

# Safeguarding the Olympic Insignia: Protecting the Commercial Integrity of the Canadian Olympic Association<sup>1</sup>

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## INTRODUCTION

The Olympic Games have become a highly commercial endeavour in recent years with revenues topping \$1.4 billion from marketing campaigns at the 2002 Salt Lake City Olympics (Webb, Eden, Redgate, Georgecink, & Perez, 2002). The commercial potential of the Olympic marks, such as the five-ring logo, and words such as 'Olympiad,' is central to Olympic organizers and sponsor marketing campaigns.

The International Olympic Committee (IOC) takes great pride in the official marks and indicia of the Olympic movement and studies have demonstrated the powerful nature of these symbols (Rines, 2000; VanWynsberghe & Ritchie, 1994). For example, the IOC has undertaken several studies evidencing the Olympic five-ring logo as the most recognised symbol in the world (Rines, 2000). While the IOC officially owns the Olympic indicia, no international law exists to protect the commercial use of these symbols.

In an effort to attempt to rectify this problem, the *Nairobi Treaty on the Protection of the Olympic Symbol* was enacted in 1981 by the World Intellectual Property Organization (World Intellectual Property Organization (WIPO), 2002; Martyn, 1998). Individual countries must ratify the treaty within their own country for it to offer protection. However, so far only 41 countries have ratified the treaty, and few of them are larger industrialised nations (WIPO, 2002).

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1. On April 22, 2002 the Canadian Olympic Association formally changed its working name to the Canadian Olympic Committee ([www.coa.org](http://www.coa.org)). This change was to come more in line with names of Olympic Committees in other nations. For the purpose of this article, the name Canadian Olympic Association (COA) will be used as the events surrounding the topic of this article took place under the previous name.

Without international protection for Olympic intellectual property, the IOC has made it clear that National Olympic Committees (NOC) should make every possible effort to protect the Olympic symbols and indicia within their constituencies (Fogo, 1990; Martyn, 1998). Certain countries have made specific efforts to deter the unlawful use of these Olympic symbols in order to secure the sole rights to use. For example, in the United States, the Ted Stevens Olympic and Amateur Sports Act of 1998 (2003) grants the United States Olympic Committee (USOC) the exclusive rights to commercial management of Olympic related marks, symbols and terminology (Moorman & Sharp, 2002; Wall, 2002). Few other countries have been afforded this level of protection for these particular indicia. However, as will be discussed Australia and China have implemented measures similar to that of the United States in order to protect Olympic indicia.

Wall (2002) argued, "the unauthorized use of intellectual property rights has the potential to dilute the brand and erode brand equity and goodwill value" (p. 581). With the prospect of unwarranted use of Olympic marks, it is imperative that NOC's make an effort to secure such protections. In particular, much focus of late has been on ambush marketing. Ambush marketing is a tactic involving an organization using promotions and advertising campaigns situated in such a manner as to reap the same commercial benefits as an official sponsor of the event (Sandler & Shani, 1989). Official sponsors pay extensive amounts of money to be associated with the goodwill and reputation linked to the Olympic Games and to reap the extensive global exposure associated with sponsorship of the Games. For example, IBM paid upwards of \$200 million (US) for the rights to be an official sponsor and use the Olympic logo in marketing campaigns for the 2000 Sydney Olympic Games (Elkin, 2002). By ensuring sound legal protection for the Olympic insignia, Olympic committees will have greater chance of deterring and fighting such unwarranted activities as ambush marketing.

This article will explore the efforts made by the Canadian Olympic Association (COA) to protect the Olympic marks and indicia within Canada. The current platform used by the COA to protect Olympic indicia not only affords this organization a remarkable amount of power to lobby against unlicensed users of Olympic insignia, it also is directly in opposition to their organizational structure. A critical examination of some of the pertinent facts of a series of cases involving the COA and the Canadian Registrar of Trademarks will be used to demonstrate how changes in the fundamental structure of the COA have made the current protection afforded to these marks in Canada more vulnerable. Finally, by demonstrating how two other countries that have recently acquired the right to host the Olympic Games (Australia and

China) have moved to protect Olympic intellectual property, this article proposes a re-examination and alternative method for the protection of the COA's and Olympic intellectual property in Canada.

