



Tuesday, October 2, 2012

9:00 AM - 10:30 AM

**304 – The Ink Is Dry. Now What? Fulfillment
of Sponsorship Contracts in Sports &
Entertainment**

Mary Mansfield

General Counsel

Naval Academy Athletic Association

Kathleen Rodin

Assistant General Counsel

Anaheim Ducks & Honda Center

Robert Simmons

Assistant General Counsel

Molson Coors

Faculty Biographies

Mary Mansfield

Mary Mansfield is general counsel and the only in-house lawyer for the Naval Academy Athletic Association, an Annapolis, MD non-profit 501(c)(3) association whose mission is to administer the intercollegiate varsity athletics program of the United States Naval Academy.

One of only four NCAA independent (non-conference) Division IA football programs, Navy handles all of its marketing, media and sponsorship rights in-house. Ms. Mansfield writes, negotiates, administers and approves over 150 contracts per year, including deals for athletic apparel, television and radio production and broadcasts, Bowl games, NFL stadium rentals for "home" games against Army, Notre Dame, and Ohio State, performer appearances, air charters, software and web placement, stadium vendors, suite rentals, golf course vendors, and over 60 local, national and international sponsorship agreements.

Ms. Mansfield is an active duty Marine Corps officer spouse, and has lived all over the country the past 15 years. Her past sports experience includes stints with the NHL's Anaheim Ducks and the San Diego Padres' California league affiliate.

A Southern California native, Ms. Mansfield received a BA from the University of California, Riverside, and a JD from the University of California, Davis.

Kathleen Rodin

Kathleen D. Rodin serves as assistant general counsel for Anaheim Ducks Hockey Club, LLC. She also serves as assistant general counsel for Anaheim Arena Management, LLC (manager of the Honda Center, located in Anaheim, CA) and The Rinks (operator of roller and ice rink facilities in Orange County, CA). Her responsibilities include drafting and negotiating sponsorship agreements, premium seating agreements, concession agreements, ticketing agreements, event agreements, managing litigation, handling real estate matters and providing legal counsel to the executives and staff of the Ducks, Honda Center and The Rinks.

Previously, Ms. Rodin worked for a law firm based in Southern California that specializes in real estate litigation and serves as general counsel to a number of prominent companies her area.

Ms. Rodin received a BS from Chapman University and a JD from Chapman University School of Law. She is an active member of ACC's Southern California Chapter and serves on the board of the ACC Sports and Entertainment Committee.

Robert Simmons

Rob Simmons was appointed recently as assistant general counsel at Molson Coors in Denver, CO, where he is responsible for providing legal and business counsel to global business units tasked with taking the Molson Coors family of beer brands to new markets worldwide. Previously at MillerCoors, Mr. Simmons was responsible for negotiating, drafting and executing the company's sponsorship agreements for a myriad of teams in all major sports as well as for concerts, festivals and special events across a wide spectrum.

Prior to joining MillerCoors, Mr. Simmons spearheaded the international market entry into India and Southeast Asia for Sunrider International, a consumer packaged goods company, addressing foreign compliance, product registration and corporate structure issues. In addition, he spent three years managing the legal affairs within a ten-state region for U.S. smokeless tobacco, where he counseled business units on antitrust, commercial and employment litigation risks and acted as the direct legal contact for sales, marketing, and government-relations teams.

Mr. Simmons received a BA from Dartmouth College and a JD from the University of Virginia.

The Ink Is Dry. Now What? Fulfillment of Sponsorship Contracts in Sports & Entertainment Agreements

Tuesday October 2, 2012

Robert L. Simmons
Assistant General Counsel
Molson Coors Brewing Company



Mary Mansfield
General Counsel
Naval Academy Athletic Association



Katie Rodin
Assistant General Counsel
Anaheim Ducks & Honda Center



Why Sponsorships?

Sponsorship Goals

- Seeking Partnerships, NOT transactions, with partners that can help a company drive profitable market share growth
- To sell more product, generate revenue
- Partnerships lead to:
 - Driving Retail - Leverage the sports team to create opportunities for the product to sell//brand to be developed
 - Build brands - differentiate and integrate activation with key consumers
 - Engage your system - give the distributors/sales reps great selling tools with great stories (e.g., NASCAR, NFL, NHL, MLB teams, Soccer, College)

Why Sponsorships?

Source of Revenue

- Build Partnerships - with Brands that elevate
 - Consumers can identify with brands that elevate, strengthen
 - Expectation of Consumers
 - Wide variety of partnerships (consumer goods, professional services)
 - Provides a Property Owner the opportunity to share consumer experiences with those outside the traditional consumer base, through joint marketing initiatives

Why Sponsorships?

