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A STUDY ON AMBUSH MARKETING: WITH SPECIAL REFERENCE TO INDIAN PREMIER LEAGUE(IPL)

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ABSTRACT

This research abstract presents an overview of a study on the practice of ambush marketing, its different forms, and the associated legal aspects, with a particular focus on the Indian Premier League (IPL). The research addresses the emerging issue of ambush marketing, a controversial marketing strategy often witnessed during major sporting events. It emphasizes the necessity to examine and counter ambush marketing within the context of the IPL, a prestigious cricket tournament in India. The study categorizes ambush marketing into distinct forms, including direct, indirect, and incidental strategies. These categories shed light on the tactics employed by brands to create associations with events without being official sponsors. The research delves into real-life instances of ambush marketing observed in various IPL seasons, offering a historical perspective and insights into how this practice has evolved over time.

The legal framework in India, primarily the Trademark Act of 1999, is thoroughly reviewed to assess its effectiveness in addressing ambush marketing. The analysis identifies potential gaps in legal protection. Additionally, the study explores international approaches to ambush marketing by examining case studies from countries such as South Africa, Brazil, Canada, Australia, and the United Kingdom. This comparative analysis provides a broader perspective on handling this issue.

The research concludes by stressing the immediate need for legislation in India to efficiently counter ambush marketing in the IPL. It proposes a policy outline designed to safeguard the interests of all stakeholders, including official sponsors and event organizers.

BACKGROUND OF THE STUDY

Ambush marketing refers companies to promote their brands or products by associating them with a team, league or event without paying for the privilege. Generally, ambush means "an attack

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from hidden position". In ambush marketing, company exploits to advertise themselves on events, in which it's not an official sponsor.

In 10th Indian Premier League(IPL) that happened in the year 2018, Vivo being the official sponsor of the event spent hefty amount in being one of the sponsor. In the same breeze, in some events sub categories are sponsored by other than official sponsors. For example Aircel advertised with concept of meeting the Team members of Chennai Super Kings, Vodafone advertising with "Vodafone Super fan" in which opted customer get ball signed by winning captain. Yes, this is Ambush Marketing.

For now, being a very new terminology "ambush marketing" has no specific legislation in India and this paper serves the same reason to shed light upon ambush marketing and its nexus with IPR protection.

LITERATURE REVIEW

Dr. A. Shivakanth Shetty and Ms. Thamizh Chelvi, *Ambush Marketing Landscape in India: Innovative Practice or Parasitic Marketing*, ELK Asia Pacific Journal Of Marketing And Retail Management 2012:

This article talks about the cases in which ambush marketing is witnessed in the world of sports. It elucidates various examples of real incidents of ambush marketing in the world. It compares whether the ambush marketing is an innovation or parasitic marketing. At the end the paper doesn't provide any solutions and effective method to be adopted and this is the gap filled by this paper.³

Tony Meenaghan, *Ambush Marketing: Corporate Strategy and Consumer reaction*, Psychology & Marketing:

He emphasized that commercial sponsorship has grown as method of marketing communications. This article observed the occurrence of ambush marketing and the main strategies employed by ambushing companies as well as the consumer reaction to the ambush marketing. He also

³ Dr. A. Shivakanth Shetty and Ms. Thamizh Chelvi Lecturer, "Ambush Marketing Landscape in India: Innovative Practice or Parasitic Marketing" 3 *Elk Asia Pacific Journal of Marketing and Retail Management* (2012).

examined five generally employed ambush marketing strategies. The same was referred by the researcher to my research.⁴

Rukmani Seth, *Ambush Marketing – Need for Legislation in India*, Journal of Intellectual Property Rights:

This paper examined ambush as an infringement to Intellectual Property and suitability of existing IP legislations to tackle it. This paper shows that due to the absence of principal legislations and case precedents the issue related ambush marketing couldn't be solved. It stated various legislations related to ambush marketing in world. It concludes that India needs such legislations to combat ambush marketing. But doesn't suggest any provisions to be amended in India. This is rectified in the same paper.⁵

RESEARCH OBJECTIVES

- To understand the concept of Ambush Marketing in reference to Indian Premier League.
- To analyze whether the existing provisions in India is sufficient to solve the dispute related to Ambush marketing. If Not,
- To suggest the necessary amendment to be made in the existing legislation.

RESEARCH METHODOLOGY

This Research work is based on Descriptive and analytical method of Research. The Research methodology adopted is purely doctrinal in nature with the aid of both primary and secondary sources. The former includes Statutes, Conventions, while the latter includes books, journals & legal encyclopaedias.

