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Dirty Trix at Euro 2008: Brand Protection, Ambush Marketing and Intellectual Property Theft at the European Football Championships

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Abstract

This article examines the strategies utilised by UEFA to protect its 'European Football Championships 2008' brand from intellectual property theft. In order to protect and maximise the value of the brand, UEFA restricted access to its intellectual property to a number of 'Official Partners', and introduced legal and practical strategies to prevent the sale of unofficial merchandise and 'ambush marketing' by other companies. However, despite these strategies, unofficial products were produced in vast numbers and ambush marketing campaigns meant that considerable confusion remained as to which companies were 'official' partners to the tournament. Additionally, conflicts between official UEFA partners and those connected with the competing teams resulted in all parties engaging in ambush marketing activity. This article details the conflicts and also revisits previous theory on ambush marketing. It concludes that rather than pursuing event-specific anti-ambush legislation, event organisers and competitors need to find consensual solutions to prevent disputes and consumer confusion which may reduce the value of commercial rights for sporting mega-events in the future.

Keywords

Sporting Events, Intellectual Property, Counterfeiting, Ambush Marketing

Introduction

This article analyses the strategies utilised at the 2008 UEFA European Football Championships in Austria and Switzerland (Euro2008) to protect the competition's brand and the value of this brand to UEFA's 'official partners.' More specifically, it will investigate the issues of counterfeiting, unofficial merchandise, ambush marketing and the conflicts between the official UEFA-endorsed brands and those of the partners of the teams competing in the tournament. The intention was to assess whether UEFA's strategies were successful in protecting the Euro2008 brand (and the association of this brand with the official partners) from counterfeiters and ambush marketers hoping to gain commercial advantage by 'piggy-backing' on the tournament but without paying a fee to the event organiser. 1

The author used the method of participant observation to assess how spectators and local participants attending matches, official UEFA 'fan zones', and other venues in the host cities, experienced the branding and sponsorship of the event. Observations were carried out amongst football supporters attending the tournament in the host nations and (to a lesser extent) the local participants already resident in the host cities, in five of the eight locations (Geneva, Zurich, Innsbruck, Vienna and Salzburg). However, in such a short period in the field 2

and with linguistic hurdles to overcome, it cannot be claimed that this was in any way a genuine ethnographic account of these groups' cultural experiences of the event involving significant immersion into their inter-subjective 'life-worlds' (Husserl, 1964; Schutz, 1972). Practical issues of time and finance meant that another limitation of the methodology was the lack of a comprehensive post-tournament assessment of identification of official partners. Finally it should also be noted that the findings are limited to the impact of UEFA's strategies within the host nations, rather than the wider television and digital audience. Bearing in mind that sponsors of such mega-events typically focus on TV audiences rather than 'direct' spectators of the event (Tribou and Desbordes 2007: 273), this was another important limitation in the scope of this research. The observations were supported by a number of unstructured and semi-structured interviews (held mainly after the event) with event organisers, partners and UEFA themselves.

The data suggested that despite UEFA's strategies, considerable confusion remained amongst spectators and local participants at Euro2008 as to which companies were connected with the event, and that brand rivals to the UEFA partners may have gained considerable commercial advantage from the tournament despite having no official connection. The findings also suggest that occasionally the official UEFA partners were themselves involved in ambush marketing at the expense of rivals sponsoring participating teams or players. These findings lead the author to challenge some of the early assumptions and judgements about 'ambush marketing' in particular. The article concludes with recommendations for the lessons that could be learnt by both UEFA and its partners and considers how this area could, and should, develop for future sporting mega-events.

Expect Emotions! Protecting the Euro 2008 Brand

The Euro2008 brand was an extremely valuable one for Europe's governing body of football. In addition to the direct value from ticket income and television revenue from the tournament matches, UEFA made €280million from 'commercial activity' around the event (UEFA, 2008: 2), mainly through sponsorship and advertising. Its strategy for maximising the return from these income streams was to appoint a limited number of 'official partners', who would be granted exclusive use of the Euro2008 trademarks in their marketing and exclusive advertising in the stadia, and in television 'slots' around the match broadcasts. Rights were divided into a number of 'brand sectors', providing the partners with exclusivity which would exclude their commercial rivals. For example, Carlsberg bought rights to be the official beer partner, Coca-Cola were the official soft drinks partner, Hyundai were the official car manufacturer and Mastercard were the official credit card. In addition, to gain the most value from hosting the event across Austria and Switzerland, UEFA appointed nation-specific partners; Austria Telekom were the official telecommunications partner for matches hosted in Austria for example.

For the sponsors themselves, the actual value of engaging in these agreements has been debated extensively and remains unclear (e.g. Nufer and Bühler 2010). Whilst most research has pointed to an increase in awareness of the sponsors from consumers of the event (e.g. Hoek et al. 1997), a survey on the impact of sponsorship of the 2000 European Football Championships found that less than 5% of respondents were 'spontaneously aware' of ten of the 12 official sponsors (Institut Français de Démoscopie, 2000, in Tribou and Desbordes 2007: 283). It is clear that what increase in awareness occurs does so only after substantial additional expenditure on advertising (Tribou and Desbordes 2007: 275). Even then, there is considerable doubt that this awareness is transformed into an actual increase in sales, even amongst the most 'high involvement' fans (Pitts and Slattery 2004), a goal that remains the primary concern for event sponsors (Morris and Irwin 1996).

