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The Defending Champion Since its inception in the late 1800s, Coca-Cola has experienced meteoric growth, progressing from nine glasses per day to nearly 4.5 billion cases on an annual basis (“Top 10,” 2004). Today, Coca-Cola offers nearly 400 brands in over 200 countries and controls the highest market share (44%) in the soft drink market (“Top 10,” 2004). In addition to its leading global market-share, Coca-Cola also retains the title of having the most popular individual beverage in the world in Coca-Cola Classic, with an 18.6% market share (“Top 10,” 2004). Additionally, in 2003 it placed four beverages in the top 10 for individual product sales: Coke Classic (#1), Diet Coke (3), Sprite (5), and Caffeine Free Diet Coke (8) (“Top 10,” 2004).

Through Research & Development (R&D) and acquisitions, Coca-Cola has also expanded its product line to include non-carbonated beverage products, including: Dasani, Fanta, Fruitopia, Hi-C, Minute Maid, and Mr. Pibb. In 2003, Coca-Cola spent approximately \$1.9 billion on marketing and advertising. In November 2004, Coca-Cola CEO Neville Isdell stated that “[Marketing expenditures] would rise by \$350-\$400 million a year ..

. forever” (Marketplace Roundup, 2004). Pepsi-Cola: The Challenger With the exception of brief bankruptcy stints in 1923 and 1932, Pepsi-Cola assumed its place at the heels of Coca-Cola through its creation of an extensive franchise bottling network and distribution outlets (Yoffie, 2004). Over the years, the Pepsi-Cola company has expanded its product offerings, through R&D and acquisitions, to include: Diet Pepsi, Mountain Dew, Mug Root Beer, Slice, Sierra Mist, Lipton, Aquafina, and Starbucks Frappachino, among others. Pepsicola’s acquisition of Gatorade from the Quaker Oats company in December 2000 further proved its commitment to broadening its product

base as well as expanding its sponsorship connection to the sport industry, in which Gatorade was already a major player. As of 2003, Pepsi controlled 31.8% of the market in the soft drink industry with annual sales of 3.2 billion cases ("Top 10," 2004). Today, the company's flagship brand, Pepsi-Cola, ranks second only to Coca-Cola Classic, with a U.

S. market share of 11.9% ("Top 10," 2004). Similar to the Coca-Cola company, it also has four products in the top 10 on an individual product sales basis: Pepsi (#2), Mountain Dew (4), Diet Pepsi (6), and Sierra Mist (9) ("Top 10," 2004). In 2003, Pepsi spent \$1.

billion dollars on marketing and advertising (www.pepsico.com).

Introduction It was March 31, 2003, and the Coca-Cola Classic brand management team was excited about enjoying another Major League Baseball opening day at Turner Field against the visiting Montreal Expos. As the team drove out to Turner Field, most of the talk centered on the Atlanta Braves' prospects for the upcoming season. Jill Smith, however, had her mind on football—specifically, the 2004 Super Bowl in Houston—only 10 months away.

Although Coca-Cola was no longer the official soft drink sponsor of the National Football League—rival Pepsi-Cola had outbid Coca-Cola for those rights in 2002—Coca-Cola was an official team sponsor of the Houston Texans, the hosts of the upcoming Super Bowl. Jill, the senior marketing executive on the Coca-Cola Classic brand, had recently received a memo from her boss, the Vice President of Brand Management for the Classic brand, requesting that, within two weeks, she present her recommendations

for what, if any, promotional activity the company should conduct in conjunction with the 2004 Super Bowl in Houston. Jill knew that if Coca-Cola planned to conduct any such promotional activity, it would be viewed by some, including the NFL and Pepsi, as “ambush marketing.” Her recommendations might not only have ethical implications for Coca-Cola, but also legal implications as well. As a local Atlanta youth choir sang the national anthem to commence the Braves’ 2003 season, Jill’s mind was elsewhere, mulling over a wide range of concerns and possible recommendations.

