

Olympic and Paralympic Marks Act (2007, c. 25)

Act current to January 25th, 2011

Attention: See coming into force provision and notes, where applicable.

Olympic and Paralympic Marks Act

2007, c. 25

[Assented to June 22nd, 2007]

An Act respecting the protection of marks related to the Olympic Games and the Paralympic Games and protection against certain misleading business associations and making a related amendment to the Trade-marks Act

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title

1. This Act may be cited as the *Olympic and Paralympic Marks Act*.

Interpretation

2. (1) The following definitions apply in this Act.

"COC"

« *COC* »

"COC" means the Canadian Olympic Committee, a corporation incorporated under Part II of *The Companies Act, 1934*, chapter 33 of the Statutes of Canada, 1934.

"court"

« *tribunal* »

"court" means the Federal Court or the superior court of a province.

"CPC"

« *CPC* »

"CPC" means the Canadian Paralympic Committee, a corporation incorporated under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970.

"Olympic or Paralympic mark"

« *marque olympique ou paralympique* »

"Olympic or Paralympic mark" means, subject to subsection (3), a mark set out in Schedule 1 or 2.

"organizing committee"

« *comité d'organisation* »

“organizing committee” means any organization that is recognized, by the COC and a city in Canada elected to host an Olympic Games or Paralympic Games, as being responsible for the planning, organizing, financing and staging of those Games.

Words and expressions

(2) Unless the context otherwise requires, words and expressions used in this Act have the same meaning as in the *Trade-marks Act*.

Schedule 2 marks

(3) A mark set out in column 1 of Schedule 2 is considered not to be an Olympic or Paralympic mark after the corresponding expiry date set out in column 2.

Prohibited marks

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.

Prohibited marks — translations

(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.

Exception

(3) Subsections (1) and (2) do not apply to an organizing committee, the COC or the CPC.

Excepted uses

(4) Nothing in subsection (1) or (2) prevents

- (a) the adoption, use or registration, as a trade-mark or otherwise, of a mark described in subsection (1) or (2) if the person has obtained the written consent of an organizing committee during any period prescribed by regulation or of the COC or the CPC during any other period, and acts in accordance with that consent;
- (b) the use of a trade-mark by an owner or licensee of the trade-mark if an owner or licensee of the trade-mark used it before March 2, 2007 and the use subsequent to that date is in association with
 - (i) the same wares or services as those for which the trade-mark was used before that date,
 - (ii) the wares or services in respect of which it is registered under the *Trade-marks Act*, or
 - (iii) any other wares or services of the same general class as that for which it is registered or was, before that date, used;
- (c) the use of a trade-mark by an owner or licensee of the trade-mark if an owner or licensee of the trade-mark used it before the day of publication in Part I of the *Canada Gazette* of an order that, by adding a mark to Schedule 1 or 2, prohibits the use of the trade-mark and the use subsequent to that day is in association with

- (i) the same wares or services as those for which the trade-mark was used before that date,
 - (ii) the wares or services in respect of which it is registered under the *Trade-marks Act*, or
 - (iii) any other wares or services of the same general class as that for which it is registered or was, before that date, used;
- (d) the use by Her Majesty, a university or a public authority, or a person authorized by Her Majesty, the university or the public authority, of a badge, crest, emblem or other mark in respect of which Her Majesty, the university or the public authority, as the case may be, has requested that the Registrar give public notice under paragraph 9(1)(n) of the *Trade-marks Act*, if the notice is given before March 2, 2007;
- (e) the use by Her Majesty, a university or a public authority, or a person authorized by Her Majesty, the university or the public authority, of a badge, crest, emblem or other mark in respect of which Her Majesty, the university or the public authority, as the case may be, has requested that the Registrar give public notice under paragraph 9(1)(n) of the *Trade-marks Act*, if the notice is given before the day of publication in Part I of the *Canada Gazette* of an order that, by adding a mark to Schedule 1 or 2, prohibits the use of the badge, crest, emblem or other mark;
- (f) the use of a protected geographical indication identifying a wine or spirit, if the wine or spirit originates in the territory indicated by the indication;
- (g) the use by a person of their address, the geographical name of their place of business, an accurate indication of the origin of their wares or services, or an accurate description of their wares or services to the extent that the description is necessary to explain those wares or services to the public;
- (h) the use by an individual of their name; or
- (j) the use by an individual who has been selected by the COC or the CPC to compete, or has competed, in an Olympic Games or Paralympic Games, or another person with that individual's consent, of the mark "Olympian", "Olympic", "Olympien" or "Olympique", or "Paralympian", "Paralympic", "Paralympien" or "Paralympique", as the case may be, in reference to the individual's participation in, or selection for, those Games.