Nevertheless, in order to make these partnerships as valuable as possible to the sponsors, UEFA attempted to limit access to the 'goodwill' surrounding the tournament to prevent companies who were unable - or unwilling - to pay to become official partners from using the event for their own commercial benefit. These companies included the manufacturers of unofficial merchandise and providers of goods/services in the same brand sectors as the official partners and who wished to 'piggyback' on the tournament in a manner known in management, marketing and legal studies as 'ambush', 'parasitic' (Bitel, 1997: 12) or 'guerrilla' (Johnson, 2008:24) marketing. By reducing the access of the 'ambush marketers' to the tournament, UEFA believed that the value for official partners in increased awareness and sales would be greater, due to the potential confusion and clutter that can result from unchecked unofficial marketing activity (see Shank 2005: 360). This would in turn keep the value of these agreements high, which UEFA have argued is vital for the health of the game because profits from the tournament are re-distributed back into European football.

Legal protection existed in both Austria and Switzerland to protect against ambush marketing from laws on trademarks and unfair competition. Therefore UEFA registered a series of Euro2008 trademarks in the host nations and further afield. These trademarks included the phrases, 'Euro 2008 UEFA Austria-Switzerland', 'UEFA European Football Championship', 'Austria/Switzerland 2008', 'EM 2008' and 'Euro 2008', the tournament logo, images of the Henri Delaunay trophy, the official mascots 'Trix and Flix'¹ and the tournament slogan "Expect Emotions!" The registrations meant that any company using one of the trademarks, or a similar mark that could

lead to confusion on behalf of the consumer, would be acting unlawfully. Before the tournament began UEFA's lawyers undertook a number of high profile cases against trademark infringement by producers of unofficial merchandise. These cases brought significant media criticism upon UEFA, but were also credited by the organisation with deterring many future trademark infringements (Interview, 12/11/08). The unfair competition laws in both host nations provided further protection, preventing companies with no license from misleading the public that they had an official connection to the event. However, these legal remedies did not provide watertight protection for either UEFA or its partners. Trademark law restrictions meant that many of the words (e.g. 'football', 'euro', 'champions') and images (e.g. that of a football, a football player or a national flag) that could be used to suggest a connection with the tournament could not be protected individually.² Furthermore, unfair competition legislation provided protection only in cases where companies were misleading their customers as to an official connection and in doing so were directly harming a competing partner. More subtle methods whereby rival companies used the event for their own commercial gain through ambush marketing were, as we will see, not legally prohibited. UEFA's requests for specific anti-ambush legislation, such as that which exists around the Olympic Games, were refused by both Austrian and Swiss Governments following lobbying from civil rights groups (Interview, 12/11/08).

Football Emotions! Unofficial Merchandise at Euro 2008

One direct source of income from the tournament would come from official merchandise featuring Euro2008 trademarks. T-shirts, hats, scarves, flags, key-rings, and 'Trix and Flix' toys were produced featuring the official trademarks, to be sold in grounds, fan-zones, supermarkets, shops and stalls in the host cities and beyond. Production of unofficial and counterfeit Euro2008 goods was one obvious method for those who wished to make money from the tournament without paying a license fee to the organisers. UEFA attempted to counter this through the registration of trademarks (both ones they used and ones they feared might be used by unofficial producers), rigorous early enforcement of these trademarks through the courts³ and a close working relationship with customs in both Austria and Switzerland to prevent counterfeit goods entering the host nations. 8

In terms of preventing trademark breach, UEFA's strategy was a success. Over 200,000 counterfeit items were seized by customs as they came into the host nations (Interview, 12/11/08), and observations around the host cities during the tournament, uncovered virtually no counterfeit goods featuring UEFA's trademarks. Unofficial use of the Euro2008 marks were typically limited to very low-level infringements, for example on chalkboards advertising screenings of matches at bars and restaurants, or on items sold at cake stalls. Such breaches appeared to be little threat to the Euro2008 brand, and arguably enhanced its value, essentially advertising the tournament – and the opportunity for exposure of the official partners' advertising – in very positive ways with which local participants could connect. Trademark breach that would be damaging to UEFA in terms of lost income from merchandising was virtually non-existent on the streets of the host cities. UEFA may have received strong media and popular criticism for their early trademark enforcement, but their strategy appeared to succeed in keeping counterfeit Euro2008 products away from the host nations. 9

