



JODIE WARREN

TABLES TURNED on ambush marketers



Ambush marketing is now recognised as more than an annoyance, it is a serious threat to the success of the ambushed business.

Ambush marketing is broadly defined as the unauthorized association of a business/ organization with the marketing of a particular event. Ambush marketing has become very much a part of today's corporate sponsorship domain and is perhaps most prevalent in the context of the Olympic Games.

There are a number of highly effective methods which "ambushers" utilize. One of the most common is where the ambusher sponsors some lesser element attached to an overall event and exploits this association through major promotional effort. In the example of the Olympic Games, while official worldwide sponsorship may go for the price of \$20 - \$25 million, the ambusher sponsors some lesser category, for example the Australian Team in a particular sport.

At present there is no clear law in Queensland that prohibits conduct described as ambush marketing (although specific legislation has been passed to protect rights associated with the Olympic Games, the Commonwealth Games and the Melbourne Formula One Grand Prix). Other than a direct infringement of copyright or trademark, the two remedies usually available are contained in the Trade Practices Act 1974 and the tort of passing off.

Any marketing activity by a corporation that falsely suggests the existence of a sponsorship affiliation between the corporation and an event may constitute misleading and deceptive conduct in breach of sections 52 and 53 of the Trade Practices Act 1974. However, these provisions are more concerned with protecting consumers, rather than the commercial loss suffered by the official sponsor or the event organiser.

The tort of passing off can provide a remedy to official sponsors if, (a) the official sponsor can establish that it has some reputation or goodwill in respect of the event, (b) that the corporation has caused a misrepresentation by causing consumers to believe that

the corporation has an official sponsorship with the event and (c) that the official sponsor has suffered loss or damage to its reputation, goodwill or trade.

A recent Bill introduced into Parliament seeks to restrict ambush marketing at major sporting events. The Major Sports Amendment Bill 2006, which amends the Major Sports Facilities Act 2001, bans advertising within sight of Queensland's major sports facilities, including Suncorp Stadium and the Gabba. Advertising is defined to include aerial blimps, skywriting, and banners on buildings or banners attached to aircraft. The Bill imposes a maximum penalty of \$52,500.00. The ban does not apply to an advertisement that is a logo, symbol or similar matter displayed on a building or other structure on more than a temporary basis.

The Bill provides that the Major Sports Facility Authority (MSFA) may authorise the display of an advertisement in airspace or on a building or other structure within sight of a major sports facility only upon a written application. The display will be authorised only if the MSFA is satisfied the display is appropriate for the event. When making this decision the MSFA will have regard to the commercial arrangements about the advertisement with the MSFA or the event organiser; whether or not the advertisement is consistent with other advertisements approved for the event; and any effect of the advertisement on how the facility is perceived by persons intending or likely to stage events at the facility in the future.

SPECS 'N' SPORT

MATT BRADFORD



A local sporting association contacted us recently with a question about wearing sunglasses during sport

