

2010 No. 2477

TRADE MARKS

COMMERCIAL PROPERTY

**The Olympics, Paralympics and London Olympics Association
Rights (Infringement Proceedings) Regulations 2010**

<i>Made</i>	- - - -	<i>7th October 2010</i>
<i>Laid before Parliament</i>		<i>12th October 2010</i>
<i>Coming into force</i>	- -	<i>8th November 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 5A and 7(1) of the Olympic Symbol etc. (Protection) Act 1995^(a) and paragraph 10 of Schedule 4 to the London Olympic Games and Paralympic Games Act 2006^(b):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Olympics, Paralympics and London Olympics Association Rights (Infringement Proceedings) Regulations 2010 and shall come into force on 8th November 2010.

(2) In these Regulations—

“the 1995 Act” means the Olympic Symbol etc. (Protection) Act 1995,

“the 2006 Act” means the London Olympic Games and Paralympic Games Act 2006, and

“the court”, unless the context otherwise requires, means—

(a) in England and Wales and Northern Ireland, the High Court, and

(b) in Scotland, the Court of Session.

Order for erasure of controlled representations, etc.

2.—(1) Where a person is found to have infringed the London Olympics association right^(c) the court may make an order requiring the person—

(a) 1995 c. 32; section 5A was inserted and section 7 was amended by paragraphs 6 and 10 of Schedule 3 to the 2006 Act respectively; section 7 was also amended by paragraph 1(d) of the Schedule to the Transfer of Functions (Olympics and Paralympics) Order 2007 (S.I. 2007/2129).

(b) 2006 c.12; paragraph 10 of Schedule 4 was amended by paragraph 6(1)(t) of the Schedule to the Transfer of Functions (Olympics and Paralympics) Order 2007.

(c) The London Olympics association right is the right constituted under paragraph 1(1) of Schedule 4 to the 2006 Act.

- (a) to cause the offending controlled representation(a) to be erased, removed or obliterated from any infringing goods, material or articles(b) in the person’s possession, custody or control, or
- (b) if it is not reasonably practicable for the offending controlled representation to be erased, removed or obliterated, to secure the destruction of the infringing goods, material or articles in question.

(2) If an order under paragraph (1) is not complied with, or it appears to the court likely that such an order would not be complied with, the court may order that the infringing goods, material or articles be delivered to such person as the court may direct for erasure, removal or obliteration of the offending controlled representation or for destruction, as the case may be.

Order for delivery up of infringing goods, material or articles

3.—(1) The London Organising Committee(c) may apply to the court for an order for the delivery up to it, or such other person as the court may direct, of any infringing goods, material or articles which a person has in his or her possession, custody or control in the course of a business.

(2) The London Organising Committee may not make an application under this Regulation after 31st December 2012.

(3) No order shall be made under this Regulation unless the court also makes, or it appears to the court that there are grounds for making, an order under regulation 4 (order as to disposal of infringing goods, etc.).

(4) A person to whom any infringing goods, material or articles are delivered up in pursuance of an order under this Regulation shall, if an order under regulation 4 is not made, retain them pending the making of an order, or the decision not to make an order, under that regulation.

(5) Nothing in this Regulation affects any other power of the court.

Order as to the disposal of infringing goods, material or articles, etc.

4.—(1) Where infringing goods, material or articles have been delivered up in pursuance of an order under regulation 3, an application may be made to the court—

- (a) for an order that they or it be destroyed or forfeited to such person as the court may think fit, or
- (b) for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the London Olympics association right would be adequate to compensate the London Organising Committee and any licensee and protect their interests.

(3) Any person having an interest in the goods, material or articles is entitled—

- (a) to appear in proceedings for an order under this Regulation, whether or not the person was served with notice, and
- (b) to appeal against any order made, whether or not the person appeared.

(4) An order under this Regulation shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(a) The expression “controlled representation” is defined in section 3 of the 1995 Act, as amended by paragraph 3 of Schedule 3 to the 2006 Act and applied and modified in relation to the London Olympics association right by paragraph 10 of Schedule 4 to that Act.

