

## PERMUTATION & COMBINATION OF SPORTS IPR AND AMBUSH MARKETING

---

**Aditya Ladha\***

### ABSTRACT

---

The maximum sale of their products is the ultimate goal of every brand. As a result, these brands resort to different practices, legal and illegal, to maximize their sales. One of such practices is the practice of ambush marketing. The practice of ambush marketing is when the 3<sup>rd</sup> party, which is not even related to an event, portrays to the consumer that it is the sponsor of the event and is associated with it. With the onset of Dream 11 IPL 2021, the concept of ambush marketing has once again gained the attention of everyone. Though the title sponsor of the tournament is Dream 11 since 2020, the advertisements broadcasted during the matches last year were more of My11cric, promoted by the BCCI President, Sourav Ganguly, himself. In recent times, the practice of ambush marketing has been rampant. Now whether this practice is moral or not, is highly debatable, but due to the absence of legislation in India, the practice is certainly not illegal. The present paper deals with the various IPRs available in the sports industry, the practice of Ambush Marketing, its International scenario, and the need for legislation in India.

**Keywords:** Intellectual Property, Ambush Marketing, IPR and Sports, Infringement, Legislation.

---

\*BA LLB, FIFTH YEAR, SYMBIOSIS LAW SCHOOL, PUNE.

## INTRODUCTION

---

An Intellectual Property (hereinafter referred to as IP) is something that gains its form when the creativity of an individual is put in motion. As per the website of the World Intellectual Property Organization (hereinafter referred to as WIPO), the IP has been defined as the creation of the outcome of the human intellect.<sup>1</sup> In simpler terms, an IP is something that has been invented by the individual, using its intellect and is not something, which is already in existence, thus doing justice to the term IP. These properties include various works like artistic work, literature, symbols, names, designs, etc.

The rights attached along with the IP are known as the Intellectual Property Rights (hereinafter referred to as IPR). These Rights are well enforceable under the law and ensures protection to the work of the individual against the unsolicited and non-permitted use of such work. Internationally, Article 27 of the Universal Declaration of Human Rights (UDHR), grants the protection to the IP of the individual and holds that each individual has the right to get his work protected which evolves out of any “*scientific, literary or artistic production*”<sup>2</sup>.

IPR protection helps in the promotion of innovative ideas. In the absence of such protection, the inventors or the originators will not be able to reap the benefits of their work in the complete sense, thus discouraging the Research and Development. The IPRs reward the intellect and the creativity of the human brain, which in return motivates the individual to think of better & innovative ideas.

Initially, the inventions were protected by keeping them as secrets. However, due to technological advancements and national prestige, these inventions were then exhibited. Germany became the first nation, in 1867, to receive genuine recognition as an industrial nation, during an exhibition that was held in Paris.<sup>3</sup> In the Indian context, the IPRs were first given legal recognition when in 1856, an Act based on the British Patent Law, was enacted. In the year 1893, a global organization named BIRPI (United International Bureaux for Protection of Intellectual Property) was formed to manage the administrative task relating to

---

<sup>1</sup>*What is Intellectual Property?*, available at <https://www.wipo.int/about-ip/en/>, last accessed on 24/06/2020 at 01: 13 p.m.

<sup>2</sup>Article 27 of the Universal Declaration of Human Rights (UDHR)

<sup>3</sup>*Ibid*

the IP at a global stage.<sup>4</sup> The Paris Convention of 1883<sup>5</sup> and the Berne Convention of 1886<sup>6</sup> are said to be the founding stones of BIRPI. As the time progressed, the headquarters were shifted from Berne to Geneva and BIRPI was transformed to WIPO, in 1970.<sup>7</sup>

## IPR AND SPORTS

---

Initially, sports were considered as one of the recreational means. Unlike today, there was no much hue and cry with respect to the commercialization of sports. However, the sporting world saw a complete revolution over time. Major leagues such as the Premier League in Football, the Indian Premier League & Big Bash League in Cricket, and many such other leagues in different sports categories completely changed the dynamics of the game.

