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FROM THE FIELD OF

How to protect the exclusivity in your brand's sponsorship

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Congratulations! You're the director of marketing for a major soft drink and you just signed an agreement to sponsor a professional sports team. Your agreement states that your brand is the team's exclusive soft drink sponsor and that no other soft drinks will be signed as team sponsors. Sounds like an airtight deal, right?

Not in today's world. For example, what if the team has a beer sponsor who later acquires a competing soft drink brand? Or what if a competing soft drink wants to sponsor the team's stadium (but not the team)? Or what if a competing soft drink wants to sponsor the brand-new online broadcasts of the team's games?

Issues such as these are becoming more common in today's sports sponsorship landscape. Failure to adequately address them up front may reduce the value of your brand's sponsorship, lead to conflicts between sponsors and teams or leagues, and result in potentially costly legal battles (as evidenced by the litigation between AT&T and NASCAR over competitive sponsorship issues).

In order to create a solid sponsorship agreement, parties need to recognize and address the likely issues and draft carefully for as many contingencies as possible, including defining competing brands and exclusivity.

Who is a competitor?

Defining vague or ambiguous terms is a classic challenge in contract drafting. This is especially true in today's world, where cell phones can double as Internet providers and banks offer everything from checking accounts to investment services. Thus, defining the competing brands in a sponsorship agreement can be trickier than ever. For example, is a product like flavored water competing with soft drinks? What about iced teas? Energy drinks? Defining competitor merely by using a category name is often unhelpful when categories can be so muddy. On the other hand, merely listing specific competitors fails to protect the sponsor if new competitors enter the market.

AT&T and NASCAR's disagreement is a good example of what can happenwhen exclusivity is not adequately addressed.

One solution to this definitional problem is to use a definition that is indexed to a third-party categorization system that updates as new brands enter the market. For instance, a soft drink sponsor might identify a categorization system used by the beverage industry. Defining "competitor" as any brand that falls into a certain category in that system would ensure that both parties understood exactly which brands were included as competitors up front while also ensuring that new brands entering the market would be covered as competitors.

In addition to carefully defining what a competitive sponsor is, your company may want to contract against a clashing sponsor, i.e., sponsors that are not competitive in the traditional sense but that might be embarrassing or otherwise counter to the goals of the existing sponsor. For instance, a candy bar sponsor might see its sponsorship value decrease if a weight loss company became a fellow sponsor. While certain clashing sponsors could be easily named in the sponsorship agreement, others might be hard to anticipate.

Finally, sponsorship agreements need to consider issues related to multifaceted companies and corporate mergers and acquisitions. For instance, if a noncompeting sponsor acquires or is acquired by a company that is competitive with your brand, your company needs to have provisions that minimize exposure of the competitive aspect of the other sponsor. Similarly, if a noncompeting sponsor has a subsidiary that is competitive with your brand, your sponsorship agreements need to be clear that only the noncompeting parent brand may be used in connection with the sponsorship. Details as specific as what logos and names may or may not be displayed should be spelled out in the agreement, as should details on how corporate name changes will be handled.

What is exclusive?

Even if a sponsorship agreement is clear on who competitors are, there is still the issue of which sponsorship activities are exclusive and which are open to competitors. For instance, a team may sell exclusive naming rights to its stadium but also wish to sell sponsorships for entrances, lounges or other sub-parts of the stadium. Similarly, a league that broadcasts games on two television networks may grant exclusive sponsorships to two competing brands from the same category, one on each channel. Sponsorship agreements need to clearly indicate in what areas a sponsor is being granted exclusive rights so as to avoid conflict.

Careful definition of exclusive areas of sponsorship inventory is particularly relevant these days given the proliferation of new media. Today's sports sponsorships can include exposure both on traditional media and new media as diverse as Web sites, online game broadcasts, mobile content, video games, simulations, YouTube, Twitter and more. Not only do these new media need to be addressed, but the agreement should also provide contingencies for unknown media that may be developed in the future.

As television ratings for sporting events decrease and commercials fall prey to digital recording technology, sports sponsorships will become increasingly important avenues to establish a company's brand. As sports entities increase their sponsorship inventory and sponsors race to secure exclusives, the potential for conflict between sponsors and teams will increase. Careful drafting of sponsorship agreements to address as many problems as possible can help ensure that the contracting parties maximize their benefit from their exclusive sponsorship while reducing potential conflict.

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