

## ADVERTISING & MARKETING BULLETIN

August 2007

### **AMBUSH MARKETING AND “THE OLYMPIC AND PARALYMPIC MARKS ACT”: WHAT THIS MEANS FOR BUSINESSES AND OLYMPIC MARKETING**

#### **AMBUSH MARKETING: PROTECTING OFFICIAL SPONSORSHIP AT THE 2010 VANCOUVER OLYMPIC GAMES**

Sponsoring major sports or cultural events is a standard technique used by many businesses to associate themselves with the goodwill, reputation or popularity generated by these events. The cost can be high, particularly if it is a high-profile event such as the Super Bowl or the World Cup. However, the perceived sales payoff of being associated with such an event makes it worthwhile for many companies.

Many interesting legal and ethical questions arise when companies attempt to become linked with these events without paying for the right to do so. How are official sponsors protected from these practices, and how can event organizers protect the sponsorship value of their events?

#### **AMBUSH MARKETING**

“Ambush Marketing” is the term given to actions by third parties that attempt to capitalize on the value and goodwill associated with a major event to the detriment of official sponsors. It generally involves an unauthorized association of a business with the marketing of an event. This comes at a cost to an organization or business that has paid for the right to associate itself with the event. Successful ambush marketing induces the public into believing that a company (or its product/service) has arranged for official endorsement.

It is sometimes derisively referred to as ‘parasitic marketing,’ and it is a serious issue for any particular event that relies on outside sponsorship as a source of funding. If ambush marketing is successful and goes unpunished, official sponsors might ask themselves what commercial value is gained by their ‘official’ sponsorship of an event.

#### **THE OLYMPIC GAMES AND THE IOC**

The Olympic Games have often been a target for ambush marketing practices. As one of the most well-known sporting events in the world, it has enormous marketing value. Consumer research studies have shown that the brand awareness of the Olympic Rings as a symbol of the Olympic Games is at levels above 90%.

Accordingly, there has been a great deal of pressure on host country governments from the International Olympic Committee (“IOC”) for the creation of legislation and regulations that effectively deter ambush marketing. The central difficulty is that many of these practices are outside of traditional intellectual property laws and exist in a grey area that is difficult to police or regulate. When there is no actual use of protected trademarks or copyrighted logos, it makes it more difficult to punish ambush marketing under existing laws.

One solution is the introduction of specific legislation to address ambush marketing and the protection of Olympic marks. Australia did this for the 2000 Sydney Games (with mixed success), and the UK has introduced similar legislation for the 2012 London Games.

#### **THE VANCOUVER GAMES AND “THE OLYMPIC AND PARALYMPICS MARKS ACT”**

With the 2010 Vancouver Olympic Games (the “Games”) quickly approaching, in March of 2007 the Canadian government introduced Bill C-47 *The Olympic and Paralympic Marks Act* (the “Act”). On June 22, 2007, it received Royal Assent and is coming into effect at a later date. The *Act* addresses Olympic mark protection and ambush marketing challenges, as promised by the Canadian government when bidding for the Games in 2003.

In addition to amending the *Trade-Marks Act* (Canada) to include certain Olympic trademarks and trade names, the *Act* is intended to add further protection to Olympic marks and the official sponsors of the Games. One of the *Act's* central focuses is the prevention of ambush marketing. Section 4(1) addresses intentional efforts to weaken official sponsorship rights through promotions or advertising that trades off the event's goodwill while seeking to confuse the buying public.

Schedule 3 provides a list of expressions that will prove to be a determinative factor as to whether or not ones actions are considered ambush marketing. The words are mainly generic terms such as 'Games,' '2010,' 'Winter,' 'Gold' and 'XXIst' which normally could not be registered or protected under the *Trade-Marks Act* due to their general, unspecific nature. However, under the new *Act*, the courts are required to consider these phrases and their use to determine whether or not a company has engaged in ambush marketing. It is important to note that schedules 2 and 3 contain a so-called "sunset clause" and will expire at the end of 2010.

Finally, in section 6 of the *Act*, the civil requirement for an applicant to show irreparable harm when seeking an interlocutory injunction against an offending company is removed. This significantly lowers the threshold for the Vancouver Organizing Committee ("VANOC"), or an official sponsor to seek an injunction against an offending third party. Essentially, if anyone is using any of the words from Schedule 3 in conjunction with promotional activity that could imply a business association with the Games, VANOC can apply for an immediate injunction against this person or business in order to stop their activity.

