

# **"AMBUSH MARKETING: WHETHER AN ETHICAL BUSINESS PRACTICE"**

## **ABSTRACT**

Ambush marketing is not a new practice but it emerged after the growth in sports activities all over the world. Ambush Marketing has emerged in the recent years as an effective weapon in the arsenal of marketing departments seeking to associate themselves with sporting events without official authorization or endorsement of the event organizer. It is an attack not from the hidden position. Such practices are unethical business practices, hampering the exclusive rights of the sponsors, affecting the value and integrity of the event and confusing and wrongfully seeking attention of the people by designating themselves as an official sponsor. With the events happening all over the world, laws relating to ambush marketing also developed but in India there is no specific law dealing with ambush marketing despite various practices relating to ambush marketing happening in India. This Article is focusing on strategies adopted by ambushers, effects of such practice on sponsors, event organizers and customers and laws preventing such practices.

## **INTRODUCTION**

In the Intellectual Property world apart from its general types like Patents, Copyrights, Designs, Trademarks, etc. there is one more area which emerged in the past years, known as ‘Ambush Marketing’ also called as ‘guerrilla’ or ‘parasitic’ marketing.<sup>1</sup> The term Ambush Marketing was first coined by marketing strategist Jerry Welsh from American Express Company in the 1980s.<sup>2</sup> The word ‘ambush’ as used in Ambush Marketing means an attack from a hidden position. Ambush Marketing has emerged in the recent years as an effective weapon in the arsenal of marketing departments seeking to associate themselves with sporting events without official authorization or endorsement of the event organizer.<sup>3</sup> In simple, it is the concept where the advertisers engage themselves in a particular event for the promotion of their product without paying any kind of sponsorship fee. The objective of the Ambush Marketing is two-fold:-<sup>4</sup>

- To get the maximum return from the marketing money,
- To undermine the branding efforts of the rivals by stealing the attention of the public and confusing the viewers.

The instance of Ambush Marketing was first witnessed in 1984 Olympics when Kodak sponsored TV broadcast of the games as well as the US track team even though Fujifilm was the official sponsor. In the same event Nike, Famous for being an Olympic Ambush Marketer was also seen campaigning for its products even though the official sponsor was Converse. In India this concept came in lights when during the 1996 World Cup, Pepsi had taken campaigns with the tagline “Nothing official about it” although the official sponsor for the tournament was Coca-Cola.

One of the major reasons behind Ambush Marketing coming up with a rapid growth is due to its cost effectiveness. The advertisers don’t have to spend the huge amount which they have to pay to the sponsors and also there is no need to spend much amount on publicity and ad campaigns like on T.V, Print and other things. Ambush marketing is seen majorly in the

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<sup>1</sup> ‘Ambush Marketing and the 2010 World Cup’, by Dr. Andre Soldner, German South African Lawyers Association Newsletter, August 2006.

<sup>2</sup> <http://economictimes.indiatimes.com/definition/ambush-marketing> (Accessed on February 6, 2015)

<sup>3</sup> Townley Stephen, Harrington Dan & Couchman Nicholas, The legal and Practical Prevention of ambush marketing in sports, Psychology and Marketing, Vol 15, Issue 4, 333-348 (1998) (Accessed on February 6, 2015).

<sup>4</sup> Dickerson M. Downing, Mary R. Bram, Crowell & Moring and Rodrigo Azevedo, Silveiro Advogados, *Ambush Marketing: Coming Soon to a Stadium Near You*, <http://www.acc.com/legalresources/quickcounsel/amcstasny.cfm> (Accessed on January 30, 2015)

sports events because as these events are being held at international level it becomes easy for the advertisers to gain the attention of the people both nationally and internationally.

In the present time, Ambush Marketing has become an important aspect in the Intellectual Property Infringement and still there are many countries which have not yet made any specific law regarding it. But there are some countries like South Africa, Brazil, Canada, New Zealand, USA, etc that are aware of the seriousness of Ambush Marketing and its effect and have made laws to prohibit it. We cannot say that world is not aware of Ambush Marketing and neither it is taking place on a small ground but rather this practise usually takes place in the mega events like that of Olympics and FIFA then why not any law is made regarding this which strictly related to this and prohibit it completely.

Ambush marketing is not just rivalry between the different brands which lead to this evil practise but we can say that it is a smarter way to get attention for a brand. As there are no laws, it is openly done on a larger scale. The mega events like Olympics and World Cup which majorly rely on the money collected from sponsors to organize the event have to now realize that if this practise is not stopped then in coming time no one will waste their money in paying sponsorship fee and rather will adopt this way to promote their brand which is easy and effective.