### EARLY PROTECTION EFFORTS IN CANADA

Protecting the Olympic indicia has long been a concern of the International Olympic Committee (i.e. Barney, Wenn, & Martyn, 2002; Fogo, 1990; Foster, 2000; Keyes, 2002; Martyn, 1998; Moorman, 2002). As the Olympic Games have become increasingly commercialized (Barney et al., 2002; Davidson & McDonald, 2002; Martyn, 1998; Sandler & Shani, 1989) and the use of symbols associated with the Olympic movement have become more frequent, greater emphasis has been placed on the need to protect against the unwarranted use of the insignia. The Olympic Charter is the governing document that regulates the functioning of the IOC and all activities associated with the Olympic Movement. The Olympic Charter has strict rules regulating the use of symbols, mottos, and anthems by the National Olympic Committees (International Olympic Committee (IOC), 2002; Straschnov, 1979). However, the protection afforded to organizing committees in each of the countries has been minimal. Bye-Law 1.1 of Rule 17<sup>2</sup> of the Olympic Charter states that the "IOC may take all appropriate steps to obtain the legal protection, both on a national and international basis, of the Olympic symbol, flag, motto and anthem" (IOC, 2002, p. 19). Further Bye-Law 2.0 to Rule 17 explains that each National Olympic Committee "shall take steps to prohibit any use of the Olympic Symbol, flag, motto or anthem which would be contrary to these Rules" and "shall endeavour to obtain protection of the designations 'Olympic' and 'Olympiad'" (p. 19).

Up until the 1970s, the Canadian Olympic Association had made little effort to protect Olympic intellectual property against commercial use by other organizations. Certain marks such as the Olympic Rings, COA logo and several others had been registered as ordinary trademarks under the *Trade-marks Act* of Canada; however, this type of protection is limited and time sensitive (Fogo, 1990). Following the 1972 Munich Olympics, the potential profitability in commercially marketing the Olympic symbols and related indicia was revealed (MacDonald, 1982). With the rising cost in staging an Olympic Games, the Munich Organizing Committee was the first to realize the financial rewards of licensing Olympic Symbols, raising close to \$750 million

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2. In previous editions of the Olympic Charter, this regulation fell under Rule 6, as cited by various authors prior to this time (i.e. Barney, Wenn, & Martyn, 2002; Fogo, 1990; Martyn, 1998; Straschnov, 1979)

(US) (Guttman, 2002). Thus, the COA and the Montreal Olympic Organising Committee (COJO) sought to further protect the indicia in order to reap the potential financial rewards offered by the selling of rights to use these symbols.

In 1973, an application to extend the currently registered marks under the *Trade-marks Act* was still awaiting approval. With the 1976 Montreal Olympic Games approaching, this left the COA and COJO in search of alternative and more comprehensive measures of protection for Olympic indicia. The two organizations lobbied the Canadian federal government to enact legislation that would protect certain indicia. This piece of legislation passed quickly through parliament and on July 23, 1973, *The Olympic Act* was enacted (Acts of Parliament, 1973, 21-22 Elizabeth 2, c. 31). This act was extremely important in protecting the insignia for the duration of the marketing campaigns surrounding the Montreal Olympic Games. On July 30, 1975, an amendment to the Act was also passed by parliament that offered additional protection to specific indicia such as the words Olympic, Olympic Games, Olympics, and Olympiad (Acts of Parliament, 1975, 23-24 Elizabeth 2, c. 68). This amendment to the legislation would also offer protection for symbols, emblems, and other insignia implying attachment to the 1976 Olympic Games. While *The Olympic Act* provided much needed protection of indicia, it had a limited duration of June 13, 1975 until January 1, 1977 (Fogo, 1990; Martyn, 1998). After this time the COA would no longer have protection against unwarranted use of Olympic marks.

