SEE YOU IN COURT: A PARTY MAY NOT APPEAL AGAINST AN ORDER MADE IN ITS FAVOUR

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In a judgment[1] rendered on April 8, 2008 and delivered from the Bench, the Federal Court of Appeal ("FCA") dismissed an appeal by "See You In - Canadian Athletes Fund Corporation" (the "Appellant") in respect of a decision in judicial review proceedings from a judge that prevented the Canadian Olympic Committee (the "Respondent") to publish the words "See you in Torino", "See you in Beijing, and "See you in Vancouver" as official marks.

(By virtue of section 9 of the *Trade-Marks Act*, no person may adopt, in connection with a business, any mark consisting of, or so nearly resembling as to be likely to be mistaken for, any badge, crest, emblem or mark adopted and used by any public authority, in Canada as an official mark for wares or services.)

Surprisingly, while it was successful in preventing the Respondent from publishing its official marks, the Appellant nonetheless filed an appeal because one of its argument was rejected, namely that the Respondent was a licensee of the mark from the International Olympic Committee. The Appellant contended that the Federal Court erred in its reasons and sought to have this finding reversed.

The FCA decided not to intervene, on the basis that "a party who has obtained the relief it sought is not normally entitled to appeal against the judge's reasons".

The Respondent, on its part, also filed a cross-appeal to challenge the decision made by the Federal Court. It sought to reverse the Federal Court's finding that the Respondent "had not "adopted and used" the marks prior to the decision of the Registrar to publish them as official marks".

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[1] *See You In - Canadian Athletes Fund Corporation* v. *Canadian Olympic Committee,* 2008 FCA 124 (CanLII)

In refusing to grant the cross-appeal, the FCA relied on the fact that the only relevant evidence of “use”, namely the evidence of distribution to the public of pen and flashlight sets with the COC logo and the marks in question, was sufficiently equivocal to consider that the Judge made no palpable and overriding error in concluding that the Respondent did not succeed in establishing that it had used the marks as required.

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