RESEARCH QUESTIONS

1. What are the different types of Ambush Marketing?

⁴ Tony Meenaghan, "Ambush Marketing: Corporate Strategy and Consumer Reaction" 40 *Psychology & Marketing* (2023).

⁵ Rukmani Seth, "Ambush Marketing – Need for Legislation in India" 15 *Journal of Intellectual Property Rights* (2010).

2. What are the cases IPL faced related to Ambush Marketing?
3. How the cases related to ambush marketing are solved? Are there necessary provisions available in India?
4. If Not, What are the necessary steps can be taken to combat ambush marketing in India?

DIFFERENT TYPES OF AMBUSH MARKETING

Ambush Marketing can be classified broadly into 3 types:

1. Direct Ambush Marketing
2. Indirect Ambush Marketing
3. Incidental Ambush Marketing

DIRECT AMBUSH MARKETING

It is a tactical use of symbols and the associated trademarks of the event which gives the picture regarding the actual sponsors of the event. Here, the person or ambusher intentionally tries to reap the benefits from the event. There are many ways by which direct ambush marketing can be done. Some of them are listed below:

a. Predatory Ambushing

Predatory ambushing refers to direct ambushing of a market competitor, with an intention to create confusion of the real sponsor of any event in an effort to gain market share and to confuse consumers as to who is the official sponsor.

For example, the campaign employed by AMEX against VISA during the 1994 winter games happened in Norway. Winter games 1994 were officially sponsored by VISA. Whereas, AMEX (a credit card service provider company) came up with a voice-over saying "*So if you're traveling to Norway, you'll need a passport, but you don't need a Visa*" made the official sponsor so furious.⁶

b. Coattail Ambushing

⁶ Reuters, *Credit Card War Erupts at Olympics: Advertising: IOC accuses American Express Co. of 'ambush marketing' in campaign aimed at rival Visa*, LOS ANGELES TIMES, February 19, 1994 http://articles.latimes.com/1994-02-19/business/fin-24757_1_american-express (accessed on March 2 2018)

Coattail ambushing means gaining publicity through sponsoring without being individual sponsors to an individual or an event. It is an attempt by a company to directly associate with the property or event by “playing up” a *connection* to the property or event that is legally valid but does not involve any financial sponsorship. In other words, it refers to the unsolicited association of a company to an event. For example, In Beijing Summer Olympics, 2008, following Liu Xiang’s injury in the men’s 110m hurdles; Nike released a full page advertisement in the major Beijing newspaper featuring the image of the dejected Liu, a Nike-endorsed athlete, and the tagline: “*Love competition. Love risking your pride. Love winning it back. Love giving it everything you’ve got. Love the glory. Love the pain. Love the sport even when it breaks your heart*”. This affected Adidas who were the official sponsors of the event.⁷

c. Ambushing via Property or Trademark Infringement

Property or trademark infringement is an intentional misuse or violation of the protected intellectual property, such as logos of teams or events, or making use of unauthorized references to tournaments, teams or sports individual, words or symbols in a brand’s marketing as a means of attaching itself to dilute or confuse the consumers.

For example, In UEFA European Championships, 2008, betting company Unibet released a series of magazine advertisement in Polish magazine, Pitkanoza for online betting on the European Championship, explicitly featuring the words ‘Euro 2008’ and football in their adverts.⁸

d. Self-Ambushing

Self-ambushing involves breaching the limits of a company's sponsorship parameters such that it infringes on another sponsor's marketing or advertising.

For example, in 2008 the official sponsor of the UEFA European Championships, Carlsberg, at the event gave out headbands and t-shirts with the Carlsberg logo which was not included in its

⁷ See Kevin Garside, *Liu Xiang sent to Olympic death by China's £1 billion image-building exercise*, THE TELEGRAPH 20 Aug 2008, <https://www.telegraph.co.uk/sport/olympics/2589848/Liu-Xiang-sent-to-Olympic-death-by-Chinas-1-billion-image-building-exercise.html> (accessed on March 2, 2018)

⁸ Pearson D.G., *Dirty Trix at Euro 2008: Brand Protection, Ambush Marketing and Intellectual Property Theft at the European Football Championships*. The Entertainment and Sports Law Journal, Jan 2012.

sponsorship agreement, and violated the sponsorship of another company that was permitted to hand out these items⁹.

