

Reputation Management

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A discussion of some of the risks in sports celebrity endorsement

Nike must have thought that it was onto a very good thing in extending its exclusive sponsorship with world number one golfer, Tiger Woods in 2000 to the tune of more than \$100 million. Among other things, it enabled Nike to benefit from association with Woods and apparently guaranteed that he would use their equipment during tournaments. His implicit and explicit endorsement of those clubs could have been expected to boost sales in the consumer market hugely. But recent reports indicate that Woods is less than enamoured of the Nike driver he has been using since last September and has reverted to his trusty Titleist he used to use when he first burst onto the golfing circuit in 1997. Clearly, Nike has been put in a very difficult position since any threat it makes to terminate the relationship as a result is likely to be interpreted as a case of cutting off its corporate nose to spite its face.

From the sponsor's point of view, the main purpose of sponsorship is to ensure that its name and brand is distributed widely to consumers of the sport (raising awareness) and to enjoy some brand enhancement by association with the brand of the licensee. The compact between the two parties depends to a large extent on the continuing reputation of the player or club. What happens when the club's reputation declines endangering the brand of the sponsor at the same time? Can the sponsor do anything to prevent this happening? And if the sponsorship agreement says nothing, can the sponsor pull out of the agreement?

These are precisely the dilemmas that will be taxing the sponsors of the US basketball player, Kobe Bryant, who is currently facing a criminal rape charge that could lead to a sentence of life imprisonment. His fame in the United States is comparable in British terms to David Beckham, which has allowed him to benefit from a number of lucrative sponsorship contracts. Those sponsors – who would initially been looking for exposure by association with a star sportsman – must now be worried that they could suffer the opposite – tainting by association.

There have a number of recent occasions in the UK in which clubs operating in rugby union and soccer have discovered that their PR profiles were less than cast iron. The example of Leeds United FC is interesting. The club's brand became tarnished during the course of the trial of Lee Bowyer and Jonathan Woodgate given the racially sensitive nature of the charges that the two players faced. Indeed, the club's manager, David O'Leary's published account of the trial was given as the primary explanation for his summary dismissal at the end of the 2001-2 season.

Decided cases in the field of sports sponsorship are something of a rarity. However, in the related area of entertainment, there are some interesting parallels. For instance, in the celebrated case of *Spice Girls –v- Aprilla*, an Italian motorcycle manufacturer sued the Spice Girls' management company after its marketing campaign to popularise the motorcycles using photographs of Posh, Sporty, Scary, Baby and Ginger was apparently spoiled by Geri Halliwell's departure from the band. Arguably, the fundamental purpose of the agreement between the parties was the provision of favourable publicity. Although the absence of Halliwell from the band's line-up did not prevent any publicity being provided, Aprilla believed that it should have been told in advance of Halliwell's imminent departure and the absence of such information amounted to a misrepresentation. The damages awarded would have compensated – at least in part - the loss of favourable publicity. Although these facts are clearly difficult to replicate, the principle of compensating a sponsor for failure to provide adequate sponsorship services is an important one in the field of sports sponsorship.

Anything that recklessly damages a club's brand will inevitably tarnish the sponsor's own brand. This does not of itself amount to misrepresentation unless it could be convincingly argued that there was a representation implicit in the sponsorship agreement that the club enjoyed a particular reputation. This does not work if nothing is concealed from the sponsor before entering into the contract. In fact, in most circumstances the difficulties will arise only after the contract has been in existence. The sponsor could try to argue that that brand enhancement was a fundamental provision of the contract that went to the heart of the commercial relationship. The absence of that would, by such logic, amount to what lawyers call a "repudiatory breach" of the contract, enabling the sponsor to terminate. However, trying to imply terms into agreements is risky and the prospect of spending considerable amounts of money on litigation to discover whether or not a term can indeed be implied is a less than appealing prospect for many.

It is clearly better to rely on provisions that appear in the sponsorship contract itself. But this is not necessarily without difficulties. When Greg Rusedski fell victim to an adverse line call during his Wimbledon encounter with Andy Roddick, his subsequent frustration led to a celebrated verbal outburst whose language was sufficiently colourful to prompt apologies to viewers from television commentators. Rusedski's sponsors could be forgiven for wanting to dissociate themselves from such behaviour given the harsh judgements the player received in the media afterward.

Ironically, even though Rusedski's tongue-lashing activities earned him a £1,500 fine from the All England Club, he has since profited by a sum more than 100 times the amount of that fine by his appearance in a TV advert for Buxton mineral water in which he parodies his behaviour during that match. This calls into question the proper interpretation of provisions that occasionally appear in sponsorship contracts that allow sponsors various rights in the event that the party being sponsored "shocks or offends the community". If Rusedski's contracts contained this type of wording, what exactly would shocking or offending the community actually mean? After all, if Rusedski's behaviour can be lampooned so shamelessly there must be a question-mark over the value of such a clause. Any attempt to trigger it would run the risk of the sponsor having to justify its belief that the behaviour was genuinely shocking if it were capable of such easy commercial exploitation. The manufacturers of Buxton are unlikely to have concluded that Rusedski's behaviour fell into that category since such a conclusion would be incompatible with its advertising campaign.

Moreover, would the whole of the community need to be offended, or just part? And if part, would it have to be a substantial part? Ultimately, these questions could only be resolved by a court trying to decipher what the true intentions of the parties were at the time they entered into the contract.

Although it's something of a cliché among legal circles, the importance of careful contract-drafting cannot be over-emphasised. Sponsors need protection in their contracts since they are dealing with parties whose public profiles contain an inevitably large dose of unpredictability. Warranties need to be watertight and rights to renegotiate under predetermined sets of circumstances must be crystal clear. Although sports lawyers may consequently appear to be dancing on a pin as they mine the thesaurus in pursuit of the holy grail of accurate drafting, the alternative route is probably less palatable still for sponsors: litigating in court and engaging PR professionals in potentially expensive damage limitation exercises.

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