

2009 No. 1969

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

INTELLECTUAL PROPERTY

SPORTS GROUNDS AND SPORTING EVENTS

COMMONWEALTH GAMES

**The Glasgow Commonwealth Games Act 2008 (Games
Association Right) Order 2009**

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| <i>Made</i> - - - - | <i>20th July 2009</i> |
| <i>Laid before Parliament</i> | <i>21st July 2009</i> |
| <i>Coming into force</i> - - | <i>20th January 2010</i> |

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (4) and (7) of the Scotland Act 1998(a).

Citation, commencement and extent

1.—(1) This Order may be cited as the Glasgow Commonwealth Games Act 2008(b) (Games Association Right) Order 2009.

(2) This Order shall come into force six months after the day on which the Order is made.

(3) This Order extends to each part of the United Kingdom.

Interpretation

2. In this Order—

“business” includes a trade or profession;

“court” means—

(a) in England and Wales, the High Court;

(b) in Scotland, the Court of Session, (except in articles 16 and 17 where it also includes the sheriff court);

(a) 1998 c.46.
(b) 2008 (asp 4).

(c) in Northern Ireland, the High Court (except in articles 16 and 17 where it also includes the county court);

“Glasgow Commonwealth Games” means the Commonwealth Games that are to be held principally in Glasgow in 2014;

“Glasgow Commonwealth Games association right” has the meaning given by article 4(1);

“infringing goods” means goods which bear a representation or whose packaging bears a representation and—

- (a) the application of the representation to the goods or their packaging was an infringement of the Glasgow Commonwealth Games association right;
- (b) the goods are proposed to be imported into the United Kingdom and the application of the representation in the United Kingdom to them or their packaging would be an infringement of that right; or
- (c) the representation has otherwise been used in relation to the goods in such a way as to infringe that right;

“infringing material” means material which bears a representation and either—

- (a) it is used for labelling or packaging goods, as a business paper, for advertising goods or services or by being displayed, in such a way as to infringe the Glasgow Commonwealth Games association right; or
- (b) it is intended to be so used and such use would infringe that right;

“infringing articles” means articles—

- (a) which are specifically designed or adapted for making copies of a representation, and
- (b) which are in the possession, custody or control of a person who knows or has reason to believe that they have been or are to be used to produce infringing goods or infringing material;

“Organising Committee” means the company named Glasgow 2014 Limited which was incorporated on 11th June 2007 (company registration number SC325245).

Adaptation of expressions for Scotland

3. In the application of this Order to Scotland—

“accounts” means count, reckoning and payment;

“delivery up” means delivery;

“injunction” means interdict.

The Glasgow Commonwealth Games association right

4.—(1) There is to be a right, to be known as the Glasgow Commonwealth Games association right, which confers exclusive rights in relation to the use of any representation (of any kind) in a manner likely to suggest to the public that there is an association between the Glasgow Commonwealth Games and—

- (a) goods or services; or
- (b) a person who provides goods or services.

(2) For the purposes of this Order—

- (a) the concept of an association between a person, goods or a service and the Glasgow Commonwealth Games includes, in particular—
 - (i) any kind of contractual relationship;
 - (ii) any kind of commercial relationship;
 - (iii) any kind of corporate or structural connection; and

- (iv) the provision by a person of a financial or other support for or in connection with the Glasgow Commonwealth Games; but
- (b) a person does not suggest an association between a person, goods or a service and the Glasgow Commonwealth Games only by making a statement which—
 - (i) accords with honest practices in industrial or commercial matters; and
 - (ii) does not make a promotional or other commercial use of a representation relating to the Glasgow Commonwealth Games by incorporating it in a context to which the Glasgow Commonwealth Games are substantively irrelevant.

Infringement: general

5.—(1) A person infringes the Glasgow Commonwealth Games association right if in the course of business the person uses in relation to goods or services any representation (of any kind) in a manner likely to suggest to the public that there is an association between the Glasgow Commonwealth Games and—

- (a) the goods or services; or
 - (b) the person who provides the goods or services.
- (2) Paragraph (1) is subject to articles 6 to 13 of this Order.
- (3) For the purposes of this Order, a person uses a representation if, in particular, that person—
- (a) affixes it to goods or the packaging thereof;
 - (b) incorporates it in a flag or banner;
 - (c) offers or exposes for sale, puts on the market or stocks for those purposes goods which bear it or whose packaging bears it;
 - (d) imports or exports goods which bear it or whose packaging bears it;
 - (e) offers or supplies services under a sign which consists of or contains it; or
 - (f) uses it on business papers or in advertising.

Authorised use

6.—(1) The Glasgow Commonwealth Games association right is not infringed by use of a representation in accordance with an authorisation granted by the Organising Committee.

(2) The Organising Committee must make arrangements for the grant of authorisations; and the arrangements may, in particular, make provision about charges.

7.—(1) The Organising Committee must maintain a register of persons, and classes of persons, authorised for the purposes of article 6.

