

# WORLD FOOTBALL SUMMIT TRADEMARK AND IP TOOLKIT

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**International  
Trademark  
Association**

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# TOOLKIT OVERVIEW

As the world's most popular sport, football fuels an industry that generates billions of dollars in revenue every year. The opportunities to commercially profit from the game go far beyond the selling of tickets.

Nowadays, more than ever, companies and other corporate agents are willing to capitalize on the public's interest to promote their goods and services and make offerings that were simply unthinkable some years ago.

In the business of football, the assets that are negotiated and licensed are essentially intangible. Names, logos, crests, mascots, and other distinctive signs are the subject matter of licensing and merchandising agreements. Images of the games are central in the highly lucrative area of football broadcasting. And the use of athlete's likenesses, in their turn, are negotiated through endorsement contracts and other sponsorship deals. These all constitute aspects of intellectual property (IP).

Protecting these assets is fundamental for all parties involved in the business. That is why football and IP are inextricably intertwined.

Understanding and successfully navigating these issues can create tremendous opportunities for lawyers and legal professionals. Bearing this in mind, this toolkit covers the most relevant aspects of the interface between intellectual property and football.

- Section 2 explains why the creation and protection of trademarks is important to a club, demonstrating how this form of IP can be paramount for the generation of revenue and to the growth of the business.
- Section 3 explores the commercialization of Trademarks and IP, including sponsorship contracts signed by leagues, clubs, and players. It also deals with reputational issues and how IP rights can be properly secured.  
  
Section 3.3. covers the emerging and quite interesting area of NFTs, explaining what they are and why they constitute an opportunity for clubs and other football-related entities. This section also deals with IP enforcement in the video game industry, and elaborates on the metaverse, blockchain, third-party marketplaces and platforms, and the challenges that are unique to the digital space.
- Section 4 addresses stadium-related rights (including naming rights) and how football clubs can profit from them.
- Section 5 dives into the secondary business that can generate an additional revenue.
- Section 6 declares that “union is strength” and identifies the main associations that can help you in your IP management and defense.
- Section 7 explores the new (digital) world of opportunities that esports and the metaverse can offer.
- Section 8 deals with clearance and protection of IP. It explains what a club should consider when developing a brand, including how and where it should be protected.
- Finally, Section 9 examines enforcement of IP rights. It starts with on-line enforcement, including websites, social media platforms, marketplaces, and domain names. It then moves on to cover off-line enforcement, including anti-counterfeiting programs, unauthorized use of IP for marketing purposes, and enforcement of exclusivity rights in restricted areas.

If a club or football-related entity does not understand and address these issues, it is likely missing out on core revenue by failing to protect and monetize IP rights as a strategic tool to grow their business.

# INTRODUCTION

## Why creation and protection of brands (and trademarks) is important to a club

Brands and trademarks are property assets that can be bought, sold, licensed (not only for merchandising), or even used as a security interest to secure a loan to grow your business.

- Brand = That which represents your company's reputation and goodwill to consumers/in public
- Registered Trademark = A legal protection of your brand

Brands in football are "Super Brands" because they convey the passion of their fans and customers and represent the values of their teams. The goodwill associated with these Super Brands is potentially huge and the more your team evolves, the more valuable your brand will be.

Football clubs are always looking at new sources of revenue and there is no better way to do that than by using their own brands.

### 2.1. IP is essential to revenue streams/growth of business (licensing, secondary businesses):

- Create your brand
- Register your Trademark
- Place a value on your brand
- Maximize the value of your brand through its full exploitation and monetization

### 2.2. Enforcement of your brand is essential to:

- preserve the legal validity of your Trademark,
- prevent infringement to avoid significant damage to you and your goods/services, including loss of the goodwill and reputation
- seek compensation for actual damage caused by unauthorized uses of the Trademark.

