

AMBUSH MARKETING: ITALIAN GOVERNMENT PROPOSES A NEW SPECIAL LAW

On 17 January 2020, the Italian Government proposes a new law on "ambush marketing"; the law, if approved by the Italian Parliament, would offer a further level of protection other than the "ordinary" unfair competition rules.

Sport and other popular events are always a great occasion for marketing, thanks to the worldwide attention which they attract among the general public. In the era of digital advertising, this exposure is indeed multiplied: a viral hashtag or few trend topics can give large visibility in few minutes to an online campaign. The incoming European Football Cup and, for Italy, the 2026 Winter Olympic Games in Milano-Cortina will certainly offer the umpteenth example, as well as in the past World Football Cups or other popular events have made (e.g., the launch of the new Star Wars movie or Milan EXPO 2015, just to mention the more recent cases decided by the Italian Courts on that regard).

On the other side, **event organizer, sponsors and corporate stakeholders** have often complained that they do not have enough returns from the mediatic and marketing exposure of "their" event and that in any case the success of these advertising campaigns is mainly relying on the parasitic exploitation of the events they "create" (or at least they had paid for, speaking of sponsors). Even if the campaign does not use trademarks, logos or other owned or registered distinctive signs or it does not claim official sponsorship, the mere conceptual link or suggestion can be enough to attract consumers' attention and, in a certain way, **misleading** them or, in any case, cause a **competitive prejudice** *vis-à-vis* the official sponsor who is paying to have that kind of consumer's attention.

AMBUSH MARKETING AND UNFAIR COMPETITION

Ambush marketing is the "legalese" notion used by lawyers and Courts to tackle this phenomenon. Until now, in Italy ambush marketing is a special figure of the general **unfair competition rules**: in a recent decision rendered by the Court of Milan, it has been defined as the marketing strategy where a competitor tries to illegitimately create an association between its trade mark or image and a high profile event, without having any sponsorship or other contractual relationship with the event organizer.

THE PROPOSED LAW ON AMBUSH MARKETING

After previous attempts and proposals in the last years, on 17 January 2020, the Italian Government officially proposed to the Italian Parliament to approve

Key issues

- A draft law on ambush marketing has been proposed by the Italian Government; the law shall be then discussed and approved by the Parliament;
- The ambush marketing would be sanctioned with fines ranging from 500,000 EUR to 2,500,000 EUR; the competent authority to issue the fine is the AGCM (Italian Competition Authority);
- According to the draft law, the ambush marketing will be sanctioned only if it occurs starting from ninety days before the event and within the ninety days after; and
- The interested parties should maintain the right to action the ordinary unfair competition rules before the Courts, as further level of protection and when the new law will not be applicable.

a law which make ambush marketing a special figure of unlawful conducts. According to the press release of the Government, a special effort was made in "*making a careful balance between the protection of the economic interests of the organizer and official sponsor of the event, on one hand, and the marketing opportunities of third-parties*" (Press release of the Italian Government of 17.01.2020).

THE SUBJECT-MATTER

The proposed law defines the events potentially exposed to the ambush marketing, as the "*sport events or exhibitions of national or international exposure, as well as shows with artists of national or international reputation*". According to the draft law, it would be prevented to make "*parasitic marketing*" which is the marketing activity (i) "*unauthorized by the event organizer*"; and (ii) aimed to obtain an "*economic or competitive advantage*".

The draft law provides with a (non-exclusive?) list of potential subject-matters, *i.e.*:

- (a) the creation of an indirect link between the owned trademark, name or distinctive sign and the event able to deceive the public on the identity of the official sponsors;
- (b) the declaration to be an official sponsor of the event, without being official sponsor of the event;
- (c) the marketing of the owned trademark, name or distinctive sign by means of any sufficient action to attract consumers' attention, during the event or in venues closed to the event;
- (d) the selling or merchandising of products and services branded even if only partially with the event logo or other distinctive signs able to deceive regarding the same logo or give an incorrect link with the event or the organizer.

EXEPTION

The draft law provides an express exemption regarding the marketing activity carried out by virtue of sponsorship agreements with athletes personally, clubs, artists and authorized attendants of the event.

SANCTIONS AND COMPETENT AUTHORITY

The ambush marketing would be sanctionable with administrative fines ranging **from 500,000 EUR to 2,500,000 EUR** and the competent authority to issue the fines would be the **AGCM** (in Italian, *Autorità Garante per la Concorrenza ed il Mercato*, which is the Italian Competition Authority).

DURATION AND COORDINATION WITH GENERAL UNFAIR COMPETITION RULES

The special law on ambush marketing would sanction conduct only if occurred between the ninety days before the event and the ninety days after the event.

The draft law expressly provides that the special law, if approved by the Parliament, would not prevent the interested party from proceeding based on other available grounds of protection, *e.g.*: the general unfair competition rules. Therefore, event organizers and sponsors would apparently maintain the right to start proceedings before the civil courts, for instance where and when the special law would be no longer applicable, although the proposed route before the AGCM would constitute certainly a more sharp and effective alternative, in terms of time and sanctions.

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