

The London Organising Committee of the
Olympic Games and Paralympic Games Limited

London 2012's UK statutory marketing rights
April 2010



Brand protection

Information On London 2012's UK Statutory Marketing Rights Under:

**The London Olympic Games And Paralympic Games Act 2006
(The "2006 Act")**

-and-

**The Olympic Symbol Etc (Protection) Act 1995
("OSPA")**

This document gives an indication of The London Organising Committee of the Olympic Games and Paralympic Games Limited's ("LOCOG") current interpretation of the 2006 Act and OSPA only.

Examples are given for illustrative purposes only and do not indicate that an activity definitely will, or will not, infringe LOCOG's rights. A wide variety of factors, including content, context and presentation will be relevant when determining infringement and cases must be reviewed on an individual basis considering all the circumstances.

The information provided is intended to help people stay within the law and LOCOG expects it to be used in good faith.

In areas of doubt, please respect the spirit of the law and do not undertake any activity which is contrary to LOCOG's aims and objectives (see further point 1 below).

The disclaimer at point 8 must be read. If you are in any doubt as to the effect of OSPA or the 2006 Act, please consult your own adviser for legal advice.

**The London Organising Committee
of the Olympic Games and Paralympic Games Limited
Updated 30 April 2010**

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Part A – Introduction and Background:

1. Introduction

1.1 Purpose of document

The London Organising Committee of the Olympic Games and Paralympic Games Limited (“**LOCOG**”) has produced this document to provide detailed information about the special statutory marketing rights which are (or will be) afforded to the London 2012 Olympic Games and Paralympic Games (the “**2012 Games**”) in the United Kingdom, namely, rights under:

- **The Olympic Association Right** established by the Olympic Symbol etc (Protection) Act 1995 (“**OSPA**”) (as amended by Schedule 3 of the London Olympic Games and Paralympic Games Act 2006 (the “**2006 Act**”));
- **The Paralympic Association Right** established by OSPA;
- **The London Olympic Association Right** (“**LOAR**”) established by Schedule 4 of the 2006 Act;
- The **Advertising Regulations** to be established in accordance with the 2006 Act;
- The **Street Trading Regulations** to be established in accordance with the 2006 Act; and
- The **Ticket Touting Offences** established by the 2006 Act.

These laws will allow LOCOG to protect the integrity and value of the 2012 Games and the Olympic and Paralympic movements in general.

By applying and enforcing these laws, LOCOG will stop people undermining the rights granted to the official broadcasters, sponsors, suppliers and licensees of the 2012 Games. These rights are acquired by companies who invest millions of pounds to help support the planning, staging and organisation of the 2012 Games in an official capacity. People who seek the same benefits for free, without investing in the Games by paying for these rights - for example by engaging in “ambush marketing” or producing counterfeit goods - are effectively depriving the Games of key revenue. If the 2012 Games are to be the great success to which we all aspire LOCOG cannot allow such unlawful activity and will do everything to ensure it is stopped.

LOCOG also has contractual obligations to protect the investment that official broadcasters, sponsors, suppliers and licensees make, and to protect the integrity of the Games. LOCOG will exercise its legal rights to fulfil these obligations

However, LOCOG hopes that this informational material, which is part of an ongoing educational process, will help everyone to stay within the law.

Copies of the Olympic Symbol etc (Protection) Act 1995 (unamended) and The London Olympic Games and Paralympic Games Act 2006 can be found at:

www.opsi.gov.uk/acts

1.2 LOCOG's role

LOCOG is responsible for organising and staging the London 2012 Olympic Games and Paralympic Games. It also sells sponsorship to the British Olympic and Paralympic teams ("**Team GB**" and "**ParalympicsGB**") until 2012, and has obligations to the British Olympic Association ("**BOA**") and the British Paralympic Association ("**BPA**") to protect the marketing rights to the teams. As such LOCOG has a direct role in supporting the British teams in the run-up to 2012 and beyond.

LOCOG is a private, limited liability company with only 3% (approx.) of its revenue coming from the public sector (which represents funding for the Paralympic Games specifically). The remaining 97% is raised privately, through sponsorship, merchandise sales, ticket sales and broadcasting revenues etc. The above statutory provisions are intended to secure LOCOG's ability to raise this revenue.

OSPA & LOAR:

LOCOG must raise money by selling rights of association to the 2012 Games to sponsors, by selling official merchandise and by selling tickets. In order to maximise sponsorship revenue it is essential that the association which can be granted to sponsors is exclusive. LOCOG must therefore be able to prevent others from creating an unauthorised association with the Games and thereby profiting from the Games for free to the detriment of those who have lawfully acquired such rights. LOCOG must also be able to ensure that counterfeit and other unofficial London 2012, Team GB and ParalympicsGB merchandise is not put on the market, thereby prejudicing its ability to raise funds from the sale of official merchandise. LOCOG has therefore been granted special rights under OSPA and LOAR (see further Part B).

Although LOCOG has a responsibility to enforce the statutory rights which have been conferred on it under OSPA and LOAR, it is not a government authority or anything similar, and does not have any regulatory responsibilities in relation to LOAR or OSPA.

It does not therefore have a duty, nor does it have the resources, to provide individual advice to people concerned that their activities may infringe LOCOG's rights.

However, to satisfy demand for information about the 2006 Act and address concerns which have been raised, LOCOG has produced this document as a resource for people looking for further information on the law in this area. This document also meets commitments LOCOG made during the passage of the 2006 Act through Parliament, which LOCOG will continue to fulfil by regularly updating this document as its interpretation of OSPA and LOAR evolves. LOCOG has also produced user friendly "What you need to know" booklets which provide an overview of our rights. Those booklets should be read in conjunction with this document. These are available at london2012.com/brandprotection.

Advertising Regulations & Street Trading Regulations:

The powers proposed under the Advertising Regulations and Street Trading Regulations (the "**Regulations**") (see further Part C below) are to be conferred on the Olympic Delivery Authority (the "**ODA**"). The ODA is the public authority responsible for building the permanent infrastructure necessary for London to host the 2012 Games. The ODA is financed by National Lottery and Council Tax grants but does not have the power to grant any marketing or communication rights to the 2012 Games, Team GB or ParalympicsGB. LOCOG will work with the ODA and other public authorities such as the police and trading standards to ensure the Regulations are enforced.

This document gives a brief overview of the provisions of the 2006 Act which provide for these Regulations to be made. In June 2009, the ODA issued a notice outlining how the Regulations will be implemented. This is available on the London 2012 website at <http://www.london2012.com/news/publications/pdf/advertising-and-street-trading-regulations-detailed-document.pdf> Once the Regulations are drafted and become law (which is anticipated to be in 2010) this document will be updated to provide further details.

Ticket Touting Offences:

LOCOG is responsible for selling tickets (for both sporting and non-sporting events) to the 2012 Games. To prevent tickets being made available on the black market and thereby protecting the consumer, the 2006 Act introduces criminal offences in relation to the resale of tickets and the sale of fake London 2012 tickets. LOCOG will work with the police and other public authorities to ensure these laws are enforced.

This document gives a brief overview of the Ticket Touting Offences. Further details will be provided when tickets go on sale (anticipated to be in 2011).

1.3 Other relevant laws and regulations etc

The statutory provisions listed above should not be considered in isolation. The following (amongst others) may be relevant:

- **Trade marks** – LOCOG, the International Olympic Committee (“**IOC**”), the International Paralympic Committee (“**IPC**”), the BOA and BPA are all proprietors and/or licensees of certain Community and UK registered trade marks, as well as trade marks in many other jurisdictions around the world. Some of the key trade marks relating to the 2012 Games are illustrated at Schedule 1. However, those marks are not exhaustive and additional trade marks will be registered in the run-up to 2012.
- **Design Rights** – most of the designs relating to the 2012 Games (eg the designs of mascots, the official font of London 2012 and medals etc) will be registered as registered designs and/or protected by design right.
- **Copyright** – copyright will protect all artwork, graphics and films etc created by or for LOCOG in connection with the 2012 Games, including for example the London 2012 pictograms, an illustration of which is shown at Schedule 1.
- **Passing off** – the tort of passing off will continue to apply and may be particularly relevant in cases of false endorsement. For example where there is a suggestion that a product or service claims to be endorsed by LOCOG or by the 2012 Games.
- **The Consumer Protection from Unfair Trading Regulations 2008** - these regulations will be relevant to false and misleading trade practices.
- **Advertising rules, regulations and codes of practice** – in relation to advertising, the general rules, regulations and codes of practice set down by the advertising industry will continue to apply. Compliance with the provisions of OSPA and the 2006 Act will not necessarily confer immunity in respect of other such requirements.
- **The Olympic Charter & IPC Handbook** – these put certain constraints on participants in the Olympic Games and Paralympic Games respectively from allowing their image to be used in advertising, and from participating in other commercial and promotional activities during the period of any Olympic or Paralympic Games in which they are competing. (See further point 4.1.)

Part B – Association Rights:

2. The Olympic Symbol etc (Protection) Act 1995 (“OSPA”) *as amended by the 2006 Act*

2.1 Background

OSPA was introduced in 1995, creating the Olympic Association Right. This right confers exclusive rights on the British Olympic Association (“**BOA**”) in relation to certain Olympic words and symbols (as explained below).

The 2006 Act extends the original protection afforded to Olympic marks under OSPA to equivalent Paralympic marks, by creating the Paralympic Association Right. This right is conferred on the British Paralympic Association (“**BPA**”).

Regulations under OSPA also provide for LOCOG to become a joint proprietor with the BOA and BPA of the Olympic and Paralympic Association Rights respectively, until 31 December 2012.

The 2006 Act has also clarified and abolished some of the original defences in OSPA (see further point 2.5 below).

