

# GSLTR

## Global Sports Law and Taxation Reports

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# Ambush marketing in sport<sup>1</sup>

by Steve Cornelius<sup>2</sup>

## Introduction

Since the end of the twentieth century, professional sport has developed into a worldwide industry worth hundreds of billions of dollars. Along with that, the idea of sport as a purely recreational activity has also largely disappeared. In the last thirty years, sport has become an important component of the entertainment industry.<sup>3</sup> Sport federations have awakened to the fact that sport has an inherent entertainment value and that this entertainment characteristic of sport also has an inherent market value<sup>4</sup> that can be utilised for the benefit of the relevant sports federations.<sup>5</sup>

The advertising industry has long since recognised the opportunities that sport holds for marketing. The sports industry manages on a weekly basis to attract to a single location a significantly large group of consumers that can all be simultaneously reached with a single message, a feat which no other industry achieves to quite the same extent.<sup>6</sup> The advertising industry has consequently begun to concentrate more and more on sport as a tool to expose consumers to goods and services. This has manifested itself in several ways: billboards have been erected near sports stadia, flyers and free samples are handed out to spectators outside stadia, aeroplanes with banners have flown over jam-packed stadia, businesses in the areas around stadia promote special offers, newspapers and magazines include posters of sports heroes in their publications, advertisements contain images of sports and air time for advertising during radio and television broadcasts of sport are sold like hot cakes.

In the era of strict amateurism in sport, during the late nineteenth century and the early to mid-twentieth century, sports federations were characterised by their cautious approach. They strictly guarded the ethos of a social order together with physical and spiritual health through physical exercise that was founded on the playing fields of the private schools in England<sup>7</sup>. Sports federations paid no attention to the advertising campaigns that began to

develop around sport, provided that the sportsmen and women did not breach the amateur code in the process.<sup>8</sup>

However, the cracks soon appeared. Events at local, regional and provincial level were initially principally funded by participants and proceeds from ticket sales. Sports events were largely dependent on local authorities, who provided facilities, and the selfless work of volunteers. However, the increasing need for national, transnational and international competition began to take its toll economically on sports federations. Rising costs also had the effect that the proceeds from ticket sales were no longer sufficient to sustain sport.<sup>9</sup> This resulted in sport, as an industry, becoming more and more receptive to advertising. Initially, many restrictions were placed on advertising. The number, nature, extent, size and positioning of advertising material were strictly regulated.

The increased inclination towards professionalism also led to the awareness of sport as a business. Seasoned business tycoons like Kerry Packer, Rupert Murdoch and Louis Luyt turned to the management of sports federations and sports leagues.<sup>10</sup> It would inevitably lead to the development of sport as a business. Where sport previously distanced itself from advertising, sports federations and sports leagues now embraced it. Where sport was initially indifferent to the advertising practises that developed around sport, sports federations and leagues now sought to control them and utilise them to their greatest benefit. This would unavoidably lead to tension between sports bodies and business enterprises, but also among business enterprises themselves.

It is out of this tension that the notion of ambush marketing would emerge. According to Leone<sup>11</sup>, the concept "ambush marketing" is a derogatory label that opponents attach to any advertising activity that refers to or alludes to sports or a sports event, even if it does not allude to a relationship or a connection with the sports event itself. The controversy surrounding ambush marketing invokes a hefty debate,

with viewpoints ranging from the absolute free market approach allowing everything to the draconian regulation of any form of advertising during a specific sports event. In essence, the debate turns firstly on the question of whether ambush marketing should be subject to regulation at all. Secondly, if ambush marketing indeed requires regulation, to what extent should it be regulated?

Although the controversy around ambush marketing comes to the fore largely in sport, and particularly in relation to high level sport, such as the Olympic Games, World Cup tournaments and international competitions and leagues, it is not uncommon for this phenomenon also to emerge in other social and cultural spheres.<sup>12</sup> The focus in this article is limited to ambush marketing in sport, but the same principles will also be applicable to ambush marketing in any other context.

## What is ambush marketing?

Ambush marketing in sport is defined as marketing enabling a business enterprise to insinuate a relationship between specific goods or services and a sports event, without the marketer actually making any financial contribution to the sports event, whether by sponsorship or any other method.<sup>13</sup> The aim here is to use the goodwill of the sports event to secure exposure for the goods or services of the advertiser.<sup>14</sup> According to Epstein<sup>15</sup> ambush marketing consists of any marketing activity relating to a sports event, in which a party is involved without being an official sponsor of that event. This occurs when an enterprise, with no direct involvement with or interest in a sports event, presents its trademarks, trade names, goods or services in such a way that it creates the impression that a relationship exists between the sports event and that enterprise, when in reality there is no such connection. For example, in the lead up to the 2000 Olympic Games in Sydney, the airline Qantas launched an advertising campaign of "Special Olympic offers". Qantas also engaged well known athletes to appear



in these advertisements. Although Ansett was the official airline sponsor of the 2000 Olympic Games, market research showed that 60% of Australians were under the impression that Qantas was in fact the official airline.<sup>16</sup>

Griffith-Jones<sup>17</sup> takes the definition one step further and suggests that ambush marketing also occurs when no relationship with the sports event is suggested, but an enterprise uses the interest that the sports event generates to promote its trade names or trademarks, without that enterprise having any direct involvement or interest in the sports event. For example, in the lead up to the 1996 Olympic Games in Atlanta, the sports clothing manufacturer Nike bought an old building in the city centre of Atlanta and turned it into a Nike museum.<sup>18</sup> Nike is known as an enterprise that does not often get involved with sport as an official sponsor, but never lets a marketing opportunity at a large sports event pass by unharnessed.<sup>19</sup> The question arises whether or not such advertising practises amount to ambush marketing.

The interest that a sports event generates with the public bestows an inherent goodwill or marketing value on that event. A sponsor effectively "purchases" the sports federation's permission to use that goodwill or marketing value to its advantage. Ambush marketing means that a third party, often a direct competitor of the sponsor, unlawfully tries to gain advantage from the marketing value of the sports event without the permission of the sports federation, diverting the focus from the sponsor, and diminishing the impact of the sponsor's advertising.<sup>20</sup>

In this article I distinguish between ambush marketing, which is unlawful, and parallel marketing, which is lawful. It is often difficult to discern when advertising goes too far. The aim is then also to develop a guideline whereby the differentiation between ambush marketing and parallel marketing can be readily determined.

### Why is there ambush marketing?

Many reasons have been offered to explain why a business enterprise would be tempted to resort to ambush marketing. Firstly, especially in high level sports, it demands an excessive amount of money to be declared an official sponsor of a sports event. Many enterprises quite simply cannot afford it or cannot justify the expenditure,

and then follow the alternative route of ambush marketing. Secondly, the number of sponsors that can get involved in a particular sports event is naturally limited. This is further complicated by long-standing established relationships between a specific sport or sports event and a specific sponsor.<sup>21</sup> Competitors that also want to utilise the opportunity to promote their goods or services then sometimes resort to ambush marketing. Moreover, there may be a prohibition on advertising in respect of the product that the marketer wishes to advance (such as tobacco) or the product may not be compatible with the image that the particular sports federation wishes to portray (for example pornographic material).<sup>22</sup>

Whatever the particular reason, a business enterprise resorts to ambush marketing with one aim, that is to associate the goodwill of the enterprise so closely with the goodwill or marketing value of the sports event that the enterprise's goodwill is in fact enhanced by the goodwill of the event.<sup>23</sup> This is also an important characteristic distinguishing ambush marketing from parallel marketing.

