



**GUIDANCE ON THE
BIRMINGHAM
COMMONWEALTH GAMES ACT
ASSOCIATION WITH THE GAMES**

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GUIDANCE ON THE BIRMINGHAM COMMONWEALTH GAMES ACT 2020 (the “Act”)

ASSOCIATION WITH THE BIRMINGHAM 2022 COMMONWEALTH GAMES

A. INTRODUCTION

The Commonwealth Games Federation (www.cgf.com) owns the rights to the Commonwealth Games and grants the rights to host the Commonwealth Games to cities based in the Commonwealth, such as Birmingham. When Birmingham was awarded the right to host the 2022 Commonwealth Games (the “Games”), the UK Government, as part of its hosting commitments, was required to put legislation in place to protect the intellectual property of the Games and the indicia relating to the Games against any unauthorised use, thereby managing public investment in the Games.

Following the passage of the Act on 25th June 2020, new protections have been put in place which prohibit unauthorised associations with the Games, and which prevent ambush marketing by third parties who are not officially associated with and/or who are not sponsors/partners of the Games. It also prevents any unauthorised advertising in, and in the vicinity of, Games locations, the details of which will be set out in regulations by Government.

The Act allows the Birmingham Organising Committee for the 2022 Commonwealth Games (“Birmingham 2022”) to use, and grant authorisations to use, any representation that suggests an association between the Games and goods or services or persons providing such goods or services; Birmingham 2022 is also able to enforce these provisions as if it had an exclusive right to use a representation that suggests an association with the Games.

This right is separate from, and in addition to, the intellectual property rights which exist, including but not limited to registrations to protect the words, logos, designs and imagery relating to the Games. The Act has been introduced to enable Birmingham 2022 to protect the Games against the unauthorised use of any names, logos, emblems, imagery etc which are not already protected by existing intellectual property legislation. It will prevent a business from seeking to benefit from an association with the Games without being officially authorised by Birmingham 2022 to do so.

The Act is intended to be proportionate and not unnecessarily restrictive. It will be enforced reasonably with a view to being positive, to enhance the operation and delivery of the Games in Birmingham in 2022, and, not to overly restrict the operation of legitimate local and/or national businesses in the area.

This Guidance is intended to provide further information to individuals and businesses in relation to associating with the Games.

The full text of the Act is available to view at:-
<http://www.legislation.gov.uk/ukpga/2020/10/contents/enacted>

In addition, Birmingham 2022 has published a “No Marketing Rights Protocol” to suppliers of the Games and other third parties who are not official sponsors or partners of the Games. This can be found on Birmingham 2022 website at <https://www.birmingham2022.com/about-us/our-purpose/brand-protection/>

B. ASSOCIATION WITH THE GAMES

The Act gives Birmingham 2022 the power to grant to third parties the right to associate themselves and their brand with the Games. The Act provides that (subject to a number of exceptions) only those individuals, businesses or organisations that have been authorised by Birmingham 2022 to do so can associate themselves with the Games **in the course of a business**. It ensures that those individuals, businesses or organisations without such authorisation cannot associate themselves with Birmingham 2022 or imply or suggest in any way to the public that they, or their goods or services, are associated with the Games.

If a use of a representation is made, which is purely personal and is not in the course of business, then specific authorisation will not be required from Birmingham 2022.

In addition, Birmingham 2022 has developed a Community brand and associated Community programme with a dedicated logo/mark which can be used by organisations, groups or charities for specific projects or initiatives which share Birmingham 2022's vision and mission. These will include projects which aim to improve skills, offer training, provide volunteering opportunities and resource, benefit the environment, encourage participation in sport or deliver youth engagement activities. Further details of Birmingham 2022's Community programme can be found on www.birmingham2022.com.