Steve McKelvey, JD, is an assistant professor in the Department of Sport Management at the University of Massachusetts Amherst. His research interests include sport sponsorship and legal issues in sport marketing. 114 Volume 15 • Number 2 • 2006 • Sport Marketing Quarterly The “Cola Wars” The “cola wars,” which describes the on-going battle between Coca-Cola and Pepsi for supremacy in the soft drink industry, date back to the 1950s when Pepsi’s corporate focus became “Beat Coke” (Yoffie, 2004). Since then, they have battled domestically and globally for market share and sales, with a tremendous amount at stake: the soft drink industry annually produces approximately 10. billion cases of soft drinks domestically, with a total U. S.

retail value of \$65 billion. Of that annual dollar total, the “cola” flavors represent close to a 70% market share, followed distantly by the lemon/lime, citrus, pepper, root beer, and orange flavored soft drinks (Yoffie, 2004).

Given the amount at stake, the “cola wars” are fought daily between Coca-Cola and Pepsi-Cola on a variety of fronts, as illustrated below: New

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Products: There seem to be no secrets in the beverage category, with Coca-Cola and Pepsi typically releasing new products in unison. For example, in 2003 when Coca-Cola introduced Vanilla Coke and Sprite Re-Mix, Pepsi simultaneously countered by introducing Mountain Dew Live Wire, Pepsi Blue, and Sierra Mist (Chura, 2003). Within the last five years, both Coca-Cola and Pepsi also introduced their own brands of bottled waters (Aquafina and Dasani, respectively). More recently, responding to the low-carb craze, within weeks of Coca-Cola's launch of C2, Pepsi responded with Pepsi Edge (Moses, 2004).

The “cola wars” even extends to product packaging: recently, both corporations have tried to reduce costs and increase profit margins with the release of the streamlined 1.5-liter bottle in attempt to phase out the 2-liter bottles. Global Expansion: The “cola wars” have also heated up on the international front. For example, India, a nation with over one billion potential customers, has become one of the latest battlegrounds. Over the past five years, both corporations have battled for the rights to use cricket stars as sponsors, to fund “Bollywood” movies, and to secure online relationships (Yahoo! India with Pepsi; Hungama with Coca-Cola). Both companies have aired commercials with high profile Indian personalities in an effort to capture this burgeoning market (Datta, 2001).

Likewise, as China has opened its borders to international trade, Coca-Cola and Pepsi have aggressively moved to establish themselves. Both companies have moved aggressively to establish distribution, manufacturing, and bottling networks in China, enabling both to offset stagnant soft drink sales in the United States (Terhune, 2004). In 2003, Houston Rockets basketball
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sensation Yao Ming, a native of China, was at the center of ambush marketing allegations and a subsequent lawsuit when Coca-Cola utilized his image on packaging without his permission (Anthony, 2004). Coca-Cola alleged that it had properly secured the rights to feature Ming through its official sponsorship of the Chinese national basketball team (Anthony, 2003). The lawsuit, though settled, illustrates just how much is at stake in global expansion for companies like Coca-Cola and Pepsi, as the profile of major U.S. sport leagues and its stars expand to countries like China. U.S.-based Marketing Initiatives: The summer months always serve as a key battleground for high-profile promotional sweepstakes campaigns. For instance, in the summer of 2004, Coca-Cola launched its “Unexpected Summer” promotion centered on its tradition and in-store merchandising, which Pepsi countered with its “Play for a Billion” promotion (MacArthur, 2004).

Over the past decade, the “cola wars” have expanded into new venues, including sponsorship deals with public schools and municipalities (Benson, 1999). The “cola wars” have also recently entered the digital music world. For instance, in 2004, when Coca-Cola launched www.mycokemusic.com in an effort to tap into the growing on-line, tech-savvy, digital media market, Pepsi immediately countered with a consumer offer of 100 million songs in a co-branded promotion with Apple’s iTunes (Briggs, 2004).

