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PROFESSIONAL SPORTS and the LAW

May-June 2011 ● Volume 2, Issue 2

Best Practices for Negotiating Naming Rights and Sponsorship Deals

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Naming rights and sponsorship deals are, of course nothing new, but never before have we seen such a proliferation in the number and permutations of such deals as there have been in recent years. For the most part, such arrangements have been success stories, mutually beneficial for teams and corporate sponsors; however, some vital lessons have emerged for negotiating and structuring such arrangements.

Throughout history, institutions such as schools and hospitals as well as public spaces have been named after benefactors. The first stadium, Wrigley Field, was named after the Chicago Cubs owner and chewing gum magnate William Wrigley in 1926. Today, naming rights and sponsorship deals are booming. More than 80 out of the approximately 120 teams in the NFL, NHL, NBA and MLB have their home stadia or arenas named after corporate sponsors,[1] college and universities have begun seeking out corporate sponsors for their stadiums (for example, the KFC Yum! Center at the University of Louisville) and even the Basketball Hall of Fame is looking to get into the game, reportedly actively seeking a corporate naming rights sponsor.[2] Naming rights and sponsorship deals are evolving, with package deals becoming more common and teams creatively generating more and more sponsorship opportunities–for example, at Coors Field, the home of the Colorado Rockies, Coors has exclusive pouring rights in addition to other tie-in arrangements[3], while financial institutions (Citizens Bank, Wachovia, Barclays and M&T Bank to name a few) have various tie-in arrangements such as the right to install ATM's at the stadia that bear their names[4]; another example is Anheuser-Busch's 6-year $1.2 billion deal with NFL which includes licensing, marketing, media and team sponsorship.

Teams and leagues are drawn to such arrangements because they present a significant revenue stream, and corporate sponsors vie for and pay top dollar for the invaluable advertising and goodwill. Most such arrangements are a success for both sides, but there have been several cautionary tales. The Astros' stadium naming rights deal with the Enron, which the team was forced to quickly dismantle after the 2002 scandal, and the 49ers naming rights deals with 3Com and Monster Cable, which were reviled by fans and local media (who continued to refer to the stadium as Candlestick Park and finally passed a referendum requiring the name of the stadium to be reverted to Candlestick Park)[5] speak to the reputational risk in associating one's organization with another entity. There is, of course, no way to predict an Enron-type scandal or extreme fan backlash to corporate sponsorship; however, it is vital to build contingency plans into naming rights and sponsorship deals. For example, termination provisions are important–what will trigger either party's right to terminate (e.g., public accusations of moral turpitude? indictment for a felony? conviction for a felony? bankruptcy?) and how fees and/or royalties will be addressed in case of termination are points that should be thoughtfully negotiated and meticulously worded in the agreement. It is also important for teams that are entering into naming rights or sponsorship arrangements, such as the 49ers who are giving naming rights sponsorship another go, reportedly actively seeking a naming sponsor for their new $937 million stadium[6], to coordinate with the corporate sponsor to develop a public relations strategy both from the outset and in real-time response to shifting media and fan opinion.

Another risk that must be dealt with in naming rights and sponsorship deals are lockouts and other work stoppages which

1 Sam Hollis, "Stadium Naming Rights–A Quick Tour," March 13, 2008, available at: http://www.couchmansllp.com/documents/d-080313-sh_NamingRightsArticle.pdf (last visited June 3, 2011).

2 Tabetha Esry, "Basketball Hall of Fame Plans to Sell Title Sponsorship," March 24, 2011, available at: http://www.theemzone.com/vnews/display.v/ART/2011/03/24/4d8a0bd3747a2 (last visited June 3, 2011).

3 Robert J. Sherwood, "Nine Strikes and You're Out!," August 28, 2002, available at: http://www.forbes.com/2002/08/28/0828sf_print.html (last visited June 3, 2011).

4 Billy Solun, "Making A Name For Yourself Doesn't Come Cheap," September 7, 2003, available at: http://www.highbeam.com/doc/1G1-119675888.html (last visited June 3, 2011).

5 Shelley DuBois, "The Best and Worst Stadium Naming Rights Deals," March 30, 2011, available at: http://money.cnn.com/galleries/2011/fortune/1103/gallery.stadium_names.fortune/index.html (last visited June 3, 2011).

6 Curtis Echelberger, "CAA Hired to Sell Naming Rights for San Francisco 49ers' Proposed Stadium," April 27, 2011, http://www.bloomberg.com/news/2011-04-27/caa-hired-to-sell-naming-rights-forsan-francisco-49ers-proposed-stadium.html (last visited June 3, 2011).

can occur because of natural disasters or collective bargaining disputes, such as the currently ongoing NFL labor dispute. Although a naming rights or sponsorship deal is profitable to the corporate sponsor regardless of such events, because the sponsor's name is part of a local and beloved sports institution, garnering invaluable advertising and community goodwill, the sponsor is likely to request that payments be pro rated for the time period that the stadium is not in operation. The team may wish to counter with an offer of additional advertising or branding tie-in opportunities in compensation (e.g., the sponsor's sign may be lit up and displayed during concerts and other events held at the stadium, instead of just for team games), which would allow the team to maintain its revenue stream at a time when it is especially needed. It would be prudent for teams to take a cue from the NFL–in anticipation of a possible 2011 lockout (which did come to fruition), the NFL renegotiated its television contracts to provide that networks would pay for scheduled games that were not played due to a lockout.[7] The NFL thus protected itself from grave financial consequences and preserved at least one (albeit very significant) revenue stream while other revenue sources are comprised due to the lockout. Teams should attempt to garner such protective provisions for contingencies such as lockouts; although, of course, it should be noted that the networks agreed in the NFL's case because NFL games draw enormous audiences and thus the NFL had great leverage.

