Organizers of major sporting events are pushing hard to enact an extended protection for the terms and symbols related to the events. Currently, there is no or at best little legal protection for events as such and there have been lively discussions concerning the registrability of event marks, if they have to fulfil the same requirements as ordinary trademarks or not? The concept of event marks was developed as an attempt to secure the additional protection, but it has been mostly rejected at a national level. This short paper examines contrasting arguments of the desirability of extended protection in the opening sections. In the latter sections, it considers the feasibility of event market protection and the possible alternatives to the full protection that is being called for in some quarters. The latter part of the paper focuses on the upcoming London Olympics and the legal protections which are afforded to the protection of the event London 2012.

**KEYWORDS:** Trademarks; Event Marks; Olympics; Ambush Marketing

Over the years, big sporting events have become a huge business on the international market. Events like the Olympic Games and the FIFA Soccer World Cup attracts the attention of a global audience of billions of spectators which in turn generate huge incomes for companies whose brands and images are associated to a specific event. These events attract huge numbers of competitors as they are marketing opportunities that are too good to miss.

Given the growing interest of such events, the cost of organizing them has increased dramatically. This means that traditional sources of funding are no longer sufficient to cover the costs and sponsoring agreements have taken over as the main source of finance. As one of the official sponsors you will obtain the exclusive right to associate your image and/or brand with the event, which includes the exclusive right to use the official emblems, trademarks and mascots. A chance to be associated with an event should be something that only applies to the official sponsors but over the past few years this exclusivity has been challenged by something referred to as ‘ambush marketing’. Non-sponsors are seeking to associate their companies with the event and benefit from the good-will associated with the event without authorization.
and the problem that arises within this situation is if these activities are to be seen as trademark abuse or if the so called ‘event marks’ enjoy some other form of protection.

**Protection of an Event Mark**

It is prudent to begin with an overview of the question on protection of both a trademark and event marks before considering the wider issues raised with event mark protection. A brand may be defined as a name, symbol, design, logo or maybe a combination of the former, but regardless of how the brand is defined it always intends to identify a seller’s goods or services and to differentiate them from those of the competitors. The interesting point is that brands tend to extend beyond just products and services, which mean that people and organizations may also be viewed as brands. For sports consumers, organizations such as the New York Rangers or Real Madrid can represent a valuable brand whilst a person like Usain Bolt, whose ‘brand’ influence on ticket sales to certain events can also be seen as a valuable brand. There are a lot of other branded products and sponsored events are yet another type of a branded product. A trademark can be registered on a national level, on a Union level or on both levels. I will limit the discussion, only including the Union trademark protection and therefore, not explain the protection of national trademarks since this would not be relevant in terms of the aims of this article.

To be able to register a Union trademark the mark in question must first and foremost fulfil the formal requirements for a trademark. According to the Council Regulation on the Union Trademark (CTMR)\(^1\), a trademark is defined as ‘any sign capable of being represented graphically, which is capable of distinguishing the goods or services of one undertaking from those of other undertakings.’ The sign is the subject of importance of a registered trademark and may consist of words, designs, letters, numerals, etc. as long as it can be graphically represented. This requirement is easily achieved for two-dimensional marks but can be a major problem for the less traditional marks, such as smells and colours, which might not be able to be reproduced directly in their visible form.\(^2\)

Whether or not a mark will be successful in the process of registration depends on its ability to distinguish the goods and services in question from those of the competitors. In other words, the mark needs to be capable of being distinctive of a particular trader’s goods and services to the relevant consumers, and it is up to the applicant to persuade the Trade-Marks Registry or the court in question that the mark fulfils the conditions.\(^3\) As mentioned above, a trademark is only registrable if it satisfies the criteria of registrability which the law lays down. Article 4 CTMR indicates the minimum level of registrability of a trademark and if the requirements are not fulfilled the trademark cannot be registered. There are a number of objections that may have to be overcome before it can be registered, and these can be divided into absolute grounds of refusal and relative grounds of refusal.