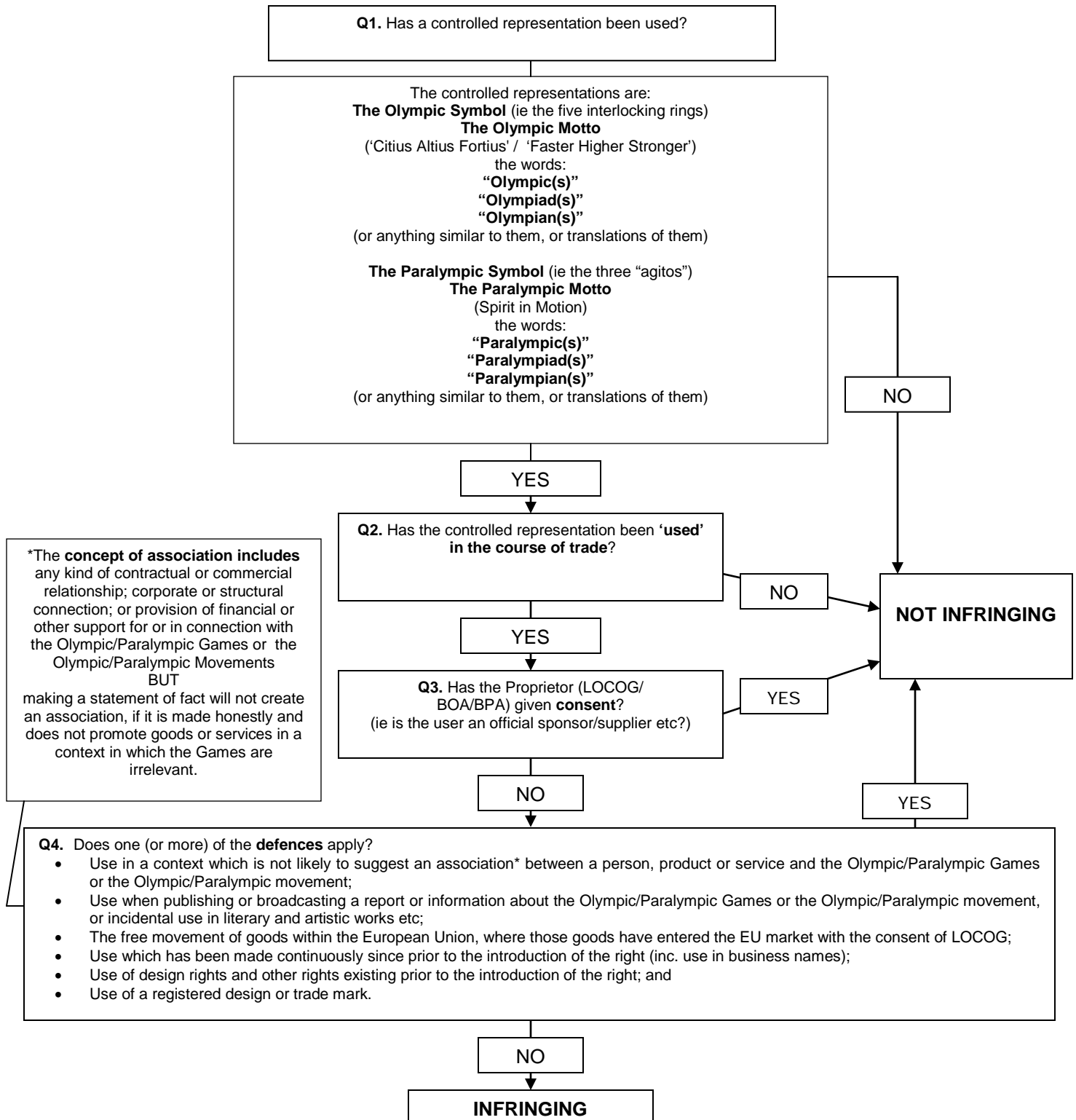
NB: OSPA applies in the UK in relation to the Olympic and Paralympic movements and the Olympic and Paralympic Games generally (ie including past and future Games – eg Beijing 2008 and Vancouver 2010 and Sochi 2014) (the “**Games**”). It is not limited to the 2012 Games.

The following summary of OSPA is based on the Olympic Symbol etc (Protection) Act 1995 **as amended by the 2006 Act**.

The flowchart overleaf has been created by LOCOG to illustrate how OSPA operates. More detail on each question listed in the flowchart is then given in points 2.2 – 2.5 below.

Flowchart summarising OSPA

(This flowchart reflects the provisions of the Olympic Symbol etc (Protection) Act 1995 (as amended).)



Elaboration on Flowchart:

2.2 Question 1: Has a “controlled representation” been used?

OSPA creates the Olympic Association Right and the Paralympic Association Right, which give the “Proprietor” of each Right (see 2.4 below) exclusive rights in relation to the following “controlled representations”:

A. The “Olympic Association Right”:

(i) The Olympic symbol

(ie the five interlocking rings of the IOC)

and anything so similar to it as to be likely to create an association with it

(ii) The words:

'Olympic' or 'Olympics'

'Olympiad' or 'Olympiads'

'Olympian' or 'Olympians'

including their translations and anything so similar to them as to be likely to create an association with the Olympic Games or the Olympic movement

(iii) The Olympic motto

('Citius Altius Fortius'/'Faster Higher Stronger')

including translations of the motto and anything so similar to it as to be likely to create an association with it

B. The “Paralympic Association Right”:

(i) The Paralympic symbol

(ie the three agitos of the IPC)

and anything so similar to it as to be likely to create an association with it

(ii) The words:

'Paralympic' or 'Paralympics'

'Paralympiad' or 'Paralympiads'

'Paralympian' or 'Paralympians'

including their translations and anything so similar to them as to be likely to create an association with the Paralympic Games or the Paralympic movement

(iii) **The Paralympic motto**

(‘Spirit in Motion’)

including translations of the motto and anything so similar to it as to be likely to create an association with it

2.3 **Question 2: Has the controlled representation been used in the course of trade?**

Any *use* of the above controlled representations, *in the course of trade*, without the consent of the *Proprietor* will, subject to any defences applying, infringe the rights granted by OSPA.

“**In the course of trade**” bears its ordinary meaning.

The definition of infringing “**uses**” includes amongst others:

- use in advertising;
- use on business papers;
- the application of a controlled representation to goods or their packaging; and
- supplying services under a sign including a controlled representation.

2.4 **Question 3: Has the Proprietor given consent?**

The **Proprietors** of the **Olympic Association Right** are the BOA and (for the period until 31 December 2012) LOCOG.

The **Proprietors** of the **Paralympic Association Right** are the BPA and (for the period until 31 December 2012) LOCOG.

OSPA does not dictate how “**consents**” to use the controlled representations must be granted by a Proprietor. However, consents will normally be granted by a formal written licence agreement, and generally only to official sponsors and suppliers, and official non-commercial partners of LOCOG. A list of current sponsors can be found at www.london2012.com.

2.5 Question 4: Does one (or more) of the defences apply?

2.5.1 Summary of defences

The defences to infringement of the Olympic and Paralympic Association Rights are contained in Section 4 of OSPA.

By way of summary, defences are available for the following types of activity (the defences summarised at (a), (b) and (c) are explored in more detail below):

(NB: ‘*’ indicates that the defence has been amended/introduced by the 2006 Act.)

- (a) *Use in a context which is not likely to suggest an association between a person, product or service and the Olympic/Paralympic Games or the Olympic/Paralympic movement (s4(3));

Eg An antique store advertising for sale:

“Original Marble Olympian Statue
circa 500BC”

- (b) *Making a statement honestly, provided it is not used for promotional purposes in an irrelevant context (s4(3)(b));

Eg An advert for a leisure centre:

“5 tennis courts; fully equipped gym; basketball court; Olympic sized swimming pool; jacuzzi, sauna and steam room”

Such a statement will benefit from the defence assuming that it accords with honest commercial practices (see further 2.5.3 below).

- (c) *Use when publishing or broadcasting a report or information about the Olympic/Paralympic Games or the Olympic/Paralympic movement, or incidental use in literary or artistic works etc (s4(1));

Eg a newspaper can publish reports and/or information about the Olympic/Paralympic Movement, or a film about an athlete can make incidental references to the Olympic Games/Paralympic Games without infringing OSPA

(NB This defence does not benefit advertising material which is published or broadcast at the same time as, or in connection with such a report or information, although adverts for the publication or broadcast itself are permitted - see further 2.5.4 and 4.5 below.)

- (d) *The free movement of goods within the European Union, where those goods have entered the EU market with the consent of the Proprietor (S4(4));

- (e) Use which has been made continuously since prior to the introduction of OSPA on 20 September 1995, including use in business names (s4(11) and 4(12));

Eg a café which has traded under the business name “Olympic Café” since before the introduction of OSPA can continue to trade and advertise its business as it has done in the past without infringing OSPA
(but this does not authorise the business to further suggest an association with the Games through other means)

- (f) Use of design rights and other rights existing prior to the introduction of OSPA in 1995, and use of any registered design or trade mark (s4(13) and 4(14));

Eg a pen manufacturer who has a registered trade mark for “Olympens” can continue to use the trade mark in the classes for which the trade mark is registered without infringing OSPA (but this does authorise the trade mark owner to further suggest an association with the Games through other means).

- (g) Use for judicial or parliamentary proceedings etc (s4(15)).

2.5.2 No association defence

Section 4(3) of OSPA provides a defence where there has been use of a controlled representation in a context which is not likely to suggest an association between a person, product or service and the Olympic/Paralympic Games or the Olympic/Paralympic movement.

Section 4(3)(a) of OSPA defines the concept of association to include any kind of **“contractual” or “commercial” relationship** with the Olympic/Paralympic Games or the Olympic/Paralympic movement, or any provision of **“financial or other support** for or in connection with” the Olympic/Paralympic Games or the Olympic/Paralympic

movement. (Note that this is an inclusive definition so does not exclude other types of association from being infringing).

