

Legally Speaking

Sponsorship and Naming Rights Agreements

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Sponsorship and Naming Rights Agreements

Why are these points important?

- A. The team receives the best return on its sponsorship assets.
- B. The team protects itself in the event of a financial or legal default by the sponsor.
- C. The team has control over its sponsorship assets and revenue.

Sponsorship and Naming Rights Agreements

- I. Types of Sponsorship Agreements
- II. Pre-Agreement Protections
- III. Important Contract Clauses

Types of Sponsorship Agreements

- A. Naming rights
- B. Presentation rights
- C. Media rights
- D. Food and beverage rights
- E. Advertising and promotion rights

Pre-Agreement Protections

- A. Does the sponsor have the financial ability to perform its obligations?
 1. Perform due diligence as to the financial and legal stability of the sponsor.
 2. Develop a due diligence list.
 3. Get a release and do a background check.
 4. Get security for the obligation—letter of credit, personal guarantee, bond, lien on assets, cash deposit.
- B. Plan the segments of the rights to be marketed, avoid overlap, clearly carve out the exclusivity.

Pre-Agreement Protections (cont.)

C. Define the intellectual property (IP)—trademarks, service marks, logos, slogans—to be marketed.

Important Contract Clauses

- A. Identify parties and guarantors.
- B. Establish the term—starting date and ending date.
- C. Set procedure for termination—voluntary, involuntary, cause and cure.
 - 1. Rights of team if sponsor defaults, becomes insolvent or files bankruptcy
 - 2. Procedure for collection against security

Important Contract Clauses (cont.)

- D. Include renewal process—exclusive negotiation period, mutual renewal or not, mutual release or not.
- E. List the assets and rights being transferred to the sponsor—signage, program ads, date for group outings, suite usage and so on.

Important Contract Clauses (cont.)

- F. List the IP being licensed to the sponsor—for example, use of logo and name of team, use of name of ballpark.
- G. Consider exclusivity across product and service sectors, local and national sectors—for example, exclusive bank, financial services, health care, insurance.

Important Contract Clauses (cont.)

- H. Require prior approval of team for use of team's IP.
- I. Include morals clause, providing team with remedy, such as termination, if sponsor violates certain standards or diminishes team's goodwill by association with prohibited activity.

Important Contract Clauses (cont.)

- J. Include Major League Rule 54 language—subject to baseball rules.
- K. Keep in mind the requirement for approval of MiLB and league as a regulated transaction (concession agreement potentially more than one year, media agreements, naming rights agreements, any contract with potential duration of five years or longer).

Important Contract Clauses (cont.)

- L. Set the payment terms, including sponsorship fee and other costs such as signage design and construction.
- M. Under local law, determine whether a sales or other tax applies to the payments and allocate responsibility for the taxes.
- N. Determine the remedy of team in the event of breach of the agreement—cure and default.

Important Contract Clauses (cont.)

- O. Require the sponsor to indemnify team for any claims arising out of sponsor's activities.
- P. Require the sponsor to provide certificate of liability insurance (including product liability insurance, if sponsor produces consumer products) with team as additional insured.

Important Contract Clauses (cont.)

- Q. Limit liability of the team.
- R. Require team's prior consent for assignment of the agreement.
- S. Clarify the independent contractor relationship.
- T. Include confidentiality and remedy for breach.
- U. Give attention to other typical provisions.



See you
at the
ballpark!