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In this issue: BEWARE THE CANADIAN OLYMPICS!

The Winter Olympics won’t be held in British Columbia, Canada until 2010. But already there are storms on the horizon. Unprecedented trademark legislation, specific to the rights of the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), and related entities such as the Vancouver Organizing Committee for the Winter Olympics, came into force on 22 June 2007. Known as “Bill C-47”, the new *Act* establishes rights and remedies well beyond what the *Trade-marks Act* provides.

The basic legal right of the COC is established in §§3 and 4 of the new *Act*:

3. (1) No person shall adopt or use in connection with a business, as a trade-mark or otherwise, an Olympic or Paralympic mark or a mark that so nearly resembles an Olympic or Paralympic mark as to be likely to be mistaken for it.

(2) No person shall use in connection with a business, as a trade-mark or otherwise, a mark that is a translation in any language of an Olympic or Paralympic mark.

4. (1) No person shall, during any period prescribed by regulation, in association with a trade-mark or other mark, promote or otherwise direct public attention to their business, wares or services in a manner that misleads or is likely to mislead the public into believing that

(a) the person’s business, wares or services are approved, authorized or endorsed by an organizing committee, the COC or the CPC; or

(b) a business association exists between the person’s business and the Olympic Games, the Paralympic Games, an organizing committee, the COC or the CPC.

Not so bad? But the trademarks qualifying as “Olympic or Paralympic” marks number 58 so far, and include many that have no apparent direct relationship with the Olympics, such as (i) COVAN, and (ii) FASTER, HIGHER, STRONGER, and (iii) SPIRIT IN MOTION. The Government has the right to add more marks to the prohibited list.

Further, although an interim or interlocutory injunction is granted in other trademark cases only if the applicant for an injunction has suffered irreparable harm (*i.e.*, harm not adequately remediable by damages), in C-47 cases, §6 provides:

6. If an interim or interlocutory injunction is sought during any period prescribed by regulation in respect of an act that is claimed to be contrary to section 3 or 4, an applicant is not required to prove that they will suffer irreparable harm.

Importation of offending goods under Bill C-47 into Canada also invites severe remedies. §8 provides:

8. (1) A court may, on application,
- (a) if it considers that any wares to which an Olympic or Paralympic mark has been applied are about to be imported into Canada or have been imported into Canada but have not yet been released...and that their distribution in Canada would be a use of the mark as a trade-mark that is contrary to section 3, make an order
 - (i) directing the Minister of Public Safety and Emergency Preparedness to take reasonable measures...to detain the wares...

and, if the case is made out that the wares do run afoul of the *Act*,

...may make any order that it considers appropriate in the circumstances, including an order that the wares be destroyed or exported or that they be delivered up to the applicant as the applicant's property absolutely.

Anyone whose goods or services are to be marketed with any reference, direct or oblique, to the 2010 Winter Olympics or its environment, runs the risk of violating Bill C-47. Caution and due review of the provisions of the *Act* are recommended.



**BARRISTERS AND SOLICITORS
REGISTERED PATENT AGENTS**

**Suite 2000
777 Hornby Street
Vancouver, BC V6Z 1S4
Telephone: (604) 689-9255
Telefax: (604) 689-9265
email@barrigar.com**

**Suite 201
1007 Fort Street
Victoria, BC V8V 3K5
Telephone: (250) 389-0387
Telefax: (250) 389-2659
www.barrigar.com**

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