## 3.1. Sponsorship

### 3.1.1. League/Club

- A club will usually have licensed rights to use its League brand IP (e.g., trademark and copyright). League brand IP tends to be owned by the relevant Association.
- A club should own all Club brand IP rights including name, crest, slogans, nicknames, or synonymous phrases.
- A club can commercialize its sponsorship assets through deals with third-party sponsors. Potential club assets could include (subject to local regulations) sponsor brand placement on the Club kit (see below for more detail), stadium naming rights, stadium perimeter board exposure, and Club partner designations (e.g., Official Shoe Sponsor of the Club).
- A League or the relevant Competition will often:
  - ◊ require the inclusion of a League or Competition logo on Club assets such as shirts; and
  - ◊ dictate the places on the Club kit that can be commercialized for sponsors (e.g., front of shirt, sleeve, back of shirt, shorts, etc).
- A club must be aware that the commercial sponsorship rights it grants to a sponsor must not conflict with Competition sponsors appointed by the Competition organizers. For example, the Champions League requires clubs to provide “clean” club stadiums for all Champion League games to allow the display of Champion League sponsors in the stadium.

### 3.1.2. Player/Club

- Image Rights of players are potentially commercially exploitable by either the Club or the Player.
- A Player’s Image Rights may include the Player’s name, likeness, image, voice, and so forth.
- For example, Players who own their Image Rights may:
  - ◊ permit the Club to exploit Image Rights for Club-related activities (including use by Club Sponsors); and
  - ◊ personally exploit the Image Rights for a personal non-Club endorsement deal. The player cannot use Club trademarks (e.g., be depicted in Club kit) for her endorsement activities.
- The right to exploit depends on:
  - ◊ who owns the Player’s Image Rights (i.e., the Club or the Player); and
  - ◊ in what context the Image Rights are being exploited (i.e., the Club context or the Player’s personal context).
- Some players and clubs are exploiting Image Rights through the trending sale of NFTs. Beware of unauthorized use of trademarks—for example a player launching a personal NFT potentially infringes the Club’s trademarks by wearing Club kit see below for more on NFTs).

### 3.1.3. Warning: reputational issues

- Material and ongoing reputational risk issues can:
  - ◊ affect the value or perceived value of a sponsorship
  - ◊ cause loss of revenue from sponsors suspending/terminating sponsorships
  - ◊ diminish the attractiveness of the Club brand to potential sponsors.
- Players who receive ongoing adverse media coverage may impact a club’s reputation. This may impact the value of the Club brand/future sponsorship deals.
- Reputational risk may come from various sources:
  - ◊ Fan and public reaction
  - ◊ Negative media focus on a club or player
  - ◊ Corporate governance/sanctions
  - ◊ Reputationally risky behavior of a club or players.
  - ◊ The reputation of football clubs, managers, and sponsors
  - ◊ Players with a bad reputation (prison sentences or other brushes with the law, etc.)
- Breakaway Leagues:
  - ◊ Attracting new club sponsors if a club joins a new league may be challenging as the new league may have no proven metrics on viewership or brand awareness.

### 3.1.4. Ensuring appropriate IP rights are secured

- Register trademarks for names and logos (and, potentially, slogans)
- Privacy law: Obtaining Player consent for use of Image Rights before use by the Club.
- Copyright: Copyrights generally don’t need to be registered, but some countries have a registration system (e.g., the US and China).
- Unregistered rights: Your ability to rely on unregistered right will depend on the country (e.g., some countries will have provisions for unfair competition/passing off to protect the reputation of a player or club).

# COMMERCIALIZATION OF IP

## 3.2. Merchandising

- The production and sale of merchandising products branded with Club, League, or Federation trademarks, are a very common and typical way to commercialize IP rights.
- It is crucial to develop and design a merchandising program defining the following issues:
  - ◇ Identification of the assets to be included in the products
  - ◇ Definition of the territories where the merchandising products are going to be marketed
  - ◇ Definition of the categories of products to be produced and marketed
  - ◇ Confirmation that all the assets to be used and reproduced in the products are duly protected in each territory and relevant class
  - ◇ Definition of how the merchandising program will be executed:
    - Directly by the rights holder
    - Through a licensing program:
      - Master licenses
      - Direct licenses
      - Sublicensees
      - Authorized distributors, etc.
  - ◇ Definition of whether the sales will be conducted physically and/or digitally.
  - ◇ Creation of a brand manual to include guidelines regarding how the IP rights may be used by the licensees (producers, distributors, etc.) both in the products and on the label or packaging.
- Build a strong enforcement strategy to guarantee to the licensees that the trademark holder is concerned about keeping the market clean of non-authorized products.

