OREI

SPORTS LAW INSTITUTE

AMBUSH MARKETING IN FOOTBALL COMPETITIONS: WHERE SHOULD BRAND PROTECTION END?

Authors: Guy Schlaefli & Rodrigo Arias Grillo

September 2026

INDEX

I. Introduction

Quoting Jeff Bezos, "your brand is what people say about you when you're not in the room." Ambush marketing is, in essence, the deliberate exploitation of that principle: a campaign built entirely around what the public will say, think or feel about a brand's proximity to a football competition, without that brand ever having paid to be in the room. It is a discreet practice, rarely violent to the eye, yet it sits at the crossroads of three very different fields of expertise that do not always speak the same language: finance, commercial and legal practice, and sports governance.

This is precisely what makes the topic worth a dedicated discussion rather than a footnote to sponsorship law. Ambush marketing is too often treated as a purely legal problem, to be solved with the right clause or the right precedent. It is not. It is, first, a financial question about how much of a mega-event's revenue genuinely depends on exclusivity and what that dependency is worth. It is, second, a commercial and legal question about where contractual promises made to sponsors stop being enforceable against the outside world. And it is, third, a governance question about the legitimacy of a private organiser writing and enforcing its own rules over public space and public attention.

i. A financial reading: what exclusivity is actually worth

From a financial perspective, sponsorship has become one of the principal revenue streams underpinning the mega-event model, and its value is built almost entirely on the promise of exclusivity. Organisers price that exclusivity into their commercial packages, and sponsors pay for it precisely because it distinguishes them from everyone else in their sector. The financial distinction to be drawn here is that ambush marketing does not steal a fixed asset; it erodes a variable one; the perceived scarcity of association with the event. That erosion is real, but, as will be seen, it is far less measured and far less understood than the enforcement budgets built to prevent it would suggest.

ii. A commercial and legal reading: what the law was actually built to do

From a commercial and legal perspective, the distinction is a different one. Contract law, intellectual property law and unfair competition law were not designed with sponsorship exclusivity as their organising purpose; they were designed to protect registered rights, to prevent confusion in the marketplace and to give effect to bargains between consenting parties. None of these bodies of law were built to bind a third party who has signed nothing, registered nothing and copied nothing. The legal distinction, then, is between what sponsors and organisers have agreed to protect through contract, and what the law independently recognises as worth protecting regardless of that contract. The gap between the two is where ambush marketing lives.

iii. A governance reading: who gets to decide, and on what authority

From a sports governance perspective, the distinction is sharper still. When a football association or a local organising committee designates a clean zone, drafts an anti-ambush regulation or threatens enforcement action against a local business, it is not acting as a neutral legislator; it is acting as a commercial party regulating a market in which it also participates and profits. This is not, by itself, illegitimate; sports governing bodies routinely regulate matters that touch on commercial life. But it does mean that any assessment of ambush marketing has to ask a governance question that finance and law cannot answer on their own: is the body making these rules accountable to anyone beyond its own sponsors for how far those rules reach?

Ambush marketing is not merely a legal question of what marketing law permits, but a governance question of what a private organiser should permit itself to prohibit.

This article proceeds along these three lines. It begins by mapping the typology of ambush marketing and the competing interests at stake, before examining the limits of existing legal authority and how these limits are treated across common law and civil law jurisdictions. It then turns to clean zones as the clearest example of governance overreach, and to the economic case advanced in favour of exclusivity. It closes with conclusions and recommendations addressed, in turn, to the financial, the commercial and legal, and the sports governance dimensions of the topic, because a problem that sits at the intersection of three disciplines deserves a solution that speaks to all three.

II. A Typology of Ambush Marketing

There is a necessary distinction of typology here that needs to be made: not all unpaid-for marketing can be rendered ambush and illicit. Physical presence alone near a football competition cannot be banned by event organisers. There may be a billboard for a movie two streets down from the stadium which gains some broadcasting exposure through a high panned shot of the stadium before the game. This sort of intrusion ambushing is inevitable and as such, largely permitted and completely legal.

There can be direct ambush on the other end of this spectrum which will include use of protected trademarks or logos, false official designation or partnership claims. This would be considered clearly unlawful under intellectual property law or fair competition law.