This did not stop unofficial merchandise being produced and traded, it merely meant that these goods could not bear the official trademarks. Throughout the host nations, shops and stalls were full of unofficial merchandise, and producers of such goods developed ingenious methods of suggesting a link to the tournament without breaching UEFA's trademarks. T-shirts and hats bore slogans such as "Hopp ('Go') Suisse", "Fan 2008 - Innsbruck", "€08," and in one case, "Football Emotions!", obviously with reference to the official Euro2008 slogan. Most of these goods were borderline breach of domestic unfair competition legislation but were unlikely to result in legal action, particularly where the commercial damage was minimal, the outcome of a legal case would be uncertain, and the adverse public relations could be damaging to UEFA. Legislation requested by UEFA to make such goods illegal would have made it significantly easier to stop the sale of some of these goods, but it would have run the risk of increased criticism on the grounds that the tournament organisers were being 'greedy'. This accusation could already be seen around the host cities, with dozens of stickers on lampposts and telephone boxes bearing the UEFA logo but replacing the motto "We Care About Football" with, "We Care About Money". 10

However, the situation for the competing nations and their national associations was significantly different. 11 Observations revealed substantial amounts of counterfeit goods, unofficial 'copies' and other merchandise that breached the trademarks of the National Associations (e.g. the French Football Federation cockerel) of the competing nations. Stalls and shops in the host cities were openly selling fake team kits featuring the trademarks of the associations and their kit manufacturer. One mini-market had even been constructed against the back fence of the official UEFA fan-zone in Geneva, selling counterfeit replica shirts. In other host cities, street traders were seen selling fake replica shirts within the official fan-zones. On occasion, UEFA enforcement teams operating in the fan-zones and around the stadia were seen moving street traders on, but generally observations indicated that whilst UEFA and customs were very strict in terms of preventing breach of the UEFA and Euro2008 trademarks, they did not consider it their job to protect the intellectual property of the competing

nations (Interview, 12/11/08).⁴

'Power to the Fans!' Ambush Marketing at Euro 2008

The second way in which companies with no connection to the Championships attempted to gain a commercial advantage from the tournament was through ambush marketing. It has been argued that serious academic work on ambush marketing is scarce (Meenaghan, 1998a: 302; Sandler and Shani, 1989: 11) and that early scholarship in this area has failed to agree even on a definition of the term (see Bailey, 2006: 4; Hoek and Gendall, 2002: 74), never mind develop comprehensive arguments as to whether the practice is commercially harmful or unethical (Sullivan and Murphy, 1998: 364). There is no accepted definition of exactly what practices are encompassed within (and excluded from) the term (Hoek and Gendall, 2002: 74), and Portlock and Rose have gone as far as suggesting the term is redundant to modern sports marketing, and that the term "parallel event marketing" is more appropriate (2009: 284). Shani and Sandler define ambush marketing as, "a planned effort (campaign) by an organization to associate themselves indirectly with an event in order to gain at least some of the recognition and benefits that are associated with being an official sponsor" (1989: 11). Meenaghan argues that it, 12

...involves the unauthorised association with an event or activity for commercial purposes by a brand owner. This association (...) has the effect of misleading the consumer into believing that the ambushing brand is the sponsor, thereby encouraging the goodwill that is normally returned to the legitimate sponsor. (1998a: 302)

Bitel is rather more judgemental: 13

The central aim of the ambusher is to lie. They want to sell the public a lie, namely that their product has a connection with the sports event or person being used, or more accurately abused, and therefore to enhance the reputation of their product (1997: 12).

Ambush marketing at Euro2008 occurred when companies that had no official connection with the tournament, and had not paid a license fee to UEFA to use their logos, implied a connection with the tournament through the marketing of their goods and services. It is argued that ambush marketing harms the official partners who have paid for the exclusive rights to use the event trademarks because it reduces the value of their partnership in the eyes of the consumer (Meenaghan, 1998b: 306; Sullivan and Murphy, 1998: 355) and may also provide an unfair and undeserved advantage to rival companies who are indulging in this kind of campaign (Payne, 1998). Furthermore, it has been claimed that the danger of ambush marketing to event rights holders such as UEFA is that it will reduce the value of their 'exclusive' rights to their partners for future events (Couchman and Harrington, 2000: 15; Meenaghan, 1998b: 306; Payne, 1998: 331; Townley, 1998: 334). However, to what extent, if at all, this damage occurs tangibly has yet to be proven. 14

Moreover, the condemnation of ambush marketing on ethical grounds, which appears to be the dominant narrative from both sports governing bodies (in particular the International Olympic Committee), and many of those writing on the subject from marketing, management and legal perspectives, should not go unquestioned. As we will see, often those who are involved in ambush marketing have invested significantly in the event, either from the perspective of the local host city, or the competitor nations. Furthermore, the official sponsors themselves are occasionally involved in their own ambush marketing. In addition to this, research has suggested that the consumers and supporters of such events are typically not morally opposed to the ambush marketing events of non-affiliated companies (Chartered Institute of Marketing, 2000; see also Portlock and Rose 2009: 284). Indeed, observations of the success of ambush campaigns at Euro2008 showed that fans were keen to buy or wear products that were part of these campaigns, particularly where the ambusher was a sponsor of the national team. Many of the campaigns could not have been successful without the support of fans and local participants. 15