In a general way, the term ‘Ambush marketing’ can be defined as an attempt by a third party to create a direct or indirect association on a sport event or its participants without their approval, hence denying official sponsors, suppliers and partners parts of the commercial value derived from the 'official' designation<sup>5</sup>. This association is without the permission of the sport endeavour or its official partners, and the desire is to deceive the sport consumer into believing that there is an official association associated with the event.<sup>6</sup>

Many sports organizations have created a specialized definition for ambush marketing to meet their needs. Two examples are:

- **The Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games** has broadly defined ambush marketing as “*Only official sponsors, licensees and government partners of the Olympic Movement in Canada are allowed to suggest an affiliation or connection with*

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<sup>5</sup> (Harbottle & Lewis, 2004)

<sup>6</sup> (Schwarz & Hunter, 2008)

*the Olympic Movement or any Olympic Games. Unfortunately, those exclusive rights can be infringed by “ambush marketing” – marketing that capitalizes on the goodwill of the Movement by creating a false, unauthorized association with the Olympic Movement, Olympic Games or Olympic athletes without making the financial investment required to secure official sponsorship rights”.*<sup>7</sup>

- **The European Sponsorship Association**, in its recently released *Position Statement on Ambush Marketing*, defines the term broadly as encompassing: "Any kind of marketing activity undertaken around a property by an entity that is not a sponsor, where the entity seeks commercial benefit from associating itself with the property".<sup>8</sup>

## **EVOLUTION OF AMBUSH MARKETING**

The growth of sponsorship occurred mainly for two reasons:

1. Researchers have claimed it could break through clutter that affected advertising. This made it an increasingly attractive alternative to mass media advertising.
2. Event owners became more sophisticated at developing packages that enabled them to obtain higher returns from their events.

Ambush marketing thus arose when companies that were formerly able to associate themselves with certain high-profile events (such as the Olympics) became excluded from official sponsorship deals, either by way of increased costs or category exclusivities.

The first instance of ambush marketing occurred when Kodak failed to secure sponsorship rights for the 1984 Olympic Games to Fuji. Undeterred, Kodak became the sponsor of the ABC's broadcasts of those Games and the “official film” of the U.S. track team. Kodak secured the worldwide category sponsorship for the 1988 Olympic Games, but Fuji aggressively promoted its sponsorship of the U.S. swimming team.

In a parallel move, although Coca-Cola secured official worldwide sponsorship rights to the 1990 Football World Cup, Pepsi sponsored the high profile Brazilian soccer team.

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<sup>7</sup> <http://www.docin.com/p-434372686.html> (Accessed on February 6, 2015)

<sup>8</sup> Ibid

The International Olympic Committee (IOC) has expressed strong concern over ambush marketing. A similar situation arose in early 2003, when the Indian cricket team came close to boycotting the ICC Champions Trophy tournament. Players expressed concern that personal advertising and endorsement contracts they had entered into would conflict with the ICC anti-ambush rules, designed to ensure official sponsors had exclusive promotional rights during the event.

These examples provide a brief overview of the relationship between sporting commercialisation and ambush marketing.<sup>9</sup>

### **STRATEGIES ADOPTED IN AMBUSH MARKETING**

Ambush marketing can be broadly understood under the following heads. They are stated as follows:

#### **1. Direct Ambush Marketing**

It is a strategic use of symbols and the associated trademarks of the event which gives the picture regarding the actual sponsors of the event. Here, the person or marketer intentionally tries to reap the benefits from the event. There are many ways in which direct ambush marketing is done. Some of them are listed below-

##### ***a. Predatory Ambushing-***

The direct ambushing of a market competitor, intentionally attacking a rival's official sponsorship in an effort to gain market share, and to confuse consumers as to who is the official sponsor.

The campaign employed by AMEX against VISA during the 1994 winter games is an example of predatory ambushing. Official sponsor VISA was outraged when AMEX aired a commercial with the tagline, '*So if you're traveling to Norway, you'll need a passport, but you don't need a Visa*'.<sup>10</sup>

##### ***b. Coattail Ambushing-***

It is an attempt by a brand to directly associate itself with a property or event by "playing up" a connection to the property/event that is legitimate but does not involve financial

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<sup>9</sup> *Dean Crow and Janet Hoek*, Ambush Marketing: A Critical Review and Some Practical Advice, Marketing Bulletin, 2003, 14, Article 1, <http://marketing-bulletin.massey.ac.nz> (Accessed on February 6, 2015)

<sup>10</sup> Ann Bransom, Demand Media, <http://yourbusiness.azcentral.com/four-types-ambush-marketing-14038.html> (Accessed on February 6, 2015)

sponsorship/ without securing official event sponsor status. In other words, it refers to the unsolicited association of a company to an event.

