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Can the Ambush of Greenpeace be seen as a method of Ambush marketing, and if so, what (if any) effect did it have?

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Abstract

On the 25th August 2013, Greenpeace protesters ambushed the podium celebrations of the Belgian Formula One Grand Prix. While protests at sporting events are not uncommon, what is unusual about this event is that it managed to catch the organisers off guard at a crucial part of the ceremony, in front of the world media.

This article will explore how the protest occurred and analyse what the implications are for both Shell and sporting events more generally.

Keywords: *Ambush Marketing, Formula One, Event Management, Security, Protest, Environmentalist*

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AMBUSH MARKETING

Ambush marketing is a term that often polarises people. At one level, it can be seen as a clever and humorous attempt to create brand awareness for a product, often through non-traditional media channels. At the other extreme, it has been variously described as destructive, with legitimate sponsors (who have paid for commercial rights to an event) suggesting that the usurpation of their rights is akin to theft.¹ Typically, the ambush marketing campaign is carried out by a rival to the official sponsor in order to either shift attention and recognition to their brand. It can also be used to create a legitimacy or association between the event, the target audience and the ambushing company in question.² In response to this, event rights holders in some jurisdictions (for example: New Zealand,³ Canada,⁴ South Africa,⁵ England⁶ and most recently in *Australia*⁷) have reacted with the enactment of legislation in order to protect their trademarks and intellectual property. As with any other civil remedy though, enforcing these restrictions is very much a balancing exercise between protecting commercial interests and allowing legitimate freedom of speech.

POLAR-ISING OPINIONS

The surprising ambush of Shell by Greenpeace at the 2013 Belgium Grand Prix was very different from 'traditional' ambush marketing campaigns and was certainly an unusual ambush for a charity to carry out. Indeed, rather than seeking money or profit, the ambush was designed to achieve the very opposite, recognition of what the charity felt was the destructive behaviour of Shell Oil in the Antarctic. In essence, a direct 'guerrilla' assault on Shell's business operations at a time and location calculated to inflict maximum damage and embarrassment.

In doing so, Greenpeace had followed the essence of Jay Conrad Levinson's seminal work on "Guerrilla Marketing" (an alternative form of marketing using military-like tactics including '*ambushes, sabotage, raids and elements of surprise*')⁸ to launch an imaginative high-energy ambush with the potential to spread virally across social and traditional media. Interestingly, in a case brought by Shell in the District Court of Amsterdam against Greenpeace activists targeting petrol stations in the Netherlands, the Court even

¹ See for example: T Meenaghan, 'Point of view: Ambush Marketing – Immoral or Imaginative Practice?' (1994) 34(3) *Journal of Advertising Research* 77; S Townley, D Harrington & N Couchman, 'The Legal and Practical Prevention of Ambush Marketing in Sports' (1998) 15(4) *Psychology & Marketing* 333

² P Dore, 'Let the Games Begin' (2006) ISLR 40, OH Dean, 'Ambushing Event Piracy' (2012) *European Intellectual Property Review* 762

³ *Major Events Management Act of 2007* (New Zealand); see also D Hood, 'Rugby World Cup 2011 New Zealand: Ambush Marketing' (2011) 9(8) WSLR 10; OJ Morgan, 'Ambush Marketing: New Zealand is in search of events to host' (2008) *European Intellectual Property Review* 454

⁴ *The Olympic and Paralympic Marks Act (S.C.2007, c.25)* (Canada); see also J Heshka, 'Rules and Rogues – VANOC's approach to ambush marketers may keep the lawyers happy but the strategy is backfiring' (2010) *Marketing Magazine* (Toronto, ON), February 1.

⁵ *Merchandise Marks Act No.17 of 1941*; see also: M Murphy, 'South Africa: Ambush Marketing: Part1: National Preventative Legislation' (2009) 7(9) WSLR 11; I Blackshaw, 'South Africa 2010 World Cup: FIFA wins Landmark "Ambush Marketing" case' (2010) 1/2 ISLJ 140

⁶ *Olympic Symbol (Protection) Act 1995, London Olympic Games and Paralympic Games Act 2006*; J Walters, 'Protecting Official Sponsors at Major Sporting Events' (2013) 11(8) WSLR 11;

⁷ *Major Sporting Events (Indicia and Images) Protection Act 2014*; See also S Essey, 'Intercepting the Ambush: the Major Sporting Events (Indicia and Images) Protection Act 2014' (2014) *Sports Law Administration & Practice* (Jun) 1

⁸ JC Levinson, *Guerrilla advertising: cost-effective techniques for small-business success* (1994, New York: Houghton Mifflin Company)

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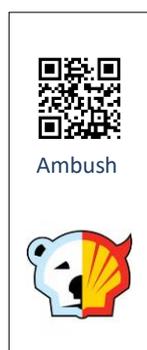
impliedly accepted the quasi-legitimacy of (limited) direct action as a conduit of freedom of speech. Several parts of the judgment are equally applicable to this incident and are reproduced below:

“The basic principle is that organisations such as Greenpeace are in principle free to take action and to make their views publicly known. The sole fact that such action causes inconvenience to the company targeted by the action – in this case, Shell – does not mean that such action is wrongful.... Greenpeace’s interest in being able to express its opinion freely and in a forceful manner has to be weighed against the legitimate (business) interest of Shell.”⁹

And further at [5.9]:

“Action must also be *proportional*. In a case such as this, it cannot be stipulated that action must not cause any damage whatsoever to Shell. A company such as Shell, which performs or wishes to perform activities that are controversial in society, and to which many people object, can and must expect that action will be taken to try to persuade it to change its views. To be effective, such action will also be able to cause damage to Shell. However, such action may at least be required not to cause substantial damage by, for example, lasting longer than is needed to achieve the intended objective.”¹⁰

SO WHAT EXACTLY DID THEY DO?



Essentially, Greenpeace secreted a number of remote-controlled banners onto the railings in front of the winner’s enclosure on the F1 podium. When the national anthems were played during the final trophy presentation, (as the race winners were standing in front of a board displaying the sponsorship logo of Shell oil), the banners were then unfurled to reveal a polar bear superimposed onto half of the company’s famous yellow and red shell. Somewhat symbolically, the other half of the shell had been altered to include a devil horn, invoking a quasi-religious dichotomy of good versus evil. At the same time, but arguably less successful as an ambush, a number of activists attempted to abseil down from or climb up the spectator stands to reveal banners, but most were prevented from doing so by security staff.

This tactic of using Shell’s own logo against them is classic *ambush marketing by intrusion*¹¹ - the placing of a rival logo in a location where it will be captured and can direct viewers to a website (‘save the arctic.org’). It is however important to note that is not just the offending banners that created the ambush, but rather this ambush continued via a clever campaign on social (and national) media. Videos of the event were posted online that showed the organisers forcefully and aggressively taking the Greenpeace protesters off the top of the podium set, while a police helicopter was used to bring down the Para-gliding protester over the race circuit.¹² A video of the podium ambush (that had previously been posted on YouTube) was also removed from the site allegedly due to copyright complaints. As previous ambush marketing incidents have

⁹ *Shell Nederland Verkoopmaatschappij B.V and others v. Stichting Greenpeace Nederland and others* (2012) 5th October, District Court of Amsterdam, [5.5]. [A translation of the full case can be found at:

<http://www.greenpeace.org/international/Global/international/publications/climate/2012/Arctic/finaltranslation%20of%20judgment.pdf>] <Last Accessed: 14th November 2014>

¹⁰ *ibid*

¹¹ D Cran & S Griffiths, ‘Ambush Marketing: Unsporting behaviour or fair play?’ (2010) *Entertainment Law Review* 293

¹² The video can be viewed at Treehugger.com: <http://bit.ly/1u6H3XI> <Last Accessed: 14th November 2014>

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demonstrated though,¹³ these type of actions (while legally justified) often only serve to increase the notoriety of an incident,¹⁴ and ultimately the video footage became viral through other video streaming sites and Greenpeace's own website.

DID THE AMBUSH ACTUALLY HAVE ANY EFFECT?

Picking the Grand Prix was a very clever decision by Greenpeace. The race is a popular international motor sporting event, with viewers from all over the world. However while many broadcasters avoided showing the banners positioned around the track,¹⁵ the ambush on the podium took everyone by surprise and generated considerable media coverage. Worryingly, the comparative ease of the protesters to disrupt both the race and podium presentations raise a number of questions about the security arrangements taken by the organisers, and their ability to ensure the safety of the event. The incident also raised a number of interesting debates as to whether sport should be immune from political messages, or whether campaigns such as Greenpeace's are an inherent by-product of having corporate sponsorship?

Ultimately though, it is difficult to measure how successful Greenpeace's campaign was in converting viewers. As of 2015, Shell is still a proud sponsor of both F1 and Ferrari, and with motorsport becoming more energy and fuel efficient, it is a valid question to ask whether the ambush had any long-term effect? Greenpeace may have won one race, but winning a Championship campaign is a much longer struggle. With Greenpeace's recent victory against Lego (following a sustained campaign against the toymaker to drop its links with Shell),¹⁶ should F1 be braced for further disruptions in forthcoming years?

¹³ K Lines & J Heshka, 'Ambush Marketing at the FIFA World Cup 2010' (2010) 8(8) World Sports Law Report (August)

¹⁴ Indeed, it was claimed by Greenpeace that the original YouTube video had nearly a quarter of a million views in just over 36 hours before it was removed

¹⁵ See the photos on: <http://www.f1fanatic.co.uk/2013/08/25/greenpeace-target-shell-with-belgian-grand-prix-protest/> <Last Accessed: 14th November 2014>

¹⁶ See the Greenpeace video "Everything is NOT Awesome" that went viral and generated over 6m views:

http://youtu.be/qhbliUq0_r4; Lego subsequently announced that they would not be renewing their partnership: A Vaughan, 'Lego ends Shell partnership following Greenpeace campaign' *The Guardian* (London, 9th October 2014)



Lego video

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