

This month's article was written by Leigh Augustine-Schlossinger, Denver, owner and managing member of a firm focusing on legal representation of athletes, Leigh Augustine, Attorney at Law, LLC—(303) 726-5329, leigh@augustinesports.com.

The author gives special thanks for assistance in the preparation of this article to Adria Muir and Holly Christensen, third-year students at the University of Denver College of Law.

This article provides an overview of team and league guidelines as they pertain to endorsement contracts for professional athletes, discusses negotiations of endorsement contracts, and covers essential elements in such contracts.

Endorsement Contracts for Professional Athletes

by Leigh Augustine–Schlossinger

Companies quite often use the name, likeness, or image of professional athletes for their marketing campaigns.¹ Such corporate sponsorships for athletes, generally called endorsements, easily can exceed \$100,000 per year. Coaches also may be used for corporate marketing campaigns as they fall under the purview of endorsement contracts for professional athletes.²

Representation of professional athletes for these sponsorship contracts creates many unique legal issues, inasmuch as the athlete may need to comply with league and team rules in addition to following general business precepts. This article provides a general overview of endorsement contracts, including the categories and essential elements. It also discusses team and league endorsement guidelines and issues involved in contract negotiations.

Team and League Guidelines

Before seeking any sponsorship, an athlete or his or her advisor should be familiar with the athlete's team and league endorsement guidelines. Examples of guidelines that may cause unexpected problems include conflict of interest rules between team and individual sponsors, and violations of regulations regarding specific advertising activities. Olympic athletes have many more restrictions on the corporate endorsements they may accept because technically they are considered amateur athletes.³

Categories of Endorsement Contracts

Sponsorships for professional athletes generally can be divided into three categories: headgear and clothing, hard goods, and non-

marking sponsorships. Following is a discussion of each of these areas.

Headgear and Clothing

Advertising on an athlete's helmet, headband, or hat commonly is referred to as "headgear" advertising. Sponsors consider headgear as the most important space on an athlete because it receives the most exposure on television and in photos. In a few sports, such as professional skiing and snowboarding, athletes are allowed to sell individual sponsorships on their headgear to corporate sponsors.⁴

Nevertheless, most teams do not allow their athletes to sell individual sponsorships on the rest of their bodies (namely, their uniforms and shoes), because that space typically is reserved for team sponsors.⁵ For example, the National Football League recently signed a ten-year contract with Reebok, which requires that all NFL players wear Reebok shoes during games.⁶ Thus, if an NFL player has an individual sponsorship with a competitor of Reebok, all competitor-identifying marks must be covered before the player steps on the playing field or practice field or into a press conference.

Hard Goods

Hard goods include the athlete's protective wear and equipment—for example, pads, snowboards, skis, and hockey sticks. Some teams and leagues have strict rules regarding hard goods sponsors. An example of this is the US Ski Team. If a hard goods manufacturer wants a member of the US Ski Team to use its equipment, the manufacturer first must pay the US Ski Team and become an Official Equipment Supplier.⁷

Non-Marking Sponsorships

Non-marking sponsorships involve corporate-athlete partnerships that do not include any

advertising rights on the athlete's person. Instead, the sponsor uses the athlete's name, likeness, or appearance in its advertisements, autograph sessions, or speaking engagements. Many guidelines that apply for athlete's headgear relationships also apply in non-marking relationships, including conflicts of interest. For example, United Airlines has purchased category exclusivity as part of its sponsorship of the US Ski Team; therefore, an athlete on that team could not receive any type of sponsorship, including a speaking engagement, from a company such as Delta Airlines.