#### REGISTRAR OF TRADE-MARKS V. CANADIAN OLYMPIC ASSOCIATION

Following the completion of the Montreal Olympic Games and all activities therein, the COJO ceased to exist and The Olympic Act expired on January 1, 1977. This left the COA with concerns over their ability to protect Olympic indicia from commercial use by other organizations (Barney et al., 2002). The COA employed the legal counsel of Kenneth McKay of the Toronto Law Firm, Sim, Hughes, Ashton and McKay (Barney et al.). McKay explored the option of registering the indicia as Official Marks. Official Marks, as defined by Section 9 of the Trade-marks Act, offers an organization substantial and lucrative protection over these marks. It means that the COA would have sole control over the symbols, which would allow them to commercially market these indicia, as well as have a legal basis to deter any organization from using them without express permission or contractual agreement with the COA. This differs from registration as a regular

trademark, which only warrants grounds for limiting other organizations of the same or similar wares and services from using the indicia.

Registration as an Official Mark is very profitable and offers a much more commercially advantageous position (Fogo, 1990). The COA can limit the use of Olympic indicia by any other organization, not only sport organizations. Further, as there is no renewal process or renewal fee, it provides relatively unlimited protection (MacDonald, 1982). Few organizations, and specifically no sport organizations, had secured this position at that point in time. Among those that had were the United Nations, The Red Cross and the Royal Canadian Mounted Police (Fogo, 1990). These organizations were prestigious and played a specific role in performing a duty for the public.

An application was made to the Registrar of Trade-marks under Section 9 of the Trade-marks Act, which specifically deals with Official Marks. Unlike regular applications for trade-marks which require an official search and examination performed by the Canadian Intellectual Property Organization, registration of an Official Mark only requires the Registrar to be satisfied that an organization is a 'public authority' (Wong & Carter, 2002). The terms associated with public authority status are defined under Section 9(1)(n)(iii) of the *Trade-marks Act*:

9. (1) No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for, (p. 6)

(n) any badge, crest, emblem or mark

(iii) adopted and used by any public authority, in Canada as an official mark for wares or services (p. 9)

(Trade-marks Act, 1985). The Registrar of Trade-marks rejected the initial application in 1979 on the grounds that the COA was not a public authority (*Canadian Olympic Assoc. v. Registrar of Trade-marks*, 1981a). The definition of public authority was ambiguous and not clearly delineated in the Trade-marks Act. The Registrar of Trade-marks applied a widely accepted three-pronged test from case literature to determine whether an organization could be considered a public authority:

1. There must a duty owed to the public
2. A sufficient degree of control must be exercised by the appropriate government over the activities of the body
3. Any profit earned by the body must be for the benefit of the public and not for any private benefit

(*Canadian Olympic Assoc. v. Registrar of Trade-marks*, 1981b; *Littlewood v. George Wimpey & Co. Ltd. et al.*, 1953)

In response to the decision of the registrar, McKay launched an appeal on behalf of the COA. In 1981, the judge, Justice Mahoney, of the Federal Court determined that the COA was under significant federal government control to be deemed a public authority (*Canadian Olympic Assoc. v. Registrar of Trade-marks*, 1981b). The judge determined that the evidence suggested that the COA had close ties to government and that profits gained by the organization were for the good of the public. He decided that it was not necessary to demonstrate a duty to the public in order to be considered a public authority. Therefore, since the organization was able to demonstrate two factors of the three-pronged test, it was sufficient to be deemed a public authority for the purposes of the Trade-marks Act. Thus, the Olympic indicia could be registered as Official Marks and be afforded lucrative protection. The Registrar of Trade-marks subsequently launched an appeal. However, with growing support and evidence provided by key officials of the COA, the decision was upheld (*Registrar of Trademarks v. Canadian Olympic Assoc.*, 1982).

### PROTECTION DILEMMA

This case was precedent setting and consequently led to a marked rise in the number of applications to the Registrar of Trade-marks under Section 9 (Lantham, 1985). It also allowed the COA an extraordinary amount of power to go after organizations that used the now protected marks. In the years following the courts' decision to allow registration of Olympic marks under Section 9 of the Trade-marks Act, the COA embarked on a campaign to eradicate the use of Olympic intellectual property by outside organizations. These cases ranged from the COA attacking small 'mom and pop' businesses such as a cabinet maker in Guelph, Ontario who had been using the Olympic Rings in the store logo (MacDonald, 1982), to larger national corporations such as Konica Canada Inc. who had been publishing the "Guinness Book of Olympic Records" since 1967 (Fogo, 1990; *Canadian Olympic Assoc. v. Konica Canada Inc.*, 1987). In a more recent case, the COA successfully forced the Saskatchewan Power Corporation (Saskatchewan, Canada) to stop airing a regional television advertisement that depicted five curling stones coming together to form the Olympic Rings (Schofield, 1998).