Clarification

(5) For greater certainty, the use of an Olympic or Paralympic mark or a translation of it in any language in the publication or broadcasting of a news report relating to Olympic Games or Paralympic Games, including by means of electronic media, or for the purposes of criticism or parody relating to Olympic Games or Paralympic Games, is not a use in connection with a business.

Clarification

(6) For greater certainty, the inclusion of an Olympic or Paralympic mark or a translation of it in any language in an artistic work, within the meaning of the *Copyright Act*, by the author of that work, is not in itself a use in connection with a business if the work is not reproduced on a commercial scale.

Prohibited acts

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.

Use of expressions set out in Schedule 3

(2) In determining whether a person has acted contrary to subsection (1), the court shall take into account any evidence that the person has used, in any language,

- (a) a combination of expressions set out in Part 1 of Schedule 3; or
- (b) the combination of an expression set out in Part 1 of Schedule 3 with an expression set out in Part 2 of that Schedule.

Proximity to mark

(3) The placement of an advertisement in proximity to published material — including material published electronically — that contains an Olympic or Paralympic mark or a translation of it in any language is not in itself an act contrary to subsection (1).

Remedies

5. (1) If a court finds, on application, that an act has been done contrary to section 3 or 4, it may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits, for punitive damages, for the publication of a corrective advertisement and for the destruction, exportation or other disposition

- (a) of any offending wares, packages, labels and advertising material; and
- (b) of any dies used to apply to those wares, packages, labels or advertising material a mark whose adoption or use is prohibited under section 3.

Application to court

(2) An application referred to in subsection (1) may be made

- (a) during any period prescribed by regulation, only by
 - (i) an organizing committee, or
 - (ii) the COC or the CPC, or a person who uses an Olympic or Paralympic mark with the written consent referred to in paragraph 3(4)(a), if the COC, the CPC or the person, as the case may be, has obtained during that period an organizing committee's written authorization to make the application, or has made a written request during that period to an organizing committee for its authorization to which the committee has not responded, in writing, within 10 days after receipt of the request; or
- (b) during any other period, only by
 - (i) the COC or the CPC, or
 - (ii) an organizing committee, or a person who uses an Olympic or Paralympic mark with the written consent referred to in paragraph 3(4)(a), if the committee or person, as the case may be, has obtained during that period the COC's or the CPC's written authorization to make the application, or has made a written request during that period to the COC or the CPC for its authorization to which the COC or the CPC, as the case may be, has not responded, in writing, within 10 days after receipt of the request.

No unreasonable refusal

(3) The authorization may not be unreasonably refused.

Interim or interlocutory injunction

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.

Limitation period

7. No remedy may be awarded in respect of an act contrary to section 3 or 4 that was committed more than three years before the commencement of an action under subsection 5(1).

Detention and disposition of imported wares

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, within the meaning of the *Customs Act*, 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, on the basis of information reasonably required by that Minister and provided by the applicant, to detain the wares,
- (ii) directing that Minister to notify the applicant and the owner or importer of the wares, without delay after detaining them, of the detention and the reasons for it, and
- (iii) providing for any other matters that the court considers appropriate; and

(b) if it finds that the distribution in Canada of wares detained in accordance with an order made under paragraph (a) would be a use of the mark as a trade-mark that is contrary to section 3, 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.

Application to court

(2) An application referred to in subsection (1) may be made

(a) during any period prescribed by regulation, only by

- (i) an organizing committee, or
- (ii) the COC or the CPC, if it has obtained during that period an organizing committee's written authorization to make the application, or has made a written request during that period to an organizing committee for its authorization to which the committee has not responded, in writing, within 10 days after receipt of the request; or

(b) during any other period, only by

- (i) the COC or the CPC, or
- (ii) an organizing committee, if the committee has obtained during that period the COC's or the CPC's written authorization to make the application, or has made a written request during that period to the COC or the CPC for its authorization to which the COC or the CPC, as the case may be, has not responded, in writing, within 10 days after receipt of the request.

No unreasonable refusal

(3) The authorization may not be unreasonably refused.

Application for detention order

(4) An application for an order under paragraph (1)(a) may be made either on notice or *ex parte*. In all cases, notice of such an application must be given to the Minister of Public Safety and Emergency Preparedness.

Security

(5) Before making an order under paragraph (1)(a), the court may require the applicant to furnish security, in an amount fixed by the court,
(a) to cover duties, within the meaning of the *Customs Act*, and storage and handling charges, and any other amount that may become chargeable against the wares; and
(b) to answer any damages that may by reason of the order be sustained by the owner, importer or consignee of the wares.

Application for directions

(6) The Minister of Public Safety and Emergency Preparedness may apply to the court for directions in implementing an order made under paragraph (1)(a).