Consequently, with many technological advancements in place, several new techniques have been adopted in the game. For example, the world of cricket first saw the 'Umpire Decision Review System (UDRS) in 2008 during the India-Sri Lanka Test match.<sup>8</sup> An example of the new design in the sport's equipment can be the Jabulani Football, which was specially designed for the 2010 FIFA World Cup. The makers of the ball, Adidas, designed it completely different from the conventional football, which was stitched from the pig bladders.<sup>9</sup> Another classic example can be the 'Mongoose Bat' used by Mathew Hayden in the IPL match between Chennai Super Kings and Delhi Daredevils, which was invented by the British Company Mongoose. The specialty of these bats was that they were designed keeping in mind the shortest format of cricket, the T20s.<sup>10</sup>

The sports industry, as a whole, comprises several industries in itself. Ranging from the different sports equipment to the new innovative rules and techniques and from the merchandise to the broadcasting of the sports event, the sports industry has now become an

---

<sup>4</sup>1893-BIRPI established, available at <https://www.wipo.int/about-wipo/en/history.html>, last accessed on 24/06/2020 at 02:30 p.m.

<sup>5</sup>Paris Convention for the Protection of Industrial Property, 1883

<sup>6</sup>Berne Convention for the Protection of Literary and Artistic Works, 1886

<sup>7</sup>Supra 4, 1970-BIRPI becomes WIPO

<sup>8</sup>What is DRS: All rules, number of chances and Umpire's Call explained, available at <https://sportstar.thehindu.com/cricket/drs-rules-umpire-call-ball-tracking-sehwag-india-srilanka/article30046674.ece> last accessed on 25/06/2020 at 04:08 p.m.

<sup>9</sup>The Intellectual Property of the World Cup, available at <http://blog.ipfolio.com/the-intellectual-property-of-the-world-cup>, last accessed on 25/06/2020 at 04:19 p.m.

<sup>10</sup>Hayden launches Mongoose Bat, available at <https://www.news18.com/cricketnext/news/hayden-launches-mongoose-bat-564353.html>, last accessed on 25/06/2020 at 04:26 p.m.

amalgamation of entertainment and a massive business prospect. Every year, apart from the ongoing leagues in different sports, several new leagues are introduced.

The leagues and modern day sporting events have changed the face of the game and have also provided the sportsmen with huge opportunities to earn a hefty amount of money. With its onset, there are different sectors that cater to the needs of these leagues and events. It starts right from naming the leagues, events, names of the participating teams to subsequently deciding the rules and regulations of the sports, the telecast & broadcasting rights, designing the merchandise & jerseys of such events, etc. With so much invention and the unique creations involved, it becomes necessary to protect these advancements with the help of IPRs so that the people behind these innovations can reap and realize the benefits of such ideas and inventions to the maximum extent possible.

## FORMS OF IPR AVAILABLE IN SPORTS

---

### 1. Trademarks

Trademark is something distinctive that represents a particular business. It can be a color scheme, sign, name, logo, or even a sound.<sup>11</sup> Now, the Trademark is said to be the most commonly used IPR in the field of sports. The names of the franchise, the sports personalities, their titles, etc. are all the trademarks that are used by the franchise and its owners to generate revenues. For example, the Manchester United Football Club or the Kolkata Knight Riders have their names and logos trademarked. These franchises sell a lot of products and merchandise such as jerseys, mugs, key chains, etc. It is their IP and these logos depict that the particular product with their logo engraved on it, belongs to the respective franchise. However, it will be wrong if anyone else, outside the franchise, gets benefitted from using these logos, thus making its protection of paramount importance.<sup>12</sup>

### 2. Patents

A patent is granted to some new invention, which is innovative and is useful in terms of industrial application. Considering the advancement in technology, the field of sports has seen a lot of such inventions. For instance, the Goal Line Technology 'GLT' in football is the

---

<sup>11</sup> *Registering Sound Marks in India*, available at <https://www.mondaq.com/india/trademark/603306/registering-sound-marks-in-india-trade-mark-rules-2017>, last accessed on 25/06/2020 at 05:05 p.m.