The COA case drastically changed the manner in which marks can be registered under Section 9 of the Trade-marks Act. However, the rationales provided by Justice Mahoney for the determination of the COA as a public

authority under Section 9 are contentious and warrant re-visitation. The arguments presented in this case, which persuaded the federal court to make the decision, are based on assumptions, many of which no longer hold true of the Canadian Olympic Association today. Changes in the structure of the COA and the sport system in Canada serve as a basis for demonstrating how arguments and assumptions previously connected with this case are no longer current (Bright, 1992; Kikulis, 2000; Kikulis, Slack & Hinings, 1995; Thibault & Harvey, 1997; Whitson & Macintosh, 1988). Further, as a number of high profile cases have been brought to the forefront concerning the same issues of public authority status as the COA case, recent decisions have shed new light on the requirements to attain this status (i.e. *Canadian Jewish Congress v. Chosen People Ministries, Inc.*, 2002; *FileNET Corp. v. The Registrar of Trade-marks*, 2001). Finally, with the COA and the city of Vancouver putting forth a bid for the 2010 Winter Olympics, the protection of Olympic intellectual property continues to be a vital concern (Legal Counsel, COA, personal communication, November 15, 2002).

While there is no specific provision in the Trade-marks Act for appealing the declaration of an Official Mark (Prenol, 2001; Wong & Carter, 2002), the lobbying done by the COA in order to maintain this profitable protection has ultimately drawn attention to the privileged position afforded to the organization. The following section will discuss the rationale provided by the court for registration of the COA as a public authority and the potential ramifications therein. Further, as substantial changes have been made in the COA, potential legal implications for the reform or restructuring protection of COA intellectual property will be discussed.

In 1979, as the COA applied to the Registrar of Trademarks, the organization needed to prove that it was under significant federal government control to be considered a public authority (Fogo, 1990). While the Registrar of Trade-marks had initially refused the application on the basis that the organization was not under federal government control, the final decision in the matter was grounded in an assumption of the organizational structure of the COA (*Registrar of Trade-marks v. Canadian Olympic Assoc.*, 1982). The notion was that since the organization was an incorporated non-profit it would qualify as being under some degree of federal government control. Non-profit organizations generally exist for the benefit of public good rather than for private financial gain. All profit generated in a non-profit organization is redistributed back into the organization, and not for the financial gain of organizational stakeholders (Crimmons & Keil, 1983). At the time of the application the COA was considered to be an incorporated non-profit

organization at the federal level, regulated by the Canada Corporations Act (R.S.C., c. C-32, 1970).

The Canada Corporations Act allows public organizations that meet the criteria as charitable organizations to be issued specific tax benefits (Canada Customs and Revenue Agency, 2002). In the past, an organization that generally met this criterion was considered to be under significant federal government control. A recent court decision, *Canadian Jewish Congress v. Chosen People Ministries, Inc.* (2002) demonstrates the courts current stance on this argument. The court decided that despite the fact that Chosen People Ministries, Inc. was incorporated as a non-profit corporation with charitable objects and tax-exempt status in compliance with government regulations, the court did not see this as subjecting these organizations to 'significant' government control (Gamache, 2002). Given this recent court decision, the COA could no longer claim to be under federal government control on the basis of non-profit incorporated status.

Defining the COA's role in Canadian society is central to the discussion of its status as a public authority. Upon appeal by the Registrar of Trade-marks in 1982, Richard W. Pound, President of the COA, prepared an affidavit declaring the COA's connection to the federal government (*Registrar of Trade-marks v. Canadian Olympic Assoc.*, 1982). The affidavit was the first formal statement provided by the COA to the courts demonstrating its personal connections to the federal government. The official declaration demonstrated the COA's authority by detailing the IOC's recognition of this organization as the official governing body regulating the Olympic movement in Canada. This has been the case since inception in 1907 (Wenn, 1990), and is presently demonstrated by the IOC's association with the COA regarding Vancouver's bid for the 2010 Winter Olympic Games (Copps, 2002).

