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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Olympic Insignia Protection Amendment Bill 2001

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Olympic Insignia Protection Amendment Bill 2001

Date Introduced: 20 September 2001

House: House of Representatives

Portfolio: Industry, Science and Resources

Commencement: Twenty eight days after Royal Assent

Purpose

This Bill amends the *Olympic Insignia Protection Act 1987* (the Act) so as to regulate the commercial use of certain Olympic expressions in advertising and sale of goods and services. This is done in order to protect and increase the revenue raised by the Australian Olympic Committee (AOC) through its licensing of the Olympic expressions.

Background

On 24 March 2001 Senator the Hon Nick Minchin announced the Government's decision to allow the AOC to licence the use of the words 'Olympic', 'Olympic Games' and 'Olympiad' in Australia.¹ The Act already gives the AOC the right to protect Olympic Games symbols through licensing arrangements with sponsors, and the Government stated that its decision would strengthen the AOC's fundraising ability.

Press reports indicate that the AOC requested a restriction on the use of the words 'Olympic' and 'Olympiad' as early as 1993.² The then Labor government said that it believed the existing use of these words as trade marks, brand names and business names should not be affected.³ At the time it was suggested that the Government believed any attempt to restrict a word such as 'Olympic' could be the subject of a legal challenge.⁴

The *Sydney 2000 Games (Indicia and Images) Protection Act 1996* gave SOCOG (Sydney Organising Committee for the Olympic Games) the right to license the use of key words, phrases and images associated with the Sydney Games. The list included the words 'Olympiad' and 'Olympic', the use of the word 'Olympian' or 'Olympic' with 'gold', 'silver' or 'bronze', and the use of any visual or aural representation suggesting a connection with the Olympic or Paralympic Games. The Act contained a number of exceptions allowing:

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- businesses already using proscribed words or symbols to continue to do so, provided that they did not attempt to link themselves to the Games, and
- permitting the use of proscribed words, phrases and images in news and current affairs reporting, review, criticism and the provision of factual information (for example, by tour operators).

The Second Reading speech also made it clear that the Act was not intended to limit the 'reasonable needs' of sporting bodies to raise money and promote their athletes in the lead-up to the Sydney Olympics. But the Government recommended that these bodies negotiate Memoranda of Understanding with the Sydney Games' organisers as a safeguard if they intended using any of the protected words, symbols or images.⁵

This Act ceased to have effect on 31 December 2000.

Australian Olympic Committee

The AOC is a non-profit association incorporated under the *Associations Incorporation Act 1981* of Victoria. It is recognised by the International Olympic Committee (IOC) as the National Olympic Committee in Australia. It has specific functions and responsibilities in Australia under the Olympic Charter in relation to the Olympics generally, but particularly in relation to selecting Australian teams for each Olympic Games.

The AOC is independent of Government and Government funding other than contributions by State Governments to the Olympic Team Appeal. The funds required for the AOC's activities are generated by income distributions from the Australian Olympic Foundation, grants from the IOC, fundraising by the AOC, State Olympic Councils and their Corporate Appeal Committees, and by the licensing and sponsorship activities of the AOC. The AOC has argued that it firmly believes that ongoing protection of terms such as 'Olympic' and 'Olympic Games' is essential "to ensure the financial stability and independence of the AOC and its ability to raise sufficient funds through its marketing program to fund the costs and expenses associated with the preparation of Australian Olympic Teams and their participation in Olympic Games".⁶ The AOC's fundraising efforts can be damaged by ambush marketing.

Ambush Marketing

'Ambush' or 'parasitic' marketing is a term to denote:

the unauthorised association by business of their names, brands, products or services with a sports event or competition through any one or more of a wide range of marketing activities; 'unauthorised' in the sense that the controller of the commercial rights in such events, usually the relevant governing body, has neither sanctioned nor licensed the association itself or through its commercial agents.⁷

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Essentially, corporations using ambush marketing are trying to reap a commercial benefit by associating themselves with a particular event, without paying the price. The Joint Submission by the NSW Government and SOCOG to the Senate Legal and Constitutional References Committee on Ambush Marketing gave a number of examples of how they believed these campaigns had been run in the past.⁸ To protect official sponsors from ambush marketing, the *Sydney 2000 Games (Indicia and Images) Protection Act 1996* set up a licensing scheme limiting the use, for commercial purposes, of a range of words, phrases and images. The scheme prohibited an unlicensed company from using words, phrases or images to suggest a sponsorship arrangement with the Sydney Games or other support for them. Just prior to the Games there was a well publicised legal dispute between Ansett Airlines (the official sponsor) and Qantas in which Qantas was accused of ambush marketing, and Ansett tried to stop its domestic rival from running advertisements using the word ‘Olympic’.⁹

According to the IOC’s final report on the Sydney Olympic Games, SOCOG’s marketing program raised a record amount of \$US315 million from local sponsorship, \$US356 million from tickets and \$US66 million from licensing. The IOC report declared the Sydney marketing program, which generated \$US2.6 billion, ‘the most successful in history’.¹⁰

Main Provisions

A number of amendments proposed by this Bill will have the effect of restructuring the *Olympic Insignia Protection Act 1987* by dividing it into four separate chapters and replacing the expression ‘the Committee’ with ‘AOC’ or ‘Australian Olympic Committee’. **Items 27, 30 and 33** substitute a reference to the *Trade Marks Act 1955*, which has been repealed, with a reference to the *Trade Marks Act 1995*.

