

Ambush Marketing and the Law: A look ahead to the Paris Olympic and Paralympic Games 2024

January 2024



What is Ambush Marketing?

Ambush marketing is an attempt by an unauthorised party, through marketing activity, to take advantage of the high media profile of an event, team or individual, by associating itself with the event, team or individual without permission and without paying any licence or sponsorship fees.

There is no universally agreed definition of ambush marketing. It can be interpreted widely, as above, or more narrowly, as being an activity, which merely causes public confusion over who is the sponsor of an event. It is most closely associated with major sporting events, but any event or occasion can be targeted by ambush marketers - from music festivals and TV shows, to award ceremonies and royal weddings.

Ambush marketing is clearly an effective marketing tool for brand owners as it can achieve similar results without incurring the expense of an official sponsorship or endorsement. It is also often done at the expense of a competitor who has invested in the event. However, it also has damaging effects, not only for those ambushed competitors, but also for the integrity of the event, team or individual concerned and their potential to attract future sponsors. Ambush marketing can also backfire for the brand undertaking the unauthorised activity, either from a PR and/or a legal point of view.

Types of Ambush Marketing

There are three main types of ambush which, depending on a range of factors, may fall foul of the law or trigger a claim.

Ambush by association

This occurs when the non-sponsor ambusher seeks to associate itself with the event without authorisation and consequently misleads the public into thinking the ambusher is somehow connected with the event. The most blatant examples will involve direct, explicit references being made to the event, and may involve the use of protected event trade marks or other intellectual property rights. For example, a brand that is ignorant of the rules may run an "Olympic Offers" promotion despite not being an official Olympic partner.

Big companies tend to be alert to such restrictions and will seek to avoid infringements by making less direct references (e.g. American footballs, or "touchdown" or "game day" language in relation to the Super Bowl).

Brands that sponsor a team or an athlete participating in an event often capitalise on these rights in a way which may lead the public to think they have an affiliation with the event. At a minimum, they will seek to draw on the public excitement for the event. This is normally a completely legitimate tactic. For example, although not an official sponsor of the event, AIG did this during the Rugby World Cup 2019: as a long-term sponsor of the All Blacks, it released a rugby-themed advert starring some of the team about "*How NOT to drive in Japan*", promoting its car insurance division. AIG alluded to the event, but no direct references were made; a clever, funny campaign and in no way infringing legal rights. Similarly, Beats by Dre regularly run emotive campaigns ahead of major events featuring athletes competing in the events. Although they don't sponsor the events themselves, the timing and creativity of the adverts mean that these are seen as adverts relating to the relevant events.

However, brands need to be alert to the fact that some events have special 'anti-ambush' rights (see below) which may mean that this sort of tactic crosses the line.

Ambush by Intrusion

An 'intruding' ambusher will normally seek to gain prominent brand exposure at the event, targeting the 'live' audience in the stadia and/or through broadcast media. This may occur within the event's area of control, or just outside it. Tactics can include erecting huge signs on land in shot of cameras, blimps, skywriting, or simply distributing products to fans as they arrive at the event.

Bavaria (the Dutch brewery) famously deployed intrusion marketing at both the 2006 and 2010 FIFA World Cups. In 2010, a group of Dutch models entered a match (disguised as Danish fans) and, shortly after kick-off, revealed orange mini-dresses which bore very small Bavaria logos. This, combined with an ad campaign in the Netherlands featuring the same mini-dress, achieved significant exposure (partially due to increased publicity as a result of a number of the women being arrested for contravention of local IP laws).

Contrastingly, a more subtle example of ambush by intrusion was Mumm champagne's #NextVictory

campaign during the 2018 Winter Olympics which cleverly engaged Usain Bolt (an official ambassador for Mumm) challenging winter athletes to do his 'lightning bolt' pose on the podium. If they posted a photo of them doing this and tagged Usain Bolt, he would reward them with a bottle of Mumm champagne. Bolt, whilst being an athlete synonymous with the Olympics Games and athletics, was not a participating athlete and was therefore exempt from Rule 40 (as mentioned below), and as there was no exposure of Mumm's brands by the participating athletes in the stadia, this didn't clearly breach the IOC's rules. However, the campaign went viral online and achieved the objective of Mumm being associated with the Games.