C. USE OF REPRESENTATION(S)

A representation might be the use of a series of words, imagery or a combination of both words and imagery (visual or otherwise) which suggest to the public that a business is officially associated with the Games. Such "use" of a representation includes, among other things:-

- **applying the representation to goods or services;**
- **selling or offering for sale goods with an infringing representation, or importing or exporting such goods;**
- **providing or offering services by reference to a representation;**
- **promoting goods or services by reference to a representation.**

Broadly speaking, an individual or business might attempt to use, without authorisation, certain images or words in advertising for goods or services which they sell or on the goods or packaging themselves. This could lead to the general public buying such goods or services to believe that those individuals or businesses have contributed financially to the operation and delivery of the Games and that, as a result, Birmingham 2022 is endorsing such goods and services as being associated in some way with the Games.

By contrast, official partners/sponsors of the Games will be appointed by Birmingham 2022 and most of them will be contributing financially to the cost of the Games and its delivery. Those individuals, businesses or organisations who are not authorised should not be able to use the same rights to associate with the Games for their own commercial advantage as those official sponsors/partners.

Businesses who attempt to use such a “representation” do not usually use the words, images or logos (for example the official “Birmingham 2022” logo (see further examples below)) which are already protected by the operation of copyright and/or which are protected as a result of the registrations by Birmingham 2022 of such words, phrases, images and/or logos as trademarks or registered designs. Instead, they might use words, or a combination of words, similar to those which have been registered or protected, or they might use a logo which differs from the official registered logo in an attempt not to infringe the registered mark. Section E and the Appendix to this Guidance, provide examples of such expressions and how they might or might not be used in practice.

However, such use can still result in the public believing that the business or individual is officially connected in some way with the Games. The Act therefore goes further than the existing intellectual property protections which are available to Birmingham 2022. Therefore, any unauthorised use of these “representations” which are not protected by copyright, trademark or registered designs are now also prohibited.

D. INTELLECTUAL PROPERTY PROTECTION

As at the date of this Guidance, Birmingham 2022 has obtained intellectual property protection for those words and logos set out below under both UK and international copyright, trademark registrations and registered designs. Any use of the following words and logos, in the areas which have been protected, would infringe the intellectual property rights of Birmingham 2022:-

1. Words

“Birmingham 2022”

“B2022”

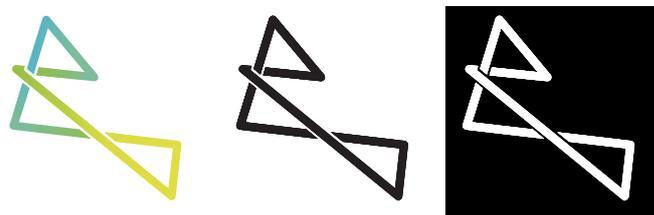
“United by Birmingham 2022”

2. Font

The “Brum” font used in the official Birmingham 2022 logo

3. Logos

a. Official Logo of the 2022 Commonwealth Games (Colour and B&W versions)



b. Official Registered Birmingham 2022 Community Logo (Colour and B&W versions)



Further words, phrases and logos will be registered/protected by Birmingham 2022 in due course in the run up to the Games. These might include but are not limited to the official mascot of the Games, sports pictograms and the names and logos of other Birmingham 2022 programmes or sub-brands such as the volunteer programme.

E. WHAT IS LIKELY TO BE CONSIDERED AN “ASSOCIATION”?

Even though the Act does not specify actual words or phrases which are prohibited, Birmingham 2022 wishes to provide some guidance and direction as to which words and phrases, when used in conjunction with each other, might be considered by Birmingham 2022 to be a “representation” therefore suggesting an “association” with the Games. It is likely that only those persons or entities who are expressly permitted or authorised to be “associated” with the Games can use such words or phrases.

