

ADVERTISING, MARKETING & PROMOTIONS

>>ALERT

LEGAL RISKS ABOUND AS THE WORLD CUP KICKS INTO GEAR

As with any major event, the FIFA World Cup presents an attractive marketing opportunity for brands to connect with consumers around the world. The World Cup is a particularly hot ticket for marketers because it only occurs once every four years and is followed closely by fans worldwide. It also helps that soccer (err ... football) is the most popular sport in the world. Although the buzz can present a compelling marketing tool, marketers should be wary of the unique legal risks associated with leveraging the 2018 FIFA World Cup Russia without permission.

AMBUSH MARKETING

Marketers are naturally attracted to popular events – especially sporting events – in order to connect with fans. However, marketers typically cannot use names or trademarks associated with those events without becoming official sponsors, and those sponsorship rights can cost tens (if not hundreds) of millions of dollars. Given how lucrative sponsorships are, the organizations staging these events are quite aggressive in stopping non-sponsor brands from free riding on their promotional efforts.

Ambush marketing is the practice of leveraging an event in marketing or advertising without becoming an official sponsor of that event. Although U.S. law makes it unlawful to use a third party's trademark in such a way as to imply an endorsement or sponsorship without permission, marketers often seek to find subtle ways to evoke an event that do not run afoul of this prohibition. For that reason, especially on social media, brands have found more clever ways

THE BOTTOM LINE

Although Russia's World Cup Law is not enforceable in the United States – and we cannot advise on marketing activities conducted in Russia – FIFA has made clear that it views ambush marketing in whatever form as unlawful and infringing on its intellectual property rights. Accordingly, marketers will walk a particularly fine line when attempting to leverage the 2018 World Cup in Russia, and as always should consult counsel before trying to jump into the mix.

to leverage the buzz surrounding famous events (think the Oreo headline “You Can Always Dunk in the Dark” when the lights went out during the 2013 Super Bowl).

LAWS PROTECTING FIFA MARKS

Like any major event promoter, FIFA asserts trademark rights over a number of words and phrases – including FIFA, World Cup, and Russia 2018 – as well as emblems and logos associated with the World Cup. FIFA has been known in recent years to be particularly aggressive in enforcing its intellectual property, and given the natural incentive to preserve brand

integrity and avoid losing the exclusive protection of its intellectual property, this aggressive stance is to be expected.

However, FIFA takes things to a whole new level when it comes to ambush marketing. Given the prestige associated with hosting the FIFA World Cup, FIFA encourages host countries to pass particularly restrictive laws to discourage ambush marketing. Russia, the host of the 2018 World Cup, passed such a law in 2013 (Federal Law 108-FZ, referred to as the “World Cup Law”), which, among other things, prohibits the following activities without the written permission of FIFA:

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- >> Any type of marketing for the purpose of creating an association with FIFA, by use of FIFA's trademarks or otherwise;
- >> Events or advertising directed at ticket holders for FIFA events; or
- >> Giveaways of tickets to FIFA events in connection with sweepstakes, contests, or other promotions.

Violations of the law are punishable by fines or, in certain circumstances, criminal penalties.

PAST ENFORCEMENT

Although FIFA's enforcement activities have not kicked into full gear for the 2018 World Cup, FIFA's previous enforcement activities provide a solid road map for what may attract its attention this year.

In-stadium ambush marketing is the fastest way to draw the ire of FIFA. As an early example, during the 2006 World Cup in Germany, the Dutch beer brand Bavaria distributed thousands of sets of branded orange lederhosen to World Cup attendees. Many attendees were denied entry unless they removed the garments, and FIFA later filed suit

against Bavaria. In 2010, Bavaria doubled down by sending 36 orange-clad women to the South Africa World Cup. Apparently un-amused by the repeat tactic, FIFA filed charges against the organizers of the "stunt." After being ejected by FIFA officials, several of the women were arrested by South African police. Brazilian beachwear brand Blue Man similarly caught FIFA's attention in 2014 when Brazilian footballer Neymar was photographed in-stadium wearing Blue Man boxers under his shorts, leading to enforcement by FIFA (but a 25% uptick in sales for the brand).

FIFA has also taken issue with marketers whose activities fall outside the stadium. For example, in 2010, FIFA sent a cease-and-desist letter to South African airline Kulula, which disseminated ads that included stadiums, vuvuzelas (remember those?) and national flags, with the claim that it was the "Unofficial National Carrier of the You-Know-What." In 2014, FIFA similarly took issue with Brazilian travel company Decolar's use of the tagline "Viva o Mundial" in connection with the marketing of travel packages

specifically to World Cup host cities. Though "mundial" translates literally to "worldwide," it is also a trademark registered by FIFA, and FIFA argued that Decolar was attempting to draw a connection with FIFA through its use of the term.

These enforcement activities are notable, as they were prompted by activities that would arguably be legal under U.S. law, and would probably not draw as much attention in connection with other events.

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