

Ambush at the Trademark Office: Legal Limits on Olympic Branding Through *Usopc V. Puma*

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Abstract

Ambush marketing is a complex challenge faced during the intersection of Intellectual property rights and sports brand marketing. Most of the time it is not illegal, but it frequently compromises the exclusivity given to the official sponsors, resulting in conflicts with official sponsors for the unauthorised commercial association, especially in prominent events like Olympic Games.

This paper critically examines the case of United States Olympic & Paralympic Committee (USOPC) v. Puma, where Puma is not an official Olympic sponsor but attempted to register a trademark as “PUMA TOKYO 2021”. The United States Patent and Trademark Office (USPTO) rejected the registration as it will create the potential false association and dilution of Olympic goodwill. Even before the court ruled the registration.

This paper also seeks to explore the ramifications of this administrative decision for trademark law, the regulatory measures on non official sponsors and the extent scope of Olympic property rights. Additionally this paper will compare this rejection of registration with international precedent to suggest a unified legal framework for tackling ambush marketing around the world.

Keywords: ambush marketing, Olympic Games, IPR in sports, trademark dilution, USOPC, Puma, sponsorship law

1. INTRODUCTION

Ambush marketing denotes a strategic effort by a brand to link itself with a major event, especially sporting event without paying sponsorship fees or obtaining official sponsorship rights (McKelvey & Grady, 2008). Unlike traditional trademark infringement, ambush marketing generally occupies a grey area within law, often depend on implied association rather than direct utilisation of protected symbols or logos. In recent days the sports events as massive commercial ventures, the protection of Intellectual property (IP) not only safeguards the name and logos but also the atmosphere and implied endorsement associated with the events (Garde, 2012). The International Olympic committee (IOC) that governs the Olympic Games follows stringent national legislation in protecting the sponsorship rights like Ted Stevens Olympic and Amateur Sports Act of US¹

This paper intends to explore the legal dimensions of ambush marketing through a doctrinal perspective, with the help of USOPC v. Puma as focal case. The paper will examine the relevant legal framework, analyse the legal reason behind USPTO’s refusal and compare the international strategies regarding ambush marketing and suggest a framework for future regulatory measures.

2. Ambush Marketing and Intellectual Property Law

Ambush marketing holds a unique space in legal discourse, where IPR, unfair competition and commercial speech converge. Although ambush marketing is not inherently unlawful, it erodes the commercial value of official sponsors and may mislead consumers. It also affects the legality of the nature of representation event sponsors.

2.1 Types of Ambush Marketing

Ambush marketing into two main categories such as direct and indirect (Payne, 2006). Direct ambush marketing occurs when a non sponsor utilizes the official symbols, trademark or events title without authorisation. Whereas indirect ambush marketing is in contrast to direct ambush marketing involves subtle allusions like “Tokyo 2021” or themed advertisement. This indirect marketing, though legally uncertain, can still cause significant commercial damage.

2.2 Legal Mechanisms Against Ambush Marketing

¹ United States

Various legal instruments are utilized to combat ambush marketing, depending on the jurisdiction:

- **Trademark Law:** safeguards registered logos, slogans, and event titles. In the U.S. it is governed by the **Lanham Act**.
- **Special Legislation:** The **Ted Stevens Olympic and Amateur Sports Act** grants exclusive rights to terms like “Olympic” and “Olympiad”
- **Passing Off:** UK and India used common law principles to prevent misrepresentation of registered brands, resulting in damage of goodwill (WIPO, 2016).
- **Copyright Law:** frequently involved in ambush cases, but safeguards the creative expressions, such as promotional content or mascots.
- **Image and Publicity Rights:** when the athletes' identities are commercially exploited without their consent, it places a significant role.

2.3 Judicial Treatment of Ambush Marketing

The courts of various jurisdictions often struggled with the conflict between protecting IP rights and maintaining the freedom of commercial expression. For example the Australian case *AOC v. Telstra*, 2016 used a “reasonable consumer” test to check whether the advertisement implied official sponsorship. *ICC Development v. Arvee enterprise*, 2003 an Indian case illustrates the challenges of enforcement when the term “world cup” is deemed generic and non exclusive.

In the United State, there is no specific statutory law to deal with ambush marketing, the USOPC through the federal legislation offers protection to Olympic properties. This protection also challenges the trademark application that appears to exploit the goodwill of Olympic authorisation.

3. Case Law Analysis: USOPC v. Puma (2020–2021)

3.1 Background of case

In preparation of the delayed Tokyo 2020 Olympic, Puma SE submitted an application to register a trademark such as “PUMA TOKYO 2021” and “PUMA BEIJING 2022” with the United States Patent and Trademark Office (USPTO). However Puma was not an official sponsor of the event, but this branding initiative designed to capitalise on the global focus related to the Olympics.

In response to the application filed the United States Olympic and Paralympic Committee (USOPC) contended that the proposed trademarks might lead to potential threats to Olympic Games and its commercial exclusivity. This constitutes unfair competition as defined by the Lanham act and infringing the rights of Olympic established under Olympic and Amateur act.

3.2 Issues Raised

The USOPC contended:

- The marks registered by Puma falsely associated a connection with Olympic events.
- They destroy the unique character of the Olympic brand.
- The registration highlights the exclusive rights given by federal law.
- The federal law does not list city names, but coupling “Tokyo” and “2021” during the time of the Olympics will imply that the Puma is in association with the event.

3.3 Outcome and Implications

Puma withdrew the trademark application, before the matter was decided by litigation. The USPTO had initially sided with the USOPC, suggesting a probable denial due to concern based on confusion and dilution concerns.

