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体育法律资讯

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速览

【热点体育动态】

广州恒大与巴里奥斯之合同纠纷

恒大向国际足联起诉巴里奥斯

恒大向国际足联起诉巴里奥斯，要求赔偿合同规定的2500万欧元违约金，以及申请对其全球禁赛6个月。至少从现在看来，恒大的起诉有理有据。

依国际足联目前实行的《转会细则》第4章“维持职业球员和俱乐部之间的合同稳定性”第17条“无正当理由中止合同的后果”第1款中，第一句就是“任何情况下，违约方都应支付赔偿。”至于金额，可按双方签订协议中相关费用，依照最长时间期限进行赔偿。恒大与巴里奥斯的合同已有明文规定违约金数额，赔偿金额即以这个数字为准。

此外，第17条的第3款还规定：“除强制性赔偿损失外，任何球员在合同保护

期内被发现违反合同，都应受体育禁赛处罚。禁赛应该是4个月禁止参加任何正式比赛。情况严重者禁赛期应为6个月。任何情况下，禁赛期是从新赛季开始那一天算起。”

历史上球员单方面违约，私下操作转会惹出的赔款和禁赛事件层出不穷。最出名的就是菲戈和奥特加，1995年菲戈先后与尤文图斯和帕尔玛草签合同，一女二嫁，最终被意大利足协两年内禁止加盟意甲，他之后又与本菲卡私下签约，事情曝光后，本人被葡萄牙足协禁赛45天。2000年菲戈故伎重演，私下与皇马主席候选人佩雷斯签约，被媒体曝光后千夫所指。但慑于不履约将被全球禁赛，菲戈只能完成转会。

相比菲戈的不专一，奥特加与巴里奥斯的情况类似。2002年夏奥特加加盟费内巴切，土耳其球队一共付出了900万美元的代价。但2003年初奥特加因与主帅切廷有隙擅自离队，跟随老东家河床队训练，并拒绝回到土耳其。2003年3月费内巴切将其告到国际足联，国际足联判决奥特加无故违背合同，赔偿费内巴切俱乐部1100万美元，并全球禁赛直到2003年12月30日。奥特加随后上诉到瑞士的国际体育仲裁法庭，但因为毫无胜算希望，在2003年11月又主动撤诉。随后，奥特加无力偿还上千万美元的赔偿金宣布退役。直到2004年中，他才与费内巴切达成和解协议，得以自由加盟纽维尔老男孩队。此时，奥特加已被禁赛长达14个月。

近年知名球星罢训求转会事件频发，伊布拉、阿圭罗、法布里加斯等人都曾拒绝归队要挟自己的母队以求转会。但他们没有越过底线向媒体说谎是自由身，也没有拒绝与母队保持联系。显然，巴里奥斯很可能像他的前辈同胞奥特加一样，为自己的愚蠢付出代价。

土耳其劲旅特拉布宗决定放弃引进巴里奥斯

据土耳其媒体报道，土耳其劲旅特拉布宗决定放弃引进巴里奥斯，因为不想被牵扯到他和广州恒大的纠纷中。

上周六，土耳其媒体铺天盖地报道，称巴里奥斯已经和土超的特拉布宗达成一致，后者开出了200万欧元的年薪和为期三年的工作合同，双方最晚将在本周一正式签约。然而直到今日，巴里奥斯依然没有在土耳其出现，所谓的签约也没有完成。

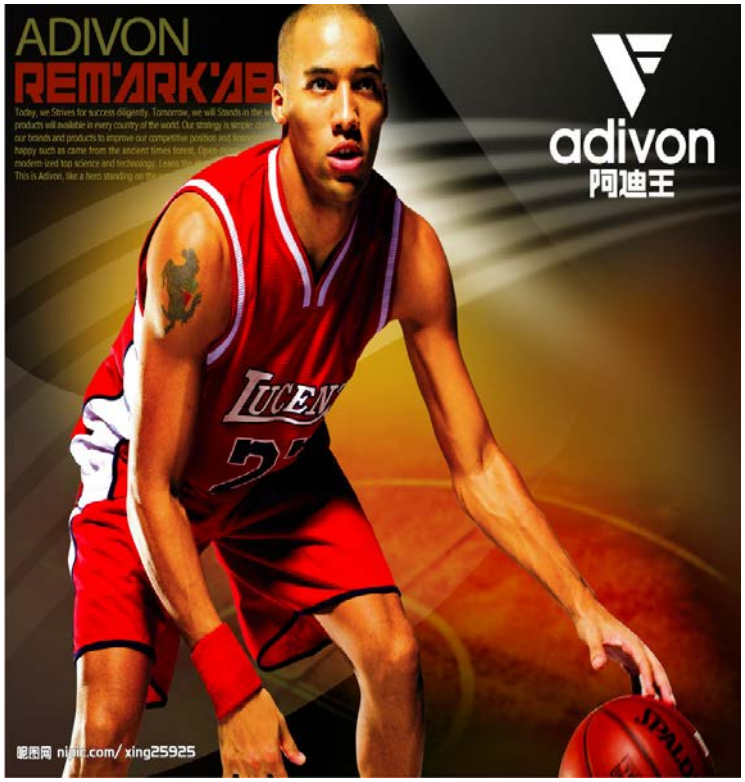
土耳其媒体报道称，之前巴里奥斯一直表示自己是自由球员身份，国际足联裁定他摆脱了和广州恒大的合同。然而事实上国际足联尚未对巴里奥斯和广州恒大的官司做出裁决，这让特拉布宗不敢轻易签下巴拉圭射手。据悉，特拉布宗俱乐部律师建议球队不要冒着风险签下巴里奥斯。

特拉布宗体育上赛季成绩惨淡，仅获得土超联赛第9名，为此球队年初炒掉了功勋主帅居内什。夏季特拉布宗在转会市场投资不小，先是2年合同年薪250万欧元签下切尔西老将马卢达，加上科特迪瓦中场佐科拉，以及前奥地利金靴延科，可谓雄心勃勃。巴里奥斯是土耳其人加强锋线的首选，他的自由身也对囊中并不宽裕的特拉布宗有极大的诱惑。然而，特拉布宗知道依据FIFA相关条例，一旦巴里奥斯在和广州恒大诉讼中败诉，俱乐部可能将面临轻则冻结转会窗引援资格，重则剥夺欧战资格的严厉处罚。

阿迪达斯与阿迪王5年纠纷和解 专家:山寨转正需早动手

据经济之声《央广财经评论》报道，阿迪王曾经在网络上红极一时，这家体育用品厂商的产品甚至因为这个山寨味道浓重的名字在网络上赢得了一批拥趸，但也正是因为商标太山寨，阿迪王最终还是和美国的阿迪达斯公司在2008年8月走上了法庭。

