

ASSER International Sports Law Series

For further volumes:
<http://www.springer.com/series/8858>

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

Prof. Ian S. Blackshaw
80 rue Principale
62310 Sains-les-Fressin
France
e-mail: ian.blackshaw@orange.fr

ISSN 1874-6926
ISBN 978-90-6704-792-0
DOI 10.1007/978-90-6704-793-7

e-ISBN 978-90-6704-793-7

Library of Congress Control Number: 2011938391

© T.M.C. ASSER PRESS, The Hague, The Netherlands, and the author 2012

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl

Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Cover design: eStudio Calamar, Berlin/Figueres

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Series Information

Books in the *ASSER International Sports Law Series* chart and comment upon the legal and policy developments in European and international sports law. The books contain materials on interstate organisations and the international sports governing bodies, and will serve as comprehensive and relevant reference tools for all those involved in the area on a professional basis.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre is the co-founder and coordinator of the Hague International Sports Law Academy (HISLA), the purpose of which is the organisation of academic conferences and workshops of international excellence which are held in various parts of the world. Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

Series Editors

Dr. Robert C. R. Siekmann, Director Asser International Sports Centre
e-mail: r.siekmann@asser.nl

Dr. Janwillem Soek
e-mail: j.soek@asser.nl

M. A. van der Harst LL.M.
e-mail: m.van.der.harst@asser.nl

Editorial Office

ASSER International Sports Law Centre
T.M.C. Asser Instituut
P.O. Box 30461
2500 GL, The Hague
The Netherlands
www.sportslaw.nl



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
Associate Director
National Sports Law Institute
Marquette University Law School
Milwaukee, WI
USA

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.

The book 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.

- 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

Prof. Ian Blackshaw
Honorary Fellow
ASSER International Sports Law Centre
The Hague
The Netherlands

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

Acknowledgments

The author of this book wishes to thank Professor Robert Siekmann, the director of the TMC Asser Instituut International Sports Law Centre, The Hague, The Netherlands, and Dr. Janwillem Soek, the Centre's senior researcher, for all their interest, encouragement and support for this book and its final editing; Mr. Philip van Tongeren, the director of TMC Asser Publishing, for publishing the book in the Asser International Sports Law Series; and my good friend and learned colleague, Keith McGarry, for locating several of the precedents included in the book; and last, but, by no means least, my wife Christine for all her patience and understanding whilst I was writing the book.

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.

Contents

1	Introductory Remarks	1
1.1	Introductory Remarks	1
2	Negotiating Drafting and Interpreting Sports Marketing Agreements: Some General Legal and Practical Points and Considerations.	3
2.1	Introductory Remarks	3
2.2	Negotiating Sports Marketing Agreements.	3
2.3	General Principles of Drafting and Interpreting Sports Marketing Agreements	5
2.4	Concluding Remarks.	11
2.5	Appendices	12
2.5.1	Appendix 1	12
2.5.2	Appendix 2	15
3	The Importance of Intellectual Property Rights in Sports Event Marketing	17
3.1	Introductory Remarks	17
3.2	Sports Events Marketing	18
3.2.1	Trademark Protection	18
3.2.2	Copyright Protection	21
3.3	Hypothetical New Sports Event Case Study.	22
3.4	Copyright Assignment.	23
3.5	Concluding Remarks.	24
3.6	Appendix.	25
4	Letters of Intent, Heads of Agreement and Preliminary Agreements	29
4.1	Introductory Remarks	29
4.2	Legal Nature and Validity	30

