SPORTS MANAGEMENT AND MARKETING AGREEMENTS

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Logo VDE Legal dient op elke pagina (onderaan) van de presentatie terug te komen

SPORTS MARKETING AGREEMENTS

- Economic importance of sports sponsoring
- Forms of sports marketing
- Sponsoring agreements (forms and checklist)
- Analysis franchising and supply agreement
- Endorsement agreement Manufacturer/Player

AMBUSH MARKETING

- What is Ambush Marketing?
- Dutch case law ("Bavaria's Lions Hose")
- IP+ Protection (international developments)

SPORTS MANAGEMENT AGREEMENTS.

- Forms and services provided
- Legal aspects

SPORTS MARKETING

Economic importance of sponsoring (including sports sponsoring):

- Worldwide 2009: 44,4 billion Us Dollars (+ 3% since 2008)[1].
- The Netherlands: 2008: 930 million Euro (+ 6% since 2007), of which more than 50% to sports[2].Biggest sponsor: Rabo Bank: 50 million Euro (e.g. Pro Tour cycling team).
- Worldwide economic crisis: negative impact on expenditure (e.g. ING and Formula One, DSB Bank (bankruptcy in November 2009) and Dutch first Division team Alkmaar (AZ).
- Delayed effect because of ongoing long term contracts.
- Expectations: more critical attitude towards sponsoring
- Balance between rational and mere emotional criteria.
- Measuring of effects.
- Should fit in overall marketing strategy.

[1] Figures IEG/WPP.

[2] Sponsor Tribune/Sponsor Maps

SPORTS MARKETING

Some Forms of sports marketing:

- Sponsorship
- Corporate Hospitality
- International Sports Logo Licensing
- Corporate naming Rights of stadiums and arenas (e.g. Allianz arena München)
- Supply agreements

SPORTS MARKETING

SPORTS SPONSORSHIP AGREEMENTS

Definition:[3]

"Commercial agreement whereby a sponsor pays a certain sum of money (the sponsorship fee) and/or provides certain products, services or other facilities (value in kind) to the sponsored party, in return for which the sponsor is granted certain rights of association with the sponsored party, through which the sponsor can promote the image of the sponsor and sale of the sponsor's products and/or services"

Forms of sports sponsoring:

- Title sponsorship
- Event sponsorship
- Broadcast sponsorship of the vent
- Team and individual sponsorship
- Official designations
- Official supplierships
- Franchise
- Official Program Sponsor
- Commemorative items
- Premiums and other promotional items
- Corporate hospitality
- Tickets and access to VIP areas
- Combination of one or more abovementioned forms: endless possibilities of "formats"

[3] Simon Gardiner : Sports Law, 3d Edition Cavendish Publishing Limited.

SPORTS MARKETING

Checklist[4] legal issues sponsorship agreement:

- Definition of rights granted to sponsor
- Exclusive/non exclusive nature of rights granted
- Precise definition of Product and/or service category
- Territorial issues
- Warranties (e.g. participation team in first division: minimum number of TV-broadcasted events)
- Term of the agreement and renewal clauses(option clauses, right of first refusal, matching clauses)
- Financial terms and conditions
- Obligations of the parties
- Public and product liability
- Insurance
- Indemnities
- Access rights
- Force majeure
- Termination
- Post termination arrangements
- Dispute resolution (ordinary courts, arbitration, mediation) and applicable law

[4] Simon Gardiner

Analysis "Cooperation Agreement Supplier of non alcoholic beverages and football club" (Franchise non alcoholic beverages)

- Considerations: promotion of brand for sports drink/association of this brand with healthy lifestyle/sports

Rights of the sponsor:

