



Ambush Marketing: A Global Legal Perspective





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EXECUTIVE SUMMARY

'Ambush marketing': A controversial marketing practice involving unofficial association or intrusion that pits non-sponsors against event producers, official sponsors, and other rights holders. Even though ambush marketing campaigns are quite prevalent, most countries do not, in fact, have specific legislation designed to address the practise. Some countries have adopted more specific legislation to guard against ambush marketing where the event owners (such as the International Olympic Committee and FIFA) have pushed for the enactment of highly-restrictive event-based legislation in order for a locality to obtain the rights to produce the event – these include Brazil, Russia, and South Korea (when each hosted the Olympic Games), and Italy (which will host the Olympic Games in 2026). Without specific rules governing typical ambush marketing practises around the world, official sponsors, the so-called 'ambush marketers', and the owners of events themselves must look to traditional intellectual property and unfair competition laws to determine what each party can and cannot do.

One reason ambush marketing may not be specifically outlawed is that it is hard to define. Is the use of generic imagery of a sport or entertainment event by a non-sponsor an 'ambush' or even illegal? And should it be? Is a brand an 'ambusher' of the Olympic Games or the FIFA World Cup even though it sponsored several national teams or individual athletes? And what about new technology: is a filter or 'skin' within a social media app featuring advertising from a non-sponsor and which is triggered when the app user enters an event venue considered an ambush? These are critical questions that challenge the current legal frameworks around the world.

Ambush marketing is most often thought of in the context of sporting events, but it is certainly not limited to that field. Popular entertainment events and notable international events, such as the Academy Awards, the Grammys, 'fashion week' runway shows, and royal weddings, also generate a fair share of ambush marketing activity.

The practise of ambush marketing does not appear to be going away any time soon. As recent actions by the Australian and US Olympic Committees, the Danish Football Union,

the regulatory body of the Russian Federation, and the US' National Collegiate Athletic Association show, ambush marketing and the enforcement against it is still a hot button issue.

This guide, which updates GALA's 2014 edition, summarizes the laws, rules, and regulations governing ambush marketing in 68 countries. The guide addresses legal considerations, regulatory considerations, commercial considerations, and recent enforcement actions in the field of ambush marketing.

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ABOUT GALA

The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing more than 90 countries, each member has the local expertise and experience in advertising, marketing and promotion law that will help your campaign achieve its objectives, and navigate the legal minefield successfully. GALA is a uniquely sensitive global resource whose members maintain frequent contact with each other to maximize the effectiveness of their collaborative efforts for their shared clients. GALA provides the premier worldwide resource to advertisers and agencies seeking solutions to problems involving the complex legal issues affecting today's marketplace.

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LEGAL CONSIDERATIONS

In Turkey, there is no specific law on ambush marketing, but provisions regarding ambush marketing can be found within several basic codes in Turkey, namely the Turkish Commercial Code and the Consumer Protection Law.

Under these laws, three conditions should be met in order that ambush marketing is deemed illegal:

- a relationship should exist between the parasite marketer and the organization for which he is not a sponsor;
- this relationship should be unfair or work in such a way as to take unfair benefit from the other party's name, product, reputation etc. or misleading; and
- there should be the possibility of damage to the official sponsor.

A parasite marketer will face legal sanctions under the unfair competition rules set out in the Turkish Commercial Code. Turkish advertisement legislations, in this respect, especially the Consumer Protection Law proscribes deceptive and misleading advertisements; consequently, parasite marketers are likely to be exposed to the Consumer Protection Law's sanctions too.

(a) Unfair Competition Regulations

Whilst parasite marketing always infringes unfair competition rules, ambush marketing is generally a grey area since it can not be deemed illegal in every situation. Parasite marketing usually arises from advertisements and consequently brings about unfair competition, according to the Turkish Commercial Code. Once unfair competition has been determined, a sponsor becomes entitled to require the abrogation of the wrongful acts and compensation for the damages caused.

(b) Advertisement Regulations

Ambush marketing may be evaluated as misleading the consumer, as it implies a relation with an organization where there is none. As such an act is unlawful under the Turkish Olympic Games Act, it also violates the advertising regulations, as they prescribe that all advertisements must be in conformity with the laws.

In addition to this it may be alleged that acts of ambush marketing infringe the relevant provisions of advertisement regulations in Turkey, namely the Consumer Protection Law and its implementing Regulation on Commercial Advertisement and Unfair Commercial Practices. If a commercial practice does not comply with the requirement of professional care, and significantly damages or is highly likely to damage the economic course of conduct of the ordinary consumer or its target group, it will be deemed to be unfair. The implementing Regulation on Commercial Advertisement and Unfair Commercial Practices lists non-exhaustive examples of unfair commercial practices. Commercial practices that are misleading with regard to a competitor's goods, services, trademarks or other distinctive signs are considered likely to significantly distort the economic behaviour of the average

consumer and are therefore considered as unfair commercial practices. In addition, it is forbidden to take unfair advantage of a person's and/or business entity's name, trade name, intellectual and industrial property rights or reputation acquired from an advertising campaign, as this is considered to be an illegal act aiming to gain unfair benefits from another's commercial reputation.

Thus aggressive and misleading practices will be deemed as unfair commercial practice and will be subject to sanctions as an unfair commercial practice.

