

LEGAL CONSIDERATIONS FOR SPONSORSHIP CONTRACTS OF OLYMPIC ATHLETES*

LEIGH AUGUSTINE-SCHLOSSINGER**

I. INTRODUCTION

Despite the fact that Olympic athletes are generally considered amateurs, the governing bodies of their sports allow them to receive funding from their respective teams, as well as from corporate sponsors.¹ These sponsorships, generally called endorsements, can exceed \$100,000 per year for an athlete, thus forcing the need for detailed contracts, and commonly, attorneys.² Representation of Olympic athletes for their sponsorship contracts creates many

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** After graduating from the University of Denver's College of Law in 1998, Mr. Augustine-Schlossinger became the Vice President and General Counsel of Proxy Partners, L.L.C., the Denver-based marketing agency specializing in Gen-Y corporate consulting, event production, and action sports athlete representation. In the beginning of 2001, he opened his own law firm, and Proxy Partners became his first client. From there, he increased his client roster to include athletes such as Caroline Lalive (two-time Olympic Alpine skier in Downhill, Super-G, and Giant Slalom), Todd Lodwick (three-time Olympic Nordic Combined skier), Genevieve Simard (Canadian Olympic Alpine skier and 2002 World Cup Rookie of the Year), Rick Bower (1999 World Champion Halfpipe snowboarder), Emiko Torito (two-time World Juniors Mogul medallist), Jay Kincaid (World Champion Freestyle kayaker), and represents National Lacrosse League players with their endorsement and playing contracts.

In addition to sports figures, Mr. Augustine-Schlossinger does intellectual property work for the Ben Taylor Band, Dispatch, and the University of Denver. He lectures for the Sports Law class at the University of Denver's College of Law, and has coached lacrosse at Cherry Creek High School since the spring of 1997.

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1. See U.S. OLYMPIC COMM. CONSTITUTION art. I, § 2(A) (2002) [hereinafter USOC CONSTITUTION] (defining "amateur athlete" and stating each amateur athlete must meet eligibility requirements set forth by national governing body for his or her sport), available at http://www.usoc.org/about_us/documents/constitution051502.pdf; see also BYLAWS OF U.S. SKI & SNOWBOARD ASS'N art. IV, § E(1) (2001) [hereinafter BYLAWS OF USSA] (stating U.S. Ski Team requirements for amateur eligibility status), available at <http://www.usskiteam.com/general/ussabylaws.pdf>.

2. See BLACK'S LAW DICTIONARY 1402 (6th ed. 1990). Sponsor is defined as "a surety; one who makes a promise or gives security for another." *Id.*; see also Robert E. Fraley & F. Russell Harwell, *The Sports Lawyer's Duty to Avoid Differing Interests: A Practical Guide to Responsible Representation*, 11 HASTINGS COMM. & ENT. L.J. 165, 170 (1988). Due to abuses in agent representation of athletes in the past, many ath-

unique legal issues, as the athlete is governed by rules of the International Olympic Committee, the United States Olympic Committee, and the athlete's specific team.³ This Article discusses how these governing bodies affect potential sponsorship contracts and thus the negotiating leverage of the athlete, as well as the essential elements of an athlete's sponsorship contract.

II. INTERNATIONAL OLYMPIC COMMITTEE

As mentioned above, there are three governing bodies for each Olympic athlete: the International Olympic Committee ("IOC"), the United States Olympic Committee ("USOC"), and the athlete's specific team.⁴ Of the three, the IOC is by far the least restrictive in imposing sponsorship guidelines on the athlete.⁵ This is due to the fact that the IOC Charter is silent as to athlete sponsorships.⁶ Nonetheless, the IOC Charter is still critically important, as its 1974

letes, Olympic and otherwise, are now seeking attorneys to represent them in their legal and business affairs. *See id.*

3. *See* INT'L OLYMPIC COMM. CHARTER R. 1-5 (2001) [hereinafter IOC CHARTER] (codifying fundamental principles, rules, and bylaws of Olympic movement), available at http://multimedia.olympic.org/pdf/en_report_122.pdf. The Olympic Charter governs the organization of the Olympic movement and ensures the regular celebration of the Olympic Games. *See id.*; *see also* USOC CONSTITUTION, *supra* note 1, at art. III, § 1 (explaining power and jurisdiction of United States Olympic Committee). The United States Olympic Committee ("USOC") serves "as the coordinating body for amateur athletic activity in the United States directly relating to international amateur competition." *Id.*; *see also* BYLAWS OF USSA, *supra* note 1, at art. I, § A (naming organization as national governing body for skiing and snowboarding in U.S.).

4. *See* IOC CHARTER, *supra* note 3, at R. 1, 3 (explaining IOC is supreme authority and other members of Olympic Movement are international federations, national olympic committees, and national associations); *see also* USOC CONSTITUTION, *supra* note 1, at art. III, § 1 (stating USOC has power to recognize eligible sports organizations as national governing bodies); BYLAWS OF USSA, *supra* note 1, at art. I, § A (giving example of national governing body). Skiers and snowboarders are also governed by the International Ski Federation ("FIS"), which schedules the competitions and imposes the race guidelines like timers and judges. *See FIS: The History*, at <http://www.fis-ski.com/insidefis/fishistory/thehistory.html> (last visited Mar. 18, 2003).