- (2) The register must specify in respect of each authorised person—
- (a) the person’s name;
 - (b) the person’s principal place of business;
 - (c) the goods or services to which the authorisation relates;
 - (d) the period in respect of which the authorisation has effect.
- (3) The register must specify in respect of each authorised class of person—
- (a) the nature of the class;
 - (b) the goods or services to which the authorisation relates (including the circumstances in which it does or does not apply); and
 - (c) the period in respect of which the authorisation has effect.

(4) The Organising Committee must ensure that a copy of the register is accessible to the public by use of the internet.

(5) If a copy of the register or an entry in the register is certified on behalf of the Organising Committee as an accurate copy, it is to be treated as accurate for all purposes (including for the purposes of legal proceedings) unless the contrary is proved.

Infringement: other exceptions

8. The Glasgow Commonwealth Games association right is not infringed by the use of a trade mark registered under the Trade Marks Act 1994(a) or design registered under the Registered Designs Act 1949(b) in relation to goods or services for which it is registered.

9. The Glasgow Commonwealth Games association right is not infringed by—

- (a) the use by a person of the person's own name or address;
- (b) the use of indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of provision of services, or other characteristics of the goods or services;
- (c) the use of a representation which is necessary to indicate the intended purpose of a product or service;

provided, in each case, that the use is in accordance with honest practices in industrial or commercial matters.

10. The Glasgow Commonwealth Games association right is not infringed by use of a representation where—

- (a) the use is for the purposes of an undertaking; and
- (b) the way in which the representation is used for the purposes of the undertaking is a way in which it has been continuously used for those purposes before the day on which this Order comes into force.

11. The Glasgow Commonwealth Games association right is not infringed by use of a representation where the use—

- (a) takes place under a right subsisting immediately before the day on which this Order comes into force; or
- (b) is liable to be prevented by virtue of such a right.

12.—(1) The Glasgow Commonwealth Games association right is not infringed by the use of a representation—

- (a) in publishing or broadcasting a report of a sporting or other event forming part of the Glasgow Commonwealth Games;
- (b) in publishing or broadcasting information about the Glasgow Commonwealth Games;
- (c) as an incidental inclusion in a literary work, dramatic work, artistic work, sound recording, film or broadcast, within the meaning of Part I of the Copyright, Designs and Patents Act 1988(c); or
- (d) as an inclusion in an advertisement for a publication or broadcast of a kind described in sub-paragraph (a) or (b).

(2) But the exceptions in paragraph (1)(a) and (b) do not apply to advertising material which is published or broadcast at the same time as, or in connection with, a report or information.

13. The Glasgow Commonwealth Games association right is not infringed by the use of a representation in relation to goods if—

- (a) they were put on the market in the European Economic Area in accordance with an authorisation granted by the Organising Committee;

(a) 1994 c.26.
(b) 1949 c.88.
(c) 1988 c.48.

- (b) the representation was used in relation to the goods when they were put on the market; and
- (c) the Organising Committee does not oppose further dealings in the goods for legitimate reasons (including, in particular, that the condition of the goods has been changed or impaired after they were put on the market).

Action for infringement

14.—(1) Infringement of the Glasgow Commonwealth Games association right is actionable by the Organising Committee.

(2) In an action for infringement all relief by way of damages, injunction and accounts is available to it as is available in respect of the infringement of any other property right.

Order for erasure etc. of representations

15.—(1) The Organising Committee may apply to the court for an order which requires a person who has infringed the Glasgow Commonwealth Games association right:—

- (a) to erase, remove or obliterate the offending representation from any infringing goods, material or articles in the person's possession, custody or control; or
- (b) if it is not reasonably practicable to so erase remove or obliterate, to secure the destruction of the infringing goods, material or articles in question.

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

Order for delivery up of infringing goods, material or articles

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

(2) No order may be made unless the court also makes, or it appears to the court that there are grounds for making, an order under article 17 (order as to disposal of infringing goods, material or articles etc).

(3) If an application for an order under article 17 has been made but not yet determined, a person to whom any infringing goods, material or articles are delivered in pursuance of an order under this article must retain them pending the making of an order, or the decision not to make an order, under that article.

(4) Nothing in this article affects any other power of the court.

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

17.—(1) Where infringing goods, material or articles have been delivered up in pursuance of an order under article 16 (order for delivery up of infringing goods, material or articles), the Organising Committee may apply to the court—

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

(2) In considering whether to make an order under paragraph (1), the court is to consider whether other remedies available in an action for infringement of the Glasgow Commonwealth Games association right would be adequate to compensate the Organising Committee and any authorised person and protect their interests.

(3) Where the Organising Committee applies for an order under this article, a copy of the application must be served on all identifiable persons having an interest in the goods, material or articles, and any such person is entitled—

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

(4) No order may take effect until—

- (a) the end of the period within which notice of an appeal may be given or,
- (b) if before the end of that period notice of appeal is given, the final determination or abandonment of that appeal.

(5) Where there is more than one person having an interest in the goods, material or articles, the court may make such order as it thinks just.

