

# Licensing Olympic Symbols

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Looking ahead to the 2000 Games in Sydney, opportunities to use Olympic symbols are clearly controlled.

Marketing opportunities involving the use of Olympic symbols have undoubtedly become more attractive to producers of goods and services since the announcement that Sydney will host the Olympic Games in the year 2000.

In recognition, the federal government acted to extend further opportunities for ambush marketing in relation to Olympic symbols. Additional protection has been provided by the Olympic Insignia Protection Amendment Act (1994), which supplements the Olympic Insignia Protection Act (1987). Both will be referred to collectively as "the Act." The statutory regime gives rights of exclusive use of certain Olympic symbols to the Australian Olympic Committee (AOC).

The practical effect of the Act is that anybody wanting to exploit the commercial opportunities must obtain a license or risk civil action brought by the AOC.

## THE SCHEME

Features of the government's protection are summarized below:

- The trademarking Olympic ring symbol is given copyright and design protection. The Olympic symbol cannot be reproduced without the AOC's consent. As a protected design, the Olympic symbol is accorded the status of personal property.
- The Act gives the AOC the mechanism to apply to register a design that incorporates a representation of the protected Olympic

symbol on the Olympic torch and flame. Any application must be lodged with the design office, which maintains a separate register for Olympic designs.

- Anyone may lodge objections to a proposed Olympic design registration, but only the AOC may apply to register a design incorporating either the Olympic symbol on the Olympic torch and flame. The register may be inspected at any time by a member of the public.

- A registered Olympic design is protected for a period of 12 years commencing on the day the design is registered.

- The depiction of the Olympic torch and flame symbol, unlike the Olympic rings may change according to the games' venue. The Act therefore allows for the Olympic torch and flame during a particular summer or winter Olympics to be declared from time-to-time an artistic work. As an artistic work, it is eligible for design registration.

- Where that artistic work is registered as a protected design, protection lasts for three but not more than four years before the opening of the Olympic games. The period ends on 31 December after the closing of those games unless terminated earlier under the Act.

- The Act also stipulates that an Olympic symbol, a protected design, and an Olympic motto may not be registered as trademarks. This restriction applies to the Olympic motto, whether it is expressed in English — *Faster Higher Stronger* — or in Latin — *Cilias, Altius, Fortius*.

## CONSEQUENCES FOR INFRINGEMENT OF THE ACT

The AOC has been vigilant in protecting and enforcing its rights.

Where a protected design is either reproduced or imitated without authorization, the AOC can obtain an injunction prohibiting the sale or dissemination of infringing material (including an order for destruction or cancellation of any infringing material, and other damages or an account of profits).

## Trade Marks

The Act does not prevent applications for registration of trademarks such as "Sydney 2000," "Sydney 2000 Olympics," or the word "Olympic." A search of the Trade-Marks Office database will disclose applications that include those words and variations of them. The Sydney Organizing Committee for the Olympic Games (SOCOG) has applied to register "Sydney 2000 Share the Spirit" in every class of goods and services.

A few applications for the mark "Sydney 2000" exist, but it is doubtful such a mark would be registrable *per se*. As a general rule, marks with strong geographical references do not qualify for registration. The Trade Marks Act contains only one specific prohibition on registration of Olympic marks — the registration of "Olympic Champions."

## References Not Covered by the Act

While steady reproduction of a protected design or the Olympic rings themselves will violate the AOC's statutory monopoly, uncertainties may arise where readers seek to use Olympic references not covered by the Act. It would be necessary to consider more generally applicable laws dealing with protection of consumers and business reputation.

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### Passing Off

Even where references to the Olympics are not used in conjunction with a protected Olympic symbol, the same would need to be aware of the consequences of "passing off." Passing off occurs where, in the course of trade, a trader seeks to appropriate the goodwill of another by misstating that person's goods or services. Given the powerful symbolic nature of Olympic references combined with the high profile in the community of the AOC and the SOCOG, it is possible that a consumer would mistakenly think that goods carrying Olympic references also may carry the AOC's or SOCOG's endorsement.

### Consumer Protection

It is quite possible that a representation made about the Olympics could be misleading or deceptive and attract the operation of Federal and State consumer protection legislation (the Trade Practices Act and State Fair Trading laws). Using terminology that refers to the Olympics in conjunction with the provision of goods or services may be misleading or deceptive in certain circumstances in a passing-off claim where a consumer wrongly perceives that there is an association with or endorsement of those products and services by the Olympic Movement.

Liability under consumer protection laws will also arise where a trader makes a false representation that either goods and services, or the business itself, have a sponsorship or approval that they do not have. It is possible, depending on the circumstances, that a reference to the Olympics may unwittingly

suggest sponsorship by the AOC or SOCOG.

The AOC, in a passing-off claim, or an action under Trade Practices and Fair Trading legislation would be entitled to remedies including either damages or an injunction. In a passing-off claim, a further remedy of an account of profits is available.

Finally, business name/legislation in certain States, and the Federal Corporations Law, has restricted the registration of business names that imply a connection with the Olympics. Such words would include "Sydney 2000."

### NEGOTIATING A MERCHANDISING LICENSE — HOW TO APPLY FOR APPROVAL

Given the likelihood of prosecution for unauthorized use of protected Olympic references and symbols, it is wise to obtain prior approval.

The AOC has appointed a specialist body, Sports Marketing and Management Pty Limited (SMML) to handle licensing and sponsorship on its behalf. Any requests to use an Olympic symbol to promote merchandise must be put to this body.

SMML has prepared a license application form that is given to applicants. It requests detailed information including:

- The nature of the applicant's business and copies of financial records.

- Detailed descriptions of the applicant's product range and the proposed licensed merchandise.

- Projected sales of licensed items.

- Product distribution and market penetration.

The applicant is then evaluated for suitability as a licensee holder. From a commercial perspective, given the extent of disclosure required, an applicant may wish to obtain some assurance of confidentiality from SMML, the AOC, and the SOCOG.

Further, for policy reasons the AOC may restrict the availability of some Olympic logos for use by a prospective licensee holder. For example, only a limited number of licensees to use the words "Sydney 2000" in conjunction with the Olympic flame logo have been granted, and except in unusual circumstances further licensees will not be granted. Reasons for this restriction include the following:

- The AOC's international obligations restrict the extent to which it can promote Sydney as the host city until the Atlanta 1996 games have taken place. This means that Sydney does not steal Atlanta's place in the limelight. Presumably, Sydney will benefit where similar restrictions are placed upon the next host city until after the year 2000.

- The issue of the "Sydney 2000" logo is uncertain. While it has been used as the official logo for the Sydney 2000 games bid, no decision has been made to use it as the official logo in the lead up to and during the games.

A trader may not need to obtain a license in circumstances where all that is done is to indicate that Sydney is the host city for the 2000 Olympics without using a protected symbol. This in itself may not suggest association with or approval by the AOC. Such a decision, however, should not be made without careful thought and advice about the issues raised above.