- Right of the sponsor to mention the brand as sponsor of the team on photomaterial
- Right to have the players drink from cups bearing the brand name
- Banners on the dug out in conformity with certain seize
- Cooler with brand name in both dug-outs
- Valets carrying sports bags, drink cups etc with brand name;
- License to use the emblem of the club and photo of first team for promotional and advertising purpose
- Fixed boarding (television oriented) of 9 meters during all matches except unless excluded under UEFA or FIFA Regulations (e.g. Champions League)
- Fixed boarding (television oriented) on the side of the pitch according a specific seize
- Availability of publicity space on all places where beverages are sold within the stadium and guarantee of clear visibility
- Provide POS-materials (panels, price lists, "beer" mats, glasses etc. with brand name
- Exclusive distribution rights of brands belonging to the group of sponsor[5] ("pouring rights")
- Free and exclusive placement of automotive machines for the distribution of beverages
- Realization of "style integration" projects in and around the stadium
- Business seats, parking places ("hospitality rights")
- Club cards
- Tickets for special promotional actions for specific target groups ("corporate hospitality and ticketing")
- Attendance of yearly "Fan Day"
- Guarantee of display of logo on all official receptions and availability of brand beverages
- Exclusivity for non-alcoholic beverages
- 50% sponsoring to be allocated to youth

[5] Conformity with European and National competition law should be reviewed (art.* Treaty of Lisbon) and guidelines European Commission on restraints in vertical agreements.

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Obligations sponsor:

- Payment of sponsoring monies
- Additional sponsoring monies related to quantity of trays beverages sold by the Club
- Supply of promotional materials for the brand
- Supply of certain quantity of free brand products to the players of the first team
- Accounting drinks sold

SPORTS MARKETING

Specific contract clauses on duration and termination:

- Specific term of 3 years with obligation of the parties to negotiate extension ultimately 6 months for expiration
- Obligation to give notice of termination ultimately 3 months before expiration[6]
- However automatic termination when team is no longer participating in First Division: obligations of the parties to negotiate the contract
- Right of termination in the event of bankruptcy or forclosure
- Right of immediate termination in the vent of negative publicity prejudicial to reputation of the sponsor (hoologanism, doping, judicial investigations, fraud, misbehaviour etc.)
- Choice of law and jurisdiction clause

[6] If and to the extent that parts of this sponsoring agreement may be considered as an exclusive or quasi exclusive franchise and/or distributorship agreement national imperative distribution and/or franchise laws may be applicable. For Belgium: The 1961 Act on the unilateral termination of exclusive and quasi-exclusive distribution agreements which requires notice of termination also in the event of an agreement for specific term and which is highly protective for the distributor in the event of termination.

For franchising see: the (Belgian) Act on precontractual information of 19 December 2005.

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ENDORSEMENT AGREEMENTS

Under these agreements companies use well-known sports persons to endorse and promote their products and services, which usually, but necessarily have a sporting connection

Case 2: Analysis of Endorsement Agreement

Rights licensed: Granting exclusive right and license to brand owner to use the Player's Endorsement in relation of the promotion of the brand by any suitable media.

Player's endorsement:

"the Player's trade marks, the Player's name, nickname, initials, autograph, voice, facsimile, signature,photpgraph, statements, likeness, caricature, computer generated image, motion picture, videotape or any other endorsement or image whatsoever associated with the Player"

Products:

" sports and leisure footwear, sports and leisure clothing and related accessories of a nature or type the same as or similar to those manufactured by or on behalf of the producer or its distributor or licensees included but not limited to caps, visors, hand bands, wrist bands and bags".

Remuneration:

fixed sum per year to be increased with additional amounts depending on the players" successes (national championship, participation Champions League, FIFA World Cup or other)

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Obligations of the Player:

"At all times during the Contract Period, the Player shall and the Agency shall ensure that the Player shall exclusively wear, use and promote the Producer's brand throughout the contract Territory ("The World") whenever the player:

a) Is practicing, training, competing, playing or otherwise involved in soccer;
b) Is being filmed by promotional videotape or posing for photographs or otherwise engaged in promotional or other activities;
c) Attends any soccer match or training session whether as a player, spectator, television commentator or in any other capacity;
d) Appears in or is featured in any newspapers, magazines or other publications;
e) Participates in any public or interview including but not limited to television and other press appearances in relation to both sporting and non-sporting events;
f) Engages in sports or sports promotional activities.

EXCEPTION: if incompatible with sponsoring of national team.

Minimum of personal appearances throughout the world.

