

ARTICLES

Consumer Attitudes of Deception and the Legality of Ambush Marketing Practices

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INTRODUCTION

Corporate sponsorship of sport erupted into a multi-billion dollar industry in the United States and throughout the rest of the world during the 1990s (Cornwell & Maignon, 1998; Stotlar, 2000). As the popularity of sports grew, so did the desire of corporate America to market itself in association with the numerous amateur and professional sports organizations. Sport sponsorship expenditures will grow from \$11.1 billion in 1997 to an estimated \$26.5 billion by 2005 (SponsorClick, 2002). While no clear estimates are available for all types of corporate sponsoring efforts, which involve sporting events, music events, festivals and fairs, fine art events, and professional or trade shows (Gwinner, 1997), sports sponsorships reportedly represent 63-65 percent of total corporate sponsorship spending (Lee, Sandler, and Shani, 1997; SponsorClick, 2002).

Firms who sponsor sporting events incur great costs to sponsor the event and to let customers know they are contributing to the success of the event, the experience of the participants, and the enjoyment of the customers. The value of this sponsorship may be seriously diluted when non-contributors benefit from association with the event without bearing the costs (Besser, 1999). Non-official sponsors presumably take this "free ride" and capitalize on goodwill

that is not earned when they employ advertising techniques designed to associate themselves with the event or sport.

This advertising strategy is well known now as "ambush marketing." Ambush marketing has been defined many ways ranging from an intentional effort to weaken or ambush a competitor's official association with a sports organization which acquired its rights through payment of sponsorship fees (McKelvey, 1992, 1994) to the "ability to reasonably confuse" the consumer regarding the ambushing company's status as an official sponsor (McAuley & Sutton, 1999). Ambush marketing, although usually legal, has been criticized as deceptive and unethical (Doust, 1998; Falconer, 1996; Mandese & Fahey, 1992). However, one pioneer in the field of ambush marketing, Jerry Welsh, who created Amercian Expresses' advertising campaign suggesting an association between Amex and the Olympics during the 1980s (Levin, 1992), counters that ambush marketing is ethically and legally correct since official sponsors only buy the official association with a particular event such as the Olympics or World Cup rather than the entire thematic space surrounding the event (Welsh, 2002). Basically, one cannot sell what one does not own, and no sport organization owns the entire concept of or aura surrounding a sport such as basketball, football, or racing.

Welsh also argued that ambush marketing is a natural result of the inflated prices companies are asked to pay for high-profile rights packages. Million dollar price tags on sponsorship packages force companies to seek any route available to be identified with the images and events so long as it does not mislead the public. A key element of Welsh's argument is that the ambush marketing activities do not mislead the public (Welsh, 2002). Thus, it is important to begin to investigate what public attitudes and perceptions are toward ambush marketing particularly focusing on the potential deceptive elements of these advertising practices.

Attitudes toward advertising can be divided into two distinct segments, attitudes toward the institution and attitudes toward the practice (Sandage & Leckenby, 1980). The institution of ambush marketing has been debated at length, but there is much less information available about how consumers view the advertising and promotional practices commonly associated with ambush marketing. Recent literature has produced differing results regarding whether consumers are opposed to ambush marketing and tactics used by ambush marketers (Shani & Sandler, 1998 (suggesting consumer oppose such practices); Lyberger & McCarthy, 2001 (concluding that most consumers do not oppose such practices)).

The purpose of this study was to extend previous research by Shani & Sandler (1998) and Lyberger and McCarthy (2001) by further examining

consumers' perceptions of ambush marketing practices and examining the legal issues raised by such practices. Specifically, this study seeks to examine consumer perceptions about the potential deceptive aspects of ambush marketing practices and explore how different consumer segments evaluate these aspects of ambush marketing practices. This paper provides an overview of the legal landscape surrounding ambush marketing practices, a summary of relevant ambush marketing literature, and a detailed discussion of the findings and results in this study. The paper concludes with several suggestions and recommendations for future research.

LEGAL LANDSCAPE OF AMBUSH MARKETING

A simple Google internet search produced almost 35,000 websites mentioning ambush marketing and almost 5000 specifically related to ambush marketing. Many of these websites are maintained by advertising and marketing companies promoting their talents at either protecting against ambush marketing or facilitating the most creative usage of ambush marketing, and in some instances, both. Many more websites are offered by law firms and risk management companies who offer to assist sport organizations by creating airtight sponsorship agreements or pursuing legal remedies against companies using ambush marketing strategies. Clearly the proliferation of ambush marketing as an advertising strategy suggests there are few if any legal obstacles to this strategy. However, it is important to summarize how legal issues have arisen related to ambush marketing and how different sport organizations have taken different approaches to combat or deter ambush marketing as a result of the first legal challenges.

Common Legal Challenges to Ambush Marketing

A typical sport organization has primarily two legal remedies it might pursue, trademark infringement and misappropriation of goodwill, when it feels that its sponsorship rights have been violated or exploited by an unauthorized company (McKelvey, 1992). The strongest remedy in terms of trademark protection is the Lanham Act. Section 32 and 43(a) of the Lanham Act prohibits the use in commerce of any registered mark which is likely to cause confusion, or to cause mistake, or to deceive without the consent of the registrant. In order to prevail in a Lanham Act claim the plaintiff/sport organization must satisfy a two-prong test (15 U.S.C. §1114(1)(a) & §1125(a) (2004).) First, it must prove an unauthorized use of a registered mark. Second, it must prove that the unauthorized use by the defendant/ambusher created a likelihood of confusion in the mind of consumers. The likelihood of confusion

is a very demanding burden for the sport organization. Further, a Lanham Act claim has several inherent limitations. For instance, it is designed to protect registrants from companies who include a similar mark on their products and then offer those products to the buying public. However, it does not easily adapt itself to protect a registrant from companies that do not include any mark or logo on their product but just use a similar mark or reference in a commercial advertisement. Thus, for most ambush marketers, the Lanham Act is not a serious threat.

