



# Sport Update

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## Sporting Lisbon

Now that Lisbon has been passed, what does it mean for sport? Well, sport is explicitly mentioned in an EU Treaty for the first time. “*The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States*” in an expanded number of areas, including, lo and behold, sport. “*The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.*” This may lead to funding being given to sports which have a strong volunteer element and/or a social and educational function.

The EU will also be responsible for “*developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.*”

An example of the EU's involvement in sports can be seen in the European Commission's recent involvement in the launch of a study on volunteering in sport in the EU. The study can be found at <http://snaponline.snapsurveys.com/siam/surveylanding/intereviewer.asp>. The EU White Paper on Sport says that participation in amateur team sports and non-profit clubs reinforces active citizenship and is a way in which the non-formal education of young people can be enhanced. The White Paper also highlights the growing tendency among young people to practice sport individually rather than collectively. The Commission is to identify key challenges for non-profit sporting organisations and the main characteristics of the services they provide. It will also support grassroots in sport through the Europe for Citizens programme. It will seek to encourage young people to volunteer in sport through the Youth in Action programme. It also hopes to develop the exchange of information and best practice on volunteering in sport.

All sport is built on volunteerism at grassroots level. However, due to the decrease in the amount of donations and government funding available, the majority of not for profit sporting organisations need to raise revenue from some kind of commercial activity. The last meeting of the EU working group on non-profit sport organisations took place in April. Hopefully, with sport specifically addressed in Lisbon, the EU can play a more active role in the development of volunteerism in sport.

## WIPOut

The World Intellectual Property Organisation (WIPO) has struck a blow for sporting bodies in the fight against ticket touting. Although the case is nothing new in terms of intellectual property law, it does show one avenue through which clubs and governing bodies may seek to deal with ticket touting. A WIPO panel has found that the use of club names on ticket tout websites created confusion that the websites were authorised by the clubs. A number of English soccer clubs including Liverpool, Man Utd, Spurs and West Ham complained against a website owner. Official Tickets Ltd sold tickets to the complainants' matches and other events, using domain names such as [official-liverpool-tickets.com](http://official-liverpool-tickets.com) and [official-manchester-tickets.com](http://official-manchester-tickets.com). Although these domain names use geographical terms rather than the full name of the clubs, the panel found that the domain names were confusingly similar to the parties' trademarks. Official Tickets Ltd does not sell official tickets and the panel also found that it had registered domain names with the purpose of misleading consumers and that this was not consistent with the bona fide offering of goods or services required under WIPO's Uniform Dispute Resolution Policy. Nothing infuriates fans more than desperately hunting for tickets and having to pay a multiple of face value to unofficial sources.



## Crash Bang Wallop

The recent 'crashgate' scandal involving the Renault Formula One team has had a direct effect on the Renault Formula One team's brand. On foot of the scandal, Dutch financial services company ING has ended its sponsorship of the Renault team early. Spanish insurance company, Mutua Madrilenia also terminated its deal with the French team. The sponsorship deal with ING was believed to be worth in and around \$65 million per annum. Renault itself managed to escape with a suspended sentence and can count itself quite lucky. ING meanwhile is to become the main sponsor of the Dutch football association, KNBV.

On a similar note, South African bank Nedbank has pulled its sponsorship of Athletics South Africa over its handling of the Caster Semenya affair. It released a statement saying its reputation could be damaged by "the unfortunate negative situation". Semenya won the women's 800 metres at the Berlin World Championship, but was the subject of gender tests after the gold medal performance. The Athletics South Africa chief, Leonard Chuene, lied about his role in pre-Berlin testing of Semenya and has since admitted that the runner was tested before Berlin by Athletics South Africa and that he was advised that she should not compete. The IAAF has yet to make any decision on the gender test results which still have to be examined by medical experts. A decision is expected at the next meeting of the IAAF Council on the 21<sup>st</sup> of November.

