

ORGANISATION MONDIALE DU COMMERCE

IP/N/1/AUS/I/4

3 octobre 1996

(96-4001)

Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

Original: anglais

PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

Australie

Le présent document contient le texte¹ des lois et réglementations ci-après, notifiées par l'Australie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/AUS/1/Rev.1):

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¹Anglais seulement.



Olympic Insignia Protection Act 1987

No. 27 of 1987

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SCHEDULE

OUTLINE OF THE OLYMPIC SYMBOL



Olympic Insignia Protection Act 1987

No. 27 of 1987

**An Act to make provision for the protection of the olympic
insignia, and for related purposes**

[Assented to 26 May 1987]

[Date of commencement 23 June 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Olympic Insignia Protection Act 1987*.

Interpretation

2. (1) In this Act, unless the contrary intention appears—
“Australia”, when used in a geographical sense, includes the external Territories;
10 “charge” means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise;

- "corresponding design", in relation to an artistic work, means a design that, when applied to an article, results in a reproduction of that work;
- "design of the olympic symbol" means the design that, when applied to any article, results in a reproduction of the olympic symbol; 5
- "Federal Court" means the Federal Court of Australia;
- "Federation" means the Australian Olympic Federation Incorporated, being an association incorporated on 24 April 1985 under the Associations Incorporation Act 1981 of Victoria;
- "monopoly", in relation to a protected design, means the exclusive right to apply the design to any article to which the design is capable of being applied; 10
- "olympic motto" means the motto "citius, altius, fortius";
- "olympic symbol" means the symbol an outline of which is set out in the Schedule; 15
- "protected design" means—
- (a) the design of the olympic symbol; and
 - (b) a registered olympic design;
- "protection period", in relation to a registered olympic design, means the period of 12 years commencing on the day the design was registered, as extended or reduced under section 11; 20
- "registered olympic design" means a design registered under this Act;
- "Registrar" means the Registrar of Designs holding office under the *Designs Act 1906*;
- "reproduction", in relation to an artistic work, has the same meaning as in the *Copyright Act 1968*. 25
- (2) Where, by virtue of regulations in force for the purposes of subsection 17 (2) of the *Designs Act 1906*, a design is not capable of being registered under that Act for an article specified in those regulations, a reference in this Act to an article does not include a reference to an article so specified. 30
- (3) Unless the contrary intention appears, an expression used in this Act and the *Designs Act 1906* has the same meaning in this Act as in the *Designs Act 1906*.
- Act to bind Crown** 35
3. Subject to Part VII of the *Copyright Act 1968*, this Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.
- Extension of Act to external Territories**
4. This Act extends to the external Territories. 40

PART II—COPYRIGHT PROTECTION

Ownership, &c., of copyright in the olympic symbol

5. (1) For the purposes of the *Copyright Act 1968*—
- (a) the olympic symbol shall be taken to be an original artistic work in which copyright subsists; and 5
 - (b) the Federation shall be taken to be the owner of the copyright in the olympic symbol.
- (2) Notwithstanding anything in the *Copyright Act 1968*—
- (a) copyright in the olympic symbol subsists indefinitely; and 10
 - (b) a fair dealing with the olympic symbol does not constitute an infringement of the copyright in the olympic symbol if it is for the purpose of, or is associated with, the giving of information (including the reporting of news)—
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film. 15
- (3) An expression used in this section and in the *Copyright Act 1968* has the same meaning in this section as it has in that Act.
- (4) The Federation does not have the capacity to bring an action or proceeding under the law of a foreign country for an infringement of copyright in the olympic symbol. 20

PART III—DESIGN PROTECTION

Ownership of protected design

6. The Federation shall be taken to be the owner of a protected design.

Monopoly of design

7. (1) The Federation has a monopoly in a protected design. 25

(2) The rights of the Federation with respect to a protected design are personal property and, subject to this Act, the laws applicable to ownership of personal property apply in relation to the monopoly in the design as they apply in relation to other choses in action.

