Athletes in the Development Stage of their Athlete journey need to be aware of their image rights and the associated benefits and risks of entering into agreements that seek to utilise their image (for example, sponsorship or endorsement deals).

Overview

An athlete’s “image rights” are their most important and valuable off-the-pitch assets, providing a key source of revenue that can continue beyond their playing days. Image rights are not limited to an athlete’s physical appearance and instead cover a wide variety of associated traits. These may include:

1. Name or nickname
2. Physical features
3. Signature
4. Unique characteristics

Teams and sponsors commonly enter into “image rights deals” with athletes. These agreements compensate athletes for the use of these traits in advertising, endorsements, or other commercial products or activities. However, athletes must be careful to avoid contractual or tax issues in structuring the use of their image rights.
**Image Rights Companies**

Athletes begin their professional journey with personal ownership over their image rights. However, most athletes eventually choose to transfer ownership in all image rights to a specially constructed entity known as an Image Rights Company (IRC). This entity, which usually remains under the athlete’s control, serves exclusively as a tool to organise and receive payment for use of the athlete’s image.

> There are many tax and administrative benefits for using an IRC. Most prominently, income paid through an IRC is taxed at the corporate tax rate instead of at the athlete’s personal income tax rate. In many cases, this structure allows athletes to reduce their tax liability by a significant amount.

Legally, the athlete’s exposure to legal risk is reduced because the IRC is the entity that will enter into commercial deals. This means that if anything goes wrong with those agreements, resulting in financial loss (or worse) for the athlete, the company will be on the hook, not the assets of the individual athlete.

**Club Context**

Athletes or their IRCs can seek to license the use of image rights in a variety of commercial contexts. As a result, it is often important to limit the context in which the license applies.

One important distinction occurs between a “club” context and a “personal” context. Often, professional football teams request the right to use the player’s image in his capacity as a member of that team. For example, the Standard Premier League Player Contract assigns the right to use the players’ image in connection with club “name colours, Strip trade marks, logos or other identifying characteristics.” Supplementary club-specific image rights agreements, negotiated at the time of signing, are also common with household name athletes.

However, grants in a “club context” do not extend to the athlete in a “personal” context, where they are wearing their own clothes or appearing outside team activities. Rights in this context can be broken down and sold to individual sponsors.

**Sponsorship Conflicts**

A related issue involves the existence of commercial conflicts between sponsors. While the limitation of rights to certain contexts prevents some overlap, it may not be enough to resolve conflicts with existing team, league, or federation sponsors. For example, if a player is personally sponsored by McDonalds and a team is sponsored by Burger King, the player may be unable to fulfil the terms of their sponsorship agreement.

As a result, clubs and athletes should check for possible conflicts between sponsors before signing an image rights deal. Any conflicts with existing deals should be carved out of the new deal. In many cases, it will be necessary to receive the consent of an existing sponsor before a conflicting deal can become effective.
Commercial Justification & Documentation

Over the last two decades, HMRC has increasingly challenged the legitimacy of certain image rights deals. This is due to several high-profile cases in which Premier League football clubs made unusually large payments to athlete IRCs. In cases where teams and athletes could not provide a commercial justification for the size of payments to an IRC, HMRC viewed this compensation as illegal “disguised remuneration.”

In order to establish an IRC, a player must be able to prove that their image rights have some value to a commercial sponsor. Evidence might include existing or potential agreements, such as an equipment sponsorship deal. Once the IRC is established, the athlete is free to use it for all image rights transactions. However, athletes should continue to ensure that compensation from these transactions remains proportional to the commercial value of their image. Although there is no exact measurement of such value, independent accountants or financial advisors may be able to calculate a range based on, among other things, the athlete’s overall salary as well as the extent to which their image rights are actually used.

In 2017, HMRC published new guidance on the taxation of image rights. Previously, the HMRC had agreed with Premier League clubs to accept IRC agreements that, among other things, constituted less than 20% of total salary payments made to a player. However, this agreement was not renewed. As a result, HMRC may challenge any individual agreement it determines to violate the guidelines. This makes it more important than ever to remain vigilant against poor advice.

Our Role

Athletes benefit immensely from careful attention to compliance with contractual commitments and tax rules surrounding image rights. Mackrell Solicitors have extensive experience in properly forming image rights companies and ensuring that rights deals comply with all existing commitments. This experience allows athletes to avoid disputes, earn commercial income and stay focused on the work that matters.

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