5. *See* IOC CHARTER, *supra* note 1, at R. 32 (stating national organization committees have exclusive authority to determine clothing, uniforms, and equipment used on occasion of Olympic Games). Furthermore, the international federations and national organization committees govern eligibility. *See id.* at R. 45. An Olympic competitor cannot allow his or her person, name, picture, or sports performance to be used for advertising purposes during the Olympic Games. *See id.* at R. 61 (stating no form of publicity or propaganda may appear on any article of clothing or equipment during Olympic Games).

6. *See id.* The Olympic Charter only governs what the athletes may wear on their uniforms during the Olympic Games. *See id.*

amendments are the primary reason that Olympic athletes are allowed to receive any form of compensation.⁷

Prior to 1972, Olympic athletes were amateurs in the truest sense of the word; they were not allowed to receive compensation in any form.⁸ The turning point came in 1972 when Avery Brundage, President of the IOC, left his presidential post.⁹ Two years later, the word "amateur" was removed from the Olympic Charter entirely.¹⁰ This paved the way for a line of professional athletes, many of whom were paid highly to compete in the Olympics: soccer players, tennis players, and equestrian sport athletes in 1988; figure skaters and basketball players in 1992; and hockey players in 1998.¹¹

Due to the removal of the word "amateur" from its charter, the IOC currently allows athletes to receive support from their respective teams. Such support generally comes in the form of a modest monthly stipend in order to pay the athlete's expenses and to compensate the team providing the athlete with coaches, trainers, traveling costs, and competition entry fees.¹² Some U.S. Olympic athletes receive a stipend between \$500 and \$1500 per month, while others receive less in exchange for living in dorm-like housing provided by their team.¹³

7. See Lex Hemphill, *Olympic Amateurism a Thing of the Past*, S. COAST TODAY (New Bedford, Mass.), Feb. 1, 2002, available at <http://www.s-t.com/daily/02-02/02-01-02/c04sp096.htm>. The word "amateur" was removed from the Olympic Charter in 1974, allowing highly paid professional athletes into the Olympics. See *id.*

8. See *id.* Former IOC President Avery Brundage was the most zealous advocate of amateurism in sport. See *id.*

9. See *id.* (attributing athlete's ability to receive pay to retirement of Mr. Brundage). "American athletes in all sports in the upcoming [2002] Winter Olympics receive pay—'support' might be a better word." *Id.*

10. See IOC CHARTER, *supra* note 3, at R. 51 (indicating only mention of word "amateur" in reference to International Boxing Association).

11. See ROBERT C. BERRY & GLENN M. WONG, LAW AND BUSINESS OF SPORTS INDUSTRIES: COMMON ISSUES IN AMATEUR AND PROFESSIONAL SPORTS, 6-7 (2d ed. 1986); George Vecsey, *Olympics Crossing the Magic Line*, N.Y. TIMES, July 19, 1992, at A2 (commenting on first time in Olympics history that professional basketball players were allowed to compete in 1992); see also Hemphill, *supra* note 7 (stating entry years of various "professional" athletes into Olympics).

12. See BERRY & WONG, *supra* note 11, at 19 (explaining USOC has instituted athlete Subsistence Program designed to assist athletes financially).

13. The stipend amounts mentioned are from the USSA and are provided for demonstration purposes only. Please note that each national governing body (such as the USSA) has its own guidelines regarding stipends.

III. UNITED STATES OLYMPIC COMMITTEE

Although the IOC has removed the word “amateur” from its charter, the USOC has left it in.¹⁴ Nonetheless, the USOC slips past the issue of amateurism by defining an amateur athlete as “any athlete who meets the eligibility standards established by the National Governing Body or Paralympic Sports Organization for the Sport in which the athlete competes.”¹⁵ In other words, the USOC delegated the responsibility of defining amateurism, and more importantly, if and how athletes can be paid, to the governing body of each athlete, otherwise known as his or her national governing body (“NGB”).¹⁶

Despite this delegation, the USOC directly and indirectly compensates athletes who compete on behalf of the United States.¹⁷ This is accomplished by allowing athletes to use the Olympic training facility in Colorado Springs and through “Operation Gold,” which pays \$25,000 to any U.S. athlete who wins a Gold Olympic medal.¹⁸

14. See USOC CONSTITUTION, *supra* note 1, at art. 1, § 2(A)-(C) (defining “amateur athlete,” “amateur athletic competition,” and “amateur sports organization”).

15. *Id.* at art I., § 2(A).

