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Ambush Marketing and Intellectual Property Law: A Critical Analysis of Legal Responses in the Context of Major Sporting Events

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Ambush marketing has become a real headache for organisers of major sports events. They're constantly looking for stronger ways to protect their event logos, trademarks, and symbols from being hijacked by businesses that aren't official sponsors. This paper digs into what makes ambush marketing different from traditional trademark infringement, and looks at how it affects the events themselves, their organisers, and the sponsors who've paid for the privilege. There's also a close look at whether today's intellectual property laws are really up to the task of dealing with these challenges. In addition, there's a discussion around the so-called 'Super-IP' laws, those extra layers of legal protection that host countries sometimes introduce, often under pressure from major global sports bodies, going way beyond what's normally required under standard laws. To back up the discussion, the study looks at relevant case laws from different angles. In the recommendations, the paper suggests that creating these event-specific laws might not be the best route forward. Instead, refining existing intellectual property laws with clearer guidelines, inspired by both international agreements and domestic laws, would be a better approach. The paper also explores non-legal strategies that could help reduce the impact of ambush marketing. In the end, it calls for a balanced approach, one that respects sponsors' rights, promotes fair competition, and also protects the basic right to freedom of speech and expression.

Keywords: trademark infringement, ambushing practices, event-specific enactments, super IP.

INTRODUCTION

Sporting events are bigger than ever, and it's no surprise that major corporate brands are jumping on the bandwagon. These events have become prime opportunities for businesses to gain exposure, and with that comes a rise in something called ambush marketing. Basically, ambush marketing is when a company tries to associate itself with an event without actually being one of the official sponsors. They take advantage of all the hype and attention surrounding the event, hoping to ride on its coattails and get their brand out there, all without paying for the privilege of being an official partner. It's a clever way of getting noticed, but it can undermine the real sponsors, who often pay a hefty price for those exclusive rights.

Some people call it things like parasite marketing, guerrilla marketing, or viral marketing, but whatever you call it, the practice has its downsides. It can hurt the reputation of sporting events, especially because it might make future sponsors hesitant to get involved, which can be bad for the financial health of these events.¹ After all, it's the sponsors who help make everything possible.

What makes ambush marketing tricky is that there's no clear legal definition of it. The courts have weighed in a few times, but the rulings have been inconsistent and often don't provide clear guidance. Traditional legal tools like trademark laws and passing-off actions don't seem to fully address the issue. So, it feels like it's time to rethink how we handle this. It's time to take a closer look at how other countries are handling this or think about updating legal frameworks so they make sense in today's fast-moving, heavily commercial world.

NEGATIVE IMPACT OF AMBUSH MARKETING: FROM FUJI-KODAK (1984) TO THE BEIJING OLYMPICS (2008)

Ambush marketing is when a brand, which isn't officially tied to an event, tries to ride on the visibility and buzz surrounding it. Essentially, they're piggybacking on the event's success without contributing to its costs, taking advantage of the official sponsor's efforts and the event organiser's hard work. One of the most iconic examples of this dates back to the 1984 Olympics. After Kodak lost out to Fuji as the official sponsor, Kodak decided to sponsor the

¹ Nicholas Burton, 'Conceptualizing Ambush Marketing: Developing a Typology of Ambush Strategy and Exploring the Managerial Implications for Sport Sponsors' (D' Phil Thesis, Coventry University 2012)

event's television broadcasts instead. And it paid off in a big way. More people tuned into the TV coverage, which featured Kodak ads, than attended the events in person. To make it even trickier, Kodak also supported the US track team, leading many viewers to assume Kodak was the official sponsor, not Fuji.

Fast forward to the 1990 Football World Cup, and we see the rivalry between Coca-Cola and Pepsi playing out in full force. While Coca-Cola had the official sponsorship, Pepsi cleverly grabbed the spotlight by sponsoring the Brazilian national team.² This strategy of free-riding became more aggressive with each passing event, setting the stage for even bolder moves in the years that followed.

The 1992 Barcelona Olympics offered another creative example when Visa had exclusive rights, requiring all vendors to only accept Visa cards. American Express, never one to back down, ran an ad campaign with the cheeky tagline: And remember, to visit Spain, you don't need a visa.³ This little wordplay confused the public into thinking American Express had some official connection to the event, even though they weren't officially involved.

