

employee. This could be the case even though the copyright vests in the employer.

practical implications

Dealing - Under the reforms proposed by the Report, moral rights: cannot be assigned; and may be waived by instrument in writing signed by the author.

Infringement proceedings may be taken by the author only (or her/his legal representative upon the author's death or mental illness).

A person who deals in a work the subject of moral rights (for example a publisher) may infringe those rights by use of the work where she/he has actual or constructive knowledge that the person from whom she/he received the work has infringed the creator's moral rights (for example, by modifying the work).

Remedies for infringement would comprise the full range of remedies including damages, injunctions and declaratory relief. Infringement proceedings would be heard by the Federal Court or State Supreme Courts (rather than the Copyright Tribunal).

comment

The introduction of the proposed moral rights scheme will have significant implications not only for creators of copyright works but for those who commercially deal in copyright works, from publishers and broadcasters to gallery owners and multi-media producers.

Although moral rights by their very nature are not economic rights, their recognition will have a significant effect upon the ability of both the artist and others to utilise the economic potential of their works. It is in the interests of both creators and users of works that the existence and scope of moral rights can be determined with some degree of certainty.

All those in the business of creating and dealing in copyright works should closely consider the Report's proposed legislative scheme. The Government's review will certainly benefit from input from creators and industry participants and groups on the likely practical and economic implications of the proposed scheme.

All interested parties should forward submissions and comments to the Attorney-General's Department (Telephone (06) 250 6325, Facsimile (06) 250 5929).

Sue Gilchrist, Freehill Hollingdale & Page (Sydney)

And the winner is...

Catherine McGill discusses the protection of Olympic symbols, Sydney 2000 logos and names

The announcement on 23 September 1993 by Juan Antonio Samaranch that Sydney would hold the Year 2000 Olympic Games saw a flurry of activity by entrepreneurs to register trade marks, company and business names in an endeavour to cash in on the goodwill attaching to the Olympic symbols, Sydney 2000 logos and names.

The Sydney Organising Committee for the Olympic Games (SOCOG), the Australian Olympic Committee Incorporated (AOC) and the International Olympic Committee (IOC) have moved quickly to protect their intellectual property rights and have given a strong indication that persons hoping to exploit goodwill attaching to those rights do so at their own risk.

This article examines the substantial rights which exist under statute and

common law for the protection of Olympic related intellectual property and notes some recent proposals to extend protection.

Olympic Insignia Protection Act 1987

The *Olympic Insignia Protection Act (Cth) 1987* enables the AOC, or the Australian Olympic Federation (AOF) as it was then known, to control the use within Australia of the Olympic Symbol (the five inter-locking rings), the terms "Olympic" and "Olympiad", the Olympic motto "Citius, Altius, Fortius" and other nominated Olympic designs including the koala-styled mascot and various other designs.

The AOC has been permitted by the IOC to exercise the above rights in Australia and the IOC has allowed the Olympic



symbol to be licensed provided that it is compensated by way of royalty payments.

The Act's purpose is to assist the collection of funds to finance Australian participation in the Olympic Games through the licensing by the AOC of certain designs including the Olympic Symbol. In order to clarify the issue of ownership of copyright in the Olympic Symbol the Act vests ownership of copyright in the Symbol in the AOC. The Act also provides that the AOC is the owner of certain protected designs which were registered for a period of 12 years under the Act as registered Olympic designs. The design protection provided by the Act is similar to that provided under the Designs Act 1906 and enables the AOC (or its licensees) to take legal action to prevent the unlicensed use of the designs or to prohibit the importation of articles bearing the designs.

Olympic Insignia Protection Amendment Act 1994

The *Olympic Insignia Protection Amendment Act 1994* widens the protection afforded to Olympic related designs and words. The amendments provide a mechanism for the protection of the Olympic Torch and Flame Designs for a limited time around each Olympic Games by way of the protected designs provisions of the *Olympic Insignia Protection Act*. Registration of trade marks that contain or consist of the English version of the Olympic motto "Faster, Higher, Stronger" are prohibited in the same manner as those that contain or consist of the motto "Citius, Altius, Fortius".