30 Infringement of monopoly in protected design

8. (1) A person infringes the monopoly in a protected design if—
- (a) in the case of the design of the olympic symbol—at any time; or
 - (b) in the case of a registered olympic design—during the protection period in relation to that design, 35
- the person, without the licence of the Federation—
- (c) applies the design or any fraudulent or obvious imitation of it to any article;
 - (d) imports into Australia for sale, or for use for the purposes of any trade or business, any article to which the design or any fraudulent

or obvious imitation of it has been applied, whether before or after the commencement of this Act, outside Australia; or

(e) sells, or offers or keeps for sale, or hires, or offers or keeps for hire—

(i) any article to which the design or any fraudulent or obvious imitation of it has been applied in infringement of the monopoly in the design; or

(ii) any article—

(A) to which the design or any fraudulent or obvious imitation of it has been applied; and

(B) that has been imported into Australia in infringement of the monopoly in the design.

(2) A person does not infringe the monopoly in a protected design by virtue of the application of paragraph (1) (c) or sub-paragraph (1) (e) (i) in relation to an article if, at the time when the person did the act that, but for this sub-section, would have constituted the infringement, the person did not intend that the article would be used in Australia at a later time by any person.

(3) Subject to sub-section (4), if a person infringes the monopoly in a protected design—

(a) the Federation; or

(b) a holder of a licence in relation to the design whose interests have been, are or would be affected by the infringement,

may bring an action or proceeding against the person in the Federal Court for infringement of the monopoly in the design.

(4) An action or proceeding for infringement of the monopoly in a protected design shall not be instituted by the holder of a licence in relation to the design without the consent of the Federation.

(5) Where—

(a) a person, being the holder of a licence in relation to a protected design, applies, by notice in writing served on the Federation, for the consent of the Federation under sub-section (4) to the institution by the person of an action or proceeding for infringement of the monopoly in the design; and

(b) the Federation does not grant or refuse that consent before the end of the period of 7 days after the day on which the notice was served,

the Federation shall, at the end of that period, be deemed to have granted that consent under sub-section (4).

(6) Consent under sub-section (4) to the institution of an action or proceeding shall not be unreasonably refused.

(7) Sub-section (4) does not affect the granting of an interlocutory injunction on the application of a holder of a licence in relation to a protected design.

(8) For the purposes of this section, a design shall not be taken not to be a fraudulent or obvious imitation of a registered olympic design by reason only that the first-mentioned design does not incorporate the design of the olympic symbol.

Remedies for infringement of monopoly in protected design

9. The relief that the Federal Court may grant in an action or proceeding for the infringement of the monopoly in a protected design includes an injunction (subject to such terms, if any, as the Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

Registration of olympic designs

10. (1) The Federation may, in relation to an artistic work that incorporates the olympic symbol, apply to the Registrar for the registration under this Act of the design that, when applied to any article, results in a reproduction of the artistic work.

(2) An application under sub-section (1)—

(a) shall be in accordance with an approved form;

(b) shall be accompanied by a fee of \$65 or such higher fee as is prescribed; and

(c) shall be lodged by being left at, or delivered by post to, the Designs Office.

(3) Where an application is made under sub-section (1), the Registrar shall cause notice of the application to be published in the *Gazette* and in the *Official Journal*.

(4) A notice of an application shall invite persons who wish to object to the grant of the application on any relevant grounds to make representations in connection with the application by such date, not being a date earlier than 60 days after the date of the notice, as is specified in the notice.

(5) A person may, not later than the date specified in the notice, make representations to the Registrar in connection with the application in accordance with an approved form.

(6) Subject to sub-section (7), after the Registrar has considered any such representations made in respect of an application for registration of the design in relation to an artistic work, the Registrar shall register the design if, and only if—

(a) copyright under the *Copyright Act 1968* subsists in the artistic work;

(b) the Federation is the owner of the copyright in the artistic work;