Ambush marketing can also be aimed at creating uncertainty among consumers, so that they identify the goods or services in the advertisement with the specific sports event. The goal is then to create the impression that the enterprise is associated with the sports event. The objective is two-fold, namely to advance the enterprise's goods or services, and simultaneously to undermine the impact of the advertisements of the official sponsors.<sup>24</sup>

### To regulate or not to regulate?

Unavoidably, the controversy surrounding ambush marketing has attracted the attention of authorities worldwide. The question arises whether sports federations must simply be left at the mercy of the free market or if government involvement is required.

The decision to regulate can only be justified if there is a legitimate interest worthy of protection, the interest is under threat and current law is insufficient to offer protection.<sup>25</sup> Leone<sup>26</sup> is of the opinion that these requirements are absent and that regulation would consequently improperly interfere with the free market. She bases her viewpoint on various arguments:

- A prohibition on ambush marketing is unnecessary. Why should authorities have to get involved to protect sports federations (and sponsors)? The 2006 Football World Cup was successfully hosted in Germany without any official measures implemented by the authorities to forbid ambush marketing, and so was the 2008 European Football Championship that took place in Austria and Switzerland.
- A prohibition on ambush marketing does not benefit sport. Enterprises that utilise ambush marketing are often involved as sponsors at different levels of sport. If the restrictions on ambush marketing are too strict, it would deprive sport of those sponsorships to the detriment of sport in general.
- A prohibition on ambush marketing does not have broader economic advantages. It only benefits large international sports federations and multinational companies.
- Ambush marketing is acceptable on every other level of the economy and that should therefore also be the case in sport. If sport cannot cope with normal competitive practices, then it is the business model of sport that should be reconsidered, not ambush marketing.
- The restriction of ambush marketing is anti-competitive and it is unreasonable to afford the opportunities to benefit from a large sports event only to selected large business enterprises. Besides, the hundreds of millions of dollars contributed by official sponsors pale in comparison with the billions of dollars in taxpayers' money that authorities pump into large sports events. A large number of enterprises, which have contributed to making a sports event possible through payment of their taxes, are prevented from gaining any advantage from the interest generated by the sports event.
- It is too difficult to draw a line between unlawful ambush marketing and lawful parallel marketing. Advertisers attempt to gain advantage from sports events in diverse ways and not all methods evoke the same level of indignation. For example, can a school present a "Summer Games" without infringing measures aimed at the 2012 Olympic Games in London? Or what about the barkeeper that writes on a blackboard outside the door "Watch the Games here"?
- Existing law already offers sufficient protection. Sports federations and their official sponsors are already protected by means of the existing intellectual



property law (especially with regards to trademarks and trade names) and regulation of unlawful competition. There are also avenues outside the law that can be used to put an end to ambush marketing. Official sponsors can, for example, purchase all the advertising space around a stadium and sports federations can agree with broadcasters to only sell advertising air time to official sponsors.

Consequently, Leone<sup>27</sup> concludes that any prohibition on ambush marketing is draconian and unjustifiable, especially considering that the lion's share of the funding of a large sports event or tournament comes from taxpayers' contributions.

The validity of these arguments must be investigated to determine if the regulation of ambush marketing is truly desirable or not.

### Is there a legally recognized interest?

Any discussion of ambush marketing and the need for regulation rests mainly on the question of whether the particular sports federation has a legally recognized interest that would be violated or infringed upon in the event of ambush marketing. In other words, is the advertising value of the sports event an interest worthy of legal protection? The answer to this question will determine not only if regulation is necessary, but will also indicate the extent to which regulation is required, if indeed there is an interest being threatened.

Most legal systems today recognize a variety of statutory and common law commercial, personality and intellectual property rights. It is particularly in this variety of recognized rights that the advertising value of an enterprise as a legally protectable interest lies. In some respects, the recognition and protection of advertising value is quite obvious, such as in the case of registered trademarks in terms of applicable legislation. When, whether by ambush marketing or by other means, these rights are infringed, the applicable law places a variety of remedies at the disposal of the disadvantaged party.

The law has recognised for quite some time that every business enterprise has a subjective right to the goodwill of the enterprise.<sup>28</sup> A sports federation, as an enterprise, accordingly also has this subjective right to goodwill. This goodwill is not just the embodiment of the reputation of an

enterprise. Reputation is predominantly a personality interest,<sup>29</sup> but goodwill is indeed a patrimonial interest that vests in the estate of the enterprise.<sup>30</sup> It is likely the most important asset of any enterprise, because without the ability to attract and entice clients no enterprise could maintain a meaningful existence.

Goodwill is an immaterial asset in the estate of an enterprise, just as confidential information or trade secrets may be. As Judge Diamond explained,<sup>31</sup> an enterprise acts unlawfully when it uses, to its own advantage, the confidential information that a competitor developed with zeal and expertise. The unlawful use of confidential information entails laying claim to a trade asset that was created by the efforts of another. According to Judge Diamond<sup>32</sup> it is difficult to see how this usurpation differs in principle from stealing the goods out of a competitor's shop. This begs the question; does ambush marketing not also comprise the advancement of an enterprise through the use of the goodwill attached to a sports event? Is the goodwill attached to a sports event not an asset developed through the skill and expertise of the particular sports federation? If goodwill is an asset, in principle there can then be no distinction between the unlawful use of goodwill and the unlawful use of any other trade asset, such as confidential information. Judge Van Dijkhorst explained<sup>33</sup> that the misuse of confidential information indeed also amounts to violation of goodwill. There is consequently no underlying difference between misuse of confidential information and misuse of goodwill. At the end of the day, both are forms of unlawful competition.

The position is similar to that of English law. Judge Laddie<sup>34</sup> puts it that

*"although the defendant may not damage the goodwill as such, what he does is damage the value of the goodwill to the claimant because, instead of benefiting from exclusive rights to his property, the latter now finds that someone else is squatting on it. It is for the owner of goodwill to maintain, raise or lower the quality of his reputation or to decide who, if anyone, can use it alongside him. The ability to do that is compromised if another can use the reputation or goodwill without his permission and as he likes."*

In *Douglas v Hello! Ltd.*<sup>35</sup> the House of Lords held that photographs of the ap-

plicants' wedding ceremony could not be published without permission. The reason for this finding did not lie so much in the violation of the applicants' privacy (they had, after all, already agreed to publish the wedding photographs in another magazine), but more in the possible commercial disadvantage that was held in the infringement of the applicants' exclusive rights (as famous movie stars). In German law the protection of goodwill is also seen as the foundation for restrictions on ambush marketing.<sup>36</sup>

Besides the patrimonial interest in goodwill, there are also personality interests at stake. For purposes of this discussion, it is of the utmost importance to note that it is not only natural persons that have personality interests, but also juristic persons – insofar as it is reasonable – in the sense of personality rights such as reputation and identity.<sup>37</sup>

Naturally, the patrimonial interest of goodwill is strongly connected with the personality interest in reputation. However, both goodwill and reputation are inextricably linked with identity. Goodwill, or reputation, is senseless if not related to a specific identifiable individual or enterprise. The unique essential elements that underlie the right to identity, are simultaneously also the characteristics that distinguish an individual or enterprise with a particular goodwill or reputation from another.