经过了长达5年的对峙，两家公司的争端终于画上了句号。阿迪达斯公司刚刚确认，双方达成和解，泉州阿迪王体育用品（中国）有限公司也将不再有"阿迪王"商标，阿迪王公司的名称和的英文商标Adivon则依然属于泉州的这家企业。至于和解协议的其他内容，则成为商业秘密，两家公司都不得公开。



颇值得玩味的一点是，虽然阿迪达斯是在全世界知名的体育用品品牌，但在和阿迪王的持久战中，却从来没有赢过任何一场官司。反而因为阿迪达斯而生的阿迪王，在发展过程中开始考虑品牌问题，逐步转型生活时尚产品。

同样是所谓的山寨品牌，中国的体育品牌乔丹也被美国篮球球星乔丹起诉，相关诉讼还没有结束，阿迪王和阿迪达斯的和解方式会不会给两个乔丹解决争端提供一种可行选择，现在还不得而知。

《央广财经评论》，经济之声特约评论员、著名品牌战略专家李光斗，来评论这个话题。

阿迪达斯和阿迪王经过了5年的争端后，现在终于达成了和解。虽然和解协议保密，但是根据阿迪达斯透露的消息，阿迪王仍然保留公司的名称和Adivon这个英文商标。怎么看这个结果？

李光斗：我觉得阿迪王应该捡了一个宝，虽然不能再用阿迪王的中文名称了，但是消费者所熟知的Adivon这个英文名仍然可以使用，这对它来说是渡过了最大的一个难关。

对于阿迪达斯来说，这也是它面对中国知识产权保护的不得已而为之，取得了局部性的胜利，但也没有斩尽杀绝。商业谈判就是一定的妥协。

如果从产品的类型来看，二者在未来还有打架的机会吗？

李光斗：阿迪达斯之所以显得比较大度，可能没有把Adivon放在眼里，可能觉得商品定位也不同，不认为阿迪王会给阿迪达斯构成实质威胁。我觉得这次阿迪达斯手下留情了。

乔丹体育和美国篮球明星乔丹的诉讼还没有最终结果，阿迪王和阿迪达斯的和解方式，能否也出现在乔丹体育和球星乔丹之间？

李光斗：我很不乐观，因为对于乔丹，最大的知识产权是Air Jordan飞人乔丹，如果乔丹体育要保留乔丹这样一个名称的话，可能双方都不可接受，这个诉讼对于乔丹和乔丹体育不具参考意义。

中国山寨品牌的出路，壮士断腕也不是，另起炉灶也不是，正面临一个非常尴尬的境界，他们的心情一定是“要知现在何必当初”？如果加多宝知道凉茶市场这么大，干嘛当年一定要借王老吉出海？干嘛自己不取一个名字就叫加多宝，那它现在的日子应该好过得多。

一个叫艾弗森的体育品牌的做法似乎有一定代表性。去年九月，艾弗森品牌签约同名NBA球星阿伦·艾弗森，

签约费用每年有300万至400万费用。这个做法算不算“补票成功”，值不值得借鉴？

李光斗：这是先上车后买票，可能对艾弗森来说，反正这个名字也已经被别人注册了，捡个三四百万一年也无所谓，但是我觉得这种方式是一种偶发或特例，不会让所有企业模仿。中国企业家还是抱着极大的机会主义。

但是有一个阶段问题，比如在生存阶段，想的是怎么活下来，这个阶段可能会不择手段。等到成长起来，存活下来再发展的时候，又会发现这种不择手段是需要付出代价的。

李光斗：商业竞争一定要遵循基本的游戏规则，而不是首先是生存，生存也要有生存的原则，就像战争会牺牲生命一样，企业有生存下来，也有没生存下来的，不能为了生存而不择手段。所谓山寨都是不好的，世界上最大的服装企业就是一个山寨企业——ZARA，它已经超越了全球最大的服装品牌——美国的GAP，营业额过千亿，但它是创造性的山寨，比如把世界名牌高富帅全都变成屌丝，全都拉下神坛，把流行时尚变得人人可以，反而赢得了消费者的喜爱，我们称之为创作性破坏。ZARA本身也有知识产权，虽然每年ZARA要支付巨额的赔偿，但是这个品牌立住了，可能跟西班牙本身就是个海盗国家有关系，它有强烈的海盗精神。

【经典体育法律案例】

皇家马德里与欧足联之间的处罚争议

案件名称：Arbitration CAS 98/199, Real Madrid / UEFA[1]

仲裁机构：国际体育仲裁院（CAS）

【涉及的主要法律问题】

1．欧足联并没有委托国际体育仲裁院可以对所有的争议都行使管辖权，国际体育仲裁院仅仅对欧足联执法行政部门作出的涉及金钱性质的民事方面的决定享有专属管辖权。

2．如果对争议的性质有所争论，国际体育仲裁院将会根据具体案情决定某项争议是属于体育性质的还是涉及金钱问题的民法性质的争议。如果这两个因素都与某争议有关，有必要决定哪一方的性质是主要的，尤其是要根据产生争议的决定的后果来判断。

3．在本争议中，禁止使用体育场比赛一次的决定主要是具有体育性质的争议，因此不属于国际体育仲裁院

的管辖范围。相反，对俱乐部的罚金和一定数量的没收票款则属于国际体育仲裁院的管辖范围。

【基本案情】

1998年4月1日晚上8点三刻，西班牙皇家马德里和德国的多特蒙德俱乐部在马德里的伯纳乌球场即将进行欧洲冠军杯的半决赛。在比赛开始前的几分钟其中的一个球门忽然倒塌了，砸向了球场与观众之间的隔离墙。数十名观众爬上了围墙并且用力摇晃，导致隔离墙和球门都坍塌了。重新修理球门花了将近一个小时，这意味着直到十点的时候比赛才开始。比赛照常进行。1998年4月5日，欧足联纪律控制部门对马德里俱乐部罚款30万瑞士法朗，禁止使用伯纳乌球场进行欧足联比赛两次，并且声称应当没收100万瑞士法郎。欧足联纪律控制部门作出该裁决的依据是比赛前的骚乱违反了欧足联的有关安全条例以及8.5万名观众观看比赛这样一个事实，尽管俱乐部声称观众只有6.55万名。

在皇马提出申诉之后，1998年5月29日，欧足联申诉部门将罚款从30万降至15万瑞士法郎，禁止使用伯纳乌球场的期限也缩短至1个月。其指出皇马在几个方面都没有符合安全义务的标准，但是与其他类似的情况向比较，纪律控制部门对皇马的处罚仍然是太严重了。不过，欧足联申诉部门仍然不相信皇马所讲的观众人数要少于欧足联纪律控制部门的

