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# Ambush Marketing beyond the Olympics: when advertising becomes unfair competition

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# Ambush Marketing beyond the Olympics: when advertising becomes unfair competition

## Introduction

The recent decision against Zalando sets a significant precedent in the regulation of ambush marketing.

The sanction imposed by the Italian Competition Authority, along with subsequent judicial confirmation, highlights the need to guarantee the fairness of commercial communications during high-profile events becomes evident. This case highlights how the phenomenon of ambush marketing can also occur outside the Olympics, making a careful assessment of the advertising strategies to be adopted essential.

In light of this, the relevant legislation - introduced precisely in view of the 2026 Milan-Cortina Olympic Games – is confirmed to have a broader scope applicable to various sporting and cultural events.

In anticipation of the next Italian Olympic Games, it is essential to know the principles established by the authorities and any new CONI Guidelines on the subject, in order to avoid risks and ensure communication in compliance with the regulations in force.

## 1. Regulatory context

Article 10 of Law Decree 16/2020 (containing 'Urgent provisions for the organisation and holding of the Winter Olympic and Paralympic Games Milan Cortina 2026 and the ATP Finals Turin 2021 - 2025, and on the prohibition of ambush marketing - referred to as 'parasitic activities'-) and subsequent amendments prohibits *"parasitic, fraudulent, deceptive or misleading advertising and marketing activities carried out in connection with the organisation of **sporting events or trade fairs of national or international importance** that have not been authorised by the organisers and are aimed at gaining an economic or competitive advantage"*.

In particular, the parasitic advertising and marketing activities prohibited by the Article 10 are as follows:

- the creation of a link, **even indirectly**, between a trade mark or other distinctive sign and one of the events referred to above, liable to mislead the public as to the identity of the official sponsors;
- the false representation or statement in its advertising that it is an official sponsor of one of the above-mentioned events;
- the promotion of one's trade mark or other distinctive sign through any action, not authorised by the organiser, which is likely to attract the attention of the public, carried out on the occasion of one of the above-mentioned events, and which is likely to create the erroneous impression in the public that the author of the conduct is a sponsor of the sporting event or trade fair itself;
- the sale and advertising of products or services that are abusively marked, even in part, with the logo of one of the events referred to above, or with other distinctive signs likely to mislead the public as to the logo itself and to create the erroneous perception of any connection with the event or with its organiser or with persons authorised by the latter.

However, **conduct related to sponsorship agreements** concluded with individual athletes, teams, artists or authorised participants in one of the above-mentioned events does not constitute prohibited parasitic advertising and marketing activities.

Pursuant to Article 11 of Law Decree 16/2020, these bans **operate from the date of registration of the official logos, brands or trademarks of the events in question, until the 180th day** following the official end date of those **events**.

## Sanctions

In the event of an ascertained violation of the prohibitions set forth in Article 10, the Italian Competition Authority (AGCM) may impose **an administrative fine ranging from €100.000 to €2.5 million**, unless the conduct constitutes an offence or a more serious administrative offence and without prejudice to the application of the other provisions of law to protect the persons who claim that their rights or interests have been harmed as a result of the conduct referred to in Article 10 [e.g. unfair competition regulations pursuant to Article 2598 of the Civil Code, regulations on the protection of trademarks under the Industrial Property Code, or Articles 20 et seq. of the Consumer Code on unfair commercial practices, etc.].

## 2. Case

By order No. 30099 of 29 March 2022, at the conclusion of administrative proceeding No. PV 16/2021, the AGCM ruled that the company Zalando SE (hereinafter also referred to as '**Zalando**') had engaged in parasitic advertising activities within the meaning of Article 10(1) and (2)(a) of Decree-Law No. 16/202, imposing on the company an administrative fine of €100,000.

The proceedings concerned the conduct engaged in by Zalando consisting in the dissemination, from 1 June to 8 June 2021, of a large billboard in the same square in Rome where the official *Football Village* of the 'UEFA Euro 2020' championship held from 11 June to 11 July 2020 was set up.

The posting contained:

- i the name of Zalando
- ii the image of a white football shirt with the distinctive Zalando logo, surrounded by 24 “shapes” bearing the colors of the flags belonging to the 24 nations participating in the championship and
- iii *the claim* “who will be the winner?”



However, the advertising message had not been authorised by the organisers of the event and Zalando was not one of the official sponsors of the championship.

The AGCM therefore considered that the elements included in the message was capable of creating a link - at least indirectly - between the Zalando brand and the "UEFA Euro 2020" championship and of misleading the public by falsely suggesting that Zalando was the official sponsor of the football event.

Against the AGCM's measure, Zalando appealed to the Lazio Regional Administrative Court, which, with judgment No. 13478 of 30 August 2023, rejected the German company's claims and upheld the Authority's decision.

Zalando also appealed against this judgment to the Council of State, which, in its judgment No. 3118 of 11 April 2025, **rejected Zalando's appeal in its entirety**.

In this judgment, the Council of State, before ruling on the appellant's grounds of appeal, referred to the provisions on ambush marketing set out in Decree-Law 16/2020 and certain principles established by civil case law on parasitic advertising that can be summarised in the following points:

- The practice of ambush marketing consists of the **association** of a brand or product with **an event of great media resonance**, carried out **without the authorisation of the event organizer**.
- Such practice is considered misleading **insofar** as it **misleads the average consumer as to the existence of sponsorship or franchising relationships** or, in any event, of a **connection with the holders of intellectual property rights** existing on the logos and other assets of the event (when, in reality, such relationships or connection do not exist) and constitutes a particular case of unfair competition contrary to professional fairness falling within the scope of Article 2598, no. 3, of the Civil Code.
- By means of ambush marketing, the unfair competitor **improperly associates the image and brand of a company with an event of particular media resonance without being linked by sponsorship, licensing or similar relationships** with the event organiser; in this way, it takes advantage of the event itself without bearing the costs, resulting in undue attachment to the event itself and negative interference in the contractual relationships between organisers and authorised parties.
- It is a **multi-offence unlawful act**: the injured parties are the organisers of the event, the official licensees (or sponsors) and the public.