In this regard identity consists of that uniqueness or distinctiveness that identifies a person as an individual and separates him from others. Identity is made up of the collection of characteristics that make an individual different.<sup>38</sup> In the case of an enterprise, identity consists firstly of the registered and common law trademarks of that enterprise. But it is also so much more. It includes the manner in which shops are furnished – a person can walk into a McDonalds fast food outlet anywhere in the world and experience a sense of familiarity. Identity also includes the merchandise of an enterprise, as well as the packaging and presentation. In the case of a sports federation, identity also consists of the tournaments that the sports federation hosts that make it different from other sports federations. When one thinks of the International Olympic Committee, one involuntarily thinks of the Olympic logo of five coloured rings on a white background. At the same time, one thinks of the Olympic Games, the grand opening ceremony, the lighting of the Ol-



ympic torch, the competition in a variety of sport disciplines, and the list goes on. They are all inseparable characteristics that determine the identity of the International Olympic Committee. The same can be said of other sports federations and the large tournaments that they host.

The right to identity can in this regard be violated in one of two ways. Firstly, violation occurs if the unique characteristics of that person are used in a manner that cannot be reconciled with the true image of that person. In addition, the unauthorised use of the individual's image includes some type of misrepresentation, for example that the individual endorses or approves of a particular product.<sup>39</sup> The unlawfulness in this type of situation mainly lies in the misrepresentation regarding the person involved. If it is established that every sports federation has personality rights, and more specifically a right to identity, then there can be no logical distinction between the case where the false impression is created that a person endorses a product, and the case where advertising falsely alludes to a relationship between a sports federation and an enterprise.

Secondly, the right to identity is infringed if a unique characteristic of a person is used without authority by another person for commercial gain. Besides the unlawful use of the person's image, such use also primarily has a commercial motive that is exclusively intended to promote goods or services in order to increase client or customer base.<sup>40</sup> This infringement of the right to identity thus mainly concerns the unlawful use of the person's personal characteristics for advertising purposes. The unlawfulness in this case lies in the violation of the right to freedom of association and the commercial exploitation of the individual. If it appears that every sports federation has personality rights, and more specifically a right to identity, then there can be no logical distinction between the case where the image of an individual can be used without authority in advertising, and the case where advertising without authority uses the image of a sports federation.

The restriction of ambush marketing consequently rests on the recognition and protection of various related patrimonial interests and personality interests, namely goodwill, reputation and identity. Where advertising during a large sports event infringes on one of these rights of the par-

ticular sports federation, then it amounts to ambush marketing and it is therefore unlawful. Where advertising merely relies on the increasing interest that a sports event generates, without violating the sport federation's right to goodwill, reputation or identity, then it amounts to lawful parallel marketing.

### Is regulation necessary?

International sports federations have relatively recently become aware of ambush marketing and measures to prohibit it have only received serious attention in the last decade. It must therefore be considered whether perhaps sport can get along without any regulations to restrict ambush marketing.

Research has shown that ambush marketing is very effective. It convinces consumers that there is a close bond between an enterprise and a sports event. Hence, research indicates that ambush marketing undermines the exposure of the official sponsors. Consumers often remember the trade name that is used in ambush marketing, while the official sponsors are less often seen as being associated with the sports event. It all leads to confusion amongst consumers.<sup>41</sup>

But then, what about the 2006 Football World Cup in Germany which seemingly ran smoothly without the implementation of any legislation to restrict ambush marketing? And what about the 2008 European Football Championship in Austria and Switzerland that was also apparently a success in the absence of any such rules?<sup>42</sup> The simple answer is that it is misleading to suggest that ambush marketing was not restricted during these events. It is true that neither the German authorities, nor the Swiss or Austrian authorities, implemented any particular measures specifically for the respective tournaments. However, ambush marketing is prohibited under German law by means of laws aimed at unlawful competition. Misleading business practices are viewed as unfair and thus unlawful. More specifically, a business practice is *inter alia* misleading if it contains false information or other misleading details, including statements or symbols which directly or indirectly allude to a sponsorship or to the endorsement of an enterprise or the goods or services that are associated with the enterprise.<sup>43</sup> Here is consequently a general provision that forbids ambush marketing in general, making

it unnecessary to adopt specific measures for each particular sports event. This stipulation does not specifically refer to sport, which means that ambush marketing in any other environment is also forbidden. The statute books of both Switzerland<sup>44</sup> and Austria<sup>45</sup> also contain rules that can be used to prohibit ambush marketing.

Today it is unthinkable that international sports federations would award any large sports event to a particular country if regulations to prohibit ambush marketing are lacking. There is at least one good reason for this. It is estimated that the sports industry annually loses more than \$1 billion due to varying forms of ambush marketing.<sup>46</sup> The extent of these losses is in itself already a strong indication that there may be serious prejudice and that this prejudice is not adequately addressed under current law. The law recognizes the patrimonial interest that every enterprise has in its goodwill, together with the right to exploit this interest profitably.<sup>47</sup> Goodwill is an asset which, just like any other trade asset, must be protected against misuse and usurpation.

### The interest of sport

The view that regulation of ambush marketing is not in the interest of sport is not sustainable in the context of professional sport. The more ambush marketing in sport increases, the more the value of association with a sports event decreases for an official sponsor.<sup>48</sup>

The further argument that restriction of ambush marketing will deprive sport of sponsorships, because many enterprises that make use of ambush marketing are actually sponsors on other levels of sport, is equally untenable. It ignores the fact that it is often those very same sponsors that are demanding that sports federations and authorities implement prohibitions on ambush marketing.<sup>49</sup>

The converse is actually true. If ambush marketing is not restricted, there is a very real possibility that existing sponsors may withdraw their sponsorships and follow the route of ambush marketing themselves.<sup>50</sup> This is not just a hypothetical risk. There have already been several cases where sponsorships have been ended or where former sponsors have resorted to ambush marketing.

In 1993, the official sponsor, Panasonic,



refused to fork out \$2.5 million in sponsorship for the Formula 1 South African Grand Prix. Oil producer Sasol had bombarded the area surrounding the Kyalami racetrack with advertising boards and had purchased the greatest part of the advertising time on the television broadcasting of the event. The consequence was that Panasonic's sponsorship was overshadowed and the impression created that Sasol was the official sponsor of the South African Grand Prix. In a later court battle, the court ruled in favour of Panasonic, and held that the funds could indeed be withheld.<sup>51</sup>

In 1997 the relationship between the United Cricket Board of South Africa and their sponsor at that time, Vodacom, soured after MTN's blimp floated above the stadium during the third test match between South Africa and Australia.<sup>52</sup> The dispute ended up in court<sup>53</sup> and eventually led to Vodacom withdrawing its sponsorship from cricket.<sup>54</sup>

The problem also emerged in Europe. The manufacturer of potato chips, Pringles, was one of the official sponsors during the European Football Championship in 2000. By the time the next championship dawned in 2004, Pringles had withdrawn as sponsor and reverted to ambush marketing instead.<sup>55</sup> The result was that Pringles still reaped the rewards of being associated with the soccer tournament, but at a fraction of the costs, without having to make any contribution to the financing of the tournament.

