

FIFA World Cup – Ambush Marketing

Dr. Andreas Glarner, LL.M.

With the FIFA World Cup in Brazil, the next major sporting event will start on 12th June. We cannot predict what ambush type activities will take place. But it is a safe bet that – apart from the official sponsors – there will be others taking advantage of the event in order to promote their goods and services. A good time to recap the dos and don'ts in ambush marketing.

What is Ambush Marketing

FIFA defines Ambush Marketing as «prohibited marketing activities which try to take advantage of the huge interest and high profile of an event by creating a commercial association and/or seeking promotional exposure without the authorisation of the event organiser».

FIFA – as well as other organisers of major sporting events – have a big interest to protect their events from anyone trying to profit from the event without being a (paying) official sponsor. The event organiser sold the exclusive marketing rights to the sponsor. One example is VISA's sponsorship of the 2012 London Olympic Games where online tickets could only be booked with a Visa Card. If the event organiser cannot guarantee the exclusivity, he risks losing the sponsor or is in breach of the agreement.

Legal Considerations

In order to prevent a devaluation of official sponsorship, FIFA will take action against companies who are not official sponsors when it believes that their ad-vertising implies an affiliation with the World Cup.

Nevertheless, from a Swiss point of view, not any form of association is to be considered prohibited. Unlike other jurisdictions which hosted major sporting events, Switzerland has never passed legislation generally prohibiting ambush marketing. Ambush marketing is therefore allowed to the extent the marketing measures do not infringe (IP) rights of third parties and do not deceive the public about an affiliation to the event organiser.

Thus, from a legal point of view, ambush marketing activities may be divided into two categories: prohibited «parasite» marketing and permitted «smart marketing»:

Prohibited «Parasite» Marketing

This category includes all ambush marketing activities that constitute an infringement of the event organiser's rights. This includes, for example, the unauthorised use of the event's trademarks or creating the impression of being an official sponsor.

The organisers of sporting events actively enforce their respective rights. Accordingly, we advise companies which are not officially affiliated with the World Cup to remain careful if seeking to link their products and services with the event. As a first step, it is recommendable to consult the guidance published by organisers¹. However, this guidance is the organiser's interpretation of the legal framework. It often goes beyond the protection offered by law and would not necessarily be upheld by a court.

In order to avoid litigation, we recommend avoiding the following high risk activities without prior and careful legal consideration:

Use the FIFA / World Cup trademarks (which include FIFA, World Cup, Brazil 2014, Football World Cup, Soccer World Cup, Copa 2014, «Host City» names +2014 (e.g. Rio 2014), the Fan Fest Logo, the official emblem, mascot, slogan «All In One Rhythm» and the World Cup trophy)

Use amended versions of the FIFA / World Cup trademarks

Use images or names of athletes

Use the official World Cup song

Otherwise imply an affiliation as a sponsor, partner or supplier with the World Cup

¹ See http://www.fifa.com/mm/document/affederation/marketing/01/37/85/97/2014_fifapublicguidelines_eng_17052013.pdf

Permitted «Smart Marketing»

So called «smart marketing» activities do not infringe the event organiser's (IP) rights, but still base on connecting the advertisement with a current event. Famous past examples are:

- For the London Olympics 2012, Nike launched a campaign under the title «Find your greatness» showing hobby-athletes in cities bearing the name «London» around the world.
- At the same occasion, Nike sponsored athletes who used a neon-green coloured shoe, thereby creating a recognisable «Team Nike» and an immense media presence.
- American Express undermined Visa's official sponsorship of the 1992 Olympic Games in Barcelona by running advertisements that stated «You don't need a visa to visit Spain».

As long as the public is not deceived about an affiliation to the event organiser, the following marketing activities are not prohibited under Swiss law. As Ambush Marketing is a grey zone area at the borderline between illegality and legality, we recommend to always seeking legal advice before initiating the activity.

Promotional activities next to public viewings (e.g. distribution of whistles or other fan-articles)
Advertisement referring directly to the event (e.g. wishing the national team good luck)
Use of trademarks which contain a reference to the event without creating a likelihood of confusion
Special rebates or products for the occasion of the World Cup
Use tickets to the World Cup as prizes in sweepstakes or contests without implying an affiliation with the World Cup
Sub-Sponsorship (e.g. sponsorship of a public viewing location)
Organise public viewings with a public viewing license issued by SUISA

* in collaboration with Dr. Patrick Rohn

MME Partners compact

MME Partners is an innovative business law firm with offices in the two Swiss economic centers Zurich and Zug. MME Partners' intellectual property (IP) team has broad experience counseling clients and representing them in court and arbitration proceedings related to IP and competition law issues. We support our clients in protecting and marketing their products, innovation and reputation.

Zurich

Kreuzstrasse 42
8008 Zurich
T +41 44 254 99 66
F +41 44 254 99 60
office@mmepartners.ch

Zug

Gubelstrasse 11
6300 Zug
T +41 41 726 99 66
F +41 41 726 99 60
office@mmepartners.ch



Dr. Martin Eckert
Partner/Attorney at Law
martin.eckert@mmepartners.ch



Dr. Andreas Glarner, LL.M.
Partner/Attorney at Law
andreas.glarner@mmepartners.ch



Prof. Dr. Andreas Furrer, LL.M.
Partner/Attorney at Law
andreas.furrer@mmepartners.ch