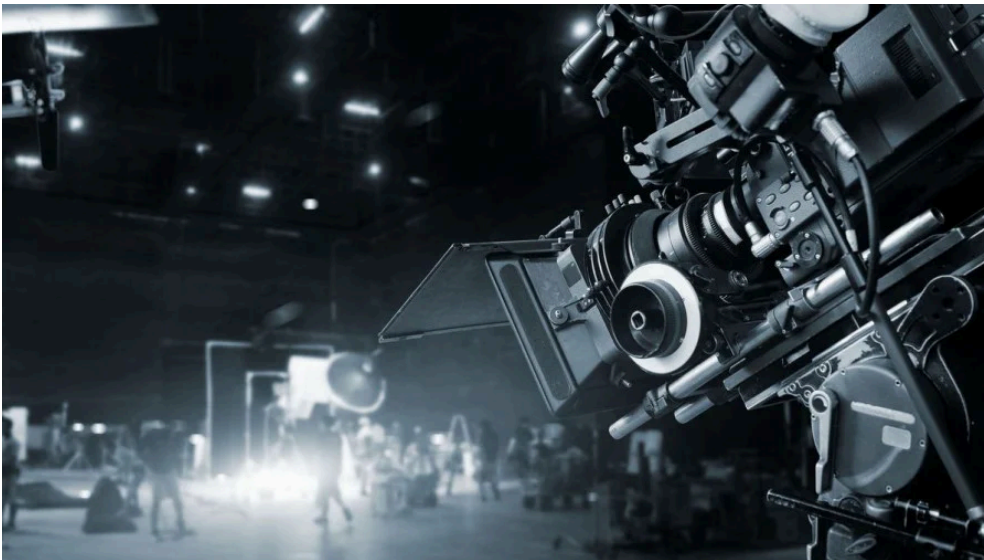




A guide to the main provisions of endorsement contracts in sport



Tuesday, 21 January 2025 Author: [Arne Al](#), [Sophia Grippo](#)

From athlete endorsements to brand partnerships, sponsorship contracts in sports are complex legal instruments. This article examines the essential clauses of endorsement contracts between companies (brands) and individual athletes, providing key insights for athletes and their representatives during contract negotiations.

Introduction

Concluding sponsorship contracts is one of the most common ways for athletes to exploit their name and likeness and often provide a crucial additional source of income.

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Athletes commonly generate significant revenue through the conclusion of sponsorship contracts which income significantly enhances athletes' financial gains, allowing them to diversify their earnings beyond sports (employment) contracts or prize money and thereby optimize their overall earning potential.

Simultaneously, companies can strengthen their reach and connect with a wider audience and strengthen or build-up their image through sponsorship of (sporting) events, teams, federations or individual athletes, which makes sponsorship contracts a much-used phenomenon in and a vital component of the present-day sports industry. To place it in perspective, in 2022, the sport sponsorship market was worth an estimated 66 billion U.S. dollars.^[1]

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Sport sponsorship contracts

A sponsorship contract with an individual athlete often takes the form of an endorsement contract. Endorsements are generally viewed as a type of sponsorship with a clear focus on the relationship between the sponsor and the athlete, where the athlete personally endorses the company/brand of the sponsor.^[2]

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While there are certain instances of sponsors supporting athletes with branding and developing the image of the athlete by creating a marketing plan or marketing strategy (for instance Michael Jordan and Nike),^[3] in the authors experience practice has shown that besides the financial and/or in-kind compensation, many sponsors may not always take a longer term approach to building a partnership with the athlete, for example, for ways to work together to advance career and commercial opportunities for the athlete, focusing on more immediate promotion and endorsement of the product or brand.

This could be different where the athlete provides for a specific 'purpose' which the sponsor can embrace and use in their marketing strategy. In the view of the sponsor, it is often the athlete who must endorse the brand and not the other way around. The gap between expectations of the athlete and the brands can and often do, lead to disappointment and friction between the parties and eventually event to legal disputes.

It is important to note that sports sponsorship contracts are commercial contracts, which can offer a great bit of flexibility and can be individualized and customized to the specific relationship between the sponsor and the sponsored party. Therefore, each individual sponsorship contract must be carefully analyzed.^[4] There are numerous common provisions and clauses in such contracts. In the case of a conflict resulting in legal proceedings, the substance, wording, applicable law and choice of forum of the underlying sponsorship contract becomes increasingly critical for both parties to safeguard their individual rights. The fundamental components, essential and frequently incorporated clauses of such contracts will be discussed further below.