In Beijing Summer Olympics, 2008, following Liu Xiang's injury in the men's 110m hurdles, Nike released a full page ad in the major Beijing newspaper featuring the image of the disconsolate Liu, a Nike-endorsed athlete, and the tagline: "*Love competition. Love risking your pride. Love winning it back. Love giving it everything you've got. Love the glory. Love the pain. Love the sport even when it breaks your heart*". This affected Adidas who were the official sponsors of the event.<sup>11</sup>

***c. Ambushing via trademark/license infringement-***

The intentional unauthorized use of protected intellectual property, such properties can include the logos of teams or events, or making use of unauthorized references to tournaments, teams or athletes, words and symbols in a brand's marketing as a means of attaching itself in the eyes of consumers to a property or event.

In UEFA European Championships, 2008, betting company Unibet released a series of magazine advertisement in Polish magazine, Pitkanoza for online betting on the European Championship, explicitly featuring the words 'Euro 2008' and football in their adverts.

***d. Ambushing 'by degree'-***

Marketing activities by an official sponsor above and beyond what has been agreed on in the sponsorship contract, also known as sponsor self- ambushing. Self-ambushing is the practice of breaching the limits of a company's sponsorship parameters in a way that infringes on another sponsor's marketing or advertising.

In 2008 the official sponsor of the UEFA European Championships, Carlsberg, gave out headbands and t-shirts with the Carlsberg logo at the tournament. These forms of advertising were not included in its sponsorship agreement, and violated the sponsorship of another company that was permitted to hand out these items.<sup>12</sup>

**2. Indirect Ambush Marketing**

***a. Ambushing by association-***

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<sup>11</sup>Ms Charul Agrawal, Ms Jyothi Byahatti "Re-engineering of Indian Economy-Opportunities & Challenges, [http://indialawjournal.com/volume4/issue\\_4/article\\_5.html](http://indialawjournal.com/volume4/issue_4/article_5.html) (Accessed on February 6, 2015)

<sup>12</sup> Ann Bransom, Demand Media, <http://yourbusiness.azcentral.com/four-types-ambush-marketing-14038.html> (Accessed on February 6, 2015)

The use of imagery or terminology not protected by intellectual-property laws to create an illusion that an organization has links to a sporting event or property.

***b. Value-based ambushing-***

Tailoring by a non-sponsor of its marketing practices to appeal to the same values or involve the same themes as do the event or its promotion, such that audiences attracted to the event or its marketing will likewise be attracted to the non-sponsor's marketing. It can be understood as making a direct reference to the event or property's theme or values to imply a link with the event in the mind of the consumers. Puma, in the European Championship, 2008, in order to promote its football line used the tagline, June 2008: Together Everywhere, thus making a direct reference to the event being played that month.

***c. Ambushing 'by distraction'-***

It can also be understood as creating the distraction in or around the place of event, not having any association with the event, in order to gain the attention from the event's audience and thus promote the brand's product.

In The Open Championship, 2008, Bentley set up a line-up of the Bentley cars outside Hill side Golf club which is adjacent to the Royal Birkdale, the host course of the Open, which attracted great attraction from the event audience.

***d. Parallel property ambushing-***

An application of 'ambushing by distraction' is in which the ambusher-marketed product is the event/property itself, thus capitalizing on the main event's goodwill.

Nike organized a global contest "human race" in 24 countries around the world including Shanghai, where the Olympics, 2008 was taking place, which was continued for 7 days following the Olympics, and gathered a huge international marketing throughout Olympics centered around Nike and the marathon.

***e. Pre-emptive Ambushing-***

When the official sponsor creates the marketing communication in order to usurp any possible ambush marketing campaigns of the rivals, thus prompting the ambush activities and distracting the focus from any of the other official sponsors of the event. In the European Championship, 2008, Adidas produced 16 inflatable footballers wearing the jersey of each

country participating in the event with Adidas logo and stripes including those countries which were sponsored by Nike and Puma.<sup>13</sup>

### **3. Incidental Ambush Marketing**

This comes into picture when the market communications of a company lead to such incidental ambushing of the official sponsors. It may be done in two ways:

#### ***a. Unintentional Ambushing-***

This is when the consumers incorrectly identify a non-sponsoring company as an official sponsor due to its previous association or due expectation of association with the event. *Speedo* earned a considerable attention from media as result of success of swimmers wearing LZR racer swimsuits.