Opportunistic Ambush

Whether or not 'opportunistic' advertising, which reacts and refers to topical events, can genuinely be referred to as ambush marketing is up for debate; it is often done in a humorous manner so is arguably unlikely to mislead the public into believing there is a commercial endorsement or association. A prime example of this was when the flame expired during the Sochi 2014 Winter Olympic torch relay and was caught on camera being relit by a Zippo lighter. Zippo capitalised on this by using the photograph across its social media.

How does English law protect against Ambush Marketing?

There is currently no specific legislation in England and Wales which outlaws ambush marketing per se.

Where event organisers and their official sponsors are aggrieved by the ambushing of events by third parties,

they must generally seek redress through traditional forms of intellectual property protection (trade mark infringement or copyright infringement), and torts such as passing off. However, event-specific anti-ambush marketing legislation has been introduced for major events hosted in the UK. The London 2012 Olympic and Paralympic Games and the Glasgow 2014 and Birmingham 2022 Commonwealth Games benefitted from such legislation. The Olympic and Paralympic symbols and terminology also benefit from enhanced protection, with consequences for their unauthorised commercial use.

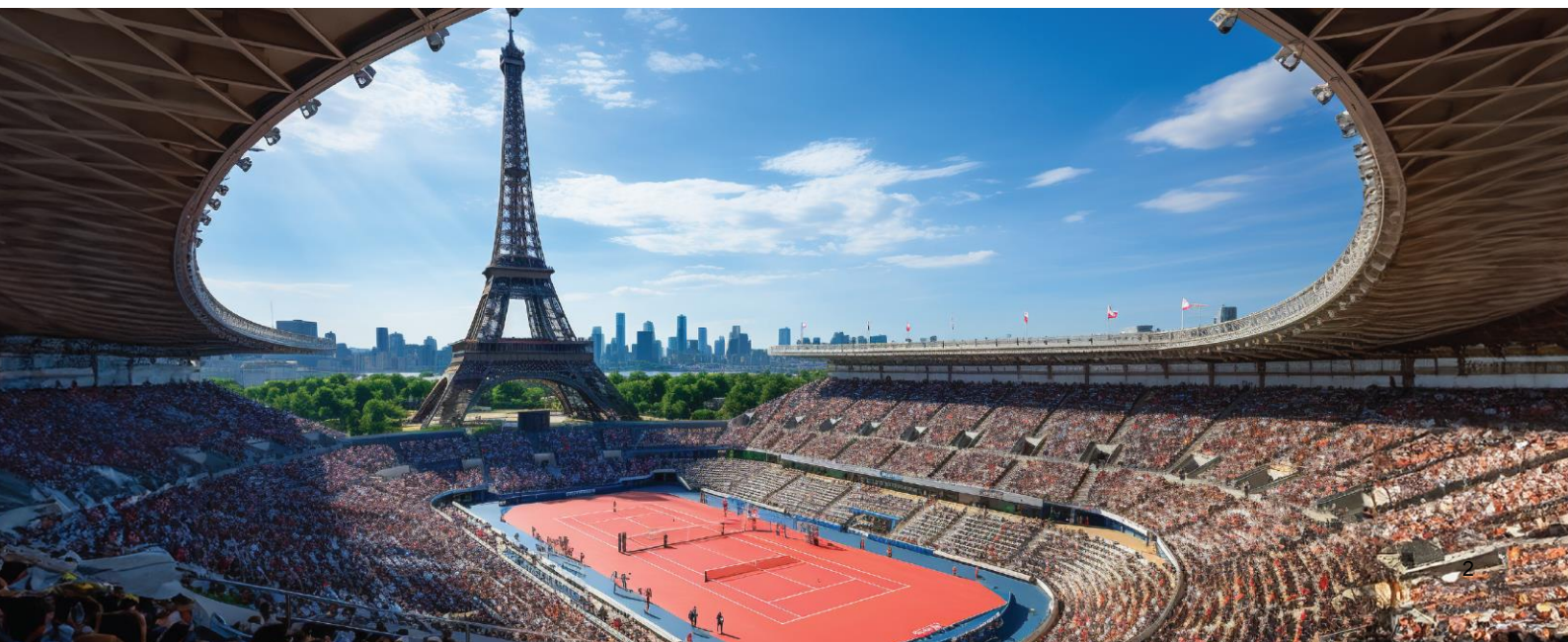
Below we briefly note the traditional legal grounds available to address ambush marketing. We refer to event organisers throughout, but teams, individuals or any other ambushed rights-owners can potentially also rely on these.