- (c) no corresponding design in relation to the artistic work is registered under the *Designs Act 1906*; and
- (d) if the design in relation to the artistic work were registered under this Act, the number of registered olympic designs with unexpired protection periods would not exceed 10.
- (7) A design shall not be registered under this Act unless it is a new or original design and in particular, shall not be registered if the design—
- (a) differs only in immaterial details or in features commonly used in a relevant trade from; or
- (b) is an obvious adaptation of, a design that—
- (c) was registered under the *Designs Act 1906*; or
- (d) was published or used in Australia in respect of any article, before the date on which the application was made.
- (8) For the purposes of sub-section (7), account shall not be taken of any secret use.
- (9) Where the Federation is the owner of the copyright in an artistic work, the design in relation to the artistic work shall not be treated for the purposes of this section as being other than new or original, or as having been published or used, by reason only of any use made of the artistic work before the application for registration of the design.
- (10) Where the Registrar makes a decision under sub-section (6) to register or to refuse to register a design, the Registrar shall cause notice of the decision to be published in the *Gazette* and in the *Official Journal*.
- (11) An appeal lies to the Federal Court from a decision of the Registrar under sub-section (6) to register or to refuse to register a design.
- Extension or reduction of protection periods in relation to registered olympic designs**
11. (1) The Federation may, not later than 6 months before the end of the protection period in relation to a registered olympic design (including a protection period that has been extended or reduced under this section), apply to the Registrar for that period to be extended by a further period of 12 years.
- (2) An application under sub-section (1)—
- (a) shall be in accordance with an approved form;
- (b) shall be accompanied by a fee of \$65 or such higher fee as is prescribed; and
- (c) shall be lodged by being left at, or delivered by post to, the Designs Office.
- (3) Where an application is made under sub-section (1), the Registrar shall cause notice of the application to be published in the *Gazette* and in the *Official Journal*.

- (4) A notice of an application shall invite persons who wish to object to the grant of the application on any relevant grounds to make representations in connection with the application by such date, not being a date earlier than 60 days after the date of the notice, as is specified in the notice.
- (5) A person may, not later than the date specified in the notice, make representations to the Registrar in connection with the application in accordance with an approved form.
- (6) After the Registrar has considered any such representations made in respect of an application for the extension of the protection period in relation to a registered olympic design, the Registrar shall, before the end of the protection period, extend the protection period for a further period of 12 years if the Registrar would be required to register the design if an application for registration of the design had been made immediately after the end of the protection period.
- (7) The Registrar shall, on the application of the Federation made in accordance with an approved form, reduce the duration of the protection period in relation to a registered olympic design.
- (8) Where the protection period in relation to a registered olympic design ends or is extended, the Registrar shall cause notice of the end or extension to be published in the *Gazette* and in the *Official Journal*.
- (9) Where the Registrar makes a decision under sub-section (6) refusing to extend a protection period, the Registrar shall cause notice of the decision to be published in the *Gazette* and in the *Official Journal*.
- (10) An appeal lies to the Federal Court from a decision of the Registrar under sub-section (6) to extend or to refuse to extend a protection period.

Register of Olympic Designs

12. (1) There shall be kept at the Designs Office a Register of Olympic Designs.
- (2) The Registrar shall enter in the Register of Olympic Designs particulars of—
- (a) registered olympic designs;
- (b) the end and extension of protection periods in relation to registered olympic designs; and
- (c) any other prescribed matters.
- (3) The Register of Olympic Designs shall be open to the inspection of the public at the times, and on payment of the fees (if any), prescribed for the purposes of this section.
- (4) The regulations may make further provision with respect to the Register of Olympic Designs, including, but without limiting the generality of the foregoing, provision for the correction of errors in the Register of Olympic Designs.

(5) Section 36 of the *Designs Act 1906* applies in relation to the Register of Olympic Designs in the same manner as it applies in relation to the Register of Designs.

(6) The Federal Court, on the application of a person aggrieved, may order the rectification of the Register of Olympic Designs by—

- (a) the making of any entry wrongly omitted to be made in the Register of Olympic Designs; or
- (b) the expunging or amendment of any entry wrongly made in or remaining on the Register of Olympic Designs; or
- (c) the correcting of any error or defect in the Register of Olympic Designs.

(7) Notice of each application under sub-section (6) shall be given to the Registrar, who may be heard on the application.

(8) A copy of an order under sub-section (6) shall be served on the Registrar, who shall, on receipt of the order, take such steps as are necessary to give effect to the order.

