Protecting the Olympic Brand: Winners and Losers

Introduction
The concept of ‘ambush marketing’, whereby a company who is not an official sponsor of an event takes actions to promote their brand in a way that they are perceived to be associated with that event, has been referred to as ‘one of the most disquieting developments in sponsorship’ (Meenaghan, 1998:20). The 1984 Los Angeles Olympic Games has been identified as the first event to be targeted by ambush marketing, since which time it has become a ‘major issue for the sponsoring industry’ (Meenaghan, 1998:21).

The aim of this paper is to consider the measures that have been put in place to protect event brands and events’ official sponsors in an attempt to drive out the practice of ambush marketing. While a number of ambushed events and resultant protectionist measures will be considered, this paper will focus on both the ambushing and protection of the Olympic Games brand, with a focus on the measures being put in place to protect the brand of the Olympic Games taking place in London in 2012. In doing so, this paper questions the potential implications for a range of stakeholders that could be brought about should the letter of the law relating to the protection of this brand be applied.

Ambushing the Olympics
An abundance of empirical evidence exists that illustrates the effectiveness of ambush marketing (Sandler and Shani, 1989; Meenaghan, 1994; Garrahan, 2000) against a range of sport event settings. Vodafone’s six-year deal sponsoring the Wallabies for the 2003 rugby World Cup was sidelined after archrival Telstra signed up as the official tournament sponsor. Vodafone responded by deploying a team of look-alike players named ‘The Vodafone Wannabies’ to tour the country. An independent poll revealed that Vodafone ranked ahead of Telstra in a list of the event’s ‘sponsors’ (Media Asia, 2004:23). At the 1994 Winter Olympics in Lillehammer, Norway, in response to official-sponsor Visa’s claims that American Express would not be accepted in the Olympic Village, American Express created an advertising campaign playing on two different connotations of the word visa, ‘claiming (correctly) that Americans do not need “visas” to travel to Norway’ (Sauer, 2002). During the 1996 Atlanta Olympic Games, Nike embarked upon an ambush campaign by prominently displaying its logo on the building directly opposite the Olympic stadium. Although not an official Olympic sponsor, this promotion inextricably tied Nike to the city and to the event (Sauer, 2002). Adidas, although not an official sponsor of the 2000 Sydney Olympic Games, was cited as the seventh most recognised ‘sponsor’ of the games (Garrahan, 2000). This was due largely to the publicity surrounding the Adidas body suits worn by the Australian swimming team that prominently displayed the organisation’s logo throughout the event.

Whatever form the ambush may take however, the end result will ultimately lead to what Meenaghan (1996:106) describes as ‘consumer confusion [which in turn will] deny the legitimate sponsor clear recognition for its sponsorship role’. This then ‘damages the integrity and financial basis of an event’ (Hoek and Gendall, 2002) for which the sponsors have paid dearly. Resultant measures to regulate the activity of ambush marketing now appear to be gaining in momentum. However, as Lagae (2005:218) identifies, ‘the legal battle against ambushers is not straightforward [because ambushers operate in a] grey zone’. The more adroit ambushers avoid using official identifiers and will instead often create alternative devices that relate to the event or team without actually breaching registered trademarks. For example, Hoek (1997) cites the New Zealand ‘Ring Ring’ case where the imaginative use of a visual device clearly referred to the Olympic Rings symbol when read closely. Indeed, the
fact that some ambushing could be regarded as being legal only serves to highlight the need for sponsors and event organisers to plug as many potential ambushing loopholes as possible. Europe currently has very few legal precedents with regard to ambush marketing; this situation however could soon be changing.

Protecting London 2012 against ambush marketers

Part of London’s original bid to host the 2012 Olympic Games included measures to prevent ambush marketing. Sherwood and Owen (2005:21) reported that in its bid, legislation is to be passed that ‘would make it illegal for companies that are not official sponsors to try to link their products with the [London] Olympics’. Sherwood and Owen further noted that Tessa Jowell, the British Culture Secretary of the day, was said to be determined to introduce legislation that would ‘make it unlawful for people to associate themselves, their products or their services with the games for any commercial benefit, unless they have been authorised to do so’ (2005:21). On being awarded the 2012 Olympic and Paralympic Games, London was immediately required to enter into the ‘Host City Contract’. Obligations under this contract meant fulfilling all commitments made in the bidding process - including protection for the official sponsors. As a result, the UK Government brought into force the London Olympic and Paralympic Games Act 2006 (Act) (Intellectual Property Office, 2009). The Act essentially grants the London Organising Committee for the Olympic Games (LOCOG) the rights to prevent any unauthorised representations or associations with the games (a much wider right than available under normal intellectual property rights) and LOCOG has made it clear that it will do everything in its power to stop unlawful use. Representation is described as being ‘any image, graphic design, sound or word of any kind which is likely to suggest to the public an association between a person, goods or services and the London Olympics’, while associations are defined as being ‘any kind of contractual or commercial relationship, corporate or structural connection; or the provision of financial or other support’ (Macfarlanes, 2010). Infringement of the Act, therefore, is not restricted to the use of Olympic-specific words or symbols. Furthermore, the 2006 Act provides no limitations on what may or may not create an ‘association’. Whilst there are certain key terms that the 2006 Act provides that the Court may take into particular account when considering whether there is an association, the Secretary of State is free to add to this list. For the London Olympic games in 2012, the use of two words from list A or one word from list A and one from list B together will in effect create a potential infringement of the Act (Figure 1).

