

Appendix A

Extract from an undated draft letter by the Dutch government addressed to the president of FIFA, purporting to confirm the terms of Government Guarantee No. 6 ('Protection and Exploitation of Commercial Rights') in respect of the Low Countries bid for the 2017 FIFA Confederations Cup/2018 FIFA World Cup and/or the 2021 FIFA Confederations Cup/2022 FIFA World Cup:

General Measures and Protections

The Netherlands represents and guarantees to FIFA and ensures to FIFA that the following measures and protections will be implemented and operative on the federal, state, municipal, local and other relevant levels by no later than 1 June 2013, if necessary by the issuance of special legislation:

- (i) the establishment of special “protected” status for the Competitions and in particular for FIFA’s intellectual property rights relating to the Events, such “protected” status to bestow upon the intellectual property rights to [be] protected the equivalent rights as trademark registrations;
- (ii) the unauthorised use, reproduction, imitation, counterfeiting, or modification of any official symbols of FIFA or the Events, or any other FIFA intellectual property in relation to the Events, as well as to import, export, sell, offer, expose for sale, or conceal official symbols or products resulting from unauthorized reproduction, counterfeiting, or modification of official symbols, will be prohibited by law;
- (iii) the registration and use of domain names containing FIFA’s trademarks will be prohibited by law;

- (iv) ambush marketing by association in relation to the Events and/or FIFA, namely to promote, or otherwise direct public attention to businesses, products or services in a manner that may induce third parties into erroneously believing that those products or services are approved, authorised or endorsed by FIFA, or are connected to the Events, will be prohibited by law;
- (v) ambush marketing by intrusion in relation to the Events and/or FIFA, namely to practice, organise, approve, or sponsor any promotional, advertising, or marketing activities through which one targets the audience of the Events, including ticket holders, in order to gain exposure for its businesses, products or services without authorization from FIFA, will be prohibited by law;
- (vi) any and all acts of “unfair competition” or “passing off” in relation to the Events and/or FIFA, will be prohibited by law;
- (vii) to hold, organise, approve or sponsor a commercial public viewing event related to the Events, unless expressly authorised in writing by FIFA, will be prohibited by law;
- (viii) the resale or redistribution of match tickets or Event tickets, unless expressly authorised in writing by FIFA, will be prohibited by law;
- (ix) the use of match tickets or Event tickets in advertising, sales, competitions, sweepstakes, give away, or other promotional activities, or as part of a hospitality or travel package, or the making available or advertising of match tickets or Event tickets for any such purposes, unless expressly authorised in writing by FIFA, will be prohibited by law; and
- (x) the prohibitions listed above shall be sanctioned by a suitably severe penalty to deter any deliberate breach, subject to a written demand for penalty by FIFA.

Procedural Measures and Protections

The Netherlands represents and guarantees to FIFA and ensures to FIFA that the following procedural measures and protections will be implemented and operative on the federal, state, municipal, local and other relevant levels by no later than 1 June 2013, if necessary by the issuance of special legislation:

- (i) the implementation of expedited examination and registration procedures for all FIFA’s trademark, design and (if relevant) copyright applications related to the Events;
- (ii) the implementation of expedited examination and opposition procedures for all third party trademarks, designs and (if relevant) copyright applications related to FIFA and/or the Events, filed without FIFA’s written authorisation;

- (iii) the grant of special powers to local law enforcement officers to enforce the prohibitions and restrictions outlined in this Guarantee, to seize or confiscate any materials that they reasonably suspect are being used in connection with the breach, and to dispose of/destroy goods used or created in connection with the breach (upon conviction for the breach);
- (iv) the creation and enforcement of a restricted advertising and street trading zone within, and in the airspace above, a two kilometre (2 km) zone around each stadium and other official sites used for the Events, in which the right to conduct commercial activities is subject to approval by FIFA or its appointees;
- (v) the implementation of expedited enforcement procedures, including judicial procedures, in relation to the enforcement by FIFA of its legal rights in connection with the Events;
- (vi) the allocation of a suitable number of law enforcement officers to work with FIFA and physically participate in FIFA's rights protection programme, including the participation in patrol teams during the Events;
- (vii) the allocation of sufficient numbers of customs officers to properly control the importation of counterfeit and pirate goods;
- (viii) the establishment of a national rights protection programme committee to consist of members of the relevant national government departments and agencies (such as the department of trade & industry, the intellectual property office, customs service, public prosecutors office, law enforcement agencies, etc.); and
- (ix) the establishment of regional rights protection programme committees for each host city, which are to consist of regional members of the relevant bodies as above.

