



INTERNATIONAL
INTELLECTUAL
PROPERTY
INSTITUTE

**Intellectual Property and Sporting Events: Effective
Protection of Event Symbols through Law and Practice**

Molly Torsen, IIPI



© istockphoto, 2007

This report does not constitute legal advice. This document does not establish an attorney-client relationship. Neither IIPI nor its authors accept liability for any loss that may arise from reliance on the information contained in this report. This report is not affiliated in any way with the International Olympic Committee

Focusing on the Olympic Games, this report will look at the intellectual property-related issues and challenges inherent in hosting a world-class sporting event. Hosting the Olympic Games presents a unique opportunity and challenge for any host country; indeed the International Olympic Committee (IOC) maintains that the Games represent the most effective international corporate marketing platform in the world. It is incumbent upon a National Olympic Committee (NOC) to comply with a stringent set of goals and rules in order to successfully host the Olympic Games. The NOC performs a wide array of functions, ranging from ensuring that political demonstrations are not held in the host city to organizing medical services. With regard to intellectual property (IP), the NOC also manages domestic sponsorship, ticketing and licensing programs within the host country under the direction of the IOC. This report will highlight some IP-specific challenges and successes that host countries have experienced while hosting the Olympic Games, will look at the efforts some future host countries are making and will suggest some practical tips for IP enforcement.

- I. Introduction
- II. Background on the International Olympic Committee
- III. Intellectual Property and its Importance in Marketing the Games
- IV. Ambush Marketing
- V. Personality Rights
- VI. IP Laws and Olympic Games Host Countries
 - a. The Nairobi Treaty
 - b. Domestic Laws related to the Olympic Games
 - i. Canada
 - ii. Beijing
 - iii. London
- VII. Conclusion

I. Introduction

Any country hosting the Olympic Games undertakes a tremendous amount of planning, construction and institutional collaboration. While many countries make a profit by running the two-week event, this has not always been the case. At the 2004 Olympic Games hosted in Athens, the cost of the Games overshot the budget substantially; the initial forecast was about 4.5 billion euros (\$USD 6.1 billion), while the overall cost reached 9 to 13 billion euros, depending on the source (\$USD 12 to 16 billion), not including the cost of accelerating construction projects like the Attiki Road Highway.¹ Other reasons for the high cost arose following Greece's successful 1997 bid to host the Games, including the fact that security was an extravagant cost following the September 11 attacks in 2001.



© IOC / Olympic Museum Collections

Ticket sales were lower than expected, requiring Greece to rely on purchased broadcasting rights and corporate sponsorships for revenue. Sponsorships are huge sources of revenue that rely on the effective protection of the Olympic Games' intellectual property. While additional ticket sales would have helped alleviate some of the financial strain, it is the corporate sponsorships that carry the bulk of financial weight.

There are five aspects of intellectual property-related law relevant to sporting events: copyright; design; trademarks; passing off; and personality rights. Many of these areas overlap in a given situation. This report will focus on the successes and challenges host countries have experienced in implementing specific intellectual property (IP) laws and policies to protect, and profit from, the Olympic symbols. The image above demonstrates how both copyright and trademark can apply to a given image.

¹ See *The Cost of Athens 2004 Olympics*, The Greek Embassy, Press Release, Nov. 13, 2004. Cf. *Athens Olympics Costs Greece 13 Billion Euros*, The People's Daily Online, August 10, 2006; and *Cost of Athens Olympics Far Exceeds Estimates*, Athens News Agency, Nov. 18, 2004.

A trademark or servicemark is a distinctive sign or symbol that uniquely identifies the source of products or services. A copyright, on the other hand, subsists in a wide range of creative works whether they are offered in the stream of commerce or not. The Olympic symbol in conjunction with the design for Greece in the above example is protected by both forms of intellectual property. Both are also protected on their own as copyrights and trademarks.

Recent consumer research conducted in eleven countries indicates that unaided brand awareness for the Olympic rings was 93 percent;² in trademark law parlance, this is truly a “famous mark” and has licensing value worth millions of dollars. Comparisons will be made between jurisdictions and against other sporting events (e.g., the World Cup) to suggest commonalities and helpful tips for future host countries with regard to intellectual property law and enforcement. Ambush marketing – the practice some companies employ to capitalize on the good will of the Olympics without authorization or payment of sponsorship fees – will also be discussed.

II. Background: The International Olympic Committee

In 1894, French educator Baron Pierre de Coubertin revived the idea of the Olympic Games of Greek antiquity by founding the International Olympic Committee (IOC) to serve as an umbrella organization for the Olympic Movement. Baroness de Coubertin, Pierre’s wife, ironically noted toward the end of her life that her husband had spent the bulk of their money on the Olympics, leaving her in financial difficulty after his death.³ The IOC is now extremely wealthy; it owns and profits from all the intellectual property rights in the Olympic symbols, flag, motto, anthem and Games.⁴ Today, the IOC ensures the continuity of the Olympic Games through the funding it receives via broadcasting rights and from its worldwide sponsorship program, The Olympic Partner Program (TOP), which relies on the recognition and goodwill of the Olympic symbol.

While this writing will not focus on broadcasting, it should be noted that broadcasting provides a huge source of revenue for the IOC and the National Olympic Committees (NOCs). The 2006 Olympic Winter Games in Torino, Italy, generated approximately \$833 million in rights fees revenue – that is, the money taken in from broadcast organizations that paid for the right to broadcast the Olympic Games. One hundred sixty countries televised the Games, and there were over 900 hours of live Olympic Games competition. Over eighty rights-holding broadcast organizations participated in their

² Anne M. Wall, *The Game Behind the Games*, 91 TRADEMARK REP. 1243 (2001).

³ See, e.g., Robert Knight Barney, *Golden Egg or Fools’ Gold? American Olympic Commercialism and the IOC in Proceedings: Thirty-Third Session of the International Olympic Academy*, 1993, at 123.