Sport Sponsorships: Sport sponsorship has become an increasingly integral part of marketing strategy for both Coke and Pepsi. Over the past few decades, concurrent with the overall rise in sport sponsorship spending, both

corporations have aligned their core brands with sport properties that they feel effectively deliver particular market segments. Both corporations annually rank among the top 50 in sports advertising spending. In 2003, the Pepsi-Cola beverage division spent an estimated \$77 million (ranking 10) and Coca-Cola spent an estimated \$64 million (ranking 17) (Top 50, 2004). Appendix A lists the major involvements of both corporations within the area of sport sponsorships.

As shall be seen in greater detail, arguably no U. S. sport property provides more fertile ground for the “cola wars” than the National Football League. Overview of NFL sponsorship program Two events changed the course of professional sports in the 1950s. The first event was CBS signing on in 1956 to televise NFL games. The second occurred at Yankee Stadium on December 28, 1958, when, in a thrilling fashion, the underdog Baltimore Colts beat the New York Giants, 23-17, for the NFL Championship before an estimated television audience Volume 15 • Number 2 • 2006 • Sport Marketing Quarterly 115 of 45 million people.

Based upon the growing popularity of the NFL as a television property, in 1962 the NFL renewed its broadcast arrangement with CBS, for a then-exorbitant \$4.5 million annually (Mihoces, 1998). With each subsequent television negotiation, the NFL achieved monumental increases in television rights fees, reflecting the fact that the Super Bowl is the top rated sports telecast every year. In 1998, the NFL entered into eight-year television rights deals with ABC, Fox, CBS, and ESPN totaling \$17.6 billion, representing an average annual value of \$2.

2 billion {By the Numbers, 2004). In addition, in 2004 DirecTV extended its Sunday Ticket package contract through 2010 at a total five-year cost of \$3. billion (Bernstein, 2004). In 1963, to further capitalize on its growing popularity, the NFL, through a representation agreement with its member franchises known as the NFL Trust Agreement, created a division whose main purpose was to generate income as a method of underwriting the league's charitable programs (this division within NFL was officially named NFL Properties, or "NFLP," in 1982). The premise of the NFL Trust Agreement was that all revenues generated through broadcasting, licensing, and sponsorship would be shared equally among all the NFL teams. It was not until the 1980s that the NFL began to fully realize the potential for additional revenues through licensing and corporate sponsorship.

Corporations today are willing to invest tens of millions of dollars on a multi-year basis to gain an association with the NFL and access to its fan base, and the escalating cost of these sponsorship deals suggests that an NFL sponsorship creates numerous benefits for the corporations. Table 1 identifies the NFL's 2003 official sponsors. Historically, an official sponsorship deal with the NFL granted the sponsor the rights to utilize not only leaguewide NFL trademarks, but also the individual trademarks of all of the NFL teams in their advertising and promotional campaigns. However, in the mid 1990s, a small coalition of owners led by Jerry Jones of the Dallas Cowboys began to challenge the NFL to release the local marketing rights back to the individual teams. In an attempt to force this issue on the NFLP, Jones embarked on a series of highly-publicized sponsorship signings that made companies like Pepsi, Nike, American Express, AT&T, and Dr. Pepper

official sponsors of the Dallas Cowboys stadium (a clever maneuver designed to associate these companies with the Dallas Cowboys while not violating the legal provisions of the team's agreement with NFLP) ("NFL, Cowboys owner," 1996). Table / 2003 NFL Sponsors Company (brand) Bayer Pharmaceuticals Corp. Campbell Soup Co. CanonUSA, Inc.

Castrol North America, Inc. Coors Brewing Co. DirecTV, Inc. FedexCorp.

Frito-Lay North America Catorade/ Tropicana (Catorade) Catorade/Tropicana (Tropicana) General Motors Corp. (Cadillac) IBM Kraft Foods, Inc. (Oscar

Mayer) Masterfoods MBNA America Bank Motorola Inc. News America Pepsi-

Cola North America (Pepsi) Southwest Airlines Co. Staples Visa USA Category

Pharmaceutical Soup Cameras and Equipment Motor Oil Beer Satellite

Television Worldwide Delivery Service Salty Snack Sports Beverage (Isotonic)

