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## Ambush marketing in sports industry

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### Abstract

Ambush marketing is not a new practice but it emerged after the growth in sports activities all over the world. Ambush Marketing has emerged in the recent years as an effective weapon in the arsenal of marketing departments seeking to associate themselves with sporting events without official authorization or endorsement of the event organizer. It is an attack not from the hidden position. Such practices are unethical business practices, hampering the exclusive rights of the sponsors, affecting the value and integrity of the event and confusing and wrongfully seeking attention of the people by designating themselves as an official sponsor. As sponsorship is a vital tool for new sources of money for sport it is important to set certain standards which should be strictly protected. Ambush marketing represents an activity which could harm the essence of the sponsorship. It is obvious that ambush marketing can only be done intentionally, not by negligence.

**Keywords:** Ambush, marketing, sports, industry, legal, protection

### 1. Introduction

Ambush Marketing is a controversial practice that has evoked a heated debate among its proponents and opponents. The arguments for and against of the practice in the ethical/moral and legal fields have not produced a definitive outcome as a result of the differing interest of the parties associated with the ambushing practice. The uncertainty in evaluation affected the emergence of demands by the sponsors and event organizers to drive self-interested legislation that violates the basic rights and freedoms of an individual. Therefore, the awareness of the development of the ambush practice is of importance for all the stakeholders<sup>[1]</sup>.

Ambush marketing, in more of the recent time period has emerged as an effectual, nevertheless a bit contentious weapon in the armoury of marketing departments, lot of corporations have indulged in ambush marketing to exploit international events such as the Olympics, Football World Cup, or the Commonwealth Games<sup>[2]</sup>. Ambush Marketing was initially defined as a “co-intentional effort to weaken or ambush its competitors’ official sponsorship”<sup>[3]</sup>. There are lot definitions which are being used to describe what Ambush Marketing is, but, all of them contain the same fundamental structure. It can be understood as a marketing strategy wherein, mostly the rival advertisers associate themselves with a particular event without paying any sponsorship fee. Ambush marketing is done by engaging in promotion and advertising that trade off the event or goodwill and reputation, and the result is confusion for the buying public as to which company really holds official sponsorship rights<sup>[4]</sup>.

Thus, what actually the 3rd party companies try to do in Ambush Marketing is that, they want to maximize their profit and increase their popularity with the consumers on the cost of the official Sponsor associated with the event, consequently, the 3rd person capitalizes on the goodwill of the event without getting officially associated with it<sup>[5]</sup>.

It is to be noted that in this sort of association with the event, the alliance is outside the knowledge and authority of the organizing committee, who hold all the rights of the event with them. The word “ambush” as in the word ambush marketing, means “an attack from a hidden position”. The term ambush marketing was coined in the 1980s by marketing strategist Jerry Welsh<sup>[6]</sup>.

“He stated that due to Million Dollar price tags for getting sponsorship companies are forced to find other ways to reach out to the consumers and in due price tags for getting sponsorship companies are forced to find other ways to reach out to the consumers and in due process misleading the public. Furthermore, Ambush marketing is also being referred to as ‘parasite marketing’ or ‘guerrilla marketing’<sup>[7]</sup>.”

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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>[8]</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>[9]</sup>. According to Epstein<sup>[10]</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 overs". Qantas also engaged well known athletes to appear.

## 2. Legal definition of ambush marketing

There are many different definitions of ambush marketing, which represents a specific violation of sponsorship rules. Special attention deserves the ICC International Code on Sponsorship, which was issued in 2003 and follows the well-established ICC policy of promoting high standards of ethics in marketing via self-regulatory codes intended to complement the existing framework of national and international law. ICC International Code on Sponsorship was first issued in 1992, as an expression of the business community's recognition of its social responsibilities in respect of marketing activities and communications. Under article B4 of the Code, no party should seek to give the impression that it is a sponsor of any event or of media coverage of an event, whether sponsored or not, if it is not in fact an official sponsor of the property or of media coverage<sup>[11]</sup>. Sponsors and sponsored parties, as well as other parties involved in a given sponsorship, should avoid imitation of the representation of other sponsorships where such imitation might mislead or generate confusion, even if applied to non-competitive products, companies or events (article 3)<sup>[12]</sup>.

### 2.1 Legal perspective

From a legal perspective, broadly speaking, ambush marketing can essentially take two forms, namely: 'Association' and 'Intrusion'.

There are different classifications of examples of ambush marketing. Most of the ambush activities could be selected in one of categories below<sup>[13]</sup>.