(9) A defendant in an action or proceeding for the infringement of the monopoly in a protected design may apply, by way of counter-claim in the action or proceeding, for the rectification of the Register of Olympic Designs by the expunging of the entry of the registration of the design from the Register of Olympic Designs.

Delegation

13. Section 8A of the *Designs Act 1906* applies in relation to the Registrar's powers under this Part in the same manner in which it applies in relation to the Registrar's powers under that Act.

Approved forms

14. (1) A reference in this Part to an approved form is a reference to a form approved by the Registrar in writing.

(2) An approved form may require any statement in the form to be verified by a statutory declaration accompanying the form.

PART IV—MISCELLANEOUS

Certain purported dispositions or charges to be void

15. (1) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the Federation of the whole or any part of—

- (a) its interest in the copyright in the olympic symbol; or
- (b) its interest in a protected design,

is void.

(2) A charge purporting to be given by the Federation with respect to an asset of the Federation that consists of, or includes, the whole or any part of—

- (a) its interest in the copyright in the olympic symbol; or
 - (b) its interest in a protected design,
- is void.

Validation of certain licences

16. Where, before the date of commencement of this Act, the Federation purported to grant a licence for a particular period ending after that date in respect of the copyright in, or the design of, the olympic symbol, the licence is as valid and effectual as it would have been if it had been granted on that date for the part of that period that commenced on that date.

Application of the *Copyright Act 1968*

17. (1) Division 8 of Part III of the *Copyright Act 1968* does not apply in relation to—

- (a) the copyright in the olympic symbol; and
- (b) where the design in relation to an artistic work is registered under this Act—the copyright in the artistic work.

(2) It is not an infringement of the copyright in the olympic symbol to apply the design of the olympic symbol to an article.

(3) During the protection period in relation to a registered olympic design, being the design in relation to an artistic work, it is not an infringement of the copyright in the artistic work to apply the design to an article.

(4) Where—

- (a) an artistic work incorporates the olympic symbol;
- (b) the design in relation to the artistic work is registered under this Act; and
- (c) the protection period in relation to the design has ended,

it is not an infringement of the copyright in the artistic work to apply a design to an article, being—

- (d) a design that is a corresponding design in relation to an artistic work that is a public domain version of the first-mentioned artistic work; or
- (e) a design that differs from the design referred to in paragraph (d) only in immaterial details or in features commonly used in a relevant trade.

(5) For the purposes of sub-section (4), where an artistic work incorporates the olympic symbol, the artistic work (if any) that would result from the omission of the olympic symbol from the first-mentioned artistic work shall be taken to be the public domain version of the first-mentioned artistic work.

(6) Where, by virtue of this section, it is not an infringement of the copyright in an artistic work to apply a particular design to an article at a particular time, it is not an infringement of the copyright in the artistic work to do any of the following acts or things at that time:

- (a) import into Australia any article to which the design has been applied; 5
- (b) sell, offer or keep for sale, or hire, or offer or keep for hire, any article to which the design has been applied.

Protected designs not to be registered under the Designs Act 1906

18. The Registrar shall not register under the *Designs Act 1906*— 10

- (a) a protected design;
- (b) a design incorporating a protected design;
- (c) a design that differs from a protected design only in immaterial details or in features commonly used in a relevant trade; or
- (d) a design that is an obvious adaptation of a protected design. 15

Certain marks not to be registered under the Trade Marks Act 1955

19. The Registrar of Trade Marks shall not register under the *Trade Marks Act 1955* a trade mark that contains or consists of any of the following marks or a mark so nearly resembling any of those marks as to be likely to be taken for that mark: 20

- (a) the olympic motto;
- (b) the olympic symbol;
- (c) where the design in relation to an artistic work is registered under this Act—the artistic work. 25

Preservation of certain existing rights

20. (1) Subject to sub-section (3), nothing in this Act affects any rights conferred by law on a person in respect of—

- (a) a trade mark registered under the *Trade Marks Act 1955* before the date of commencement of this Act; or
- (b) a design registered under the *Designs Act 1906* before that date. 30