INDIRECT AMBUSH MARKETING

a. Ambushing by association

When there is use of imagery or terminology which is not protected by intellectual-property laws and aimed to create an illusion that a brand or company has links to that sporting event or property is called ambushing by association.

For example, Kit Kat ran a competition in 2012 during European Football Championships that offered participants the chance to win ticket for 2012 Euro championship where they had replaced the 'O' with a football. Even though they didn't have official link to the soccer championships, they made happen this competition¹⁰.

b. Ambush by distraction

When there is a setup of a promotional presence at or near an event, without actually making specific reference to the event itself, with a view to take advantage of the public's attention toward the event and the audience members' awareness of their surroundings¹¹. So it can be understood as creating distraction in or around the place of event, without having any association with the event, in order to gain the attention from the audience and thus promote the brand.

For example, The Open Championship in 2008 saw Bentley set up a line-up of its cars outside Hill side Golf club which was adjacent to the host course of the Open, the Royal Birkdale. This attracted great attraction from the event audience and detracting attention from the official sponsor, Lexus¹².

⁹ *Ibid*

¹⁰ *Supra note 3*

¹¹ Ann Bransom, *Four types of ambush marketing*, AZCENTRAL, <http://yourbusiness.azcentral.com/four-types-ambush-marketing-14038.html> (accessed on March 5, 2018)

¹² ENS Africa, *FIFA world cup 2010 – ambush marketing or pseudo sponsorship*, IPENSIGHT <https://www.ensafrica.com/news/FIFA-world-cup-2010supTMsup-ambush-marketing-or-pseudo-sponsorship?Id=427&STitle=IP%20ENSight> (accessed on March 5, 2018)

c. Value based Ambushing

Tailoring by a non-sponsor of its marketing practices to appeal to the same values or involve the same themes as of the event so as to attract the audience to same attention even after being a non-sponsor.

For example, in the European Championship of 2008 Puma in order to promote its football line used the tagline “*June 2008: Together everywhere*”, thus making a direct reference to the event of football being played that month¹³.

INCIDENTAL AMBUSHING

a. Unintentional ambushing

This happens when the consumers incorrectly identifies a non-sponsoring company as an official sponsor due to its previous association or expectation of association with the event.

For example, it is Speedo that earned a considerable attention from media as result of success of swimmers wearing LZR racer swimsuits. This portrayed Speedo as official sponsor of the Beijing Games which created a lot of confusion in the market¹⁴.

b. Saturation ambushing

Saturation ambushing is the strategy to increase the broadcast-media advertising and marketing at the time of an event but makes no reference to the event itself and avoid making of associative imagery or suggestion relating to an event.

For example, during the Beijing Olympics Lucozade had involved into aggressive marketing of its products much above its standard marketing featuring athletes and many sports significantly. Saturation ambushing merely capitalizes on the increased broadcast media attention and television audiences that is around an event.

¹³ Simon Chadwick and Nicholas Burton, *Ambushed!* The Wall Street Journal, Jan 2010 <https://www.wsj.com/articles/SB10001424052970204731804574391102699362862> (accessed on 5 march 2018)

¹⁴ *Ibid*

AMBUSH MARKETING FACED IN INDIAN PREMIER LEAGUE (IPL)

The Indian Premier League (IPL) is a professional Twenty 20 cricket tournament in India contested during April and May of every year by franchise teams representing Indian major cities. The league was initiated by the Board of Control for Cricket in India (BCCI) in 2007¹⁵.

Cricket is synonymous to sports in India. The well-known fact is that this game draws the principal attention and highest amount of revenue than all the other form of sports taken together in India. IPL is providing a stage for many young cricketers to show their performance. The tournament is also profitable too to advertisers and broadcasting channels. It followed the commercial and popular T20 format of the game where the teams play 20 over each. It is currently contested by 8 teams consisting of players from around the world. With eight teams, each team play each other twice in a home-and-away *Round-Robin*¹⁶ format in the league phase.

At the conclusion of the league stage, the top four teams will qualify for the Playoffs. The top two teams from the league phase will play against each other in the first Qualifier match, with the winner going straight to the final and the loser gets another chance to qualify for the IPL final by playing the second Qualifier match. Meanwhile, the third and fourth place teams from league phase play against each other in an eliminator match and the winner from that match will play the loser from the first Qualifying match. The winner of the second Qualifiers will face the winner of the first Qualifiers in the IPL Final match, where the winner will be crowned the Indian Premier League champions¹⁷.