In 2003 Australia and New Zealand were to host the Rugby World Cup jointly. New Zealand's rugby authorities were not capable of providing "clean" stadiums, without any advertising. The International Rugby Board thus decided to strip New Zealand of the honour of hosting certain matches, with the result being that Australia ended up being the sole host of the tournament. The costs that New Zealand had incurred in preparation for the tournament were therefore wasted.<sup>56</sup>

If ambush marketing is not restricted, there is the risk that existing sponsors will stop sponsoring events, and this is a significant disadvantage that should be averted. It may be that these are a few examples out of the large number of sponsorships where sponsors have indeed pulled out, but they should not be overlooked, and the law must also guard against the risk of harm and not only the actual, existing harm.<sup>57</sup> In other words, the law must be proactive

and not reactive. The risk of withdrawal of sponsors is thus another reason to justify the implementation of measures restricting ambush marketing.

### Economic Interest

The economic impact of professional sport reaches much further than merely ticket sales, or the sale of merchandise, food and beverages around the stadium. Sport annually contributes approximately \$1 billion in direct expenditure to the South African economy.<sup>58</sup> Some large sports events inherently have a large impact. The rugby tour of the British and Irish Lions in 2009 attracted around 37,000 tourists to South Africa, and in six weeks contributed about \$200 million to the gross domestic product in South Africa.<sup>59</sup> The dress rehearsal for the Football World Cup, the Confederations Cup, also drew about 15,000 visitors to South Africa in 2009, and contributed approximately \$100 million to the economy.<sup>60</sup> In the same year, the Indian Premier League cricket tournament, which was moved to South Africa amid the unrest surrounding the elections in India, contributed about \$150 million to the economy.<sup>61</sup> The Football World Cup in 2010 attracted an estimated 400,000 tourists to South Africa, and contributed around \$2 billion to the gross domestic product.<sup>62</sup> When one takes into account that these events all took place during the greatest economic crisis since the Great Depression, the statistics are mind boggling. Furthermore, it is estimated that the exposure that South Africa received during the Football World Cup by means of television broadcasts and the experiences of tourists could amount to an annual increase of 1.6 million more tourists visiting South Africa than what was originally estimated.<sup>63</sup> To add to this, one must account for the direct and indirect job opportunities that are created as a result of such sport events, particularly in the construction and tourism industries. Ultimately these economic benefits mean that the billions of dollars of tax money that are pumped into the events, eventually return to the pockets of tax payers in various ways and on a fairly large scale.

Because of this it is of cardinal importance that the sponsors that make large-scale sports events possible must be protected. Withdrawal of sponsors could have catastrophic consequences for sport. As mentioned above, in 2003 Panasonic refused to pay out their \$2 million sponsorship for the Formula 1 South African Grand Prix.

This led to the organisers of the race having insufficient funds to satisfy their financial obligations and consequently being liquidated due to bankruptcy.<sup>64</sup> The result of the debacle is that South Africa has since not been able to host a Formula 1 race. The liquidation of the organisers and the associated protracted litigation left a void and it was not possible in the following years to host a Formula 1 race in South Africa. Competition for the right to host a Formula 1 Grand Prix is tough, since there are limited opportunities available. South Africa's loss was another country's gain. This filled up the race calendar to the extent that later attempts by South Africa to secure another opportunity have been in vain. The direct loss to the South African economy is astronomical. In 1996 it was estimated that the Formula 1 Australian Grand Prix in Melbourne that year pumped \$80 million into the gross domestic product of the state of Victoria and created more than two thousand full-time jobs.<sup>65</sup> This may mean that the South African economy has lost in the region of \$1 billion and thousands of job opportunities in the fifteen years since the previous Formula 1 South African Grand Prix. This is largely owed to the fact that the sponsors were not looked after.

Besides that, the indirect losses are difficult to determine. The direct broadcast of any Formula 1 race attracts over 350 million viewers in more than 150 countries.<sup>66</sup> With the loss of this single annual opportunity, South Africa has been deprived of one of the best opportunities of marketing itself as a tourist and commercial destination.

This all means that clamping down on ambush marketing clearly furthers a broader economic interest, and is thus also justifiable in this regard.

### Competitive advertising

Some advertisers view ambush marketing purely as a creative marketing strategy. When an enterprise takes on a specific role in the market, its competitors should have the right to seize every opportunity possible to compete with that enterprise for the attention of consumers.<sup>67</sup> This approach suggests that it is only in sport that certain forms of advertising are branded as ambush marketing, while similar advertising schemes in other settings are deemed acceptable.<sup>68</sup>



This view is once again unfounded. It is not only sport that labours under ambush marketing. Any event that attracts the attention of the public is susceptible to ambush marketing.<sup>69</sup>

Sainsbury's, sponsor of famous television chef Jamie Oliver, were livid when a photo of Oliver's wife, Jules, with a trolley of groceries from a competitor, Waitrose, was published. Pepsi's \$75 million sponsorship contract with Britney Spears came under threat when she was photographed with a can of Coca-Cola in her hand. To Pepsi's great embarrassment, Spears was later photographed holding a can of Schweppes Sunkist.<sup>70</sup> In Germany, the whiskey manufacturer Jim Beam used a photograph of a whiskey bottle on the bonnet of a Rolls Royce motor vehicle. The court held that Jim Beam wanted to exploit the reputation and status of Rolls Royce in an unauthorised manner to advertise their whiskey.<sup>71</sup> In the United States of America, the Washington Post instituted legal action against Gator, an enterprise employing pop-up advertisements on internet websites. The pop-up advertisements often market products in direct competition with the products displayed on the website.<sup>72</sup>

Ambush marketing is therefore to be found all over, and is problematic regardless of the industry in which it is used. Sport is thus no different from any other industry in this regard. The restriction of ambush marketing in sport (as well as in other industries) boils down to a statutory extension of the common law prohibition against unlawful competition. Unlawful competition occurs when an enterprise takes advantage of the reputation of a competitor to advertise its own product. This is often achieved by using similar brand names or packaging to that of a competitor. The aim is to deceive consumers into confusing the product of that enterprise (usually of an inferior quality) with the product of the competitor (usually of a superior quality and more popular). The sales of that enterprise are boosted in this way at the expense of the competitor's product.<sup>73</sup> An important aspect of the law regarding unlawful competition is that it is aimed at protecting consumers from misleading and confusing marketing practises. Is that not precisely the aim with the regulation of ambush marketing? As indicated previously, ambush marketing is hugely effective due to its success at confusing consumers. The restriction of ambush marketing should thus be seen as

a logical extension of the law as regards passing off and misappropriation.

### Free market

Sports sponsorships, and especially the hold that large multinational enterprises have over sponsorship of major international sports events, are often viewed as anti-competitive. Measures to restrict ambush marketing entrench these anti-competitive practises.<sup>74</sup> It prevents competitors of established sponsors from gaining any advantage from the interest generated by large sports events. It also seemingly prevents smaller enterprises from getting any advertising from large sports events. This is unreasonable towards these smaller enterprises, especially since they contribute to the financing of the sports event through the payment of taxes.