## 3.3. NFTS/Videogames

### 3.3.1. NFTs 101

- What is an NFT? the NFT is the link to the asset, not the asset itself
- What rights do you own when you buy an NFT?
  - ◇ Whatever rights are given to you by assignment or license
    - This is no different from buying a painting—what rights do you get when you buy an original Picasso? Only ownership over the physical support, not over the intellectual work.
  - ◇ Vet the transferor the same way you would veto any investment or high value purchase—Do they have the authority to grant the rights they are granting?
- How are rights granted? Smart contract plus a physical contract
- What is the *real* value?
  - ◇ Exclusivity (limited release or autographed baseball card, custom jerseys, or skins)
  - ◇ Immersive experiences (sporting events, games, matches)
  - ◇ Interoperability (e.g., your NFT provides access to certain powers or weapons in one game that you can then access and utilize across other platforms or titles)
  - ◇ Automatic royalty payments by transaction (e.g., ticket sales)

### 3.3.2. Protection and Enforcement Considerations for Digital Assets

- How should brands approach registering trademarks for digital assets?
  - ◇ Large companies are filing trademark applications to sell digital versions of their products in the metaverse
  - ◇ Classes 9, 35, and 41 are being used by companies to register their products in the virtual world
- How are IP offices and brands approaching this? Intent to use applications are flooding IP offices; you need to be aware of the risks of overly broad descriptions vs more tailored descriptions



# STADIUM RIGHTS



## 4.

- Many football stadiums are named for local historical people, however, in other sports (and in many cases for European top teams in football) it is now customary to have the home stadium sponsored as an additional income stream.
- Naming rights are a remarkable marketing operation around which two real markets are growing: naming rights and concession rights.
- Naming rights denotes the right to name a stadium after a sponsor in exchange for an amount of money agreed upon between the parties. These are an alternative form of sponsorship.
- These rights also indirectly increase team negotiating power with corporate sponsors in smaller level sponsorship contracts.
- The brand of a club represents the foundational element of the exchange relationships established between the club and sponsor companies.
- Football clubs can grant various ‘concessions contracts,’ (‘franchises’), to third parties to provide various products and services at the venue.
- These concession or franchise arrangements bring in a welcome income stream and have the further advantage of the making the provision of food and beverages (“Pourage Rights”) more cost-effective and providing—in addition—a profit for the club concerned, which would otherwise have to operate the concession/franchise itself, possibly at a loss.

# SECONDARY BUSINESSES

## 5.

- Clubs, Leagues and even players and Federations, can explore multiple business activities, other than those strictly related to sport to further exploit their IP rights.
- The sports industry is starting to explore new business opportunities to increase its revenues:

<p><b>Educational programs:</b> directly offered from the sports entity (a club, league, etc.) or in collaboration with universities, colleges or other educational centers or partners</p>	<p><b>Sports academies</b></p>	<p><b>Research and development</b> projects on technology, programs, or methods related to sports</p>	<p><b>Audiovisual:</b> production, creation, and exploitation of audiovisual content to be commercially exploited in the market (broadcasters, platforms, social media, etc.)</p>	<p><b>Digital content and businesses:</b> developing new digital opportunities (the metaverse, NFTs, virtual events, etc.)</p>	<p><b>Exploitation of sports venues:</b> concerts, museums, tours, events, symposiums, conferences, etc.</p>
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- Make sure that all the IP rights to be exploited through secondary businesses are duly protected in the relevant territories and for the relevant activities/products.

# ASSOCIATIONS – INTA, WFS

## 6.

Participation in industry associations can play a critical role in the development and protection of your brand. By way of example:



- **INTA (International Trademark Association)**—A global association of nearly 35,000 brand owners and brand legal professionals, including major brands, small-and medium enterprises, law firms of all sizes, and professors and students. Membership grants you access to this immense network, advocacy outreach to government officials on relevant legislation, and provides you with resources and tools to further grow and protect your brands.



- **WFS (World Football Summit)**—The football industry’s leading stakeholders meet here to shape the future of the game and the business. The WFS hosts the largest and most influential community in football, providing a voice to the multiple stakeholders involved, allowing them to meet, discuss, promote, and generate business opportunities.