Passing Off

To ground an action in passing off, broadly, the event organiser would need to show all of the following:

1. it has established a reputation or goodwill in the event in question;
2. the third party has made a misrepresentation which has led to confusion in the minds of the public as to whether there is a connection with the event organiser; and
3. the event organiser has suffered or is likely to suffer damage.

The tort of passing off is a useful tool to address ambush by association and is likely to be asserted in most cases, however it can be quite a hard cause of action to prove.



Registered Trade Marks

Where the event organiser has a registered trade mark for the name of the event itself (e.g. World Cup, or London 2012) or logos, mascots, expressions associated with it, and that trade mark or a similar mark has been used by a third party in its advertising, the event organiser is likely to be able to bring action against the third party for trade mark infringement.

Copyright Infringement

The event organiser is likely to have created a logo and other graphics, artwork or designs (including mascots, pictograms and 'look and feel'), or even music, for the event. These will likely be sufficiently original to attract copyright. All imagery and footage taken of the event will also benefit from copyright protection. The event organiser will own that imagery or footage (or otherwise seek to control the rights via contract). Unauthorised reproduction of such copyright works by an ambush marketer also is therefore likely constitute copyright infringement in respect of which the event organiser can bring enforcement action.

Advertising Codes and Consumer Laws

Event organisers may also have recourse to the advertising self-regulatory regime to combat ambush marketing. The Advertising Codes are known as the CAP (non-broadcast) Code and BCAP (broadcast) Code. They are enforced by the Advertising Standards Authority (ASA). These Codes require, among other things, that all adverts are honest and truthful and that they should not be misleading. The use of the names or images of individuals, such as athletes, without their consent, may also fall foul of the Codes.

Ambush marketers should also be aware of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Marketing can constitute an "unfair commercial practice" under the CPRs in various circumstances, for example, if it is misleading or if it is one of the 'banned practices' listed in the CPRs.

Note the CPRs are due to be replaced by a new piece of consumer law in late 2024/25, called the Digital Market, Competition and Consumers Bill (DMCC).

The updates are relatively minor when it comes to the substance of the rules, but regulators will find it easier to enforce the DMCC, and regulators like the Competition and Markets Authority (CMA) will have very

strong powers to investigate suspected breaches and to issue very large fines (up to 10% of global turnover).

Ticket Terms and Conditions & Contract

The ticket terms and conditions for events will usually also prevent the use of tickets for any commercial/marketing purposes without the permission of the event organiser, for example the use of tickets in unauthorised promotions. Legislation may also make such activity a criminal offence.

Ticket T&Cs will also routinely prevent ambush by intrusion by prohibiting spectators from distributing or displaying commercial paraphernalia in stadia without prior authorisation from the event organisers.

Event organisers will normally use contractual terms to seek to prevent ambush marketing by including relevant terms in their agreements with participants in the event (athletes, teams, officials etc.). These will often include similar restrictions to those included in the ticket T&Cs to restrict what commercial messages they can display (for example on kit and equipment), but may also prevent them from allowing their name or image to be used within advertising during the event and/or for the purposes of ambush marketing. An example of this is Rule 40 of the Olympic Charter which places specific restrictions on athletes competing in the Olympic Games (see further commentary on Rule 40 below).