UEFA were rigorous in preventing unofficial usage of their trademarks from the outset, so companies wishing to indulge in ambush marketing needed to be more subtle in their approach, avoiding use of any UEFA trademarks (or slogans/logos that could be confused with UEFA marks) and also avoiding suggesting to the consumer that they were official sponsors of the tournament, which would be a breach of local laws on unfair competition. However, in the absence of the anti-ambush legislation requested by UEFA, there were still a number of ways in which companies could use the goodwill existing between the tournament and football fans in order to market their product. Ambush marketing in both Switzerland and Austria was rife and the following section will provide a flavour of some of the ambush marketing campaigns observed. 16

In Switzerland, Swiss International Airlines used the tournament to market extensively at airports, on public transport and on advertising hoardings around the host cities. Fans disembarking S.I.A. flights were given chocolate footballs with the corporate logo, and billboards at luggage reclaim and in arrivals showed football 17

fans waving flags of the participating countries under the slogan "The Airline for all Fans". This campaign was also extensive in Geneva where trams taking fans to the fan-zones and the stadium were painted with images of fans hanging out of the tram windows, and the 'Airline for all Fans' slogan. S.I.A. even had a logo at the bottom of their posters of a 'matchstick-man' on a green background to give it the air of authenticity. The logo had no connection to UEFA but the campaign gave the impression that S.I.A. existed in an official capacity at the tournament. The marketing campaign was not illegal in any way, avoiding using any trademarked logo or slogan and not even mentioning words such as "European", "Championships" or "Football". The campaign was also aided by the fact that national flags cannot be trademarked.

Mars and Heinz suggested a connection between their product and the tournament in Switzerland by declaring allegiance to the Swiss team on the packaging of their products. Heinz printed "Hopp Suisse" on their bottles of ketchup whilst Mars also printed "Hopp" on its wrappers, and used the slogan, "Power to the Fans". Both slogans would be fairly meaningless but for their timing and context. Other companies such as B-Win (a gambling company involved in football sponsorship) adopted a more direct approach, positioning women wearing short skirts in corporate colours outside train stations serving the stadia handing out B-Win balloons to fans. The scale of the ambush marketing in both Austria and Switzerland was such that it was impossible to walk down a street in any host city without seeing references to the tournament in virtually every shop window and advertising hoarding. Pured potato producers requested that the Austrian team should 'pulp' the opposition, lingerie shops placed red and yellow cards down bras worn by mannequins holding footballs, and almost every pastry shop sold cakes in the shape of footballs or in the national team's colours. None of these companies had paid any fee to UEFA for the right to connect their products with the tournament, in stark contrast to the official partners, but all were able to utilise the goodwill surrounding Euro2008 in order to market their goods (however irrelevant to football) despite being unable to use the tournament logo or the words "Euro2008". 18

Of course, not all of this ambush marketing was necessarily damaging to UEFA or its partners. Whilst it could be argued that the connection of some companies with the tournament perhaps undermined the Euro2008 brand (due to 'low quality' goods or 'low prestige' companies), for the most part the ambush marketing served only to advertise the tournament on behalf of UEFA. This may have increased interest amongst locals, meaning larger attendances at fan-zones and higher television viewing figures, both of which exposed more consumers to the marketing of the official partners. However, the aforementioned cases did not infringe upon the brand sectors of the official partners. Of more concern to UEFA and its partners was ambush marketing by companies who were operating in the same brand sectors as the official partners. It was particularly noticeable that companies who have traditionally marketed around football (many of whom were concurrently sponsoring other UEFA 'properties' such as the Champions League) were involved in ambush marketing to imply that they, and not their rivals, were connected to the Championships. Again, it is difficult for companies to adopt an ethical standpoint on the issue when they are themselves involved in this type of activity at other events, sometimes concurrently. 19

Two of the most important sponsors for a football tournament are the official beer supplier (for Euro2008, Carlsberg) and the official kit manufacturer (Adidas). However, many of their brand sector rivals are also heavily involved in football sponsorship, and a number of ambush marketing campaigns by these companies were observed during Euro2008. In Zurich, Adidas's rivals Nike and Puma both advertised heavily to suggest a connection between their goods and the tournament. Nike hung a giant banner advert featuring a football player and the Nike 'swoosh' from scaffolding on a building next to the official fan-zone, visible to those watching the matches on the big screens. Meanwhile Puma hung banners with the slogan "Republic of Puma Football" across the official UEFA 'fan walk' from the train station to the stadium. The ambushes by Nike and Puma, due to their size and positioning, clearly suggested to those in the fan-zone and/or walking to the stadium that it was these companies, and not Adidas, who were officially connected to the tournament. Carlsberg was also the 'victim' of ambush marketing; in Austria the local beer Fahrenburger advertised itself as the "Unofficial Fan Beer" and Heineken (who sponsor the UEFA Champions League) set up stalls near the stadium in Salzburg and distributed Amstel hats to fans. All these activities are problematic if you believe that rival companies taking advantage of an event in such a way to advertise their products will reduce the direct commercial value of entering into a partnership contract with UEFA for 'exclusive' access in a particular brand sector. 20

