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## **ETHICAL IMPLICATIONS OF AMBUSH MARKETING: WHERE SHOULD LAW DRAW THE LINE?**

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### **ABSTRACT**

This research paper examines the controversial practice of ambush marketing to determine whether it can be considered a legitimate business strategy or an unethical exploitation of the market dynamics. Ambush marketing is when a brand either directly or indirectly seeks to associate itself with an event without availing sponsorship rights, for some exploitable commercial advantage. While this marketing allows the brand to gain visibility at low costs, it raises concerns regarding fairness, the protection of intellectual property rights, and the integrity and sanctity of sponsorship agreements. The paper critically evaluates ambush marketing by delving into the legal and ethical implications associated with it, particularly in the context of large-scale sporting and cultural events. It underscores the adverse effects that ambush marketing may have on various stakeholders, such as official sponsors, who invest substantial sums of money in order to acquire exclusive promotional and advertising rights, event organizers who rely on sponsorship to fund their events, and consumers who are misled by such marketing. It explores how such practices undermine the fundamental purpose and objectives of sponsorship agreements. A central focus of the paper is the absence of specific legislation regulating ambush marketing in India, leading to ambiguity in distinguishing between lawful competitive advertising and deceptive marketing tactics and practices. Employing doctrinal research, the paper explores whether existing laws, such as the Trademarks Act, 1999, and Copyright Act, 1957, provide sufficient protection and remedies to official sponsors against the challenges posed by ambush marketing. The study further assesses the need for specific legislation to safeguard the rights of event organizers and official sponsors while ensuring fair competition and balance in the market. It further emphasizes the necessity for a comprehensive legal standard to clearly define and regulate ambush marketing practices, to ensure a fair balance between commercial free speech, consumer interests, and the economic value of sponsorship agreements.

**Keywords:** Ambush Marketing, Sponsorship Rights, Intellectual Property Rights, Unfair Competition, Copyright Act 1957, Trademark Act 1999, Opportunistic marketing

## Introduction

Ambush marketing is a marketing strategy wherein a company deliberately associates itself, either directly or indirectly, with an event, often major sporting or cultural events, without securing official sponsorship rights, to gain recognition and promotional benefits similar to those enjoyed by official sponsors.<sup>1</sup> This practice can be considered a deceptive tactic resulting in unfair competition, which affects various stakeholders such as official sponsors, event organizers, and consumers. But the main stakeholders that are detrimentally affected are the official sponsors who invest substantial sums of money to secure sponsorship and promotional rights.<sup>2</sup> Ambush marketing undermines the value of these investments made by official sponsors, as non-sponsoring brands can achieve the same amount of visibility and brand association at a fraction of the cost, thereby undermining the commercial value of sponsorship agreements, also potentially deterring future sponsorships.<sup>3</sup>

Consumers, in the meantime, are left confused about which brands are officially associated with an event and which are not, as ambush marketing engages in deceptive practices affecting consumer perceptions and decisions.<sup>4</sup> At a broader level, ambush marketing raises serious ethical questions: is it an opportunistic and innovative business strategy that fosters fair competition, or is it an exploitative practice that undermines the very purpose of sponsorship agreements?<sup>5</sup> This dilemma between legitimate and illegitimate marketing makes the issue pressing not only in the field of law but also in the domains of business ethics and consumer protection.

Countries such as New Zealand, South Africa, and the United Kingdom have identified ambush marketing as a pressing issue and thus have enacted special legislation to fill in this regulatory

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<sup>1</sup> Neha Kaushik Anand & Aditi Pant, *Ambush Marketing: A Review and Examples*, 7 Int'l J. Mgmt. & Com. Innovations 1131, 1131–34 (2019); Sudipta Bandyopadhyay, *Ambush Marketing—The Problem and the Projected Solutions vis-à-vis India*, J. Intell. Prop. Rts. 376, 376–81 (2003).

<sup>2</sup> M. Payne, *Ambush Marketing—A Threat to Corporate Sponsorship*, 38 MIT Sloan Mgmt. Rev. (1996), <https://sloanreview.mit.edu/article/ambush-marketing-a-threat-to-corporate-sponsorship/>; *Ambush Marketing: When Sponsors Cry “Foul”*, WIPO Mag. (Apr. 2019), <https://www.wipo.int/web/wipo-magazine/articles/ambush-marketing-when-sponsors-cry-foul-40720>.

<sup>3</sup> *The Impact of Marketing Strategy of Ambush Marketing on Major Event Sponsorship and National Development*, Int'l J. All Res. Educ. & Sci. 1, 1–5 (2021).