估计人数，因此其认为球场内的观众人数应当超过8.5万名。申诉部门认为这8.5万名观众中包括本来不应该进场的2万名观众，依平均每张票价格50瑞士法朗计算，没收100万瑞士法朗是合理的。

皇马及时将该争议进行了上诉。它对于罚款没有提出异议，其只是对禁止使用伯纳乌球场以及没收100万瑞士法郎提出反对意见。简而言之，皇马俱乐部认为禁止使用伯纳乌球场一个月的处罚与该俱乐部所犯的过错是不相称的。至于没收100万瑞士法朗，皇马仍然对当时观众的人数提出异议。它以计算机报告为根据指出当场观众的人数约为6.5万人。

【诉辩主张】

申请人皇家马德里俱乐部认为欧足联所作的禁止使用伯纳乌球场以及没收100万瑞士法郎与该俱乐部所犯的过错是不相称的，因此要求宣布欧足联的有关裁决是无效的。

【程序性问题】

在管辖权方面，欧足联1997年9月24日的会议决定接受国际体育仲裁院的管辖。国际体育仲裁院管辖的根据是《欧足联章程》中涉及仲裁管辖的条款。

本争议的法律适用主要是欧足联的有关规定以及瑞士

法的相关法律。

【事实和证据】

1．欧足联裁决的性质的确认

在争议事项的可仲裁性方面，国际体育仲裁院需要解决的第一个问题就是其对禁止使用伯纳乌球场一个月的处罚是否有管辖权。

在管辖权方面，欧足联1997年9月24日的会议决定接受国际体育仲裁院的管辖。不过，《欧足联章程》第56条[2]和第57条[3]对这种管辖权作了解释和限制。根据这两条规定可以看出，欧足联并没有授权国际体育仲裁院来解决所有的争议，因此有必要确定的是禁止使用伯纳乌球场的处罚是否是“体育性质”的裁决并且因此就不属于欧足联授权国际体育仲裁院管辖的事项，或者就如同皇马俱乐部所讲的那样，其是否是一个属于国际体育仲裁院管辖范围内的（具有财产性质）的民法意义上的裁决。

因为该争议是当事人自愿提交国际体育仲裁院仲裁的，故当事人的意愿是很重要的。不过，应当承认的是欧足联的有关规则并不是很明确的，因为其对于区分财产性的争议和体育性的争议并没有任何的规定。不过，欧足联的赫尔辛基特别会议记录表明“如果对争

议的性质有疑问，国际体育仲裁院将根据案件的具体情况来决定某项争议到底是属于体育性质的争议还是民事法律上的财产性质的争议。在对这些争议进行区分的时候应适用《瑞士联邦国际私法》第177条第1款的规定。涉及合同法、非合同性质的民事责任、公司法、人身权、工业产权、知识产权等的争议是财产性质的争议，因此可以提交仲裁。不过，涉及对足球比赛、巡回赛等的准备、组织和实施标准的解释和应用的争议是体育性质的，不用考虑它们是否与比赛规则、比赛处罚有关”。仲裁庭对这种观点表示了认可。不过尽管如此，欧足联条例中对财产性质和体育性质的争议的区分仍然是不明确的。

某项争议属于某一种类的争议是很明显的。譬如裁判在球场上作出的涉及比赛的裁决当然是体育性质的。另一方面，对某一特对比赛的电视转播权的争议看起来好像是具有财产性质的争议。不过，仲裁庭认为大多数争议都包括体育和财产的双重性质，在职业体育运动中更是如此，因为有关的争议总是多多少少涉及经济利益，因此也具有财产的意思。

仲裁庭认为其在亚特兰大奥运会上所作的一个涉及国际泳联的裁决中对这个问题进行了阐述，在该裁决中国际体育仲裁院裁定它有权对具有财产后果的某些规范的执行问题进行裁定。而在本案中，确立国际体育仲裁院仲裁

管辖的根据是《欧足联章程》第56和57条的规定，但是其对国际体育仲裁院的管辖权作了某些特殊限制，因此有必要确定这些条款规定的争议是否包括了本争议。这就需要对当事人之间的争议的性质进行确定。

国际体育仲裁院当然有权来确定某项争议的性质，这也是欧足联的意思，而且在前述的欧足联赫尔辛基会议的会议记录中也作了陈述。不过仲裁庭认为不能根据以往的标准来确定争议的性质，而应当根据具体争议的特殊要素和争议情形来进行具体问题具体分析。仲裁庭认为应当确定具有体育和财产双重性质的争议的主要因素，尤其是要根据裁决的效果来确定。譬如如果一个争议具有财产和体育的双重性质，但是后一种是主要的，那么应当把该争议认为是《欧足联章程》第57条第2款意义上的体育性质的争议。

事实是欧足联赫尔辛基会议的会议记录表明“国际体育仲裁院不能受理专门属于体育性质的争议”，副词“Exclusively”的应用意味着国际体育仲裁院可以对包括体育性质在内的争议行使管辖权。不过，结合《欧足联章程》第57条第2款的语言可以认为当一个裁决既涉及财产性质又涉及体育性质并且后者是主要的问题时，这就是一个具有体育性质的争议。基于以上所述，禁止使用伯纳乌球场的裁决保护体育和财产的双重因素，因此有必要确定

的是哪一因素是占主要地位的。

尽管国际体育仲裁院以前从来没有做过类似的裁决，但是其作出的涉及欧足联与安德莱赫俱乐部的争议并不能作为先例来引用，因为欧足联对安德莱赫俱乐部的处罚是一个主要具有体育性质但却具有深远的财产后果的裁决。具体到本案而言，欧足联基于相同的证据作出了罚款和禁止使用伯纳乌球场的两个裁决，前者主要是财产性质的，而后者即禁止使用体育场的决定主要是一个体育性质的裁决。后者对俱乐部所带来的主要后果是失去了在自己的体育馆进行比赛的主场优势，这似乎是一个主要具有体育后果的决定。应当承认的是，该俱乐部可能也会受到门票收入减少和承担其他费用的损失，不过，与罚款和没收不同的是，它们是间接的财产后果。相应地，仲裁庭认为禁止在一个月内适用伯纳乌球场的裁决是一个体育性质占主要因素的裁决，因此不属于国际体育仲裁院的管辖范围。