Therefore, the authoritative nature of the organization has never been in debate; rather the issue lies in defining the 'public' nature of the organization. In the appeal by the Registrar of Trade-marks (1982), the courts' assessment was that the circumstances surrounding organizational links to the Canadian public (which were not defined) demonstrates that the COA's public character was manifest, and therefore the COA would qualify under Section 9(1) n of the *Trade-marks Act* (*Registrar of Trade-marks v. Canadian Olympic Assoc.*, 1982).

Currently the mandate of the COA is altogether divergent to the previous ruling on the issue of public character, in that it is considered to be a private organization. The mandate states that "the [COA] is a private not-for-profit corporation and **the largest private sector funder** of high performance sport in Canada" (Canadian Olympic Committee, 2002). Thus, the COA can no



longer claim to be a public authority as its nature as a private entity is apparent.

As the COA has moved toward being a more autonomous organization, sources of funding have drastically changed. In 1981, 30-40% of funding for the functioning of the COA was derived from federal government spending (*Registrar of Trade-marks v. Canadian Olympic Assoc.*, 1982), however with decreases in federal support and a move towards professionalization of sport organizations (Whitson & Macintosh, 1988; Kikulis, 2000), the COA no longer receives direct federal financial assistance (Administrator, COA, personal communication, November 26, 2002). The COA receives financial support from a number of external sources including marketing campaigns, grants, and segregated funds (i.e. Canadian Olympic Fund, Petro-Canada Olympic Torch Fund). The COA strongly concedes its previous ties with the Federal government; however it also acknowledges its independence. Thus, an important partnership has emerged between the COA and the government; however, it is one of mutually beneficial understanding rather than one of dependence (Administrator, COA, personal communication, November 21, 2002). The implications therein suggest that the federal government does not exert significant control over of the operations of the COA. Therefore, while financial ties were an important factor in demonstrating the control previously exerted by the federal government, the financial independence of the COA demonstrates that lack of support for such an argument at the present time.

The affidavit presented by Pound in 1982 also demonstrated federal government ties by citing Prime Minister Pierre Trudeau's support of the Olympic Games in the commission of programs such as the Olympic Lottery, Olympic Coins Program, Olympic Stamp Program and the Olympic Radio and Television Organization. While these programs were important to the COA at the time of this case, none of these programs currently exist in Canada (COA Marketing Administrator, personal communication, November 21, 2002). Further, ties to the organizations that aided in administering a number of these programs have been disbanded or have changed drastically. For example, Richard Pound, in his affidavit to the court, cited the close ties between the COA and the government entity known as Fitness and Amateur Sport Directorate as demonstrative of the COA's reliance on federal government (*Registrar of Trade-marks v. Canadian Olympic Association*, 1982). In 1993, as part of a major reorganization by the federal government, this department was broken up. Currently, fitness is the responsibility of the Department of Health and amateur sport falls within the jurisdiction of the Department of Canadian Heritage (Semotiuk, 1998). Sport Canada is a branch within the Department of Heritage that governs amateur sport in Canada. While ties exist

between the COA and Sport Canada, the Department of Heritage does not exhibit control over the operations of the COA. Rather a partnership has developed for "the purpose of pursuing commercially profitable opportunities" (COA Legal Counsel, personal communication, November 15, 2002).

### POTENTIAL DIRECTIONS

Fogo (1990) argued "some way must be found to better balance the desire to protect essential marks associated with the Olympic Games against piracy with the rights legitimately held by Canadians and others carrying on business in Canada" (p. 445). With the COA making a new attempt to bring the Olympic Games to Canada, the organization will need to focus on how it will protect these indicia and ensure the ability to fully reap the financial rewards from commercial marketing opportunities. The following section will demonstrate two cases where National Olympic Committees and host cities have taken specific action towards protecting Olympic intellectual property. These will serve as a basis for discussion regarding the directions that Canada may consider taking in the future.

#### Case #1 – Australia

In 2000, the world's attention was focused on Sydney, Australia, for the Summer Olympic Games. Australia had been proactive in protecting Olympic intellectual property by enacting the Olympic Insignia Protection Act of 1987, which was amended in 2001 (Finnis, 2002). This legislation offered specific protection of Olympic Insignia, not only for the duration of Olympic Games but also surrounding all activities related to the Olympic movement in Australia by transferring ownership of the Olympic words and related indicia to the Australian Olympic Committee (AOC). The Act was rationalized by one government official who stated that ". . .not only will [the legislation] facilitate the Australian Olympic Federation's ability to raise funds so that Australia will be represented by the best possible team at the Olympic Games. . .but it also provides the Olympic Movement with the means to protect and maintain the dignity of its logo and the five Olympic Rings" (Finnis).

