



A BRIEF GUIDE TO REDFLAGS IN SPONSORSHIP AGREEMENTS

In a sponsorship agreement, a sponsor agrees to make payments, or provide a sponsored party, like an athlete or influencer, with goods or services in exchange for the promotion of that sponsor's brand, product, or business.

Signing a sponsorship agreement is an exciting time for both the sponsor and the sponsored party. However, sponsorship agreements may be complex and the parties may have adverse incentives which impact the agreement's clauses. Attention to detail at the outset is vital to ensure that red flags are not overlooked and misunderstandings do not lead to disputes down the line.

Ambiguous Services or Sponsor Benefits

One of the most important clauses in sponsorship agreements outlines the services or types of benefits that a sponsored party is obligated to provide. Clarity in this clause is in both the sponsor and the sponsored party's interest.

A sponsor should strive to make this clause as detailed as possible to ensure that it is receiving the exact type of promotion that it is looking for. To ensure this clause is specific, a sponsor might think to include an appendix or schedule in the Agreement that allows space to provide an exhaustive list in detail.

A sponsored party should also want clarity in this clause. The sponsored party is tasked with carrying out the obligations contained in this clause, and any misunderstanding of the sponsored party's responsibilities might open the door to legal trouble. When in doubt, a sponsored party should ask questions and ensure that they know exactly what they will be expected to do after signing the agreement.

Unclear Sponsorship Fee

The sponsor's primary obligation under the sponsorship agreement is to pay the sponsorship fee. It is in the sponsored party's utmost interest to settle how the sponsorship fee will be paid.

There are a number of key considerations that the sponsored party will want to take into account:

- **The sponsorship fee amount:** the sponsorship fee may be a fixed cash amount, may consist of payment in kind (meaning in the form of goods or services), or may even be a hybrid! In any case, the agreement should specify what form of currency is being used in calculating the fixed amount or value of goods or services to be provided.
- **Exclusions from the sponsorship fee:** the agreement should clarify whether the sponsored party will be receiving the sponsorship fee alone for their services, or whether the sponsor is responsible for additional costs.
- **Timing of Payment:** the sponsored party will want to know exactly when it will receive its compensation. Payment of the sponsorship fee may be upfront, in instalments, conditioned on the quality of a performance, or even as a combination of these methods.

Sticky Term Dates

Another important clause relates to the duration of the agreement, or the term. The term will largely depend on the nature of the sponsorship opportunity. A term may cover the duration of a single event and a short period thereafter or may otherwise be fixed for a set period of time. Terms are generally specified as clear-cut dates, which are not difficult to understand. However, some sponsorship agreements may be renewable, meaning the term may be extended, so term dates are not always a hard and fast rule.

Both parties may wish to include rights to renew or extend the arrangement in case the relationship is successful. Renewal can take the form of an option, which specifies when, how and by which party it can be exercised. Furthermore, the option might limit a sponsored party's ability to negotiate with third parties or bind a sponsored party to renewal in a number of ways:

- **A right of first negotiation:** this right might specify certain dates before the agreement's termination where the sponsored party is restricted from negotiating with third parties and is only permitted to negotiate with the Sponsor;
- **A right of first refusal:** this right might similarly specify certain dates before the agreement's termination where the sponsored party is free to negotiate with third parties, but is bound to renew should the sponsor match or top the terms of any competing sponsorship agreement received by the sponsored party; and
- **An opt-out option:** in some cases, the option to renew is automatic and a sponsored party must give formal notice to a sponsor to avoid renewal. The window for this notice is generally specified in the contract, and missing the relevant deadline by accident might prove burdensome.

Unlimited Grounds for Termination

There is usually a lot of planning, capital investment and reliance that goes into a sponsorship arrangement, so parties typically detail the specific situations where the agreement may be terminated prior to the end of the term. Common termination situations include failures to cure a breach of the agreement within a set period of time, such as insolvency related issues, a scandal or controversy reflecting poorly on a party's brand or image, or situations where an unforeseeable circumstance renders performance impractical or impossible (known as a Force Majeure).

In some circumstances, an agreement may specify certain situations that are grounds for immediate termination, where a party is left without an opportunity to cure. If a sponsored party breaches the agreement, the agreement may allow for an obligation on the sponsor to repay some or all of the sponsorship fee. In contrast, if the sponsor breaches, the agreement may give the sponsored party rights to find a new sponsor, the grounds to sue the sponsor, or even terminate the sponsor's rights to promote its relationship with the sponsored party. These remedies aren't attractive outcomes, so it is pivotal that the parties understand when termination may occur (especially immediate termination).

License of Intellectual Property

A license is the means by which each party can use the other's intellectual property. The sponsored party will need a license from the sponsor so that they may use the sponsor's intellectual property in their promotions. Likewise, the sponsor may seek a mutual license so that it may repurpose content or promotions created by the sponsored party, or to otherwise promote the relationship.

“ It is in both parties' interest to ensure that the scope of each intellectual property license is defined in the agreement. This includes setting geographic boundaries, time periods, acceptable mediums, and the purposes by which the other party's intellectual property may be used. The intellectual property provision should also specify which party is responsible for dealing with potential infringement, and who will bear the cost of pursuing infringers. ”

Our Role

Mackrell.Solicitors work with both sponsors and sponsored parties. This means that we are able to advise clients from both sides of the table and therefore, we are acutely aware of the risks and pitfalls associated with sponsorship agreements. Both a sponsor and a sponsored party should take time to understand the intricacies of their sponsorship agreements and ensure they obtain the right guidance to avoid legal pitfalls.



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