

**London Olympics 2012  
Restrictions on Marketing Strategies**



**Further information**

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This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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## Introduction

The eyes of the world will be on the upcoming 30th Olympiad, hosted in London in summer 2012.

Sports events in general and the Olympics in particular are not only attractive from a sporting perspective, but also represent enormous opportunities to marketing executives, with an almost unparalleled audience of loyal supporters and the opportunity for businesses to associate their products or services with national teams and sporting success. It is precisely because of these attractions, however, that there are considerable risks of intellectual property rights being infringed.

The hundreds of millions of pounds necessary to organise the Games must be raised by the London 2012 Organising Committee from the private sector – by selling sponsorship, official merchandise and tickets.

To raise the necessary revenue, the London 2012 Organising Committee must be able to give its sponsors an exclusive association to London 2012 and the Olympic and Paralympic movements in the UK. As such, non-sponsors must be prevented from undertaking unauthorised activities which damage the sponsors' exclusive rights.

It is important for third parties to know where the boundaries lie as to what is permitted and what is not. Non-sponsors must be discouraged from associating their businesses with the London Olympic Games and should be provided with an awareness of the current legislation in place which helps to achieve this.

This note discusses the need for brand protection, identifies the protected Games' marks, provides information on how they are protected, when they can and cannot be used and the penalties for infringement.

The following information can only act as a general guide and is not capable of constituting legal advice in any particular case.

In particular, it is essential to note that the legal consequences and risks may vary depending on the country in which the proposed marketing activity is to take place.

## Brand Protection

The London Organising Committee of the Olympic Games and Paralympic Games Limited ("LOCOG") is the organisation responsible for organising and hosting the London 2012 Olympic Games and Paralympic Games. It is also required by the International Olympic Committee (the "IOC") and the International Paralympic Committee (the "IPC") to protect their brands in the United Kingdom.

To fund the Games LOCOG 'sells' its brand to sponsors and merchandise licensees. If anyone could simply use these logos or associate with the Games for free, the funding model would not work.

Official London 2012 sponsors make a huge contribution to the Games by investing millions of pounds and providing their goods, services, expertise and support to the Games. In return they are given the exclusive right to market their products in connection with London 2012 and use the official logos. To protect their investment in the Games, LOCOG will seek to prevent ambush marketing.

### What is ambush marketing?

- Ambush marketing involves a company trying to associate itself with a major sports event without paying any sponsorship fees, when its competitors or other third parties have paid for this benefit.
- Consumers then associate non-sponsors with the event, opposed to those who have paid for the privilege.
- This damages the investment of genuine sponsors, and risks the organiser's ability to fund the event.
- (*LOCOG, "Business, What you need to know", March 2010*)

Accordingly, the exclusivity of sponsors and licensees needs protecting. Details of the laws and key rights which enable LOCOG to do so are provided on the following page.

## Governing Legislation

Most Olympic related terms and logos are registered as UK or Community trade marks. In addition, the Olympic brand is protected under copyright, design right, passing off and trade descriptions legislation.

In the UK the following laws have been passed to enable LOCOG to protect the integrity and value of the 2012 Games and Olympic and Paralympic movements in general.

- **The Olympic Symbol etc (Protection) Act 1995 (OSPA)**
- **The London Olympic Games and Paralympic Games Act 2006 (2006 Act)**

### RIGHTS OF ASSOCIATION

Rights of association provide official sponsors with the exclusive right to be associated with the Olympics, Paralympics, or London Games.

1) OSPA was introduced in 1995, creating the Olympics Association Right (OAR). This right confers exclusive rights on the British Olympic Association in relation to certain Olympic words and symbols.

2) The 2006 Act has amended OSPA to strengthen the existing protection and to extend it to equivalent Paralympic marks too, creating the Paralympics Association Right (PAR).

LOCOG is a joint proprietor of both these rights until 2012.

3) The London Olympics Association Right (LOAR) was created by the 2006 Act and enables LOCOG to prevent the creation of an unauthorised association between people, goods or services and London 2012.

The question of whether or not an association with London 2012 has been created in any particular case will depend on the overall impression given by the advertisement, marketing material or goods in question.