Termination clauses:

- retirement professional football
- incapacity to play for more than 6 months
- criminal offence or behavior which brings the player into public disrepute, contempt, scandal or ridicule etc.
- Right of First Dealing and of First Refusal
- Penalty clauses may be unenforceable in some jurisdictions or subject to mitigation by the courts

AMBUSH MARKETING

What is ambush marketing?

The value of sponsorship is directly related to the degree of exclusivity which is granted in the particular category of products or services for which the rights are granted.[7]

Ambush marketing occurs when a company or firm claims an association with an event, tries to profit from the event or tries to break in the event without the authorisation of the owner/organizer of the event with the result that the exclusivity of the rights of official sponsors are prejudiced and therefore their value adversely affected.

Forms of ambush marketing:

- Infringement of intellectual property: unauthorized use of trademarks, logo's etc. Unlawfull. Remedies: prohibitory injunction proceedings

- Comparative advertising (identifies expressly or impliedly identifies a competitor) is allowed if conditions of EC Comparative Advertising Directive (2006/114/EC) are met.

  However comparative advertising should not take unfair advantage of the reputation of a trademark, trade name or other distinguishing mark of a competitor or of the designation of the origin of competing products.

  Since ECJ 18 June 2009 (L'Oréal v Bellure) rights of owner of trademark with established reputation strengthened. In case of CTM: established reputation in one Member State is sufficient (ECJ PAGO Case C-301/07). Protection of goodwill attached to trademarks.

- Broadcasting sponsorship versus official sponsorship event

  Remedy: contractual clauses (e.g. broadcasting sponsorship and on-screen credits in UEFA Broadcasting Rights Agreements reserved to official partners of UEFA.

- Joint promotions between an official sponsor and a third party

- Sale of promotional material to the public attending the event.

- Corporate hospitality and ticketing

[7] See also Simon Gardiner

AMBUSH MARKETING

Examples Ambush Marketing[8]:

2009: Hugo Boss sailboat follows Tiger Woods of the shore of the British Open

2006: Bavaria's Brewery was removed from fans of the Netherlands because Budweiser was the official sponsor

2002: Nike supplied the runners in the Boston marathon being sponsored by Adidas with spray painted swooshes hat commemorated the day of the race but not the race itself

2000: Qantas Airlines adopted a slogan "The Spirit of Australia" whilst the slogan for the Sidney Olympic Games was "Share The Spirit" and Ansett Air was the official airline sponsor

1998: Nike decided to sponsor individual teams at the 1998 FIFA World Cup whilst Adidas was the official sponsor.

1992: During the Barcelona Olympic Games Michael Jordan (sponsored by Nike) covered the Reebok sign on his gear. Nike also sponsored the press conference of his Dream Team.

[8] Source : http://www.optimm7.com/internet/sem/what-is-ambush-marketing.html

AMBUSH MARKETING

President Court of Utrecht 1 June 2006 (injunction proceedings):

Agreement between KNVB ("Dutch Football Association") and Heineken (official sponsor KNVB): exclusive advertising rights Heineken games Dutch football team during preparation games for Euro 2006 (Germany/Austria).

Bavaria, competing brand sells the so called "Leeuwenhose" with Bavaria logo.

President:

- Relation between KNVB and ticket holder is of a contractual nature
- KNVB cannot refuse access to the event to ticket holders wearing the Bavaria"Leeuwenhose" on the basis of the terms and conditions of this contractual relation
- Sale by Bavaria of a considerable amount of promotional material with the Bavaria Logo is an unfair act of competition against KNVB and Heineken
- Bavaria circumvents in a devious way the ban on advertising and promotional materials other than authorized by KNVB
- Bavaria is ordered to abstain from selling the Bavaria "Leeuwenhose" in the direct vicinity or within an aera of 10 km from the stadion.