如上所述，仲裁庭作出这种结论的根据是前述《欧足联章程》第56和57条的立法理由。很明显，欧足联授予

国际体育仲裁院管辖权的目的就是要减少向国内法院提起诉讼的风险，而且《欧足联章程》第56条第2款指出“不得将有关争议向国内法院提起诉讼行动”。不过对于仲裁庭来讲，注意到以下这一点就足够了，即申请人没有能够证明禁止在一个月内使用伯纳乌球场的裁决可以基于财产或者其他需要法律保护的原因而提交仲裁。

仲裁庭最后认为禁止申请人在一个月内使用伯纳乌球场的裁决是一个主要涉及体育性质的决定，当然申请人也没有能够提出其他相反的证明。不过，仲裁庭接受欧足联的观点，即国际体育仲裁院不对这个裁决进行管辖。

2．欧足联罚款裁决的处理

至于没收100万瑞士法郎的处罚，仲裁庭认为如何计算不应当受到指责。不过，重要的是需要确定当天晚上伯纳乌球场是否真正多出了这2万名观众。仲裁庭最后裁定现场观众至少有85000人。对于没收100万瑞士法朗的裁决，欧足联裁决的依据是欧足联纪律处罚条例的有关规定。根据有关规定所计算的处罚数额应当按照“遇有歧异时有利于被告”的解释原则进行计算，因此，仲裁庭认为在当时比赛的时候现场观众至少有85000人，这也与欧足联上诉委员会所推出的数目是一致的。尽管这只是一个估

算数目，以每张票价50瑞士法朗计算，根据《瑞士债法典》第42条第2款的规定，仲裁庭认为应当没收的数额是60万瑞士法朗。

【裁决】

仲裁庭最后裁定其对禁止使用伯纳乌球场的裁决的异议没有管辖权；部分维持欧足联的没收票款的裁决，即将没收的数额从100万减至60万。

【评析】

与对安德莱赫争议的处罚不同，国际体育仲裁院裁定禁止皇马俱乐部使用主场一次对该俱乐部的损失不能与安德莱赫队可能受到的损失相提并论，故该性质是有关体育运动的争议，国际体育仲裁院对该问题没有管辖权，但对罚款和没收一定数额的票款则有管辖权。关键是如何认定某项争议是否是体育性质还是财产性质的争议，在这方面国际体育仲裁院并没有固定的标准，而且瑞士联邦法院的有关裁决也不能作为定案的先例。尽管国际体育仲裁院通常对于体育性质的争议并不涉足，但是在现代职业体育运动中某一因为体育比赛而产生的争议不完全涉及财产性质也是不太现实的，较常见的就是某一争议既涉及体育

性质又涉及财产性质，为了国际体育仲裁院管辖的原因，解决的办法是要确定有关的争议中是体育因素占主要部分还是财产性质较为重要，这就需要对有关的进行具体问题具体分析。

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[1] 资料来源：Arbitration CAS 98/199, Real Madrid / UEFA, award of 9 October 1998, in Matthieu Reeb (ed.), Digest of CAS Awards Ⅱ1998—2000, The Hague/London/New York: Kluwer Law International, pp.490-499.

[2] 1997年的《欧足联章程》第56条规定如下：

1．国际体育仲裁院对与欧足联有关的产生于欧足联与其成员国足协、俱乐部、球员或官员以及他们彼此之间（具有财产性质）的民事法律争议具有专属的管辖权。

2．不得将此类争议向有关国家的国内法院提起诉讼行动。

3．国际体育仲裁院进行的仲裁程序将适用《体育仲裁规则》的规定。

[3] 1997年的《欧足联章程》第57条规定如下：

1．国际体育仲裁院对于所有的针对司法行政部门作出的（财产性质）的民事裁决所提起的上诉具有专有的管辖权。此类上诉应当在收到有异议的裁决之日起10天内向国际体育仲裁院提起。

2．不得对司法行政部门作出的具有体育性质的裁决提起异议。

【体育竞赛法律纠纷与对策】

随着现代民主与法治进程的逐步发展，人们对伸张、保护和救济合法体育权益的要求也日益强烈。近期，中国足协两次被其会员俱乐部作为被告诉诸法庭，国内层出不穷的体育纠纷开始体现出对现代体育法治发展的不可忽视的推动意义——外部纠纷解决手段能否介入体育内部的自治行为，已经成为目前我国体育界、法学界共同关注的焦点，尤其是司法能否对体育争议的处理过程进行监督和审查，在我国行政法学领域引发了极为有益的讨论。如同任何一项人类活动，体育竞赛受到各种不同类型、不同形态的准则和标准的规范。如何公正有效地解决好这些体育纠纷，越来越成为影响体育健康发展的热点问题。

首先是合法，用法律标准来调整体育竞赛主体间的法律关系；其次是符合竞技体育特定的体育规则；再次是符合特定的体育职业道德和伦理规范的约束。一旦这些规则或约束被打破，体育竞赛的法律纠纷就应运而生，因此，从这种意义上说，体育竞赛纠纷是竞赛活动的“副产品”，它具有不可避免性。也正因为如此，对体育竞赛纠纷的事后解决会显得特别重要。

本课题正是以此为切入点，通过对我国体育竞赛的法律纠纷典型案例的评述，分析现有体育竞赛的法律纠纷基

本形态及救济方式；通过对现行我国法律的分析，揭示制约合理有效解决纠纷的瓶颈，从而提出从仲裁和司法两个角度综合解决我国体育竞赛的法律纠纷解决机制，尤其是对司法解决方式提出了深入而详细的论证和分析，通过对司法介入的利弊分析，提出司法介入适度的建议，并就司法如何介入问题，从司法介入的时机与纠纷类型选择、司法介入后的审查范围以及司法介入的裁判适用角度对司法介入的模式进行了设计，为我国解决有关体育竞赛的法律纠纷提供理论指导和实践应用范式。

1　我国现行法律对体育竞赛法律纠纷案的调控

1.1　我国体育竞赛法制现状

目前我国体育自治领域的立法呈现出的特点是，法律和法规的数量较少，内容缺乏具体操作性，不能够直接被司法机关作为对体育纠纷介入或审查的依据；部门规章和地方规章虽然数量相对较多，但内容缺乏针对性，又由于其仅具“参照”效力，因此也不能作为司法介入体育纠纷的有力支持；体育行业组织章程对于本行业领域内的不同类型纠纷的解决和处理方式规定不统一、不完善，有些甚至与法律、法规的规定相违背，虽然不具有司法适用力，但实际上却在其内部发生着不可否认的作用；而对于行业组织章程在行业

