Draft bill regulating ambush marketing approved by the Council of Ministers

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On 17 January 2020, the Italian Council of Ministers approved a draft bill specifically prohibiting ambush marketing which was introduced following a proposal by the Minister of Justice, Alfonso Bonafede. The bill aims at strengthening the protection of the economic interests of companies that sponsor sports events and exhibitions of national and international relevance. The bill should introduce appropriate measures, particularly in light of the upcoming 2020 UEFA European Football Championship, with a view to preventing unauthorised economic players from associating their trademarks or products with any symbol or logo of the relevant events.

The provisions provided for in the bill, however, have a general scope of application, given the absence of a specific legal framework regulating ambush marketing. The bill illustrates three possible subject categories which are affected by the threats posed by ambush marketing.

On the one hand, ambush marketing may be dangerous for the general public, insofar as misleading advertising leads the general public to believe that the sponsored product is covered by a sponsorship agreement which does not actually exist.

Secondly, it negatively affects the operators who have legitimately entered into sponsorship agreements and who fail to obtain the expected revenues in return because of the misleading effects of ambush marketing and the sidetracking of consumers which it brings about.

Lastly, the bill assumes that the relevant event organisers also suffer damages from ambush marketing, as the value of the licences for the relevant logos and image rights decreases.

The bill prohibits any form of parasitic advertising practised on the occasion of sports events, exhibitions of national and international relevance or shows in which internationally or nationally renowned artists participate. In order to qualify as parasitic, such forms of advertising have to meet two requirements: they are not authorised by the event organisers and they pursue an economic or competitive advantage.

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Since ambush marketing is inherently connected to events of limited duration, the draft bill provides for a temporarily-limited protection which extends from 90 days before the official beginning of the event until the 90th day following the end thereof.

Finally, the draft bill entrusts the Italian Competition Authority with the power to impose administrative penalties ranging from EUR 500 000 to EUR 2 500 000. Such penalties should be imposed with a view to balancing, on the one hand, the protection of the economic expectations of events organisers and official sponsor operators and, on the other hand, the desire to engage in advertising for third-party operators on the occasion of events of significant resonance.

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