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With a number of significant fixtures on New Zealand's sporting horizon, the Major Events Management Bill seeks to tackle a pressing issue – though not without controversy.

New Zealand is a country recognised for its prowess in the global sporting arena. In the coming decade, New Zealand will play host to four global sporting events with far-reaching social, economic and legal implications, beginning with the World Netball Championships this November. In 2010 the World Rowing Championships will be held at Lake Karapiro, 2011 sees the arrival of the IRB Rugby World Cup and in 2015 New Zealand and Australia will jointly host the ICC Cricket World Cup.

Looming over these events is the threat known as “ambush marketing,” where an organisation attempts to associate its name, brand, products or services with a popular event without paying for the right to do so. It is a practice that can be highly damaging to event organisers and official sponsors, undermining the event's integrity and its ability to attract sponsors in the future.

The Major Events Management Bill, introduced on 12 December 2006, is intended to address the problem of ambush marketing and, in doing so, help make New Zealand a competitive and desirable destination for future events. Its supporters hope it will be passed in the coming months. However, the Bill is already attracting its share of public controversy over a number of its key provisions.

THE STATUS QUO Traditional legal remedies have often been of only limited effect in countering ambush marketing. Until now, New Zealand has been reliant on intellectual property torts such as trademark and copyright infringement and passing off, along with broad prohibitions under the Fair Trading Act.

“While providing an adequate arsenal against fakes or other misuses of event IP, these causes of action did little to prevent the more sophisticated forms of ambush marketing,” says Peter Stubbs, partner in Simpson Grierson's Commercial department and New Zealand's leading expert in sales and marketing law. “Given the speed with which ambush marketing campaigns are carried out, the offending campaign may be over before action could be taken. If no event IP was used and the public wasn't deceived, particularly in implied-association campaigns, angry event organisers and official sponsors were often left without a remedy.”

This was the case in 1996 when BellSouth was the primary sponsor of the New Zealand Olympic Games team. Telecom published an

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advertisement featuring the word “ring” repeated five times and arranged in the format and colours of the Olympic rings logo. Beneath the image was the phrase, “With Telecom mobile you can take your own phone to the Olympics”. An application for an interim injunction was refused because, although it was clear what association Telecom was making, there was insufficient evidence that the public would assume an official sponsorship connection.

The drafting of the Major Events Management Bill was ultimately precipitated by the success of New Zealand's bids to host the 2011 IRB Rugby World Cup and the 2015 ICC Cricket World Cup. Both bids included a commitment to ensure adequate provisions are in place to protect the event sponsors.

THE PROPOSED LEGISLATION

The Bill contains the following key features relating to ambush marketing:

- the flexibility to apply it to any “major event” of international significance
- restrictions on vicinity marketing within “clean zones” around event venues
- restrictions on unauthorised “association” with the major event
- provision for declaration of official event words or emblems; and
- an increased range of available remedies, including offence provisions for intentional acts of ambush marketing.

Against international trends, New Zealand has opted for a single “major events” Bill, to cover any number of sporting or cultural events staged wholly or partially in New Zealand. In deciding what may be deemed a “major event”, the Economic Development Minister will have to take into consideration a number of factors, including the extent to which the event will raise New Zealand's international profile, generate tourism, sponsorship and international media coverage and provide any other substantial sporting, economic and other benefits to New Zealand. Events of only national or local importance, although often equally (and sometimes more) vulnerable to ambush marketing, will not qualify for special protection.

“The government has promised us flexibility in the proposed Bill, allowing it to potentially apply to any event of ‘international significance,’” says Richard Watts, senior associate in Simpson Grierson's Intellectual Property team. “What amounts to ‘international significance’ however, may be contentious. First, the international focus has already led to criticism by organisers of local events, such as New Zealand's Big Day Out annual music concert. While this is a relatively significant event, it is likely to fall outside the present definition of a ‘major event’, meaning that useful provisions

such as criminal penalties for the scalping of tickets won't apply to it." To add to this, recent comments from the Select Committee have suggested that the threshold for 'international significance' may be set so high as to exclude all but the very largest international sports events. If this path is followed, the promise of flexibility may be hollow."

Following the success of the equivalent Sydney Olympics legislation, the Bill attempts to control vicinity marketing by declaring "clean zones" around the event venue and stadia. The Bill proposes a prohibition against all unauthorised advertising and street trading in the clean zone, including that situated outside the zone but visible from within it.

