

symbol to be licensed provided that it is compensated by way of royalty payments.

The Act's purpose is to assist the collection of funds to finance Australian participation in the Olympic Games through the licensing by the AOC of certain designs including the Olympic Symbol. In order to clarify the issue of ownership of copyright in the Olympic Symbol the Act vests ownership of copyright in the Symbol in the AOC. The Act also provides that the AOC is the owner of certain protected designs which were registered for a period of 12 years under the Act as registered Olympic designs. The design protection provided by the Act is similar to that provided under the Designs Act 1906 and enables the AOC (or its licensees) to take legal action to prevent the unlicensed use of the designs or to prohibit the importation of articles bearing the designs.

Olympic Insignia Protection Amendment Act 1994

The *Olympic Insignia Protection Amendment Act 1994* widens the protection afforded to Olympic related designs and words. The amendments provide a mechanism for the protection of the Olympic Torch and Flame Designs for a limited time around each Olympic Games by way of the protected designs provisions of the *Olympic Insignia Protection Act*. Registration of trade marks that contain or consist of the English version of the Olympic motto "Faster, Higher, Stronger" are prohibited in the same manner as those that contain or consist of the motto "Citius, Altius, Fortius".

Copyright Act, Trade Practices Act and Passing Off

Currently, an action for infringement of copyright can be taken by SOCOG or AOC in relation to reproductions of the Sydney 2000 Bid Flash Logo. Sections 52 and 53 of the *Trade Practices Act 1974* and corresponding State Fair Trading legislation may also be used to prevent use of the Flash Logo, "Sydney 2000" and associated words where such conduct is misleading or deceptive or falsely represents that a business or its goods or services has some association with or approval from SOCOG or AOC.

In addition, the common law tort of passing off may be used by SOCOG or AOC in order to stop traders passing off their goods and/or their businesses as in some way being sponsored or approved by or otherwise connected with the Olympics.

Trade Mark Protection

Trade mark applications in each of the 42 classes of the International Classification System have been lodged by SOCOG to protect the Flash Logo and the composite Bid logo containing the Flash logo, the words "Sydney 2000" and the slogan "Share the Spirit". Upon registration SOCOG will acquire proprietary rights under the *Trade Marks Act 1955* to use these names and logos and will be entitled to take proceedings for infringement.

Business and Company Names

On 27 April this year, the Premier of NSW announced that the use of business names associated with the Sydney Olympics or the Paralympics will be restricted by Federal, State and Territory Governments. In NSW, under new Ministerial directions and guidelines to be issued under the *Business Names Act 1962*, words and phrases such as "Olympic", "Olympian", "Paralympic", "Olympiad", "Share the Spirit", "Gold", "Summer Games" and "Millennium Games" will be unacceptable for registration without the consent of the Minister for Consumer Affairs. It is proposed that the changes will remain in force until the end of the Sydney 2000 Games. The Premier has indicated that similar regulations will be introduced by all governments to protect the sponsorship revenue for the Games and in an endeavour to prevent harm to Australia's reputation.

It has been reported that the NSW Department for Consumer Affairs has deferred or frozen approximately 240 applications to register business names using terms such as "Olympic", "Sydney 2000" and "Games City" and that the applications are now likely to be refused. It is likely that if the applications are not refused the use of them will be challenged by SOCOG on other grounds such as possible breaches of sections 52 and 53 of the *Trade Practices Act* as referred to above.

Further, recent amendments to the Corporations Law Regulations require Ministerial permission for the reservation or registration of company names that suggest a link with the Sydney Olympics or the Paralympics. Names containing the words "Olympic", "Paralympic" and their derivatives suggesting a connection with the Sydney Games will not be permitted to be registered unless the applicant has obtained a certificate from SOCOG to the effect that there is an official connection between the company and the Games.

The NSW State Government is also considering enacting further legislation to protect Olympic related intellectual property.

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In the prurient interest

Max Bonnell reports on the Burswood Casino's attempt to injunct "Real Life"

The proprietors of Burswood Casino in Perth have failed to obtain an injunction to prevent Channel Seven's current (Ed. "public") affairs flagship *Real Life* from televising video footage of its patrons taken by the casino's own security cameras.

Although the cameras were installed for security purposes, it came to *Real Life's* attention that some members of the casino's staff had used the cameras for an unauthorised voyeuristic purpose. The footage that *Real Life* obtained and broadcast focussed upon the cleavage and underwear of several female patrons.

issues

The injunction was sought in the Federal Court on the grounds that the proposed broadcast would amount to a breach of privacy and that the videotape had been obtained by Seven without the consent of the casino proprietors. [Ed.: other grounds argued - copyright, breach of confidence and "public interest"]

French J said that the primary issue was whether the casino patrons had an interest in the material being broadcast, and concluded that the patrons' interests did not require that an injunction be granted. No written judgment had been delivered at the time of writing. The videotape was broadcast by *Real Life* in the first week of July.

The application contained echoes of the *Whiskisoda* case heard in Melbourne last year, in which the Victorian Supreme Court refused to grant an injunction restraining *Real Life* from broadcasting footage taped by a hidden camera in a striptease show (see Communications Law Bulletin Vol. 13 No. 4). Together, the two cases emphasise the difficulty of obtaining an injunction preventing a broadcast on the ground that the footage may have been filmed or obtained without the consent of the subjects.