Contract Negotiations

After an athlete locates a sponsor and navigates applicable regulations, the real work begins. Although non-attorney agents historically dominated endorsement negotiations, this trend is changing. Many athletes are turning to attorney-agents due to their formal contract training, ethical requirements for disclosure of client conflicts of interest, and malpractice insurance coverage.⁸

Many points must be taken into consideration when negotiating a professional athlete's sponsorship deal, some of which are common to other types of contracts. Below is a description of the most important elements of a professional athlete's endorsement contract, whether relevant to headgear, clothing, hard goods, or non-marking sponsorships: (1) term of the contract; (2) base versus incentives; (3) indemnity; (4) endorsed products; (5) athlete approval; (6) appearances; and (7) termination.

Term of the Contract

An overwhelming consideration in an athlete's sponsorship contract is the current stage of the athlete's career. If an athlete is young, a short-term contract generally is preferable to allow for renegotiation

as ranking and statistics improve. The opposite also is true; if the athlete is near the end of his or her athletic career, a long-term contract with guaranteed payments generally is preferable.

Base Versus Incentives

The best sponsorship contracts have a combination of retainer (also known as “base” or “guaranteed compensation”) and bonus payments (“incentives”). Incentive payments often are tied to photos⁹ and victories. This combination provides the athlete with both the security of guaranteed income and the potential to earn additional money—sometimes double or triple the guaranteed income.

Many sponsors seek to “cap” the victory and photo incentive portions of a contract to limit the tangible maximum payout. A cap is not favorable to the athlete, as he or she might reach the maximum (“cap out”) and inadvertently end up giving free advertising to the sponsor. Nevertheless, if the contract is carefully negotiated, an incentive schedule may be a great way to align the athlete’s performance with the sponsor’s goals.

Indemnity

As with most contracts, an indemnity clause should be included whenever possible. In the case of a sponsorship contract for an athlete, the indemnity clause should work to protect the athlete from an act or omission of the sponsor, in the event the athlete is named in a lawsuit against the sponsor. Such litigation may pertain to trademark infringement, products liability, personal injury claims, or other issues.

Endorsed Products

The sponsorship contract should have a provision that explicitly details the endorsed products. It is in the athlete’s best interests to define the endorsed products as

narrowly as possible. If left undefined, the sponsor likely will construe an endorsed product clause as broadly as possible, thus limiting the athlete from seeking additional sponsorships in related categories. For example, if the sponsor wants the athlete to endorse nutritional snack bars, the sponsor may attempt to designate the endorsed products as “health products.” This would be unfavorable to the athlete because it may foreclose the possibility of sponsorships from other companies for bottled water, vitamins, exercise equipment, sports drinks, memberships in health clubs, and any other product that could be categorized as a “health product.”

Athlete Approval

It is highly recommended that the contract allow the athlete (or his or her advisor) to review all advertising and promotional materials prior to their release to the public. Advisors can avert future problems, such as the resolution of a dispute after materials are released, by including an approval clause into the contract before it is signed.

Appearances

Most sponsors expect the athlete to make appearances to promote the sponsor or products. Such appearances may include photo and autograph sessions, as well as presentations to the sponsor’s employees about the training and dedication required for professional athletics. Scheduling several days for the appearances is reasonable. However, it is recommended that an athlete limit the annual requirements, with additional days to be paid by the sponsor. The appearance fee varies and is negotiable for each athlete.¹⁰

Termination

As with all contracts, endorsement contracts may be breached by any party, either intentionally or inadvertently. “For cause” termination clauses typically

are mutual, and often include reasonable conditions for either party to terminate the contract. Examples of acceptable termination clauses for athlete-clients include non-performance by the sponsor, generally for nonpayment within thirty days of being invoiced or for not supplying the athlete with enough product to compete.

Examples of reasonable termination causes for the sponsor include expulsion of the athlete for substance violations, such as drug use or blood doping,¹¹ or for a felony conviction.¹² Such reasons that allow the sponsor to terminate the contract most likely are not negotiable. The best advice may be to draft the termination clause as favorably to the athlete as possible. In addition, the advisor should thoroughly explain to the athlete the repercussions of a violation.

