

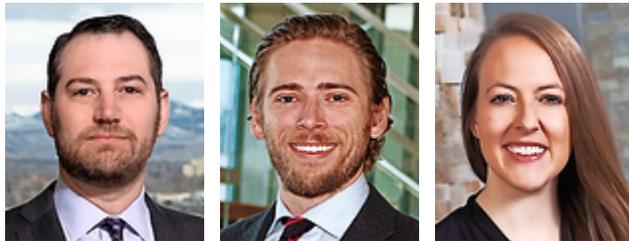
The United States Law Week®

August 15, 2019

INSIGHT: Sports Sponsorship, Naming Rights—Takeaways for Getting a Name in Lights

BNA Snapshot

Potential sponsors of major sports events and venues want to maintain their brand value and invest wisely in marketing associations. Hogan Lovells attorneys examine legal and business issues to watch, like defining, measuring and protecting value; exclusivity and prominence provisions; remedies; and monetizing stadium naming rights.



By Matthew Eisler, Ryan Adrian, and Kathryn Raffensperger

The Olympics, other major sports and cultural events, and high-profile TV shows attract fans and marketing executives alike. Without sponsorship, many elite events and major broadcasts simply could not happen. But with these unrivaled attractions comes considerable risk.

Sponsors must maintain their brand value and invest wisely in marketing associations. At the same time, they must fend off any ambush marketing. Sports teams and personalities must be able to exploit their image rights. As such, options for parties to quickly distance themselves from each other should the association turn sour can feature prominent.

Legal trends to watch and help clients understand include business considerations like defining, measuring and protecting value; exclusivity and prominence provisions; remedies; and monetizing stadium naming rights.

Defining, Measuring, Protecting Value

A large part of what a sponsor is buying in a naming rights or sponsorship transaction is the power of association. Accordingly, naming rights and sponsorship transactions, and the attendant value proposition, have increasingly become more about community involvement, content creation, retail partnerships and sponsor integration with the team, rather than just payment in exchange for a name on a venue.

Successful execution of this strategy has driven substantial value to sponsors and has in turn increased the value to arena/stadium owners and teams from selling sponsorships and naming rights.

It has also led to an increased need for arena/stadium operators and teams to develop new ways to demonstrate how these associations are driving value for the sponsor so the sponsor can justify its increasing spend.

One interesting outcome of this need is the recent rise in incentive-based sponsorship arrangements, which use performance-based metrics as a new way of defining and measuring value for the sponsor.

In these arrangements, a corporate sponsor pays a base sponsorship fee and agrees to make incremental fee payments contingent on the stadium/arena and/or the team achieving metrics such as exceeding specified turnstile attendance baselines, a threshold number of social media mentions, the team tenant qualifying for the playoffs, etc.

Legal Considerations

We have also seen a trend towards more complex protections of the sponsor's investment and the arena/stadium and team's revenue streams through legal provisions in the naming rights or sponsorship contract, such as exclusivity and sponsor prominence/dominance protections and a robust remedies package.

Exclusivity and prominence/dominance provisions

Exclusivity provisions refer to protection for the sponsor against the presence of advertising and sponsorship in an arena/stadium by the sponsor's competitors and can come in a variety of flavors ranging from ensuring the sponsor is the only brand in its industry that can have such a sponsorship presence to prohibiting a sponsorship presence from only a limited, defined set of competitors.

Prominence/dominance provisions ensure that a sponsor's signage and advertising will be placed in frequent and visible locations throughout the stadium/arena and that such signage and advertising will be larger, brighter and, with respect to digital signage, more frequently displayed than that of other sponsors.

Remedies

Finally, the remedies package for breaches provides important protections for both parties given the high dollar value and long-term nature of many naming rights and sponsorship transactions. Stadiums/arenas and teams are highly resistant to any flat termination rights, which interfere with their ability to monetize the sponsorship or naming rights (which is discussed further below).

Although it is difficult to obtain a flat termination right in favor of a sponsor in all but the most extreme circumstances, sponsors can protect themselves and their investments through negotiation of (1) make-whole rights in the event of "changed circumstances" (e.g., the ability to receive substitute advertising or sponsorship rights, to recover a refund of sponsorship fees or, in certain circumstances, to terminate in the event the sponsor is not being provided with the core rights and benefits that it negotiated for) and (2) an abatement of fees and the ability to terminate after a certain time period in the event of a force majeure occurrence (e.g., damage or destruction of the stadium/arena, work stoppages, etc.).

Monetizing Stadium/Arena Naming Rights

Although corporate sponsors purchase naming rights for high dollar values (with the top 15 naming rights deals as of April 30, 2018, having aggregate dollar values ranging from \$178 million to \$639 million), payment for those rights is accomplished through installment payments of sponsorship fees that are stretched over the entire term of the naming rights deal (those same top 15 naming rights deals having terms ranging from 20-32 years).

As a result, stadium/arena owners have searched for ways in which naming rights can be monetized up-front. This is especially important for arenas/stadiums that are in the construction phase, as the up-front monetization of the stadium/arena's naming rights can provide a significant source of funding for the construction project.

One method by which this immediate monetization can be accomplished is through asset backed securitization arrangements, pursuant to which the arena/stadium owner will, through a special purpose entity, issue bonds to investors that are backed solely by the naming rights receivables.

Purchase of the bonds provides immediate liquid funds to the arena/stadium owner, and the bonds are repaid to the investors through the future payments of the sponsorship fees by the corporate sponsor. In addition to making an otherwise relatively illiquid asset liquid, this arrangement also transfers some of the risk of payment default by the corporate sponsor to the investors.

However, the risk to the investor is potentially relatively low if the corporate sponsor has a high credit rating, which for most corporate naming rights sponsors is generally the case. This generally high credit rating has the added benefit of allowing the arena/stadium to issue the bonds at a relatively low interest rate, resulting in a lower cost of capital than might otherwise be available through more traditional bank financing.

However, these asset-backed securitization arrangements are not without their challenges. Many corporate sponsors enter into naming rights deals through newly formed shell companies and are unwilling to provide a parent-level guarantee for payment of the sponsorship fees. This results in a lower credit quality rating for the bond issuer, thus requiring payment of a higher interest rate on the bonds.

Additionally, as discussed above, naming rights deals typically involve at least some termination rights that can be exercised by the corporate sponsor under specified circumstances (including for certain things that are outside the arena/stadium's control), as well as other remedies that could impact the cash flow stream from the naming rights deal.

If the corporate sponsor were to exercise one of these rights, the arena/stadium (or the team) would become responsible for the repayment of the bonds and would lose the benefit of the high credit rating of the corporate sponsor.

Thus, the drafting and negotiation of the naming rights agreement must be carefully undertaken to ensure, to the extent possible, that the agreement is “bankable.”

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Hogan Lovells, in partnership with the Sports Lawyers Association, co-hosted a sponsorship and naming rights program at the Barclays Center sports and entertainment arena, in Brooklyn, N.Y., in April.