16. See IOC CHARTER, *supra* note 3, at R. 20 (providing that national Olympic committees, like USOC, must accept as members more than one national federation for each sport). Currently, the USOC recognizes the following thirty-nine NGBs: National Archery Association, U.S.A. Badminton, U.S.A. Baseball, U.S.A. Basketball, U.S. Biathlon Association, U.S. Bobsled and Skeleton Federation, U.S.A. Boxing, U.S.A. Canoe/Kayak, U.S.A. Curling, U.S.A. Cycling, Inc., United States Diving, Inc., U.S.A. Equestrian, U.S. Fencing Association, U.S. Field Hockey Association, U.S. Figure Skating Association, U.S.A. Gymnastics, U.S.A. Hockey, Inc., U.S.A. Judo, U.S. Luge Association, U.S. Modern Pentathlon Association, United States Rowing Association (“U.S. Rowing”), United States Sailing Association (“U.S. Sailing”), U.S.A. Shooting, U.S. Ski and Snowboard Association (“USSA”), U.S. Soccer Federation, Amateur Softball Association (“U.S.A. Softball”), U.S. Speed Skating, U.S.A. Swimming, U.S. Synchronized Swimming, Inc., U.S.A. Table Tennis, U.S. Taekwondo Union, U.S. Team Handball Federation, U.S. Tennis Association (“USTA”), U.S.A. Track & Field, U.S.A. Triathlon, U.S.A. Volleyball, United States Water Polo, U.S.A. Weightlifting, and U.S.A. Wrestling. See generally IOC CHARTER, *supra* note 3.

17. See *Operation Gold: 2002 Olympic Team Members Get Increase for Top Performances*, at <http://www.olympic-usa.org/news/102201usoc.html> (Oct. 22, 2001) (detailing plan for increased funding for 2004 quadrennial for athlete support).

18. See *id.* (explaining increase in reward for medal winners at 2002 Olympic Winter Games). Gold medallists received \$25,000, silver medallists received \$15,000, and bronze medallists received \$10,000. See *id.* The complex provides housing, dining, recreational, and training facilities for up to 557 coaches and athletes. See *Colorado Springs Training Center*, at http://www.usolympicteam.com/about_us/visitor_ctr_COS.html (last visited Mar. 18, 2003) (describing sports and training facilities of U.S. Olympic Team).

The USOC pays its staff, the training facility, and “Operation Gold” by selling sponsorships to corporations.¹⁹ Such sponsorships can bring in several million dollars from a single sponsor, depending on what the sponsor seeks to gain from the arrangement.²⁰ Generally, a USOC corporate sponsor receives the license to use the USOC logo (five colored Olympic rings) on its products and advertising.²¹

The USOC Charter, however, is silent on the issue of individual athletes’ receiving sponsorships that potentially conflict with USOC corporate sponsors.²² This silence has opened the door to athletes’ obtaining conflicting sponsorships, assuming that such sponsorships do not violate any of the rules of the athlete’s specific team.²³ Currently, the USOC has not interfered with any individual athlete’s sponsorship.

IV. INDIVIDUAL TEAM GUIDELINES

Each individual team competing under the USOC Charter (each NGB) is empowered to create its own guidelines regarding its athletes and their sponsorships.²⁴ Thus, each team provides specific and restrictive guidelines enforceable by both the individual team and the USOC.²⁵ The power the team holds to enforce such

19. See *Worldwide Sponsors*, at http://www.usolympicteam.com/support/ww_sponsors.html (last visited Mar. 18, 2003). The current USOC worldwide sponsors are Coca-Cola, John Hancock, Kodak, McDonald’s, Panasonic, Samsung, Schlumberger, Sports Illustrated, Visa, and Xerox. See *id.*

20. See *Visa Extends Olympic Games Sponsorship for Eight More Years*, at <http://www.corporate.visa.com/mc/press/press123.html> (Nov. 11, 2002) (stating Visa has extended its sponsorship through 2012); see also *Salt Lake 2002 OPUS Sponsorship Programme*, at http://multimedia.olympic.org/pdf/en_report_103.pdf (last visited Mar. 18, 2003) (stating over \$840 million was raised for 2002 Olympic Games).

21. See *Salt Lake 2002 OPUS Sponsorship Programme*, *supra* note 20. For the 2002 Olympics in Salt Lake City, the USOC and the Salt Lake Organizing Committee (“SLOC”) set up a joint marketing venture called Olympic Properties of the United States (“OPUS”), which offered sponsors and suppliers marketing rights to both the USOC and the SLOC marks. See *id.*; see also *Salt Lake City 2002 Olympic Winter Games: Marketing*, at <http://www.tdctrade.com/olympics/saltlake.htm> (last visited Mar. 18, 2003) (detailing marketing venture between SLOC and USOC).

22. See USOC CONSTITUTION, *supra* note 1, at art. II, § 1 (listing powers and jurisdiction of USOC with no mention of sponsor conflicts).

