



Ambush Marketing - A Principled Business Practice and Just Commercial Irritant either! A Case Study of Contemporary Era




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ABSTRACT

Ambush marketing has become increasingly popular as global sports participation has increased, despite it not being a recent practice. It is an unethical commercial practice where companies attempt to identify themselves with a sporting event without the permission of the organizers, in order to gain a competitive advantage and mislead the public. These practices have a negative impact on the event's worth and integrity, as well as the exclusive rights of the sponsors. Despite the prevalence of ambush marketing, India does not have a specific law to forbid such behavior. This article focuses on the implications of ambush marketing on sponsors, event organizers, and customers, as well as the tactics used by ambushers. To summarize, ambush marketing is an unethical practice of attempting to identify oneself with a sporting event without the permission of the organizers. It has a negative impact on the event's worth and integrity, as well as the exclusive rights of the sponsors, and is a growing problem that is yet to be addressed in India. This article highlights the implications of such practices, as well as the tactics used by ambushers.



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INTRODUCTION

There is a new sector of intellectual property known as "Ambush Marketing," sometimes referred to as "guerrilla" or "parasitic" marketing, in addition to the more established forms such as patents, copyrights, designs, trademarks, etc (Soldner, 2006) . "Ambush marketing" was coined in the 1980s by marketing strategist Jerry Welsh of the American Express Company (Times, 2015). The term "ambush" denotes a covert assault when it comes to ambush marketing. In recent years, marketing departments have used ambush marketing as a powerful tool in their toolkit to identify themselves with athletic events without the organisers' explicit consent or authorization (Townley Stephen, 2015).

It is, in essence, the concept that permits advertising to use event participation as a means of product promotion without incurring sponsorship costs. The objectives of Ambush Marketing are twofold (Dickerson M. Downing, 2015):

1. To optimise the return on investment from the marketing budget.
2. To confuse visitors and deflect attention from rival brands in order to undermine their efforts.

Despite Fujifilm being the official sponsor, Kodak provided sponsorship for both the 1984 Olympic TV broadcast and the US track squad. This was the first instance of ambush marketing. Despite the fact that Converse was the official sponsor of the event, Olympic ambush marketer Nike was also in attendance to advertise their products. In India, Pepsi launched advertising during the 1996 World Cup with the slogan "Nothing official about it," despite Coca-Cola being the official sponsor of the competition. One of the primary causes of ambush marketing's quick ascent is its cost-effectiveness. Advertisers do not have to spend a lot of money on PR and advertising campaigns similar to those that run in print, television, and other media. Ambush marketing is particularly common at sporting events because its global scope makes it easy for advertisers to target both domestic and overseas consumers.

Although ambush marketing has gained prominence recently as a type of intellectual property theft, many countries still do not have a national legislation that forbids it expressly.



Nonetheless, since they recognise the seriousness and consequences of ambush marketing, some countries - including the United States, Canada, New Zealand, South Africa, and Brazil— have enacted legislation making it illegal. We can't say that ambush marketing is unheard of or that it only happens in intimate situations since it happens a lot at big athletic events like the Olympics and FIFA. This is a common practise at these gatherings, so why hasn't legislation been created to expressly target and criminalise it?

Rather than just being the outcome of rival companies battling with one another, ambush marketing is a more cunning strategy to bring attention to a brand. Since there are no legal restrictions, it is carried out more freely. It is now necessary to acknowledge that, if this practise continues, no one will waste money on paying sponsorship fees in the future; instead, they will choose this straightforward but effective method of brand promotion. Major events like the Olympics and World Cup rely heavily on sponsorship money to fund their operations.

Ambush marketing is the term used to describe a third party's attempt, without the participants' permission, to create a direct or indirect relationship with a sporting event. In doing so, official sponsors, vendors, and partners lose out on some of the financial advantages that come with having the "official" label. This association was formed without the sport endeavor's or its official partners' permission with the intention of misleading sports enthusiasts by thinking the event is associated with a recognised body ((Schwarz & Hunter, 2008).