This extrajudicial resolution, however, confirmed the regulatory authority of Olympic organisation in curbing ambush marketing. It established a **soft precedent** for employing trademark opposition and administrative measures to avert unauthorized association with the event.

The consequences are twofold:

- Brands need to be vigilant when trying to create thematic branding linked to major events.
- IP offices, rather than solely the courts, play a crucial role in controlling ambush marketing tactics at the registration stage.

4. Comparative International Approaches to Ambush Marketing

Ambush marketing is handled differently in different jurisdictions. Some countries rely on event based laws and others enforce their general IP laws. In U.S the trademark register on its own opposes the

application, serving as a deterrent even in the absence of Litigation, as demonstrated by USOPC V. PUMA case. A comparative analysis helps to understand the advantages and disadvantages of this strategy.

4.1 Australia: AOC v. Telstra (2016)

In Australia, Telstra was sued by the Australian Olympic committee (AOC) for Olympic themed advertisements that suggested affiliation without using an official logo. The advertising included athletes and made reference to the games, even though Telstra did not directly use Olympic symbols. The court recognized that the campaign capitalised on the goodwill, which connected with indirect ambush marketing, even if telstra legally conformed with trademark law (Stewart, 2016). This case shows the importance of legislative specificity, Australia has statutes such as the **Olympic Insignia Protection Act 1987** that give Olympic phrases and emblems legal protection beyond the ordinary trademark law.

4.2 South Africa: SARU v. Eskort (2023)

In **South African Rugby Union (SARU) v. Eskort**, the Gauteng High Court decided that Eskort's engaged in ambush marketing when they used Springboks-themed slogans during the Rugby World Cup without permission. The billboards and other promotional material gave the impression that Eskorts was an official sponsor ordered to be taken down by the court. The legal framework is lacking in addressing this issue. This court decision supported the further use of common law in IP protection by relying on the concept of passing off and illegal competition (LegalBrief, 2023).

4.3 United Kingdom: Arsenal FC v. Reed (ECJ, 2003)

In case **Arsenal Football Club plc v. Reed** shows how **trademark law safeguards sports brands from unauthorised commercial use**. In this case the defendant near the stadium sold scarves and other items featuring the Arsenal brand. The court held that, if the products had the appearance of official endorsement even disclaimers could not stop trademark infringement (ECJ, 2003). The ruling emphasised how trademarks serve as an origin role and how third party use, even by fans or small merchants, can weaken a brand's character.

4.4 Lessons for the United States

In contrast to other countries such as Australia and South Africa, the U.S lacks in specific law for Ambush Marketing. Instead, it depends on event specific laws (e.g., Ted Stevens Act) and general IP laws. The **USOPC v. Puma** case serves as an example of how the USPTO took preemptive action to prevent ambush marketing, in the absence of judicial recognition. This disparity suggests that the United States may require specific legislation for Ambush marketing especially for major sports events like the Olympic and FIFA World Cup.

5. Policy and Legal Analysis

5.1 Evaluating the Effectiveness of IP Laws

The current IPR framework provides a sufficient tool for direct ambush marketing (unauthorised use of logos or slogan). But indirect ambush marketing, city year combination (e.g., "Tokyo 2021") and other themes sometimes fall into a legal gray area. This nuance is demonstrated in the USOPC v. Puma case, where purpose is just as important as content. Although the trademark opposition procedures at the USPTO are successful, they need to be closely monitored and supported by legal counsel and actively enforced by the rights holders. The USOPC may be more capable than other sports organisations, which raises questions regarding consistency and equity.

5.2 Ambush Marketing vs. Commercial Free Speech

The legal experts contend that regulations on ambush marketing restrictions could extensively violate commercial free speech rights of the first amendment (McKelvey & Grady, 2016). Especially when allusions to athletic events are made without overt infringement, courts must strike a balance between IP protection and free speech. The critics of puma might argue that "Tokyo 2021" is a factual term describing a time and location of a specific place. But this wording is loaded with implicit sponsorship during Olympic years. This demonstrates contextual legal interpretation when comes to ambush conflicts.

5.3 Need for International Harmonization

Ambush Marketing strategies are currently dispersed. Common law principles are used in certain nations, others with event specific laws and sponsorship agreements are used by numerous international athletic organisations to impose private contractual constraints. The WIPO guidelines or model law for ambush marketing is one potential remedy, it might provide uniform rules for large scale events while upholding National Intellectual Property Rights. It explains what indirect ambush marketing is, implied association thresholds, pre-event trademark filing guidelines. Smaller countries and event planners could maintain sponsorship exclusivity and steer clear of uneven court ruling with the aid of such harmonisation

6. CONCLUSION AND RECOMMENDATIONS

One example of the changing legal responses to ambush marketing is the USOPC v. Puma case. It illustrates how non-sponsors try to profit from international sporting events without going beyond obvious lines of infringement, even if the case was settled through trademark opposition rather than judicial adjudication. It also emphasizes how administrative enforcement is becoming more and more important in IPR strategy.

This analysis yields a number of recommendations:

- Make indirect ambush marketing legally enforceable with precise definitions and cutoff points.
- Urge sports regulatory organizations to keep an eye on trademark applications and take preventative measures.
- Create a worldwide model law under WIPO to harmonize international IPR standards with ambush marketing protection.
- Use consumer perception and rationality as interpretive tools to strike a balance between the protection of intellectual property rights and the right to free commercial expression.

The complexity and clarity of the regulations governing their economic environment must increase in tandem with the globalization and digitization of athletic events.

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