Therefore, although not definitive or conclusive, the following expressions when used in conjunction with each other, or with a reference to sports or sporting or cultural events or indeed multi-sport events, are likely to be considered by Birmingham 2022 to be an association with the Games. As a result, such use might be subject to an enforcement action by Birmingham 2022 under the terms of the Act:-

- **Birmingham**
- **Commonwealth Games**
- **Two Thousand and Twenty Two**
- **2022**
- **XXII nd or 22nd**
- **XXII**
- **Medals**
- **Sponsors**
- **Suppliers**
- **Providers**
- **Partners**
- **Gold**
- **Silver**
- **Bronze**
- **Organising Committee**

By way of example, the unauthorised use of the following word combinations would be likely to be regarded as attempting to create an association with the Games and hence would not be permitted under the Act:-

- **“Supporters of the 2022 Games”**
- **“Going for Gold in 2022”**
- **“Birmingham Games”**

By contrast, and by way of guidance only, the following words and phrases are likely to be permitted for use by Birmingham 2022:-

- A marketing campaign by a tanning lotion brand which states:- **“Go Bronze this Summer”** (whereas in contrast the use of the phrase **“Go Bronze in Brum”** would likely not be permitted);
- A travel website stating that a **“hotel is within walking distance of the Commonwealth Games”**;
- A claim by an electronics brand that their **“products are the best for watching athletics”**.

The Appendix to this Guidance includes more detailed examples and practical guidance as to what might or might not be permitted.

F. AUTHORISATION GRANTED BY BIRMINGHAM 2022

The Act enables Birmingham 2022 to grant authorisations to associate with the Games to third parties, including its official sponsors and partners and stakeholders. This permission/authorisation will be granted in writing directly by Birmingham 2022 to the authorised third party for no additional fee. For example:-

- **Birmingham City Council has been granted the right/licence from Birmingham 2022 to use the term “Proud Host City” in connection with the Games as well as use of a composite logo which incorporates the Birmingham 2022 official logo together with the Birmingham City Council logo.**
- **Similarly, the UK Government has been granted the right/licence from Birmingham 2022 to use the phrase “Proud Host Nation” in connection with the Games.**
- **A number of official partners/sponsors who have signed sponsorship agreements in relation to the Games have been granted a right/licence from Birmingham 2022 to associate themselves and their business with the Games.**
- **A number of community initiatives have been granted a licence by Birmingham 2022 to use the “United by Birmingham” logo referred to above and, as a result, are able to associate their initiative with the Games.**

See further details below as to how individuals and businesses can engage with Birmingham 2022 in order to request such a licence/authorisation.

Where an authorisation has not been granted by Birmingham 2022, the Act gives Birmingham 2022 the right, unless one of the exceptions applies, to prevent individuals or businesses from associating with the Games by using a representation. Birmingham 2022 has been given the right under the Act to take legal action against such parties.

Birmingham 2022 will react to individual suspected infringements on a case-by-case basis. The Appendix attached however does provide some realistic examples of what might or might not constitute an infringement and should be used for guidance purposes only.

G. WHAT WILL HAPPEN IN THE EVENT OF AN INFRINGEMENT?

Birmingham 2022 might choose to make informal contact with an organisation or individual they consider responsible for an infringing representation and ask for that infringement to be removed or remedied - for example - asking for particular words to be removed from a website. If the infringing use is immediately removed, Birmingham 2022 might choose not to pursue the matter further.

Alternatively, a request might be made by Birmingham 2022 to the infringer to stop selling the goods in question or to stop the unauthorised activity.

In some cases, Birmingham 2022 might also choose to issue a "cease and desist" letter. This is usually a formal document sent from Birmingham 2022's Legal Department or lawyers

representing Birmingham 2022. Failure to comply with the instructions in that letter could mean an organisation might be taken to court.

If the unauthorised association does not stop upon receipt of the "cease and desist" letter, or, if the nature of the infringement means that the matter must be dealt with urgently due to the damage being caused, Birmingham 2022 might take legal action against the infringer to seek the remedies detailed below from the courts. In the event that legal action is commenced, the infringing party will receive details of what action Birmingham 2022 is taking, and why it is being taken, and what steps the infringing party must take in order to respond to the action.