To suit their objectives, many sports organisations have developed a unique concept of ambush marketing. Two instances are:

The Vancouver Organising Committee for the 2010 Olympic and Paralympic Winter Games has defined ambush marketing as "Only official sponsors, licencees and government partners of the Olympic Movement in Canada are allowed to suggest an affiliation or connection with the Olympic Movement or any Olympic Games." Unfortunately, "ambush marketing" - marketing that preys on the Movement's goodwill by creating a false, unauthorised association with the Olympic Games, the Olympic Movement, or Olympic athletes - can violate those exclusive rights if the necessary financial investment isn't made to secure official sponsorship rights.

The European Sponsorship Association defines ambush marketing broadly as "any type of marketing activity undertaken around a property by an entity that is not a sponsor, where the entity seeks commercial benefit from associating itself with the property" in its recently published Position Statement on the subject.



RESEARCH OBJECTIVES

1. Understanding the Ambush Marketing from the Perspective of case study
2. To know whether the Ambush Marketing is a business Practice or a commercial irritant!

DISCUSSION

Breakthrough in ambush marketing

The growth of sponsorship was mostly caused by two factors:

1. Researchers claim that it might cut through the clutter of advertisements. Because of this, it became a more enticing alternative to mainstream media advertising.
2. Sophisticated packages that assist event planners in maximising their earnings have been introduced.

As a result, ambush marketing emerged when companies were unable to officially sponsor high-profile events (like the Olympics) because of increased expenses or category exclusivities. The inception of ambush marketing occurred when Kodak declined to provide Fuji sponsorship rights for the Summer Olympics in 1984. Undaunted, Kodak consented to support both the American track team's "official film" and the ABC coverage of those Games. Despite Fuji's aggressive marketing to promote its sponsorship of the American swimming squad, Kodak managed to secure the worldwide category sponsorship for the 1988 Olympic Games.

Pepsi took a different strategy and sponsored the renowned Brazilian football team in parallel, even though Coca-Cola had secured official worldwide sponsorship rights for the Football World Cup in 1990. The International Olympic Committee (IOC) is not fond of ambush marketing. A similar situation occurred early in 2003, when the Indian cricket team was about to withdraw from the ICC Champions Trophy competition. Some players who had signed contracts for personal advertising and endorsements were concerned about the ICC anti-ambush regulations, which were designed to ensure that official sponsors had exclusive promotional rights throughout the event. These pictures provide a brief synopsis of the connections between athletic commercialization and ambush marketing. (Hoek, 2003)

Ambush Marketing Strategies

The following categories serve as a general framework for understanding ambush marketing. They are as follows:

Direct Marketing By Ambush

Using logos and emblems, the event purposefully presents a picture of its true sponsors. Here, the individual or marketer is deliberately attempting to make money out of the



event. There are several approaches of direct ambush marketing. A list of a few of them is as follows:

1. Predatory Ambush is when a competitor's official sponsorship is openly contested in an attempt to gain market share and deceive consumers about the true sponsor. The campaign that AMEX conducted against VISA during the 1994 Winter Olympics is an example of predatory ambushing. Official sponsor VISA was furious when AMEX produced an advertising that said, "So if you're travelling to Norway, you'll need a passport, but you don't need a visa". (Ann Bransom, 2015)

2. Coattail Ambushing A brand aims to establish a direct connection with the property or event by "playing up" a real association that does not require cash sponsorship or official event sponsor status. Stated differently, it suggests a business's unwelcome association with an event. In response to Liu Xiang's injury sustained during the men's 110-meter hurdles event in Beijing in 2008, Nike ran a full-page advertising with the tagline, "Love competition. jeopardising your pride for love," in the leading Beijing newspaper. Love getting it back. I adore giving it your all. Treasure the beauty. I adore the pain. Love the sport despite the pain it causes to your heart. Adidas, the primary sponsor of the event, was impacted by this (Ms Charul Agrawal, Re-engineering of Indian Economy-Opportunities & Challenges, 2015).

3. Ambushing through trademark or licence infringement is the intentional unauthorised use of intellectual property that is protected by law. Examples of this include team or event logos, unauthorised references to events, teams, or competitions, and words and symbols used in brand marketing to imply a connection between the brand and a particular good or service in the minds of consumers. Pitkanoza, a Polish magazine, included many print ads from Unibet, a betting company, encouraging readers to wager on the 2008 UEFA European Championships online. "Euro 2008" and football are mentioned in the commercial material.

