

FIFA 2010 – What Can We Learn From an Ambush Marketing Perspective?

Posted on 27/07/2010 by [Sue Irwin Ironside](#)

With the wrap up of the FIFA World Cup 2010 in South Africa, Paul the Octopus can go back to his grotto and contemplate his newfound psychic abilities and those of us with an interest in intellectual property can look at lessons learned in relation to ambush marketing incidents which occurred during the tournament. These lessons are particularly valuable given that New Zealand's Major Event Management Act 2007 (MEMA) is currently untested in the courts. Any cases which are brought under MEMA will no doubt look to other jurisdictions with similar ambush marketing legislation, such as the South African Trade Practices Act (no. 76 of 1976) and the Merchandise Marks Act (No 17 of 1941), for preliminary guidance.

The Tavern Case – Federation Internationale de Football Association (FIFA) v Eastwood Tavern (GNP) (unreported case no. 52309/07, 12-15-2009)

FIFA's fight against ambush marketing kicked-off with this case involving a restaurant in Pretoria, located across the road from the Loftus Stadium where FIFA World Cup matches were to be played, which erected signs containing WORLD CUP 2010, the national flags of competing nations in the FIFA tournament, TWENTY TEN SOUTH

AFRICA and SOUTH AFRICA 2010 alongside its own branding.

FIFA brought an action against the Eastwood Tavern in relation to both trade mark infringement, passing off under the common law and unlawful competition under section 15A of the Merchandise Marks Act and section 9(d) of the Trade Practices Act.

The parties settled the matter before it proceeded to Court but the High Court of South Africa issued an order which prohibited Eastwood Tavern from, inter alia, obtaining special promotional benefit from, or associating its business with, the 2010 FIA World Cup.

The Lollipop Case - Federation Internationale de Football Association (FIFA) v Metcash Trading Africa (Pty) Limited (unreported case no. 53304/07, 1-10-2009)

The second ball through FIFA's ambush marketing goal was the Metcash Lollipop case. Metcash, a major distributor in South Africa, was selling "Astor 2010 Pops" – lollipops which were packaged in wrappers depicting the "2010" written with soccer balls depicted as the 0's, the South African flag and soccer balls.

FIFA brought an action against Metcash which alleged trade mark infringement in relation to the use of the soccer ball 2010 which was a registered FIFA trade mark. In addition, FIFA brought actions in passing off and unlawful competition (once again under section 15A of the Merchandise Marks Act and section 9(d) of the Trade Practices Act) alleging that the use of the 2010, soccer ball and South African flag elements together called to mind the 2010 FIFA World Cup. The High Court of South

Africa found in favour of FIFA and restrained Metcash from competing unlawfully with FIFA by deriving special promotional benefit from the tournament without FIFA's approval. Costs were also awarded against Metcash.

The Keyring Case - Federation Internationale de Football Association (FIFA) v Executive Trading Cc and the Registrar of Designs (Case No 52308/07)

FIFA has also issued proceedings against both Executive Trading and the Registrar of Designs in relation to the use and registration of a design depicting a vuvuzela trumpet, with a football and 2010 written beside it. Executive Trading intend to use the design in relation to a key holder. The Registrar of Designs registered the design.

FIFA is trying to prevent the use of the design by Executive Trading on ambush marketing grounds. In addition, FIFA is applying for an order against the Registrar of Designs to cancel the registration of the design. The case is yet to be heard by the Courts.

Close Calls

Bavaria Brewery

The Bavaria Brewery had perhaps the most successful counter attack against FIFA and South Africa's ambush marketing laws in terms of gaining international exposure for a very successful ambush marketing event. Bavaria organised for 36 young, blonde females to attend the World Cup match between the Netherlands and Denmark dressed in bright orange mini-dresses (the national colour of the Netherlands and

Bavaria beer). The dresses had small Bavaria emblems on them. All of the women were immediately removed from the stadium and FIFA decided to lay charges against two of the women. After several days the charges were dropped after FIFA reached a settlement with Bavaria. However, by this time the damage had been done.

Budweiser Beer was the official beer sponsor of the 2010 FIFA World Cup and, as such Bavaria scored a direct ambush marketing hit against a major sponsor, which essentially went unpunished – in fact quite the opposite – it has been reported in media that the Bavaria website was the fifth most visited beer website in the United Kingdom the week after the stunt, which also caused international headlines for several days as the world watched and waited for the outcome of the case.

Kulula.com

South African budget airline kulula.com tried some creative thinking to get around South Africa's ambush marketing legislation. They first ran an advertisement with the heading "Unofficial National Carrier of the "You-Know-What"" and which featured soccer balls, the date 2010, vuvuzelas and other items associated with soccer. It did not however contain any direct reference to the tournament. FIFA served a cease and desist letter to kulula.com alleging that the sum of the elements contained in the advertisement brought to mind the 2010 FIFA World Cup. Kulula.com duly complied with the letter but brought out a second advertisement headed "Not Next Year, Not Last Year, But Somewhere In Between." which replaced the soccer related elements with other items in a tongue-in-cheek way. FIFA did not object to the second advertisement. Once again the attention which Kulula received from this campaign, on a global level, was substantial.

While the cases taken so far by FIFA discussed in the first part of this article have proved to be successful and have no doubt acted as a deterrent to some regarding ambush marketing, the problem remains that those organisations which “take their chances” and run ambush marketing campaigns often reap the collateral publicity rewards associated with their illegal activities. The cases and situations discussed may assist not only event organisers and the Ministry of Economic Development in relation to possible prosecutions under MEMA, but may also help individuals and business owners and operators to begin to delineate some of the limits to ambush marketing activities.

If you have any queries on ambush marketing or MEMA [contact us](#).