⁴ See, e.g., Ch. Four, Administration, *The IOC Final Report 2001-2004*, July 2, 2005, available at http://multimedia.olympic.org/pdf/en_report_969.pdf

dissemination.⁵ Television rights to the Olympic Games are only sold to broadcasters guaranteeing the broadest free-to-air coverage in their respective territories.⁶

The sponsorship program, The Olympic Partner Program (TOP), was established in 1985 and provides the highest level of corporate revenue for the IOC. Those companies selected to join TOP are designated as worldwide Olympic partners and are granted exclusive worldwide marketing opportunities for their products or services. TOP extends to hosting committees and to national and regional committees. For the Torino 2006 Games and the Beijing 2008 Games (during the 2005-2008 quadrennium), it is estimated that TOP will generate approximately \$866 million in support of the Olympic Movement. Unfortunately, it may be an uphill battle. Some knock-off products for the Beijing Olympics are currently available on the Internet and through street vendors; counterfeit baseball hats with the Olympic logo are selling for about USD \$1.00.⁷ China's particular challenges in this realm will be explored below.

Sponsorship on the domestic level is comprised of different tiers. Aside from the TOP participants, there are Official Suppliers and officially-licensed products. Varying marketing rights packages are offered to these companies depending on their tier. Sponsors at Torino in 2006, for example, included:

- The Fiat Group
- Sanpaolo
- Telecom/TIM, and
- The Regione Piemonte



The Sanpaolo trademark and logo and its representation on a pin, in conjunction with the Torino Olympic Games, available at <http://www.pinseurope.com/ptrade/oli/oli.htm>

The Torino Organizing Committee (TOROC) undertook the sponsorship arrangements with these and other local sponsors and dealt daily with “the institutions, sponsors, athletes and...thousands of large and small problems”⁸ to make the Torino Olympics a reality.

⁵ For these and other statistics, see the 2006 Marketing Fact File, The International Olympic Committee, available at http://multimedia.olympic.org/pdf/en_report_344.pdf.

⁶ *Id.*, at 41.

⁷ Charles Whelan, *Beijing Fighting to Safeguard Integrity of Olympic Rings*, Business Day South Africa, April 12, 2007.

⁸ *What Does TOROC Do?*, Torino 2006, available at http://www.torino2006.org/ENG/OlympicGames/dietro_quinte/toroc.html

The second tier of Official Suppliers (behind TOP participants) is also a competitive environment for companies. For Yale Cordage Vice President Dick Hildebrand, whose company was chosen as the official line (rope) supplier for the U.S. Olympic Sailing Team in 2000: “Our company culture is steeped in a rich racing tradition. It’s nice to know that we’ll be such an integral part of the Olympic effort.”⁹

Other Official Suppliers have included:

- *Weston Bakeries Limited* has been named the Official Supplier of Bread and Baked Goods for the Vancouver 2010 Olympic and Paralympic Winter Games
- *Schenker Italiana* has been named the Official Supplier of Freight Forwarding and Customs Clearance for several Olympic Games and Schenker China Limited is the Official Freight Forwarding and Customs Clearance Exclusive Supplier of the Beijing 2008 Olympic Games



This is the Schenker trademark and logo; its status as an Official Supplier allows it to use the Beijing 2008 mark on its Schenker China Limited website <http://www.schenker.com.hk/>.

- *ICI* (Imperial Chemical Industries PLC) Paints was the Official Supplier of Paint for the 2002 Salt Lake City Olympic Games

International Partners, through TOP, have provided sponsorship income and in-kind contributions totaling the aforementioned \$866 million over a four-year period. (In-kind contributions generally consist of providing goods or services as opposed to money). The IOC’s International Partners, during the 2005-2008 timeframe include such international companies as Coca-Cola ®, McDonald’s ®, General Electric ®, Kodak ® and Visa ®.

⁹ *U.S. Olympic Sailing Team Knows the Ropes*, Yale Cordage Press Release, May 30, 2000.



Coca-Cola®, a TOP Partner, links its logo with the Olympic Rings.
The Coca-Cola Press Lounge in Piazza Solferino during the
Winter Games in Torino, © Nicole Diekmann, courtesy of Coca-Cola.

The TOP Sponsors enjoy exclusive sponsorship within their respective industries, such as “carbonated beverages,” “financial services,” etc. The relationships between the IOC and the many companies that support the Olympics is complex but this overview highlights the large amount of financial support that is garnered through broadcasting and marketing, both of which rely on strong intellectual property protection. In sum:

Olympic sponsorship is an agreement between an Olympic organization and a corporation, whereby the corporation is granted the rights to specific Olympic intellectual property and Olympic marketing opportunities in exchange for financial support and value-in-kind contributions. Olympic sponsorship programs operate on the principle of product-category exclusivity [such as “banking services” or “softdrinks”]. Under the direction of the IOC, the Olympic Family works to preserve the value of Olympic properties and to protect the exclusive right of Olympic Sponsors.¹⁰

On the national and local level, domestic Olympic Committees manage the various levels of sponsorship. In 2008, for example, the Beijing Organizing Committee for the Olympic Games (BOCOG) is working with Chinese companies on the three-tiered levels of sponsorship.

¹⁰ *Id.*, at 21.



© David and Catherine Thambiratnam 2007

This photograph captures one of the official Beijing Olympic mascots, the International Olympic symbol and the trademark of one of the International TOP Sponsors, Omega ®.