By the time the 1996 Atlanta Olympics rolled around, Nike took ambush marketing to new heights with a stunt that's often considered one of the most daring in marketing history. They set up a 'Nike Village' near the Olympic Park, offering experiences for both athletes and the public.⁴ This move distracted attention from Reebok, the official sponsor, and saved Nike an estimated \$50 million in sponsorship fees while still capturing massive visibility.

Then, in 2008, Nike found another way to sidestep the official sponsorship route during the Beijing Olympics. They organised a global running event called the 'Human Race,' which spanned 24 countries, including Shanghai, where Olympic events were being held.⁵ The timing of the event, just after the Olympics ended, turned it into a huge promotional opportunity for Nike, capitalising on the Olympic spotlight without actually being part of it.

² Paul Deckelman, 'VISA, American Express battle with Olympic ads' (*UPI*, 07 February 1992) <<https://www.upi.com/Archives/1992/02/07/VISA-American-Express-battle-with-Olympic-ads/8877697438800/>> accessed 02 April 2025

³ Hugh G Hansen, *Intellectual Property Law and Policy* (Hart Publishing 2008)

⁴ Rhonda Schaffler, 'Nike's Olympic ambush' *CNN Money* (19 July 1996) <https://money.cnn.com/1996/07/19/companies/olympic_pkg/> accessed 04 April 2025

⁵ 'The real Olympics competition: Nike and Adidas claim China's heroes' *The Guardian* (18 August 2008) <<https://www.theguardian.com/sport/2008/aug/18/olympics2008.retail>> accessed 07 April 2025

These tactics might seem clever, but they do come with a cost. Ambush marketing can seriously impact the revenue of official sponsors and make future sponsors hesitant to invest in major events, fearing that their exclusivity and visibility will be undermined.

KEY ISSUES ARISING FROM AMBUSH MARKETING

Ambush marketing often raises two main concerns:

1. Are current intellectual property (IP) laws enough to protect the exclusive rights of event organisers and official sponsors?
2. Can alternative legal remedies, such as special legislation, respect the principles of fair use, competition law, and freedom of speech?

Limitations of Existing Intellectual Property Laws: The thing about ambush marketing is that there's no clear legal definition for it, so event organisers and sponsors often end up trying to fight it under existing trademark laws. Unfortunately, this approach doesn't always work because there are so many grey areas in the law. Ambush marketers often find loopholes to exploit.

Registered Trademarks: When it comes to trademarks, the typical legal battles involve direct competition between brands. But ambush marketing often thrives on creating indirect associations instead of using a trademark directly. For instance, Nike at the Los Angeles Olympics didn't compete directly with the International Olympic Committee (IOC). Instead, it blurred the lines by associating its brand with the event without official permission. This makes it harder to challenge legally, since the trademarks involved might not be directly violated. While cases like the American Express v Visa situation are easier to pinpoint, ambush marketers typically avoid using registered trademarks and instead play on the event's image or the organiser's name.⁶ This makes it tough to classify their actions as trademark infringement.

Passing Off: Passing off refers to the practice of misleading consumers into thinking one brand is associated with another. But ambush marketing is a bit trickier; it's less about

⁶ Robert Goldman, *Sign Wars: The Cluttered Landscape of Advertising* (Guilford Press 1996)

confusion over products and more about creating a deceptive association between the ambusher's brand and the event itself.

Take the case of *National Hockey League v Pepsi-Cola Canada Ltd*,⁷ in Canada, even though Coca-Cola held the official soft drink rights for NHL games, Pepsi ran ads during broadcasts and organised a contest that seemed to tie them to the league. The NHL argued that Pepsi was misleading the public, but the court didn't buy it. The judge ruled there wasn't enough evidence to prove the public thought Pepsi was officially linked to the NHL.

Similar decisions have been made in cases like *ICC (Development) International Ltd. v Arvee Enterprises*,⁸ where the court dismissed claims against Philips for offering World Cup tickets as prizes. These rulings show that passing off laws usually focus on direct business competition, which doesn't really address the indirect brand-event associations made by ambushers. That's why many event organisers now push for special laws to deal with these tactics.