Juice Car and Passenger Truck Computer Hardware Processed Meats/Pickles

Chocolate and Non-chocolate Confectionery Team-Identified Credit Cards

Wireless Telecommunications Equipment Super Bowl Free Standing Inserts

Soft Drinks Airline Office Supply Retailer Payment Systems Services Partner

Since 2003 1998 1984 1991 2002 1994 2000 2000 1983 2002 2001 2003

1983 2002 1995 1999 1979 2002 1997 1996 1995 Source: By the Numbers

2004 (2004). SportsBusiness Journal, 6(36), 22. 116 Volume 15 • Number 2 •

2006 • Sport Marketing Quarterly In response to Jones' renegade efforts, in

1995 the NFL sued Jones and the Dallas Cowboys for violating the Trust

Agreement the club signed in 1982 authorizing the NFL to negotiate

commercial uses of the team's name, helmet, uniform, and slogans ("NFL,

Cowboys owner," 1996). The NFL also voiced concern that Jones' actions in

signing sponsorship deals with competitors of NFL official sponsors, including Coca-Cola, constituted ambush marketing (“NFL, Cowboys owner,” 1996).

The case was eventually settled out of court, with the NFL recognizing Jones’ right to sell sponsorships to the Dallas Cowboys stadium. However, in 2002, spurred by the continued lobbying of Jones and newer owners such as Washington’s Daniel Snyder, the NFL agreed to cede local marketing rights back to the individual teams, creating the opportunity for individual teams to sell its trademark rights to whomever they choose, including competitors of NFL official league-wide sponsors (Lefton, 2002). Capitalizing on this policy change, competitors of official NFL sponsors began to aggressively pursue individual team sponsorship rights. One of those companies was MasterCard, which went from no NFL team deals in 2002 to 25 NFL team deals by 2004, leaving Visa with the seven remaining NFL teams despite its position as the NFL’s “official credit card.” advertising in and around the Super Bowl telecast, 2) presence in and around the venue of the Super Bowl, 3) consumer promotions tying into the event, which typically offer football-themed merchandise in proof of purchase offers or trips and tickets as sweepstakes prizes, and 4) congratulatory messages. Purchase of

Advertising Time in and Around the Event: The purchase of advertising in and around a sporting event telecast is one of the most common and popular tactics of ambush marketing (McKelvey, 1992; Meenaghan, 1996; McAuley ; Sutton, 1999).

This tactic was also deemed to be the most effective form of ambush marketing in a survey designed to assess the attitudes and opinions of senior marketing executives of corporations actively engaged in sport sponsorship

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(McKelvey ; Gladden, 2003). Given its unparalleled worldwide audience, telecasts of the Super Bowl have historically provided fertile ground for ambush marketers. Throughout the 1990s, for example, Anheuser-Busch conducted a series of highly-publicized “ Bud Bowl” commercials that aired during Super Bowl telecasts, serving to ambush Miller Brewing’s position as the NFL’s official beer sponsor of the Super Bowl. The “ Bud Bowl” campaign featured its main beers, Budweiser and Bud Light (the bottles personified as football players), competing in a fantasy football game for the mythic “ Bud Bowl Championship. Throughout the Super Bowl telecasts the commercials provided highlights of the “ game.

” Corporations seeking to gain an association with the Super Bowl have also resorted to purchasing advertising on local affiliate stations, thus ambushing competitors who have secured exclusive category advertising rights within the national telecast of the Super Bowl. Presence in and Around the Event Venue Another popular form of ambush marketing is for non-sponsors to secure a presence in and around the sporting event venue. In the early days of ambush marketing, companies would employ blimps and airplanes with trailing banners to ambush a major sporting event, but event owners have successfully closed this ambush avenue by working closely with the Federal Aviation Administration and with host cities to enact air traffic restrictions during such events. Other popular ambush marketing avenues have included: securing strategically placed billboards; erecting tents and inflatables in high-traffic locations; and distributing literature and samples to consumers attending the event. These types of activities are all designed to gain an implied association with the event.