#### ***b. Saturation Ambushing-***

Saturation ambushers increase their broadcast-media advertising and marketing at the time of an event but make no reference to the event itself and avoid any associative imagery or suggestion. *Lucozade*, during the Beijing Olympics indulged into aggressive marketing of its products much above its standard marketing featuring athletes and a variety of sports significantly. Saturation ambushing merely capitalizes on the increased broadcast media attention and television audiences surrounding the event.

### **BENEFITS OF AMNUSH MARKETING**

Ambush marketing despite being an intellectual property infringement has survived. Ambush marketing campaigns are ephemeral: sporting events such as world cups Olympics etc occur for a short period of time.<sup>14</sup> Therefore it becomes very difficult for the event organizers to exercise their legal options to curtail such activity. In the case of Pepsi and Coca-Cola, during the cricket world cup 1994, coke was the official sponsor of the event but Pepsi ambushed coke by coming up with a catchy tagline “*nothing official about it*”. Pepsi got away scot-free by using the popular strategy of issuing disclaimer “*the company is not an official sponsor and has not paid to affiliate with the event*”. Also, the laws exist which may have a general application to the problem of ambush marketing, only a handful of cases

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<sup>13</sup> Ms Charul Agrawal, Ms Jyothi Byahatti “Re-engineering of Indian Economy-Opportunities & Challenges, [http://indialawjournal.com/volume4/issue\\_4/article\\_5.html](http://indialawjournal.com/volume4/issue_4/article_5.html), (Accessed on February 6, 2015)

<sup>14</sup> [articles.economicstimes.indiatimes.com](http://articles.economicstimes.indiatimes.com), (Accessed on February 6, 2015)

have actually progressed through the judicial system. Also, since there is a paucity of case laws regarding ambush marketing there are less number of cases being reported.<sup>15</sup>

Some of the benefits from Ambush marketing are listed below:

- With ambush advertising, both the brands and their companies get lots of free media. Also, the advertising agencies win because the client increases spends -more than was planned and -so more revenue.
- Lots of people in the advertising and marketing companies find sudden purpose. This releases energy and creates renewed enthusiasm. The CEOs of both companies spend more time with the concerned brand's heads; therefore get greater opportunity and visibility.<sup>16</sup>
- The news and trade media, always looking for content, have something to write about. This is like fresh juice. They can now fill lots of columns. As for consumers, they are enjoying all the fuss and are hopeful this will bring prices down - because of fierce competition.

### **EFFECTS OF AMBUSH MARKETING**

The Ambush Marketing has become very effective, there are many indications regarding it, although evidences of its occurrence is very limited. But happening of such activities harms and infringe rights of sponsors, event organizers and consumers.

#### **1. Effect on sponsorship**

For any event to become successful, sponsorship is required, it helps event organizers in terms of revenue, other than it they provide technical support, promotes the event so that people attracts towards the event and many other ways. This sponsorship does not only benefit the event organizers but sponsors get large benefits by it, they through the sponsorship tries to gather attraction of the consumers on their product, so as to get increased

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<sup>15</sup> Ms Charul Agrawal, Ms Jyothi Byahatti "Re-engineering of Indian Economy-Opportunities & Challenges, [http://indialawjournal.com/volume4/issue\\_4/article\\_5.htm](http://indialawjournal.com/volume4/issue_4/article_5.htm), (Accessed on February 6, 2015)

<sup>16</sup> Ms Charul Agrawal, Ms Jyothi Byahatti "Re-engineering of Indian Economy-Opportunities & Challenges, [http://indialawjournal.com/volume4/issue\\_4/article\\_5.html](http://indialawjournal.com/volume4/issue_4/article_5.html) (Accessed on February 6, 2015)

their sale<sup>17</sup>. Even now sponsorship is becoming very costlier, high amount is being spent for getting sponsorship.

When a company invests in such costlier sponsorship, they emphasis on return-over-investment and they demand for exclusivity. But Ambush Marketing hinders their exclusivity which caters heavy loss to sponsors, thus affects event organizers. Sponsorship is one of the ways for getting revenue for event, loss in sponsorship, effects high to the event organizers<sup>18</sup>. There are many incidences of it and one of such incidence is about Adidas, which shortly, after 1988 World Cup thought to remain sponsor in 2002 world cup when Nike through Ambush Marketing took away the exclusivity<sup>19</sup>.

## **2. Effect on Sponsors**

Through the sponsorship, sponsors tries to make direct relation with the consumers. For it, proper identification is required so as to who is the real sponsor of the event. When Ambush Marketing comes, it will become difficult for the consumers to identify who is the actual sponsor. This will create confusion in the minds of the consumers, thus will result in heavy loss to the sponsors<sup>20</sup>.

