

Protecting IP, Ambush Marketing, and Major Sports Events: The Vancouver 2010

Olympic Case Study

You may well recall the debacle at the 2010 FIFA World Cup involving a group of 36 “orange-clad women”¹ being ejected from the Netherlands-Denmark match; after acquiring the lower-box tickets from ITV pundit Robbie Earle (who was fired by ITV following the incident), *Bavaria Brewery* orchestrated a flash mob where the 36 women stripped off their outer layers to reveal *Bavaria Brewery*’s infamous mini-skirted orange dress. Despite not bearing the *Bavaria Brewery* logo, the mini-skirted orange dresses certainly drew the spectator’s attention to the beer company, as *Bavaria Brewery* had attempted a similar stunt at the 2006 FIFA World Cup in Germany (where a group of Dutch supporters bore orange lederhosen to advertise the beer brand)². Anheuser-Busch, the manufacturers of *Budweiser Beer*, had signed a multi-million-dollar sponsorship agreement with FIFA in order to become the official (and exclusive) beer sponsor of the 2010 FIFA World Cup, even introducing the limited edition 2010 World Cup Budweiser Aluminum bottle³.

Major Sports Events (“MSEs”), such as the FIFA World Cup and the Olympic Games, are uniquely vulnerable to ambush marketing. The grandiose nature of these events being broadcasted around the globe amplifies the importance of media rights protections in the MSE context. Canada was faced with such considerations during the lead-up to the Vancouver 2010 Winter Olympic Games, an event which saw 235 broadcasters and television stations reach a potential audience of

¹ <https://www.theguardian.com/football/2010/jun/16/fifa-world-cup-ambush-marketing>

² <https://www.campaignlive.co.uk/article/fifa-cracks-down-world-cup-ambush-marketing-stunt/1010807>

³ <https://popsop.com/2010/05/budweiser-metal-bottle-may-become-a-world-cup-fans-must-have-item/>

3.8 billion people worldwide⁴. With nearly USD\$1 billion of advertising revenue⁵ being generated for the Vancouver 2010 Games, how did the event protect its stakeholders' intellectual property interests during these monumental Games?

In 2007, the Government of Canada introduced the *Olympics and Paralympic Marks Act* ("OPMA"), a piece of special legislation designed to enhance the protections already offered in Canada (such as those through the *Trade-Marks Act*). As the Parliament of Canada notes in the introduction to the OPMA, "the sheer volume of possible violations, within a short window of time, are presumed to be the justification for the enhanced protection"⁶ beyond traditional protections such as the *Trade-Marks Act*. The OPMA specifically spoke to "unauthorized associations with the event", ensuring that only approved sponsors (part of the "Olympic Family") may benefit from the goodwill associated with the Games⁷. Such legislation would allow the Vancouver Organizing Committee for the 2010 Games ("VANOC") to have primary authority in ensuring Olympic sponsors' exclusivity, as such unique legislative powers would allow for unprecedented protections against unauthorized associations of competitor companies.

Such enhanced protections, however, stirred up a rather fulsome debate surrounding the scope of the OPMA. Under the Act, VANOC (or other relevant accusers) would need to prove that the public "would likely be misled" as to the existence of an authorized association. The OPMA lists a number of generic terms which, in context or in combination, may constitute evidence of ambush marketing in violation of the OPMA (such as "Games", "2010", "Winter", "Gold", "Silver" and "Bronze")⁸. Organizations such as the Intellectual Property Institute of Canada noted that such

⁴https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/How_We_Do_It/Broadcasters/EN_Vancouver_2010_Audience_Report.pdf

⁵ <https://olympic.ca/press/vancouver-2010-press-release/#:~:text=VANOC's%20operating%20revenues%20totalled%20%241.884,merchandising%20revenue%20of%20%2454.6%20million.>

⁶ https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/391LS555E

⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2669723

⁸ *Supra*, note 6, Schedule 3.

enhanced protections, particularly considering the changing of the rules for interlocutory injunctions surrounding alleged violations, may lead to abuse of the Act⁹. VANOC's website promised to enforce its right in a "fair and reasonable manner", including "pro-actively educating and engaging the public and implementing a fair process for assessing infringement and enforcing its rights"¹⁰. Considering the special powers vested in VANOC through the OPMA, organizations such as the Intellectual Property Institute of Canada and non-sponsor businesses may well have had continued cause for concern, despite such promises from VANOC.

Ultimately, few major issues arose in the MSE context surrounding the exercising of the OPMA. However, the Vancouver 2010 Games provides an interesting case study for major events and the protection of intellectual property rights. Should organizing committees be granted enhanced IP protection powers in the major event context? How can legislation strike an appropriate balance between protecting sponsorship investment in a major event whilst not unduly restricting the rights of the general public? Though the enactment of the OPMA may have been considered "overkill" by some, the Vancouver 2010 Games (unlike the 2010 FIFA World Cup) were certainly successful in avoiding a legacy of ambush marketing stunts. With the rise of digital media in the decade which followed the 2010 Games, it will be interesting to see how such protections would be handled in the current IP law climate of Canada (say, during the lead-up to Vancouver 2030 Winter Games¹¹?).

⁹ <https://www.lexology.com/library/detail.aspx?g=e549f552-022d-4de5-b81c-9edec4cec1a2>

¹⁰ *Ibid.*

¹¹ <https://www.cbc.ca/sports/olympics/bc-winter-olympic-john-furlong-1.5986898>