### LISTED EXPRESSIONS

The 2006 Act specifies certain listed expressions that a court may take into account when determining if an association has been created with London 2012. The burden of proof is on LOCOG to prove that an association has been made for there to be an infringement.

#### Listed Expressions are:

- Any two words from list A; or
- Any word in list A with one or more from list B.

<b>A</b>	<b>B</b>
Games	Gold
Two Thousand and Twelve	Silver
2012	Bronze
Twenty Twelve	London
	medals
	sponsor
	summer

LOCOG advises that although the expressions are a helpful guide, they are not the only thing a court will look at. It should therefore not be assumed that if a listed expression is not used LOCOG's right will not be infringed.

LOAR can therefore be infringed whether or not a Listed Expression is used. The fundamental issue is whether an association has been created with London 2012.

## What are the Protected Games' Marks

The Games' Marks are protected by law in a variety of ways. They include all of the official names, words, marks, logos and designs relating to London 2012 and/or the Olympic and Paralympic Movements (collectively known as the Protected Games' Marks). They are legally protected marks owned by or licensed to LOCOG. (*LOCOG publication "Brand Protection: Information for Businesses", March 2010*)

The unauthorised use of any of the Games' Marks is strictly prohibited. This also includes the use of any similar marks or logos which could be mistaken for a protected Games' Mark.

### Protected Trade Marks and Designs



Any variation of this emblem is legally protected. It is used in a variety of different colours and can be filled in with an image or design.





The words: **London 2012 – 2012 – LOCOG – Javelin  
Team GB – Get Set – Games Maker**

The British Olympic Association (BOA) and British Paralympic Association (BPA) are responsible for taking the British Olympic and Paralympic Teams to the 2012 Games. However, LOCOG has taken on responsibility for protecting the Team logos and those of the BOA and BPA. The Team GB and Paralympics GB LOGOS are therefore also Protected Games' Marks. (*LOCOG publication "Brand Protection: Information for Businesses", March 2010*)





## How are they protected?

### Protected by copyright:

All films, musical works, artistic works and designs (for example the Games' emblems, pictograms, mascots and posters) created by LOCOG or other official Olympic and Paralympic bodies (already or in the future) in connection with the Games will be protected by copyright.

### Olympic and Paralympic "controlled representations" protected by the Olympic Symbol etc (Protection) Act 1995:

The words:	The symbols of:	The mottos of:
<ul style="list-style-type: none"> <li>- Olympic</li> <li>- Olympian</li> <li>- Olympiad</li> <li>- Paralympic</li> <li>- Paralympian</li> <li>- Paralympiad</li> </ul> <p>their plurals, translations and anything similar to them.</p>	<ul style="list-style-type: none"> <li>- The International Olympic Committee (IOC):</li> </ul>  <ul style="list-style-type: none"> <li>- The International Paralympic Committee (IPC):</li> </ul>  <p>and anything similar to them.</p>	<ul style="list-style-type: none"> <li>- The IOC: Citius, Altius, Fortius and Faster, Higher, Stronger.</li> <li>- The IPC: Spirit in Motion</li> </ul> <p>their translations and anything similar to them.</p>

(This includes any translations or anything similar which is likely to cause an association)

### Protected by the London Olympic Association Right (LOAR):

LOAR protects official sponsors by preventing people, in the course of trade, and in relation to goods and services, from making any representation of any kind that is likely to suggest to the public that there is an association between the London Games and particular goods or services or a person providing them (paragraph 2(1), Schedule 4, 2006 Act)



## Infringement and Defences

### INFRINGEMENT OF THE ASSOCIATION RIGHTS

The Olympic and Paralympic Association Rights are infringed when a "controlled representation" (see table opposite) is used without authorisation, in the course of trade.

There is a presumption of infringement unless the user can show that a defence applies or that its use was not likely to create an association with the Olympics/Paralympics.

The LOAR is infringed when an unauthorised non-sponsor, in the course of trade, creates an association between their business goods or services and London 2012. It is for LOCOG to show that an infringement has occurred by proving that such an association has been made.

