

When Association Becomes Infringement: The Legal Risks of Ambush Marketing

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Ambush marketing is the practice of marketing to strategically associate a product with an event, or to take advantage of the event's high viewership and attendance, without the event owner's permission. While it sounds attractive, its rise and widespread use means it has substantial risks and drawbacks. Major event organizers, such as FIFA and the International Olympic Committee ("IOC"), the organizers of the World Cup and Olympic Games, as well as the brands that pay substantial sums for official sponsorship positions, take the protection of their intellectual property rights seriously, and for good reason. If free riders were permitted to operate with impunity, fewer brands would pay the fees required to license these rights, and these rights would inherently become less valuable.

Many brands have found creative ways to conduct ambush marketing campaigns at international sporting events. Given the allure of a massive and diverse audience, ambush marketing schemes—while risky—can provide millions in equivalent brand value (EBV) without the price tag of an official sponsorship. For example, during the 2016 Rio Olympic Games, Under Armour ran a "Rule Yourself" campaign, which leveraged Michael Phelps during his final Olympics to promote its brand. Under Armour was not an official sponsor of those games, Nike was, but Under Armour rented a series of outdoor gyms on a beach in Rio to set up marketing and workouts for fans. Under Armour's campaign was widely seen as a success, but it came with substantial risk and the brand had to walk a fine line between infringing on official sponsors' turf while still attempting to capitalize off of millions of attendees and eyes around the globe.

Brands in the United States are nearing a once-in-a-generation opportunity. In 2026, 11 U.S. cities will host the FIFA World Cup, and Los Angeles, CA will host the Summer Olympics in 2028 ("LA28"). International competition, especially the World Cup, brings hordes of young audiences and rare occasions for appointment television that capture billions of eyes paying attention to the same thing at the same time. The 2025 Club World Cup, a less prominent tournament than the World Cup, drew over 2 billion viewers, according to FIFA. The 2026 World Cup is expected to shatter this metric. Official sponsorship at each of these events provides a clear path to capitalize on these massive occasions.

The Benefits of Acquiring an Official Sponsorship

There is no match for official sponsorship. At the World Cup, for example, sponsors have the right to associate with the event, authorized use of official logos, the ability to launch associated campaigns and promotions, exclusivity within their commercial category, brand exposure during official broadcasts and tournament venues, and the right to license official products, among other benefits. While paying to be an official partner of the World Cup or Olympic Games is costly, these partnerships ensure brands can partner with international competitions without fear of retaliation and have unfettered access to the millions of attendees and viewers. FIFA also rewards its Commercial Partners through ambush marketing protection, so brands that have undertaken the investment to receive top-line exposure and preferential access to World Cup advertising, among other benefits, also receive FIFA's protection from brands seeking to ambush market at the World Cup.

The robust protection of these sponsorship agreements is evident throughout each major event. For instance, in the upcoming World Cup, even companies that have signed naming rights deals with stadiums will not have those rights recognized during World Cup broadcasts unless they are official partners with FIFA. A match that is being played at Lumen Field or NRG Stadium might only be referred to as Seattle Stadium or Houston Stadium, unless those brands officially partner with FIFA. Interestingly, for the first time in Olympics history, LA28 will award venue-naming rights to brands that either currently sponsor venues being used for the games or are interested in naming temporary venues. However, at the World Cup, FIFA goes even further to ensure that only its exclusive partners are allowed to be shown on screen. Fans attending matches will notice that branding around the stadium—even the logos on refrigerators and other vending equipment—will be hidden from view if the manufacturer is not an official sponsor.

The opportunity to be officially associated with the World Cup expands beyond stadiums and broadcasts, and presents an opportunity for brands to capitalize on the tournament's reach without having to secure a top-level sponsorship deal. The World Cup is taking place in 16 cities across the United States, Canada, and Mexico, and each city is hosting a FIFA Fan Festival for local residents to watch the games. Local and regional brands have already started agreeing to sponsorships for these events—and they undoubtedly will present ambush marketing opportunities as well—but over eight months out from the first kick, this is yet another avenue through which brands can associate themselves with the world's biggest tournament.

Weighing Ambush Marketing's Pros and Cons

So, what is a brand without the coveted sponsorship to do? American brands may be tempted to insert themselves into the conversations surrounding the World Cup and Olympic Games, but without an official sponsorship, they must be careful to avoid using elements that could imply an unauthorized commercial association with FIFA or the IOC. Costly lawsuits and injunctions will be filed if these lines are crossed, and both brands and organizing committees have indicated ambush marketing will come with severe consequences.

