CLIENT ALERT

INTELLECTUAL PROPERTY & ADVERTISING LAW

# Bok Friday, But Not For Sale

The Merchandise Marks Act, ambush marketing, and what the 2026 Rugby's Greatest Rivalry Tour means for your brand

**14 August 2026**

## ACT NOW — THE PROTECTION IS LIVE

The 2026 **Rugby's Greatest Rivalry Tour** — the Springboks' series against the All Blacks — has been designated a **protected event** under section 15A of the Merchandise Marks Act 17 of 1941. Protection runs from **7 August 2026 to 12 September 2026**. It is in force as you read this.

For that window, no business may use the Tour, the teams, or the associated marks to promote itself unless it is an **authorised sponsor** or has the organiser's written permission. That includes words most South Africans use every day — **"Bok", "Bokke", "Bokkie" and "Bok Friday"**.

Breach is not merely a civil wrong. It is a **criminal offence**, and the fine is calculated *per article* to which the offence relates.

## IN THIS ISSUE

## 1. THE STATUTE: WHAT THE ACT IS, AND WHAT SURVIVES

The **Merchandise Marks Act 17 of 1941** is one of South Africa's oldest commercial statutes still in daily use. It was written to regulate how goods are marked, how they are described to the buying public, and how certain protected words and emblems may be used in connection with a business.

Most practitioners are surprised by how little of it is left. When the **Consumer Protection Act 68 of 2008** came into force on 31 March 2011, it repealed the bulk of the Act — the sections dealing with false trade descriptions, marking of goods, and related trading offences. Consumer-facing misdescription now lives in the CPA. What remains of the Merchandise Marks Act is a narrow but potent core:

| SECTION | WHAT IT DOES | IN PRACTICE |
|---|---|---|
| Section 14 | Unauthorised use of certain emblems | Prohibits using national flags, state emblems and coats of arms, official certification marks, and the emblems or names of international organisations in connection with your trade — without written authority. Also prohibits falsely implying government patronage or supply. |
| Section 15 | Use of certain marks may be prohibited | Empowers the Minister to publish a Gazette notice prohibiting, absolutely or conditionally, the use of specified marks, words, letters or figures in connection with any trade, business or event. |
| Section 15A | Abuse of trade mark in relation to an event | The anti-ambush-marketing provision. Empowers the Minister to designate an event as a "protected event", after which no one may use a mark in relation to that event to derive promotional benefit, without the organiser's prior authority. |
| Section 18 | Evidence | Sets out evidentiary presumptions in prosecutions under the Act. |
| Section 20 | Penalties | Fines and imprisonment — calculated per article to which the offence relates. See section 8 below. |

**The definitions that do the heavy lifting**

A handful of defined terms determine how far the Act reaches. They are drawn deliberately wide.

| TERM | DEFINITION UNDER THE ACT |
|---|---|
| “Mark” | Any sign capable of being represented graphically — including a device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour, or container for goods, or any combination of these. Note that “mark” excludes a registered trade mark, which is dealt with separately; but for the purposes of section 15A, “trade mark” is expressly defined to include a mark. |
| “Event” | An exhibition, show or competition of a sporting, recreational or entertainment nature which is (a) held in public; (b) likely to attract public attention or be newsworthy; and (c) financed or subsidised by commercial sponsorship. Critically, the definition extends to any broadcast of the event — so the protection follows the match onto television and streaming platforms. |
| “Apply to” | To emboss, impress, engrave, etch, print upon, weave into, work into or onto, annex or affix to, or incorporate in. In other words: almost any way of putting a mark onto something. |
| “Covering” | Any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, wrapper or container — so packaging and secondary packaging are squarely caught, not just the product itself. |
| “Protected event” | An event designated as such by the Minister under section 15A. |

> **Practical takeaway.** Because "mark" includes *colour* and *shape*, and because "event" includes the *broadcast* of the event, a campaign does not have to name the Tour or reproduce a logo to fall within the Act. A visual language that unmistakably evokes the event can be enough.

## 2. THE COMMON LAW: PASSING OFF AND UNLAWFUL COMPETITION

Long before the Act was amended to deal with events, South African law protected traders against commercial free-riding through the **common law of delict**. Two causes of action matter here, and it is worth understanding both — because they remain available alongside the statute, and because their limits explain exactly why section 15A had to be enacted.

### Unlawful competition

Unlawful competition is not a free-standing wrong in South African law. It is a species of the *Aquilian action* — the general delictual claim for patrimonial loss. A claimant must prove all the ordinary elements: a wrongful act, fault, causation, and loss.

Wrongfulness is the battleground. The test is whether the conduct is *contra bonos mores* — whether it offends the legal convictions and general sense of justice of the community. The leading authority remains **Schultz v Butt** (Appellate Division, 1986), where a competitor took a mould directly off a rival's boat hull and sold copies. The court held that profiting from another's skill, labour and expenditure, without contributing anything of one's own, was unfair and unjust — and therefore wrongful.

### Passing off

Passing off protects goodwill against a misrepresentation. The classic formulation, from **Capital Estate and General Agencies v Holiday Inns** (Appellate Division, 1977), is that passing off consists in a representation by one person that his business, goods or services are those of another, or are associated with those of another.