<sup>4</sup> D. Shani & D. Sandler, *Ambush Marketing: Is Confusion to Blame for the Flickering of the Flame?*, 15 Psychol. & Marketing 367 (1998); Rohan Gulaty & R. Priya, *Impact of Ambush Marketing on Consumer's Buying Behaviour—A Study of Snapdeal's Marketing Strategy*, 8 Int'l J. Eng. Mgmt. Res. (Issue 5) (2018), <https://ijemr.in/wp-content/uploads/2018/04/Impact-of-Ambush-Marketing-on-Consumers-Buying-Behaviour-A-Study-of-Snapdeals-Marketing-Strategy.pdf>.

<sup>5</sup> T. Meenaghan, *Ambush Marketing: Immoral or Imaginative?*, 33 J. Advert. Res. 77 (1994).

gap.<sup>6</sup> In India, the absence of specific legislation addressing ambush marketing compounds these challenges, making it difficult to distinguish between lawful competitive advertising and deceptive tactics.<sup>7</sup> Existing intellectual property laws, such as the Trademarks Act, 1999, and the Copyright Act, 1957, offer limited regulations and remedies to ambush marketing, raising ambiguities between what's lawful and unlawful.<sup>8</sup>

## Types of Ambush Marketing

### i. Direct Ambush Marketing

Direct ambush marketing occurs when a brand or marketer deliberately attempts to form or depict an association with an event by using the event's logo, name, title, or slogans.<sup>9</sup> These are easier to spot and assign liability to as they usually involve infringement of trademarks, designs, or copyrighted material belonging to the event. Direct ambush marketing can be challenged by claims of trademark infringement, copyright violations, or passing off under laws such as Trademark Act, 1999, or the Copyright Act, 1957. In the case of *ICC Development (International) Ltd. v. Evergreen Service Station*<sup>10</sup>, the defendant used the ICC Cricket World Cup logo without authorization for promotional activities. The court granted an injunction against the misuse of the ICC trademarked logo, recognizing copyright infringement and restricting unauthorized use in ambush marketing in light of the Copyright Act, 1957.

### ii. Indirect ambush marketing

Indirect ambush marketing is wherein a brand or marketer tries to form an indirect association with an event without necessarily referring to the said event; this can also be termed as associative ambush marketing. An example of this would be in 2012, when a KitKat, a chocolate brand by Nestlé, during the Euro 2012, the UEFA European

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<sup>6</sup> O.J. Morgan, *Legislating to Control Ambush Marketing—The New Zealand Model* (Feb. 18, 2008) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1094581](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1094581); Peter Johnson, *Ambush Marketing and Brand Protection: Law and Practice* (Oxford Univ. Press, 2011).

<sup>7</sup> Rukmani Seth, *Ambush Marketing—Need for Legislation in India*, 15 J. Intell. Prop. Rts. 455, 455–63 (2010).

<sup>8</sup> Rukmani Seth, *Ambush Marketing—Need for Legislation in India*, 15 J. Intell. Prop. Rts. 455, 455–63 (2010); Isiri Rajaneesh, *The Evolution of Ambush Marketing and Intellectual Property Rights Protection: Legal Challenges in the Digital Era* (2025), <https://www.ijllr.com/post/the-evolution-of-ambush-marketing-and-intellectual-property-rights-protection-legal-challenges-in-t>.

<sup>9</sup> Aditya Ladha, *Permutation and Combination of Sports IPR and Ambush Marketing*, 1 J. Corp. L. & Juris. 199 (2021).

<sup>10</sup> *ICC Development (International) Ltd. v. Evergreen Service Station & Anr.*, 2003 SCC OnLine Bom 768 (India).

Football Championship, though not an official sponsor, ran a promotional competition called “Win Euro 2012” which invited consumers to participate and win prizes related to the tournament. The brand created a promotional link to the event by association without infringing upon the event’s intellectual properties while still leveraging the event’s popularity for commercial gain and undermining the purpose of official sponsorship agreements.<sup>11</sup> In such cases of indirect ambush marketing, it’s more difficult to penalize or assign liability, as there is no infringement of intellectual property rights.

