Controversial Logo for the 2020 Tokyo Olympics

Background
Tokyo, which was elected as the host city of the 2020 Summer Olympics by the International Olympic Committee ("IOC"), made an announcement to withdraw its first version of the games’ emblems designed by Mr. Kenjiro Sano ("Kenjiro Sano") on 1 September 2015 because Belgian designer Mr. Olivier Debie ("Olivier") has complained that Kenjiro Sano in designing one of the games’ emblems withdrawn ("Tokyo 2020 logo") has copied the logo he designed for the Théâtre de Liège ("Théâtre de Liège logo"). The Théâtre de Liège logo was designed by Olivier some time in 2012. Olivier designed it for a theatre in the eastern Belgian city. Olivier announced that he will file a lawsuit against the IOC for the copyright infringement. This article seeks to examine the claims raised by Olivier in Hong Kong law context.

Legal Analysis

Copyright law in Hong Kong
The Copyright Ordinance (Cap. 528) ("Ordinance") is the key legislation relating to copyright in Hong Kong. Copyright subsists in a work only if it satisfies the following key criteria prescribed by the Ordinance:

1. it must be a work which falls within one of the categories specified in section 2(1) of the Ordinance;
2. is original within the definition in common law (in the case of a literary, dramatic, musical or artistic works); and
3. is recorded, in writing or otherwise (in the case of a literary, dramatic, or musical work).

Is the Théâtre de Liège logo protected?
Logos and emblems are graphic works which fall within the category of artistic works under section 2(1) of the Ordinance. The Théâtre de Liège logo falls within the category of artistic...
works and thus satisfies condition 1. Regarding originality, it is said that it relates to the expression of the thought, rather than the originality of ideas (University of London Press Ltd v University Tutorial Press Ltd (1916) 2 Ch 601). To justify the protection of the originality, one must show that more than negligible or trivial effort or relevant skill and judgement had been expended in the creation of the work and the standard is a low one (Tai Shing Diary Ltd v Maersk Hong Kong Ltd [2007] 2 HKC 23). Looking at the graphic of the Théâtre de Liège logo designed by Olivier, it seems that he has exercised sufficient skill and judgement to make the Théâtre de Liège logo his original work. There is so far no evidence or allegation that Olivier had himself copied the Théâtre de Liège logo from another person's original design. Hence the copyright in the Théâtre de Liège logo is likely to subsist.

Has Kenjiro Sano and IOC infringed the copyright of Olivier?

Once copyright is proved to subsist in a work, the copyright owner has the exclusive right to do certain acts in respect of the work and to stop others from doing these acts, the so-called restricted acts. Such restricted acts include copying of the work, and issuing copies of the work to the public. Section 22(2) & (3) of the Ordinance provides that copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the restricted acts in relation to the work as a whole or any substantial part of it. There is no infringement if the infringing act is not done in relation to a substantial part of the copyright work, and what is substantial depends more on the quality than the quantity of what has been taken. To succeed in his claims in Hong Kong, Olivier needs to establish that (i) there is sufficient similarity in the features which he alleges have been copied, i.e. the Tokyo 2020 logo is a sufficient resemble of the Théâtre de Liège logo, and (ii) the Tokyo 2020 logo was not created independently without copying the Théâtre de Liège logo, e.g. Kenjiro Sano had prior access to the Théâtre de Liège logo. Proof of the commission of the restricted acts is sufficient to constitute an infringement; there is no requirement cast on the copyright owner to show that the infringer knew that he was infringing copyright, i.e. it is not necessary to prove a guilty mind to establish liability.

Based on the graphic designs of the logos, it is not hard to identify some significant similarities between the logos. A substantial part of the Théâtre de Liège logo has been incorporated in the Tokyo 2020 logo. The only issue may be whether Kenjiro Sano has copied from the design of the Théâtre de Liège logo, or create the Tokyo 2020 logo independently without reference to the Théâtre de Liège logo. This is a question of fact and evidence, e.g. whether Kenjiro Sano had prior access to the Théâtre de Liège logo. In a news conference held in Tokyo, Kenjiro Sano claimed that he had never been to Belgium, nor seen the logo even once. Therefore, the issue remains uncertain and is subject to the further investigation. If it is shown that Kenjiro Sano had prior access to the Théâtre de Liège logo, for example, that Théâtre de Liège is a famous theatre and its logo appears in a lot of
international publications having circulation or publicity worldwide which Kenjiro Sano may have access to, he may be found to have copied from the design of the Théâtre de Liège logo and thus have infringed the copyright of Olivier in the Théâtre de Liège logo.

**Reflection**

The IOC’s withdrawal of the Tokyo 2020 logo appears to be a wise move to minimise any potential harm or loss at a time when no lawsuit has even been filed by Olivier against Kenjiro Sano and/or the IOC, given that the risk of copyright infringement is not remote. If Olivier proceeds to file a lawsuit in Belgium or Japan, one must also beware of the application of international copyright conventions, such as the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention in the context of international copyright law.

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**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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