This problem can be easily avoided. The measures that restrict ambush marketing can include protection for these smaller enterprises. This is also the position in South Africa. Section 15A of the Merchandise Marks Act<sup>75</sup> empowers the Minister of Trade and Industry to declare that a sports event be protected against ambush marketing. The Minister may only do so if the organisers have created sufficient trade opportunities for the smaller enterprises. Before the organisers of the Football World Cup could thus claim protection under s15A, they had to present plans which would advance the interests of the smaller enterprises to the Minister. (Whether or not such plans were indeed implemented and carried out is not clear. But the lack thereof would bring the validity of the Minister's notice, and consequently the legal validity of any acts against alleged instances of ambush marketing, into question.<sup>76</sup>)

There is also a practical solution. The experience in South Africa was that the smaller enterprises were not at all excluded from the advantages offered by the Football World Cup. It was difficult to find a single shop where the 2010 World Cup logo was not prominently displayed. But how could they do so without invoking the wrath of the international soccer federation, FIFA?

The answer is simply that the business enterprises displayed advertisements of the official sponsors containing the 2010 World Cup logo in their shops too. Every business that accepted payment by credit

card prominently sported the advertisement of VISA, an official sponsor and credit card service provider, in their windows. Every fast food outlet, restaurant and supermarket displayed advertisements of the official sponsor, Coca-Cola. Every travel agent prominently displayed advertisements of the official airline, Emirates. Sport and clothing shops displayed advertisements of Adidas, another official sponsor, and sold replicas of Adidas's Jabulani football. Electronics shops and department stores displayed advertisements of the official sponsor, Sony. Any shop that sold mobile phones and airtime advertised MTN as official sponsor. The official mascot, Zakumi, was on sale everywhere. This had advantages for all the involved parties. The official sponsors received maximum exposure in the process. This made it especially difficult for any competitors (at least in South Africa) to overshadow the official sponsors through ambush marketing. More importantly, smaller enterprises still had the opportunity to take advantage of the large numbers of visiting tourists, despite the restrictions on ambush marketing. As already mentioned, the tourist spend in 2010 contributed \$2 billion to the gross domestic product.<sup>77</sup> In this way the billions of dollars in taxes that the state pumped into the World Cup eventually found its way back to the enterprises that paid the taxes in the first place.

The prohibition of ambush marketing therefore does not necessarily have the effect of suppressing smaller enterprises. Large multinational enterprises are, however, still restricted. With Coca-Cola as an official sponsor no room was left for Pepsi or Schweppes to get a foot in the door with advertising directed at consumers attending the World Cup. The official sponsorships of Hyundai and Kia also prevented any other vehicle manufacturers from garnering any marketing opportunities at the World Cup. In this regard, Leone<sup>78</sup> may have a valid argument when she asserts that sports sponsorships are anti-competitive and that the business model of sport should be revised. It is actually not the entire business model that requires revision, but only the manner in which official sponsors are appointed. Most international sports federations, including the International Olympic Committee, already have well established, long-term relationships with certain sponsors.<sup>79</sup> This makes it impossible for other enterprises to become involved as a sponsor of a large sports event, even if they were to offer remarkably greater value. Perhaps the time



has come to confront international sports federations and require free competition for large sponsorships. Why can the sponsors for a specific Olympic Games or World Championship not be appointed by way of an open tender process? This is, however, a wide-reaching issue that falls outside the scope of this article.

### Where is the line to be drawn?

It is true that it is often difficult to draw the line between unlawful ambush marketing and lawful parallel marketing. When major sports events take place, a wide variety of enterprises attempt to make use of the opportunity to advertise in many different ways. The possible ways in which ambush marketing and parallel marketing can take place are endless, and the inventiveness of advertisers knows no bounds. It would be impossible to present an exhaustive list, and only a small selection of the countless possibilities is therefore considered.

One approach is for an enterprise to purchase advertising space around a stadium or air time during broadcasts. Enterprises also purchase advertising space in magazines and newspapers, especially in the sports pages. It is especially where there is a theme or golden thread regarding the sports event running through such advertisements that the line between the lawful and the unlawful blurs.<sup>80</sup> In exceptional cases enterprises can use the trademarks of the relevant sports federations or sports events in such advertising without authority and in an unlawful manner.<sup>81</sup>

Enterprises can sponsor specific athletes or teams. Occasionally this requires the specific athlete or team to use the sponsor's products, such as rugby or football boots, during the sports event. In other instances, the enterprise will advertise its sponsorship of the athlete or team during the sports event. Sometimes the athlete or team will appear in the advertisements of the enterprise.<sup>82</sup>

It is possible for an enterprise to be a secondary sponsor of a sports event, but to advertise their sponsorship aggressively and out of proportion to the value of the sponsorship.<sup>83</sup>

Enterprises often make special offers to the public during large sports events. These offers may exceed the limits of lawful advertising when referred to as an "Olympic offer" or a "World Cup of-

fer".<sup>84</sup> Sometimes promotions occur in the area of the stadium, which can include the handing out of flyers or free samples.<sup>85</sup>

The ultimate question is: which of these forms of marketing are lawful, and which are not? Leone<sup>86</sup> correctly remarks that it is particularly difficult to make this distinction. Her opinion that ambush marketing should not be regulated for this reason, is short sighted. To the contrary, proper regulation will result in the concept of ambush marketing being authoritatively defined. The advantage of such a definition is that official sponsors and other enterprises that wish to advertise during a large sports event will have clarity on what is allowed and what not. Enterprises will at the outset also be made aware of the consequences of the use of ambush marketing, and will thus contribute to the discouragement of the use of unlawful ambush marketing. The uncertainty surrounding ambush marketing is therefore a strong argument in favour of implementing regulation.

### Are existing regulations insufficient?

It is often suggested that the existing laws offer sufficient protection to sports federations and their sponsors, and that it is therefore unnecessary to implement measures to restrict ambush marketing. The current laws mainly offer protection in two ways. Firstly, there is intellectual property law that protects trademarks and trade names. Secondly, there is the law of competition which guards against unlawful and unfair competition.<sup>87</sup>

When an enterprise without permission uses the names or logos of the International Olympic Committee or that of a sports federation or sports tournament in its advertising, the law regarding trademarks and trade names is infringed. The owner of the trademark can institute legal action to protect the trademark and prevent its unlawful use.<sup>88</sup> In such cases, the existing intellectual property laws already offer adequate protection.

