

Right here, right now – the major events management act in force

What do the Rugby World Cup and intellectual property lawyers have in common? The Major Events Management Act (“MEMA”) - which came into force in 2007, and is intended to protect against ambush marketing for major events.

You probably don't know much about MEMA, and you probably don't think that it applies to you or your business, because the perception is that it only applies to people trying to rip off the rights associated with major sporting events. To an extent, you'd be right. The first prosecution under MEMA (against CL NZ Trading Company Limited and its director Terry Lung Chan) is for importing counterfeit Rugby World Cup 2011 apparel. The defendants are alleged to have imported over 1,000 counterfeit t-shirts.

The prosecution against CL NZ represents the extreme edge of ambush marketing under the Act. However what most businesses don't realise is that other, more innocuous, forms of promotion might also fall foul of the Act.

“Ambush marketing” – what you should NOT do

“Ambush marketing” describes the actions of companies or advertisers who seek to capture the benefits enjoyed by sponsors without the authorisation of the event organiser. MEMA specifically deals with two forms of ambush marketing: (i) **by association**, which involves an advertiser misleading the public into thinking that the ambush marketer is an authorised partner or somehow associated with the event; and (ii) **by intrusion**, which occurs when an event is used to draw attention to the ambush marketer's brand from an audience gathered solely for the major event.

As part of the prohibition on ambush marketing by association, the Act prohibits offering, giving away, or selling a ticket to a major event activity in connection with the promotion of goods or services. So where does this leave, for example, the plumbing supply company which offers a draw to win tickets to the Rugby World Cup to its customers? Arguably, such activities would be in breach of the Act.

What kinds of events?

MEMA only applies to major events that are of international significance, that attract large audiences and therefore sponsors, and applies only for a specified period of time. Events that have been declared “major events” to date include, in addition to the Rugby World Cup, the World Rowing Championships 2010 and the U19 Cricket World Cup 2010.

Protection of words and emblems

MEMA provides for protection of words and emblems that could denote a connection with a major event, whether or not they are eligible for registration under the Trade Marks Act 2002 and/or actually registered. In relation to the Rugby World Cup, for example, the words ‘Rugby World Cup’, ‘World Cup 2011’, ‘World in Union’, ‘Rugby New Zealand 2011’ and ‘Webb Ellis Cup’ are protected, as are the associated Rugby World Cup and IRB logos. Returning to our example, using the words “Rugby World Cup” to promote the ticket give-away, or showing pictures of the tickets, might leave the plumbing firm in contravention of the Act.

This protection is qualified, however: the Minister of Economic Development must take into account whether such protection is necessary to obtain maximum benefits for New Zealanders and to prevent unauthorised commercial exploitation at the expense of the major event organiser or sponsors. The Minister will also be required to consult with parties who are substantially affected (which may include parties with existing common law/registered rights in the same or similar words and emblems).

Border protection measures equivalent to those under the Trade Marks Act 2002 are provided in relation to materials bearing protected major event words or emblems. This is how the items sought to be imported by CL NZ Trading Company Limited were seized.

What will not infringe under MEMA

The following sorts of activities will not amount to an infringement as long as they are carried out in accordance with honest practices in industrial or commercial matters:

- The use by a person of his or her own real name or address;
- The use of the proper name of any town, road or other place in New Zealand;
- The use of a person's legal or trade name or an existing registered trade mark;
- Existing businesses and organisations continuing to carry out their current activities;
- The use of indications concerning the kind, quality, quantity, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of goods or services;
- Where incorporated into a context where the major event is substantially irrelevant;
- The use of representations necessary to indicate the intended purpose of a product or service; and
- The editorial use of names and indicia, such as for current affairs, criticism or review.

It's not entirely clear whether our plumbing promotion would fall within any of these exceptions. The promotion would need to be quite clearly worded to ensure that it did. A user-friendly guide to the practical application of the Act can be downloaded from the official Rugby World Cup website or the Ministry of Economic Development website. For further information on how to comply with MEMA, or any other issues arising under MEMA, contact us.

“Right here, right now”...or “Wrong place, wrong time”?

What do you think of The Feelers' version of “Right Here, Right Now” by Jesus Jones, chosen for the RWC ticketing campaign? Love it? Hate it? Should we have used a New Zealand song? Visit our blog on this topic and post your comment.

By Ian Finch, Partner, and Ben Cain, Trainee Solicitor

Courtesy of James & Wells Intellectual Property.

To read more go to: <http://www.jaws.co.nz/media/right-here-right-now-the-major-events-management-act-in-force>