III. Marketing: Sponsoring and Licensing

Described above, Olympic Sponsors fall into several categories. The Sponsorship Program developed for the 2008 Olympic Games in Beijing is the most comprehensive program yet implemented and provides a five-year calendar of events and opportunities to enhance the marketing privileges of the sponsoring corporations.¹¹ In addition to providing capital for actually hosting the Games, sponsorships also provide the bulk of the funding for

the athletes themselves. For example, Australian swimmer Ian Thorpe earned approximately \$3,675,000 from sponsorships during 2002, while he earned only \$25,000 in prize money from swimming.¹²

Sponsorship agreements are drafted for a very small percentage of those who are interested in becoming sponsors. Competition to be appointed an Olympic partner or sponsor on any level is intense and expensive. “Companies spend millions of dollars to obtain the associative rights and millions more in advertising revenue to cash in on the success of the Olympic Movement.”¹³ Anheuser-Busch, for example, allegedly paid more than US \$50 million to officially sponsor the 2002 Winter Olympics in Salt Lake City.¹⁴ Currently, Sponsors for the 2012 Olympic Games in London are currently vying for the privileges that official sponsorship brings. A timetable for companies hoping to sponsor the 2012 Olympic and Paralympic Games was announced in September of 2006. Invitations to Tender (ITT) were issued one month afterward.¹⁵ The London Games’ first domestic sponsor was Lloyd’s TSB.¹⁶ Being selected as a Sponsor on any tier is a much sought-after position.

¹¹ See The Beijing 2008 Olympic Marketing Plan Overview, <http://en.beijing2008.cn/46/72/column211717246.shtml>.

¹² J. Thomson, *Ian Thorpe: The Prizemoney Barely Buys His Lunch*, Business Review Weekly, November 28-December 4, 2002, 50-53.

¹³ Jane Sebel and Dominic Gyngell, *Protecting Olympic Gold: Ambush Marketing and Other Threats to Olympic Symbols and Indicia*, 23 University of New South Wales Law Journal (1999).

¹⁴ Abram Sauer, *Ambush Marketing Steals the Show*, Brandchannel.com, May 27, 2002.

¹⁵ Timetable Announced for Companies to Partner the London 2012 Olympic and Paralympic Games, Press Release, London 2012, Sept. 28, 2006, available at <http://www.london2012.com/en/news/press+room/releases/2006/September/2006-09-28-11-22.htm>.

¹⁶ See Lloyds TSB is First Domestic Partner of London 2012, Media Release, London 2012, March 14, 2007, available at <http://business.london-2012.co.uk/London-2012-Partners/>.

This phenomenon holds true for a variety of other famous sporting events, including the World Cup, the Tour de France, the Commonwealth Games and many others. A recent New York Times article noted that “[t]he presence of advertising at the Tour (de France) can hardly be overstated... The race is preceded each day over its entire route by a publicity caravan, a mile-long parade of [forty-five] corporate floats.”¹⁷ Intrepid Marketing, Ltd., did some follow-up research on Microsoft’s corporate sponsorship of the 2002 Commonwealth Games, for which Microsoft provided in-kind support and approximately US \$3 million. Intrepid found that 32% of its sample perceived Microsoft much more positively; 48% perceived it slightly more positively and that, overall, there was a 13% shift in attitude toward Microsoft, 84% of which was positive.¹⁸ Although Microsoft had not historically sponsored such grand-scale sporting events, it has become more involved in sports sponsorships. For example, it is a sponsor of the American Le Mans Series Race Team¹⁹ and is now the Official Supplier for Software at the 2008 Beijing Olympic Games.²⁰



Olympic Flame, © istockphoto.com/Arne Thaysen 2005

¹⁷ Edward Wyatt, “For Sponsors, Tour Is Nearly a Monthlong Bonanza of Exposure,” *New York Times*, July 19, 2007.

¹⁸ Rachael Church, *Case Study: Microsoft UK’s Sponsorship of the 2002 Commonwealth Games*, Sport and Technology, available at <http://www.sportandtechnology.com/page/0026.html>.

¹⁹ Microsoft Announces Sponsorship of American Le Mans Series Race Team, Xbox Press, May 24, 2006, available at <http://www.xbox.com/en-US/press/2006/0524-lemanssponsorship.htm>.

²⁰ Microsoft Becomes Software Supplier for 2008 Beijing Olympics, China Tech News, July 2, 2007, available at <http://www.chinatechnews.com/2007/07/02/5579-microsoft-becomes-software-supplier-for-2008-beijing-olympics/>.

IV. Ambush Marketing

Ambush marketing is an industry term that has gained popularity with relation to sponsors for sporting events. Specifically, a company engages in ambush marketing when it trades on the goodwill of an event, i.e., tries to tie itself to that event, without being an official sponsor, thereby skirting sponsorship fees but reaping commercial benefits. Generally, this practice lies outside the purview of intellectual property law, especially when a company refrains from directly using logos or trademarks but presents itself in some other way as being affiliated with a popular event. Ambush marketing is one (often unacceptable) answer to an author's question: "What of brand owners who are not among the lucky or extravagant few to win the bidding orders for official endorsement rights?"²¹

One example of ambush marketing in the context of the Olympics is a company sponsorship of something aside from the Games themselves. In 1984, Fuji® was an official Olympic Games sponsor. Kodak® sponsored the TV broadcasts of the Games and the U.S. track team, however. For an audience that is not paying specific attention to which company is an "official" sponsor, Kodak's advertisements during the televising of the Olympic Games would likely seem "official" although Kodak was paying much less sponsorship money, and Kodak would thereby benefit from its overall non-official association with the Olympic Games. Kodak has, since 1984, become an Official Sponsor.



Another example of ambush marketing occurred at the 2006 Football World Cup in Germany. The Dutch beer brewer Bavaria, which was not an Official Sponsor of the World Cup, distributed lederhosen bearing its logo to hundreds of Dutch supporters who were attending the match against the Ivory Coast: "[I]n one of the most surreal incidents of the World Cup so far, stadium officials in Stuttgart made the supporters take their trousers off – leaving many of them to watch Holland's 2-1 victory in their underpants."²²

²¹ Roger Matthews, *Going for Gold*, Legal Week, July 8, 2004.