Copyright Act, Trade Practices Act and Passing Off

Currently, an action for infringement of copyright can be taken by SOCOG or AOC in relation to reproductions of the Sydney 2000 Bid Flash Logo. Sections 52 and 53 of the *Trade Practices Act 1974* and corresponding State Fair Trading legislation may also be used to prevent use of the Flash Logo, "Sydney 2000" and associated words where such conduct is misleading or deceptive or falsely represents that a business or its goods or services has some association with or approval from SOCOG or AOC.

In addition, the common law tort of passing off may be used by SOCOG or AOC in order to stop traders passing off their goods and/or their businesses as in some way being sponsored or approved by or otherwise connected with the Olympics.

Trade Mark Protection

Trade mark applications in each of the 42 classes of the International Classification System have been lodged by SOCOG to protect the Flash Logo and the composite Bid logo containing the Flash logo, the words "Sydney 2000" and the slogan "Share the Spirit". Upon registration SOCOG will acquire proprietary rights under the *Trade Marks Act 1955* to use these names and logos and will be entitled to take proceedings for infringement.

Business and Company Names

On 27 April this year, the Premier of NSW announced that the use of business names associated with the Sydney Olympics or the Paralympics will be restricted by Federal, State and Territory Governments. In NSW, under new Ministerial directions and guidelines to be issued under the *Business Names Act 1962*, words and phrases such as "Olympic", "Olympian", "Paralympic", "Olympiad", "Share the Spirit", "Gold", "Summer Games" and "Millennium Games" will be unacceptable for registration without the consent of the Minister for Consumer Affairs. It is proposed that the changes will remain in force until the end of the Sydney 2000 Games. The Premier has indicated that similar regulations will be introduced by all governments to protect the sponsorship revenue for the Games and in an endeavour to prevent harm to Australia's reputation.

It has been reported that the NSW Department for Consumer Affairs has deferred or frozen approximately 240 applications to register business names using terms such as "Olympic", "Sydney 2000" and "Games City" and that the applications are now likely to be refused. It is likely that if the applications are not refused the use of them will be challenged by SOCOG on other grounds such as possible breaches of sections 52 and 53 of the *Trade Practices Act* as referred to above.

Further, recent amendments to the Corporations Law Regulations require Ministerial permission for the reservation or registration of company names that suggest a link with the Sydney Olympics or the Paralympics. Names containing the words "Olympic", "Paralympic" and their derivatives suggesting a connection with the Sydney Games will not be permitted to be registered unless the applicant has obtained a certificate from SOCOG to the effect that there is an official connection between the company and the Games.

The NSW State Government is also considering enacting further legislation to protect Olympic related intellectual property.

Catherine McGill is a solicitor with Blake Dawson Waldron.

In the prurient interest

Max Bonnell reports on the Burswood Casino's attempt to injunct "Real Life"

The proprietors of Burswood Casino in Perth have failed to obtain an injunction to prevent Channel Seven's current (Ed. "public") affairs flagship *Real Life* from televising video footage of its patrons taken by the casino's own security cameras.

Although the cameras were installed for security purposes, it came to *Real Life's* attention that some members of the casino's staff had used the cameras for an unauthorised voyeuristic purpose. The footage that *Real Life* obtained and broadcast focussed upon the cleavage and underwear of several female patrons.

issues

The injunction was sought in the Federal Court on the grounds that the proposed broadcast would amount to a breach of privacy and that the videotape had been obtained by Seven without the consent of the casino proprietors. [Ed.: other grounds argued - copyright, breach of confidence and "public interest"]

French J said that the primary issue was whether the casino patrons had an interest in the material being broadcast, and concluded that the patrons' interests did not require that an injunction be granted. No written judgment had been delivered at the time of writing. The videotape was broadcast by *Real Life* in the first week of July.

The application contained echoes of the *Whiskisoda* case heard in Melbourne last year, in which the Victorian Supreme Court refused to grant an injunction restraining *Real Life* from broadcasting footage taped by a hidden camera in a striptease show (see Communications Law Bulletin Vol. 13 No. 4). Together, the two cases emphasise the difficulty of obtaining an injunction preventing a broadcast on the ground that the footage may have been filmed or obtained without the consent of the subjects.

It is clear that, even in those circumstances, courts will require something more before an injunction will be