Competition law also offers a measure of protection against ambush marketing. An enterprise which improperly encroaches on the goodwill of a competitor can be held liable in delict or tort for these actions. Infringement is improper when it is contrary to public policy and negates the merits of competition. Unlawful competition can take various forms. With ambush marketing, of importance is the mislead-

ing or undue influence of consumers, passing off, misappropriation, and interference with a contractual relationship.<sup>89</sup>

Misleading or undue influence of consumers is self explanatory, as is interference with a contractual relationship. Ambush marketing is particularly aimed at hijacking the goodwill of a sports event, to the detriment of the sports federation and the official sponsors. In certain cases this can also interfere with the contractual relationship between the sports federation and the sponsor, in the sense that the sponsor does not achieve the agreed advantages from the relationship.<sup>90</sup>

Passing off consists of the copying or imitating of a competitor's logos or trademarks, or the use of packaging that is almost identical to that of the competitor's packaging. This creates the impression that the performance of the party committing the act of passing off is equal to the performance of the competitor. Unsuspecting consumers that wish to purchase the competitor's product are then deceived into purchasing the product of the party committing the act of passing off instead.<sup>91</sup>

Misappropriation occurs when one competitor takes advantage of another competitor's reputation by openly creating the impression of a connection with that competitor.<sup>92</sup> As such the majority of cases of ambush marketing will fall into this category. The objective of ambush marketing is after all to take advantage of the interest in (or reputation of) a sports event to achieve a trade advantage for an enterprise.

At face value therefore, it appears that the current law does in fact have sufficient rules and regulations to effectively protect sports federations or official sponsors against ambush marketing. In cases where trademarks are used without permission, this is indeed the case. However, in cases of unlawful competition the position is not so clear. The law of competition offers the disadvantaged party a remedy in tort or delict. An essential requirement to succeed with such a claim is the proof of damages. The damage must in essence be quantified. In many cases of ambush marketing it is practically impossible to meet this requirement. For example, how does FIFA, or any of the official sponsors, prove that they suffered damage as a result of Kulula.com's advertisement during the World Cup that declared that Kulula is the "Unofficial national carrier of the 'you



know what””<sup>93</sup> Ambush marketing violates the goodwill of the sports event and official sponsors, and as such it is very difficult to quantify damages in dollars and cents.<sup>94</sup>

Apart from that, an international sports event, and the ambush marketing that accompanies it, is of short duration. It is often not worth the effort for sports federations and official sponsors to spend years and years in civil litigation and appeals while the ambush marketing only lasted for several weeks.<sup>95</sup> It is not uncommon for litigation to drag on for considerably longer than the four year interval between each Olympic Games or World Cup. >From a practical point of view, drawn out civil litigation is therefore undesirable.

Despite the fact that there are existing laws that can, at least in theory, offer the required protection against ambush marketing, in reality those measures are often not effective. Thus there is a great need for effective practical regulation to restrict ambush marketing.

### Ethical questions

The phenomenon of ambush marketing inevitably raises the question whether such advertising practices are ethically justifiable. There are three important ethical principles relevant to advertising.<sup>96</sup> Firstly, advertising must be responsible. The advertising industry offers a service to a community of enterprises and consumers. On the one hand, an advertiser must assist an enterprise to market its goods and services and increase its profit margin. On the other hand, advertisers also have a responsibility towards consumers, mainly to ensure that they are not misled. Advertisers also have a duty to ensure that advertising is fair towards all the parties involved, including other enterprises. Secondly, advertising must be socially and economically accountable. Thirdly, advertising must not be harmful. Advertisers must be aware of the conscious and subconscious consequences of advertising. An advertisement for a vacuum cleaner or washing powder could, for example, further entrench the stereotypical image of the role of women in our society, and this can be detrimental. Another example could be the use of cartoons in advertisements for alcoholic beverages, which could be harmful towards children.

Ambush marketing does not meet any of

the mentioned ethical standards. To a large extent, it boils down to the unlawful use of a trade asset that vests in a particular sports federation, and as such it is just as detrimental and irresponsible as any other form of usurpation. Furthermore, ambush marketing often leads to confusion, and in this sense it is not fair towards consumers. It is further irresponsible because it does not treat all the role players fairly. Sports federations do not get any advantage from the usurping of their goodwill, and official sponsors are upstaged unfairly. In addition, the losses suffered annually by sports federations as a result of ambush marketing, and the danger that sponsorships may be reduced or withdrawn on account of ambush marketing, means that ambush marketing is not socially or economically responsible and that it is harmful.

Because of all of this, it is difficult to justify ambush marketing from an ethical point of view. Although the unethical nature of ambush marketing in itself is perhaps not a reason to forbid it, together with all the arguments already advanced, it strongly indicates that regulation is both necessary and desirable.

### Quo vadis regulation?

It may be clear that ambush marketing does in fact need to be regulated. The question then remains to what extent and in what way should it be done. Statutory measures to guard against ambush marketing mainly fall in two categories, namely specific measures that are only applicable to a specific sports event or specific type of advertising, and general measures that are applicable to any sports event that meets certain requirements.

Australia applied the approach of implementing specific measures for a particular sports event. On a national level, this includes Sydney 2000 Games (Indicia and Images) Protection Act 1996 and the Melbourne 2006 Commonwealth Games Protection Act 2005. On a regional level, the Victoria State Australian Grand Prix Act 1994 and the New South Wales Olympic Arrangements Act 2000. Legislative measures are also focused on regulating certain forms of ambush marketing, as with the Victoria Major Events Aerial Advertising Act 2007.

A similar approach is taken in the United Kingdom, where legislation was promulgated to protect the 2012 Olympic Games

in London against ambush marketing. The necessary measures are contained in the London Olympic Games and Paralympic Games Act 2006.

This approach is actually juristically unsound. The law should lay down general regulations that apply to all similar cases.<sup>97</sup> The law should not provide relief separately to each individual case, because that results in the measures being arbitrary and inconsistent.

The promulgation of general measures is preferable. This approach is followed in Germany<sup>98</sup> and South Africa.<sup>99</sup> It is also the approach taken in New Zealand with the promulgation of the Major Events Management Act 2007. Some federal states in Australia have also since begun to move in the same direction with the Queensland Major Sports Facilities Act 2001 and the Victoria Major Sports Events Act 2009.

Regardless of whether the measures are aimed at a specific event or are of general application, the measures all have one thing in common: they prohibit any suggestion or allusion to a connection between an enterprise and the protected sports event.<sup>100</sup>

According to these regulations, the mere purchasing of advertising space near the stadium, advertising air time during broadcasts or advertising space in magazines and newspapers will not amount to ambush marketing. Sponsorships of athletes or teams are not affected by the provisions, and the athletes are permitted to use the sponsor's products during the sports event. During the 2010 Football World Cup where Adidas was an official sponsor, Nike inter alia sponsored the official clothing for the teams from the Netherlands, Brazil and the United States of America, while Puma sponsored the clothing for the teams from Italy, Algeria and Ghana. The relevant enterprise is also permitted to advertise its sponsorship of a particular team during the period of the tournament. During the 2010 Soccer World Cup, ABSA made no secret of the fact that they were the official sponsor of the South African soccer team, and no steps were taken against ABSA, even though First National Bank was one of the official sponsors of the tournament.

Therefore there is still provision for parallel marketing. An essential element of the measures is that advertising must allude to an involvement with the sports event



for it to be classified as ambush marketing. When advertising uses the logo and trademark of the sports federation or sports event without authority, the provisions are infringed. Any direct or indirect reference to the sports event in advertising could possibly amount to a violation of the measures.

