



Sport Update

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Battle of the beer

The Alcohol Marketing Communications Monitoring Body (AMCMB) has found that there has been general compliance with the Alcohol Marketing, Communications and Sponsorship Codes of Practice which came into effect last summer (see Beauchamps Sport update July 2008). The AMCMB is a Government appointed watchdog that monitors compliance with the voluntary alcohol marketing codes which are designed to protect children from exposure to alcohol advertising. A number of television stations, including RTE, breached the voluntary code and received a reprimand. The AMCMB does not have the power to issue fines. The offending advertisements on RTE were run during the Galway Races (an event which occurs at a time of day during which such ads are off limits), but RTE claimed that the audience for television racing would be mostly adults. Channel 6 (now 3e), Setanta Ireland and TG4 are also alleged to have, respectively, run alcohol advertisements at a time young people watch television, misinterpreted the code, and aired inappropriate ads during a live GAA match.

In other booze news, an Australian governmental taskforce has recommended a ban on alcohol-related sponsorship in sport. The taskforce believes alcohol promotion sits uneasily with the glamour of sport. Australian sporting organisations have denounced the proposed ban, pointing out that such a ban would be devastating to sport and may not have the desired affect.

Meanwhile, the Rugby Football Union (RFU) in England has brought an unsuccessful complaint to the UK's Advertising Standards Authority (ASA) over an advertising campaign by brewing company Fuller for its use of the tagline "Support English Rugby" in advertisements involving its London Pride ale. The RFU claimed this suggested that London Pride was an official sponsor of English rugby, whereas the official beer sponsor of the team is Greene King IPA. The ASA did not think that consumers were likely to be misled, as nowhere in the ad did it say that London Pride was an official sponsor. Secondly, the text was not misleading because Fuller's has long supported English rugby (as opposed to the English team). It is open to argument whether London Pride was engaging in ambush marketing or simply linking itself to domestic rugby in England. The decision will not concern the London 2012 organisers, as there is special legislation in place which deals with ambush marketing and the use of Olympic intellectual property. The introduction of such legislation is now expected before a country will be awarded the right to host most major events.

Forty love

An International Tennis Federation Independent Anti-Doping Tribunal recently found that Richard Gasquet was guilty of an anti-doping rule violation, but found that he had ingested cocaine when kissing a woman in a night club. The Tribunal found that Gasquet and a mystery woman known only as Pamela "*kissed mouth to mouth about 7 times... each kiss lasting about 5 to 10 seconds*". In June a French newspaper had published an interview with Pamela in which she denied taking cocaine on the night in question, but ultimately she refused to proffer any evidence before the Tribunal. The decision for its implications as regards the defences available in anti-doping cases.

The World Anti-Doping Code provides for the reduction of a "period of ineligibility" (i.e. suspension) where the athlete can show "No Fault or Negligence" or "No Significant Fault or Negligence". In the case of a prohibited substance which is a specified substance (which is considered less serious), these defences allow for a reduction, but not an elimination, of the period of ineligibility. It is often difficult for a athlete to bring himself within either defence. In order to rely on No Fault or Negligence or No Significant Fault or Negligence, the athlete must first establish on the balance of probability how the prohibited substance entered his system.



The Tribunal accepted that on the balance of probability it came from kissing Pamela. The amount of cocaine found in Gasquet's sample was very small – in the region of 5 mg, with an amount of 1 mg having the appearance and size of "a single grain of refined salt". Hair analysis conducted by Gasquet's expert witnesses excluded the possibility that he was a regular social user and it made any allegation of recreational use unlikely. The evidence also showed that the level of cocaine in Gasquet's sample was so small that it was more than likely ingested within the 12 hour period prior to the test.