Further Confirmations Regarding Commercial Rights

The Netherlands also represents and guarantees to FIFA that it unconditionally and irrevocably acknowledges FIFA's legal and beneficial, unrestricted and exclusive ownership of all media rights, marketing rights, ticketing rights and all other commercial rights related the Events, as well as of any marks and other intellectual property rights of FIFA related to the Events.

The Netherlands further represents and guarantees to FIFA, and will ensure, that the Netherlands will pass, to the extent necessary, special laws designed to ensure full protection of FIFA's ownership of all media rights, marketing rights, ticketing rights, other commercial rights, marks and other intellectual property and shall provide FIFA with the support of officers of relevant authorities, such as police and customs, to assist in the protection of the media rights, marketing rights, ticketing rights, other commercial rights, marks and other intellectual property of FIFA.

The Netherlands also represents and guarantees to FIFA, and will ensure, that there are and will be no legal restrictions or prohibitions on the sale, advertising or

distribution of FIFA Commercial Affiliates' or FIFA Contractors' products, including food and beverages, in the stadiums or other sites for the duration of the Competitions and Events and that there are and will be no legal restrictions or prohibitions on the exploitation of the media rights, marketing rights, ticketing rights, other commercial rights, marks or other intellectual property of FIFA. The Netherlands agrees that any media, marketing, ticketing or other commercial laws or regulations which interfere with, or impinge upon FIFA's exploitation of the media rights, marketing rights, ticketing rights, and other commercial rights are suspended in respect of the Competition and that FIFA may exploit such rights unfettered in the Netherlands in a manner of its own choosing. FIFA shall, in particular without limitation, have the full and exclusive control over any news access or related rights, and fully control all access and accreditation rights to any official sites.

The Netherlands also represents and guarantees to FIFA that FIFA and each of the entities outlined below shall be permitted unconditionally to conduct business activities in relation to the Events in the Netherlands:

- (i) FIFA / FIFA Subsidiaries;
- (ii) FIFA Confederations and FIFA Member Associations;
- (iii) Hosting Association and LOC;
- (iv) FIFA Service Providers;
- (v) FIFA Host Broadcaster, FIFA Commercial Affiliates and FIFA Contractors;
and
- (vi) other FIFA partners and their staff whose activities, services or deliveries are important for the organisation, staging, administering, marketing, rights implementation etc. in connection with the Events.

The entities outlined above shall be entitled, if required, free of charge and on an expedited basis, to register and establish themselves and legally recognised commercial entities in the Netherlands, to conduct trade and other commercial activities, to lease business premises, to own property (of all kinds), to employ staff, to enter into contracts of any nature and to conduct legal action in the Netherlands against third parties.

General Undertakings

The Government Declaration and the Government Guarantees No 1–8 shall be read together and interpreted as a whole. When the meaning, interpretation, scope and intent as set out in Chapter F of Government Guarantee No. 8 differs from or conflicts with a provision in this Guarantee, Chapter F of Government Guarantee No. 8 shall be given absolute priority and will prevail as the only applicable, valid and binding obligation, undertaking, guarantee or assurance by the Government of the Netherlands.

Nothing in this Government Guarantee may lead to or be interpreted as leading to a breach of Constitutional rules and principles or rules and principles of public policy applicable in the Netherlands, such as for example but not limited to the state structure, the separation of powers, the non-discrimination principle and the prevalence of international law.

The Government of the Netherlands represents and guarantees to FIFA and ensures that all special laws, regulations and ordinances necessary to properly fulfil the obligations under this Guarantee have been enacted or shall be enacted and enter into force in due time.

This Guarantee shall be valid and binding as of the date of its execution and shall remain valid and binding regardless of the fact that certain laws, regulations and ordinances will be enacted at a later stage. The necessary legal framework is in place to allow FIFA to impose enforcement of this Government Guarantee. The government of the Netherlands understands that all obligations under this Government Guarantee must be fulfilled and will take all necessary steps to ensure this.

If required, the government of the Netherlands, together with the LOC, will make all necessary arrangements to provide FIFA with an English translation of the relevant laws, regulations, ordinances (including circulars), other legal instruments and practice.

The government of the Netherlands confirm that all relevant correspondence and discussions shall be conducted in English language.

The signatories confirm to be competent to issue this Government Guarantee. Under the laws of the Netherlands, this Government Guarantee is and shall remain binding and valid against the Netherlands and its government and all other relevant authorities and bodies, up to, during and following the Competitions, irrespective of any change in the government of the Netherlands or in its representatives, or any change in the laws and regulations in the Netherlands.