One can apply a simple context test to draw the line between lawful parallel marketing and unlawful ambush marketing. The test merely requires that the specific advertisement be taken out of the context of the sports event and be considered against the backdrop of a normal, everyday situation. If the message in the advertisement can still be regarded as meaningful, then it is parallel marketing. If the message is rendered senseless, then there is a clear infringement on the goodwill of the sports event and it can be categorised as ambush marketing. In other words, is the advertisement of such a nature that it is to be expected in the everyday, ordinary course of business? If so, it is parallel marketing. If it is obviously only focused on the specific sports event, then it is ambush marketing.

One can illustrate this context test by means of a few examples. During the 2010 Football World Cup, the low-cost airline, Kulula.com, launched an advertising campaign in the Sunday newspapers in which it stated that it was the "unofficial national carrier of the 'you know what'". The advertisement also consisted of images of footballs, vuvuzelas, a soccer player and an image of a structure that looked very similar to the soccer stadium in Cape Town.<sup>101</sup> When one views this advertisement outside the context of the World Cup, it makes very little sense. It is thus hardly surprising that Kulula.com was threatened with legal action. They wisely decided not to try their luck in the courts.

During the 1996 Olympic Games in Atlanta, New Zealand Telecoms placed an advertisement in New Zealand newspapers, where the word "Ring" was written five times as follows in blue, black, red, yellow and green:

**Ring Ring Ring  
Ring Ring**

The manner in which the words were placed and the colours used directly alluded to the Olympic logo of five coloured rings. New Zealand's Olympic and Commonwealth Committee instituted legal ac-

tion against New Zealand Telecoms, but based on the law at the time, the court dismissed the application because it did not violate the trademark of the Olympic Committee.<sup>102</sup> New Zealand only promulgated legislation in 2007 to restrict ambush marketing, and the question is how the advertisement would have been judged if the legislation had been in force at the time. If one applies the context test to the facts, one can conclude that the advertisement would probably not have had the same impact in another context. The word "ring" in the context of an advertisement for mobile phones is not unexpected, but the importance of the positioning and colours would have lost its effect in other circumstances. Consequently, under current legislation it would probably have been deemed to be ambush marketing.

How would ABSA's advertising during the World Cup be regarded? ABSA aggressively advertised their official sponsorship of the South African national football team. Football is a game that is played all year round, and the national team does on occasion take part in tournaments and friendly matches. The marketing of the sponsorship would consequently still

be meaningful even when viewed out of the context of the World Cup, and it thus amounts to lawful parallel marketing.

## Conclusion

It appears that there is an increasing tendency to restrict ambush marketing by means of specific legislation. This tendency is encouraged by the realisation that ambush marketing is detrimental, not only for the official sponsors of international sports events and sports federations, but also for the economic wellbeing of regions and countries. It is further promoted by the prestige associated with the hosting of major international sports events and the rivalry between cities and countries to be appointed as hosts. Focused legislation will undoubtedly do much in the way of addressing the problem of ambush marketing. Also undoubtedly, however, advertisers will come up with innovative advertising campaigns that will test, and often blur, the boundary between ambush and parallel marketing. As long as there are still major international sports events, the discourse in this regard will continue.

<sup>1</sup> An earlier Afrikaans version of this article entitled "Sluikreklame in Sport" was published on *Litnet Akademies Geesteswetenskappe* at [www.litnet.co.za/cgi-bin/giga.cgi?cmd=cause\\_dir\\_news\\_item&cause\\_id=1270&news\\_id=111977&cat\\_id=284](http://www.litnet.co.za/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1270&news_id=111977&cat_id=284) I am much indebted to Joné Laubscher who assisted with this English translation. Any errors are solely due to my stubbornness.

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<sup>3</sup> Andrews, "Sport in the late capitalist moment" in: Slack (ed), *The Commercialisation of Sport* (2004) 3 et seq.

<sup>4</sup> Andrews 23.

<sup>5</sup> Louw, *Sports Law in South Africa* (2010) 418.

<sup>6</sup> Shilbury, Westerbeek, Quick and Funk, *Strategic Sports Marketing* 3 ed (2009) 9.

<sup>7</sup> Bodin, Robène and Héas, *Sport and Violence in Europe* (2005) 12.

<sup>8</sup> Bal, *e Sports Geography* 2 ed (2003) 42.

<sup>9</sup> Shilbury et al, 11 et seq.

<sup>10</sup> Louw 418.

<sup>11</sup> "Ambush marketing: Criminal offence or free enterprise?" 2008/3-4 *Int Sports LJ* 75.

<sup>12</sup> De Beer, "Potch-plakkate is glo 'lokvalbemarking'" in: *Beeld*, 26 September 2007 at 2.

<sup>13</sup> Nafziger, *International Sports Law* 2 ed (2004) 172.

<sup>14</sup> Schwartz and Hunter, *Advanced Theory and Practise in Sports Marketing* (2008) 253.

<sup>15</sup> *Sports Law* (2003) 252.

<sup>16</sup> Amis and Cornwell, *Global Sport Sponsorship* (2005) 215.

<sup>17</sup> Griffith-Jones, *Law and the Business of Sport* 1997 227.

<sup>18</sup> McDonald and Milne, *Cases in Sports Marketing* (1999) 184.

<sup>19</sup> Amis and Cornwell 215.

<sup>20</sup> Meenaghan, "Ambush marketing a threat to corporate sponsorship" 1996, in: *Sloan Management Review* 103.

<sup>21</sup> Schwartz and Hunter 254.

<sup>22</sup> Cloete, Introduction to *Sports Law in South Africa* (2005) 178.

<sup>23</sup> Schwartz and Hunter 253.

<sup>24</sup> Ferrand, Torrigiani and Camps, *Routledge Handbook of Sports Sponsorship: Successful Strategies* (2006) 38.

<sup>25</sup> Du Plessis, *Re-interpretation of Statutes* (2002) 165 et seq, 259 et seq.

<sup>26</sup> 2008/3-4 *Int Sports LJ* 75 76-77.

<sup>27</sup> 2008/3-4 *Int Sports LJ* 75 76-77.

<sup>28</sup> Neethling, Potgieter and Visser, *Deliktereg* 6 ed (2010) 326 et seq.

<sup>29</sup> Neethling et al, 349 et seq.

<sup>30</sup> *Pepsico Inc v United Tobacco Co Ltd* 1988 (2) SA 334 (W) 347B-G.

<sup>31</sup> *Stellenbosch Wine Trust Ltd and another v Oude Meester Group Ltd; Oude Meester Group Ltd v Stellenbosch Wine Trust Ltd and another* 1972 (3) SA 152 (C) 185A-D.

<sup>32</sup> Idem.

<sup>33</sup> *Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd and others* 1981 (2) SA 173 (T) 183D-F.

<sup>34</sup> *Irvine v Talksport Ltd* [2003] 2 All ER 881 (CA).

<sup>35</sup> [2007] 4 All ER 545 (HL).

<sup>36</sup> *Gesetz gegen den unlauteren Wettbewerb* (UWG) Art 5 par 1 No 4.

<sup>37</sup> Neethling et al, 340 et seq.