However, in terms of the size of the audience for an ambush marketing campaign, painted trams and advertising hoardings were of limited impact when compared with the potential TV market for the matches.⁵ For the widest possible exposure, an ambush marketer would need to get their advertising inside the stadium and onto the live broadcast. Attempts by ambushers to achieve this at previous sporting events have been well documented; the most popular method is to distribute free clothing or headgear to fans before they enter the stadium and then hope it is picked up by coverage of the event. Efforts to prevent such campaigns have centred on ticket conditions and stewarding. With access to most high-profile events restricted to ticket holders, event rights holders typically make entry conditional to a search by stewards/security personnel who have the right to 21

deny entry to anyone advertising non-official brands. Normally stewards will request that any merchandise identified as being part of an 'ambush' campaign is removed (usually into bins placed by the turnstiles) before entry is granted. However, this practice has led to some public relations disasters for event rights holders, with stories of children in tears having their new favourite hat being taken by stewards (or having the offending logo literally cut out with scissors), and of groups of drunken football fans taking offence at being asked to remove their shirts before entry. At the 2002 Cricket World Cup in South Africa, spectators entering the stadia had bottles of Coca-Cola confiscated (and in some reported cases were ejected), and labels were torn from bottles of water (Shank, 2005: 339). This behaviour had a negative impact upon consumers and Pepsi, the official soft-drinks sponsor of the World Cup, attempted to distance themselves from the situation (The Financial Times, 2/9/03: 6). At the FIFA World Cup in 2006, Bavaria beer attempted to ambush games involving the Dutch national team by distributing branded lederhosen, in the hope that stewards would prefer the offending item in the stadium rather than risk either trying to deny large numbers of Dutch fans entry or allow them entry wearing nothing other than their underwear (in the event, stewards tried to cover up the Bavaria logo) (Miller, 2008: 46; Author's Observation, 16/06/06).⁶

At Euro2008, there were several attempts to get ambush marketing campaigns in the stadium, the most successful being by Vodafone at the matches played by the Greek national team. Vodafone were the official telecommunications partner of Greece (as well as being a partner for the UEFA Champions League), but they had no official connection to the tournament. In order to get their brand inside the stadium, Vodafone held a pre-tournament competition for Greek fans, the prizes being replica team shirts, but bearing the Vodafone logo.⁷ In the immediate build up to the Greece v Russia group stage match, hundreds of these were being worn by Greek fans. In addition to this, Vodafone employees distributed free branded baseball caps to fans, and set up a stall near the stadium where supporters could watch Euro2008 matches and pick up the caps and other merchandise. The result was a sea of non-official corporate logos descending on the Greece supporter sections of the stadium. The situation was confused slightly by the fact that the official telecommunications partner (for the Greece matches in Austria) was Austria Telekom, who had links with the Vodafone network through their subsidiary, Mobilkom Austria. As such, although there initially appeared a brand sector clash, there may not have been significant pressure by Austria Telekom to prevent Vodafone's marketing. Irrespective of the links, from within the stadium the campaign provided considerable confusion. 22

From interviews with the event organisers and knowledge of previous examples of this kind of 'ambush', it was expected that match-day stewards would remove the caps at the entrances to the stadium. However, the fans were allowed to proceed into the ground whilst wearing the headgear (a subsequent interview with UEFA did not suggest that the link between the companies influenced the decisions of match-day stewards to allow clothing featuring the Vodafone logo into the stadium). Once inside the stadium it was clear that Vodafone's unofficial campaign – within the venue at least – had been a success due to the fact that its logo was as prominent as any of the official partners, and certainly more so than Austria Telekom. Judging the success of the campaign to television audiences was more difficult; whether the confusion apparent inside the stadium was reflected on the wider television audience would require further research. However, from viewing the television coverage after the game, although there were very few shots of the crowd during the match itself, footage of the Greek fans inevitably picked up the Vodafone logos. It also proved impossible to clarify to what extent the footage of the match was controlled (or censored) to avoid picking up ambushes such as this. Both Austrian and Swiss public television stations made this accusation but UEFA's official line was that no censorship took place of match footage (EU Football Business, 2008). However, 'censor' is a very loaded term and may suggest a doctoring of pre-existing footage. It does, of course, go further than this and it is difficult to imagine that UEFA would not instruct a match director to avoid showing, for example, an offensive crowd flag or an orchestrated ambush marketing crowd mural. Furthermore, an interview with one UEFA employee suggested that where organised ambush marketing strategies were in place, directors would be instructed to avoid crowd shots where the offending items were on display (Interview, 12/08/08). 23

Greek Villages and Viennese Beaches: Unofficial 'Fan Zones'

As we have seen, for fans attending Euro2008, and locals upon whom this tournament - and its international sponsors - descended, there was considerable confusion as to who were the official sponsors of the tournament. Those attending matches were as likely to be confronted by brands such as Heineken, Vodafone and Nike as they were with the branding of the official partners. This confusion was further exacerbated by a number of unofficial fan-zones that were set up in the host cities and elsewhere. In addition to the official fan-zones, UEFA also issued licenses to anyone wishing to organise a public screening of matches. This was defined as screens of more than three metres in diameter; for screens smaller than this, or for non public screenings (e.g. in bars), no license was required. UEFA issued 5,390 licenses for Euro2008 (UEFA, 2008: 5) and one condition of the license was that sponsors in the same brand category as the official partners could not be connected with the screening (Interview, 12/11/08). There were a number of these screenings in the Euro2008 host cities and all set themselves up in the same style as the official fan-zones; fenced off areas with a big screen, controlled entry and their own 'partners' advertised on hoardings around the perimeter and surrounding the screen. 24