- 4.2.1 The Position in England 30
- 4.2.2 The Position in Switzerland 31
- 4.3 Appendices 33
 - 4.3.1 Concluding Remarks 33
- 4.4 Appendices 34
 - 4.4.1 Appendix 1 34
 - 4.4.2 Appendix 2 46
 - 4.4.3 Appendix 3 57
 - 4.4.4 Appendix 4 58
 - 4.4.5 Appendix 5 61
- 5 Confidentiality and Non-Disclosure Agreements 67**
 - 5.1 Introductory Remarks 67
 - 5.2 General Legal Principles on Confidentiality 68
 - 5.3 Confidentiality/Non-Disclosure Agreement
 - General Precedent 69
 - 5.4 Concluding Remarks 69
 - 5.5 Appendix 70
- 6 Sports Event Management Agreements 73**
 - 6.1 Introductory Remarks 73
 - 6.2 Sports Event Management Agreements 73
 - 6.3 Concluding Remarks 75
 - 6.4 Appendix 76
- 7 Sports Corporate Hospitality Agreements 89**
 - 7.1 Introductory Remarks 89
 - 7.2 Corporate Hospitality Agreements 90
 - 7.3 Corporate Hospitality Agreement and Terms and Conditions
 - for the Sale and Purchase of Corporate Hospitality
 - Rights Packages 91
 - 7.4 Concluding Remarks 92
 - 7.5 Appendices 93
 - 7.5.1 Appendix 1 93
 - 7.5.2 Appendix 2 115
- 8 Sports Sponsorship Agreements 121**
 - 8.1 Introductory Remarks 121
 - 8.2 Sports Sponsorship Agreements 124
 - 8.2.1 Generally 124
 - 8.2.2 Commercial Opportunities 125
 - 8.2.3 Legal Issues 126
 - 8.2.4 Sports Stadia Naming Rights Agreements 129

8.3	General Precedents of a Sports Sponsorship Agreement and a Sports Title Sponsorship Agreement	130
8.4	Concluding Remarks	130
8.5	Appendices	131
8.5.1	Appendix 1	131
8.5.2	Appendix 2	136
8.5.3	Appendix 3	146
9	Sports Stadia Naming Rights Agreements	165
9.1	Introductory Remarks	165
9.2	Corporate Naming of Stadia and Arenas	166
9.3	Corporate Naming Rights Benefits	166
9.4	Contractual Legal and Drafting Issues	167
9.5	The European Scene	170
9.6	Concluding Remarks	171
9.7	Appendix	172
10	Sports Stadia Concession Agreements	209
10.1	Introductory Remarks	209
10.2	Sports Pourage and Concession Agreements	209
10.3	General Precedents of Sports Pourage and Concession Agreements	210
10.4	Concluding Remarks	211
10.5	Appendices	212
10.5.1	Appendix 1	212
10.5.2	Appendix 2	217
11	Sports Licensing and Merchandising Agreements	223
11.1	Introductory Remarks	223
11.1.1	Contractual Issues	223
11.1.2	Intellectual Property Issues	226
11.1.3	Branding and Distribution Channels	229
11.1.4	Sports Licensing and the Net	230
11.1.5	International Considerations	231
11.1.6	Maximising Sports Licensing Revenues	236
11.1.7	Managing Sports Licensing and Merchandising Agreements	237
11.2	General Precedent of a Merchandising Agreement	237
11.3	Concluding Remarks	238
11.4	Appendix	239
12	Sports Image Rights and Endorsement Agreements	253
12.1	Introductory Remarks	253
12.2	What are Sports Image Rights?	256

- 12.3 Who Owns Them? 257
- 12.4 Protecting Sports Image Rights 261
 - 12.4.1 The UK 261
 - 12.4.2 Continental Europe 262
 - 12.4.3 The USA 265
- 12.5 Fiscal Aspects 266
- 12.6 Legal Remedies for Infringing Sports Image Rights 267
- 12.7 Precedents 268
- 12.8 Concluding Remarks 268
- 12.9 Appendices 271
 - 12.9.1 Appendix 1 271
 - 12.9.2 Appendix 2 276

- 13 Sports TV Rights Agreements 285**
 - 13.1 Introductory Remarks 285
 - 13.2 Sports Broadcasting Agreements 288
 - 13.2.1 Sports Broadcast Licence Agreement 289
 - 13.2.2 Sports Television Sponsorship Agreement 291
 - 13.3 General Precedents of a Sports Broadcast Licence Agreement and a Sports Television Programme Sponsorship Agreement 292
 - 13.4 Concluding Remarks 292
 - 13.5 Appendices 295
 - 13.5.1 Appendix 1 295
 - 13.5.2 Appendix 2 307