AMBUSH MARKETING

IP+ Protection (international developments)

- Introduction of global sponsorship and broadcasting rights (1984 Los Angeles Olympics): exclusivity of sponsorship deals (official sponsor, official supplier and official licensee)
- Need for excluded competitors to be associated with the Games: ambush marketing
- Enforcement of traditional IP-rights not appropriate or effective in order to combat ambush market for protection of interests official sponsors and their investments
- Therefore IP+ Protection: 2003 Cricket World Cup (South Africa: amendment Trade Practices Act 1976: to prohibit, in connection with a sponsored event, the making of a false or misleading statement which suggests a contractual or other connection or association between the person making the statement and the event): turning point in the prevention of ambush marketing
- The Sydney 2000 Games (Indicia and Images) Protection Act 2000 and the Olympic Arrangement Act 2000: IP+ protection but limited to broadcasting of event, advertising near the event and protection of broad range of insignia (not prevention of any association with the Olympics)
- The 2006 Melbourne Commonwealth Games
- EURO 2004 (UEFA)
- 2006 Turin Winter Olympics
- Olympic and Paralympic Marks Act 2007 (Vancouver Winter Olympics)
- London Olympic Games and Paralympic Games Act 2006

AMBUSH MARKETING

International developments:

- Introduction of IP+ protection by tailor made legislation for individual events followed by generic protection to designated events (Major Events Management Act 2007 New Zealand)
- No person may make any representation which is likely to suggest to suggest to a reasonable person that there is an association between the event and the goods and services, brand or person providing the goods and the event.
- "Generic" protection of major events is preferred to specific protection of individual events: development of necessary knowledge and experience required for development of a stable sponsorship by the public, advertisers, marketers and the legal profession

AMBUSH MARKETING

Major Events Management Act 2007 New Zealand:

Criteria “major event”:

- To attract a large number of international participants or spectators
- Raise New Zealand’s profile
- Require high level of professional management and coordination
- Attract large numbers of participants or spectators
- Offer substantial sporting, cultural, social, economic benefits for New Zealand

Need to strike the right balance between stakeholders event and the legitimate interests of traders, media and the public at large in order to avoid “overprotection” which already has been challenged before the Courts and will certainly be challenged again under European and national competition law and/or the European Convention on Human Rights.

SPORTS MANAGEMENT AGREEMENTS

No legal (statutory) definition of a sports management agreement.

Contract “sui generis” and “intuitu personae”: services may range from the mere finding of a club for a player (“FIFA football agents”) to the supply of consultancy services to the athlete in any possible area:

- Career planning
- Sponsoring deals
- Development of communication and merchandising strategy, Licensing and Merchandising, Creation of multimedia productions, creation of websites, speaker invitations, coverage in the media (TV-broadcasts, photo sessions, special events, advertising, organization of press conferences)
- Protection of image rights (e.g. trademark protection)
- Contract negotiations
- Legal advice
- Administrative services (bookkeeping, social security, filing of tax returns,)
- Compliance with sports regulations
- Multimedia
- After career planning
- Introduction to privileged partners (legal, medical, insurance, etc)

SPORT MANAGEMENT AGREEMENTS

Legal aspects:

- Detailed description of services to be provided by the agency to the athlete
- Exclusive right of representation in relation to commercial agreements
- Powers granted to the agency to act on behalf and in the name of the athlete only during contract negotiations but not the signing of the agreement or also for the signing of the agreement
- Agency normally does not become a party to the agreement (e.g. merchandising agreement) between the athlete and the third party. Agent acts as a "mere" intermediary
- European Directive on commercial agency applicable (Council Directive of 18 December 1986), at least to part of the services provided? If so, binding basic protection agent, especially in the event of termination
- Warranties agent on rights
- National licensing schemes on job placement services + license sports association e.g. FIFA) may be applicable)
- Specialist services (tax, legal, insurance, medical, wealth management) to be provided by specialist professionals to be recommended by agency which should dispose of excellent referral network
- Remuneration agent: in most cases percentage as commission on signed commercial contracts (job placement in football maximum commission percentage) and/or fixed amount and/or hourly rate depending on services to be provided
- Duration: indefinite period of time with right of termination. Football agents' maximum contract term of 2 years with right of extension. Right of immediate termination for urgent cause (confirmed positive doping test)
- Applicable law
- Jurisdiction Clause, Arbitration, Mediation

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