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I. INTRODUCTION

In 1984, Converse is an official sponsor of the Olympic Games in Los Angeles. Nevertheless, a competitor builds murals near the L.A. Coliseum, where the Games are taking place, displaying its logo and several athletes wearing its sporting clothes.1

In 1994, a credit card company, who is not an official Olympic sponsor, airs advertisements in the build-up to the Lillehammer Winter Olympics stating that American travelers do not need a “visa” to go to Norway. This statement is factually correct, but the double entendre miffs Visa, the credit card sponsor of the Games.2

In 2004, Coors pays $13 million to be known as the official beer of the NFL. It sets up a billboard along a Houston highway proudly displaying the official NFL logo and giving a daily tally of the number of days until the Super Bowl. Across the highway, a non-sponsor beer company erects its own billboard, showing the tag line, “Our Super Parties, Our Beer” on top of a football.3

Welcome to the world of ambush marketing, or, as its opponents would have it, “parasitic advertising.” This practice is by no means new, but nevertheless has not been heavily litigated—mainly because, in most countries, it is essentially legal.

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This article discusses the legal aspects of ambush marketing in eight countries around the world. While it is not a complete global survey, it provides a sample of the approaches being taken to deal with this controversial advertising practice. First, ambush marketing is defined, and the most common methods of practicing it are explored. Next, the largely ambiguous legal state of ambush marketing in the United States is discussed alongside an overview of the law in several other countries, including Canada, India, New Zealand, Argentina and South Africa. The article then looks at Olympics-specific legislation and its use to prevent ambush marketing, including analysis of such laws in the United States, Australia and China. Creative tactics for preventing ambush marketing are explored, along with an examination of whether ambush marketing is indeed unethical or merely smart advertising. The article concludes that attention to this infrequently litigated practice is necessary on an international scale.

II. WHAT IS AMBUSH MARKETING?

Ambush marketing can be defined as an attempt by a company to cash in on the goodwill or popularity of a particular event by creating an association between itself and the event, without permission from the relevant organization and without paying the fees to become an official sponsor. This can be accomplished in any number of ways. One commonly used method is to purchase advertising time on television before, during and after an event; thus, even if McDonald's is the official Olympic fast food sponsor in a certain year, Burger King can still buy time to advertise during the Olympics, which might confuse consumers as to who the true sponsor is. Companies also often practice ambush marketing by erecting billboards near the event, using planes to fly their banners overhead or handing out free merchandise, like caps or T-shirts, at or near the event so that spectators who are picked up by television cameras become walking billboards. Any of these techniques might be combined with the use of imagery or words in advertising that remind people of the event in question,

6. Garrigues, supra note 1, at 505.
7. Bean, supra note 5, at 1105.
such as the image of a figure skater during the Olympics\textsuperscript{9} or words such as “Looking forward to the Big Game?” in an ad run prior to the Super Bowl\textsuperscript{10}.

Less common, and perhaps less obvious, ambush marketing methods include giving away free tickets to the event as prizes in an advertising campaign,\textsuperscript{11} sponsoring individual teams or athletes instead of the event itself (for example, sponsoring the Brazilian soccer team rather than sponsoring the World Cup)\textsuperscript{12} or even sponsoring the city where the event is held (Visa became the “official credit card” of Atlanta when that city hosted the Olympics in 1996).\textsuperscript{13} Whatever the method, the goal is always the same: to attract attention to one’s products or services by taking advantage of the “glow” of a big event. Some view this practice as ethically questionable, while others simply find it smart marketing. Either way, it works. A survey showed that three out of five companies most associated with the 1994 Winter Olympics in Lillehammer, Norway, were not the official sponsors, even though the privilege of being a sponsor cost $40 million that year.\textsuperscript{14}

This phenomenon displeases sponsors, as well as event organizers, who need sponsorship fees to raise money for the staging of future events. If the value of a sponsorship decreases, companies may no longer be willing to pay the sky-high fees required to call themselves “official sponsors.” But what, if anything, can be done to stop ambush marketing?

