exclusion zones surrounding stadiums that came about as a result of Nike's Euro 1996 and 1998 Fifa world cup promotions. These exclusion zones are now seen as a requirement for any Olympic host bid.

The 2010 FIFA World Cup South Africa Special Measures Act, 2006 makes specific provision for the establishment of such areas. This act gives effect to the organising association agreement between Fifa and the South African Football Association and the guarantees issued by the government to comply with the list of requirements issued by Fifa.

It appears that the blatant latching on to a protected event such as the 2010 Soccer World Cup by official unofficial sponsors has been replaced by far more subtle and ingenious methods. No company in its right mind will design an ad campaign in which any of the prohibited marks, registered Fifa trade marks or imagery is used.

The scene is set for the likes of Nike, MasterCard, Pepsi, Puma and a host of other international and local brand-holders to showcase their marketing genius. Expect American Express to embark on a campaign based on the fact that you do not require a visa to visit SA. They have done it before, quite successfully.

If this trend is to continue, it may perhaps be more apt to refer to pseudo-sponsorship rather than ambush marketing. It is really such an ugly word.