With the approval of Sydney for the 2000 Olympic Games and Paralympic Games, the Sydney Organising Committee for the Olympic Games (SOCOG) sought further protection of the indicia. The SOCOG lobbied the Australian federal government to enact legislation that would further protect the Olympic Marks. The Sydney 2000 Games (Indicia and Images) Protection Act 1996 was enacted to give the organising committee the authority to use and licence

others to use the official indicia, images and words associated with the Olympic Games (Intellectual Property Australia, 2002; Keyes, 2002). This allowed greater flexibility in negotiating marketing rights while still giving sufficient protection to the Olympic marks (McCausland, 1999).

The success of the marketing efforts of the Sydney 2000 Olympic Games is proof of the potential for commercial use of intellectual property (Davidson & McDonald, 2001/2002). The IOC reported that the Sydney licensing program generated nearly \$500 million (US) in revenues, and while there were cases of unlicensed use of the Olympic symbols, the SOCOG and AOC were well equipped to deal with these infractions (Webb, et al., 2000). Thus other organising committees would do well to take heed of the efforts taken by the SOCOG and the AOC to protect the Olympic indicia.

#### Case #2 – China

Another interesting development in the protection of Olympic intellectual property occurred with the selection of Beijing, China, for the 2008 Summer Olympic Games. Upon being awarded the right to host the Olympic Games, the Beijing Olympic Games Organizing Committee took action to protect Olympic intellectual property. The Beijing municipal government legislated municipal regulations to expressly protect Olympic marks (Davidson & MacDonald, 2001/2002). Furthermore, the Chinese Olympic Committee in conjunction with the State Sport and General Administration Council of China also took action to protect the Olympic intellectual property. On April 1, 2002, the *Olympic Signs Protection Regulations* were enacted to strengthen the protection of the Olympic indicia (Beijing Olympic Games Organizing Committee, 2002). These regulations, controlled by a government agency called the State Administration for Industry and Commerce (AIC), require any party intending to use the Olympic marks to obtain a license from the Olympic Committee of China and have this license recorded with the state Trade-mark Office (Chua, 2002). The governmental sanctions have strict reprimands attached to them to ensure that the Olympic committee is able to protect, promote, and reap the financial rewards of licensing rights of the protected marks. While the ramifications of this protection have not yet been realised, it will be an important area to watch during the time leading up to and for the duration of the Beijing Olympic Games.

## CANADA: ALTERNATIVE OLYMPIC INTELLECTUAL PROPERTY PROTECTION

As demonstrated by the previous two examples, a strong catalyst towards expanding the protection of Olympic intellectual property occurs when a country is given the right to host the Olympic Games. However, as demonstrated by the opinion of the Australian government, it is also important for National Olympic Committees to reap commercial rewards beyond merely an association with the actual Games themselves, in order to maximize the profits and goodwill associated with the Olympic movement. While the examples demonstrate two different courses of action in countries with very different political systems, one important factor remains evident in each case: the state has taken an active role in preserving the rights of the Olympic committee to market and protect associated marks. Government intervention was central to ensuring that Olympic committees and host organising committees have the rights to commercially market the games and legally prevent non-sanctioned use of Olympic indicia.

In Canada, with the exception of the Olympic Act of 1976, which was very short lived, the federal government has not taken steps to ensure protection of these intellectual properties. In the late 1980s a proposal was put forth to a body known as the Intellectual Property Advisory Committee, which was made up of representatives from government, business and professional associations to alter the status of Section 9 of the Trade-marks Act of Canada. Proposals from the Canadian Olympic Association and the International Olympic Committee recommended that sub-paragraphs 9(1)(n)(ii) and (iii) be deleted from the Trade-marks Act and be replaced with a separate subparagraph regarding the protection of Olympic intellectual property (Fogo, 1990). This would give the COA extensive protection and maintain its lucrative status alongside such organizations as the Red Cross with its associated Red Crescent symbol. However, as this proposal would have fundamentally changed the nature of the Trade-marks Act, the proposal was rejected (Prenol, 2001).

