

Regulations on the Protection of Olympic Symbols of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Promulgated by Decree No. 345 of the State Council of the People's Republic of China on February 4, 2002
Effective: April 1, 2002

Table of Contents

- Articles 1 — 5
- Articles 6 — 10
- Articles 11 — 15

Article 1 — These Regulations are enacted in accordance with the provisions of the Trademark Law of the PRC for the purposes of strengthening the protection of Olympic symbols, safeguarding the lawful rights and interests of the holders of Olympic symbols, and maintaining the dignity of the Olympic Movement.

Article 2 — For the purposes of these Regulations, "Olympic symbols" refer to: (1) the Olympic five rings symbol, the Olympic flag, the Olympic motto, the Olympic emblem, and the Olympic anthem of the International Olympic Committee; (2) the designations, abbreviations and mascots that are exclusive to the Olympic Games and the Olympic Organizing Committee; (3) the name, emblem and flag of the Chinese Olympic Committee; (4) the emblem, mascot and name of the city applying to host the Olympic Games, and the symbols of the Olympic Games organizing committee; and (5) other symbols associated with the 29th Olympic Games as recorded by the Olympic Charter and the host city contract for the 29th Olympic Games.

Article 3 — For the purposes of these Regulations, "holders of Olympic symbols" refers to the International Olympic Committee, the Chinese Olympic Committee, and the organizing committee for the 29th Olympic Games. The division of rights among the International Olympic Committee, the Chinese Olympic Committee and the organizing committee for the 29th Olympic Games in respect of Olympic symbols shall be determined by the Olympic Charter and the host city contract for the 29th Olympic Games.

Article 4 — Holders of Olympic symbols shall enjoy exclusive rights in respect of the Olympic symbols in accordance with these Regulations. Without the permission of the holder of the Olympic symbols, no one may use the Olympic symbols for commercial purposes (including any potential commercial purpose, the same below), except as otherwise provided by law.

Article 5 — For the purposes of these Regulations, "use for commercial purposes" refers to the use of Olympic symbols in the following manners for gain: (1) using Olympic symbols on goods, packaging or containers of goods, or on transaction documents; (2) using Olympic symbols in the provision of services; (3) using Olympic symbols in advertisements, commercial exhibitions, commercial performances or other commercial activities; (4) selling, importing or exporting goods bearing Olympic symbols; (5) manufacturing or selling Olympic symbols; or (6) other uses for commercial purposes that may lead to the belief that there exists a sponsorship or other supportive relationship with the holder of the Olympic symbols.

Article 6 — The administrative department for industry and commerce under the State Council shall be responsible for the protection of Olympic symbols throughout the country in accordance with the provisions of these Regulations. The administrative departments for industry and commerce of local people's governments at or above the county level shall be responsible for the protection of Olympic symbols within their respective administrative regions in accordance with the provisions of these Regulations.

Article 7 — Holders of Olympic symbols shall record the Olympic symbols with the administrative department for industry and commerce under the State Council, which shall make a public announcement. The application for the recordal of Olympic symbols shall be submitted by the holder of the Olympic symbols. The matters for recordal shall include: (1) the name, address and contact details of the holder of the Olympic symbols; (2) the name, content and category of the Olympic symbols; (3) the countries or regions where the Olympic symbols are protected and the period of protection; and (4) a description of the proof of the right to use Olympic symbols.

Article 8 — Where a person obtains authorization from the holder of an Olympic symbol to use the Olympic symbol for commercial purposes, the person shall enter into a licensing contract with the holder of the Olympic symbol. A licensing contract for the use of Olympic symbols shall include the following: (1) the specific content and scope of use of the Olympic symbols to be licensed; (2) the period of the license; (3) the geographic scope of the license; and (4) the royalty to be paid. The licensee shall use the Olympic symbols in accordance with the provisions of the licensing contract within the scope and for the period as agreed. The holder of the Olympic symbol shall, within one month from the date of conclusion of the licensing contract, submit a copy of the contract to the administrative department for industry and commerce under the State Council for the record.