However, as found in the survey by McKelvey and Gladden (2003), securing signage near or around the event venue, as well as What is Ambush Marketing? As the popularity of the NFL has increased, so too has the number of companies seeking to align themselves with the league without actually securing the official sponsorship rights. This tactic, known as ambush marketing, has been defined as “ a company’s intentional efforts to weaken—or ambush—its competitor’s ‘ official sponsorship. It does this by engaging in promotions and advertising that trade off the event or property’s goodwill and reputation, and that seek to confuse the buying public as to which companies really hold official sponsorship rights” (McKelvey, 1994a, p. 20). Further literature on ambush marketing has suggested that, beyond this narrow and more pejorative definition, ambush marketing can be more broadly defined to describe “ a whole variety of wholly legitimate and morally correct methods of intruding upon public consciousness surrounding an event” (Meenaghan, 1994, p.

9). Thus, for instance, even a company that purchases generic (non-football themed) advertising within a Super Bowl telecast could, as a competitor of an NFL official sponsor, be construed as an “ ambush marketer” regardless of the company’s motives or intentions. The country’s premier sporting event, the Super Bowl, has long been one of the key battlefields in ambush marketing. Over the years, a broad range of tactics have been utilized, including: 1) the purchase of Volume 15 • Number 2 • 2006 • Sport Marketing Quarterly 117 sampling and promotional literature distribution, were deemed by corporate sport marketers to be among the least effective

ambush marketing tactics. In-venue ambushing can also involve a direct conflict between an official league sponsor and a nonsponsor.

In 1995, the New England Patriots became the first team to crack Coca-Cola's monopoly on local NFL team agreements, signing Pepsi to an official sponsorship that included in-stadium pouring rights. This deal was soon followed by Jerry Jones' high-profile signing of Pepsi to be the official sponsor of the Dallas Cowboys' stadium, as discussed above (Vaillancourt, 2001).

Conducting Consumer Promotions Another popular avenue of ambush marketing is to conduct consumer promotions that associate the ambush marketer with popular sporting events. Such promotions typically are offered at retail locations and are supported by point-of-sale displays that feature visuals "themed" to the particular sporting event and that utilize words that generically refer to the sporting event. For instance, a company intent on associating itself with the Super Bowl may run an in-store promotion offering consumers a free football in exchange for proofs-of-purchase and/or inviting consumers to enter to win "a trip for 2 for the Big Game.

"While purposely avoiding the use of any registered trademarks, the displays are intended to lure consumers through an implied association with the Super Bowl. Companies are also finding increasingly creative ways to associate themselves with events like the Super Bowl, without specifically offering Super Bowl trips. For instance, companies have provided consumers the opportunity to win trips to "Big Game"-themed parties in attractive locations such as Las Vegas or the Playboy mansion. Increasingly, these types of promotions are also being offered on-line, providing further challenges to sport organizations in identifying and addressing such

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consumer promotions. **Congratulatory Messages** In an attempt to create an association with a particular event, companies will often create advertisements offering “congratulations” to the winning team or certain players. For instance, only days after the 2003 Super Bowl, The Milk Counsel, although not an official sponsor of the NFL, ran a full-page advertisement in USA TODAY featuring the game’s two MVPs in their “Got Milk?” moustache campaign.

This tactic is one of the most indirect forms of ambush marketing, and because of the one-time nature of the advertisement and First Amendment concerns, it is one of the most legally protected methods of associating with a sporting event, especially if the “congratulations” message is not tied directly to the sale of a product or service. **The Effectiveness of Ambush Marketing** The effectiveness of ambush marketing has been the subject of numerous research studies which, with sometimes conflicting results, have focused on consumer perceptions. The majority of research has focused on the success or failure of ambush marketing in terms of levels of recall and recognition of ambush marketers versus “official sponsors” (McDaniel & Kinney, 1998; McDaniel & Kinney, 1996; Performance Research Inc. , 1992; Shani & Sandier, 1998). Research studies have also found consumer confusion regarding the classification of sponsors (McDaniel & Kinney, 1998; Sandier & Shani, 1993, 1989; Stotlar, 1993). Shani and Sandier (1998) found that consumers’ attitudes toward ambush marketing were largely indifferent and linked to their levels of knowledge of an event.

