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IP and Rights Package: Legal issues to consider in eSports endorsements and sponsorships (Part 1)

The explosion of eSports over the last five years has transformed the industry from a niche market into a global phenomenon. This rapid change has led to increasingly sophisticated commercial opportunities for the most important actors in the industry: players and teams. Esports have reached levels of sponsorship, prize money, and streaming revenues that took traditional sports decades to realize, and this brings with it a host of legal implications which esports will have to engage with and understand just as quickly.

The increasing value of rights in the eSports space means that more attention than ever is being given to contractual arrangements. The intricacies of these arrangements multiply considerably when jumping, for example, from being given \$500 worth of Alienware equipment in exchange for being seen to use it, to \$20,000 and the equipment in exchange for not only using the brand, but formally endorsing it in soundbites and other advertising.

In general, game developers and large commercial entities have, for years, had both internal and external lawyers, accountants and technical staff to deal with complex arrangements and rights protection. With some exceptions, many players have been left exposed without the right expertise needed to secure their positions.

It will always be easier and less costly for players to have the correct approach to legal dealings whilst revenues and commercial rights are modest, as this will set the tone for future dealings. There are plenty of examples of this not happening at the start of a sportsperson's career which have resulted in multi-million dollar lawsuits years later.

This article will briefly look at some of the key issues that may arise from a sponsorship, endorsement, or other commercial partnership and highlight their importance for eSports pros.

Intellectual Property or 'IP'

In all sports, intellectual property forms the basis of a significant amount of commercial revenue that can be generated. It is crucial for players and teams to be sure of what IP they own or control before it can be used in commercial agreements.

As with traditional sports, there is a limited amount of IP that players and teams can use in the wider context of their games. This is due to the fact that what happens in the leagues/tournaments are not owned by the players. Going a step further, in eSports, players do not own the avatars that are actually performing on their behalf in the game. This means that the players in particular must rely on the IP that has been derived without piggybacking on a third party—like a logo.

A team's logo is what instantly makes it recognizable when it is competing and when it is associated with merchandise. There are countless good examples of this currently in use, such as Fnatic's distinctive use of letters 'FiC' or Cloud9's use of the number 9. In a lot of countries, including the UK, this logo is likely to gain intellectual property protection in the form of copyright, as well as by application for registration of a trademark. Once the IP is secure, it can then be licensed to commercial organisations that will use it to show their connection with the team.

For an individual, it can be a little more complex, as most people are often known by their gamer handles. Some may have produced their own logo, too, but this is unusual. However, there are examples in sport where individuals have tried to secure [trademark protection](#) for nicknames (which is essentially what a handle is) such as 'Gazza', 'Zizou' for Zinedine Zidane, 'CR7' for Cristiano Ronaldo, and RF for Roger Federer. These have been successful in Europe, because they have been able to show their logos are 'distinctive' and are therefore capable of registration under the law.

Understanding where IP exists means that the rights associated can be properly packaged and sold for commercial use.

The Rights Package

As touched on above, IP is incredibly valuable. In traditional sports, the teams tend to have alternative sources of income, such as game day revenues through their stadiums, be this in the form of the ticket itself, food and beverage items, or merchandise. This is further enhanced by television broadcast, sponsorship and competition winnings.

In eSports, venues tend to be controlled by the organiser, who will either hire, or in some cases own, the venue, as is the case for example with the Gfinity Arena in London. This means that eSports teams are not able to benefit from game day income in the way their counterparts in traditional sports do, and therefore cutting off a potentially important revenue stream. Whilst streaming-derived revenues from sources like Twitch are important, it is unusual for a player or team to control a tournament broadcast, which can be substantially more lucrative. Other than competition winnings, which are never a guaranteed income, the lack of alternative revenue places increasing importance on endorsements for individual players and sponsorships for teams.

The importance of accurately describing what is being offered should not be underestimated.

Fundamental to any sponsorship or endorsement agreement is what the business paying sums of money, and/or providing equipment, will receive in return for its investment. The importance of accurately describing what is being offered should not be underestimated. Vague language may seem harmless when there are only one or two sponsors, but as the number of such commercial deals grows the risk of players losing opportunities from having inadvertently granted certain rights becomes greater. This underlines the importance of the 'brand sector' definition which covers specific types of products or services that the commercial partner will be allowed to associate with the player.

Being unclear, or too broad, with the brand sector could lead to problems at a later date. For example, SteelSeries may agree to become the 'official equipment sponsor' (this being the brand sector) for a team, but in reality only ever provided branded mice. Two years later, ASUS wants to be the keyboard sponsor of the team. By having the wide category of 'official equipment' rather than 'mice,' SteelSeries could legitimately prevent the team from signing any additional sponsors whose products fall within under the broad 'equipment' umbrella even if all of the rights are not being exploited.

Understanding what rights are on offer can also help prevent conflicts between deals that a team has and those that an individual may get. In a traditional sport like football, this conflict is often managed with teams allowing players to have certain categories to themselves, like boots and gloves, whilst the team retains the shirt sponsorship.

Effective communication of the commercial deals being signed by teams and players means that if there is a conflict, for example a player is sponsored by Kingston and the team by RedBull, then in the player's official team capacity, they **must wear** RedBull branding but anything outside of this is reserved to Kingston. Not being clearly aware of this could be very damaging as it could lead to either the player or team being in breach of their agreements.

In part 2, Daniel looks into agreement timing and length, payment terms, and jurisdiction.

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About Couchmans LLP

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