

BOOK REVIEWS

Structuring Effective Sponsorships by Craig Richards (Sydney: LBC Information Services, 1998) pages i–xi, 1–371. Price \$89.00 (softcover). ISBN 0 455 21600 2.

In 1988, the publication of G M Kelly's *Sport and the Law: An Australian Perspective*¹ was welcomed as the first Australian book to draw 'together much of the case law, legislation and academic literature which has immediate relevance to Australian sport'.² It was claimed that Mr Kelly's book reflected the growth which was occurring in leisure industries. Indeed, the mid 1980s saw the emergence of a small body of specialist legal literature about the performing and non-performing arts, and about the leisure, travel and tourism industries.

A decade later, the publication of Craig Richards' *Structuring Effective Sponsorships*³ reflects the remarkable developments which have occurred in the world of 'sports law'.

Today, it is well recognised that for many people sport is no longer 'play' — it is a very serious affair. The business nature of sport, concerns about 'rights' and attendant government involvement in sport have served to drive a mini boom in sports law. Specifically, sponsorships of sport are rarely charitable or philanthropic. They are business deals where sport sells itself as a desirable vehicle for publicity.

The public side of the boom is to be seen in litigation such as the Super League saga in rugby league,⁴ player contract negotiations, disciplinary action over performance-enhancing drugs and legal investigations into gambling in cricket and corruption in the International Olympic Committee. Less visible indicators of the rise of sports law are the existence of a well established professional association for those interested in sports law,⁵ a number of introductory and advanced university subjects in the field and substantial book and journal literature.

¹ G M Kelly, *Sport and the Law: An Australian Perspective* (1987).

² Hayden Opie, 'Book Review: *Sport and the Law: An Australian Perspective* by G M Kelly' (1988) 16 *Melbourne University Law Review* 857, 857.

³ Craig Richards, *Structuring Effective Sponsorships* (1998).

⁴ *News Limited v Australian Rugby Football League Ltd* (1996) 64 FCR 410. For an in depth analysis of the Federal Court's decision, see Warren Pengilley, 'ARL v Super League: What Does it Mean for Sporting Organisations?' (1997) 5 *Competition & Consumer Law Journal* 77. See also numerous reports on related litigation by David Garnsey in the newsletter of the Australian and New Zealand Sports Law Association: 'A League of Their Own?' (1995) 5(2) *ANZSLA Newsletter* 1; 'ARL v Super League: A Summary of The Legal Premiership Race' (1995) 5(3) *ANZSLA Newsletter* 1; 'Super League Player Contracts Declared Void' (1995) 5(4) *ANZSLA Newsletter* 10; 'Stadium Door Slammed in Super League's Face' (1995) 5(4) *ANZSLA Newsletter* 10; 'ARL Wins Super Legal Battle with News Limited' (1996) 6(1) *ANZSLA Newsletter* 1; 'News Limited's Super League Appeal Successful' (1996) 6(3) *ANZSLA Newsletter* 1; 'High Court Rejects ARL Plea' (1996) 6(4) *ANZSLA Newsletter* 4; 'ARL Wins Contract Battle' (1996) 7(3) *ANZSLA Newsletter* 1; 'Super League Player Cases at an End' (1998) 8(2) *ANZSLA Newsletter* 10.

⁵ Australian and New Zealand Sports Law Association Inc, established in 1991.

In 1988, it was said that 'sport is a broadly based activity that can give rise to almost any conceivable legal issue.'⁶ One dilemma this presented for Mr Kelly was how to strike a balance between depth and breadth of coverage. He made a fairly good attempt at resolving it. However, the massive growth in sport-related legal material over the past decade has encouraged books of much less ambitious breadth. Today, legal practitioners, academics, students and sports administrators have access to an introductory book (now in its second edition),⁷ a practical guide to a variety of mainly commercial law aspects of sport,⁸ an academic analysis of topics of importance to non-profit associations which contains much material about sport⁹ and a relatively short book dealing with athletes' personality rights.¹⁰

Structuring Effective Sponsorships continues some of the trends in book publishing on sports law. First, it is about a specialty, perhaps even a sub-specialty in the field, because sponsorships can be viewed as part of the commercial law dimension of sports law. In fairness to the author, he tries to cast his net wider than sport. The arts, charities, schools and other community groups seek sponsorship, but, realistically, most sponsorship is directed towards sport. The book reflects that reality and most examples are drawn from sport. Substantial portions of the text are aimed at a sports audience. However, that is not to suggest that those with interest in sponsorships outside sport would find the book anything other than valuable.

