

Legal Trends in Sports Marketing

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Sponsorship Alliances as a Marketing Vehicle

- Per the *International Journal of Sports Marketing & Sponsorship*, sponsors receive an average return of \$4.30 for every \$1 invested in sports sponsorship
- Increase brand awareness
- More accurate demographic targeting
- Positive publicity/emotional connections/cause-related
- “Business-back” opportunities
- Hospitality
- Sweepstakes/contests

Types of Sponsorships

- League alliances
- Team alliances
- Event alliances
- Sport governing body alliances
- Naming rights/venue alliances
- Athlete endorsement alliances



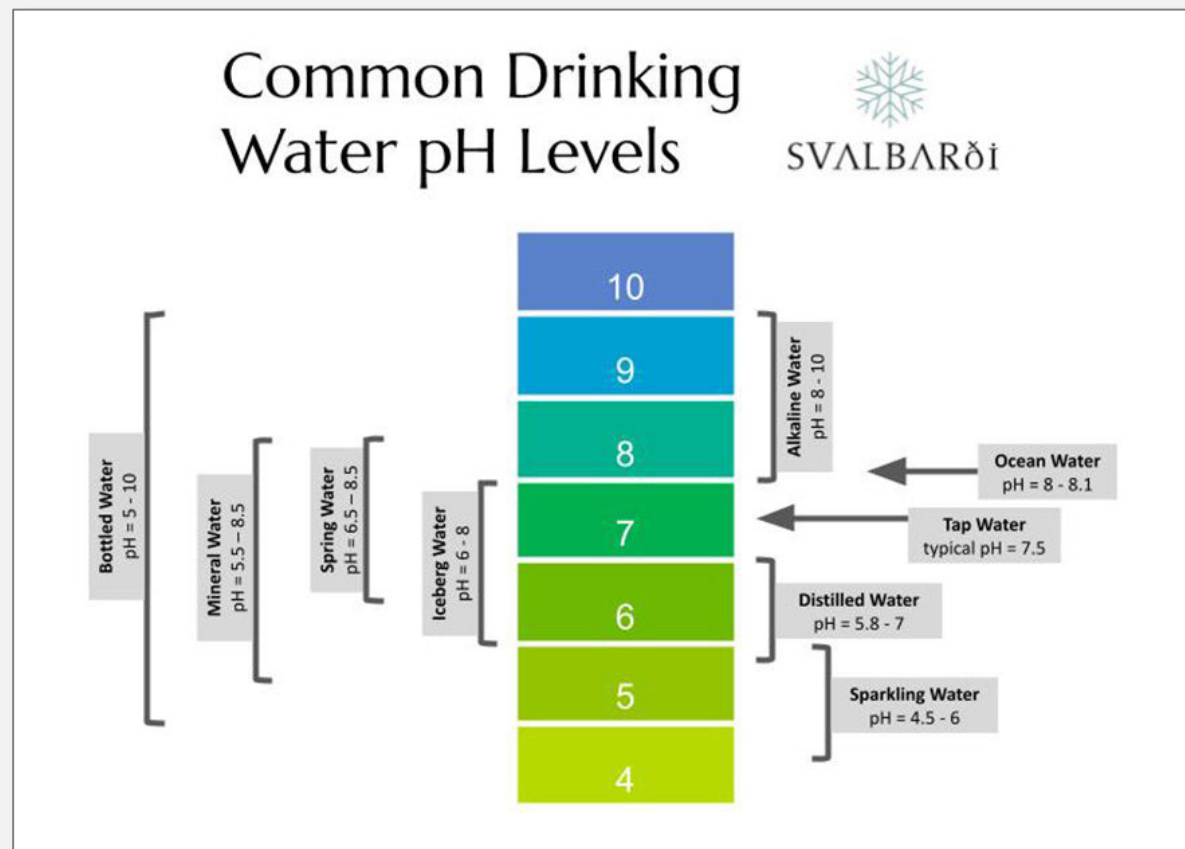
The Olympic Partner Program – “TOP”

- TOP grants sponsors exclusive global marketing rights to the Olympic IP, Games, National Olympic Committees (and teams) across the globe
- Olympic broadcaster advertising exploitation rights and limitations
- Current TOP Partners:



Category Exclusivity

Thin-slicing vs. the whole pie



DASANI^{®/MD}

perrier[®]

evian[®]

From the islands of
FIJI[®]
NATURAL ARTESIAN WATER

essentia[®]

Category Exclusivity



Gatorade Ingredients:
Water, Sugar,
Dextrose, Citric Acid,
Natural and Artificial
Flavor, Salt, Sodium
Citrate,
Monopotassium
Phosphate, Modified
Food Starch, Glycerol
Ester of Rosin, Blue 1.