Personality and image rights clause

Endorsement contracts are concluded with the intention to grant the sponsor "*the right to use (i.e. license) the athlete's name, image, or likeness in connection with advertising the sponsor's products or services*".^[5] This definition makes a reference to the licensing of personality rights, so-called

“image rights”. However, the key point of these provisions is to define and dictate how an athlete’s name, image, or likeness should be associated and used by a brand.

These clauses stipulate that the athlete (the endorser) assigns these “image rights” to the sponsor, granting them the right to exploit these image rights for the company and/or brand of the sponsor.

Image rights clauses must be drafted carefully, to be able to objectively determine the image rights that have been licensed to the sponsor, for example the use of the image rights for specific products, territory and/or services. The image rights clauses in endorsement contracts are generally extensive and define the image rights in broad terms, such as:

^[6]

“Player Endorsement means Player’s trademarks, name, nickname, mannerisms, personality, logo, strap-line, catchphrase, distinguishing characteristics, tattoos, fame, initials, autograph, voice, facsimile signature, photograph, statements, biography, career/match statistics, performance data, caricature, image (including computer generated image), motion picture, videotape, likeness or any other endorsement or image whatsoever associated with Player”^[7]

Sponsors will want an extensive and elaborate clause, since this grants them the right to use nearly every characteristic of the athlete for their own promotion. Therefore, an athlete and their advisors should take time to be aware of which rights have been granted to the sponsor and for which purpose. This will dictate how and if an athlete can have multiple endorsement contracts varying in territory, products and/or services. Hence, the athlete needs to carefully evaluate whether the endorsement contracts present any conflicts between them.^[8]

This often leads to negotiation over endorsement rights, with the athlete seeking flexibility to partner with multiple brands, while sponsors may push for broader exclusivity.

In line, athletes should also pay close attention to the time-period during which the sponsor may use the image rights of the endorser after the expiration or termination of the endorsement contract, so-called 'sell-off period'.^[9] This could lead to a potential conflict if an athlete signs with a competitor, and the initial sponsor is still contractually able to use the athlete's image rights during the sell-off period.

Another point of attention to beware of is where there are new product categories. For example, sponsors might wish to use the image rights of the athlete for the production and sale of Non-Fungible Tokens (NFTs). Therefore, to preempt cases like this, it is essential that the athlete is aware to negotiate a form of payment for the granting of these rights. This could either be an upfront payment, royalties, or a combination of both.

Image rights companies

Athletes often transfer their image rights to personal companies, which then negotiate endorsement deals on their behalf. This arrangement was examined in, for example, *Proactive Sports Management Ltd v. Wayne Rooney*,^[10] where a representation contract was deemed unenforceable as an unreasonable restraint of trade. When using such companies, athletes typically must provide personal guarantees ensuring they will fulfill contractual obligations even if their company ceases to hold their image rights.

As such, a clause is typically incorporated stating that *'In the event that the company for any reasons during the contract term will cease to be the exclusive holder of all rights to the athlete endorsement, the athlete shall continue to personally comply with all obligations deriving from the endorsement contract'*.

Morality clauses

One of the primary goals of an endorsement contract is for the athlete to positively promote the company and/or the brand of the sponsor. Therefore, the sponsor generally assesses carefully whether they want to conclude an endorsement contract with a particular athlete. Once a sponsorship relationship is established, morality clauses play an important role in the underlying contract by serving as a critical provision that enables sponsors to safeguard their brand reputation and image and disassociate from endorsers whose behavior or actions might tarnish the sponsor's image. These clauses typically outline specific behaviors or situations—such as involvement in criminal activities, moral turpitude, substance abuse, or other actions deemed detrimental to the sponsor's brand—that could trigger contract termination, suspension or reduced financial remuneration. Such morality clauses offer sponsors the ability to terminate contracts or take corrective actions if the athlete's conduct contradicts the sponsor's values or could negatively impact public perception. Morality clauses act as protective measures, allowing sponsors to uphold their brand integrity and maintain a positive public image, ultimately minimizing potential risks for the sponsor.^[11]

Although the content of endorsement contracts is confidential, it is not uncommon that companies terminate their endorsement contract by exercising their rights deriving from a moral clause. For example, Tiger Woods lost several sponsors such as AT&T, Accenture and Gillette, after numerous allegations of infidelities^[12]. A more recent example is Nike's termination of the endorsement contract with basketball player Kyrie Irving due to anti-Semitic expressions.