(2) Subject to sub-section (3), nothing in this Act affects the use of a symbol by a person on or after the date of commencement of this Act if, immediately before that date, the person would have been entitled to prevent another person from passing off, by means of the use of that symbol or of a similar symbol, goods or services as the goods or services of that first-mentioned person. 35

(3) In an action or proceeding against—

- (a) the Federation; or
- (b) the holder of a licence granted by the Federation in respect of—
 - (i) the copyright in, or the design of, the olympic symbol; or 40

(ii) a design registered, or purporting to be registered, under this Act,

for—

- (c) the infringement of a trade mark registered under the *Trade Marks Act 1955* before the date of commencement of this Act; 5
 - (d) the infringement of the monopoly of a design registered under the *Designs Act 1906* before that date; or
 - (e) passing off arising out of the use of a symbol of the kind referred to in sub-section (2), 10
- it is a defence if the defendant satisfies the court—
- (f) that, at the time of the infringement or use, the defendant was not aware that the trade mark or design was so registered, or that the plaintiff was entitled to prevent the passing off, as the case may be; and
 - (g) that the defendant had, before that time, taken all reasonable steps to ascertain whether the trade mark was so registered, a monopoly in the design so existed or the plaintiff had such an entitlement to prevent a passing off, as the case may be. 15

Compensation for acquisition of property

21. (1) Where, but for this sub-section, the operation of a provision of this Act would result in the acquisition of property from a person by another person otherwise than on just terms, there is payable to the first-mentioned person by that other person such amount of compensation as is agreed upon between those persons, or, failing agreement, as is determined by the Federal Court. 25

(2) Any compensation recovered in proceedings that are instituted under this section shall be taken into account in assessing damages or compensation or giving any other remedy in proceedings that are instituted otherwise than by virtue of this Act and that arise out of the same event or transaction.

(3) Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than by virtue of this Act shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction. 30

(4) In this section, "acquisition of property" and "just terms" have the same respective meanings as in paragraph 51 (xxxi) of the Constitution. 35

Regulations

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or 40

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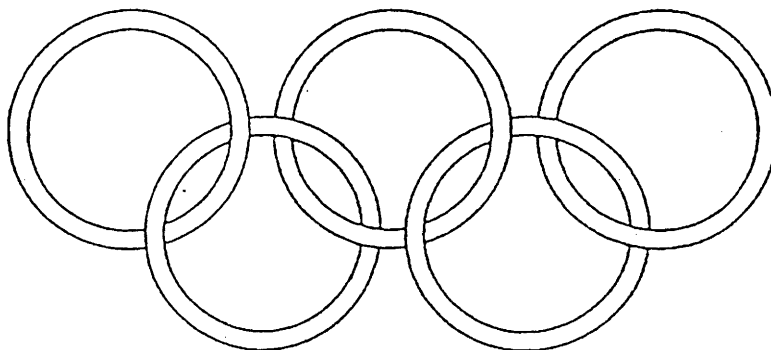
Olympic Insignia Protection No. 27, 1987

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

Sub-section 2 (1)

OUTLINE OF THE OLYMPIC SYMBOL



*[Minister's second reading speech made in—
House of Representatives on 23 October 1986
Senate on 20 February 1987]*



Olympic Insignia Protection Amendment Act 1994

No. 44 of 1994

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SCHEDULE

FURTHER AMENDMENTS



Olympic Insignia Protection Amendment Act 1994

No. 44 of 1994

An Act to amend the *Olympic Insignia Protection Act 1987*

[Assented to 15 March 1994]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Olympic Insignia Protection Amendment Act 1994*.