It is clear that, even in those circumstances, courts will require something more before an injunction will be

granted - in particular, convincing evidence that damages would not be an adequate remedy for the applicant if the broadcast were to proceed (the Casino's argument that the broadcast would deter potential patrons from visiting the casino was insufficiently strong). Nor is the fact that privacy may be threatened by the proposed broadcast a sufficient ground for the granting of an injunction unless, perhaps, the broadcast would breach a recognised duty of confidentiality owed by the broadcaster.

public interest

Also reminiscent of *Whiskisoda* was Seven's insistence that its proposed broadcast of the footage was in the public interest. According to at least one newspaper report of the hearing, French J accepted Seven's argument, saying that the broadcast was in the public interest because it would inform people of the improper use made of security cameras. Obviously, Justice French's written judgment will be eagerly awaited.

The definition of the term "in the public interest" is elusive. It does not mean merely "of interest to the public", but undoubtedly carries a connotation, however vague, that the public is entitled to read or see and will benefit from reading or seeing, the matters to be published or broadcast. Seven maintained that the public was entitled to know that the casino's security system had been abused and that it was in the public interest that this be exposed.

Maybe so. But, of course, it would have been possible to convey that information without beaming cleavages into the country's living rooms. Evidence was given

that the footage obtained by *Real Life* was between four and eight years old. No doubt the footage was titillating to some, and may have had a certain historical fascination for students of voyeurism. It is difficult to see how its being broadcast would have benefited anyone else or added anything of value to the store of human knowledge. Seven's argument drew an inadequate distinction between a message which might be in the public interest and a medium - the casino footage - that arguably was not.

In similar cases, such as *Whiskisoda*, the issue of "public interest" has often been treated as irrelevant (except in defamation cases) in which a publisher who faces an injunction application will often need to show that it will be able to rely upon a defence containing an element of public interest.

comment

It is hoped that the judgment of French J will not encourage broadcasters to continue to argue that material with essentially prurient appeal should be broadcast in the public interest. *Real Life's* invocation of the public interest amounts to an argument that in order to show a piece that informs the public that someone has acted in a way that is degrading to women, it's necessary to show pictures of cleavage.

It might be less contorted, and more honest, simply to say that without the pictures, there's no entertainment. But that could imply that the only difference between *Real Life's* broadcast and the conduct of the casino camera operator is the difference between self-righteous indignation and a smirk.

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Recent ACT decisions

Noel Greenslade provides a round-up

criminal trespass - it's in the public interest!

Peter Wilkinson, an investigative reporter for the programme *A Current Affair*, was convicted by Magistrate Ward on a charge of contravening section 11(2)(c) of the *Public Order (Protection of Persons and Property) Act 1971 (Cth)*.

The relevant provision of the Act reads "A person who being in or on premises in a Territory, refuses or neglects, without reasonable excuse, to leave those premises on being directed to do so by the occupier

or by a person acting with the authority of occupier; is guilty of an offence." Commonwealth premises are expressly excluded from the operation of this section.

On 3 October 1992 Mr Wilkinson confronted Mr Stephen Nimmo in the front garden of his property and attempted to interview him as part of *A Current Affair's* program on alleged maintenance dodgers entitled "Deadbeat Dads". Two weeks previously Mr Nimmo's solicitors had written to Mr Wilkinson's employer and that letter in part read: "We are instructed that Mr Nimmo does not wish to be interviewed by you ... we wish to make it clear that Mr Nimmo does not wish to speak to you".

After entering Mr Nimmo's front garden Mr Wilkinson said to Mr Nimmo: "We've been trying to find out why you refuse to do what the Family Court says"; and "Why did you transfer all your assets across to your wife?".

Magistrate Ward found that Mr Wilkinson was directed to leave the property on no less than nine occasions and yet did not leave the property after any of those directions. Mr Wilkinson's explanation as paraphrased by Magistrate Ward was that he felt he could convince Mr Nimmo to change his mind and speak to him, and that he believed interviewing Mr Nimmo was in the public interest. Magistrate Ward, apparently unimpressed by the public interest argument, commented:

"Another excuse is the hoary old perennial: it's in the public interest. It may well be in the interest of the TV station's ratings, to cater for the morons of this world who enjoy the spectacle of the discomfort of those branded by the TV executives as wrongdoers, and in the privacy of their own home to boot! It cannot be in the public interest that such gutter journalism be the means by which alleged wrongdoers are brought to justice. We might as well scrap the courts, repeal the laws and leave it to the television stations to control the country.

The plain fact is that the defendant had no right to be where he was. He knew he was committing a civil trespass at least. Once he was told to leave, and declined to do so he committed a criminal trespass. He had no excuse for remaining - no reasonable excuse, that is".

There may be some people in the media who will be less than satisfied with this decision and will argue that it is against the public interest. However, from the point of view of the writer it is difficult to see a logical basis for excepting journalists from the consequences of laws relating to trespass.

defamation - Evans v Fairfax appeal

In August 1993 the Federal Court heard an appeal by the plaintiff in the matter of *Graham Charles Evans v John Fairfax & Sons Limited and Allan Ramsey and John Alexander*.

The appeal was from the decision of Justice Higgins of the ACT Supreme Court delivered on 12 February 1993 (discussed in Vol. 13 No. 3 of the CLB). In the Supreme Court the plaintiff had argued his case on the basis that the defamatory imputations alleged to have been conveyed by an article titled "Cosy in the Corridors of Power" appearing in the *Sydney Morning Herald* on 14 April 1990 were conveyed from the