Brands may also try gaining exposure during the occurrence of a live event, for example, in the 2017 IPL season, though Vodafone was granted the telecommunication sponsorship for the season, Jio Telecommunications ambushed the match of the 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>12</sup>

### **Economic and ethical impact of ambush marketing: An unfair practice or strategic marketing strategy?**

Ambush marketing involves leveraging the popularity around an event by either directly or indirectly associating with the event for commercial advantage without paying any sponsorship fees.<sup>13</sup> Proponents argue that such practices encourage fair competition and fall under the ambit of commercial speech. Ambush marketers contend that such a marketing strategy is opportunistic marketing, which is merely a clever exploitation of a public event, and sponsorship exclusivity is a commercial privilege, not a right to silence competitors.<sup>14</sup>

Further, in India, this argument is grounded in the protection of commercial speech as under Article 19(1)(a) of the Indian Constitution, 1950. In *Tata Press Ltd. v. MTNL* (1995)<sup>15</sup> the

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<sup>11</sup> M. Rojas, *Best Super Bowl Commercials of All Times*, Sports & Digital Strategies (June 1, 2012), <https://sportsdigitalstrategies.wordpress.com/2012/06/01/kt-kat-partners-with-beppar-for-the-curo>

<sup>12</sup> *The Commercial Handshake: Exploring the Pervasiveness of IPL-IPR*, Kheladhikar (May 18, 2018), <https://kheladhikar.com/2018/05/18/the-commercial-handshake-exploring-the-pervasiveness-of-ipl-ipr/>

<sup>13</sup> Mailchimp, *What Is Ambush Marketing?*, <https://mailchimp.com/marketing-glossary/ambush-marketing/>

<sup>14</sup> Tim Meenaghan, *Ambush Marketing—A Threat to Corporate Sponsorship*, 38 MIT Sloan Mgmt. Rev. 103 (1996); Dean Crow & Janet Hoek, *Ambush Marketing: A Critical Review and Some Practical Advice*, 14 Marketing Bull. 1, 1–2 (2003); M.C. Obiesie, *The Impact of Marketing Strategy of Ambush Marketing on Major Event Sponsorship and National Development*, 7 Int’l J. Sport Mgmt., Recreation & Ethics 26, 28 (2021).

<sup>15</sup> *Tata Press Ltd. v. Mahanagar Tel. Nigam Ltd.*, (1995) 5 SCC 139 (India).

Supreme Court recognized commercial advertising as a facet of freedom of speech and expression. However, the Court also clarified that this protection is not absolute and is subject to reasonable restrictions under Article 19(2). Therefore, while competitive advertising is constitutionally protected, misleading representations that create false impressions of sponsorship or affiliation may legitimately be regulated in the interest of preventing consumer deception and ensuring economic fairness.

Despite the categorization of ambush marketing as “fair competition” or “opportunistic marketing,” it substantially dilutes the exclusivity and benefits of financial investments in sponsorship agreements.<sup>16</sup> By enabling non-sponsors to benefit from the event’s goodwill without financial contribution, it undermines the economic rationale that justifies substantial sponsorship investments. The ethical and economic impacts of this practice can be better understood by analyzing its effect on various stakeholders.

#### **i. Official Sponsors**

The practice of ambush marketing most evidently affects the official sponsors of the event, who have paid huge sums of money in order to leverage the popularity around the event; they invest in exchange for exploitable commercial benefits, which are then undermined by ambush marketers who free ride upon the goodwill of the event.<sup>17</sup> This raises an important concern as to why a sponsor would invest in an event when the commercial advantage derived from such an event can be enjoyed by other ambush marketers and brands. One of the prominent examples of this practice can be traced back to the 1984 Los Angeles Olympics, wherein Kodak engaged in ambush marketing despite Fujifilm being the official sponsor.<sup>18</sup> Despite Fujifilm investing huge sums of money to obtain sponsorship rights, Kodak circumvented this by sponsoring the television broadcasting rights. This indirect association created significant consumer confusion, as many believed Kodak to be the official sponsor of the event.<sup>19</sup> A similar tactic was witnessed in the 2010 FIFA World Cup in South Africa, where Budweiser

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<sup>16</sup> Tony M. Fernandes, *Ambush Marketing—Ethical Dilemmas of a Marketing Strategy*, 110 J. Bus. Ethics 371, 374 (2012).

<sup>17</sup> R. Seth, *Ambush Marketing – Need for Legislation in India*, 15 J. Intell. Prop. Rights 455, 458-60 (2010).

<sup>18</sup> Campaign UK, *History of Advertising: Kodak's 1984 Olympics Ads*, <https://www.campaignlive.co.uk/article/history-advertising-kodaks-1984-olympics-ads/1378347>; MBA Knowledge Base, *Ambush Marketing—Meaning, Types and Examples*, <https://www.mbaknol.com/marketing-management/ambush-marketing-meaning-types-and-examples/>

<sup>19</sup> RN Davis, *Ambushing the Olympic Games*, 3 Vill. Sports & Ent. L.J. 423, 425-26 (1996).