These are the black and white of the topic at hand. As can be expected, the discussion to be had operates in the grey. Indirect ambush could be an association campaign that does not include any protected marks but instead uses generic imagery of football, maybe the silhouette of a player taking a shot, the colours of a nation's flag. This is much trickier and raises some very interesting questions of legitimacy, competitive fairness and legality. This is the focus of the article.

III. Competing Interests: Sponsors, Organisers, and Commercial Freedom

So where can this line be drawn in the sand? Governing bodies organising football competitions have an obvious commercial interest in safeguarding the revenue they receive from their partnerships and sponsors for that event. The sponsors themselves obviously wish to protect the benefit they paid for and prevent direct competitors (or indeed any commercial entity, competitor or not) from obtaining the benefits without paying the commensurate charges.

Put simply, protection of these rights that are sold for competitions is functional and arguably necessary for securing the value which competition organisers apply to them. Rule makers would not want to create some sort of "Wild-West" of marketing where everyone had free rein, and competitions had no control over who they chose to associate with.

However, there is a position to be made that some of the measures taken like clean-zones and broad-reaching anti-ambush clauses can unreasonably restrict commercial expression from local businesses and non-sponsor marketing which makes no effort to infringe on intellectual property rights. This is tested against the standard of disproportionate interference with freedom of expression or competition.

The classic proportionality tests can be applied; these would seek to determine whether a restriction genuinely protects sponsorship value, and then whether narrower means could be used which would have a lesser impact on third-party commercial freedoms.

Proportional brand protection strikes a balance between this economic justification and overreaching regulatory action.

IV. The Limits of Existing Legal Authority

In practice, this is not as clear to understand as its theoretical underpinnings are to explain. It is not immediately clear what authority is available. Traditional intellectual property regimes protect against unauthorised use of registered marks while providing no general control over any references to football, nations or teams. Efforts made by football authorities to suppress this type of non-infringing associative advertising as such go beyond the scope of any natural intellectual property rights protection.

Organisers can then invoke other provisions, such as unfair competition and misrepresentation to attempt to reach out beyond IP law applications. These passing-off doctrines can be invoked where campaigns create the possibility of confusion or wrongly imply official sponsorship relationships with the event organisers. This, however, while providing some rules beyond the IP doctrines, just pushes the original question further down the road. The question instead evolves into when exactly association become misleading.

V. Comparative Legal Treatment

This question inevitably has different answers around the world and across jurisdictions. In common law jurisdictions, one may expect the rules to be widely similar. The US, Canada, Australia and the UK all do indeed rely on some common law rules for passing off which generally fit into the "classical trinity" of a requirement of goodwill, misrepresentation and damage, or variations of this. However, while the US has also statutorily implemented the Lanham Act federally, the court's decision that it must be "construed narrowly" (U.S. Olympic Comm. v. Am. Media, Inc., 156 F. Supp. 2d at 1209) has left common-law unfair competition as still the most pertinent route for pursuing an ambush marketing claim. Canada has codified the common law tort of passing off in its Trademarks Act (1985). However, they have done this without expanding the scope at all; no claim under the statute can be brought if you cannot show common law passing off. The UK and Australia largely follow suit here; there are common law remedies available under passing-off doctrines, supposedly bolstered by some statutory regimes (usually brought in or expanded in line with the country being a host-nation for the Olympics) which in practice fail to expand the common law much, if at all.

It follows then, to ask exactly how this is effectively governed in civil law jurisdictions, which do not have access to common law remedies. In Germany, for example, there is no direct legislation declaring ambush marketing illegal (Olympic-specific statutes are the exception). Organisers are then left under German law to rely on the unfair competition or intellectual property laws discussed above. The EU Trademarks Directive can be relied on in German courts too obviously. Nevertheless, the definition of a trademark as "an indication of origin" (Council Directive 2008/95) does not go much beyond traditional counterfeiting and does not include the ambush marketer who is simply trying to profit from the coverage, goodwill and positive image of the targeted event, not the origin.

The different approaches taken around the world demonstrate the difficulty of discussing this topic with a global lens. The laws and their applications will vary and supposedly reforming statutes have, time and again, merely codified the common law without building on it. This just goes to show how difficult it is to manage this grey area which is the basis of this article.

The theoretical question, which can be answered without reference to a great deal of legal jurisdictions, becomes: should the law treat creative piggybacking campaigns as unfair by default, or does this unduly limit entrepreneurial endeavour?