In order to establish no fault or negligence, an athlete must establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had used or had been administered with the prohibited substance. Gasquet's conduct that evening was found not to be completely free from fault. He ought to have known that the club in question were notorious for the use of recreational drugs. In order to establish no significant fault or negligence, a player would have to show that although his conduct was not completely free from fault, it was not significant in relation to the doping offence in issue. As cocaine is a prohibited substance only when found during "in-competition", a finding of no significant fault or negligence allows the period of ineligibility to be reduced to one year. However, the Tribunal found that even a period of ineligibility of one year would be disproportionate to the offence committed. It relied on the Court of Arbitration for Sport's decision in *Peurta. v. ITF* (CAS 2006/A/1025) which found that any sanction must be just and proportionate and that if it is not, the sanction may be challenged. The Tribunal found that any period of ineligibility would be grossly disproportionate punishment for a player who did not compete in the competition concerned (he withdrew because of injury), had already decided not to compete when the contamination occurred, and had made that decision for the very good reason that he was injured and not to avoid testing. The International Tennis Federation suggested that such a decision would open the floodgates and would unnecessarily eviscerate the strict liability principle that underlies the World Anti-Doping Code. This argument was not accepted by the Tribunal. Although the decision might be questioned, it would seem to have been an exceptional case in which the circumstances allowed the appellant to establish that the quantity of cocaine ingested was so small that it could not have come from recreational use. This decision also highlights the discord which exists in the sports world over the inclusion of cocaine as a prohibited substance "in-competition" and not as a specified substance.

Sport in court

The Welsh Rugby Union (WRU) has a battle on its hands as the country's four rugby regions are threatening legal action over the release of players for an international against New Zealand this autumn. The High Court granted Regional Rugby Wales (RRW) an emergency hearing after RRW claimed that the WRU has no right to the players for the fixture which falls outside the International Rugby Board international window. The hearing will take place in early September 2009. The WRU argues that the fixture is covered by its Participation Agreement with the RRW which was renewed from the 1 June 2009 for five years. A similar court action over player release was won by the WRU last autumn.

The US Supreme Court is set to rule on a long-running anti-trust (competition law) case which claims that the NFL's exclusive apparel deal with Reebok, which is owned by Adidas, is anti-competitive. The claim has been brought by American Needle, a company that manufactured caps branded with the logos of NFL teams until the league signed the exclusive deal with Reebok in 2001. While the NFL won the case in the appeals court in Chicago, it has sought a Supreme Court ruling in an attempt to establish that professional leagues are protected from such lawsuits. The NFL hopes to get a ruling that it should be deemed to be a single entity under competition law, thereby negating the claim that the league's 32 teams unlawfully colluded in the Reebok deal. The NBA (basketball) and NHL (ice hockey) have filed supporting briefs on behalf of the NFL.



Elsewhere in the US, NFL players are addressing US Congress members on Capitol Hill in an attempt to build political support for a possible strike. Team owners claim that the current collective bargaining agreement between players and owners is too favourable for the players and have opted out of the agreement after 2011. The players, meanwhile, have commissioned a study which indicates that the average value of teams has grown by about 14% per annum over the last ten years. The players are also said to be gently reminding Congress of all the legal niceties bestowed upon the league, such as an anti-trust exemption for broadcasting contracts. Congress has jurisdiction over a number of matters relating to the NFL, including the 1961 anti-trust exemption for broadcasting which allowed the NFL to sign television contracts on behalf of all of its teams (one major reason for the economic success of the league today). We're sure that Joe Public is well able to empathise with the poor players who are earning meagre seven-figure salaries, but a players' strike would have a knock-on effect on people employed in stadia and related activities. This isn't the first time Congress has involved itself in sports leagues. After a 232-day strike wiped out the 1994 World Series of baseball, Congress tried to take away baseball's anti-trust exemption. Eventually, in 1998, President Clinton signed legislation limiting the exemption, revoking it in respect of labour relations but not for matters involving relocation, league expansion or the minor leagues (what could simply be classified as more purely sport-related matters).

And now a word from our sponsor...

There continues to be action in the world of sports sponsorship despite the continuing economic downturn (there may be 'green shoots' depending on to whom you listen). Last month media agency Mediaedge:cia published its "Green Change" report. The report offers advice to brands on how they can form successful partnerships, while pointing out that the global sponsorship market is continuing to thrive and companies should not be deterred from entering deals by the potential for negative press. It is predicted that worldwide sponsorship and related activity will grow by 15% this year to \$44 billion. Adidas' Chief Executive has said that his company will continue to spend around 13% of its annual net sales on marketing, seeing it as an investment, while also aiming to cut costs through cutting jobs and closing regional offices.