Furthermore, the screenings advertised themselves by using terms like "Fan City", and "Fan Arena" (although they were prevented from using Euro2008 trademarks). In one of these Fan Arenas, Bitburger lager was a partner, clearly a brand sector competitor (albeit on a local scale) to Carlsberg. Again, those attending these licensed screenings were bombarded with the marketing of companies unconnected with the tournament, and in some cases direct brand sector competitors to the official partners.

Further confusion was also caused by the actions of national football associations and their partners in their attempts to create zones for their fans. In Salzburg, the Greek FA set up a zone for its fans near the stadium called 'The Greek Village'. This 'village' consisted of a big screen, although marginally less than three metres in diameter, and stalls for many of its official partners. The screen was surrounded by the logos of the official Greek FA partners with included brand sector rivals to official UEFA partners of 'Goody's' (fast food), Piraeus Bank and the already discussed Vodafone situation. Vodafone and Piraeus distributed Greek shirts and hats with their branding to be worn in the stadium and Vodafone set up a tent where fans could watch matches. The village was serviced by a Heineken beer stall. Therefore for fans attending the Greek Village there existed a completely alternative set of official partners to the tournament, in the brand sectors of telecommunications, financial services, fast food and beer. 25

Expect Confusion! UEFA and its Partners Ambush Back

The picture that has been painted so far suggests that UEFA and its partners were the victims of third party counterfeiting, producers of unofficial merchandise and ambush marketers who damaged the value of the Euro2008 brand and its 'official partner' status, and caused confusion for the supporters. This explanation reflects the traditional view taken of ambush marketing of sports events, which describes the ambusher as a 'parasite' (Bitel, 1997: 12) or 'thief' who takes from the event but contributes nothing in return (Couchman and Harrington, 2000: 22). This position is summarised by Payne, who argues that, 26

The reality, increasingly recognised by an informed public, is that ambush marketing is a deliberate attempt to deceive the consuming public, thereby achieving an undeserved advantage for a company that passes itself off as a sponsor, but pays nothing to support the event or its participants (1998: 324).

However this does not tell the whole story and far from being a 'one-way' process of ambusher and victim, as previous research has suggested, ambush marketing at Euro2008 was much more complex. Indeed, ambush marketing at mega-events such as these is actually a two-way process, where on occasion the company that has put in the financial backing for a participant becomes the victim, marginalised at what should be its moment of triumph by the official event partners.⁸ 27

The same can be said of established local companies who have been involved in sponsoring local organisations or facilities and may have played an important role in actually bringing the mega-event to the host nation/city, but are then economically excluded by the official partnership agreements. Such a situation occurred at the 2010 football World Cup in South Africa, where Puma, who have a reputation of long time supporters of African football, found themselves largely sidelined by the official partnership between FIFA and Adidas. This 'privatisation' of public space around event venues by multi-national corporations can certainly be criticised for restricting the opportunities for local or regional 'ownership' of such mega-events. It may also partially explain why fans and local participants fail to 'buy in' to the arguments of governing bodies about the dangers of ambush marketing and instead assist many of the unofficial campaigns. 28

Furthermore, observations revealed that UEFA and its official partners were, to varying extents, involved in their own ambushes targeting the official partners of the competing nations. As we have seen from the example of the Greek Village, each competing nation came to the tournament with its own official partners, including kit manufacturers, official beer and various other (mainly domestic) companies in different brand sectors. Occasionally there was synergy, most typically where Adidas manufactured the kit, Carlsberg were the official beer or Coca-Cola the official soft drink. However, in many cases, rival companies to the official UEFA Partners sponsored the participants including Nike, Puma, Heineken, Tyskie (Polish beer), Pepsi-Cola and Goody's (Greek Fast Food). Where clashes existed between UEFA partners and participating teams' partners, UEFA rules specified that press conferences had to be held in 'clean' environments with no sponsorship on view (Interview, 12/11/08). However on the football pitch, the participating teams were surrounded by adverts from the official sponsors and only their kit manufacturer was visible. 29

Away from the stadia, both UEFA and some of their official partners were able to take advantage of the Euro2008 logo to 'ambush' the national teams' partners. UEFA produced a series of official Euro2008 national team shirts, in the colours of each national team, sporting the Euro2008 trademark on the sleeve and using that nation's flag (which, as we have seen, could not be trademarked by the national association) as the badge. These were sold in host city sports shops, stalls in train stations and fan zones and in the stadia themselves, 30

often alongside the official team kits. The UEFA shirts were significantly cheaper than the replica team shirts and sold well to fans wanting to identify themselves with their national team (fans at shops were observed referring to the UEFA shirts as being, for example, 'the Austria shirt', before purchasing them). However, in producing these national team shirts, UEFA were producing their own unofficial team kit, potentially taking sales away from the national associations and the kit manufacturer.