was the official beer sponsor. However, Bavaria Brewery, a Dutch company, orchestrated an ambush marketing stunt by sending 36 women to attend a match wearing bright orange mini-dresses branded with its logo.<sup>20</sup> The move garnered massive attention inside the stadium and through global media coverage. FIFA immediately responded by ejecting the women from the stadium. Though this case is listed as a “successful” opportunistic marketing tactic, it underscores the inadequacy of legal frameworks to curb ambush marketing.<sup>21</sup> Ambush marketing causes financial losses for event organizers, reduces the interest of future sponsors, and thus threatens the sustainability of commercial events dependent upon sponsorship revenue.<sup>22</sup>

## ii. Event Organizers

Sponsorship is critical for financing mega events like the Olympics, FIFA, the World Cup, and the IPL. Ambush marketing, when left unchecked, also affects the event organizers, as in the absence of laws relating to ambush marketing, non-official sponsors dodge the marketing rules of the event organizers and market their products without paying any sponsorship fees.<sup>23</sup> Legal recourse in such a situation is not possible due to the absence of clear-cut remedies in law.<sup>24</sup> Moreover, another issue as a result of ambush marketing is the inability of event organizers to provide any sort of incentive to their sponsors, as ambush marketers derive the same benefits as the others. Companies expect exclusivity for their investment. When non-sponsor brands gain similar exposure without paying sponsorship fees, the value proposition of official sponsorship is diminished.<sup>25</sup> This makes it harder for organizers to justify premium rates for future sponsorships.<sup>26</sup> This poses a threat to the economic interests of event

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<sup>20</sup> Campaign Asia, FIFA’s Anti-Ambush Marketing Clampdown, <https://www.campaignasia.com/article/fifa-anti-ambush-marketing-clampdown/218245> (last visited Aug. 6, 2025); Marketing Week, The Orange Dress Girls: FIFA Victims of Bavaria Ambush, <https://www.marketingweek.com/the-orange-dress-girls-fifa-victims-of-bavaria-ambush/> (last visited Aug. 6, 2025).

<sup>21</sup> P. O’Gara, Ambush Marketing and Sponsorship Conflicts in Sport, 14 J. Brand Mgmt. 281, 289 (2007).

<sup>22</sup> R. Seth, Ambush Marketing – Need for Legislation in India, 15 J. Intell. Prop. Rights 455, 458-59 (2010).

<sup>23</sup> Jess Blissett, The Impact of Ambush Marketing on Official Partnerships, *Sporting Her* (Jan. 3, 2022), <https://sportingher.com/the-impact-of-ambush-marketing-on-official-partnerships/>.

<sup>24</sup> Carlos Eduardo Neves de Carvalho et al., *The Risk for Brand Owners of Ambush Marketing During Major Sporting Events*, Int’l Trademark Ass’n (Aug. 7, 2024), <https://www.inta.org/perspectives/features/the-risk-for-brand-owners-of-ambush-marketing-during-major-sporting-events/>; Lexlaw News, Ambush Marketing and Intellectual Property: When Sports Causes a Scene, *The IP Press* (Nov. 30, 2024).

<sup>25</sup> S. Bhattacharjee, *Ambush Marketing—The Problem and the Legal Dilemma*, 2 *Manupatra Intell. Prop. L.J.* 15, 16–20 (2003).

<sup>26</sup> Loeb & Loeb LLP, *Navigating Ambush Marketing and Its Impact on Event Sponsorships* (Dec. 1, 2024), <https://www.loeb.com/en/insights/publications/2024/09/navigating-ambush-marketing-and-its-impact-on-event-sponsorships>; Didier Ellis, *Framing Ambush Marketing as a Legal Issue: An Olympic Perspective*, 10 *Int’l Sports*

organizers to secure sponsorship.<sup>27</sup> This was notably illustrated during the 2012 London Olympics, wherein Nike launched its “Find Your Greatness” campaign, which coincided with the opening ceremony of the Olympics, leading consumers to believe Nike was the official sponsor, when in reality, it was Adidas.<sup>28</sup> There were no remedies available against Nike as it did not infringe upon any Olympic symbols or trademarks, yet through ambush marketing by association, it garnered massive publicity.<sup>29</sup> This case underscores how ambush marketing, under the guise of opportunistic marketing, exploits legal loopholes, making it difficult for event organizers to ensure exclusivity for their official sponsors.

## Global Legislation on Ambush Marketing

### i. United States

Like India, the US doesn't have a specific legislation regulating ambush marketing. The Lanham Act provides civil remedies against ambush marketing, as ambush marketing is equated to false association.

Section 43 of the Lanham Act states "(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

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L.J. 13 (2011).

<sup>27</sup> Rukmani Seth, *Ambush Marketing—Need for Legislation in India*, 15 J. Intell. Prop. Rts. 455, 455–63 (2010).