Now that it has spent over €200 million to bring in players such as Ronaldo, Kaka and Benzema, Real Madrid is seeking to renegotiate its kit supply deal with Adidas. The deal is currently worth €30 million per year, but Real Madrid believes that €60 million is nearer what it should be earning. Should Adidas refuse to play ball, the club may look to Nike, which currently sponsors Ronaldo. Real Madrid's other partners include Bwin, Coca-Cola, Audi and Telefonica, collectively earning the club more than €130 million per year. On a smaller scale, Liverpool has agreed a three-year deal with international tire manufacturer Maxxis, which runs until 2012 and is reportedly worth £1.5 million. The deal will provide Maxxis with exposure on pitch side boards and in the match day programme as well as on the Liverpoolfc.tv website and LFC TV channel. Liverpool is currently negotiating an extension to its shirt sponsorship deal with Danish brewer Carlsberg, which has also indicated it would consider giving its name to the club's planned new stadium if it ever materialises. Manchester United recently announced a record shirt sponsorship deal with US insurance company AON Corporation. The deal, reportedly worth £80 million will come into effect in the 2010-11 season and run for four years.

In other stadium news, England's Football Association (FA) is seeking a title sponsor (of sorts) for Wembley. While it would never ask Daily Mail readers to refer to the hallowed stadium as anything other than Wembley, it is considering the potential to call the stadium "Wembley sponsored by..." or "Wembley in association with..." It's a bit of a mouthful, but it could raise an extra STG£5 million or so per year.



Birds of flight

The British Columbia Supreme Court in Canada has found the exclusion of women's ski jumping from the 2010 Winter Olympic Games in Vancouver to be discriminatory, but found that women's ski jumping would not have to be staged at the Games (*see Beauchamps Sport Update May 2009*). Notwithstanding this, the International Olympic Committee (IOC) has said that it disagrees with the ruling. The judge said that the exclusion of women's ski jumping was discriminatory, but that the decision was made by the IOC which is not subject to the Canadian Charter of Rights and Freedoms. The IOC responded by saying that its decision not to include women's ski jumping was based on technical grounds and was not discriminatory.

Double fault

UEFA has approved new guidelines which provide a referee with the power to stop a soccer match for racist chanting by fans. If fans engage in racist chants, the referee should demand over the public address system for the behaviour to stop. If the behaviour continues, the referee should suspend the game for five to ten minutes sending the teams to the dressing rooms. If the racist chants continue after the restart of the game, the game should be abandoned.

Other sports are also attempting to stamp out racism. Former Australian Open junior tennis champion, Brydan Klein, has been banned for six months for racially abusing an opponent. Immediately after the event Tennis Australia suspended Klein from the Australian Institute of Sport and cut off his funding. Tennis Australia also reserved the right to impose its own penalties. Klein issued a public apology after the incident. Tennis Australia initially fined the player €9,350 after he verbally abused South African Raven Klaasan when they played at an ATP event in England in June. After further investigation, the ATP announced that Klein was to be banned for six months from all ATP World Tour and Challenger Tour events and was fined a further €7,000. Under the ATP Code of Conduct, Klein was found to have committed the ATP offence of "player major offence, aggravated behaviour", with the incident deemed to have been "behaviour that is flagrant and particularly injurious to the success of a tournament or is singularly egregious." Klein has the opportunity to appeal the decision and, if he enrolls in a racial sensitivity training course within the first four months of the suspension, the remaining two months' suspension and additional fine would be waived.

The Judean People's Front or the People's Front of Judea

A recent decision of the the Court of Arbitration for Sport ("CAS") involves S.C. Fotbal Club Timisoara S.A., FIFA and the Romanian Football Federation (RFF). The arbitration follows a dispute which began in 2006 between S.C. Fotbal Club Timisoara S.A., which was going by the name F.C.U. Politehnica Timisoara, and FC Politehnica Timisoara S.A. which objected. CAS ruled that measures had to be taken to avoid risk of confusion between the two clubs, which also had similar colours. F.C.U. Politehnica Timisoara was ordered by the RFF to change its name, colours and logo and pay financial compensation to the other club in 2006. In 2008, CAS threatened F.C.U. Politehnica Timisoara with a six point deduction if it did not change its colours and name by the end of June 2008. In September 2008 FIFA determined that S.C. Fotbal Club Timisoara S.A. (remember, formerly F.C.U. Politehnica Timisoara) had not complied with the 2008 CAS award and requested that the RFF deduct six points from S.C. Fotbal Club Timisoara S.A. The RFF complied. S.C. Fotbal Club Timisoara S.A. appealed to CAS to annul the RFF decision and the subsequent reaffirmation of its decision by FIFA. CAS agreed with S.C. Fotbal Club Timisoara S.A. and having determined that the club had complied on a timely basis with the orders imposed by it, CAS ordered the six points to be returned to the first team. What was the question again?

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