

The London Olympics Bill - Update

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Introduction

The award of the 2012 Olympic Games to London was followed swiftly by the London Olympics Bill (the 'Bill'), which is currently at the Committee stage on its way through Parliament. The proposed law is required to enable the organisers of the London Olympics to fight ambush marketing practices which undermine the event's sponsorship programme and also to control advertising, street trading, the sale of tickets and transport around the event. However, it has faced a degree of opposition, especially from members of the advertising industry, which has been fuelled by somewhat provocative media reports on the application of the Bill's provisions.

This article will summarise the main provisions of the Bill and argue that they were to be expected in light of the similar legislation adopted for the Sydney 2000 and Athens 2004 Games and the requirements of the International Olympic Committee.

The Existing Legal Framework

In the absence of any specific law against ambush marketing in the UK, the Olympic Symbol etc (Protection) Act 1995 (the 'OSPA') has, for the last decade, provided the British Olympic Association with a useful weapon in its fight to protect sponsorship revenues. The OSPA created an 'Olympic association right', a quasi-trade mark right, and protected the 5-ring Olympic symbol, the Olympic motto and the protected words such as 'Olympics', 'Olympiad', etc. However, it did not specifically prevent ambush marketing.

Indeed, in the absence of any general law against unfair commercial practices, organisers of sports events in the UK have struggled to combat ambush marketing and have been forced to look to a number of established legal doctrines to protect their events and commercial programmes. These have ranged from copyright and trade mark law, through to relying on contractual provisions on tickets and close coordination with local Trading Standards Departments. However, reliance on such legal tools against a well advised ambush marketer is of limited value and arguably inadequate to deal with an event the size of the Olympics.

The Proposed Law

The London Olympic Association Right

The most controversial provision in the Bill is the introduction of the London Olympic Association Right ('LOAR'). This confers on the London Organising Committee for the Olympic Games ('LOCOG') the exclusive right to authorise persons to use and exploit any visual or verbal representation (of any kind) which is likely to create, in the public mind, an association between the London Olympics and goods or services (or a person who provides goods or services).

The Bill sets out a number of words such as 'games', 'Two Thousand and Twelve', '2012' and 'twenty twelve' which, if used in combination with any of 'gold', 'silver', 'bronze', 'London', 'medals', 'sponsor' or 'summer' and with the purpose of creating an unauthorised association with the London Olympics, will give rise to a presumption of infringement of the LOAR. The list of words identified in the Bill is not definitive, and can be added to or edited by the Secretary of State. The right is therefore potentially very wide in scope. The Bill authorises LOCOG to grant exclusive rights to official sponsors and partners to associate themselves with the Games.

It will be up to LOCOG to decide whether to bring civil proceedings against infringers of the LOAR. The Court will then determine the damages, if any, to be paid by an infringer. Opponents of the proposals have pointed in particular to the presumption of infringement when the above words are used in combination. Furthermore, the burden of proof rests with the person using the words to show that no association with the London Olympics is likely to be created in the public mind. It is therefore important that businesses considering using any of the words in question exercise caution when advertising their goods and services.

Paralympic Association Right

The Bill also contains proposed amendments to the OSPA so as to create a right equivalent to the Olympic association right in respect of the Paralympic Games (the 'Paralympic Association Right').

Furthermore, the Bill broadens the scope of the association rights by removing certain exemptions to infringement provided for in the OSPA.

Advertising, Street Trading and Transport

The Bill also empowers the Secretary of State to make regulations controlling advertising and street trading in the 'vicinity' of Olympic venues, and an 'Olympic Transport Plan', to enable LOCOG to fulfil its obligations under its host city contract with the IOC. 'Vicinity' is not defined in the Bill, and the Advertising Association (which has opposed a number of propositions contained in the Bill) has called for a definition which is tied directly to the mandatory IOC requirements. Unless authorisation has been granted, trading restrictions may apply to activities in public places and on private land to which the public has access. However, the restrictions will not apply to trading in buildings (other than car parks).

It is anticipated that the restrictions relating to advertising and street trading will be enacted by secondary legislation nearer to 2012 and therefore reflect any changes in IOC policy or the Olympic venues between now and the games.

Ticket Touting

The existing UK law concerning ticket touting is insufficient to prevent the proliferation of the black market sale of tickets during the London Olympics. The Criminal Justice and Public Order Act 1994 criminalised the unauthorised sale in a public place of tickets to 'designated' football matches and ticket touting may also fall within the remit of the Price Indications (Resale of Tickets) Regulations 1994. However, the Bill proposes a direct prohibition on the unauthorised sale of Olympic tickets in a public place by an unauthorised person or in the course of business.

For the purpose of these provisions, 'sale' includes offering to sell a ticket, exposing a ticket for sale, advertising the availability of a ticket for purchase and offering or giving a person a ticket in return for goods or services. Ticket touting could incur a fine of up to £5,000 under the provisions.

The Department of Culture, Media and Sport (the –DCMS†) Factsheet

In response to the criticism of the restrictions on the use of Olympic words (see below), the DCMS released a factsheet on 31 August 2005 to –counter some of these myths†. The factsheet explains that the purpose of the Association Right is to prevent instances of unfair association with the Games. The Bill is not intended to prevent the mere use of words such as 'games' and 'London'. Instead, it grants LOCOG the power to authorise persons (such as official sponsors and commercial partners) to associate themselves with the Games. LOCOG may treat the use of certain combinations of the prohibited words by unauthorised persons as evidence of infringement of the association right.

The factsheet explains further that the Bill fulfils the IOC s requirements as regards the protection of sponsors through the prevention of ambush marketing. This is a compelling justification for the proposed legislation. The substantial revenue generated by an extensive sponsorship programme ensures the economic well-being, and indeed viability, of the Games. If the attractiveness of the Olympics to potential sponsors is compromised by ambush marketing activities, the viability of the Olympics will be threatened. London committed itself (as did Sydney and Athens before it) to fulfilling the IOC s requirements and thus the provisions in the Bill are not surprising.

It is also noteworthy that, of all the major sports events, the Olympics is perhaps most vulnerable to (and therefore in most need of protection from) ambush marketing. This is a direct consequence of the fact that the Olympic Games are a 'clean event' in that there is no sponsor branding in the stadia or on competitors' clothing. Thus, official sponsors need a greater degree of protection in order to make their substantial investment in financing the Games worthwhile

The factsheet clarifies certain other 'myths' and makes clear that, 'it will have to be decided on a case by case basis whether infringement has occurred' and consequently whether civil proceedings will be brought. The stated intention is to adopt a common sense approach and therefore factual references to London and the Olympics will still be legal.

Opposition to the Bill

Despite the factsheet described above, the Advertising Association (a federation of trade bodies and organisations representing the advertising and promotional marketing industries) summarised the industry's anxieties and main points of opposition to the Bill in a paper released on 25 October 2005. The opposition is primarily concerned with the proposed LOAR.

The Advertising Association claims that IOC requirements would be satisfied by the appropriate enforcement of existing UK law and that the additional protection set out in the Bill limits genuine freedom of commercial expression. Furthermore, it asserts that the Association Right as proposed is not proportionate or equitable, and that it introduces unreasonable protection for official sponsors and organisers to the detriment of all other businesses.

Conclusion

It appears that the DCMS factsheet has not allayed the fears voiced in opposition to the Bill. Supporters and critics alike will be keeping a close eye on the proposed legislation as it finishes its journey through Parliament.

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