More recently, Lyberger and McCarthy (2001) concluded that there existed confusion and a lack of knowledge regarding sponsorship of the Super Bowl
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that was unaffected by levels of interest in sport, in the NFL, or in the event itself. Their study further found that consumers are less aware of ambush tactics being employed at the Super Bowl than those being employed at the Olympic Games, and that there is “ a broad lack of awareness of levels of sponsorship and of the entitlements associated with those levels” (p. 136). Finally, results of their study demonstrated that a significant number of respondents did not oppose ambush marketing practices and that consumers were not “ disgruntled” by companies that engage in ambush marketing and that there seems to be “ a general acceptance of the practice” (p. 137). The effectiveness of ambush marketing has also been assessed through a survey of corporate decision makers (McKelvey & Gladden, 2003). Their study found that almost 90% of the respondents agreed that effective ambush marketing can confuse consumers into thinking a non-sponsor is actually a sponsor, and that nearly three-quarters of the respondents agreed that the average consumer does not differentiate between official sponsors and ambushers.

The survey also found that, on the whole, executives felt that sport properties were ineffective in dealing with ambush marketing threats. For instance, almost 70% of the respondents agreed that while properties often imply they will combat ambush marketing at the time of contracting, they seem powerless to do so when it occurs. Furthermore, a majority of executives agreed with the notion that properties are either too lazy or ambivalent to address the ambush marketing concerns of its corporate sponsors (McKelvey & Gladden, 2003). 118 Volume 15 • Number 2 • 2006 • Sport Marketing Quarterly cease its promotional activity. For instance, the

NFL is reported to send out “dozens of cease-and-desist letters annually to companies that engage in trademark infringement” (p. DI).

However, given the gray areas that surround the legalities of ambush marketing, U. S. professional sports leagues have historically been reluctant to bring lawsuits, primarily because ambush marketers are Legal Landscape of Ambush Marketing savvy and knowledgeable enough to avoid blatantly infringing on registered trademarks. The debate over ambush marketing is further clouded by questions regarding its legality, particularly given that there exists no decided U. S.

case law based directly upon the intangible nature of ambush marketing. In a typical ambush marketing scenario, absent an outright case of manifested trademark infringement through promotion and advertising (Host Communications v. McKelvey, 1994b). According to U. S. law, there are several legal recourses that a sport organization can involve: the licensing of official sponsor rights in contact to prevent ambush marketing.

First, if an ambush-marketing company uses a trademarked name, symbol, or logo of the event, the organization can sue for trademark infringement. One of the reasons that professional sports leagues have been reluctant to bring suit against ambush marketers is the fear of an adverse court ruling. Such was the case in 1992, when a Canadian court upheld the cause of consumer confusion

with respect to the corporeality of ambush marketing NHL v. Pepsi Cola rate affiliation can be held liable for damages.

Absent Canada (McKelvey, 1992). In 1990, the National blatant trademark infringement, however, the Lanham Hockey League ("NHL") sued Pepsi-Cola Canada Act requires that the organization demonstrate, most ("Pepsi") in a Canadian court in the first-ever litigation often through the use of consumer surveys, that there is a likelihood of confusion specifically addressing ambush marketing. The case provided a textbook illustration of ambush marketing where consumers have actually been confused as to which company is competing in action. Pepsi did not utilize any NHL registered trademarks in its promotional and advertising materials. Instead, the company utilized city names A second legal remedy is to sue ambushers for false representation of NHL playoff participants and game endorsement.

This legal claim, which can be brought under the Lanham Act or under state unfair competition statutes, enables the sport organization to argue that the ambusher is trading off of the goodwill associated with an event—goodwill that has been built up by Pepsi also sponsored the league's telecasts of the Stanley Cup playoffs throughout Canada and featured the organization, over time, through a tremendous hockey imagery as well as hockey legend Don Cherry investment of resources. Ambush marketing campaigns, however, are most often conducted by marketers who are savvy enough to use

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confusion as to its association with the NHL, Pepsi utilized disclaimer language, stating in advertisements to avoid blatant trademark infringement, instead preferring promotional materials that its promotion was not to more subtly imply or evoke a false relationship “neither associated with nor sponsored by the National Hockey League or any of its member team or other V^hen sport organizations are confronted by affiliates” (p. 7).