Permission to inspect

(7) The Minister of Public Safety and Emergency Preparedness may give the applicant or importer of the wares detained in accordance with an order made under paragraph (1)(a) an opportunity to inspect them for the purpose of substantiating, in the case of the applicant, or refuting, in the case of the importer, the applicant's claim.

Release of wares

(8) Unless an order made under paragraph (1)(a) provides otherwise, the Minister of Public Safety and Emergency Preparedness shall, subject to the *Customs Act* and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release, within the meaning of the *Customs Act*, the wares detained in accordance with the order without further notice to the applicant if, two weeks after the applicant has been notified under subparagraph (1)(a)(ii), that Minister has not been notified that an action has been commenced for an order under paragraph (1)(b).

Exportation of wares

9. A court shall not make an order under subsection 5(1) or paragraph 8(1)(b) for the exportation of wares bearing an Olympic or Paralympic mark unless it includes, as a condition of the order, a requirement that the mark be removed from the wares before they are exported.

Jurisdiction of Federal Court

10. The Federal Court has jurisdiction to entertain any action or proceeding for the enforcement of any of the provisions of this Act or of any right or remedy conferred or provided by this Act.

Effect of public notice

11. For greater certainty, public notice by the Registrar of the adoption and use of a badge, crest, emblem or other mark in accordance with a request made under paragraph 9(1)(n) of the *Trade-marks Act* has no legal effect if, at the time of the request, the requester was prohibited under section 3 from adopting or using it.

Regulations

12. (1) The Governor in Council may, by regulation, on the recommendation of the Minister of Industry, prescribe periods for the purposes of paragraph 3(4)(a), subsection 4(1), paragraph 5(2)(a), section 6 and paragraph 8(2)(a).

Orders

(2) The Governor in Council may, by order, on the recommendation of the Minister of Industry,

- (a) amend Schedule 1 by adding or deleting any mark relating to Olympic Games or Paralympic Games, other than those that are referred to in paragraph (b);
- (b) amend Schedule 2 by adding to or deleting from that Schedule, in column 1, any mark relating to Olympic Games or Paralympic Games hosted by Canada, and, in respect of any such mark, adding to or deleting from that Schedule, in column 2, the corresponding expiry date; and
- (c) amend Schedule 3 by adding any expression that in the opinion of the Governor in Council may be relevant in determining whether an act has been done contrary to section 4, or by deleting any expression set out in that Schedule.

AMENDMENT TO THIS ACT

13. [Amendment]

RELATED AMENDMENT

TRADE-MARKS ACT

14. [Amendment]

COMING INTO FORCE

Order in council

* **15.** (1) The provisions of this Act, other than section 13, come into force on a day or days to be fixed by order of the Governor in Council.

Section 13

(2) Section 13 comes into force on December 31, 2010.

* [Note: Act, other than section 13, in force December 17, 2007, see SI/2007-117.]

SCHEDULE 1

(Subsection 2(1) and paragraphs 3(4)(c) and (e) and 12(2)(a))

MARKS

1. Canadian Olympic Committee
2. Canadian Paralympic Committee
3. *Citius, Altius, Fortius*
4. Comité international olympique
5. Comité international paralympique
6. Comité olympique canadien
7. Comité paralympique canadien
8. Faster, Higher, Stronger
9. International Olympic Committee
10. International Paralympic Committee
11. Jeux olympiques
12. Jeux paralympiques
13. L'esprit en mouvement
14. Olympia
15. Olympiad
16. Olympiades
17. Olympian
18. Olympic
19. Olympic Games
20. Olympics
21. Olympie
22. Olympien
23. Olympique
24. Olympiques
25. Paralympiad
26. Paralympiades
27. Paralympian
28. Paralympic
29. Paralympic Games
30. Paralympics
31. Paralympien
32. Paralympique
33. Paralympiques
34. Plus vite, plus haut, plus fort
35. Spirit in Motion
- 36.



37.



38.



39.



SCHEDULE 2

(Subsections 2(1) and (3), paragraphs 3(4)(c) and (e) and 12(2)(b) and section 13)

MARKS

Item	Column 1 Mark	Column 2 Expiry Date
1. to 53. [Repealed, 2007, c. 25, s. 13]		

2007, c. 25, Sch. 2, s. 13; SOR/2009-332.

SCHEDULE 3

(Subsection 4(2), paragraph 12(2)(c) and section 13)

EXPRESSIONS

PART 1

1. to 10. [Repealed, 2007, c. 25, s. 13]

PART 2

1. to 7. [Repealed, 2007, c. 25, s. 13]

2007, c. 25, Sch. 3, s. 13.