<sup>28</sup> Richard Gillis, *Nike Won London 2012 Before the Games Even Began*, Guardian (July 31, 2012), <https://www.theguardian.com/media/2012/jul/31/nike-ambush-marketing-london-olympics>; Martin Lowe, *Nike and the London 2012 Olympic Games*, in *Design for Business* 168–83 (Vol. 2, 2015), [https://www.academia.edu/19835433/Ambush\\_Marketing\\_Nike\\_and\\_the\\_London\\_2012\\_Olympic\\_Games\\_Book\\_Chapter](https://www.academia.edu/19835433/Ambush_Marketing_Nike_and_the_London_2012_Olympic_Games_Book_Chapter)

<sup>29</sup> P. O'Gara, *Ambush Marketing and Sponsorship Conflicts in Sport*, 14 J. Brand Mgmt. 281, 290 (2007).

Martin Lowe, *Nike and the London 2012 Olympic Games*, in *Design for Business*, Vol. 2, 168-183 (2015), [https://www.academia.edu/19835433/Ambush\\_Marketing\\_Nike\\_and\\_the\\_London\\_2012\\_Olympic\\_Games\\_Book\\_Chapter](https://www.academia.edu/19835433/Ambush_Marketing_Nike_and_the_London_2012_Olympic_Games_Book_Chapter)

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."<sup>30</sup>

In *Boston Athletic Association v. Sullivan*<sup>31</sup> the First Circuit held that the public was likely to be confused that the defendants' unauthorized T-shirts were associated with the Boston Marathon, even though no official trademarks of the Boston Athletic Association had been used.<sup>32</sup>

In *USOC v. American Media, Inc.*<sup>33</sup> the United States Olympic Committee (USOC) sued American Media Inc. (AMI) for publishing a magazine titled "*OLYMPICS USA*" ahead of the 2000 Sydney Olympics. USOC claimed that AMI used protected Olympic marks in violation of the Amateur Sports Act of 1978 (ASA). AMI reasoned that the magazine was editorial in nature, falling under noncommercial speech, thus outside the ASA's scope. The district court of Colorado held that since AMI's magazine was noncommercial speech, ASA did not apply and stated that it could fall under the Lanham Act if consumer confusion or false endorsement could be proved, or else there is no other remedy available.<sup>34</sup>

This shows that the lack of specific legislation regulating ambush marketing poses difficulties due to high established thresholds of proving consumer confusion or deception, or false endorsement. AMI posed its magazine as editorial content rather than commercial to exploit a loophole in the law. Despite using Olympic marks without payment of sponsorship fees, no liability could be imposed on AMI.

Similarly, in *Pirone v. MacMillan, Inc.*<sup>35</sup> the defendant published a calendar featuring Babe Ruth photographs. The plaintiff was unable to provide any evidence that consumers were likely to have been confused as to whether the owners of the "Babe

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<sup>30</sup> 15 U.S.C. § 1125(a)(1)

<sup>31</sup> *Boston Athletic Ass'n v. Sullivan*, 867 F.3d 96 (1st Cir. 2017).

<sup>32</sup> Brian Lee Pelanda, *Ambush Marketing: Dissecting the Discourse*, 34 *Hastings Comm. & Ent. L.J.* 341 (2012).

<sup>33</sup> *U.S. Olympic Comm. v. Am. Media, Inc.*, 776 F. Supp. 233 (D. Colo. 1991).

<sup>34</sup> Robert N. Davis, *Ambushing the Olympic Games*, 3 *Jeffrey S. Moorad Sports L.J.* 423 (1996).

<sup>35</sup> *Pirone v. MacMillan, Inc.*, 894 F.2d 579 (2d Cir. 1990).

Ruth” mark sponsored or endorsed the defendant’s baseball calendar.<sup>36</sup>

The U.S. legal approach to ambush marketing is largely dependent on the Lanham Act. While courts have recognized false association even in the absence of a direct trademark, they have also emphasized the necessity of proving actual consumer confusion. This threshold creates loopholes that allow ambush marketers to capitalize on the goodwill of major events by contending noncommercial activity. The lack of specific legislation regulating ambush marketing leaves reliance on traditional trademark principles, which often fail to address the nuanced strategies of ambushers

## ii. United Kingdom

The United Kingdom has passed event-specific legislation to regulate ambush marketing, such as the London Olympic Games and Paralympic Games Act 2006. The Acts provide a comprehensive legal framework that enables the government to implement regulations to control advertising and trading in and around Olympic venues, in accordance with obligations imposed by the International Olympic Committee (IOC).

The central feature of the act is the grant of exclusive rights to the sponsors, protecting them against ambush marketing by association.<sup>37</sup> The Acts provide that only authorized sponsors are permitted to use logos, symbols, or other representations that may suggest a commercial link with the Games.<sup>38</sup> This protection serves to safeguard the economic value of sponsorship agreements and ensures that the benefits of investment by official sponsors are not undermined.

