



RAJAH & TANN ASIA

LAWYERS
WHO
KNOW
ASIA

IP Challenges and Opportunities for Governments in the Organisation and Exploitation of Major Sporting Events and Local Competitions

Date 25th November 2014
Prepared for World Intellectual Property Organization, Regional Seminar 2014
Presentation by Darren King
Designation Lawyer Associate
Contact details darren.king@rajahtann.com

RAJAH & TANN

Overview of Rajah & Tann Singapore



Overview of Rajah & Tann Singapore



Largest law firm in Singapore and Southeast Asia

Full service firm with the largest regional footprint

Highly regarded for its leading lawyers and practices

Overview of Rajah & Tann Singapore

Lex Mundi

Member
LexMundi
World Ready

- World's top independent alliance of leading law firms
- Rajah & Tann - the member firm for Singapore
- Providing clients a truly global reach

Practice Areas

Admiralty & Shipping

Appeals & Issues

Banking & Finance

Business Finance &
Insolvency

Capital Markets

Commercial Litigation

Competition & Antitrust
and Trade Law

Construction & Projects

Corporate Real Estate

Employment & Executive
Compensation

Energy & Resources

Entertainment & Media

Family, Probate & Trusts

Financial Institutions

Funds and Investment
Management

Hospitality

Insurance & Reinsurance

Integrated Regulatory

Intellectual Property,
Sports and Gaming

International
Arbitration

Medical Law

Mergers &
Acquisitions

Private Client

Project Finance

Tax

Technology, Media &
Telecommunications

White Collar Crime

Overview of Rajah & Tann Asia



Singapore's Sporting Highlights

- **F1 Night Race 2008 - 2017**
- **Youth Olympic Games - 2010**
- **WTA Finals 2014 - 2019**
- **IRB Sevens World Series 2015 – 2020**
- **SEA Games - 2015**

What are the benefits?

- **Financial**
- **Increase in Tourism**
- **Enhanced Reputation**
- **Sporting Legacy**
- **Infrastructure Legacy**
- **IP?**

What are the Challenges?

- **Financial pressures**
- **Sustaining the increase in tourism**
- **Risk to reputation**
- **Failure to secure a sporting reputation**
- **Failure to secure a viable physical infrastructure legacy**
- **IP?**

The Sponsorship Model

Sponsor pays \$\$ = right to associate itself with the event to the exclusion of non-sponsors.

2014 FIFA World Cup = \$1.35 billion from sponsors

➤ **Adidas**

➤ **Coca-Cola**

➤ **Emirates Airlines**

➤ **Sony**

➤ **Visa**

➤ **Hyundai-Kia**

Ambush Marketing

Undermines the value of sponsorship and discourages future sponsors from signing new deals

- ***ASSOCIATION*** – *unauthorised use of trade marks or branding to create an association with the event*
- ***INTRUSION*** – *undertaking promotional activities “on the ground”*

Combating Ambush Marketing

Trademark Protection – Registration of marks in host countries and internationally

Copyright Law – organisers are likely to be able to make use of copyright law to protect against unauthorised use of logos mascots and other relevant images

Passing Off – Common law jurisdictions make use of the tort of passing off. Useful when no trade mark infringement is present but nonetheless there is an attempt to create an association with the event

Specific Event Legislation

Conditions included in the Host Nation Agreement to protect all properties associated with the Event

- **Earliest use of specific legislation – Montreal Olympic Games of 1976**
- **Since Sydney Olympic Games in 2000 all host countries have adopted legislation**
- **FIFA, IRB and ICC have all made specific legislation a requirement to hosting games**

Effectively it became a standard requirement for those nations bidding to host major events that legislation would be a requirement

London 2012 Olympics

London Olympic and Paralympic Act 2006 (Advertising and Trading) Regulations 2011

- **Extended protection to all Olympic marks and properties**
- **Prohibited any entity from associating itself or its products or services with the Olympic games to gain a commercial advantage unless expressly authorised to do so by LOCOG**
- **Granted local authorities the powers to prevent street trading and outdoor advertising in the vicinity of Olympic venues**

Brazil 2014 FIFA World Cup

- **Express provisions obliging Brazil's IP Office to prioritise the protection of FIFA IP**
- **Specified “clean zones” around stadia where unauthorised advertising or trading was prohibited**
- **Introduced a definition of “ambush marketing” which had not previously existed in Brazilian IP Law**
- **Criminal penalties introduced for any breach of these ambush marketing laws**

Non Specific Legislation – New Zealand

Major Events Management Act 2007 (MEMA)

•For declared events the legislation kicks in prohibiting

➤ *Ambush Marketing by Association – ss 10 & 11 prohibit advertising in any form or place that is likely to suggest to a reasonable person an association between a brand and the event during the declared time period*

➤ *Ambush Marketing by Intrusion – ss 17 to 20 prohibit advertising or street trading within a defined geographical zone, or advertising clearly visible from that zone*

➤ *Any use at all of special marks/insignia associated with the event*

Weighing the Balance

“There really isn’t a black-and-white moral or ethical argument against ambush marketing. So, the case for legislation must be made on rational economic grounds in the public interest and in the specific Indian context...