Distinctiveness and Dilution in Trademark Claims: Trademark law relies on distinctiveness, the idea that a brand's mark must stand out as identifying a particular source. Dilution laws are meant to protect famous brands like Coca-Cola, even when there's no chance of confusion about the source of the product. But when it comes to event-related trademarks, like London 2012 for the Olympics, courts tend to treat them as more descriptive than distinctive. This creates a hurdle for event organisers trying to protect these marks from dilution.

A good example came during the 2006 FIFA World Cup in Germany. The German Federal Court ruled that terms like WM 2006 were too descriptive to be protected as trademarks.⁹ The court said the public saw these terms as simply referring to the event itself, not as a brand owned by FIFA. This is a common issue with event-related trademarks, where many don't qualify for protection because they lack the distinctiveness needed for trademark law. The reality is that current trademark laws don't offer much protection against ambush marketing.

⁷ *National Hockey League v Pepsi-Cola Canada Ltd* (1992) CPR Lexis 1773

⁸ *ICC (Development) International Ltd v Arvee Enterprises & Anr* (2003) 26 PTC 245

⁹ *Sürmeli v Germany* (2006) Appl No 75529/01

This gap in the legal framework has led event organisers to push for special laws that prevent unauthorised commercial associations with major events.

SPECIAL LEGISLATION SUPER-IP

Why These Laws Exist: Super IP Laws are a kind of legal one-off, brought in specifically for major international sporting events like the Olympics or the FIFA World Cup. They're tailored for big, high-stakes occasions, and there are a few pretty clear reasons why they keep popping up.

Sponsorship Money keeps these Events Running: Hosting a global sports event isn't cheap. Between building venues, managing logistics, and handling massive crowds, the bills add up fast. Sponsors help cover a big part of that, but they don't hand over millions just for fun; rather, they want their investment to be protected.

Sponsors want Exclusivity: When a company becomes an official sponsor, it gets special rights like being the only ones allowed to use the event's name, logos, or themes in their marketing.¹⁰ If random brands start jumping in and using similar visuals or messaging, it kind of defeats the whole point of being an official sponsor.

Too many Logos spoil the Image: It's not just about fairness. When unofficial brands try to sneak into the spotlight, it can make the whole event look messy. People start to wonder who's sponsoring the thing. It blurs the lines and can mess with how the event is perceived globally.

Ambush Marketing is Sneaky and Effective: Some companies try to get close to the event without actually signing a sponsorship deal. Maybe an athlete shows up wearing their gear, or they launch a cheeky campaign that hints at the event without naming it. It undercuts the companies that paid for real access. Over time, that can scare off future sponsors. Because of this, these Super-IP laws are now almost expected whenever a country wants to host a major event. They've become part of the playbook, seen as necessary to keep everything running smoothly, especially on the marketing and money side of things.

¹⁰ Goldman (n 6)

These laws tend to go further than regular IP laws, and they don't always come from the host country's legal framework. More often, they're introduced under pressure from international sports organisations, who make them a condition of hosting. That's where the nickname super-IP or IP-plus comes from, because these laws are kind of extra.

PROBLEMS WITH SUPER-IP LAWS

Discretionary and Overbroad Powers: One of the main issues with these laws is their vagueness. Many of them are written in a way that gives event organisers too much power, allowing them to claim rights over a range of associations using broad, undefined terms. Unlike regular trademark laws, which have clear guidelines about distinctiveness, descriptiveness, and fair use, these laws often don't offer that kind of clarity.

Take South Africa's Merchandise Marks (Amendment) Act from 2002,¹¹ for example. It gave FIFA the power to prevent anyone (other than their official sponsors) from using terms like World Cup, 2010, or related logos during the 2010 Football World Cup. Eventually, the Minister intervened to narrow the scope, focusing only on specific combinations involving FIFA and football. Still, the law was pretty overreaching.

A similar situation occurred during the 2003 ICC Cricket World Cup in South Africa. The Trade Practices Act¹² went so far as to stop people from bringing in any drinks that weren't Pepsi, just because Pepsi was an official sponsor. It didn't matter if the drinks were harmless or just for personal consumption.

In the U.S., the Ted Stevens Amateur Sports Act¹³ (ASA) gave the Olympic Committee full control over any Olympic-related symbols or names, even without proving that anyone was confused. This is a far cry from the usual trademark law standard.