Most high level sponsorship agreements now contain what is called a morals clause or a morality clause. Such clauses allow the sponsor certain rights, including a right of termination, in the event that the player or team acts in a way that damages the image of the sponsor. The player, team or governing body can sometimes be given a reciprocal right with the most high profile example being the England and Wales Cricket Board's termination of its deal with the now incarcerated billionaire Sir Allen Stanford. Stanford is awaiting trial in relation to his alleged involvement in a \$7 billion ponzi scheme. While sponsors want to protect their brands, the teams and governing bodies want to protect the value of their brand to other sponsors. Nonetheless, the invocation of a morality clause by a team or governing body is the exception rather than the rule. The Renault examples above are the latest in a long line of cases in which sponsors have invoked morality clauses. Kerry Katona is no longer seen as the right person to promote supermarket chain Iceland under their slogan "Mum's gone to Iceland". We wonder why. Kate Moss lost a number of deals after being photographed with cocaine. Madonna was dropped from an \$8 million Pepsi campaign following her supposedly blasphemous video "Like a Prayer". In the sporting sphere, soccer player Stan Collymore lost a boot deal with Diadora after attacking his girlfriend, Ulrika Jonsson. Perhaps the most infamous case in sport is that of dog fighting aficionado Michael Vick of American football fame. Vick lost a huge endorsement deal with Nike and was forced, under the terms of his employment contract, to repay bonuses he had been paid by his team.

The confines of morality clauses need to be carefully set down and the wording carefully chosen. Allegations can often be as damaging as a conviction in a sponsor's eyes and a sponsor will seek a wide clause, whereas the team or player may only want the clause invoked in very specific and objective circumstances such as in the case of criminal conviction. The question of what is acceptable behaviour and what is not can be impacted upon by the identity of the sponsor and the player. What might be viewed as misbehaviour in the eyes of a family-oriented brand may not be deemed outlandish by a brand aiming for 25-30 male demographic.

## Tiger Woods loses

He may be the world's first billion dollar sportsperson, but US golfer Tiger Woods recently lost a domain name dispute over charlieaxelwoods.com, which is the name of his second son (less the .com bit). Charlie was born on the 8<sup>th</sup> of February 2009 and the domain name was registered by godaddy.com on the 9<sup>th</sup> of February. Godaddy.com offered the domain name for sale on eBay on the 18<sup>th</sup> of February suggesting that it could be sold for a lot of money. Unsurprisingly, Tiger has his own trademark and suggested that his trademark had acquired such a high degree of distinctiveness that the charlieaxelwoods.com name should be protected. The arbitration body decided that the disputed domain name was not identical or confusingly similar to the Tiger Woods trademark and that Charlie Axel Woods was not a common law trade mark. He had to lose sometime.



## And now a word from our sponsors

Ticketmaster has signed up as the 'official ticketing services provider' for the London Olympics. It is a tier-three sponsor and will work with the London organising committee on the ticketing strategy and planning, as well as operating the ticket sales process. Ticketmaster has joined 10 other tier-three suppliers, with each deal said to be worth around £10 million. Meanwhile, health campaigners are up in arms at the suggestion that McDonalds is to be the only branded food outlet at the London games. It is understood that there will be other food available (just as well for the athletes), but that there will be no company branding in respect of other food outlets. McDonalds is one of the International Olympic Committee's TOP (The Olympic Partner) sponsors.

In a departure from its usual practice, Nike has agreed to be the official supplier to the Vancouver 2010 Winter Olympics. The company usually avoids the official supplier role and instead develops partnerships with athletes and teams and not with the event organisers or governing bodies. In the past, this has led to accusations of attempted ambush marketing by Nike. It is usually arch-rival Adidas which links up with event organisers and governing bodies.

Liverpool FC has agreed a new shirt sponsorship deal with Standard Chartered Bank, believed to be worth £80 million over four years. Liverpool FC's long-standing partnership with Carlsberg will come to an end next year. The Scottish FA has signed a kit supply deal with Adidas, after the UK branch of current supplier, Diadora, went into liquidation. The four-year deal commences next in January and is believed to be worth £1.5 per annum.

Spanish soccer side, Valencia, recently had to play a match in Norway without the logo of their main sponsor, Unibet. Unibet is a Switzerland-based online betting company, but in Norway only state owned monopolies are allowed to operate, and marketing by so-called illegal gambling operators is banned. French law also prohibits advertising by online betting companies, although the ban is due to be lifted on the 1<sup>st</sup> of January 2010. Recently, Ligue 1 sides Lyon and Marseille were stopped from wearing shirts featuring the Betclic name and logo, but will wear their new shirts after the ban ceases to operate in January.