5 (2) In this Act, “Principal Act” means the *Olympic Insignia Protection Act 1987*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

10 3. Section 2 of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of “olympic motto”, “protected design”, “protection period” and “registered olympic design”, and substituting the following definitions:

“‘olympic motto’ means:

- (a) the motto expressed in Latin as ‘citius, altius, fortius’; and
- (b) the motto expressed in English as ‘faster, higher, stronger’;

‘protected design’ means each of the following:

- (a) the design of the olympic symbol; 5
- (b) a registered olympic design;
- (c) a registered torch and flame design;

‘protection period’ means:

- (a) in relation to a registered olympic design—the period of 12 years starting on the day the design was registered, as extended or reduced under section 11; or 10
- (b) in relation to a registered torch and flame design for a particular Summer or Winter Olympic Games—the period starting:
 - (i) on the 1 January that is at least 3 years but less than 4 years before the opening of those Olympic Games; or 15
 - (ii) when the design is registered; whichever is later, and ending on 31 December next after the closing of those Olympic Games, as reduced under section 11A; 20

‘registered olympic design’ means a design registered under this Act in relation to an artistic work that incorporates the olympic symbol;”;

- b) by omitting the definition of “Federation” in subsection (1); 25
- c) by inserting in subsection (1) the following definitions:

“‘Committee’ means the Australian Olympic Committee Incorporated, being an association incorporated on 24 April 1985 under the Associations Incorporation Act 1981 of Victoria;

‘olympic artistic work’ means: 30

- (a) a prescribed olympic torch and flame; or
- (b) an artistic work that incorporates either but not both of the following:
 - (i) the olympic symbol;
 - (ii) a prescribed olympic torch and flame; 35

‘prescribed olympic torch and flame’ means an artistic work prescribed under section 2A;

‘registered design’ means a design registered under section 10;

‘registered torch and flame design’ means a design registered under this Act in relation to an artistic work that is or incorporates a prescribed olympic torch and flame;”.

Insertion of new section

5 **4.** After section 2 of the Principal Act the following section is inserted:

Artistic work of olympic torch and flame may be prescribed

10 **“2A.(1)** The regulations may prescribe a single artistic work of an olympic torch and flame for a particular Summer Olympic Games or for a particular Winter Olympic Games. The artistic work must not incorporate the olympic symbol.

“(2) The regulations must not prescribe an artistic work unless:

- (a) copyright under the *Copyright Act 1968* subsists in the artistic work; and
- (b) the Committee is the owner of the copyright in the artistic work.

15 **“(3)** The Governor-General may not make a regulation prescribing an artistic work for a particular Olympic Games before the 1 July that is at least 3½ years but less than 4½ years before the opening of those Olympic Games (that is, 6 months before the earliest date on which the protection period for a registered torch and flame design for those Olympic Games could start).”.

20 **Repeal of section 6 and substitution of new section**

5. Section 6 of the Principal Act is repealed and the following section is substituted:

Ownership of design of olympic symbol

25 **“6.** The Committee is taken to be the owner of:

- (a) the design of the olympic symbol; and
- (b) any registered olympic design that was registered under this Act immediately before the commencement of the *Olympic Insignia Protection Amendment Act 1994*.”.

Infringement of monopoly in protected design

30 **6.** Section 8 of the Principal Act is amended:

- (a) by inserting in paragraph (1)(b) “or registered torch and flame design” after “registered olympic design”;
- (b) by adding at the end the following subsection:

35 **“(9)** For the purposes of this section, a design may be a fraudulent or obvious imitation of a registered torch and flame design in relation to an artistic work that incorporates a prescribed torch and flame even though the first-mentioned design relates to an artistic work that does not include the prescribed olympic torch and flame.”.

Insertion of new section

7. After section 9 the following section is inserted:

Trade Practices Act 1974 provides further remedies

"9A.(1) The remedies provided under this Act in relation to protected designs are in addition to the remedies provided by the Trade Practices Act 1974 in relation to engaging in conduct that is misleading or deceptive (see section 52 of that Act) and, in particular, in relation to representations:

- (a) that goods or services have sponsorship or approval that they do not have (see paragraph 53(c) of that Act); or
(b) that a corporation as defined in that Act has a sponsorship, approval or affiliation that it does not have (see paragraph 53(d) of that Act).

"(2) The references in subsection (1) to particular provisions of the Trade Practices Act 1974 do not imply that other provisions of that Act do not apply in relation to conduct that is also covered by this Act."

Repeal of section 10 and substitution of new section

8. Section 10 of the Principal Act is repealed and the following section is substituted:

Registration of designs

"10.(1) The Committee may apply to the Registrar to register under this Act the design that, when applied to any article, results in a reproduction of an olympic artistic work.