In negotiating naming rights and sponsorship agreements, attention should be given not only to unfavorable contingencies, but also to issues that arise from the evolving and ever expanding nature of naming rights and sponsorship deals. Constant technological advances and the development of new forms of media such as Twitter require careful wording in contract provisions regarding what rights are being granted to a corporate sponsor. For example, a corporate sponsor may request guaranteed mentions of its name in connection with the team in all media, now existing or hereafter invented, while the team will want to explicitly delineate the forms of media involved in order to leave space for other (perhaps as yet unforeseen) sponsorship opportunities and to prevent inadvertently granting conflicting rights to different sponsors because of ambiguity in contract language. As in any deal, leverage in such negotiations will depend on the popularity and success of the team as well as the sum involved, among other factors.

Negotiating leverage also plays a role in how successfully a team may be able to avoid exclusivity period and right-of-first-offer provisions in naming rights and sponsorship deals. A corporate sponsor will likely require that at the end of the contract term, the team must negotiate exclusively with the sponsor for a set period (one month would be typical) and/or that if the team receives deal offers from other sponsors, the team must offer the same deal to the current sponsor on the same terms. It is in the team's interest to avoid such provisions since they are restrictive, and often lead to uncertainty and thus pose a litigation risk. On the other hand, a favorable provision that teams should seek to negotiate is, instead of a locked-in fee structure, increasing fees and premiums for positive performance, such as a winning streak, post-season games and championships or high media ratings.

Sports teams are continually carving out new and creative sponsorship opportunities, such as the Florida Panthers who recently signed a deal to name the ice floor of their arena, BankAtlantic Center, Lexus Rink–this is only the second of such naming rights deals for playing surfaces, the first being Mall of America's three year deal to put its name on the Vikings' Metrodome field.[8] Sports teams are also exploring new branding opportunities, such as the Dodgers and Lakers-branded water that is distributed by Branded Bottle and sold in the Los Angeles Area.[9] In creating such new opportunities, teams and sponsors should be aware that league approval may be required and, if the stadium or arena is publicly owned as opposed to team owned, the approval of local government may be required as well for any naming rights to the stadium. While major league teams have a certain level of autonomy, there are certain rules imposed and rights reserved by the leagues. League rules vary; for example, the NFL prohibits corporate logos of any kind on the field, while the NHL allows teams to sell four advertising positions on the ice.[10] Leagues also have varying rules regarding licensing of the team logo or other intellectual property; typically, the league has the right to enter into national agreements on behalf of all of its member teams and the teams retain various local licensing rights.

Another concern for teams in creating new sponsorship opportunities is violating the contractual rights of its existing sponsors. If a team granted the title of official beverage to Pepsi, for example, it may be contractually prohibited from entering into different sponsorship arrangements with Pepsi's competitors or companies that Pepsi does not wish to be associated with (e.g., in the interest of maintaining its family friendly image, Pepsi may not wish to have signs advertising adult magazines displayed at the stadium where it is the official beverage), and may also be prohibited from granting the title of official water to another company since that may, depending on the contract,

7 Lester Munson, "An NFL Labor Impasse Primer," March 11, 2011, available at: http://sports.espn.go.com/espn/commentary/news/story?id=6207473 (last visited June 3, 2011).

8 Don Murret, "Lexus Buys Naming Rights to Panthers' Rink," April 4, 2011, available at: http://www.sportsbusinessdaily.com/Journal/Issues/2011/04/04/Marketing-and-Sponsorship/Lexus-Panthers.aspx (last visited June 3, 2011).

9 Terry Lofton, "Liquid License," March 21, 2011, available at: http://www.sportsbusinessdaily.com/Journal/Issues/2011/03/21/Marketing-and-Sponsorship/Lefton-column.aspx (last visited June 3, 2011).

10 See footnote 8.

create a conflict. In addition to foregoing conflicting sponsorship arrangements, the team and corporate sponsor should negotiate and address how to handle and protect both parties' contractual rights in the event of ambush marketing (that is, a marketing strategy where a company capitalizes on an event or team name without paying a fee; one classic example is Nike papering Atlanta in ads during the 1996 Olympic Games, thereby benefiting from the focus on the Olympics without paying for the privilege).

In contemplating and negotiating naming rights and sponsorship deals it is always prudent to proceed with a certain amount of caution, and with the benefit of good advice as well as lessons learned from recent history. That being said, few would dispute that naming rights and sponsorship arrangements have proven to be meaningful revenue generators for teams and great investments for companies, and we will likely see many more such arrangements in the near future.

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