- 14 Sports New Media Rights Agreements 313**
 - 14.1 Introductory Remarks 313
 - 14.2 New Media Sports Rights and Marketing Agreements 314
 - 14.3 Concluding Remarks 315
 - 14.4 Appendices 316
 - 14.4.1 Appendix 1 316
 - 14.4.2 Appendix 2 328
 - 14.4.3 Appendix 3 338
 - 14.4.4 Appendix 4 352
 - 14.4.5 Appendix 5 363

- 15 Fiscal Aspects 379**
 - 15.1 Introductory Remarks 379
 - 15.2 Sports Club Case 380
 - 15.3 Structuring Sports Image Rights Arrangements and Agreements in the UK 383
 - 15.4 Structuring Sports Image Rights Arrangements in Guernsey, Channel Islands 383

- 15.5 Structuring Sports Image Rights Arrangements in Luxembourg 384
- 15.6 Concluding Remarks 384
- 15.7 Appendices 385
 - 15.7.1 Appendix 1 385
 - 15.7.2 Appendix 2 390
 - 15.7.3 Appendix 3 398
 - 15.7.4 Appendix 4 417

- 16 EU Aspects. 431**
 - 16.1 Introductory Remarks 431
 - 16.2 EU Competition Rules 433
 - 16.3 Collective Selling of Sports TV Rights 434
 - 16.4 Territorial Restrictions in Sports Merchandising and Licensing Agreements 436
 - 16.5 Options to Renew and Rights of First Refusal in Sports Marketing Agreements Generally 438
 - 16.6 Concluding Remarks 439
 - 16.7 Appendix 441

- 17 Alternative Dispute Resolution 453**
 - 17.1 Introductory Remarks 453
 - 17.2 The CAS 454
 - 17.2.1 The Organisation of the CAS 455
 - 17.2.2 The Funding of the CAS 455
 - 17.2.3 The Legal Status of the CAS 456
 - 17.2.4 CAS Arbitrators 456
 - 17.2.5 The Legal Status of CAS Awards 457
 - 17.2.6 Legal Challenges to CAS Awards 457
 - 17.3 CAS Dispute Resolution Clauses 458
 - 17.4 Expert Determination Dispute Resolution Clauses 460
 - 17.5 ‘Mixed’ Dispute Resolution Clauses 463
 - 17.6 Concluding Remarks 464

- 18 ‘Best Endeavours’ Clauses 465**
 - 18.1 Introductory Remarks 465
 - 18.1.1 ‘Best Endeavours’ 466
 - 18.1.2 ‘Reasonable Endeavours’ 467
 - 18.1.3 ‘All Reasonable Endeavours’ 468
 - 18.2 Concluding Remarks 468

19 ‘Boiler Plate’ Clauses 471

19.1 Introductory Remarks 471

19.2 Some Common ‘Boiler Plate’ Clauses. 471

 19.2.1 Amendment Clause 471

 19.2.2 Assignment Clause 472

 19.2.3 UK Contracts (Rights of Third Parties)
 Act 1999 Clause 472

 19.2.4 Counterpart Agreements Clause 472

 19.2.5 Entire Agreement Clause 472

 19.2.6 Force Majeure Clause 473

 19.2.7 Further Assurance Clause 473

 19.2.8 Good Faith Clause 473

 19.2.9 Notices Clause 474

 19.2.10 Relationship of the Parties 474

 19.2.11 Schedules Clause 474

 19.2.12 Set Off Clause 475

 19.2.13 Severance and Invalidity Clauses 475

 19.2.14 Survival of Clauses 475

 19.2.15 Time of the Essence Clause 475

 19.2.16 Waiver Clause 476

19.3 Some Examples of ‘Boilerplate’ Clauses 476

19.4 Concluding Remarks 476

19.5 Appendices 477

 19.5.1 Appendix 1 477

 19.5.2 Appendix 2 501

20 Concluding Remarks 505

Table of Legislation 507

Table of Cases 509

Index 513

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