

# ENCLOSURE, ECONOMIC BENEFIT AND THE REGULATION OF AMBUSH MARKETING IN THE 2012 LONDON OLYMPICS

Dr. Lingling Wei, Lecturer in Business Law,  
Bournemouth University

Dr. Kris Erickson, Senior Lecturer in Media Regulation,  
Bournemouth University  
[lwei@bournemouth.ac.uk](mailto:lwei@bournemouth.ac.uk)

The growth of special legislation to protect images and words associated with high-profile sporting events has attracted a great deal of controversy and attention. Since the Sydney Olympics in 2000, all subsequent Olympic events and some other major events (FIFA world Cup 2010) have been accompanied by such legislation – rules imposed on the host country that surpass and sometimes contradict existing intellectual property law (Longdin, 2009; Sacassa, 2011). Over time, the rules have grown to include generic words or phrases normally not protected under existing trademark regimes (Burrell & Gangjee, 2010). It is in the context of this growing enclosure of public events that the present research explores the purpose and effects of special legislation.

The 2012 London Olympics provided the researchers with an opportunity to study the effects of particularly strong special legislation introduced in the UK. The aim of the research was to address two interrelated research questions. First, was the special legislation effective at preventing advertisers from using banned words and images in marketing efforts during the 2012 Olympics? Second, without violating the terms of the special legislation, what tactics did non-sponsor marketers employ in their advertising campaigns around the time of the Olympic Games? Finally, based on the data analysed, are the objectives of the special legislation consonant with the objectives of the host country with respect to the public good and economic growth?

The researchers employed a content analysis methodology to capture and analyse advertising campaigns that appeared in national newspapers from 21<sup>st</sup> May to 19<sup>th</sup> August 2012. While this method excluded marketing that may have taken place in other media (physical, TV, radio), newspapers permitted systematic sampling and archiving not possible with other techniques. The study period included the build-up before the event, the games themselves, and the denouement directly following the closing ceremonies. The study sample included national newspapers (*Guardian* and *Times*), tabloids (*Daily Mirror* and *Sun*), and the local London press (*Metro*), each sampled at bi-weekly frequencies during the research period. Information on each advertising campaign was captured using a survey instrument and later analysed using SPSS. The researchers recorded information about the sector of the advertiser, images and words used in the campaign, and the level of association to the Olympics implied by the advertisement.

The study identified 114 individual print advertising campaigns by non-sponsors that referenced the Olympics. Results show that the special legislation was somewhat effective at preventing the use of banned words, logos and

images in the print media. Less than half of the advertisements surveyed made use of a prohibited word. Less than 10 per cent of the advertisements studied included a prohibited logo and these were often retail shops selling products belonging to official sponsors. The majority of advertisers were not aggressive in their ambush marketing efforts. More than 75 per cent of campaigns used Olympic references in a subtle and non-confusing manner. In most cases, removing Olympic references from the advert would not have significantly reduced the impact or message of the campaign. These findings contradict the hypothesis that ambush marketers would attempt to skirt as close as possible to the legislation without directly infringing (Payne 1998). The data show instead that advertisers used a range of indirect non-infringing tactics in their campaigns: national flags, images of sport by non-professional athletes, textual references to celebration, internationalism and sportsmanship.

The results of this study suggest that in order to completely deter advertisers from referencing high-profile sporting events such as the Olympics, drafters of special legislation would risk enclosing concepts that traditionally form part of the public cultural good: flags, references to place and season, references to sport more generally, and references to national cultural traditions. In the case of this study, a ban on flags in advertising would have encroached on marketing that referenced other concurrent events such as the celebration of the diamond jubilee, a potentially undesirable outcome from the perspective of UK culture and tourism. The authors suggest that national jurisdictions and publics should weigh the economic costs of special legislation against promised economic gains, particularly at the stage of bidding to host high-profile international sporting events.

## References

- Corbett, S., and Roy, Y. V., 2010. Events management in New Zealand: one law to rule them all? *J.B.L.*, 4, 338-362.
- Longdin, L., 2009, Public law solutions to private law problems: major event regulation subverts IP's internal balance. *J.I.P.L.P.*, 4(10), 726-742.
- Burrell, R., and Gangjee, D., 2010. Trade marks and freedom of expression - a call for caution. *IIC*, 41(5), 544-569.
- Sacassa, T., 2011. Ambush marketing and the right of association: Clamping down on references to that big event with all the athletes in a couple of years. *Journal of Sport Management*, 25, 354-370.
- Payne, M., 1998. Ambush marketing: The undeserved advantage. *Psychology & Marketing*, 15(4), 323-331.