Section 4(3)(b) then clarifies that statements made honestly and in relevant contexts will **not** create such an association. (See further 2.5.3 below.)

2.5.3 Statements made honestly and in relevant contexts

The section 4(3)(b) “honestly made statements” exception incorporates two important elements. To be covered by the exception, a statement:

- (a) must be in accordance with “*honest practices in industrial or commercial matters*”, and
- (b) must not make “*promotional or other commercial use of a protected word by incorporating it in a context to which the Olympic/Paralympic Games or the Olympic/Paralympic movement are substantively irrelevant*”.

LOCOG considers that the key factors as to whether a statement will benefit from these provisions are:

- (i) whether the statement is **true/accurate** (or believed by the person making the statement to be true/accurate);
- (ii) whether, despite being true and accurate, the statement might, given the context in which it is used, **cause confusion or misunderstanding, or be misleading** as to the commercial connection between the good or service in question and the Olympic/Paralympic Games or the Olympic/Paralympic movement;
- (iii) whether the person making the statement is taking unfair advantage of the value in the controlled representations;

(LOCOG considers that factors (i) to (iii) arise from the requirement that the use of the statement must accord with “honest practices”).)

- (iv) whether the Games are **relevant** to the context in which the statement is used.

For example, assuming that the following statements are accurate and would not, considering the statement and its placement as a whole (including for example whether

any emphasis is placed on the statement), cause confusion or misunderstanding, LOCOG considers that the following statements may benefit from the defence:

A factual reference on the website of a Bed & Breakfast in Greenwich, which states, amongst other useful information:

"The Bed & Breakfast is located in Greenwich, just a 5 minute walk to Observatory and next to the Olympic equestrian venues"

An advert for a new property development, which makes factual reference to the Games within the small print spec:

**Stratford Mansions
Buy Now!**

1 & 2 bedroom flats; ready summer 2010; £220,000 to £350,000; luxurious fittings; 5 minutes walk to Stratford International Station; next to Olympic Park; 15 minute commute to Canary Wharf

Any statements which use the controlled representations which, despite being true, are *confusing, misleading*, and/or are used in a context to which the Olympic/Paralympic Games/Movements are irrelevant are **unlikely** to benefit from the defence. In particular, if the reference to the Games is gratuitous, disproportionate or unduly emphasised (eg by using different font sizes/styles) the defence may not apply. The person making the statement should also be acting fairly in relation to the legitimate interests of the Proprietors, including LOCOG's interest in offering sponsors an exclusive association to the Games. For example LOCOG's position is that the following would not benefit from the defence:

An advert for a new property development:

"X Homes –

An Olympic investment not to be missed!

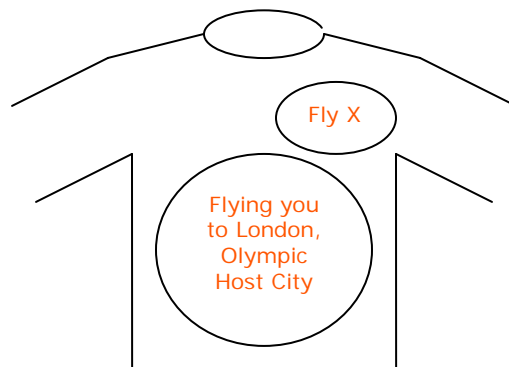
1 and 2 bedroom flats;
available in summer 2007;
luxurious fittings; 5
minutes walk to Stratford
International Station

An advert displayed in all London airports and stations:

X Hotels
welcome you to London

Hotels in every
Olympic Host City

A complimentary t-shirt given to passengers on a flight to London with its logo stitched in the corner of the t-shirt:



2.5.4 Defence for editorial use and use in literary or artistic works etc

Section 4(1) of OSPA allows the use of controlled representations when publishing or broadcasting a report or information about the Games and/or the Olympic and/or Paralympic movements. This is a wide defence which will benefit journalism. However, the defence expressly states that it does not benefit advertising material which is published or broadcast at the same time as, or in connection with, such reports or information. As such, 'advertorials' or other advertising and marketing materials which are presented as a report or information on the Games cannot 'piggyback' onto this defence. Section 4.5 below provides further information on journalism and the provision of information on the Games.

Section 4(1) of OSPA also allows the incidental inclusion of controlled representations within literary works, dramatic works, sound recordings, films or broadcasts.

2.6 Enforcement

Infringement of some of the rights granted by OSPA is a criminal offence. In particular the sale or advertisement of goods which bear a controlled representation may be a criminal offence.

Civil claims can also be brought by the Proprietor – remedies include:

- injunctions;
- damages;
- delivery up of infringing goods; and
- account of profits.

2.7 Examples

The following are examples of activities which the Proprietors have previously challenged on the basis of their rights under OSPA. They may assist in determining whether future circumstances give rise to infringements of OSPA. However, because context is relevant to determining whether an infringement has occurred, each example must be assessed on its own merits.

- Adverts for an "Olympic Sale" etc
- Clothing with "Olympic Athletic Dept", "Official Olympic", "OLYMPIAN" etc on them
- The promotion of an "Olympic Bonus Mortgage"

- Gyms advertising “Olympic Try-out” promotions
- Company logos etc which use adaptations of the Olympic symbol
- Promotional competitions to win “Olympic tickets” (Note that although OSPA may be infringed in such cases, the ticket touting offences (see Part D below) may also be relevant.)

Checklist

Any advert which uses any of the Olympic or Paralympic marks/words listed at point 2.2 above is likely to infringe OSPA, unless a defence applies. Ask the following questions to confirm infringement:

DOES THE ADVERT USE ONE OF THE MARKS OR WORDS LISTED IN POINT 2.2 ABOVE?	Yes
IS THE USE “IN THE COURSE OF TRADE”? (ie is it by or on behalf of a commercial entity, selling/promoting something?)	Yes
DOES THE USER HAVE THE CONSENT OF LOCOG/THE BOA/THE BPA?	No
DOES THE USER BENEFIT FROM A DEFENCE? (see further point 2.5 above.)	No
	= Infringement

2.9 Further information

The text of OSPA can be found at:

<http://www.opsi.gov.uk/acts/>

(NB: the version of OSPA available at this site is the original version of OSPA and does not take into account amendments made by the 2006 Act.)

3. The London Olympic Association Right (“LOAR”)

3.1 Background

LOAR was introduced by the 2006 Act and prevents people using “representations” to create an unauthorised association specifically with the London 2012 Olympic Games and/or Paralympic Games (referred to in the 2006 Act as the “**London Olympics**”).

The right created under LOAR is a **civil right**, conferred on LOCOG. It is analogous to other private intellectual property rights with the remedies for infringement being damages, account of profit, and injunction etc.

LOAR is actually **intended to prevent a specific type of activity** – ie activity which, although it does not infringe existing legal rights (such as those under trade mark legislation or the tort of passing off), does create **an unauthorised association between a person, good or service and the Games** in a way which allows that person to gain for free the benefits which LOCOG’s sponsors, official suppliers and merchandise licensees will invest millions of pounds in the Games to obtain.

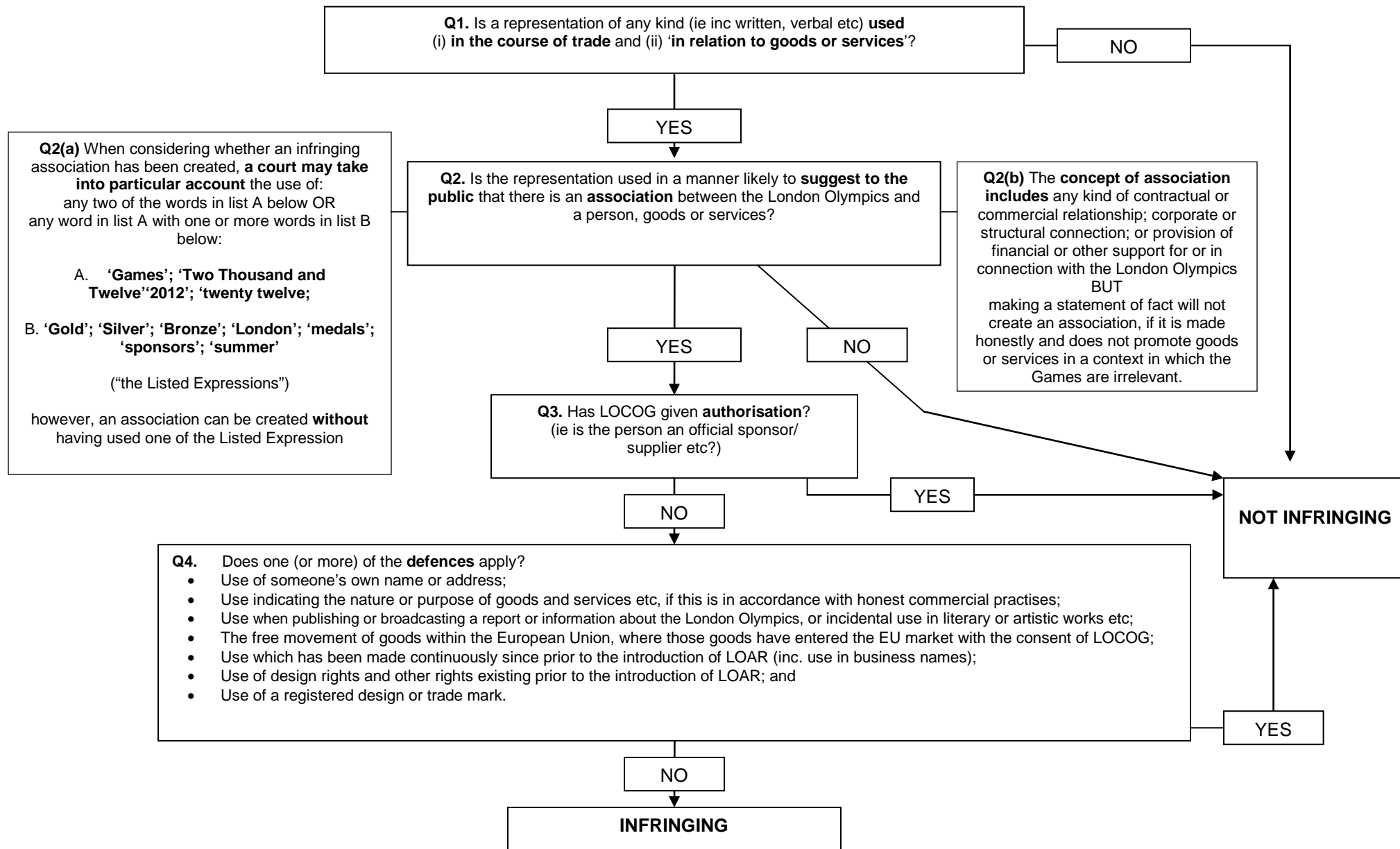
LOAR is therefore subject to a number of tests and provisos, and is subject to numerous defences. This ensures that only activities which truly prejudice the rights we need to offer exclusively to our sponsors, official suppliers and merchandise licensees are caught.

