

Who's Ambushing Whom? An Examination of Anti-Ambush Marketing Legislation in Canada: The Case of the 2010 Olympic and Paralympic Winter Games

Benoit Seguin, University of Ottawa, Canada, bseguin@uottawa.ca

Dana Ellis, University of Ottawa, Canada

Teresa Scassa, University of Ottawa, Canada

Milena Parent, University of Ottawa, Canada

Keywords: Ambush Marketing, Olympic Sponsorship, intellectual property

Abstract

Aim of the Paper

In June 2007, the Canadian Government passed the 'Olympic and Paralympic Marks Act' (Bill C-47) as a way to protect the Olympic brand and control ambush marketing activities for the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC). The new legislation provides an unprecedented level of protection to the Olympic marks despite their already extensive protection found in the Trade-marks Act (Scassa, 2008). There was little debate over the necessity of 'anti-ambush' legislation and the potential impacts on various stakeholders were not fully considered. With this in mind, it is important to ensure that the International Olympic Committee's (IOC) justification for such measures is held up to well-informed scrutiny. The purpose of this paper is to 1) examine the claims of potential harm made by the IOC in their pursuit of anti-ambush marketing legislation, 2) investigate the IOC's power to impose their desire for legislation without unquestionable proof of damage, and 3) examine the latent negative impacts of Bill C-47, not just as they apply in a sport context, but also as they potentially concern the basic rights of all Canadian citizens.

Theoretical Background

The ambush marketing literature can be summarized into five main themes: (1) describing the practice and developing a definitional construct (c.f. Payne, 1998, Sandler & Shani, 1989), (2) concerns around consumer perception and the brand impact (c.f. Meenaghan, 1998, Seguin & O'Reilly, 2008, Shani & Sandler, 1998), (3) judicial precedent and description of legalities (c.f. Bean, 1995, Nish, 2003), (4) ethical issues (c.f. Meenaghan, 1994, O'Sullivan & Murphy, 1998) and, (5) fighting and preventing ambush marketing (McKelvey, 1994, Townley, Harrington & Couchman, 1998). With Olympic TOP VI sponsorship revenues expected to reach \$866 million (IOC, 2008) the need to control the Olympic brand and to ensure sponsor exclusivity has been at the forefront of International Olympic Committee's (IOC) concerns (Seguin & O'Reilly, 2008).

Consequently, the ultimate responsibility to enhance the Olympic brand and to provide value to commercial partners remains with the IOC. Yet, governments are playing an active role in protecting the commercial interests of the IOC by passing laws such as Bill C-47. The primary goal of such legislation is to render illegal a wide range of previously legal activities and words, broadly described as ambush marketing. The impact of such measures on various stakeholders has yet to be examined.

Methodology

This paper consists of a comprehensive examination of the current literature on marketing and legal aspects of ambush marketing.

The review of literature is supported by the findings of 25 semi-structured interviews conducted with executives representing the following groups: a) IOC Olympic TOP and Canadian Olympic Committee (COC) sponsors, b) Olympic marketing executives representing the IOC, NOCs, OCOGs, and c) prominent industry personnel. All data were then coded and categorized using ATLAS.ti according to the 3 themes of interest to determine patterns:

- 1) IOC claims of potential harm of ambush marketing,
- 2) the IOC's power to impose legislation, and
- 3) latent negative impacts of Bill C-47.

Results and Discussion

A review of the legal and ambush marketing literatures does not support the need for anti-ambush legislation. In addition, our 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 addressing: clutter, integrated public relation strategies, value added-programs, sponsor recognition, sponsor activation, and lack of marketing expertise by a number of NOCs. The majority of respondents also agreed that while protecting sponsor exclusivity was nearly impossible, the IOC needed to do "everything it can" to protect their rights. Hence, strategic collaborations between the IOC, NOCs and OCOGs in lobbying governments for legislation aimed at protecting the Olympic brand and reducing ambush marketing was believed to be an important aspect of managing the Olympic brand. However, it is noted that both the literature and the interviewees 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. This raises serious questions from a legal standpoint as the ostensible purpose of legislation is to protect a country's citizens from harm, yet the potential affront to a company's basic rights, afforded under the Canadian Charter of Rights and Freedoms, has not been examined. It can be 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.

References

- Bean, L.L. (1995). Ambush Marketing: Sport Sponsorship Confusion and the Lanham Act. *Boston University Law Review*, 75, 1099-1134.
- IOC, (2008). Olympic Marketing Fact File. International Olympic Committee. Lausanne, Switzerland.
- McKelvey, S. (1994, April 18). San Legal Restraint. No Stopping Brash , *Creative Ambush Marketers*. *Brandweek*, 35(16), p. 20.
- Meenaghan, T. (1994). Point of View: Ambush Marketing: Immoral or Imaginative Practice? *Journal of Advertising Research*, 77-88.
- Meenaghan, T. (1998). Ambush Marketing: Corporate Strategy and Consumer Reaction. *Psychology and Marketing*, 15(4), 305-322.
- Nish, N. (2003). How Far Have We Come? A look at the Olympic and Amateur Sport Act of 1998, The United States Olympic Committee and the Winter Olympic Games of 2002. *Seton Hall Journal of Sports Law*, 13, 53-72.
- O'Sullivan P. and Murphy, P. (1998). Ambush Marketing: The ethical issues. *Psychology and Marketing*, 15(4), 323-331.
- Payne, M. (1998). Ambush Marketing: The Undeserved Advantage. *Psychology and Marketing*, 15(4), 323-366.
- Sandler, D.M. and Shani, D. (1989). Olympic Sponsorship vs. "Ambush" Marketing: Who gets the Gold? *Journal of Advertising Research*, 29(4), 9-14.
- Scassa, T. (2008). Faster, Higher, Stronger: The protection of Olympic marks leading up to Vancouver 2010. Forthcoming.
- Séguin, B. and O'Reilly, N.J. (2008). The Olympic brand, ambush marketing and clutter. *International Journal of Sport Management and Marketing*, 5(1), 78-104.
- Shani, D. and Shandler, D.M. (1998). Ambush Marketing: Is confusion to blame for the flickering of the flame? *Psychology and Marketing*, 15(4), 367-383.
- Townley, S. Harrington, D. and Couchman, N. (1998). The Legal and Practical Prevention of Ambush Marketing in Sport. *Psychology and Marketing*, 15(4), 333-348.