"(2) An application:

- (a) must be in accordance with an approved form; and
(b) must be accompanied by the prescribed fee; and
(c) must be lodged by being left at, or delivered by post to, the Designs Office.

"(3) The Registrar must cause notice of an application to be published in the Gazette and in the Official Journal.

"(4) A notice of an application must invite persons who wish to object to the grant of the application on any relevant grounds to make representations in connection with the application by a day specified in the notice.

"(5) The day specified in the notice must be at least 60 days after the date of the notice.

"(6) A person may, not later than the day specified in the notice, make representations to the Registrar about the application in accordance with an approved form.

"(7) Subject to subsection (8), after the Registrar has considered any representations made about the application, the Registrar must register the design if, and only if:

- (a) copyright under the Copyright Act 1968 subsists in the olympic artistic work; and
(b) the Committee is the owner of the copyright in the olympic artistic work; and
(c) the Committee is the owner of the design; and
(d) no other person has an interest in the design; and
(e) no corresponding design in relation to the olympic artistic work is registered under the Designs Act 1906; and
(f) upon registration of the design, there would be no more than 10 registered designs with unexpired protection periods (including registered designs whose protection periods have not yet started).

"(8) A design must not be registered under this section unless it is a new or original design and in particular, must not be registered if the design:

- (a) differs from a published design only in immaterial details or in features commonly used in a relevant trade; or
(b) is an obvious adaptation of a published design.

"(9) For the purposes of subsection (8), a design in relation to an artistic work is not to be treated:

- (a) as other than new or original; or
(b) as having been published or used;

merely because of any use made of the artistic work by the Committee before the day on which the application for registration of the design was lodged.

"(10) Where the Registrar decides under subsection (7) to register, or to refuse to register, a design, the Registrar must cause notice of that decision to be published in the Gazette and in the Official Journal.

"(11) An appeal lies to the Federal Court from the decision of the Registrar to register, or to refuse to register, a design.

"(12) In this section:

'published design', in relation to an application under this section, means a design that:

- (a) was registered under the Designs Act 1906; or
(b) was published or used in Australia in respect of any article; before the day on which the application was lodged.

"(13) For the purposes of the definition of 'published design' in subsection (12), any secret use of the design is to be disregarded."

Extension or reduction of protection periods in relation to registered olympic designs

9. Section 11 of the Principal Act is amended:
- (a) by omitting paragraphs (2)(a) and (b) and substituting the following paragraphs: 5
 - “(a) must be in accordance with an approved form; and
 - (b) must be accompanied by the prescribed fee; and”;
 - (b) by omitting from paragraph (2)(c) “shall” and substituting “must”.

Insertion of new section

10. After section 11 of the Principal Act the following section is inserted: 10

Reduction of protection periods for registered torch and flame designs

- 11A.(1) The Registrar must, on the application of the Committee made in accordance with an approved form, reduce the duration of the protection period in relation to a registered torch and flame design. 15
- “(2) Where the protection period in relation to a registered torch and flame design ends, the Registrar must cause notice of the end of that period to be published in the *Gazette* and in the *Official Journal*.”.

Register of Olympic Designs

11. Section 12 of the Principal Act is amended by omitting paragraph (b) and substituting the following word and paragraphs: 20
- and (b) the end and extension of protection periods in relation to registered olympic designs; and
 - (ba) registered torch and flame designs; and
 - (bb) the end of protection periods in relation to registered torch and flame designs; and”.

Certain purported dispositions or charges to be void

12. Section 15 of the Principal Act is amended:
- (a) by omitting from paragraphs (1)(b) and (2)(b) “protected design” and substituting “registered olympic design”; 30
 - (b) by adding at the end the following subsections:
 - “(3) A disposition, by assignment, declaration of trust or by any other means, purporting to be made by the Committee of the whole or any part of its interest in a registered torch and flame design is void.
 - “(4) A charge purporting to be given by the Committee with respect to an asset of the Committee that consists of, or includes, the whole or any part of its interest in a registered torch and flame design is void.”.