<sup>12</sup> Sharada Kalamadi, *Intellectual Property and Business of Sports Management*, Journal of Intellectual Property Rights, pp. 438, Volume 17 [September 2012]

most comprehensive category when it comes to patents. Several systems such as Hawk-eye systems, the Goalminder system, etc. have all been patented in this category.<sup>13</sup> The Hawk-eye technology is also used in Tennis, by the referee, to determine his decisions.<sup>14</sup> Similarly, in the cricket world, there have been various inventions that have helped in the up gradation of the game, one such invention being the Channel 9's stump cameras, which have proved to be a game changer in the sport of cricket.<sup>15</sup> There are many multiple examples like the fitness training method<sup>16</sup>, Smart Wearable by Catapult<sup>17</sup>, Mongoose Bat in Cricket<sup>18</sup>, and so on. However, in the hindsight, it is important to note that the Patent Rights, in India, are granted for a period of 20 years.<sup>19</sup>

### 3. Copyright

Copyright protects the ideas' expression, though it does not protect the idea as a whole, it gives protection to the original work of an individual.<sup>20</sup> Copyright comprises several works like literature, music, drama, photography, cinematography, etc. The most widely used IPR in the field of sports is said to be the Copyright. The recording and displaying of the game using 3D Animation<sup>21</sup> is one such example of copyright. Any music, which is related to a particular franchise<sup>22</sup>, can be registered under copyright law if it's original. Though it is not mandatory to get the work registered under the copyright law in India, still it is advisable to do so to seek a remedy in case of copyright infringement as the same serves as evidence of ownership before the Court of law.<sup>23</sup>

<sup>13</sup>Supra 9

<sup>14</sup>*Game, Set, Match: Intellectual Property and Innovation in Tennis*, available at <http://www.iprhelpdesk.eu/news/game-set-match-intellectual-property-and-innovation-tennis>, last accessed on 25/06/2020 at 05:57 p.m.

<sup>15</sup>*Patents in the World of Cricket*, available at <https://www.meyerwestip.com.au/patents-in-the-world-of-cricket/>, last accessed on 25/06/2020 at 06:00 p.m.

<sup>16</sup>Supra 12, pp. 439

<sup>17</sup>Supra 9

<sup>18</sup>*Cricket-A Batsman's Game, (Mongoose Bat Patent)*, available at <https://www.bananaip.com/ip-news-center/cricket-batsman-game-mongoose-bat/>, last accessed on 25/06/2020 at 06:07 p.m.

<sup>19</sup>*Patent Law in India*, available at <https://www.mondaq.com/india/patent/403564/patent-law-in-india--everything-you-must-know>, last accessed on 25/06/2020 at 06:10 p.m.

<sup>20</sup>Supra 16

<sup>21</sup>Rafael Vazquez, *Sports and Copyright: Are they in the same team?*, available at <http://ipconference.lt/wp-content/uploads/2016/04/Rafael-Ferraz-Vazquez.pdf>, last accessed on 27/06/2020 at 11:40 a.m.

<sup>22</sup>*Sports and Intellectual Property Rights*, available at <https://www.magzter.com/article/Business/Legal-Era/Sports-And-Intellectual-Property-Rights>, last accessed on 27/06/2020 at 11:45 a.m.

<sup>23</sup>*Intellectual Property Rights in Sports-Indian Perspective*, available at <https://www.mondaq.com/india/trademark/164974/intellectual-property-rights-in-sports-indian-perspective>, last accessed on 27/06/2020 at 11:51 a.m.

#### 4. Personality/Celebrity Rights

Personality/celebrity rights are the rights available to an individual and are related to his personality. It operates in those cases where the name, autograph, or photos of a celebrity is used to endorse a particular product.<sup>24</sup> Now the personal rights of a player need to be differentiated from those of the whole team/franchise. For instance, if David Beckham or Sachin Tendulkar endorses a particular product, the owner of the product can only use that individual's name, autograph, or photo. The logo, photo, or the name of the entire team cannot be used because it causes an unprecedented loss to the team and the team owner, thus wrongfully benefitting the owner of the product. A recent example of the personality rights in India was when the Indian Cricketer Gautam Gambhir sued a lounge-cum-restaurant, which was using his name. People mistook it to be associated with a famous personality.<sup>25</sup> However, it was held that the owner's name was also Gautam Gambhir and in fact, he used his pictures everywhere to clarify the situation. Thus, it is illegal to use the name or autograph of a famous personality, without prior consent, to endorse a product.