(c) Intellectual Property Regulations

Provisions regarding the trademark law may be taken into consideration in order to prevent ambush marketing activities. Where a non-sponsor enterprise uses the sponsor's or sponsored organization's logos, trademarks without any permission it may be evaluated as trademark infringement under the IP Code. However, trademark law protection may not be sufficient in every case, since the sponsor's trademarks are not directly used in ambush marketing strategy, rather, a connection is generally established between the organization and the non-sponsor's trademarks by making reference to them.

With regard to Olympic symbols, however, the Turkish Olympic Games Act requires permission for use of Olympics' name, logo and trademarks in any commercial communication.

REGULATORY CONSIDERATIONS

The Advertisement Board, established under the Turkish Ministry of Customs and Trade, is the main regulatory body to control ads in Turkey. Its duties include determining the rules and policies to which advertisements must adhere and prohibiting and/or imposing a monetary fine on advertisements which are contrary to the law. The Board also takes into consideration globally accepted rules related to advertising. The Board's duties are not restricted to reviewing any form of media, and therefore all forms of advertisements are subject to review. Advertisement Board decisions are legally binding.

The sole self-regulatory body in Turkey is the Advertising Self-Regulatory Board ("ROK"), which was founded by advertisers, advertising agencies and the media members. Decisions or statements of the ROK are not legally binding, and there is no obligation on advertisers to comply with its decisions. However, whilst ROK's decisions are only ethically binding, these decisions are taken into serious consideration. Since they are announced to the public, non-compliance with ROK decisions directly affects the credibility and reputation of the advertiser within the society and the relevant sector.

The ICC International Code of Advertising Practice ("ICC") standards do not have direct enforceability; ROK has adopted them in its Principles of Self-Regulation and these principles were enacted in parallel with the ICC standards. The key principles followed by ROK are decency, honesty, and truthfulness. The ICC standards are considered by ROK in its evaluation of ads when giving advisory opinions. In terms of ambush marketing, Chapter B, Article B4 of the ICC Standards concerning ambushing of sponsored events and the remaining relevant rules on fair business should be respected.

COMMERCIAL CONSIDERATIONS

Contractual Provisions: Sponsorship agreements facilitate sponsors to reach a target audience and support sponsored companies to meet expenses. However, in most cases, ambush marketers not only preclude the sponsor's connection in patches but also in some cases, they are instead perceived as sponsor. Hence contractual provisions seem to be vital in protecting sponsors before any competitor action taken. For instance, the vicinity in which the event is to be held can be bowdlerized from the competitor's advertising campaign.

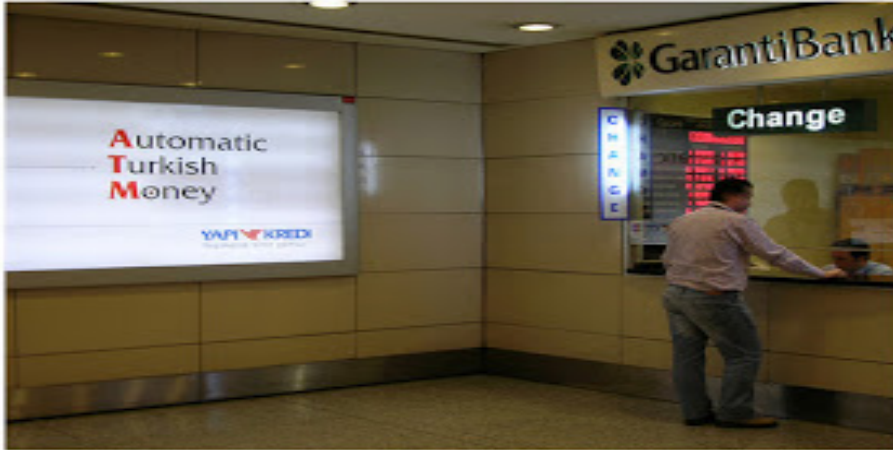
License Agreement Provisions: Intangible rights (ie the rights over the trademarks, names, even slogans of the organization) may be transferred to the sponsor for the fulfilment of the promoting performance arising from the sponsorship agreement through a license agreement. Accordingly, the sponsor, by relying on such license agreement would have the ability to impede ambush marketer against unfair use of such intangible rights arising from the organization.

We can give three outstanding examples observed in Turkey which are advertisements in the way of ambush marketing:

- (a) The photo below shows a very expensive outdoor advertisement area in Istanbul, displaying advertisements for SONY and SAMSUNG. This advertising space is located at a cross-roads where most of the business tower blocks are located, and is a crowded business area. An authorized OPEL dealer has placed its cars, as part of its advertising, right in front of this outdoor advertisement area. This can be considered as an example of ambush marketing, since no other billboards existed in this place.



- (b) In the next image, the billboard next to the branch of Garanti Bank, a major bank in Turkey, is displaying an ad for another leading bank, Yapı Kredi Bank, with the slogan “Automatic Turkish Money”.



- (c) Mavi is a very famous brand for jeans in Turkey and is also well known globally. Its branding has a blue background, as “mavi” means “blue” in Turkish. Next to the Mavi Jeans store, another clothing shop has opened, with the name “bordo”, which means “claret red”. It has not only used a color as its name, but has also used that color as the background for its signage—a clear case of ambush marketing. As “mavi” means “blue”, the other store chose to use a brand which is the name of a color like mavi, and opened its store just next to the Mavi Jeans’s store. The competitor used the claret red background in the signboard just like Mavi Jeans uses blue background in its signboard.



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