Importantly, when considering if there is an infringement, it is essential to analyse LOAR as a whole, as a number of factors must be considered together – eg how and by whom a “representation” has been used; whether an “association” with the Games has been created; the use of the words which a court may take into consideration when considering infringement; and whether a defence applies.

The flowchart overleaf has been created by LOCOG to try to illustrate how LOAR operates. More detail on each question listed in the flowchart is then given in points 3.2 – 3.5.

Flowchart summarising the London Olympics Association Right

(This flowchart reflects the provisions of Schedule 4 of the London Olympic Games and Paralympic Games 2006 Act.)



Elaboration on Flowchart:

3.2 Question 1: Is a representation, of any kind, used (i) in the course of trade and (ii) in relation to goods or services?

Any *use* of representations in a manner likely to suggest to the public an association with the 2012 Games, *in the course of trade*, without the authorisation of LOCOG will, subject to any defences applying, infringe the rights granted by LOAR.

(i) “In the course of trade” bears its ordinary meaning.

(ii) The phrase “**use in relation to goods and services**” expressly covers advertising of goods and services, and applying representations on to goods or their packaging. The definition of infringing “uses” includes, amongst other things:

use in advertising;
use on business papers;
the application of a representation to goods or their packaging; and
supplying services under a sign including a representation etc.

3.3 Question 2: Is the representation used in a manner likely to suggest to the public that there is an association between the London Olympics and a person, goods or services?

(a) Representations which suggest an association

LOAR protects against someone creating an unauthorised association with the London 2012 Olympic Games and/or Paralympic Games. The key word here is “association”.

An infringing association can be created by the use of **any** “representation”. This may be an image, graphic design, sound, or word (spoken or written) etc. One of the most obvious ways in which **an association may be created with the 2012 Games is through use of the official London 2012 emblems or other official designs, images and marks related to the 2012 Games (eg pictograms, mascots)**. Images of the Olympic Stadium or Olympic Park could also contribute to the creation of an association. Where these are used without authorisation, trade mark, design right

and/or copyright protection may be relevant, but the unauthorised use of such marks may also create an infringing association with the 2012 Games for the purposes of LOAR (see (b) below).

Although the use of *any* type of representation can create an infringing association under LOAR, Schedule 4 Paragraph 3 of the 2006 Act states that certain words, when used in certain combinations, may be taken into particular account by a court when considering whether there has been an infringement of LOCOG's right.

The words identified, referred to in this document as the “**Listed Words**”, are:

A	B
<p>‘Games’ ‘Two Thousand and Twelve’ ‘2012’ ‘twenty twelve’</p>	<p>‘Gold’ ‘Silver’ ‘Bronze’ ‘London’ ‘medals’ ‘sponsors’ ‘summer’</p>

(it is immaterial in which case the words are written)

A court may take these words into particular account when they are used in the following combinations:-

any two of the words in list A above

eg, an advert for X Brand saying
“backing the 2012 Games”

Or

any word in list A with one or more words in list B

eg, an advert for Y Brand saying
“supporting the London Games”

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(NB: Such combinations of the Listed Words are referred to in this document as the **“Listed Expressions”**).

Although the use of the Listed Expressions may well create an association with the 2012 Games, there will be many situations in which their use clearly **does not** create an association with the 2012 Games. For example the following statements, despite using the Listed Expressions, are unlikely, by themselves, to infringe LOAR as no actual “association” (see (b) below) is created by the statement:

An advert for:
“The Tower of London Gold Jewels
Exhibition 2012”

A toy shop advertising:
“Massive Summer Sale – Games, Toys, Gadgets”

A Tour de France sponsor advertising:
“Official sponsor of the Tour de France 2012”

A travel agent advertising in January 2012:
“Book your holiday for 2012 early:
Fantastic summer offers available now!”

However, the **use in question must always be considered as a whole**. In some cases, the words used in an advert for example, may not create an association in themselves, yet **the cumulative effect of using other words or imagery etc may be to create an infringing association**. Remember, LOAR can be infringed even if the Listed Expressions are not used. For example, an advert for a train company with a slogan “Come to the Capital this summer – see the world” does not in itself create an

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association with the 2012 Games, but if the advert is run in 2012, pictures athletes running through London past 2012 Games' venues, dressed in national kit and carrying Olympic-style torches, the advert will create an association with the 2012 Games, despite no use of the Listed Expressions.

(b) The definition of “association”

Schedule 4 Paragraph 1(2)(a) of the 2006 Act defines the concept of association to include any kind of “**contractual” or “commercial” relationship** with the 2012 Games, or any provision of “**financial or other support** for or in connection with” the 2012 Games.

Paragraph 1(2)(b) then carves out honestly made statements (provided they are not used for promotional purposes in irrelevant contexts - ie contexts to which the 2012 Games are not relevant). Such statements will not create an association for the purposes of LOAR. (See further point 3.5.2 below).

Effectively, paragraph 1(2)(b) operates as a defence and will be considered in more detail below at point 3.5.

The context in which a representation is made may be all-important. The examples provided throughout this document are intended to give illustrations of circumstances where an association has or has not been created. In less obvious cases you must always return to the question: has an association with the 2012 Games been created? Point 3.6 below analyses some of the factors which LOCOG believes may contribute to the creation of an association. Ultimately however, it will be for a judge to determine whether an association has been created in any particular case.

3.4 Question 3: Has LOCOG given authorisation?

Schedule 4 of the 2006 Act does not dictate how **authorisations** under LOAR must be granted by LOCOG. However, authorisations will normally be granted by a formal written licence agreement, and will only be granted to LOCOG's official sponsors and suppliers, and official non-commercial partners. LOCOG is obliged by the 2006 Act to keep a **publicly available register** of anyone to whom it grants an authorisation. This may include class exemptions, eg for schools and local authorities, taking part in official London 2012 programmes.

A list of current sponsors of the Games (including Team GB and ParalympicsGB) can be found at www.london2012.com.

3.5 Question 4: Does one (or more) of the defences apply?

3.5.1 Summary of defences

The defences to LOAR are contained in Schedule 4 Paragraphs 6 to 9 of the 2006 Act and, by incorporation, Section 4 (11) to (14) of OSPA.

When considering the defences, it should be remembered that, **it is only necessary to consider whether a defence applies if it has been determined that an association with the Games has been created.**

By way of summary, defences are available for the following types of activity (those indicated with a “*” are explored in more detail below):

- (a) Use of someone’s own name or address, provided this is in accordance with honest commercial practices (LOAR Sch 4 Para 7(a));

eg a business with offices at “2012 Gold Street”
can refer to this address in adverts without
infringing LOAR
(but this does not exempt the business from
creating an association with the 2012 Games
through other means).

- (b) *Use indicating the quality, quantity, value, geographical origin, time of production or purpose of goods and services etc, provided this is in accordance with honest commercial practices (LOAR Sch 4 Para 7 (c) and (d));

eg a bottle of wine, produced by Gold’s Winery
in 2012 can be referred to in supermarkets’
adverts:
“Gold’s 2012 Claret - 6 bottles for £30”
without infringing LOAR

- (c) Use when publishing or broadcasting a report or information about the Olympic/Paralympic Games or the Olympic/Paralympic movement, and incidental use in literary or artistic works etc (LOAR Sch 4 Para 8);

eg a newspaper can publish reports and/or information about the 2012 Games, or a film about an athlete can make incidental references to the 2012 Games without infringing LOAR

(NB This defence does not benefit advertising material which is published or broadcast at the same time as, or in connection with such a report or information, although adverts for the publication or broadcast itself are permitted - see further 3.5.4 and 4.5 below.)

- (d) The free movement of goods within the European Union, where those goods have already entered the EU market with the consent of LOCOG (LOAR Sch 4 Para 9));
- (e) Use which has been made continuously since prior to the introduction of LOAR (on 30 March 2006), including use in business names (OSPA S4(11) and 4(12) – as incorporated by Sch 4 Para 10(1)(c));

eg a café which has traded under the business name “2012 Games Café” since before the introduction of LOAR can continue to trade and advertise its business as it has done in the past without infringing LOAR

(but this does not authorise the business to further suggest an association with the 2012 Games through other means)

- (f) Use of design rights and other rights existing prior to the introduction of LOAR and use of any registered designs or trade marks (LOAR Sch 4 Para 10(1)(b) which is incorporated by reference to OSPA S4(13) and (14)).