## A pub with no beer

A report from the National Preventative Health Task Force in Australia has recommended legislation banning alcohol advertising on television at times when people under 25 are likely to be watching, including during sports coverage. The task force is committed to reducing obesity, smoking and excessive alcohol consumption. However, national governing bodies in Australia such as Cricket Australia, the Australian Football League, the National Rugby League and the Australian Rugby Union have come out against the ban saying that they promote responsible drinking. The Australian governing bodies stand to lose up to AUS\$300 million in sponsorship. Meanwhile, the Australian fast food industry has collaborated with the Australian Association of National Advertisers to produce a voluntary code to govern the way it markets products to children. It's a bigger mouthful than most of their burgers – "The Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children". The 'Quick Service Restaurant Industry' must ensure its advertising to under 14s offers healthy choices. There are also restrictions on product placement in TV programmes or in any other medium which is aimed at kids and in relation to "premium offers" such as reduced price deals and special offers.

A new report in the UK has called for a total ban on alcohol advertising, including sports sponsorship. The report is entitled 'Under the Influence' and has been published by the British Medical Association. The report also recommends higher taxes on alcohol, a reduction in licensing hours and the end of 2-for-1 promotions. Again, sponsorship agencies, drink companies and advertising groups have defended the role of alcohol advertising and sponsorship saying that removing alcohol brands from sport isn't going to address binge drinking. The report points out that the drinks industry is the second largest sponsor of sporting and cultural events behind the financial services sector. Sponsors have sought to defend alcohol sponsorship by saying that the sponsorship money invested in sport trickles down to the grass roots and to amateur participation. Like Ireland, the UK has advertising codes which, although not legally binding, are enforced by the Advertising Standards Authority. As most readers will be aware, France currently has the strictest legislation on alcohol promotion, the Loi Evin. However, a new French law updating the advertising rules on alcohol has finally allowed limited alcohol advertising on the internet (with some exceptions).



## Always Coca-Cola

Pepsi has launched an action in the US against fellow soft drink giant Coca-Cola in relation to the latter's Powerade sports drink. Pepsi is the owner of Gatorade which has in excess of 75% of the US sports drink market. In order to increase its share of the sports drink market, Coca-Cola sought to develop its product by mimicking fluids lost by athletes during exercise – in other words, sweat. This involved adding calcium and magnesium to the Powerade formula and adjusting the other ingredients so that Powerade contained the electrolytes in approximately the same ratio that the electrolytes are lost in sweat.

Coca-Cola launched an advertising campaign which initially sought to compare Powerade to Gatorade. The billboards and magazine ads directly and indirectly compared Gatorade and Powerade products. Pepsi alleged false advertising, trade mark dilution by tarnishing Gatorade's image, injury to business reputation and unfair competition. At a preliminary hearing, the US court was not persuaded that the adverts were misleading as they amounted to no more than 'non-actionable puffery'. The court also refused to grant Pepsi an injunction as it could not be shown that irreparable harm would be done to its reputation and trade mark. The battle of the sports drinks continues.

## Bwin Loses

Austrian gambling company, Bwin has lost its case before the European Court of Justice against Portugal's state controlled sports betting monopoly. It had challenged Portugal's right to operate a state-wide monopoly and exclude other companies from taking internet bets. In essence, it means that governments can bar foreign online bookmakers from offering bets in their jurisdiction. The ECJ found that Portugal's objective of restricting internet gambling to combat fraud and other crimes outweighed free trade concerns and that online betting carried a high risk of fraud. It doesn't seem to make a lot of sense that internet gaming run by the State is okay, but it's not okay when it is run by a foreign operator. While the ruling will have an impact on online gambling operators, some countries are moving towards properly regulating the area and allowing competition. For example, there are proposals in France to open up the online gambling market from January 2010. This would end the state-owned monopoly of Francais des Jeux and the PMU (which horse racing punters may recognise from backing Sea the Stars in his Prix de L'Arc de Triomphe victory).

## Jumper for goalposts

Danish goalkeeper Kim Christensen, who plays for IFK Gothenburg in Sweden, could face disciplinary action after TV cameras caught him literally moving the goalposts during a Swedish 1<sup>st</sup> Division game. The referee spotted that the posts had been moved and pushed them back into the right place. Christensen also claimed that he had done the same thing before in several other games by using his feet to push the bottom of each post slightly inwards. As ever, YouTube is on hand to provide the evidence - <http://www.youtube.com/watch?v=tyx-UaW9ORc>

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