4. "By degree" ambushing, often referred to as sponsor self-ambushing, describes promotional actions carried out by an official sponsor that surpass the parameters stipulated in the sponsorship agreement. Self-ambushing is the practise of going above and above a company's sponsorship guidelines in a way that impedes the marketing or promotion of another sponsor. Carlsberg, the official sponsor of the 2008 UEFA European Championships, gave out headbands and t-shirts bearing the Carlsberg logo during the competition. These types of promotions violated the sponsorship agreement of another company that was authorised to distribute them and were not protected by their agreement (Bransom, 2015).



Indirect Ambush Marketing

1. **Ambushing by Association:** This is the practise of creating the appearance that a business is connected to a certain sporting event or piece of real estate by employing symbols or terminology that isn't protected by intellectual property regulations.
2. **Value-based Ambushing:** In order to bring audiences to their own marketing who are drawn to the event or its promotion, a non-sponsor may customise its marketing methods to appeal to the same ideals or utilise comparable themes as the event or its promotion. We refer to this tactic as "**value-based ambushing.**" It may be seen as directly referring to the theme or values of the event or property in order to establish a link with it in the thoughts of the clients. Puma used the tagline "June 2008: Together Everywhere" to promote their football line during the 2008 European Championship, explicitly referencing the competition that month.
3. **Deception as an Ambush:** Also means setting up an unrelated distraction near or at the event site with the intention of detracting guests from the event and therefore highlighting the brand's products. In 2008, Bentley arranged a lineup of its cars outside Hill Side Golf Club, which is near the Royal Birkdale, the venue for the Open Championship. The audience at the event was quite interested in this show.
4. **Ambushing Parallel Properties:** A kind of "ambushing by distraction" occurs when the property or event itself is the product being advertised by the ambusher, taking advantage of the positive reputation of the main event. To create a major global marketing campaign around Nike and the marathon during the Olympics, the company arranged the "human race" international competition, which was held in 24 countries, including Shanghai, the site of the 2008 Summer Olympics. Seven days were added to the event following the Olympics.
5. **Ambushing in advance** when one of the official sponsors of the event creates a marketing message expressly meant to thwart any prospective ambush marketing strategies by rivals, setting off such acts and detracting from the other official sponsors of the event. For the 2008 European Championship, Adidas produced sixteen inflatable football players, dressed in the national teams' Adidas-branded jerseys, including the countries sponsored by Puma and Nike (Ms Charul Agrawal, Re-engineering of Indian Economy-Opportunities & Challenges, 2015).

Incidental Ambush Marketing

This comes into picture when the market communications of a company lead to such incidental ambushing of the official sponsors. It may be done in two ways:



- 1. Unintentional Ambushing:** Customers may unintentionally confuse a non-sponsoring company for an official sponsor because of their past involvement or reasonable expectation of participation with the event. This is known as unintentional ambushing. The success of swimmers donning LZR racing swimsuits brought significant media attention to Speedo.
- 2. Saturation Ambushing - Completion Saturation** ambushers, who ambush during an event, increase their broadcast-media promotion and advertising while avoiding any reference to the event itself and avoiding the use of language or imagery that is linked with it. During the Beijing Olympics, Lucozade's aggressive commercial marketing escalated well beyond its typical focus on athletes and a variety of sports. Saturation ambushing merely exploits the heightened interest in the event among broadcast media and television viewers.

AMBUSH MARKETING ADVANTAGES

Ambush marketing persists despite being against intellectual property rights. World cups, the Olympics, and other tournaments are examples of short-lived sporting events. Marketing ambush techniques are ephemeral. ¹⁴ The event organisers find it very difficult to use their legal options to put an end to such acts. The 1994 cricket world cup was officially sponsored by Coca-Cola, however Pepsi shocked Coca-Cola by utilising the slogan "nothing official about it." Using the well-known strategy of putting up a disclaimer that says, "the company is not an official sponsor and has not paid to affiliate with the event," Pepsi got away with it.

Furthermore, even while there are guidelines that could be applicable generally to the problem of ambush marketing, very few cases have actually reached the courtroom. Additionally, because there aren't many case laws in this field, there are less cases of ambush marketing being documented.

Ambush advertising gives brands and companies a heap of free media, which benefits both. The fact that the consumer spends more money than expected and makes more money also helps the advertising companies. Many workers in marketing and advertising companies find a new sense of purpose. Excitement is reignited and energy unleashed. The CEOs of both companies interact with the executives of the relevant brands more often, which broadens their exposure and prospects (Ms Charul Agrawal, Re-engineering of Indian Economy- Opportunities & Challenges, 2015).