\section*{III. WHAT LEGAL REMEDIES ARE AVAILABLE TO AN “AMBUSHED” PARTY IN THE UNITED STATES?}

So far, the law in the United States has been on the side of ambush marketers because ambush marketing, purely defined, does not involve such traditionally illegal activities as trademark infringement or manufacturing of counterfeit goods.\textsuperscript{15} Despite the prevalence of the practice, only two U.S. cases have dealt with the

\begin{itemize}
\item[11.] Bean, \textit{supra} note 5, at 1105.
\item[12.] Id.
\end{itemize}
issue of ambush marketing to date, and neither case involved “pure” ambush activity. However, as discussed below, false advertising, dilution and breach of contract are all potential causes of action that may be asserted against ambush marketing.

It appears that an ambushed party may be successful if it can base a claim on breach of contract. One example of this type of claim is NCAA v. Coors Brewing Co.,\(^\text{16}\) in which the NCAA filed suit for injuries stemming from Coors’ use of NCAA Men’s Basketball Final Four tournament tickets as a prize in certain commercial promotions.\(^\text{17}\) Its claims were based on two legal theories: breach of revocable license (the revocable license in question being the tickets) and unfair competition. The breach of revocable license claim arose out of the language on the backs of the tickets: “[U]nless specifically authorized in advance by the NCAA, this ticket may not be offered in a commercial promotion or as a prize in a sweepstakes or contest.” The parties disputed whether this language could be enforced through the use of contract law principles. The unfair competition claim, in contrast, was based on Coors’ alleged attempt to associate itself with the NCAA and to confuse the public into believing that the two were in some way affiliated. The case eventually settled without setting precedent on the issue of ambush marketing. Nonetheless, Coors is still important in that it was the first challenge to unauthorized use of game tickets for ambush marketing purposes.\(^\text{18}\)

What other causes of action might be available to an ambushed party in the United States?

**A. Trademark Infringement**

Notably, ambushed parties are unlikely to succeed on a cause of action based on trademark infringement. While the unauthorized use of a registered trademark or service mark would constitute trademark infringement, ambush marketing falls outside this umbrella because ambush marketing campaigns do not use third parties’ marks; rather, they creatively refer to an event and use their own marks and trade name to associate themselves with it. As a result, a cause of action for traditional trademark infringement is often unavailable to the ambushed party.

\(^\text{17}\) Id. at *1.
\(^\text{18}\) McKelvey, supra note 4, at 10.
B. False Advertising

At least one case, Mastercard Int'l v. Sprint Communications Co., suggests that an ambushed party could maintain an action for false advertising under Section 43(a) of the Lanham Act, which prohibits “false or misleading” descriptions or representations of fact in commercial advertising or promotion. In that case, Mastercard, as an official sponsor of the 1994 World Cup, had a license with ISL Football AG to use the World Cup '94 trademarks on all “card-based payment and account access devices.” Sprint, the official long-distance telecommunications sponsor, began using the trademarks on telephone calling cards. Mastercard sued Sprint for false advertising under Section 43 of the Lanham Act.

The court found that the agreement between ISL Football AG and Mastercard barred Sprint’s use, and therefore Mastercard was entitled to an injunction. Sprint was attempting to create an association in consumers’ minds between it and the World Cup, when the evidence clearly showed that its use of the World Cup '94 marks on calling cards was not ISL-approved:

Here, Sprint wishes to use the World Cup marks to convey to the world the false impression that its use of the marks on calling cards is officially sanctioned by the World Cup organization. Clearly, that is not the case, and Mastercard, which has the exclusive right to use the mark for such purposes, is entitled to enjoin this deceptive use.

As an ambush marketing case, Mastercard is unusual. First, the case involved actual use of another’s trademark, the World Cup logo, which does not occur in traditional ambush marketing. Second, both the plaintiff and defendant each had a license with the organizers of that event, and the court’s decision hinged largely on those agreements. Ultimately, the court’s analysis focused on an analysis of breach of contract issues, not the parties’ intellectual property rights.