Practical Steps for Event Organisers to Counter Ambush Marketing

In addition to asserting the rights and implementing the contractual protections described above, a range of practical steps can be taken by event organisers and sponsors to help prevent ambush marketing. For example, event organisers may buy up all of the available billboard and other advertising space in the vicinity of the venue(s) and then resell only to official sponsors, or they may impose contractual obligations on media organisations to restrict advertising and promotion during broadcasts to official sponsors.

Finally, mounting official sponsor awareness campaigns, and ensuring official sponsors activate their rights strongly will help to ensure that the public know who the official sponsors are and to diminish the effectiveness of ambush campaigns.

Ambush Marketing in focus: Paris Olympics 2024

The Olympic Games present a number of legal pitfalls for the uninformed marketer, but brands and sponsors will be ready to play their part in what should be an amazing sporting spectacle.

Paris 2024

Given the creativity of ambush marketers, many countries hosting major events such as the Olympic and Paralympic Games impose special anti-ambush laws. The relevant international rightsholders often demand that countries bidding to host such events enact such laws. The French government enacted legislation for the Paris Games in November 2023, but this legislation does not relate to ambush marketing. However, the usual legal risks associated with ambush marketing (detailed above) will be as relevant as ever and any brands considering ambushing the Games this summer need to be alert to them, as well as the specific protections set out below.

The Olympic Symbol (Protection) Act 1995 ("OSPA")

This UK Act of Parliament prevents the unauthorised use in the course of any trade (i.e. use on any products or marketing materials of any business which does not have consent) of (1) the Olympic and Paralympic symbols and mottos, (2) the words: 'Olympic', 'Paralympic', 'Olympian', 'Paralympian', 'Olympiad', and 'Paralympiad' and (3) any similar words and/or symbols. Acting in contravention of this law is a criminal offence and the British Olympic Association and British Paralympic Association are also granted rights which allow them to bring civil actions against infringement.



However, there are a limited number of defences available. For example, where relevant factual statements are made which include the protected words there should not be infringement if this in accordance with honest commercial practices. Historic use which commenced before 1995 is also permitted (so Olympic Airlines and many “Olympian” restaurants around the country are protected).

Paris 2024: what’s protected?

All of the words, logos, designs and images set out below are protected by a combination of copyright and/or trade marks. This is not an exhaustive list:

“Core” Olympic and Paralympic IP:

- ▶ The Olympic Symbol (the rings)
- ▶ “OLYMPIC GAMES”
- ▶ The Olympic motto: “Citius, Altius, Fortius” (“Faster, Higher, Stronger”)
- ▶ Paralympic symbol (the three “agitos”)
- ▶ “PARALYMPIC GAMES”
- ▶ The Paralympic motto: “Spirit in Motion”
- ▶ Official footage and images of the Games

Paris 2024 IP:

- ▶ “Paris 2024”
- ▶ The Paris 2024 Olympic and Paralympic Games logos
- ▶ Medal and Torch designs
- ▶ Mascot images and names (the Olympic and Paralympic “Phryges”)
- ▶ ‘Look and feel’ and other designs protected by copyright such as stadium renders

Team IP:

National Olympic and Paralympic Committees around the world will protect their team names, logos and other IP. In the UK, these include:

- ▶ “Team GB” and “ParalympicsGB”
- ▶ The Team GB and ParalympicsGB ‘lion’ logos
- ▶ The team’s kit designs

Athlete IP:

Current and past Olympians and Paralympians may assert their ‘image rights’ to prevent ambushes that use them without permission. In the UK this will either be through the tort of passing off or by asserting any trade marks they may have registered, for example in their:

- ▶ Name (or nicknames)
- ▶ Image
- ▶ Logos

Rule 40 of the Olympic Charter

Sponsors of individual Olympians competing in Paris need to be alert to Rule 40 of the Olympic Charter, especially if they are not also official sponsors of the Olympics. Rule 40 limits the ability of athletes to allow their personal sponsors to market their association with the athlete during the ‘Games Period’ (which runs from 18 July to 13 August 2024). ‘Generic’ advertising which does not use any Games IP or allude to the Games or the athlete’s performance at the Games is permitted to continue, provided it has previously been in market and it is run consistently in nature and frequency (i.e. without uplift or escalation during the Games Period).