Second, the book is practical but nevertheless detailed in approach. This reflects both the relative youth of the field in a doctrinal sense and the market demand for thorough guidance on how to plan, establish and manage sponsorships because they have become complex commercial transactions.

Third, while the book is written from a legal perspective, it is aimed to reach beyond a legal audience to those who seek or provide sponsorships and their marketing and communications advisers. This reflects the circumstance that in sports law (as well as other fields), the reader is just as likely to be a non-lawyer.

The book is organised into 14 chapters. One of the main points to emerge from the Introduction — chapter one — is the importance of legal advice from the beginning of planning a sponsorship. Mr Richards likens the sponsorship agreement to the architect's plans for a structure. Historically, lawyers were brought in to record deals that had been done. However, the author argues (and this is not an especially new viewpoint in other contexts) that the agreement and the lawyer's advice can be essential to planning and implementing a successful business transaction. It is this approach that he takes into the remainder of the book.

Chapter two is entitled 'Resource Centre' and explains the legal terms and concepts used in the book. Lawyers will find the definitions simplistic. The definition of the important concept 'ambush marketing' is questionable and represents the major flaw in the book. More of this below.

⁶ Opie, above n 2, 857.

⁷ Deborah Healey, *Sport and the Law* (2nd ed, 1996).

⁸ Mark Fewell (ed), *Sports Law: A Practical Guide* (1995).

⁹ Myles McGregor-Lowndes, Keith Fletcher and A S Sievers (eds), *Legal Issues for Non-Profit Associations* (1996).

¹⁰ Eugénie Buckley, *Sports Law: Name and Image* (1998).

The third chapter considers the major factors which may influence the structure of the sponsorship arrangement. These are the respective goals and objectives of the parties, the parties' compatibility and the exposure the sponsorship will receive. From a sponsor's perspective there is a surprising variety of goals which sponsorship can achieve: from raising brand awareness, through driving sales to improving staff morale. Just which are the sponsor's goals and to what degree they are to be achieved (for example, a sales increase of between 10 and 20 per cent) will have a significant effect upon how the sponsorship is structured. The author's methodical analysis of the influencing factors will reward careful attention.

Chapters four to eleven deal with what the author calls the seven steps to structuring an effective sponsorship.

Chapter four is concerned with the rights (benefits) which a sponsor receives. For even the moderately knowledgeable person, the manner in which the multifarious rights are divided is quite fascinating. Naming rights, designation rights (different sponsorship levels), signs, articles in industry or event magazines, use of participants, sales rights for product at the event, promotions at the event, rights to present awards, free tickets and even souvenirs signed by the star participants are just some of the benefits that can be sold individually or packaged for sponsors. Each has its own legal dimension and different importance in terms of the sponsor's goals and objectives.

Chapters five and six examine steps which can be taken to minimise non-sponsors cashing in on the publicity associated with an event, team or individual. Chapter five considers general issues, and chapter six looks at marketing arrangements for the Olympic Games to be held in Sydney in 2000 as a case study.

The principal topic in these chapters is 'ambush marketing'. The author acknowledges that debate surrounds the meaning of this term but he neither analyses the substance of the debate nor refers readers to the relevant sources. The definition he adopts is, 'representing an association with a sponsored person that does not exist'.¹¹ This definition covers a wide ground but it might be expected that any such behaviour will always be unlawful. The representation that goods or services have a particular origin or approval which they do not may constitute passing off or a contravention of ss 52 or 53 of the *Trade Practices Act 1974* (Cth). Additionally, the person who manufactures or sells pirate merchandise may well infringe copyright or a trade mark. These are cases of the infringement of clear legal rights. For instance, anyone who is foolish or careless enough to infringe the extensive intellectual property and marketing rights of the Sydney Organising Committee for the Olympic Games (discussed in chapter six), will find themselves dealt with firmly and swiftly. Such unlawful behaviour, while inconvenient for event organisers and sponsors, is controlled more or less adequately by the law given the requisite time and resources.

However, the author clearly contemplates that some ambushing activity cannot be prevented¹² and is lawful. In fact, the ambush that event organisers and sponsors

¹¹ Richards, above n 3, 11.