3.5.2 Statements made honestly and in relevant contexts

Although not technically a defence, Schedule 4 Paragraph 1(2)(b) of the 2006 Act (which carves out “honestly made statements” from the definition of what creates an infringing association with the 2012 Games) operates as such. It also equates to the Section 4(3)(b) defence in OSPA (see point 2.5.3 above).

The “honestly made statements” exception incorporates two important elements. To be covered by the exception, a statement:

- (a) must be in accordance with “*honest practices in industrial or commercial matters*”; and
- (b) must not make “*promotional or other commercial use of a representation relating to the London Olympics by incorporating it in a context to which the London Olympics are substantively irrelevant*”.

LOCOG considers that the key factors as to whether a statement will benefit from these provisions are:

- (i) whether the statement is **true/accurate** (or believed by the person making the statement to be true/accurate);
- (ii) whether, despite being true and accurate, the statement might, given the context in which it is used, **cause confusion or misunderstanding, or be misleading** as to the commercial connection between the good or service in relation to which the statement is being made and the 2012 Games;
- (iii) whether the person making the statement is taking unfair advantage of the value in the 2012 Games;

(LOCOG considers that factors (i) to (iii) arise from the requirement that the use of the statement must accord with “honest practices”).

- (iv) whether the Games are **relevant** to the context in which the statement is used.

For example, assuming that the following statements are accurate and would not, considering the statement and its placement as a whole (including for example whether any emphasis is placed on the statement), cause confusion or misunderstanding, LOCOG considers that the following statements may benefit from the exception:

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A reference in a brochure for a property development in Stratford which states, amongst other relevant information:

“The development is in the heart of Stratford, just a 5 minute walk from Stratford international station and next to 2012 Games village”

A leaflet distributed by a train operator announcing:

“Timetable changes during the 2012 Summer Games”

Any statements which create an association with the 2012 Games and which, despite being true, are *confusing*, *misleading*, and/or are used in a context to which the 2012 Games are irrelevant are **unlikely** to benefit from the exception. In particular, if the reference to the 2012 Games is gratuitous, disproportionate or unduly emphasised (eg by using different font sizes/styles) the exception may not apply. The person making the statement should also be acting fairly in relation to the legitimate interests of LOCOG, including its interest in offering sponsors an exclusive association with the Games. For example, LOCOG’s position is that the following statements would not benefit from the exception:

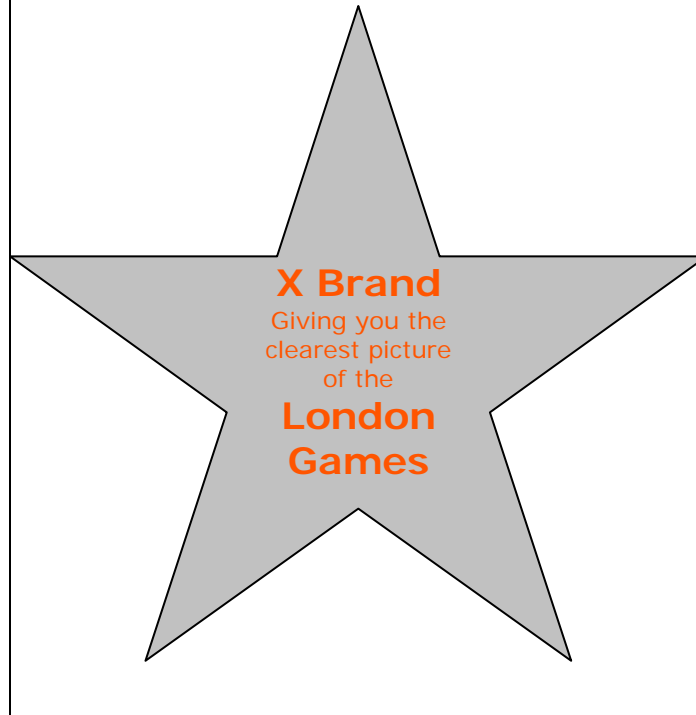
A billboard advert for a company which owns a chain of hotels throughout the UK:

X Hotels – For a great night’s sleep

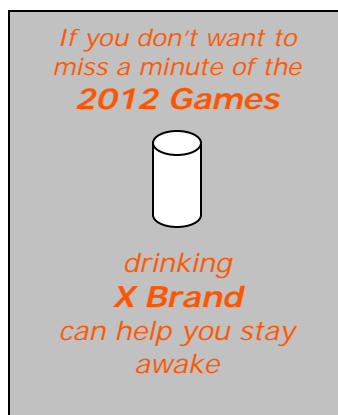
10% discount for
London 2012
Ticket holders

Book online at xhotels.com

An in-store promotion for flat screen TVs with marketing material displayed throughout the store:



An advert for a caffeine drink:



3.5.3 Use indicating the nature or purpose of goods and services etc

This defence (contained in LOAR Sch 4 Para 7 (b) and (c)) allows the use of:

“indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of goods or services,” and

“a representation which is necessary to indicate the intended purpose of a product or service”...

In the majority of instances, legitimate indications of *quality, quantity, value, geographical origin, and time of production* will not create an association with the 2012 Games anyway.

A few products whose specific *purpose* or *characteristics* relate to the 2012 Games, such as 2012 Games merchandise and tickets etc, will need to be described in a way which could create an association with the 2012 Games. They would benefit from this defence.

However, both limbs of the defence are subject to the proviso that, in each case, the use must be *“in accordance with honest practices in industrial or commercial matters”*.

LOCOG therefore considers that in determining whether the defence applies, the following considerations will be relevant:

- (i) whether the statement is **true/accurate**;
- (ii) whether, despite being true and accurate, the statement might, given the context in which it is used, **cause confusion or misunderstanding or be misleading** as to the relationship between the good or service in relation to which the statement is being made and the 2012 Games; and
- (iii) whether the person making the statement is acting fairly in relation to the legitimate interests of LOCOG as the rights holder.

For example, the following **may** benefit from the defence:

An advert for whiskey which indicates accurately and in an appropriate, proportionate manner its time and place of production:



However LOCOG's position is that the following example **would not** benefit from the defence, because it is likely to confuse, or mislead as to the relationship of X Brand with the Games:

T-shirts (even if produced in London, in 2012) which are given away in a promotion by X-Brand, with its logo stitched in the corner of the t-shirt:



3.5.4 Defence for editorial use and use in literary or artistic works

Paragraph 8 of Schedule 4 of the 2006 Act allows the use of representations which create an association with the 2012 Games when publishing or broadcasting a report or information about the 2012 Games. This is a wide defence which will benefit journalism. However, the defence expressly states that it does not benefit advertising material which is published or broadcast at the same time as, or in connection with, such reports or information. As such, 'advertorials' or other advertising and marketing materials which are presented as a report or information on the 2012 Games cannot 'piggyback' onto this defence. Further information on these issues is provided at point 4.5 below.

Paragraph 8 of Schedule 4 of the 2006 Act also allows the incidental inclusion of controlled representations within literary works, dramatic works, sound recordings, films or broadcasts.

3.6. Other factors which may contribute to the creation of an infringing association under LOAR

As mentioned above, when considering if something infringes LOAR, it is essential to look at all the relevant factors – use (or not) of the Listed Expressions will not be conclusive. Other words, images or representations used will be relevant, as may be the context and manner in which they are used.

3.6.1 Content

Even if the Listed Expressions have been used, the presence of other words and/or certain images in an advert or promotion may lead to the conclusion that **no** association has been created with the 2012 Games. On the other hand, the creative use of Games-related images, colours, icons and other phrases etc may firmly establish an association with the 2012 Games. (See examples below at point 3.6.3).

Some representations which we anticipate **might** be used to create an association are listed below. Whether their use creates an association will still be a question of fact in each case and will depend, for example, on how they are presented and the context in which they are used.

NB: LOCOG is NOT suggesting that use of the items listed below will immediately create an association with the 2012 Games, but they may well be relevant. The more of these items that are used, the more likely it is that an association with the 2012 Games will be created.

An Olympic-style torch/flame

Use of the five colours of the Olympic symbol

Use of designs which reproduce or closely resemble the official designs of the 2012 Games

Images of venues to be used for, and closely associated with, the 2012 Games such as the Olympic Stadium or Aquatics Centre in Olympic Park

The depiction of Olympic and/or Paralympic sports

(especially when a number of sports are represented – but see also point 4.1 below re the use of Olympians in adverts)

Words which capture the essence of the 2012 Games and/or qualities associated with Olympism,

(eg: “Spirit”; “Endeavour”; “Friendship”; “Winning”; “Determination”)

“XXX” or “30th”

(the 2012 Games will be the Games of the XXX Olympiad)

3.6.2 Context

LOCOG believes that various factors, other than the actual content of an advert may also be relevant as to whether an association is created, for example:

- (a) *Past conduct* – if a business can show, for example, that it has always run an annual sale called their “[YEAR] Gold Sale”, this will indicate that no association is being created with the 2012 Games. Provided the 2012 sale is promoted without in any other way creating an association with the 2012 Games, LOCOG would take a reasonable stance in such circumstances.
- (b) The *nature of the product* – it may be relevant to consider the nature of the product or service in question, and the manner in which that type of product

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is normally promoted. If for example an advert shown during the 2012 Games, features athletes and evokes emotions associated with the Games, it may be appropriate to ask, why, if it is not to gain an association with the 2012 Games, is the product being promoted in this way?

- (c) *Timing* – an advert talking about winning medals at the Games which is broadcast before or during the Commonwealth Games is likely to be associated with those Games, not with London 2012. On the other hand, such an advert which is broadcast very heavily during the London 2012 Games period, and has not been used previously, is likely to create an infringing association for the purposes of LOAR.