Three elements must be established:

1. **Reputation.** The claimant must have a protectable reputation or goodwill attaching to a distinctive name, mark or get-up.
2. **Misrepresentation.** The defendant's conduct must be reasonably likely to deceive or confuse the public into believing there is a trade connection or association.
3. **Damage.** Actual or likely damage to that reputation or goodwill must follow.

### Why the common law was not enough

Here is the gap. Both causes of action require something more than mere association. Passing off requires a **misrepresentation** — the public must actually be misled about trade source or endorsement. Unlawful competition requires conduct that crosses the **boni mores** threshold.

The sophisticated ambusher gives you neither. A campaign that says *"celebrate the big game with us"* — no logo, no team name, no claim of sponsorship — misrepresents nothing. Nobody is confused. Everybody understands the brand is not an official sponsor. Yet the brand has harvested the goodwill, attention and emotional charge that the sponsors paid for.

South African courts have been alert to this limit. In litigation over national team merchandise, the Supreme Court of Appeal observed that when the public sees a national team's name or emblem on goods, the primary association is *with the team* — the association with the governing body is secondary, if present at all. The mere fact that use of a team name brings the team to mind and encourages a purchase does not make it a misrepresentation in the passing-off sense.

> **The bottom line.** At common law, evoking an event without claiming a connection to it is very difficult to attack. Sections 15 and 15A of the Merchandise Marks Act were enacted precisely to close that gap — they make the *association itself* unlawful during a defined window, without requiring anyone to prove confusion, misrepresentation or damage.

That gap is filled by statute — but the Merchandise Marks Act is only one of the instruments in play, and it is not always the one that decides the outcome. The next section maps the rest.

## 3. THE WIDER LEGAL FRAMEWORK: HOW THE PIECES FIT TOGETHER

There is no single South African statute governing ambush marketing. What exists instead is a **layered framework** — five or six instruments, each with its own trigger, its own test, its own enforcer and its own remedy. They overlap heavily. A single non-compliant campaign will frequently engage four of them at once, and clearing one is no answer to the others.

This matters practically, because the instruments do not switch on and off together. The Merchandise Marks Act protection is **time-limited** — it expires with the Tour. The Trade Marks Act, the Consumer Protection Act and the ARB Code apply **year-round**. Advisers who treat 12 September as the date the risk ends will be wrong.

| INSTRUMENT | WHAT IT PROTECTS | TRIGGER | REMEDY AND ENFORCER |
|---|---|---|---|
| Merchandise Marks Act 17 of 1941<br>(ss 15, 15A) | The event itself, and any marks gazetted as prohibited | A Ministerial notice designating a protected event and/or prohibiting specified marks. No confusion or damage need be proved. | Criminal: fine per article, imprisonment, confiscation. Prosecuted by the State; interdicts by the organiser and sponsors. |
| Trade Marks Act 194 of 1993<br>(ss 34, 35) | Registered marks — SPRINGBOKS, the Springbok device, ALL BLACKS and the like | Unauthorised use in the course of trade of an identical or similar mark. Confusion required except under s 34(1)(c). | Civil: interdict, damages or reasonable royalty, delivery up. Enforced by the proprietor. |
| Consumer Protection Act 68 of 2008<br>(ss 24, 29, 41) | The consumer, against misleading marketing — including as to event sponsorship | Marketing that is misleading, fraudulent or deceptive. Applies whether or not any mark is used. | National Consumer Commission and Tribunal: compliance notices, administrative fines. Also consumer redress. |
| Counterfeit Goods Act 37 of 1997 | Goods bearing infringing or prohibited marks | Dealing in counterfeit goods, including goods bearing marks restricted by a Merchandise Marks Act notice. | Search, seizure, customs detention, criminal prosecution. Police, customs and the DTIC. |
| Common law | Goodwill and competitive position | A misrepresentation (passing off) or conduct that is contra bonos mores (unlawful competition). | Civil: interdict and damages. Enforced by the aggrieved trader. |

| INSTRUMENT | WHAT IT PROTECTS | TRIGGER | REMEDY AND ENFORCER |
|---|---|---|---|
| ARB Code of Advertising Practice | Advertising goodwill, and the integrity of advertising generally | Taking advantage of another party's advertising goodwill, campaign or advertising property; or misleading advertising. | Withdrawal, pre-clearance, adverse publicity, Ad Alert. The ARB Directorate, on complaint by anyone. |

**Trade Marks Act 194 of 1993**

The registered-rights layer, and the one that outlives the declaration. SPRINGBOKS, the Springbok device, the team jerseys and the associated logos are **registered trade marks**, owned and licensed in the ordinary way. That protection does not depend on any Gazette notice and does not lapse on 12 September.

- **Section 34(1)(a)** — unauthorised use in the course of trade, in relation to the goods or services for which the mark is registered, of an identical mark or one so nearly resembling it as to be likely to deceive or cause confusion.
- **Section 34(1)(b)** — the same, extended to *similar* goods or services where deception or confusion is likely.
- **Section 34(1)(c)** — the dilution provision, and the one that matters most here. Where the registered mark is **well known in the Republic**, use of an identical or similar mark that takes unfair advantage of, or is detrimental to, its distinctive character or repute is infringing *notwithstanding the absence of confusion or deception*.
- **Section 35** — protects marks that are well known in South Africa as the marks of Paris Convention nationals, whether or not they are registered here. Relevant to the visiting teams and their sponsors.

