



Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005

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Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005

Date Introduced: 26 May 2005

House: House of Representatives

Portfolio: Arts and Sport

Commencement: Royal Assent

Purpose

To provide protection of sponsorship and licensing revenue for the Melbourne 2006 Commonwealth Games ('M2006 Games') through the regulation of use of indicia and images.

Background

This Bills Digest was prepared after the Bill had been passed by Parliament. For a detailed discussion on ambush marketing and the regulation of indicia and images please refer to the [Bills Digest](#) for the *Sydney 2000 Games (Indicia and Images) Protection Act 1996* ('Sydney Olympics Act').¹

The importance of sponsorship to the M2006 Games

The M2006 Games will be held on 15 to 26 March 2006, and are budgeted at \$1.1 billion.²

The Victorian Government will invest \$697 million in the M2006 Games.³ The Commonwealth Government will contribute over \$100 million in direct financial assistance and approximately \$177 million in support services to the M2006 Games.⁴ The remainder of the funding is to come from sponsors, ticket sales, TV rights and merchandise.

Corporations may pay millions of dollars to be key sponsors of an event such as the M2006 Games.⁵ For that sort of money, corporations expect exclusivity of recognition and financial benefits to flow from the sponsorship.

The exclusivity of sponsorship of an event like the M2006 Games can be undermined by businesses engaging in 'ambush marketing'.

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What is ambush marketing?

Ambush marketing has been defined as the unauthorised association by businesses 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 neither the controller of the commercial rights in such events, usually the relevant government body, nor its commercial agents, has sanctioned or licensed the association.⁶

Ambush marketing has been particularly topical in the context of the Olympics.⁷

In preparation for the Sydney Olympic Games, the Federal Government enacted the Sydney Olympics Act to limit the use of Sydney Olympic Games indicia and insignia in order to protect the revenue received from official sponsors of the Sydney Olympic and Paralympic Games.

The Victorian Government has enacted the *Commonwealth Games Arrangements Act 2001* (‘Victorian Act’) which provides for an authorisation procedure and a register of authorised users for M2006 Games indicia and images.⁸ In addition, the Victorian Act restricts aerial advertising within the vicinity of M2006 Games venues, in an attempt to stop non-sponsors from taking up prominent advertising positions during the period of the M2006 Games.⁹

Together with the Victorian Act, this Bill puts in place a regulatory regime for the use of M2006 Games indicia and images similar to the regime used for the Sydney Olympic Games.

Pros and Cons

The Bill has the potential to substantially reduce some ambush marketing behaviours, such as the selling of counterfeit M2006 Games goods and services.

The Australian Customs Service reports that there were 119 seizures of 149,819 items of unauthorised or unlicensed products pursuant to the Sydney Olympics Act.¹⁰ The Sydney Olympic Games Organising Committee hired 60 people to patrol Sydney Olympic venues looking for goods and services which might be in breach of the Sydney Olympics Act.¹¹

What the Bill will not prevent is the clever and opportunistic advertising by non-sponsors who, without using M2006 Games indicia and images, still infer an association with the M2006 Games. One example of this type of advertising is Qantas’ pre-Sydney Olympics billboards. While not a sponsor of the Sydney Olympics, Qantas did sponsor individual athletes, such as Susie O’Neill and Ian Thorpe, and those athletes featured on billboards around Sydney with the slogan ‘Share the Spirit’.¹²

So prolific was Qantas’ advertising campaign before the Sydney Olympics that a poll in May 2000 showed that Qantas had a higher recognition as a sponsor of the Sydney

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Olympics (although it was not a sponsor) than Ansett,¹³ which paid an estimated \$40 million to be an official sponsor.¹⁴ On the only occasion that Ansett pursued an injunction against Qantas for its pre-Olympic advertising, the matter settled out of court, with the only change in Qantas' behaviour being that a line was added to Qantas advertisements noting that Qantas was not a sponsor of the Sydney Olympics.¹⁵

Therefore, the Bill does not offer much assurance to the corporations which have paid millions of dollars to be official M2006 Games sponsors that they will be protected against creative competitors whose marketing campaigns stay within the boundaries of the Bill.

Main Provisions

Clause 7(1) defines M2006 Games images as 'any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Melbourne 2006 Commonwealth Games'.

Clause 7(2) defines M2006 Games indicia, and includes the following phrases: 'Melbourne 2006 Commonwealth Games'; 'Melbourne Commonwealth Games'; 'Melbourne Games'; 'Melbourne 2006 Games'; 'Commonwealth Games'; 'Australian Commonwealth Games'; 'Friendly Games'; 'Queen's Baton Relay'; and 'M2006'. Clause 7(2)(c) provides that the combination of certain words and numbers is also M2006 Games indicia.

The definition of M2006 Games indicia in clause 7(2) includes indicia represented in a language other than English.