The Act emphasizes the perception of the public rather than the intent of a marketer. If a representation is likely to lead the audience to believe that an unauthorized party has a connection or association with the Olympic Games, it constitutes a valid actionable ground under the Act.<sup>39</sup>

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<sup>36</sup> Brian Lee Pelanda, *Ambush Marketing: Dissecting the Discourse*, 34 *Hastings Comm. & Ent. L.J.* 341 (2012)

<sup>37</sup> Zaman Faruk Kala, *Ambush Marketing in the Context of the 2012 London Olympic Games* (LL.M. thesis, Univ. of Cent. Lancashire 2012).

<sup>38</sup> Peter Johnson, *Ambush Marketing and Brand Protection: Law and Practice* (2d ed., Oxford Univ. Press 2011).

<sup>39</sup> Brian Lee Pelanda, *Ambush Marketing: Dissecting the Discourse*, 34 *Hastings Comm. & Ent. L.J.* 341, 255–60 (2012); Brian Cookson, *Erasing Ambush Marketing*, 6 *J. Intell. Prop. L. & Prac.* 149, 152–60 (2011).

### iii. New Zealand

The Major Events Management Act, 2007, was enacted by New Zealand in response to the growing problem of unauthorized commercial activities that exploit the goodwill and publicity surrounding large-scale events without official authorization. The act seeks to protect sponsorship agreements surrounding important international events from ambush marketing, ticket scalping, and pitch invasion. It aims at preventing unauthorized commercial exploitation at the expense of the major event organizer and official sponsors.<sup>40</sup>

Part 2 of the Act specifically prohibits ambush marketing by association. It stipulates that no person during a major event can make any representation in a way likely to suggest to a reasonable person that there is an association between the event and the goods, services, or brand.<sup>41</sup> The standard for determining liability is “Would this particular representation suggest to a reasonable person an association with the major event?”<sup>42</sup> Thus, it doesn’t depend upon the intent of the marketer; rather, it depends on the impact such a representation makes, focusing on consumer perception rather than the subjective intent.

The Act distinguishes between two forms of ambush marketing, that is, by association and by intrusion. The former deals with unauthorized representations implying sponsorship, while the latter prohibits physical or visual advertising activities in or around event venues without authorization.<sup>43</sup> The legislation also prescribes civil and criminal penalties, including injunctions, damages, and fines for violations.

The Major Events Management Act, 2007, protects the economic value of sponsorship agreements, protects the legitimate interests of event organizers and sponsors, and

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<sup>40</sup> Owen Morgan, *Ambush Marketing - New Zealand is in Search of Events to Host*, 30 Eur. Intel. Prop. Rev. 454 (2008).

<sup>41</sup> N.Z. Ministry of Bus., Innovation & Emp’t, *A Guide to the Major Events Management Act 2007* (May 2023), <https://www.majorevents.govt.nz/assets/Major-Events/A-Guide-to-the-Major-Events-Management-Act-2007.pdf>

<sup>42</sup> Louise Longdin, *Major Event Regulation: Lessons for and from New Zealand*, 3 Austl. & N.Z. Sports L.J. 5 (2008); N.Z. Ministry of Bus., Innovation & Emp’t, *A Guide to the Major Events Management Act 2007* (May 2023), <https://www.majorevents.govt.nz/assets/Major-Events/A-Guide-to-the-Major-Events-Management-Act-2007.pdf>

<sup>43</sup> N.Z. Ministry of Bus., Innovation & Emp’t, *A Guide to the Major Events Management Act 2007* (May 2023), <https://www.majorevents.govt.nz/assets/Major-Events/A-Guide-to-the-Major-Events-Management-Act-2007.pdf>

upholds the integrity of major international events by preventing deceptive or misleading commercial associations.<sup>44</sup>

### **Do IP laws in India provide sufficient safeguards against ambush marketing?**

Laws such as the Trademarks Act, 1999, and the Copyrights Act, 1957, provide a framework for protecting registered marks, logos, or copyrighted content against unauthorized use. When an ambush marketer engages in direct ambush marketing by using these trademarks or copyrighted material, these laws provide sufficient safeguards. However, problems in assigning liability arise when an ambush marketer engages in indirect ambush marketing, associating itself with an event without explicitly infringing upon any intellectual property rights.