Item 35 adds a **new Chapter 3** to deal with protected olympic expressions. **Proposed subsection 24(1)** defines the following terms as ‘protected olympic expressions’:

- Olympic and Olympics
- Olympic Games
- Olympiad and Olympiads

Proposed subsection 24(3) states that the expressions ‘olympian’ and ‘olympians’ are not to be treated as protected olympic expressions. This means that sportspeople who participated in previous Olympic Games will be able to promote their achievements as olympians in their attempts to attract commercial sponsors.

Proposed Division 2 defines ‘commercial purposes’ and effectively narrows the reach of the Bill, because it leaves the use of the protected words free for non-commercial use.

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‘Commercial use’ is defined as applying the protected olympic expression to goods themselves as well as using the words to advertise or sell goods or services. **Proposed section 30** sets out the two situations in which a person is said to use a protected olympic expression for commercial purposes. In practical terms, the proposed section means that if the protected word is applied to goods and services by an unlicensed person, then the supply, offer, exposure or keeping of the goods by another person is use for commercial purposes and thus an unauthorised breach of the legislation.

The Bill contains a number of exceptions allowing:

- specified groups of people and organisations who have been involved in a previous Summer or Winter Olympic Games, to use the protected words to make factual references to their past Olympic involvement, provided that the statements do not suggest an ongoing sponsorship of the Olympic movement (**proposed sections 31-34**)
- businesses already using the protected olympic expressions to continue to do so, provided their trade mark or design was registered before 20 September 2001 (**proposed section 71**), and
- the use of the protected words in the provision of information or for the purposes of review or criticism (**proposed section 35**).

Proposed section 36 regulates the use of the protected olympic expressions. **Proposed subsection 36(1)** prohibits any person, other than the AOC from using a protected olympic expression for commercial purposes. **Proposed subsection 36(2)** provides that this prohibition does not apply to licensed users. However, licensed users can only use the protected expressions in accordance with any term and conditions of their licence.

Proposed Part 3.3 gives the AOC the right to issue licenses including the terms and conditions that it determines (**proposed subsection 38(2)**). **Proposed section 40** requires the AOC to keep a register of licensed users which is to be made available for inspection on the Internet.

Protection of the olympic expressions can be enforced by injunctions, damages or destruction of offending goods (**proposed Part 3.4**).

According to the Explanatory Memorandum, an evaluation of the effectiveness and impact of the measures proposed by this Bill will be undertaken immediately after the 2004 Athens Olympic Games.¹¹

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Endnotes

- 1 Sen the Hon Nick Minchin, 'Government assists AOC's Olympic effort', *Media Release* 01/110, 24 March 2001.
- 2 *Sydney Morning Herald*, 11 December 1993 and *The Australian*, 24 December 1993.
- 3 Hon Ted Lindsay MP, Second Reading Speech, Olympic Insignia Protection Amendment Bill 1993, House of Representatives, *Debates*, 3 March 1994, p. 1685.
- 4 According to Mr Michael Ronaldson MP in his second reading speech, 'the government decision not to attempt to prohibit the use of these words should also be seen in the light of the High Court decision in *Davies & Others v Commonwealth of Australia & Anor 1988*. In this case, a provision of the *Australian Bicentennial Authority Act 1980*, which purported to prohibit the use of a number of words and expressions, was challenged. The court unanimously found that the use of the expression in dispute, '200 years', could not be validly restricted by the Act. The court held that the expression was a common one which did not distinguish any particular goods and services. It could therefore not be supported by the trademarks power of the Constitution, nor could any other head of power support it. The court did not determine the validity of other words purported to be restricted as to usage by the Act, but it is possible that an attempt to restrict the use of the word 'Olympic' could also be successfully challenged'. (House of Representatives, *Debates*, 3 March 1994, p. 1687.)
- 5 Hon John Moore MP, Second Reading Speech, Sydney 2000 Games (Indicia and Images) Protection Bill 1996, House of Representatives, *Debates*, 20 June 1996, p. 2475.
- 6 Senate Legal and Constitutional References Committee, *Cashing in on the Sydney Olympics: protecting the Sydney Olympic Games from ambush marketing*, March 1995, p. 57–58.
- 7 *ibid.*, p. 22.
- 8 *ibid.*, p. 24–27.
- 9 'Ansett to sue over 'ambush'', *Australian*, 2 September 2000, p. 10
- 10 'Thanks to Sydney a shock for Freeman – Olympics special', *Australian*, 16 July 2001, p. 10.
- 11 *Explanatory Memorandum*, Olympic insignia Protection Amendment Bill 2001, p. 18.

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