Section 34(1)(c) is the closest thing the Trade Marks Act offers to an anti-ambush provision, because it dispenses with confusion. But it still requires **use of a mark** that is identical or similar to a registered one. A campaign built on green-and-gold imagery, stadium visuals and the phrase "the big match" uses no such mark — and escapes. That specific gap is the reason sections 15 and 15A exist.

**Consumer Protection Act 68 of 2008**

The CPA is doubly relevant. First, as noted in section 1, it is the instrument that **repealed most of the Merchandise Marks Act** in 2011 and took over the ground of consumer-facing misdescription. Second — and less well known — it addresses event sponsorship expressly.

**Section 29** (General standards for the marketing of goods or services) prohibits marketing that is misleading, fraudulent or deceptive in any way, and the section lists **"the sponsoring of any event"** among the matters as to which a supplier may not mislead. That is a direct statutory hit on ambush marketing, and it is easy to overlook because it sits in consumer legislation rather than intellectual property legislation.

Two features make section 29 worth pleading alongside the Merchandise Marks Act. It applies **whether or not any protected mark is used** — it is about the impression created, not the sign deployed. And it applies **year-round**, with no dependence on a declaration.

- **Section 24** — product labelling and trade descriptions; prohibits knowingly applying a misleading trade description to goods.
- **Section 41** — false, misleading or deceptive representations in connection with the marketing or supply of goods and services.
- **Section 36** and the accompanying regulations — promotional competitions. Directly relevant to the ticket giveaways, score predictors and hamper draws that proliferate around a fixture like this. Note that these rules bind *authorised sponsors too*: a lawful right to associate with the Tour does not exempt a competition from the CPA's disclosure, rules-availability and record-keeping requirements.

Enforcement runs through the National Consumer Commission and the National Consumer Tribunal — compliance notices and administrative fines — rather than through the criminal courts.

**Counterfeit Goods Act 37 of 1997**

Where the exposure involves **physical goods** rather than advertising, this is the statute with the sharpest teeth, because it operates before any trial. It prohibits dealing in counterfeit goods and provides for search, seizure, detention in a counterfeit goods depot, and customs interception at the border.

The point most often missed is how it **interlocks with the Merchandise Marks Act**. Its reach is not limited to registered trade marks and copyright works: it extends to **marks the exclusive use of which has been granted by notice under the Merchandise Marks Act**. A section 15 prohibition notice therefore does more than create a criminal offence — it feeds directly into counterfeit-goods enforcement machinery.

The practical consequence for a retailer or importer is that unlicensed "Bokke" merchandise can be **seized and removed from the supply chain** long before any question of guilt is determined, and can be stopped at the port of entry. Penalties under that Act run to R10 000 per article and five years' imprisonment.

**How the layers apply in practice**

The clearest way to see the framework is to run one campaign through it. Take a non-sponsor beverage brand that launches a limited-edition pack in green and gold, bearing a springbok silhouette and the line *"Celebrate Bok Friday with us"*, supported by radio, outdoor near the stadium, and an on-pack competition offering match tickets.

| INSTRUMENT | HOW IT APPLIES TO THIS CAMPAIGN |
|---|---|
| Merchandise Marks Act, s 15A | Engaged. Use of "Bok Friday" and springbok imagery in relation to a protected event, calculated to derive promotional benefit, without the organiser's authority. A criminal offence — and the fine is calculated per article, so every unit of the limited-edition run counts. |
| Merchandise Marks Act, s 15 | Engaged separately, if "BOK FRIDAY" appears in the final prohibited-marks notice. |
| Trade Marks Act, s 34(1)(c) | Likely engaged by the springbok silhouette if it is similar to the registered device — dilution, no confusion required. Would remain available after the protection window closes. |
| Consumer Protection Act, s 29 | Engaged. The overall impression is one of official association, and s 29 expressly covers misleading marketing as to the sponsoring of an event. |
| Consumer Protection Act, s 36 | Engaged by the on-pack competition, independently of everything else — and it would be engaged even if the brand were an authorised sponsor. |
| Counterfeit Goods Act | Engaged as to the physical stock. Exposes the packaging run to seizure and the imported components to customs detention. |
| Common law | Passing off is arguable but not the strongest claim: the brand has not said it is a sponsor. Unlawful competition is available on the boni mores test. Both are slower and harder than the statutory routes. |
| ARB Code, cll 8.1 and 4.2.1 | Engaged, and this is the fastest route of all. An Ad Alert can strip the campaign from member media within days — well before any court application is ready. |

**The lesson.** Advising only on the Gazette notice is advising on roughly a fifth of the exposure. The same campaign attracts a criminal charge, a civil interdict, a Tribunal compliance notice, seizure of stock and a market-wide advertising ban — through five different doors, opened by five different parties, on five different timetables. And only one of those doors closes when the Tour ends.

The ARB Code, which is the fastest of these routes and the one most likely to determine what actually happens to a campaign, is dealt with in full in section 6 below.