²² Luke Harding and Andrew Culf, *The New World Cup Rule: Take Off Your Trousers, They're Offending Our Sponsor*, The Guardian, June 19, 2006.



Soccer Match © istockphoto.com / Marcus Lindström, 2006

While the outcome of the lederhosen event is a bit absurd,²³ it illustrates the seriousness with which official sponsors are asserting their rights as official sponsors. Many countries are looking into legislating in this area as international sporting events become more and more lucrative. New Zealand and the West Indies are two of the latest jurisdictions to consider specific ambush marketing legislation.

V. Personality Rights

A related issue to intellectual property is personality rights (also known as the right of publicity). As sports have developed into a global business, so too has the significance of athletes' image rights. Similar to straight support of the games themselves, retailers and businesses often seek to link their products and images with celebrities. More and more often, professional sports associations have aimed to control the image rights of their team members. Without a contractual relationship between a team and its members, however, jurisdictions handle personality rights differently. Generally, it is agreed that they fall under the auspices of privacy rights.

In most of Europe (aside from the U.K.) and in the United States, for example, an independent personality right is written into the law. These rights usually protect a celebrity's right to profit from – and keep others from profiting from – exploitation of his or her image, likeness, etc. In other jurisdictions, domestic implementation of Article 10*bis* of the Paris Convention for the Protection of Industrial Property is used to battle unfair competition and may come into play in a similar role as would stand-alone personality rights:

- (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
- (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

²³ Ultimately, a Dutch judge ruled that fans do not need to conform their clothing to the will of the sponsors. *See id.*

- (3) The following in particular shall be prohibited:
- (i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - (iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.²⁴

While the nuances of this kind of law fall outside the scope of this guide, it should be noted that there are a few distinct categories into which this kind of issue may be classified. For non-commercial exploitation, the factors a court looks at are quite different from the factors that come under scrutiny when an entity is seeking to make a profit by using a celebrity's image without permission. Dependant on a number of factors, then, including whether someone profited from a celebrity's likeness, a court may take into account whether the celebrity's reputation is somehow damaged or whether they have been portrayed in a false light that would link the public's perception of that celebrity with something he or she does not necessarily endorse.



Photographer during Sports Event © istockphoto.com / Frances Twitty 2006

Despite the United Kingdom's lack of a specific "personality rights" law, a case from that jurisdiction comprises a good example of the issue. A photograph of a well-known race car driver was altered such that he appeared to be holding a radio to his ear that bore the logo of a certain radio station. The radio station used an altered image to promote itself but the English High Court reasoned that a false impression was being made such that a significant portion of the market would believe that the driver was endorsing the radio station. The Court decided to quell that exploitation.²⁵

²⁴ Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967, and as amended September 28, 1979.

²⁵ *Edmund Irvine and Tidswell Limited v. Talksport Limited* (2002).

Like the U.K., India does not have express personality rights; its recognition is accorded by common law principles, breach of contract or trade disclosure agreements. Unlike the U.K., however, India's Delhi High Court has expressly stated that the right of publicity does not extend to events and is confined to persons.²⁶ Commentators on the topic foresee a change in the future, though, given India's thriving sports industries, including its active cricket culture and its hosting of the Commonwealth Games in 2010.²⁷

Another topical case involves a goalkeeper's name and image in a computer game. Oliver Kahn, a German soccer player who played in the 2002 World Cup, was used in an Electronic Arts, Inc (EA) computer game. Although the Fédération Internationale de Football Association (FIFA) had granted EA permission to use its logo, the specific use of a team member's image fell outside the language of the contract and Germany's strong personality rights law played a role in curtailing EA's unauthorized use of the popular soccer player. The court recalled the computer game from being sold in Germany and EA lost millions of euros in sales. All told, the 2006 FIFA World Cup is reported to have brought in €5 million in sponsorship spending, with the event reportedly boosting Germany's annual GDP by 0.01%.²⁸

In China, there is a specific law that provides a right in a person's portrait, making third-party use of a citizen's portrait for profit without consent illegal: "Chinese athletes are increasingly aware of the value of their portrait rights, and several athletes have recently sought to protect their commercial value."²⁹ Sports marketing in China, generally, is a very new field, and the complexities of sponsorship arrangements is still widely misunderstood. Chinese regulations in this area are still being developed, and IP rights are difficult to enforce. But aside from the portrait law, there is also the possibility for the registration of athletes' names as trademarks – a rare allowance compared to most jurisdictions.

These differences highlight the importance of understanding local laws. The proliferation of international sporting events may provide a reason for jurisdictions to eventually settle on something of an international standard in the realm of privacy and personality rights in the context of sports events, but the laws are currently quite varied.

A small and sometimes overlooked detail in the Olympic charter states that, "[e]xcept as permitted by the IOC Executive Board, no competitor who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes *during the Olympic Games*."³⁰ This provision came into play in 1998 when Campbell Soup Co. produced television advertisements and soup labels featuring Michelle Kwan, Nicole Bobek, and Tara Lipinski, three skaters from the U.S. Figure Skating Association competing in the Nagano Winter Games. Campbell Soup

²⁶ *ICC International Ltd. V. Arvee Enterprises & Another* (CS) OS No 1710 of 2002.

²⁷ See The Commonwealth Games Federation, *See You in Delhi in 2010*, available at <http://www.thecgf.com/games/intro.asp?yr=2010>.

²⁸ Sue Ironside, *The New Zealand Major Events Management Bill*, Baldwin Son & Carey, Issue 027, June 2007.

²⁹ Rebecca Ordish, *Sports Marketing in China: An IP Perspective*, The China Business Review, Nov.-Dec. 2005.