Some of the official partners were also involved in ambushes of brand sector rivals who sponsored the national teams. The best example of this was witnessed in Zurich train station, where Adidas constructed a ring of giant player statues in the foyer representing the 16 competing teams. At first glance these were all wearing the official team strip, sponsored by Adidas (all had the Adidas logo on the shirt and the distinctive Adidas stripes on the shorts and socks). However, not all of the competing nations were sponsored by Adidas. Closer inspection of the statues revealed that the players representing nations sponsored by Nike or Puma were not actually wearing the official kit, but were wearing an almost identical strip in the same colours with the kit manufacturer replaced by Adidas and the national association trademark replaced by the national flag of that country. Here Adidas were in effect ambushing the kit manufacturers of those nations, suggesting to the consumer that it was in fact they who performed that role for the national teams. 31

Conclusions and Recommendations

This article has looked at the practical and legal strategies employed by UEFA to protect the intellectual property rights inherent in the 2008 European Football Championships (Euro2008) through the production of official merchandise and the creation of exclusive 'Official Partner' sponsorship arrangements. It has assessed the success of these strategies in preventing third parties to these agreements producing unofficial merchandise and ambush marketing the event. One of the most obvious and already well-trodden conclusions to be drawn is that the trademarking of logos (even when combined with the usual unfair competition/passing off laws) is insufficient to ensure protection against third parties trying to make money from the event. However, with the right network and relationships in place with customs, police and local authorities, it can be very effective in preventing trademark breach and counterfeiting. Indeed, knowing the limitations of the law, UEFA requested further legislation to protect against ambush marketing and unofficial products. Such legislation has been enacted to protect against the actions of unofficial traders at the 2012 London Olympics, the 2012 UEFA European Championships and in South Africa for the 2010 World Cup. The research at Euro2008 demonstrated that normal trademark and unfair competition law would protect against trademark breaches but that, no matter how strictly it was enforced, such laws could not protect against more subtle unofficial products or forms of ambush marketing. 32

Certainly in the host cities at Euro2008 there was considerable 'brand clutter' between official UEFA partners, official participating nations' partners, international brand sector competitors to the official partners and unconnected local companies hoping to increase trade as a result of the event. This 'clutter' inevitably led to confusion amongst those attending the event as it appeared very difficult for fans and local participants to be clear as to what was the 'official' beer, fast food, or telecommunications partner of Euro2008. Clearly more research needs carrying out in this area if companies are paying substantial sums in the hope that fans will connect their brand, rather than that of a rival, to the event. It would appear that event rights holders believe that additional legislation banning the combination of key words that could be used to suggest a connection with the event⁹ will help prevent against this confusion and subsequent loss of income. However, is this the case? The research carried out at Euro2008, albeit of limited scope, suggested that unofficial products that would be outlawed by such legislation, although plentiful, were not popular with fans. Crowd observations revealed very few fans wearing such goods and no individual was witnessed actually purchasing such items. Local fans appeared much more interested in purchasing official UEFA products (far more than the official Austria and Switzerland football association products). On the face of it, little damage was being caused to UEFA or the tournament by these goods. Moreover, the prevalence of such goods (in the shops if not on the actual fans and local participants) acted as free advertising for the tournament, and through this, exposure of the official partners to those viewers. The host cities were blanketed with unofficial goods and adverts referring to the tournament and rather than damaging the tournament or taking money from UEFA and its partners, these had the potential to increase the profile of the event and its potential commercial value. Euro2008 also demonstrated that the damage that can be caused to an event rights holder due to the bad publicity of being seen as 'greedy' through pursuing such draconian legislation could potentially outweigh any commercial advantage. 33

More significant damage to UEFA's interests may have resulted from ambush marketing by brand rivals of official partners, as marketing theory suggests that this may reduce the value of future exclusive sponsorship agreements (although no hard evidence for this assumption could be found). Here it was found that many significant ambushes would not be prevented by additional legislation akin to that introduced for London 2012 as the suggestion of a connection with the event came through context and location of the marketing, not through the misleading choice of words or logos. Distribution of goods from brand rivals and advertising in the 34

host cities that did not directly refer to the tournament would not breach the 'specific expression' provisions of the legislation,¹⁰ but still resulted in significant clutter and confusion, especially where brand rivals were partners of the participating teams and had access to fan events such as the Greek Village.