23. See *id.* (failing to resolve issue of sponsor conflicts).

24. See *id.* at art. I, § 2 (defining NGB).

25. See *id.* at art. VI, § 3. “The USOC may review all matters relating to the continued recognition of a National Governing Body or Paralympic Sports Organization and may take such action as it considers appropriate, including, but not limited to, placing conditions upon the continued recognition of the National Governing Body or Paralympic Sports Organization.” *Id.*

guidelines includes suspension or expulsion from the team.²⁶ This result can be devastating for athletes because there is only one national team and expulsion would preclude them from competing on behalf of their country. Furthermore, each team has a different set of rules.²⁷ Due to this issue and the fact that all the relevant rules for each of the teams would be much too comprehensive for the purposes of this Article, this Article reviews only the team rules of the U.S. Ski and Snowboard Association (“USSA”), as they are fairly representative of many of the NGBs’ guidelines.²⁸

The USSA divides individual athletes’ sponsorships into four categories, each of which will be discussed separately below. Before seeking a sponsorship, however, each athlete must be familiar with the USSA’s sponsorship guidelines, so that the athlete does not spend time and energy finding a sponsor only to discover that the USSA will not allow it.²⁹

A. Clothing and Patches

The USSA requires its athletes to wear a uniform for all competitions, which effectively eliminates an athlete’s chance of obtaining an “outerwear” clothing sponsor.³⁰ Nonetheless, the USSA allows space on the athlete’s uniform to be sold to corporate sponsors for commercial markings in the form of patches.³¹ The USSA has, however, restricted the total amount of space devoted to commer-

26. See *USSA Code of Conduct*, at <http://www.uskiteam.com/general/codeof-conduct.htm> (June 10, 2002). Section 3 of the Code of Conduct states:

Failure to comply with any of the above provisions may lead to disciplinary action against competitors, coaches, or officials by the designated team leader. The disciplinary action taken can include: (1) Removal from the team trip or training camp; (2) Suspension from training and/or competition; (3) Elimination of coaching, travel, and other benefits.

Id.

27. See USOC CONSTITUTION, *supra* note 1, at art. I, § 2(A) (explaining eligibility for sports organizations is limited to USOC recognition).

28. See *id.*; see also BYLAWS OF USSA, *supra* note 1, at art. I, § A (naming organization as NGB for skiing and snowboarding in U.S.); 2002 U.S. Cycling Federation Rulebook, at http://www.usacycling.org/rulebooks/uscf_rulebook_toc.html (last visited Mar. 18, 2003) (detailing rules for U.S.A. Cycling).

29. See USSA 2003 COMPETITION GUIDE, art. 210 (June 10, 2002) (detailing guidelines for sponsorship), available at <http://www.uskiteam.com/snowboard/SBCgCh4.pdf>.

30. See *id.* at art. 210.5. The term “outerwear” generally refers to the clothing worn by an athlete during competitions (i.e., for snowboarders or mogul skiers, their jackets and pants and for alpine skiers, their bodysuits). See *id.* An athlete is free to find a clothing sponsor that will provide non-competition clothing, for example, “streetwear” (casual clothing) or “formalwear” (formal clothing). See *id.*

31. See *id.* at art. 211 (explaining general principles for commercial markings).

cial markings on the athlete's clothing to 250 square centimeters, and the maximum surface area for any single marking to 100 square centimeters.³² Before the USSA sets its athletes free to find sponsors to purchase any of those 250 square centimeters, the USSA sells all 250 square centimeters to its corporate sponsors.³³ Therefore, a USSA athlete cannot sell an individual sponsorship to a company and in return promise the company that a patch with its logo will be sewn onto the athlete's competition clothing.³⁴

B. Hard Goods

Athletes are allowed to receive sponsorships in the form of hard goods. Hard goods include the athlete's equipment, including his or her snowboard, skis, boots, bindings, poles, sunglasses, goggles, and protective wear.³⁵ All hard goods must be used in their commercially available design, which means the exact model that the athlete uses in competition also must be available to the general public.³⁶ Additionally, an athlete may negotiate only with the hard goods companies that have paid into the USSA sponsorship pool, which makes the company an official USSA sponsor.³⁷ For example, an alpine skier must choose between Atomic, Dynastar, Elan, Fischer, K2, Nordica, Rossignol, Salomon, or Volkl for his or her brand of skis, as those companies are the only ones who have paid into the pool for the current season.³⁸ The U.S. Snowboarding Team (a semi-independent branch within the USSA structure) is slightly different, as it does not use pools for its official suppli-

32. *See id.* at art. 211.2A.2 (detailing placement and restrictions of commercial markings).

33. *See The U.S. Ski and Snowboard Teams Are Proud to Partner with the Following Outstanding Brands and Corporations*, at <http://www.uskiteam.com/marketing/corpsponsors.htm> (last visited Mar. 18, 2003) [hereinafter *USSA Corporate Sponsors*]. The current USSA sponsors are: United Airlines, Chevy Trucks, Ernst & Young, Kodak, Charles Schwab, Visa, Nature Valley, Pharmanex, Sprint, Anheuser-Busch, Yahoo! Sports, Nintendo Game Cube, Tommy Hilfiger, Captain Morgan, Burton Snowboards, DonJoy Knee Braces, Spyder, and Banknorth. *See id.*

34. *See USSA 2003 COMPETITION GUIDE*, *supra* note 29, at art. 211.2.6. Recently, I tried to sell a sponsorship on an athlete-client to a ski resort where the resort's logo would be worn on the collar of the athlete's turtleneck, what seemed to be unclaimed space under the USSA Competition Guide. It was disallowed under article 211.2.4.2. I argued that the athlete's collar was not part of the uniform because an alpine skier's bodysuit does not cover the neck. The Vice President of the USSA, however, was not swayed.