Vitamin Water Ingredients:
reverse osmosis water, crystalline
fructose, less than 0.5% of:
vitamins A, C, B3, B5, B6, B12
(beta-carotene, ascorbic acid,
niacinamide, calcium
pantothenate, pyridoxine
hydrochloride, cyanocobalamin),
sodium selenate, manganese
citrate, electrolytes (magnesium
and calcium lactates and
potassium phosphate), cane
sugar, citric acid, gum acacia,
natural flavors, fruit and vegetable
juices (for color).

Category Exclusivity

Carbonated soft drinks vs. energy drinks



**34mg
Caffeine**

Carbonated water,
high fructose corn
syrup, caramel color,
phosphoric acid,
natural flavors,
caffeine



**46 mg
Caffeine**

Carbonated water,
caramel color,
aspartame,
phosphoric acid,
potassium benzoate,
natural flavors, citric
acid, caffeine



**80 mg
Caffeine**

Carbonated Water, sugar,
glucose, citric acid, taurine,
natural and artificial flavors,
sodium bicarbonate,
magnesium carbonate, colors,
caffeine, niacinamide,
pyridoxine HCl, calcium
pantothenate, vitamin B12

Category Exclusivity Example: **Credit Card Sponsorship**

- Sponsor shall have exclusive marketing rights within the exclusive category in accordance with the below:
 - All forms of payment cards
 - General purpose prepaid cards
 - Payment networks
 - Digital wallets
 - Payment services
 - Payment Account Access Devices
 - Foreign Currency Exchange Services



Category Exclusivity Exceptions

- Pre-existing sponsorships in exclusive category
 - Back end rights? Renewal?
- Advertisement of brands by team commercial partners on team game broadcasts
- Third party events hosted by third party promoters at arena (e.g., concerts)
- Events hosted by third parties that require “clean arena” (e.g., Olympics)
- Right of team / arena to use products and services of competitors
 - Right to notify fans in factual manner
- Future teams that play home games at arena?

League & Team Sponsorship Rights Allocation



- Co-existence between the two?
- League rule subordination
 - Territorial limitations
 - NBA International Team Marketing Program
 - NFL Global Rights Program
 - (e.g., New Orleans Saints – France; Atlanta Falcons – Germany; Miami Dolphins – Brazil)
- Implications of nationally televised games
- Local/regional sports network considerations
- Make Goods / Refund Considerations

Team Sponsorship Tie-Ins

- Sports Betting & Daily Sports Fantasy League Regulations
 - Teams can promote authorized sports betting operator through, e.g., a presenting sponsorship of team's season, sponsorship of team's mobile app, and apron signage during non-nationally televised games
 - Teams can depict odds and betting lines if (i) the messaging primarily promotes tune-in for game telecast, and (ii) League approves the types and presentation of such odds and betting lines
 - Teams can arrange to receive fees from betting operators based on referrals or cash deposits or % of gaming revenue from League games
 - Teams can promote League-approved giveaways from daily fantasy operators tied to (i) team winning the game, (ii) team scoring more points than its opponent, (iii) team reaching a target score first, and (iv) other particular results authorized by League

Team Sponsorship Tie-Ins

- League Rules re: Tradable Digital Products
 - Teams can promote League-approved NFTs, Bitcoin-related companies, but no other cryptocurrencies
 - Sponsors must have general liability insurance of at least \$5 million, with team and other League parties as insureds
- League Rules re: Nutritional Supplements
 - Teams cannot promote supplement company involved with products containing substances league's Prohibited Substances List
 - No promotion of companies selling marijuana products
 - Advertised supplements are lab-tested to ensure they do not contain banned substances and that their ingredients lists are accurate

Jersey Patches



Jersey Patches



- 1 patch up to 6.25 square inches
- 1 team sponsor
- Sponsor cannot be
- TV network,
- Competitor of an official league provider of equipment/in-game services, or
- Related to alcohol

Jersey Patches

- 3 patches:
 - 2 from team on shoulder and stomach
 - 1 large leaguewide (AT&T) on back



