

## New Zealand's Major Events Management Act

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With the excitement in New Zealand growing as the Rugby World Cup 2011 and World Rowing Championships 2010 draw near, businesses and individuals are finding themselves grappling with the practicalities of the Major Events Management Act 2007 ("the Act"). This legislation was passed to protect major event organisers from illegitimate profiteering by parties not associated with the major event. How does the Act work? What does it protect? And how successful will it be?

### WHAT ACTIVITIES DOES THE ACT COVER?

The Act attempts to protect major event organisers against ambush marketing through both association protections and intrusion protections. The Act also covers ticket scalping and pitch invasion.

### WHAT IS A MAJOR EVENT?

A major event is any event which has been declared such by an order pursuant to the Act. At this stage the following have been declared major events:

- FIFA U17 Women's World Cup 2008;
- FIBA U19 World Championship 2009;

- U19 Cricket World Cup 2010;
- World Rowing Championships 2010; and
- Rugby World Cup 2011.

An order is made by the Governor General, on the recommendation of the Economic Development Minister after consulting with both the Sports Minister and the Commerce Minister.

Once an order is made declaring an event to be a “major event”, all protections under the Act will apply to that event. Often protected emblems and protected words are declared in the same order in which the major event is declared, although the Rugby World Cup 2011 has a separate order governing these issues.

## PROTECTIONS AGAINST AMBUSH MARKETING

Recent ambush marketing experiences at the Beijing Olympics, Winter Olympics, and the FIFA World Cup in South Africa have emphasised the growing propensity for organisations to “jump on the pseudo-sponsorship bandwagon” and gain unofficial exposure for their goods and services with worldwide audiences. The Act attempts to prevent this type of behaviour through regulation of both association protections and intrusion protections.

### ***Association Protections***

It is prohibited under the Act to imply an association between a major event and goods or services, a brand of goods or services or a person who provides goods and services. The definition of “association” pursuant to the Act is “a relationship or connection, whether direct or implied, such as an approval, authorisation, sponsorship, or commercial arrangement and

includes offering, giving away, or selling a ticket to a major event activity in connection with the promotion of goods or services.”

Such a definition is expected to have far-reaching consequences in relation to the field of corporate hospitality, where sporting events have historically been used for client entertainment purposes. Under the Act such hospitality will be forbidden unless carried out by those official corporate hospitality providers appointed by the major event organiser.

A further implication of the “association” definition will be that businesses will not be able to give away tickets to the major events in relation to competitions or promotions.

The question remains as to whether the corporate hospitality and ticket giveaway provisions are in fact overly protective, and as such disadvantageous to the major event organiser. Over regulation may negatively impact business for the major event organiser.

The Act also provides for the declaration of major event emblems and words which are protected for a specified “protection period”. The emblems, words and duration of the protection period are usually declared in the order designating the event as a major event.

Courts are able to presume that a representation has been made which breaches the Act where the representation includes a major event emblem, word or words, or emblems or words which are confusingly similar to the protected emblems or words.

Not only the person who commissions the representation is liable under the association protection provisions, but also the person who has paid for the placement or location of the representation. This is an important consideration for businesses dealing in various forms of media and selling advertising as part of their revenue stream.

Breach of the provisions is not overcome by using the words “unauthorised” or “unofficial”.

Associations are allowed in some situations such as:

- where written permission of the event organiser has been given to either the representation or the association;
- where the representation is made by a natural person as an opinion and there is to be no commercial gain;
- in limited industrial or commercial circumstances such as where such a representation is necessary to show the intended purpose of goods or services;
- an existing organisation is carrying out its ordinary activities;
- reporting news and information, or
- where not used in contravention of the Act in relation to a word or emblem that is all or part of a place in New Zealand, a legal or trade name, or an existing trade mark.

A breach of the association protection provisions of the Act can result in fines of up to NZ\$150,000.

### ***Intrusion Protections and “Clean Zones”***

In addition to the association protections created under the Act, intrusion protections have also been put in place. These provisions allow the Economic Development Minister to declare “clean zones”, being

- the venue of a major event activity;
- the area directly proximate to it;
- any other area necessary to allow the major event activity to happen, and

- “clean transport routes” which are motorways, state highways or train lines (or areas directly proximate to these) which are 5 km or less from the clean zone and likely to be used by a “substantial” number of people to travel to and from the clean zones. (What constitutes a “substantial” amount of people remains to be seen).

Clean zones and clean transport routes are operational during a declared “clean period” only. They do not include “excluded land or buildings” being private land and private buildings in the clean zone (except for billboards, the actual major event activity venue or land which is generally open to the public).