## 4. AMBUSH MARKETING AND WHAT THE ACT SAYS

**What ambush marketing is**

Ambush marketing is the practice of a brand associating itself with a high-profile event — and capturing some of that event's audience, attention and goodwill — **without paying for the right to do so**. It comes in two broad forms.

| TYPE | DESCRIPTION AND TYPICAL EXAMPLES |
|---|---|
| Ambush by association (intrusion) | The brand implies an official connection it does not have — using event names, logos, team names, slogans, or wording such as "official", "proud partner" or "in support of". This is the cruder form and is usually also actionable as passing off or trade mark infringement. |
| Ambush by intrusion (association without claim) | The brand makes no claim of sponsorship at all, but engineers proximity to the event: buying up outdoor advertising around the stadium, running a themed campaign timed to the fixture, using the event's colours and imagery, distributing branded clothing to spectators, or running a "big game" promotion. This is the form the common law struggles with — and the form section 15A is built to catch. |

**Section 15A — the protected event provision**

Section 15A does two things.

**First, it creates the power to designate.**

The Minister of Trade, Industry and Competition may, after investigation and proper consultation, designate an event as a protected event by notice in the *Government Gazette*. The notice must stipulate the date protection commences and the date it ends — and the end date may be **no later than one month after the event completes or terminates**. The protection is therefore always time-limited.

The Minister may not make the designation unless satisfied of two things: that staging the event is **in the public interest**; and that the organisers have created **sufficient opportunities for small businesses**, particularly those of previously disadvantaged communities. This second requirement is the statutory hook for the transformation and procurement conditions that typically accompany these declarations — and, in the present case, the focus of the objections lodged during the consultation period.

**Second, it creates the prohibition and the offence.**

> *"For the period during which an event is protected, no person may use a trade mark in relation to such event in a manner which is calculated to achieve publicity for that trade mark and thereby to derive special promotional benefit from the event, without the prior authority of the organiser of such event."*
>
> — section 15A(2)
>
> **And section 15A(3) defines "use" expansively, to include:**
>
> - any visual representation of the mark on or in relation to goods, or in relation to the rendering of services;
> - any audible reproduction of the mark in relation to goods or services; or
> - the use of the mark in promotional activities,
>
> — which in any way, **directly or indirectly**, is intended to be brought into **association with or to allude to** the event.

Three features of that wording deserve emphasis. The prohibition reaches **indirect** use. It reaches conduct that merely **alludes to** the event. And section 15A(5) provides that for these purposes, "trade mark" **includes a mark** — importing the wide definition set out in section 1. Contravention is an offence under section 15A(4).

Crucially, our courts have held that section 15A does **not** require the rights-holder to prove unfair competition, confusion or material harm. Where a protected-event declaration is in force, the conduct is either lawful or it is not.

### Section 15 — the prohibited marks provision

Section 15 operates alongside 15A and is often overlooked. It empowers the Minister, by notice in the *Gazette*, to prohibit — absolutely or conditionally — the use of the National Flag, or of **any mark, word, letter or figure, or any arrangement or combination of them**, in connection with any trade, business, profession, occupation or event, or in connection with a trade mark, mark or trade description applied to goods. Contravention is an offence under section 15(3).

In modern practice the two provisions are used **together**: section 15A designates the event as protected, and a parallel section 15 notice publishes the specific list of words and devices that may not be used. That is exactly the structure adopted for the current rugby tour — which is why the list of prohibited words matters so much.

## 5. THE 2026 RUGBY'S GREATEST RIVALRY TOUR

### How the declaration came about

| DATE | STEP |
|---|---|
| 2 July 2026 | At the request of the South African Rugby Union (SARU), the Department of Trade, Industry and Competition published a notice proposing (a) designation of the Tour as a protected event under section 15A, and (b) a declaration of prohibited marks under section 15(1). A 15-day public comment window opened. |
| July 2026 | Comments and objections were lodged. Trade union Solidarity objected to the B-BBEE and preferential procurement conditions attached to the designation. Trade mark practitioners raised separate concerns about the breadth of the prohibited-marks list and the absence of any express limiting language distinguishing commercial exploitation from ordinary public support. |
| c. 25 July 2026 | Following consultation, the Minister of Trade, Industry and Competition, Parks Tau, confirmed the protected event designation. |
| 7 August 2026 | Protection commenced. The Tour began. |
| 12 September 2026 | The Tour ends. Protection may run to a date no later than one month after completion. |

### The marks that are caught

The prohibited-marks list published for consultation covered five categories. Review it carefully against any planned campaign.

| CATEGORY | MARKS |
|---|---|
| Event names and slogans | RUGBY'S GREATEST RIVALRY · RGR · THE GREATEST RIVALRY · A TOUR LIKE NO OTHER |
| Team names | SPRINGBOKS · SPRINGBOK WOMEN · ALL BLACKS · BLACK FERNS · SHARKS · BULLS · LIONS |
| Colloquial terms | BOK · BOKS · BOKKE · BOKKIE · BOK FRIDAY |
| Organisational names | SOUTH AFRICAN RUGBY UNION · SA RUGBY · SOUTH AFRICA RUGBY · NEW ZEALAND RUGBY |
| Devices and get-up | Springbok emblems · team jerseys · associated logos and imagery |

### THE CONTENTIOUS PART

The inclusion of **BOK, BOKS, BOKKE, BOKKIE** and **BOK FRIDAY** is the reason this declaration has attracted more commentary than its predecessors. These are not proprietary coinages; they are ordinary South African speech. The notice contains no express limiting language confining the prohibition to commercial exploitation, which has left an uncomfortable grey zone around a small business that simply posts "Go Bokke!" on its social media.