^[13]

Nike, a company known for its numerous endorsement contracts with athletes, has a history of terminating contracts by leveraging the morality clause entrenched within the respective contracts. An illustrative instance is Nike's decision to terminate its contract with Lance Armstrong following his admission of doping use, by invoking the morality clause

embedded in their contract.^[14] Nike also nearly dropped Colin Kaepernick but was afraid that it would face backlash from the media, and therefore Kaepernick stayed on Nike's roster. After the legal team of Kaepernick encouraged Nike to use the appearance of Kaepernick in a campaign, and after the agency of Nike pushed to use Kaepernick as the face of the 30th anniversary "Just Do It" campaign, it became one of the most successful campaigns.

An ongoing concern regarding morality clauses lies in their extent and wording. Sponsors commonly include broadly phrased morality clauses, granting them discretionary rights to terminate contracts whenever they perceive it necessary.^[15] On the other hand, athletes or their representatives frequently aim to avoid vaguely constructed morality clauses due to their subjective and uncertain nature. For the athlete it is important to narrow the scope and include a threshold that the endorsement contract can only be terminated based on conduct with factual support. Therefore, they engage in (lengthy) negotiations with sponsors to refine the wording of the morality clause. Oftentimes their objective is to establish specific and objective language, restricting the potential for contract termination solely to cases where the athlete is convicted of a crime.^[16]

Interestingly, morality clauses tend to solely focus on the behavior of the athlete. However, it is not ruled out that a company and/or brand engages in questionable behavior. There are numerous recent examples of public backlash over campaigns or behavior by corporations.^[17] Therefore, the sponsored athlete should consider the risk of being associated with certain sponsors, and therefore may want to include a morality clause which applies to the sponsor's behavior as well, a so-called "reverse morality clause".^[18] By incorporating said reverse morality clause, athletes ensure that they have the contractual possibility to terminate the endorsement contract if the sponsor engages in questionable behavior.^[19] Hereby the athlete is able to protect his brand from being associated with a sponsor which can tarnish his image

and reputation, for example if a company supports certain (political) movements which do not align with the beliefs of the athlete.

Right to terminate

Many commercial endorsement contracts grant the sponsor a right to terminate the contract as soon as *“the Player breaches any of the Player’s obligations, representations, warranties or undertakings under this Contract and, if capable of remedy, fails to remedy the same within 14 days of written notice from [X]”*. This right is quite broad and could result in the sponsor being able to terminate the contract rather easily.

Another common clause is the following: *“the Player shall not: deface, remove, conceal, obscure, modify, add or otherwise alter, or permit to be altered or modified by any third party, any [X] Product without [X]’ prior written approval (for the avoidance of doubt, this restriction shall also apply to shoelaces and all other aspects of [X] footwear)”*.

These two contractual clauses combined potentially grant the sponsor the opportunity to terminate the endorsement contract if, for example, the Player conceals the sponsor’s logo on the relevant products. However, certain contracts grant the sponsor the choice to either terminate the contract or to reduce the compensation owed to the athlete, sometimes even up to 100% for the remaining term of the contract. Such a right of reduction will be discussed in more detail below in a separate paragraph.

An athlete might have numerous reasons to conceal a logo on the sponsor’s products. Firstly, athletes may conceal logos to visibly express dissatisfaction with the sponsor, perhaps due to a dispute over contract terms or disagreements about the sponsor's actions or public stance. It's a non-verbal way of signaling that they are not currently supportive of the brand. Secondly, athletes have used the concealment of logos as leverage during contract negotiations. It is a way to show the sponsor that they are serious about their demands and are prepared to diminish the sponsor's visibility if necessary.

Thirdly, athletes have their image to think about as well as already discussed in the paragraph in relation to the morality clauses above. If being associated with a particular sponsor becomes negative due to controversies or conflicts, athletes might conceal logos to protect their personal image and marketability. Lastly, depending on the nature of the conflict, there might be legal or ethical reasons for an athlete to distance themselves from a sponsor. This could be due to issues such as misrepresentation, breach of contract terms, late payments, or ethical disputes.

Competitors

A sponsor in general demands exclusivity in relation to the endorsement of the athlete. This, naturally, creates a commercial advantage for the sponsor as it prevents the athlete from simultaneously endorsing other brands or products that compete with the sponsor. By agreeing upon exclusivity, the athlete provides the sponsor with more value and loyalty. However, the athlete can use this to demand higher fees, bonuses or incentives. Considering the exclusivity and to avoid any misunderstanding between the parties, in general a list of competitors is incorporated in the sponsor contract.