The absolute grounds of refusal concerns marks that should not be registered at all or be registered only in certain limited circumstances. It is the nature of the trademark, not the trademark’s relationship with other trademarks that renders it inappropriate for registration.\(^4\)
The absolute grounds for refusal are to be found in Article 7 CTMR, which states that signs that do not satisfy the requirements of Article 4 CTMR cannot constitute a trademark and therefore, cannot be registered. It also refuses registration of trademarks that are devoid of any distinctive character or are descriptive, generic or customary. The only way they could obtain registration is if they have, in fact, acquired a distinctive character through use by the date of application according to Article 7(3) CTMR. Additionally, there are further absolute grounds for refusal in Article 7(1)(e)-(h) CTMR. Contrary to the previous mentioned provisions these cannot be cured from their lack of distinctiveness through use.

The most important criteria relating to the registrability of a trademark is the distinctiveness. If the relevant public thought that a trademark is devoid of distinctive character the trademark in question cannot be registered. This refusal is essential to prevent registration of marks that are incapable of distinguishing the goods and services of the undertaking in question from others (the indication of origin requirement), and by that unable to fulfil the key function of a trademark.

Not all trademarks are born with a distinctive character. For those trademarks which may not be prima facie distinctive, it is necessary to prove that they have gained this specific status. Even if trademarks lack distinctiveness, the way the marks are used in the market may cause the public to associate it with a particular product. If they have become distinctive with a particular trader through use, the trademark will have satisfied the requirement and can thereby be registered.

Not only trademarks which are devoid of distinctive character but also marks that are descriptive are to be refused registration. The public interest of keeping the descriptive signs freely available for use and not reserved by one undertaking is the underlying reason for this exclusion from registration. Descriptive marks consist exclusively of signs or indications serving to designate the characteristics of goods and services. To register the trademark ‘Football’ for footballs is not permitted, but it is for apples since it does not describe the purpose of an apple in the same way as it would do with footballs. Wholly descriptive marks, like the one just mentioned, can only be registered if they acquire distinctiveness through use.

Relative Grounds of Refusal

If a registration of a mark would conflict with an earlier registered trademark, the relative grounds of refusal will be applicable. A mark would be refused registration if the use of that mark would infringe the earlier registered trademark and also when the use would amount to ‘passing off’. Even if these infringements existed, a refusal on relative grounds would only be the case if the proprietor of the earlier trademark right opposes the registration or if the mark already has acquired registration, applies for a declaration of invalidity. The relative grounds of refusal are to be found in Article 8 CTMR. It states that a trademark shall not be registered or if registered, be liable to be declared invalid if the marks are identical and applies to identical goods and services as the earlier registered trademark, if there exists a likelihood of confusion on the part of the public, including the likelihood of association, between
the marks or if the latter trademark takes unfair advantage of the reputation which the earlier trademark has acquired.

**Infringement of a Registered Trade**

A registered trademark gives the proprietor the exclusive rights of use of the trademark on the market. If a person uses the registered trademark in the course of trade, then the proprietor is entitled to take actions for infringement. The proprietor shall, according to Article 9 CTMR, be able to prevent third parties from using, in the course of trade, an identical sign in relation to the identical goods and services for which the trademark is registered, an identical sign in relation to goods and services similar to those of the registered trademark with the reservation that there is a likelihood of confusion amongst the public, including the likelihood of association, or a sign identical with, or similar to, the registered trademark in relation to non-similar goods and services where the registered trademark has a reputation in the Member State and when use of that sign would cause an unfair advantage.⁹

**Event Marks**

As mentioned before, events can be seen as branded products. Brands are mental structures that reside in the minds of consumers and the link that occurs between the information provided, and the specific brands are referred to as brand association. Among many strategies, marketing is one that companies tend to use to create a strong and unique brand association among the public in order to differentiate their products from those of the competitors.¹⁰ Not always are the companies using a fair marketing strategy. To market, for example, a soft drink with a banner saying ‘The Drink Of the Olympic Games 2012’ does not necessarily make people believe that the drink was produced and distributed by the International Olympic Committee (IOC), but it most certainly could make the consumer think that the soft drink has an ‘official’ link to the 2012 Olympic Games held in London. This trademark aspect will be dealt with later in this article when I discuss the concept of ‘ambush marketing’¹¹