There is a story to cover for the news and trade media, who are always looking for something to print. This is like fresh juice. They can now fill many columns. On the other side,



consumers are enjoying the chaos and are expecting that the fierce competition will lead to cheaper prices.

PRIMARY THOUGHTS ON AMBUSH MARKETING

Even though there are not many obvious indicators of it happening, ambush marketing has become very popular. However, doing so harms and infringes upon the rights of patrons, event planners, and sponsors.

1. Sponsorship makes a big impression on an event; apart from giving the organisers money, it also helps publicise events to attract attendance. In addition to the event organisers, sponsors that take part in this sponsorship scheme gain a lot by working to increase public awareness in their goods via sponsorship (nd, Ambush Marketing: Virtue or Vice, 2015). Getting a sponsorship is becoming more and more expensive even today. Businesses who engage in this form of sponsorship prioritise exclusivity and return on investment. Ambush Marketing, on the other hand, thwarts their exclusivity, which has a negative effect on event organisers and sponsors alike (Jyoti, 2015). The event organisers are greatly affected by the loss of sponsorship as it is one of the main sources of income for the event. There exist many instances of this, one of which is Adidas. After the 1988 World Cup, Nike used Ambush Marketing to eliminate the exclusivity, leading some to speculate that it might sponsor the 2002 World Cup (nd, Ambush Marketing: Virtue or Vice, 2015).
2. Perception of Through sponsorship, sponsors hope to build a more intimate relationship with their clientele. Sufficient identity is required for the event in order to identify the genuine sponsor. Customers won't be able to tell who is the real sponsor when Ambush Marketing shows up. As a result, customers will get confused, which will result in significant losses for sponsors (Ms Charul Agrawal, Re-engineering of Indian Economy-Opportunities & Challenges, 2015).
3. Perceptions that when the Ambushers enter the market, the sponsor's exclusive rights will be infringed. A sponsor may lose up to ten million dollars in potential profits if ambushers enter the market. This will ultimately reduce the amount of money generated for any event and have a significant impact on how popular the event is as sponsors will start to wonder if it is worth their money to sponsor. Though Nike was not an official sponsor during the 2010 FIFA World Cup, the company's three-minute ad featuring Ronaldo, Drogba, Cannavaro, Rooney, and Ribery was seen by almost 14 million viewers. People were lured to that advertisement because of its resemblance even though it didn't have any signs or indicators indicating the event, endangering the exclusive rights of the actual sponsor. This may have made the sponsor think about



providing more funding for the FIFA World Cup (nd, Ambush Marketing v. Sponsorship Values, 2015).

4. Perception among Customers Enhancing a company's reputation is the primary objective of ambush marketing strategies for companies. By using attractive sports arenas, these ambushers use image transfer tactics to reach their target audiences. Customers are affected in a way that makes them associate positive connotations with a brand, attracts them to the brand, helps them relate to the brand, and then transfers the positive connotations of the event to the brand (Ms Charul Agrawal, Re-engineering of Indian Economy-Opportunities & Challenges, 2015).
5. Perceptions of IPR Owners By using ambush marketing to capitalise on the goodwill that events generate, ambushers breach intellectual property rights of the holder, which includes sponsors and event organisers. These ambushers use official event organiser symbols, often inflicting major financial losses on the sponsors (Seth, 2015).

AMBUSH MARKETING CASES (SELECTED CASES, FY 2010-2020)