#### 5. Character Merchandising

Similar to the above concept, character merchandising is using the name or image of a famous personality to endorse an entire brand. Character Merchandising has proven to be a great revenue generator in the field of sports. Many of the sports brands have associated themselves with several renowned stars like Michael Jordan with Nike, Dhoni with Dream11, etc. The High Court of Delhi made it abundantly clear that the '*Right of Publicity* is a right enshrined in an individual by the virtue of Article 19 and 21 of the Constitution of India. This further ensures that an individual whose name is being used to market the product is entitled to profit from that product.<sup>26</sup>

#### 6. Broadcasting Rights

Another set of IP is the Broadcasting Rights, which allows the broadcasting companies to rebroadcast the particular event or games. For instance, Fox Sports won the broadcasting

---

<sup>24</sup>*Personality Rights in Indian scenario*, available at <https://www.mondaq.com/india/trademark/677226/personality-rights-in-indian-scenario>, last accessed on 27/06/2020 at 12:00 noon

<sup>25</sup>*Gautam Gambhir v. D.A.P. Co. & Anr.*, CS(Comm) 395/2017

<sup>26</sup>*ICC Development v. Arvee Enterprises and Anr.*, MANU/DE/0053/2003

rights to broadcast and rebroadcast the World Cup matches in 2018 (and 2022).<sup>27</sup> This helps the companies to earn a huge set of revenue as the viewership of the particular channel multifold. This is exactly why the Indian cricket governing body, the 'BCCI' is the wealthiest cricket control board in the world as it sells the Broadcasting Rights to a consortium of companies for the IPL.

## AMBUSH MARKETING

---

Though the official sponsors or the franchise are able to save themselves from the theft of their IP by the third party, there still exists one major loophole, which is probably the biggest nightmare of every sponsor or organizer of the event. The phenomenon is known as "Ambush Marketing". It is the practice to sabotage the monetary benefits that the sponsor brand desires to avail from the particular event. The main aim of the non-sponsor brand is to make the customer believe that it is officially associated with the said event.<sup>28</sup> Generally, Ambush Marketing is the practice where on one hand, a brand pays to be the official sponsor of the event, whereas the other brand, in most cases a competitive brand, tries to associate itself with the said event, without paying for the sponsorship.<sup>29</sup> The ambush marketers, in a manner, acts like a parasite, trying to live off the price that has been paid by the official sponsor of the event. Therefore, it is rightly called '*Parasitic Marketing*' as well.<sup>30</sup>

There are several reasons why the brands resort to the strategy of ambush marketing. **Firstly**, the sports events such as the Cricket World Cup, FIFA, Olympics, etc. take place after large intervals of time, that too for a very short period. However, it is during these events that giant corporations can earn a hefty sum of money due to the large coverage of these events. Thus, the brands try their best to ambush these events, earning, in turn, a huge chunk of money. **Secondly**, the absence of judicial precedents and legislation with respect to the practice of ambush marketing, the brands take advantage of such a situation.<sup>31</sup> **Thirdly**, the practice of putting a disclaimer within the advertisements proves to be an escape for the brands

---

<sup>27</sup> *Supra* 9

<sup>28</sup> Shrabani Rout, *Ambush Marketing: Need for Legislation in India*, Intellectual Property and Technology Law Updates, Singh and Associates, IP-Tech [March 2018]

<sup>29</sup> *Ibid*

<sup>30</sup> *Ambush Marketing: What it is and Why it works*, available at <https://www.wordstream.com/blog/ws/2018/04/04/ambush-marketing>, last accessed on 29/06/2020 at 04:14 p.m.

<sup>31</sup> Rukmani Seth, *Ambush Marketing-Need for Legislation in India*, Journal of Intellectual Property Rights, pp. 457, Volume 15 [November 2010]

practicing parasitic marketing. For example, in the National Hockey League, Pepsi Cola used a disclaimer stating, “We are not an official sponsor and have not paid for the affiliation with the event.” Such disclaimers prove to be a loophole and the non-sponsoring brands easily get away with such a practice. Also, such brands easily get away with the charges of passing off as the product being sold is distinct from that of the sponsoring brand, leading to heavy losses that are incurred by the latter.<sup>32</sup> Ambush Marketing can take place in many ways. Some of the examples of ambush marketing can be flying banners above the event venues, raising billboards near the athletes’ village, setting up pop-up stalls by the rival companies, giving away free goodies to the players participating in the event, etc.<sup>33</sup>

**The practice can be further categorized under the following heads:**

1. Direct Ambushing
2. Indirect Ambushing
  - a) Associative
  - b) Incidental

Direct Ambushing is the case where the marketers directly use the name, title, or logo of the event intentionally to show the association of the brand with the event, wherein reality, it has been assigned no sponsorship at all. This is the most serious act of ambushing. Direct ambushing cases are the cases that are easy to spot as the brands in this practice use the trademarks and designs of the events, which actually, they are not allowed to do.<sup>34</sup>

Indirect Ambushing is a practice that is hard to differentiate. The indirect practices can further be divided into two, i.e. **Associative Ambushing** and **Incidental Ambushing**.