There is no legal protection for events as such, and you cannot prevent people from reporting what they have seen in an event. There have been attempts to try and claim property rights over an event but none of them have ever been successful. If the organisers of sporting events register trademarks, it is usually not because they wish to provide branded goods themselves but in order to be able to license the marks for others to use, a right confirmed by Article 22(1) CTMR. Through licensing, the rights holder consent to the use of the trademark and it cannot be seen as an infringement. When a new event has been scheduled, the event organizer should therefore, first, ensure that trademark applications have been made for those marks having a commercial value to official sponsors and to ambush marketers before or soon after any campaign using the mark begins.¹²

**Protection of an Event Mark**
The concept of ‘event marks’ may be understood as any ‘signal used to identify an event, a presentation and/or a performance, in which the event organizer has the interest to use (and protect) the trademark in connection with a large number of products and services’. There have been big discussions concerning the concept of ‘event marks’ and what requirements event marks should fulfil in order to be eligible for registration. Some scholars have argued that event marks should fulfil the same registration requirements as any other ordinary trademarks while others think that event marks should be recognised as a new form of protection. To be able to discuss the registration of event marks I will touch upon a couple of cases from the First Board of Appeal at the Office for Harmonization in the Internal Market (OHIM) and a case from the Court of First Instance, now the GC (GC), all concerning the registration of word marks.

Union Trademark Case Law

In June 2001, the Fédération Internationale de Football Association (FIFA) filed an application before the OHIM seeking protection for word marks ‘WORLD CUP 2006’, ‘GERMANY 2006’ and ‘WM 2006’. These applications were covering a wide number of goods and services, and they all were relating to or to be associated with the football championships (held in Germany 2006). By a cancellation application, the chocolate company Ferrero sought to obtain a declaration of invalidity of these marks. They argued that the signs were devoid of any distinctive character and were descriptive in relation to the goods, and services covered by the marks. Because the decisions from the OHIM were all very similar, I will focus on the validity of the trademark ‘WORLD CUP 2006’, which was the first decision.

The conclusion in this case was that the trademark ‘WORLD CUP 2006’ was a descriptive mark and devoid of distinctive character and the Board of Appeal rejected the argument that it had acquired distinctiveness through use. The Board declared that the trademark had a clear descriptive meaning by stating that in sport, a “world cup” is the generic name for a regular competition. For the mark to become non-descriptive the expression must be combined with some other element such as the organizers name or a main sponsor. The Board also stated that even though it is settled case-law that a proprietor is entitled to the exclusive right to prevent third parties from using its mark, this right does not apply to trademarks that are descriptive and devoid of any distinctive character. The combination of the two words and the year was not proven to be recognised as an indicator of origin standing on its own and the average consumer would most certainly perceive ‘WORLD CUP 2006’ as the reference to a sporting event of great importance in 2006 and not as an indication of origin.

Regarding the possibility of acquiring a distinctive character through use the Board alleged that the evidence brought by FIFA was not sufficient enough to prove a fame of the mark across the European Union and that the mark was strongly remembered by the consumers. FIFA filed for court actions before the GC against the Board’s decisions, but according to the Official Journal of the European Union, these actions have been rejected and will not be dealt with.

OHIM’s First Board of Appeal reached the same conclusion in the case concerning the trademark ‘ULTIMATE FIGHTING CHAMPIONSHIP’. They stated that the mark
was devoid of any distinctive character and descriptive in relation to the services in one of the international classes applied for. This decision was made without even considering that ‘ultimate fighting’ was a term coined by the Applicant in order to identify its own fighting events since the Board believed that ‘ULTIMATE FIGHTING’ would be ‘understood as identifying, in generic and plain language, a type of combat’. In other words, the Board meant that the mark had become the generic name of the sport itself.