Despite the NHL’s claims that Pepsi ambush marketing campaigns, especially those that had engaged in misappropriation and unfair competition specifically threaten their official sponsors, they may react (referred to under Canadian laws as the tort of react by publicly denouncing the actions of the “passing off), or alternatively, that Pepsi had unlawfully ambushed the company. As NFL spokesman Brian Ly interfered with the NHL’s business associations, the McCarthy publicly stated prior to the 2004 Super Bowl court found in favor of Pepsi, holding that, inter alia, it Bowl, in addressing ambush marketing activities by several beer companies, “Ambush marketing is a transparent attempt to cash in on the passions of our fans” (Murphy, 2003, p. DI). When sport organizations As stated earlier, one of the most popular forms of believe that they have valid legal grounds, they issue ambush marketing is the offering of tickets for special cease-and-desist letters to potential infringers, threat events in consumer sweepstakes. This tactic was challenging potential legal action if the company refuses to be challenged in by the National Collegiate Athletic Association. Volume 15 • Number 2 • 2006 • Sport Marketing Quarterly 119 This research study, coupled with research studies involving

consumer attitudes toward ambush marketing, suggests significant hurdles for sport organizations regarding the prospects of educating the general public with respect to the official sponsors of the event and the potential negative impact of ambush marketing upon the value of official sponsorship programs.

Association (NCAA), which, in 2002, sued Coors Brewing Company for the unauthorized use of NCAA Final Four tickets in a consumer promotion. The NCAA argued that Coors' use of Final Four tickets constituted a breach of contract based on the ticket back language that resembles that on the back of all special event tickets including Super Bowl tickets: "[U]nless specifically authorized in advance by the NCAA, this ticket may not be offered in a commercial promotion or as a prize in a sweepstakes or contest" (McKetvey, 2003). Although this case had the potential to become a seminal U. S. case on the legalities of ambush marketing, it was settled out of court in April 2003 (McKetvey, 2003).

Ethical Considerations of Ambush Marketing While the practice of ambush marketing has been widely debated, particularly around premier sporting events such as the Olympics, World Cup and Super Bowl, the answer to whether it is an "immoral or imaginative practice ... may well lie in the eye of the beholder" (Meenaghan, 1994, p. 85).

For instance, sport property owners and their official sponsors typically regard as immoral or unethical any activity by a nonsponsor that wittingly or unwittingly intrudes upon the property's and/or sponsors' rights, thus potentially detracting from the official sponsor's "exclusive" association

with the sport property. On the other hand, such activity engaged in by non-sponsors is typically perceived and defended as nothing more than a part of the "normal 'cut and thrust' of business activity based on a strong economic justification" (p. 85). The diverse positions taken by two leading sport marketing executives further serve to illustrate the ethical issues surrounding ambush marketing. Former American Express marketing executive Jerry Wetsh, the architect behind his company's highly publicized assault on Visa's Olympic sponsorship, has been a noted defender of ambush marketing: In explaining the practice of ambush marketing .

.. there is no need to discuss ethics or morality. Companies routinely compete - mostly, we hope and expect, honestly and hard - and ambush marketing, correctly understood and rightly practiced, is an important, ethically correct, competitive tool in a non-sponsoring company's arsenal of business and image-building weapons. To think otherwise is either not to understand - or willfully to misrepresent - the meaning of ambush marketing and its significance for good - and winning - marketing practice. Wetsh, 2002, p.

4) On the other end of the spectrum, former International Olympic Committee (IOC) head of marketing Michael Payne, who coined the term "parasitic marketing" to refer to ambushers of the Olympic Movement, has stated: Ambush marketing is an attempt by corporations to mislead the public into believing that they are supporting a sports event. This deception contravenes a basic premise of ethical business practice: that of truth in advertising and business communications. .. It is in the interests of sport that ambush marketing activity be positioned in the public mind as unethical and

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deceptive and that offenders be subject to public exposure and embarrassment.