35. *See id.* at art. 211.

36. *See id.* at art. 211.1.1.

37. *See id.* at art. 210.1.

38. *See Official Equipment Suppliers*, at <http://www.uskiteam.com/marketing/equipsuppliers.htm> (last visited Mar. 18, 2003) (detailing list of current USSA equipment suppliers)

ers.³⁹ Therefore, a snowboarder is allowed to negotiate with any hard goods company that is interested in sponsoring him or her, giving the athlete added control over the sponsors he or she chooses.

C. Headgear

Advertising on an athlete's helmet, headband, or hat is commonly referred to as "headgear" advertising.⁴⁰ It is the most important advertising space on an athlete for two reasons. First, the head and face of an athlete receive the most exposure on television and in photographs, so it is the most coveted space by a sponsor.⁴¹ Second, the USSA allows its athletes to sell that space to any sponsor, so long as the sponsorship conforms with all of the USSA's guidelines.⁴² The first stipulation is that the athlete's headgear sponsor cannot conflict with any existing USSA sponsors. There are several additional restrictions as well. For example, no hard goods sponsor can purchase the headgear space, no alcohol or tobacco sponsors can purchase that space, and obscene names and markings are forbidden.⁴³

D. Non-Marking

Non-marking sponsorships are for corporate supporters that want to have a partnership with an athlete, but choose not to include any advertising rights on the athlete's person. Instead, the company utilizes the athlete's name, likeness, or appearance in advertisements for autograph sessions or for other speaking engagements. Non-marking sponsorships are subject to the same guidelines that apply to other sponsorships. Thus, a non-marking sponsor cannot conflict with a current USSA sponsor.⁴⁴ Therefore, an athlete could receive a personal sponsorship from United Airlines, a USSA sponsor; but an athlete could not receive an endorse-

39. See USSA 2003 COMPETITION GUIDE, *supra* note 29, at art. 211.2.1.

40. See *id.* at art. 211.2.5.

41. For photographs that show several athletes and their headgear logos, see <http://www.uskiteam.com>.

42. See USSA 2003 COMPETITION GUIDE, *supra* note 29, at arts. 211.2.5.1-211.2.5.2.

43. See *id.* at arts. 210.1, 210.6. Although no tobacco or alcohol companies may sponsor an athlete, Anheuser-Busch and Captain Morgan are corporate sponsors of the USSA. See *USSA Corporate Sponsors*, *supra* note 33 (detailing list of current USSA corporate sponsors).

44. See USSA 2003 COMPETITION GUIDE, *supra* note 29, at arts. 210-211.

ment—even a non-marking endorsement—with a direct competitor of United Airlines.⁴⁵

During the Olympic Games, athletes cannot have any commercial markings on their uniforms, except for the logos on their hard goods, which again must be in the same form as is available to the general public.⁴⁶ For the two weeks of the Olympics, the USSA gives its athletes special competition uniforms that do not bear any logos.⁴⁷ Similarly, during the two weeks of the Olympics, an athlete's headgear cannot bear the logo of his or her headgear sponsor, which is a material fact that must be disclosed to a potential sponsor before signing the contract.⁴⁸ Nonetheless, sponsors still receive the benefit of advertising from their athletes during the Olympics by utilizing them in other ways, for example, by airing commercials featuring an athlete during his or her televised event.⁴⁹

45. *See id.* at art. 210.

46. *See Objectives of Olympic Marketing*, at http://www.olympic.org/uk/organisation/facts/introduction/objectives_uk.asp (last visited Mar. 18, 2003). In a superficial attempt to keep the appearance of amateurism, the IOC has banned corporate advertising on the athletes during the Games. *See id.* Nonetheless, the IOC accepts incredible revenues from sponsorships and other sources. *See Introduction to Olympic Marketing*, at http://www.olympic.org/uk/organisation/facts/introduction/index_uk.asp (last visited Mar. 18, 2003). The IOC has raised \$1.815 billion (40%) from corporate sponsorships, \$2.236 billion (50%) from broadcast rights, \$380 million (8%) from ticket sales, and \$100 million (2%) from licensing and other revenues. *See id.*

47. *See Objectives of Olympic Marketing*, *supra* note 46 (stating Olympic Games do not allow advertising on athletes). During the 2002 Olympics, the company Spyder quietly slipped past this issue as the clothing sponsor for the U.S. Ski Team's Alpine skiers (Downhill, Super-G, Giant Slalom, and Slalom events). *See Suppliers*, at <http://www.uskiteam.com/marketing/suppliers.htm> (last visited Mar. 18, 2003) (stating Spyder is current sponsor for U.S. Ski Team). Spyder provided the race uniforms for the U.S. Ski Team through the entire season and during the Olympics. *See About Spyder*, at <http://www.spyder.com/spyder.asp?section=about&page=overview> (last visited Mar. 18, 2003) (noting 2002 Winter Games was first exposure of ski gear on "world stage"). The company issued special uniforms that did not have any of the U.S. Ski Team's corporate sponsors' logos. Nonetheless, the uniforms have easily identifiable spider webs throughout the front and back. *See Catalog*, at <http://www.spyder.com/spyder.asp?section=catalog&page=racing> (last visited Mar. 18, 2003) (displaying various racing suits available from company).