The Applicant brought an action before the GC against the decision. According to the GC, the OHIM had made a group analysis of all the products and services when deciding if the absolute grounds of refusal in Article 7(1) CTMR were to be applied instead of analysing each individual product and service separately. A group analysis should only be allowed if there is ‘a sufficiently direct and specific common link to each other to the extent of forming such a sufficiently homogeneous category’. Due to the ‘inadequate statement of reason’ the GC annulled the decision and sent the case back to the Office for a new and motivated decision.

It is fair to conclude that the principles stemming from the above cases make it clear that a word mark and an event mark need to fulfil the same requirements for registration as any other ordinary trademark and should not be seen as a new category of trademarks. However, it still remains unclear whether there should be an extended protection for valuable event marks.

**Ambush Marketing**

The term ‘ambush marketing’ was coined by Jerry C. Welsh but as with many other terms the meaning of the term changed considerably since. Ambush marketing could, in a simple way, be defined as ‘a planned campaign by an organisation to associate itself indirectly with an event in order to gain at least some of the recognition and benefits that are associated with being an official sponsor’.

The rise of ambush marketing is directly related to media attention during big sporting events. Sponsoring individual teams, athletes or the broadcasts of events rather than directly sponsoring the event or giving away tickets for the event as a prize are some examples of popular ambush marketing techniques. This means that ambush marketing does not need to involve counterfeiting or illegal use of the protected trademarks, symbols or names associated with the event. Companies simply develop an ‘alternative’ advertising campaign around the event and benefit by association with the event without paying any fee to become an official sponsor.

To generalize the practice of ambush marketing as a synonym for cheating or illegal behaviour would appear to be excessive and the legality or illegality of an ambush marketing campaign should therefore be analyzed on a case-by-case basis. Some ambush marketing exercises have a clear will to mislead the consumers and should be restrained by courts, while other campaigns are created in good faith to explore available marketing alternatives. When assessing the legality of a campaign, the question of likelihood to mislead the average consumer should be taken into account.
According to the IOC, it is very important to make sure to attach a negative meaning to the term since ambush marketing can be seen as cheating and can also cause damages to the Olympic Movement by devaluing the Olympic brand. Due to this fact, and to protect the partners’ rights, IOC finds it extremely important to have an extended protection through special legislation preventing ambush marketing.32

The Alternative of an Extended Protection

In some situations, traditional legal measures are not sufficient enough to tackle problems that may arise concerning events and their protected event marks. Over the past few years, the importance of sponsorships for the organization and financing of major events has grown. This, together with the lack of effectiveness of the traditional legal measures and the increasing instances of ambush marketing, has led event organizers and the official sponsors to demand sui generis protection to protect the properties associated with their events. This is a form of protection that is complimentary to the traditional means of protection.33

A couple of sui generis legislations have been drafted for different kinds of sporting events by the host countries, but this article will only touch upon the one drafted by the organizers of the upcoming 2012 Olympic Games in London.

London Olympic Games and Paralympic Games Act 2006

Before all major sporting events, the candidates are asked to draft and pass legislation to protect properties associated with the event in question. For countries willing to host an event, a protection against ambush marketing has become almost a mandatory requirement, and this requirement was applied to the 2012 Olympic Games. London came out as the winner of the bid to host the games and adopted the London Olympic Games and Paralympic Games Act 2006. The main purpose of the act is to prevent the creation of an unauthorised association between people, goods and services and London 2012 and this legislation gives the organizers a protection beyond the protection of ordinary trademark law.34

The Act mentioned above states that all the exclusive rights in relation to the use of the protected symbols and trademarks shall belong to the Olympic committee. When using protected trademarks in a way likely to suggest to the public that there is an association between the London Olympics and your goods and services, there is no requirement that the association must be misleading. In other words, the activity causing the association might be found to infringe the special legislation, even if there is no risk of confusion to consumers. Regardless of this strong protection of the rights, the Act specifies some exceptions to infringements, such as earlier registered marks or descriptive or incidental use.35

The Olympic Symbol

The Olympic Games is an event that commands the attention of the entire world, including the media, for a couple of weeks every other year, which makes it the most effective international marketing platform for companies. Top companies are willing
to pay huge amounts of money to become official sponsors and acquire the exclusive rights to use the valuable trademarks when marketing their products.