- Unauthorized use of intellectual property rights
- Advertising
- Broadcast sponsorship
- Joint promotions
- Competitions and promotions
- Pourage agreement
- Corporate hospitality and ticketing

Ambush Marketing can be divided into three broad categories:

- a) Direct ambush marketing
- b) Associative ambush marketing
- c) Incidental ambush marketing

### 2.1.1 Direct ambush marketing

It is an intentional use of symbols and trademarks associated with the mass event so as to give the consumers the wrong impression as to the actual sponsors of the event. Certain direct ambush marketing strategies are:

1. **Predatory ambushing:** The direct ambushing of a market competitor, intentionally attacking a rival's official sponsorship in an effort to gain market share, and to confuse consumers as to who is the official sponsor. For example, during the Heineken, UEFA European championships, 2008, Heineken in an effort to ambush Carlsberg's official sponsorship, created marching band-style "Trom-pets" (drum hats) for Dutch fans on their way to Bern which also acted as drum, branded with the heineken logo and name; company released advertisements featuring Dutch fans travelling to Switzerland, visiting official Oranje fans camping complex, and Heineken marketing executives plotting ways to ambush the European Championship<sup>[14]</sup>.
2. **Coat tail ambushing:** The attempt by an organization to directly associate itself with a property through legitimate link, without securing official event sponsor status. It refers to the unsolicited association of a company to an event. For example, in Beijing Summer Olympics, 2008, following Liu Xiang's injury in the men's 110m hurdles, Nike released a full page ad in the major Beijing newspaper featuring the image of the disconsolate Liu, a Nike-endorsed athlete, and the tagline: "Love competition. Love risking your pride. Love winning it back. Love giving it everything you've got. Love the glory. Love the pain. Love the sport even when it breaks your heart"<sup>[15]</sup>.
3. **Property infringement ambushing:** The intentional use of protected intellectual property, including trademarked and copyrighted property such as logos, names, words and symbols, in a brand's marketing as a means of attaching itself in the eyes of consumers to a property or event. For example, in UEFA European Championships, 2008, betting company Unibet released a series of magazine advertisement in Polish magazine, Pitkanzoza for online betting on the European Championship, explicitly featuring the words 'Euro 2008' and football in their adverts ling" brand<sup>[16]</sup>.

### 2.1.2 Associative ambush marketing

The term itself is clear as it means intentional use of such terms or imagery which portrays that the company has links to the sport event or property, without making any reference to the official sponsorship. Such different types of associative strategies are:

1. **Sponsor self-ambushing:** When the official sponsor creates the marketing communication beyond the scope of its sponsorship rights effectively ambushing the other official sponsors. During UEFA European Championship, 2008, the official sponsor Carlsberg extended its promotion beyond the sponsorship rights by giving away headbands to the fans during the tourney, sporting fake team-colour hair, it also gave T-Shirts to the fans visiting the brand's promotional Booth<sup>[17]</sup>.
2. **Distractive Ambushing:** Creating the distraction in or around the place of event, not having any association with the event, in order to gain the attention from the event's audience and thus promote the brand's product. For example, in The Open Championship, 2008, Bentley

set up a line-up of the Bentley <sup>[18]</sup> cars outside Hill side Golf club which is adjacent to the Royal Birkdale, the host course of the Open, which attracted great attraction from the event audience <sup>[19]</sup>.

3. **Value ambush:** Making a direct reference to the event or property's theme or values to imply a link with the event in the mind of the consumers. For example, Puma, in the European Championship, 2008, in order to promote its football line used the tagline, June 2008: Together Everywhere, thus making a direct reference to the event being played that month <sup>[20]</sup>.
4. **Insurgent ambushing:** use of surprise and aggressive promotion at an event with minimum investment in order to maximize the awareness and to distract the attention of the people from the official sponsors of the event and the event itself. For example, in 2008 French Open- Ronald Garros, K-Swiss ambushed the rivals Adidas and the clothing sponsor Lacoste by setting up a huge purple tennis ball on a crashed car on the major route to Ronald Garros.
5. **Pre-emptive ambushing:** When the official sponsor creates the marketing communication in order to usurp any possible ambush marketing campaigns of the rivals, thus prompting the ambush activities and distracting the focus from any of the other official sponsors of the event. For example, in the European Championship, 2008, Adidas produced 16 inflatable footballers wearing the jersey of each country participating in the event with Adidas logo and stripes including those countries which were sponsored by Nike and Puma.
6. **Parallel property ambushing:** The creation of a rival event or property to be run parallel to the main ambush target, associating the brand to the sport or the industry at the time of the event, thus capitalizing on the main event's goodwill. For example, Nike organized a global contest "human race" in 24 countries around the world including Shanghai, where the Olympics, 2008 was taking place, which was continued for 7 days following the Olympics, and gathered a huge international marketing throughout Olympics centre around Nike and the marathon <sup>[21]</sup>.

### 2.1.3 Incidental ambush marketing

When the market communications of a company leads to such incidental ambushing of the official sponsors. It may be done in two ways:

1. **Unintentional Ambushing:** when the consumers incorrectly identifies a non-sponsoring company as an official sponsor due to its previous association or due expectation of association with the event. For example, Speedo earned a considerable attention from media as result of success of swimmers wearing LZR racer swimsuits. This portrayed Speedo as official sponsor of the Beijing Games thus creating confusion in the market <sup>[22]</sup>.
2. **Saturation ambushing:** A strategic increase in the marketing communication of a product through aggressive marketing in order to maximize the advertisement during the event by maximizing available advertising before, during and after the event. For example, Lucozade, during the Beijing Olympics indulged into aggressive marketing of its products much above its standard marketing featuring athletes and a variety of sports significantly <sup>[23]</sup>.