48. This created a unique problem when one of my clients told me, two weeks before the Winter 2002 Olympics, that the athlete's head was too small to fit any mass-production helmet used for competition. Unfortunately, the athlete's custom helmet was custom painted with the headgear sponsor's logo, and therefore was unusable for the Olympics. My staff worked with the helmet manufacturer to find a blank helmet that would fit the athlete's head, only to find that getting that helmet into the Athlete Village in Park City was a bigger problem than getting the right size helmet in the first place.

49. During the 2002 Olympics, Steamboat Ski Resort had a television commercial featuring many of the Olympians that hailed from Steamboat, and in-

V. CONTRACT NEGOTIATIONS

After the rules of the governing bodies have been navigated successfully and a sponsor indicates interest in sponsoring an athlete, the real work begins. Negotiating a contract, whether for hard goods, headgear, or a non-marking sponsorship, is relatively similar to negotiating most corporate contracts. The major terms (length of the contract and base retainer) are agreed upon in person or via telephone; then the contract goes back and forth between the sponsor and the athlete (or more typically, his or her advisor) via email or facsimile with proposed changes, until both sides agree on the final terms of the sponsorship contract.

One key point about an athlete's negotiating leverage is his or her "personal" story. Although some competitors can rely on their mere existence as Olympic athletes or on their status as medal-winners, a compelling story about an athlete can be extremely attractive to a sponsor and an incredible leverage tool. The sponsor generally wants to become a partner with the athlete, to share the same philosophy and work ethic of the athlete, and to become part of the athlete's success story.

An example of this occurred with my client, Rick Bower.⁵⁰ Rick is a halfpipe snowboarder, and in 1999 he was the FIS World Champion.⁵¹ The 2000 and 2001 seasons finished with marginal results for him, but in January of 2002, he ranked sixth in the U.S. and was making a strong run to be one of the four halfpipers sent to Salt Lake City.⁵² Tragically, in the last qualifying event before the Olympics in Breckenridge, Colorado, Rick soared twelve feet above the superpipe, but missed the landing and suffered a 100% tear to his right ACL.⁵³ Several of his sponsorship contracts expired

cluded the tag line "When Olympians gather in Utah, it's called the winter games. When they gather in Steamboat, it's called Thursday." The resort aired the commercial during every Olympic event in which a Steamboat athlete competed.

50. See *AugustineSports.com*, at http://www.augustinesports.com/rick_bower.htm (last visited Mar. 18, 2003) (detailing biography of Rick Bower); see also *USSA Snowboard Athlete Bios*, at <http://internal.ussa.org/PR/public/Biosbrd.asp?ussaid=4894630> (last visited Mar. 18, 2003) (citing biography of Rick Bower).

51. See *Competitors*, at <http://www.fis-ski.com/competitors/results.php?id=6659> (last visited Mar. 18, 2003) (explaining in 1999, Bower won World Snowboard Championships in Halfpipe in Berchtesgaden, Germany).

52. See *id.* (citing Bower's standings in FIS competition).

53. See *USSA 2003 COMPETITION GUIDE*, *supra* note 29, at art. 800 (explaining recommended dimensions for halfpipe and superpipe). A superpipe is similar to a halfpipe, but larger. See *id.* at art. 801.1. A halfpipe has a length of 110 meters, width of 15 meters, and wall height of 4 meters. See *id.* at art. 800. A superpipe has a length of 130 meters, width of 16 meters, and wall height of 5 meters. See *id.* at art. 801.1.

in the spring of 2002, and Rick knew that he could not rest very easily on his 1999 results for his sponsors to come clamoring back.

In each sponsorship proposal sent out on his behalf, emphasis was placed on his inevitable comeback and relentless pursuit of the Olympic dream. The delicately worded over letters spoke of his incredible work ethic in rehab and stressed that his age, then twenty-four, gave him the maturity and experience of a true champion. Finally, each negotiation pushed for a contract with a term of four years so his sponsors knew his goal was nothing short of the 2006 Olympics in Italy.

The “comeback” story succeeded, as it greatly increased negotiating leverage and, more importantly, brought most of Rick’s sponsors back.⁵⁴ In September 2002, the season-opening competition was held in Chile, and Rick finished twelfth.⁵⁵ He told the media that because it was his first time on snow in eight months, he held back to protect his knee, which actually felt better than ever. He said that if he had let himself go, he would have won the competition easily.