The Netherlands

[Extract (Sect. A, the definitions section, omitted here) from a draft letter available online at the time of writing on the web site of the Dutch government at <http://www.overheid.nl/>]

Appendix B

Resolution on anti-ambush marketing legislation published by the Emerging Issues committee of the International Trademark Association (INTA), November 2010 (referred to in [Sect. 8.7](#) in [Chap. 8](#)):

WHEREAS, organizers of major sporting and other entertainment events seek to generate greater revenues by preventing non-event sponsors from engaging in unauthorized marketing and advertising activities that create associations with the event (so-called “ambush marketing” activities);

WHEREAS, ambush marketing activities in many cases may be permissible under established trademark or unfair competition laws;

WHEREAS, the intense competition to become the host country for major events increasingly has led to the enactment of special legislation to prevent ambush marketing for such events as the Olympic and Paralympic games in the United Kingdom, Canada and Brazil; the Commonwealth games in Australia; and the World Cup in South Africa; and

WHEREAS, ambush marketing legislation often extends sponsors’ and organizers’ rights well beyond the protection of traditional trademark and unfair competition laws, thus impeding existing trademark owners’ rights by failing to appropriately balance the interests of official sponsors and event organizers with free commercial speech, fair use and the legitimate commercial activities of others;

BE IT RESOLVED, that the International Trademark Association recommends that countries electing to adopt ambush marketing legislation relating to major events ensure that the legitimate rights of trademark owners and the public to use trademarks and descriptive terms fairly are balanced appropriately against the rights of event sponsors and organizers.

BE IT FURTHER RESOLVED, that the International Trademark Association recommends that ambush marketing legislation relating to major events should be based on the following principles and guidelines:

- a. A reasonable balance should be struck between the interests of the organizers, sponsors, local businesses and property owners, the local community in which the event will be held, and trademark owners.
- b. Prior to adopting ambush marketing legislation for the protection of a major event, event emblem or word, there should be consultation with potentially affected parties.
- c. The special protections granted to organizers and sponsors of a protected event should be limited in time so that they are in effect only for a certain amount of time leading up to the event and for a reasonable amount of time following the event.
- d. Restricted “ambush marketing” activities should be limited in scope and clearly defined so that only commercial activities that create or are likely to create a false implication of sponsorship or association for the non-sponsor or confusion among the public as to sponsorship are prohibited.
- e. Remedies in ambush marketing legislation should minimize the risk of sponsors using overreaching rights of action to the detriment of bona fide trademark owners.
- f. Special protection should not be granted to any single non-distinctive term or symbol and such terms and symbols should remain available for use by all traders, so long as use of such single term or symbol does not create a false impression of sponsorship of the event.
- g. The validity of pre-existing rights, whether intellectual property rights, tangible property rights, contract rights, and others, should be recognized and reasonably accommodated, especially when establishing such restrictions as “clean zones” and “clean transport zones.”
- h. The effect of ambush marketing legislation on trademark applications, particularly for symbols, should be taken into account. For example, it may be appropriate to provide that a conflicting application remains in limbo pending expiry of a special protection period.
- i. Ambush marketing legislation should make it clear that the organizers and/or sponsors of the event are the only entities responsible for bringing, or entitled to bring, civil actions to enforce the legislation.
- j. Express exceptions to violation of ambush marketing legislation could include ongoing activities by existing organizations, registered trademarks and trade names. The categories of exceptions should be appropriately and carefully defined—for example the manner in which a registered trademark category is defined may also need to include device marks and “brand extensions.” Pre-existing unregistered trademarks and trade names should be taken into account and descriptive and other permissible fair uses should also be excepted, so long as they do not create a false impression of sponsorship.
- k. In the interests of appropriately balancing the respective parties’ rights it would be preferable for ambush marketing legislation to avoid presumptions of violations and rather make the inclusion of protected emblems or words a factor to be considered in assessing whether a violation has occurred.

1. Ambush marketing legislation might provide for civil remedies as are available in other types of intellectual property matters, such as injunctions, damages, seizure of counterfeit goods, and corrective advertising, but should not provide for criminal penalties, such as criminal fines and imprisonment.’

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Glossary

Lanham Act United States federal trademark statute

Lei Geral da Copa Draft legislation before Brazilian Congress (at the time of writing) for the 2014 FIFA World Cup Brazil

London Act London Olympic and Paralympic Games Act, 2006, passed for the 2012 London Olympic Games

Pelé Act Brazil's general sports Act (Law 9615/98)

Sochi Act The Russian Federation's 'Olympic Law' (Federal Law No. 310-FZ) passed for the 2014 Sochi Winter Olympic Games

Ted Stevens Act Ted Stevens Olympic and Amateur Sports Act, 1998 (United States)

Vancouver Act Canada's Olympic and Paralympic Marks Act, 2007 (also referred to as 'Bill C-47'), passed for the 2010 Vancouver Winter Olympic Games

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