AUSTRALIAN CUSTOMS NOTICE NO. 2005/28

Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005

# Introduction

This is a guide to the operation of the Customs seizure provisions of the *Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005* (the Act) and is intended for the owners and authorised users of the Melbourne 2006 Commonwealth Games (the Games) indicia and images. The Act came into effect on 26 June 2005 and ceases to have effect on 30 June 2006.

The Act establishes a legislative scheme to permit the owner of material bearing the Games indicia and/or images, or an authorised user, to object to the importation of goods which allegedly infringe their usage of these indicia and/or images for commercial purposes. It is recommended that persons considering lodgement of a Notice of Objection discuss the matter with their legal advisers before proceeding with the Notice.

The Act is designed to prevent the unauthorised commercial use of certain indicia and images associated with the Games, in order to provide a more secure environment in which the Melbourne 2006 Commonwealth Games Corporation can raise revenue through sponsorship and can prevent ambush marketing.

Customs is working closely with the Melbourne 2006 Commonwealth Games Corporation and will ensure that only authorised licence holders are able to import merchandise with the approved logos and associated markings.

# Outline

Section 20 of the Act establishes a scheme for lodging a Notice of Objection in respect of these goods and section 21 of the Act empowers Customs to seize such goods pending resolution of an action brought by the objector as to whether the importation of the goods infringes notified indicia and/or images.

# The Legislative Scheme - Seizure Provisions

Section 21 of the Act provides that where:

* 1. goods manufactured outside Australia have been imported into Australia and are subject to the control of Customs; and
  2. the imported goods have had applied to them Melbourne 2006 Commonwealth Games indicia and/or images; and
  3. there has been given to Customs a Notice in writing objecting to the importation of goods that have applied to them Melbourne 2006 Commonwealth Games indicia and/or images, in respect of the imported goods; and
  4. the goods, in the opinion of Customs, have applied to them Melbourne 2006 Commonwealth Games indicia and/or images that the designated owner is not authorised by the Act to use for commercial purposes;



# then Customs must seize the imported goods unless there are reasonable grounds for believing:

* the Games indicia and/or images (refer section 12 of the Act) would not be contravened by the use by the designated owner of the indicia and/or images for commercial purposes; or
* the objector has not provided sufficient security to reimburse the Commonwealth in respect of expenses that may be incurred by the Commonwealth if the goods were seized.

The legislative scheme does not provide for seizure of goods which are imported for the personal use of the importer and are not intended to be dealt with or provided for commercial purposes (refer section 9 of the Act). It also does not empower Customs to take seizure action on its own behalf.

It is important to note that the seizure powers are drawn directly from section 21(2) of the Act.

**NOTE:** The *Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005*

contains the following definitions:

***ACGA*** means the Australian Commonwealth Games Association (ABN 55 165 736 898).

***authorised user*** means:

* + 1. a person authorised by the Melbourne 2006 Commonwealth Games Corporation to use Melbourne 2006 Commonwealth Games indicia or images under section 56D of the **Commonwealth Games Arrangements Act 2001** of Victoria; and
    2. the ACGA; and
    3. the CGF.

***CGF*** means the body known as the Commonwealth Games Federation that has the responsibility for the direction and control of the Commonwealth Games.

***Melbourne 2006 Commonwealth Games*** means the 18th Commonwealth Games held in Melbourne in 2006.

## Melbourne 2006 Commonwealth Games body means:

1. the Melbourne 2006 Commonwealth Games Corporation; and
2. the ACGA; and
3. the CGF.

***Melbourne 2006 Commonwealth Games Corporation*** means the Melbourne 2006 Commonwealth Games Corporation established under Part 1A of the **Commonwealth Games Arrangements Act 2001** of Victoria.

***Melbourne 2006 Commonwealth Games images*** means any visual or aural representations that, to a reasonable person, in the circumstances of the presentation, would suggest a connection with the Melbourne 2006 Commonwealth Games.

***Melbourne 2006 Commonwealth Games indicia*** means any of the following:

1. any of the following phrases:
   1. “Melbourne 2006 Commonwealth Games”;
   2. “Melbourne Commonwealth Games”;
   3. “Melbourne Games”;
   4. “Melbourne 2006 Games”;
   5. “Commonwealth Games”;
   6. “Australian Commonwealth Games”;
   7. “Friendly Games”;
   8. “Queen’s Baton Relay”;
   9. “Commonwealth Games Cultural Program”;
   10. “Melbourne 2006 Cultural Program”;
   11. “M06 Cultural Program”;

(whether the reference to “2006” in subparagraphs (i), (iv) and (x) is in words or numerals);

1. either “M06” or “M2006”;
2. any combination of an indicium in an item in List A with an indicium in that item in List B:

|  |  |  |
| --- | --- | --- |
| **Melbourne 2006 Commonwealth Games indicia** | | |
| **Item** | **List A indicia** | **List B indicia** |
| 1 | “Two thousand and six” “2006”  “18th” “XVIIIth”  “Eighteenth” | “Commonwealth Games” “Games” |
| 2 | “Commonwealth Games” “Commonwealth Games athlete” | “Gold”  “Silver” “Bronze” |
| 3 | “Australian Commonwealth Games team” | “Melbourne” “Melbourne 2006”  “Melbourne two thousand and six”  “M2006” |

## Application of Melbourne 2006 Commonwealth Games indicia and images (part definition);

Without limiting the generality of the meaning of the expression, Melbourne 2006 Commonwealth Games indicia and / or images are applied to goods when the indicia and/or images:

* + are woven in, impressed on, worked into, or affixed or annexed to, the goods; or
  + are applied to any covering, document, label, reel or thing in or with which the goods are, or are intended to be, dealt with or provided in the course of trade.

When goods that have had applied to them the Games indicia and/or images, are imported into Australia for the purpose of sale or distribution by a person, the person is taken to have applied the indicia and/or images to them.

## Meaning of commercial purposes

A person is taken to have used the Games indicia and/or images for commercial purposes if:

* + they have applied Games indicia and/or images to any of their goods or services; and
  + the application is for the primary purpose of advertising or promotion, or any activity that would increase their sales; and
  + the application would suggest to a reasonable person that the person was, or has been a sponsor, or provided support for the Games.

Any other person who supplies or displays any such goods or services is also taken to have used such goods or services for commercial purposes.

# Notice of Objection to Importation

A Notice of Objection may be lodged objecting to the importation of goods that have applied to them Melbourne 2006 Commonwealth Games indicia and/or images that the designated owner of the goods is not authorised under the Act to use for commercial purposes. A Notice of Objection must be accompanied by a copy of the particulars contained in the Register of authorised users of the Melbourne 2006 Commonwealth Games indicia and/or images in relation to each item for which the objector has given a notice. The copy of the Register must be certified by the Melbourne 2006 Commonwealth Games Corporation (refer section 18 of the Act).

A Notice of Objection must be accompanied by a security and be lodged and accepted by Customs before the goods are imported as it cannot operate retrospectively. It may be revoked by notice given in writing to the Chief Executive Officer of Customs at any time and all Notices cease to have effect when the Act ceases to have effect on

30 June 2006, or for an authorised user other than the ACGA or the CGF, on the day on which the user’s authorisation ceases to be in force.

# The Security

The amount of the Security will be an amount that the Chief Executive Officer of Customs considers sufficient to reimburse the Commonwealth for any expenses that may be incurred by it in seizing goods under the Act. This is currently set at $10,000. Where a debit note has been issued to the objector for seizure expenses and the claim is not satisfied within a specified time, Customs will draw on the Security.

Where the Security is insufficient to reimburse the Commonwealth for expenses incurred in relation to the seizure of the goods, the amount of the excess is a debt due by the objector which is recoverable in a court of competent jurisdiction. Customs' practice is to require that sureties to a Customs security be either an Australian bank or guarantee company which has been approved as a surety to Customs securities. A list of these institutions is available from Customs offices.

# Persons Entitled to Lodge a Notice of Objection

The Melbourne 2006 Commonwealth Games Corporation or an authorised user may give the Customs CEO a written notice objecting to the importation of the goods.

An authorised user (other than the ACGA or the CGF) may only give a notice in relation to Melbourne 2006 Commonwealth Games indicia or images that the person is authorised to use under section 56D of the **Commonwealth Games Arrangements Act 2001** of Victoria.

An authorised user may not give notice except with written consent from the Melbourne 2006 Commonwealth Games Corporation. The Corporation is taken to have given the consent if an authorised user gives the Corporation a written request for consent under section 14 of the Act; and the Corporation neither gives nor refuses that consent before the end of the third working day following the day on which the request was given.

A letter or facsimile of the consent or the request would satisfy the above requirements.

**NOTE:** You should ensure all documentation is accurate and complete to facilitate the acceptance and implementation of the Notice.

# Help Customs to Help You

Customs will take all reasonable steps to carry out its obligations under this legislation. However, as a very large volume of goods is imported each day, it is not possible to physically examine every item. Customs instead carries out a system of risk-based checks and audits to ensure compliance with regulations and other requirements.

To help Customs intercept shipments of infringing goods your assistance is necessary. Any information you are able to provide about suspect importations will help protect your rights with respect to goods which bear the Games indicia and/or images. The following information would be particularly useful:

* designated name of owner/importer;
* name of overseas supplier/manufacturer;
* name of ship, airline/flight number;
* expected date/port of arrival;
* details/description/quantity/country of origin of the goods.

All information will be treated in confidence.

# Notification of Seizure

Section 22 of the Act provides that as soon as practicable after goods are seized, Customs will give both the designated owner and the Objector, either personally or by post, a written notice identifying the goods and stating that the goods have been seized under section 21 of the Act.

# Forfeiture of Goods - by Consent

The designated owner (importer) of any seized goods may, at any time before the objector makes an application for an injunction in respect of the goods, consent to the goods

being forfeited to the Commonwealth by giving a written notice to Customs.

# Release of Goods - No Application for Injunction

Customs must release seized goods which have not been forfeited to the Commonwealth to the designated owner of the goods if, within the specified application period (refer section 23 of the Act):

* proceedings for an injunction have not been instituted by the objector in relation to the goods; **or**
* though proceedings may have been instituted, the objector has not given written notice to Customs advising that proceedings have been instituted.

**WARNING:** The objector should be aware that when advised by Customs of an importation, unless the objector has procedures in place at the end of the nominated timeframe, the goods **will be released** to the designated owner.

# General Information

Compliance with the requirements outlined in this notice should facilitate the prompt processing of the Notice of Objection. All Notice of Objection applications should be sent directly to the Australian Customs Service, Intellectual Property Rights,

Cargo Branch, 5 Constitution Avenue, Canberra City, ACT 2601.

Further information regarding the *Melbourne 2006 Commonwealth Games (Indicia And Images) Protection Act 2005* may be obtained from either the Department of Communications, Information Technology and the Arts on telephone number

(02) 6271 1607; or the Australian Customs Service, Intellectual Property Rights, Cargo Branch, on telephone number (02) 6275 6445, fax number (02) 6279 3444 or email [iprights@customs.gov.au.](mailto:iprights@customs.gov.au)

Copies of the Act can be found on [www.comlaw.gov.au](http://www.comlaw.gov.au/) or [www.dcita.gov.au](http://www.dcita.gov.au/)

Philomena Carnell National Manager Cargo Branch

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