Player NIL

- League Group Player Rights Granted to Member-Teams
 - Teams may grant sponsors the right to use player names and likenesses on a group basis in advertisements
 - 3 or more players required to be in single advertisement, 5 or more required in series of advertisements
 - All players must share equal prominence
 - Same player cannot be used in more than 1 creative execution at a time or more than 3 in same year
 - No implied player endorsement of product or service
 - Rights cannot be used to promote footwear brands, hard alcohol and tobacco products, unapproved dietary supplements, political causes, and any entity that would embarrass or be detrimental to the league's image or interests

Representations and Warranties

- Typical “fundamental representations”
 - Right and authority, duly authorized
 - No conflicts
 - Good standing
- Acknowledgment by sponsor that teams and arena cannot guarantee on court success or attendance levels
 - But see force majeure...

Indemnification

- Breach
- Acts or omissions
- Promotion events conducted by sponsor
- Any product or service offered by sponsor
- Content of sponsor's advertising copy
- Fan injuries at the arena during games or events

Termination Rights

- Breach
- Relocation of team outside of certain geographic territory
- Opt out?
- Ongoing force majeure?
- Fundamental change in league rules?

Force Majeure

- Force majeure clauses excuse nonperformance when extraordinary events prevent a party from fulfilling its obligations
- Courts look at (1) whether the event constitutes a force majeure under the contract, (2) whether the risk of nonperformance was foreseeable and mitigatable, and (3) whether performance is actually impossible
- Very relevant during COVID-19 lockdowns (e.g., applicable to epidemics, pandemics, and/or government action)



Sample Force Majeure Clause

“If a Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, upon notice to the other Parties, such Party’s obligations (other than a payment obligation herein) shall be abated for the duration of the Force Majeure Event. Upon the end of the Force Majeure Event, Sponsor shall be granted in lieu of any unavailable Entitlements during the Force Majeure Event, Substitute Entitlements in accordance with Section XYZ above. In the event that the applicable Team Party is unable to provide Substitute Entitlements of equal or comparable value that are acceptable to Sponsor, then that Team Party shall provide a refund to Sponsor or a reduction of Fees for the amount of Fees applicable to the unavailable Entitlements and other benefits that were not granted and/or provided to Sponsor in accordance with this Agreement; the amount of Fees or reduction of Fees shall be determined by the mutual agreement of the Parties (acting in good faith) and, in the case of a refund, shall be payable by the applicable Team Party within thirty (30) days.”

Force Majeure

- Do sponsorship payments continue during force majeure?
- Right to terminate if ongoing for certain period of time?
- Relationship of the parties can be critical in avoiding disputes

Make Good Rights / Refunds

- Typical Definition: “make good rights or benefits that are substantially equivalent in value to the rights or benefits that are otherwise required to be, but for the reasons set forth in the applicable provisions of this Agreement are not, provided by [Team] to Sponsor hereunder.”
- Common practice to use game / event minimum as proxy for materiality
 - Do games played in front of no / less fans count?
- Sponsors want refunds / teams want make goods
- Need to determine what is “fair value”

Back-End Rights

- Extensions/Renewals
 - Does partner have a right to discuss an extension/renewal or an absolute right to extend/renew (or somewhere in between)?
- Right of First Offer
 - Soft: If parties cannot reach mutually acceptable terms, rights holder may negotiate with third parties on any term
 - Hard: Rights holder may not offer third party more favorable terms than those offered to partner
- Right of First Refusal/Right to Match
 - Enables party to make a decision based on the complete information derived from the other party's negotiations with a third party
 - Has chilling effect on third parties to negotiating with rights holders

Sample Corporate Morals Clause

“Without limiting any other rights or remedies Sponsor may have under this Agreement, Sponsor may terminate this Agreement by written notice to Company at any time in the event that Company, the League or the Team (including any player on the Team) becomes involved in any controversy or scandal that has a negative effect on the business, reputation, or the public’s perception of Sponsor or its products or services, as determined by Sponsor in its sole good faith discretion (a “Sponsor Morality Termination”); provided, however, that Sponsor shall not be able to invoke a Sponsor Morality Termination with respect to the conduct of any Team player unless such conduct, during the Term, (a) results in a felony criminal conviction or plea of nolo contendere thereof of or by a Team player, or (b) involves, at a minimum, the suspension by the League of at least two (2) Team players for a minimum of twelve (12) games each during the applicable League Season.”