AMBUSH MARKETING FACED DURING 2009 IPL

PepsiCo being the official sponsors of IPL 2009 came up with a famous slogan 'Youngistaan'. But Coca Cola tactically ambushed PepsiCo during the IPL season II. Virender Sehwag, captain of Delhi Daredevils, and Ishant Sharma, member of Kolkata knight riders both are PepsiCo's

¹⁵ IPL confirms South Africa switch, BBC, 24 March 2009, (accessed on 6 march 2018)

¹⁶ A *round-robin* tournament is a competition in which each team meets all other teams in turn.

¹⁷ Sushant Satghare, *Indian Premier League Schedule - 2016 fixtures*, August 27, 2015, <http://cricbetlive.co.uk/2015/08/27/indian-premier-league-schedule-ipl-2016-fixtures/> , (accessed on 6 March 2018)

‘Youngistaan’ brand ambassadors¹⁸. Even though they are brand ambassadors of PepsiCo they have been present at various promotional activities of Coca-Cola India, simply because Cola is the associate sponsor and the official pouring partner for both DD and KKR.

For instance, a Send-off ceremony for DD was organized by Coca-Cola India. At the event, Sehwal (brand ambassador of PepsiCo) along with Coke ambassador Gautham Gambhir, revealed a limited edition bottle of Coca-Cola for IPL. Even Ishant Sharma (another PepsiCo ambassador) was spotted on Sprite’s limited edition bottles, along with Sourav Ganguly and Shah Rukh Khan¹⁹. The big disadvantage for Coca-Cola is that IPL had to move out of India to South Africa. Even though the actions of Coca-Cola and the players were considered to be indirect ambush marketing.

AMBUSH MARKETING FACED DURING 2012 IPL

Indian Premier League event which is always a big opportunity for brands since it captures attention of masses. The following two cases played a huge role related to ambush marketing. Companies tried to associate IPL to win them free advertising, despite some of the strictest rules, by upstaging rivals paying lakhs of rupees to be official sponsors of IPL 2012. Sponsorship spending has risen during the past 20 years, attracting so-called ambushers, where they are trying to relate themselves with an event without paying for the rights.

CASE I- LIC INDIA FOREVER FAN PAGE: PREDICT & WIN

LIC had launched Predict & Win campaign on a Facebook fan page. LIC was not sponsoring IPL, they were just riding free over the other’s horse i.e. they were ambushing the official sponsors. The contest posted in the FB page made the audience to believe that LIC were also one of the sponsors of IPL. People were in IPL fever, supporting their teams and ready to participate such contents on social media to entertain them self along with game predictions²⁰.

¹⁸ Meghna Sharma, *The return of Ambush Marketing*, FINANCIAL EXPRESS, December 5 2017 <http://www.financialexpress.com/industry/the-return-of-ambush-marketing/960724/> (accessed on 7 March 2018)

¹⁹ Suvi dogra, *Coca-Cola bowls marketing googly to PepsiCo*, BUSINESS STANDARD, January 20, 2013 http://www.business-standard.com/article/companies/coca-cola-bowls-marketing-googly-to-pepsico-109050500086_1.html (accessed on March 7 2018)

²⁰ Sujay Khandge, *Ambush Marketing Cases Associated to Event IPL*, DIGITAL HAWK (May 17 2012), <http://www.khandge.com/2012/05/ambush-marketing-cases-associated-to.html> (accessed on March 6 2018)

CASE II- HIPPO'S – INDIAN FOOD LEAGUE

Parle Agro had launched IFL (Indian Food League) for their popular snacks brand Hippo. This campaign IFL (Indian Food League) conceptualizes and design on the basis of IPL (Indian Premier League). The concept is excellent as one you have to support your favourite dish belongs to popular region (IPL Franchises)²¹.

Above both the cases ambusher has utilized the event buzz very smartly; IPL association with their campaign has been created awareness about their brand in community. Ambush Marketing tactics are not new to marketer but how smartly they utilized this tool is entirely their call.

AMBUSH MARKETING FACED DURING IPL 2013

PepsiCo the well-known drinks company paid BCCI Rs. 396 Crore to buy IPL rights for five years starting from 2013. PepsiCo has also got the official pouring rights for all the eight teams that participated in the event. But the rival company (Coca cola) used a combined marketing strategy of price reduction to affect the official sponsor of the event. This is the time where Coca Cola sold 200 ml drink for just Rs 8/-. Though PepsiCo held the rights to serve drinks in all the stadiums Coca-Cola was selling its drinks with low-cost mobile vending machines to serve cheaper priced drinks outside the stadiums. This is a form of ambush marketing which affects the official sponsor of the event.

