



## Sport Update

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### Sponsorship: up or down?

Much like the economy, ask any number of experts about the state of sponsorship in sport and you'll get any number of different answers. While some reports are focusing on the drying up of funds, others are reporting large deals and the resulting explanations from the companies spending such amounts.

Royal Bank of Scotland has renewed its sponsorship of the Six Nations Championship for four years for a reported £20 million deal even though the bank has reported record losses of £28 billion. Forced to defend this decision in light of the record losses and reliance on UK government bailouts, RBS insists that the sponsorship is necessary for commercial aims and not for hospitality or merely a desire to raise awareness of the bank. However, the troubled bank is scaling back in other sport sponsorship arenas. It announced that it is terminating its partnership with the rights holder Williams F1 team at the end of the 2010 season as part of an attempt to halve its sport sponsorship budget by next year. So far, HSBC and Barclays are also maintaining their relationship with sport.

Alcohol companies are still drinking buddies with sports, even with the increasing restrictions imposed on the advertising of alcohol. Wolf Blass has renewed its sponsorship deal with the Rugby Football Union and will continue as the official wine of English Rugby and official wine supplier to the RFU. As part of the agreement, match ticket holders will be able to sample and purchase wines from a dedicated Wolf Blass bar at the entrance to Twickenham.

While recruitment companies are not having an easy time of it these days, one industry is certain to increase its workforce exponentially over the next couple of years: the London Olympic Games. Adecco has decided to take advantage of the increasing number of employees required to service the upcoming London Olympic games by becoming the Official Recruitment Services Supplier to London 2012. Adecco will be responsible for the permanent and temporary recruitment of personnel for the London Organising Committee of the Olympic Games and Paralympic Games between now and 2012.

Car companies are reversing their sport sponsorship spend. Having recently ended its relationship with Tiger Woods, General Motors has announced it may cut back on local dealership promotions. GM pulled out of its Super Bowl advertising, usually a staple of GM's advertising campaign, and cut some of its spending on NASCAR as well as its sponsorship of the US Olympic Committee. Meanwhile, Subaru and Suzuki have pulled out of the World Rally Championship and Renault Formula 1 sponsor ING has announced it is not going to renew its sponsorship deal after this season after the financial services company was forced to cut 7000 jobs.

So where do we go from here? The first thing is not to panic and remember the fundamentals. When the recession is over people will be happy to start spending again and companies do not want to fall off the radar in the meantime. There may need to be cuts, but they should be balanced cuts. Sport sponsorships are an effective way to stay present in the consumer's consciousness, since sport itself tends to suffer less than other industries in a recession.

If you are a sponsor, focus on your target audience both in terms of geographical location and personality. For example, HSBC is targeting Asian golf tournaments, because as a sport, golf is growing rapidly in Asia and it has both male and female interest as well as family appeal, allowing the bank to reach a new demographic. Don't be afraid to try something different. Wrigley's Extra is launching a new campaign tapping into the stress of injury time in Premier League soccer matches. Once the clock hits 90 minutes, the digital perimeter boards and screens at eleven Premier League clubs will advertise Wrigley's Extra gum.

If you are a rights holder, focus on target sponsors or industries. Consider what rights you have to sell and what demographic you bring to the table. Do not be shy about highlighting the strong points of your sport and the spending potential of your audience. Consider splitting the rights you have to sell in new ways. Epsom Downs Racecourse recently lost its title sponsor, Vodafone, and reacting to the global economic climate, it is dividing up the sponsorship rights for the English Derby meeting into two separate day packages, offering the sponsorship of individual races on Ladies Day and Derby Day. Parties were showing interest in the title sponsorship, but could not commit to the two days of the 2009 Derby Festival due to ongoing economic uncertainty.

And, no matter who you are, if you find yourself in a situation, financial or otherwise, which means you'll have to call time on an existing sponsorship agreement, get proper legal advice to ensure that you follow the terms of the agreement in relation to early termination.



## When State law and federation law conflict

Often we get the hint of a struggle between State law and the rules and regulations of a sporting federation, but rarely is this struggle so open and obvious as it was recently in the United Arab Emirates (“UAE”). Israeli tennis player, Shahar Peer, ranked one of the top 50 players in the world, was refused an entry visa into the UAE to play in the Dubai Open. The WTA, the governing body for women’s professional tennis, has left open the possibility that the Dubai tournament may not survive. The WTA (and male counterpart ATP) has a rule that tournaments cannot discriminate against players of any nationality, ethnicity or religion, and if they do, they could lose their sanction. Peer was denied entry by the UAE government, which has no diplomatic ties with Israel. While everyone appreciates the sentiment that sport should exist outside of religion and politics, a clash sometimes happens.

