

Denis Lee and Robert MacGinn of Silverman Sherliker warn that under new legislation, the promised economic benefits could be replaced by an atmosphere that stifles free enterprise

Burned by the Olympic flame?

The recent controversy surrounding the Olympic logo for the 2012 Games in London may be just a foretaste of trouble ahead for businesses hoping to benefit from the world's biggest sporting event. New laws put the aesthetics of the branding in the shade, and could land businesses in very hot water. Entrepreneurs who are not fully informed or sail too close to the wind could potentially face a fine of up to £20,000 and a criminal record.

Draconian legislation

Recent Olympic legislation has been described by some as 'the most draconian intellectual property law enacted'. The International Olympic Committee (IOC) enjoys protection under The London Olympic and Paralympic Games Act 2006 (2006 Act) that effectively creates a new type of intellectual property right, defined in Section 1 as the London Olympic Association Right (LOA Right). Under Section 2, a person will infringe the LOA Right if that person presents or markets goods or services in such a manner as to give the impression that there is an association with the London Olympics, whether that be a contractual, commercial or corporate association. This means, over and above the trade mark rights which the IOC and LOCOG have already protected (*see below*), the Organising Committee can also stop any business which uses any representation or promotional means which imply that it has a connection or association with, or has obtained a sanction from the Association.

Ambush marketers beware

Bitter lessons learned from previous Olympic Games meant the IOC and LOCOG were not going to take a chance on allowing anyone to succeed with "ambush marketing" strategies. In the past, businesses have managed to hitch a free ride on a high profile sporting events such as the Olympics or Paralympics. In a well-publicised case, Nike succeeded in sponsoring athletes at the 1996 Games in Atlanta. Adidas was not

amused, since it had paid millions of dollars to be the official sponsor. More recently, at the Euro 2004 football championships, official sponsors Carlsberg could only watch in horror as Heineken pulled off a stunt by distributing free branded hats and megaphones to fans entering the stands. Television coverage of spectators showed that the Heineken had succeeded in reaching parts that were thought to be safely out of bounds. As a result at least in part of such coups, the 2006 Act was passed. It is expected to be used to prevent future ambushes, and may be applied to venues, airports, train terminals and so forth.

The forbidden words

One key provision of the 2006 Act is to define two lists of words that cannot lawfully be used in trade without official permission. Business owners have already reported receiving letters from LOGOC, requiring them to remove specific phrases from marketing material, websites and brand names themselves. The definition determining if a person has infringed the LOA Right is found in Section 3 (*see below*). When a person use words from the first list in combination with those from the second, they could potentially be found to have infringed the LOA Right.

The effect, as feared by small businesses and non-official sponsors, is to outlaw a vast range of marketing statements and opportunities. If a statement, used in trade, includes for instance "summer" and "2012", it could fall foul of this law. Thus, a hotel advertising "Holiday deals for summer 2012" could potentially be prosecuted.

Limited defence

This right is currently enforceable and will remain in force until 31 December 2012. The only defence permitted is a somewhat vague provision for 'honest business use' and words inherently necessary to a description of goods or services. It a fair assumption that this will form the basis of any test case.

Bullets and bones

In 1912, the British Olympic Association ("BOA") registered the word Olympic as a UK trade mark, in five trade mark classes, relating mainly to articles of clothing. By contrast, in 2005 the International Olympic Committee registered "2012" as a Community Trade Mark covering all classes across the European Union. In the meantime, the BOA succeeded in registering the words "London 2012" in every one of the existing 45 trade mark classes.

While the general public can confidently expect to be faced with key fobs (class 6), DVDs (class 9) and mugs (class 21) featuring London 2012 branding, there will perhaps be rather more limited demand for London 2012 artificial limbs (class 10), ammunition (class 13) and whalebone (class 20). Yet all these articles – and many more besides – are specified in the BOA's registrations.

Being part of it

The London bid won in 2005 on a wave of goodwill and promises of inclusion. Now, many businesses are finding it hard to see how the current legislation, and the BOA's comprehensive registered rights, encourage a spirit of co-operation and participation that will deliver the promised rewards.

Businesses need to be wary of the implications of adopting any marketing message that may seem to associate them with official London 2012 sponsorship, as the consequences of infringement could be very grave.

The lesson, to avoid being burned by the Olympic flame, is to tread carefully and if in any doubt, get advice on the permitted boundaries of the 2006 Act.

Dennis Lee is a solicitor with London law firm Silverman Sherliker LLP, where Robert MacGinn is a trade mark and branding specialist.

dktl@silvermansherliker.co.uk, rm@silvermansherliker.co.uk Tel: 020 7749 2700 or visit the website at: www.silvermansherliker.co.uk

The relevant section and wording from the 2006 Act:

1 (1) There shall be a right, to be known as the London Olympics association right, which shall confer exclusive rights in relation to the use of any representation (of any kind) in a manner likely to suggest to the public that there is an association between the London Olympics and -

(a) goods or services, or
(b) a person who provides goods or services.

(2) For the purposes of this schedule -
(a) the concept of an association between a person, goods or a service and the London Olympics includes, in particular-

(i) any contractual relationship,
(ii) any commercial relationship,
(iii) any kind of corporate or structural connection, and
(iv) the provision by a person of financial or other support for or in connection with the London Olympics, but

2 (1) A person infringes the London Olympics association right if in the course of trade he uses in relation to goods or services any representation (of any kind) in a manner likely to suggest to the public that there is an association between the London Olympics and

(a) the goods or services, or

(b) a person who provides the goods or services.

3 (1) For the purpose of considering whether a person has infringed the London Olympics association right a court may, in particular, take account of his use of a combination of expressions of a kind specified in sub-paragraph (2).

(2) The combinations referred to in sub-paragraph (1) are combinations of - (a) any of the expressions in the first group, with

(b) any of the expressions in the second group or any of the other expressions in the first group.

(3) The following expressions form the

first group for the purposes of sub-paragraph (2)-

(a) "games",
(b) "Two Thousand and Twelve",
(c) "2012", and
(d) "twenty twelve".

(4) The following expressions form the second group for the purposes of sub-paragraph (2)-

(a) gold,
(b) silver,
(c) bronze,
(d) London,
(e) medals,
(f) sponsor, and
(g) summer.