3.6.3 Examples

LOCOG's view as to when there would or would not be an infringement of its rights under LOAR is illustrated by the following examples:

UNLIKELY TO INFRINGE	WILL INFRINGE
<p>An advert for running spikes showing runners in a non-descript setting and claiming:</p> <p>“Helping athletes run faster”</p>	<p>An advert for running spikes showing runners in a stadium, carrying Olympic-type torches and claiming:</p> <p>“Helping athletes win <u>gold</u> at the London <u>Games</u>”</p>
<p>An advert for hair gel featuring a famous Paralympian and showing some of their inspirational career performances with the tag-line:</p> <p>“Some people create magic which can make your hair stand on end. We’ve bottled it”</p>	<p>An advert for hair gel which shows athletic images and an athlete being presented with a gold medal outside one of the iconic London 2012 venues, with a voiceover:</p> <p>“Is the excitement of the 2012 Games making the hairs on your neck stand on end? Use X Brand Super Gel to make sure your head matches.”</p>

4. Special cases (relevant when considering both OSPA and LOAR).

4.1 Use of Olympians

The LOAR and OSPA are not intended to prevent Olympians or Paralympians endorsing products and the appearance in an advert of an Olympian will not, by itself, create an association with the Games. However, where an Olympian or Paralympian is used in an advert which also uses controlled representations/Listed Expressions and other Games-related images etc, there may nevertheless be an infringing association created with the Games for the purposes of OSPA/LOAR.

LOCOG's position as to when there would or would not be an infringement of its rights under OSPA/LOAR is illustrated by the following examples:

UNLIKELY TO INFRINGE	WILL INFRINGE
An advert for a product endorsed by a Paralympian which has a picture of the Paralympian holding the product with a small caption beside the image saying "Joe Bloggs, Paralympic Champion 2008"	An advert for a company which is supporting a number of athletes which shows them in action with the headline: "Our Olympians"
An advert featuring an Olympian at the wheel of a car and with a slogan: "The power to get you there X Brand Cars – sponsors of Joe Bloggs"	A TV advert for a gas company featuring Olympians running through London carrying an Olympic style torch with a slogan "Lighting the flame for 2012".

The **Olympic Charter** and **IPC Handbook** also **prohibit athletes** participating in the Olympic Games and Paralympic Games from allowing their **image** to be used in **any form of advertising during the period of the Games** (except as may be permitted by the IOC/IPC etc). (These restrictions are not specific to the London Games and will apply equally to Beijing 2008 and Vancouver 2010). This has been the case for previous Games.

Images and footage from the Olympic Games and Paralympic Games are also carefully controlled and are generally only licensed for commercial use to official sponsors and licensees of the Games.

NB: In all cases, the consent of the athlete must of course be obtained before using their name or image to endorse products or services.

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4.2 National Governing Bodies

Importantly, it should be noted that there is only one British Olympic team and one British Paralympic team – all sports are brought together collectively under one name: Team GB and ParalympicsGB respectively. There is not therefore an Olympic Swimming team or British Paralympic Rowing team.

UK National Governing Bodies for the sports which participate in the Olympic and Paralympic Games (“**NGBs**”) contribute very significantly to the success of Team GB and ParalympicsGB. However, NGBs do not fund the teams’ attendance at the Olympic and Paralympic Games. It is Team GB and ParalympicsGB sponsors who do this.

In order to fund the cost of taking the teams to the Games, we must retain the right for Games’ sponsors to have an *exclusive* association with Team GB and ParalympicsGB. NGB sponsors (unless also Games’ sponsors) cannot therefore be granted rights to associate themselves with the Games: the sponsors of NGB’s buy the right to associate themselves with that particular sport/the national team, not to the Olympic or Paralympic Games/teams. As such, OSPA and LOAR will apply to them as they would to any other company.

4.3 Promotions to win Games’ tickets etc

The unauthorised use of Games’ tickets in product promotions (as prizes in commercial/promotional competitions etc) and for other commercial purposes may well:

- (a) fall foul of the terms and conditions of Games tickets;
- (b) if Olympic or Paralympic terminology is used, infringe OSPA; and/or
- (c) in relation to 2012 Games tickets, create an infringing association with the Games for the purposes of LOAR.

The Ticket Touting Offences may also be of relevance here.

LOCOG will grant its sponsors the right to use Games tickets for commercial purposes, for example as incentives for staff, corporate hospitality and as prizes in customer promotions. The value to sponsors of the *exclusive* rights to run such promotions is huge. As such, LOCOG will take a firm stance against any non-sponsors using tickets in unauthorised promotions.

4.4 Sporting goods companies etc

There has been some concern about how LOAR may affect the ability of companies to advertise sports-related products in the normal way – ie by using athletes; generic sporting images; and messages about athleticism, winning, determination etc. We wish to ease such concerns.

Although the use of athletic imagery etc in the promotion of goods or services could contribute to the creation of an association with the 2012 Games, LOCOG acknowledges that adverts for sports clothing/equipment, gyms/health clubs and health food products etc have legitimate grounds for featuring these types of generic sporting images/ideas in their adverts.

However, OSPA and LOAR still apply to these industries, and if for example the Listed Expressions, images of an Olympic style torch and/or use of the five colours of the Olympic symbol are used by such companies alongside athletic images and messages etc, this is likely to result in an infringement of LOAR.

LOCOG's view as to when there would or would not be an infringement of its rights under OSPA/LOAR is illustrated by the following examples:

UNLIKELY TO INFRINGE	WILL INFRINGE
<p>An advert for a sports drink showing athletes competing, with a slogan:</p> <p>“giving you the energy to win”</p> <p>and with no other representations which make an association with the Games.</p>	<p>A TV advert for a sports clothing brand which features Olympians posing at iconic Games' venues, having medals hung around their necks and with a slogan:</p> <p>“Be inspired by the 2012 Games”.</p>

Note that special rules apply to members of the World Federations of Sporting Goods Industry (“**WFSGI**”), with which the IOC has special arrangements. Members of WFSGI should contact the IOC in relation to any enquiries about this.

4.5 Editorial usage and the provision of information on the Games

OSPA and LOAR provide reporting/editorial-use defences so that journalists and others commenting or providing information on the Games may refer to the Games and/or the Olympic and Paralympic Movements without infringing the BOA, BPA and/or LOCOG's rights.

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However, the defence expressly states that it will not benefit advertising material published or broadcast at the same time as or in connection with a report or information about the Games.

We are aware of a number of circumstances in which businesses are using the provision of information about the 2012 Games to create an association between themselves and the Games, or to simply exploit the interest in the 2012 Games. The points below provide LOCOG's position in relation to such cases:

4.5.1 Advertorials

The reporting/editorial-use defences in OSPA and LOAR are intended to allow, for example, a newspaper to provide reports on the Games, or a TV documentary to feature a piece about the history of the Games. However, the defences make it clear that 'advertorial' material will not benefit from the defences. For example, the promotion of a particular brand which is presented in the guise of a 'report' about the Games (and would probably have to carry a disclaimer stating it was an advert) is still likely to infringe OSPA and/or LOAR. If the 'report' has been produced by and paid for (whether in cash or in kind) by the brand in question, this will evidence that the defence should not apply. For example LOCOG's view as to when there would or would not be an infringement of its rights is illustrated by the following examples:

UNLIKELY TO INFRINGE	WILL INFRINGE
<p>An article in a newspaper about an athlete qualifying to compete in the Games with a headline:</p> <p>"Olympic Triumph"</p>	<p>An advertorial piece in a magazine produced by X Brand with a headline:</p> <p>"Olympic Inspiration"</p> <p>which pictures X Brand's products and talks about how the Olympic Games have inspired the company to create the product in question.</p>

4.5.2 Marketing material

Where the provision of information about the Games crosses over from being genuine journalism/commentary to being simple marketing material, there may well be infringement of LOCOG's rights. For example, it is common for businesses to provide useful information to customers/clients, and the provision of information relevant to the Games may be perfectly acceptable in some circumstances. However, where the

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information is presented in such a way that it amounts to the business marketing itself in association with the Games, this may well infringe.

The following examples (depending on their overall presentation) illustrate LOCOG's view as to when there would or would not be an infringement of its rights:

UNLIKELY TO INFRINGE	WILL INFRINGE
<p>An architect's firm which provides its clients with regular updates on developments in the construction industry and in one issue, has one of several articles which focuses on the design of the Olympic stadium with a headline:</p> <p>"Constructing the Games"</p>	<p>A law firm which produces a brochure to send to clients which is titled:</p> <p>"X, Y & Z Co The 2012 Olympics "</p> <p>which, as well as providing information on the Games promotes the partners of the firm as "X, Y & Z Co's Olympic Team" so as to suggest an association between the firm and the Games.</p>
<p>A bank which puts on a seminar called:</p> <p>"Building your Business"</p> <p>for local businesses to update them on local business opportunities, and which has a section of the seminar providing information about business opportunities arising from the Games.</p>	<p>An accountancy firm which hosts an Olympic-themed lunch and sends out invites to clients:</p> <p>"A, B & C Co London 2012 lunch join us on 20 June for lunch and to hear how the 2012 Games is having an impact on the UK's economy"</p>

4.5.3 Conferences

Since London won the bid to host the 2012 Olympic and Paralympic Games, a vast number of "Olympic" or "London 2012" conferences have been held throughout the UK. Many of these have been run on a non-commercial basis by local councils or community interest groups for example. However, others have been presented in a way which create a commercial association with the Games. LOCOG has produced guidelines specifically for conference providers which is available at www.london2012.com/brand-protection.

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4.5.4 **Sponsored broadcasts etc**

Although a radio or television programme - such as a “London 2012/Olympic update” - may benefit from the reporting/editorial-use defences under LOAR/OSPA, the ‘reporting’ defences make it clear that advertisers should not be able to create an association with the Games by trying to piggyback onto such legitimate use. For example, a daily slot during the Games, reporting on the day’s events should **not** be promoted as “Olympic Update - Brought to you by X Brand” or “London 2012 bulletin – sponsored by Y Brand”. Similarly, a newspaper supplement about the Games should not allow a third party advertiser to create an association with the Games in this way. (By way of clarification, we do not consider that an association with the Games could be created by adverts which are presented in the usual manner and not integrated into the content of the programme about the Games.)