## ESPORTS, GAMING AND METAVERSE: A NEW (DIGITAL) WORLD OF OPPORTUNITIES

## 7.

- The growing popularity of esports and the metaverse has caught the eye of a number of professional football clubs (and professional players) who see the opportunity to grow their brand and their revenue.
- Activities in the gaming sector help enable football clubs to improve awareness of their brand, increase their fanbase, and them to connect with new generations of customers, such as the computer-loving millennials.



# ESPORTS, GAMING AND METAVERSE: A NEW (DIGITAL) WORLD OF OPPORTUNITIES

- The audiences are somewhat similar and there are numerous examples of football clubs getting involved and having their own esports franchises. For instance, Ajax has done a great job in linking esports with real-life soccer by using FIFA players in their social outreach, such as by filming training sessions with the players or offering home game tickets.
- Esports is a new opportunity for a lower-league teams to make it as a top tier club in the world (of esports) and to attract a worldwide audience. Danish side Brøndby IF and German second-tier VFL Bochum are a prime example of esports success. It's great exposure on a global scale because clubs with fewer fans can make a name for themselves and become more recognized.
- This is a real development opportunity and some football clubs have started to employ some of the most talented FIFA or PES gamers to represent them at the esports tournaments, many on a full-time basis. Esports players are yet to reach their peak when it comes to earning a contract with a club, but more and more clubs are doing it.
- The metaverse is a further opportunity since it creates for the fans a different way to experience games as well as the football club. Some clubs are moving there already but it's the leagues that should take the lead, following the examples of other sports.
- The 2022 NBA All-Star Game introduced "Coach Nat," a metaverse basketball coach, in Cleveland. Coach Nat trains and develops the next generation of NBA prospects as a computer-generated coach. In the metaverse, the coach will assist young basketball players in developing their talents.
- On April 16, 2022, the NBA collaborated with Google, inviting fans to an immersive 3D metaverse, Google Pixel Arena, in the NBA app, which allows fans to enter a 3D basketball arena through the gyroscopes of their phones to experience the daily lives of NBA players. Users can also join games on Google Pixel Arena to score points to win virtual rewards.
- To expand its presence in the metaverse, NFL launched NFL Tycoon, an interactive game on the free-to-play online gaming platform Roblox this year, which serves as an extension of the NFL's real-life engagement to encourage social connectivity, and in which fans may learn about and engage with NFL football.

## CLEARANCE AND PROTECTION OF IP



**Protecting brands by means of trademark registration provides football clubs with the tools to prevent someone using similar signs and riding off the back (and goodwill) of your business. Without registration, you may be tackled in your business expansion.**

# CLEARANCE AND PROTECTION OF IP

## 8.1. Creating and Clearing a Trademark

### What is a trademark?

An identifying mark, logo, name, slogan—and, depending on the jurisdiction, potentially also shapes, sound, smell, or color—or any other features that distinguish one source of products or services from another.



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### ▪ What to consider when developing a brand/trademark for a sports team?

- ◇ Name of Club—MILWAUKEE BREWERS
  - If the trademark includes a geographical reference, ensure that you have permission from local authorities.
- ◇ Club Logo
  - If the trademark includes a coat of arms or other locally protected emblems, ensure that you have permission from local authorities
- ◇ Stadium Name and Logo
  - If the trademark includes a sponsor's name, ensure that you have permission to use it (e.g., American Family Field naming rights licensed from American Family Insurance).
- ◇ Tournament emblem
  - Ensure permission of organizer, sponsor, or relevant governing body (e.g., FIFA, Premier League, etc.).

### ▪ What intellectual property rights should be transferred to the Club?

- ◇ Assignment of artistic works through employment agreements or service agreements
- ◇ Assignment of ownership in musical compositions (e.g., Club anthem) and audio-visual content
- ◇ Assignment of IP rights in a website design or mobile app.
- ◇ If the Club logo includes any third-party assets, ensure that you have obtained a license to use them.
- ◇ Ensure that key Club domain names and social media handles are owned by the Club.
- ◇ Ensure ownership of domain names, e.g., www.brewers.com
- ◇ Secure social media handles on the most common platforms, including those that are regional or country specific.

### ▪ Is the trademark I've chosen available??

- ◇ Conduct a trademark search to ensure that the Club name and Club logo are available for registration.
- ◇ Conduct the search in key jurisdictions of commercial importance.
- ◇ Seek local advice (in the jurisdiction in which you plan to register) as to whether the selected trademark is objectional or causes offense, as this can be a ground for refusal of a trademark registration.