Multiple factors must be considered when negotiating an Olympic athlete’s sponsorship contract that may not be considered in other corporate or sponsorship contracts. The most important elements relevant to hard goods, headgear, and most non-marking sponsorship contracts are: the term of the contract, base compensation and incentives, indemnity, endorsed products, athlete approval, athlete appearances, arbitration and choice of law, no assignment, signature products, and termination.

A. Term of the Contract

An overwhelming consideration in an athlete’s sponsorship contract is the current stage of the athlete’s career. If the athlete is young with a long athletic career in front of him or her (perhaps two or three more Olympic Games), it is advisable to negotiate a short-term contract, preferably one to two years.⁵⁶ This is because as the advocate for the client, one must anticipate improvement in

54. See *AugustineSports.com*, *supra* note 50. Rick’s returning sponsors included Salomon boots and Park City’s Mountain Logics Snowboard Shop. See *id.* His new sponsors include Head snowboards, Carrera eyewear and helmets, and Nike sportswear. See *id.*

55. See *Competitors*, *supra* note 51 (explaining Bower finished in twelfth place in World Cup Halfpipe competition in Valle Nevado, Chile).

56. Unfortunately, sponsors work on the other side of this argument, and attempt to sign up-and-comers for the longest contract possible. That way, if the athlete turns into a household name, the sponsor already will have them under contract.

the athlete's ranking and statistics. Upon progression of the athlete's ranking, the advisor will have the ability to renegotiate more lucrative contracts without having been locked into a long-term contract that grossly underpays the athlete. The opposite is also true—if the athlete is near the end of his or her athletic career, the longer the contract with the most guaranteed payments possible, the better.

B. Base Versus Incentives

Well-negotiated contracts are a combination of retainer (also known as “base” or guaranteed compensation) and bonuses for victories and photos (incentives). This combination provides the athlete with both the security of guaranteed income and the potential to earn additional money, sometimes doubling or tripling his or her base. A typical hard goods contract for an Olympic skier ranked in the top twenty-five in the world should be between \$10,000 and \$50,000 in base, and two to three times as much in maximum payout for incentives.⁵⁷ When negotiated correctly, incentives will be paid for finishing in the top ten per race, and up to the top twenty-five for end of season rankings. Additionally, incentives should be paid by the sponsors for getting their logo in the public eye, specifically in magazines, on television, and in films.⁵⁸ Many sponsors seek to “cap” the incentive portion of the contract so that they will have a tangible maximum payout for their budgeting purposes.⁵⁹ Regardless, if the contract is negotiated adequately, the incentive schedule is a great way to align the athlete's performance with the sponsor's goals.

C. Indemnity

As with most contracts, an indemnity clause should be included. In the case of a sponsorship contract for an athlete, the indemnity clause works differently than in a standard corporate contract. It works to protect the athlete from an act or omission by the sponsor in case the athlete is named in a lawsuit against the

57. See David Leon Moore, *Independent-Thinking U.S. Olympic Hero Zooms Ahead*, USA TODAY, Nov. 27, 2002 (stating Bode Miller will earn over one million dollars in ski contracts and endorsements in 2002), available at http://www.usatoday.com/sports/olympics/winter/2002-11-27-miller-cover-story_x.htm.

58. Generally, sponsors will pay an athlete for this type of incentive only if the photograph or video clearly identifies the athlete as well as the company's logo.

59. Unfortunately for the athlete, caps are almost always involved, and are generally not favorable to the athlete as they might “cap out” (reach the maximum) and start to give free advertising to his or her sponsor.

sponsor by a third party. For example, imagine an athlete's sponsor is Salomon skis, and part of the sponsorship contract states that the athlete has his or her own signature model of skis that will be sold to the public. If a third party, unrelated to either the athlete or the company, uses the product and suffers an injury, that third party may sue Salomon and the athlete in a product liability claim. The athlete must be protected from such a claim, and this is done best through an indemnity clause, whereby the sponsor indemnifies the athlete.

D. Endorsed Products

A requirement for all sponsorship contracts is a provision that explicitly details the product or products the athlete is endorsing. If left undefined, the sponsor will construe an endorsed product clause as broadly as possible in an attempt to foreclose 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 is unfavorable to the athlete because it would foreclose the possibility of sponsorships from other companies for products such as bottled water, vitamins, exercise equipment, sports drinks, memberships to health clubs, and any other product that could be categorized as a "health product." Therefore, it is in the athlete's best interest to define the endorsed products as narrowly as possible.

E. 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. Remembering to include such a provision in the sponsorship contract may not be obvious, but it can save advisors the trouble of having to resolve a dispute about what is publicized after the materials are released.

F. Appearances

Virtually all sponsors expect athletes to make appearances. These may include photograph sessions, autograph sessions, or presentations to the sponsor's employees about the training and dedication it takes to become an Olympian. Scheduling several days of appearances for the sponsor is reasonable, but it is recommended that an athlete limit them to about three eight-hour days

per year. The sponsor should pay the athlete for additional days at a minimum of \$500 per day.⁶⁰ Further, when negotiating the sponsorship contract, the athlete should include a clause requiring the sponsor to pay for all necessary travel, lodging, and meals for the athlete and his or her advisor.