AMBUSH MARKETING FACED DURING IPL 2017

As we know Reliance Jio has emerged as a new network into the market and almost attained monopoly. The brand is making all efforts to ensure it reaches the audience as much as it can. In a match between Mumbai Indians and Sunrisers Hyderabad on 12th April 2017, this brand created the “Jio logo” as a wave by the spectators and ambushed one of its competitors, Vodafone who is also a leading sponsor of the event.

This was made to happen by gathering large number of people with Jio T-shirts and seated them in such a manner that they could form a wave which caught everyone's attention. This idea was

²¹ Saloni, *Ambush Marketing Campaigns*, INSANE CAMPAIGNS September 21 2013
<http://insanecampaigns.blogspot.in/http://insanecampaigns.blogspot.in/> (accessed on March 8 2018)

clearly to ambush Vodafone's marketing efforts. Vodafone also brought its flagship characters ZooZoo's to grab the attention of the people.²²

AMBUSH MARKETING FACED DURING IPL 2023

The most recent issue that arose and was addressed in the current IPL. TATA, Dream 11, CRED, Upstox, Saudi tourism authority, Herbalife, Rupay, Star Sports, Viacom 18, CEAT and Aramco are the actual sponsors in this IPL. There was an issue that prevented fans from entering the stadium to see the match between KKR and LSG. They were allegedly stopped by KKR management because they were wearing green and maroon t-shirts and were also followers of Mohan Bagan. Mohan Bagan is a football team based in Kolkata that wears green and maroon jerseys. However, the fans were actually stopped by the IPL league's Anti-Ambush marketing team as they considered this to be an ambush marketing.

PROVISIONS RELATED TO AMBUSH MARKETING IN INDIA

At present, India has not enacted any specific anti-ambush marketing laws and accordingly the reference to be made to the Trade Marks Act, 1999, the Copyright Act, 1957, the Emblems and Names Act, 1950 and the common law notion of passing off.

THE COPYRIGHT ACT, 1957

The Copyright Act, 1957 provides remedy in a restricted set of instances for Ambush Marketing. When copyright is violated like when logos, marks or any other type of original work is used by a third party without the authorization of the owner then it amounts to Copyright Infringement. This gives the owner of Copyright a privilege to enjoy their rights over their work to reproduce, perform or publish.

The Delhi High Court in case of *ICC Development V. EverGreen Service Station*, recognized a limited role of copyright law in granting an injunction preventing the defendants from using the logo of "ICC World Cup 2003" consisting of black & white strips and the mascot "dazzler" holding these

²² Prasad Sanyal, *Reliance Jio vs. Vodafone now? Ambush marketing at IPL 2017*, TIMES OF INDIA, April 13, 2017 <https://timesofindia.indiatimes.com/business/india-business/reliance-jio-vs-vodafone-now-ambush-marketing-at-ipl-2017/articleshow/58161452.cms> (accessed on March 8, 2018)

to be "artistic work" protected under section 2(c) of the copyright Act, 1957. . 'Lay observer rest' holds a prominent position in Indian context; this test is applied by the courts to decide the cases concerning alleged copyright infringement. The test relies on "if to the lay observer it would not appear to be reproduction of copyrighted work, there is no infringement of copyright of works".²³

THE TRADEMARK ACT, 1999

Under Trademarks act, 1999 if a campaign uses registered trademarks to a rival or the event organizers then an infringement action or a passing-off action can be taken against him under the trademarks act, 1999.

In the case of *ICC Development International Ltd (ICCDIL) v. Arvee*²⁴, a suit was filed for an injunction against the defendants for using the slogan "Philips: Diwali Manao World Cup Jao" and "Buy a Philips Audio System, win a ticket to world Cup". ICC had applied for the registration of words "ICC Cricket World Cup South Africa 2003". The grounds raised for the argument were *inter alia* of passing off and ambush marketing. But the Court rejected the plaintiff's argument and held that there is no misuse of the ICC logo.²⁵

These cases show that the intellectual property law has not been well suited for dealing implicit associations between an advertiser or Sponsors and a major sporting event. The law of passing off has been predominantly attempted to be used to combat the ambush marketing practices. However the courts have decided in many cases that passing off is not suited for dealing relation between an advertiser and a major sporting event. The law of passing off has been settled through catena of cases.²⁶ And it becomes clear that without proving misrepresentation the action of passing off can't be taken.²⁷

²³ See Bhattacharjee, 'Ambush Marketing – The Problem and the Projected Solutions vis-a-vis Intellectual Property Law', Journal of Intellectual Property Rights, Vol 8, Spetember 2003.