- a) Associative Ambushing is the practice, where the non-sponsoring brands create an image in the minds of people that they are related to the sports or the event in some manner, without actually referring to the said event.

---

<sup>32</sup>Supra 29

<sup>33</sup>Supra 23

<sup>34</sup>Ambush Marketing: *When sponsors cry 'foul'*, WIPO Magazine, pp. 22, No. 2 [April 2019]



- b) Incidental ambushing is the practice, wherein the non-sponsoring brands flood the event with their own advertisements in such large numbers, that they easily distract the consumer into believing that they are the sponsors of the event.<sup>35</sup>

## INTERNATIONAL SCENARIO ON AMBUSH MARKETING

---

The very first case of Ambush Marketing took place in the 1984 Olympic Games. Fuji of Japan won the race of being the official sponsor of the event. It in turn paid a huge amount to the event organizers. It won against its greatest rival, Kodak of the USA. However, Kodak adopted a practice in which it bagged the sponsorship of the ABC Network, which got the broadcasting rights of the Olympic Games and thus became the “official film” of the track team from the USA. Fuji too took its time to take sweet revenge in the Olympics of 1988 by sponsoring the USA swimming team, when Kodak was awarded the sponsorship of the event.<sup>36</sup> Similar was the case in the 1990 Football World Cup when Coca Cola was granted the worldwide sponsorship of the event. Pepsi resorted to ambush marketing and thus bombarded the World Cup by sponsoring the famous Brazilian Team.<sup>37</sup> In 1989, Coca Cola was made the official sponsor of the National Hockey League Games (NHL) and thus was allowed to use the NHL trademark and symbols for promotion. However, it did not obtain the rights to advertise during the broadcast of the televised NHL games. Pepsi, in turn, obtained the rights and flooded the television with advertisements along with hockey-related contests, without using any of the symbols of NHL.<sup>38</sup> In the 1990s, the sports giant Nike too ambushed various sporting events, thus affecting the benefits of the official sponsors. Reebok was the official sponsor of the 1992 Barcelona Olympics, when Michael Jordan, a member of the American Basketball team covered the logo of the official sponsor with the American Flag. The Act was carefully crafted and strategized by Nike, the official sponsor of Michael Jordan.<sup>39</sup> Similar was the case when Michael Johnson in the 1996 Atlanta Olympics won the 400m race with a record, flashing the Nike Golden shoes in every advertisement. A picture of Michael Johnson was also featured on the cover of the Times Magazine, with the Olympic medals and golden shoes by Nike around his neck. It is to be noted that Reebok was the

---

<sup>35</sup>Supra 29

<sup>36</sup>Dr. A. Shivakanth Shetty & Ms. Thamizh Chelvi, *Ambush Marketing Landscape in India: Innovative Practice or Parasitic Marketing*, ELK Asia Pacific Journal, Volume 3 Issue 2 [2012]

<sup>37</sup>Ibid

<sup>38</sup>*NHL v. Pepsi-Cola Ltd.*, 92 DLT 4<sup>th</sup> 349

<sup>39</sup>3 *Times Nike Ambushed the Olympics*, available at <https://www.highspeedtraining.co.uk/hub/ambush-marketing-sport/>, last accessed on 29/06/2020 at 08:05 p.m.

official sponsor of the event.<sup>40</sup> In the 1994 Winter Olympics, Visa received the sponsorship of the event. Its arch-nemesis, American Express, ran a chain of advertisements, which stated, “*To travel to Lillehammer, you don’t need a Visa.*”<sup>41</sup> In the 2012 London Olympics, Headphones company *Beats* gatecrashed the event by giving away free headphones with Union Jack on them, to the sportsperson, who worn those headphones during the events. It needs to be mentioned that Beats was not the official sponsor of the event.<sup>42</sup> Owing to so many cases with the passage of time, many of the countries in the world have taken proactive steps and have enacted legislation to curb this practice.