NB: The sponsorship of news and current affairs programmes broadcast on TV is regulated by Ofcom, as are news bulletins broadcast on radio. The Ofcom rules must also therefore be considered in relation to the sponsorship of reports or information broadcast about the Games during or as part of such programmes.

4.6 **Broadcasting and use of TV footage of the Games**

There are three issues to consider here:

- (a) broadcasting live/full coverage of the Games to viewers;
- (b) using footage of the Games for promotional purposes (eg in adverts); and
- (c) using television coverage of the Games to attract customers into an establishment (eg a pub).

The most relevant legal right here is copyright, however, OSPA and LOAR may also be relevant in some contexts.

This section applies in relation to all Games’ footage – for past and future Games.

4.6.1 **Broadcasting**

The IOC sells the worldwide broadcast rights to the Games. Full television coverage of the Games (as opposed to news highlights which are authorised in accordance with the IOC’s news access rules) will therefore only be available through the channels which have bought those rights. Illegal, unauthorised or pirate coverage broadcast by other television channels or via other media (for example via the web) will infringe the IOC’s

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(and/or the official broadcaster's) copyright in the coverage of the Games. Such illegal activity will be taken very seriously. The same applies to coverage of the Paralympic Games which is controlled by the relevant organising committee (for London 2012, LOCOG).

4.6.2 Use of footage

The reproduction of footage of the Games for promotional purposes, for example in adverts, is a right which the IOC and IPC reserves for sponsors of the Olympic and Paralympic movements. Any unauthorised promotional use of Games footage will be taken very seriously. In such circumstances, as well as infringement of the IOC or IPC's (and/or the official broadcaster's) copyright in the footage, there may also be infringement of OSPA, for example if controlled representations are used. Similarly, in relation to footage of, or in connection with, the 2012 Games, there may be infringement of LOAR.

4.6.3 TV coverage in pubs etc

It is standard practice for pubs and other establishments in the UK to show live coverage of sporting events on television for their customers. OSPA and/or LOAR will not prevent such establishments showing coverage of the Games. (Although note that an entertainment or other licence may need to be obtained.)

Simple statements saying "Watch the Olympic Games here" or "Live coverage of the 2012 Games inside" are likely to benefit from the "honestly made statements" defence in OSPA and LOAR respectively. (See points 2.5.3 and 3.5.2 above.)

BUT where such a statement, despite being true, is made within advertising or promotional materials so as to create an association between a brand/goods/services and the Games (or the 2012 Games), there may nevertheless be infringement. This is because the defence will only benefit statements which are made in accordance with honest practices in industrial or commercial matters. Relevant factors here are whether the overall impression created is confusing or misleading as to the relationship between the brand and the Games, or whether the person making the statement is acting unfairly in relation to LOCOG's rights. For example LOCOG's view as to when there would or would not be an infringement of its rights is illustrated by the following examples:

UNLIKELY TO INFRINGE	WILL INFRINGE
<p>An unbranded chalk board outside a pub during the period of the Games:</p> 	<p>A brewery sends a pack of promotional materials including flyers, bunting and posters to all of the pubs in the UK which sell its beer asking them to use these during the Games:</p> 

4.7 Websites

LOCOG considers that any domain names that contain controlled representations or create an association with the 2012 Games, will, if used in the course of trade and subject to a defence applying, infringe OSPA and/or LOAR. There is no general exception for websites. If someone is using the worldwide web to unfairly exploit the Games, LOCOG will take appropriate action.

Where a website is being used to provide information about the Games, or as chat forum about the Games, the same principles as set out above at point 4.5 will apply.

As such a 'blogging' site which is run on a purely non-commercial basis may not infringe OSPA or LOAR. However, a site which is a London 2012 dedicated online news service for which subscribers have to pay a monthly fee and/or which carries advertising, would be considered in the course of trade, and LOCOG would assert its rights under OSPA and LOAR as appropriate.

4.8 Business names

Operating a business under the name “**Olympic Sports Warehouse**” or “**2012 Games Event Management Ltd**” etc, will (subject to a defence applying) infringe OSPA/LOAR. However, businesses which have been trading continuously under the name “Olympic Cafe” or “Olympian Trophies” etc since **prior to September 1995** when OSPA was introduced will benefit from a defence and will not infringe OSPA by the continued use of that name.

NB: Businesses trading under a name which includes a controlled representation under OSPA (‘Olympic’, ‘Olympian’ etc) will not be able to register as a company under that name, nor be given a consumer credit licence without the permission of the Proprietors of the right under OSPA (ie LOCOG, the BOA or the BPA).

4.9 Tourism

The British tourism industry will inevitably benefit hugely from the 2012 Games coming to London in 2012. The UK will be in the world’s spotlight and its profile as a sporting and tourist destination will most definitely be raised.

In due course, LOCOG will be working with tourism organisations to ensure that visitors are not only attracted to London to watch the 2012 Games, but also to ensure that the UK as a whole is seen as *the* place to come in 2012. The 2012 Games will also be a fantastic platform on which to promote the country, thereby ensuring that many of the (approximately) 4 billion people who will be watching the 2012 Games on TV, are attracted to the UK for many years after 2012. In this way, everyone involved in the UK’s travel industry will benefit from the 2012 Games in the run-up to, during, and long after, the 2012 Games have closed.

There cannot however be a general exception for travel agents, hotels and airlines etc etc, to promote their businesses in association with the 2012 Games. They must be treated in the same way as any other business when applying OSPA and LOAR. This is particularly so as LOCOG has/will probably have an airline sponsor, hotel sponsor, and other official sponsors or suppliers within the tourism sector. To protect the massive investment such sponsors will put into the 2012 Games, we must be able to offer them an exclusive association to the 2012 Games which will set them apart from their competitors.

4.10 The international dimension

It is important to note that only the IOC's worldwide TOP Sponsors (a current list of which can be found on www.london2012.com) are able to advertise their association with the Olympic Games on a global basis.

Sponsors of foreign National Olympic Committees/National Paralympic Committees are not able to advertise their association with that particular Olympic/Paralympic Committee or National Olympic/Paralympic Team in another jurisdiction. Hence, if X Brand sponsors the Jamaican Olympic team, it cannot advertise this fact in the UK without the consent of LOCOG.

Similarly LOCOG's 'domestic' sponsors are only permitted to advertise their association with London 2012 outside the UK if the permission of the relevant National Olympic Committee and/or National Paralympic Committee of the country in which the advert is being run is obtained by the IOC/IPC.

4.11 Non-commercial uses

OSPA and LOAR do not affect any activities which are not 'in the course of trade'. As such, activities relating to the Games undertaken on a not-for-profit basis and which do not give commercial entities a promotional or marketing benefit, will not be affected by OSPA or LOAR. However, where non-commercial activities overlap with commercial activities (for example if a commercial organisation is working with a non-commercial organisation to put on a jointly-branded event), then OSPA and LOAR will become relevant.

LOCOG has and will be developing numerous official London 2012 programmes and events to get the UK public involved in and/or inspired by the 2012 Games. We have also established the London 2012 Inspire programme to enable outstanding non-commercial projects and events organisations which have been inspired by the 2012 Games to apply to LOCOG to officially associate these with the 2012 Games through use of the London 2012 Inspire mark (see further www.london2012.com/get-involved).

Non-commercial organisations can also support the 2012 Games by respecting the need to protect the exclusivity of the London 2012 brand so that we are able to raise the funds to host the Games.

4.12 Authorised users

4.12.1 London 2012 Sponsors and Official Suppliers etc

London 2012 Sponsors and Official Suppliers, and the IOC's TOP Sponsors which have signed up until 2012, (ie all companies which have paid, in cash or value in kind, for the right to associate with the 2012 Games), are able to advertise their association with the 2012 Games within the terms of their sponsorship agreements with LOCOG or the IOC (as appropriate). For a full list of London 2012 sponsors in the UK see www.london2012.com.

4.12.2 Non-commercial partners

LOCOG has/will authorise its key non-commercial partners (eg central government departments, local boroughs hosting the Games, and the National Lottery) to use the London 2012 emblems and otherwise associate with the 2012 Games in a variety of ways. As noted at 4.11 above, LOCOG has also established the London 2012 Inspire programme to allow other non-commercial organisations to apply to associate with the 2012 Games through use of the London 2012 Inspire mark.

4.12.3 Register of authorised users

LOCOG is obliged under the 2006 Act to maintain a register of all people authorised to create an association with the 2012 Games. A list of all official London 2012 sponsors and suppliers is publicly available via this register. The register also includes details of rights granted to non-commercial partners, and will include class exemptions (for example if all UK schools are authorised to hold a London 2012 themed event).

4.12.4 The Olympic Delivery Authority

The Olympic Delivery Authority ("**the ODA**"), the public authority responsible for building the infrastructure for the 2012 Games clearly has the right to associate itself with the Games. However, the ODA does not have the right to grant any Olympic marketing or communication rights to third parties, nor is it able to grant any of its suppliers "official supplier to the Games" status etc.

4.12.5 Suppliers and contractors working on the London 2012 project

All suppliers and contractors working for LOCOG, the ODA and other organisations (either directly or down the supply chain) on the 2012 Games project are required to sign up to 'No Marketing Rights' clauses which limit their ability to promote their involvement

in the 2012 Games. This is to protect the exclusive rights of sponsors and official suppliers who, unlike normal suppliers and contractors, provide cash and/or value in kind goods and services to support the 2012 Games. LOCOG has published guidelines on the No Marketing Rights Clauses at www.london2012.com/suppliersprotocol which explain what suppliers and contractors can and cannot say and do in relation to their work on the 2012 Games.