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

(7) References in this article to a person having interest in goods, material or articles include any person in whose favour an order could be made under this article or under section 114, 204 or 231 of the Copyright, Designs and Patents Act 1988(a) (which make similar provision in relation to infringement of copyright, rights in performances and design right).

Remedy for groundless threats of infringement proceedings

18.—(1) Where the Organising Committee threatens a person with proceedings for infringement of the Glasgow Commonwealth Games association right other than in relation to—

- (a) the application to goods or their packaging of a representation;
- (b) the importation of goods to which, or to the packaging of which, such a representation has been applied; or
- (c) the supply of services under a sign which consists of or contains such a representation,

that person may apply to the court for relief under this article.

(2) The relief which may be applied for is any of the following:—

- (a) a declaration that the threat is unjustifiable;
- (b) an injunction against the continuance of the threat; and
- (c) damages in respect of any loss suffered as a result of the threat.

(3) The person is entitled to the relief applied for unless the Organising Committee satisfies the court that the act in respect of which proceedings were threatened constitutes (or if done would constitute) an infringement of the Glasgow Commonwealth Games association right.

(4) The mere notification of rights conferred by this Order does not constitute a threat of proceedings for the purposes of this article.

Duration

19.—(1) This Order ceases to have effect six months from the date of the closing ceremony of the Glasgow Commonwealth Games.

(a) 1988 c.48.

(2) Notwithstanding paragraph (1), where an action for infringement of the Glasgow Commonwealth Games association right is commenced, (including an application made to the court for an order under articles 15 to 17), before the end of six months from the date of the closing ceremony of the Glasgow Commonwealth Games, this Order continues to have effect in respect of that action.

ANN McKECHIN
Parliamentary Under Secretary of State
Scotland Office
Ministry of Justice

Dover House,
London
20th July 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision which is expedient in consequence of the Glasgow Commonwealth Games Act 2008 (“the 2008 Act”).

The 2008 Act makes provision in relation to the Commonwealth Games that are to be held predominantly in Glasgow in 2014 (“the Glasgow Commonwealth Games”).

Article 2 provides for interpretation. Orders specified in the Order may be made by the High Court in England, Wales and Northern Ireland and the Court of Session in Scotland. Orders made under articles 16 and 17 may also be made in the sheriff court in Scotland or the county court in Northern Ireland.

Article 3 adapts certain expressions relating to court proceedings to Scotland.

Article 4 creates a specific event association right in relation to the Glasgow Commonwealth Games. It defines the Glasgow Commonwealth Games association right as the use of any representation in a way which suggests an association between the Games and goods or services, or a person providing goods or services. The concept of association is defined as where a commercial, contractual, corporate or financial link is suggested between a person, product or service and the Games. It does not include where a statement accords with honest commercial practices and does not make a commercial use of the representation in an irrelevant context.

Article 5 makes general provision about infringement. A person will infringe the association right if representations are made in the course of business in a manner likely to suggest an association with the Glasgow Commonwealth Games. It also provides what is to be treated as a use of a representation for the purposes of the Order.

Article 6 makes provision for authorised use of the Glasgow Commonwealth Games association right. Where the Organising Committee has granted an authorisation, use of a representation does not amount to an infringement.

Article 7 provides that the Organising Committee is under a duty to maintain a public register of those persons who have been granted the right to associate with the Glasgow Commonwealth Games.

Articles 8 to 13 provide a number of exceptions to infringement of the association right. Article 8 provides for an exception in relation to uses of registered trademarks or designs.

Article 9 creates an exception for use of certain types of information, including indications that describe (amongst other things) the purpose, quality or origin of a product or service.

Article 10 provides for an exception where a representation has been in continuous use prior to the Order coming into force where that usage is for the purpose of an undertaking.

Article 11 provides that the association right is not infringed by use of a representation where that use takes place under a pre-existing right or where the pre-existing rights may otherwise prevent usage.

Article 12 enables publication and broadcasting without infringement in certain cases.

Article 13 provides an exemption from infringement where goods were put on the market in a European Economic Area with authorisation from the Organising Committee and where further dealings in the goods are not opposed by the Committee.

Articles 14 to 17 make provision for the remedies available for infringement of the association right. Article 14 provides that an action for infringement of a Commonwealth Games association right may be brought by the Organising Committee.

Article 15 provides that, on application by the Organising Committee, the court may order the erasure of the offending representation from any infringing goods, material or articles. In cases

where it is not reasonably practicable to remove the representation, the court may order destruction of the infringing goods, material and articles in question.

Article 16 provides that the Organising Committee may apply to the court for an order for delivery of any infringing good, material or articles to the Committee or such other person as the court directs.

Article 17 provides that the Organising Committee may apply to the court for an order that infringing goods, material or articles which have been delivered up in pursuance of an order under article 16 may be destroyed or forfeited. The provision also provides for the notification of any persons who might have an interest in any such goods, material or articles.

Article 18 provides for a remedy against groundless threats of infringement proceedings.

Article 19 makes provision for the Order ceasing to have effect six months after the date of the Glasgow Commonwealth Games closing ceremony.

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