²⁴ (2003) 26 PTC 245 (Del).

²⁵ *Supra* Note 18

²⁶ See, for example, *Spalding Brothers v. A gamage Ltd* (1915) 84 LJ Ch 449; *EWBV enootschap v. J. Townsend & Sons Ltd*. (1979) AC731

²⁷ See DAVID BAINBRIDGE, INTELLECTUAL PROPERTY, FINANCIAL TIMES, PITMAN PUBLISHING, 4TH EDITION 1999 AT 601

Hence it becomes very clear that the current legal regime on ambush marketing in India is only partially successful to combat the ambush marketing and hence a *sui generis* approach has to be taken and new laws has to be framed²⁸. The *Sui generis* law as a whole for India is necessary but is not as easy as saying. Enacting a new law for every new emerging issues lead to numerous Acts every year, which is not possible in reality. Hence as similar to the United Kingdom and South Africa an event specific legislation can be made to every event that occurs on the specific period of time.²⁹

LAW RELATING TO AMBUSH MARKETING IN OTHER COUNTRIES

Ambush Marketing has become an important aspect in the Intellectual Property Infringement and still there are many countries not made any specific law regarding it. But there are few which made laws to prohibit it.

SOUTH AFRICA

The Government of South Africa had made two acts to prohibit Ambush Marketing. One is the Section 9 of the Trade Practises Act, 1976 which says that any person who in connection with a sponsored event make, publish or display any false or misleading statement, which represents, between that person and the event or the person sponsoring the event, then that person shall be held as liable³⁰.

The other is the Section 15A of the Merchandise Marks Amendment Act 61 of 2002. Section 15A(2) says that ‘for the time period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade

²⁸ See Prashant R Sharma, *Ambush Marketing – The Concept*, Research Hub – International Multidisciplinary Research Journal, Volume 2, Issue-4, April-2015

²⁹ *Contra* Bhattacharjee, ‘*Ambush Marketing – The Problem and the Projected Solutions vis-a-vis Intellectual Property Law*’, Journal of Intellectual Property Rights, Vol 8, September 2003. (This authority explicitly says that only a new *Sui generis* law on ambush marketing would render the solution for issues on ambush marketing. But an event specific law would be more effective and easier to draft which is in force only during the time period.)

³⁰ Trade Practices Amendment Act, 2001, Act No. 26 of 2001, available at: <http://www.info.gov.za/view/DownloadFileAction?id=86468>

mark and thereby to gain special promotional advantage from the event, without the prior right of the organizer of such event³¹.

This enabled the Minister for Business and Industry to assign a sports event as specially protected under the Act for a limited period. Although the event financed by commercial sponsors, it guarantees that small companies are allowed ample advertising space, especially the “*formerly handicapped communities*”. The South African government chose the 2010 football World Cup as such an event.³² This Acts protects the trademarks from the usage by the third parties to create a relationship between them and the event they sponsored. These restrictions on the use of trademarks are accompanied by heavy penalties of 5 years imprisonment.³³

BRAZIL

Though as such no specific law has been made on Ambush Marketing in Brazil but there are few traditional laws that would protect Ambush Marketing. The Brazilian Industrial Property Act³⁴ may be used to prevent a direct ambush marketing strategy as it prohibits unauthorized registrations for reproduction or imitation of names and symbols of officially recognized sports events. The Brazilian Sports Act³⁵ which is also known as the ‘Pele Act’ contains provisions related to trademark protection by protecting the names and symbols of sports administration. Also, the Brazilian Civil Code need permission prior to use the image or name of any person like famed persons; athletes for commercial use which can also help prevent direct association during sports events³⁶.

³¹ Merchandise Marks Amendment Act no 61 of 2002, Act to amend Merchandise Marks Act no: 17, 1941 available at: <http://www.cipro.co.za/legislation%20forms/merchandise%20marks/Merchandise%20Mark%20Act.pdf>

³² See Notice 683 of 2006, STAATSKOERANT, 25 may 2006, Notification no: 28877

³³ See Cornelius S., South African Measures to Combat Ambush Marketing in Sport, The International Sports Law Journal, 2003/1 p.38: Also See *FIFA v. Metcash Trading Africa (Pty) Ltd*, North Gauteng High Court (Pretoria), 1 Oct. 2009, case No: 53304/07

³⁴ Article 195, Law No. 9279 of 14 may 1996 available at (www.glin.gov/search.action, ID du GLIN: 139720)