Application of the Copyright Act 1968

13. Section 17 of the Principal Act is amended:
- (a) by inserting after paragraph (1)(a) the following paragraph:
 - “(aa) the copyright in a prescribed olympic torch and flame; and”;
 - (b) by omitting from subsection (3) “olympic”;
 - (c) by inserting after subsection (5) the following subsection:
 - “(5A) Where the protection period in relation to a registered torch and flame design has ended, it is not an infringement of the copyright in the artistic work concerned to apply the design to an article.”.

10 **Certain marks not to be registered under the Trade Marks Act 1955**

14. Section 19 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:
- “(ba) where an artistic work of an olympic torch and flame is prescribed under this Act—the artistic work;”.

15 **Preservation of certain existing rights**

15. Section 20 of the Principal Act is amended:
- (a) by omitting from paragraph (1)(a) “before the date of commencement of this Act”;
 - (b) by omitting from paragraph (1)(b) “before that date”;
 - (c) by omitting from subsection (2) “the date of commencement of this Act” and substituting “a relevant date”;
 - (d) by inserting after subsection (2) the following subsection:
 - “(2A) In subsection (2):
 - ‘relevant date’ means each of the following:
 - (a) the date of commencement of this Act (23 June 1987);
 - (b) the date of commencement of the *Olympic Insignia Protection Amendment Act 1994*;
 - (c) the date of registration of a registered torch and flame design.”;
 - (e) by inserting after subparagraph (3)(b)(i) the following subparagraph:
 - “(ia) the copyright in a prescribed olympic torch and flame; or”;
 - (f) by omitting from paragraph (3)(c) “before the date of commencement of this Act”;
 - (g) by omitting from paragraph (3)(d) “before that date”;
 - (h) by omitting from paragraph (3)(e) “of the kind referred to” and substituting “as mentioned”.

Further amendments

16. The Principal Act is further amended as set out in the Schedule.

SCHEDULE
FURTHER AMENDMENTS

Section 16

The following provisions are amended by omitting “Federation” (wherever occurring) and substituting “Committee”:

Subsections 5(1) and (4)

Section 7

Subsections 8(1), (3); (4) and (5)

Subsections 11(1) and (7)

Section 15

Section 16

Subsection 20(3).

NOTE

1. No. 27, 1987.

*[Minister's second reading speech made in—
Senate on 16 December 1993
House of Representatives on 3 March 1994]*



Statutory Rules 1993 No. 234¹

Olympic Insignia Protection Regulations

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Olympic Insignia Protection Act 1987*.

Dated 2 September 1993.

P. BENNETT
Administrator

By His Excellency's Command,

C. SCHACHT
Minister for Science and Small Business

Citation

1. These Regulations may be cited as the Olympic Insignia Protection Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

2 *Olympic Insignia Protection 1993 No. 234*

Interpretation

2. In these Regulations, unless the contrary intention appears:

“Act” means *Olympic Insignia Protection Act 1987*;

“approved form” has the same meaning as in Part III of the Act;

“Register” means Register of Olympic Designs.

Application for registration of olympic design—fee

3. For the purposes of paragraph 10 (2) (b) of the Act, the fee for an application for registration of an olympic design is an amount equal to the amount of the fee prescribed under regulation 4 of the Designs Regulations for the lodging of an application for the registration of a design.

Application for extension of protection period—registered olympic designs: fee

4. For the purposes of paragraph 11 (2) (b) of the Act, the fee for an application for extension of the protection period in relation to a registered olympic design is an amount equal to the amount of the fee prescribed under regulation 4 of the Designs Regulations for the lodging of a request for the second extension of the period of registration of a design.

Times for public inspection of Register

5. For the purposes of subsection 12 (3) of the Act, the times at which the Designs Office is open to the public in accordance with regulation 53 of the Designs Regulations are prescribed.

Correction of Register

6. (1) On a request being made in the approved form, the Registrar may amend an entry in the Register for the purposes of correcting a clerical error or an obvious mistake.

(2) The Registrar may, of his or her own initiative, amend an entry in the Register to correct a clerical error or an obvious mistake.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 9 September 1993.