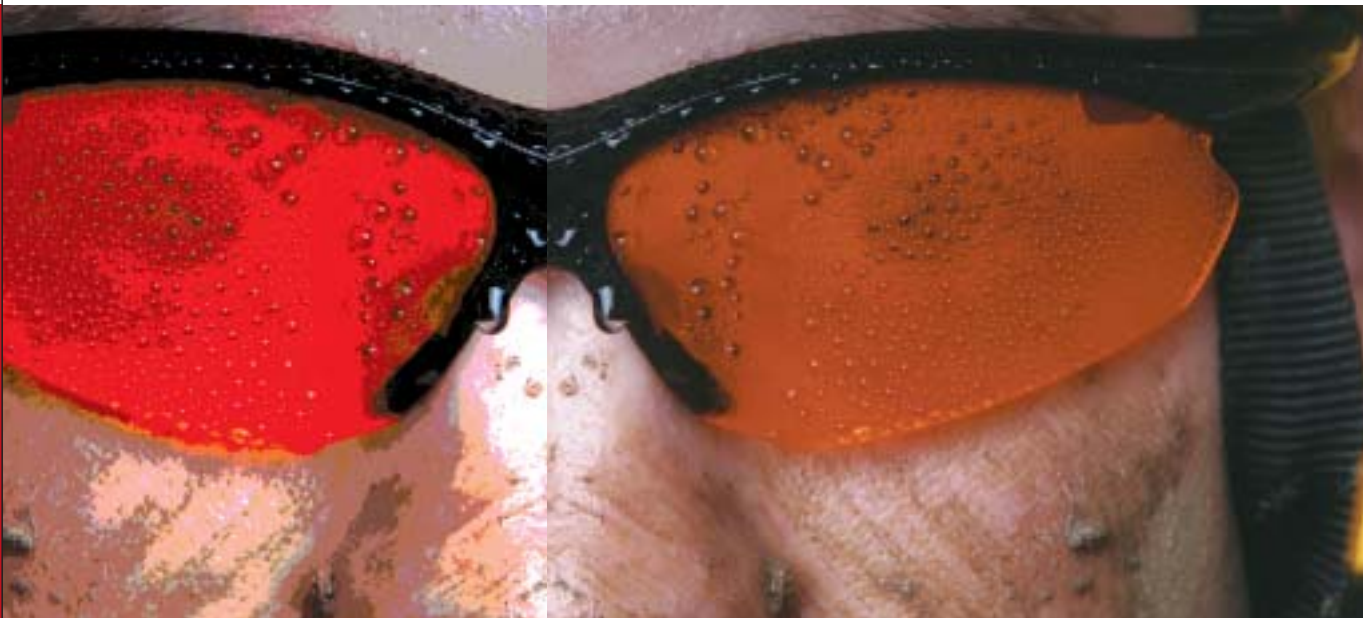
and the legal implications of banning or allowing them. This is a difficult question to answer, as there are different factors to consider for different sports, but we have made the following general observations that might provide associations with some guidance.

adornments or accessories that may endanger player safety may be worn on the field/court.

However, it may also be argued from a sun-safe point of view that participants should be allowed to wear sunglasses to protect their eyes from being damaged and also to reduce the fatiguing effect of heat and the sun. Whether this is relevant to your sport depends on a number of factors, including the length of time that it takes to complete a match or event and whether the conditions are extreme (for example the glare when skiing or the heat from the sun during a marathon). If

though the rule applies to all players (regardless of their eyesight), this is still discrimination as those with the impairment are not able to comply with this rule. However, it would not be unlawful discrimination to allow prescription glasses but ban prescription sunglasses.

If your association allows competitors to wear prescription glasses, it makes sense that they be allowed to wear prescription sunglasses. Sports-styled and wrap-around prescription sunglasses would be a much safer option for players to wear, rather than regular prescription glasses, as they would have much less chance



If there are no specific rules in your sport governing sunglasses there are 3 issues that need to be considered:

1. Will allowing sunglasses create a risk of injury to players?
2. Will banning sunglasses create a risk of injury to players?
3. Will banning prescription sunglasses be an act of unlawful discrimination?

Depending on your particular sport, allowing a player to wear sunglasses may clearly pose a risk of injury to other players. If another player hits the sunglasses with their arm or hand they may injure themselves. But the real threat would be to the person wearing sunglasses. If the sunglasses are hit by the ball or another player's arm, the force could seriously injure the person's face, head and eyes. If this is an issue for your sport and you have no specific rule, sunglasses could be banned under a general rule which provides that no

the potential protection from the sun is outweighed by the risk of sunglasses causing an injury, then sunglasses should not be allowed.

It is also relevant to consider the wearing of prescription glasses in sport. In addition to the risk of injury to players, there is also the issue of discrimination. Preventing players from wearing prescription glasses is likely to be considered an act of unlawful discrimination unless it can be shown that wearing glasses is dangerous and unreasonable and that the discrimination is necessary to protect the safety of players. The Anti-Discrimination Act 1991 (Qld) prohibits discrimination against a person on the basis of an impairment and includes sporting associations. If a player cannot compete without wearing prescription glasses, and your association prevents them from doing so, your association is treating the player less favourably because of their impairment. Even

of falling off or being dislodged.

In summary, where there is a clear risk of injury from a player wearing sunglasses it would not be unreasonable to exclude all players from wearing sunglasses. If there is only a slight risk of injury, or if you already allow players to wear prescription glasses, you should consider allowing all players to wear sunglasses. Players should be encouraged to wear contact lenses where possible or asked to ensure that the prescription glasses or sunglasses are suitable for the physical activity (encourage lenses that are made from polycarbonate or CR39 rather than glass). The players should also be warned of the risk that they may suffer an injury as a result of wearing the sunglasses. If it becomes apparent during a match that the glasses or sunglasses pose a risk of causing harm to the players the player should be asked to remove them or leave the match.