**Our reading.** Section 15A(2) requires use that is *calculated to achieve publicity* for the mark and to *derive special promotional benefit* from the event. On a proper construction, a genuine expression of support carrying no promotional payload should fall outside it. But that construction has not been tested, the section 15 prohibition is drafted more broadly than 15A, and the sanction is criminal. Until there is clarity, the prudent course for any business is to keep the event out of its commercial communications entirely.

**Who is authorised**

Only the organiser (SARU) and its **authorised sponsors** may use the protected marks commercially. Those publicly identified to date are:

- **Castle Double Malt** — title partner of the series
- **DHL**
- **Klipdrift**
- **Airlink**

Further sponsors were indicated as still to be announced. **Confirm the current authorised list before advising on any campaign** — and note that even an authorised sponsor's rights are defined by its sponsorship agreement, not by the Gazette notice. A sponsor with beverage category rights does not thereby acquire the right to run an unrelated promotion.

The Gazette notice is not the only constraint. A second regime — the **ARB Code of Advertising Practice** — applies to the same campaigns, on a different test, with different remedies and on a very much faster timetable. It is dealt with in the next section.

## 6. THE ARB AND THE CODE OF ADVERTISING PRACTICE

The **Advertising Regulatory Board** is South Africa's self-regulatory body for advertising content. It is a non-profit company that adjudicates complaints about advertising against the **Code of Advertising Practice**, which substantially incorporates the International Chamber of Commerce's international advertising code. The ARB was established in 2018 following the closure of its predecessor, the Advertising Standards Authority, and it carries the ASA's body of decisions forward as precedent.

For a client planning a campaign during the Tour, the ARB matters for a practical reason that is easy to underestimate: **it moves far faster than a court**. A complaint can be lodged by anyone, at no cost to a consumer complainant, and a respondent is ordinarily given only **five working days** to reply — a period the Directorate may shorten where the matter is urgent. A campaign can be pulled off air before an urgent High Court application would even be enrolled.

### How the Code is structured

The Code is published in parts: a Preface; **Section I** (Introduction and definitions); **Section II** (General Principles — the substantive rules that apply to all advertising); **Section III** (Specific Categories of Advertising); **Section IV** (Identification of editorial style in print); and a **Procedural Guide**. Sitting alongside these are subject-specific Appendices — currently Alcohol, Breast Milk Substitutes, Cosmetics, Environmental, Food & Beverage, Gambling, Pet Food, Social Media and Vapour Products.

**AN IMPORTANT CORRECTION TO A COMMON ASSUMPTION**

There is **no longer a Sponsorship Code, and no ambush marketing appendix**, in the ARB Code. The old *ASA Sponsorship Code* — which expressly defined ambush marketing and provided that no organisation other than an official sponsor may, directly or by implication, create the impression that its communications relate to a particular event — was widely cited around the 2010 FIFA World Cup and still appears in commentary and precedent bundles today. It does not form part of the current Code, and neither Section II nor Section III contains a dedicated sponsorship or ambush marketing clause.

**That does not mean ambush marketing is unregulated by the ARB.** It means the conduct is caught by the *general principles* instead — principally clause 8. Advisers should cite those clauses, not the lapsed Sponsorship Code.

**The clauses that catch ambush marketing**

Several provisions of Section II do the work. Clause 8 is the primary hook.

| CLAUSE | WHAT IT PROVIDES, AND WHY IT BITES |
|---|---|
| 8.1<br>Exploitation of advertising goodwill | "Advertisements may not take advantage of the advertising goodwill relating to the trade name or symbol of the product or service of another, or advertising goodwill relating to another party's advertising campaign or advertising property, unless the prior written permission of the proprietor of the advertising goodwill has been obtained."<br><br>Note the breadth: it reaches not only a trade name or symbol but another party's advertising CAMPAIGN and advertising PROPERTY. A sponsorship property — the Tour, its look, its slogans — falls comfortably within that language. And unlike passing off, the clause requires no misrepresentation and no confusion: taking advantage of the goodwill is itself the breach. |
| 8.2<br>Parody carve-out and factors | Parodies primarily intended to amuse, which are not likely materially to affect another advertiser's advertising goodwill, fall outside clause 8.1. In assessing a complaint the ARB considers, among other things, the likelihood of confusion, deception, and diminution of advertising goodwill; and whether the device or concept constitutes the "signature" of the product or service, is consistently used, is spread across media, and is prominent in the consumer's mind.<br><br>The carve-out is narrower than advertisers hope. A humorous execution that still trades on the event is not a parody in this sense. |
| 9.1 and 9.2<br>Imitation | "An advertiser should not copy an existing advertisement, local or international, or any part thereof in a manner that is recognisable or clearly evokes the existing concept and which may result in the likely loss of potential advertising value." Protection runs for TWO YEARS from the date of last usage of the advertising, packaging or labelling concerned.<br><br>Relevant where a non-sponsor's creative echoes a sponsor's campaign — the "clearly evokes" standard is deliberately lower than copying. |
| 4.2.1<br>Misleading claims | "Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer."<br><br>The words "by implication" and "ambiguity" are the operative ones. An advertisement that leaves consumers with the impression of an official connection is misleading even if it never uses the word "official". |

| CLAUSE | WHAT IT PROVIDES, AND WHY IT BITES |
|---|---|
| 4.1<br>Substantiation | Before advertising is published, an advertiser must HOLD IN ITS POSSESSION documentary evidence supporting all claims, direct or implied, that are capable of objective substantiation.<br><br>Practical consequence: a brand claiming any form of official status must have the signed sponsorship or licence agreement in hand BEFORE publication. “We were about to sign” is not a defence, and the evidence must be produced on demand. |
| 2.1<br>Honesty and responsibility | “Advertisements should not be so framed as to abuse the trust of the consumer or exploit their lack of experience, knowledge or credulity. Advertising should be prepared with a sense of responsibility to the consumer.”<br><br>The catch-all, and frequently pleaded alongside clause 8. |
| 10<br>Testimonials and endorsements | Governs the use of testimonials and endorsements. Relevant where a campaign features a player, coach or commentator — an endorsement must be genuine, current and authorised. Note that under the Merchandise Marks Act the use of athletes, teams or performers in advertising during a protected event carries its own authorisation requirement. |