- Unique Type of Contractual Relationship
 - Different from other business deals where contract is signed, product delivered, and you're done
 - On-going, evolving, required continued/continuous communication between the parties, each with its own goal:
For the Sponsor - to ensure it receives the full value of the deal,
For the Property - to keep Sponsor satisfied and extend/renew the deal
- Parties in a sponsorship deal:
 - Property Owner, Sponsor, 3rd party agencies (sponsorship/media/PR), event promoters, vendors, broadcast/print/digital media
 - Types of sponsorships (title, presenting, participating, overall exclusive, category exclusivity, naming rights, athlete/celebrity endorsements, etc.)

Fulfillment of Sponsorships

Fulfillment

- Introduction
- Best Practices- Building and Maintaining the Relationship to Ensure Successful, Smooth Execution
 - Maintain Regular Communication: different levels (staff/Sr. Management/Legal)
 - Manage Sponsor's Expectations
 - Maintain Consistency of Sponsor's Input/Approval rights
 - Approval Process for Use of Marks, Use of Style Guide
- Getting the Benefits of the Deal – Ensuring Maximum ROI
 - Key issues to consider

Building and Maintaining the Relationship

Best Practices to prevent issues arising during fulfillment

- Maintain Regular Communication
 - Create a communication plan
 - Regular status calls
 - Ensure communications reflect each party's position
- Manage Sponsor's Expectations
 - When available, owner should provide historical data for the activity-web impressions, number of customer visits to activation
- Maintain Consistency of Sponsor's Input/Approval Rights
 - Property Owner's level of control/approval rights

Building and Maintaining the Relationship

Use of Marks-Approval Process

- Property Owner can control exploitation and monitor quality AND activities with pre-approval rights
- Build and maintain brand consistency in all applications for consumer recognition and familiarity
- No use with other third-party marks
- Sponsor should minimize approval rights. Approval rights cause delays (micromanagement), interference with business activities, lost business opportunities, etc.

Building and Maintaining the Relationship

Use of Marks-Approval Process (cont'd)

- Consistent approval process for property
- Quality standard for selected matters (e.g., "first class manner consistent with professional sports property industry standards, and shall not reflect negatively on any Team Party)
- Samples/audit rights/requests and requirement for timely delivery

Building and Maintaining the Relationship

Use of Marks-Approval Process (cont'd)

- Best Practices
- Pre-approval for selected matters (e.g., content modifications prior to public display, licensed products prior to production/public display)
- Short time periods
- Deemed approved or deemed denied

Building and Maintaining the Relationship

Use of Marks-Approval Process (cont'd)

Develop and Use a Style Guide

- Property owner should develop and maintain a style guide
- For use by parties and 3rd parties to maintain brand consistency in all media
- Property Owner has the right to allow exceptions for certain applications
- Provides a guideline and benchmark to reference for questions on the use of marks

Building and Maintaining the Relationship- Contract Tools

Getting the Benefit of the Deal

- Tracking Fulfillment of Deliverables
- Delivery of Elements Provision
 - Delivery of Elements versus Elements Negotiated
 - Each Party should ensure that it is getting the value of the deal
 - Tickets, Signage, Performances, Advertising
 - Process for reconciliation of assets, establish mechanism for “Make-good” credits
- Sharing of Data Provision
 - Negotiate to share data collected at events, but be mindful of privacy expectations and limitations

Building and Maintaining the Relationship- Celebrity Endorsements

Key issues to consider:

Media Use/Associated Releases

- Name, signature, image likeness, etc.
- All consumer and promotional print, publicity and advertising materials, digital content, point-of-sale and sweepstakes materials

Scope of Services

- Television/radio commercials, personal appearances
- Best Practice – When scope is undefined, include a representative sample or schedule as an Exhibit attached to the agreement

Publicity

- Best Practice – ensure contract sets forth scope of publicity (interviews, autograph sessions, corporate appearances)

Building and Maintaining the Relationship- Celebrity Endorsements

- Celebrity/Spokesperson Endorsements
- Social Media Efforts
 - Best Practice – negotiate for pre-approval rights for Tweets and Facebook postings related to your company's product
 - Compensation
 - Exclusivity
 - Opportunities Presented
 - Best Practice – negotiate for pre-approval rights for offers to celebrity to pose/be filmed or photographed for material intended for print, online or broadcast publication/distribution
- Appearance (hair, tanning, body art, jewelry)
 - Allowed to wear clothing of competitor during contract term?
- Unique Services (specific performance, basis for injunctive relief)

