My homeland was invaded by a foreign power 2 years ago, amidst much fanfare, publicity and excitement. The world sat watching with avid interest to see events unfold, although few spectators were even mildly concerned about these developments and, ultimately, boredom over the resultant spectacle appeared to be the order of the day. The invader was expected (had been invited, in fact), it brought no tanks or guns (although quite a few private jets were to be seen), and its uniform was more bespoke three-piece suits than combat camouflage. While the operation had taken longer to plan than the D-Day landings (more than 6 years in the making), the invasion and subsequent regime change lasted only a month. FIFA had come to South Africa, and my country would never be the same again.

This book started as the germ of an idea that festered amid some interesting debates with postgraduate students in seminars on intellectual property law, where we explored the fascinating world of ‘ambush marketing’ (well, I found it fascinating, it’s mostly impossible to divine the thoughts of a student). From subsequent reading on ambush marketing and IP rights in sport I developed an interest in the commercialisation of sport in its various guises; in the sometimes extremely interesting ways in which businesses have managed to ‘unofficially’ market their products and services in relation to major sports events and the likewise intriguing ways in which rights holders have proceeded to protect their often considerable investment in these events by means of recourse to the law. Fascination, however, gradually blossomed into disbelief, caused mainly by one specific aspect of ambush marketing: The ways in which the law—specifically in the form of domestic legislation in the countries that have hosted recent major events—has been used, or abused, in order to protect the privately ‘owned’ commercial rights of event organisers and sponsors at the expense of the rights of just about everyone else.

Upon further reading I found more, and ever more blatant, examples of this, and started to see a pattern of significant economic and political power at work in the world of sport. I have come to the conclusion (and I am not alone in this respect) that those governing world sport and those who plough millions of dollars into major events as sponsors and ‘commercial partners’ in order to put on the biggest
shows on earth have for some time now been hard at work behind the scenes creating very powerful and influential cliques, and have often rabidly protected their power and financial interests by various means involving the law. I am no conspiracy theorist, and I am not suggesting that some dark forces or illuminati are at work here. I just believe that the modern political economy of international sport has assumed dimensions which may require urgent intervention in the public interest, and in the interests of sport. As a lawyer and a teacher of law I have found them extremely worrying.

Following FIFA’s brief but tempestuous invasion of my country I felt the need to take up arms. The pen is mightier than the sword, and the laptop is mightier still. So I did what academics are wont to do. I wrote a paper, which was published as a series of articles in a local South African law journal, on the legal implications of commercial monopolies in events such as the FIFA World Cup, and on the (what I view to be) deplorable legislation that my country’s democratically elected lawmakers have passed and which has been employed in order to protect and maintain one such monopoly. These articles have formed the basis for this book, and I wish to thank the publishers of the Obiter journal, at the Law Faculty of the Nelson Mandela Metropolitan University in Port Elizabeth, for their kind permission to use some of that material in this attempt to expand the discussion and to include other jurisdictions and other events in the purview.

Further reading on the subject in researching this book has surprised me into finding that very little work has been done to date by the legal fraternity, from a critical perspective, in respect of assessing the legitimacy of the current state of affairs regarding commercial rights to sports mega-events and how the law is employed to protect such rights. In trawling the Internet I have found literally hundreds of articles, opinion pieces and blog postings on ambush marketing, from across the world. The reader is encouraged to search for these, there’s some very interesting stuff out there. From this bounty of source material I have tried to piece together what I hope is an interesting if possibly rather long-winded exploration of the nature and implications of the commercial juggernaut that is the modern sports mega-event, and of the activities of those involved in staging and financing these spectacles. While I also found a number of examples of scholarly writing on the subject emanating from both the legal and marketing fraternities, a definitive and all-encompassing critical treatise on the legal and other issues involved has eluded me. This book is not such a work, although I fervently hope that, while not providing a comprehensive and all-encompassing source on the subject, it might serve at the very least to provoke further thinking, reading, writing and debate in the interests of development of the law for purposes of its application to such events in future.

I wish to sincerely thank my colleague, mentor and friend, Tanya Woker, who first suggested that I should write this book (although I am constantly looking for ways to get back at her for the months of hard work that her suggestion inspired).

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I hope, for once, that more people will read this book than have assisted me in writing it or have supported me along the way. Despite all their assistance, the mistakes, omissions and no doubt glaring errors are, of course, my own.

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