¹² Ibid 118–20, 251.

fear is not of the illegal ilk. Over the years there have been some spectacularly successful ambushes. For instance, there was motor vehicle manufacturer General Motors Holden's ambush of official Australian Olympic team sponsor, Toyota, at the time of the 1992 Olympic Games. In that instance, every gold medal winning Australian was presented with a 'Golden Holden' by two of the Australian Olympic broadcaster's leading commentators. Needless to say, by the time of the next Olympic Games, the gap had been plugged by myriad legal provisions in Olympic team member and broadcaster contracts.

The real ambusher is the one who can succeed in *bringing the sponsored activity to the audience's mind* without infringing any intellectual property right associated with that activity and without making any prohibited representation of an affiliation or connection with it. Hence, the ambusher achieves significant marketing objectives without paying the premium associated with an official sponsorship. Naturally, sponsors feel undermined and sponsored people foresee less lucrative deals when the time for renewal arrives. Their response has been to label the ambushers as immoral, pirates, parasites and, in effect, a new version of the 'bludger'.

On the other hand, there is an argument for celebrating the real ambusher. It epitomises the freedom of speech essential for a democratic society as well as the ingenuity and enterprise of the free market. Furthermore, some organisations which have been damned because they were real ambushers have shown that they had legitimate marketing messages to convey and interests to protect.

Without further analysis and explanation, which the book does not contain, it is inappropriate to collectively label the unlawful and the lawful activity as ambush marketing, because it risks creating the impression that certain lawful activity is clearly wrong, if not illegal.

Chapters seven, eight and nine deal with payment mechanisms, consultation and 'flexibility' respectively. Flexibility is about renewal, early withdrawal and adjustments to the sponsorship arrangements.

Chapter ten examines the methods available to quantify the value predicted or achieved for a sponsorship. While the chapter does not delve into the detail of the relevant statistical methods, it does explain the methods' general nature and identifies those which are best used for assessing the achievement of various sponsorship goals and objectives. It seems that these methods are becoming increasingly sophisticated and sports administrators and lawyers working in the area of sponsorship will need to have the general understanding of them which the book provides.

Chapter eleven is concerned with due diligence and explains methods for checking whether all is as it should be, or is likely to be, before sponsorship is entered into. Everything from financial reports on the sponsor and sponsored person, sighting necessary approvals and authorities and provision for insurance are covered. No doubt, some recent scandals in sport will see sponsors and sponsored persons making greater efforts in this domain.

While sponsorships can occur successfully without television or radio coverage, many sponsorships of events depend on the presence of television coverage in

particular. Chapter twelve deals with the issues raised by an event's broadcasting. The broadcaster's presence will mean more complex arrangements involving similar issues to those discussed earlier in the book. However, the chapter deals with additional ones such as virtual advertising (electronic replacement of fixed signs at venues or electronic insertion of signs where there are none) and control of the event to prevent unauthorised broadcasts.

Chapter thirteen deals with the use of celebrities in sponsorship and their so-called personality rights. This is a topic upon which there is now a considerable body of Australian case law and commercial practice.¹³

Chapter fourteen concludes the book with three very useful case studies — sponsorship of a sports team, a ballet company and a public cause — in which the earlier material is pulled together in practical demonstrations.

This book is very well organised. On the whole, explanations are clear. There is useful cross-referencing. Each chapter commences with a short statement of its contents. Each section in a chapter is followed by key points in a box in bullet point format, and each chapter concludes with a checklist. The index proved helpful and is moderately well detailed.

Whether the highly structured approach is 'friendly' to a casual reader will remain to be seen; it may prove to be a little tedious. However, the book seems to strike a good balance between the needs of practising lawyers and sports administrators. It is to be expected that it will be in strong demand in sports studies and marketing courses as well as related law subjects, although for law students its best use will be principally as a practical guidebook.

In recent years, a number of useful book chapters and articles have been published concerning sports sponsorship or marketing¹⁴ but, in the Australian context, *Structuring Effective Sponsorships* by Craig Richards is a significant development in the practical sports law literature.

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¹³ See generally Buckley, above n 10.

¹⁴ L Bean, 'Ambush Marketing: Sports Sponsorship Confusion and the *Lanham Act*' (1995) 75 *Boston University Law Review* 1099; Jamie Nettleton, 'Legal Aspects of Sports Sponsorship' (1995) 3 *Sports Law and Finance* 28; Katrina Rathie and Tim Gaspar, 'Sponsorship Agreements' in Fewell (ed), above n 8, 78; Anne Wall, 'Sports Marketing and the Law: Protecting Proprietary Interests in Sports Entertainment Events' (1996) 7 *Marquette Sports Law Journal* 77.

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