³⁰ The International Olympic Committee Charter, Rule 41, Bye-law 3 (emphasis added).

was not a Sponsor of the Olympic Games, but the television commercials were aired and the embellished labels were put on the market *during* the Games. Campbell and the United States Organizing Committee (USOC) sorted through the issue outside of court; the sum Campbell paid for the waiver was reportedly about \$400,000.³¹

³¹ Kimberly W. Alcantara, *Let the Games Begin*, Pattishall, McAuliffe Newsletter, Winter 2002.

VI. IP Laws and Olympic Games Host Countries

A. The Nairobi Treaty

The World Intellectual Property Organization (WIPO) administers the Nairobi Treaty on the Protection of the Olympic Symbol (The Nairobi Treaty), which was signed in 1981. Any State party to the Nairobi Treaty is obliged to protect the Olympic symbol of the five interlaced rings from commercial use in advertisements (or on goods or as a mark, etc.) without the explicit authorization of the IOC. If the IOC grants authorization for use of the symbol, the NOC of that State is entitled to a portion of the IOC's revenue for granting that authorization.

The Nairobi Treaty has forty-six contracting parties, which is relatively few compared to the main international IP treaties. The original signatories of the Nairobi Treaty in 1982 were Egypt, Equatorial Guinea, Ethiopia and Kenya. The Treaty has a wider reach today, including some European and Latin American countries. For stronger protection of the Olympic symbol and related words and symbols, however, countries began implementing domestic Olympics legislation. An example demonstrating the Nairobi Treaty's effects, as well as the effects of some domestic laws and policies, is how the interconnected rings (the Olympic symbol) and the word mark "Citius altius fortius" are registered in various databases:

The World Intellectual Property Organization: The Madrid System

Number 17.01.1978

Owner: The International Olympic Committee



CITIUS · ALTIUS · FORTIUS

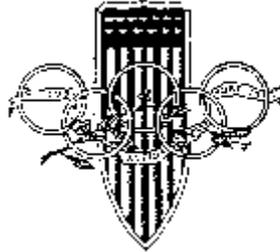
United States: Not a Party to the Nairobi Treaty

USPTO Serial Number 89000109

Filed August 2, 1930.

Owned by the Xth Olympiade Committee of the Games of Los Angeles, USA, 1932 Corporation.

Also protected by Statute.



CITIUS ALTIUS FORTIUS

Canada: Not a Party to the Nairobi Treaty

CIPO Serial Number 0916396

Filed December 15, 2004

Owned by the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games

CITIUS ALTIUS FORTIUS

Countries that are not party to the Nairobi Treaty do not ignore the power of the Olympic symbol, however; far from it. The International Olympic Committee (IOC) ensures that host countries comply with specific guidelines regarding intellectual property protection. For this reason, *sui generis* Olympics laws have been drafted in several countries, both those that have and have not implemented the Nairobi Treaty. The Nairobi Treaty, it should be remembered, only requires absolute protection of the Olympic symbol. Below is a non-exhaustive list of *sui generis* laws regarding the Olympic games and intellectual property protection:

- Law on the Olympic Emblems, 1964, **Liechtenstein;**
- Decree-Law No. 104-82 on the Ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, 1982, **Guatemala;**
- The Olympic Insignia Protection Act of 1987 (amended by Act No. 106 of 2006), **Australia;**
- Law No. 24.664, Protection of Olympic Symbols and Designations, 1996, **Argentina;**

- Regulations on the Protection of Olympic Symbols, 2002, **Beijing**;
- Law No. 2819/2000, Establishment of the Company “Olympic Village 2004 S.A.,” Protection of Olympic Symbols and Marks and Other Provisions, 2004, **Greece**;
- Olympic Symbol Protection Act of 1995, **The United Kingdom**;
- Bill C-47, An Act Respecting the Protection of Marks Related to the Olympic Games and the Paralympic Games and Protection Against Certain Misleading Business Associations and Making a Related Amendment to the Trade-marks Act, House of Commons, **Canada**, 2007;
- The **Russian** Parliament gave its preliminary approval for a strict new IP law to support the country’s bid to host the 2014 Olympic Winter Games.

The subject matter each law aims to protect is similar, with all of them including the Olympic rings and the words “Olympics,” “Olympiad,” “Paralympics,” etc. Some laws go further and forbid certain combinations of expressions. The U.K.’s Olympic Symbol Protection Act of 1995, as updated by the London Olympic Games and Paralympic Games Act of 2006, prohibits such combinations as “games” and “gold” or “2012” and “summer.” Clearly, domestic laws provide a higher level of protection for Olympic-related words and imagery than does the Nairobi Treaty.

i. The Example of Canada

Certainly, issues arise when businesses feel that their freedom to market themselves is curbed. Critics of Canada’s Bill C-47, for example, think that the law could prove to be a problem for “businesses that simply wish to express support for the Games.”³² In the comparable British bill, only the British organizing committee can legally pursue entities it believes have engaged in ambush marketing. In Canada, the Vancouver Organizing Committee (VANOC) can initiate litigation, as can a sponsoring firm so long as it obtains VANOC’s approval, which cannot be “unreasonably withheld.” On the other hand, C-47, which recently received Royal Assent, will not affect not-for-profit enterprises that use Olympic and Paralympic marks for non-commercial purposes, and it does not require people or businesses which are already using these marks to cease doing so. Artworks, news reports and Olympic athletes who wish to market themselves based on their association with the Olympics may do so.³³ There are circumstances that have caught media attention in this arena that highlight some of the gray areas in the Bill.

³² Patrick Brethour, *Olympics Bill Toughens Trademark Muscle*, Report on Business, June 28, 2007, quoting Cynthia Rowden with the Intellectual Property Institute of Canada.

³³ See Bill C-47, assented to June 22, 2007, available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3066122&file=4>.

