

SOUTH AFRICAN COMPANIES BEWILDERED BY FIFA AMBUSH MARKETING RULES

By Chris Moerdyk

Many South African companies have been bewildered by the intensity with which FIFA has applied its so-called ambush marketing rules.

Which is quite ironic because I would have expected South Africans to understand clearly what these laws are all about?

Ever since ambush marketing legislation was promulgated in South Africa just before the Cricket World Cup took place in 2003, these laws, developed in South Africa, have been used by a number of other countries as a legislative model for international sponsored events.

But, they have still taken a lot of South Africans by surprise. Many companies simply carrying at photograph of a soccer ball or using the figure "2010" or the words "South Africa" with extreme subtlety, have received strong "cease and desist" letters from FIFA.

A local airline that ran amusing satirical advertisements with vague references to the World Cup, were forced to withdraw their advertising after some far from amusing correspondence from FIFA.

Judging from callers to local radio talk shows and letters to the editors of newspapers, ordinary South Africans seem to feel that South Africa has sold its soul to FIFA. Many South Africans see FIFA as bullies in not allowing clothing bearing logos of companies and products that are not official sponsors anywhere near stadiums. Not allowing any form of social gathering within a 30m kilometre radius of a world cup game. Something many South Africans read as not being able to invite some friends and family to their homes to watch a world cup game on television.

There is no question that the original euphoria of winning the rights to host the 2010 football world cup has been diminished for many South Africans who regard FIFA rules with regard to vendors, local manufacture of 2010 paraphernalia and clothing as well as the right to offer accommodation, as being draconian to say the least.

So much so, that should any other event of this nature come South Africa's way, I am sure that a lot more people will take the opportunity to comment on and object to proposed legislation, a lot more seriously.

There are, of course, two sides to the ambush marketing issue. The first is the right side in which big sponsors of the World Cup such as Sony, Visa and the like are being protected from competitors trying to climb on their bandwagon for free. I don't think anyone with any sort of functional brain has any problem with that. After all, why should Sony cough up a millions of dollars in sponsorship if someone like Panasonic can just waltz in and fill the stadium with their banners and clutter broadcasts of the game with their ads?

But, the other side of ambush marketing is what the domestic airline, Kulula, is doing. In my opinion FIFA was crazy to have come down so harshly on Kulula's first advertisement which, admittedly, was filled with soccer innuendo and would be even crazier to have a go at the second Kulula ad that appeared this weekend because the innuendo was very much in the eye of the beholder.

Whether or not Kulula is breaking the law depends entirely on what magistrates, judges and lawyers think, not mere mortals like you and me.

What Sepp Blatter and his FIFA colleagues just don't seem to get is that the more they huff and puff and blow the Kulula ads out of the sky, the more Kulula will like every minute of it.

By having its ads banned, Kulula has won the first prize of advertising. It has got everyone's attention. It is also, I'm told, selling airline seats as a result.

And, I would guess that every time Herr Blatter wields his big stick, Kulula will, as it did in the first place, utter innocent astonishment that their ads should be perceived to have something to do with the Wo*ld C*p or 20*10 or foo*ba*I or even Sou*th Af*i*a and very graciously agree to withdraw it.

And a few days later come up with another and maybe even one more. But as it is, Kulula advertising has done its job, got the results, and achieved the return on investment.

It is clear therefore, that in applying ambush marketing laws, FIFA should show some circumspection. Sure, it should come down heavily on anyone trying to directly muscle in on an official sponsor's turf. But, it should be careful of fanning fires and creating more publicity with bans than if they had just ignored the silly stuff from the start.

On the other hand, it is also clear that in order to appease their sponsors and give them value for the vast amount of money they are spending, FIFA perhaps feels it needs to be seen to be vigorously defending their positions.

I am pretty sure, though, that Kulula is not going to be the only thorn in Fife's side. We can expect more. Just as what happened in Korea during the world cup there where a mobile phone company that has been sidelined because it didn't happen to be the cell phone company that was an official sponsor, launched a "fan club" that had millions joining in and wearing the perfectly legal T-shirts that didn't carry any logos but everyone knew exactly what company they were promoting.

South Africa had certainly not just rolled over and allowed blanket bans to take place on anything to do with World Cup 2010. It has been very democratic and correct about it all with an invitation some years ago, for public scrutiny and objections to FIFA's request - as is required by the Merchandise Marks Act.

FIFA's request was wide ranging and predictably included all variations of the South Africa 2010 logo and all the country and relevant logos of all of the previous football World Cup events as well all previous World Cup emblems, pictures or drawings of the FIFA World Cup Trophy and Jules Rimed Cup.

These included the following descriptive:

2010 FIFA WORLD CUP SOUTH AFRICA
WORLD CUP 2010
ROSA 2010
FOOTBALL WORLD CUP
FIFA WORLD CUP
SOUTH AFRICA 2010
SA 2010
2010 FIFA WORLD CUP
AFRICA 2010
SOCCER WORLD CUP
WORLD CUP
SOUTH AFRICA WORLD CUP

2010
ALL NAMES OF ALL SA VENUE CITIES WITH THE FIGURE 2010 BEHIND THEM
TWENTY TEN
WORLD CUP SOUTH AFRICA
CONFEDERATIONS CUP
WIN INN AFRICA FOR AFRICA
FOOTBALL FOR A BETTER WORLD

The closing date for objections was three years before the kickoff, on 2 August 2007.

The request for objections was published, through notice 787 of 2007 in the government gazette, on 21 June 2007 and made available on 2 July 2007.

The Minister of Trade and Industry took into account objections from the public as well as the principles within South Africa's legislation in this area when he decides whether or not to grant the requested trademarks.

The Government, however, acknowledged FIFA's intellectual property rights as one of its guarantees. <http://www.sa2010.gov.za/government/guarantees.php>. Protection of intellectual property and marketing rights were done in accordance with current South African legislation. http://www.sa2010.gov.za/government/merchandise_marks.php

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