Another remedy is available under common law principles of unfair competition. This remedy allows recovery for the misappropriation of goodwill and reputation of a sports organization. The remedy for misappropriation is fairly simple. The sport organization need only show that it is the owner of the event or right in question, that the ambusher has participated in unauthorized activity and that its goodwill or reputation has been appropriated or damaged through the use of false representations in relation to products or services (McKelvey, 1992). Courts are generally reluctant to extend claims based upon misappropriation of goodwill to ambush marketing practices. For example, the Delaware federal district court rejected the National Football League's misappropriation of goodwill claims against the Delaware State Lottery for its lottery game tied to actual NFL games (*N.F.L. v. Delaware*, 1977). Instead, courts seem to prefer to rely on the Lanham Act and trademark infringement. However, with the Lanham Act's inherent limitations discussed above, misappropriation of goodwill seems to be a better remedy for sport organizations.

The *NFL v. Delaware* case has been most often cited for its holding permitting ambush marketers to avoid trademark infringement and unfair competition claims by using disclaimers in their advertising. The NFL presented survey evidence that between 19 and 21 percent of those surveyed were confused as to the NFL's sponsorship or endorsement of the state lottery game. The court agreed that this was sufficient evidence to demonstrate consumer confusion and stated "one may not . . . advertise one's services in a manner which creates an impression in the mind of the relevant segment of the public that a connection exists between the services offered and the holder of the registered mark when no such connection exists" (*NFL v. Delaware*, p. 1380). The district court determined that an adequate remedy for this transgression was for the state lottery to include a clear and conspicuous statement that the game was not associated with or authorized by the NFL (p. 1381).

Sports organizations contend that the use of disclaimers does not adequately protect the consumer or the sport organization. Since 1977, other

courts have limited and delineated the loophole, but it is still alive and well. Now it is the ambusher that must show that the information in the disclaimer would significantly decrease the likelihood of confusion (McKelvey, 1992). Injunctive relief will be provided to a sport organization upon a showing that the disclaimers are not prominently displayed; however, the impact of the *NFL v. Delaware* decision has made it very difficult for sport organizations to challenge ambush marketing practices using unfair competition and trademark infringement theories.

The First Lawsuit – Pepsi Cola Canada

Another significant legal contribution to the evolution of ambush marketing was *National Hockey League v. Pepsi-Cola Canada Ltd.*, (1992). Pepsi-Cola Canada (hereinafter "Pepsi") utilized numerous ambush marketing techniques to associate itself with the 1990 Stanley Cup hockey play-offs. Pepsi conducted a nationwide promotional campaign in Canada wherein consumers were eligible for up to \$10,000 if they matched certain information contained on bottle caps and specially marked cups with the outcome of the Stanley Cup play-offs. The Stanley Cup pits the winner of the National Hockey League's Campbell Conference against the winner of the Wales Conference in a 7-game playoff series. Assume when the Edmonton Oilers won the Stanley Cup in the 5th game of the series in 1990, a lucky consumer had acquired a Pepsi bottle cap saying "If Edmonton wins in 5 games you win \$10,000," that consumer was eligible to win the \$10,000 prize once he submitted the Contest entry form, winning game piece, and successfully completed a skills test included on the entry form. Several other prizes such as free Pepsi products and merchandise and small cash awards were also available. Pepsi ran extensive television advertising during the television broadcasts of the NHL playoffs to promote its prize contest.

The National Hockey League sued Pepsi in an effort to protect the rights it had sold to Coca Cola as the "official" sponsor of the NHL. Unfortunately, in 1989 when the NHL entered into its sponsorship agreement with Coca Cola, television broadcast advertising rights were not among the rights included in the agreement. The broadcast advertising rights had been licensed to Molson Breweries who in turn granted Pepsi the rights to be the exclusive advertiser of soft drinks during the broadcast of all post season and playoff games. The NHL alleged four theories of recovery – common law tort of passing off; statutory passing off; trademark infringement; and interference with economic relations and future business relations. The Canadian court rejected each of the NHL's claims and dismissed the action.

The passing off claims were rejected because the NHL's consumer survey evidence was not adequate to demonstrate that Pepsi's promotional activities had created a false impression that the product or activity was authorized, approved, or endorsed by the NHL. Even if the survey evidence had been acceptable to the court, the court cited *NFL v. Delaware* (1977), to show that Pepsi's disclaimers would have been sufficient to dispel any impressions of sponsorship or approval. The trademark infringement claims were easily dismissed since none of the NHL's actual registered marks were used by Pepsi. And the court finally dismissed the interference with economic relations claims since the NHL could not base its claim on the rights of another (i.e. Coca Cola) and none of Coca Cola's rights under its sponsorship agreement with the NHL had been interfered with. The court noted that Coca Cola's sponsorship agreement did not include any advertising rights with respect to television broadcasts. The court's opinion confirmed what many sport managers suspected, that most common law and statutory remedies simply do not encompass common ambush marketing practices. Thus, many companies viewed the Canadian decision as an open invitation to engage in ambush marketing (McKelvey, 1992). As a result, sport organizations were forced to identify additional business and legal strategies to combat ambush marketing practices.

The Business Solutions Approach

Numerous solutions short of litigation have been recommended since *N.H.L. v. Pepsi Cola Canada*. These include sending a cease and desist letter to the ambusher either prior to the marketing campaign if possible or as soon as possible after the sports organization learns of the activities (McKelvey, 1992). The sport organization may also negotiate a settlement with the ambusher whereby the ambusher agrees to withdraw the promotion in exchange for something from the sport organization (McKelvey). It has also been recommended to clearly identify specific rights and enforcement efforts in sponsorship agreements during contract negotiations with individual teams and players, broadcasters, and unions. Specifically, the parties should proactively negotiate what efforts will be taken by the sport organization to preserve and protect the sponsor's rights and investment.

However, such negotiations are not always possible since sponsors may have an unrealistic expectation of what the sport organization can do to protect against ambush marketing. Additionally, the ambush marketer has no contractual relationship with the sport organization or the official sponsor who is being ambushed. Thus, unless the ambusher is committing an independent

illegal act such as trademark infringement, deceptive advertising, or unfair competition, the sponsorship agreement cannot prevent ambush marketing. Instead, better sponsorship agreements will only help the sport organization and its official sponsors to better understand what steps are going to be taken to minimize ambush marketing.

