



# Olympic Symbol etc. (Protection) Act 1995

## 1995 CHAPTER 32

An Act to make provision about the use for commercial purposes of the Olympic symbol and certain words associated with the Olympic games; and for connected purposes. [19th July 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *The Olympics association right*

#### **1 Creation**

- (1) There shall be a right, to be known as the Olympics association right.
- (2) The right shall carry with it the rights and remedies provided by this Act, which shall be exercisable by such person as the Secretary of State may by order made by statutory instrument appoint for the purposes of this subsection.
- (3) An order under subsection (2) above which revokes a previous order under that subsection may contain such supplementary and transitional provision as the Secretary of State thinks fit.
- (4) A statutory instrument containing an order under subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **2 Rights conferred**

- (1) The Olympics association right shall confer exclusive rights in relation to the use of the Olympic symbol, the Olympic motto and the protected words.

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- (2) Subject to sections 4 and 5 below, the rights conferred by subsection (1) above shall be infringed by any act done in the United Kingdom which—
  - (a) constitutes infringement under section 3 below, and
  - (b) is done without the consent of the person for the time being appointed under section 1(2) above (in this Act referred to as “the proprietor”).
- (3) The proprietor may exploit the rights conferred by subsection (1) above for gain, but may not make any disposition of, or of any interest in or over, them.
- (4) This section shall not have effect to permit the doing of anything which would otherwise be liable to be prevented by virtue of a right—
  - (a) subsisting immediately before the day on which this Act comes into force, or
  - (b) created by—
    - (i) the registration of a design under the Registered Designs Act 1949 on or after the day on which this Act comes into force, or
    - (ii) the registration of a trade mark under the Trade Marks Act 1994 on or after that day.
- (5) Consent given for the purposes of subsection (2)(b) above by a person appointed under section 1(2) above shall, subject to its terms, be binding on any person subsequently appointed under that provision; and references in this Act to doing anything with, or without, the consent of the proprietor shall be construed accordingly.

### **3 Infringement**

- (1) A person infringes the Olympics association right if in the course of trade he uses—
  - (a) a representation of the Olympic symbol, the Olympic motto or a protected word, or
  - (b) a representation of something so similar to the Olympic symbol or the Olympic motto as to be likely to create in the public mind an association with it,(in this Act referred to as “a controlled representation”).
- (2) For the purposes of this section, a person uses a controlled representation if, in particular, he—
  - (a) affixes it to goods or the packaging thereof,
  - (b) incorporates it in a flag or banner,
  - (c) offers or exposes for sale, puts on the market or stocks for those purposes goods which bear it or whose packaging bears it,
  - (d) imports or exports goods which bear it or whose packaging bears it,
  - (e) offers or supplies services under a sign which consists of or contains it, or
  - (f) uses it on business papers or in advertising.

### **4 Limits on effect**

- (1) The Olympics association right is not infringed by use of a controlled representation where—
  - (a) the use consists of use in a work of any of the descriptions mentioned in subsection (3) below, and

- (b) the person using the representation does not intend the work to be used in relation to goods or services in circumstances which would involve an infringement of the Olympics association right,  
provided the use is in accordance with honest practices in industrial or commercial matters.
- (2) The Olympics association right is not infringed by use of a controlled representation where—
- (a) the use consists of use of a work of any of the descriptions mentioned in subsection (3) below, and
- (b) the use of the work is not in relation to goods or services,  
provided the use of the representation is in accordance with honest practices in industrial or commercial matters.
- (3) The descriptions of work referred to in subsections (1)(a) and (2)(a) above are a literary work, a dramatic work, a musical work, an artistic work, a sound recording, a film, a broadcast and a cable programme, in each case within the meaning of Part I of the Copyright, Designs and Patents Act 1988.
- (4) For the purposes of subsection (2)(b) above, there shall be disregarded any use in relation to a work which—
- (a) is of any of the descriptions mentioned in subsection (3) above, and
- (b) is to any extent about the Olympic games or the Olympic movement.
- (5) For the purposes of subsection (2)(b) above, use of a work in relation to goods shall be disregarded where—
- (a) the work is to any extent about the Olympic games or the Olympic movement, and
- (b) the person using the work does not do so with a view to gain for himself or another or with the intent to cause loss to another.
- (6) In the case of a representation of a protected word, the Olympics association right is not infringed by use which is not such as ordinarily to create an association with—
- (a) the Olympic games or the Olympic movement, or
- (b) a quality ordinarily associated with the Olympic games or the Olympic movement.
- (7) In the case of a representation of a protected word, the Olympics association right is not infringed by use which creates an association between the Olympic games or the Olympic movement and any person or thing where the association fairly represents a connection between the two, provided the use is in accordance with honest practices in industrial or commercial matters.
- (8) The Olympics association right is not infringed by use of a controlled representation where—
- (a) the use is in relation to goods which bear, or whose packaging bears, the representation,
- (b) the goods are not infringing goods by virtue of paragraph (a) or (b) of section 7(2) below, and
- (c) the use involves doing any of the things mentioned in section 3(2)(c) or (d) above.