## **3. Effect of Event Organizers**

When the Ambusher's will enter in the market, the exclusive right of the sponsor will infringe. What a sponsor being exclusive can earn, his earning will diminish to more than ten million dollars if the ambusher's come in market. This will lead sponsors to think, whether they should invest in sponsorship which will ultimately affect the revenue generation for any event and largely event's popularity may also deteriorate. In the FIFA World Cup 2010, when Nike not being a official sponsor prior to world cup made an three minute advert with number of protagonists such as Ronaldo, Drogba, Cannavaro, Rooney and Ribery on TV, You Tube and nearly 14 million people watched that video. That advert did not contain any symbol, mark of the event but being of same nature attracted people, which affected the exclusive

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<sup>17</sup> Ambush Marketing: Virtue or Vice, <http://blogs.sun.ac.za/plawfiles201208Ambush-Marketing-Virtue-or-Vice.pdf> (Accessed on February 6, 2015)

<sup>18</sup> Agrawal Charu & Byahatti Jyoti, Ambush Marketing: Concepts and Strategic Implications, Spl. Issue: X, Vol III, October, 13, Asia Pacific Journal of Research, <http://apjor.com/files1383062412.pdf> (Accessed on February 6, 2015)

<sup>19</sup> Ambush Marketing: Virtue or Vice, <http://blogs.sun.ac.za/plawfiles201208Ambush-Marketing-Virtue-or-Vice.pdf> (Accessed on February 6, 2015)

<sup>20</sup> Agrawal Charu & Byahatti Jyoti, Ambush Marketing: Concepts and Strategic Implications, Spl. Issue: X, Vol III, October, 13, Asia Pacific Journal of Research, <http://apjor.com/files1383062412.pdf> (Accessed on February 6, 2015)

right of the official sponsor. This could have resulted in sponsor to think for further sponsorship in FIFA World Cup<sup>21</sup>.

#### **4. Effect of Consumers**

Main reason for firms or companies being involved in ambush marketing activities is to boost the image of the company. These ambushers use image transfer process in order to reach to the target groups through attractive sporting setting. The consumers are affected in a way that they associate positive image towards a brand, they get attracted towards the brand and associate themselves towards the brand and subsequently transfer the positive image of the event to the brand<sup>22</sup>.

#### **5. Effect on IPR Right Holder**

Through Ambush Marketing, ambusher's not only infringe the IP rights of the holder (sponsors and event organizers) but also transgress IP rights by capitalizing earned goodwill through an event. These ambushers use registered symbols of the event organizers which even lead to heavy loss to the sponsors<sup>23</sup>.

### **SOME CASE STUDIES**

#### **1. Kodak-Fuji**

Ambush marketing really began with Kodak in the 1984 Olympics when they ran a series of campaigns suggesting they were the official sponsors when in fact they weren't. They successfully managed to convince the consumer they were the official sponsor, when in fact it was Fuji Film. Kodak ambushed Fuji again in 1996. As soon as Atlanta was awarded the rights for the 1996 summer games, Kodak bought 50 major poster sites in the city for the next four years, at an estimated \$28,000 per month. So, the official sponsor Fuji, was again pipped at the post by Kodak.<sup>24</sup>

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<sup>21</sup> Ambush Marketing v. Sponsorship Values at the London Olympic Games, 2012, <http://laboratoire-droit-sport.fr/wp-content/uploads/2014/02/Ambush-Marketing-2012.pdf> (Accessed on February 6, 2015)

<sup>22</sup> Agrawal Charu & Byahatti Jyoti, Ambush Marketing: Concepts and Strategic Implications, Spl. Issue: X, Vol III, October, 13, Asia Pacific Journal of Research, <http://apjor.com/files1383062412.pdf> (Accessed on February 6, 2015)

<sup>23</sup> Ericsson Seth, Ambush Marketing: Examining the Development of An Event Organizer Right of Association, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1970149](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1970149) (Accessed on February 6, 2015)

<sup>24</sup> Amsterdam Printing, 5 Companies Launch Ambush Marketing Attacks, July 27, 2010, [onlinelibrary.wiley.com](http://onlinelibrary.wiley.com) (Accessed on February 6, 2015)

## **2. Coca-Cola - Pepsico**

Coca-Cola spent a total of \$400 million on marketing in Beijing in 2008, including \$85 million to be an Olympic sponsor, yet consumers believed that Pepsi was the official sponsor.

PepsiCo's highly successful marketing campaign included an online competition, in which 160 million voters from China ranked mug shots. The winning entries were printed on cans cheering on Team China. Pepsi also replaced its traditional blue cans with red ones in China.