³⁵ Art. 87, Pele Law - Law 9615/98 | Law No. 9,615 of 25 March 1998

³⁶ Townley Stephen, Harrington Dan & Couchman Nicholas, *The legal and Practical Prevention of ambush marketing in sports*, Psychology and Marketing, Vol 15, Issue 4, 333-348 (1998)

CANADA

The first case reported worldwide for Ambush Marketing was in Canada, *National Hockey League v. Pepsi Cola Ltd.*³⁷ In this case Pepsi had taken an advertising campaign called 'Diet Pepsi \$4,000,000 Pro Hockey Playoff Pool' during the National Hockey Playoff games and the Stanley cup. The official sponsor of the event was Coca Cola. The provisions of the Canadian Competition Act³⁸ doesn't explicitly contains provision on ambush marketing but provides any act engaging a person into such practice of Ambush Marketing and making false claims to public then the rules laid down in this act will be applicable.

AUSTRALIA

In the recent times, Australia has also been in the front position for making laws relating to Ambush Marketing. The Summer Olympics 2000 was held in Sydney and the Australian Government passed the Sydney 2000 games (Indicia and Images) Protection Act, 1996 and the New South Wales government passed the Olympics Arrangements Act, 2000. A significance of both the laws was '***Games Specific Legislation enacted to prevent ambush marketing***' since these Olympics the Australian government has enacted similar laws for hallmark sport events and the most recent of them is the Melbourne 2006 Commonwealth Games Protection Act, 2005³⁹.

UNITED KINGDOM

In 2006, England enacted London Olympic Games and Paralympic Games Acts, 2006(LOGA) with the aim of combating ambush marketing at the 2012 Summer Olympics. This Act in relation with Olympic Symbol Protection Act dated 1995 (OSPA) grants exclusive rights to the London Organising Committee of the Olympic Games Ltd. (LOCOG) and the British Olympic Association on certain representation called "*Controlled Representations*" which includes Olympic symbol, the Olympic motto and etc.⁴⁰ It provides similar protection for the Paralympic Games (i.e.

³⁷ (1992) 92 DLR (4th) 349 (BC Sup Ct). For an excellent analysis of the cases and its possible implications in North America, see Bean, 'Sports Sponsorship and the Lanham Act', 1099.

³⁸ Competition Act (R.S., 1985, c. C-34).

³⁹ STACEY A. HALL, SIMON SHIBLI, ERIC SCHWARZ, SPORT FACILITY OPERATIONS MANAGEMENT, 2010

⁴⁰ 3. (1) – A person infringes the Olympics association right if in the course of trade, he uses
(a) a representation of the Olympic symbol, the Olympic motto or a protected word, or

for the Olympic marks and symbols).⁴¹Third parties are prohibited from the usage of these Controlled Representations, so as to make in the mind of the public an association with the Olympic Movement.⁴²

SCOPE AND LIMITATION

As discussed earlier in India only the Copyrights Act and Trademark Acts are referred to solve the issues related to ambush marketing. Chapter III of the paper discussed on the instances in IPL where ambush marketing is faced. There are several instances where ambush marketing caused chaos between companies. Hence a necessary step to be taken to combat the prevalence of ambush marketing in IPL. An overview of the Ambush marketing specific legislation in United Kingdom, Australia and South Africa has been discussed earlier. The issue that arises is about the applicability of the similar legislation in Indian constitutional context. The issue on ambush marketing legislation is that whether combating the ambusher is violative of freedom of speech and expression.

Every presentation for the promotion of goods or ideas would be considered as advertisement.⁴³ The freedom of speech and expression is guaranteed under Article 19 (1) (a) of the Indian Constitution. The freedom is constituted of

- The right to lay what sentiments he pleases before the public or the right to convey information and ideas.⁴⁴
- The right to receive information and ideas from others through any lawful medium.⁴⁵

(b) a representation of something so similar to the Olympic symbol or the Olympic motto or a word so similar to a protected word as to be likely to create in the public mind an association with it, (in this Act referred to as "a controlled representation")". Section 3(1) OSPA as amended by Schedule 3; section 3(1) LOGA.

⁴¹ See schedule 3 section 6 of the London Olympic and Paralympic Games Act, 2006 (which inserted a section 5A in the Olympic Symbol etc. (Protection) Act, 1995 to make provision for Paralympic Games words and marks)

⁴² Before the OSPA was enacted, around 50 marks had already been registered bearing the word "Olympic". Post-1995 applications contrary to OSPA have been refused by the UK Trade Mark Registry.