The First Amendment also plays a role in ambush marketing; indeed, it may be a large part of the reason why the current legal remedies in the United States are lacking. The First Amendment

23. Id.
24. Id. at 1966.
25. Id.
allows advertisers to promote their goods and services, provided they do not violate the rights of others. As has been discussed, pure ambush marketing is not a violation of trademark law per se. As a result, if the ambush marketer is not guilty of trademark infringement in an ambush marketing campaign, then it may stand behind the protections of the First Amendment. Also, there has been an increasing trend toward upholding First Amendment rights where they conflict with trademark rights, although this is most noticeable in the context of trademark infringement cases involving artistic works. The case that first established the First Amendment-friendly “artistic relevance” standard for determining whether titles of certain artistic works constituted Lanham Act violations is *Rogers v. Grimaldi.* This standard deems that the balance between free speech and trademark rights should generally tip in favor of free speech, unless the title has “no artistic relevance to the underlying work whatsoever” or “explicitly misleads” as to the source or content of the work. Another example is *Mattel v. Walking Mountain Productions,* in which the court ordered $1.8 million in costs and attorney’s fees to Walking Mountain in a trademark infringement action brought by Mattel. The court stated that Mattel’s claims were groundless and unreasonable because the defendant’s photographs, which depicted BARBIE dolls in provocative poses, were clearly parodic in nature, and the use of the BARBIE mark was relevant to the artist’s work and was not misleading. Based on these cases, a court faced with an ambush marketing situation could conclude that First Amendment protection extends to ambush marketing campaigns, depending upon the circumstances.

**C. Dilution**

Could Visa successfully assert a dilution claim if a competitor ran an ad stating that “you don’t need a visa to go to . . .”? The recent Supreme Court case of *Victor Moseley et al. v. V Secret Catalogue, Inc. et al.* held that the Federal Trademark Dilution Act requires “actual dilution,” rather than “a likelihood of dilution,” by objective proof of actual injury to the economic value

27. 875 F.2d 994 (2d Cir. 1989).
28. Id. at 999.
30. Id. at *3.
of the mark. Unfortunately, the Court gave no guidance as to what proof would suffice.

Several courts have now held that identical marks in themselves constitute sufficient circumstantial evidence to prove actual dilution,\textsuperscript{32} but ambush marketing situations do not traditionally involve an ambusher using a third party's trademarks, our example notwithstanding. With bills before Congress to amend the Federal Trademark Dilution Act, it is difficult to predict the applicability of the Act to ambush marketing activities.

\textbf{D. Reverse Confusion}

On the surface, a reverse confusion theory would seem to be analogous to ambush marketing activities. According to one authority, reverse confusion may occur when the junior user saturates the market and overwhelms the senior user, rather than trying to profit from the senior user's mark.\textsuperscript{33} Reverse confusion may occur when the junior user swamps the reputation of the senior user with a relatively much larger advertising campaign.\textsuperscript{34} However, the doctrine has never been applied in an ambush marketing case in the United States. As noted, ambushers are not usually using third parties' marks; they are merely trying to associate their own marks, and thus their products or services, with the "glow" of a large event. Furthermore, the reverse confusion doctrine in particular is highly fact-specific and depends for its application on the presence of certain critical key facts. When the facts vary from that model, reverse confusion doctrine is not applicable. Therefore, its applicability to ambush marketing is unclear.\textsuperscript{35}

\textbf{E. Tort of Interference With Contract and Prospective Advantage}

Two other possibilities for relief, although they have never been discussed in a precedential ambush marketing case in the United States, are the tort of interference with contractual relations and the related tort of interference with prospective economic advantage. The elements of tortious interference with contractual relations, in brief, are: 1) the existence of a valid


\textsuperscript{33} \textit{Id.} at 23-37.

\textsuperscript{34} \textit{Id.} at 23-46.

\textsuperscript{35} \textit{Id.} at 23-46.
contractual relationship; 2) knowledge of that relationship on the part of the interferor; 3) intentional interference causing a breach or termination of the relationship; and 4) resultant damage to the party whose relationship was disrupted.\textsuperscript{36} Similarly, the elements of tortious interference with prospective economic advantage are the existence of a business relationship or expectancy with a probability of future economic benefit, knowledge of it, interference with it causing the relationship to be terminated or the expectancy not realized, and resulting damages.\textsuperscript{37}

While claims based on this approach have yet to be ruled upon in the United States, the tort of interference with contract was mentioned briefly in the Canadian case of \textit{National Hockey League et al. v. Pepsi-Cola Canada Ltd.}, discussed fully below.\textsuperscript{38} In that case, the court noted without further explanation that Pepsi’s conduct had not risen to the level of this tort because Coke’s contractual rights were very limited.\textsuperscript{39} Thus, although the approach was not successful, it appears to be a potentially valid one under the correct set of facts.