#### **EFFECTIVENESS OF THE ACT**

The legislation is quite comprehensive and some have criticized it for providing an excessive level of protection for corporate sponsors. It does not leave much room for third parties to manoeuvre with respect to the unauthorized use of Olympic marks but may also capture conduct that is not ambush marketing but which fits under the ambit of the *Act*. There have been previous cases where the IOC has tried to stop businesses that have been in operation for years, from using a name or trade-mark that the IOC considers confusing with the protected Olympic symbols. This was the case with "Olympia Pizza," a small family-run restaurant in Vancouver. The IOC sent a letter demanding that they change their name and remove a sign which uses the Olympic rings as part of their logo. The owners refused to co-operate and the resulting media coverage of the dispute presented a "David and Goliath" characterization of events. This created negative public opinion towards VANOC and their decision to fight an independently-owned pizzeria. The dispute began before the *Act* was passed, and VANOC subsequently posted a policy document regarding businesses that existed before 1998 that use "Olympic" symbols or phrases. Essentially, it states that businesses are allowed to keep their name, but will be required to remove any offending symbols or signage. It remains to be seen how VANOC will approach such situations in the future given the negative public response to the Olympia Pizza scenario.

Of course, even with the *Act* some companies may still find ways of getting around it. Many companies have been successful in doing this in the past. Lufthansa is a prime example. By painting the "noses" of their aircraft to look like soccer balls during the World Cup in 2006, they managed to capitalize on the event without being an official sponsor.

However, the fear of negative publicity is making it less attractive to run an ambush marketing campaign targeting the Olympics. A public relations battle with VANOC and/or the IOC could be very costly, both financially and to one's reputation. Imperial Oil learned this lesson when running a contest during the 2006 Torino Games. The contest did not use any Olympic symbols or make any reference to the Games, other than to offer plane and hockey tickets to Italy to "Cheer on Canada." It is worth noting that Imperial Oil has been an official sponsor of Hockey Canada for more than twenty years now. It is also worth noting that Petro-Canada is an official sponsor of the Olympic Games on a national level. VANOC eventually persuaded Imperial Oil to withdraw the campaign and remove what VANOC deemed an "unauthorized association" between Imperial Oil and the Olympic Games. It seems as though VANOC plans on aggressively protecting the Olympic marks and the official sponsors of the Games.

## WHAT OTHER LEGAL OPTIONS ARE AVAILABLE?

There are a number of options that companies can pursue to protect themselves from ambush marketing. The use of contracts can be an effective tool; for example, a provision in a sponsorship agreement could require all billboards within a certain radius of the event to be rented, and therefore controlled, by the organizers of the event. Another helpful contractual provision would require the venue to restrict access to rival companies. These are just a few examples; there are a variety of options that are available to help prevent unauthorized associations by third parties. The key is that companies and event organizers recognize the mutually beneficial value of corporate sponsorship, and that they work together to effectively limit opportunities for ambush marketing. The Vancouver Olympics are already proving to be an interesting case study in this area. It will be very instructive to see what tactics are used, and the effectiveness of the new legislation in stopping them.

*Written by Sean Clarke and Sharon Groom.*

---

*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

---

© Copyright 2007 McMillan Binch Mendelsohn LLP

## ABOUT McMILLAN BINCH MENDELSON LLP

McMillan Binch Mendelsohn LLP, one of Canada's leading business law firms, is committed to advancing our client's interests through exemplary client service combined with thoughtful and pragmatic advice. The firm is a values-driven organization that takes a dynamic and sophisticated approach to providing practical and creative solutions to its clients. Its client first, team-based approach draws effectively upon our diverse expertise. The firm has a national, cross-border and international practice and has grown to be one of the top 20 largest firms in Canada. The firm is agile and flexible, committed to always striving for excellence. For additional information visit [www.mcmbm.com](http://www.mcmbm.com).

*For further information please contact your McMillan Binch Mendelsohn LLP lawyer or one of the Practice Leaders of our Advertising & Marketing Group listed below:*

### PRACTICE LEADERS

Sharon Groom	416.865.7152	<a href="mailto:sharon.groom@mcmbm.com">sharon.groom@mcmbm.com</a>
Bill Hearn	416.865.7240	<a href="mailto:bill.hearn@mcmbm.com">bill.hearn@mcmbm.com</a>

## McMILLAN BINCH MENDELSON

TORONTO | TEL: 416.865.7000 | FAX: 416.865.7048

MONTRÉAL | TEL: 514.987.5000 | FAX: 514.987.1213

[www.mcmbm.com](http://www.mcmbm.com)