

THE 2010 WORLD CUP – DO'S AND DON'TS OF MARKETING

The 2010 World Cup is widely being touted as an unparalleled marketing opportunity for South Africa and its business community.

Naturally, however, the commercial potential of an international event of this magnitude is not fair game for anyone to exploit. FIFA, as the "owner" of the event, is at pains to ensure not only that the goodwill and reputation attached to the event are not open to abuse, but that the interests of the official sponsors (in other words those who have entered into agreements with FIFA and who have paid substantial sums of money for the right to have their names attached to the event) are not undermined by "ambush marketing".

"Ambush marketing" is the colloquial term applied to any attempt by a supplier to associate its products or services with an event, despite not being an official sponsor. The supplier uses the event as a platform to promote his brand or product but without making the financial investment and the other obligations undertaken by a sponsor.

In order to combat ambush marketing, FIFA seeks to protect all variations of the South Africa 2010 logo and all the country-specific logos and symbols of all of the previous football world cup events, as well as all previous world cup emblems and pictures or drawings of the FIFA World Cup Trophy and Jules Rimet Cup (the previous World Cup trophy). As at 6 February 2008, the following marks associated with the World Cup had been registered by FIFA as trademarks and/or as registered designs: -

- The Official Mascot
- The Official Emblem
- The Official Poster
- 2010 FIFA WORLD CUP SOUTH AFRICA
- WORLD CUP 2010
- RSA 2010
- FOOTBALL WORLD CUP
- FIFA WORLD CUP
- SOUTH AFRICA 2010
- SA 2010/ ZA 2010
- 2010 FIFA WORLD CUP
- SOCCER WORLD CUP
- WORLD CUP
- SOUTH AFRICA WORLD CUP
- ALL NAMES OF ALL SA VENUE CITIES WITH THE FIGURE 2010 BEHIND THEM

- TWENTY TEN / 2010
- WORLD CUP SOUTH AFRICA

Any similar derivatives and/or combinations of any of the above marks. Apart from the protection afforded by the registration of the names and symbols above as trademarks, legislation has been enacted in South Africa specifically in order to provide protection to the organisers and sponsors of high profile events, like the World Cup, that are inevitable targets for ambush marketing. This legislation includes amendments to the Trade Practices Act, section 15A(1) of the Merchandise Marks Act and the First and Second 2010 FIFA World Cup Special Measures Acts ("the SMA`s").

Particular restrictions are imposed in relation to liquor marketing. Section 3(2)(b) of the second SMA restricts the marketing, distribution, consumption and advertising of liquor at a designated stadium or venue to commercial affiliates that have been recognised by FIFA. Therefore, no liquor product produced by anyone who has not been designated by FIFA as an official sponsor (or "commercial affiliate", as it is called in the legislation) may be sold in and/or around any stadium or venue during a FIFA event or marketed within the stadium itself.

While most of the restrictions in the SMA`s are related to sale and promotion of certain products in and around the stadia at which World Cup matches are to take place, it should be noted that the use of FIFA's trademarks is restricted no matter where one intends to use them. Any bar or restaurant using any of the trademarks or presenting itself as a sponsor of the event would be guilty of infringing the trademarks and copyright belonging to FIFA.

No-one other than the official sponsors may make use of any of these trademarks in their advertising. The official sponsors are given the exclusive rights to associate with the event, to use the official "event marks", to exposure in and around the stadia, in all official FIFA publications and on the official World Cup website.

While some may regard ambush marketing as simply smart business, the law does prohibit it and any business person seeking to capitalise on an event such as the World Cup should take care to ensure that the limits of what is permissible are not exceeded.

Unauthorised use of the protected trademarks and copyright, or the marketing of products other than those of recognised sponsors at or around World Cup venues could result in hefty fines or even imprisonment.

In addition to the criminal penalties that an offender may face, any "authorised person" may institute proceedings for an interdict or damages. FIFA itself is of course an "authorised person", as is the local World Cup organising committee or "LOC". Subject to the terms of the sponsorship agreement between FIFA and itself, any of the official sponsors would also have the right to take action against an offending party.

All of this does not mean that local businesses will not be able to benefit from the publicity around the 2010 World Cup. The event continues to present a massive marketing opportunity for those who are imaginative in how they promote themselves and their products, while at the same time being cautious not to infringe the legislation.

The FIFA Public Information Sheet, which is a guide to FIFA's official marks, gives various instructive examples of when FIFA's marks can safely be used in different applications. The booklet can be downloaded from the FIFA Website. Naturally, FIFA cannot name every single scenario, but the general message conveyed by the examples is quite clear, namely that the publicity around football can be used in a general way to attract customers.

Some examples of legitimate use would be: -

- An advertisement using reference to general football terms and imagery does not constitute an unauthorised association unless it makes use of the FIFA and World Cup trademarks and symbols.
- Non-commercial use of the match schedule would not be an unauthorised association. "Commercial use" would occur where a business, not affiliated with the event as an official sponsor, displays its name, branding or logo on the match schedule. It is unlikely that the mere display of an unaltered copy of the match schedule would be considered to be use of a commercial nature and thus would not be problematic.
- Merchandising articles of clothing bearing general football terms and imagery, or terms and imagery relating to South Africa, (or both together) without an associated allusion to the World Cup, does not create an unauthorised association. In-store decoration with general football-related terms or symbols or terms or symbols related to South Africa, without any reference to the World Cup, would not be prohibited.

Finally, although the Information Sheet does not mention it, there would also probably be no difficulty with an outlet that sells one of the official sponsors' products displaying advertising for the product, issued by the official sponsor itself and bearing the World Cup imagery. This would naturally attract attention to the venue itself, without infringing the sponsor's rights.

In conclusion, there is no question that entrepreneurs seeking to capitalise on the publicity and the influx of foreign visitors that the World Cup will attract, will be able to do so. What is required, in order to do so legitimately, however, is that they be careful not to overstep the mark. All that is required is some ingenuity and a sound understanding of what is legally allowed.

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1250 words