Although ambush marketing remains largely unaddressed in the United States, courts in several other countries have had occasion to deal with the issue. It should be noted that the bases for ambush marketing claims differ from country to country. Litigants in some countries have brought claims for passing off or unfair competition, while other countries have specific legislation in place to deal with the issue. What follows is a glimpse of how ambush marketing lawsuits have been treated around the world. The approach taken in those other countries may represent the different directions in which U.S. law could be headed.

\textbf{IV. CANADA}

Canada is home to \textit{NHL v. Pepsi},\textsuperscript{40} the first case worldwide ever to deal head-on with ambush marketing in its purest form. In this case, Pepsi was sued for putting on an advertising campaign during the Stanley Cup playoffs called the “Diet Pepsi $4,000,000 Pro Hockey Playoff Pool.” Although Coke was the official sponsor of the NHL, Pepsi invited the public to collect specially marked promotional materials, such as bottle caps, cups and scratch cards, containing statements such as, “If [name of city that was home to

\textsuperscript{36} \textit{Commerce Funding Corp. v. Worldwide Security Services Corp.}, 249 F.3d 204, 210 (4th Cir. 2001).
\textsuperscript{37} \textit{Id.}
\textsuperscript{38} 70 B.C.L.R. (2d) 27 (1992), aff’d, 59 C.P.R. (3d) 216 (1995).
\textsuperscript{39} \textit{Id.} at 217.
\textsuperscript{40} \textit{Id.} at 216.
an NHL team] wins in [x number of games], you win.” Lucky contestants in this game received prizes. All the materials contained disclaimers stating that the campaign was not associated with or sponsored by the NHL.

The court identified the action as one for the tort of passing off, specifically, the type of passing off involving the suggestion, in promotion for the defendant’s product, that the plaintiff was in some way authorizing or endorsing that product. In this way, the defendant could cash in on the goodwill built up previously by the plaintiff. The court found that likelihood of any false impression as to sponsorship was minimal and, in any event, was eliminated by the clear disclaimers. Therefore, the action was dismissed.

*NHL v. Pepsi* made it clear that, however the rest of the world chose to handle the problem of ambush marketing, “pure” ambush marketing such as was involved in this case—involving no trademark infringement or other legal violations—was an acceptable practice in Canada. Interestingly, however, the covenant that Canada signed regarding Vancouver’s candidacy for the 2010 Olympic Games stated that, while ambush marketing is not specifically addressed in the Canadian Competition Act\(^{41}\) (which governs business conduct in Canada), the misleading representations and deceptive marketing practices provisions of the Act could apply if a person, while engaging in ambush marketing, makes a materially false or misleading representation to the public. Thus, even in Canada, the door to ambush marketing actions may still be partway open.\(^ {42} \)

V. INDIA

The Delhi High Court of India took a similar view of ambush marketing in the case of *ICC Development (Int'l Ltd.) v. Arvee Enterprises & Philips,*\(^ {43} \) a case triggered by Philips’ promotion offering Cricket World Cup tickets as prizes. The ads for the promotion used the slogans “Philips: Diwali Mana World Cup Jao” and “Buy a Philips Audio System, Win a Ticket to the World Cup,” alongside an image of a ticket with a fictitious seat and gate number reading, “Cricket World Cup 2003.” The International Cricket Council (ICC) had entered into contracts with nine official sponsors that year. Philips was not one of them. The ICC claimed that Philips’s ads constituted passing off, unfair competition and ambush marketing, and filed suit, seeking an injunction

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43. 2003 (26) P.T.C. 245 (Del).
restraining Philips from publishing any further advertisements associating itself with the ICC or the Cricket World Cup.