On the other hand, while an ambush marketing campaign may give rise to litigation, a brand may nonetheless see ambush marketing campaigns as a risk worth taking. In fact, a lawsuit may represent a net positive for a brand in certain instances. Should a brand decide that the publicity around a lawsuit outweighs the potential negative effects from that enforcement, it could choose to nonetheless take the risk to garner publicity in association with these major events. Further, while damages are a possible avenue of relief, organizers and official sponsors often seek injunctive relief for ambush marketing campaigns, which (1) limits the financial risk stemming from these lawsuits, and (2) may naturally allow for the impact of the campaign to take hold among the target consumer before it can be enjoined.

If they seek to go down that route, brands should be particularly wary ahead of the World Cup and Olympic Games of adapting logos, trademarks, and other forms of content owned by the IOC, FIFA, and their official partners, including the following:

- medal and torch designs;
- the Olympic rings;
- the World Cup trophy;
- stadium renders of the official host sites; and
- official game and competition footage.

Instead, brands may consider temporarily associating with American culture and symbolism through unprotected symbols. The First Amendment's broad protections for speech permit companies to raise brand awareness without infringing on the rights of competition organizers and their corporate partners.

For example, no individual entity owns the rights to the color scheme of the American flag. If brands timely advertise and create merchandise sporting the red, white, and blue or the stars and stripes, it will be obvious to consumers and target audiences that a campaign related to international competition is taking place. Other ways for brands to associate themselves with the worldwide conversation involve the temporary incorporation of iconic imagery like the Statue of Liberty, the Founding Fathers, Bald Eagles, Rosie the Riveter, or Uncle Sam.

While commercial speech that cloaks itself in American iconography is protected by the First Amendment, it is still crucial that brands considering ambush marketing stop short of running misleading campaigns that might cause consumers to falsely associate themselves with the competition organizers. These campaigns also must consider whether their advertising could pass muster under other countries' speech protections, or lack thereof. Although the First Amendment's protections are broad, should a campaign seek to associate itself with another country's iconography or protected terms and symbols, and should that marketing be broadcast or displayed in a country without the same legal framework, brands could find themselves in legal peril even if they have covered their bases domestically.

The Olympic "Super" Trademark

The pitfalls of an ambush marketing campaign are particularly weighty with regards to the word "Olympic" and the Olympic rings. In addition to being registered trademarks, the word "Olympic" and the Olympic rings have statutory "super" trademark protection. The Ted Stevens Olympic and Amateur Sports Act grants the US Olympic and Paralympic Committee ("USOPC") a cause of action against brands that use these marks to promote the sale of goods. What makes this statutory protection a "super" trademark is that, unlike actions under the Lanham Act, claims under this statute do not require a showing that the use is likely to confuse the public. As a result, brands cannot make use of these references that would otherwise be protected by the First Amendment, and the USOPC is diligent about protecting these marks.

Last year, ahead of and during the 2024 Paris Olympics, the USOPC sued Prime Hydration, seeking damages and injunctive relief stemming from violations of both the Ted Stevens Act and the Lanham Act. Prime used the phrase "3x Olympic Gold Medalist and Counting" on a limited-edition bottle featuring basketball star Kevin Durant. The USOPC has licensed its rights to Coca-Cola to use the "Olympic" mark on beverages, and according to the USOPC, "[m]uch of the value of the sponsorship agreement is derived from its exclusivity." Prime, however, had no such license and the USOPC

quickly asserted its rights in seeking to prevent this use. While the case settled, it should serve as a cautionary tale in balancing the pros and cons of ambush marketing.

This advice applies to both registered and unregistered marks. Savvy brand managers might also have noticed that FIFA applied for protection of “USA 2026,” but subsequently abandoned its efforts to register it. While “USA 2026” is not a registered trademark, when used in connection with FIFA’s branding for the World Cup, it may acquire sufficient distinctiveness for FIFA to hold common law rights in the use of the mark—especially if the public begins associating “USA 2026” with the FIFA World Cup as the tournament approaches. At the same time, brands that use the mark in connection with certain indicia, such as a soccer ball, risk implying a sponsorship, affiliation, or connection with FIFA, which could expose them to potential liability.

The United States international sporting scene will be buzzing in 2026 and 2028, and brands are well positioned to take advantage of billions of eyes and attendees on screens, fields, courts, pools, and around stadiums through official and sanctioned sponsorships. However, marketing teams must be aware of the legal hazards associated with ambush marketing.

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