- <sup>38</sup> Neethling et al, 369 et seq.
- <sup>39</sup> *Grütter v Lombard* 2007 (4) SA 89 (SCA).
- <sup>40</sup> *Wells v Atoll Media (Pty) Ltd* [2009] ZAWCHC 173.
- <sup>41</sup> Schlossberg, *Sports Marketing* (1996) 30 et seq.; Lee, *Sport Sponsors' Decision Making in a Global Market: An Application of Analytical Hierarchy Process (AHP)*, PhD thesis, University of Minnesota (2008) 67-68; Amis and Cornwell, 215.
- <sup>42</sup> Leone, 2008/3-4 *Int Sports LJ* 75.
- <sup>43</sup> UWG Art 5 par 1 no 4.
- <sup>44</sup> See for example *Bundesgesetz vom 19 Dezember 1986 gegen den unlauteren Wettbewerb* Art 2 and 3(d).
- <sup>45</sup> See for example app Let 2 *Bundesgesetz gegen den unlauteren Wettbewerb*.
- <sup>46</sup> Kolah, *Essential Law for Marketers* (2002) 388.
- <sup>47</sup> *Pepsico Inc v United Tobacco Co Ltd* 1988 (2) SA 334 (W).
- <sup>48</sup> Wong, *Essentials of Sports Law* 4 ed (2010) 680.
- <sup>49</sup> McDonald and Milne 179; Masterman *Sponsorship: For a Return on Investment* (2007) 245.
- <sup>50</sup> Masterman, 246.
- <sup>51</sup> *Motor Racing Enterprises (Pty) Ltd (in liquidation) v NPS (Electronics) Ltd* 1996 (4) SA 950 (A).
- <sup>52</sup> Van der Westhuizen, "Uitspraak voorbehoud in Vodacom, VKRSA se saak" in: *Beeld* 13 September 1997 at 2.
- <sup>53</sup> Van der Westhuizen, "Vodacom dien aansoek in teen SA kriketraad: Kontrak 'moenie verbreek word'", in: *Beeld* 11 September 1997 at 5.
- <sup>54</sup> Van der Westhuizen, "Uitspraak voorbehoud in Vodacom, VKRSA se saak", in: *Beeld* 13 September 1997 at 2.
- <sup>55</sup> Masterman, 246.
- <sup>56</sup> Schwartz and Hunter, 254.
- <sup>57</sup> *Pepsico Inc v United Tobacco Co Ltd* 1988 (2) SA 334 (W) 338A.
- <sup>58</sup> Slabbert, "Nuwe buro vir konferensies moet uit Wêreldbeker leer", in: *Beeld Sake* 7 May 2010 at 2.
- <sup>59</sup> Thys, "Rugbytoer lewer leue-hydrae tot SA toerismesektor", in: *Beeld Sake* 21 November 2009 at 13.
- <sup>60</sup> Slabbert, "Nuwe buro vir konferensies moet uit Wêreldbeker leer", in: *Beeld Sake* 7 May 2010 at 2.
- <sup>61</sup> Buchner, "IPL 'n goeie advertensie vir SA, sê Zuma", in: *Beeld Sake* 26 May 2009 at 11.
- <sup>62</sup> Smith, "Sowat 400 000 buitelanders by WB", in: *Beeld Sake* 1 November 2010 at 2.
- <sup>63</sup> Idem.
- <sup>64</sup> *Motor Racing Enterprises (Pty) Ltd (in liquidation) v NPS (Electronics) Ltd* 1996 (4) SA 950 (A).
- <sup>65</sup> Gratton and Henry, *Sport in the City: The Role of Sport in Economic and Social Regeneration* (2001) 170.
- <sup>66</sup> McComb, *Sports in World History* (2004) 59.
- <sup>67</sup> Masterman, 246.
- <sup>68</sup> Leone, 2008/3-4 *Int Sports LJ* 75 76-77.
- <sup>69</sup> Schatte, *Strategic Branding – The Difficulty of the Term and Trademark 'Fußball WM 2006'* (2009) 11; De Beer, "Potch-plakkate is glo 'lokalbemarking'", in: *Beeld* 26 September 2007 at 2.
- <sup>70</sup> Kolah, 390.
- <sup>71</sup> *Rolls Royce BGHI ZR 133/80* [1983] GRUR 247.
- <sup>72</sup> Reed, *Internet Law* (2004) 86.
- <sup>73</sup> Muhlberg, *The Law of the Brand: A Practical Guide to Branding Law in South Africa* (2005) 72 et seq.
- <sup>74</sup> Leone, 2008/3-4 *Int Sports LJ* 75 76-77.
- <sup>75</sup> 17 of 1941.
- <sup>76</sup> Du Plessis, 54.
- <sup>77</sup> Smith, "Sowat 400 000 buitelanders by WB", in: *Beeld Sake* 1 November 2010 at 2.
- <sup>78</sup> 2008/3-4 *Int Sports LJ* 75 76-77.
- <sup>79</sup> Schwartz and Hunter, 254.
- <sup>80</sup> Amis and Cornwell, 216.
- <sup>81</sup> Nafziger, 173.
- <sup>82</sup> Lam, *Legal Aspects of Marketing and Event Management* (2008) 17.
- <sup>83</sup> Ferrand et al, 39.
- <sup>84</sup> Amis and Cornwell, 216.
- <sup>85</sup> Ferrand et al, 39.
- <sup>86</sup> 2008/3-4 *Int Sports LJ* 75 76-77.
- <sup>87</sup> Amis and Cornwell, 219.
- <sup>88</sup> See for example Ch 8 of the *Trade Marks Act 194* of 1993.
- <sup>89</sup> Neethling et al, 326 et seq.
- <sup>90</sup> As was the case in *Motor Racing Enterprises (Pty) Ltd (in liquidation) v NPS (Electronics) Ltd* 1996 (4) SA 950 (A).
- <sup>91</sup> Neethling et al, 330-331.
- <sup>92</sup> Neethling et al, 311.
- <sup>93</sup> Daryl, "FIFA has \$1 billion in reserve funds, but still doesn't appreciate clever advertising", on [www.worldcupblog.org/world-cup-2010/fifa-has-1-billion-in-reserve-funds-but-still-doesnt-appreciate-clever-advertising.html](http://www.worldcupblog.org/world-cup-2010/fifa-has-1-billion-in-reserve-funds-but-still-doesnt-appreciate-clever-advertising.html) (accessed on 30 March 2011).
- <sup>94</sup> Neethling et al, 327.
- <sup>95</sup> Wong, 681.
- <sup>96</sup> Jones, *The Advertising Business* (1999) 502 et seq.
- <sup>97</sup> Du Plessis, 164 et seq.
- <sup>98</sup> UWG Art 5 par 1 no 4.
- <sup>99</sup> S 15A *Merchandise Marks Act* 17 of 1941; s 9(d); *Trade Practises Act* 76 of 1976.
- <sup>100</sup> Schwartz, Hall and Shibli, *Sport Facility Operations Management: A Global Perspective* (2010) 150 et seq.
- <sup>101</sup> Daryl, "FIFA has \$1 billion in reserve funds, but still doesn't appreciate clever advertising", on [www.worldcupblog.org/world-cup-2010/fifa-has-1-billion-in-reserve-funds-but-still-doesnt-appreciate-clever-advertising.html](http://www.worldcupblog.org/world-cup-2010/fifa-has-1-billion-in-reserve-funds-but-still-doesnt-appreciate-clever-advertising.html) (accessed on 30 March 2011).
- <sup>102</sup> Amis and Cornwell, 216.