Clash of the Titans

JONATHAN BROUGHTON



The recent controversy surrounding Steve Turner's future in the National Rugby League ("NRL") has brought the spotlight on the enforceability of a club's rules.

In June 2006 Turner, who was playing for the Melbourne Storm Club, agreed to a two-year deal with the new Gold Coast Titans Club. Although a formal contract was never signed by the parties, the Titans' officials claimed that Turner had verbally accepted their offer. Further, Turner may numerous public affirmations of his intention to play the 2007 and 2008 seasons with the Titans.

In August 2006 Turner did a back flip and signed a three-year contract with the Melbourne Storm and sought to renege his verbal agreement with the Titans. The NRL responded by stating that it will refuse to register Turner's contract with Melbourne and either force him to play with the Titans in 2007 and 2008 or sit out the seasons.

According to a representative of the NRL, each of the clubs are required to enter into a contract with the NRL which establishes amongst other things the rules governing players ("NRL Rules"). In turn, each of the clubs enter into a contract with each of the players a condition of which is compliance with the NRL Rules.

We are informed that one of the NRL Rules is that each player contract is required to be lodged with the NRL for registration.

In the current situation, NRL CEO David Gallop stated in the media "We've (the NRL) got absolute discretion to not register a contract...". Turner indicated that if the NRL refused to register his contract with Melbourne he may take the matter to court. The Sunday Mail reported that:

"Asked if that meant that NRL could ignore a court's decision and force Turner to either play with the Titans or not at all, Gallop replied "Yes but obviously we would look very carefully at any court decision."

Clubs and organisations are entitled to develop their own rules for governing the association with their members. These rules form a contractual relationship between the club and its members. However, it is not possible for clubs to contract out of the law. We were unable to view a copy of the NRL Rules and are therefore not in a position to comment on the specific legality of Gallop's comment above, but to say that it dangerous for the CEO of an organisation to claim that their club rules are above review by a court.

As at the writing of this report a resolution on the playing future of Turner was still being negotiated.

SCALPERS profits trimmed

JAMES WOODGATE



In the last issue of Mullins Sport we discussed the legal issues associated with scalpers reselling tickets to major sporting events. We commented

that at the time of writing the article the only recourse of event organisers to combat scalping was to take action pursuant to the ticket purchasing conditions.

Cricket Australia have stated that so far they have cancelled approximately 2000 tickets to the Ashes series because they were resold at a premium. Considering the volume of tickets sold in Brisbane and also across Australia, there is no doubt that the relatively small number of cancelled tickets means that Cricket Australia have had difficulty catching scalpers.

In fact Cricket Australia have publicly complained about how difficult it has been for them to catch scalpers and have been putting pressure on all levels of government to legislate against scalping. This extensive lobbying by Cricket Australia and other sporting bodies such as the Australian Rugby Union has resulted in the Queensland Government

becoming the first state government to pass legislation prohibiting scalping of tickets to national and international sporting events (including Super 14 Rugby and State of Origin Rugby League) and other special events such as major music concerts. The new laws only apply to events held at Queensland's major sporting venues specified in the Regulations to the Act which include the Gabba, Suncorp Stadium, QSAC and the Brisbane Entertainment Centre.

The new section 30C of the Major Sports Facilities Act 2000 makes it an offence to resell tickets to one of these events for greater than 10% above the original ticket price. The penalty for reselling a ticket at this price is a maximum fine of \$1500 while the maximum penalty for purchasing a ticket from a scalper is \$375.

Interestingly the new laws specifically state that people who conduct a public sale forum in a newspaper, auction house or internet website will not be in contravention of this new provision if their forum is used by someone to resell a ticket in contravention of section 30C. This is obviously designed to protect companies such as ebay which was heavily criticised by Cricket Australia

for not doing enough to stop scalpers using their online auction forum to resell Ashes tickets.

It is likely that the Queensland Police will face some of the same enforcement issues as Cricket Australia with internet crime offenders often proving difficult to track down. Unless the public sale forums such as ebay are compelled to provide the police with details of the buyers and sellers using their websites, the police may face problems catching offenders, as the online auction sites are unlikely to start voluntarily handing over this information about their customers.