## AUSTRALIA

---

Australia was one of the first countries to enact legislation against the practice of Ambush Marketing. When Sydney was made the host of the Olympic Games in 2000, the Sydney 2000 Games (Indicia and Images) Protection Act, 1996 was passed by the Australian Government. A similar Act was passed by the government of New South Wales, titled Olympic Arrangements Act, 2000, for the same event. Both the Acts were enacted in an attempt to do away with the practice and provide a clean venue for the Games. The purpose was also to portray New South Wales and Australia as an ideal venue for future gaming and sports events. The Act specifically prohibited the registrar to register any trademark under the Trademarks Act, which consisted of any mark or symbol of the Olympic motto, symbol, torch, or anything related to the Olympics. The protected symbol for commercial purposes was only allowed to be used by the Australian Olympic Committee. Even after the Olympics, the Australian government has, from time to time, come up with similar Acts for big events.<sup>43</sup>

## NEW ZEALAND

---

The country has passed the legislation, titled Major Events Management Act, 2007. The legislation aims to protect the sponsors of major sporting events. The Act mainly prohibits any representation which suggests the relation of the event and the brand, even when they are

---

<sup>40</sup>*Ibid*

<sup>41</sup>Sudipta Bhattacharjee, *Ambush Marketing-The Problem and Projected Solutions vis-à-vis Intellectual Property Law-A Global Perspective*, Journal of Intellectual Property Rights, pp. 377, Volume 8 [September, 2003]

<sup>42</sup>*Ambush Marketing in Sports*, available at <https://lexsportiva.blog/2019/04/15/ambush-marketing-in-sports/>, last accessed on 29/06/2020 at 08:36 p.m.

<sup>43</sup>Melbourne Commonwealth Games, 2006

not related. It also prohibits the use of certain phrases or logos, which are related to major events.

## **CHINA**

---

Like Australia, China too passed the legislation when it got the chance to host the Summer Olympics in the year 2008. The legislation was titled “Protection of Olympics Symbols Relations, 2002.” The legislation not only protects the distinctive trademarks related to the Olympics but also contains a prevention clause for ambush marketing. However, the term ambush marketing has been vaguely defined in the legislation.

## **OTHER COUNTRIES**

---

Apart from the above three major countries, there are many other countries such as Canada, England, and South Africa, which enacted dedicated legislation to do away with the practice of Ambush Marketing. Though Brazil does not have a specific Act for the practice of Ambush Marketing, its CPC and Industrial Property Act prohibits the practice of unlawful enrichment.

## **INDIAN SCENARIO: NEED FOR LEGISLATION**

---

The Indian counterpart to is not immune to this clever practice. The practice is rampant which “illegitimately” benefits the ambush marketers, and in turn, inversely affects the sponsoring brand. The first case in India was when Coca-Cola was awarded the official sponsorship of the 1996 Cricket World Cup and its rival, Pepsi launched an advertisement campaign titled “nothing official about it”, thus ambushing the Coca-Cola market.<sup>44</sup> One of the early cases of Ambush Marketing in India was when the International Cricket Council (ICC) moved to Delhi High Court with an interim application to restrain Britannia and its registered departmental stores from using the official mascot and the logo of the 2003 Cricket World Cup. The Delhi High Court rejected the application stating that the South African Cricket Board appointed a Tour and Travel Company to be the sole official travel operator of the World Cup and that company, in return, booked 200 tickets of the different World Cup matches for the Britannia’s guests. It was held that by doing so, Britannia can use the logo

---

<sup>44</sup> *Supra* 36

and mascot of the event for its promotional schemes.<sup>45</sup> During the same World Cup, ICC also filed an application in India for the registration of the term “ICC Cricket World Cup 2003”, its mascot and the logo, giving justification that with time, the event has acquired a distinctive identity of its own. The event gave out various sponsorships to different brands and their dealers. One of the authorized dealers of Philips India, Arvee Enterprises, used the slogan of the World Cup to sell its electronics product. They also started a campaign wherein the lucky winners could win the tickets to the World Cup matches. However, it is important to mention that neither Philips India nor Arvee Enterprises was granted any sponsorship of the event. They even deluded the customers into believing that they were associated with the event. Still, the defendants got away from the charges of Ambush Marketing and passing-off. The Court held that the Defendants did not use the logo or the mascot of the World Cup. Instead, they contracted with the travel partners and merely offered the tickets as prizes and thus, concluded that the practice cannot be termed as ambush marketing.<sup>46</sup>