Nevertheless, to avoid disputes, the boundaries of the exclusivity must be described in detail. Especially when dealing with a large multinational company that has a global reach in territory, category and specific products, exclusivity provisions must be clearly defined. It is especially important for the athlete to define the competitors as narrow as possible to create more flexibility when searching for additional sponsors.

However, as highlighted in the section on the “image rights clause”, it is a possibility that during negotiations, the athlete is able to convince the sponsor to allow other companies, known as so-called “permitted companies”, to utilize the athlete’s image rights as well. In such case, the endorsement contract is no longer exclusive in relation to certain products and/or brands. When dealing with such non-exclusive

endorsement contracts that allow only designated “permitted companies” to use the athlete’s image rights, it is crucial that the endorsement contract explicitly lists these companies in order to avoid disputes. Additionally, if possible, the endorsement contract should detail the extent to which the athlete’s image rights will be used by said permitted companies or for which specific products.

Remuneration

In general, an athlete receives remuneration per appearance, social media post, or in the event of a long-term endorsement contract on an annual base fee. Typically, an annual base fee depends on the team and/or club the athlete is under contract with, in which competition the said team participates, and the percentage of appearances of the athlete in certain competitions or tournaments. Hereby the sponsor makes sure that the athlete is paid based on the exposure created by the athlete. As the amount of the annual base fee can differ significantly, it is important to check the requirements in this regard carefully.

In general, the highest annual base fee is only applicable in very restricted situations and the lowest annual base fee is sometimes nil, due to a 100% reduction of the fee being applied by the sponsor. This way, the sponsor mitigates the risks of having to pay an athlete although the athlete does not create any exposure or endorsement of the brand or product. However, in such event the athlete is still obliged to perform certain services and obligations, but will not receive any compensation for it, as in the opinion of the sponsor, the athlete does not create any value by creating marketing opportunities and/or exposure.

However, from the perspective of an athlete, the mere signing of an endorsement contract creates value for that particular company/brand, especially if the athlete is well-known. The signing creates extra exposure for the company and the fact that a top-level athlete signs with a certain brand sends a (positive) signal to the potential customers. The athlete can request a signing bonus.

Rights of reduction

Endorsement contracts typically include clauses that give the sponsor the authority to decrease the compensation owed to the athlete under certain circumstances. As mentioned above, this reduction can occur if the athlete violates specific terms of the contract. As such, violations may not always warrant a contract termination, in many cases sponsors have the option to reduce the agreed-upon (base) compensation instead of terminating the entire contract. This reduction can be quite significant, with reductions of up to 50% not being uncommon.

The reasons mentioned earlier that might move an athlete to consider concealing their sponsor's logo typically apply to athletes who are not heavily reliant on the income from endorsement contracts. This is because a reduction in their (base) compensation, especially if it is at least 50%, could result in a substantial loss of earnings.

The following are other common circumstances where a sponsor may find justification to reduce an athlete's sponsorship compensation:

- Failure to participate in (major) sporting events, thereby not generating enough brand exposure for the sponsor;
- Retirement from the relevant sport or if the athlete has been absent from competitions related to the relevant sport for at least a certain amount of consecutive days;
- Failure to wear and/or use the sponsor's products;
- Use of competitor products at any time which there is an obligation to wear the sponsor's products;
- Suspension from participating in sports competitions (e.g., due to for example a failed drug test); and
- Engaging in behavior that in the opinion of the sponsor, reflects unfavorably on the reputation of the sponsor and/or brings the athlete into public disrepute.

Bonus clauses

In addition to a base remuneration, endorsement contracts oftentimes incentivize athletic performance by granting bonuses to a sponsored party. Such bonuses are typically contingent on whether certain athletic achievements have been reached or certain awards have been won by such party. As such, an athlete's achievements create additional exposure for the company or brand and in general contribute to the likeness of the athlete. Once again, the wording of the bonus clauses is of utmost importance.

For example, if an endorsement contract states that the sponsored party is entitled to receive a bonus if they win a certain award, it is crucial that the contract states the exact name of the award and whether the athlete must achieve the first, second or third place. A small error can lead to serious disputes. In an instance where a contract provides a bonus to an athlete for winning a particular award, but the award has undergone a recent renaming,^[20] the sponsor might argue that the athlete hasn't achieved the specific award mentioned in the contract, thus denying the entitlement to the bonus.