## **3. American Express – Visa INC**

The first notable instances of ambush marketing occurred between the 1984 Summer Olympics, which were the first to utilize a more rigid, yet restrictive policy regarding the number of companies that could be designated as “official” sponsors, and the 1988 Summer Olympics in Seoul; in 1986, American Express (a rival to official sponsor Visa Inc.), began a marketing campaign in Asia promoting merchandise from a fictitious “Olympic Heritage Committee”, supposedly based in Switzerland.

American Express halted the campaign following complaints by the International Olympic Committee, who threatened to denounce the company's actions with newspaper ads, and media events in which sports ministers and Olympic athletes from the countries involved in the campaign would cut American Express credit cards into pieces, if they did not withdraw the ads.

In a follow-up, American Express released ads with the tagline “*Amex welcomes you to Seoul*”, featuring a photo from the opening ceremony of the 1986 Asian Games also held in Seoul, indirectly implying that it was a photo of the Olympics opening ceremony. Visa responded with ads attacking American Express, most prominently promoting the fact that because of its sponsorship deal, only Visa cards are accepted at Olympic venues.

Prior to the 1992 Winter Olympics and Summer Olympics, American Express retaliated with another campaign, clarifying that the Visa exclusivity only applied to Olympic venues for ticket sales, and not other services (such as shops and restaurants) available in the host cities, using the tagline “*You'll need a passport, but you don't need a Visa.*”<sup>25</sup>

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<sup>25</sup> [http://en.wikipedia.org/wiki/Ambush\\_marketing#Notable\\_examples](http://en.wikipedia.org/wiki/Ambush_marketing#Notable_examples) (Accessed on February 6, 2015)

#### 4. Olympic Games

During the opening ceremony of the 2008 Summer Olympics in Beijing, former Olympic gymnast Li Ning was the final torchbearer and ultimately lit the flame at Beijing National Stadium. Li Ning is also the founder of a domestic shoe company of the same name.

While the Li Ning company was not an official sponsor of the games, it had still associated itself with the games through its role as an equipment supplier for several Chinese Olympic teams, and through Li Ning's status as both a Chinese sports and business icon. However, Ning was, per its sponsorship rights, required to wear clothing from his competitor, and official Olympic sponsor, Adidas, during the ceremony.

#### **AMBUSH MARKETING: WHETHER AN ETHICAL BUSINESS PRACTICE**

The much controversial question regarding ambush marketing is whether it is ethical business practice, when rights of many are violated. According to Event Organizers and sponsors, ambush marketing practice is unethical business practice and harms Event's integrity to the much larger extent. According to Marketing Director of IOC "ambush marketing is not a game. It is a deadly serious business and one that has the potential to destroy sponsorship. If ambush marketing ... is left unchecked, then the fundamental revenue base of sport will be undermined. If sport and other sponsored organizations do not learn to properly protect their rights and the exclusivity of their rights and the exclusivity of their sponsors, then they will lose their independent financial revenue source."<sup>26</sup>

According to Corporate Sponsors, ambushers takes away their exclusive right of being an sponsor and creates their image of being a sponsor of that event to the customers, which largely affects the return-over-investment of the official sponsors. According to them ambush marketing is a threat to the expected value of purchase they are expecting<sup>27</sup>.

Another Event Organizers feel is the threat of their revenue and future sponsorship. Sponsorship is not a new practice, but the one going since ages in order that all the sections

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<sup>26</sup> M.R. Payne, "A Talk by IOC Market Chief Michael R. Payne," *The Sport Marketing Letter*, January 1993, p. 4; Meenaghan Tonny, Ambush Marketing - A Threat to Corporate Sponsorship, <http://sloanreview.mit.edu/article/ambushmarketingathreattocorporatesponsorship/> (Accessed on February 6, 2015)

<sup>27</sup> Meenaghan Tonny, Ambush Marketing - A Threat to Corporate Sponsorship, <http://sloanreview.mit.edu/article/ambushmarketingathreattocorporatesponsorship/> (Accessed on February 6, 2015)

of the society can enjoy and take part in the cultural and sporting events of the country. Sponsors are like “Angels” for the Event Organizers, who put up their revenues, does the promotional events on behalf of the organizers, provides technical support to the organizers on just a small interest that the event will reflect only their brand name (exclusive). But when their rights are taken away by other brands and their revenue which they are expecting is shared, it forces them to think that whether they should be sponsor for the next event. This creates problem for the sponsors as to who will be the sponsor for the event to finance, secondly, reputation of event also deteriorates.

