

Who's Ambushing Whom?

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16th European Association for Sport Management Conference
Heidelberg, Germany

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Outline

- Review of Literature
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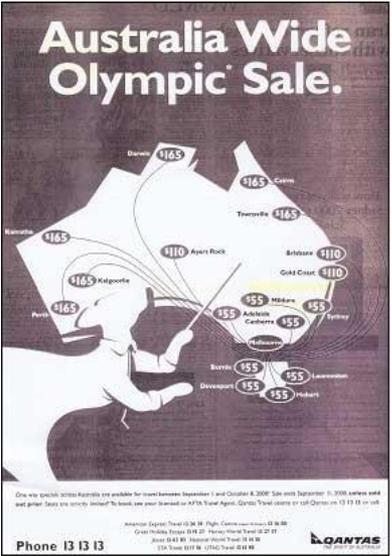
Review of literature

Ambush marketing - definition

“the efforts of an organization to associate itself indirectly with an event in an effort to reap the same benefits as an official sponsor”

(Sandler & Shani, 1989)

Ambush marketing



Review of Literature

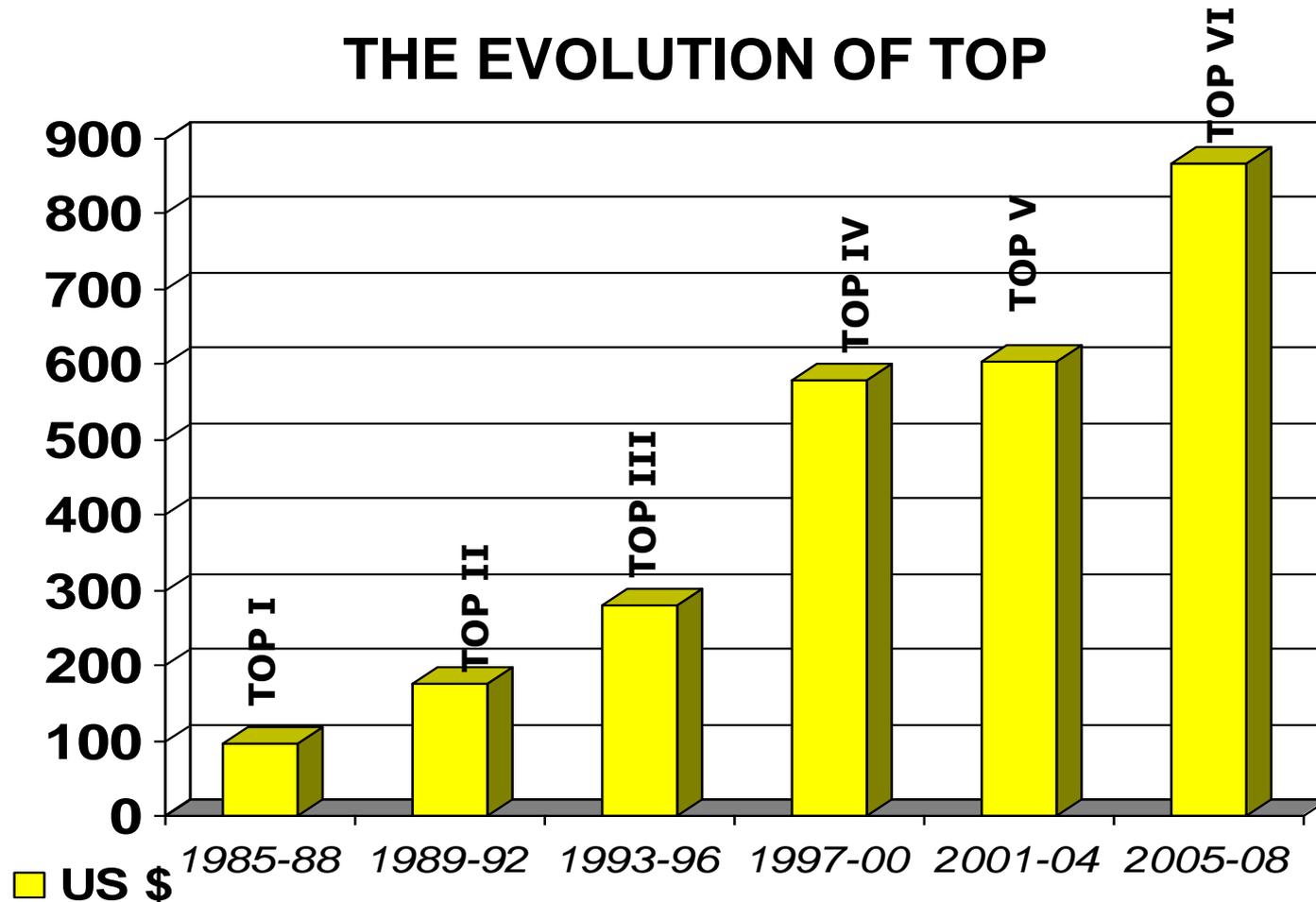
- It is also argued that ambushing may be legitimate competitive marketing (Séguin & O'Reilly, 2008).
- For the most part the context in which these techniques are used is perfectly legal (Hoek & Gendall, 2003).