### Sports sponsorship: Not merely a philanthropic gesture

Sports sponsorship is not merely a philanthropic gesture. It is also expected to generate financial returns <sup>[24]</sup>. This profit-oriented perspective motivates companies to sponsor major sports events with the strategic commercial objectives of creating brand awareness and enhancing their corporate image <sup>[25]</sup>. The business of sports sponsorship is very lucrative for some event organizers, especially since event organizers like the Federation Internationale de Football Association (FIFA) are known to demand tax-free status for their earnings <sup>[26]</sup>.

### 4. Legal Protection of Ambush Marketing

There are different ways of legal protection against ambush marketing on national and international level. From industrial property legislation, brand marks protection, restriction coming out of competitive law, indemnity protection to some other parts of legislation consisting of special laws introduced for protection against ambush marketing acts <sup>[27]</sup>.

In response to the threats of ambush marketing and other forms of trademark infringement, organizers of major sporting events have sometimes required host countries or cities to implement special laws that, going beyond standard trademark law, provide regulations and penalties for advertisers who disseminate marketing materials that create unauthorized associations with an event by making references to specific words, concepts, and symbols <sup>[28]</sup>. Organizers may also require a city to set up "clean zones" in and around venues, in which advertising and commerce is restricted to those that are authorized by the event's organizer specifically, the event's official sponsors.

Some countries have decided to pass a special legislation. Following pressure from the organizers of the Cricket World Cup, the South African government has introduced legislation banning ambush marketing both before and during the tournament. The Merchandise Marks Amendment Act 2002 is drafted in very broad terms to cover what the South African calls both "ambush by way of intrusion" and "ambush by way of association" <sup>[29]</sup>. Under the new law, officially passed on 17 January 2003, the relevant government minister is empowered to designate an event as protected. Any unauthorized person who then uses their brand in relation to the event in a way which seeks to derive "special promotional benefit from the event" will be guilty of a criminal offence <sup>[30]</sup>. South African law represents strong legal support for sponsorship. It is common that organizers of the most important global sport competitions try to get similar legal protection from their governments.

The Organizing committees of Olympic Games in Sydney 2000, Beijing 2008 and London 2012 <sup>[31]</sup>, European football championship in Portugal 2004, New Zealand Rugby World Cup 2011 <sup>[32]</sup> were able to convince their governments to pass special laws regarding protection against ambush in connection with important international sports competitions.

Another effective way to protect sport organizations represents "Nairobi convention of the protection of Olympic symbols" which gives the legal protection of the Olympic rings globally <sup>[33]</sup>. Similar protection of the Olympic symbols can be found in some countries, where NOC initiated protection of their symbols on their territories. These laws represent a fundamental legal grounding for protection of marketing activities which use Olympic symbols as their most important marketing tools.

As IOC is extremely concerned about ambush marketing the

special provision was introduced in the Olympic Charter. Rule 40 of the Olympic Charter forbids all Olympic athletes from participating in marketing activities for companies that are not official sponsors of the Olympics, even if they have official relationships with the advertiser, during a timeframe that begins 9 days before the opening ceremony, and ends 3 days after the Games' conclusion. This includes advertising material containing "Olympic-related terms," including the current year, the host city's name, "Games," "Olympians," "Sponsors," "Medal," "Gold," "Silver," "Bronze," "Challenge," "Effort," "Performance," and "Victory" [34].

Apart from special laws regarding protection against ambush marketing there are also some other legal possibilities how to combat with ambush marketing. The most effective are legal means coming out of rules, which govern intellectual property rights.

At its most blatant, ambush marketing (also known as parasitic marketing) takes the form of actionable legal wrong such as trademark infringement or passing off. There may also be trade descriptions offences which can be dealt with by Trading Standards offices and right owners acting in unison [35].

#### 4. Examples of ambush marketing

The variety of different ambush activities increase, parasitic advertisers try to find new and original ways how to get advantages of the status of sponsors without paying a sponsorship fee. There is a long and distinguished history of brands, running campaigns around sporting and other events, without being official sponsors. Whether or not these activities should be seen as legitimate depends to a great extent on the nature of the activity and your own point of view. Likewise, any kind of "intrusion" ambushing which involves trespass on property or breach of ticket terms and conditions will tend to be problematic [36].

The official sponsor of the USA Olympic Dream team in 1992 in Barcelona was Reebok but the Reebok logo on the track suit of players was covered up with the American flag, after which, Nike held a press conference with players from the Olympic team. In 1996, Coca Cola acquired the rights of being the official sponsor of the cricket world cup held in India. However, to tackle the same, Pepsi launched a campaign named – "Nothing official about it" and stole the limelight from Coca Cola. The instance perhaps marks the most famous example of ambush advertising in India [37].

In connection with the Football World Championship 2010 in South Africa national South African Airline started a campaign to give free seats to anyone named "Sepp Blatter". (Name of FIFA president). They found someone, put up an advert and ended the advert by saying, "its official, Sepp Blatter flies with us". Before the beginning of the competitions which was sponsored by Adidas, Nike put up an interactive advert in Johannesburg at the City's Life Center, the fourth tallest building in the city. Nike was not the official sponsor, however, it won [38].