Olympic Pizza, a small family-run restaurant in Vancouver, British Columbia, received a cease and desist letter from the IOC. Olympic Pizza has been in existence for over fifteen years and has used the same name and a rendition of the Olympic symbol since it opened its doors. Both VANOC and the IOC received a rash of negative press coverage for their efforts to quell Olympic Pizza's name and logo. VANOC has since stated:

Businesses that began using the word "Olympic" (or similar terms) in their names or marks before January 1998 likely did not do so to take unfair advantage of Vancouver's bid to host the 2010 Winter Games. VANOC is less likely to ask those businesses to change their names, as long as they do not suggest a connection with the Olympic Movement or the 2010 Winter Games. Nevertheless, VANOC will require that those businesses not use symbols that clearly suggest a connection to the Olympic Movement or the 2010 Winter Games – such as the Olympic Rings, the Olympic Torch, the Olympic Motto, or emblems relating to the 2010 Winter Games – or start using their names or marks for new kinds of businesses, in new locations or in new ways.

Businesses that began using the word "Olympic" (or similar terms) in their names or marks after January 1998 without the permission of VANOC, the COC or the IOC will be required to change their names and marks and stop using all symbols that suggest a connection to the Olympic Movement.³⁴



Canadian Flag © istockphoto/ Soren Pilman 2007

VANOC now has strong legal powers to protect its trademarks. The 2007 Act sets out thirty-five words and expressions, as well as four images, to be protected as Olympic or Paralympic marks. An additional seventeen words and expressions and two images are to be protected through the year 2010 only. For example, "Spirit in Motion" is an expression receiving perpetual protection while "Vancouver 2010" will not be protected after 2010. Another mark that VANOC is protecting is its Inukshuk design. Its description (abbreviated) in a few domestic trademark databases is seen as follows; notice

³⁴ Protecting the Olympic Brand Helps Create Conditions for Successful Games and Financial Legacies for Athletes, Vancouver 2010 News Release, Jan. 25, 2006, available at http://www.vancouver2010.com/en/OrganizingCommittee/MediaCentre/NewsReleases/2006/01/26/74_0601260941-655

that the International Olympic Committee owns the mark in jurisdictions other than Canada:

CANADA

Application Number: 0916708

Filed: April 25, 2005

Applicant: Vancouver Organizing Committee for the
2010 Olympic and Paralympic Winter Games



AUSTRALIA

Application Number: 1079801

Filed: October 10, 2005

Applicant: Comité International Olympique



UNITED STATES

Application Number: 76648706

Filed: October 18, 2005

Applicant: Comité International Olympique



ii. Beijing

When Beijing was named the host of the 2008 Olympics, it drew up a Protection of Olympic Symbols regulation and passed the law in 2002.³⁵ The language of the Regulations is similar to other domestic Olympics/IP laws, but because of China's notoriously lax intellectual property enforcement, the country has been facing pressure to implement additional measures. The Beijing Organizing Committee is using five separate Fuwa mascots for the games, each of which is specifically protected by the Regulations:

Designed to express the playful qualities of five little children who form an intimate circle of friends, Fuwa also embody the natural characteristics of four of China's most popular animals -- the Fish, the Panda, the Tibetan Antelope, the Swallow -- and the Olympic Flame. Each of Fuwa has a rhyming two-syllable name -- a traditional way of expressing affection for children in China. Beibei is the Fish, Jingjing is the Panda, Huanhuan is the Olympic Flame, Yingying is the Tibetan Antelope and Nini is the Swallow.³⁶



Two of the five Beijing Olympics mascots, Jingjing and Yingying, available on the Official Beijing Olympics Website, <http://en.beijing2008.cn/en.shtml>

A recent news report looking at the state of counterfeit goods noted that, while swathes of street vendors are hawking faux Rolexes and Montblanc pens, “relatively few peddlers are pushing illegally copied Olympics souvenirs, even though the city is in a frenzy of preparations for the games.”³⁷ Reasons for this could include Chinese political will to enforce IP laws to show that the country can behave in accordance with international anti-pirating rules. For example, the attempt by the Chinese government to enforce IP

³⁵ Regulations on the Protection of Olympic Symbols, adopted at the 54th Executive Meeting of the State Council on January 30, 2002, promulgated by Decree No. 345 of the State Council of the People's Republic of China on February 4, 2002 and effective as of April 1, 2002, available at <http://en.beijing2008.cn/bocog/ipr/n214071828.shtml>.

³⁶ The Official Mascots of the Beijing 2008 Olympic Games, Beijing Olympics Official Website, <http://en.beijing2008.com/80/05/article211990580.shtml>.

³⁷ Marilyn Geewax, *Phony Olympic Souvenirs Not Rampant in China So Far*, *The Atlanta Journal-Constitution*, June 24, 2007.

laws can be seen by its increased inspections, destruction of fake goods, and creation of a telephone hotline to report IP violators.

At least one commentator on the topic remains skeptical of the apparent success: “People want Prada bags, not Olympics pins.”³⁸ She predicts, however, that once Olympics hype is widespread in 2008, counterfeit products will be rampant. The Dean of Tsinghua School of Economics in Beijing, Yingyi Qian, said the central government is sincerely committed to halting counterfeiters. Customs officers are currently being trained in how to tell apart authentic and counterfeit Beijing Olympics Fuwa mascots,³⁹ and a notice from China Customs has been issued, making particular note that it is “entitled to conduct control over Olympic materials entering or leaving China Customs territory...in accordance with relevant laws and regulations.”⁴⁰ Recently, Beijing has called upon Hong Kong – noted as a regional role model in IP protection – to help Beijing with its enforcement expertise.⁴¹

In June of 2007, Beijing police were reported to have seized nearly 30,000 fake Olympic products, most of which were illicit copies of the official mascots. Most of these fake products were sold “near subways or at night markets or on the Internet.”⁴² In one raid, almost 13,000 partially-finished “Fuwa” and almost 13,000 finished products were confiscated from a rental home in the Shandong Province. The fake Fuwas, manifested in this case as fake rag dolls, were filled with industrial waste and moldy cotton.⁴³

It seems that China’s reputation for lax IP enforcement has not stopped corporate sponsorship competition from being fierce. “Certainly corporate sponsors have queued up to invest millions of dollars in the Beijing Games, touted to be a money spinner despite a decision by organizers to sell tickets and Olympic souvenirs at cheap rates so that ordinary Chinese with little spending power can enjoy the Games.”⁴⁴ Companies such as Adidas have battled to become official sponsors of the Beijing Olympic Games. Adidas’ Olympic program director noted that Beijing “represents a difficult challenge. But we are working closely with (the organizing committee) and we are confident.”⁴⁵

³⁸ *Id.*, quoting Jo-Ann Sperano, a legal expert with a New York self-regulation group for the jewelry industry.

