

MAJOR EVENTS MANAGEMENT ACT.



Malcolm Hurley

The Rugby World Cup is big business. It relies on deals with official sponsors, including suppliers, licensees, broadcasters and travel and hospitality agents. The value of these deals is dependent on giving sponsors exclusive rights – and being able to protect those rights.

According to the countdown screen near my office, it is less than 12 months to the Rugby World Cup. It is one of the world's top-three sporting events, and will be the biggest in 2011. And this is where the Major Events Management Act 2007 comes in.

The Act is designed to prevent ambush marketing and to enhance the rights of event organisers and official sponsors for major events. The Rugby World Cup 2011 has been declared a major event for the purposes of the Act.

Ambush marketing is a promotion tactic designed to associate a company, product or service with a particular event – or to attract the attention of people attending the event, without payment being made for an official sponsorship. The Act contemplates two types of ambush marketing: by association and by intrusion.

There are plenty of examples of high-profile ambush marketing by major brands. The Nike/Reebok debacle during the 1996 Atlanta Olympics is a good one. Nike – which

was not a sponsor – purchased extensive billboard advertising on all the arterial routes into the Olympic stadia. It also lined these routes with people giving away swoosh banners to wave at the competitions and put up an enormous Nike Centre overlooking the stadium. The public was so overwhelmed by Nike advertising that, by the time they entered the stadium, they thought that Nike was the official sponsor. Reebok – who had paid US\$50 million to become an official sponsor – was less than thrilled.

However, the Act does not apply just to major brands and their multi-million dollar campaigns. On the other end of the scale, it also applies to the retailer with a single shop.

AMBUSH MARKETING BY ASSOCIATION

Under the Act, no person may – during the protection period for a major event – make any representation in a way likely to suggest to a reasonable person that there is an association between the event and goods or services, a brand of goods or services, or a person who

provides goods or services. There are exceptions, of course. The most important (and logical) being that the person has the written authorisation of the major event organiser. The protection period for the Rugby World Cup continues until 21 November 2011.

There is a real sting in this legislation. There are various emblems and words which have been declared 'major event emblems' and 'major event words' and the use by a person of these emblems or words – or anything closely resembling them – is deemed automatically to be a breach of the Act. This is the case even where they are combined with words like 'unauthorised' or 'unofficial.' A list of the emblems and words is included in the Major Events Emblems and Words (Rugby World Cup 2011) Order 2008. They include, for example, Rugby World Cup, World Cup 2011, RWC, Rugby New Zealand 2011, Total Rugby, Webb Ellis Cup and IRB.

What does this mean for a retailer? A retailer cannot have a 'Rugby World Cup sale' or offer 'Rugby World Cup specials.' It does not matter where or how the promotion is advertised.

Similarly, although a retailer can include generic rugby images in its shop window or other displays, it cannot use any of the protected words or images. A picture of a rugby player is fine. The picture combined with the words 'Rugby World Cup' is not.

We have been asked by a number of clients whether they are able to offer Rugby World Cup tickets as prizes for competitions. 'Buy any item over \$100 and be in the draw to win two tickets to a Rugby World Cup game.' As you will have guessed, the answer is no. It implies an association with the Rugby World Cup.

Retailers also have to be careful about goods which have any of the major event words and emblems applied to them without consent – in other words, counterfeit goods. I will return to this further on.

AMBUSH MARKETING BY INTRUSION

This deals with promotional activities suggesting an association. But other provisions in the Act prevent any advertising at all within particular areas, even where there is clearly no association.

The Economic Development Minister may declare clean zones (the match venue and its immediate surrounds) and clean transport routes (extending up to five kilometres from a clean zone along motorways, state highways and railways which are likely to be used by people travelling to or from the venue). These areas are controlled during the clean period. Clean zones and clean transport routes do not include private land and buildings – other than billboards – the venue of the major event and land to which the public ordinarily has access. The Minister has yet to declare the clean zones, clean transport routes and clean periods for the Rugby World Cup, but they should be finalised by this September.

There are various advertising restrictions. No person may advertise in the clean zone during a clean period without the written authorisation of the major event organiser. A retailer cannot place an advertisement on a billboard outside the stadium without this authorisation. Similarly, and think here of the Nike/Reebok example, a retailer cannot give away flags or T-shirts advertising its products as people enter the stadium. Many of these people will wave the flags or put on the T-shirts and this will be advertising in the clean zone. Once again, this is whether or not the advertising has any association with the Rugby World Cup.

Further, no person may advertise in a manner that is clearly visible from inside the clean zone without authorisation. A retailer cannot advertise on a billboard on the side of a building or, perhaps, a moving vehicle which, although outside the zone, can be seen with the naked eye from inside the zone.

Another example would be advertising on fly-past banners pulled by an aircraft or even painting it on the aircraft itself. Once again, it does not matter what the subject matter of the advertisement is.

The same sort of concept applies to clean transport routes. No person

may advertise in a clean transport route during a clean period without written authorisation. This time, however, there is no offence relating to advertising which is outside the clean transport route but which can be seen from within it.

There is a particularly important exception to these offences. This is where the advertising is done by an existing organisation continuing to carry out its ordinary activities in connection with honest practices in industrial or commercial matters. For example, if a retailer has had signage in a clean zone for many years, it will not be in breach to keep it there during the clean period. It may, of course, be in breach if it takes advantage of its proximity to the major event by adding additional advertising. It's all a matter of degree.

COUNTERFEIT GOODS

Finally, I would like to return to counterfeit goods. This is particularly topical, since criminal charges were laid last month against CL NZ Trading Company Limited and its director Terry Lung Chan, for importing counterfeit Rugby World Cup apparel. The defendants are alleged to have imported over 1,000 counterfeit T-shirts, which were intercepted and detained by Customs. If convicted, they are liable to fines of up to \$150,000.

Retailers should be aware that if they sell counterfeit Rugby World Cup goods and they know that they are counterfeit they will also be exposed to these fines. And, for this purpose, goods with any of the protected words and emblems which I mentioned earlier will fall within the offence. ■

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