Prior to the 2012 Summer Olympics in London, England, bookmaker Paddy Power announced that it was the official sponsor of "the largest athletics event in London this year": an egg-and-spoon race in the French village of London, Burgundy with a €100 credit as a prize. LOCOG threatened Paddy Power over ads for the event, but backtracked after Paddy Power threatened to take the organizing committee to court. Nike released a television advert tying into the Games with a similar concept, featuring footage of athletes training in

other places named "London", and the tagline "Greatness doesn't only exist in SW19. During the Olympic Games in London, many athletes wore head phones branded "Beats By Dr Dre", whether these athletes were paid to wear these head phones, that is not known, the point is that the viewers saw the product during the event [39].

Pepsi ambushed Coca Cola in 2014 Football World Cup. Coca Cola signed a contract and became the official marketing partner of FIFA and had a marketing, branding and activation exclusivity in the category relating to FIFA and World Cup efforts of every Football World Cup. Pepsi ambushed this marketing effort of Coca Cola by signing 19 renowned football players including Argentinean Lionel Messi and Sergio Agüero, Englishman Jack Wilshere and Brazilian David Luiz, etc. and launching its 'Live for Now' Campaign. Though not associated with the actual event, Pepsi's marketing activities made it look like it was associated with it and this affected Coca Cola [40].

#### 5. Exclusivity in sponsorship contracts

Exclusivity is common in endorsements and corporate sponsorship contracts. Ambush marketing may take any number of forms but essentially it is an attack on the exclusivity which most commercial partners of a sport seek and will to a limited extent obtain. Legal protection against ambush marketing is vitally important for the majority of modern sponsorship and endorsements [41].

One of the best examples of the importance of exclusivity in sponsorship is IOC marketing programme /The Olympic programme – TOP/, which proved to be one of the most successful marketing programmes in the past 20 years. TOP companies /sponsors/ receives exclusive marketing rights and opportunities within their designated product category. They may exercise these rights on a worldwide basis, and they may develop marketing programmes with the various members of the Olympic Movement - the IOC, the NOCs, and the Organizing Committees [42].

The success of a sponsorship depends largely on the exclusivity granted and whether the venues in question are 'clean' venues. It is possible to grant sponsorship rights to a number of parties but usually limited to one per product/service category. The sponsor must ensure there are no existing agreements that conflict with the sponsor [43].

The most common target of ambush marketing is the exclusivity of the sponsor. It is important to notice that buying a sponsorship does not (and cannot) buy you the exclusive right to association with the event, but merely a right to official sponsor status plus a package of sponsorship rights [44].

#### 6. Position of the athletes

There are some questions regarding role of athletes in ambush activities. In principle, athletes can be (mis) used as a tool of ambush advertisers to achieve some goals connected with the attack on exclusivity of official sponsors. Is the athlete in such a case a victim of an ambush company; is he (she) responsible along with the company; which degree of knowledge about ambush marketing could be expected from an individual athlete? [45]

The image of athletes could also be the harmed by ambush marketing, either alone or together with their sports organizations. Unauthorized use of intellectual property rights regarding the image of famous athlete is the classic case of such an abuse.

One of the most important factors is to determine the relationship between the sponsors of an athlete and sponsors of his/her (national) team. Athletes are involved in many different sports competitions with different rules regarding the rights of individual commercial promotion. It is vital to know who owns the rights of each competition and which rules should be followed. It is well known that the Olympic Charter proposes limited possibilities for commercial promotion. All athletes who wish to get accreditation for the Olympics have to sign a special Olympic declaration in which they agree to respect the rules of the Olympic Charter. Beside that NOCs are also responsible for the behavior of their athletes and could be sanctioned for the infringements of their athletes<sup>[46]</sup>. Most developed NOCs prepare and sign contract prior to the Olympic Games with Athletes, Officials and National Federations. The aim of the contracts is to clarify rights and obligations of parties taking part at Olympic Games. This includes common rules coming out of the Olympic Charter including clothing rules, accreditation, way of behavior, anti-doping regulations and also provisions regarding commercial engagements of athletes, National Federations (NF) and NOCs. As the exclusivity of NOCs partners is primarily reserved for the period of Olympic Games in is wise to specify the time period when sponsors of athletes and NF should not be active and respect the rights of sponsors of NOCs. It is important to sign this contract in the period of preparation for the Olympic Games as athletes, their agents and sponsors can prepare for communication and promotion in the period before and after Olympic Games. Sometimes it is wise to include sponsors of athletes to join NOCs sponsors for the year of Olympic Games but in this case the agreement should be reached between sponsor of the athlete and NOCs<sup>[47]</sup>.

There were some other cases where sponsors of individual athletes made ambush marketing towards the sponsors of the national (Olympic) team<sup>[48]</sup> or the organizers of Olympic Games<sup>[49]</sup>. Some cases are well known in connection with football stars<sup>[50]</sup>. It is evident that sponsors behind athletes who they support are trying to use their image to penetrate into the area of the competition where they are not official sponsors<sup>[51]</sup>.

In the commercial world of sport, athletes are supposed to follow main principles of sponsorship. Participation in advertising campaigns with the aim to make harm to official sponsors is not the behavior, expected from professional athletes. Therefore, there is no reason why an athlete would not be responsible for wrongdoing together with "Ambush Company", if all the elements of ambush marketing are proved. Many professional athletes have their own legal advisers who should be able to distinguish prohibited campaigns from common advertising.