**Jurisdiction: the members-only limit**

This is the point most often got wrong. Following the Supreme Court of Appeal’s judgment in the *Herbex* matter in 2017, the ARB has **no jurisdiction over non-members**. It may not require a non-member to participate in its processes, and it may not issue an instruction, order, ruling or sanction against one. The Procedural Guide reflects this: a non-member may decline the ARB’s jurisdiction.

But the qualification is what gives the system its force. The ARB **is entitled to rule on the advertising of a non-member for the guidance of its own members**. Its members include the great majority of South Africa’s significant publishers, broadcasters and platforms. A ruling that an advertisement breaches the Code, communicated to that membership as an **Ad Alert**, results in member media declining to carry it.

> **The commercial reality.** A non-member cannot be ordered to withdraw a campaign — and will find, within days, that there is nowhere left to run it. For a national campaign that is indistinguishable in effect from an interdict, obtained at a fraction of the cost and several weeks sooner. Treat Code compliance as mandatory regardless of membership status.

**Complaints, sanctions and timing**

| ISSUE | POSITION UNDER THE PROCEDURAL GUIDE |
|---|---|
| Who may complain | Anyone. Consumer complaints are handled free of charge; competitor complaints attract a non-refundable filing fee. Complainants must identify themselves, and their names are ordinarily published in the ruling. |
| What may be complained of | Advertising that is current, or that was published within the last 90 days. |
| Time to respond | Five working days as standard — and the Directorate may shorten this where the circumstances are urgent. Campaign teams should be told now that a five-day clock is a real possibility during the Tour. |
| Sanctions available | Withdrawal of the advertisement in its current format; referral of amended advertising for pre-publication review; a pre-clearance obligation on all future advertising, imposed after repeated breaches within a 12-month period; adverse publicity naming the defaulter; and an order to publish a summary of the ruling in relevant media. |
| Ad Alerts | Issued where a respondent ignores reasonable requests for cooperation. This is the sanction that reaches non-members, and the one with the sharpest commercial consequence. |
| Withdrawal deadlines | Vary by medium — immediate for broadcast and online, approximately two weeks for outdoor, and up to three months for packaging. Digital and broadcast spend is therefore the most exposed. |
| Appeals | Three tiers. The Directorate decides at first instance; an appeal lies to the Advertising Appeals Committee within 10 days; and a further appeal lies to the Final Appeal Committee within 20 days. Appeals are wide, not confined to the record below, and costs may be awarded. |

**Two regimes, two different tests**

The statute and the Code overlap but are not the same enquiry, and a campaign can clear one and fail the other. Advise on both.

| | MERCHANDISE MARKS ACT | ARB CODE |
|---|---|---|
| Applies to | Everyone, but only during the declared protection window | Advertising generally, at all times — binding on members; effective against non-members via Ad Alerts |
| The test | Use of a mark in relation to the protected event, calculated to achieve publicity and derive special promotional benefit, without the organiser's authority | Taking advantage of another party's advertising goodwill, campaign or advertising property without prior written permission (cl 8.1); or advertising likely to mislead (cl 4.2.1) |
| Confusion required? | No | No — clause 8.1 does not require confusion, though it is a factor under 8.2 |
| Who enforces | The State (prosecution); the organiser and sponsors (civil interdict) | Any complainant, through the ARB Directorate |
| Remedy | Criminal fine per article, imprisonment, confiscation of goods; interdict and damages | Withdrawal, pre-clearance, adverse publicity, Ad Alert |
| Speed | Weeks to months — urgent application or prosecution | Days — five working days to respond, shorter if urgent |
| Ends when | The protection window closes, no later than one month after the Tour | Never — the Code applies year-round |

### WHAT THIS MEANS FOR YOUR CAMPAIGN

- **A campaign can be lawful under the Act and still breach the Code.** If the protection window has closed, or the creative avoids every prohibited mark, clause 8.1 may still catch it where it trades on a sponsor's advertising property.
- **The ARB is the sponsor's fastest weapon.** If you act for an authorised sponsor and spot an ambush, an ARB complaint will usually stop the campaign before a High Court application is ready to issue. Consider it first, and run the interdict in parallel if the conduct continues.
- **If you act for a non-sponsor, membership status is no comfort.** The Ad Alert route reaches you regardless.
- **Hold the paperwork before you publish.** Clause 4.1 requires documentary substantiation to be in hand at the time of publication — not obtainable later.
- **Brief for a five-day clock.** Make sure someone with authority to pull a campaign is contactable throughout the Tour, including over match weekends.