Conclusion

Negotiating and writing sponsorship contracts for professional athletes is an extremely rewarding, albeit challenging, area of law. These contracts often can amount to significant sums of money for the athlete. That fact, coupled with the intricacies of the athlete's specific team and league guidelines, tend to influence athletes to turn to lawyer-advisors. Each athlete has a unique situation, depending on his or her sport, ranking, and stage of career. Using the leverage that results from these factors can result in effective representation of an athlete when negotiating endorsement contracts.

NOTES

1. A longer version of this article will be published in 10 *Vill. Sports & Ent. L.J.* (Spring 2003).

2. *See, e.g.*, "Colorado Coach Receives New Contract," Aug. 9, 2002, on the CBS sports website, stating that University of Colorado's Head

Football Coach Gary Barnett receives \$640,000 per year for his Nike shoe and broadcasting contracts, http://cbs.sportsline.com/u/wire/stories/0,1169,5593608_56,00.html (last visited Oct. 25, 2002).

3. *See, e.g.*, United States Olympic Committee Constitution, Section 2, Paragraph A, lines 12-14 at <http://www.usolympicteam.com>, click on "Legal" (last visited Dec. 4, 2002).

4. *See, e.g.*, United States Ski & Snowboard Association ("USSA") Competition Guide, Section 211.2.5, page 38 at <http://www.ussskiteam.com/snowboard/sbcompguide.htm> (last visited Nov. 1, 2002).

5. *See, e.g.*, USSA Competition Guide, *supra*, note 4, which allows for the US Ski Team athletes to have up to 250-square centimeters of commercial advertising on their competition uniform. However, before the USSA sets its athletes free to find sponsors to fill those 250 square centimeters, the team sells all of it to its corporate sponsors, including Chevy Trucks, Charles Schwab, Bank of America, Dannon, Ernst & Young, Kodak, Visa, Gateway, Budweiser, Nature Valley, Pharmanex, Spyder, Lipton, Spring, Yahoo! Sports, United Airlines, Nestle, and Captain Morgan. *See* <http://www.ussskiteam.com/marketing/corpsponsors.htm> (last visited Oct. 25, 2002).

6. *See* "Reebok Resurfaces," March 22, 2002, on the CNN Money Online Magazine, http://money.cnn.com/2002/03/20/news/companies/marchmadness_reebok (last visited Oct. 25, 2002).

7. The current US Ski Team Official Equipment Suppliers for the Alpine team are Atomic, Dynastar, Elan, Fischer, K2, Rossignol, Salomon, and Volkl. *See* <http://www.ussskiteam.com/marketing/equipsuppliers.htm> (last visited Oct. 25, 2002).

8. Due to abuses in agent representation of athletes in the past, many athletes now are seeking attorneys to represent them in their legal and business affairs. *See, e.g.*, Fraley and Harwell, "The Sports

Lawyer's Duty to Avoid Differing Interests: A Practical Guide to Responsible Representation," 11 *Hastings Comm. & Ent. L.J.* 165, 170 (Winter 1989).

9. Generally, sponsors will pay an athlete for a photo that appears in a magazine or newspaper only if the photo clearly identifies the athlete as well as the company's logo.

10. For comparison of appearance fee rates of sports figures and celebrities, *see* <http://www.gamesinfo.com.au/postgames/pa/pg000183.htm>, <http://www.celebrityplacementservices.com>, www.sportscelebs.com, and <http://www.speakerbooking.com> (all sites last last visited Oct. 25, 2002).

11. Blood doping is one in which the athlete's own blood is "removed some one or two months before an athletic event and placed in cold storage. These cells are then infused [back into the athlete] one to seven days before the athletic event. If the procedure is done correctly this certainly increases the aerobic capacity of the athlete. . . ." *See* <http://spot.colorado.edu/~gamow/research/doping.html> (last visited Oct. 25, 2002).

12. This is commonly known as a "moral clause." ■