## 7. Benefits of ambush market

Ambush marketing despite being an intellectual property infringement has survived. Ambush marketing campaigns are ephemeral: sporting events such as world cups Olympics etc occur for a short period of time<sup>[52]</sup>. Therefore it becomes very difficult for the event organizers to exercise their legal options to curtail such activity. In the case of Pepsi and Coca-Cola, during the cricket world cup 1994, coke was the official sponsor of the event but Pepsi ambushed coke by coming up with a catchy tagline "nothing official about it". Pepsi got away scot-free by using the popular strategy of issuing disclaimer "the company is not an official sponsor and has not

paid to affiliate with the event". Also, the laws exist which may have a general application to the problem of ambush marketing, only a handful of cases<sup>9</sup> have actually progressed through the judicial system. Also, since there is a paucity of case laws regarding ambush marketing there is less number of cases being reported<sup>[53]</sup>.

Some of the benefits from Ambush marketing are listed below:

- With ambush advertising, both the brands and their companies get lots of free media. Also, the advertising agencies win because the client increases spends -more then was planned and -so more revenue.
- Lots of people in the advertising and marketing companies find sudden purpose. This releases energy and creates renewed enthusiasm. The CEOs of both companies spend more time with the concerned brand's heads; therefore get greater opportunity and visibility<sup>[54]</sup>.
- The news and trade media, always looking for content, have something to write about.

This is like fresh juice. They can now fill lots of columns. As for consumers, they are enjoying all the fuss and are hopeful this will bring prices down - because of fierce competition.

## 8. Effects of Ambush Marketing

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

### 8.1 Effect on sponsorship

For any event to become successful sponsorship is required, it helps event organizers in terms of revenue, other than it they provide technical support, promotes the event so that people attracts towards the event and many other ways. This sponsorship does not only benefit the event organizers but sponsors get large benefits by it, they through the sponsorship tries to gather attraction of the consumers on their product, so as to get increased their sale<sup>[55]</sup>. Even now sponsorship is becoming very costlier, high amount is being spent for getting sponsorship.

When a company invests in such costlier sponsorship, they emphasis on return-over-investment and they demand for exclusivity. But Ambush Marketing hinders their exclusivity which caters heavy loss to sponsors, thus affects event organizers. Sponsorship is one of the ways for getting revenue for event, loss in sponsorship, effects high to the event organizers<sup>[56]</sup>. There are many incidences of it and one of such incidence is about Adidas, which shortly, after 1988 World Cup thought to remain sponsor in 2002 world cup when Nike through Ambush Marketing took away the exclusivity<sup>[57]</sup>.

### 8.2. Effect on sponsors

Through the sponsorship, sponsors tries to make direct relation with the consumers. For it, proper identification is required so as to who is the real sponsor of the event. When Ambush Marketing comes, it will become difficult for the consumers to identify who is the actual sponsor. This will create confusion in the minds of the consumers, thus will result in heavy loss to the sponsors<sup>[58]</sup>.

### 8.3 Effect of event organizers

When the Ambusher's will enter in the market, the exclusive

right of the sponsor will infringe. What a sponsor being exclusive can earn, his earning will diminish to more than ten million dollars if the ambusher's come in market. This will lead sponsors to think, whether they should invest in sponsorship which will ultimately affect the revenue generation for any event and largely event's popularity may also deteriorate. In the FIFA World Cup 2010, when Nike not being an official sponsor prior to world cup made an three minute advert with number of protagonists such as Ronaldo, Drogba, Cannavaro, Rooney and Ribery on TV, You Tube and nearly 14 million people watched that video. That advert did not contain any symbol, mark of the event but being of same nature attracted people, which affected the exclusive right of the official sponsor. This could have resulted in sponsor to think for further sponsorship in FIFA World Cup [59].

#### 8.4 Effect of Consumers

Main reason for firms or companies being involved in ambush marketing activities is to boost the image of the company. These ambushers use image transfer process in order to reach to the target groups through attractive sporting setting. The consumers are affected in a way that they associate positive image towards a brand, they get attracted towards the brand and associate themselves towards the brand and subsequently transfer the positive image of the event to the brand [60].

#### 8.5 Effect on IPR right holder

Through Ambush Marketing, ambusher's not only infringe the IP rights of the holder (sponsors and event organizers) but also transgress IP rights by capitalizing earned goodwill though an event. These ambushers use registered symbols of the event organizers which even lead to heavy loss to the sponsors [61].

### 9. Ambush Marketing: Whether an Ethical Business Practice

#### 9.1 Argument against ambush marketing

The much controversial question regarding ambush marketing is whether it is ethical business practice, when rights of many are violated. According to Event Organizers and sponsors, ambush marketing practice is unethical business practice and harms Event's integrity to the much larger extent. According to Marketing Director of IOC "ambush marketing is not a game. It is a deadly serious business and one that has the potential to destroy sponsorship. If ambush marketing. Is left unchecked, then the fundamental revenue base of sport will be undermined? If sport and other sponsored organizations do not learn to properly protect their rights and the exclusivity of their rights and the exclusivity of their sponsors, then they will lose their independent financial revenue source [62]."