The Olympic properties are set out in the Olympic charter which also states that the rights in those properties belong exclusively to the IOC which, as mentioned before, has the possibility to license the rights for profit making or in advertising purpose. The Olympic properties include the Olympic symbol, the Olympic flag, the Olympic motto, the Olympic emblems, the Olympic anthem, the Olympic flame and Olympic torch, and any Olympic designation.

The Charter does not provide the properties with any legal protection, and it requires the IOC to try to obtain protection for the Olympic properties. The responsibility lies not only on the IOC but the National Olympic Committees (NOC) are also obliged to try to protect the properties.

The Olympic Symbol is protected by the Nairobi Treaty, and this legislation is administered by the World Intellectual Property Organisation (WIPO). It only relates to the Olympic symbol and the purpose of the treaty is to make the use of the symbol dependent on the authorisation by the IOC.

All the contracting parties must, according to Article I of the Nairobi Treaty, refuse, or invalidate, the registration of a trademark which uses the Olympic symbol in any way. They must also make sure that the use of the symbol as a mark, when used for commercial purposes, is prohibited. The only time any use of the Olympic symbol will be accepted is when the authorisation for use has been given by the IOC or if it fulfils the exemptions stated in the Treaty.

The Treaty has had little or no impact at all on the protection of the Olympic symbol. In fact, not many of the host countries were members of the Treaty at the time they hosted the Olympic Games. Instead, they made commitments to the IOC to legislate to protect the Olympic symbol, motto and certain words by creating the so-called sui generis protection stated above.

Analysis

The Olympic rings are probably one of the most recognised symbols in the world, and it is unsurprising that the companies want to associate their businesses with the Olympic brand. As already explained most Olympic related terms and logos are registered as Union trademarks and the Olympic brand is protected under different legislations, such as trademark legislation and passing off. Ever since the Olympic Symbol (Protection) Act 1995 was adopted there has been a protection for these valuable rights. In addition to this, the 2006 Act introduces a protection for “Listed Expressions.” These expressions could be words like Games, Two Thousand and Twelve, 2012 and Twenty Twelve and a use of any of these words in itself or together with any of the words London, Medals, Sponsor, Gold, Silver or Bronze would be seen as an infringement.

The laws relating to the 2012 Olympics are probably the most restrictive ever in their scope. Even simple messages such as ‘come to our bar and watch the 2012 Olympic Games’ would probably be seen as an infringement of the 2006 Act. If you
can afford it, you should apply for official sponsorship in one of the many categories available since that is deemed to be the only real way to be ‘legally’ associated with the Games. In major sporting events like the Olympics, there is only room for one official sponsor from each market segment. This increases the competition between potential sponsors and will probably lead to higher amounts of money paid to become an official sponsor, with the result that the organizers will make the most money from their sponsorship agreements. In other words, granting exclusivity is the key to success.44

With the growing importance of major events, a growing demand for stronger protection against ambush marketing is needed. The critics refer to ambush marketing as ‘parasite marketing’ and are claiming that some companies are deliberately looking for ways to free-ride on their rivals’ sponsorship. The impression of involvement without paying the sponsorship fee is, according to the critics, only harmful to the good of sports. The supporters, on the other hand, do not agree with ambushing marketing giving a negative impact on the market. They claim that ambush marketing creates a positive free market force, and such an activity will not threaten the budget of event organizers. Instead, ambush marketing will encourage event organizers to work harder to defeat violation of intellectual property. Through the hard work, the awareness of intellectual property rights will increase, which will lead to a long-term benefit for all the intellectual property owners.45

To challenge ambush marketing is not always that easy. One of the problems is that the ‘likelihood of confusion’ analysis does not always apply to ambush cases since some of the companies do not directly use or display the Olympic marks. Instead, they create a false association with the marks and the Olympics among the customers. In most jurisdictions, to mislead consumers to think that the advertiser is an official sponsor or a partner of the event is considered to be illegal, but that is not always the case. Due to protection of free speech, ordinary trademark law and unfair competition statutes are usually not sufficient enough to prevent the forms of ambush marketing that are more sophisticated. This is why the event organizers and the official sponsors now are trying to develop new forms to increase protection of the exclusive rights. They are pushing hard to enhance the protection of their rights. Even if such special legislations certainly would increase the legal certainty it could also create anti-competitive effects.46

