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Ambush Marketing: Think Twice Before Hitching a Ride on Famous Trademarks

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The term “ambush marketing” might conjure images of masked marketers lurking in the shadows, ready to smooth talk a consumer into buying an umbrella on a sunny day. In fact, ambush marketing refers to a company’s attempt to capitalize on the popularity of a well-known property or event without the consent or authorization of the necessary parties. While today’s small and mid-size business owners are increasingly aware of the importance of protecting their own trademarks^[1] and other intellectual property, they may unknowingly engage in marketing activities that ambush the property of others.

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Ambush marketing occurs most frequently in connection with national or international events with broad appeal and recognition. For example, consider three recent events in the sports and entertainment industries that transcend their traditional markets and have become, to some extent, part of our collective cultural experience. The NFL’s Super Bowl is regularly the year’s most watched program in the United States television market. The Academy of Motion Picture Arts and Sciences’ annual Academy Awards ceremony uses star power to tap into America’s infatuation with fame and celebrity. As this article is being written, office workers throughout the country are participating in a rite of spring: “March Madness” bracket pools in conjunction with the NCAA’s men’s basketball tournament. These organizations, and others like them, let it be known publicly that they are serious about protecting their trademarks.

[1] For convenience purposes, the term trademark is used broadly to cover both trademarks and service marks.

[2] As quoted in *Super Bowl, Super Trademarks: Protecting the NFL’s IP*, by Eriq Gardner, *The Hollywood Reporter, Esq.*, January 29, 2007.

[3] As quoted in the NCAA official press release, *Unauthorized Usage of March Madness in Advertising Campaign Acknowledged* by Liberty Mutual Insurance Company, dated May 26, 2006. The “March Madness” trademark is actually held by March Madness Athletic Association, LLC and licensed to the NCAA on an exclusive basis for its use in connection with the Division I basketball championships.

[4] See Gardner, *The Hollywood Reporter, Esq.*

[5] As quoted in the online article, *Forget Argentina and Brazil - This is the Real World Cup-Winning Team*, by Ben Moshinsky, *TheLawyer.com*, May 29, 2006. The 2006 World Cup in Germany was the subject of numerous



ambush marketing campaigns. Most notably, one match was attended by hundreds of Dutch fans clad in orange lederhosen bearing the logo of Bavaria beer, a Netherlands-based brewer and competitor of official sponsor Anheuser-Busch. The fans were required to remove their pants prior to entering the stadium.

[6] See *The Harvard Crimson Online Edition*, 'Hahvahd' Tours Nearly Stopped by Administration, by Nicholas A. Ciani, July 7, 2006; and *Marking Harvard Territory*, by Alexander H. Greeley, May 3, 2005.

[7] Courts would consider several factors, including whether consumers would mistake the advertiser as having an official relationship with the event.