The eventual success of the law will be in the success of the events protected and the fostering of an environment that promotes many more similar events finding a home in India. Importantly, if one is to reconcile the public interest with limits on freedom and curbs on creativity and innovation engendered by an anti- ambush marketing law, ***the protected event should not lose the spirit of the staging in trying to enforce laws with hyper-technical precision.***”

Nandan Kamath, cited in “*Ambush Marketing & the Mega Event Monopoly*”, Andre M. Louw, Springer, 2012

Effectiveness of Specific Event Legislation

South Africa 2010 FIFA World Cup

- **FIFA official beer sponsor Budweiser**
- **30 Dutch supporters wearing orange dresses from Dutch Brewery “Bavaria” arrived at stadium to watch match. They were forcibly removed and the supposed ringleaders arrested.**
- **Result – bad publicity for FIFA, bad publicity for organisers, bad publicity for IP law, lots of valuable coverage for Bavaria.**
- **Good example of how not to implement IP enforcement programme**

Effectiveness in Brazil 2014

The Ambush Marketing battleground is now predominantly online:

- **Before the tournament the World Cup had already been mentioned 10 million times on Twitter, Brazil v Germany semi final most discussed game ever on Twitter.**
- **Facebook recorded 3.6 billion World Cup related interactions**
- ***Nike* - not an official sponsor, 3.46 million followers on Twitter (Adidas 1.2 million). Online campaign responsible for 13% increase in sales – without infringing trademark, or an infringing unauthorised association with the event.**

Role of Specific Legislation in Future

- **Given the scale and importance of the online battleground how necessary/effective is legislation**
- **2015 IRB World Cup England – specific legislation?**
- **UEFA 2020 – no commitment to specific legislation in the winning bid (to host semi finals and final at Wembley)**

Rights Protection Programmes

- **Identify Core Properties and Rights**
- **Protect those properties by existing means**
- **Engage with Stakeholders**
- **Educate**
- **Develop Monitoring and Enforcement Strategy**
- **Implement Monitoring and Enforcement Effectively (and flexibly)**

Opportunity to Educate

Any large sporting event will provide an opportunity to educate about the role of IP and the scope of protection

- **Brand Protection Guidelines – the foundation**
- **Legislation will have made the headlines build on the media interest to inform and educate the public and businesses**
- **Opportunity to evaluate the effectiveness and suitability of your current regime and enforcement capabilities**
- **Engage the legal network**

Organisation and effective protection during the event

•Early monitoring

- Unauthorised merchandise*
- Unauthorised ticket sales*
- Unauthorised travel packages*
- Unauthorised use of marks in advertising*
- Online activity – social media*

•Enforcement

- Degree of Enforcement*
 - Depends on the circumstances

Monitoring and Enforcement During the Event

Remember “Bavaria” South Africa 2010 !

It is at the enforcement stage during the event which has greatest potential for damaging reputation of brands, the event and the host organiser/city/country

- **Comprehensive**
- **Consistent**
- **Graduated to fit the circumstance**
- **Plan for foreseeable circumstances**
- **Try to keep a sense of humour**
- **Be aware of social media – and use it**

Capturing the Benefit of Hosting Events

Government as Contracting Party

The use of the marks along with the host country/city e.g. “Brazil FIFA World Cup” and “London 2012” – “the city + mark” is recognised as having a value once the host is announced

- Use of “Olympic” beyond the event itself – Olympic Stadia, Olympic Parks will continue to bear the Olympic name**
- Use in tourist promotional activity – not just the event itself but in the years before and after**
- Television coverage – 10s of millions across the world watching**

Capturing the Benefit of Hosting Events

Private Party as Contracting Party

The contract between the event owner and the “organising” party may contain a grant of IP use

Crucial to have relationship with that “organising” party to ensure that right of use may extend to other parties e.g. host country’s tourism board for use of marks and content for promotional use and the scope of such use

Private Party can benefit from support of the Government bodies including advice on protection of IP

Other opportunities

Be Creative

Rajah & Tann legal partner for the 2015 SEA Games

Legal work in relation to the games

Seminars to Sporting Associations on various legal issues

Use IP to maximise the Opportunities

- **Opportunity to evaluate your current IP Legal and Regulatory Framework**
- **Opportunity to engage legal community in developing an effective monitoring and enforcement environment**
- **Opportunity to educate sporting bodies and the public about use of IP in context of sporting events**
- **Opportunity to maximise the benefit to the country of hosting the event by exploiting IP related to the event**

Disclaimer

The material in this presentation is prepared for general information only and is not intended to be a full analysis of the points discussed. This presentation is also not intended to constitute, and should not be taken as, legal, tax or financial advice by Rajah & Tann Asia. The structures, transactions and illustrations which form the subject of this presentation may not be applicable or suitable for your specific circumstances or needs and you should seek separate advice for your specific situation. Any reference to any specific local law or practice has been compiled or arrived at from sources believed to be reliable and Rajah & Tann Asia does not make any representation as to the accuracy, reliability or completeness of such information.

Thank You