The court dismissed the suit and refused to grant the injunction, holding that the slogans at issue merely showed that the purchasers of Philips’s goods might win a prize and nothing more. While the campaign drew attention to the event, it did not create any likelihood of confusion that Philips was a sponsor or licensee thereof. Therefore, the court said, there was no passing off or unfair trading.

In directly addressing the question of ambush marketing, the court stated that the phrase “ambush marketing” is not a legal term and, moreover, that the practice itself is different from passing off. This difference arises from the fact that there is no element of deceit in ambush marketing, only opportunistic commercial exploitation of the event. Thus, in the court’s view, this type of conduct is not contrary to the public interest, particularly since commercial advertising is free speech protected by the Indian Constitution. If the trademarks of the plaintiff are not used, the advertising campaign cannot be illegal. The court noted in particular that the terms “World Cup” and “Cricket World Cup” were generic and thus not protectable as trademarks, and that Philips had refrained from using any of the plaintiff’s protectable marks, such as the World Cup logo or mascot.

Like the NHL v. Pepsi decision in Canada, this case essentially seems to hold that ambush marketing is legal, putting India on the permissive side along with Canada. As seen in the following discussion, New Zealand also fits into this mold.

VI. NEW ZEALAND

In New Zealand Olympic and Commonwealth Games Ass’n, Inc. v. Telecom New Zealand, the New Zealand Olympic Association (the “Association”) sued Telecom New Zealand regarding one of its ads. The ad featured the word “ring” in positions similar to those of the five rings of the Olympic symbol, in the following manner:

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ring    ring    ring
      ring       ring
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This arrangement of words appeared beside the slogan “With Telecom mobile, you can take your own phone to the Olympics.” The Association sought an injunction, alleging that the ad

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constituted unfair trading and passing off because it suggested an association between the Olympics and Telecom.45

The court refused to grant the injunction, finding that the “typical newspaper reader” would not be misled by the ad. It opined that, as newspaper readers “tend to browse” and would “not be reading advertisements in a closely focused way,” the advertisement would merely be “mildly amusing” and would “seem like a cartoon or a clever device.” It further stated that “it is a long way from [brief amusement] to an assumption that this play on the Olympic five circles must have been with the authority of the Olympics organisation, or through sponsorship of the Olympics.”46

VII. ARGENTINA

Not all courts are so lenient regarding ambush marketing, however. In a still-pending case, Argentina may come down on the opposite side from Canada, India and New Zealand by refusing to tolerate the practice. On June 3, 2002, the Federal Court for Civil and Commercial Matters of the City of Buenos Aires granted a preliminary injunction in the case of FIFA v. PepsiCo De Argentina S.R.L. That case involves an advertisement that Pepsi ran during the 2002 World Cup, of which rival Coca-Cola was an official sponsor. The ad in question prominently featured various star soccer players and used the phrase “Tokyo 2002.” FIFA complained that this ad was unfair competition because it suggested an association between Pepsi and the World Cup. The court agreed, issuing a preliminary injunction ordering Pepsi to stop broadcasting the ad lest consumers believe that it was sponsoring the World Cup.47

While the case currently remains unresolved, the issuance of the preliminary injunction suggests that Argentina may fall on the less permissive side when it comes to ambush marketing. However, no country discussed here has been tougher on ambush marketing than South Africa.

VIII. SOUTH AFRICA

South Africa has recently amended two of its laws to make ambush marketing essentially illegal. In particular, it is now a criminal offense in that country, and can result in heavy fines and

45. Id.
46. Id. at 763.
even lengthy jail sentences, when done around the time of certain designated protected events.\textsuperscript{48}