In the FIFA World Cup cases, the Board did not face the core question regarding who actually coined the expression ‘WORLD CUP’, and the answer remains unanswered. Depending on the answer to the question, understandings might change. If the expression had already been used by a sport competitor before FIFA organized the first championships it would be unfair to grant exclusivity of the expression to FIFA. The attempt to monopolize the term would be completely unjustified. However, if it was the other way around, and FIFA coined the expression as an indication of its international football championships, it would seem fair to grant an exclusive right over the term. Several years have now passed since the delivery of the ‘World Cup’ decisions and even if it were found that the term indeed was coined by FIFA, it would now be too late to claim exclusive rights over the term ‘WORLD CUP’ since it has become a customary term to identify international sporting competitions. To monopolize the words would seem excessive because it
would oblige earlier users suddenly to refrain from the use. The actions brought by FIFA before the GC were, as mentioned, rejected. This means that there is still no answer on how to reduce uncertainty regarding the possibility to legally use terms relating to a big event.47

Regarding event marks, some scholars think that it should be recognised as a new category of trademarks providing an enhanced protection over the protected marks, without the need of enactment of special legislation. They also state that the advertising function of event marks would be another argument in favour of the registrability of this special category. A use of the event mark by non-official sponsors might lead the public to think that there is a relationship between the event organizer and the company in question since it might create a false association to consumers. This could have a negative effect on the investments made by the official sponsors and to avoid a situation like that, the advertising function of event marks needs to be protected.48 However, this approach has been heavily criticized. A large part of the specialised doctrine argues that ‘event marks’ should, as any other ordinary trademark, fulfil the same registration requirements in order to be entitled to be registered. The doctrine discussed this argument in relation to marks such as ‘WM 2006’ where they said that a sign like that could not be registered due to the fact that it had a descriptive character and was devoid of any distinctiveness, which meant such marks could not fulfil the indication of origin requirement. To grant an exclusive right for a descriptive sign could lead to negative reactions on competition, such as hindering others from the use of commonly coined terms referring to their event, which would create a market restriction. Some authors, therefore, insist on the ‘need to keep free’ principle in order to regulate the registration but the question is whether a potential risk of restricting competition would be reason enough not to protect the legitimate interest of organizers of major events.49

Traditional legal measures are not always sufficient to fight the most sophisticated forms of ambush marketing and event organizers and official sponsors argue that an event-specific legislation is needed in order to increase the legal certainty. This will give them effective means to combat the unauthorized use. However, it is undeniable that such legislations can bring concerns about anti-competitive behaviour. The potential anti-competitive effect of granting the exclusive right over words of public property to event organizers and official sponsors might be interpreted by competition authorities as a strategy to avoid competition and may, through monopolization, lead to an abuse of a dominant position according to Article 102 TFEU. The latter argument might be used by non-sponsors against the desired special legislation. One must not forget that without sponsorship, major events like the Olympics might not survive. Therefore, one needs to consider that reasonable restriction might be necessary to guarantee the value and attractiveness of official sponsorships.50

The problem is how you should do the assessment of what a reasonable restriction should be. The enactment of an enhanced protection at the Olympics has included a controversial association right which empowers the organizers to stop companies from making an unauthorised connection to the event. A woman wanted to register ‘GREAT EXHIBITION 2012’ as a trademark for her business with the aim to celebrate all that is remarkable about the United Kingdom. She was organizing live art and Union events, which were to take place in August 2012, at the same time as
the summer Olympics. Her registration application was rejected on the ground that it seemed to be making an association with the Games. When she asked what they meant, the Organizing Committee said that they could use ‘association’ in the broadest of terms according to the 2006 Act. It is hard to say if this was a reasonable restriction or not, but the association right has inspired fierce debates. Some are saying that if there is no confusion to if you are a sponsor or not there should not be a problem. People are not stupid, and the general public knows that there is no connection. Critics have therefore argued that the association right could be seen as a step too far in some of the cases.\textsuperscript{51}