VI. Clean Zones and the Problem of Overreach

On this, FIFA and the IOC have implemented some regulations which have been seen as overreaching. Clean zones are one of these. This describes a zone surrounding a stadium or venue for the event in which no unauthorised companies can operate. They usually have built-in "business-as-usual" exceptions, which limit the direct impact on the local economy. However, critiques of overreach still come into play here. Cutting out an entire region and completely restricting who can advertise there fails to align with any of the legal methods of recourse discussed thus far. This is where the calls for overregulation really take hold. The governments regulating this have not seen it to be such a pressing issue as to fully regulate it. Yet the corporations who benefit from this monopolised control of the event locations, using it to maximise the value of the sponsorships they can offer, have gone beyond the available legal remedies and set up restrictions that arguably restrict the free speech of local business owners as well as punish the creative endeavours of aspiring businesses.

Host cities and nations often allow this kind of extra-legal overreach. Or, to put it less accusatorially, privately designed enforcement programmes backed by public authorities create a fertile ground for regulatory overreach that potentially cannot be supported on a legal level.

VII. The Economic Case for Brand Protection & Exclusivity

The commercial justifications are not without merit, and it can be argued that they are substantial. Sponsorship revenue is indeed a key stream of income for mega-events like the World Cup.[1] This creates an obvious incentive to overprotect brand assets and suppress any informal, non-sponsor associations. It is less clear, however, that this line of reasoning would be successfully applied in many other areas; dependence on a single revenue stream would not, in most other sectors, be sufficient to justify special legal treatment. Yet countries appear somewhat prepared to bend the rules to allow events of this scale to take place.

A further unresolved matter is the cost-benefit analysis. Little material could be found on what impact marginal reductions in ambush marketing actually have on sponsorship value. If this could be ascertained, it would need to be weighed against the social and economic cost of restrictive measures, which is likewise difficult to quantify.

One way of seeing this is that exclusivity is primarily the commercial benefit a sponsor is buying. Ambush marketing can significantly reduce consumers' ability to identify the correct official sponsors.[2] This has significantly driven the escalation of measures against ambush. However, this, in and of itself, is not legislation. These are contractual agreements given force by their respective enforcement regimes. It makes sense that such agreements can restrict a host from taking on another official sponsor in the same sector or provide that a sponsor must not behave in a way that brings bad publicity to the event; these are standard contractual terms. What they cannot do, given privity of contract, a key cornerstone of contractual law, is bind third parties. So why exactly should such a contractual exclusivity agreement be able to restrict a third party from advertising in an area where it would otherwise be breaking no law?

This is a difficult question, and one that raises issues under Articles 101 and 102 TFEU in the EU, under the Sherman Act in the United States, and under the respective antitrust legislation found around the world. Private companies creating restrictions that produce quasi-monopolies in markets tied to an event is conduct that competition and antitrust law address in every country where common law or counterfeiting law has otherwise been left to incidentally dominate ambush marketing regulation.

---

[1] Mariana Guará Rocha Coelho, João Guilherme Barbosa de Amorim and Victor Manoel Cunha de Almeida, 'Sports Mega-Event Sponsorship: The Impact of FIFA Reputation and World Cup Image on Sponsor Brand Equity' (2019) 16(1) BAR - Brazilian Administration Review, e180071, https://doi.org/10.1590/1807-7692bar2019180071.

[2] Nick Burton and Simon Chadwick, 'European Football Supporter Attitudes toward Ambush Marketing' (2018) International Journal of Sports Marketing and Sponsorship, https://doi.org/10.1108/IJSMS-10-2017-0107.

VIII. Conclusions and Recommendations

This article takes the position that sports events are no different from anything else and should not receive special protections that insulate them or their sponsors from competition outside the normal legal recourses. It also argues that efforts to do so are detrimental for sport in general. If a large organisation is seen to be, or is found to be, unreasonably restricting its competitors and discouraging local or smaller businesses from legally using the profile of their event to reach new audiences, this would not be good publicity.

There is a trend towards escalating enforcement regimes in this area, and this article makes two points regarding that trend:

- First, that this escalation is primarily driven by risk-averse sponsor expectations and corresponding lobbying, rather than by any evidence of significant financial harm; and
- Second, that heavy-handed, extra-legal enforcement can backfire, generating a more effective marketing campaign for the ambusher through the resulting media discussion.