However, the athlete, in this scenario, could not pursue the originally agreed-upon award due to its alteration. In such a case, a civil court or arbitration tribunal will generally have to rule on the matter taking into account the intention of the parties, which is often a subjective test. The previous example highlights the importance of having clear and precise conditions regarding the payment of contractually agreed bonuses to the sponsored party, aiming to avoid legal disputes.

It is important to clearly set out a bonus compensation schedule in the Bonus clause (i.e., bonus triggering event(s) and pay-out date(s)). Thus, it is advised to clearly state whether the bonus will be paid within a certain time frame (e.g., after the event triggering the bonus occurred or at the end of the contract year). Regarding bonus triggering events, it is advised to include detailed definitions of relevant terms, such as, what is considered as an 'official match', 'participating' or 'goal or assist' and whether a bonus is

cumulative, periodic or a one-time bonus. Discussing this upfront and incorporating detailed definitions prevents legal disputes.

Unilateral extension option

A “unilateral extension” clause, imposes restrictions on the freedom of the sponsored party.^[21] Practice has shown that an endorsement contract could easily be unilaterally extended for an additional specified number of years, which could be burdensome for the athlete.

Adidas v Rafael Alcântara do Nascimento

This has been argued before a Dutch court by the Brazilian football player, Rafael Alcântara do Nascimento (‘Rafinha’).^[22] Rafinha concluded an endorsement contract with adidas from 1 October 2013 until 30 June 2018 or until the end of the FIFA World Cup 2018. The endorsement contract contained a clause stating the following:

‘The Image Company shall not, and shall procure that the Player shall not, negotiate or otherwise deal with any third party in respect of any Third Party Offer until six months prior to the expiry of this Contract. In any event, Adidas International shall have the right to renew this Contract for the same number of years as the contract Period on the same financial terms as apply in the last Contract Year of the Contract Period on the same financial terms as apply in the last Contract Year of the Contract Period and in all other respects on the same terms and conditions of this Contract including this Clause 22 provided that Adidas International gives notice to the Image Company six (6) months prior to the expiry of the Contract Period.’

In December 2017 adidas notified Rafinha that the endorsement contract had been extended for a duration of five years. Rafinha contested the unilateral extension and stopped wearing adidas products in July 2018. Ultimately, the judge ruled that the unilateral extension clause was

sufficiently clear and valid. As per the judge's perspective, it was not uncommon for unilateral extension clauses to be incorporated in such endorsement contracts, since it can take several years for a sponsor to earn back its investment. If the financial compensation is higher, this generally means that it will take longer to earn back the investment, which creates the need for a longer contract. In addition, Rafinha was represented by his father, a player agent, and negotiations had taken place before the conclusion of the contract. He also had the opportunity to seek legal advice. Due to the above, the judge ordered Rafinha to adhere to the endorsement contract and prohibited him from wearing products from adidas' competitors.

Nike v Diego Ribas da Cunha

Another case between Nike and the Brazilian professional football player Diego Ribas da Cunha ('Diego') illustrates that a unilateral extension option must be clearly worded if a sponsor wants to exercise that right.^[23] Nike signed an endorsement contract with Diego from 1 April 2002 until 30 March 2003. Since Diego was a minor, his father assisted him in the process. The parties extended the endorsement contract by signing a Portuguese endorsement contract with a duration from 1 April 2003 until 31 March 2007. In addition, approximately three months later, the parties signed an English version of the endorsement contract. This English contract contained a unilateral extension clause, which granted Nike the unilateral right to extend the contract with four additional years. However, the Portuguese endorsement contract was the leading contract. It is the opinion of the court that the Portuguese contract did not contain a clear unilateral extension option. For instance, the provision did not state by which date Nike had to utilize the option. Under these circumstances, the court ruled that it could not be expected of Diego to understand that Nike was entitled to trigger the unilateral extension option, let alone for a period of four years.