Over the passage of time, there have been so many cases in India that are the result of the loopholes in the IP Law, when it comes to ambush marketing. Recently, MS Dhoni was in the headlines, when he was said to have allegedly violated the ICC guidelines in the 2011 World Cup, by promoting the brand in an advertisement that was a competitor of the official sponsor of the World Cup.<sup>47</sup> In the most recent case in India scenario, in the 2017 IPL season, though Vodafone was granted the telecommunication sponsorship for the season, Jio telecommunications ambushed the match of *Mumbai Indians v. Sunrisers Hyderabad* by creating a Mexican wave in the audience crowd. Jio made the spectators stand in the formation of the word “JIO” and thus, hampered the marketing of the telecom company Vodafone.<sup>48</sup>

The presence of the anti-ambush marketing clause in the contract between the sponsors and the event organizers proves to be an alternative way to protect the sponsors. However, competitive brands are able to find loopholes in one way or the other. In the absence of

---

<sup>45</sup>ICC plea for stay on use of WC logo rejected, available at <https://www.rediff.com/cricket/2002/dec/04reject.htm>, last accessed on 30/06/2020 at 03:09 p.m.

<sup>46</sup>Supra 26

<sup>47</sup>Dhoni violated ambush marketing rule?, available at <http://archive.indianexpress.com/news/dhoni-violated-ambush-marketing-rule-/750882/>, last accessed on 30/06/2020 at 03:47 p.m.

<sup>48</sup>The commercial handshake: Exploring the pervasiveness of IPL-IPR, available at <https://kheladhikar.com/2018/05/18/the-commercial-handshake-exploring-the-pervasiveness-of-ipl-ipr/>, last accessed on 30/06/2020 at 03:33 p.m.

judicial precedents and legislative measures, it is very difficult to properly address the practice. Though the High Court of Delhi, while dealing with this issue had granted an injunction against the use of the logo of the plaintiff, by the defendant, still it was mainly because the use was a violation under the Indian Copyrights Act, 1957 and was merely a copyright infringement.<sup>49</sup> The sponsors pay millions to earn the rights to advertise their products and use the logos or mascots of the events, but the practice of Ambush Marketing sets a bad precedent and hence, demotivates the brands to pay for the rights. As a result, they resort to similar practices, causing huge losses to the sports industry. In the absence of any concrete legislation and judicial precedents, it becomes difficult to counter Ambush Marketing, making it more prevalent.

Therefore, it is high time that this problem needs to be addressed and that too, on a priority basis. The legislature needs to formulate a law which prohibits the unlawful use of logos or expressions related to the events. Their use shall only be bestowed on the official sponsors. It should be also kept in mind while making the law that any individual or the brand, not associated with the event, but still deludes the audience in believing so, shall be punished appropriately. The legislation should also keep in mind the economic benefits and the public interest while formulating any law.

## CONCLUSION

---

Ambush Marketing is a debatable topic. The sponsors adversely affected by this practice term it as an “illegitimate practice”, whereas the brands following it describe it as a marketing strategy to increase the sale of their products. It is an ongoing argument whether to term it as a moral practice or not, but till the time there is no legislation to keep a check on such practices, it is not an “illegal” practice for sure. However, the regulation of such practice is the need of the hour, because if the practitioners are left unchecked, there will be no incentive for the sponsors to pay such huge sponsorship fees, without which the events cannot take place. Additionally, there should be a zero-tolerance policy against such practices, which should be accompanied by a proper awareness campaign, so that the 3<sup>rd</sup> party fears engage in these practices. Initially, the legislation should come up with specific legislation for the events, which are of national importance. The Author intends to highlight the fact that the investment in a sport, in the form of sponsorship, has to lead to the growth of the sport and its

<sup>49</sup>*ICC Development v. EGGS*, (2003) 6 PTC 228 (Del)

viewership base, thus, making it of utmost importance to cover the problem of the infringement of IPR in the sports arena by filling up lacunae in present legislation, dedicated legislation to counter the practice of Ambush Marketing under the IP Law.