Each National Olympic Committee around the world is taking a slightly different approach, and the International Olympic Committee has issued a set of [key principles and illustrative guidance for athletes competing at Paris 2024](#).

In the UK, the British Olympic Association (BOA) requires brands to notify it of any generic campaigns they intend to run through the Games Period by 4 July 2024 (or 18 July if athletes are selected after 4 July), and those campaigns must also be already in the market by that date. The BOA does not allow brands to undertake any good luck or congratulatory messages during the Games Period, including on social media (but brands can post such messages outside of the Games Period). However, it does allow athletes to issue a controlled number of generic thank you messages to their personal sponsors during the Games Period. More details are set out in the [BOA’s guidelines](#).

Note that there is an equivalent to Rule 40 in respect of the Paralympics too.

Social media guidelines

The IOC has recently published its [guidelines for social and digital media posts](#) ahead of the Paris Games. There are two different sets of guidelines: one for athletes taking part in the Games, and another for accredited individuals not taking part in the Games. The new guidelines allow athletes and other individuals to take photographs and/or record audio or video content at the Olympic Games, using their mobile phones, to be shared with their followers. There are some restrictions, such as sharing posts that are commercial in nature, and certain areas (including medical areas) are off-limits. They are also forbidden from sharing live footage or any videos that are longer than two minutes in duration.

Top Tips for Advertisers and Brands for Paris 2024

Unless you are an official sponsor and have your campaign approved by the relevant rightsholder(s):

1. Avoid using any official Olympic/Paralympic, Paris 2024 or national team/athlete logos, protected terms, designs, images or footage in your advertising.
2. Ensure that the advertising does not mislead people into thinking there is a connection between the brand advertised and the event/team etc, when there is not. For example, if you would expect to see an official Olympic/Paris 2024/Team GB sponsor logo at the end/in the corner of the advert because of the connection made to the event/team, it is likely to have crossed the line.
3. If there is only a minor allusion or nod to the event, the risk will be lower. In the context of Paris 2024, this might be the use of a French theme or referencing competitions or athletic events in a generic sense. However, be careful to not to combine too many of these elements together to give an overall effect which could be misleading.
4. Remember that social media is also a form of advertising - brief your digital teams/agencies. Use of event hashtags or emojis (especially repeatedly or systematically) or even regular re-posting of content related to Paris 2024 could be an infringement and result in legal action.
5. Consider the following which may affect the likelihood of a rights holder taking action:
 - ▶ The content of the ad

- ▶ The timing
 - ▶ The nature of the product or services being promoted
 - ▶ The scale of the campaign
 - ▶ Your ability to pull adverts (if a complaint is made)
 - ▶ Any actual or potential conflicts between the products/services you're promoting and those of any of the official sponsors (as the rights holder is likely to come under pressure from them to take action to prevent your campaign).
6. Don't use tickets to any Olympic or Paralympic events in promotional activities without first checking the terms and conditions of any tickets.
 7. If you're planning on advertising or undertaking PR or marketing in France during or in connection with the Olympic or Paralympic Games, make sure you seek advice from local lawyers as to the legality of your activities and any associated risks.
 8. Always consider the legal and reputational risks when deciding whether to go ahead with a campaign.

If you have any questions about this document, ambush marketing or sports marketing more generally please contact Geraint Lloyd-Taylor, JJ Shaw or David Cakebread:



Geraint Lloyd-Taylor
Partner, Co-head of Advertising & Marketing Law

+44 (0)20 7074 8450
geraint.lloyd-taylor@lewissilkin.com



JJ Shaw
Managing Associate

+44 (0)20 7074 8348
jj.shaw@lewissilkin.com



David Cakebread
Associate

+44 (0)20 7074 8044
David.Cakebread@lewissilkin.com



Lewis Silkin LLP, Arbor,
255 Blackfriars Road, London,
SE1 9AX
T +44 (0)20 7074 8000
www.lewissilkin.com

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