1. Case No. 1: Flipkart and Snapdeal in the Indian E-Commerce War the example of ambush marketing in Indian e-commerce is rather good. Snapdeal was the start of the War. A notable daily, TOI, released a piece about Flipkart's Big Billion Day Sale on October 6. Flipkart has been advertising their biggest bargain in India lately.
2. Case No. 2: Despite the fact that many people believed Pepsi was the official beverage, Coca-Cola spent \$400 million on marketing in Beijing in 2008, including \$85 million for the Olympics. A highly successful aspect of PepsiCo's marketing effort was an online competition where 160 million Chinese voters assessed mug photos. The winning submission was printed on cans that favoured Team China. Pepsi used to use blue cans, however in China, they now use red cans.
3. Case No. 3: In 1993, Jackson signed a multi-million dollar contract with Pepsi and was set to perform in Thailand. However, he cancelled the gigs, citing heat fatigue and illness as his reasons. Rival Coca-Cola swiftly made fun of Jackson by running a print ad in Bangkok that said, "Dehydrated? There's always Coca-Cola. The audience was enraged by two streakers who interrupted an Australian rugby match in 2002 while donning nothing but the Vodafone logo. Indeed, ambush marketing has crossed a line, as seen by the necessity for Vodafone's CEO to issue an apology.
4. Case No. 4: Heineken against Steinlager - The Steinlager "We believe" advertisement is maybe the best-thought-out ambush ever. Heineken was the official sponsor of the Rugby World Cup, and Steinlager was the sponsor of the All Blacks. Heineken was closely monitoring the situation and fully expecting Steinlager to launch an attack. But



Steinlager did something really clever. Once again, they offered their white can as a lucky charm. The can was white the last time the All Blacks won the Rugby World Cup. As a result, the onlookers sneaked in the white can as a lucky charm. The World Cup was won by the All Blacks, and Steinlager received praise and good sales.

5. Case No. 5: Burger King advises "Never Trust a Clown." Burger King used the reemergence of the clown in the horror film IT to its advantage during last month's German pre-premiere. The fast-food juggernaut Burger King found a classic way to take McDonald's by surprise by "hi-jacking" a horror film. The Moment was the clown's reappearance at the German pre-premiere of the horror film IT last month. After the straightforward caption, "The moral is.. never trust a clown," appeared on the screen, the Burger King logo mockingly mocked Ronald McDonald.
6. Case No. 6: Olympic Games - At the 2008 Summer Olympics in Beijing, Li Ning, a former Olympic gymnast, carried the torch one final time before igniting it at Beijing National Stadium. Li Ning is also the founder of the domestic shoe company of the same name. The Li Ning company was associated with the games even though it wasn't an official sponsor since it supplied equipment to several Chinese Olympic teams and because Li Ning was well-known in China as a businessman and athlete. Ning's sponsorship requirements required it to wear the official Olympic sponsor, Adidas, a rival, during the ceremony.
7. Case No. 7: Pay with Ices Paypal - Initial Launch WePay completed the unthinkable by verifying PayPal. While they were at a PayPal developer conference and paying the price for "freezing" user accounts, WePay left them a small gift. The words "PayPal freezes accounts - unfreeze your money" were scrawled on a huge block of ice that held cash and was shoved up against the conference entrance. This is only an additional example of ambush marketing.
8. Case No. 8: Nike discovers Your Greatness - Nike strategically chose to film in the US, Norway, Jamaica, and Nigeria—all of which have the same name as the UK city—with the word "London" prominently featured in their advertising. For a firm like Nike to be prepared to invest a significant amount of money to demonstrate the efficacy of an ambush commercial was unprecedented.
9. Case No. 9: Kodak and Fuji Photo By falsely posing as the official sponsors of the 1984 Olympics through a series of advertising efforts, Kodak was the corporation that really developed ambush marketing. Fuji Film was successful in convincing the buyer that they were the official sponsor, even if they weren't. Kodak shocked Fuji again in 1996. As soon as Atlanta was awarded the right to host the 1996 Summer Games, Kodak



bought 50 prominent poster positions throughout Atlanta for the next four years, at an estimated cost of \$28,000 per month. Consequently, Kodak won first place again against their official sponsor, Fuji.

10. Case No. 10: Match between Visa and Master Card: Visa was able to launch advertising with the tagline "The Olympics don't take American Express" since it was the official sponsor of the 1992 Summer Olympics in Barcelona. American Express found itself on the defence after watching the commercial. In response, American Express released a series of advertisements saying, "You don't need a visa to visit Spain" (Printing, 2010).

AMBUSH MARKETING - A PRINCIPLED BUSINESS PRACTICE!

It is a contentious question if ambush marketing, when many people's rights are violated, is a moral business activity. Ambush marketing, according to event planners and sponsors, is unethical and gravely undermines the event's reputation. The head of marketing for the IOC says, "Ambush marketing is not a game." It's a really serious issue that might destroy sponsorship. If ambush marketing is not reined down, sports will lose its main source of income. If sports and other sponsored organisations don't learn how to effectively protect their rights, the exclusivity of their sponsors, and their rights, they will lose their independent source of funding (Payne, 1993).