Takeaways from the jurisprudence of the Dutch civil court, applying Dutch law in relation to unilateral extension clauses in endorsement contracts, are that an extension option is a

severe clause that under certain circumstances is considered unacceptable. Naturally, the clause must be agreed upon in writing. Moreover, the (financial) arrangements in the option year(s) should be higher than during the initial term of the sponsor contract and the triggering of the unilateral extension should be timely communicated in writing. If a contract is unilaterally extended without showing a willingness to discuss in a reasonable manner to increase the compensation of the player under the contract, such clause will under Dutch law be considered invalid because its application would be unacceptable by standards of reasonableness and fairness.^[24]—

Unilateral extension clauses at FIFA DRC

A unilateral extension clause is also commonly incorporated in employment contracts of football players. However, the FIFA Dispute Resolution Chamber (“**FIFA DRC**”) of the FIFA Football Tribunal, who rules on employment related disputes with an international dimension between football clubs and players, has made it clear that such clauses generally have disputable validity due to the excessive restriction they impose on the freedom of a player. The FIFA DRC came to the following conclusion in one published decision:^[25]—

‘Unilateral options are, in general, problematic since they limit the freedom of the party that cannot make use of the option in an excessive manner. Furthermore, such options are not based on reciprocity, since the right to extend a contract is left exclusively at the discretion of one party.’

However, based on the jurisprudence of the FIFA DRC^[26] and the Court of Arbitration for Sport (“**CAS**”) ^[27]—, such unilateral extension clauses can be valid if and insofar as they comply with the following criteria:^[28]—

1. The total maximal duration of the employment contract may not be excessive. In that sense, the maximum period shall not exceed the 5-year term of Article 18 para 2 of the RSTP, 2023 edition;
2. The club must exercise the unilateral extension option within a reasonable timeframe before expiry of the current

employment contract,

3. The applicable salary during the extension period must be clearly incorporated in the original employment contract,
4. The applicable salary during the extension period must be a substantial increase in relation to the salary during the original employment contract,
5. The unilateral extension option must explicitly be incorporated in the original employment contract,
6. The extension period must be proportional to the original employment contract, and the extension period may not exceed the duration of the original employment contract, and
7. Only one unilateral extension option may be exercised.

These criteria and jurisprudence can also be taken into consideration when drafting or negotiating unilateral extension clauses in endorsement contracts.

Right to match and right of first refusal

Important clauses for sponsors are a “right to match” and a “right of first refusal”. Generally, these clauses are incorporated into contracts alongside each other. A right of first refusal in an endorsement contract is a contractual right of the sponsor to be offered the right to renegotiate the endorsement contract before its expiration date. If the parties cannot reach an agreement on the terms of such an extension, the sponsored party is free to enter into a endorsement contract with a third party.^[29]

A right to match is oftentimes incorporated in endorsement contracts alongside a right of first refusal. A right to match obliges the sponsored party to submit any offer from a third party to the sponsor within the period defined in the respective contractual clause. The sponsor then has the right to match this third-party offer. In many cases, the right to match can exceed the duration of the endorsement contract.^[30] In the authors’ experience, several major brands often define the term of the sponsor’s right to match in the same way, namely 180 days. Although major brands in general are not willing to reduce the term of the matching right, the authors

have seen some examples in which the sponsor did so and reduced the terms to 100, 90 or 60 days. This, as like many amendments, depends on the negotiation position of the athlete.

Another element of the matching right is the term in which the sponsor should inform the athlete in writing whether it matches the proposal of the third party. Only when the sponsor does not use their right to match, the athlete is free to enter into a new endorsement contract with the third party. One can question the validity and applicability of this clause in the event that the athlete terminated the endorsement contract or simply does not want to continue to endorse the brand or company.

As is the case with a great number of clauses in endorsement contracts, the wording is of utmost importance. Should the clause fail to specify which aspects of the contract offer must be matched, or what happens when the third party's proposal includes elements, such as financial components, that the sponsor is unable to match, this could lead to unwanted disputes. The sponsor generally benefits from a clause clearly describing what terms of the third-party offer must be matched. If a clause is vague and unclear, it will be easier for the third-party or the sponsored party to argue that the sponsor has not completely matched the third-party offer.

This clearly follows from the English High Court case between the sponsor, New Balance, and the sponsored party, Liverpool FC.^[31] New Balance and Liverpool FC concluded an endorsement contract which was due to expire at the end of the 2019/2020 football season.

Aforementioned endorsement contract contained the following matching right clause: *"(...) If an acceptable offer is received from a third party Liverpool FC must submit the specific terms of such offer to New Balance. New Balance shall then have thirty (30) business days from the date of receipt of such third-party offer to Notify the Club in writing if it will enter into a new contract with the Club on terms no less favourable to the Club that (i) the terms of this Contract*

and/or (ii) the material, measurable and matchable terms of such third-party offer.^[32] For more information on this case, you can refer to [this article](#) on LawInSport^[33].

