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Ian S. Blackshaw

Sports Marketing Agreements: Legal, Fiscal and Practical Aspects

T · M · C · A S S E R P R E S S

 Springer

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Foreword

I am pleased to write the Foreword to Professor Ian Blackshaw's book on the Legal, Fiscal and Practical Aspects of Sports Marketing Agreements, particularly as various sports marketing methods and principles, as he points out in this book, in many ways originated and developed in the United States. Sports marketing has now taken root in the rest of the world as well, and, despite the economic downturn and recession, it continues to flourish.

In his book, Professor Blackshaw adopts an efficient and useful approach to this subject by combining theory with practice. As shown in the Table of Contents, a wide range of sports marketing agreements are covered, including: Sports Broadcasting Agreements, often the life blood of a major sporting event; and New Media Rights Agreements, which often provide sports marketers with an extra dimension for commercializing sports events particularly through online media such as "webcasting."

Of particular importance, the book covers the impact of the European Union (EU) on the commercialization of sports events, particularly the Competition Rules of the EU, which apply whenever sport constitutes an economic activity. As sport becomes a bigger and bigger business around the world it is difficult to conceive of any situation in which the necessary economic activity could be absent. As a result, the EU aspects of sports marketing are very important in practice and must be taken into account when negotiating and drafting sports marketing agreements with a European dimension.

This book also tackles the important impact of tax law and rules on sports marketing. It specifically covers the fiscal aspects of Sports Image Rights Agreements and the need to shelter the considerable revenues that sports personalities, such as David Beckham, may earn from the commercial exploitation of their image in a wide range of consumer goods and services on an international scale.

Professor Blackshaw is a leading authority on the use of Alternative Dispute Resolution (ADR) for the extra-judicial settlement of sports disputes of various kinds, particularly commercial ones that transcend national boundaries. Demonstrating this expertise he includes a comprehensive chapter on ADR and extols its

merits for dealing with sports disputes that are bound to arise under a wide range of sports marketing agreements due to the large amounts of money involved and put at risk. Coupled with this focus on ADR, throughout the book he reinforces the need to draft clear and unambiguous agreements as another method to avoid disputes.

Overall, Professor Blackshaw's book contains many useful insights and important information regarding a variety of sports marketing agreements that will be of interest to readers from every aspect of the sports industry, including; sports administrators, rights holders, marketers, advertisers, broadcasters and their professional advisers, and others who are involved in the organization, promotion and commercialization of sports events and personalities. This book will also become a useful resource for academics, researchers, scholars and students in sports marketing and law.

Congratulations to Professor Blackshaw on this important and highly practical book. I recommend this book to individuals involved in sports marketing and sports law around the world. I look forward to relying on it in my own sports law research and courses in the future.

Milwaukee, Spring 2011

Prof. Paul Anderson
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Author's Preface

Sport is now big business—worth more than 3% of world trade and 3.7% of the combined GNP of the 27 Member States of the European Union with a population of some 500 million—and a whole new body of law and practice has grown up in the field of the commercialisation of sports events and the exploitation of the image and personality rights of elite athletes, all of which is commonly referred to—in the jargon—as Sports Marketing.

Indeed, without the considerable revenues derived from various forms of Sports Marketing, especially Sponsorship and Sports Broadcasting and New Media Rights—many major sporting events, such as the Olympic Games and the FIFA World Cup, could not be organised and staged; and likewise many athletes could not afford to train and participate in them—much to the disappointment of sports fans around the world.

The aim of this book, therefore, is to provide sports administrators and their professional advisers, especially their lawyers, marketers, media advisers, advertising, PR and sports agents, sports law students and researchers, as well as others involved in the commercialisation, marketing and promotion of major sporting events and sports personalities, with an overview of the legal, fiscal and practical aspects of drafting and enforcing a wide range of standard Sports Marketing Agreements and also particular sports-specific clauses, including so-called 'Morality Clauses' in Sports Image Rights and Endorsement Agreements, particularly relevant to the recent fall from grace of Tiger Woods and, indeed, of other sports personalities.

The book also includes many samples of these Agreements, whose structures and contents are discussed, analysed and explained in the text of the relevant chapters. This special feature of the book will be of particular interest to legal practitioners, sports administrators, agents and managers.

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- a chapter on Stadia Naming Rights Agreements, a unique and lucrative form of sports sponsorship, which, like Sports Marketing itself, originated in the States, but is proving to be popular elsewhere.¹ A General Precedent of such an Agreement is also included.
- the important aspect of dispute resolution, especially the various forms of alternative dispute resolution (ADR) methods and mechanisms, especially commercial Mediation, that particularly lend themselves to the *extra judicial* settlement of sports-related disputes, which, not surprisingly, with all the money sloshing around in world sport, are on the increase. Samples of 'Dispute Resolution Clauses' are included and discussed in the chapter devoted to this subject.
- the European Union (EU) aspects of the subject, especially the application of the EU Competition Rules to restrictive provisions, such as territorial restrictions in Sports Licensing and Merchandising Agreements.
- a chapter on some of the tax aspects of the subject, particularly in relation to the possibilities of the tax sheltering off-shore of the substantial financial benefits of the licensing of sports image and personality rights of leading sports persons.

This is a fascinating and money-spinning field of sports law and it is the author's further aim that this book will quickly establish itself as the leading work of its kind, combining as it uniquely does the theory and the practice.

The Law is stated as of 1 January, 2011 according to the sources available at that date.

The Hague, Spring 2011

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¹ For example, the Arsenal Football Club's new 'Emirates' Stadium in London.

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Of course, in the time-honoured phrase, the responsibility for the book as a whole, including any errors that may have crept into the final text, rests with the author alone.

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Abbreviations

ABTA	Association of British Travel Agents
ADR	Alternative Dispute Resolution
ATMs	Automated Teller Machines
CAS	Court of Arbitration for Sport
CJEU	Court of Justice of the European Union
CO	Swiss Code of Obligations
EBU	European Broadcasting Union
ECHR	European Convention on Human Rights
EEA	European Economic Area
EU	European Union
FCPA	US Foreign Corrupt Practices Act
FIFA	International Federation of Association Football
HMRC	Her Majesty's Revenue and Customs
ICANN	Internet Corporation for Assigned Names
ICC	Incorporated Cell Company
IMG	International Management Group
IOC	International Olympic Committee
IP	Intellectual Property
IPRs	Intellectual Property Rights
IR	Image Rights
IRRA	Image Rights Representation Agreement
ISL	International Sport Leisure and Culture
KNVB	Royal Netherlands Football Association
LOCOG	Organising Committee of the London 2012 Summer Olympics
NBC	National Broadcasting Company
NFF	Norwegian Football Federation
NIC	National Insurance Contributions
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay-As-You-Earn
PCC	Protected Cell Company
PCT	Patent Cooperation Treaty

PLT	Patent Law Treaty
SFCs	Specialist Financial Centres
SOPARFI	Société de Participations Financières
TRIPS	Trade Related Aspects of Intellectual Property Rights
UDRP	Uniform Domain Name Dispute Resolution Policy
UEFA	Union of European Football Associations
VIK	Value in Kind
WIPO	World Intellectual Property Organization