内部的适用，司法又因无据可依或法律依据明显缺乏实质性、可操作性和可发展性而无法介入。

1.2　中国现行法律解决体育竞赛的法律纠纷的法制缺陷

1.2.1　相关法律规范不完善

从体育立法的形式和具体内容来看，其缺陷主要体现在三个方面：

第一，全国人大及其常委会制定的法律仅有一部《体育法》，并且其条文以原则性内容为主，缺乏实用性和操作性；第二，行政规章虽然数量相对较多，其中不少也涉及体育行政机关或行业组织行使公权力的情况，但对外部解决手段诸如司法介入体育纠纷解决的问题几乎毫无规定；第三，各体育单项协会中的纠纷处理机关设置参差不齐，多数单项协会的章程中对该项目纠纷的处理未作规定，而少数对纠纷处理做出规定的单项协会规章中，所规定的内容并不统一且仅限于协会内部处分；从外部效力上来看，此类行业协会章程并无司法适用力。

1.2.2　处理纠纷主体性质交融

体育行政管理和协会管理的“两块牌子、一班人马”管理模式使得体育竞赛主体关系趋于混乱，从而使得许多法律关系难以归类，导致既定的纠纷解决机制在具体运作的过程中难以实施，或错用纠纷解决机制或某些主体利用关系的混乱，逃脱责任，规避外部解决如司法审查。由于目前各体育组织对运动员、运动队、俱乐部的救济渠道不畅，司法也不愿意或者难以有效解决体育纠纷，不少体育纠纷并未得到妥善解决，运动员、运动队、俱乐部的合法权益没有得到充分保障，这普遍引起了体育界、法学界等社会各界的高度关注，在社会上产生了较大反响。

1.2.3　体育仲裁体系不健全，地位不独立

法理表明，仲裁制度之所以被称为准司法，并且一裁终局、排除法院管辖，是因为其中立的法律地位和丰富的专业知识作为支撑，然在我国，从《体育法》颁布至今，却迟迟没有相应的体育法规出台来具体规范体育仲裁制度。

1.2.4　司法介入的强度不够

就专业化而言，虽然法官对于很多体育竞赛中的技术性问题是外行，没有足够的发言权，但是他至少可以从正当程序的角度出发，对纠纷进行司法性质的审查。就行业自治而言，其实质性含义是指在法律没有明确规定的情况下，可以自行制定规范来实现自我的管理，并没有说纠纷的最终解决也必须在内部自行处理。所谓的 “自治”是自我管理，而不是自我裁决。因此，法院可以对于体育中产生的纠纷进行审查，而并非是对体育自治的干涉和侵权。而且按照意思自治的原理，至少也应当给予当事人选择仲裁还是法院管辖的权利，否则司法介入力度偏弱的情况长期存在的话，将危害到整个体育领域内部的公正体系。

2　综合解决体育竞赛的法律纠纷方案

纵观国内外体育竞赛纠纷解决机制，无论是何种解决机制，其最终结果都是保证纠纷解决的合理、公正，因此，不存在着何种纠纷解决机制是最完善的、最优的，只存在着最合适、最有效的纠纷解决机制。本课题通过对体育竞赛纠纷的外部解决方式——体育仲裁方式和司法解决方式来综合考察我国体育竞赛纠纷的最合适和最有效的纠纷解决机制。

2.1　体育仲裁体制

体育竞赛纠纷在国内外都并非新生事物，从已有的案例来看，体育竞赛纠纷在国外多以仲裁方式解决，对仲裁裁决有异议而诉至法庭的也不在少数；而国内对体育竞赛纠纷的理论研究几乎空白，实践中将此类纠纷提请仲裁或诉讼例子极少。由于国内目前还未建立《体育法》中规定的体育仲裁机构，有关体育仲裁的规范性文件仅有尚未出台的《体育仲裁条例（草案）》，且从本文所参考的资料中也未能发现由国内普通仲裁机构对体育竞赛纠纷进行裁决的案例，因此对体育仲裁制度的考查只能从国外相关制度中寻找可循之处进行归类总结，对体育仲裁制度作理论上的分析和架构，根据我国的实际情况，从体育仲裁协议、体育仲裁的管辖范围、体育仲裁机构和体育仲裁的效力、体育仲裁规则、体育仲裁程序等角度探讨切实可行的体育仲裁制度，提出一些观点和看法。

2.2　司法解决机制

2.2.1　司法介入的利弊分析

2.2.1.1　司法难以介入的原因分析

从法学角度来看，司法能否介入体育自治以及相关体育纠纷的处理，如何介入为佳，事实上其核心是讨论体育行业组织或其认可的其他体育纠纷处理机构的职权与责任是否对应，即一个享有体育纠纷处理权的机关，当其对纠纷做出裁决的同时，是否应当承受相应责任的约束？答案是肯定的，对行政权形成有力的制约，控制行政权不被滥用正是司法权存在的意义所在。

然而，“长春亚泰足球俱乐部诉中国足协”和“广州吉利集团诉中国足协”两起案件的起诉过程及审理结果，基本上体现了我国现阶段体育行业组织对体育竞赛中产生的争议及其相关纠纷的裁决垄断，并且这一垄断既排斥了民事诉讼，也排斥了行政诉讼。虽然龚建平黑哨一案在刑事诉讼领域得到了审查，但被告是以个人名义被定罪量刑，所定罪名为受贿罪，而对于与比赛有关的体育行业组织及被告所属行业协会的行为并无认定处理。因此可见，目前我国对于体育行业组织所为的公权力性质的自治行为，尤其是对体育竞赛中产生的争议及相关纠纷的裁决行为，基本上采取了司法不得介入的态度。我们认为，目前国内司法难以介入体育纠纷自治，主要基于以下两方面的原因：已经存在的立法缺陷和可能产生的机制冲突。

2.2.1.2　司法介入的可能性与必要性分析

从司法介入的必要性角度看：

首先，司法介入体育自治是依法治国、依法治体的需要。在提倡依法治国的今天，中国开始在国家生活和社会生活的各个领域都以法治标准来制定发展目标和计划，作为以行政权力为核心的发展中国家，依法行政理应成为一切法治的楷模。由于行政权在现代社会迅速发展，行政管理内容的扩张和行政权行使方式有权力效力的改变等因素，

为行政分权奠定了基础并使之得以盛行，行政权不再属国家行政机关专有，一些具有执行性、给付性、事务性、操作性和弱权力性的行政权由非行政组织行使更加适宜，以行业组织为代表的社会公共体成为政府转变职能的重要载体。

其次，设立体育仲裁制度与国际普遍做法相衔接。目前，世界各国大多建立了多元化的救济机制，通过体育组织内部与外部纠纷救济机制相结合的方式来解决体育纠纷。普遍的实践是首先完善体育组织内部的纠纷解决机制，并建立专门的中立的体育仲裁机构或者由国家仲裁协会承担体育仲裁的任务，使得大部分体育纠纷通过仲裁方式得