Leading up to the end of the contract, the parties attempted to agree on a new deal. In the absence of an contract, New Balance agreed to allow Liverpool FC to enter into negotiations with third parties. During 2019, Liverpool FC received an offer from Nike, which included very specific terms, for example:

"Nike will: (...) market LFC and/or Licensed Products through marketing initiatives featuring not less than three (3) non-football global superstar athletes and influencers of the calibre of Lebron James, Serena Williams, Drake, etc with such initiatives being used to market certain Licensed Products produced for the start of Season 2020/2021 in Year 1 and for certain Licensed Product produced for each Season as applicable thereafter;"

On 16 August 2019, New Balance stated that it would match Nike's offer *"on terms no less favourable to the Club than the material, measurable and matchable terms of the Nike Offer"*.

However, Liverpool FC contested this statement and claimed that New Balance was not able to deliver on the terms of its offer. Eventually, it was found that New Balance's terms were indeed less favorable than Nike's, since New Balance's offer omitted the mentioning of *"of the caliber of Lebron James, Serena Williams, Drake etc."*. Therefore, New Balance did not fulfill the conditions of the vaguely worded matching rights clause in the endorsement contract. If the matching rights clause would have stated more clearly which terms of the third-party offer needed to be matched, New Balance might have had a better chance to match Nike's offer.^[34]

A matching right clause has also led to a lengthy dispute between the Rangers Football Club and UK retailer Sports Direct.^[35] The parties concluded a retail contract on 21 June 2017 which contained an extensive matching right clause. The matching right clause provided that the Rangers Football Club could enter into negotiations with third parties for the

period after the expiry date of the contract. However, Sports Direct was granted a two-year right after expiry of the contract to match any third-party offer. On 12 July 2018, the Rangers Football Club notified Sports Direct with a Notice of Offer from a third party, the Elite Group. Sports Direct then exercised its matching right in respect of this offer on 25 July 2018. On 11 September 2018, the Rangers Football Club entered into a new contract with the Elite Group, without notifying Sports Direct in accordance with the matching right clause (“**the Elite Contract**”).

In essence, the dispute related to the question whether Sports Direct was entitled to the matching right on more than one occasion. The Court was of the opinion that the matching right clause makes it clear that the Rangers Football Club cannot negotiate with a third party in respect of a new or amended offer if some other offer has been matched. Therefore, the Court ruled that the matching right clause in question recognizes that there can be multiple matching rights and granted an injunction restraining the Rangers Football Club from performing or assisting Elite to perform the Elite Contract.^[36] The aforementioned case once again shows that the wording of a matching right clause is essential. If the clause had clearly stated that Sports Direct was only entitled to match one offer, the Rangers Football Club most likely would have been able to enter into the Elite Contract.

Governing law and jurisdiction clause

Endorsement contracts generally contain a governing law and jurisdiction clause. In the author’s experience, often Dutch law is proposed by the brand as the governing law in endorsement contracts. This choice is largely since the European headquarters of many sports brands are located in the Netherlands.^[37]

Practice has shown that the jurisdiction clause oftentimes is drafted to benefit the sponsor. This can clearly be demonstrated by the following clause, which is generally included in contracts: “(...) and (ii) the courts of Amsterdam

have exclusive jurisdiction over any substantive or interim proceedings, claims or matters between the parties arising out of or in connection with this Contract and/or its subject matter (including non-contractual claims, and any dispute regarding the existence, validity or termination of this Contract), subject to the proviso that [X] shall be entitled to bring substantive or interim legal proceedings against PLAYER in the courts of PLAYER's country of domicile, or in the courts of the country where PLAYER is playing at that time, or in any other court in which [X] is entitled to assert jurisdiction. The parties expressly consent to the exercise of jurisdiction in accordance with this Section H and to the laying of venue of any such proceeding or action brought in such courts and the parties hereby irrevocably waive any and all objections and/or defenses of lack of personal jurisdiction and forum non conveniens with respect to such courts".

The above clause indicates that only the sponsor holds the authority to decide where it wants to commence legal action against the athlete. It grants the sponsor the option to initiate legal proceedings in the courts of the country where the athlete is currently competing. However, athletes consistently find themselves playing for new clubs in different countries. Thus, the abovementioned clause suggests that the jurisdiction of the competent court would be determined by the athlete's current club. Furthermore, this scenario could lead to legal claims being presented before courts that do not provide the desired protection and safeguards to guarantee a fair and equal outcome. Nonetheless, in these instances, the courts in question are still required to apply Dutch law, due to the governing law clause, potentially creating somewhat unclear circumstances.