India lacks event-specific legislation to regulate such indirect ambush marketing<sup>45</sup>. As a result, ambush marketers develop a creative advertising campaign that capitalizes on the event's popularity without directly using the event's logos, its trademarks, or trademark names.<sup>46</sup> When there is a trademark infringement or a copyright infringement by the ambush marketer, it falls within the ambit of the Trademarks Act, 1999, and the Copyrights Act, 1957. But in such a case where the acts of the ambush marketers do not violate any intellectual property rights but nevertheless create a strong associative link, the ambush marketers are successful in evading liability.<sup>47</sup> This raises a major concern as event organizers and official sponsors have no legal recourse to resort to, as there is no "legitimate" ground in the legislation to claim damages upon. Courts in such cases cannot impose liability unless a clear statutory violation has been established. This results in a regulatory gap or a loophole where ambush marketers can benefit commercially from an event's goodwill without investing in the event or paying for sponsorship.<sup>48</sup>

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<sup>44</sup> Louise Longdin, *Major Event Regulation: Lessons for and from New Zealand*, 3 *Austl. & N.Z. Sports L.J.* 5 (2008); N.Z. Ministry of Bus., Innovation & Emp't, *A Guide to the Major Events Management Act 2007* (May 2023), <https://www.majorevents.govt.nz/assets/Major-Events/A-Guide-to-the-Major-Events-Management-Act-2007.pdf>

<sup>45</sup> Rukmani Seth, *Ambush Marketing – Need for Legislation in India*, 15 *J. Intell. Prop. Rts.* 455, 459 (2010)

<sup>46</sup> Nagasundari Shruti K & Lakshana K, *A Study on Ambush Marketing: With Special Reference to Indian Premier League*, *Int'l J. L. & Soc. Sci. Stud.* 294, 295–296 (2024)

<sup>47</sup> Rukmani Seth, *Ambush Marketing – Need for Legislation in India*, 15 *J. Intell. Prop. Rts.* 455, 455–63 (2010); Manish Tiwari & Radhika Bhargava, *Protect the Sports; Protect the Sponsors: Need for an Action against Ambush Marketing*, *Ind. L.J.*, Vol. 4, Issue 4 (2006).

<sup>48</sup> *Ambush Marketing: Need for Legislation in India*, Mondaq (Apr. 9, 2018).

The *NHL V. Pepsi Cola*<sup>49</sup> is a perfect example of such a circumstance. This case arose out of Pepsi-Cola's 1990 advertising campaign, the "*Diet Pepsi \$4,000,000 Pro Hockey Playoff Pool*," which was launched during the NHL playoffs and heavily centered on the Stanley Cup. Pepsi was not an official sponsor of the NHL and did not use any NHL logos or trademarks. At that time, Coca-Cola Ltd. had secured official sponsorship rights with the NHL for about \$2.6 million. This sponsorship gave Coke promotional rights to use NHL symbols. The NHL sued Pepsi, claiming that Pepsi's playoff pool and advertisements created a false association with the NHL, amounting to ambush marketing. The court rejected the NHL's claims, stating that Coke's contract could not bind third parties like Pepsi, and that Pepsi's marketing strategy, which helped them to benefit from the NHL's goodwill, was lawful because it did not involve unauthorized use of NHL trademarks or trade names.<sup>50</sup> Thus, Pepsi successfully, through indirect ambush marketing, associated itself with the NHL playoffs without using any protected marks or names, thereby exploiting a legal loophole.<sup>51</sup> This decision underscores that in the absence of specific anti-ambush marketing legislation, wherein courts often favor marketers who employ creative yet non-infringing campaigns, thereby leaving loopholes for ambushers to exploit as long as their strategies do not involve trademark or tradename infringement.<sup>52</sup> These loopholes underscore the need for event-specific legislation or clear statutory provisions that directly address ambush marketing, so that the event organizers and sponsors' commercial rights are protected.<sup>53</sup>

Another notable case is *ICC Development v. Arvee Enterprises*<sup>54</sup>, where ICC Development (International) LTD. had acquired sponsorship and broadcasting rights for the ICC World Cup organized by the International Cricket Council. Arvee Enterprises thereafter launched a promotional campaign titled "Philips: Diwali Manao World Cup Jao" offering consumers a chance to win tickets to the World Cup upon purchasing their products. ICC contended that the campaign amounted to unauthorized commercial exploitation and constituted ambush marketing, since Philips was neither an official sponsor nor had any affiliation with the World Cup. The Delhi High Court, however, held that since there was no violation of any intellectual

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<sup>49</sup> National Hockey League v. Pepsi-Cola Canada Ltd., 56 B.C.A.C. 1 (B.C. Ct. App. 1995) [Canada].

<sup>50</sup> Robert N. Davis, *Ambushing the Olympic Games*, 3 Vill. Sports & Ent. L.J. 423 (1996).