According to Corporate Sponsors, ambushers takes away their exclusive right of being an sponsor and creates their image of being a sponsor of that event to the customers, which largely affects the return-over-investment of the official sponsors. According to them ambush marketing is a threat to the expected value of purchase they are expecting [63].

Another Event Organizers feel is the threat of their revenue and future sponsorship. Sponsorship is not a new practice, but the one going since ages in order that all the sections of the society can enjoy and take part in the cultural and sporting events of the country. Sponsors are like "Angels" for the Event Organizers, who put up their revenues, does the promotional events on behalf of the organizers, provides

technical support to the organizers on just a small interest that the event will reflect only their brand name (exclusive). But when their rights are taken away by other brands and their revenue which they are expecting is shared, it forces them to think that whether they should be sponsor for the next event. This creates problem for the sponsors as to who will be the sponsor for the event to finance, secondly, reputation of event also deteriorates [64].

#### 10.2 Proponents of ambush marketing

Those who identify ambush marketing as a justified professional tool, say that there is nothing unethical or morally wrong with hijacking a sponsor's limelight. They identify that opportunities in the market are meant to be exploited if they present themselves and a public event is one such opportunity that can be exploited to market the business [65]. While a company may have the exclusive rights as sponsor in the particular event premises, it may not hold such rights outside for instance in the mass media. This is viewed as an opportunity by ambush marketers to exploit avenues that the particular sponsor may have created, yet not exploited fully. In as much as the ambush marketer may be seen as hijacking an independent event, the fact remains that if the sponsor would invest enough to exploit all the available marketing avenues, there may be no room for ambush marketing [66].

The way rights to the sponsorship of a major event like the world cup, are issued are sometimes discriminatory to small firms and more so to the local or regional firms rather than international ones [67]. This is because the bidding for sponsorship rights involves the investment of huge resources that some firms cannot afford. The policy where only one firm is issued exclusive rights to be the major sponsor is also to blame for the ambush marketing as other firms feel left out and even powerless in such a situation [68]. The solution to this would perhaps be the reservation of some sponsorship opportunities to local firms or offering the sponsorship rights to different companies that are industry specific, which are not in any form of competition with each other. This would reduce the amount of ambush marketing that is usually experienced during major events, but it doesn't guarantee that there will be no such acts entirely [69].

#### 10.3 Public opinion on ambush marketing

The public, however, do not hold a strong opinion in regard to the corporate wars that are usually evident in the sponsorship of events. They enjoy the variety of choices presented by the different companies, and do not care whoever wins or loses. This has made lawmakers reluctant to make any stringent laws that would reduce ambush marketing in the market as no one gets hurt in the process [70]. Even though the companies involved, and more so those ambushed may complain, they are reluctant to push for the formulation of major laws since they also participate in the same acts when they are not in a position to secure ultimate sponsorship rights. While some people may argue that ambush marketing is wrong others may argue that it is not. The problem lies in outlining the particular weight of its advantages versus that of its disadvantages [71]. Among the proposed remedies to ambush marketing is disclosure where proponents argue that ambush marketers should disclose their intentions to the company being ambushed as well as to the market in general. This has, however, been identified to have potential negative effects. The first is the perception of the market towards the

ambusher. Marketing is a game of perception where a company seeks to build a positive perception in the market towards itself [72]. In disclosing that it is an ambusher, consumers may be aware of the potential losses that may be incurred in the event especially by the official sponsor and, therefore, form a negative perception of the ambushing company [73].

The second is the negative influence that the disclosure may have on the brand. This is more so where the same company is known to be a popular ambusher of many events. This may also lead to market awareness, where previously ignorant customers may start to notice the ambush marketing and shun any association with a particular company's products [74].

#### 10.4 Ethical implications of ambush marketing

One of the ethical aspects that are manifested in ambush marketing is egoism, which dictates that morality coincides with the self-interest of an organization or an individual. In this case, the ambushing company identifies that the achievement of its goals is their moral obligation no matter who they trample upon on the way. The interests of the sponsoring company are not considered when choosing ambush marketing as a major marketing strategy [75]. Conscience, which is a set of internalized set of moral principles that are taught to us by various authority figures, unfortunately doesn't apply in the corporate world where those making the major strategic decisions are not the ones who implement them [76].

It is, therefore, almost impossible for those implementing ambush marketing as a strategy not to do so since their job, which demands that they follow the orders of their superiors takes preference over any internalized moral principles that they may hold [77]. The principle of prima-facie, which suggests that an obligation can be overridden by a more important obligation, also comes into play in this case. The obligation to achieve organizational goals override any other personal obligations that employees may hold even if they are personal, for as long as they are part of the organization that chooses to adopt ambush marketing [78].

Moral standards do not apply in this case since there is no immediate harmful effect on human beings if a company chooses to adopt ambush marketing. This is mostly used to justify the actions of such marketers since they can always identify the action as just normal business and nothing personal. Ethical relativism also applies in this case, as it dictates that what is right is determined what the particular society or industry says is actually right or wrong. In this case, while some of the companies that are ambushed might identify ambush marketing as an unethical trick they are also open to the opinion of adopting it if they ever find themselves in a position where they really need to advertise to a market that has already been monopolized by one sponsor [79].