On the other hand Ambushers claim that it is not unethical business practice. That they live in free market where equal competition prevails where they have right to promote their brand. It is up to the official sponsors, as how they promote their brand and event<sup>28</sup>. According to them, if the right of promotion is given only to the sponsors, will it not affect the fair competition in market. According to Jerry C. Welsh, former head of worldwide marketing at American Express, competitors have “not only a right, but an obligation to shareholders to take advantage of such events.”<sup>29</sup>

## **LAWS RELATING TO AMBUSH MARKETING**

In the present time, Ambush Marketing has become an important aspect in the Intellectual Property Infringement and still there are many countries which have not yet made any specific law regarding it. But there are some countries which are aware of the seriousness of Ambush Marketing taking place in near future and have made strict laws to prohibit it. They are-

### **❖ South Africa**

The Government of South Africa had made two acts to prohibit Ambush Marketing. One is the Section 9 of the Trade Practises Act, 1976 which says that any person who in connection with a sponsored event make, publish or display any false or misleading statement, communication or advertisement which represents, implies or suggests a contractual or other

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<sup>28</sup> Garrigues Cristina, Ambush Marketing: A Threat to Global Sponsored Events?, <http://www.twobirds.com/en/news/articles/2004/ambushmarketingsponsoredevents> (Accessed on February 6, 2015)

<sup>29</sup> Bayless (1988), p. B1; Meenaghan Tonny, Ambush Marketing - A Threat to Corporate Sponsorship, <http://sloanreview.mit.edu/article/ambushmarketingathreattocorporatesponsorship/>(Accessed on February 6, 2015)

connection or association between that person and the event or the person sponsoring the event, or cause such statement, communication or advertisement to be made, published or displayed then that person shall be held as liable.<sup>30</sup>

The other is the Section 15A of the Merchandise Marks Amendment Act 61 of 2002. Section 15A(2) says that ‘for the period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit from the event, without the prior authority of the organizer of such event.’<sup>31</sup>

### ❖ **Brazil**

As the time is approaching for the 2014 FIFA world cup to be held in Brazil the fear of Ambush Marketing at a great extent is also supposed to be there. Though as such no specific law has been made on Ambush Marketing in Brazil but there are traditional laws that will protect from Ambush Marketing. The Brazilian Industrial Property Act may be used to prevent a direct ambush marketing strategy as it prohibits unauthorized registrations for reproduction or imitation of names and symbols of officially recognized sports events. The Brazilian Sports Act which is also known as the ‘Pele Act’ compliments this trademark protection by protecting the names and symbols of sports administration entities regardless of whether formal registration has occurred. The Brazilian Copyright Act, event mascots, posters and trophies can be protected from misappropriation and copying if they satisfy the basic minimum requirements for Copyright Protection. Also, the Brazilian Civil Code requires permission prior to using the image or name of any person like famous persons, athletes for commercial purposes which can also help prevent direct associations during sports events.<sup>32</sup>

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<sup>30</sup> Act No. 26 of 2001, Trade Practices Amendment Act, 2001,  
<http://www.info.gov.za/view/DownloadFileAction?id=86468> (Accessed on February 4, 2015)

<sup>31</sup> Merchandise Marks Act 17 of 1941,  
<http://www.cipro.co.za/legislation%20forms/merchandise%20marks/Merchandise%20Mark%20Act.pdf>  
(Accessed on February 3, 2015)

<sup>32</sup> Supra note 3.

### ❖ **Canada**

The first case reported worldwide for Ambush Marketing was in Canada of National Hockey League v. Pepsi Cola Ltd. In this case Pepsi had taken an advertising campaign called 'Diet Pepsi \$4,000,000 Pro Hockey Playoff Pool' during the National Hockey Playoff games and the Stanley cup. Here Pepsi was not the official sponsor but, it was Coca-Cola which was the official sponsor for the events. Though the provisions regarding Ambush Marketing are not been specifically mentioned in the Canadian Competition Act but if any act engaging a person into such practise of Ambush Marketing and making false claims to public then the rules laid down in this act will apply.