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- (9) The Olympics association right is not infringed by use of a controlled representation where—
- (a) the use is in relation to goods,
  - (b) the goods have been put on the market in the European Economic Area by the proprietor or with his consent, and
  - (c) the representation was used in relation to the goods when they were so put on the market.
- (10) Subsection (9) above shall not apply where there exist legitimate reasons for the proprietor to oppose further dealings in the goods (in particular, where the condition of the goods has been changed or impaired after they have been put on the market).
- (11) The Olympics association right is not infringed by use of a controlled representation where—
- (a) the use is for the purposes of an undertaking, and
  - (b) the way in which the representation is used for the purposes of the undertaking is a way in which it has been continuously used for those purposes since a date prior to the commencement of this Act.
- (12) In the case of a representation of a protected word, the Olympics association right is not infringed by use as part of—
- (a) the name of a company, being a name which was the company's corporate name immediately before the day on which this Act comes into force, or
  - (b) the name under which a business is carried on, being a business which was carried on under that name immediately before the day on which this Act comes into force.
- (13) The Olympics association right is not infringed by use of a controlled representation where the use—
- (a) takes place under a right subsisting immediately before the day on which this Act comes into force, or
  - (b) is liable to be prevented by virtue of such a right.
- (14) The Olympics association right is not infringed by use of a controlled representation where the use—
- (a) takes place under a right created by—
    - (i) the registration of a design under the Registered Designs Act 1949 on or after the day on which this Act comes into force, or
    - (ii) the registration of a trade mark under the Trade Marks Act 1994 on or after that day, or
  - (b) is liable to be prevented by virtue of such a right.
- (15) The Olympics association right is not infringed by use of a controlled representation for the purposes of—
- (a) judicial or parliamentary proceedings, or
  - (b) a Royal Commission or statutory inquiry.
- (16) In subsection (15) above—
- “judicial proceedings” includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities;

“parliamentary proceedings” includes proceedings of the Northern Ireland Assembly or of the European Parliament;

“Royal Commission” includes a Commission appointed for Northern Ireland by the Secretary of State in pursuance of the prerogative powers of Her Majesty delegated to him under section 7(2) of the Northern Ireland Constitution Act 1973; and

“statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.

- (17) In this section, references to use of a work in relation to goods include use of a work on goods.

## **5 Power to prescribe further limits on effect**

- (1) The Secretary of State may by order made by statutory instrument specify additional cases in which the Olympics association right is not infringed.
- (2) Without prejudice to the generality of subsection (1) above, the matters by reference to which a case may be specified under that subsection include—
  - (a) the description of controlled representation used, and
  - (b) the description of persons by whom a controlled representation is used.
- (3) An order under this section may contain such supplementary and transitional provision and savings as the Secretary of State thinks fit.

### *Remedies in relation to infringement*

## **6 Action for infringement**

- (1) An infringement of the Olympics association right shall be actionable by the proprietor.
- (2) In an action for infringement, all such relief by way of damages, injunctions, accounts or otherwise shall be available to the proprietor as is available in respect of the infringement of a property right.

## **7 Orders in relation to infringing goods, material or articles**

- (1) The Secretary of State may by regulations make, in relation to infringing goods, material and articles, provision corresponding to that made by the following provisions of the Trade Marks Act 1994 in relation to goods, material and articles which are infringing goods, material and articles for the purposes of that Act—
  - section 15 (order for erasure etc. of offending sign),
  - section 16 (order for delivery up of infringing goods, material or articles),
  - section 18 (period after which remedy of delivery up not available),
  - section 19 (order as to disposal of infringing goods, material or articles), and
  - section 20 (jurisdiction in Scotland and Northern Ireland in relation to proceedings for an order under section 16 or 19).
- (2) Goods are “infringing goods” for the purposes of this Act if they or their packaging bear a controlled representation and—

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- (a) the application of the representation to the goods or their packaging was an infringement of the Olympics association right,
  - (b) the goods are proposed to be imported into the United Kingdom and the application of the representation in the United Kingdom to them or their packaging would be an infringement of that right, or
  - (c) the representation has otherwise been used in relation to the goods in such a way as to infringe that right.
- (3) Material is “infringing material” for the purposes of this Act if it bears a controlled representation and either—
- (a) it is used for labelling or packaging goods, as a business paper, or for advertising goods or services, in such a way as to infringe the Olympics association right, or
  - (b) it is intended to be so used and such use would infringe that right.
- (4) Articles are “infringing articles” for the purposes of this Act if they are articles—
- (a) which are specifically designed or adapted for making copies of a controlled representation, and
  - (b) which a person has in his possession, custody or control, knowing or having reason to believe that they have been or are to be used to produce infringing goods or material.
- (5) The power conferred by subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Nothing in subsection (2) above shall be construed as affecting the importation of goods which may lawfully be imported into the United Kingdom by virtue of an enforceable Community right.