³⁹ Minnie Chan, *Customs Officers Train to Spot Fake Olympic Mascots*, South China Morning Post, July 13, 2007.

⁴⁰ Customs Clearance Notice for Beijing Olympic Materials, April 27, 2007, available at http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=66340&col_no=121&dir=200704.

⁴¹ See *Hong Kong – A Role Model in Intellectual Property Protection*, Hong Kong Commerce, Industry and Technology Bureau, Nov. 13, 2002, available at http://www.csb.gov.hk/english/letter/files/showcasing_ipd_e.pdf.

⁴² Beijing Seizes Nearly 30,000 Fake Olympic Products, Ministry of Commerce of the P.R.C., June 19, 2007, available at http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=86425&col_no=893&dir=200706

⁴³ *Id.*

⁴⁴ Charles Whelan, *Beijing Fighting to Safeguard Integrity of Olympic Rings*, Business Day (South Africa), April 12, 2007.

⁴⁵ *Id.*, quoting Erica Kerner.



Fuwa Nini Multifunctional Cushion & Blanket, a licensed silk product from the Official Beijing Olympics webpage, available for 275.00 RMB yuan. See <http://en.beijing2008.cn/27/39/article212053927.shtml>

Beyond the 2008 Olympics, however, there will likely be more attention paid to sports in Asia. “[T]he Olympics is only part of a bigger growth story in Asia,” according to the Chief Executive Officer of Total Sports Asia, the leading independent sports marketing company in Asia.⁴⁶ The FIFA World Cup 2006 generated over USD \$100 million in Asia; “[t]he industry trends that have established themselves so clearly in the United States and in Europe are now likewise being replicated in Asia.”⁴⁷

Censorship

An interesting side-bar to the protection of the Olympic symbol in Beijing is a recent campaign by Reporters Without Borders / Reporters Sans Frontières, condemning the lack of progress in free speech and human rights in China.



Reporters Without Borders http://www.rsf.org/rubrique.php3?id_rubrique=174

Reporters Without Borders is utilizing the concept of the IOC’s interlocking circles in a manner that is potentially controversial but which likely escapes the contours of the Beijing Organizing Committee’s intellectual property clauses. The interlocking cufflinks copy the idea of the Olympic symbol, but do not replicate the symbol itself. Furthermore, the Regulations on the Protection of Olympic Symbols for the Beijing Games only prescribe unauthorized use of the Olympic Symbol for commercial uses:

⁴⁶ Alex Iskandar Liew, *quoting* Marcus Luer, *Asia Sports Marketing Spending to Surge 20% to USD 18 Billion Next Year*, Business Wire, July 10, 2007.

⁴⁷ *Id.*, *quoting* Marcus Luer.

No one may use Olympic symbols for commercial purposes (including potential commercial purposes, and the same below) without the authorization of the right holders.⁴⁸

The definition of “commercial purposes” in the Regulations is as follows:

For the purpose of these Regulations, "use for commercial purposes" means the use of Olympic symbols *for profit-making purposes* in the following ways:

- (1) The use of Olympic symbols in goods, packages or containers of goods or trade documents of good;
- (2) The use of Olympic symbols in services;
- (3) The use of Olympic symbols in advertising, commercial exhibition, profit-making performance and other commercial activities;
- (4) Selling, importing or exporting goods bearing Olympic symbols;
- (5) Manufacturing or selling Olympic symbols;
- (6) Other acts that might mislead people to think there are sponsorship or other supporting relations between the doers and the right holders of Olympic symbols.



Australian Passport © istockphoto/Brian Pamphilon 2007

Because Reporters Without Borders is not using the symbols in a commercial manner, there is probably not an intellectual property issue here unless it can be shown (under other domestic laws)⁴⁹ that there is a likelihood of confusion insofar as the public perceives that there is a connection between Reporters Without Borders and the IOC or the Beijing Organizing Committee.

There was a range of outcomes regarding similar cases in Australia during the Sydney 2000 Olympic Games. The Olympic Insignia Protection Act of 1987⁵⁰ protected the Olympic rings, motto, and various other images associated with the Games, and the Sydney Organizing Committee (SOCOG) had the right to prosecute unauthorized uses, including “the design or any fraudulent or obvious imitation of (a registered Olympic design) to any article.”⁵¹ One author on the topic interpreted that language to potentially give the SOCOG the “power to prohibit protest art incorporating Olympic insignia on a range of ‘articles’ including t-shirts and perhaps even billboard posters.”⁵² Indeed, in one

⁴⁸ Regulations, *supra* note 30, Art. 4.

⁴⁹ Article 14 of the Regulations states: In addition to these Regulations, Olympic symbols are also protected according to provisions of other laws and administrative regulations such as the Copyright Law of the People's Republic of China, Trademark Law of the People's Republic of China, the Patent Law of the People's Republic of China and the Regulations on Administration of Special Symbols. *Id.*

⁵⁰ Law No. 27 of 1987, available at http://www.wipo.int/clea/docs_new/pdf/en/au/au045en.pdf.

⁵¹ *Id.*, Art. 8(1).