### ❖ **Australia**

In the recent times, Australia has also been in the forefront for making laws pertaining to Ambush Marketing. At the time of the Summer Olympics in 2000 which were held in Sydney, the Australian Government passed the Sydney 2000 games (Indicia and Images) Protection Act, 1996 and the New South Wales government passed the Olympics Arrangements Act, 2000. A significant part of both the laws was 'Games Specific Legislation enacted to prevent ambush marketing and provide for clean games venues to equip New South Wales and Australia for future sporting and large marketing programmes.' Since these Olympics the Australian government has enacted similar laws for hallmark sport events and the most recent of them is the Melbourne 2006 Commonwealth Games Protection Act, 2005.<sup>33</sup>

### ❖ **New Zealand**

New Zealand has recently passed the Major Events Management Act, 2007 to provide greater protection to the sponsors of important events from Ambush Marketing. The purpose of the anti-ambush marketing part of the law is to prevent unauthorized commercial exploitation at the expense of either a major event organizer or a major event sponsor. This particular law lays down three specific criteria's. It prohibits –<sup>34</sup>

- Representations that suggest persons, brands, goods or services have an association with a major event when they do not;

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<sup>33</sup> 'Sport Facility Operations Management' by Stacey A. Hall, Simon Shibli, Eric Schwarz, 2010

<sup>34</sup> Ibid

- Advertising from intruding on a major event activity and the attention of the associated audience; and,
- Prohibits the use of certain emblems and words relating to Olympic games and commonwealth games without appropriate authorization.

#### ❖ **India**

Recently, we have witnessed the Ambush advertisements of the hoardings in Mumbai. It was when the Jet Airways came up with a campaign saying “We’ve Changed” and on the other way the Kingfisher Airlines came up saying “We’ve Made Them Changed”. These two were further ambushed when the Go airways came up saying “We’ve Not Changed. We Are Still The Smartest Way To Fly”. Apart from these the latest ambush marketing was seen when Procter & Gamble for its shampoo brand named ‘Pantene’ launched an ad campaign with a tagline “A Mystery Shampoo. Eighty Percent women say it is better than anything else.” After a few days of this launch Hindustan Unilever came up with its shampoo brand ‘Dove’ with a tagline “There is no Mystery. Dove is the No. 1 shampoo”. Thus this was a clear case when the campaign for ‘Pantene’ was ambushed by ‘Dove’.<sup>35</sup>

Keeping in mind these incidents, at present in India there are no specific Anti-Ambush Marketing laws being laid down. Though India is planning to organize the Olympics in near future and the other mega sports event but as of now have not laid down any law which can strictly prevent Ambush Marketing. But under the Trademarks Act, 1999 if a campaign uses registered trademarks to a rival or the event organizers then an infringement action or a passing-off action can be taken against him under the Trademarks act, 1999. In the case of ICC Development v. Arvee Enterprises and Anr it was observed that the plaintiff in order to find success in his claim must prove that there was ‘likelihood of confusion’ in public minds that the defendants were sponsors or licensee of world cup.

Also, The Copyright Act, 1957 provides remedy in a limited set of instances for Ambush Marketing. When copyright is violated like when logos, marks or any other type of original work is used by a party without the permission of the owner. The Copyright Act, 1957 gives the owner of the Copyright a privilege to enjoy the rights over his work to reproduce, perform or publish and when the other party does the same without licence then it amounts to

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<sup>35</sup> Sharad Vadehra, Kan and Krishme, *Ambush Marketing – Growth in India* [http://www.galamarketlaw.com/joomla4/index.php?option=com\\_content&view=article&id=306&Itemid=306](http://www.galamarketlaw.com/joomla4/index.php?option=com_content&view=article&id=306&Itemid=306) (Accessed on May 23, 2013)

Copyright Infringement. The Delhi High Court in the case of ICC Development v. Evergreen Service Station recognized a limited role of Copyright in granting an injunction and preventing the defendants from using the logo of 'ICC World Cup 2003' which consist of black and white stripes and the mascot 'dazzler' holding these to be the artistic work protected under section 2(c) of the Copyright Act, 1957.

## **CONCLUSION**

Ambush Marketing is not a new practice but concern about such practice came with the increase in world- wide sports activities. This type of practice if affecting the rights of various stakeholders to the much larger extent and for it many concerns have been raised that laws/regulation should be made in order to stop such practices. The London Olympics Bill, published on 15 July 2005, debated in Standing Committee, and amended on 18 October 2005 are some of the Legislations relating to regulation of Sponsorships and prevention of Ambush Marketing. These laws were made so that sponsors who have invested could get proper returns over those investments, the event ca run smoothly and can get sponsorship every time and people can appreciate such events.

But in India, there is no specific law in order to avoid such practices. There are many incidences of Ambush Market happening in India also. Even in future we are trying to get Olympics in India, but without any law relating to ambush marketing, it will become difficult to conduct Olympics in India. We will not get good sponsors, and if no sponsors will be there, there will be financing problem. Moreover, people will not show interest without good promotional activities. Therefore, there is an urgent need for Legislation Relating to Ambush Marketing in India.