In Australia, the Sydney 2000 Games (Indicia and Images) Protection Act¹⁴ tried to cover anything related to the Games, including plain words or images that were purely descriptive.

¹¹ Merchandise Marks Act 1941, s 15(1)(b)

¹² Trade Practices Act 1976

¹³ Ted Stevens Olympic and Amateur Sports

¹⁴ Sydney 2000 Games (Indicia and Images) Protection Act 1996

A court case, *Baxter & Co. v Australian Olympic Committee*¹⁵, showed that while the word Olympic couldn't be monopolised without evidence of exclusive use, trademarks that didn't mislead consumers about a connection to the Games were still valid.

These laws essentially create brand-new intellectual property rights, giving event organisers almost total control over commercial activities, sometimes even when those activities aren't competing with the official sponsors.

Impact on Freedom of Speech and Expression: Another concern with these laws is how they restrict freedom of expression. By controlling who can use event-related terms and publicity rights, they limit how individuals and businesses can express themselves. It's a fine line because while preventing false advertising is important, these laws sometimes go too far.

The South African Constitutional Court ruled that while the government can limit speech to protect trademarks or prevent misleading advertising, those limits have to be reasonable.¹⁶ In a case like *R. v Oakes*¹⁷ The court pointed out that existing trademark laws and advertising regulations already do a decent job of preventing misleading use. But anti-ambush marketing laws often overstep and restrict free speech more than necessary. In the U.S., the case *San Francisco Arts & Athletics v USOC*¹⁸ involved the U.S. Olympic Committee's broad powers under the Amateur Sports Act. The court ruled that these powers were so sweeping that they could block even legitimate, constitutionally protected uses of Olympic-related trademarks. This kind of control raises serious questions about the limits of intellectual property laws.

Questioning the Legitimacy of Super-IP Laws: The real issue with these laws is that they're often driven by private international sports organisations, not the host countries. The idea that these laws protect local investments doesn't always hold up, especially when huge chunks of event profits go untaxed or are taken overseas. Also, these laws often favour official sponsors who tend to be large corporations, forming exclusive groups that leave little room for smaller, local businesses to thrive near the event venues. In some cases, the laws even include criminal penalties for ambush marketing, which raises questions about whether

¹⁵ *Baxter & Co v Australian Olympic Committee* (1997) 36 IPR 621

¹⁶ *Laugh It Out Promotions CC v South Africa Breweries International and Another* [2005] Case CCT 42/04

¹⁷ *R v Oakes* [1986] 1 SCR 103

¹⁸ *SFAA v USOC* (1987) 483 US 522

it's fair for governments to pass short-term, sponsor-driven laws that essentially expand intellectual property rights for private companies.

Considering all of this, it's clear that anti-ambush marketing laws, as they stand, are unbalanced and often unfair. What's needed is a more reasonable approach, one that takes both commercial interests and public freedoms into account.

RECOMMENDATIONS

At the end of the day, ambush marketing is caught in a tug-of-war between two conflicting ideas: coexistence and competitive exclusion. This issue isn't something that can be solved with a one-size-fits-all approach. It's not just a legal issue, nor is it solely a marketing challenge. A more balanced solution would combine both legal and non-legal strategies.

On the legal side, two main reforms are being suggested. First, there's a call for stronger international agreements to address ambush marketing. Second, existing trademark laws need to be updated to better address the unique challenges posed by global sporting events.

On the non-legal side, improvements could come through better contracts and agreements between all parties involved, as well as awareness campaigns to help stakeholders better understand these issues.

LEGAL MEASURES – UPDATING TRADEMARK LAWS

A Common Application Process: Event organisers today face a major headache with trademark protection because it's territorial. What this means is that if an event is broadcast or potentially hosted in different countries, the organisers need to file separate applications for trademarks like logos, marks, and slogans in every country.

Take the 2010 FIFA World Cup, for instance. FIFA had to submit a staggering 45,000 applications just to register one single mark globally.¹⁹ That's a lot of red tape, right? No wonder organisers sometimes push host countries to pass special laws that give blanket protection to all sorts of generic or commercial phrases. These laws often sidestep regular trademark rules, which is far from ideal.