To accomplish this, new sections have been inserted into South Africa’s Trade Practices Act of 1974.\textsuperscript{49} These sections prohibit the publication or display of false or misleading statements or ads implying a contractual or other connection with a sponsored event or its sponsor.\textsuperscript{50} A new provision was also introduced into the Merchandise Marks Act.\textsuperscript{51} This provision outlaws the deliberate use of a trademark in relation to a sponsored event, without the authority of the event organizer and in a manner that is calculated to achieve publicity for the mark and thereby to derive gratuitous promotional benefit from the event. Those desiring protection under this provision must apply to the South African Minister of Trade and Industry, who designates certain events as protected under the law. (The Act does not specify whether applications should be made by event organizers or by sponsors, or the time period within which they should be made.) These protected events can include any that will be held in public, of a sporting or entertainment nature, which will be likely to attract consumers’ attention and which are financed by commercial sponsorship. The Minister cannot designate an event as protected unless the staging of the event is considered to be in the public interest and is satisfied that the organizers of the event have created sufficient opportunities for small businesses, particularly those of previously disadvantaged communities. The designation of an event as protected must end within one month after the staging of the event.\textsuperscript{52}

The 2003 Cricket World Cup was the first major event to benefit from this new law,\textsuperscript{53} where it was rigorously enforced. Two schoolteachers took a group of students to a match at the Maritzburg Oval. Because Pepsi was the event’s official sponsor, the children with Cokes in their lunch boxes were barred entry until they peeled off the Coca-Cola labels and scraped off the logos from all the bottle tops and lids.\textsuperscript{54} The CWC organizing committee,
in an effort to protect the interests of the event’s sponsors, had made a list before the event of products that were banned from the stadium which, in addition to Coca-Cola products, also included various branded clothing, hats and bags. \(^{55}\) Hundreds of cease and desist letters were also sent to offenders, including both local and international companies, ordering them to stop their ambush marketing activities. \(^{56}\)

IX. OLYMPICS-SPECIFIC LEGISLATION

While the new South African laws protect public events in general, several other countries have taken the tactic of passing anti-ambush laws just to cover what for them will usually be a once-in-a-lifetime event: the Olympics. Host countries often put strict legislation in place before the Games, specifically to protect the Olympic trademarks and mottos.

A. United States

One example of this approach is the United States, which has had its Amateur Sports Act \(^{57}\) (ASA) in place since 1978. This statute grants the United States Olympic Committee (USOC) an almost absolute right to control the use of any Olympic-related words, marks, mottos or insignia by others, such as the word “Olympics,” the Olympic five-ringed symbol, the Latin motto, *citius altius fortius*, or its English translation, “faster higher stronger.” It provides that the USOC does not have to prove likelihood of confusion in order to make out an infringement case, and that standard Lanham Act defenses may not be available to an alleged infringer. \(^{58}\) While the ASA does not expressly refer to ambush marketing, similar legislation in Australia and China has been passed with the additional goal of guarding against instances of ambush marketing.

B. Australia

Australia has passed a wide variety of legislation specific to the Olympics, particularly right before it hosted them in Sydney in 2000. One example is the Sydney 2000 Games (Indicia and Images) Protection Act 22, 1996, now repealed but put in place

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\(^{55}\) Coke Drinker Says He Was Assaulted at Cricket Stadium, SABC News, at http://www.sabcnews.co.za/sport/cricket/0,2172,53153,00.html (February 17, 2003).


specifically for the 2000 Olympic Games. That legislation broadly
prevented the use of Olympic-related expressions and images for
commercial purposes. Unlike the U.S. Amateur Sports Act, it
included not only the Olympics’ specific mottos and trademarks,
but also such vague expressions as “Sydney 2000” and “Summer
Games.” Moreover, it covered “any visual or aural
representations that, to a reasonable person, in the circumstances
of the presentation, would suggest a connection” with the Sydney
2000 games. What the Act essentially prohibited was the
unlicensed use of these indicia and images for commercial
purposes, if the indicia and images were applied to goods or
services in a way that “to a reasonable person would suggest”
sponsorship.

Australia also passed the Olympic Insignia Protection Act (the
“Act”) in 1987, which was amended in 2001 (the “2001
Amendments”). This Act created a class of “protected Olympic
expressions,” including the words “Olympic Games,” “Olympic,”
“Olympiad” and their plurals. The Olympic rings symbol and
Olympic motto had been protected from unauthorized use in
Australia under the original Act, but the 2001 Amendments gave
rise to still more prohibited usage by including the words listed
above. Under the 2001 Amendments, the protected terms may not
be used without permission in ways that suggest sponsorship of or
affiliation with the Olympics.