Figure 1. Key terms that may form ‘associations’ with the 2012 Olympic Games

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Protecting the Olympic Brand – a step too far?

LOCOG, however, has also stressed that the absence of these words will not prevent infringement. It is therefore proposed in this paper that the Act goes a step too far and could severely restrict businesses and planned events in the London area from promoting and conducting their legal, day-to-day activities. Take, for example, the London Tourist Board who may wish to use the phrase ‘visit London in 2012’, or a local school wanting to promote its 2012 Summer Sports Day. Using these words in their promotions would, according to the letter of the law, be an infringement under the measures taken to protect the Olympic brand, and yet would not be attempts (deliberate or otherwise) to ambush the Olympic brand.

It would appear that this argument is echoed by the UK’s Chartered Institute of Marketing who contend that the Act goes far beyond its ‘valid remit of preventing ambush marketing and preserving investment value for official sponsors’, further pointing out that it ‘fails to give allowance to the (by Olympic standards) minuscule efforts of small and medium-sized companies to gain some benefit from the presence of the Games’, and that since the majority of marketers are unaware of the provisions of the Act, they are ‘likely to get a rude awakening’ when they discover that a planned activity could contravene it. (Thorpe, 2008)

Iconic Buildings and the Marketing of Destinations

Each geographic location has a distinctive culture, history and unique selling point differentiating one location from another (Morgan and Pritchard, 2002). Tourist destinations and cities are being branded to ensure that they do not blend into the background within the competitive market place (Keller, 2008). Moreover, tourist destinations are no longer being viewed as just places, but are increasingly being viewed as at least part of the actual product that is consumed (Ashworth and Voogd, 1990). Mommas (2003) proposes that destination branding occurs when a destination differentiates itself and is identifiable through a number of elements such as a ‘name, symbol, logo, word or graphic’. With the combination of these elements it can ‘convey the promise of a memorable travel experience that is uniquely associated with the destination, it also serves to consolidate and reinforce the recollection of memorable destination experiences’. Skinner (2010) believes that further consideration of the uniqueness of a place also involves understanding what comprises the genius loci – the essence, or spirit of an individual place, proposing that this needs to include a consideration of the unique architecture that contributes to the overall physical environment, as well as other experiential aspects in order to understand what constitutes the unique offering of one destination over another. This perspective therefore shows the importance of the destination brand itself in being able to align its promotions with the place’s iconic buildings that contribute to its unique identity. With 15 million tourists visiting the capital (Bremmer, 2010), London is the most visited city in the world, topping Euromonitor International’s list of Top City Destinations in 2008. When considering what London has to offer as its unique destination proposition, both the English Tourist Board website and Visit London website include Westminster Abbey, the Houses of Parliament, Buckingham Palace (www.enjoyengland.com accessed, 15/12/10), the London Eye and the Tower of London (www.visitlondon.com, accessed, 15/12/10) in their ‘top ten places to visit’ in London. All of these places are synonymous with London, instantly recognisable and are iconic landmarks within the city of London. But what is it that makes these buildings so iconic, firstly, the above buildings and many other places in London are famous in their own right and secondly they are symbolic to the English culture and aesthetic to eye (Sklair, 2006). Sklair (2006) further suggests that iconic buildings have the ability to transform skylines and be identifiable across the globe. The iconic buildings and landmarks in London therefore form part of London’s destination product, are the unique selling points that help to create a large part of
the experience for the tourist, and also entice the tourist to visit the destination. However, according to the letter of the law, the use of London’s iconic buildings in promotional activities, or even representation of the London skyline could indeed cause an infringement of the regulations set out by the London Olympic Association Rights (LOAR).