# CLEARANCE AND PROTECTION OF IP

## 8.2. Filings, maintenance, budget

### Why do I need trademark protection?

- ◇ Trademark protection is the legal basis for exclusive rights to build sponsorship and licensing programs.
- ◇ A registered trademark is an asset that can be licensed, sold, or used as security.
- ◇ A trademark registration is a requirement to open official online retail stores on some e-commerce platforms.
- ◇ A trademark registration is a powerful enforcement tool to prevent third parties from benefiting from the goodwill in your brand (e.g., by selling counterfeit Club kits and/or merchandise).

### What can be protected?

Multiple aspects of a brand can be protected as trademarks. Approach the process in stages, depending on your legal budget, and your commercial and legal needs:

- a. Stage 1: file your primary trademark now
- b. Stage 2: file secondary trademarks later

MAIN BRAND ASSETS	TRADEMARK	STAGE 1 OR 2	OWNERSHIP/OTHER COMMENTS
Seattle Mariners*	Club Name	Stage 1	Primary Word Mark
	Main Club Logo	Stage 1	Primary Logo Mark
	Other Club Logos	Stage 1	Plans to use on merchandise now
	Club Uniform	Stage 1	Primary Club Kit
西雅图水手 (Seattle Mariners in Chinese Language)*	Translation/ Transliteration	Stage 2	Depending on extent of use by fans and merchandising plans
M's*	Nickname	Stage 2	Depending on extent of use by fans
“Sea Us Rise”	Slogan	Stage 2	Depending on short- or long-term use
T MOBILE PARK*	Stadium Name	Stage 2	Seattle Mariners licensed the naming rights in the home stadium to Deutsche Telekom AG who named the stadium T-Mobile Park. The trademark rights are owned by Deutsche Telekom AG. Subject to local authority.
Names and nicknames, logos (e.g. Black Mamba); gestures (e.g. Usain Bolts' lightning bolt pose), kit, goal celebrations*	Players/ Managers	Stage 1 or 2	Depends on contract. Club will usually have contractual right to sub-license Player Imagery (including name and image) to sponsors and others. A Club should check if a Player has registered their own rights which may preclude the Club from registering/ exploiting the rights

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# CLEARANCE AND PROTECTION OF IP

## ▪ What goods and services should the trademark registration cover?

The broadest protection usually covers club activities, merchandise, sponsored goods, and services in 38 classes. Adopt a tiered approach depending on your main commercial and legal needs.



## ▪ Where should I file my trademark application?

◇ There is no worldwide protection for trademarks, as trademark rights are territorial. As such, you should adopt a tiered approach based on the commercial importance of each jurisdiction:

- What is the home country?
- Where will use of the mark occur?
- Where are the greatest concentrations of fans/what are the key other countries of interest?
- Where will the merchandise be manufactured?
- Consider “defensive filings” to enforce your rights in markets that are hotbeds of counterfeits.

◇ Questions to ask when considering where to file:

- Where is the business currently active?
- Where is the business likely to be active (real plans) in the short to mid-term?
- Where is the business likely to have ‘spill-over’ reputation (from which an unauthorized third party could try to benefit)
- Where is there a reasonable possibility of the business being active in the longer term?

## When and how do I file a trademark application?

File trademark applications on the date of a brand launch to avoid divulging to public through the application (which may be open to the public).

Take advantage of international and regional trademark protection systems, which provide cheaper initial costs.

## 9.1. Online

- Proof of registration is a requirement for any actions for removal of infringements based on trademark infringement, i.e., trademark registration certificates are required).
- For copyright infringement, attestation of ownership normally is sufficient.
- Due to the volume of infringements, it is recommended to use a third-party online brand protection service provider to handle online takedown requests.

### ◆ Websites

Typical steps to enforce against a website:

- Sending a cease-and-desist letter to the registrant/operator of the website
- Requesting the hosting provider to block the content of the website
- Report to law enforcement if criminal conduct is taking place (this is often in relation to counterfeits)
- Request search engine to block results Contact Registrar

### ◆ Online Third-Party Marketplaces

- Many online platforms now feature third-party marketplaces where individuals can sell products.
- Infringing use of a trademark can be in the product description or on the goods itself.
- Due to an increase in counterfeit activity online, many online marketplaces now have brand registries that allow for brands to register their marks to streamline online enforcement.
- “Takedown requests” of listings raise the “whack a mole” issue, meaning that deleted listings are often simply reposted—and then the process needs to start all over again.