Various restrictions apply to the clean zones and the clean transport routes during the clean period. No street trading or advertising is allowed within the clean zone which does not have the authorisation of the major event organiser. Further, advertising is not allowed which is clearly visible from within the clean zone – including aerial advertising. Advertising is also prohibited within the clean transport route unless authorised by the major event organiser.

Both the person who commissions and pays for the advertisement and the person who is paid for carrying out the advertising will be in breach of the Act.

Exceptions to these restrictions exist including where

- certain honest practices are involved;
- where the advertising is on shoes, clothes and personal items of members of the public (as long as there is no intention to advertise at the major event) or volunteers and participants in the major event activity;
- or advertising on trains, boats or vehicles carrying out ordinary activities in their usual manner.

It is also permitted to have advertising on newspapers or magazines or televisions, radios or electronic devices where these are being used in a personal capacity and not for the purpose of intrusion advertising. An exception also exists in relation to emergency aircraft.

## TICKET SCALPING

People planning to make a profit by buying bulk tickets to Rugby World Cup games and selling them at a profit to fans, will be disappointed - under the Act there are now laws in place to stop what is commonly known as “ticket scalping”.

The Act does allow a person to on-sell tickets to major events to other people. However, it is prohibited to knowingly sell or trade tickets to major events for more than the original sale price for which they have been purchased.

While it is not prohibited to make group bookings for family and friends and be reimbursed for the tickets, people will be prevented from selling tickets on eBay or equivalent websites to the highest bidder (unless the highest bid is less than or equal to the price which was paid for the ticket).

The original sale price is defined in the Act and includes “charges necessary to effect the sale or trade of a ticket”. So courier costs could be passed on as part of the original sale price.

Under the Act “sell or trade” means any transaction “regardless of its form” where the sale or trade of the ticket for more than its original purchase price is the substantial purpose of the transaction.

Tickets may be sold or traded for more than the original price of the ticket if the authorisation of the major event organiser has been given.

Anyone who is convicted of the offence of knowingly selling or trading a ticket to a major event for more than the original price of the ticket under the Act is liable to a fine not exceeding NZ\$5000.

### PITCH INVASION

Provisions prohibiting pitch invasion have also been included in the Act. The prohibition includes both a person entering onto a playing surface at a major sporting event, and a person intentionally propelling any object onto a playing surface at such an event.

People in breach of this section of the Act are liable to up to 3 months in prison and a maximum fine of \$5000.

### PERMANENTLY PROTECTED WORDS AND SYMBOLS

There are also provisions which allow for the permanent protection of certain marks - namely, Olympic Games and Commonwealth Games emblems and words - on a permanent basis. Certain exceptions are also applicable to the use of these permanently protected words and symbols.

### ENFORCEMENT

New Zealand legislators have attempted, to give the Act “teeth” and allow enforcement agencies effective tools to properly police breaches of the Act. Measures which have been allowed, have met with some criticism with many concerned that the level of policing required by government agencies will be untenable.

There has been a noticeable campaign of press releases “warning” the public about the provisions of the Act – in particular the advertising limitation and ticket scalping issues. A manual has also been released by the Ministry of Economic Development to assist businesses and individuals in keeping within the provisions of the Act. Despite this, confusion as to the exact limits of the Act remains high for both the public and practitioners wishing to advise their clients.

While this confusion is part of new and almost entirely untested law, it may well be in the event organisers’ interests to recognise that the costs and inconvenience of policing and dealing with infringement incidents may be avoided by the event organisers and relevant governmental bodies providing advice and clarity to organisations attempting to stay within the limits of the Act from the beginning.

The Ministry of Economic Development laid the first charges under the Act on 22 April 2010. Terry Lung Chang, director of CL NZ Trading Company Limited, is facing criminal charges after a shipment of over 1000 t-shirts bearing one of the International Rugby Board logos was intercepted by New Zealand Customs. The case has been adjourned until 29 June 2010. The Ministry of Economic Development will no doubt be hoping that these charges have a deterrent effect on would-be counterfeiters.

The Act provides for the appointment of enforcement officers, who are able to seize or cover things which are in breach of the Act, and issue formal warnings. Courts are able to grant injunctions, damages and account of profits under the Act, as well as orders for erasure allowing for unauthorised material to be removed, obliterated or covered. Courts are able to make directions for corrective advertising, order delivery up of goods, materials or objects or order the forfeiture, destruction or retention of goods. Criminal charges can be laid under the Act.

## CONCLUSION

The practical application of the Major Events Management Act will be a challenge not only to businesses and individuals trying to abide by its provisions, but also to people charged with the enforcement of those provisions. At this stage, due to the relatively new and untested status of the Act there appear to be many grey areas, in particular the association and intrusion protection provisions. Practitioners and the public will watch with interest over the coming months to see how issues are dealt with as they arise.

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