As one example shows, although not directly connected to the Olympics, a recent publicity stunt by the Australian cricket team in October 2010 saw pictures of the Australian cricket team’s captain and vice captain beamed onto Big Ben with the caption ‘Don’t forget to pack the urn’ (Scott, 2010). As a result, Westminster City Council threatened to take legal action against Cricket Australia claiming that the stunt constituted a criminal offence as Big Ben is classed as a world heritage site (Davis 2010). Prior to this Westminster city council had not taken any legal action against other parties who had undertaken similar promotional activities (Scott, 2010). For example, no action was taken when, in 1999, FHM magazine projected a naked image of Gail Porter onto the Houses of Parliament (www.cunningham.com). This particular campaign captured public attention, created a vast amount of publicity within the media, and made many headlines in front page newspapers and on television programmes (Fry, 1999). Davis (2010) suggests that with the 2012 London Olympics approaching, if Westminster city council did take action against companies that flaunt the law, they could fear an increase in ‘Guerrilla Advertising’. Even though the Australian cricket team escaped prosecution (Online BBC, 2010) and the image projected onto Big Ben contained none of the words or images restricted by LOCOG, the cricket team were still made an example of to the rest of the world as a direct result of the forthcoming 2012 Olympics. Whilst it is acknowledged that within the guidelines of the Olympic handbook there is no mention or restriction in using iconic buildings of London either as a place to advertise or to use within promotional material. It nevertheless leads to questions about Westminster City Council’s responses to the actions of the Australian cricket team.

The images of London are used by countless companies, schools and the buildings and icons are a fundamental part of the tourist industry and on the sightseeing tours (see, for example, http://www.themustardagency.com/education.php?sub=education_prospectuses and http://www.theoriginaltour.com/tour_information/page_109.html). Upon closer inspection of LOCOG’s Brand Protection guidelines (http://www.london2012.com) along with a consideration the protected words in columns A and B (Figure 1), it can be easily foreseen that a large amount of all promotional activities undertaken in 2012 could come under scrutiny. With these strict guidelines in mind, how can the marketer or proprietor ensure that they are free from prosecution and do not inadvertently launch a campaign only to find out that they are accused of ambush marketing? Furthermore, with so many people using the London skyline, buildings and icons in their promotional materials, how can such restrictive brand protection be enforced, and if it is enforced, to whose cost?

Most of the venues that will be used for the London Olympic Games are iconic city buildings and landmarks (http://www.london2012.com/map.php). Moreover, in addition to the list of potential associations caused by using the words in columns A and B (Figure 1), there is an additional list in the Brand Protection handbook (p37) that, according to Mommas (2003) would be the type of symbols, logos, words and graphics generally used to brand a destination, but which, if used in promotional materials by companies who are not official sponsors of the event could constitute an infringement of the rights of LOCOG to protect the Olympic brand. This list includes ‘images of venues to be used for, and closely associated with, the 2012 Games’, and ‘words which capture the essence of the 2012 Games and/or qualities associated with Olympism, (eg: “Spirit”; “Endeavour”; “Friendship”; “Winning”;
“Determination”). While LOCOG stresses that it ‘is NOT suggesting that use of the items listed below will immediately create an association with the 2012 Games, but they may well be relevant. The more of these items that are used, the more likely it is that an association with the 2012 Games will be created’ (http://www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf).

Whilst the LOAR allow the screening of events in public houses and entertainment venues and using such terms as ‘Watch the Olympic Games Here’ or ‘Live Coverage of the 2012 Games Here’ would not be classed as an infringement of the act per se (LOAR, 2010), it is clearly outlined in section 4.6.3. of the Act that if the venue uses such statements displayed within or on other items that include other brands this would then be classed as an infringement (LOAR, 2010). Many public houses and entertainment establishments advertise their upcoming events and promotions using promotional boards, blackboards, posters, etc, that may already display a number of brand logos. Is the LOAR suggesting that all establishments screening Olympic Games events remove ALL other promotional materials within the establishment in the run up and during the games that may be next to the promotion of the Olympic Games (even though these may be permanent fixtures) or that the venues in question buy in new non-branded promotional boards solely for the use of promoting the Olympic Games? With this in mind, where does the LOAR draw the line as to what is classed as an infringement on the promotion of the 2012 Olympics?

Also of concern is that LOCOG decided to use the iconic London red Routemaster Bus in the closing ceremony of the previous Olympic Games in Beijing (http://www.london2012.com/games/ceremonies/index.php). Does this use therefore mean that, because LOCOG has already associated this ‘icon of England (http://www.icons.org.uk/theicons/collection/view?mode=list) with the London 2012 Olympic Games that they could include this image as a potential Olympic association if used by a potential ambush marketer?

**Conclusion**

It is not being proposed that attempts at minimising the practice of ambush marketing should not be pursued. What we are proposing, however, is that any planned measures, especially those that could bring attendant legal redress, should not go too far in attempting to protect the Olympic brand. We suggest that the measures put in place to protect the brand of the forthcoming Olympic Games taking place in London in 2012 are a step too far. While these measures may mean a win against ambush marketing for LOCOG, it could potentially mean that other organisations become losers as they may not use the icons of the destination brand of London without fear of falling foul of the law.

The tracking of both legal actions by LOCOG in pursuit of the protection of the Olympic brand, and also a content analysis of promotional materials utilising brand icons of London and words forming potential Olympic associations could form a fruitful avenue for further research.
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