What can be done? The WTA consulted with Peer regarding this year’s tournament and she agreed that the tournament should go ahead for the sake of other players. However, top American player, Andy Roddick, decided not to defend his title at the men’s event in protest at Peer’s treatment. The Israeli Tennis Association has contacted the WTA seeking assurances that Peer’s ranking will not be affected by her absence in Dubai. The WTA fined the tournament \$300,000 and it is reported that Peer is to receive \$45,000 in compensation (the tournament may appeal the fine since it is not in charge of issuing visas). Sponsors can also express their displeasure. The Wall Street Journal Europe has withdrawn its sponsorship of the Dubai Tennis Championships claiming the treatment of Peer was counter to its editorial policy. US cable’s Tennis Channel refused to broadcast the tournament and Dubai may lose the tournament in future years.

And what can a sporting federation or governing body do? The only weapon a sporting federation has is not to sanction the tournament and, therefore, remove the economic benefits of hosting such a tournament. It remains to be seen what the WTA and ATP will do. It may be of little comfort to Peer that, in an apparent volte face, the UAE admitted two Israeli male players for the men’s tournament.

## When State law and federation law conflict Part 2

Romanian hooker (of the rugby variety), Marius Tincu, is at the centre of a controversy after the European Rugby Cup Independent Appeal Committee banned him for 18 weeks from all competitions (until the 9<sup>th</sup> of March) for an alleged eye gouging incident that occurred while playing for his club Perpignan in the Heineken Cup. Tincu has played for Perpignan in the French domestic league during the ban. The French rugby league was notified by the French Olympic Committee (“FOC”) before Christmas that he was allowed to participate in domestic matches. FOC believes that a suspension in one competition should not apply to another. This has been interpreted by the French league as affirming the primacy of French law over all other considerations within disciplinary proceedings. However, the IRB disagrees and has investigated the matter further. The IRB is particularly troubled by the lack of respect for the universality principle enshrined in the regulations governing rugby. It acknowledges that the enforcement of the suspension in France is problematic because of the legal position in France and it plans on meeting with the relevant French authorities to discuss the matter. Decisions of an international federation must be honoured globally if the disciplinary procedures of the international federation are to have any teeth. Without this recognition, it will be too easy for a player to avoid meaningful sanctions. For FOC’s sake we hope this is cleared up.

## Putting their thinking “cap” on

UEFA and the European Clubs Association have begun discussions regarding a salary cap on the amount a club can spend on player transfers and wages. It is proposed that clubs should only be allowed to spend around 51% of their revenue on transfers and salaries. The Football Association of Ireland has led the way on this front, with a 65% cap already in place in the League of Ireland. The talks arise out of well founded fears that due to the recent influx of cash into the top-leagues, the system has become unsustainable. A club’s revenue consists of ticket sales, sponsorship, merchandise sales and television income, but for the purposes of the cap would not include investment by owners or shareholders. Any deal with UEFA would be limited to clubs involved in European competitions.

The rationale for the cap is to promote competitiveness and parity within the leagues and to control costs. However, if the cap is a percentage of a team’s total turnover, the richer clubs will still be spending more than their poorer counterparts. Limiting the team’s turnover so that it does not include investment by owners or major shareholders will help to some extent, but the bigger/more successful clubs will still have a larger pool of cash from sponsorship, ticket sales and merchandise than smaller clubs. The proposal comes up against EU competition law and must also not affect the free movement of players between EU Member States.



In the National Football League in the US a hard cap has been in place since 2004. It requires teams to stay under the maximum limit at all times or face fines and/or the cancellation of contracts. There is also a minimum limit for the team payroll that must be paid to players. The National Basketball Association employs a soft cap which allows teams to exceed the cap in certain circumstances, for example to keep a player who has been with the team for a long period. In Major League Baseball a "luxury tax" is imposed whereby teams who exceed a stated limit are "taxed" a percentage which is paid to the league and used for development. In practice this has proven less effective than the hard salary cap, since the wealthier teams sometimes decide it's worth paying a little extra over the top to get the top players.

However, there are problems facing any salary cap in Europe that does not exist in the US. Free movement of players, the importance of international competitions, the fact that European sport tends to operate a promotion/relegation system (rather than franchise based teams), the fact that different governing bodies govern international and domestic competitions and the fact that tax rates and schemes differ widely from country to country all present legal and practical difficulties in implementing any sort of salary cap. Not surprisingly the top soccer clubs in Europe are not in favour of such a scheme. A salary cap has operated in the Guinness Premiership in rugby, but club owners and the Rugby Football Union are concerned with the potential departure of top players to France, where no salary cap operates.