## 7. WORKED EXAMPLES: SPONSORS AND NON-SPONSORS

The distinction that matters is not between big brands and small ones, or between paid advertising and organic content. It is between **using the event to sell** and **everything else**. The examples below apply that line.

**What an authorised sponsor may do**

| ACTIVITY | POSITION |
| --- | --- |
| Castle Double Malt runs a national campaign: "Castle Double Malt — proud title partner of Rugby's Greatest Rivalry." | PERMITTED. Direct associative use of the event name, within its sponsorship rights as title partner. |
| DHL brands its delivery fleet and depots with Springbok imagery for the duration of the Tour. | PERMITTED, to the extent granted by its sponsorship agreement. The Gazette notice removes the statutory prohibition; the agreement defines the scope. |
| Klipdrift runs an on-pack promotion offering match tickets and a hospitality package as prizes. | PERMITTED, subject to its rights package and to the Consumer Protection Act rules on promotional competitions. |
| Airlink advertises itself as an official airline partner of the Tour and themes its in-flight service accordingly. | PERMITTED within its category rights. |
| A sponsor extends its Tour campaign to a product line not covered by its sponsorship agreement. | CAUTION. The statutory shield is only as wide as the organiser's authority. Use beyond the agreed category is unauthorised use, and is a breach of contract as well. |

**What a non-sponsor may NOT do**

| ACTIVITY | POSITION |
|---|---|
| A competing beer or spirits brand runs "Celebrate Bok Friday with [Brand]" across radio, print and social. | PROHIBITED. Direct use of a listed prohibited mark to derive promotional benefit. Classic ambush by association. |
| A retailer runs an in-store "Rugby's Greatest Rivalry Sale" with green-and-gold point-of-sale material. | PROHIBITED. Uses the event name and get-up to drive trade. |
| A restaurant advertises "Watch Rugby's Greatest Rivalry live here — free wings with every jug!" | PROHIBITED as advertised. Screening the match under a valid commercial broadcast licence is lawful; advertising the event by name to attract custom is not. See below for the compliant version. |
| A bank runs a "Bokke Bonus" savings promotion timed to the Tour. | PROHIBITED. Uses a listed mark for commercial promotion. |
| An airline advertises itself as the "unofficial carrier of the you-know-what." | PROHIBITED — and note this is precisely the formula that drew a cease-and-desist during the 2010 World Cup. Coy circumlocution does not help: section 15A(3) expressly reaches indirect use and allusion. |
| A brand distributes branded clothing in event colours to spectators outside the stadium. | PROHIBITED. Ambush by intrusion. During the 2010 World Cup this conduct led to spectators being removed from the stadium and to arrests, with the Merchandise Marks Act cited among the possible charges (later withdrawn on settlement). |
| A company runs a social media competition: "Predict the score, win a hamper" with Springbok imagery. | PROHIBITED. Alludes to the event for promotional benefit and uses protected devices. |
| An agency books outdoor advertising sites immediately surrounding the match venue with themed creative. | PROHIBITED where the creative alludes to the event. Note that venue-adjacent inventory is often separately restricted by the organiser's own arrangements. |
| A retailer sells unlicensed "Bokke" T-shirts, scarves or flags. | PROHIBITED, and additionally exposed under the Trade Marks Act and the Counterfeit Goods Act, with seizure and customs consequences. |

**What a non-sponsor may still do**

The declaration does not shut down normal trade. The following remain available.

| ACTIVITY | POSITION |
|---|---|
| A pub screens the match under a valid commercial broadcast licence and advertises "Live sport on our big screens." | PERMITTED. Generic, does not name the event, the teams, or use protected get-up. The licence is a separate requirement — confirm it is in place. |
| A retailer stocks and sells officially licensed merchandise sourced from an authorised supplier. | PERMITTED. Retail sale of genuine licensed goods is not ambush marketing. Keep the supply chain documentation. |
| A business holds an internal dress-down day, staff wear green and gold, photographs stay off commercial channels. | PERMITTED. No promotional payload, no commercial communication. |
| A newspaper, broadcaster or website reports on the matches, names the teams, and publishes match photographs. | PERMITTED. Genuine editorial and news reporting is not use "in relation to goods or services" for promotional benefit. The line is crossed when editorial is used as a vehicle for a sponsor-style association by an advertiser. |
| An employee posts personally on their own social media: "Go Bokke!" | PERMITTED on a proper construction — there is no commercial promotion. But if the post appears on a company account, or tags or features the employer's products, it becomes a commercial communication and the analysis changes entirely. |
| A brand runs a general sports or "summer of sport" campaign with no reference to the Tour, the teams or the protected marks. | PERMITTED. Sport is not owned; this event is protected. Keep the creative genuinely generic and document that decision. |

**THE LINE, IN ONE SENTENCE**

If a reasonable person would conclude that your business is **using the Tour to sell something** — whether or not they think you are a sponsor, and whether or not you named the event — you are in the prohibited zone. If the reference carries no commercial payload, you are very probably outside it. Where the answer is unclear, the criminal sanction makes restraint the right default.