Clause 9 defines the two situations in which M2006 Games indicia and images are used for a commercial purpose. The first situation (clause 9(2)) is where a person causes M2006 Games indicia or images to be applied to goods or services for the primary purpose of advertising, promotion or enhancement of demand, and the application of the images or indicia suggests a sponsorship, or other support arrangement, of the M2006 Games or an event connected with the M2006 Games.

The second situation (clause 9(3)) has all the same elements as clause 9(2), and involves a second person who:

1. supplies or offers to supply the goods or services; or
2. exposes the goods for supply; or
3. keeps the goods for supply by themselves or another.

Clause 10 sets out a presumption that a sponsorship, or other support, arrangement exists (for the purposes of clause 9(2) and (3)) where M2006 Games indicia and images are

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applied to a good or service for the primary purpose of enhancing demand for that good or service.

Clause 11 provides that where M2006 Games indicia and images are used for the primary purpose of:

- a) criticism or review, such as in a newspaper, magazine or broadcast; or
- b) the provision of information, such as the reporting of news and current affairs,

then the application or use of the M2006 Games indicia and images is not for a commercial purpose.

Clause 12 is the primary provision regulating the use of M2006 Games indicia and images. **Clause 12(1)** provides that a person other than:

- a) the M2006 Corporation; or
- b) an authorised user (as defined in section 7),

must not use the M2006 Games indicia and images for commercial purposes. **Clause 12(4)** extends the prohibition in clause 12(1) to any indicium that ‘so closely resembles a Melbourne 2006 Commonwealth Games indicium that a reasonable person is likely to mistake it for the Melbourne 2006 Commonwealth Games indicium’.

Clause 12(2) provides for the M2006 Corporation, the Australian Commonwealth Games Association and the Commonwealth Games Federation to use M2006 Games indicia and images for commercial purposes.

Clause 12(3) limits the use that authorised users may make of M2006 Games indicia and images to the commercial purposes licensed to them under section 56D of the Victorian Act.

Part 4 Division 2 covers the importation of goods which have M2006 Games indicia and images applied to them. In particular, **clause 20** allows for authorised users or the M2006 Games Corporation to give a notice to the Customs CEO objecting to the importation of goods with M2006 Games indicia and images applied to them, where the designated owner of those goods (as defined in clause 17) is not authorised to use the goods for commercial purposes.

Part 4 Division 3 sets out the remedies for contravention of clause 12, including injunctions, interim injunctions, corrective advertisements, damages or accounts of profit. Corrective advertisements may only be applied for by the M2006 Games Corporation (**clause 33**).

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Clause 47 is a sunset clause, with the Act ceasing to have effect on 30 June 2006.

Concluding Comment

While the Bill will reduce some of the more obvious ambush marketing behaviours, such as the selling of counterfeit goods and services, there is still scope for non-sponsors' marketing campaigns that make associations between their goods and services and the M2006 Games.

Endnotes

- 1 Bronwyn Young, 'Sydney 2000 Games (Indicia and Images) Protection Bill 1996', [*Bills Digest*, no. 89](#), Department of the Parliamentary Library, Canberra, 1995–96.
- 2 Phillip Hudson and Kirsty Simpson, '\$100m Games boost in Budget', *Sunday Age*, 15 February 2004, pp. 1 and 10.
- 3 *ibid.*
- 4 Sen. the Hon. Rod Kemp (Minister for the Arts and Sport), [*Australian Government support for M2006 Games*](#), media release, 11 May 2004.
- 5 Michelle Gilchrist, 'A sporting chance', *The Australian*, 15 March 2004, p. 10. Although the amount of Qantas' sponsorship of the M2006 Games is undisclosed, this article estimates that Qantas' sponsorship is between \$10 and \$20 million.
- 6 Senate Legal and Constitutional References Committee, *Cashing in on the Sydney Olympics: Protecting the Sydney Olympics from Ambush Marketing*, Canberra, 1995, p. 22.
- 7 Examples of marketing strategies used at previous Olympics which have been discussed in the context of ambush marketing include: Nike's sponsorship of individual members of the US basketball team at the Barcelona Olympics, when Reebok was an official US Olympic team sponsor; non-Olympic sponsor Nike's 'You Don't Win Silver, You Lose Gold' billboards prominently displayed throughout Atlanta in 1996; Qantas' sponsorship of pre-Olympic events such as the swimming selection trials, but not sponsoring the Sydney 2000 Olympics.
- 8 Part 5A Division 2 of the Victorian Act.
- 9 Section 56KG of the Victorian Act.
- 10 Australian Customs Service, *Annual Report 2000–01*, p. 26.
- 11 Stephen Dabkowski, 'Games will protect its brands', *Sydney Morning Herald*, 3 June 2000, p. 55.
- 12 *ibid.*

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- 13 Stephen Dabkowski, 'Women lead the way in Olympics support: survey', *The Age*, 20 June 2000, p. 5.
- 14 Stephen Dabkowski, 'Buckle up for Games air war', *The Age*, 21 August 2000, p. 1.
- 15 John Lehmann and Michael McGuire, 'Steal a deal', *The Australian*, 20 September 2000, p. 19.

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