¹⁹ Paras Sharma, 'INTELLECTUAL PROPERTY RIGHTS IN SPORTS' (2020) 8(3) International Journal of Creative Research Thoughts <<https://www.ijcrt.org/papers/IJCRT2003361.pdf>> accessed 07 April 2025

With events growing globally, thanks to international media and online platforms, restricting trademark protection to just one country seems outdated. Event-specific laws only offer protection for a short time, while registering marks through established trademark law ensures longer-lasting rights that meet the organiser's needs. This is where an international, standardised filing process could help.

Take the Madrid Protocol²⁰ as an example. It lets trademark owners file a single application that covers multiple countries. For global organisers like the International Olympic Committee (IOC) or FIFA, this would mean protecting their event-related brands in all member countries with just one application.²¹ The process starts with the application being filed in the organiser's home country (say, Switzerland for FIFA) and sent to the World Intellectual Property Organisation (WIPO). WIPO then works with trademark offices in each country to review the application.²² This system would help filter out overly generic terms like games, gold, or even just the date 2010, while still safeguarding distinctive marks like the Olympic rings or FIFA's brand.²³

This idea strikes a balance, protecting the legitimate business interests of companies in the host country while also allowing global organisers to maintain control over their brands.

Defining the Scope of Ambush Marketing: The Role of International Conventions: The case of *In Ringling Bros. v Utah Division of Travel Development*²⁴ highlights a big issue: what exactly counts as unfair competition? Trademark law plays a big part in this, but the boundaries of unfair competition are still pretty murky. For example, the Paris Convention defines it as actions that go against honest business practices, but it doesn't get into specifics, especially when it comes to the tricky issue of ambush marketing or misleading associations with big events.

This is where international conventions could step in, offering clearer, more standardised guidelines for how countries can deal with ambush marketing. Here are a few concepts that could make a difference:

²⁰ Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989

²¹ *Ibid*

²² *Ibid*

²³ *Ibid*

²⁴ *Ringling Bros.-Barnum & Bailey Combined Shows Inc v Utah Division of Travel Development* [1999] 170 F.3d 449

The Doctrine of Parasitism: This one's borrowed from French law, and it's basically about one-party piggybacking on another's reputation for their gain. Imagine this: An event brand has worked hard to build a reputation, it takes years of investment, effort, and creativity. Along comes a business that exploits that brand's reputation without any effort of its own, hoping to benefit from the brand's hard-earned recognition.

A good example is the *L'Oréal SA v Bellure NV*²⁵ case, where the European Court of Justice ruled that well-known brands are protected from others trying to cash in on their prestige. Similarly, in *French National Olympic and Sports Committee (CNOSF) v Henri Maire* wine producer used Olympic-like imagery to sell their wine. The court didn't buy it and ruled it as parasitism; they were trying to use the Olympic brand to sell their product without permission.

Misleading Advertising: This idea is a bit of a legal minefield, but it's crucial in preventing businesses from deceiving consumers. In the EU, misleading advertising is any form of ad that can mislead or deceive its audience, thus affecting their buying decisions.²⁶ With ambush marketing, this becomes even trickier. Event sponsors often have to prove that the ambusher's actions misled consumers into thinking they were official sponsors.

Take the 1996 Atlanta Olympics. Pepsi-Cola ran an ad featuring 400-metre race winner Marie-José Pérec, with the slogan Marie-José Pérec, official representative of an unofficial Atlanta drink.²⁷ The clever wording could easily mislead consumers into thinking Pepsi had some official tie to the Olympics, influencing their purchase decisions.

Trademark Injury and Consumer Harm: Trademark law exists to protect competition and help consumers know where products come from. But when ambush marketing happens, it can cloud this clarity. Typically, anti-ambush laws rely on two main arguments: market pre-emption (where event owners claim rights to a brand's value) and free riding (where others benefit from a mark without permission). But often, these arguments skip over the most important question: Are consumers harmed?

²⁵ *L'Oréal SA v Bellure NV* [2010] EWCA Civ 535

²⁶ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising 2006

²⁷ *National Football League v Coors Brewing Co* [1999] WL 1254122

This is where the trademark injury doctrine comes in. The idea is to focus on whether consumers are misled enough to influence their purchasing choices. It's not just about the ambusher's gains or deception; it's about the real impact on consumers. Take *Warner Bros. Inc. v Gay Toys Inc.*²⁸ For instance, a toy company made a car that looked just like the one from *The Dukes of Hazzard*. A survey showed that 80% of children thought it was the real car from the show, assuming it was officially licensed. The court ruled that what matters is whether the public is likely to be misled, even if that confusion is just a possibility.

