



# Birmingham Commonwealth Games Act 2020

## 2020 CHAPTER 10

### PART 2

#### ASSOCIATION WITH THE GAMES

#### **3 Unauthorised association with the Games**

- (1) A person acting in the course of a business may not use any representation (of any kind) in a manner likely to suggest to the public that there is an association between the Games and—
  - (a) goods or services, or
  - (b) a person providing goods or services.
- (2) The following are examples of an association between the Games and a person providing goods or services—
  - (a) a contractual relationship;
  - (b) a commercial relationship;
  - (c) a corporate or structural connection;
  - (d) the provision of financial or other assistance.
- (3) “Use” of a representation includes, among other things—
  - (a) applying a representation to goods or documents;
  - (b) selling, offering, or exposing for sale goods that bear a representation;
  - (c) importing or exporting goods that bear a representation;
  - (d) providing or offering services by reference to a representation;
  - (e) promoting goods or services by reference to a representation.
- (4) A breach of subsection (1) is to be treated as though it were an infringement of an exclusive right of the Organising Committee to use any representation (of any kind) in the manner described in that subsection.

- (5) In an action for breach of subsection (1), the court may grant any relief that is available in respect of the infringement of a property right (whether by way of damages, injunction, accounts or otherwise).
- (6) In subsection (5), “court” means—
- (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session or the sheriff, and
  - (c) in Northern Ireland, the High Court or the county court.
- (7) Subsection (1) is—
- (a) subject to sections 4 and 5 (authorised association and other exceptions), and
  - (b) enforceable only by the Organising Committee in accordance with subsections (4) and (5) and sections 6 and 7.

#### **4 Authorised association**

- (1) Section 3(1) is not breached by the use of a representation in accordance with an authorisation granted by the Organising Committee.
- (2) An authorisation granted under this section may—
- (a) be granted in respect of a person or a description of person;
  - (b) be granted in respect of a description of representation;
  - (c) be subject to conditions;
  - (d) be revoked.
- (3) In considering whether or not to grant an authorisation under this section, the Organising Committee may have regard to, among other things, any agreements entered into (whether by the Secretary of State or otherwise) for the purposes of the Games.
- (4) An authorisation granted under this section must be in writing.

#### **5 Exceptions to the prohibition on unauthorised association**

##### *Intellectual property rights*

- (1) Section 3(1) is not breached by—
- (a) the use of a trade mark registered under the Trade Marks Act 1994 for goods or services for which it is registered;
  - (b) the use of a design registered under the Registered Designs Act 1949;
  - (c) the exercise of another intellectual property right subsisting immediately before the day on which this Act is passed.

##### *Continuous use*

- (2) Section 3(1) is not breached by the use of a representation in any manner by a person acting in the course of a business if—
- (a) immediately before 21 December 2017, the representation was used in that manner for the purpose of activities constituting the business, and
  - (b) the representation has continued to be used in that manner for that purpose since that day.

*Fair use*

- (3) Section 3(1) is not breached by—
- (a) the use by a person of the person’s name or address,
  - (b) the use of indications concerning—
    - (i) the kind, quality, quantity, intended purpose, value or geographical origin, or any other characteristic, of goods or services, or
    - (ii) the time of production of goods or of the provision of services, or
  - (c) the use of a representation for the purpose of identifying or referring to goods or services as those of a person authorised under section 4,
- provided, in each case, that the use is in accordance with honest practices in industrial or commercial matters.
- (4) Section 3(1) is not breached by the use of a representation—
- (a) in a report of a Games event,
  - (b) for the purpose of sharing information about the Games,
  - (c) for the purpose of promoting—
    - (i) such a report, or
    - (ii) the sharing of such information, or
  - (d) as an incidental inclusion in a literary work, dramatic work, artistic work, sound recording, film or broadcast.
- (5) Any reference in subsection (4) to a report of a Games event or the sharing of information about the Games does not include a reference to material that is published or broadcast for the purpose of promoting something other than the Games.
- (6) Terms used in subsections (4)(d) and (5) and in Part 1 of the Copyright, Designs and Patents Act 1988 have the same meaning in those provisions as they have in that Part.

*Dealings in authorised goods*

- (7) Section 3(1) is not breached by the use of a representation in relation to goods (the “current use”) if—
- (a) the goods bear the representation,
  - (b) they were put on the market in accordance with an authorisation granted by the Organising Committee under section 4, and
  - (c) the current use is in accordance with that authorisation.

*Organising Committee*

- (8) Section 3(1) is not breached by the use of a representation by the Organising Committee.

*Information society services*

- (9) Schedule 1 contains exceptions relevant to providers of information society services.

**6 Enforcement of section 3(1) in relation to goods and documents**

- (1) A court may make any order falling within subsection (3) in respect of infringing goods or documents held by any person in the course of a business.

- (2) “Infringing goods or documents” means—
- (a) goods or documents that bear a representation in breach of section 3(1), or
  - (b) things that have been specifically designed or adapted to produce such goods or documents.
- (3) The orders falling within this subsection are—
- (a) an order that the infringing goods or documents be delivered up to—
    - (i) the Organising Committee, or
    - (ii) such other person as the court may direct;
  - (b) an order that the representation be erased, removed or obliterated from the infringing goods or documents;
  - (c) an order that the infringing goods or documents be returned to—
    - (i) the person from whom they were delivered up, or
    - (ii) any other person having an interest in them;
  - (d) an order that the infringing goods or documents be forfeited to—
    - (i) the Organising Committee, or
    - (ii) such other person as the court may direct;
  - (e) an order that the infringing goods or documents be destroyed.
- (4) No order for forfeiture or destruction may be made unless the court is satisfied that no other remedy available would be adequate to compensate the Organising Committee or protect its interests.
- (5) In this section, “court” has the meaning given by section 3(6).

## **7 Protections for persons with an interest in goods or documents**

- (1) If the Organising Committee applies for an order under section 6—
- (a) a copy of the application must be served on all identifiable persons having an interest in the infringing goods or documents;
  - (b) any person having an interest in the infringing goods or documents is entitled—
    - (i) to appear in proceedings under section 6 relating to the infringing goods or documents, and
    - (ii) to appeal against any order made in respect of the infringing goods or documents (whether or not the person appeared in the proceedings in which the order was made).
- (2) No order for destruction or forfeiture under section 6 may take effect until—
- (a) the end of the period during which notice of an appeal may be given, or
  - (b) if before the end of that period notice of an appeal is given, the final determination or abandonment of the appeal.

## **8 Guidance**

- (1) The Organising Committee must, before the end of the period of 31 days beginning with the day on which this Act is passed, publish guidance about the operation of this Part.

- (2) The Organising Committee may revise guidance published in accordance with subsection (1).

## **9 Interpretation of Part 2**

- (1) In this Part—

“business” includes trade or profession;

“Games event” has the meaning given by section 1(3);

“goods” includes their packaging;

“infringing goods or documents” has the meaning given by section 6(2);

“use”, in relation to a representation, is to be read in accordance with section 3(3).

- (2) In the application of this Part to Scotland—

(a) “accounts” means count, reckoning and payment;

(b) “delivery up” means delivery;

(c) “injunction” means interdict.