The principle of the veil of ignorance suggests that people in their original position know nothing about themselves personally or about what their individual situation will be once the rules are chosen and the veil is lifted. This suggests that a move to disclose ambushing intentions can be avoided without any moral consequences being suffered [80]. This also suggests that the fact that the public population doesn't know that a particular company is an ambusher, means that no moral obligations are attached to such an ambusher [81].

The other suggested solution, where organizers may choose to allocate sponsorship rights to many companies, is supported by utilitarianism, which suggests that actions chosen should

produce the most pleasure or happiness for the greatest number of people or affected participants [82].

#### 10. Ambush Marketing in Nigeria

Recently, we witnessed the Ambush advertisements where one company calling itself 'PopCola' and intentionally using the Super Eagles' group photo for newspaper advertisement, and relating it to the Africa Cup of Nations in Cameroon. Also, 'Trophy' did a similar ambush and deceptive advertising intentionally. Coca-Cola is the official soft drinks partner of the NFF and the Super Eagles and the company and brand with the legitimate right to identify with the team. This is the company that has kept faith with the NFF and the Super Eagles during good and tough times and should reap where they have sowed [83].

In the same vein, Nigerian Breweries PLC is the company and 33 Export is the brand that can so identify with the Super Eagles as the official beer for the 33rd Africa Cup of Nations. This company and the product in question have done tremendously well in sticking with the NFF and the Super Eagles through thick and thin. Keeping in mind these incidents, at present in Nigeria there are no specific Anti-Ambush Marketing laws being laid down [84].

The existence and manifestation of this phenomenon at global sporting events has become emboldened and deeply rooted so much so that legal experts are working around the clock to curtail this menace by devising other ways outside the known traditional intellectual property laws.

But in Nigeria, it is a strange practice and malady that is still unknown despite the fact that we have hosted global sporting events like the Junior World Cup and African Cup of Nations in the past. It may interest us to note that one of the conditions of FIFA for awarding countries the right to host the World Cup deals with how ambush marketing can be tackled through the instrumentality of the law outside the known traditional intellectual property laws that has become deficient in this sphere. The existing traditional intellectual property laws of most countries, including the ones of Nigeria, tackle issues relating to the unauthorized use of a registered trade mark, logo or slogan, use of a copy of any artistic work protected by copyright or a deliberate misleading of the public [85].

Can we comfortably say that the Nigeria intellectual property laws can curb this menace? Before we proceed, we must note that the Nigerian legal system evolved from the United Kingdom, and by extension our intellectual property laws are almost the same as those of the United Kingdom. And the lacuna in both countries' laws are to a reasonable extent cemented by the international treaties that they are signatory to. While the Copyrights, Patents and Design Act, 1988 is the regulatory legal framework for intellectual property matters in the United Kingdom, the Nigerian Trademarks and Copyrights Act, 2004 are the one in Nigeria. A cursory look at the two laws shows that the one of the United Kingdom Act has gone through a serious legislative furnace than the other in matters relating to the handling of intellectual property matters. In spite of the legislative height already attained in handling matters relating to intellectual property by the United Kingdom, during the London 2012 Olympic, a sui generis legislation was put in place specifically to curb ambush marketing. And this helped in no small measure in reducing the parasitic activities of ambush marketers.

In Africa, South Africa is already ahead of Nigeria in this sphere. The laws put together for the South Africa World Cup 2010 were so all-embracing that ambushers found it very hard

to explore loopholes. The South Africa World Cup 2010 model of the fight against ambush marketing has become a ray of hope to future sponsors and event owners. Sport analysts are agreed that South Africa is the first country, arguably, to take the boldest step in this direction. The South Africa experience in the fight against ambush marketing shows how effective legal instruments can be when appropriate and all-embracing laws are in place and there is a willingness to enforce them.

The future of sports in Nigeria, especially with regard to ambush marketing, is in putting in place a special legislation to check the activities of smart ambush marketers. Our intellectual property laws are deficient in this area. If you are still in doubt, then show me the section of our intellectual property laws that you can invoke against Usain Bolt who kissed his Puma shoe during an event sponsored by Nike? A sui generis legislation in place against ambush marketing will go a long way to encourage sports sponsors and marketers. We must act now. The future should be today. The world is leaving us behind. Our brother, South Africa has set the ball rolling since 2010.

However, it would also be immensely beneficial for anti-ambush marketing clauses to be introduced in each of these individual IPRs and additionally a sui generis (new or novel) anti-ambushing Law should be enacted to cover every IPR. The adoption of these measures would not only encourage indigenous businesses to invest and innovate within the Nigerian sports sector but will also encourage foreign investors and sponsors to invest in the Nigerian sports sector in general and sports events; the with such statutes in place it would suggest to the international business community that their investments and IPRs would be secured.