### ◆ Social media

- Takedown procedures for use of IP in posts or in account names
  - Account suspension or transfer (in case of impersonation)
  - Removal of post

### ◆ Domain names

- A key infringement activity in the domain name space is the registration of a domain name that incorporate an identical trademark or similar designation.
- Cease and desist letters are the first line of defence.
- The Uniform Dispute Resolution Procedure is frequently used for domain name arbitration.

### ◆ App Stores





## 9.2. Offline/Physical Enforcement

### • Anticounterfeiting

- ◇ Ensure that you have an updated and complete trademark portfolio, i.e., that all the trademarks and designs are properly registered and up to date in relation to the relevant classes in all the territories.
  - Geographical scope of where you choose to register should take into consideration not only where the business is now, but also where business will take place in the future, focusing on those territories with a significant counterfeiting presence (preventive registrations).
  - It is essential to work closely with the business areas to fine-tune the registration of trademarks and designs and to gather and retain evidence of use.
- ◇ For copyright protection, confirm what kind of evidence is required in each jurisdiction to prove ownership and to enforce rights.
- ◇ For image rights:
  - Confirm who is the holder of the exploitation rights of the image rights of the players (Club, Competition, Federation, etc.).
  - Enforcement is relevant in relation to the non-authorized use of the image of the players on goods or services.
- ◇ Identify the hot territories where the trademark holder is willing to invest time and costs to fight against counterfeits.
- ◇ Constantly update information regarding all the authenticity measures and indicators (references, indications on how labels should be applied, etc.). This is usually crucial for both the rights holder and third parties (police, customs authorities, etc.) to identify the non-authorized products:
- ◇ Keep control of each territory by conducting regular investigations and monitoring the territory to discover sales of counterfeit products (i.e., by involving private investigators, the police, etc.)
- ◇ Customs recordal of the main trademarks allows you to be informed of any suspected merchandise that is being imported/exported to/from the most relevant territories.

- ◇ Define a clear strategy regarding intellectual property enforcement:
  - Design a policy identifying possible counterfeiting scenarios
  - Define whether action should be taken through criminal, administrative, or mercantile/civil procedures
  - Build good and collaborative relationships with the authorities
- ◇ Explore the possibilities of run joint actions with other intellectual property rights owner in the sports industry (clubs, competition organizers, federations, etc). This concept can be especially interesting/useful when there are high-level matches (e.g., finals, derby matches, etc.)

## • IP infringement (unauthorized use of IP for marketing purposes)

- ◇ Maintain control of your IP portfolio in each territory.
- ◇ Retain evidence of the use, goodwill, and reputation of all the IP, as evidence.

Use monitoring tools or third-party assistance to become aware of and potentially take action against any non-authorized use of IP.

- ◇ Define a policy regarding the criteria and strategies to follow in relation to each infringement case.
- ◇ Possible actions:
  - Cease and desist letter
  - Report through social media, platforms, websites
  - Court actions
  - Settlement agreements

## 9.3. Onsite

There is usually a requirement to keep areas around event venues “clean,” i.e., reserved for official sponsors, licensees, and suppliers only.

### • Areas of concern

- ◇ Stadiums, sports event venues, fan zones, public transportation hubs (airports, metro stations, etc.)

### • Types of infringing activity

- ◇ Unauthorized trading of merchandise
  - Counterfeit goods—e.g., sales of clothing, balls, scarves, and hats that feature registered trademarks (e.g., logos) associated with the team or event without the trademark owner’s authorization
  - Unauthorized merchandise stalls/sellers—e.g., sales of generic/low quality goods around the event from pop up/moving sellers

### • Ambush advertising

- ◇ Usually carried out by third-party brands that are not sponsors (e.g., distribution of free products)

### • Basis for enforcement action

- ◇ Ability to take action depends on the local laws in place (IP laws, street trading license etc.)

### • Support required

- ◇ The support required will depend on the country but usually would include local law enforcement, police, specialist law enforcement bodies, and private operators (e.g. landowners of buildings, transport network operators, advertising operators)



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