However, if ambush marketing reduces the value of the brands of mega-events such as Euro2008, how can event rights holders such as UEFA best go about protecting their brand and the value of exclusive sponsorship deals for the future? The observations suggested that most of the serious attempts at ambush marketing came from companies who are already involved in sponsorship of football and other sports. As such, there will be avenues of communication already open that should be utilised to a greater extent to persuade these companies not to engage in ambushes. Clearly event rights holders would not wish to threaten potential future sponsorship agreements with these companies (e.g. by blacklisting potential sponsors) as this could reduce the overall value of their rights. However, there are other ways in which such companies could be persuaded to 'keep their distance' from events they are not officially sponsors of, particularly where these companies are also sponsors of the participating teams. 35

As we have seen, UEFA and its official partners have themselves been involved with 'ambush' strategies of various kinds, from the production of unofficial national team shirts to the ambushing of kit manufacturers by the official UEFA supplier. To truly understand the phenomenon of ambush marketing we need to develop on existing explanations and realise that it is far more complex than a simple 'one way' process of ambusher and victim. Instead, ambush marketing should be understood as an ongoing process that develops from one event to the next and in which the 'ambusher' one year may be the 'victim' the next. We also need to acknowledge that sometimes 'unofficial' sponsors are genuine and legitimate stakeholders to an event, most often through the teams participating in it. The traditional view of the ambush marketer being a parasite and thief who gives nothing back to the tournament simply does not stand up to scrutiny when viewed in the context of a national sponsor who has supported a team through qualification and suddenly finds itself not only marginalised, but also possibly ambushed by the official partners. These, and local companies, have often invested significantly prior to the event and are popular with fans and local participants. 36

An agreement on respecting the rights of participating national associations and allowing them more freedom to make money from the event is one potential way in which UEFA could encourage participating teams' sponsors – through the national association – to respect the official partners to a greater extent. Another way in which event rights holders could encourage adherence to the 'spirit' of the exclusive event partner is to coordinate efforts against counterfeiting of national kits. At Euro2008, whilst UEFA (in conjunction with customs and local authorities) were strict and highly successful in preventing counterfeit UEFA goods being sold, they did little to protect the trademarks of the competing nations. Giving competing nations more of a stake in the anti-intellectual property theft strategies of an event could encourage compliance and respect of the intended exclusivity of official partners. It seemed absurd that at Euro2008 it was companies with pre-existing commercial and legal ties with UEFA and the competing nations at Euro2008 that were the most active in the ambush marketing of the tournament. Sporting mega-events with very valuable brands will always remain the target for counterfeiters and companies who cannot afford to pay for official sponsorship rights, but existing trademark and unfair competition laws should be sufficient to deal with these infringements. If rival sponsors of participants and other events wish to infringe paid-for 'exclusivity' agreements then the event organiser should take the responsibility of managing the situation through their existing networks, rather than pressurising local governments to introduce draconian laws that risk further disenfranchising local participants and visiting fans. 37

Unfortunately it appears that the rights holders for sporting mega-events will continue to pressurise governments to introduce such legislation rather than look to more consensual solutions. The 2010 FIFA World Cup in South Africa saw an amendment to the Merchandise Marks Act that made certain statutorily-defined ambush marketing activities unlawful and led to a number of court cases, for example against a restaurant in Pretoria which adopted its signage to refer to the tournament (Blackshaw 2010: 37). Local street traders were required to decant unlicensed drinks into non-branded bottles and the low-cost airline Kulula was forced to withdraw a number of humorous ambush marketing advertisements referring to the "You-know-what" (Reuters, 2010). In the most high profile case, a group of Dutch women wearing non-branded orange mini-dresses were ejected from a stadium, detained in FIFA's offices and threatened with arrest after it was alleged they were part of a Bavaria beer ambush marketing campaign (The Guardian, 15/06/10). FIFA's enthusiastic enforcement was inevitably criticised by the world's media and forced the organisation to engage in a public relations battle to defend its practices. Similar legislation was also in place for the 2012 European Championships and the 2012 London Olympic Games. It seems inevitable that upcoming sports tournaments will see the cycle of ingenious ambush marketing, draconian counter-measure and P.R. struggle continuing for the foreseeable future. 38

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1 Although in doing this, UEFA were subject to a copyright challenge by an artist who claimed the characters were derived from his own cartoon foxes 'Fix' and 'Foxi'.

2 Although trademark laws differ between EU states, it is typical for generic words, non-distinctive words or descriptive words or phrases to be excluded from trademark registration.

3 UEFA undertook 569 cases of IP infringement in 49 different countries (UEFA, 2008: 5).

4 UEFA argued that they were not in a position to protect competing nations' I.P. because they did not have sufficient information on their trademarks or products (Interview, 12/11/08).

5 UEFA recorded that each match was viewed by at least 155 million viewers (UEFA, 2008: 5).

6 Bavaria also distributed branded underwear in case stewards asked fans to remove the lederhosen.

7 The wearing of this logo on shirts at official UEFA international games is prohibited by tournament rules.

8 This points to a much more complex situation for the 'high involvement' fan who is expected to be most heavily influenced by sports sponsorship than has been previously suggested (e.g. Meenaghan 2001, Pitts and Slattery 2004).

9 The London Olympic Games and Paralympic Games Act 2006 (Schedule 4, ss.1-3) for example prohibits the unauthorised use "in a manner likely to suggest to the public that there is an association with the London Olympic Games" of a combination of words from 'List A' (including '2012', 'twenty twelve' and 'games') and 'List B' (including 'London', 'sponsor', 'medals' and 'summer').

10 Although activity of this nature close to the venues may breach regulations on advertising and trading in the Olympic 'exclusion zone'.