The clean zone provisions have been criticised for two main reasons, both of which are likely to cause ongoing discussion. The first is the potential size of the clean zones – up to five kilometres along the main arterial routes to the venue. Parliament is in a difficult predicament, wanting to cover off arterial routes that might be some distance away, such as the road from Auckland International Airport into Eden Park. However, in doing so, it has potentially allowed for clean zones that will encompass large parts of the city.

"In both Auckland and Wellington the entire CBD is within five kilometres of the relevant stadium," says Richard Watts. "Without careful management, this provision could come under fire from non-sponsors who may see sponsorship of a major event as a ticket to push other advertisers out of key 'neutral' marketing space."

The other particular concern regarding clean zones is enforcement: the Bill is silent on who will enforce them. It has already been acknowledged, and experience in Sydney and Melbourne confirms, that police at major events generally have more pressing duties, particularly surrounding public safety, than enforcing marketing bans. There may therefore be a need for a special taskforce or enabling legislation to allow local government bodies to handle enforcement; either way, cost is likely to be a factor.

The area that is likely to ignite the greatest debate, however, is the "association" restriction. Specific words or emblems may be declared "major event emblems", enabling strict control of emblems implying official association with an event, such as a Rugby World Cup logo or even the words "Rugby World Cup". But in a direct attempt to address the growing popularity of implied-association campaigns, the Bill also proposes a restriction on representations that are likely to suggest an association between the event and the advertiser's goods or services to a reasonable person.

The association restriction is likely to be controversial, and it may be left for the courts to determine its scope. "One debatable example is the well-known case of Lufthansa painting footballs on its planes," says Peter Stubbs. "Under the New Zealand Bill, would that constitute an 'association' with the FIFA World Cup, or just with German football, or football itself? Where does patriotism end and association begin? If the term is interpreted too widely it may unfairly restrict legitimate advertisers. If it's interpreted too narrowly it may add little to the current Fair Trading Act prohibition on misleading conduct."

An association will be presumed in any circumstance where the advertiser misuses event IP, such as the event name or emblem. The Bill does provide a number of exceptions to the association prohibition, such as use in news reporting or criticism, or where

the association is necessary to indicate the intended purpose of an advertiser's goods or services.

Of all the discussion provoked by the Bill, however, the adverse public reaction that has been most surprising is regarding pitch invasion. New Zealanders have come out in surprising force against the Bill's proposed restrictions in this area. "Streaking" across pitches in few or no clothes at major sporting events has long been frowned upon in New Zealand. However, now that Parliament has proposed harsh penalties, including imprisonment of up to three months, the pendulum appears to have swung back, with many now claiming that this would be an infringement of civil liberties and – perhaps more significantly – an attack on Kiwi nostalgia. As the Government is currently finding, you only miss something once it is taken away.

A QUESTION OF BALANCE The Major Events Management Bill rejects the previous piecemeal approach and attempts to provide a more general statutory framework within which to deal with ambush marketing. It will provide robust mechanisms for dealing with counterfeits and vicinity marketing, and the introduction of offence provisions for intentional or "knowing" breaches should act as a deterrent to undertaking such activities.

Further clarification is still required regarding the delineation and enforcement of clean zones, and the implications for those conducting their usual business within these areas. When it comes to dealing with implied association campaigns, whether the Bill lives up to the Government's promise to provide a "clear, predictable and fair" regime may still lie in the hands of the courts. The need to balance the protection of the event sponsors with the reasonable freedoms of businesses, advertisers and individuals will make these challenging questions to resolve.

In April 2007 Auckland City Council announced that it is backing the Bill, but stipulated a requirement for clarification of the overlap between the legislation and the compliance and enforcement of local bylaws.

Simpson Grierson has a long-standing association with a number of New Zealand's leading sporting organisations and will be following closely the progress of the Bill. The firm has been working with Netball New Zealand in relation to this year's World Netball Championships, which may be the first major event to take place after the Bill is enacted into law. The firm previously worked with Netball New Zealand on the Fisher & Paykel series, the development of the National Bank Cup and various other sponsorship projects. Simpson Grierson's involvement in the sporting community also includes providing a range of sponsorship, policy and resource management advice to Yachting New Zealand and working with AI Grand Prix and SPARC New Zealand.

The Bill is likely to be passed in the third quarter of this year. In the years to come the issues addressed by the Bill will have widespread effect, both directly and indirectly, on a number of groups, including sporting bodies, sponsors, events organisers and local governments. From whichever side of the fence you look at it, there are turbulent times ahead. Watch this space.

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