

«Ambush Marketing and the first investigation closed by the Italian Competition Authority»

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Ambush marketing is a strategy that involves a brand team trying to associate their products or services with a big event that already has official companies-sponsors.

Decree-Law No. 16 of 11 March 2020 contains under Chapter III the “*Regulation of the prohibition of parasitic activities*”

The Italian Competition Authority (ICA) has the competence to ascertain violations and impose fines.

- structural nature
- Is not limited to a specific event
- any sporting event or trade fair of **national** or **international** significance.

Before the Decree - general rules/Directive
2005/29/EC on **unfair commercial practices**

the Decree introduced **the first organic discipline** to combat parasitic activities (articles 10, 11, 12, 13 and 14)

The conversion law made changes to the text originally envisaged, expanding the scope of application of the discipline.

The wording “*parasitic advertising ban*” was modified to “*parasitic activity ban*”.

The art. 10 contains a **general clause**.

In particular, activities are prohibited that: i) are carried out “*in relation to the organization*” of sporting events or exhibitions of national or international importance; ii) are not authorized by the organizers; iii) have the purpose of obtaining an economic or competitive advantage.

The second paragraph of article 10 of the Decree provides the list of activities prohibited as parasitic:

- a) *the creation of a link, even indirect, between a trademark or other distinctive sign and one of the events, capable of misleading the public as to the identity of the official sponsors;*
- b) *the misrepresentation or statement in your advertisement that you are an official sponsor of an event,*

c) the promotion of one's brand or other distinctive sign through any action, not authorized by the organizer, which is suitable to attract the attention of the public, carried out on the occasion of one of the events, and capable of generating the erroneous impression in the public that the perpetrator of the conduct is a sponsor of the sporting event or fair itself;

d) the sale and advertising of products or services illegally marked, even only in part, with the logo of one of the events or with other distinctive signs capable of misleading the public about the logo itself and giving rise to the erroneous perception of any connection with the event or with its organizer or with the subjects authorized by him.

This is an **exhaustive** and non-illustrative list

Where the conditions of paragraph 1 occur, it is therefore necessary to verify whether the activities to be contested fall within one of the four conducts indicated in the provision.

Conducts carried out in execution of sponsorship contracts concluded with individual athletes, teams, artists or authorized participants in one of the events, do not constitute parasitic advertising activities.

the pecuniary administrative sanction of the payment of a sum from 100,000 euros to 2.5 million euros

The ICA proceeds in accordance with article 8 of Legislative Decree 145/2007, when compatible (article 12).

On 29 March 2022, the Italian Competition Authority closed the first investigation on Ambush Marketing: the PV16 *Zalando Cartello Euro 2020*.

The proceeding concerns the conduct carried out by Zalando consisting in the diffusion of a **large billboard**, in the same square in Rome where the official Football Village area of the international football event "UEFA Euro 2020" was set up by UEFA.



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With the provision, the Authority highlighted that the advertising message integrates, contrary to what the Company claims in its defense, a parasitic advertising activity prohibited by Law Decree number 16/2020

First of all, the Authority noted that the scope of application of the discipline is defined by the general clause of art. 10 of the Decree pursuant to which all *«fraudulent, deceptive or misleading parasitic advertising and marketing activities»* are prohibited that: i) are carried out in relation to the organization *«of sporting national or international events or exhibitions; ii) are not authorized by the organizers; iii) have the purpose of obtaining an economic or competitive advantage»*

Therefore the ICA clarified that the discipline does not refer solely to the organization and conduct of the «*Milan Cortina 2026 Olympic and Paralympic Winter Games and the ATP Turin 2021-2025 finals*», but to all sporting events of national or international importance and, therefore, also at the international football event “UEFA Euro 2020”.

The second paragraph of art. 10 of the Decree, identifies among the four typed conducts and, among these, under letter a) the creation of an even indirect connection between a trademark or other distinctive sign and the event such as to *«mislead the public about identity of the sponsors»*.

Therefore, contrary to what the Company maintains, the regulations in question define the elements in which the case of "*parasitic advertising activity*" is integrated, including the misleading of the public on a specific aspect the identity of «*the sponsors which can derive from an indirect link between the advertised brand and the event*».

The Authority, therefore, considered the posting subject of the procedure to be attributable to the scope of application of the regulations.

The advertising message, in fact:

- ✓ was not authorized by the organizers;
- ✓ was posted in the immediate vicinity of the commercial area set up by UEFA (the so-called Football Village) on the occasion of the event;
- ✓ is characterized by expressions and representations (the image of a football shirt surrounded by «*lags belonging to the 24 Nations participating in the event*» and the claim «*who will be the winner?*») suitable to create a link between the Zalando brand and the football event;
- ✓ and by reason of this connection, was suitable to mislead the public by suggesting, that Zalando is, contrary to the truth, sponsor of the event.

With its decision, the Authority fined Zalando for a total amount of 100.000 euro, considering that it was the first application of the Decree and the times for dissemination of the bill (only 7 days).

Thank you for your attention!