In examining Zalando's grounds of appeal, the Council of State held, *inter alia*:

- That the reasoning of the AGCM as to the deceptiveness of the campaign was correct due to the presence of elements (depiction of a football shirt, proximity of the message to the Football Village, and slogan used) capable of creating an indirect link with the event and of inducing the average consumer to believe that Zalando was one of the sponsors of the event.
- The AGCM's reasoning concerning the existence of the indirect link referred to in Article 10 of Law Decree No 16/2020, which the Authority inferred from the following elements, is correct:
  - The posting of the disputed message in the immediate vicinity of the commercial area set up by UEFA.
  - Indication of the name of Zalando.
  - Reproduction of the image of a white football shirt with the Zalando distinctive logo.
  - Reproduction of a football jersey surrounded by the flags of the 24 nations participating in the event.
  - Use of the claim 'who will be the winner?'.
- That the Regional Administrative Court correctly emphasised, *inter alia*, (i) the irrelevance of the fact that the contested billboard should have remained posted only **until 3 days before the event**; (ii) the **simultaneous presence** of UEFA's stands and the contested billboard; and (iii) the correctness of the decision not to assess the relevance of the new billboard that Zalando would have posted at a later date, to clarify the first one, since this was a **future and uncertain event**;
- That no problem would have arisen (not even in terms of limiting freedom of expression or other constitutionally guaranteed rights) 'if the exact same message had been published in another place' and in such a way as not to mislead the public (who follow sport) as to the identity of the sponsors of the 'UEFA Euro 2020' event.

For these reasons, the appellant's grounds of appeal were held to be unfounded and Zalando's appeal was dismissed, with the costs of the litigation set off on account of the novelty of the matter - this being the first case of application of the legislation under Law Decree 16/2020.

### 3. Conclusions and practical suggestions

This case demonstrates that unlawful ambush marketing can also take place in the case of misleading commercial communication designed to create a direct or indirect link with an event of great media resonance **other than the Olympics** (although the reference legislation in Decree-Law 16/2020 was issued on the occasion of the 2026 Milan-Cortina **Olympics**).

The decision under review is, moreover, extremely relevant in that it draws from it a number of elements to be considered when carrying out an advertising campaign (in terms of launch timing, creative content and messaging), in order to prevent it from constituting **illicit ambush marketing**.

The key elements that led the AGCM to the sanction highlight that a marketing communication can be considered unlawful not only when there are explicit references to the event, but also when an indirect connection is made. Therefore, any brand that intends to carry out promotional activities in the vicinity of a major event must pay particular attention to:

- **Choice of colours and images:** visual elements referable to the event can generate a misleading association.
- **Slogan wording:** ambiguous or allusive messages can be interpreted as attempts to exploit the notoriety of the event.
- **Location of the message:** geographical proximity to an official area of the event can influence public perception, as was the case with Zalando.

Specifically, during and near the time and location of a major event ('Event')\*, in the absence of a sponsorship contract, it is appropriate:

- Avoid falsely communicating/representing that they are an official sponsor of the Event or have any agreement or relationship with the organisers of the Event.
- Avoid disseminating advertising campaigns or commercial communications in general capable of creating a link, direct or indirect, between one's own brand or other distinctive sign and the Event in such a way as to mislead the public as to the identity of the official sponsors of the Event (e.g. reproduction of the logo or other official properties of the Event; use of the name of the Event; use of images referable to the participants in the Event, use of claims evocative of the Event; etc.).
- Avoid undertaking promotional initiatives not authorised by the organiser of the Event, which are likely to attract the attention of the public and mislead the public into believing that the author of the conduct is a sponsor of the Event (e.g. themed events, operations or competitions with prizes, challenges of various kinds; etc.).
- Avoid the sale and/or publicity of products or services abusively marked, in whole or in part, with the official logo of the Event or with other distinctive signs likely to mislead the public on the logo in question and to create the erroneous impression that there is a connection of any kind with the Event, its organiser or persons authorised by the latter (e.g. distribution of merchandising alluding to the Event, design and sale of a capsule collection or limited edition products related to the Event, etc.).
- Avoid the use of intellectual property rights owned by the Event organisers and, in general, relating to the Event without the prior consent of the relevant owners.

It is in any case understood that **each advertising initiative must always be examined on a case-by-case basis** in order to assess whether it may concretely entail risks in terms of unlawful ambush marketing.

With the Milan-Cortina 2026 Olympic and Paralympic Games just around the corner, companies will certainly have to adopt conscious advertising strategies to avoid the risk of infringement.

It will be essential to monitor whether new guidelines on ambush marketing will be published by CONI - Comitato Olimpico Nazionale Italiano (Italian National Olympic Committee) and to make sure that any marketing initiative is not ambiguous or potentially misleading (the latest guidelines for the Paris 2024 Olympic Games are available [here](#)).

Finally, the case under exam suggests that the approach of Italian jurisprudence will also be increasingly severe in recognising and sanctioning ambush marketing practices, representing a relevant precedent for future litigation.

*\*it is advisable to continue such behaviour even after the end of the Event, at least for 6 months after the official end date of the Event itself.*

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