<sup>51</sup> Rukmani Seth, *Ambush Marketing—Need for Legislation in India*, 15 J. Intell. Prop. Rts. 455, 455–63 (2010); S. Bhattacharjee, *Ambush Marketing—The Problem and the Legal Dilemma*, 2 Manupatra Intell. Prop. L.J. 15 (2003).

<sup>52</sup> Robert N. Davis, *Ambushing the Olympic Games*, 3 Vill. Sports & Ent. L.J. 423 (1996).

<sup>53</sup> Singh & Chawda, *The Issue of Ambush Marketing: Need for a Specialized Legislation*, JURIST (Oct. 4, 2021).

<sup>54</sup> *ICC Dev. (Int'l) Ltd. v. Arvee Enters.*, 2003 SCC OnLine Del 2, (2003) 26 PTC 245 (Del).

property, such as trademark or copyright infringement, the campaign cannot be considered illegal ambush marketing. The Court emphasized that Indian law provides no specific remedies to event organizers in such instances, highlighting the absence of statutory recognition of event rights.<sup>55</sup> This judgment remains a cornerstone for underscoring the need for specific legislation for regulating ambush marketing, as the court explicitly states that unless the marketing uses a registered trademark, infringes copyright, or amounts to passing off, the organizers have no remedies under law.<sup>56</sup>

These loopholes mentioned above threaten future sponsorship agreements and investments, as ambush marketing left unchecked reduces the value derived from exclusive sponsorships, thereby reducing the financial viability of sporting events in India.<sup>57</sup> This underscores the pressing need for specific legislation in the area of ambush marketing in order to safeguard the needs of official sponsors and event organizers.<sup>58</sup> Specific legislation would not only safeguard official sponsors' interests but also consumer interests, as it can prevent misleading associations and unauthorized commercial exploitation.<sup>59</sup>

## Conclusion

Ambush marketing occupies a complex and contested space at the intersection of intellectual property law, commercial speech, consumer protection, and business ethics. As this research paper has enumerated, the practice cannot be dismissed as merely innovative competitive advertising, nor can it always be considered illegal; instead, it exists within a grey zone. Thus, legislations have to focus on balancing the freedom of businesses to engage in legitimate competitive advertising and the need to protect the economic value and exclusivity of sponsorship agreements.

Existing legal frameworks in India fail to address indirect or associative ambush marketing. A multitude of judicial precedents illustrate that in the absence of statutory violation, courts are restricted from intervening, thereby allowing ambushers to capitalize on event goodwill without any sort of financial investment or contribution. This regulatory gap weakens the

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<sup>55</sup> *ICC Dev. (Int'l) Ltd. v. Arvee Enters.*, 2003 SCC OnLine Del 2, (2003) 26 PTC 245 (Del).

<sup>56</sup> *Lakshay Suri, Beyond the Ambush: Safeguarding Sponsorship Rights Through Intellectual Property Legislation in India*, 7 Int'l J. Multidisciplinary Rsch. 1, 1–3 (2025).

<sup>57</sup> *Rukmani Seth, Ambush Marketing – Need for Legislation in India*, 15 J. Intell. Prop. Rts. 455, 457–58 (2010).

<sup>58</sup> *Rukmani Seth, Ambush Marketing – Need for Legislation in India*, 15 J. Intell. Prop. Rts. 455, 457–58 (2010).

<sup>59</sup> *Lakshay Suri, Beyond the Ambush: Safeguarding Sponsorship Rights Through Intellectual Property Legislation in India*, 7 Int'l J. Multidisciplinary Rsch. 1, 1–3 (2025).

commercial integrity of sponsorship agreements and diminishes the incentive structure upon which major sporting and cultural events depend.

Further, a comparative analysis of legislations of the United Kingdom and New Zealand shows that event-specific legislation offers a more effective protection. By focusing on consumer perception and the likelihood of implied association, rather than strictly on trademark infringement, these legislations are far more effective in safeguarding sponsorship exclusivity while still facilitating fair competition.

From an ethical standpoint, ambush marketing raises serious concerns regarding fairness and good faith in commercial dealings. While proponents characterize it as opportunistic marketing, critics argue that it amounts to free-riding on investments made by official sponsors and event organizers. Moreover, consumer confusion regarding sponsorship affiliations may distort purchasing decisions and erode transparency in the marketplace.

Therefore, the law must draw a careful but principled line. A balanced legislative framework in India should aim at clearly defining ambush marketing, distinguishing between permissible competitive advertising and misleading associative conduct. Further, move away from standards of trademark and copyright infringement and incorporate a consumer-perception standard to address indirect ambush marketing while also focusing on protecting the legitimate commercial interests of event organizers and official sponsors. Such reform would not create a monopoly over public discourse surrounding events, but rather recognize and protect the economic value generated through lawful sponsorship agreements.