## Give me back my medal!

After a tantrum, the likes of which has not been seen since last weekend in your local playground, Swedish wrestler Ara Abrahamian wants his bronze medal back and appealed to CAS to get it. In protest against a disputed penalty call against him, Mr. Abrahamian ripped off the odious medal, dropped it to the floor and, with a wave to the crowd, walked away during the medal ceremony. The IOC stripped him of the medal and removed his Olympic identity and accreditation, ruling that he violated the Olympic charter and disrespected the other medallists. CAS recently upheld the IOC's decision, ruling that the sanctions were not "disproportionate in the circumstances" and that the athlete's behaviour was not justified even if he had a valid complaint regarding several refereeing/sporting decisions. Through his own actions Mr. Abrahamian relinquished the medal. He placed it on the floor and walked away and he cannot now claim he wants it back.

The IOC has jurisdiction over the medal ceremony, while the international federation governs the competition itself. While his frustration at a number of sporting decisions made during the event led to his behaviour at the medal ceremony, it is important to note that CAS examined the sanctions imposed by the IOC in light of the actions of Mr. Abrahamian at the medal ceremony. It was not for the IOC to examine his complaints arising out of the bout itself, as these would fall to the international federation. This CAS decision sets a precedent that an athlete may not use a medal ceremony or the equivalent to voice his or her protest against any incident or decision, or to try and censure a sports federation, regardless of whether the protest is a valid one.

## Bookmakers: Duty of Care as Enabler?

A recent UK Court case (*Calvert v William Hill Credit Limited* [2008] EWCA Civ 1427) examined whether bookmakers owe a duty of care to protect compulsive gamblers from themselves. The facts, in summary, are that a compulsive gambler signed up for an account with a bookmaker to make telephone bets and after a flurry of calls and bets over a number of hours asked that his account be closed and not reopened. The bookmaker did not follow proper procedures and let him open another account with the company. The gambler sued for breach of the general duty to protect problem gamblers from their compulsion and, alternatively, for breach of the specific duty for its failure to close the account and not reopen it. The Court in the first instance held that there was no general duty, but there was a specific duty in this case which had been breached. However, the judge also held that the damages were not a result of this breach since, as a compulsive gambler, he would have lost the money anyway on bets with other bookmakers and the gambler appealed.

The Court of Appeal said that this is not a matter of determining whether there was a duty of care, a breach of that duty and the damages caused by the breach. Instead the question is whether the scope of the duty of care in the circumstances of the case is such as to embrace damage of the kind which the claimant claims to have suffered. In denying his appeal, the Court of Appeal held that the bookmaker did assume a responsibility to not allow the gambler to place telephone bets with them (as per his account), but it did not assume a responsibility to prevent him from gambling other than by telephone bets with the bookmaker in question. The quantification of his losses could not ignore other gambling losses which he probably would have suffered in light of his compulsion.

The judge did highlight concerns regarding the bookmaker's internal procedures when a customer tries to exclude himself from utilising the service. The judge recommended regular reviews of the self-exclusion policy as well as clear, written notification of the policy and procedures to its customers.



## Drinking Brains

In a clever, or alternatively, absurd move to avoid the French Loi Evan (a ban on alcohol promotion) but still promote its sponsor beer-company SA Brain, the Welsh Six Nations Championship team had the logo "Try Essai" on their jerseys for the first Friday night match in the Six Nations last week. "Try" refers to the method of scoring in rugby. "Essai" is the French translation of "try". And, when spoken aloud, it sounds like "Try SA"...as in SA Brain.... Ehm, so basically the Welsh fan is watching the match, imbibing the SA Brain products and reading aloud from the television. Well, it probably sounded like a good idea when it was put forward to the committee.

## Ka Mate! Ka Mate! Ka Ora! Ka Ora!

The Ngati Toa tribe is the Maori tribe which invented the Ka Mate haka made famous by the All-Blacks. A recent settlement awarded NZ\$121 million to the tribe as well as the intellectual property rights of the Ka Mate haka. However, while the tribe officially owns the war dance, it will not be able to claim royalties or veto the use of the haka by the All-Blacks. The award of property rights will provide protection against commercial or "inappropriate" uses. The performance of the war dance by the All-Blacks does not fall within this category. Unless they lose!

## How to settle the Cork Hurlers dispute!

Its World Championship Time again for the World RPS Society! What, you've never heard of the World RPS Society? You may be missing out! The World Rock, Paper, Scissors Championship title is up for grabs in Toronto, Canada with the final scheduled for later this year. The World RPS Society (whose slogan is "Serving the Needs of Decision Makers since 1918") officially sanctions the Championship. The sport (?) is all inclusive, with participants from all ages and fitness levels (?), both genders, and even competitors with only one hand. Don't enter a competition lightly though. Strength, strategy and discipline are all part of any victory. There are strict rules as to when the hand signal may be played and to ensure that the signal is sufficiently representative and uniform and in accordance with the Internationally Recognised Throwing System, the RPS Society's official guide. Last year's winner received \$10,000. Frank Murphy v Sean Og here we come.

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