Centralising Sports Administration?

JOHN MULLINS



JOHN MULLINS
EDITORIAL



The traditional structure of Sports within Australia is under challenge. The Australian Sports Commission want Australian Sports to move from their traditional Federated Model to what they call the Unitary Model.

Many of the traditional Australian Sports were organised in the late 19th century prior to federation. When Australia became a country these State Sporting organisations grouped together to create National Sporting Organisations (“NSOs”) following roughly the same Federated Model as Australia.

It is extremely typical today of NSOs to be made up of a membership of the State Organisations. Some organisations are trying to create a situation where the actual participants become members of the NSO as well as the States. I see this as potentially creating real difficulties. The participant member then becomes a member of the State Organisation and the National

- Structure provides career path for voluntary administrators.
- Widespread sense of ownership.
- Allows for differences in local circumstances.

Cons

- Inefficient used of resources.
- Duplication of efforts and systems.
- Inefficient communication channels.
- NSO far removed from grass roots.
- Conflict in marketing, policy, promotion, etc.
- Structure fragmented and no overall responsibility for development of sport.
- Reliance on constitution or charter for compliance.

UNITARY STRUCTURE

Pros

- Control over personnel and systems.
- Decision making is straight forward.
- Greater authority to implement decisions.

To change from a Federated Model to a Unitary Model will require State Associations to give up some powers – which is not likely to happen.

Body through this dual membership there are all sorts of matters such as member protection and discipline which become very complex and confusing.

The Unitary Model is essentially one structure which runs the Sport and all State and Regional Associations simply become committees of this centralised structure.

What are the advantages and disadvantages of each of these structures. Ian Fullagar, a prominent sports lawyer in Australia, has suggested the following advantages and disadvantages of the respective models at the recent ANZSLA conference.

FEDERATED STRUCTURE

Pros

- Servicing a number of segments in market.
- Participation and Representation at greater levels.

- Single line of management accountability.
- Greater control over systems and structures.

Cons

- Difficult to implement.
- Clubs, individual members and volunteers may be further disenfranchised if SSA is removed.
- Well developed processes and systems required.
- Greater perception of control and power.
- Centralised power may be used in destructive way.

To date the Australian Sports Commission has only persuaded one sport – Touch Football – to become a Unitary Structure. To change from a Federated Model to a Unitary Model will require State Associations to give up some powers – which is not likely to happen.

Cricket is the number one summer sport in Australia. In years gone by, with flagging attendances and declining sponsorship some might have challenged this statistic. Today, Cricket is at the top of the heap. Capacity crowds for the first four days of test matches, support for corporate entertaining facilities, overwhelming sponsorship and massive crowds – Cricket is major business. Behind the scenes, Pakistan forfeited test match and Darryl Haire gets fired, and new legislation is brought to better protect sports from ambush marketing and to outlaw scalping of tickets.

This Ashes Test Series in Australia will generate huge amounts of revenue for Australian Cricket and the State Cricket Associations. Thanks to the Barmy Army and the general support for Australian Cricket, each of the local economies will have a huge injection of cash because of the test matches. There is increasing pressure to ensure that the commercial interests of this golden goose are protected.

In this edition, we write about both the ambush marketing and ticket scalping legislation.

In Australia, the issue of skin cancer is well known. What is less well known is the effect on people’s eyes from extended periods in the sun. There is an interesting article in relation to sunglasses and the position of sport with respect to permitting or prohibiting sunglasses.

In recent times, we have seen ongoing tensions between state sporting associations and national sporting associations. The Australian Sports Commission would like to see these tensions removed from federated sporting bodies as most are now by changing to a unitary model where there exists one body for the governance of the sport throughout Australia. The pros and cons of both models are outlined in this edition. I think that it is extremely unlikely that we will see the unitary model in major Australian sport. The ongoing tensions between the State and national bodies will continue, particularly as they relate to competing sponsors.

The Australia New Zealand Sports Law Association Conference will be held in Brisbane / Gold Coast next year and I have been asked to be the Chairman of the organising committee. In recent years, the ANZLA Conference has set an incredibly high standard as a conference in the area of sports law. This year’s conference in Auckland had an outstanding line up of speakers. I trust next years will be just as good.