By introducing the legal doctrines of parasitism, misleading advertising, and trademark injury, countries can develop better ways of tackling ambush marketing. These frameworks help create a more consistent and fair approach to handling brand misrepresentation and ensure that the interests of event organisers and sponsors are protected. If international conventions adopt these ideas, we'd likely see clearer guidelines on what constitutes unfair competition, making things much simpler for everyone involved.

Lessons from the Lanham Act, 1946: The Lanham Act of 1946²⁹ offers some valuable legal principles when it comes to dealing with tricky issues like ambush marketing. One of its key sections, Section 43(a)³⁰, lets businesses take legal action against anyone who uses a name, symbol, mark, or misleading description in a way that could confuse the public or falsely suggest a connection, sponsorship, or affiliation with another entity. Thanks to its broad language and favourable court rulings, this provision has become a useful tool for tackling ambush marketing.

A classic example of this in action is the *Boston Athletic Association v Sullivan*.³¹ Case. In this instance, a retailer sold shirts with the phrase 1986 Marathon printed on them, careful to avoid the official event organiser's trademark. But the court quickly saw through the ploy. Even though the shirts didn't directly use the protected marks, the design and wording were intended to imply a connection to the Boston Marathon, which was historically organised by the Boston Athletic Association. The court ruled in favour of the Association, noting that the public could easily be misled into thinking there was an official partnership or sponsorship.

²⁸ *Warner Bros Inc v Gay Toys Inc* [1981] 658 F.2d 76

²⁹ Lanham (Trademark) Act 1946, s 1125(a)(1)(A)

³⁰ Lanham Act 1946, s 1125(a)

³¹ *Boston Athletic Association v Sullivan* [1989] 867 F.2d 22

This decision shows how the Lanham Act can be used to fight back against ambush marketing.

The legal reasoning in cases like this sets a helpful precedent for dealing with ambush marketing. Other countries looking to tighten up their trademark laws could learn a lot from how the Lanham Act has been applied. Rather than creating a new set of event-specific laws that might be too restrictive (and potentially infringe on free speech), it makes more sense to adapt and modernise existing legal frameworks to better address issues like ambush marketing.

CREATING EXCEPTIONS

The Commercial Speech Principle: Commercial speech is essentially any communication that's aimed at promoting a business or product. In a competitive market, businesses need the freedom to use language that accurately describes what they're selling, so consumers can make informed choices. If event organisers were given too much power to control language and symbols, it could hurt the ability of businesses to communicate with consumers and stifle fair competition.

Take the *Victoria Park Racing & Recreation Grounds Ltd. v Taylor*.³² Case, for example. The court ruled that just because a business competes with another doesn't automatically mean there's a legal violation, especially when there's no malicious intent. However, trademark law has often been less forgiving, treating legitimate business practices as ambush marketing simply because they're linked to an event. To address this, we need clearer guidelines in trademark law to protect commercial speech. This would help ensure that businesses can use descriptive language without fear of legal consequences, giving consumers better information to make smarter decisions.

This idea connects to the First Amendment's protection of free speech, especially when it comes to the flow of truthful information. In *Central Hudson Electric Corp. v. Public Service Commission of New York*, the court ruled that commercial speech is protected, as long as it's truthful and not misleading.³³ This principle extends to the use of words and symbols in their

³² *Victoria Park Racing & Recreation Grounds Ltd v Taylor* [1937] 58 CLR 479

³³ *Central Hudson Gas & Electric Corp v Public Service Commission of New York* [1980] 447 US 557

descriptive, rather than trademark, sense, such as when businesses are just trying to inform the public about their products.

A great example of this is the *Abercrombie & Fitch Co. v Hunting World Inc.*³⁴ A case where the word Safari was used in connection with boots sold by the defendant. Even though there was some risk that consumers might associate the term with the plaintiff's brand, the court found that Safari was being used descriptively, not as a trademark. This is an important distinction that allows for freedom of expression in the marketplace.