Article 9 — Where any of the following acts are committed without the permission of the holder of the Olympic symbol, which acts are sufficient to cause confusion among the public, the provisions of Articles 10 to 12 of these Regulations shall be applied: (1) using a mark that is identical or similar to an Olympic symbol without authorization; (2) using words that are identical or similar to an Olympic symbol without authorization; or (3) other acts that may cause confusion among the public without authorization.

Article 10 — Where a person uses an Olympic symbol without authorization, thus infringing upon the exclusive right of the holder of the Olympic symbol, and a dispute arises, the parties shall resolve the dispute through consultation. Where the parties are unwilling to resolve the dispute through consultation, or the consultation is unsuccessful, the holder of the Olympic symbol or an interested party may bring a lawsuit with a people's court, or request the administrative department for industry and commerce to handle the matter. Where the administrative department for industry and commerce determines upon handling the matter that the infringement is established, it shall order the infringer to cease the infringing act immediately, and shall confiscate and destroy the infringing goods and the tools specially used for manufacturing the infringing goods or for counterfeiting the Olympic symbols; where a fine is imposed, the fine shall be calculated based on the illegal turnover. Where the illegal turnover is 50,000 yuan or more, a fine of not more than five times the illegal turnover may be imposed; where there is no illegal turnover or the illegal turnover is less than 50,000 yuan, a fine of not more than 250,000 yuan may be imposed. Where the parties are dissatisfied with the decision, they may bring an administrative lawsuit with a people's court in accordance with the Administrative Litigation Law of the PRC. The infringer shall also compensate for the losses suffered by the holder of the Olympic symbol as a result of the infringement. If it is difficult to determine the actual losses, the compensation shall be determined based on the benefits obtained by the infringer from the infringement. If both the actual losses of the holder and the benefits obtained by the infringer are difficult to determine, the people's court may award compensation of not more than 5,000,000 yuan based on the circumstances of the infringement.

Article 11 — Where the administrative department for industry and commerce has, based on the evidence that an infringement of the exclusive right to use Olympic symbols has been committed, the power to conduct investigation and impose punishment in accordance with the law, it may exercise the following functions and powers: (1) to inquire of the relevant parties and investigate the circumstances of the infringement; (2) to inspect and duplicate the contracts, invoices, account books and other relevant materials relating to the infringement; (3) to inspect the premises and goods relating to the infringement; and (4) to seal up or seize the goods and the tools specially used for manufacturing the infringing goods or for counterfeiting

the Olympic symbols that are proved to have infringed upon the exclusive right to use Olympic symbols. Where the administrative department for industry and commerce exercises the functions and powers provided for in the preceding paragraph in accordance with the law, the parties shall assist and cooperate, and shall not refuse or obstruct such exercise.

Article 12 — The import and export goods that are suspected of infringing upon the exclusive right to use Olympic symbols shall be subject to investigation and punishment by the customs authorities in accordance with the provisions of the Customs Law of the PRC and the Regulations of the PRC on the Customs Protection of Intellectual Property Rights. The departments in charge of the administration of import and export trade shall investigate and deal with suspected infringements of the exclusive right to use Olympic symbols in import and export trade.

Article 13 — Where the holder of an Olympic symbol discovers an act of infringement of the exclusive right to use an Olympic symbol, or a dispute over such right, it may request the administrative department for industry and commerce to handle the matter, or bring a lawsuit directly with a people's court in accordance with the provisions of the Civil Procedure Law of the PRC. In hearing cases of infringement of the exclusive right to use Olympic symbols, the people's court may, at the request of the holder of the Olympic symbol, order the infringer to cease the infringement, remove the obstacles, eliminate the effects and compensate for the losses. The people's court may also confiscate the infringing goods, the tools specially used for manufacturing infringing goods, and the illegal gains, and may impose a fine in accordance with the law.

Article 14 — The provisions of these Regulations on the protection of Olympic symbols shall apply, with appropriate modifications, to the protection of exclusive rights in the symbols of the Paralympic Games and other symbols associated with them.

Article 15 — These Regulations shall enter into force on April 1, 2002.

Disclaimer: This English translation is provided for informational and reference purposes only. While every effort has been made to ensure accuracy, this is an unofficial translation. For legal purposes, the official Chinese text as promulgated by the State Council of the People's Republic of China shall prevail. Dan Young Business Consultancy accepts no liability for any reliance placed on this translation.