到解决，而国家司法机关对体育纠纷的解决进行适度司法干预。关于体育仲裁的受案范围，国外仲裁机构受理的案件主要包括：由于参赛资格问题引发的争端；由于违反行为准则引发的争端；由于服用禁用药物引发的争端；与体育有关的商业争端;体育活动的组织者与专业广播公司合作伙伴间关于出让广告合同引发的争端；运动员、教练员雇佣合同争端以及其他需要仲裁的问题等等。就体育纠纷解决的程序而言，一般都是依照各单项协会内部解决、国家奥委会调解协商、国家仲裁协会或体育仲裁委员会仲裁的顺序来处理的，司法仅对体育纠纷进行适当干预。大多国家规定，仲裁为终局裁决，具有执行效力。

再次，司法介入体育自治和体育纠纷的处理也是体育事业发展的需要和2008年奥运会成功举办之后的必然要求。作为已经成为WTO成员的我国，其规则中规定的必须由法院行使对行政行为的最终审查权的要求，同样应当适用于体育行业组织对体育纠纷的处理和裁决行为。司法介入体育纠纷的处理和裁决，一方面有利于对纠纷当事人的合法权益进行公正、公开的保护，符合WTO规则中透明度原则的精神；另一方面，也能够对纠纷的处理和裁决机构更好的进行监督和制约，防止体育行业组织滥用公权力而又规避相对人寻求司法程序的救济。而作为奥运会的曾经主办国，更应当建立起一套适用于有关体育竞赛纠纷的司法审查机制，这既是对纠纷的最终裁判方式，也是

对行政主体相关裁决行为的最后审查防线，有利于提高纠纷当事人对奥运会组委会和其他体育自治组织的信任度。

从司法介入的可能性角度看：

国内司法制度的日益发展与完善和行政诉讼理论与实践的进步为司法介入体育纠纷的处理和裁决提供了内部条件。在我国，体育行业组织的权力主要来源于法律授权和体育行政机关规章的授权。其次，作为行业组织的体育单项协会与律师协会、医师协会等一样，既可根据法律、法规、规章的授权或行政机关的委托行使一定的国家行政职权，也可根据其本身的章程对其内部公共事务进行自治管理，行使社会公权力。行业组织制定自治规章的行为是一种自主立法，即在本行业领域内制定的与法律性质基本相似的规则，许多体育单项协会在其章程中规定了其进行该项目管理活动的法律手段，包括采取具有执行力的行政行为和裁决，很显然属于公权力行使和公务活动的性质，应当受到司法监督，允许相对人提请司法审查而获得权利救济。

2.2.2　司法介入的适度

2.2.2.1　司法介入适度的理由

首先，虽然体育诉讼具有国家强制性和严格规范性，它由法院凭借国家审判权确定体育纠纷主体之间的体育权利义务关系，并以国家强制力保证体育纠纷主体履行生效的判决，可以使纠纷得到最有效、最彻底的解决。但是，法院的法官并非体育运动的专家，处理禁用药物的范围、取样、检测、分析的条件和程序等等复杂问题，反而会极大地加重法院的

负担。此外，各国法律制度差异很大，一个体育案件在不同国家审理可能产生的不同结果，必然会影响到体育规则及裁判准则的全球统一性，会对体育事业发展形成一定的冲击。法院的司法程序往往不够迅捷，无法解决一些要求立即处理的体育纠纷。

其次，虽然司法介入体育纠纷的判例较为普遍和正常，但国外相关案例进行分析后可以发现，多数情况下，体育纠纷产生的最初阶段，司法都不会立即介入，而是在对纠纷穷尽了行政救济或仲裁救济的情况下，将司法介入作为对纠纷各方当事人利益的最后救济手段，并且作为最后救济的司法裁判往往是相当有效的。。例如：去年受到全球关注的NBA停摆事件，因为双方无法达成满意协议，NBA总裁大卫-斯特恩取消了一个季度的所有比赛。在球员方面可能会采取解散工会，然后以反托拉斯法为据状告NBA联盟的情况下，NBA方面向球员工会提出诉讼申请，希望美国地方法官保罗-加德菲裁定NBA停摆不算是妨害反托拉斯法行为。经过耗时数月的谈判，律师代表最终要求美国联邦法官介入劳资谈判，并最终通过司法的介入协助结束了这场旷日持久的停摆僵局。

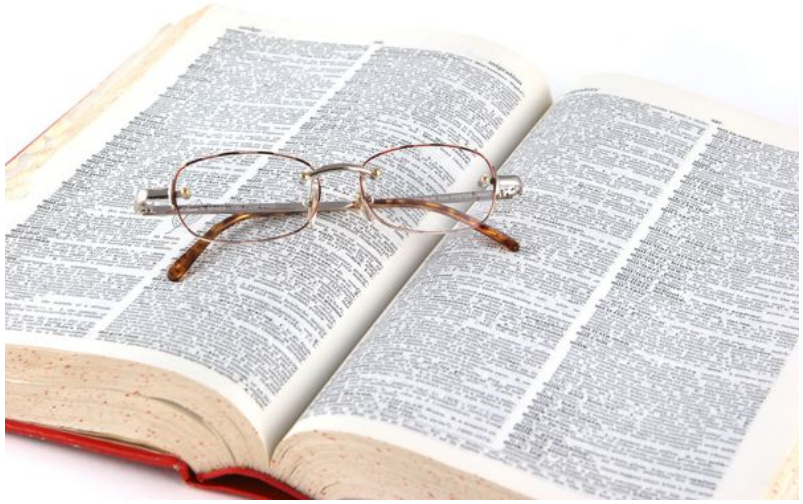
所以，根据目前国内体育立法滞后、体育仲裁机构尚未建立、体育自治体制还处于初级阶段的现状来考虑，国内司法介入体育纠纷不宜过急过躁，而是

应当选择适当的时机和方式介入，既不破坏体育行业自治的独立性、专业性、特殊性，充分利用行政资源解决体育纠纷，又要切实加强对体育自治组织的司法监督，防止公权力被滥用，体现司法的最终性和权威性。