Review of Literature

- (1) describing the practice and developing a definitional construct (cf. Crow & Hoek, 2003; McKelvey & Grady, 2008 ; Payne, 1998; Sandler & Shani, 1989).
- (2) concerns around consumer perception and the brand impact (cf. Meenaghan, 1998; Preuss et al., 2008; Séguin et al, 2005; Séguin & O'Reilly, 2008; Sandler & Shani, 1993; Shani & Sandler, 1998).
- (3) judicial precedent and description of legalities (cf. Bean, 1995; Ettorre, 1993; Nish, 2003).
- (4) ethical issues (cf. Meenaghan, 1994; O'Sullivan & Murphy, 1998).
- (5) fighting and preventing ambush marketing (cf. Townley, Harrington & Couchman, 1998; Séguin & O'Reilly, 2008).

Review of Literature



Review of Literature

- Ultimate responsibility to enhance the Olympic brand and to provide value to commercial partners remains with the IOC in collaboration with NOCs, OCOGs and sponsors.

(Séguin & O'Reilly, 2008)

Review of Literature

- Has become commonplace to protect from ambush marketing using legislation (Eg. London, New Zealand, Australia & South Africa)
- Canada- Bill C-47 Olympic and Paralympic Marks Act (OPMA)



Review of Literature

OPMA Section 4(1)

“No person shall, during any period prescribed by regulation, in association with a trade-mark or other mark, promote, or otherwise direct public attention, to their businesses, wares or services in a manner that misleads, or is likely to mislead that a business association exists between the business and the Olympic Games, Paralympic Games, OCOG, COC or CPC ...”

(Olympic and Paralympic Marks Act, 2007)

Review of Literature

OPMA Section 6

Removes the requirement of the plaintiff to demonstrate irreparable harm in order to succeed in getting an interlocutory injunction against a possible ambush marketer during the designated protected period.

(Olympic and Paralympic Marks Act, 2007)

Review of Literature

- Created explicitly in response to requests of IOC that host cities ensure the protection of official sponsors through legislation.
- OPMA Provides protection over and above that already stringent *Trademarks Act* which protects intellectual property.

Research Question

Is The Olympic and Paralympic Marks Act born out of concern for the protection of the public from harm or rather as a way for the IOC to ensure its commercial interests are protected first and foremost while the public right to freedom of expression is ambushed?

Methodology

Comprehensive literature review on marketing and legal aspects of sport.