The grey area discussed at the outset remains elusive and difficult to define, and its size and shape shift across jurisdictions. FIFA's effort to create a regulatory system that applies evenly and satisfies everyone is no easy feat. What is needed is a fresh look at both the measures available and what, precisely, is at stake.

More studies need to be done on the impact of ambush marketing on the exclusivity of official sponsors, and more clarity is needed on what exactly an ambush marketer can do before encroaching on that exclusivity. Marketers will always be creative and will always find a way to outthink a restriction; the solution cannot be an outright ban on anyone advertising near an event, as this would be neither proportionate nor legal.

Alongside this, there could be a shift from punitive measures to education. Perhaps a more holistic approach that focuses on counteracting ambush marketing as a phenomenon in sport generally. Whatever change is needed, studies conducted so far on the measures currently being taken "indicate poor performance" when it comes to remedying the issue ("A Systematic Literature Review of Ambush Marketing in Sport").

A concluding thought is that, over the course of this research, the social and cultural importance of football has seemed to justify the special treatment and uneven rules discussed here. This article, however, takes the position that it is precisely that importance which should encourage openness, and a corresponding restriction on the influence private contracts are permitted to exert over third-party advertising.

The three lessons of this article: dependence on a single revenue stream does not, of itself, justify special legal treatment; privity of contract cannot be stretched to bind those who never signed; and a governing body that regulates its own market owes an account of how far its rules should reach.

i. A Financial Perspective

- Commission and publish independent economic studies quantifying the marginal impact of ambush marketing on sponsorship value, rather than continuing to set enforcement budgets on the assumption that the impact is self-evidently severe.
- Weigh enforcement spending (clean-zone security, monitoring, litigation) against its demonstrable return, and treat that spending as a cost line subject to the same scrutiny as any other commercial investment, not as an unquestioned cost of doing business.
- Reduce structural dependence on exclusivity as the principal driver of sponsorship value, diversifying revenue models (media rights, data, licensing, digital engagement) so that the financial case for aggressive brand protection is not the only lever available to sponsors and organisers.
- Price sponsorship packages with realistic, disclosed assumptions about the residual risk of non-infringing associative marketing, rather than implicitly selling a guarantee of total exclusivity that the law does not, in fact, provide.

ii. A Commercial and Legal Perspective

- Apply a consistent proportionality test to every brand-protection measure: does the restriction genuinely protect a recognised legal interest, and is there a narrower means available that would achieve the same protection with less impact on third parties?
- Resist the temptation to extend contractual exclusivity, through the back door of clean-zone rules or accreditation conditions, to bind parties who are not privy to the sponsorship contract; where genuine legal gaps exist, pursue them through unfair competition or passing-off doctrines rather than through extra-legal enforcement.
- Monitor brand-protection regimes against antitrust and competition law, particularly under Articles 101 and 102 TFEU, the Sherman Act, and equivalent regimes, so that

legitimate sponsorship protection does not tip into the creation of quasi-monopolies over public spaces and public attention.

- Favour legal certainty over discretionary enforcement: clear, narrowly drafted definitions of prohibited conduct serve organisers, sponsors and third parties alike better than broad, open-ended anti-ambush clauses that are enforced unevenly.

iii. A Sports Governance Perspective

- Treat brand protection regulation as an exercise of self-regulatory power that carries an obligation of accountability, not as a purely commercial prerogative; governing bodies that write and enforce their own market rules should be able to explain and justify the reach of those rules to host cities, local businesses and the public.

- Consult host cities, local business associations and consumer representatives before designating clean zones or comparable restrictions, so that the scope of the measure reflects a genuine balancing of interests rather than a unilateral commercial decision.

- Shift the emphasis of enforcement from punitive, headline-driven action against ambushers, which can generate free publicity for the very campaign it targets, towards education and voluntary compliance built around clearly published rules.

- Periodically review the effectiveness of anti-ambush regulation against its stated goals, following the studies which so far "indicate poor performance" in this field, and be prepared to recalibrate or withdraw measures that cannot demonstrate a proportionate benefit.

- Recognise that the social and cultural importance of football is an argument for openness and legitimacy in how these rules are made, not for insulating football from the ordinary legal recourses that apply to every other commercial activity.