



THE OLYMPIC BRAND: NAVIGATING THE LEGAL MINEFIELD

STELLA SYRIANOS*
ROBIC, LLP
LAWYERS, PATENT AND TRADE-MARKS AGENTS

While the eyes of the world will be on the competing athletes at the 2010 Olympic Winter Games, the Vancouver Olympic Committee ("VANOC") will be keeping a close watch on any marketing it deems as capitalizing on the goodwill of the Olympics/Paralympics Movement, Games or athletes.

The *Olympic and Paralympic Marks Act* ("Act"), federal legislation adopted in 2007, seeks to expressly protect the Olympic/Paralympic brand ("Olympic Brand") in Canada by preventing "ambush marketing" which is characterized as attempts by a business that is not an official Olympic sponsor to associate itself with the Olympic Games for profit. For VANOC, the Olympic Brand comprises names, phrases, marks, logos and designs connected to the Olympics, including those more specifically relating to the 2010 Winter Games.

As such, the *Act* has significantly toughened VANOC's trade-mark muscle as it has been granted with power over language and symbols associated with the Olympic Games which extends significantly beyond the most routinely identified trade-mark: the five interlocking circles commonly known as the Olympic rings.

For starters, on a broad-spectrum, the *Act* prohibits the adoption or use in connection with a business, as a trade-mark or otherwise, in any language, of an Olympic mark or a mark that resembles an Olympic mark so as to be likely to be mistaken for it, including "Canadian Olympic Committee", "Canadian Paralympic Committee", "Olympic Games", "Spirit in Motion" and "Faster, Higher, Stronger" as well as the graphic depiction of the Olympic rings.

On a narrower scale, the *Act* also lists certain Vancouver-specific word and design marks entitled to special trade-mark protection, including "Sea to Sky Games", "Canada 2010", "Vancouver 2010", "Whistler 2010", the Olympic Mascots' names "Miga", "Quatchi" and "Sumi", their virtual reality sidekick "Mukmuk", their graphic illustrations, as well as pictograms for individual sports. However, it is worth mentioning that the *Act* includes a "sunset clause" for these particular elements, meaning that their protection expires as of December 31st, 2010.

© CIPS, 2010.

* With ROBIC, LLP a multidisciplinary firm of Lawyers, and Patent and Trade-mark Agents. Published in the Winter 2009 Newsletter of the firm (Vol. 13, No. 4). Publication 068.114E.

Yet another important feature of this legislation is the power it grants VANOC to police the use of a combination of a list of expressions, in any language, insofar as questionable combinations may be taken into account by the Federal Court in determining if someone has misled the public in believing their business is associated with or endorsed by the Olympics. These expressions include the combination of "Games" with "2010" or with "Medals" or the combination of the expressions "Games", "2010", "Medals" with "Winter", "Gold", "Silver", "Bronze", "Sponsor" or the host city itself "Vancouver".

The *Act* affords several exceptions such as use prior to March 2, 2007, in association with the same wares and services contemplated by the prior user or registration as well as use of a mark or its translation in any language in the context of news reports, criticism and parody which are not considered to constitute use in connection with a business.

Remedies for violations of the *Act* include injunctions (without proof of irreparable harm), damages, punitive damages, publication of corrective advertisements and destruction of offending products, packages, labels and advertising material.

Considering the potentially wide-ranging powers of the *Act*, prior to using marks, symbols or a combination of legislated expressions falling under the scheme of the *Act* and before embarking on a creative marketing campaign wherein such elements appear, businesses and advertisers are best advised to consult with legal counsel or risk facing VANOC's wrath! As for our Canadian athletes, let us cheer them on: GO CANADA GO !

ROBIC + LAW
+ BUSINESS
+ SCIENCE
+ ART

