

OLYMPIC INSIGNIA PROTECTION AMENDMENT BILL 1993

(Second Reading)

The Olympic Insignia Protection Act provides protection for what are collectively called the olympic insignia, namely the well-known representation of the five interlocking rings and the olympic motto "citius, altius, fortius", which in translation means "faster, higher, stronger".

This protection accrues to the benefit of the Australian Olympic Committee (AOC), formerly known as the Australian Olympic Federation, by providing it with a means to derive income by licensing the use of the insignia and of up to ten associated registered olympic designs, which are created by the Act for this specific purpose.

As Honourable Senators would no doubt be aware, the participation in, and the hosting of, an Olympic Games is an extremely expensive undertaking. As the Host Nation for the Year 2000 Games Australia will be expending considerable sums over the next seven years on the provision of infrastructure, facilities and organisation for this major event.

Events of the magnitude of the Olympic Games provide unparalleled business opportunities for the marketing of products and services. Official Olympic Games sponsors recognise these opportunities and are willing to pay considerable licence fees to the AOC for the rights to take advantage of these opportunities.

Unfortunately, at times like these there are always "freeriders" who wish to exploit the available opportunities without making any contribution. These are the businesses and organisations which indulge in what is commonly called "ambush marketing", an activity that was certainly rife in Australia around the time of the Barcelona Olympics, and, to a lesser extent, at the time of the Albertville Winter Olympics.

The AOC, on behalf of the International Olympic Committee, is naturally concerned that as much as possible should be done to strengthen the protection afforded under the Act to the olympic insignia against this unauthorised commercial exploitation.

This would have a twofold benefit. Firstly, it would protect the revenue base of the AOC, the body charged with overseeing Australia's participation in the Olympic Games, and secondly, and perhaps more importantly, it would ensure that Australia is in a position to assure the International Olympic Committee that Australian law gives effect, to as full an extent as possible, the obligations of the Olympic Charter.

Mr President, I would now briefly like to detail the legislative changes made by the Olympic Insignia Protection Amendment Bill.

The most "technical" change made amends all references in the Act to the "Federation" to refer instead to the "Committee", as in 1990 the Australian Olympic Federation changed its name to the Australian Olympic Committee, or the AOC.

Another very minor amendment to the fee setting provisions of the Act will ensure that the application fees for registering designs under the Act, and for extending their protection periods, remain pegged to the corresponding fees in the Designs Act 1906.

The remaining amendments are more substantial and relate directly to the issues of protection which I have already outlined.

The Act currently provides that the Registrar of Trade Marks must not register a trade mark which is comprised of, or contains, the olympic motto, or words very similar to the motto. As I stated before, the motto is the Latin "citius, altius, fortius". The Bill extends this prohibition on registration to the English translation of the motto—"faster, higher, stronger".

I referred earlier to the provision made in the Act for the registration of up to ten olympic designs. These designs, and the five interlocking rings, are designs in which the AOC has a monopoly and can license. This allows the AOIC, or the holder of a licence in relation to a protected design to take legal action if the monopoly in the design is infringed.

The Bill seeks to provide protection in much the same way for designs of the olympic torch and flame. A new design of the torch and flame is commissioned for each Olympic Games (both Winter and Summer), so, in terms of commercial advantage to the AOC, protection of these designs is only required for a limited period leading up to and following each Games.

The protection period proposed is from the beginning of three calendar years before the year of the particular Games, to the end of the year of that Games. This provides a maximum protection period of four years for any particular design, and because of the structuring of the time periods, minimises the potential for confusion.

This is because there will only ever be a maximum of two designs for the olympic torch and flame for which designs could be registered at the one time (one Winter Games design and one Summer Games design), and the overlap period will never exceed one year.

The designs for the olympic torch and flame will be included in the maximum of ten registered designs allowed by the Act currently, as it ensures that when the AOIC no longer has a use for a logo or design it will pass into the public domain. There will be no provision for extending the period of protection for registered designs of the torch and flame, but it will be possible for the AOC to apply to have the protection period reduced if more commercial benefit could be gained from registering other designs as part of the "portfolio" of ten.

Mr President, I am sure that we are all aware of the existence of trade marks, brand names and business names which have been operating for many years using the word "olympic", or some or all of the words comprised in the English translation of the motto, or indeed a representation of what could be an olympic torch or flame.

As there is no intention to acquire the rights which have accrued, both at common law and in these registrations, or affect existing rights in any way, the Bill clearly provides for the preservation of existing rights.

This includes any rights in the torch or flame which may have accrued to persons under the related legislative provisions of the Designs Act 1906 or the Trade Marks Act 1955 up to the time of the gazettal of the Statutory Rules prescribing the particular torch and flame design.

Gazettal will take place no more than six months before the commencement of the relevant protection period.

This will limit the period in which common law rights, if any, might accrue in relation to the use of the olympic torch and flame.

Finally, Mr President, in recognition of the seriousness of the need for protection against unauthorised commercial exploitation, the Bill takes the unusual step of referring potential infringers to the remedies which are available under the Trade Practices Act against organisations whose conduct is misleading and deceptive and which make false representations as to sponsorship, affiliation or approval.

I would like to take this opportunity to urge the AOC, as the body charged with responsibility for raising funds for participation in the Olympic Games to make optimum use of the Olympic Insignia Protection Act, as amended. I would also like to remind the AOC of the value and potential for use of other existing industrial and intellectual property legislative regimes which, after all, are also designed to provide a degree of market exclusivity and therefore protection.

A detailed explanation of the changes made by the Bill is contained in the Explanatory Memorandum.

The changes brought about by the Bill require no net additional expenditure.

I commend this Bill to the Senate and present the Explanatory Memorandum to this Bill.

FINANCIAL IMPACT STATEMENT

The amendments to the Olympic Insignia Protection Act 1997 have no financial impact.

Debate (on motion by Senator Reid) adjourned.

The PRESIDENT —Order! Pursuant to the order of the Senate agreed to on 18 August 1993, the resumption of the debate shall be made an order of the day for the first day of sitting in 1994.