## 11. Conclusion

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

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

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  30. Specifically, the Act states:  
 "(2) For the period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit from the event, without the prior authority of the organiser of such event.  
 "(3) For the purposes of subsection (2), the use of a trade mark includes-  
 a) any visual representation of the trade mark upon or in relation to goods or in relation to the rendering of services;  
 b) any audible reproduction of the trade mark in relation to goods or the rendering of services;  
 c) the use of the trade mark in promotional activities, which in any way, directly or indirectly, is intended to be brought into association with or to allude to an event;.....  
 "(4) Any person who contravenes subsection (2) shall be guilty of an offence.  
 "(5) For the purposes of this section 'trade mark' includes a mark."
  31. The United Kingdom passed the London Olympic Games and Paralympic Games Act 2006 prior to the 2012 Summer Olympics on top of existing laws providing special protection for Olympic symbols, the act banned the use of the words "2012" and "Games" by non-sponsors, either together, or with words or concepts relating to the event, such as "Gold," "Silver," "Bronze," "Medals," "Summer," "Sponsors," or "London," to imply an association with the Games. LOCOG also announced plans to enforce these rules in the internet keyword advertising market.
  32. Prior to the 2011 Rugby World Cup, New Zealand "Major Events Management Act," which prohibits any promotional use of words, emblems, and concepts implying association with events specifically designated as "major" by the national government, without permission from the event's organizers. The law also provides the ability for clean zones to be established around event sites for the purposes of enforcing advertising rules and providing crowd control.
  33. Nairobi treaty on the protection of the Olympic Symbol, adopted in Nairobi September 26, 1981
  34. Rule 40 of the Olympic Charter: "To participate in the Olympic Games, a competitor, team official or other team personnel must respect and comply with the Olympic Charter and World Anti-Doping Code, including the conditions of participation established by the IOC, as well as with the rules of the relevant IF as approved by the IOC, and the competitor, team official or other team personnel must be entered by his NOC;"
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  42. In addition to the exclusive worldwide marketing opportunities, partners receive:  
 Use of all Olympic imagery, as well as appropriate Olympic designations on products  
 Hospitality opportunities at the Olympic Games  
 Direct advertising and promotional opportunities, including preferential access to Olympic broadcast advertising  
 On-site concessions/franchise and product sale/showcase opportunities  
 Ambush marketing protection  
 Acknowledgement of their support through a broad Olympic sponsorship recognition programme
  43. Tone Jagodic and Zlatko Mateša (n.27)
  44. New South African (n.29)
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  47. Such case was the sponsor of Slovenian athlete Tina Maze sponsor Tekanne which joined sponsors of NOC of Slovenia in the period of Olympic year 2010. The sponsor found out that is better to make an agreement with NOC and be active also during and after Olympic Games in Vancouver than to risk to have a conflict with NOC and its sponsors.
  48. Such a case was the behavior of another Slovenian athlete Primož Kozmus who won the gold medal at Peking 2008 Olympics and who did not care about the restrictions for one of his sponsors and advertised it during the period closely followed after the conclusion of the games originally reserved for NOCs sponsors. NOC of Slovenia was in the position to sue the athlete but finally did not decide to put him before the court although from the legal point it was clear that the violation of the contract was evident.
  49. At the 2008 Summer Olympics in Beijing, the IOC worked with the local organizing committee to develop a "robust brand-protection program"; logos of non-sponsors were covered with tape on equipment at Games facilities: A restriction that applied even to appliances, bathroom fixtures, elevators, and fire extinguishers. However, there was a high-profile ambush during the opening ceremony; former Olympic gymnast Li Ning, who founded a Chinese shoe company, lit the Olympic cauldron. The Li-Ning company was not an official sponsor of the Games (but did act as an equipment supplier for some of China's teams), and Li wore Adidas appeal for the sequence per its official sponsorship. On the first trading day following the ceremony, Li-Ning's share price increased by 3.52%.
  50. PepsiCo has endorsement contracts with a number of top football players participating in the Japan/Korea FIFA World Cup 2002. These include David Beckham, Juan Sebastian Veron, Emmanuel Petit, Rivaldo and Rui Costa. However, unlike Coca-Cola which has been an official sponsor of the FIFA World Cup for 24 years, PepsiCo is not an official sponsor of the tournament. During the tournament, Pepsi ran a number of advertisements in various countries featuring the footballers on its endorsement roster in conjunction with the phrase "Tokyo 2002" and the Pepsi logo. FIFA were able to obtain a court injunction in Argentina restraining

- PepsiCo from using one such advertisement, on the basis that it suggested a “presumed sponsorship relationship” and could therefore cause confusion among consumers. FIFA is apparently taking proceedings in Ecuador in relation to similar commercials and has also locked horns with PepsiCo in Mexico; “Fourth referee for FIFA ‘ambush marketing’ claims against Pepsi?”
51. Coca Cola signed a contract and became the official marketing partner of FIFA and had a marketing, branding and activation exclusivity in the category relating to FIFA and World Cup efforts of every Football World Cup. Pepsi ambushed this marketing effort of Coca Cola by signing 19 renowned football players including Argentinean Lionel Messi and Sergio Agüero, Englishman Jack Wilshere and Brazilian David Luiz, etc. and launching its ‘Live for Now’ Campaign. Though not associated with the actual event, Pepsi’s marketing activities made it look like it was associated with it and this affected Coca Cola.
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