Litigation is always an option available to the sport organization; however, this option tends to be impractical from a business standpoint for many sport organizations. Sport organizations feel that the threat of litigation may be one of their better defensive tactics at the present time even though that perception is not supported by any measurable increase in court filings (Lefton, 2003). However, litigation requires a sport organization to devote considerable funds and time to react to ambush marketing tactics. Litigation is often a last resort for most sport organizations and especially smaller companies with limited resources. In addition, any litigation which is vigorously contested by the ambusher will take years to resolve. Another very significant concern for sport organizations is the potential to create legal precedents unfavorable to itself and other sport organizations such as the early *N.H.L. v. Pepsi Cola Canada* decision. However, unlike many sport organizations, the USOC and the NCAA, have the necessary resources to pursue litigation as a response to ambush marketing practices and have chosen to adopt an aggressive and multi-dimensional approach.

A Multi-Dimensional Approach: Olympics and NCAA

Olympic organizations and the NCAA use a combination approach, implementing business and legal response strategies. These organizations aggressively threaten and pursue litigation and also adopt and implement a variety of informational strategies directed at consumers and potential ambush marketers.

Olympic sponsor protection.

In order to protect the official Olympic sponsors, the USOC developed a comprehensive sponsor protection program in the 1990s. Now the USOC, IOC, as well as the local organizing groups adopt Brand and Sponsor Protection plans for each Olympic event. Typically the Olympic host city must include its strategies for protecting Olympic intellectual property rights as part of its Bid Proposal, and the Host City Agreement will require certain protections of Olympic marks and logos. For example, Australia adopted the Sydney 2000 Games (Indicia and Images) Protection Act (1996) (see also, Kendall & Curthoys, 2001) and Beijing issued a municipal government decree

to protect Olympic intellectual property rights ("Beijing launches decree to fight ambush marketing," 2001).

The USOC is also an active litigant often wielding their powers created in The Ted Stevens Olympic and Amateur Sports Act ("OASA") (2004). The OASA was enacted in 1978 in part to protect the USOC's ability to produce funds necessary to support American athletes' participation in the Olympic movement (36 U.S.C. §220501 (2000)). Several provisions grant the USOC exclusive rights to the words "United States Olympic Committee," the symbols of the International Olympic Committee including the five interlocking rings, and the words "Olympic" and "Olympiad," "Citius Altius Fortius," "Paralympic," "Paralympiad," "Pan-American," "America Espirito Sport Fraternite," or any combination of those words (36 U.S.C. §220506(a)). The USOC possesses the exclusive right to license the use of these marks. The OASA further provides that the USOC may pursue any remedies traditionally available for trademark infringement if any person uses the protected symbols "for the purpose of trade, to induce the sale of any goods or services, or to promote any... athletic performance, or competition" (36 U.S.C. §220506(c)(3)).

While the USOC is entitled to the remedies provided under traditional trademark protection identified in the Lanham Act, courts have modified the USOC's burden of proof and held that the USOC need not prove that the contested use of its marks is likely to cause confusion (*USOC v. San Francisco Arts & Athletics, Inc.*, 1987). Being relieved of this evidentiary burden has consistently been referred to as providing the USOC with broader protection than available to ordinary trademark owners. While an unauthorized user of an ordinary trademark can often wage a meaningful defense to trademark infringement under the Lanham Act by simply arguing that there was no consumer confusion, an unauthorized user of USOC protected marks and symbols is often hit with a cease and desist order easily obtained by the USOC without any showing of consumer confusion.

We have often seen the USOC use this heightened or broadened trademark protection even when the unauthorized activities seemed benign and relatively insignificant. For example, the Salt Lake Olympic Organizing Committee demanded that a corn farmer who created crop circles in his field in the shape of the 5 interlocking rings remove the rings or pay a \$10,000 licensing fee (Associated Press, 2001). Similarly, during the 1996 Olympics in Atlanta, several small, local businesses were haled into court by the Atlanta Olympic Organizing Committee for unauthorized use of Olympic marks and logos (Goldman, 1994). Sometimes the USOC's or the local organizing committees'

heavy-handed policing of Olympic marks and logos has been criticized; however, such tactics were generally successful (Crow & Hoek, 2003).

NCAA anti-ambush marketing efforts.

The NCAA is also becoming more aggressive toward ambush marketing often pursuing or threatening to pursue the costly litigation option. For example, in a recent lawsuit the NCAA sued Coors Brewing Company to thwart Coors' use of tickets to the NCAA Men's Basketball Championship Tournament in an advertising promotion. This was the first lawsuit to challenge the use of sports tickets in an unauthorized sweepstakes promotion (*National Collegiate Athletic Association and Host Communications, Inc. v. Coors Brewing Company*, 2002) (See, McKelvey, 2002).

The NCAA based its claim against Coors on two primary legal theories - breach of contract and unfair competition. The NCAA's breach of contract claim alleged that Coors' ticket sweepstakes offering two tickets to the final three games of the tournament run annually in March and April violated the terms of the NCAA's revocable license (McKelvey, 2002). The NCAA Final Four ticket-back included language that stated "[U]nless specifically authorized in advance by the NCAA, this ticket may not be offered in a commercial promotion or as a prize in a sweepstakes or contest" (McKelvey, 2002, p. 117). Both parties agreed that the tickets were revocable licenses but they disagreed as to whether the law recognized a cause of action for breach of a revocable license. The traditional right of the licensor is to simply revoke the license, not sue for damages under a breach of contract theory. The NCAA attempted to use contract law principles to enforce ticket-back language.

