

A massive global audience is predicted for the upcoming FIFA Women's World Cup in Australia and New Zealand. Official advertisers and sponsors have paid substantial sums for exposure during the event. Other businesses may be thinking of ways to gain from the exposure that the event receives but without paying. New Zealand has laws stopping this "ambush" marketing and anyone not officially associated with the event will need to avoid falling foul of the laws.

WHAT IS AMBUSH MARKETING?

Ambush marketing involves free-riding on the exposure to a major event without paying to be involved. Essentially, brands aim to associate or link themselves with the event's goodwill, public interest, and fan base, without the cost of official sponsorship.

AMBUSH MARKETING LAWS

The Major Events Management Act 2007 (**MEM Act**) protects events designated as "major events" from ambush marketing, ticket scalping and pitch invasion during the specified protective period around the event. The MEM Act's ambush marketing laws seek to prevent unauthorised commercial exploitation of major events at the expense of organisers and their sponsors.

Examples of events previously protected by the MEM Act include FIFA U-17 Women's World Cup 2008, Rugby World Cup 2011, World Masters Games 2017 and the 36th America's Cup.

PROTECTIONS FOR THE FIFA WOMEN'S WORLD CUP

The MEM Act provides the following protection for the FIFA Women's World Cup:

1. **Ambush marketing by association**

Ambush marketing by association, as the term implies, involves a business seeking to link itself with an event, team, or player, etc. without permission. Under the MEM Act, you cannot imply any association with FIFA or the FIFA Women's World Cup – unless of course you are authorised.

Businesses must take care not to create an unauthorised association or link with the event, including through the use of designated major event emblems or words (or words and emblems that so closely resemble major event words or emblems that they are likely to deceive or confuse). Under the MEM Act, the use of designated words and emblems may lead to a presumption of association in breach of the Act.

The words and emblems designated for the FIFA Women's World Cup include "FIFA", "FIFA Women's World Cup", "Football Women's World Cup" and official logos. There are also a wide range of words which if used in combination may lead to the presumption of association with the event.

The combined words come in two lists and the provision applies if words from the two lists are used together. The first list has the following words: "Football World Cup", "FWWC", "WFWC" and "World Cup Football". The second list has a range of words that are relevant to the event. Those words include "2023", relevant NZ and Australian cities and a range of other terms that are related to the event. The complete list is available [here](#).

Ambush marketing can also infringe the trade marks, copyright and other intellectual property rights of the event owner or sponsors.

2. **Ambush marketing by intrusion**

Ambush marketing by intrusion is where a business attempts to gain visibility at or near an event without permission or official sponsorship. This could be through various means, such as setting up unauthorised advertisements near the event venue, distributing promotional materials or branded clothing to event attendees, or through public stunts designed to divert attention towards the ambushing brand. This strategy "intrudes" on the event.

Under the MEM Act, unless authorised, no person is permitted to advertise or engage in street trading in the declared clean zones (or anywhere clearly visible from within the clean zone) and transport routes during declared clean periods. The clean zones, clean transport routes and clean periods for the FIFA Women's World Cup are specified by [Gazette Notice](#). These include stadiums and surrounding areas, fan zones and transport routes.

Businesses ordinarily trading in the clean zones may continue their usual activities. And established signage that promotes those businesses will not need to be removed or obscured.

So what are examples of prohibited conduct?

Using the following as part of your business marketing during the FIFA Women's World Cup and other designated major events will likely fall foul of the MEM Act (unless of course you are authorised):

- Using actual names, logos, slogans or branding of the major event.
- Using words or pictures that are clearly suggestive of the major event or which are intended to refer to the event and imply an association.

- Offering major event tickets as prizes in competitions, fundraising activities, and other promotional activities.
- Distributing pamphlets, flyers, or giveaways within a clean zone in the designated clean period.
- Using internet domain names that include or are similar to major event names or slogans.
- Promotional stunts or guerrilla marketing campaigns within or around the event venue or within clean zones and the clean transport routes.
- Coordinating with others to wear branded clothing or carrying branded items in coordination with other spectators.
- Using the event's key words on social media platforms to promote your brand.
- Publishing an advertorial suggesting a commercial relationship with the major event that is not authorised by the event organiser.
- Advertising in the clean zone and along the clean transport routes.
- Using countdown clocks / tickers counting down to the event.
- Using official intellectual property as in-store decorations – generic football or country-related decorations are generally acceptable.
- Otherwise seeking to create an association with the event.

So what can you do?

The MEM Act does not prohibit all advertising during the FIFA Women's World Cup. There are numerous ways of promoting or advertising your brand without falling foul of the MEM Act - but of course it can be a fine line if you are actually trying to leverage off the event itself! Do not use protected words and logos. Campaigns themed generally around football are unlikely to cause issues if they do not imply an official association with the event or sponsors. A key step should be to check that any planned advertising would not imply an association with the event to a reasonable person.

¹ FIFA Intellectual Property Guidelines, May 2023, Page 10.

In its intellectual property guide¹, FIFA encourages the celebration of the event without using the official intellectual property. FIFA states that it “*encourages businesses and the public to use generic football or country-related images and/or terminology that do not incorporate any FIFA Intellectual Property*”.

SOCIAL MEDIA AND THE FIFA WOMEN'S WORLD CUP

Leveraging social media during major events can be a powerful way to engage with your customers. However, you will need to take care when using social media and social media influencers to avoid using the event's protected words and logos (or words and emblems that so closely resemble major event words or emblems that they are likely to deceive or confuse) in your social media posts (including hashtags) or to imply an association with the event (as discussed above). As a business you are also unable to retweet or share official content – as this is an exclusive right granted to FIFA rights holders.

You can make non-specific references to the event and your excitement. You can post about women's football. You can engage with teams or individuals to share their posts and congratulate them on their achievements. You can also run promotions and giveaways that coincide with the event, without referencing it.

It will be important to ensure your social media strategy is compliant and that your team knows what they can and cannot post.

FURTHER INFORMATION

Further information on the MEM Act and the FIFA Women's World Cup is available in the Ministry of business, Innovation and Employment's guide, [A Guide to the Major Events Management Act 2007](#), the [Major Events Management FIFA Women's World Cup order](#) and FIFA's [FIFA Intellectual Property Guidelines](#). If you would like to know more, please contact your usual Jackson Russell Business Law advisor or one of the team listed below.

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