G. Arbitration and Choice of Law

A sponsorship contract should include arbitration and choice of law clauses in order to protect the athlete in case of a disagreement with the sponsor regarding the terms of the contract. As with most contract disputes, arbitration is the preferred method of resolution, as it provides a speedy and relatively inexpensive means to resolve the dispute. If possible, the chosen law should be that of the advisor's home state because of convenience to the advisor and his or her knowledge of the applicable law.

H. No Assignment

An athlete's contract should contain a "no assignment" clause so that the sponsor is not able to assign any portion of the contract to any other entity.⁶¹ It is a rare situation, but could prove how important this clause is if in the middle of the term of the contract, another entity purchases the sponsor company. In the event that such action occurs, the clause reserves the athlete's right to renegotiate the contract with the purchasing entity.

I. Signature Products

Signature products are those that bear the athlete's name, such as a ski, snowboard, or shoe. If possible, a provision regarding sig-

60. For examples of appearance fee rates of other sports figures and celebrities, see *Celebrity Appearances*, at http://www.celebrityplacementservices.com/celebrity_appearances3.htm (last visited Mar. 18, 2003) (detailing business of celebrity appearances); *Celebrity Speakers and Entertainers*, at <http://www.speakerbooking.com> (last visited Mar. 18, 2003) (providing fee arrangements of celebrity speakers for various occasions); *Sports Celebrity Marketing, S.C.M. Inc.*, at <http://www.sportscelebs.com> (last visited Mar. 18, 2003) (matching corporations with prominent sports figures for certain fees).

61. See *Arias v. Solis*, 754 F. Supp. 290, 295 (E.D.N.Y. 1991) (holding boxer's services to be unique and extraordinary, permitting court to enforce negative covenant in managing contract by enjoining boxer from engaging in exhibitions or bouts without prior approval of manager); see also *Rath v. Degener*, 185 N.E. 223, 224 (Ill. 1933) (holding parole contract will not be specifically enforced in court of equity unless it is certain that proof is established beyond reasonable doubt); *Rabinovich v. Reith*, 120 Ill. App. 409, 412 (Ill. App. Ct. 1905) (holding court may not order specific performance of contract for personal services); *Pingley v. Brunson*, 252 S.E.2d 560, 561 (S.C. 1979) (ruling singer's qualities were not so unique as to warrant grant of specific performance).

nature products should be negotiated into the contract when the athlete is young and there is very little possibility of the sponsor's actually making such a product. The reason for this is that it is an easy provision to write into the contract when the chance of it actually happening is remote. Once it is part of the contract, however, it is difficult for the sponsor to eliminate it during renegotiation. As for the amount paid to the athlete for a signature product, it depends on the product and the athlete's negotiating leverage. For example, ski or snowboard deals could range anywhere from one to ten dollars per pair of skis or snowboard sold to the public, but it is more typical for the athlete to receive a bonus at landmark sales numbers, such as \$10,000 or \$25,000.⁶²

J. Termination

Endorsement contracts can be breached intentionally or unintentionally by the athlete or the sponsor. As the athlete's advisor, protecting the client is the primary goal. Therefore, under certain circumstances, the athlete must be given a reasonable way to terminate the contract. Two examples of acceptable termination clauses for athlete-clients include nonperformance by the sponsor (generally for nonpayment within thirty days of being invoiced) and not supplying the athlete with enough products to compete. The termination clause also should be mutual. If the company gives the athlete the right to terminate the contract, it also will want to retain the right to terminate the contract under certain conditions. Such actions include, but are not limited to, the athlete's expulsion from his or her national team for blood doping or other substance violation and conviction of a felony.⁶³ Such reasons for allowing the company to terminate the contract are not unreasonable, and are most likely non-negotiable. The best advice is to draft the moral clause as practically as possible, and to explain completely the repercussions of a violation to the athlete.

62. Recently, I negotiated a signature video game contract on behalf of a professional surfer. The contract paid \$10,000 bonuses to the athlete for every 25,000 games sold.

63. This is commonly known as a "moral clause." See Igor Gamow, *Effects of Blood Doping and Gamow's High Altitude Bed*, at <http://spot.colorado.edu/~gamow/research/doping.html> (last visited Mar. 18, 2003). Blood doping is a process by 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." *Id.*

VI. CONCLUSION

Negotiating and writing sponsorship contracts for Olympic athletes is an extremely rewarding, albeit challenging, area of law. Frequently, these contracts can amount to significant sums of money each year for an athlete. That fact, coupled with the intricacies of the IOC, USOC, and the athlete's NGB guidelines, tend to influence athletes to turn to attorney-advisors for assistance in navigating the rules and negotiating the contracts. Each athlete has a unique situation due to negotiating leverage. This influence to bargain depends on his or her sport, ranking, and stage of his or her career. Using that leverage while negotiating the contract results in effective representation of the athlete when bargaining his or her endorsement contracts.