⁵² Sally McCausland, *Art and the Olympics*, Art + Law, December 1999.

court case,⁵³ a woman had produced and distributed free t-shirts sporting a design that depicted a hen in a cage with five eggs on behalf of Animal Liberation Tasmania. SOCOG sought and obtained an injunction restraining any further reproduction or sale of the image, as well as delivery-up of the remaining t-shirts. The fact that the t-shirt distribution was a non-commercial endeavor was not a sufficient defense. It is important to note, however, that Australia's copyright law at the time did not provide for exceptions in the realm of parodic or satirical uses of a copyrighted image.⁵⁴ Furthermore, Australia does not constitutionally protect political expression.

iii. London

Hundreds of millions of pounds are required to organize the 2012 Olympic Games. The London Organizing Committee (LOCOG) is working on protecting the 2012 suite of Marks, including the Olympic symbol, the Paralympic symbol, the London 2012 logo, the British Olympic Association logo, the URL www.London2012.com, and derivatives thereof.



Official logo of London 2012, available at <http://www.london2012.com/>

The unauthorized use of any of the Games' Marks, or marks that are confusingly similar to these marks, is unlawful. Falsely representing any association, affiliation, endorsement, sponsorship, or similar relationship with London 2012, the British Olympic and Paralympic teams, or any other part of the Movements, is unlawful.

The Olympic Symbol Protection Act of 1995 is the relevant legal instrument to enforce the above. It creates a London Olympics association right, conferring exclusive rights to use, in the course of trade, any representation in a manner likely to suggest to the public that there is an association between the London Olympics and goods or services, or a person who provides goods and services. Exceptions for reporting, broadcasting, incidental inclusion, and a few other non-infringing uses are included in the Act.

LOCOG has created a brief series of practical "Do's and Don'ts" guides and a "Frequently Asked Questions" list in an effort to inform a variety of entities how to utilize the Olympic symbols in their publications, merchandise, and other products.

⁵³ *Sydney Organising Committee for the Olympic Games v. Pam Clarke*, unreported, FCA, Branson J, 25 June 1998.

⁵⁴ See *Major Copyright Reforms Strike Balance*, The Attorney General Philip Ruddock MP, Australia, Media Release 088/2006, May 14, 2006.

Titled “Brand Protection Information,” the London 2012 webpage dedicated to the Olympics and intellectual property provides examples and straight-forward lists that likely cover most of the questions that could arise with regard to whether and how various symbols can be used.⁵⁵ It also includes links to stand-alone guides, including:

- An Overview of the Official Games’ Marks;
- London 2012 Brand Protection – Information for Businesses;
- London 2012 Brand Protection – Information for Non-Commercial Organisations;
- Detailed Information on the London 2012 Organising Committee’s Statutory Marketing Rights

iv. New Zealand

Although New Zealand is not gearing up to host the Olympic Games, it is currently introducing specific legislation to counter ambush marketing in major sporting events to prepare for such events as the World Rowing Championships in 2010, the Rugby World Cup in 2011, and the Cricket World Cup in 2015, in addition to others. Trevor Mallard, the Minister for Economic Development and Sport, has emphasized that the New Zealand legislation is a “home-grown model” resulting from a cooperative effort between his office and the New Zealand Intellectual Property Office.⁵⁶

The Major Events Management Bill was introduced in December of 2006 and is intended to address the threat of ambush marketing, amongst other IP-related issues. Until this point, New Zealand has relied on IP torts such as trademark and copyright infringement to deal with ambush marketing. While traditional IP regimes have been useful in fighting counterfeit sports goods, sophisticated ambush marketers have mostly flown under the IP radar. In 1996, Bellsouth was the primary sponsor of the New Zealand Olympic Games. Unfortunately for Bellsouth, Telecom released an advertising campaign that used the Olympic rings, put the word “ring” in each ring and added: “With Telecom mobile you can take your own phone to the Olympics.” Under then-current legislation, there was insufficient evidence to suggest that that public assumed that Telecom was an official sponsor. The new bill, still under consideration, aims to curtail this problem by restricting unauthorized “associations” with major events and by increasing the range of available remedies, including offense provisions for intentional acts of ambush marketing.

⁵⁵ See <http://www.london2012.com/about/our-brand/using-the-brand.php>

⁵⁶ See *How New Zealand Plans to Protect Sporting Sponsors*, Managing Intellectual Property, 2006.



Auckland © istockphoto / Greg Ward, 2007

VII. Conclusion

Hosting the Olympic Games, or any sporting event that garners international attention, is a rare opportunity for businesses to underwrite an important international effort that has a wide range of positive outcomes including a profit to that business from its association with the event. The sheer vastness of the Olympic Games – including the athletes, the audiences, the news agencies that report on the games, the television channels that transmit them to the world, and the businesses that provide the necessary capital to fund such elaborate events – requires that the International Olympic Committee (IOC) make and enforce strict regulations on intellectual property. The degree to which sponsors can rely on the exclusivity of their rights in funding the Games will have an impact on future sponsorships and the viability of future Games.

Countries hosting the Games often implement specific IP laws to ensure that their national Olympic committees have a legal framework under which they must comply with the IOC's IP regulations, which protect the Olympic Symbol and a range of other thematic words and symbols. Some countries are also party to the Nairobi Treaty, which ensures protection solely for the Olympic Symbol, comprised of the five interlocking rings. The extent to which words, phrases, and images are “locked up” for use by official Olympics sponsors is an often-contentious balance. While some companies aim to free-ride on the goodwill of the Olympics by associating their goods or services with the Olympics through ambush marketing tactics, other companies, such as the pizza restaurant in Vancouver, have legitimate interests in retaining their own intellectual property for use beyond the Olympic Games. There is a wide range of intellectual property in international sporting events. Protecting and enforcing that IP is an essential and substantial component of ensuring that international sporting events remain a viable financial reality.