Methodology

- Supported by 25 semi-structured interviews with executives representing:
 - TOP and COC sponsors
 - Olympic marketing executives representing IOC, NOCs, OGOCs
 - Prominent industry personnel

Methodology

Data coded and categorized according to 3 identified themes:

1. IOC claims of harm from ambush marketing
2. IOC's power to impose anti-ambush legislation
3. Latent negative impacts of Bill C-47

Results & Discussion

- Review of literature does not support the need for anti-ambush legislation.
- Results suggest that the IOC and its major stakeholders (e.g. NOCs, OCOGs and sponsors) each have roles and responsibilities in preventing ambush marketing, including:

Results & Discussion

1. Addressing clutter

“ They are whoring themselves to the market to make X amount of dollars and because of that, just the sheer clutter takes away from the value.”

(TOP Sponsors)

Results & Discussion

2. Integrated public relations strategies

“There is some direct role for the public relations and media relations perspective. They play a direct role and they play a very significant role in educating and leading the organizing committees, with respect to hand-tying ambush activity, that they should be undertaking.”

(TOP Sponsor)

Results & Discussion

3. Value-added programs

“To some extent sponsors should be required to activate what they purchase and on the other hand properties should have a sponsor recognition plan and a bit of a media promotions plan to make the event known and to have value.”

(Olympic Experts)

Results & Discussion

4. Sponsor recognition

“Sponsor recognition, was there some?...I think they need to consult those sponsors, particularly those sponsors who live and work in the world of consumer products to help them develop a very effective plan on sponsor recognition.”

(TOP Sponsor)

Results & Discussion

5. Sponsor activation

“Do a good job at leveraging. I really believe that your competitors aren’t going to step up and ambush you if they think your going to do this all out great campaign and they’ll look like chump.”

(COC Sponsor)

Results & Discussion

6. Increase marketing expertise of NOCs

“The role of the IOC is to coach and teach the NOCs that they need to engage, encompass and coordinate all their NGB’s efforts into one consolidated group.”

(TOP Sponsors)

Results & Discussion

- Both the literature and interviews offered little direct evidence of harm caused by ambush marketing, which could not be sufficiently resolved by the less aggressive and unobjectionable brand protection and education strategies outlined above.



Results & Discussion

- Raises serious questions from a legal standpoint as ostensible purpose of legislation is to protect a country's citizens from harm, yet the potential affront to people's basic rights, afforded under the Canadian Charter of Rights and Freedoms, has not been considered.

Results & Discussion

- It is argued that in seeking to protect the sponsorship rights of certain companies (i.e., legislation in place of proper brand protection), the government is, in fact, causing more harm than good.



Results & Discussion

- Four main categories of concern:
 1. Process issues
 2. Overbreadth
 3. Remedial issues
 4. Rights of the public



Results & Discussion

Process Issues

- Time between OPMA's introduction & passage into law was unusually brief.
- Basis for acceptance of necessity of the bill never clearly stated/understood during debate.
- Arguably a business problem not a legal problem as discussed earlier in results.
- Clearly the result of an already promised commitment to the IOC.

Results & Discussion

Overbreadth

- Monopoly rights typically kept in check by notions of fairness in competition, commercial freedom, & desire to prevent consumer confusion.
- New ‘right of association’ is packed with ambiguities that make it much broader right.
- Standard not confusion but infinitely more obscure ‘likely to mislead into believing.’

Results & Discussion

Remedial Issues

- No burden to prove irreparable harm in order to obtain injunction.
- Increases possibility of shutting down legitimate activities during key periods.
- VANOCs attempt to articulate guidelines for enforcement does not substitute for clearly delineated & measured legislative response.

Results & Discussion

Rights of the Public

- Without participation & support of community stakeholders the games could not take place.
- OPMA denies their individual right to associate in any commercial manner with an event of significant public & communal dimensions.
- Translates into a chill on the natural process whereby members of a community reference & interact with events within that community.

Future Research

- Awareness & perception of ambush marketing by key sport stakeholders (sport federations, athletes).
- Possible impacts of the legislation on these stakeholders.
- International legislation comparisons.
- A new intellectual property right?
- Who's ambushing whom?

THANK YOU

QUESTIONS??



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