H. WHAT ACTIONS CAN BE TAKEN BY BIRMINGHAM 2022 AGAINST INFRINGERS?

In the event that Birmingham 2022 decides to take civil action against an infringing party to protect against such unauthorised association under the Act, Birmingham 2022 wishes to reassure individuals and businesses that it will act reasonably and with pragmatism when deciding whether to take such action.

If legal action is taken, the remedies available to Birmingham 2022 include the following:-

- **Injunction (interdict in Scotland) (i.e. an order to stop doing the infringing act);**
- **Damages (i.e. a sum of money to be paid in compensation for any loss incurred by Birmingham 2022 as a result of the infringing action);**
- **Action to deliver up (delivery in Scotland) the infringing goods or documents to Birmingham 2022 or such other person as the court thinks fit (i.e.**

an order to give the infringing items to a specific person);

- **Obtaining an order that the representation be erased, removed or obliterated from the infringing goods or documents;**
- **Obtaining an order that the infringing goods or documents be returned to the person from whom they were delivered up or such other person who has an interest in them;**
- **Obtaining an order that the goods or documents be forfeited to Birmingham 2022 or such other person as the court directs; and /or**
- **Obtaining an order for the goods or documents to be destroyed.**

Forfeiture or destruction of the goods would be a remedy of last resort.

I. ARE THERE ANY EXCEPTIONS THAT APPLY?

Not all unauthorised associations are prohibited under the Act – there are some exceptions. The following uses of words, logos or indicia which otherwise might look like an unauthorised association with the Games are expressly permitted under the Act. As a result, such uses do not require a separate licence/authorisation from Birmingham 2022 provided that such uses are objectively considered to be **honest business practices**:-

- **If a business or person already has a specific trademark registered in its own name or it has a licence to use such trademark, even if such trademark is similar to one of the marks which has been registered by Birmingham 2022, then, no specific authorisation is required provided the goods or services on or in respect of which the mark is to be used are registered for that particular use.**
- **If a business or person already legitimately owns its own registered design which it wishes to use, even if such registered design is similar in some respects to the design(s) registered by Birmingham 2022, then no specific authorisation from Birmingham 2022 is required.**
- **If a business or person had the right to use a particular intellectual property right other than trademark or registered design before the date the Act received Royal Assent (i.e. 25th June 2020).**
- **If a representation had already been used by a business or person before 21 December 2017 and has continued to be used since then for the same business purpose. For example, a business that has continuously since that date been called “Commonwealth Gold Games” or “Birmingham Games” and has been operating in the same business area since that date can continue to use that name.**
- **If the representation used is factual and the use is in line with honest practices in industrial or commercial matters as follows:-**
 - **If the representation is actually the name of a person or business or their address;**
 - **If a representation factually describes any goods or services in terms of descriptions of quality, purpose, value, origin or other characteristics. For example, a statement of fact in a publication that states “Come to our restaurant which is in walking distance of the name of a Birmingham Commonwealth Games venue” would be factual and therefore permitted;**
 - **If the representation is not a trademark and merely describes the time of production of the goods e.g. “Manufactured in Birmingham in 2022”;**
 - **If the representation is used in a genuine report of a Games event or used to share information about the Games (e.g. a news broadcast or newspaper report online). Further specific guidance as to what might or might not be permitted in this context will be provided separately by Birmingham 2022 following discussion with media organisations. Birmingham 2022 does however acknowledge that it is its intention to be proportionate and reasonable; or**
 - **If the representation used is incidental to a literary or dramatic work, such as a film or other artistic work.**
- **If any goods are resold in the market which bear a word, combination of words, imagery or logo which has already been approved by Birmingham 2022 then no further authorisation is required for the resale.**

- **Providers of information society services (such as online marketplaces) who merely host, cache or store information which contains or refers to representations, might be classed as an exception provided they meet the conditions set out in Schedule 1 of the Act. For example, if Birmingham 2022 notifies an online marketplace that an item is being sold on its site which has not been authorised and is therefore an infringement under the Act, and the owner of the site subsequently refuses to**

remove the item from sale then the owner of the online site could be liable under the Act.