While the 2001 Amendments may prevent the most overt
ambush marketing that features Olympic expressions or logos,
they will not prevent the type of advertising in which sponsorship
is only implied because of other factors, which means they will
essentially fail to cover instances of “pure” ambush marketing. The
2001 Amendments also do not stop companies from using
expressions such as “Sydney 2000” in their advertising. Registered
trademarks incorporating Olympic brands that were registered
prior to September 20, 2001 are not affected by this law. The
government was set to review the effectiveness of the law after the

60. Lisa Riton and Blake Dawson Waldron, Brand Protection for International Sporting
61. Id. at 8.
62. Id.
Athens Olympics in 2004, until which time it continues in its current form.65

Finally, in anticipation of the 2000 Sydney Games, Australia passed the Olympic Arrangements Act.66 In its effort to prevent ambush marketing activity, this Act focused mainly on the administrative and practical aspect of the Games. For example, it made an offense the sale of any unauthorized merchandising articles within a certain radius of any of the event locations during the Games. Offending articles could be seized and forfeited. It also banned skywriting or flying banners above the official locations by placing a temporary restriction on the airspace over competition venues.67

While all these efforts would seem to prohibit many instances of ambush marketing, some argue that the law may have failed to achieve its purpose in this regard, noting the types of advertising that did in fact take place during the Sydney 2000 Games.68 However, ambush marketing is so legally elusive that any degree of success in preventing it may be considered a cause for celebration among its opponents.

C. China

Following suit, China passed its own regulations protecting Olympic intellectual property rights shortly after Beijing was selected as the host city of the Olympics for 2008. These are the Protection of Olympic Symbols Regulations,69 effective April 1, 2002 (the “Regulations”). Like the U.S. Amateur Sports Act and the Australian legislation, the Regulations protect Olympic symbols and names, but also include an ambush marketing clause. The Regulations state that Olympic names and logos may not be used for “implied commercial purposes,” meaning that no entity can create a false or unauthorized association with the Olympic movement. However, ambush marketing is defined somewhat vaguely as “activities that might be deemed by others as an existing sponsorship or other supportive relationship.” This

67. Harbottle & Lewis, supra note 50.
unclear language is likely to result in the use of a significant amount of discretion in enforcing the Regulations.\textsuperscript{70}

X. HOW CAN SPONSORS PROTECT THEMSELVES?

What precautions can marketers take to avoid lawsuits? And what can sponsors and event organizers do to prevent ambush marketing from confusing the public as to who are the true sponsors of a major event?

Sponsors and event organizers have created a variety of strategies to prevent ambush marketing, or at least guard against what they see as its harmful effects. Although a lawsuit might seem like the first solution to come to mind, there are practical risks to consider that may make suing a less desirable option. These risks, along with the undeveloped status of the legal issues in the United States, may help explain why ambush marketing has been so infrequently litigated. For example, the organizations behind sporting events might be reluctant to sue for fear of alienating the large corporations who, although not current sponsors, might want to sponsor the event in the future. Organizers of events like the Olympics, where so many companies choose the cheaper option of sponsoring individual teams rather than the event itself, have an additional dilemma: a crackdown on ambush marketing could lead to a mass defection by these smaller sponsors, who might fear that their activities could be construed as ambushing if their competitors are sponsoring the larger event.\textsuperscript{71}

Therefore, a plethora of non-legal strategies have been employed in an attempt to curb the offending marketing activity without getting too combative. This type of self-help may be the most effective way of protecting oneself from such activity in the United States.

One method is for official event sponsors to compete with their own ads. For example, event organizers can control the billboards around the event by buying up the space for sponsors only. In 1997, the International Olympics Committee announced that any city bidding to host the Olympics must secure all advertising space within city limits for official sponsors for the entire month in which the Games are to be held, or the bid will be denied. Athens, the host for 2004, reportedly agreed to do so despite the $10 million it was expected to cost the city.\textsuperscript{72}

\textsuperscript{70} Fraser Mendel and Chao Yijun, \textit{Protecting Olympic Intellectual Property}, 17(4) China Law & Practice, May 2003, at 33-34.


