

## FIFA's 'policeman' red cards unapproved 2010 soccer ads

Dump all your ideas of using soccer balls, the numbers 2010 and the words FIFA Soccer World Cup in any combination that alludes to South Africa's hosting of the World Cup in 2010 on any advertising material from now on - or you will be in infringement of the tough ambush marketing laws that South Africa, ironically enough, pioneered and the FIFA attorneys will be enforcing. Company directors who flout the law could end up with a criminal record.

 By [Louise Marsland](#) 16 Aug 2006

South Africa's FIFA attorneys Spoor & Fisher yesterday, Wednesday, 16 August 2006, put a damper on excitement building in the market in the lead up to the 2010 FIFA World Cup, with a formal presentation of the ambush marketing laws that it helped draft for South Africa - and, as FIFA's representative attorneys of the African continent - will be enforcing from now until the end of 2010.

And it's no joke - South Africa's ambush marketing laws are the toughest in the world and are being adopted by other countries, says Dr Dean Owen, Spoor & Fisher partner, who gave a special presentation to The Media Shop clients yesterday at chic Harrisons in Rivonia, Sandton. His presentation was a well-timed adjunct to the 2010 marketing and communications workshop hosted by Government and the International Marketing Council, the day before in Johannesburg, Tuesday, 15 August.

If you think ambush marketing is only about wearing your rival brand's T-shirt at a sporting event sponsored by your competitor, or floating a blimp with your client's brand over a stadium to get them exposure without paying the sponsorship dues, think again. It's a hellava lot more complicated - and very serious.

### Sponsors' rights

Forget Germany 2006 and what was allowed there over the most recent Soccer World Cup spectacular - it didn't have any such laws. Whereas South Africa, in May already this year, had the Minister of Trade & Industry declare the 2010 FIFA World Cup event as an event protected by the ambush marketing laws, meaning that the tough provisions of this act are now in force from May 2006 to December 2010 (six months after the event due to be held over June/July 2010), to protect FIFA's global rights to the event and all its sponsors' rights.

It means simply: if you are not a FIFA World Cup 2010 official sponsor, or have not had your carefully thought-out campaign or product to capitalise on the hype of 2010 approved by FIFA, you will not be allowed to sell, display, advertise, allude to, or distribute any material, service or product for gain which is associated with our World Cup Soccer event. Even a combination of the words 2010, soccer, world cup, FIFA, South Africa... and so on... could get you into trouble, according to Owen.

Dr Owen is one of the lawyers tasked by FIFA to enforce the legislation. He also helped draft the law and, FIFA's 'policeman' in South Africa, is set to become the most unpopular man in marketing circles!

### The letter of the law

This complex ambush marketing law will probably become the most well-known piece of legislation in South Africa over the next four years, particularly by marketers and ad agencies who will no doubt experience

intense frustration at all the rules outlawing their creative brilliance, as even the lawyers recognise that much of marketing is about "ambushing" competitor brands in the marketplace.

Explained the sharp Dr Owen with dry humour: "Ambushing... scoring marketing goals is really the marketer's raison d'être...But, in the current environment, one places oneself at risk if you try score these goals by way of ambush marketing."

In the letter of the law, ambush marketing takes place when a trader seeks to utilise the publicity value of an event, for instance a major sports tournament or concert, to gain a benefit from it despite not having an interest or connection with that event, and more particularly, having made a financial contribution towards the event.

It's about "riding on the back of another party's goodwill", expounded Owen, who was clearly briefed to cut the legalese and provide legal clarity in more simple language for the industry!

The rationale for protection is as follows:

- Major events require sponsorship to make them viable.
- Investors require a return on investment from the event. If they don't, they are less likely to sponsor events in the future. Without sponsors there are no events.
- Ethics - taking advantage and benefit without investment.

Ambush marketing can be classified in two species, according to Owen:

1. *Association* - in this form of ambush marketing, the ambush marketer misleads the public into thinking that he is an authorised sponsor or contributor associated with the event. Examples of words trademarked by FIFA are: FIFA World Cup; South Africa 2010; 2010 (with soccer balls in place of the noughts); Soccer World Cup; World Cup 2010; South Africa 2010; etc. There are numerous websites and adverts in contravention of the law already, says Owen. In answer to a question from The Media Shop's Harry Herber, Owen pointed out that since FIFA has trade marked its rights in most countries around the globe, it doesn't even matter if you register your World Cup website, in say, Bulgaria... FIFA will find you.
2. *Intrusion* - The ambush marketer seeks not to suggest a connection with the event, but rather to give own name, trade mark or other insignia exposure through the medium of the publicity attracted by the event: this is done without any authorisation of the event organiser. To protect the event in terms of intrusion is Sec 15A of the Merchandise Marks Act - based on the abuse of Trade Mark Act. Elements of intrusion include:
  - Use of Trade Mark - even one's own registered Trade Mark.
  - Manner of use of that Trade Mark to achieve publicity for it
  - Use of Trade Mark to allude to event.
  - Derive special promotional benefit from alluding to the event.
  - User must intend all of the above.