2.2.2.2　司法介入的时机与纠纷类型选择

首先，司法介入的时机选择与纠纷性质之间存有重要关系，应当根据体育纠纷的不同类型和纠纷当事人是否触犯国家强制性法律的标准做出相应划分。

第一种情况：特殊性民事利益，如裁判员测中得出的医学数据关或行业协会中的裁决但如果做出的裁决影响夺从业或参赛资格、高关申请复议的权利；在时机介入。如果体育纠纷涉及的为纯技术在正常情况下做出的判罚或违禁药物检等，此类纠纷一般情况下应由体育行政机机构进行调查处理，并可做出终局裁决；到当事人基本的人身、财产权利时，如剥额罚款等，应当保留当事人向上级主管机当事人对复议结果仍有异议或复议程序不必前置的情况下，应当允许司法在此时介入，作为当事人合法权利的最后救济途径，如果当事人选择仲裁解决的，也可通过仲裁的方式解决。



第二种情况：选择时机介入。对于民事合同纠纷，即当纠纷涉及体育活动中有关视听转播权合同、知识产权合同、广告合同、体育劳资合同等一般民事、商业利益时，通常情况下，如果自治机关章程中没有规定此类纠纷必须由自治机关中的解纷机构首先处理，则可作为普通民事诉讼直接由法院管辖，如当事人事先或事后达成仲裁协议的，也可由普通仲裁机构仲裁。换言之，如果体育纠纷是民事性质的，当事人对司法是否立即介入有选择权，但如果事先在合同、章程等文件中约定或事后当事人选择仲裁解决纠纷的，则司法不宜介入。

第三种情况：强制性介入。在体育竞赛或相关体育活动中发生严重人身伤害、经济犯罪或其他构成犯罪的行为时，司法机关应当立即介入管辖，作为刑事案件进行审理。在大多数国家的体育立法中，均有规定凡当事人涉及触犯刑事法律的纠纷，应当作为刑事案件处理，体育自治机关不再享有对此类纠纷的自治处理权。

其次，仅从行政法角度来看，西方实践判例的经验表明，司法介入体育纠纷的时机不宜过早，而应当在穷尽了行政救济或仲裁救济之后。当然这还需要有立法和制度上的支持，对于目前国内一些体育行业协会规章中所规定的由该协会内部裁决机构做出终局裁决的规定，如果与国家法律、法规或规章冲突的，应当依照国家法律、法规或参

照国家行政规章的规定，允许当事人对行政裁决不服的，依照《行政诉讼法》有关规定申请司法复审。

2.2.2.3　司法介入后的审查范围

从司法介入的体育纠纷的方式来看，司法介入可以与准司法介入（体育行政裁决方式）并行，而对纠纷的审查范围则应以针对已经做出的行政裁决内容和程序的合法性为主。

2.2.2.4　司法介入的裁判适用：司法介入对体育纠纷以后，主要通过刑事诉讼、民事诉讼和行政诉讼三大程序来进行裁判。司法依据不同的诉讼程序介入体育纠纷后，其判决种类的适用也有各自不同的特点。

3　结束语

只要存在竞争，就必然会存在纠纷，存在争议。而且随着现代民主与法治进程的逐步发展，人们对伸张、保护和救济合法权益的要求也日益强烈，体育竞赛参与者的法律观念和维权意识也日益增强。

体育体制改革所带来的利益的重分与规则的重建，加剧了体育竞赛纠纷的频繁涌现，对于这些法律纠纷的出现，仅仅靠行业内部的纪律已经显得苍白无力，寻求外部的解决机制迫在眉睫，我们有理由相信，随着体育立法和监督体制的日益完善，司法解决和仲裁解决机制将在我国逐步得以重新确立。

【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。

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 联系我们。

内部文件，仅供交流

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【Sports advertisement gambling laws】

Since the Gambling Act 2005 came into force in September 2007 the UK is considered one of the most liberal yet well regulated sports gambling sectors in the world.
The Act established the Gambling Commission as the principal regulator of commercial gambling in the UK.

Since 2007 sports gambling has been one of the fastest growing sectors of the gambling market. It can be said that this is a result of the advances in technology. For instance, viewers of live television football matches are bombarded at half-time with numerous betting companies offering special odds on certain events happening in the second half, like the final score or next goal-scorer. Furthermore, the shirts of the football teams playing in the televised game often carry sponsorship by gambling companies, and there is almost always odds being advertised on the electronic boards around the edge of the field of play.

There is a concern as to how large the effect may be on the young children and other vulnerable persons who also watch televised sport. Research from Australia, another Commonwealth country, shows that children can name, on average, two or three betting firms and discuss their favourite sports teams in terms of odds.

The Gambling Commission licence terms require that licensees comply with the relevant advertising codes of practice; found in Part 16 (s. 327-333) of the 2005 Act. The Advertising Standards Authority emphasises that "gambling advertisements and marketing communications for gambling products are socially responsible, with particular regard to the need to protect young persons under 18 and other vulnerable persons being harmed or exploited by advertising that features or promotes gambling". There is a general ban on advertising such on television before 9pm.

There is, however, a significant shortcoming in the current regulatory regime that is demonstrated by the statistic that around 80% of online gambling in the UK is conducted by operators outside the jurisdiction and therefore not licensed by the Gambling Commission. This was acknowledged by the UK Government in December 2012 when it published a short draft Gambling (Licensing and Advertising) bill whose primary purpose is to require overseas gambling operators to obtain a Gambling Commission's licence in order to provide services or advertisements to British-based consumers.

MPs in Australia are considering a complete ban on all gambling advertising and live odds updates during sports broadcasts and at stadiums. Presented to the Federal Parliament was a 20,000-signature petition demanding action. Australia also has the additional issue of so-called ‘cash for comment’ where commentators and guests are paid to mention gambling odds. This would also have been banned under the new bill, but broadcasters themselves have agreed to voluntarily implement new restrictions outlined last week by Australian Prime Minister, Julia Gillard, to avoid the legislation being introduced.

There is a major threat of addiction and associated ills that sports gambling can bring. But it has been argued that in the not too distant future, restrictions on sports gambling advertising will go the way tobacco and alcohol advertising did in the 1990s and 2000s.

HOTSPOT IN SPORTS NEWS

Nike ends relationship with Lance Armstrong

In 2012, Lance Armstrong, the most decorated, celebrated and controversial rider in cycling history, was stripped of his seven Tour de France titles after refusing to contest charges of doping, drug trafficking and administering of drugs to others, according to the United States Anti-Doping Agency.

Following years of denials, Lance Armstrong admitted to Oprah Winfrey in January 2013 that he did use performance-enhancing drugs during his run to seven Tour de France titles. Nike has snatched its support from the fallen cyclist's former charity, Livestrong, marking the end to the nine-year campaign to raise money by selling yellow bracelets. The partnership began in 2004 and brought more than $100m to the foundation that has renounced its founder.

Nike and other sponsors, including Oakley and Trek, backed Armstrong right up until all of his legal options ran out, forcing him to confess to using performance-enhancing drugs and methods throughout his career.

