

AMBUSH MARKETING: CREATE A BUZZ WITHOUT GETTING STUNG

Events draw huge publicity and ambush marketing is a way of associating your brand with an event without being the official sponsor, but the rules and regulations around ambush marketing have been tightened as organisers try to protect their sponsors' investment. With the Birmingham 2022 Commonwealth Games approaching, Freeths experts Simon Barker and Emma Bacon steer you through the opportunities and legal constraints of ambush marketing.

What is ambush marketing?

Ambush (or guerrilla) marketing is a planned campaign by an organisation to associate itself with an event. Large-scale events like the Commonwealth Games are a popular target, but, increasingly, companies are exploiting any events of interest, the Wagatha Christie libel trial for example.

There are three types of ambush marketing:

1. Ambush marketing by association covers a range of advertising. From brands being pointedly not associated with the event (a food and beverage company advertising itself as the food of NOT going to international football tournaments) to ads alluding to an event (a snack brand using imagery associated with an event on packaging – footballs for the World Cup for example).
2. Ambush marketing by intrusion is where a brand uses the space in, around or near a venue for publicity. For example, branding vehicles outside a stadium or giving away product to participants hoping that the product is seen inside the event.
3. Opportunistic ambush marketing is the most accessible. It works well on social media, can be creative and is suitable for any current event; Aldi, defended by Freeths, marked their settlement with M&S over caterpillar cake copyright infringement with a series of humorous social media ads.

Be aware of the legal constraints before diving in to ambush marketing

1. **Check event specific legislation** – Large events usually have specific regulation over the use of logos, mottos and keywords. The Birmingham 2022 Commonwealth Games' restrictions are deliberately general, moving away from specific words to anything that creates an association with the Games. Freeths can provide the published guidance.
2. **Look at controls on location advertising** – Regulations will set out where you can advertise and any restrictions on trading at the event. In 2009 a snack brand handed out freebies to people queuing for a sporting event, hoping that their product would be caught on camera inside. Doing similar at the Birmingham 2022 Commonwealth Games could easily be caught by their location restrictions.
3. **Watch private intellectual property rights** – When packaging a product to create an association with an event, don't stray into trademark, copyright, or design right infringement, or passing off. Be conscious of the branding, design and colours used by the event and official sponsors.

4. **Remember general advertising regulations** – Avoid suggesting that you are an official sponsor of an event if you are not. Are there official emblems or trademarks that you might be featuring or anything similar that might create confusion in an advertising context? Does using a national or regional flag suggest an association that your product or service cannot claim?
5. **Adhere to ticket terms and conditions** – Running ticket giveaways is a popular way to associate a brand with an event. Make sure that the conditions of the ticket purchase and attendance permit that – you may have to go to the official event operator to buy complimentary tickets.
6. **Scrutinise your contractual obligations** – Do you have any that restrict the marketing you can do? Do you have to follow specific brand guidelines? Have you got a contract in place with a competitor which forbids certain types of activity? As an official sponsor your hands could be tied, so make sure you understand the contractual obligations and how long they are in place for.
7. **Review general street and aerial advertising regulations** – Are you allowed to hand out flyers on that street? Can you fly a drone over that area?

For advice on ambush marketing whether you are an official sponsor or not, contact the Intellectual Property and Media team at Freeths. Simon Barker, 0345 634 2583, simon.barker@freeths.co.uk and Emma Bacon, 0345 166 6291, emma.bacon@freeths.co.uk.

Article published here <https://www.b4-business.com/news/ambush-marketing-create-a-buzz-without-getting-stung/>