Examples of South African and other brands in breach of the ambush marketing laws were cited by Owen:

- The very obvious 2010 business card being handed out at traffic intersections to try capitalise on

"business opportunities" for 2010.

- A Protea Hotel website for The Ranch venue which has the words, "2010 Soccer World Cup" in a headline and their Protea logo morphed to look like a soccer ball. According to Owen the website gives the impression that there may be a connection between the organisers of the 2010 FIFA World Cup and it transgresses the Trade Mark Act.
- A 'Black Tie' billboard which used soccer balls on the billboard and the words "2010".
- In Germany, for the 2006 FIFA World Cup, Air Emirates was the official airline sponsor for FIFA - but Lufthansa, Germany's official airline, got in the game by painting the nose cones of their aircraft fleet to resemble soccer balls. Under our ambush marketing laws, that will not be allowed in South Africa for 2010.

An Absa billboard used as an example of the "grey area" of the law was deemed to "probably not" be in transgression... It depicts a group of kids in soccer uniforms with a half constructed stadium in the background and the words: "Now come and play here", a less direct allusion to the 2010 world cup.

## **Consequences**

The consequences of flouting the law are grave and deemed to be a criminal offence and could lead to fines and/or imprisonment imposed on a company and/or director of R5000 or three years imprisonment for infringing it. First offenders probably won't go to jail, but fines will apply, according to Spoor & Fisher.

Says Owen: "The implications are that marketers must take care: the stakes are high, directors could end up with criminal records."

His advice? "Seek legal opinion as this is a minefield you are walking into and you want to have some form of a route map to guide you. The difficult thing is the effect on existing sponsorships, i.e., the Absa stadium which will have to change its name. That is just one of the things put into the mix."

FIFA will be publishing its detailed guidelines in the next month concerning its rules and regulations governing activity around the 2010 world cup.

## **Scoring a goal regardless...**

Okay, so before you drown yourself in the trendy office Zen garden Koi pond, there is a huge grey area which can be gotten around creatively... apparently.

Chit chat around the ice bucket after the event revealed that, for example, if Protea Hotels had said: "We're a great place to stay in 2010", it would probably have been OK. It was the use of the words South Africa, soccer, and world cup in the same sentence that has lawyers' hackles rising.

Owen did also stress that the moment FIFA approves something, be it a product line extension or campaign, it is not unlawful.

Also, if you inadvertently transgress the law in this regard, you will probably get a warning letter first to order you to desist - which is fairer than the Joburg traffic department which throws you in jail immediately for outstanding parking fines.

Of course, the IMC and Government would prefer it if everyone got behind a total, holistic brand campaign

showcase South Africa and all things positive in the lead up to 2010. Germany certainly benefited from the approach with its 'Germany - Land of Ideas' campaign which allowed its biggest brands to get on board in campaign which went far beyond the 2006 FIFA Soccer World Cup: fixing their economy, attracting investment for the future and unifying the nation in never before seen displays of patriotism.

It's a dream which would serve South Africa well - imagine having people speak of us and Africa in glowing terms... without all the "yes, buts..." and a litany of negatives. Otherwise the lawyers will be the only winners of this game.

## ABOUT LOUISE MARSLAND

Louise Burgers (previously Marsland) is Founder/Content Director: SOURCE Content Marketing Agency. Louise is a Writer, Publisher, Editor, Content Strategist, Content/Media Trainer. She has written about consumer trends, brands, branding, media, marketing and the advertising communications industry in SA and across Africa, for over 20 years, notably, as previous Africa Editor: Bizcommunity.com; Editor: Bizcommunity Media/Marketing SA; Editor-in-Chief: AdVantage magazine; Editor: Marketing Mx magazine; Editor: Progressive Retailing magazine; Editor: BusinessBrief magazine; Editor: FMCG Files newsletter. Web: [www.sourceagency.co.za](http://www.sourceagency.co.za).  
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