In the past, Armstrong skilfully deflected accusations about his doping by changing the subject to his charity work. All too often, a challenge to Armstrong was portrayed as support for cancer.

Alongside, Nike gave Armstrong an enormous platform to downplay the accusations, airing a television advertisement in which Armstrong said, 'Everybody wants to know what I'm on. What am I on? I'm on my bike busting my ass six hours a day. What are you on?'

Armstrong was not ultimately charged with crimes, but he is currently a defendant in numerous lawsuits seeking to collect some of the tens of millions he collected from sponsors and other underwriters.

In October 2012, the US Anti-Doping Agency stripped Armstrong of his titles and called his teams 'the most sophisticated, professionalised and successful doping program that sport has ever seen'.

Michael Jordan's Chinese law suit

After two decades on the basketball court, Michael Jordan is currently learning the rules of defence and offence in a different game: the Chinese legal system. Qiaodan Sports Company Limited ("Qiaodan Sports"), a Chinese sportswear company, are throwing their legal dispute with him back into his court.

Michael Jordan's fame in China is long-standing. He was first seen on Chinese television playing for the 1984 gold medal-winning US basketball team at the Los Angeles Olympics. Since then, he has become hugely famous in China, both under his English name but also under his Chinese name "乔丹" which is the Chinese equivalent of the name "Jordan". This Chinese name is shown in pinyin, the official system which is used to transcribe Chinese characters into Latin script, as "Qiaodan". Whilst Michael Jordan registered trademarks for "Jordan" in English in China as far back as 1993, he never applied for any registered trademarks for "乔丹" nor for the pinyin representation "Qiaodan".

Qiaodan Sports first applied to register the name "Qiaodan", when they applied to use the name with the logo of a baseball player at bat. They also filed several trademark applications for "乔丹" and "QIAO

DAN", which were approved for registration in 1998. Qiaodan Sports have been using their "Qiaodan" and "乔丹" brands since 2000 and have made significant brand-building efforts over the years. Qiaodan Sports currently own about 6,000 shops in China which trade under the "QIAO DAN" name.

In November 2011, Qiaodan Sports won approval from the China Security Regulatory Commission for an IPO of 112.5 million shares to raise about RMB 1.1 billion (approximately USD 178 million). On 21 February 2012, just as Qiaodan Sports were set to debut on the stock market, Michael Jordan commenced proceedings against Qiaodan Sports for the unauthorised use of his name at Shanghai No. 2 People's Intermediate Court. He claimed that Qiaodan Sports were illegally using his Chinese name and his jersey number 23 on their products without his permission. Since Michael Jordan has never registered any trademarks for his Chinese name, his claim is based on the grounds that Qiaodan Sports' use of his Chinese name was in breach of his rights in his Chinese name. He demanded that Qiaodan Sports stop using the name and the trademarks and requested compensation.

Whilst Chinese law generally protects parties who hold registrations and who file early for them, this does not mean that it is open season to register the names of famous people, even if they do not have registered trademarks. Specifically, Chinese law protects the right of personal name under Article 99 of **民法通**则 (General Principle of Civil Law) and prohibits infringement of the naming rights of individuals under Article 2 of **侵**权责任法 (Torts Liabilities Law). These principles are also reflected in Article 31 of **商**标法 (Trademarks Law) which

provides that an individual's name rights shall be protected as a prior legitimate right.

In its defence, Qiaodan Sports contended that the Chinese name "乔丹" and its pinyin representation "Qiaodan" were only a translation of the English word "Jordan" and that they were not Michael Jordan's real name or full name. It noted that there were about 4,600 Chinese citizens with the name "Qiaodan" and even more foreigners that have translated their names to "Qiaodan". As such, it argued that "乔丹" and "Qiaodan" should not belong exclusively to Michael Jordan.

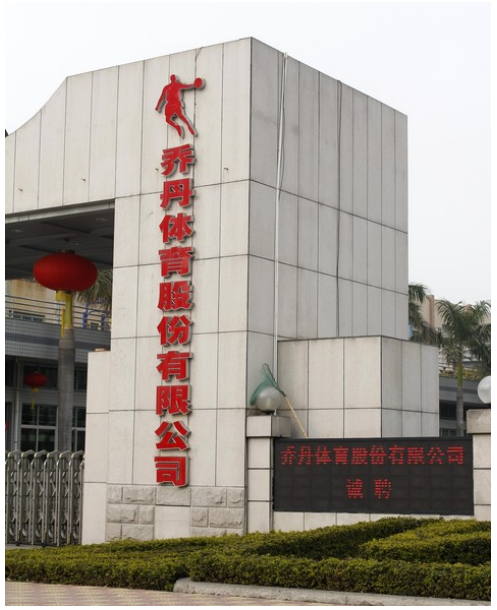
These proceedings were brought following recent decisions by the Chinese courts in favour of protecting the naming rights of other well-known basketball players such as Yao Ming in 2011 and Yi Jianlian in 2010. A Chinese court ruled for former NBA player, Yao Ming, who challenged Wuhan Yunhe Sharks Sportswear Company for using his name and the logo "Yao Ming Era" on its products. The company was forced to stop using the name and to pay RMB 300,000 (approximately US $48,600) in damages. Another NBA player, Yi Jianlian, won against Fujian Yi Jianlian Sport Goods Company at a Chinese court which held that an individual's name right should be recognized as a prior right.

To slam-dunk his naming rights claim, Michael Jordan needs to establish that, firstly, he is a famous public figure and his fame under his Chinese name preceded Qiaodan Sports' trademarks, secondly, Qiaodan Sports has acted in bad faith by intentionally using his Chinese name or other personal attributes without his permission, and thirdly, the use of his Chinese name or other personal attributes has injured him by

causing confusion among consumers who misguidedly associate Qiaodan Sports or their products with him.

The Shanghai court accepted this case on 1 March 2012, and there has not yet been any verdict so far.

In an interesting twist to this case, on 26 March 2013, Qiaodan Sports threw the ball back into Michael Jordan's court and countersued him for an apology and damages at the Quanzhou City Intermediate People's Court in Fujian, alleging that the above lawsuit has tarnished its reputation and thwarted its plan for an IPO on the Shanghai stock exchange. The Fujian court accepted the case on 2 April 2013.



Many sports companies in China have been looking to capitalize on the sudden popularity of NBA surprise standout, Jeremy Lin, by selling jerseys and t-shirts bearing his Chinese name, Lin Shuhao, or his English name. The Financial and Economic Committee of the National People's Congress recognises that there are many businesses who register the names of celebrities as trademarks, affecting the rights and reputation of these celebrities and public interests. