



# 体育法律资讯

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## 【热点体育动态】

### 上海国际马拉松成功举行



在汶川地震中失去双腿的绵竹汉旺镇舞蹈老师廖智，借助假肢向终点奋力奔跑。夹道的拉拉队和市民们，毫不吝啬地为这位参加健身跑的“最美跑步者”送上欢呼和掌声。

这是12月1日上午，上海国际马拉松赛中的感人一幕。



安全、环保和快乐，来自对赛事的精心组织和安排。上海市副市长赵雯表示，上海国际马拉松赛规模和影响正进一步扩大，办好赛事责任重大，上海要按照国际田联路跑金标赛事标准，坚持“安全第一、服务至上”，对竞赛组织、安全保卫、服务保障、医疗救护、交通组织等进行全面深入安排，精心做好赛事转播、宣传报道和参赛观赛安全文明提示，放大赛事效应，展示城市形象，确保安全、有序、文明、热烈、精彩。

12月1日上午，2013上海国际马拉松赛在外滩陈毅广场鸣枪起跑。来自84个国家和地区的35000名选手分别参加了全程马拉松、半程马拉松、10公里跑和健身跑比赛。长长的人流织就出一条斑斓的彩带。

“奔跑的城市，市民的节日”，这是2013上海国际马拉松赛的主题。人类的奔跑本能碰撞现代文明的辉煌，成就了人与城市的“浪漫约会”。以安全、环保和快乐为特点的上海国际马拉松赛，带来了“人”与“城”的狂欢。



今年“上马”，人气“爆棚”，规模空前。起点，标志醒目的移动厕所；终点，一条贴心的保暖毯。5公里、10公里、“半马”、“全马”设项多样而合理，沿途还有科学安排的饮水、能量补给站和市民此起彼伏的加油声。冲过终点时，一张张不同肤色的脸上，满是对运动的享受、对城市的热爱、对健康生活的向往。

一位先生，上身西装、下身运动短裤和跑鞋，手捧一束玫瑰，跑完全程，他在向观众席上的爱人表达浓浓的情意。临近终点线，不少参赛市民脱掉运动鞋，赤脚丈量最后的征程，他们用双脚“亲吻”大地的方式，表达对跑步的热爱。下午一点半，已经过了截止时间，仍有选手陆续朝终点线跑来，其中有一位六十多岁的老人，艰难地迈着步子，而他的亲人耐心站在场外，为他加油鼓劲。



城市马拉松是著名的景观体育。通过独具匠心的路线规划，借助电视直播的方式，马拉松成为城市景观的展示窗口。历年的上海马拉松赛，从外滩黄浦沿线看现代上海的摩登巨变，从南京路淮海路沿线看上海的时尚风情，一路奔跑，一路拾取经典海派影像。与其说，这是一条比赛线路，莫若说，这是一条精心设计的“城市景观长廊”。

“这项赛事鼓励每个人充分发挥个性，促使人获得全面发展，同时养成坚持体育锻炼的好习惯。”上海市体育局局长李毓毅说，“同时，上海把马拉松赛事作为城市文化来推进，力求反映出城市发展的过程，展示城市的亮点。”

从国内外经验看，马拉松赛事总是能给一座城市增添别

样的魅力。2013年11月30日举行的上海国际马拉松赛高峰论坛上，国内外专业人士以“马拉松与城市文化”为主题，畅谈赛事给城市带来的宝贵财富。从纽约、波士顿到伦敦、柏林，这些国际大都市共有的一个特点是，都有一年一度的马拉松赛。一项历史悠久、参与人数动辄数万的城市马拉松赛，已经成为国际大都市一张深入人心的“文化名片”。

国际田联高级经理肖恩·华莱士·琼斯认为，马拉松的精神产物，如对成功的渴望、意志力的加强、社会包容性的提升以及公共健康的改善，都是举办城市的财富，“所有这些都将成为城市文化的一部分，也是城市马拉松留给全世界的美好印象”。



## 2013年终总结：恒大3连冠，李娜开启“小时代”

没有奥运会，没有世界杯，2013年体坛的预告片看起来并不那么激动人心，但到了年终，却收获了出人意料的好票房。中超三连冠的广州恒大荣获了亚冠冠军奖杯，将中国足坛染成了一片“恒大红”；26岁的维特尔用F1总冠军四连冠，把曾经前无古人的舒马赫埋在了车迷的记忆深处；再度成功包揽世锦赛男子短跑3金，他的每一次极速冲刺都能点燃全世界的激情；从年初排名第七到年终世界排名第三，31岁的李娜书写了自己也是亚洲人在网坛的一个新时代；西游英国10年的丁俊晖终于完成了从男孩到男人的蜕变，全年拿下4个排名赛的壮举使他在斯诺克这个欧洲人玩了几百年的项目中成为了绝对主角；还有那个30岁的林丹，世锦赛五连冠和以第286位的世界排名夺得世界冠军都将成为难以复制的经典……

谁说体坛没有奥运会和世界杯就难出大片？一部好电影，不看名气，要看演技。

### 博尔特 速度与激情

“牙买加闪电”从不会停止创造传奇的脚步。这一年，博尔特6次参赛，包括预赛及半决赛在内出场22次，收获了12个冠军，其中在最重要的莫斯科田径世锦赛上，轻松囊括男子100米、200米和4x100米接力3枚短炮金牌，追平了卡尔·刘易斯和迈克尔·约翰逊共同保持的8枚个人世锦赛金牌总数纪录，也同样追平了卡尔·刘易斯保持的个人世锦赛奖牌总数10枚的纪录。同时，也弥补了因抢跑而无缘大邱世锦赛百米冠军的遗憾。



这个地球上，地球人已经无力与博尔特在跑道上为敌了，他已经开始寻找更多的领域去展现自己的速度与激情。在阿根廷，博尔特完胜一辆快速公交车后，又向中国的公交车发起挑战，有公交司机回应：“200米的距离内，绝对无法击败博尔特。”

### 李娜 小时代



从年初WTA深圳公开赛夺得冠军，到伊斯坦布尔年终总决赛亚军，虽然未能重现力夺大满贯奖杯的辉煌，但2013对于李娜来说，依然是近乎完美的一年。从年初排名第七到年终世界排名第三，创造了亚洲球手在世界网坛的巅峰时刻。

这一年，李娜还登上了著名的《时代》杂志封面，并入选2013年百大影响力人物，与英国王妃凯特和奥巴马夫人米歇尔在“偶像类”中齐名。据著名财经媒体英国《金融时报》和美国《华尔街日报》的估算，李娜的商业价值已经超过2亿元人民币，李娜凭借着自身实力和个人魅力，并契合网球项目的巨大影响力，已经成为了中国体育新的世界名片，并成为了中国体坛最具“时代”坐标的女将。

在与著名教练卡洛斯1年多的合作中，李娜在身体、技术、战术和心理层面都得到了长足提高，而对于网坛亚洲一姐来说，仍有进一步提升的空间。“我知道我的

年纪不小了，但我依然对明年充满了期待。”在夺得澳网亚军后，李娜表示对自己的未来依然充满信心。

## 广州恒大 地心引力



2013年，中国体坛最热的话题，一定是恒大。

11月9日亚冠决赛次回合，天河体育场甚至整个广州城，都早早被恒大的球衣染成一片红色，这天，13亿中国人都目不转睛地盯着天河体育场中央的那一片绿茵。

90分钟的足球比赛，这次显得特别漫长，没有人再过多地关注穆里奇的漂亮突破或孔卡的精彩传递，所有的人都在焦急地等待着一个属于中国足坛的历史性时刻的到来。虽然盼望中的大胜最终没有出现，但1：1的比分已经足以使广州恒大以3：3的总比分凭借客场进球多的优势，代表中国足球首次登顶亚洲。

这一年，广州恒大几乎成为了中国足坛甚至整个中国体坛的代名词。但正如那句经典台词“广州未赢够”，这一年里风光无限的广州恒大，仍未能实现三冠王的伟业，世俱杯与拜仁的交锋，更让他们看清了努力的方向和提升的空间。

### 丁俊晖 西游降魔篇

这一年，丁俊晖被认为是斯诺克界最成功的选手。

这一年，他连续赢得上海大师赛、印度赛、成都国锦赛奖杯，大型排名赛背靠背三连冠，上一次做到这一点的是20年前的亨德利；这一年，他在大型排名赛创造了22连胜，决胜局豪取11连胜的佳绩，同样仅次于夺得过31连胜的“台球皇帝”亨德利；这一年，他一共拿下4个大型排名赛，成为了斯诺克界夺冠次数最多的选手；这一年，他再度轰出了147分，成为了斯诺克界“80后”选手中破100分次数和



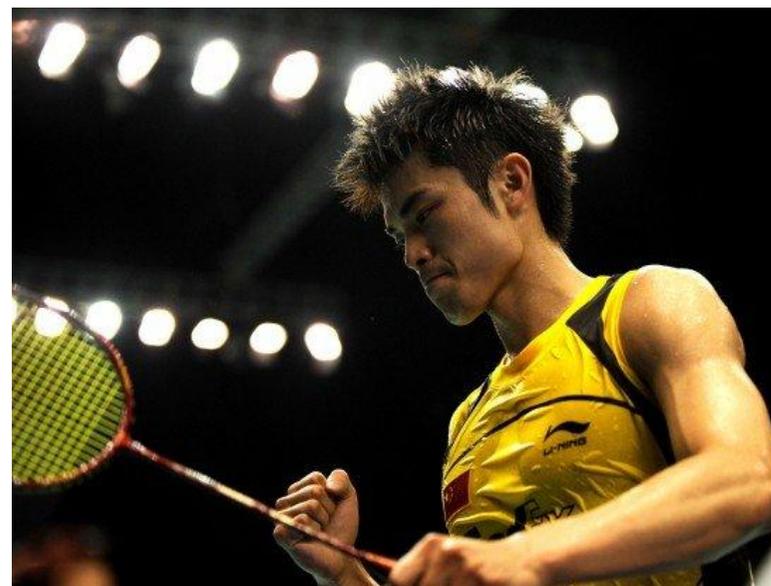
147分次数最多的选手；这一年，丁俊晖入围CCTV体坛风云人物最佳男运动员提名，《中国新闻周刊》影响中国年度人物榜，被公认为2013年中国体坛最大的正能量。

转入职业10年后，丁俊晖终于不再是那个爱哭、内敛、会因紧张而眼皮猛跳的大男孩了，人们看到的是他的淡定和沉着，也正是因此，丁俊晖终于将他的超人天赋转化为了获胜的能量，完成了从神童到大师的蜕变。

## 林丹 无人区

2012年伦敦奥运会，林丹史无前例地完成了对奥运会羽毛球男单金牌的卫冕，然后与谢杏芳甜蜜走进婚姻殿堂。此后，林丹极少出现在羽毛球赛场上，几乎所有人都认为功成名就的林丹不会再回来了，但在2013年羽毛球世锦赛上，林丹却给世人留下了一个巨大的惊叹号。

此前只打了3场亚锦赛的林丹，世界排名已落至286位，最终凭借一张外卡重归世锦赛赛场。但世界排名从来不是林丹攻城拔寨的阻碍，以连胜谌龙、李宗伟两大高手的方式，拿到了个人的第18个世界冠军，更实现了世界羽坛史无前例的世锦赛五连冠。尽管全年仅参加了9场国际赛事的林丹，年终世界排名仍在102位的低谷，但仅凭世锦赛五连冠这



一项，就充分证明了如今的羽坛林丹依旧是无人能撼的绝对王者。

如今，林丹的身前已经是一片没有坐标的无人区，他继续迈出的每一步，都将是羽坛的一个历史性时刻。

### 维特尔 致青春

在刚刚过去的2013赛季，维特尔连续第4次捧起了F1年度总冠军奖杯，追平了意大利车手阿斯卡利在1952年至1953年创造的9连胜的F1最长跨年分站赛连胜纪录，打破由舒马赫保持的单赛季分站赛7连胜纪录，并追平了舒马赫保持的单赛季分站赛13胜的纪录……而这一系列伟大纪录的背后，有一个最核心的关键词：26岁。

从2006年踏入F1车坛至今，关于维特尔的所有记录都与“最年轻”有关。2006年土耳其站，19岁53天的维特尔成为了史上最年轻的单圈最快创造者；2007年美国站，19岁349天的维特尔成为了史上最年轻的得分车手；2007年日本站，20岁89天的维特尔成为了史上最年轻的正赛领跑者；2008年意大利站，21岁72天的维特尔成为了史上最年轻的杆位车手，并在1天后



成为最年轻的分站赛冠军；2010赛季，23岁134天的维特尔成为了史上最年轻的年度总冠军；直至如今，26岁的维特尔成为了史上最年轻的年度总冠军4连冠。

当舒马赫退役后，人们还在讨论F1车坛是否会出现权力真空，莱库宁、阿隆索或者汉密尔顿谁能接班时，更年轻的维特尔一把抢过了“车王”权杖。当然，他还会用无敌的青春，继续去给那些所剩不多的纪录冠以“最年轻”的称号，直至前无古人。



## 【企业如何利用体育营销？】



体育营销有两种理解：一种是将体育作为商品销售的体育产业营销，另外一种借助体育活动而进行的其他产业的营销。体育营销的组成元素也既“体育三角形”，所有营销是建立在赞助方、体育项目和观众三者基础之上，缺任何一方都不能成其为成功的体育营销。

当前，林书豪无非是各大媒体最火热的新闻话题之一，林书豪的商业价值及体育赛事都与国内各体育产业息息相关。在大部分NBA赛场上，汇集了像耐克、安踏、乔丹等这样的国际知名品牌，继姚明退役之后，林书豪无疑也成为了目前我国各大鞋类品牌纷纷抢滩

代言的首选球员之一。在我国运动鞋类品牌向来都喜欢借助于球星的光芒，在NBA市场和国人心中渐渐提高知名度，而如今林书豪的出现则意味着大部分运动品牌鞋企面临新的卖点。

毫无疑问，林书豪的出现，再度引发了运动鞋企的新一轮营销热。例如，在体育营销路上如何挥霍成了鞋业界讨论的话题。其实并没有完全打破鞋企体育营销的计划，体育营销并没有那么复杂，不像是体育赛事赞助讲究“门当户对”，只要懂得经营，体育营销并不是一个砸钱的营销方法，像现在最擅长营销的公司，他们往往能用最低的营销成本以实现最大化的营销效果，中小型企业体育营销也许无法与大型知名企业抗衡，但只要策略得当、方式灵活、执着到位，同样可以得到事半功倍的效果。

在琳琅满目的国内运动品牌中，鞋企想要自身品牌脱颖而出，独到的营销方式至关重要。对于那些二三线的品牌，如果缺少必要的营销手段，必定会被那些大品牌吞没。采用体育营销的老品牌企业中匹克是众多中小型鞋企学习的榜样，目前匹克有15位NBA球星分布在各个球队赛场上，大大提高匹克品牌知名度；在借住NBA东风的六年时间里，匹克的销售额年均高速增长超过80%，远远超过其它对手，大与国际品牌耐克、阿迪达斯针锋相对的气魄。但是值得注意的是，企业在渴望名利双收的同时，切勿过于张场，导致NBA球星可能出现喧宾夺主的状况，导致品牌价格稀释，达到相反作用。因此，企业在采用体育营销时，一定要采用适当的方式、适当的策略才能使营销达到双赢的效果。

企业除了与采用与NBA球星合作外，在营销活动中也要采取多种形式，可以运动广告、促销、活动等多种手段，形成营销的包围之势。最常见是开展虚拟网络活动与网络赛事，如街舞比赛等。总而言之，企业在策划宣传活动时，一定要与“草根”联系在一起，





注意宣传活动的每一个细枝末节，以最小的投入获得更大的效果。另外，企业对于体育界的每一次商机应该了如指掌，抓住时机，以最快的速度提高产品知名度，收回成本。这就需要企业具备敏锐的洞察力的快速的反应。林书豪的热销给我很大反思，下面我们就看看什么是体育营销。

体育营销就是以体育活动为载体来推广自己的产品和品牌的一种市场营销活动，是体育营销市场营销的一种手段。体育营销包括两个层面一是指将体育本身作为产品营销。从一支球队和它的运动员，到一场赛事、一次运动会，都可视为营销学意义上的产品，这个层面可以称之为“体育产业营销”。

另一种是指运用营销学的原量，以体育赛事为载体而进行的非体育产品的推广和品牌传播等营销现象。比如我们在世界杯中所看到的赞助商的一切活动和身影，以及它们产品、品牌的巧妙展示等。我们通常所说的体育营销是指后一个层面。体育消费者倾向于将自己与体育联系在一起，创造了增强对相关赞助产品品牌忠诚度的机会；而体育营销恰恰以其特有的公益性、互动性和成本效益优势成为消费者和商家共同青睐的品牌传播方式。具体原因如下：

- 1、体育激发个人情感依恋，体育营销者能将企业及产品的品牌与比赛的兴奋、动力及感情联系在一起；
- 2、体育普遍吸引与渗透了生活的所有要素，能跨越文化、信仰、种族等障碍，如果你想找一种全世界共同的交流的语言，那肯定是体育，正是体育文化这种公平、平等和无边界的沟通功能，让体育营销圆了众多商家的品牌梦。
- 3、另一方面作为兼具媒体功能的体育赛事，由于赛事的群体普及程度、规格等级、吸引力不同，其传播的能力及商业投资价值

值就千差万别，作为参与投资的企业面对现实，如何从中发现价值，赢得回报，显得更加紧迫！

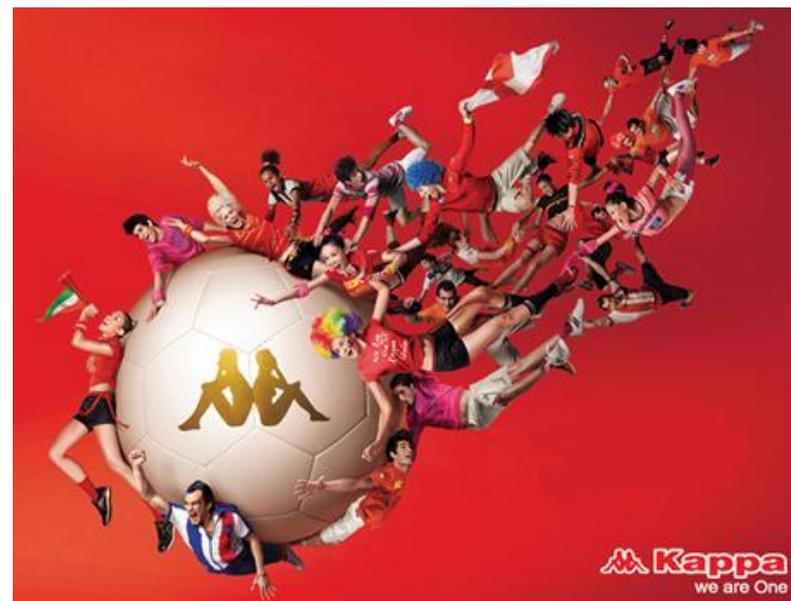
4、普通营销的一种重要趋势是从“广告型”营销的方向向“事业型”营销转变，这种转变可以树立企业的“道德”和“社会责任”的公益形象，而体育营销正迎合了这一趋势；

体育营销是依托于体育活动（赞助形式），将产品（或企业）与体育结合，把体育项目内涵赋予企业品牌，形成特有的企业识别、形象解码转移、品牌内化演绎的价值增值的系统工程。体育营销堪称21世纪最有效的市场推广工具之一，是企业经营中的一种战略，各行各业已认同体育营销对达成商业目标的效用。

在当今，隐性营销已经成为国内外重大体育赛事中司空见惯的营销“搭车”现象。在2002年世界杯上，可口可乐利用官方赞助商的身份开展了大量的营销宣传活动，而竞争对手百事可乐通过单独赞助球星的方式来推出广告宣传、召集旗下球星举办五人制足球比赛，通过在巴士外部安装大型电子广告牌来播放广告并随时向大众播报世界杯赛况等手段，让许多人认为百事可乐就是世界杯的官方赞助商。可见，隐性营销之所

以能够成功主要凭借的还是企业富有创意的营销手段。因此，只要不触及法律法规的红线，任何一家企业都可以利用体育营销来提升品牌知晓度，提升产品销售量，只不过竞争对手之间真正要较量的是他们的营销智慧。

从营销原理上来看，体育营销实际上是事件营销的一个分枝。所谓“事件营销”（Event Marketing），指的是营销者在不损害公众利益的前提下，有计划地策划、组织、举行和利用具有新闻价值的活动，通过运作有“热点新闻效应”的事件来吸引媒体和社会公众



的兴趣和注意，以达到提高社会知名度、塑造企业良好形象和最终促进产品或服务销售的目的。

对于企业来讲，由于体育赛事（尤其是重大赛事）具有持续时间较长、连续性热点新闻较多、辐射范围较广（跨区域、跨国界）和关注人群收视率较高等因素使其拥有了一般事件并不具备的独特营销优势。而且，体育运动还是能够超越国家地域、政治见解、风俗习惯、宗教信仰、民族等诸多因素的限制，为世界范围内最广泛的人群所接受和喜爱。因此，通过与体育活动或者赛事结缘进而开展营销活动也就成为众多企业进行品牌扩张或者提升的良好平台。

从事件营销的营销传播效果来看，它可以让涉案企业在较短的时间之内迅速提升民众或者受众对企业及其产品的关注程度，从而达到扩大品牌传播范围、提升品牌知晓度的作用。但事件营销的终极目标还是要促使企业产品或者服务的销售“更上一层楼”。国内



外区域性、全国性或者世界性的体育赛事凭借周期性明显和关注范围广泛等特点能够为企业品牌传播的强大平台，并为其覆盖更大的市场空间奠定品牌知晓方面的优势。农夫山泉在1998年世界杯期间展开的广告轰炸所达到的传播效果就是体育营销在早期市场上所彰显出的力量。

如果从销售量和市场份额来比较，哈尔滨啤酒与雪花、青岛和燕京等全国性市场领导者显然不能形成对等的竞争关系。但企业希望借助世界杯合作伙伴这一契机，来为哈尔滨啤酒进攻全国市场做出品牌传播上的营销准备。对此，百威英博亚太区总裁傅玫凯这样表示：“哈尔滨啤酒是中国历史最悠久的啤酒品牌，也是首个成为

FIFA世界杯官方合作伙伴的中国啤酒品牌。

公司希望借力这次大规模的世界杯整合市场营销活动，进一步树立哈尔滨啤酒全国领先啤酒品牌的优势地位。”可以看出，在青岛啤酒（北京奥运啤酒产品提供商）和雪花啤酒（“非奥运营销”的典型代表）先后受益体育营销之后，哈尔滨啤酒也希望通过借位世界杯来为全国品牌的塑造和市场网络开拓铺就品牌传播的基石。

此外，体育赛事的筹备本身也可以为企业扩大产品销量、延伸销售半径提供新的机会。例如2010年4月，由英利自己设计并施工的南非第一个光伏并网发电系统工程并网成功。按照公司规划，英利计划今年在南非建立子公司，借助赞助世界杯的效果，开拓南非太阳能市场，并为非洲边远地区的20个足球培训中心提供太阳能发电系统，英利还将与南非国家电力公司合作，在开普敦附近建南非第一个大的太阳能发电站。此外，南非世界杯组委会总共向格力采购了超过2亿元人民币的空调产品（包括主场馆足球城比赛球场和训练场馆、办公楼等场地的空调设施）。

体育营销的商业魅力毋庸置疑，但只有遵循一定的营销模式才可能在达到营销目标的同时，将风险降到最低。而无论如何体育营销带给赞助商们的将是一场集合“智慧、运气和实力”为一体的残酷营销战争。



## 【体育法律业务组介绍】

### ○ 体育法服务范围

- 1、为各类体育俱乐部的组成和结构提供法律咨询服务；
- 2、起草赞助协议、商品化协议和许可协议；
- 3、就传统和新兴的传播、数字和数据的商业化利用提供法律咨询服务；
- 4、就赛事和体育活动的组织和管理提供法律咨询服务；
- 5、就体育品牌特别是有关体育用品和服饰的品牌的知识产权保护提供法律服务；
- 6、就运动员的签约、入会和转会提供法律意见；
- 7、就体育场馆的建设、融资、开发和相关事项提供法律咨询服务；
- 8、代表职业运动员、教练员、体育俱乐部、体育经纪人、体育行业主管部门、体育用品和服装制造商参加相关的争议纠纷的解决；



- 9、代表体育用品和服装制作商处理产品责任纠纷和知识产权纠纷；
- 10、为体育运动队和体育活动的主办方、承办方和赞助商协商和起草各类相关合同。

## ○ 服务方式

- 1、担任专项法律顾问：就各项业务提供全过程、全面、深入的专项服务，办理相关具体事务。
- 2、担任常年法律顾问：就各项业务提供日常法律咨询，处理日常法律事务。

## ○ 微信平台

2013年5月，上海大成体育法业务组正式创建了“体育法”微信公众账号。

微信号：sportslaw

历经三个月的发展，“体育法”微信公众账号已经成长为一个具有广泛影响力的体育法资讯平台，我们致力于体育法律理论研究、体育热点新闻共享、体育合作信息交流三大领域，力图通过微信公共平台的影响力，为大家提供专业、高效的服务。欢迎大家支持并关注“体育法”！





非常感谢您的阅读,

本资讯由上海大成体育法业务组编辑,仅供参考。

如有任何问题,请通过电邮 [zhang.bing@dachenglaw.com](mailto:zhang.bing@dachenglaw.com) 联系我们。

内部文件,仅供交流



# Sports Law Periodical

8th, 2013

Editor: Zhang Bing

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# Hotspot in Sports News

## Real Madrid, Barcelona fined \$10M over TV rights deal

Barcelona and Real Madrid have been fined for breaking Spain's anti-competition laws when agreeing a television



deal for their domestic league and cup soccer matches. The two clubs, along with Sevilla and Racing Santander, must pay almost €8.5 million (\$11.5 million) between them, while TV production company Mediapro has been fined €6.5 million (\$8.8 million). They were found guilty by Spain's National Markets and Competition Commission (CNMC) of agreeing a TV rights deal of longer than the stipulated three years.



In 2010, the clubs agreed four-year contracts with Mediapro. Real was fined €3.9 million

(\$5.28 million), Sevilla €900,000 (\$1.21 million) and Santander €30,000 (\$40,624) -- all in line with the values of their respective contracts.

La Liga champion Barca said Monday it intends to appeal its €3.6 million (\$4.87 million) fine within the allowed two-month window, but would pay despite it having *"an economic impact"* on this season's operations *"subject to a favorable ruling on future courts involving the refund of payment made."*

*"FC Barcelona's appeal is based on the consideration that the signing of the contract was consistent with the provisions of the General Law on Audiovisual Communication, and also that the contract of assignment of rights mentioned has not affected in practice the audiovisual market,"* its

website reported. *"The contract was signed by the previous Board, dated June 9, 2010, four days before the presidential elections. That decision was challenged by some candidates."*

Sandro Rosell, Barca's current club president, took over from Joan Laporta -- whose reign lasted from 2003-10. Spanish clubs, unlike those in other top European leagues,



do not have collective television agreements. Real and Barca hold 50% of the top division's TV income, with the other half shared among the other 18 clubs. It has helped the leading duo not only dominate the domestic competition, but also become two of the world's most wealthy clubs allowing Real to splash out \$132 million on Gareth Bale in August while also tying star player Cristiano Ronaldo to a lucrative new long-term contract worth a reported \$206 million.

Barca's financial resources are not quite so deep, though have improved since accepting shirt sponsorship for the first time in 2010 with the Qatar Foundation -- a five-year deal reportedly worth up to \$225 million. The club signed Brazil star Neymar for \$75 million in May. The CNMC said in a statement explaining the ruling that the four clubs and Mediapro had committed "a very serious offense" by breaking its April 14, 2010 ruling on the acquisition of broadcasting rights for football competitions.



## Serena Williams: 2013 season was make or break for my career



There *"It could have been the secret to my success or the secret to my demise,"* a wistful Serena Williams says of

her 2013 season. The irresistible force in women's tennis is talking about her record-breaking year, one in which she vowed to play more than she ever had done previously. It was a decision that paid huge dividends. Not only did her victories at the French Open and U.S. Open take her grand slam tally to 17, she also successfully defended her



season-ending WTA Championships crown. She claimed 11 titles in 2013 -- the best return in the women's game for 16 years -- adding \$12.3 million in prize money to what has become a very healthy bank balance over the years.

Far from slowing down, Williams has a new spring in her step at the age of 32. Her 17 major titles mean she is just one behind Chris Evert and Martina Navratilova and within sight of Steffi Graf, out in front on 22 grand slam titles in the post-1968 Open era.

*"It is getting exciting," Williams told CNN. "I have four grand slams next year to try and at least catch up with Martina and Chrissy so it will be really exciting. Hopefully I can do it but really being here 17 is fun, obviously I want more and I never want to stop until I reach my goals. I'm excited about just looking forward to the possibilities of next year. I*

*started with 15 and this year I'm starting with 17 (next year) so hopefully I can win a couple -- one, two or three, who knows? Any would be good for me."*

Serena's career has been transformed since she teamed up with coach Patrick Moratoglou after a demoralizing first round defeat at the 2012 French Open. Having tumbled to 175 in the world after a series of injury-hit seasons, he helped Serena roar back to the top of the game; if and when Serena breaks 18, his pride will be immeasurable too. *"Martina and Chris, they are legends, so to have Serena part of this small group means a lot,"* Frenchman Moratoglou said. *"It means a lot to her too that she's only one grand slam away to reach them and then maybe to overtake them it's an option that you can really think about it. There will be a lot of emotion when she'll be close to winning the next grand slam and sitting next to those great champions, but she can make it. Steffi is a bit far away still. I think it's too early to speak about Steffi -- she has 22 -- so (Serena) has to win five more and six more to overtake Steffi so that's a long way. I think it's important not to look at the mountain when you want to climb it, just the next step."*



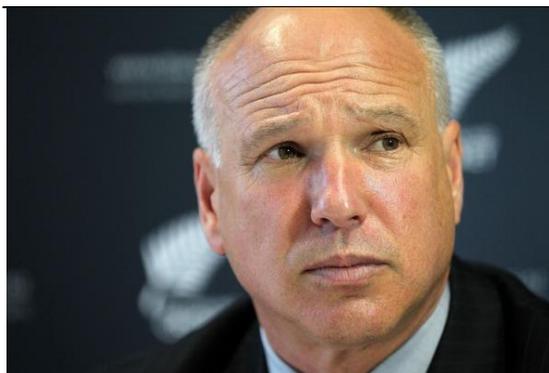
Moratoglou is from the school of thought that a defeat, however painful, can provide an important reality check and provoke an elite athlete into a drive to ensure it isn't repeated. That pivotal reverse to Virginie Razzano at the French Open last year spurred Williams on to a spike in form and another shock grand slam exit -- to Sabine Lisicki at Wimbledon this year -- acted as a similar catalyst. *"It was definitely motivating -- I definitely learnt a lot from that match,"* Williams explains of her defeat to the German in round four. *"It wasn't good that I lost but it was good that I was able to learn from that loss and I was able to do better and I won some matches because of that loss so I guess it helped me out."*

And though Serena is quick to pay tribute to her team from agent to coach, hitting partner to physio, she also revealed that she still leans on the support of her mum, who was with her during her triumphant WTA Championships campaign, and dad to help her game. She said: *"I called my dad every match at the U.S. Open from the third round on, he really helped me in that tournament, and he really helped me behind the scenes to win some matches. I was really happy to have the support and have his help and so yeah I definitely rely on my dad and my dad for a lot of coaching."*

## Three former New Zealand cricketers investigated over match-fixing



*“New Zealand Cricket had been aware for months of the International Cricket Council investigation into former New*



*Zealand players' involvement in alleged match-fixing*", NZC chief executive David White said on Thursday. The ICC was forced to issue a statement confirming it had been investigating a small group of players after a newspaper reported that up to three players were involved in a probe by the anti-corruption and security unit.

Chris Cairns was named in several publications as one of the players in question and made a brief statement regarding the allegations. *"We need to let the investigation by the ICC run its course,"* he said. Lou Vincent later confirmed he was one of the players under investigation. *"I wish to let everyone know that I am cooperating with an ongoing ICC Anti-Corruption investigation that has been made public today,"* Vincent said in a statement. *"This investigation is bound by a number of rules and regulations that mean I am unable to make any further public comment. I will personally talk to the public when I am able to. In the meantime I cannot comment. Please respect me and my family's privacy until such time."*

NZC had also issued a statement before White gave a short media conference at University Oval in Dunedin before the third day's play of the first Test between New Zealand and West Indies began. *"New Zealand Cricket is aware that the International Cricket Council is investigating a small number of New Zealand cricketers,"* White said. *"We have*

*been aware of this investigation for a number of months and are shocked and surprised by the allegations. I do know who they are but I can't name them because it is with the ICC,"* he added when asked if he knew who was the subject of the investigation. White said it was his understanding that three players were under scrutiny.

No current players are the subject of the probe and the matches under investigation were overseas and not domestic matches in New Zealand. The ICC had kept NZC up to date with regular meetings.

*"We support the ICC's investigation as corruption has no place in our sport. No current New Zealand players are being investigated. No games played in New Zealand are being investigated. Lastly, no matches under New Zealand Cricket's jurisdiction are being investigated."*

The ICC had earlier confirmed its investigation following the report in the New Zealand Herald that the investigation was *"poised to blow the lid off the biggest sporting scandal in New Zealand's history"*. The Herald said the investigation was concentrating on *"historic matches involving international stars"*. It said inquiries had *"concentrated on cricket at a domestic or franchise level"* and it was not known whether they would reveal any attempt to fix international matches.



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An ICC statement said: *"The ICC confirms that it has indeed been working closely over the past few months with its colleagues in the domestic anti-corruption units of member boards to investigate these and related matters. The ICC and all of its members maintain a zero-tolerance attitude towards corruption in the sport. Naturally, as the investigation remains ongoing and nobody has been charged with any offence, no further comment will be made."*

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# International Sportslaw Practice

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## Support in Japanese sports, despite deaths; will the culture catch up to the law?

In January 2013, the world learned of the physical and mental abuse suffered by 15 female judoka under the watch of the Japanese Olympic women's head coach Ryuji Sonoda. The revelations came just a month after the suicide of a 17-year old high-school basketball captain in Osaka who was punished during training by his coach the day before.

Such incidents at different levels of Japanese sports have led to concern amongst the Japanese public and government about the athlete's welfare and whether training methods are too strict. Proponents say that corporal

punishment in educational or sporting settings are necessary to develop discipline and strength, however a growing body of international and domestic law outlaw the practice, especially when it comes to children.

This article will focus on the judo scandal and other difficulties the sport has faced in 2013. The use of corporal punishment in Japanese sport will also be analysed to determine whether such methods have a place in training athletes of any level.

The Japanese martial art of Judo was created in 1882 and was introduced as an Olympic sport at the 1964 Tokyo Olympic Games. Judo translates as “the gentle way” or “the way of gentleness” and requires both physical and mental skill to defeat an opponent. Judo in Japan is governed by the All Japan Judo Federation (AJJF) which oversees the training and instructing of judoka to promote judo.. The

AJJF is funded partly by the Japanese Sports Council (JSC) and the Japanese Olympic Committee (JOC) and partly by the Ministry of Education, Culture, Sports, Science and Technology (MEXT), the Japanese governmental department that aims, amongst other things, to promote sport and enhance the performances of top-level athletes in Japan.



## Japanese female judo athletes abused



At the 2012 London Olympics Japan`s Judo team won seven medals of which only one was gold, earned by female judoka Kaori Matsumoto. The male team failed to win a gold medal for the first time since the introduction of judo to the Games in 1964. The Japanese judo squad was expected to win gold in half of the fourteen events that took place after winning four gold medals in the Beijing Games and eight in Athens. Men`s judo coach Shinichi Shinohara was openly critical of the judoka and stated that the main reason why the male athletes underperformed was due to a lack of mental strength. The substandard performances of the female judoka, may likely be attributable to the team's troubled preparation prior to the Games after reports surfaced about abuse of the female athletes during training camps.

In December 2012 the Japan Olympic Committee (JOC) received a letter from 15 female judo athletes exposing Sonoda`s coaching methods which included `slapping` and `kicking` the athletes, and in extreme circumstances

hitting them with bamboo sticks. Sonoda and his staff were also accused of verbally abusing those athletes who were not performing.

In January 2013, during an investigation by the JOC (where only Sonoda and a few of the judo athletes were interviewed), Sonoda admitted to physically punishing the athletes whose names and details were kept private. Sonoda was subsequently reprimanded privately by the AJJF. The media soon learned of the situation and pressure began to mount on the AJJF and JOC to take further action. Sonoda resigned as head coach shortly after but faced no criminal charges. The resignation of Sonoda and potential further spotlight on Japanese judo may have been the main contributing factors in criminal charges not being proceeded with.

The abuse of athletes had not occurred overnight according



to former Olympian Kaori Yamaguchi who informed that it was happening for four years. The AJJF first learned of Sonoda's actions back in September 2012 when one female athlete complained of ill-treatment by Ryuji Sonoda. Yamaguchi, who retired from competitive judo in 1989 following a very successful career is a respected figure in Japanese judo and, acted as an adviser for the athletes after hearing of the situation and informed top officials at the AJJF requesting a proper investigation in the process. At the time the AJJF were reviewing Japan's Olympic judo performance and the all-male federation opted to issue Sonoda with a stern warning rather than carry out a full investigation after the review was complete.

Shortly after the warning was given the AJJF met with the athletes and apologised but this proved to be futile as just a month later Sonoda credited his strict coaching methods as the reason for the win by a female judokain a later bout. The AJJF's belief in his coaching methods and their confirmation in November 2012 that Sonoda would remain in his role following the Olympics prompted the athletes to report their allegations to the JOC.

Following Sonoda's resignation the Japanese sports minister for MEXT, Hakubun Shimonura, described the abuse case as the "gravest crisis in Japan's sporting history" and asked the JOC to conduct a fresh investigation of the incident. JOC president Takeda Tsunekazu concurred and also announced a national campaign against abuse in Japanese sport by creating an external commission with the objective of investigating coaching behaviour in judo as

well as other sports. Following an investigation by the JOC into the physical abuse it was found that serious misconduct had occurred and consequently the AJJF's funding for team development was cut.

## Is physical abuse approved of?

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The approach of the AJJF and the JOC to the situation has been criticized by former teacher and social commentator Naoki Ogi who suggests the organisations colluded and coordinated their responses to the scandal. He added that the JOC should have launched its own investigation well before January 2013 and that corporal punishment is the product of poor coaching techniques. Academic researcher Aaron Miller went further by questioning the role of Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT). He believes that where a Japanese sports coach is under investigation by MEXT for physical abuse; if the individual admits to their actions they have a six out of ten chance of avoiding punishment by the governing body. Reflecting on this statistic Miller suggests MEXT may therefore approve of corporal punishment as the correct way to guide Japan's youth.

One example of the government's indifferent approach to corporal punishment is seen in the case of Hiroshi Totsuka. Totsuka spent only four years in prison for manslaughter after four students committed suicide whilst attending his rehabilitative yacht club for problematic children during the 1980's. The Nagoya High Court's major issue was deciding whether corporal punishment was violence or education and on overruling a lower court's judgement, it was held that Totsuka's violent training methods had neglected human rights and had nothing to do with education. Activities at the yacht club continued and on his release in 2006, Totsuka told the media: “‘taibatsu wa kyōiku’”: ‘corporal punishment is education’. In 2009, Totsuka's educational policies came under scrutiny once more after an 18-year-old student committed suicide after arriving at the school just three days earlier. This time the local police authorities decided that the incident was suicide after the female had told a friend she wished to die.

## Corporal Punishment

Following the revelations regarding Sonoda and his subsequent resignation, the issue of corporal punishment or taibatsu, a term used in Japan to describe corporal punishment in sport and



educational settings, , was raised again. In December 2012, the 17 year old captain of a high school basketball team committed suicide after being physically abused by his coach during practice the day before. This led to a public debate about the use of physical abuse and corporal punishment in sports and education in Japan. The basketball coach, identified as Hajime Komura, has now been sentenced to one year in prison for his actions. In 2007, 17-year-old sumo trainee Takashi Saito died after being beaten with beer bottles and a baseball bat by his coach and other wrestlers at his stable. His coach Junichi Yamamoto was sentenced to six years in prison for manslaughter.

Corporal punishment is illegal under Article 11 of the Education Law 1947 but a ruling by the Tokyo High Court in 1981 suggested this provision did not prohibit all physical punishment with the circumstances of each case determinative of the outcome. Furthermore there is no criminal penalty for corporal punishment unless death or severe injury occurs, as seen in the Takashi Saito case.

## **Authoritarian culture**

Lee Thompson, a professor of sports sociology at Tokyo's Waseda University, believes the authoritarian culture within Japanese sports allows coaches to beat their athletes in the name of training and in order to strengthen the

character of the individual athlete. This view echoes the information provided by the 15 female judoka who, in their statement following Sonoda's resignation, revealed "the abuse was done in the name of coaching, but in reality it was far from being "coaching".

Academic researcher Aaron Miller believes coaches see corporal punishment as beneficial for the "chosen pupil" in pursuit of maximizing their potential. The pupil will then act as an example to his teammates of how to act and behave after receiving the punishment in such adverse circumstances.

Retired judoka and Olympic silver medalist Noriko Mizoguchi stated in an article in *The Independent*: "There is a huge gap between teacher and student." "There is very little two-way communication – athletes just do as they're told. If there's a problem, they can't challenge him."

In February 2013, the JOC conducted a survey of over 3,000 certified top-level athletes to discover how many had suffered abuse from their coaches. Approximately half of the surveys were returned and in March 2013 the results were released. Two hundred and six athletes, or 11.5%, said they had been victims of abuse by an authority figure. Twenty of those athletes required medical treatment. Out of a survey of 3000 coaches from sports member organizations across Japan, 3% of those who responded admitted to harassing their players. The figures only

represent the views of top-level athletes, however, and in so doing omits the many other lower-level athletes who may be subject to abuse daily.

However in May 2013, a survey by Japanese newspaper Asahi Shimbun showed that around 60% of Japanese university athletes think corporal punishment is acceptable during school athletic programs. Five hundred and ten students took part in the survey and further results indicated that 60% of athletes said that punishment helped them to become more serious and 62% believed violent punishment was acceptable where there was a strong relationship between students and coaches. The study acts as a deterrent to the Japanese government who are trying to eradicate physical punishment as a method of training.

## Is corporal punishment breaching an athlete's human rights?



A further underlying issue regarding the use of corporal punishment on an athlete is the breach of their human rights. As a Member State of the United Nations (UN) Japan has a responsibility to ensure that events in their country do not breach the Universal Declaration of Human Rights

1947 and other international human rights treaties including the Convention on the Rights of the Child. In October 2012 Japan submitted a report under Article 40 of the International Covenant on Civil and Political Rights which requires Member States to show the measures they have adopted in giving effect to the rights for the period through January 2007 to September 2011. In the report, the number of human rights infringement cases in Japan concerning corporal punishment handled by the Human Rights Organs (HRO) of the Ministry of Justice (MOJ) in 2010 was 337, an increase from 268 in 2009 and 198 in 2008. The Japanese government may come under pressure from the UN and the international community to address the situation should the number of corporal punishment cases continue to increase. In addition to international laws banning corporal punishment, there is also a “Global Initiative to End All Corporal Punishment of Children.”

## Is reform possible in Judo?

Following the physical abuse of the 15 female judoka, the athletes sought reform of the AJJF stating that the whole organisation was responsible for their maltreatment, not just Sonoda. Before discussions of possible reform could be discussed however, judo in Japan



was hit by a series of events further damaging the image of the sport. The day after Sonoda's resignation, two-time former Olympic judo champion Masato Uchishiba was found guilty of rape and was given a five-year prison sentence.

In March 2013, the AJJF was accused of misappropriating funds given by the governmental department Japan Sports Council (JSC). The JSC gave ¥36.2m (£240,000/\$371,000/€281,000) in supportive funds to 27 unqualified AJJF coaches of which a large proportion was then donated to the AJJF by the coaches. An investigation confirming the accusations showed that the coaches were still receiving the money during periods they did not work with the athletes and as unqualified coaches they should not have been receiving such sizeable amounts.

In May 2013, another incident led to the director of the AJJF Jiro Fukuda, to resign after allegations arose accusing him of making sexual advances towards a top female judoka in December 2011. The allegation was raised by former judoka Noriko Mizoguchi on behalf of the victim and after a special team was launched to investigate the accusations, Fukuda offered his resignation.

In June 2013, International Judo Federation (IJF) president Marius Vizer warned Japan to 'clean up' Japanese judo and start with new reforms and developments in light of the events that rocked the sport. The IJF expect the AJJF to submit a report by October 15, 2013.

The AJJF has now undergone some major changes following the different scandals. Twenty-three directors of the AJJF, including the president, resigned at an extraordinary board of directors meeting in July 2013. President Haruki Uemura stepped down despite saying in June he wanted to oversee all of the necessary reforms. Last month Shoji Muneoka was appointed the new president of the AJJF as the organisation looks to rebuild its image following the scandals.

Reform of training methods in Japanese sport may take time as such practices are ingrained in the country's culture. Author Robert Whiting believes reform will be difficult as the practices are too entrenched in Japanese society for real change to occur anytime soon. He believes that corporal punishment is the product of a physical education system where physical punishment is acceptable. If one does not do something right physically the consensus is that the individual will be punished physically.



## **Disciplinary procedures of the National Governing Bodies (NGB's)**

Looking ahead the disciplinary procedures of the AJJF will be significant in eradicating physical abuse in judo. The approach taken by the disciplinary committee of the AJJF towards Ryuji Sonoda prior to his resignation was lenient and the JOC immediately sought to address the issue. In March 2013, the JOC issued 13 directives to the AJJF encouraging the implementation of stricter procedures. The directives included the ‘prohibition of violence or misconduct directed at athletes by coaches’ and ‘the establishment of a framework for athletes to report any concerns to the organisation.’

Most recently the disciplinary procedures of the AJJF were tested after an investigation was launched following accusations that 9 senior members of the Tenri University judo club, including world champion Shohei Ono, had physically abused first year students. Following the investigation the discipline committee of the AJJF found the accusations to be true and decided to issue the athletes with 3- month suspensions from major judo competitions. The incidents happened under the watch of Professor Shozo Fujii who subsequently resigned from both his positions as elite judo program director of Tenri University and as director of the AJJF prior to the findings of the investigation.

AJJF executive director Yasuhiro Chikaishi believes the punishments given to the athletes will act as a “judicial precedent if it is likened to a ruling” and the decision will serve as a guideline to future incidents of a similar

nature. Discussing the severity of the punishment Chikaishi went on to comment that the members of the disciplinary committee “did not propose that the period of suspension should exceed 3 months, nor that the students should be given only written reprimands.” The only other option of greater severity than suspension would be to expel the athletes from competition.

## Conclusion

Judo and Japanese sport has come into the spotlight this year for the wrong reasons. The recent scandals in judo led to a series of resignations ultimately ending in a change of presidency of the AJJF. The physical and mental abuse suffered by the elite female judoka in addition to the suicide of a high-school student as a direct result of abuse has brought the issue of corporal punishment in Japanese sport to the attention of the country and the sporting world. The traditional cultural values of taibatsu are still supported in Japan but yet it remains illegal by Japanese law. Tokyo’s successful bid for the 2020 Olympics Games Japan has given the country the opportunity to educate the world about Japanese sport and culture. It is hoped that Japan can learn from the events of the past year and MEXT can address the issue of physical abuse in Japanese sport as the country looks forward to hosting the world.

# Contractual remedies for damage to reputation in sport sponsorship



## The problem of Damage to Reputation in Sponsorship Contracts

There have been many parodies of easily recognisable product endorsements by now-disgraced sports personalities

published on the Internet, the images of Lance Armstrong and Tiger Woods on Twitter with the Nike swoosh and the caption – “Nike – Don’t Do it” is a memorable example. While many appreciate the humour of these, they highlight the risk of damage to the reputation of well-established brands caused by the alleged or actual misconduct of sponsoring athletes.



It is no secret that companies pay vast amounts of money to secure endorsements, so that they may profit from their association with the success, vitality and talent of the individual. When an athlete does something to negatively affect their personal reputation, and thereby tarnishes the positive attributes which the endorsed products sought to embody or reflect, the sponsoring company will often suffer loss – either because the endorsement is not as profitable as it would have been had the athlete retained their good reputation or, worse, because the product's close association with the athlete may stigmatise the product altogether.

One recent example of a reputation irreversibly tarnished is that of the cyclist Lance Armstrong, who admitted to the use of performance enhancing drugs throughout his career. Following

these admissions, Armstrong's well-known and long-established associations with both Nike and Trek were terminated, no doubt because his endorsement was no longer considered to be the profitable arrangement the brands had desired. It is unknown whether any damages were pursued by Armstrong's former endorsers, but had they decided to attempt a recovery, the route to such damages may not have been immediately apparent.

The protection of damage to reputation is normally considered to be the role of defamation but, as Armstrong said nothing which directly defamed or tarnished the reputation of his sponsors, such an action would be unsustainable. Nevertheless, the brands' association with a declared 'cheat' clearly lowered their desirability to the consuming public and it is self-evident that a loss was nevertheless sustained.

What is proposed in this article is that an application of normal contractual principles may afford a sponsor a route to recovery of losses sustained in circumstances where an athlete's actions affect the marketability of an endorsed product.

Sponsorship Agreement Template

## Sponsorship Agreement

Date: \_\_\_\_\_

Between

\_\_\_\_\_  
Sponsor [1<sup>st</sup> Party]

AND

\_\_\_\_\_  
Sponsee[2<sup>nd</sup> Party]

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## Defamation or Breach of Contract?

While defamation may be the established remedy for damage to reputation, authorities in contractual cases show that, in certain circumstances, the courts have been willing to compensate claimants where their reputation has been damaged as a consequence of the actions of a contractual counterparty.

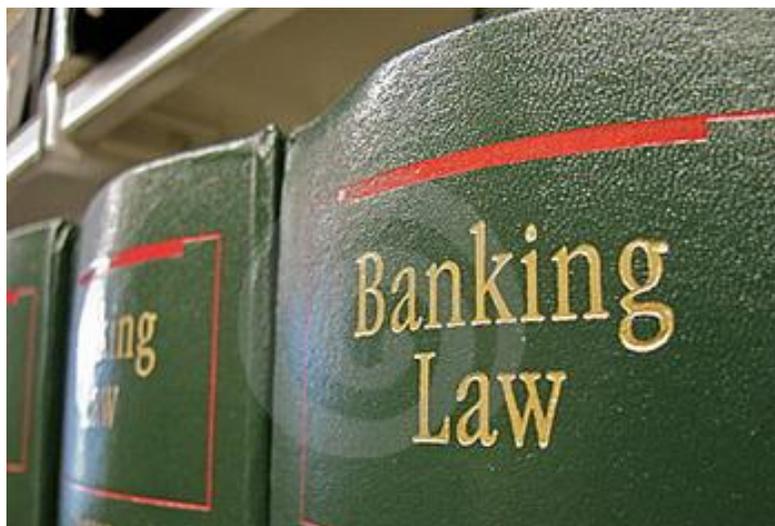
In *Wilson v. United Counties Bank* a bankrupt customer brought a successful action for breach of contract against a bank and the House of Lords unanimously upheld recovery of damages for consequential loss of personal reputation, Viscount Finlay stating at p.120, that:

*"It is difficult to see on what principle such damages might not be given if there has been an actual bankruptcy as the result of breach of contract on the part of the defendant to take steps to prevent it. If the imputation of bankruptcy would give right to such damages in an action for libel, why should not the fact of the bankruptcy owing to the defendant's breach of duty confer a similar right upon the plaintiff [in an action for breach of contract]."*

This is an early case, however, the comparison of the right to damages in defamation and contract is illuminating. It appears that where damage to reputation, of a sort that would give a right to recovery in defamation has been caused

by a breach of contract, rather than a defamatory statement, such damages are recoverable.

In *Kpohraror v. Woolwich Building Society* the plaintiff successfully brought an action for, *inter alia*, damages for loss of business reputation resulting from a cheque being wrongly dishonoured by his bank. Evans LJ, giving the leading judgment of the Court of Appeal, upheld the Master's finding below that such loss was recoverable, citing *Wilson* as authoritative on the matter. Moreover, the Court of Appeal made it clear that the class of persons entitled to recover such losses was not restricted to traders (at 124D).



Perhaps the leading case in this area, however, is the House of Lords decision in *Malik v. BCCI*. The Bank, BCCI, was found to have been involved with a large-scale fraud and other criminal acts, as a result of which the claimants, both employees of the bank, lost their jobs. The employees brought successful actions against the bank for breach of their employment contracts. In the course of judgment, the House of Lords unanimously upheld the pleaded head of loss for "*stigma damages*", under which the claimants claimed that their future employability had been handicapped by reason of the stigma attaching to the

bank's activities and their innocent association with them.

Mr Malik, the lead claimant, recovered damages because of a breach of the implied, mutual duty of trust and confidence. However, put another way, it could be said that the damage was caused by Mr Malik's association with what Lord Nicholls described as, a "*dishonest and corrupt business*".

Although the duty of trust and confidence does not exist in sports sponsorship agreements, it may be argued that an action by a contracting athlete which brings their reputation into disrepute may, in circumstances where that action can be brought within the ambit of an express or implied term, be a repudiatory breach of the sponsorship contract, entitling the brand to terminate.

In defence of the claim in *Malik*, counsel for BCCI submitted that injury to reputation is protected by the law of defamation, the boundaries of which could not be side-stepped by allowing a claim in contract, where such a claim would not succeed in defamation (relying on *Lonrho plc v Fayed (No.5)*, per Dillon LJ). Crucially, for present purposes, Lord Nicholls described this submission as misconceived.

Lord Nicholls observed that, with certain exceptions, defamation provides a remedy whether or not the injury to a person's reputation causes financial loss.



However, Lord Nicholls went on to note that if, as a result of the injury to his reputation a claimant does in fact suffer financial loss, this may also be recoverable in a defamation action as 'special damage'. It was this element of 'special damage' that Lord Nicholls considered may also be recoverable for breach of contract.

There was no good reason, in his Lordship's opinion, why, provided damage to reputation could be brought within the ambit of the breach of an express or an implied term of a contract, and that that breach could be proved to have caused financial loss, such loss would not be recoverable simply because the subject matter of such a breach (being harm to reputation) would more ordinarily be dealt with by the tort of defamation.

Thus, it would appear that there is authority for the proposition that "*stigma damage*" is a head of loss recoverable for breach of contract where there has been:

- A breach of some term of the contract between the claimant and the defendant;
- Actual pecuniary loss suffered by the claimant;
- That the loss was caused by the breach; and
- That the loss claimed is not too remote.

It is plain to see how this approach applies to sponsorship agreements. The underlying premise of such an agreement is that the sponsor benefits from the association of its brand with an athlete. When an athlete acts in a

way that damages the image it is seeking to enhance, it would seem that damages are in principle recoverable.

## Breach of a Term

The question in each case must be; is the behaviour of the athlete a breach of a term of the sponsorship agreement. Many agreements contain express clauses, usually referred to as a 'morals clause', which require athletes to comply with the rules of their sport, or more generally not to act in any way which may be detrimental to the image of the sponsor. Much has been written about the use of morals clauses in relation to Armstrong and others, however, most breaches of morals clauses result not in damages for pecuniary loss, but the termination or suspension of the agreement and/or the repayment of the amount of the sponsorship.

There is no reason, however, why a well-drafted morals clause may not in itself include the right to recovery in the event of breach. One straightforward approach may be to permit recovery of an amount of agreed liquidated damages (provided this does not



offend the rules on penalty). Alternatively, a clause could simply provide for the recovery of "*consequential loss caused*" by breach.

As many sports lawyers know, it is often the reality of the situation that the nature and content of such a clause will be determined by the relative bargaining power of the parties. Whilst the sponsor will want the morals clause to be widely drafted with the remedies for breach as generous as possible, the sportsperson will want the conduct which offends the clause to be as narrow as possible, and the remedies to be limited.

Although the inclusion of a morals clause or other like provision is now commonplace in sponsorship agreements, such a clause may not appear in every contract. The question then becomes: can a term be implied requiring the athlete to comply with the rules of the sport and/or not to act in a way which is detrimental to the image of the brand?

Turning again to simple propositions of contract; the leading authority on implied terms is the Privy Council case of *AG of Belize v Belize Telecom*. Lord Hoffman's starting point in his leading judgment was that if a provision is not included in a contract then the presumption must be that the parties did not intend to include it. Where an event occurs which is not addressed by the contract, Lord Hoffman concludes that the loss lies where it falls. However, his Lordship continued:

*"In some cases...the reasonable addressee would understand the instrument to mean something else. He would consider that the only meaning consistent with the other provisions of the instrument, read against the relevant background, is that something is to happen. The event in question is to affect the rights of the parties. The instrument may not have expressly said so, but this is what it must mean. In such a case, it is said that the court implies a term as to what will happen if the event in question occurs. But the implication of the term is not an addition to the instrument. It only spells out what the instrument means."*

In the context of an agreement which has the purpose of enhancing the reputation of a brand, whilst clearly fact-specific, there is a good argument that the true meaning of such an agreement would include a term that the athlete would not act in way that was likely to cause damage to that reputation.

As a result, it would be easy to conclude that the finding of misconduct against Armstrong in the USADA report



would be in breach of an express or implied term of the type discussed above. It may be less straightforward, however, when an athlete's conduct is unconnected with his sport (as, for example, with the revelations which emerged in 2010 of Tiger Woods' various extra-marital

affairs). In such circumstances, the question will be answered by the scope of the term which it is said has been breached.

## Establishing Loss

The other major task is establishing pecuniary loss: as a starting point, the claimant could produce its accounts to demonstrate a drop in sales following discovery of the athlete's misconduct. However, to establish that the loss was caused by the athlete's behaviour may be a more difficult task. An analysis as to whether other factors have influenced the financial data may also be necessary and it is likely that it would need to be established by expert evidence.

## Remoteness

It was said in the case of *Cointax v. Myham & Son*, referred to in *Malik v BCCI*, that:

*"To sum up the whole matter, it appears to me that the sound view to take is this: The loss to a man's business may not be, and perhaps is not, usually in contemplation between the parties as the consequence of a breach of contract, but where the party guilty of the breach of contract or warranty knows that the other party is relying*

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*on his fulfilment of the contract and knows the possible and probable consequences of such reliance, the damages caused to the other party by the consequent breach of his contract are recoverable by him."*

Accordingly, although also subject to the precise facts of each action, remoteness is unlikely to be a major obstacle in sports cases. The parties to a sponsorship agreement understand that in most cases where a corporate entity sponsors a professional athlete, the purpose of such sponsorship is to enhance the brand by that association. As such, where an athlete acts in a way that damages the brand, the pecuniary loss caused by the breach will very likely be held by a court to be within the probable and anticipated consequences of such reliance.

## Conclusion

Consequently, and contrary to common perception, it seems that English law does in fact recognise a head of damage which can be described as "*stigma loss*", and that this is a type of loss which is likely to be suffered in situations where sponsored athletes are found to have cheated or acted in a way which might otherwise damage the sponsor's brand image.

The two main hurdles for a sponsor to succeed in such a claim are: (1) establishing the existence and scope of a term which prohibits the athlete's behaviour; and (2) proving the existence of loss which was caused by the breach

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of the term.

# Introduction of Sports Law Group

## Sports Law Service Scope

- 1, Provide legal consulting service about the composition and structure of various sporting clubs;
- 2, Draft sponsorship agreements, commercial agreements and the license agreements;
- 3, Provide legal consulting service about traditional and emerging commercial cases;
- 4, Provide legal consulting service about events, sports organizations and management;
- 5, Provide legal advice of intellectual property protection in sports brands, especially for those that are related to sporting goods and clothing brands;
- 6, Provide legal opinions in signing contracts with athletes, their initiation and transfers;
- 7, Provide legal consulting service in the construction of sports venues, financing, development, and other related matters;
- 8, Solve disputes in the name of professional athletes, coaches and sports clubs, sports brokers, departments in charge of sporting industries and sports goods, and apparel manufacturers;

9, Deal with product liability disputes and intellectual property disputes on behalf of sporting goods and apparel makers;

10, Draft various and inter-connected contracts for sports teams, sports organizers and sponsors.



## Service mode

- 1, Served as special counsel: each business will provide the whole process, comprehensive, in-depth special services, and related specific issues.
- 2, Served as perennial legal counsel: each business will provide daily legal consultation dealing with daily legal affairs.

Thank you very much for your reading,

Edited by Shanghai dacheng sports business group, the information is for reference only.

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Internal documents, only for communication.