But the line can get blurry when businesses use event-related names or symbols to try to ride the coattails of a major event. For instance, in *National Football League v Coors Brewing Co.*,³⁵ the court ruled that Coors couldn't just mention the NFL in their ads as a descriptive term. The court felt that they were trying to capitalise on the NFL's brand rather than simply providing information to consumers. This highlights the fine balance between protecting legitimate descriptive use and preventing ambush marketing.

The *KP Permanent Make-Up, Inc. v Lasting Impression I, Inc.*³⁶ The Case reinforces this idea. The U.S. Supreme Court emphasised that society's interest in allowing businesses to use descriptive language outweighs concerns about potential confusion among consumers. So, trademark law should allow businesses to use descriptive terms freely, supporting healthy competition and giving consumers the best chance to make well-informed decisions.

Freedom of Expression -

Trademark law should also recognise some reasonable exceptions to protect honest businesses and individuals who are simply commenting on, reporting, or critiquing things.

News Reporting & Coverage: Journalists should be able to use event names, mascots, or symbols when reporting news, as long as they're not misleading or implying an official relationship where there isn't one.

Critique, Parody, and Commentary: Media like songs, movies, or satire should be allowed to use trademarked materials if it's for commentary or parody.

³⁴ *Abercrombie & Fitch Co v Hunting World Inc* [1976] 537 F.2d 4

³⁵ *National Football League v Coors Brewing Co* [1999] WL 1254122

³⁶ *KP Permanent Make-Up Inc v Lasting Impression I Inc* [2004] 543 US 111

Descriptive Business Use: Businesses should be able to use trademarks honestly and straightforwardly, like to describe their goods, their origins, or other existing trademarks.

Introducing these exceptions would help protect freedom of expression and ensure that people can comment on, critique, or parody events without fear of overreach from trademark law.

Practical (Non-Legal) Measures -

Beyond just legal reforms, event organisers and sponsors can take practical steps to prevent ambush marketing while maintaining fair competition. Here are a few ideas:

Stadium Agreements: Event organisers can work with stadium owners to create agreements that limit unofficial advertising around the venue, essentially creating clean sites free from ambush marketing.

Clear Sponsorship Packages: Sponsors should get clear advertising rights during broadcasts, ensuring that these rights are respected and fair.

Strong Licensing Systems: Event organisers can establish solid licensing agreements with official sponsors, giving them exclusive rights to use event-related symbols and logos. When ambush marketing occurs, they should act quickly.

Sponsor Awareness Campaigns: Promote official sponsors actively, both at events and through other channels, so the public knows who's officially involved.

Ticket Sale Terms: Ticket terms should be transparent and enforceable, ensuring that unofficial sponsors don't hijack event-related promotions.

Trademark Protection: Finally, event organisers should register all event-related names, logos, and slogans as trademarks. This makes it easier to legally protect their brand and reduce the chances of ambush marketing.

CONCLUSION

At the heart of the Olympic Movement is a simple yet powerful goal: to build a more peaceful and just world by encouraging young people to engage in sports, free from discrimination,

and to uphold values like friendship, solidarity, and fair play. It's all about bringing people together and celebrating the power of sport to unite us. That said, there's a bit of tension between this ideal and the reasoning we often hear for tougher intellectual property protections. The common argument is that stronger legal safeguards help attract more sponsors. But here's the thing: this raises a big question.

Should we be using state power to enforce the commercial interests of a private organisation? Even courts have started to question whether these protections undermine free speech and fair competition. It's important to recognise that the positive energy surrounding major events like the Olympics comes from a whole range of people and groups working together. Treating the organiser or sponsor as the sole owner of the event doesn't seem right.

The anti-ambush marketing strategies discussed might seem like a step in the right direction, but their success really depends on a shift in how we think about the issue. It's going to take a team effort, with host countries, international bodies, sports organisations, and event managers all working together. They can't just see this as another marketing battle.

They need to think about the bigger picture, how these decisions impact the event itself and stay true to the ideals of the Olympic Movement. The onus to spark this change largely falls on sports organisations and national governments. Sure, it might take a while to get everyone on the same page, but it's a start.

One place to start might be awareness campaigns that help people actually understand how current intellectual property laws work and open up real conversations about whether the existing (and often patchy) regulations need a serious update or some kind of reform at the national level.