Another possibility for a jurisdiction clause is that the clause refers to an arbitration tribunal instead of a (civil) court. This is a common phenomenon in contracts concluded between two commercial parties. Confidentiality is one of the most important advantages of arbitration. However, confidentiality predominantly serves the interests of the sponsor, who is typically a commercial party. Such confidentiality proves advantageous for the sponsor in several ways:

1. A sponsor may be reluctant to start legal proceedings against an athlete, as this might negatively influence its image. Opting for arbitration helps the sponsor to avoid tarnishing its public image.
2. Confidentiality of the arbitral proceedings enables the sponsor to keep commercial company information from becoming public.
3. An arbitral award is generally bound by confidentiality, in principle it will not lead to a precedent, which is beneficial for the sponsor.^[38]

The fact that the confidentiality in relation to any disputes with an athlete is of great importance to a company is also reflected in the penalties and/or consequences in case an athlete partially or wholly conceals or “polishes out” the brand or mark of the company. By doing this, as also mentioned before, the athlete makes to the broader public known with the fact that there is a dispute between the athlete and the company or brand which the company tries to avoid getting publicly known.

Conclusion

In conclusion, commercial sports endorsement contracts represent a vital aspect of the sports industry, representing a mutually beneficial relationship between sponsors and athletes. These contracts provide athletes with crucial financial support, diversifying their income streams beyond traditional sports (employment) contracts. Simultaneously, sponsors gain invaluable marketing opportunities and brand exposure through association with sports personalities and events. The mutual benefits derived from such partnerships underscore their popularity and necessity in the sporting world.

However, the complicated nature of these contracts necessitates careful crafting and understanding. The assignment and licensing of image rights form an essential element of these contracts, often requiring athletes to navigate multiple endorsements cautiously. Morality clauses, essential for protecting a sponsor's brand integrity, can lead to

significant consequences if breached, as seen in high-profile cases involving Tiger Woods and Lance Armstrong. Furthermore, as with all contracts the wording of each clause should be clear as ambiguous wording can lead to complex disputes.

Conclusively, commercial sports endorsement contracts are not solely financial contracts, but strategic partnerships requiring close attention to legal details. Both parties must engage in these contracts with a clear understanding of their terms and implications, ensuring that the interests of both the sponsor and the athlete are well safeguarded. This careful balance is essential in maintaining the integrity and success of these important contracts in the sports industry, especially as the sports sponsorship market will continue to grow and play an important role in the sports landscape.

For any party wishing to engage in a sports endorsement contract, please keep the following aspects in mind:

- Clearly define which (image) rights are being licensed, including the scope, territory, duration, and specific uses;
- Ensure that the obligations of all parties are clearly defined, such as appearances, social media promotion, sponsor deliverables;
- Negotiate (reversed) morality clauses to protect your reputation;
- Specify the remuneration structure and include clear and precise bonus structures that outline the exact performance triggers and payment schedules;
- Be aware of any conflicting agreements that may be in place, such as employment agreements which grant the employer certain (image) rights, as well as any other endorsement contracts; and
- Take the applicable law and place of jurisdiction into consideration and seek legal advice of specialized legal advisors in this field and jurisdiction.

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Written by



[Arne Al](#)

Arne Al is a lawyer at BMDW Advocaten in the Netherlands. BMDW Advocaten is a boutique law firm specialised in (inter)national sports law, with a particular focus on football (www.bmdw.nl). Arne specialises in providing legal advice and assistance in (international) transfers. In addition, Arne also advises in (international) dispute resolution within football and commercial contracts.

aa@bmdw.nl

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Sophia Grippo

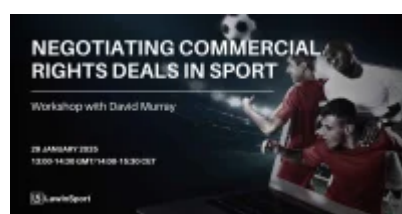
Sophia Grippo is a lawyer at BMDW Advocaten in the Netherlands. BMDW Advocaten is a boutique law firm specialised in (inter)national sports law, with a particular focus on football (www.bmdw.nl). Sophia and specialises in providing legal advice to athletes and companies in the conclusion of commercial contracts. In addition Sophia also provides legal advice in (international) transfers and (international) dispute resolution and arbitration.

sg@bmdw.nl

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