(b) The expressions “infringing goods”, “infringing material” and “infringing articles” are defined in section 7 of the 1995 Act, as amended by paragraph 10 of Schedule 3 to the 2006 Act and applied and modified in relation to the London Olympics association right by paragraph 10 of Schedule 4 to that Act.

(c) The expression “the London Organising Committee” is defined in section 1(3) of the 2006 Act.

(5) Where there is more than one person interested in the goods, material or articles, the court shall make such order (if any) as it thinks just.

(6) If the court decides that no order should be made under this Regulation, the person in whose possession, custody or control the goods, material or articles were before being delivered up is entitled to their return.

(7) In this Regulation, “licensee” means a person to whom the London Organising Committee has granted an authorisation under paragraph 4 of Schedule 4 to the 2006 Act.

(8) References in this Regulation to a person having an interest in goods, material or articles include any person in whose favour an order could be made under—

- (a) this Regulation,
- (b) section 19 of the Trade Marks Act 1994^(a) (including that section as applied by regulation 4 of the Community Trade Marks Regulations 2006^(b)),
- (c) section 24D of the Registered Designs Act 1949^(c),
- (d) section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988^(d), or
- (e) regulation 1C of the Community Design Regulations 2005^(e).

Jurisdiction of sheriff court or county court in Northern Ireland

5. Proceedings for an order under regulation 3 (order for delivery up of infringing goods, material or articles) or regulation 4 (order as to disposal of infringing goods, etc.) may be brought—

- (a) in the sheriff court in Scotland, or
- (b) in a county court in Northern Ireland.

This does not affect the jurisdiction of the Court of Session or the High Court in Northern Ireland.

Amendment of the Olympics Association Right (Infringement Proceedings) Regulations 1995

6. The Olympics Association Right (Infringement Proceedings) Regulations 1995^(f) are amended as follows—

- (a) in the title, for “Olympics Association Right” substitute “Olympics and Paralympics Association Rights”;
- (b) in regulation 1 (Citation, commencement and interpretation)—
 - (i) in paragraph (1), for “Olympics Association Right” substitute “Olympics and Paralympics Association Rights”;
 - (ii) for paragraph (2), substitute—

“(2) In these Regulations—

“the court”, unless the context otherwise requires, means—
 - (a) in England and Wales and Northern Ireland, the High Court, and
 - (b) in Scotland, the Court of Session; and

(a) 1994 c. 26; section 19 was amended by paragraph 16 of Schedule 2 to the Intellectual Property (Enforcement, etc.) Regulations 2006 (S.I. 2006/1028).

(b) S.I. 2006/1027; regulation 4 was amended by regulation 2 of the Community Trade Marks (Amendment) Regulations 2008 (S.I. 2008/1959).

(c) 1949 c. 88; section 24D was inserted by paragraph 3 of Schedule 1 to the Intellectual Property (Enforcement, etc.) Regulations 2006.

(d) 1988 c. 48; sections 114, 204 and 231 were amended by paragraphs 7, 11 and 14 of Schedule 2 to the Intellectual Property (Enforcement, etc.) Regulations 2006 respectively; section 204 was also amended by paragraph 8 of the Schedule to the Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18); and section 231 was also amended by Schedule 4 to the Intellectual Property (Enforcement, etc.) Regulations 2006.

(e) S.I. 2005/2339; regulation 1C was inserted by paragraph 9 of Schedule 3 to the Intellectual Property (Enforcement, etc.) Regulations 2006.

(f) S.I. 1995/3325.

“the Olympics association right” means the Olympics association right^(a) or the Paralympics association right^(b) as the case may be.”;

(c) in regulation 2 (Order for erasure &c of controlled representations), omit the footnote for “Olympics association right”; and

(d) in regulation 5 (Order as to the disposal of infringing goods, material or articles etc.), for paragraph (6), substitute—

“(6) In this Regulation, “licensee” means a person to whom the proprietor has given consent for the purposes of section 2(2)(b) of the Olympic Symbol etc. (Protection) Act 1995.