## 8. CONSEQUENCES OF NON-COMPLIANCE

### Criminal penalties

Contravention of sections 14, 15 or 15A is a criminal offence. Section 20 sets the penalties — and note the **per-article** calculation, which is what turns a modest-looking fine into a material exposure across a print run or a stock consignment.

| CONVICTION | FINE | IMPRISONMENT |
|---|---|---|
| First conviction<br>(s 20(1)(a)(i)) | Up to R5 000 for EACH ARTICLE to which the offence relates | Up to 3 years — or both fine and imprisonment |
| Any subsequent conviction<br>(s 20(1)(a)(ii)) | Up to R10 000 for EACH ARTICLE to which the offence relates | Up to 5 years — or both fine and imprisonment |

In addition, section 20(2) empowers the convicting court to order the **confiscation of all or any part of the goods** in respect of which the offence was committed, over and above any other penalty. Confiscated goods are disposed of as the Minister directs.

### Commercial and civil consequences

| EXPOSURE | DESCRIPTION |
|---|---|
| Interdict | The organiser or an authorised sponsor may approach the High Court urgently for an interdict restraining the campaign. In practice this is the most immediate risk: an urgent application mid-campaign destroys the media spend and the campaign timing simultaneously. |
| Civil damages | Available in parallel where the conduct also constitutes trade mark infringement, passing off, or unlawful competition at common law. |
| Contractual liability | Ambush conduct frequently breaches broadcaster terms, venue conditions of entry, retail supply agreements, and media-owner terms. Existing sponsorship or partnership arrangements elsewhere in the group may contain morality or compliance clauses triggered by the conduct. |
| ARB Ad Alert | Member media decline to carry the advertising. For a national campaign, this is effectively a market-wide withdrawal, and it operates far faster than litigation. |
| Reputational damage | Ambush marketing enforcement is highly newsworthy, particularly where national teams are involved. The reputational cost of being publicly identified as free-riding on the Springboks routinely exceeds the fine. |

| EXPOSURE | DESCRIPTION |
|---|---|
| Counterfeit goods enforcement | Where prohibited marks are applied to goods, the Counterfeit Goods Act enables search, seizure and customs detention — with the goods removed from the supply chain before any trial. |
| Third-party conduct | An organisation that outsources marketing, promotions or activations remains accountable for its agencies, promoters and franchisees. Contractual warranties and indemnities should be reviewed now, not after the notice arrives. |

## 9. COMPLIANCE CHECKLIST

For the period to 12 September 2026, we recommend the following steps.

1. **Audit everything in flight.** Review every live and scheduled campaign, promotion, in-store activation, packaging run, email, and social post against the prohibited-marks list. Include content already scheduled in publishing tools.
2. **Search the words, not just the logos.** Run a keyword sweep across your creative and copy for BOK, BOKS, BOKKE, BOKKIE, BOK FRIDAY, SPRINGBOK, ALL BLACKS, and the event names. Word-level exposure is the most commonly missed.
3. **Check the visual language.** Because “mark” includes colour and shape, green-and-gold get-up, jersey imagery and stadium visuals can create exposure even with no protected word on the page.
4. **Brief the agencies in writing.** Send a written instruction to every external agency, promoter, influencer and franchisee. Confirm receipt. Accountability for third-party conduct sits with you.
5. **Lock down social media.** Company accounts are commercial communications. Brief community managers explicitly — a single well-meant reply on match day is the most likely point of failure.
6. **Verify your supply chain.** If you retail rugby merchandise, confirm and document that it is officially licensed and sourced from an authorised supplier.
7. **Confirm broadcast licences.** If you screen matches to customers, ensure the commercial licence is current and that your advertising of the screening is generic.
8. **Test against the ARB Code as well as the Act.** Ask separately whether the creative takes advantage of a sponsor’s advertising goodwill, campaign or advertising property (clause 8.1), and whether it could leave consumers with the impression of an official connection (clause 4.2.1). A campaign can pass the statute and fail the Code.
9. **Hold your substantiation before publication.** Clause 4.1 requires documentary evidence of any claim capable of objective substantiation to be in your possession at the time of publication — including any claim of official or partner status.
10. **Nominate a five-day responder.** Ensure someone with authority to withdraw a campaign is contactable throughout the Tour, including over match weekends. The ARB’s standard reply period is five working days and may be shortened for urgency.

11. **Route the grey areas to legal before publication.** The sanction is criminal and the enforcement window is short. Pre-clearance costs far less than an urgent interdict.

12. **Diarise the end date.** Protection lapses when the notice says it does — no later than one month after the Tour completes. Ordinary trade mark and common law positions then resume, but they do not disappear: the Springbok emblem and team names remain protected as registered trade marks year-round.

**BEFORE YOU PUBLISH — THREE ITEMS TO VERIFY**

**1. The Gazette reference.** Insert the Government Notice number and Gazette number for the final declaration, and confirm the stipulated commencement and termination dates against the notice itself. (Note: Gazette 33581 of 23 September 2010 is the *consolidation* gazette for the Act, not the protected-event notice — it should not be cited as the source of the rugby declaration.)

**2. The final prohibited-marks list.** The list reproduced above is drawn from the notice published for comment on 2 July 2026. Confirm whether any marks were added, removed or qualified in the final notice following the consultation.

**3. The current sponsor roster.** Castle Double Malt, DHL, Klipdrift and Airlink were confirmed, with further sponsors indicated as pending. Verify the position at the date of circulation.

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Merchandise Marks Act 17 of 1941 · Trade Marks Act 194 of 1993 · Consumer Protection Act 68 of 2008 · Counterfeit Goods Act 37 of 1997 · ARB Code of Advertising Practice (Sections I–IV and Procedural Guide, v2026-04-07)