### *Criminal sanctions*

## **8 Offences in relation to goods**

- (1) A person shall be guilty of an offence if with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor, he—
- (a) applies a controlled representation to goods or their packaging,
  - (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a representation, or
  - (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b) above.
- (2) A person shall be guilty of an offence if with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor, he—
- (a) applies a controlled representation to material intended to be used—
    - (i) for labelling or packaging goods,
    - (ii) as a business paper in relation to goods, or
    - (iii) for advertising goods,

- (b) uses in the course of a business material bearing such a representation for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or
  - (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b) above.
- (3) A person shall be guilty of an offence if with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor, he—
- (a) makes an article specifically designed or adapted for making copies of a controlled representation, or
  - (b) has such an article in his possession, custody or control in the course of a business,
- knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.
- (4) It shall be a defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the representation in the manner in which it was used, or was to be used, was not an infringement of the Olympics association right.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.

## **9 Supplementary provisions as to summary proceedings in Scotland**

- (1) Notwithstanding anything in section 331 of the Criminal Procedure (Scotland) Act 1975, summary proceedings in Scotland for an offence under this Act may be begun at any time within six months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge.
- (2) For the purposes of subsection (1) above—
- (a) a certificate of the Lord Advocate as to the date mentioned in that subsection shall be conclusive evidence, and
  - (b) proceedings in Scotland shall be deemed to be begun on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.

## **10 Partnerships and bodies corporate**

Section 101 of the Trade Marks Act 1994 (offences committed by partnerships and bodies corporate) shall apply in relation to an offence under this Act as it applies in relation to an offence under that Act.

*Forfeiture of counterfeit goods, etc.*

## **11 Forfeiture: England and Wales or Northern Ireland**

- (1) Section 97 of the Trade Marks Act 1994 (which makes provision about the forfeiture of certain goods, material or articles which come into the possession of any person in

connection with the investigation or prosecution of a relevant offence) shall also have effect with the following modifications.

- (2) In subsection (1) (which describes the goods, material or articles concerned)—
  - (a) in paragraph (a), for “sign identical to or likely to be mistaken for a registered trade mark” there shall be substituted “representation within paragraph (a) or (b) of section 3(1) of the Olympic Symbol etc. (Protection) Act 1995”, and
  - (b) in paragraphs (b) and (c), for “sign” there shall be substituted “representation”.
- (3) In subsection (7)(a) (power of court to direct release instead of destruction on condition that offending sign erased etc.) for “sign” there shall be substituted “representation”.
- (4) In subsection (8) (which defines “relevant offence”) for “section 92 above (unauthorised use of trade mark etc. in relation to goods)” there shall be substituted “section 8 of the Olympic Symbol etc. (Protection) Act 1995”.

## 12 Forfeiture: Scotland

- (1) Section 98 of the Trade Marks Act 1994 (which makes provision about the forfeiture of certain goods, material or articles on application by the procurator-fiscal or where a person is convicted of a relevant offence) shall also have effect with the following modifications.
- (2) In subsection (1) (which describes the goods, material or articles concerned)—
  - (a) in paragraph (a), for “sign identical to or likely to be mistaken for a registered trade mark” there shall be substituted “representation within paragraph (a) or (b) of section 3(1) of the Olympic Symbol etc. (Protection) Act 1995”, and
  - (b) in paragraphs (b) and (c), for “sign” there shall be substituted “representation”.
- (3) In subsection (13) (power of court to direct release instead of destruction on condition that offending sign erased etc.) for “sign” there shall be substituted “representation”.
- (4) In subsection (14), in the definition of “relevant offence”, for “section 92 (unauthorised use of trade mark, &c. in relation to goods)” there shall be substituted “section 8 of the Olympic Symbol etc. (Protection) Act 1995”.

### *Restrictions on acquisition of competing rights*

## 13 Registration of designs and trade marks

- (1) In section 1 of the Registered Designs Act 1949 (designs registrable under Act) there shall be inserted at the end—
  - “(6) A design shall not be registered if it consists of or contains a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995 unless it appears to the registrar—
    - (a) that the application is made by the person for the time being appointed under section 1(2) of the Olympic Symbol etc. (Protection) Act 1995 (power of Secretary of State to appoint a person as the proprietor of the Olympics association right), or
    - (b) that consent has been given by or on behalf of the person mentioned in paragraph (a) of this subsection.”



- (2) In section 4 of the Trade Marks Act 1994 (which specifies cases where a trade mark shall not be registered) there shall be inserted at the end—

“(5) A trade mark which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995 shall not be registered unless it appears to the registrar—

- (a) that the application is made by the person for the time being appointed under section 1(2) of the Olympic Symbol etc. (Protection) Act 1995 (power of Secretary of State to appoint a person as the proprietor of the Olympics association right), or
- (b) that consent has been given by or on behalf of the person mentioned in paragraph (a) above.”

- (3) This section has effect in relation to applications for registration made on or after the day on which this Act comes into force.

#### **14 Acquisition of design right**

- (1) In section 213 of the Copyright, Designs and Patents Act 1988 (design right in original designs) after subsection (5) there shall be inserted—

“(5A) Design right does not subsist in a design which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995.”

- (2) Subsection (1) above has effect in relation to designs created on or after the day on which this Act comes into force.

- (3) For the purposes of subsection (2) above, a design is created on the first day on which—

- (a) it is recorded in a design document, or
- (b) an article is made to it.

#### *Miscellaneous*

#### **15 Power to give directions to proprietor**

- (1) The proprietor shall comply with any directions given by the Secretary of State with respect to the exercise of the rights conferred by section 2(1) above.

- (2) Directions under this section may be of a general or particular character and may be varied or revoked by subsequent directions.

- (3) A transaction between any person and the proprietor in his capacity as such shall not be void by reason only that the transaction was carried out in contravention of a direction given under this section; and a person dealing with the proprietor shall not be concerned to see or enquire whether a direction under this section has been given or complied with.

#### **16 Remedy for groundless threats of infringement proceedings**

- (1) Where the proprietor threatens another with proceedings for infringement of the Olympics association right other than—

- (a) the application to goods or their packaging of a controlled representation,
- (b) the importation of goods to which, or to the packaging of which, such a representation has been applied, or
- (c) the supply of services under a sign which consists of or contains such a representation,

any person aggrieved may bring proceedings for relief under this section.

- (2) The relief which may be applied for is any of the following—
  - (a) a declaration that the threats are unjustifiable,
  - (b) an injunction against the continuance of the threats, and
  - (c) damages in respect of any loss he has sustained by the threats;
- (3) A plaintiff under this section shall be entitled to the relief applied for unless the defendant shows that the acts in respect of which proceedings were threatened constitute (or if done would constitute) an infringement of the Olympics association right.
- (4) The mere notification of the rights conferred by this Act shall not constitute a threat of proceedings for the purposes of this section.

## 17 Burden of proof

- (1) Subject to subsection (2) below, if in any civil proceedings under this Act a question arises as to the use to which a controlled representation has been put, it shall be for the proprietor to show what use was made of it.
- (2) If in any civil proceedings under this Act a question arises as to the application of any of subsections (1), (2) and (6) to (15) of section 4 above or any case specified under section 5 above, it shall be for the person who alleges that the subsection or case applies to show that it does.

### *General*

## 18 Interpretation

- (1) In this Act—
  - “business” includes a trade or profession;
  - “controlled representation” has the meaning given by section 3(1) above;
  - “infringing articles” has the meaning given by section 7(4) above;
  - “infringing goods” has the meaning given by section 7(2) above;
  - “infringing material” has the meaning given by section 7(3) above;
  - “Olympic motto” means the motto of the International Olympic Committee, “Citius, altius, fortius”;
  - “Olympic symbol” means the symbol of the International Olympic Committee, consisting of five interlocking rings;
  - “proprietor” has the meaning given by section 2(2) above; and
  - “trade” includes a business or profession.
- (2) For the purposes of this Act each of the following is a protected word, namely, “Olympiad”, “Olympiads”, “Olympian”, “Olympians”, “Olympic” and “Olympics”.

- (3) In this Act, references to the Olympic motto or a protected word include the motto or word in translation into any language.
- (4) In the application of this Act to Scotland—
  - “accounts” means count, reckoning and payment;
  - “declaration” means declarator;
  - “defendant” means defender;
  - “injunction” means interdict; and
  - “plaintiff” means pursuer.

## **19 Short title, commencement and extent**

- (1) This Act may be cited as the Olympic Symbol etc. (Protection) Act 1995.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to Northern Ireland.