The big question is if the additional protection of event marks really is needed, and if it is desirable? Even if there might be clear answers to this within the MS, the issue is still yet to be decided by the Courts on a Union level. What the CJEU decides on this topic will definitely have an impact throughout Europe since the MS are obliged to adapt to these decisions. A worldwide survey has been made on the desirability of the recognition of event marks as a new category of trademarks. The conclusion of the survey was that trademark and competition law should not be amended merely for sport events and that an extended protection should be avoided. Even if an extended \textit{sui generis} protection was to be adopted it should provide a balance between the relevant parties' interests and preferably be done through event-specific legislation, such as the 2006 Act, which is limited in time and only applies to certain situations. The consequences of granting a 'special' treatment to event marks, which would influence the assessment of the registrability, could be that other industries would push for the same treatment. This is why an event-specific legislation, which is limited in time, is preferable to recognizing event marks as a new category of trademarks.\textsuperscript{52}

\textbf{Conclusion}

Organizers of major sporting events are pushing hard to enact an extended protection for the terms and symbols related to the events. There is no legal protection for events as such and there have been lively discussions concerning the registrability of event marks, if they have to fulfil the same requirements as ordinary trademarks or not. The concept of event marks was developed as an attempt to secure the additional protection, but it has been rejected on a national level. After a thorough analysis, I conclude that there is no need for an extended protection in view of ambush marketing considering the detrimental effects such forms of additional protections could lead to in the existing trademark system. The benefit of an extended protection does not outweigh the burdens. If it becomes unavoidable to secure the investments of event organizers and official sponsors and protect the registered trademarks without extended protections, the option of event-specific legislation, which is at least limited in time, should be chosen. This alternative should be carefully analysed before adopted as legislation since such \textit{sui generis} protections could lead to anti-competitive behaviour and restrict freedom of speech.

The same applies to the creation of a new category of trademarks. If an event mark were accepted as a new category, it would have more lenient registration requirements. It would also lead to an eternal monopoly over terms that should be kept free for everyone to use. This is both unneeded and undesirable from a legal point of view and because of that, it is only fair that event marks should meet the
exact same requirements as any other ordinary trademark in order to be suitable for registration.

Unless a clear decision is made by the courts or legislature, ambush marketing will continue and increase. Different scholars are arguing about the nature of ambush marketing, if it is to be seen as ethical, illegal or simply smart business. This needs to be analysed on a case-by-case basis. It will be interesting to see if such a decision has been delivered before the 2016 Olympic Games and how Brazil will address the complex issues discussed in this paper.

Notes

4 Davis, J. p. 196.
6 Davis, J. p. 198.
7 Davis, J. pp. 198-199.
12 Johnson. P, p. 4 and p.15.
17 Decision R 1466/2005-I.
20 Decision R 1466/2005-I, para. 42.
21 Decision R 1466/2005-I, para. 49.
22 Decision R 1466/2005-I, para. 60.
23 OJC, 2008, C313/49
26 T-118/06, Zuffa v OHIM – ULTIMATE FIGHTING CHAMPIONSHIP (2 April 2009).
27 T-118/06, para. 28.
28 T-118/06, para. 36.
29 Johnson, P. pp. 6-7.
31 Danneman Lundgren. F, pp. 6-8.
32 Danneman Lundgren. F, pp. 6-8.
33 Danneman Lundgren. F, pp. 54-56.
36 [hyperlink]
37 Olympic Charter chp. 7(2).
38 Olympic Charter, chps. 8-14.
40 Johnson, p. 99.
41 Johnson, pp.100-101.
42 [hyperlink]
43 [hyperlink]
44 [hyperlink]
45 Schmitz, p. 208.
46 Danneman Lundgren, F. pp. 18-19.
47 Danneman Lundgren, F. pp. 38-40.
49 Danneman Lundgren, F. pp. 50-53.
52 Danneman Lundgren, F. pp. 67-71.