The courts will also take into account the interests of those parties who, for example, own any goods or documents which are the subject of any infringement action. For example, the Act provides that a copy of any application must be served on them, and, they are entitled to appear in the proceedings and appeal against any order made.

J. WHAT DO I HAVE TO DO TO GET PERMISSION/ AUTHORISATION TO ASSOCIATE WITH THE GAMES?

Only Birmingham 2022 can grant an authorisation to associate with the Games and the authorisation will be documented in writing in the form of a licence agreement.

The authorisation can be:-

- (i) granted in respect of a business or a particular type of business (e.g. personal trainer, gymnasium or a chain of gymnasiums);**
- (ii) in respect of a representation;**
- (iii) subject to conditions, such as when a representation can be used and where; and**
- (iv) revoked provided the revocation is in writing and made in a clear and timely manner.**

There will be no additional fee payable to Birmingham 2022.

An authorisation from Birmingham 2022 is likely to be granted as part of a sponsorship arrangement with an official sponsor/partner of the Games. Alternatively, a one off request to associate with the Games can be made to Birmingham 2022 via the following process:-

- **An email should be sent to the following email address:- association@birmingham2022.com**
- **The email should set out the following details:-**
 - **whether the request is in respect of a person or description of persons (such as business or group of businesses);**

- **whether the request is in respect of a specific representation and what specific words or phrases the requestor wishes to use;**
- **details of how the requestor wishes to use the words or phrases;**
- **details as to where the representation would be used; and**
- **how long the requestor wishes to use the representation.**

- **Birmingham 2022 will respond to the requestor to confirm whether it agrees to the use of the representation.**
- **If Birmingham 2022 agrees to the use of the representation, a short licence agreement will be sent to the requestor for acceptance and signature.**
- **Once the licence agreement is signed by or on behalf of the requestor, the representation can be used by the requestor for the use specified, in line with the scope and duration set out in the licence.**

Please note that it will only be in exceptional circumstances that an authorisation/licence will be granted outside of an official partner/sponsor relationship.

K. WILL THE PROVISIONS OF THE ACT CEASE TO HAVE EFFECT BY A CERTAIN DATE?

The provisions of the Act which are subject to this Guidance will cease to have effect from 1 January 2023, when it is anticipated that all events associated with the Games will have taken place and the Organising Committee will be, or will shortly be, wound up.

For further guidance on associations with the Games, please contact Birmingham 2022 on association@birmingham2022.com.

This Guidance and any other information which might be provided in relation to the Act is intended only to give an indication of Birmingham 2022's interpretation of the Act and is without prejudice to any rights which Birmingham 2022 might have in any particular case. The provisions of the Act are ultimately subject to interpretation by the courts and the information provided in this Guidance document cannot be treated as a strict statement of law.

If you are in any doubt about the effect of the Act or if you are proposing to do something which you think might be an infringement of the Act, we recommend that you should seek independent legal advice.

APPENDIX TO GUIDANCE

KEY



The activity is likely to be permitted. If in doubt, ask Birmingham 2022



NOT PERMITTED – Organisations must not carry out this type of activity or use

All requests for approval and enquiries should be directed, as appropriate to:
association@birmingham2022.com

NOTE: THE EXAMPLES BELOW ARE NOT DEFINITIVE AND ARE FOR GUIDANCE PURPOSES ONLY TO ASSIST INDIVIDUALS AND BUSINESS TO MAKE DECISIONS.

BIRMINGHAM 2022 RESERVES ITS RIGHTS TO TAKE ACTION AGAINST ANY PERSON OR BUSINESS WHO ACTS IN CONTRAVENTION OF THE ACT. ACTION MAY THEREFORE BE TAKEN AGAINST ANY UNAUTHORISED ASSOCIATION WITH THE GAMES WHICH MAY BE SIMILAR TO ANY OF THE EXAMPLES WHICH ARE NOT EXPRESSLY PROHIBITED BELOW.

	Example of Activity/Use	Position of the Organising Committee
	A major electronics supplier's brand campaign advertises that their TVs are "perfect for watching athletics / this summer's sport".	This use does not imply an association with the Commonwealth Games as a specific event. No infringement action would therefore be taken by Birmingham 2022.
	A restaurant/hotel advertises or lists themselves as being within "easy walking distance of" or "well located for" Alexander Stadium, a Commonwealth Games Venue.	Whilst this does suggest an association between the restaurant and the Games, it is through the use of an indication concerning the characteristics/factual description of the service, which is an exception to the restriction under Section 5(3)(b)(i) of the Act.
	A local School welcomes the Birmingham Commonwealth Games with posters on the school gates	There would be no unauthorised association as the school is not acting in the "course of a business" and there is no suggestion of a commercial, corporate or contractual relationship, between the group/school and the Games.

	<p>A national newspaper features an article on the Games and runs advertisements alongside the article which relate to non-sponsor products.</p>	<p>This would be permitted by the “fair use” exception in Section 5(4) of the Act in relation to a report of a Games event / purpose of sharing information about the Games.</p> <p>Birmingham 2022 considers that editorial freedom about the Games should be protected allowing the news to report on the Games. The advertising is likely to be considered to be incidental to the article.</p>
	<p>An owner of a website wishes to include a link to the official Birmingham 2022 website.</p>	<p>This would be permitted provided that the link is displayed as follows:- “Visit the official website of the Birmingham 2022 Commonwealth Games at: www.birmingham2022.com”.</p> <p>No Birmingham 2022 Commonwealth Games logos or other images should be used when linking.</p>
	<p>Online retailer offers 20% discount with the code “Commonwealth Games”.</p>	<p>The promotion draws links between the Games and organisation in the mind of the public. As a result, there would be an unauthorised use of a representation inferring a commercial relationship.</p> <p>Birmingham 2022 could take action against such infringement.</p>
	<p>Café sells “Birmingham 2022 Burger”.</p>	<p>The promotion suggests an association between the Games and the café. As a result, there would be an unauthorised use of a representation inferring a commercial relationship.</p> <p>Birmingham 2022 could take action against such infringement.</p>
	<p>High Street retailer sells T-shirts featuring “Birmingham 2022” or “Birmingham Gold” embroidered on the pocket.</p>	<p>“Birmingham 2022” is a registered word trademark and as such Birmingham 2022 would likely take trademark infringement action against the High Street retailer to stop sales.</p> <p>The use of “Birmingham Gold” would also be prohibited under the Act, despite it not including a mark or word which is trademarked, as its use would create an unauthorised association with the Games.</p>

	<p>Tanning Shop runs a Facebook promotion for tanning products "Go for Bronze in Birmingham this Summer".</p>	<p>The shop aims to use a promotion including a representation which suggests an association with the Commonwealth Games. As such this is an unauthorised use of a representation which infers a commercial relationship.</p> <p>As a result, Birmingham 2022 could take infringement action against the shop.</p>
	<p>A soft drinks company releases a social media campaign to wish athletes good luck at the Commonwealth Games.</p>	<p>The company is using a representation in order to suggest an association or link between it and the Games and is therefore unauthorised.</p> <p>As a result, Birmingham 2022 could take infringement action.</p>
	<p>A gym posts a monthly newsletter on a noticeboard and emails it to members mentioning "be inspired by the Games and get fit".</p>	<p>The gym is aiming to promote goods or services by reference to a representation, even if there is no specific suggestion of a commercial relationship. As a result, Birmingham 2022 would consider that this organisation is trying to gain financially from an association with Games.</p> <p>As a result, Birmingham 2022 could take infringement action.</p>