Corporate Sponsors assert that ambushers infringe upon their exclusive right to sponsor an event and mislead consumers into believing they are doing so, which negatively affects the official sponsors' return on investment. They argue that there is a danger to the expected value of their purchase from ambush marketing (Tonny M. , 2015).

In exchange for a small amount of exclusive rights over the event, sponsors serve as "Angels" for the event organisers by giving of their revenues, promoting the event on their behalf, and providing technical assistance. Sponsors act as "Angels" for the event organisers by contributing a portion of their profits, advertising the event on their behalf, and provide technical support in exchange for a limited number of exclusive rights over the event.

Ambushers, however, contend that it is a legal business strategy. that as they operate in a free market with reasonable competition, they have the freedom to promote their brand. The way that official sponsors promote their events and products is up to them (Cristina, 2015). They argue that granting sponsors exclusive rights to promote won't affect the fairness of the market. According to Jerry C. Welsh, the former global marketing executive of American Express, competing corporations have "not only a right, but an obligation to shareholders to take advantage of such events" (Tonny B. a., 1998).



LAWS CONCERNING AMBUSH MARKETING

The laws pertaining to ambush marketing differ between nations. Nonetheless, there are some recurring motifs. Ambush marketing is frequently countered with the application of intellectual property legislation. Brands may face legal ramifications for unauthorised use of trademarks or copyrighted symbols linked to events, such as trademark infringement or copyright infringement.

Ambush marketing may also be prevented under **Unfair Competition Laws (UCL)**. For instance, a company may be considered to be participating in unfair competition if its logo or colours are identical to those of an event or its official sponsors.

Official event sponsors may also be safeguarded by Competition Law. One example of anti-competitive behaviour is when a brand provides discounts or other incentives to customers who attend an event.

Aside from these broad regulations, several nations have **General or Particular laws** that forbid ambush marketing during important athletic events. The London Olympic and Paralympic Games Act 2006, for instance, forbids ambush marketing during the Olympic and Paralympic Games in the United Kingdom.

Here are some specific examples of laws related to ambush marketing in different countries:

- 1. United Kingdom:** Ambush marketing during the Olympic and Paralympic Games is forbidden by the London Olympic and Paralympic Games Act of 2006. The Act also grants law enforcement the authority to confiscate and destroy items used in ambush marketing.
- 2. Germany:** Ambush marketing that might mislead customers is forbidden by the German Act Against Unfair Competition.
- 3. Italy:** Ambush marketing for the 2022 Ryder Cup, the 2021–2025 ATP Finals, the Euro 2021, and the Milan–Cortina 2026 Winter Olympics is forbidden under Law Decree No. 16/2020.
- 4. France:** Ambush marketing that might mislead consumers into thinking a business is an official sponsor of an event is forbidden by the French Consumer Code.
- 5. India:** Ambush marketing is not specifically forbidden by law in India. However, ambush marketing practises may be challenged by event organisers and official sponsors using intellectual property or unfair competition laws.

It is crucial to remember that ambush marketing laws are intricate and dynamic. Companies who are thinking about using ambush marketing techniques have to carefully weigh the dangers and consult a lawyer.



CONCLUSIONS AND SUGGESTIONS

Even while ambush marketing is not a new tactic, worries about it have grown as there are more international athletic events taking place. This kind of conduct seriously violates the rights of several stakeholders, which is why many are worried that laws or rules should be put in place to put an end to it. Among the rules controlling sponsorship regulations and the prevention of ambush marketing is the London Olympics Bill, which was released on July 15, 2005, deliberated in Standing Committee, and amended on October 18, 2005. These rules were made to ensure that sponsors could get a good return on their investments, that the event would run well and attract sponsors each time, and that guests would have fun at these kinds of events. But in India, there is no specific rule that forbids these kinds of practises. Numerous ambush marketplaces have occurred in India. Though we're still working on it, it will be difficult to organise the Olympics in India in the absence of legislation prohibiting ambush marketing. Even if sponsors are found, there will still be a financial problem. Nor will people show interest in the event that there are no vigorous marketing activities. There is an urgent need for laws in India regarding ambush marketing.

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