With the pending Vancouver Bid for the 2010 Winter Olympic Games, the cause for concern over the protection of intellectual property is increasing. The COA cannot afford to go to court over the defence of the indicia under the current protection offered by the Trade-marks Act (COA Legal Counsel, personal communication, November 15, 2002). Honourable Sheila Copps, Minister of Heritage, has put forth the impression that the federal government is concerned over the practice of 'ambush marketing' and will take legislative measures to protect against such conduct (Copps, 2002). Copps (2002) states

"an issue could be raised under the misleading representations and deceptive marketing practices provisions of the [Canada] *Competition Act* if a person, while engaging in 'ambush marketing' makes materially false or misleading representations to the public" (p. 3). While demonstrating a concern over the issue of protection, this measure would not provide a rigorous alternative approach to ensuring the commercial and intellectual protection of Olympic marks in Canada.

In order for the COA to retain its lucrative position and sole power over the protection of Olympic intellectual property, specific legislative action needs to be taken at the federal level. The Canadian political system is very similar to the Australian system, thus legislative action, modelled after the Olympic Insignia Protection Act, is a realistic course of action. The effectiveness of the Australian act has been demonstrated by the success of the 2000 Olympic Games (Keyes, 2002), and thus provides a sound basis for modelling legislative action in Canada to protect Olympic indicia. Such action would allow the COA both ownership of the Olympic indicia within Canada, and the rights to commercially protect the marks.

Currently, the COA charges companies a minimum of \$1 million (CDN) to become a sponsoring partner of the Canadian Olympic Association (Administrator, COA, personal communication, November 21, 2002). While there is no shortage of companies who are willing to pay the high price to become an official sponsor, the concern is over businesses, which are not willing to pay and are associating themselves with the Olympic Movement in Canada. Legislation such as the 1976 Olympic Act or the Australian Olympic Insignia Protection Act, would give the COA greater leverage and clout to enforce the commercial protection of the indicia. Furthermore, the protection would be more explicit than the ambiguous protection provided by the Official Marks status.

In addition, should Vancouver win the bid for the 2010 Olympic Games, a proactive measure such as legislation would allow immediate protection towards the enactment of commercial activities surrounding the Games. This type of legislation would also allow for amendments or additions to be made in order to give specific rights of use to the Vancouver Organising Committee. Under the current regulations, the COA is the governing organization for the marks and could not transfer this responsibility to another governing body, such as an organising committee. Within the current manner that the marks are protected, legal action against violators is a lengthy process and may not be suitable to protect and reap commercial rewards surrounding an Olympic Games. Finally, even if Vancouver does not win the bid for the Olympic Games, protective legislation similar to the Australian *Olympic Insignia*

*Protection Act* could be an important catalyst to raising money and awareness for the Olympic Movement in Canada, thus also fostering educational awareness, which is also of central importance to protecting the Olympic integrity.

## CONCLUSION

Wall (2002) argued that it is essential that the National Olympic Committees and Olympic Organising Committees develop a multifaceted plan to protect Olympic intellectual property and the contractual rights of official marketing partners. While no single method of protection will be foolproof in protecting the marks, every effort towards ratification of more protective policies is valuable. The COA has enjoyed a time of luxury in the protection of Olympic intellectual property under the Trade-marks Act; however that lucrative status afforded under this protection will not remain constant with the changing structure of the organization and numerous cases challenging the fundamentals of this position. While the COA stands by the affidavit provided by Richard W. Pound in 1982 declaring its official position (Legal Counsel, COA, personal communication, November 15, 2002), there is growing concern over its ability to maintain such a profitable position. Thus, an alternative means of protecting the intellectual property is necessary for the COA to continue to have sole rights to commercial use indicia and legal backing to deter those who illicitly use the marks. It has been proposed that specific legislative action be enacted by the federal government to protect Olympic intellectual property, as has been done in countries such as Australia and China. This type of targeted and controlled measure is one step in the right direction towards balancing the commercial potential of the Olympic indicia in Canada, and the rights of companies to use the Olympic insignia.

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