PART C – Advertising And Street Trading Regulations:

5. Advertising Regulations

The 2006 Act provides for regulations to be created in relation to the control of advertising in the vicinity of 2012 Games' venues. These will enable LOCOG to enforce the 'clean venues' policy of the Olympic Games – ie that there can be no advertising on or around the field of play or seen by tv cameras covering the Olympic Games. They will also enable London 2012 to offer its sponsors an exclusive opportunity to advertise outside these areas but in close vicinity to venues, so that their exclusive association with the 2012 Games can be maintained and spectators are not bombarded by commercial messages from other companies who have not invested in the 2012 Games.

The Advertising Regulations are likely to apply to any form of advertising (eg billboards, fly posting, the handing out of leaflets/products etc), but will only prevent unauthorised advertising in a clearly defined vicinity around 2012 Games' venues and only for a maximum period of two weeks before and during the 2012 Games.

In June 2009, the ODA issued a notice outlining how the Advertising and Street Trading Regulations will be implemented. This is available on the London 2012 website at <http://www.london2012.com/news/publications/pdf/advertising-and-street-trading-regulations-detailed-document.pdf> Further details about the Advertising Regulations will be published by LOCOG when they have been drafted and become law. (This is likely to happen in 2010/2011.)

6. Street Trading Regulations

The 2006 Act provides for regulations to be created in relation to the control of street trading in the vicinity of 2012 Games' venues. These are likely to allow, where necessary, for the suspension of existing street trading licences and for special temporary licences to be granted, for the period of the 2012 Games. The Street Trading Regulations will apply only in a clearly defined vicinity around 2012 Games' venues and only for a maximum period of two weeks before and during the 2012 Games.

In June 2009, the ODA issued a notice outlining how the Advertising and Street Trading Regulations will be implemented. This is available on the London 2012 website at <http://www.london2012.com/news/publications/pdf/advertising-and-street-trading-regulations-detailed-document.pdf> Further details about the Street Trading Regulations will be published by LOCOG when they have been drafted and become law. (This is likely to happen in 2010/2011.)

This document provides LOCOG's interpretation of its statutory rights only and is not a substitute for legal advice. If you think you may have infringed our rights, or you are proposing to do something which you think may infringe our rights, we recommend that you seek independent legal advice. V30.04.10

PART D – Ticket Touting Offences:

7. Ticket touting offences

The 2006 Act provides that the sale of ‘Olympic tickets’ will be prohibited if the seller is not authorised by LOCOG.

‘Olympic tickets’ is defined in the 2006 Act to include anything which is, or purports to be, a ticket for an event held as part of the London 2012 Olympic and/or Paralympic Games – whether sporting or not.

These offences will catch people selling, advertising, or offering to sell, Olympic tickets in the course of a business or to make a profit. Principally, this offence will be used to prevent sales of London 2012 tickets on the black market. The offences also prohibit the sale of tickets in a public place. So, for example, ticket touts will not be able to sell tickets outside London 2012 venues.

The ticket touting offences are already in force and apply to people selling or offering fake London 2012 tickets before official tickets come on sale. However, the ticket touting offences will clearly become far more significant once official London 2012 tickets go on sale. This is likely to be in 2011. Further details about the ticket touting offences will be given at that time.

PART E – Miscellaneous:

8. Disclaimer – Important – Please read

This document is intended to give only an indication of LOCOG's interpretation of OSPA and the 2006 Act, and are ***without prejudice*** to any rights which LOCOG may have in any particular case.

LOAR is a new right whose ultimate interpretation will be by the courts. Similarly, the courts have not yet considered any of the provisions of OSPA and as such, the information provided in this document cannot be treated as a strict statement of the law. Nor does it constitute legal or professional advice. We have sought to provide our best interpretation of OSPA and LOAR, in order to help you. However, as we progress towards the 2012 Games there will inevitably be developments and this document will need reviewing.

Anyone using this document must accept that LOCOG will react to potential infringements of OSPA and/or LOAR on a case by case basis and that it is impossible to predict or describe every type of potentially infringing activity.

Consequently, the information provided in this document is given without liability or restriction on LOCOG's part. This document does not constitute any form of authorisation, permission, consent, licence, waiver or estoppel (express or implied) that in any way limits or prejudices LOCOG's statutory rights to enforce LOAR or OSPA (or any other rights) in any circumstances. This document is for illustrative purposes only and reliance is at the reader's own risk.

If you are in any doubt as to the effect of OSPA or the 2006 Act, then you should consult your own adviser for legal advice.

SCHEDULE 1:

The Protected Games' Marks

All of the following names, words, marks, logos and designs relating to London 2012 and/or the Olympic and Paralympic Movements (collectively known as the Protected Games' Marks) are legally protected marks owned by or licensed to The London Organising Committee of the Olympic Games and Paralympic Games Limited (LOCOG).

Protected trade marks and designs:



The words: **London 2012 – 2012 – LOCOG – Javelin – Team GB**

All of the above marks and words are protected either as registered trade marks, registered designs and/or by common law. The official emblems of the London 2012 Olympic Games come in a number of colours and can have designs within the emblems, for example with the Union flag as shown above. These variations of the emblems, the bespoke font shown above and other official marks of London 2012 (including Games' mascots and all pictograms) are all, or will be once they are created, legally protected.

Protected by the Olympic Symbol etc (Protection) Act 1995 (OSPA):

The words: **Olympic – Olympian – Olympiad – Paralympic – Paralympian – Paralympiad** plus their plurals, translations and anything similar to them.

The symbol of
The International Olympic Committee (IOC):



The symbol of
The International Paralympic Committee (IPC):



The mottos of **the IOC**: Citius, Altius, Fortius and Faster, Higher, Stronger; and **the IPC**: Spirit in Motion, plus their translations and anything similar to them.

Protected by the London Olympic Games and Paralympic Games Act 2006:

The London Olympic Games and Paralympic Games Act 2006 (the 2006 Act) grants LOCOG the London Olympic Association Right. It allows LOCOG to prevent people from creating an association between a business, goods or services and the London 2012 Olympic Games and/or Paralympic Games, in the course of trade. This prevents, for example, businesses from running any advertising or marketing campaigns which suggest they are associated with London 2012 without LOCOG's authority. An association can be created through the use of ANY representation whether in audio or visual form for example. However, the 2006 Act specifies certain 'Listed Expressions' and states that a court may take these into particular account when determining if an association has been created.

The Listed Expressions are:

– any two of the words: **Games, Two Thousand and Twelve, 2012, Twenty-Twelve**

OR

– any word in the list above with one or more of the words: **London, medals, sponsors, summer, gold, silver, bronze**

Whether an association has been created with London 2012, or not, will be a question of fact. The 2006 Act specifies the Listed Expressions, and states that a court may take them into particular account when determining if there has been an infringement of LOCOG's rights. But an association can be created by the use of **any** representation, which may be in any form and may or may not use the Listed Expressions. Although the Listed Expressions are a helpful guide they are not the only thing a court would look at so it shouldn't be assumed that if a Listed Expression is not used, LOCOG's right will not be infringed. For example the following advert illustrates how an infringing association under the 2006 Act may be created.



Example: An advert which creates an association with London 2012 through use of images and text

Protected by copyright:

All films, musical works, artistic works and designs (e.g. the Games' emblems, mascots and posters) created by LOCOG or other official Olympic and Paralympic bodies (already or in the future) in connection with the Games are (or will be once created) protected by copyright.

Further information:

The unauthorised commercial exploitation of the Protected Games' Marks is generally prohibited, but other uses - for example, editorial use by journalists - are permitted. Detailed information on LOCOG's rights and the defences available under OSPA and the 2006 Act is available at london2012.com/brandprotection.

If you think you may have infringed LOCOG's rights, or you are proposing to do something which you think may infringe LOCOG's rights, we recommend that you seek independent legal advice.

This publication is available on request in other languages and formats.
To obtain these please quote reference number LOC2010/20
Email enquiries@london2012.com

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SCHEDULE 2:

Glossary:

“the 2006 Act”	means the London Olympic Games and Paralympic Games Act 2006 as given Royal Assent on 30 March 2006;
“the 2012 Games”	means the Olympic Games and/or Paralympic Games to be held in London in 2012;
“controlled representations”	means the words, phrases and symbols protected under the Olympic Symbol etc (Protection) Act 1995;
“the BOA”	means the British Olympic Association;
“the BPA”	means the British Paralympic Association;
“the Games”	mean the Olympic Games and/or Paralympic Games;
“the IOC”	means the International Olympic Committee;
“the IPC”	means the International Paralympic Committee;
“the Listed Expressions”	means the combinations of words which a court may take into particular account when determining whether there has been an infringing association created for the purposes of LOAR;
“the Listed Words”	means the words listed within LOAR that, when used in certain combinations, a court may take into particular account when determining whether there has been an infringing association created for the purposes of LOAR;
“LOCOG”	means The London Organising Committee of the Olympic Games and Paralympic Games Limited;
“the ODA”	means The Olympic Delivery Authority;

“OSPA”	means the Olympic Symbols etc. (Protection) Act 1995;
“NGBs”	means the National Governing Bodies of Olympic and Paralympic sports in the UK;
“ParalympicsGB”	means the British Paralympic team;
“Proprietor(s)”	means the person/people appointed as the proprietor(s) of the rights created by OSPA
“the Regulations”	means the Advertising Regulations and Street Trading Regulations provided for in the 2006 Act;
“Team GB”	means the British Olympic team;
“TOP Sponsors”	means the members of “The Olympic Partnership programme” which is the IOC’s worldwide sponsorship programme, the current members of which are shown on the London 2012 website.

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The London Organising Committee of the
Olympic Games and Paralympic Games Ltd.
23rd floor, One Churchill Place
Canary Wharf, London E14 5LN
Reception +44 (0)20 3 2012 000
Fax +44 (0)20 3 2012 001