(7) References in this Regulation to a person having an interest in goods, material or articles include any person in whose favour an order could be made under—

(a) this Regulation,

(b) section 19 of the Trade Marks Act 1994^(c) (including that section as applied by regulation 4 of the Community Trade Marks Regulations 2006^(d)),

(c) section 24D of the Registered Designs Act 1949^(e),

(d) section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988^(f), or

(e) regulation 1C of the Community Design Regulations 2005^(g).”.

7th October 2010

Hugh Robertson
Parliamentary Under Secretary of State
Department for Culture, Media and Sport

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- (a) The Olympics association right is the right constituted under section 1(1) of the Olympic Symbol etc. (Protection) Act 1995.
- (b) The Paralympics association right is the right constituted under section 5A of the Olympic Symbol etc. (Protection) Act 1995. Section 5A was inserted by paragraph 6 of Schedule 3 to the London Olympic Games and Paralympic Games Act 2006 (c. 12).
- (c) 1994 c. 26; section 19 was amended by paragraph 16 of Schedule 2 to the Intellectual Property (Enforcement, etc.) Regulations 2006 (S.I. 2006/1028).
- (d) S.I. 2006/1027; regulation 4 was amended by regulation 2 of the Community Trade Marks (Amendment) Regulations 2008 (S.I. 2008/1959).
- (e) 1949 c. 88; section 24D was inserted by paragraph 3 of Schedule 1 to the Intellectual Property (Enforcement, etc.) Regulations 2006.
- (f) 1988 c. 48; sections 114, 204 and 231 were amended by paragraphs 7, 11 and 14 of Schedule 2 to the Intellectual Property (Enforcement, etc.) Regulations 2006 respectively; section 204 was also amended by paragraph 8 of the Schedule to the Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18); and section 231 was also amended by Schedule 4 to the Intellectual Property (Enforcement, etc.) Regulations 2006.
- (g) S.I. 2005/2339; regulation 1C was inserted by paragraph 9 of Schedule 3 to the Intellectual Property (Enforcement, etc.) Regulations 2006.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to orders which the court may make in relation to infringing goods, material or articles in an action for infringement of the London Olympics association right.

The London Olympics association right consists of the rights and remedies conferred by Schedule 4 to the London Olympic Games and Paralympic Games Act 2006 (“the 2006 Act”) in relation to representations (of any kind) used in relation to goods or services in a manner likely to suggest to the public that there is an association between the London Olympic Games or Paralympic Games and the goods or services or a person who provides the goods or services. The London Olympics association right ceases to have effect on 31st December 2012 in accordance with section 40(8) of the 2006 Act.

Regulation 2 provides that the court may order the erasure of an offending representation from any infringing goods, material or articles or the destruction of the infringing goods, material or articles in question.

Regulation 3 provides that the London Organising Committee of the Olympic Games and Paralympic Games Limited (“LOCOG”) may apply to the court for an order that any infringing goods, material or articles be delivered up to it or such other person as the court directs.

Regulation 4 provides that LOCOG may apply to the court for an order that infringing goods, material or articles which have been delivered up in pursuance of an order under regulation 3 may be destroyed or forfeited. It also confers a power to make rules of court to provide for the notification of any persons who might have an interest in any such goods, material or articles.

The orders specified in these Regulations may be made by the High Court in England and Wales, the High Court in Northern Ireland, and the Court of Session in Scotland. Orders under regulation 3 or regulation 4 may also be made by the sheriff court in Scotland or a county court in Northern Ireland.

Regulation 6 amends 1995 Regulations relating the Olympics association right (created by the Olympic Symbol etc. (Protection) Act 1995). The amendments are necessary following the extension of the Olympic Symbol etc. (Protection) Act 1995 to the Paralympic Games and the amendment of provisions of the Trade Marks Act 1994 (upon which these Regulations and the 1995 Regulations are based).

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