It is only by making ambush marketing unattractive to potential offenders that sport can continue to protect its revenue base. (Payne, 1998, p. 330-331) Regardless of one's perspective, it is important to consider ambush marketing within an ethical framework. Ambush marketing, although usually legal, has often been criticized as deceptive and unethical (Doust, 1998; O'Sullivan ; Murphy, 1998). Doust (1998) suggests that ambush marketing can be viewed within the ethics paradigm of marketing in general. Betch and Betch (1995) define ethics as “.

.. moral principles and values that govern the actions and decisions of an individual or group. A particular action may be within the law and still not be ethical” (p. 680). Doust (1998) has further suggested that “ the degree to which a company agrees to ‘ back off a bit’ with to a large extent be determined by its own code of ethics, and by whether that company views ambush marketing practices as unethical or simply good business sense” (p.

25). Dickson (1994) further argues that companies need ethical guidelines because the letter of the law is generally considered to be only a minimum ethical standard: “ the law is a floor, and must not serve as the only basis for individual and corporate ethics” (p. 203). While most corporations have a general code of marketing ethics (some written, others not), the need to meet performance goals results in ethical stresses being placed on marketers' personal codes of ethics (p. 203-206).

The ethics of ambush marketing can be viewed from two theoretical frameworks. The first employs utilitarian theory; essentially, the right action is that which produces the most good for the most people in a specific situation. Laczniak and Murphy (1993) state: In an organizational context, utilitarianism basically states that a decision concerning corporate conduct is proper if and only if that decision produces the greatest good for the greatest number of individuals. Good is usually defined as net benefits that accrue to the parties affected by choice. (p. 30) Thus, from an ethical perspective, as suggested by Meenaghan (1996), an ambush marketer that "gives the impression of involvement with payment is merely serving its own narrow self-interest and, in doing so.

120 Volume 15 • Number 2 • 2006 • Sport Marketing Quarterly engages in behavior that is harmful to the greater good of sport" (p. 109). As Dickson (1994) further points out, there are several problems inherent in applying utilitarian theory, often also referred to as situational ethics: 1) it is difficult to calculate what constitutes the most good for the most people in a specific situation, as the principle of utility does not help in measuring good or bad; 2) it does not explain whether total good can be measured by adding up all the positive outcomes and then subtracting all the negative outcomes; 3) it can result in companies sinking to the lowest ethical standards among a group of competitors, when each rationalizes that it is at least as ethical as the competition; and 4) marketers can become fixated with how his or her company will benefit, resulting in lower ethical standards being applied. While utilitarian theory focuses on the consequences of one's actions, the second theory focuses on the intentions of the decision maker. This second

theory can be traced back to Kantian moral theory, which “rests on universal standards of goodness and the motivation to fulfill one’s duties and obligations” (Meenaghan, 1996, p. 109).

This theory has also been referred to as “duty-based ethics” (O’Sullivan & Murphy, 1998). Dickson (1994) argues that while this approach takes most of the situation or context out of the ethical evaluation, it still requires the decision maker to see the universal wrong or evil in the act if everyone did it. In other words, immoral or moral individuals may answer that, yes it would be fine for society and for others to act in the same way toward them. If, for instance, an ambush marketer’s main objective is to confuse the consumers about who the sponsor is and therefore gain the associated benefits without payment of a rights fee, the intention is clearly one of deceit and thus would be an ethically questionable practice. On the other hand, an ambush marketer may believe he or she has a moral duty and obligation to stockholders to maximize revenues. Thus, in creating a promotional campaign themed to a major sporting event, an ambush marketer may claim that, without ambushing, it is otherwise denied the right to participate in an important sporting event due merely to the fact that a competitor has already secured “official” rights to the event, that it can not afford to pay the sponsorship fee, or that it does not believe the “official” association is commensurate with the property’s sponsorship fee.

As pointed out by O’Sullivan and Murphy (1998), the financial success of Nit