Intervening Acts

What to do When Something Happens

- Force Majeure Events
- Ambush Marketing
- Morals Clause Violations
- Anything Else that Prevents Fulfillment of Deliverables

Intervening Acts- Force Majeure

Force Majeure

- Reciprocal
- Acts of God (floods, fire, weather, terrorism or catastrophe) that could not have been prevented by reasonable precautions
- Should Force Majeure definition include economic hardship? Work Stoppage? Event Cancellation?
 - Strike, Lock-out, Work Stoppage?
 - Replacement Players?
 - Number of Games missed (Pro-rated reduction in Sponsorship Fee, "Make-Good" Credits)

Intervening Acts - Force Majeure (cont'd)

Force Majeure

- Continue performing agreement, but suspend payment obligation?
- Equitable adjustment of Sponsorship Fee?
- Terminate agreement? If so, how long after Labor Dispute begins?
- Extension of Term for Period of Work Stoppage?

Intervening Acts - Ambush Marketing

Definition: Marketing and promotional activities by non-sponsors that either directly or indirectly state or imply an affiliation with or endorsement from a team or organization, without payment or authorization

- Creation of any advertising that incorporates a theme or would lead a reasonable person to believe the non-sponsor is in some way associated with or has the endorsement of the team or organization
- Example: 1996 Olympics in Atlanta – Nike’s “Just Do it America” posters ... Official Product Sponsor was Reebok
- Enforcement Challenges - unpredictable nature of ambush marketing, not practical to require a team to pursue litigation against ambush marketers

Intervening Acts - Ambush Marketing (cont'd)

Ambush Marketing

- Best Practices
 - Sponsors – negotiate for “commercially reasonable efforts” at team’s expense
 - Sports Teams – negotiate for reasonable efforts, commitment to cooperate, and avoid allowing ambush marketing to become a breach of the agreement
 - Cease and Desist options

Intervening Acts- Morals Clause Violation

Morals Clause

Morals Clause provision - Sponsor's ability to terminate an agreement if certain actions or activities in an athlete or artist's professional or personal life occur.

- Historically restrictive provision - "Sponsor has the right to terminate this Agreement if Artist is convicted of a felony involving moral turpitude".
- Jason Williams' example - Jason Williams, former New Jersey Nets player, shot and killed a limousine driver while recklessly holding a loaded shotgun in a room full of people in his home.
- Williams' contract stated NJ Nets could terminate upon conviction of an INTENTIONAL crime, but Williams was convicted of manslaughter, which is not an intent-based crime. The NJ Nets were obligated to continue payments to Williams.

Intervening Acts- Morals Clause Violation

Questions - Must there be a conviction? Will a mere allegation of admission allow a Sponsor to terminate a contract? What about Artist's conduct that does not rise to the level of criminal conduct but nevertheless could adversely impact Sponsor's brands?

- Best Practices position for Sponsor
- If, in the sole opinion of Sponsor, Artist/Athlete shall commit any act or do anything which might tend to bring Artist/Athlete into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably on Sponsor or its brands, Sponsor may, upon written notice to Artist/Athlete, immediately terminate the Agreement and no further payment shall be made on or after that date.

Problem Solving

- Negotiate “Make-Good” Credits
- Extend the Term
- Terminate for convenience, or for cause
- Re-visit approval

In-House Counsel Role in Fulfillment

- Host post-contract signing status meeting
 - Discuss expectations of all parties.
 - Confirm deliverables.
 - Determine how involved sponsor will be in the day-to-day details and agreed upon schedule and methods of communication.
- Develop documentation plan for the length of the Term for your activation staff to follow
 - TV/radio affidavits, photos, written communications – who will maintain the file?
 - What information should be forwarded to legal?
 - Measure satisfaction level of the sponsor with an eye toward renewal, as well as fulfillment of deliverables.

In-House Counsel Role in Fulfillment (cont'd)

- Develop a documentation plan for when assets are not fulfilled or delivered, (e.g., Sponsor no longer interested in an asset, Property Owner “missed” asset, force majeure)
- Should you amend the contract? Is an e-mail trail sufficient?
- Calendar key dates
 - The timing for a contractually-required Right of Negotiation can be as early as one year prior to the end of the Term.
 - Some contracts require written notice of intent not to renew, etc...
- Get out of the office and into the venue when your sponsors are activating.
 - Assist your activation staff with sponsor load-in, set-up.
 - Hear the on-the-ground issues and resolutions.