⁴³ See P.K. BANDYOPADHYAY, JUSTICE P.B. SAWANT, ADVERTISING LAW & ETHICS 5(2002)

⁴⁴ Article 19, Universal Declaration of Human Rights

⁴⁵ *Hamdard Dawakhana v Union of India* AIR 1960 SC 554.

The commercial advertisements have a dual nature- A form of expression and an element of trade and commerce; an exercise of both Articles 19 (1) (a) and 19(1) (g). In the case of *Hamdard Dawakhana v. Union of India*⁴⁶, the five judge bench held that advertisement is commercial in nature and hence doesn't get protection of Article 19(1) (a). This case was relied on the decision of the American Supreme Court in *Valentine v. F. Christenson*.⁴⁷ But later in India this case of *Hamdard Dawakhana v. Union of India* is overruled by the decision given in *Indian Express Newspapers v. Union of India*⁴⁸, a three judge bench held that the commercial advertisements or commercial speech would be given protection under Article 19(1) (a). This case was also upheld in *TATA Press Ltd. v. Mahanagar Telephone Nigam Ltd.*⁴⁹ Even these two cases relied on the decision of *William Cammarano v. U.S.A*⁵⁰ and *Jeffrey Cole v. Commonwealth of Virginia*.⁵¹ Relying on the above case it can be said that advertisements are protected under freedom of speech and expression under Indian constitution. Consequently, the restrictions can be imposed on advertisements under article 19 (2) and 19 (6) of the Indian Constitution. The losses caused by the ambush marketing can be restricted by the suitable ambush marketing legislation similar to United Kingdom or South Africa.

In Australia, as discussed earlier a specific legislation was enacted only during the Sydney Olympics. It was seen as a success and an intelligent step towards combating ambush marketing. Thus in the case of Indian premier league, it occurs every year without fail. Hence a specific legislation for Indian premier league could be the best step to combat ambush marketing. The success of the event initially depends on the sponsors of the event who come forward to sponsor the event.

CONCLUSION

This paper has mentioned the cases where ambush marketing is witnessed in IPL. It is the major threat to the official sponsors of the event. The present ambiguity in the legal regime in India makes the ambush marketing as a low-hanging fruit for the companies other than sponsors and poses an unnerving challenge to the official sponsors of the Mega event (i.e. Indian Premier League). After discussing the issues related to ambush marketing in Indian Premier League, it becomes clear that a strong anti- Ambush marketing strategy needs to be implemented in order to protect the

⁴⁶ *Ibid*

⁴⁷ (1941) 86 law Ed.1262 quoted from AIR 1960 SC 554 at 563-4

⁴⁸ AIR 1986 SC 515.

⁴⁹ AIR 1995 SC 2443.

⁵⁰ (1959) 358 US 498.

⁵¹ (1975) 421 US 809.

official sponsors of the event. Thus “Event specific Legislation” would be well well-suited strategy to combat the ambush marketing in IPL. Thus the legislation would be effective only during the IPL time period.

DIRECTIONS AND RECOMMENDATIONS

Without the involvement of sponsors the event cannot be successful. Hence the necessary step must be taken to welcome the sponsors for the event. Thus Act named “**Indian Premier League (images and indica) Protection Act**” (imaginative name) can be enacted to protect the IPL Trademarks, and Copyrights in addition with ambush marketing only during the period of event. This Act shall contain provisions to protect the real sponsors of the event from being ambushed.

The following provisions can be the principal provisions in the proposed Act:

- Restrict the use of certain expression related to IPL such as ‘IPL’, ‘T20’, ‘Best v. Best’, ‘Fantasy League’, ‘Orange Cap’, ‘Purple Cap’; which are closely associated with the event. These expressions can be called as ‘Protected expressions’ and this expression cannot be used by other than organizers for commercial purpose. License to use these expressions should be given by the official sponsors and organizers
- Any trademark related to the event must be registered under this Act and not under Indian trademarks Law. This would help the official sponsors of the event
- No person shall use the trademark registered under this Act to achieve publicity or promotional benefit without the prior authority of the Organizer of the Event.
- No person, in connection with this event, publishes or displays any misleading statement which represents a contractual or other association between that person and the event or the person sponsoring the event.
- Any person who fails to comply with the provisions of the Act shall be held liable.
- The implementation has to be assigned to the Ministry of Youth Affairs and Sports. The ministry when deems fit can add an event similar to IPL in the coming days in the same Act.