Similarly, sponsors can buy up advertising time on the network televising the relevant event, to prevent competitors from buying that time. For example, McDonald’s paid NBC to be the only fast food company allowed to advertise during the Atlanta Olympic Games telecast. However, it should be noted that this tactic is far from foolproof—ambushers can still buy time on the national network’s hundreds of local affiliates, and thus get their message out nevertheless.\(^{73}\)

Another strategy is to carefully police the event itself. This includes putting restrictions on tickets to the event, to prevent them from being given away as prizes in commercial promotions without authorization.\(^{74}\) It also includes such now-common tactics as preventing the merchandise of a sponsor’s competitor from being displayed in the stadium where the event is held, or even being carried in by a spectator, as happened to the schoolchildren at the 2003 Cricket World Cup in South Africa, recounted above.

Finally, public education can also be used to prevent, or at least lessen the impact of, ambush marketing. Event organizers use this strategy to try to convince the public that advertising activity that appears to be associated with an event, other than that of official sponsors, threatens the future of the event. The goal here is help the public recognize ambush marketing when it occurs, to see it as damaging and thus to react negatively to it.\(^{75}\) Television and newspaper ads, or mass mailings, could all be used in support of this goal.

**XI. IN DEFENSE OF AMBUSH MARKETERS**

In 2000, individual Olympic sponsors each paid up to $40 million.\(^{76}\) The sponsorship yield from the 1998 World Cup was estimated at $29 billion.\(^{77}\) Clearly, the stakes are high and event organizers are reaping the rewards. Just as clearly, small companies cannot afford to be sponsors.

Anheuser-Busch paid more than $50 million to become the official sponsor of the 2002 Winter Olympics.\(^{78}\) As an official sponsor, Anheuser-Busch had the rights to use the word “Olympic”


\(^{75}\) *Id.*


\(^{77}\) *Id.*

\(^{78}\) *Id.*
and the five-rings logo. A local company, Schirf Brewery, decided to mark its delivery trucks with the phrase “Wasatch Beers. The Unofficial Beer. 2002 Winter Games.” Schirf did not use the term “Olympic” or the five-rings logo in its advertising (thus avoiding legal liability), though it undoubtedly associated itself with the Olympic games. In this case, some might be more inclined to sympathize with a small local brewery just trying to get its name out than a large corporation engaging in a similar activity.

And what about the suggestion that ambush marketing is not unethical but rather is smart advertising? Perhaps ambush marketing, when used properly, is merely another way for companies to compete. One could argue that if consumers associate an ambush marketer or its products with an event, perhaps this merely speaks to the ingenuity of the ambush marketing campaign and the skills of the ambush marketer.

Also, it is worth noting that ambush marketing has likely resulted in increased revenues for an event’s host city. When a company pays to become the official sponsor of an event, that company has the right to advertise in coveted spaces in and around the event. One could argue that ambush marketing campaigns have made sponsored properties more valuable, resulting in an economic boom for the host city.

Thus, there appears to be room to debate the ethics of ambush marketing. For some, it is perceived as the only way to compete and nothing more than savvy advertising practices. Further, it often leads to increased sponsorship revenues for event organizers and host cities alike.

Ambush marketers might protect themselves from liability by placing disclaimers in their advertising materials, stating that they are in no way affiliated with or endorsed by the relevant event organizers. However, this is becoming a risky method in terms of likely judicial reaction. As Lord Macnaughten put it, “Thirsty folk want beer, not explanations.” The current case law seems to suggest, on the whole, that disclaimers will be effective only if prominently placed. In general, some courts appear to be getting more skeptical about how much disclaimers really do to

79. Id.
80. Id.
81. Id.
83. Id.
84. Id. at 11.
abate consumer confusion and their effectiveness has been questioned.\textsuperscript{86}

\section*{XII. CONCLUSION}

Ambush marketing is a controversial and infrequently litigated issue both in the United States and elsewhere. While it is regarded as ethically ambiguous by some, increased competition among businesses and marketers are some of the more positive results of this marketing practice. Paying attention to the law where it does exist around the world is an undoubtedly worthwhile endeavor both for marketers and for attorneys. The law in the countries where this issue has arisen may help to forecast how future U.S. cases, as well as those in other countries, will be decided.