



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### PETER TAO ZHU v THE TREASURER OF THE STATE OF NEW SOUTH WALES

The High Court of Australia today allowed an appeal from a man who, it held, was legitimately selling Sydney Olympic Club memberships in China until the Sydney Organising Committee for the Olympic Games (SOCOG) stepped in to stop him and a SOCOG officer raised the matter with the police, who arrested him.

Mr Zhu entered into an agreement in March 1999 with TOC Management Services authorising him to sell memberships in the Olympic Club. Benefits of club membership included tickets or the chance to obtain tickets to Games and related events. Two club committee members were appointed by SOCOG, including its commercial director Paul Reading. A licence agreement between SOCOG and TOC recognised TOC's right to use intellectual property, namely Games names and logos, and permitted TOC to licence others to use them. Pursuant to the agency agreement, TOC provided Mr Zhu with letters of authority, along with Club letterhead, satchels and other merchandising material. He was obliged to sell 2,000 memberships, later increased to 10,000, and he paid a total of \$260,000 for the agency rights. As it eventuated, this money was almost TOC's only income. SOCOG took over the club in August 1999. Mr Reading ordered TOC managing director Keith Wyness to terminate the agency agreement with Mr Zhu. Mr Wyness incorrectly told Mr Zhu he had committed various breaches and purported to terminate the agreement. Police arrested him as he flew into Sydney from China in December 1999. SOCOG officers had failed to make a full disclosure of the relevant facts to them. Mr Zhu was charged with obtaining money by deception and attempting to obtain money by deception but the charges were later dropped.

Mr Zhu commenced proceedings against SOCOG, TOC and Mr Wyness. He settled with Mr Wyness and action against TOC was stayed when a liquidator was appointed, but he proceeded with action against SOCOG for interference with contract. The New South Wales Supreme Court awarded Mr Zhu \$4,234,319, including \$95,000 in aggravated damages for injured feelings due to the arrest and \$200,000 in exemplary damages for SOCOG's behaviour which Justice Patricia Bergin labelled high-handed, disgraceful and reprehensible. She found that TOC's termination of the agency agreement was not valid, that SOCOG had interfered with the contract in a number of ways, and that any breaches by Mr Zhu did not justify termination. The NSW Court of Appeal allowed an appeal, finding SOCOG had established the defence of justification because Mr Zhu had made unauthorised use of intellectual property. By this time, the Treasurer had been substituted for SOCOG which had been wound up. Mr Zhu appealed to the High Court.

The Court unanimously allowed the appeal and held that SOCOG could not make out a defence of justification as the plaintiff's conduct in Australia was lawful. Mr Zhu did not require SOCOG's prior written consent to use its intellectual property due to the terms of SOCOG's licence agreement with TOC and of Mr Zhu's agency agreement with TOC. The Court held that, ultimately, the only breach made out was that Mr Zhu had obtained only oral, not written, consent to use Olympic words and symbols in China but that did not justify SOCOG's actions. SOCOG was highly unlikely to have been able to obtain an injunction or other relief against Mr Zhu. It never sought to raise its concerns with him or to negotiate with him or to consult Chinese authorities.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*