### DEFENCES

The following defences can be applied to an infringement of any association right:

#### Statements made honestly and in relevant contexts

A statement can benefit from this defence if it is made in accordance with 'honest practices in industrial or commercial matters' and must not make 'promotional or other commercial use of a protected word by incorporating it in a context to which the Olympic and Paralympic Games or Movement are substantively irrelevant.'

LOCOG states in its guidance that the following key factors will be considered in order to determine whether this defence applies:

- whether the statement is true and accurate;
- whether, despite being true and accurate, it could cause confusion or misunderstanding, or be misleading as to the relationship with the Games;
- whether the statement maker is acting fairly in relation to the legitimate interests of LOCOG;
- whether the Games are relevant to the context in which the statement is used.

E.g. the defence could be applied to an advertisement for a leisure centre reading:

"5 tennis courts; fully equipped gym; basketball court; Olympic sized swimming pool; jacuzzi, sauna and steam room"

### Editorial, journalistic or incidental use in literary and artistic works etc \*

Controlled representations can be used when publishing or broadcasting a report or information about the Games. The defence expressly states that it does not benefit advertising material which is published or broadcast at the same time as, or in connection with, such reports or information. As such 'advertorials' or other advertising and marketing materials which are presented as a report or information on the Games cannot 'piggyback' onto this defence.

OSPA and LOAR provide this defence so that journalists and others commenting or providing information on the Games may refer to it without infringing any rights.

E.g. a newspaper can publish reports and/or information about the Olympic/Paralympic Movement, or a film about an athlete can make incidental references to the Olympic Games/Paralympic Games without infringing OSPA.

However, this defence does not apply to businesses which produce newsletters, client bulletins or other marketing documents.

### Continuous Use \*

This defence covers the use of a controlled representation which has been made continuously since prior to the introduction of OSPA in 1995, including use in business names.

E.g. a café which has traded under the business name "Olympic Café" since before the introduction of OSPA can continue to trade and advertise its business as it has done in the past without infringing OSPA (but this does not authorise the business to further suggest an association with the Games through other means).

### Existing prior or registered rights \*

Use of design rights and other rights existing prior to the introduction of OSPA in 1995, and use of any registered design or trade mark.

E.g. a pen manufacturer who has a registered trade mark for "Olympens" can continue to use the trade mark in the classes for which the trade mark is registered without infringing OSPA (but this does not authorise the trade mark owner to further suggest an association with the Games through other means).

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\* At the date of publication of this note, amendments were pending in relation to these respective clauses in The London Olympic Games and Paralympic Games Act 2006.

### **No association defence**

The following defence can only be applied to an infringement of the Olympic and Paralympic Association Rights.

There is a defence where a controlled representation is used in a context which is not likely to suggest an association between a person, product or service and the Olympic and or Paralympic Games or Movement.

OSPA defines the concept of association to include any kind of 'contractual' or 'commercial' relationship with the Olympic or Paralympic Games or Movement, or any provision of 'financial or other support for or in connection with' it.

Statements made honestly and in a relevant context will not create such an association.

E.g. an antique store advertising for sale:

"Original Marble Olympian Statue circa 500 BC"

### **Use indicating the nature or purpose of goods or services etc, if this is in accordance with honest commercial practices \***

The following defence can only be applied to an infringement of the LOAR.

This defence allows the use of 'indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of goods or services,' and ' a representation which is necessary to indicate the intended purpose of a product or service.'

e.g. the following advert would benefit from this defence:

'X Brand Whiskey, Distilled in London 2012'

### **Use of someone's own name or address \***

E.g. referring to a business with offices at 2012 Gold St will not be an infringement.

### **PENALTIES**

Where a defence does not apply, infringement of an association right is against the law and can result in civil and criminal penalties.

#### **Criminal**

Infringement of some of the rights granted by OSPA is a criminal offence, but only in relation to goods, not services.

It is a criminal offence to apply a controlled representation to goods or packaging, labels, business paper in relation to goods, or material to be used to advertise goods, without consent and with a view to gain or intent to cause loss.

It is also an offence to sell, hire, distribute and offer for sale such goods or packaging.

It is also a criminal offence to have possession of or make copies of controlled representations, and knowing or having reason to believe that they would be used to commit one of the other offences.

A fine may be payable for a person found guilty under these provisions.

#### **Civil**

Civil claims can also be brought for trade mark infringement. Remedies include damages, account of profits, injunctions and orders for delivery-up of offending assets, erasure and disposal.

## Practical Questions about Branding and Marketing

### 1. Can I award Games tickets as prizes?

No, not unless you have authorisation from LOCOG. Such consent will be granted to official sponsors who can use Games tickets for commercial purposes including prizes in customer promotions.

LOCOG will take a firm stance against any non-sponsor using tickets in unauthorised promotions.

### 2. Can a conference or seminar on the topic of the Olympics be held?

Caution must be taken when presenting such an event to not create a commercial association with the Games. LOCOG wants to ensure that the public are not misled into paying to attend conferences about the Games which falsely suggest they are in some way official.

### 3. Can I create Olympics-related merchandise?

No, it is perfectly acceptable to buy official London 2012 merchandise but you cannot manufacture unofficial 'Olympic' merchandise, or copy official merchandise to produce counterfeit goods.

Merchandise or promotional items cannot be produced as marketing tools unless you are a sponsor and LOCOG have given authorisation.

### 4. Can suppliers state in promotional literature that they supply the Olympics?

Suppliers do not pay to receive the benefits of being an official marketing partner. As such, they can only make simple statements where it is necessary to explain the nature of current work or work undertaken in the past. Over-emphasised references are likely to catch LOCOG's attention.

To ensure that Suppliers do not prejudice the London 2012 Organising Committee's ability to raise money from its marketing partners, contracts with Suppliers contain the London 2012 'No Marketing Rights Clauses'. These prevent Suppliers from marketing their involvement in the Games and also prohibit ambush marketing. ("No Marketing Rights Protocol for suppliers, consultants and contractor", Dec 2007)

### 5. Can information about the Games be provided on a company's website?

If it is being operated on a purely non-commercial basis, e.g. a chat forum or a supporters' site, an infringement of LOCOG's rights is unlikely to occur. However, the laws protecting the Games' Marks also apply to websites so use of these should be discouraged to avoid an infringement.

## Future regulations

### ADVERTISING AND STREET TRADING REGULATIONS

Regulations are now being developed for the regulation of advertising and trading in and around London 2012 during the Games.

#### Purpose

These regulations will help to act as a deterrent to the serious threat of ambush marketing and will impose a 'clean venue' requirement where no advertising or other commercial branding is allowed on the field of play and other locations that can be seen by in venue television cameras or by seated spectators.

#### Scope

Within the limited geographical areas to which they apply, the regulations will only permit:

- limited forms of advertising and trading that is specifically exempted in the regulations e.g. bus timetables;
- advertising which is authorised by the designated body; and
- trading which is authorised by or on behalf of the ODA.

The regulations will only apply to trading which takes place on a highway or in another place to which the public have access. This will include trading done on private land.

In developing the definition of trading, the aim is wherever possible to allow business as usual to continue whilst preventing those seeking to profit without properly contributing to the Games.

It is expected that the regulations will be focused on the sporting competition and will apply in and around all venues where a competitive sporting event is taking place as part of the Games.

#### Who will be affected?

The regulations will affect advertisers and traders within the specific areas defined.

The regulations will mean that those people who wish to advertise and/or trade in and around the vicinity of events will be affected. The regulations will specify how far around each venue the regulations will apply.

LOCOG's expectation is that for most events, the regulations will only apply within a few hundred metres around venues, at most.

#### When?

It is thought that the regulations will only be in place for a maximum of two weeks before the start of the Opening Ceremony of the Olympic Games on 27 July 2012 and will only remain in effect for as long as required and, at the

latest, five days after the close of the Paralympic Games on 9 September 2012.

#### Enforcement

The police have immediate powers to enter land or premises to prevent or stop unauthorised advertising or trading. Reasonable opportunity to remedy the situation must initially be provided. Officers will be able to seize items used to breach regulations in order to stop or prevent contraventions or for evidence. The ODA is also empowered to institute criminal proceedings in relation to contraventions of the regulations

*(Olympic Delivery Authority, "Advertising and Street Trading Regulations", June 2009)*

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