The NCAA's second claim alleged Coors violated unfair competition laws in Indiana (Complaint, 2001). This theory of recovery contends that it was wrongful and unfair competition for Coors to associate itself with the NCAA and the Final Four. This legal theory is a difficult one to prevail upon since unfair competition claims, similar to trademark infringement claims, normally require a showing of consumer confusion. Thus the NCAA would have to prove that Coors' promotion had confused the general public into believing that Coors is somehow associated with, sponsored by, or endorsed by the NCAA. Courts have been reluctant to apply trademark infringement and unfair competition laws to defendants who have not used identical or strikingly similar marks on tangible products. If the ambusher is only making creative reference to a sporting event in its advertising and promotion materials the courts have not been inclined to prohibit such activities as unfair competition or trademark infringement.

This lawsuit would have been the first court decision since *N.H.L. v. Pepsi Cola Canada* addressing a specific and identifiable ambush marketing tactic. However, the NCAA accepted Coors offer of judgment thereby settling the case before a decision was reached on the merits (NCAA, 2003). Thus the viability of the legal theories of trademark infringement, breach of contract, and unfair competition, as a solution to ambush marketing, is still unclear. What is clear is the importance of a finding of consumer confusion and/or deception in order for these claims to have a reasonable chance for success.

AMBUSH MARKETING AND ATTRIBUTES OF DECEPTION

By definition, ambush marketing activities are activities designed to suggest an official association with an event that does not in fact exist (Shani & Sandler, 1998). Interestingly, the NCAA case against Coors was the first to raise state law claims for unfair competition under the state deceptive trade practices act. This strategy may ultimately be the most viable deterrent to ambush marketing practices. The suggestive nature of ambush marketing practices begs the question of whether consumers view these practices as deceptive and whether a consumer's inferred suggestion can or will be perceived as deceptive adequate to support the previously discussed legal claims of unfair competition, or trademark infringement, or to serve as a foundation for new claims based on deceptive advertising or deceptive trade practices.

Deceptive consumer practices are illegal under both federal and state law (Sheldon & Carter, 2004). All 50 states have adopted some form of protection for consumers and businesses from unfair or deceptive practices (See, Sheldon & Carter, pp. 967-989, for a detailed summary of each states' deceptive trade practices act). Under federal law, the Federal Trade Commission Act (FTCA) is the basic consumer protection statute empowering the FTC to enforce prohibitions against "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)). According to the FTCA (1) advertising must be truthful and non-deceptive; (2) advertising must have evidence to back up their claims; and (3) advertisements cannot be unfair (Federal Trade Commission, 2001). The FTC has issued a Deception Policy Statement defining a deceptive advertisement as one that contains a statement or omits information that is likely to mislead a reasonable consumer and that is important to the consumer's decision to buy or use the product (Federal Trade Commission).

Most ambush marketing practices would not infringe on the last two prongs of the FTCA requirements relating to evidence to back up the claims

and unfair advertising. For example, when American Express ambushed official Olympic sponsor Visa during the 1992 Winter Olympic Games, American Express featured claims in its television commercials to "visit Spain, you don't need a visa." This advertisement contained no claims that needed evidence to back them up, and was not unfair. Thus, the most likely argument to be asserted by an official sponsor is that an ambush advertisement is deceptive or untruthful. But actions such as puffery, incomplete comparisons, and implied superiority claims can deceive the consumer within the limits of the law (Lord, Kim, & Putrevu, 1997). In addition, deceptive advertising may cause consumers to make inferences that go beyond what is claimed in the ad (Burke, DeSarbo, Oliver, & Robertson, 1988; Gaeth & Heath 1987). Deception can result from innuendo, not just outright false statement. Advertisements containing implied claims that are false may also meet the legal definition of deception (Sheldon & Carter, 2004, p. 165-66).

Ambush marketing often falls into this category of advertising with implied claims, but the implied claims do not relate to the company's product or service, rather they relate to the false association between the company and a sport event or organization. For example, a shoe manufacturer may position its sponsorship of an athlete in a way to deceive consumers to think they are an official sponsor of the team or league. Although the shoe manufacturer did not explicitly state they were (or were not) a team sponsor or a league sponsor, they may have positioned their advertising in a way to make consumers believe they were. And of course the shoe manufacturer has made no false claims about its product or the underlying event. If deceptive advertising or deceptive trade practices are to be viable legal remedies, it must be demonstrated that the consumer has been misled or confused about some material or important information affecting their consumption decisions. Thus, it is important to delve into the mind of the consumer and his or her perception of ambush marketing practices.

Industry professionals clearly believe ambush marketing can confuse consumers into thinking a non-sponsor is actually a sponsor (Lefton, 2003). However, little is known about which practices consumers perceive as suggesting an official sponsorship. Therefore, it is of interest to determine whether recognition of this suggestiveness influenced customers' opinions of ambush activities. Presumably if consumers do not see ambush marketing as suggestive of official sponsorship, then an official sponsor's investment has not been devalued. Furthermore, if one accepts Welsh's (2002) argument that the official sponsor only owns the right to identify itself as an official sponsor and benefit from that official association rather than acquire and control all the thematic space around the event, any consumer confusion resulting from a

thematic space cluttered with both official and non-official sponsor advertising is not necessarily a result of any deceptive or suggestive advertising activity on the part of the non-official advertisers. In addition, if consumers are not misled about the type of association (i.e. official or not) between the ambusher and the event, or the association is not important to the consumer's purchase decisions, then presumably the advertisement is not deceptive or injurious to the consumer either. Thus, consumer attitudes and perceptions toward common ambush marketing practices must be examined more closely.

Consumer Attitudes and Ambush Marketing

Ambush marketing has gained worldwide attention and has been the subject of hundreds of articles seeking to discover how sport organizations can counter ambush marketing and whether ambush marketing practices are illegal and/or unethical (O'Sullivan & Murphy, 1998). Indeed, the debate over the ethicality and legality of ambush marketing continues today, but one segment that has not been involved in that debate to any great extent is the consumers potentially affected by ambush marketing. Despite the many forms and instances in which ambush marketing occurs, it has not been determined whether spectators are even aware when ambush marketing occurs. In fact, it has been suggested that many spectators/potential consumers are probably unaware that one company is ambushing another company's advertising rights (Woodward, 1992) and even if they are aware they simply do not care (Meenaghan, 1998; Shani & Sandler, 1998).

Previous Spectator and Consumer Studies

Meenaghan (1998) reported on an IOC study in his review of research on ambush marketing. The IOC examined spectators attending the 1996 Olympic games and concluded that "companies ambushing Olympic sponsors are not held in high regard" by spectators/consumers (p. 314). This same conclusion has been reached in other studies (Shani & Sandler, 1998). The IOC's conclusions as reported by Meenaghan (1998) may be problematic for several reasons. First, despite these conclusions, ambushers continue to flourish and enjoy high levels of brand recognition and identification associated with sport events or organizations suggesting that the consumers' perceptions toward ambush marketing tactics are not negative enough to deter ambushers at this point. Additionally, the IOC's study did not establish whether the respondents actually understood the concept of ambush marketing.

Lastly, the wording of many questions in the survey could have resulted in biased responses leaning toward a negative conclusion. For example, two

questions used by the IOC were: a) "If I see a company that is not a sponsor trying to pretend that it is supporting the Olympics, my opinion of that company is lowered", and b) "I think it is wrong for companies to deliberately avoid paying for Olympic rights" (Meenaghan, 1998, p. 314). The tone and wording of these questions could have biased the responses. The words "pretend," and "deliberately avoid" have a negative tone. The survey also contained other potentially vague references to "sponsoring the Olympic Games" (Meenaghan, p. 314). In light of the myriad of sponsor categories and packages, the IOC's survey assumed that respondents understood what it was to be a "sponsor" according to the Olympic ideal definition of sponsorship. However, the ever-expanding range of sponsor categories and sub-categories, especially associated with the Olympic games, continue to clutter the advertising landscape and confuse consumers as to who and what are "official" sponsors (Lyberger & McCarthy, 2001).

Shani and Sandler (1998) also examined ambush marketing several times, each time reaching similar conclusions that consumers are essentially indifferent toward ambush marketing. Their study of spectators attending the 1996 Olympic games also may have had some wording bias in the survey instrument. The survey instrument contained phrases such as "the practice of associating," "is it fair" and "official sponsor." This again assumes that the spectator understands and comprehends these phrases in the same way that the investigators do, which may not be the case. Shani and Sandler acknowledged that the wording of at least one of the survey questions may have contributed to a strong negative response. Meenaghan (1998) and Shani and Sandler have all acknowledged the need for further research pertaining to consumer perceptions of ambush marketing practices.

As an extension of Shani and Sandler's (1998) work, Lyberger and McCarthy (2001) examined ambush marketing practices related to the Super Bowl. Their results were similar in that they found a significant number of respondents did not oppose ambush practices, and companies that engaged in ambushing did not displease consumers. Further, they found consumer interest in the sport did not influence their perceptions of ambushers and a moderate number of respondents lacked specific knowledge of sponsorship of the event. The latter point suggested confusion among customers about sponsorship activities. Based on this point, Lyberger and McCarthy suggest educating consumers about sponsorship programs in order to dissipate the considerable apathy.

Characteristics of Ambush Marketing Practices

Since the study of consumers' perceptions of ambush marketing is still relatively new, several characteristics of ambush marketing tactics were identified from existing literature on marketing ethics. This list of characteristics was not meant to be an exhaustive list, but rather a starting point for learning more about how consumers view ambush marketing tactics. It is also important to note that each of these characteristics has been debated at length in the marketing literature, however, most of this debate centers on the point of view of managers or ethicists. Very little debate has focused on the opinions of consumers.

In this study, two primary elements of deception are examined: whether the ambush activity is dishonest and whether the ambush activity is misleading. These terms are similar in that the end result is a deceived consumer, but there is one important distinction. Dishonest advertising implies intent to deceive. Dishonesty in advertising implies that the advertiser makes a claim about their product or organization although they are aware they have no basis to make that claim (Preston, 1997). The level of honesty in the advertisement will influence the credibility of the source (Shimp & DeLozier, 1986) and the consumer's attitude toward the ad (MacKenzie & Lutz, 1989). This implies that sport consumers who believe an ambusher is acting dishonestly will be less likely to believe the ambusher's message.

Misleading or deceptive advertising, on the other hand, does not require intent. An advertisement is misleading if it is reasonable to expect that consumers exposed to it would come to hold false beliefs as a result of exposure to it (Attas, 1999). Misleading advertising practices have been associated as being harmful to both consumers and competitors (Carson, Wokutch, & Cox, 1985). However, complaints against misleading advertising typically come from competitors rather than consumers, as rival firms seek to protect themselves from false claims by other firms (Bixby & Lincoln, 1989). This indicates consumers may either not care about or not be aware of the misleading nature of particular advertising or the impact of such deceptive acts. Therefore, it is important to identify what consumers recognize as misleading and deceptive.

It is entirely possible that the aforementioned characteristics could be negated because consumers see the practices used by ambush marketers as the norm rather than the exception to the norm. Repeated exposure to an unethical business practice may desensitize customers to the unethical nature of the practice (Bone & Corey, 2000). It is possible consumers conclude that because an activity is common, it is acceptable. Conversely, consumers who perceive

firms are deviating from norms defining suitable behavior will view the firm as being less responsible (Carroll, 1979, 1999). In terms of sport sponsorship, Lyberger and McCarthy (2001) argue consumers generally accept the practice of ambush marketing. However, it is unknown whether the practice is accepted because consumers do not see it as a problem or because consumers have simply become desensitized to the practice. Therefore, this study seeks to understand whether consumers see various ambush marketing activities as either unique events or typical business practice.

Consumers may also make assumptions about the legality of different ambush marketing tactics, however, the actual legality of a marketing tactic is not always apparent to the consumer. No study has been reported examining whether consumers accurately recognize illegal marketing practices in sport such as trademark infringement, unfair or deceptive advertising, or unfair competitive practices. To the layman, many activities may appear to be illegal, but in actuality be quite legal. However, the consumer's perception of that practice as either legal or illegal, more than the actual legality of the practice may be useful to provide a better understand of potential harmful effects of such practices. We must recognize that the majority of legal remedies which have been pursued to curb ambush marketing practices are derived from consumer protection statutes. Thus, if consumers are being deceived, misled, or otherwise harmed, it strengthens the argument that these statutes should be construed and applied in such a way to prevent ambush marketing. Therefore, the actual present legality of a tactic may be much less important than the degree of legality or deception perceived by the consumer.

Finally, this study evaluates consumers' opinions regarding the ethicality of various ambush marketing practices. Unethical advertising behavior has been examined often from the perspective of the business manager and marketing personnel. However, little information and research exists concerning consumers' perceptions of unethical advertising behavior in sport. Marketing research examining consumer perceptions has essentially been divided into two areas: consumers' perceptions of questionable marketing practices and the ethics of consumers themselves (Dornoff & Tankersley, 1975; Hansen, 1993; Sturdivant & Cocanougher, 1973). The current study concentrated on consumers' perceptions in terms of recognition of common ambush marketing practices as ethical or unethical. Since the IOC theorized it could affect consumer's perceptions toward ambush marketers, and in light of an increasing awareness of corporate values by consumers (Brabbs, 1999; Mullin, 2000), it is important and timely to attempt to determine how consumers view different ambush marketing activities.

Ambush marketers have a wide range of tactics in their arsenals. The most common and effective of these strategies is (1) purchasing advertising time within the event broadcast; (2) conducting sweepstakes/contests using event tickets as prizes; (3) creating premium offers thematically tied to the event, and (4) using notable athletes affiliated with the sport or event to endorse the products or be featured in advertising (Lefton, 2003). Other strategies include fly-over blimp advertising, stadium advertising, individual team sponsorship, and even forehead tattoos (Jensen, 1996; Liberman, 2003). Since each of these tactics is unique in both design and implementation, it would appear customers would evaluate them in different ways.

Demographic variables also merit further study because marketers believe consumer behaviors are highly related to these variables (Bagozzi, Rosa, Kelly, & Coronel, 1998), yet little is known about how different demographic segments view ambush marketing activities. Specifically, there is little known about the differences in perceptions attributable to gender or age. Women are increasingly being viewed as an important sport marketing segment, and women have been found to have much different attitudes toward media than men (Burnett, Menon, & Smart, 1993). Further, women tend to react more positively to brands they perceive as supporting a good cause (McDaniel, 1999). Age is also a demographic variable of interest. As sporting events welcome new generations of consumers, it is important to understand how these younger consumers may view marketing practices differently than their predecessors.

Recent literature has suggested consumers are opposed to ambush marketing and tactics used by ambush marketers (Shani & Sandler, 1998). However, Lyberger and McCarthy (2001) found that a majority of consumers did not oppose the practices of ambush marketers. These differing results imply there is much to be learned about how consumers view ambush marketing practices. This study, therefore, seeks to further examine consumers' perceptions of ambush marketing practices and examining the legal issues raised by such practices.

METHOD

The subjects were drawn from persons attending two amateur sports contests involving USA Olympic teams. Questionnaires were distributed to persons attending either of two events occurring during tours of two of the USA Olympic teams—USA Team Handball and USA Softball. The subjects were intercepted at the event and asked to participate in the study. The events took place in a mid-west metropolitan city with a population of approximately

900,000. Since persons who are likely to view sport sponsorship were the focus of the study, it seemed reasonable to select persons who have already identified themselves as at least occasional sports fans by attending an amateur sports contest. To assure statistical power, at least 150 respondents were asked to participate in the study to form the base sample. All persons participating in the study were asked to complete a questionnaire.

Procedures and Instrumentation

A questionnaire consisting of four scenarios designed to examine respondents' recognition and perception of certain sport advertising using 7-point bi-polar semantic differential scales was developed for this study. The scenario design is accepted as an appropriate methodological tool in the assessment of attitudes (Nosanchuk, 1972). This design is also the accepted technique for determining ethical perceptions (Baumhart, 1961; Sturdivant & Cocanougher, 1973; Tsalikis & Fritzsche, 1989) and commonly used in marketing ethics research (Chonko & Hunt, 1985; Singhapakdi & Vitell, 1991; Singhapakdi, et al., 1999). The scenario design allows "the researcher to flesh out the ethical problem, to place it in a more realistic setting, and to establish explicitly the level of a number of pertinent variables at one time" (Cavanagh & Fritzsche, 1985). Scenarios were developed to represent four common instances of ambush marketing. However, it is important to note that the term or phrase "ambush marketing" is purposefully not used since the purpose of the study is to examine consumer perceptions regarding the potential deceptive elements of advertising and promotional activities that are commonly regarded as ambush marketing by industry professionals, not to examine the consumer's knowledge or familiarity with the buzzword "ambush marketing." This should help to avoid some of the survey bias that could have existed in Meenaghan (1998) and Shani and Sandler's (1998) studies. In addition, scenarios are also attributed with eliciting higher quality of data in ethics research than normally possible using direct questions (Alexander & Becker, 1978). The following four scenarios were used.

1. Team Scenario: A company who is not an official sponsor of a major sports league, becomes an official sponsor of individual teams within the league or individual stadiums where the league games are played.
2. Television Scenario: A company who has no official association with a professional sports event such as The Super Bowl advertises its products during commercial breaks occurring during the television broadcast of The Super Bowl.

3. Promotion Scenario: A company who is not an official sponsor and has no association with a professional sports event such as The Super Bowl conducts a promotional giveaway or sweepstakes where tickets to The Super Bowl are given away as prizes.

4. Logos Scenario: A company who is not an official sponsor of the Olympics uses the Olympic rings on its promotional brochures describing its products and services.

Customers were asked to rate the extent to which the activity described in the scenario was suggestive of being an official sponsor, dishonest, misleading, typical business practice, ethical or illegal. Customers were asked to rate each using single-item seven-point semantic differential scales anchored with "suggestive" and "not suggestive," "honest" and "dishonest," "not misleading" and "misleading," "unique" and "typical," "legal" and "illegal," and "ethical" and "unethical" respectively. In order to identify customer segments, respondents were asked to provide information on gender and age. Additional demographic data on respondents was collected for the purposes of describing the sample.

A four-person panel comprised of professors and professionals in sport management, marketing, and public relations reviewed the questionnaire. The panel members edited the questionnaire for comprehension and readability.

Analysis

MANOVA was used to determine whether the means of each of the characteristics of ambush marketing varied due to type of ambush activity or customer segment. In the MANOVA model, ambush activity, gender and age were entered as the independent variables and each of the six characteristics of ambush marketing (suggestive, dishonest, misleading, typical business practice, illegal, and unethical) were entered as the dependent variables. Groups were created with relatively large cell sizes, to avoid reducing the power of the test, and approximately equal cell sizes, to avoid violating statistical assumptions. Gender remained a dichotomous variable, while age was converted into dichotomous variables with cases divided at the median.

RESULTS

Demographic and Spectator Profiles of Respondents

During the two collection periods, 192 questionnaires were returned. Of these, 184 were usable while 8 were omitted as unusable due to either

incomplete or illegible responses. Of the 184 usable questionnaires, 63 (35%) were collected during the Team Handball event and 121 (65%) were collected during the Softball event. Generally, the respondents were white (84.2%), college educated (81%), with incomes ranging between \$25,000 to 60,000 (50%). The group was made up of 56% female (N=103) and 44% male (N=81) and represented more married (58%) than single (34%) or divorced (7%) persons. Of the respondents surveyed, 52% reported attending sporting events either often or regularly and 75% of the respondents reported watching sporting events on television often or regularly. In addition, 78% of the respondents at the handball game were attending their first game and 21% of the softball respondents were attending their first game.

Results of the multifactorial MANOVA were significant, Wilks' Lambda = .051, $F(6, 163) = 502.69$, $p < .001$. For the main effects of scenario, Wilks' Lambda = .485, $F(18, 461) = 7.469$, $p < .001$, indicating the combined dependent variables varied between scenarios. Results were also significant for gender, Wilks' Lambda = .919, $F(6, 163) = 2.381$, $p = .031$ and age Wilks' Lambda = .856, $F(6, 163) = 4.563$, $p < .001$, indicating the combined dependent variables varied between both age and gender. Significant differences did not exist for any of the interaction effects, meaning the main effects could be interpreted directly.

Subsequent analyses were performed to examine differences in each of the characteristics attributable to the scenario. Post hoc methods were conducted to examine differences attributable to scenario. The Scheffé method revealed that responses related to the logos scenario differed from each of the other three scenarios on each of the six characteristics. The three other scenarios – team, television, and promotion – did not differ from each other on any of the characteristics. A comparison of means revealed respondents found customers had similar opinions of the team, television, and promotion scenarios. Overall, they felt these activities were suggestive (all means were below the scale's midpoint of 4.0), but means for each of the other characteristics were all above the midpoint of the scale indicating customers, as a whole, did not feel these activities were dishonest, misleading, illegal, unique or unethical. The misuse of logos, on the other hand presented entirely different results. Consumers felt this activity was less typical than the other activities. Further, ratings for the other five characteristics were well below the midpoint of the scale indicating they felt this activity was much more dishonest, misleading, illegal, suggestive, and unethical than the other three activities. (See Means reported in Table 1).

TABLE 1

Means (Standard Deviations) of aspects of ambush marketing by scenario, gender, and age

	Suggestive	Dishonest	Misleading	Unique	Illegal	Unethical
Scenario						
Team	3.52(2.01)	4.72(2.02)	4.11(2.07)	5.24(1.49)	4.83(2.09)	4.56(1.70)
TV	3.70(2.04)	4.99(1.83)	4.89(1.96)	5.30(1.46)	5.45(1.75)	5.26(1.86)
Promotion	3.95(2.03)	4.83(1.84)	4.78(1.87)	5.39(1.64)	5.23(1.63)	4.77(1.82)
Logos	2.43(1.82)	1.92(1.29)	1.91(1.32)	4.09(1.79)	2.41(1.69)	1.88(1.48)
Gender						
Male	3.66(1.89)	4.51(2.09)	4.22(2.16)	4.95(1.57)	4.64(2.08)	4.04(2.24)
Female	3.19(2.15)	3.80(2.18)	3.69(2.17)	5.05(1.76)	4.35(2.22)	4.18(2.10)
Age						
18-39	3.31(2.00)	3.81(2.04)	3.59(2.06)	4.68(1.74)	4.43(2.06)	3.69(2.01)
40 and over	3.50(2.11)	4.46(2.26)	4.30(2.25)	5.37(1.53)	4.54(2.28)	4.60(2.23)

Univariate tests revealed gender was significant for dishonest, $F(1, 168) = 4.193$, $p = .042$. A comparison of means revealed women felt the activities in each of the scenarios were more dishonest than did men. Univariate tests revealed age was significant for dishonest, $F(1, 168) = 4.831$, $p = .029$, misleading, $F(1, 168) = 4.558$, $p = .034$, unique business practice, $F(1, 168) = 4.8220$, $p = .005$, and unethical $F(1, 168) = 9.954$, $p = .001$. Customers ages 18-39 felt the ambush marketing practices were more dishonest, more misleading, less typical, and more unethical than customers 40 and over. (See Means reported in Table 1).

DISCUSSION AND IMPLICATIONS

Although the body of literature on ambush marketing is growing, there is still a lot to be discovered about the nuances of ambush practices. Therefore, this study sought to investigate how consumers viewed various characteristics of multiple ambush marketing practices specifically related to potentially deceptive attributes of those practices. This study sought to find out whether customers evaluated various ambush activities differently, and whether different consumer segments evaluated ambush activities differently. Although

the majority of data reveals customers were indifferent to ambush marketing, there are several findings that demonstrate not all ambush marketing is the same for all people. Further, these findings give organizations hope for formulating strategies for the prevention of ambush marketing.

In terms of the differences between scenarios, results of this study revealed customers, as a whole, thought ambush activities related to team sponsorship, television advertising, or promotions suggested an official sponsorship, however they did not feel the activities depicted in the Team, Television, and Promotions scenarios were dishonest, misleading, unique, unethical, or illegal. It seems that just because something is suggestive, does not necessarily mean it is perceived as wrong or deceptive. There are two potential explanations for these findings. First, it is possible that respondents in this study may have either been indifferent to or unaware of the ramifications of the ambush activities. This seems to confirm the findings of Sandler and Shani (1998). Second, it is important to note that customers felt strongly that the activities in the Team, Television and Promotions scenarios were typical business practices and not illegal. This seems to indicate an attitude among customers that if everyone is doing it and there are no laws against it, then it must be fine. This finding also supports the arguments of those who defend ambush marketing, that such activities are neither illegal nor unethical so long as they are not deceptive. However, it is important to note that legally deceptive and misleading are identical, so while we asked consumers about several separate attributes, from a legal perspective, if an advertisement is misleading it is legally deceptive and *visa versa* (Sheldon & Carter, 2004, p. 145). It is possible that in order for consumers to perceive the situations from the Team, Television, and Promotion scenarios as misleading, the false association that is seen as suggestive must also be important to the consumer's purchase intentions or in some way harmful to the consumer. This is consistent with previous studies finding consumers more sensitive to unethical business practices if they considered themselves potentially affected by the practices (Sturdivant and Cocanougher, 1973).

On the other hand, customers saw ambush activities described in the Logos Scenario relating to the misuse of the Olympic rings as being much more egregious than the other activities in all categories. This result was not unexpected as misuse of marks is easily identified as being illegal and customers are likely to have some knowledge of right and wrong in this instance. This result does tend to support the notion that the USOC's heightened trademark protection and the NCAA's aggressive litigation strategies may be effective tools to sway consumer attitudes toward ambush marketing. It is important to note that although the events from which the

sample was chosen were not Olympic events, they did include Olympic teams. Therefore, there is the possibility the customers in the sample were more aware of the Olympic rings and more sensitive to activities including Olympic events. The other three scenarios, involving team sponsorship, television advertising, and special promotions represent activities where any potential illegality is not readily apparent and the legal ramifications are unclear.

These findings indicate sport customers are not indifferent to all ambush marketing activities as customers in this study found the Logos Scenario, which involved trademark infringement, to be objectionable in several different areas. The respondents perceived the unauthorized use of the Olympic rings logo as suggestive ($M=2.43$), dishonest ($M=1.92$), misleading ($M=1.91$), illegal ($M=1.79$), and unethical ($M=1.88$). The fact that sport consumers in this study recognized the negative elements of improper use of logos gives event organizers optimism that consumers can identify some ambush activities as inappropriate.

The licensed products segment of the sport industry provides a good example of strategies used to protect against the misuse of logos. In this area, marketers construct advertising messages to emphasize to consumers not to be misled or to avoid suggestions of an affiliation by a non-sponsor. These marketing efforts are bolstered by the existence of numerous false and deceptive advertising statutes at the federal and state levels, discussed *infra*, which provide readily available legal remedies for counterfeit or falsely labeled merchandise. Advertising messages are supplemented with labels of authenticity on the products. The challenge for marketers is to extend the notion of authenticity to other activities, such as official sponsorship, in order to protect official sponsors. To date, sport organizations have found this quite difficult and missing any meaningful legal framework upon which to build.

This study also found customers had different opinions attributable to both gender and age. In terms of gender, men and women had similar opinions for five of the six characteristics of ambush marketing. The one area in which they differed was dishonesty. Women tended to perceive the activities in each of the scenarios as more dishonest than did men. This implies ambush marketing may have different results depending on the number of women in the audience as women may be more sensitive to the dishonest aspects of ambush marketing activities.

Similarly, older and younger customers differed in several areas. Younger customers (18-39) viewed ambush marketing activities as dishonest, misleading, and unethical, which is counter to what older customers (40 and over) felt. Both age groups felt these activities were typical, but the younger group felt these activities were much less typical than did the older group.

Together, these results seem to imply that ambush marketing may be becoming less acceptable as younger generations are either more aware of ambush marketing or more sensitive to the negative characteristics of ambush marketing. This may give some validation to organizations, like the USOC and NCAA, who have adopted multi-dimensional response strategies including educational programs to inform customers about the negative aspects of ambush marketing, aggressively pursuing or threatening litigation, and restructuring sponsorship contracts to more realistically reflect their duties to curb ambush marketing.

Whereas most research concerning ambush marketing is disheartening for official sponsors and teams or leagues hoping to protect those sponsors, this study does provide a glimmer of hope as findings of this study reveal some differences between ambush tactics and the ways different consumer groups view these tactics. Identification of these differences can be of significant value to sport marketers in developing strategies to combat anticipated ambush marketing.

LIMITATIONS AND FUTURE RESEARCH

Studies conducted on Olympic fans (Lyberger, McCarthy, Seguin, & Teed, 2001; Meenaghan, 1998; Seguin, Teed, Lyberger, & McCarthy, 2001; Shani & Sandler, 1998) are beginning to produce some early indications that the aggressive sponsor protection and brand protection strategies of the IOC and local organizing committees are helping to shape consumer opinion toward ambush marketers. Similar to these studies, the preliminary results in this study warrant further study to continue to flesh out customers' perceptions of ambush marketing in order to develop better protection strategies. However, this study was limited in that it only addressed a limited number of six characteristics, and surveyed only customers attending live events. Further research should continue to identify additional characteristics and measure the significance of their impact in shaping the consumers' attitude. Further empirical research is also warranted that will expand the pool of respondents beyond the fan attending the live event to include the television viewing fan and to include fans of events beyond Olympic style events.

More importantly, future studies should investigate how perceptions of ambush marketing influence customers' image of the ambusher. This is important as corporate image has an influence on consumer product judgments (Belch & Belch, 1987; Wansink, 1989), corporate credibility (Keller & Aaker, 1992), and reputation as an advertiser (Goldberg & Hartwick, 1990). However, little is known about the extent to which corporate images are

altered due to ambush activities and how this change in image influences purchasing behavior. Future research should examine which characteristics of ambush marketing trigger changes corporate image and purchasing behavior.

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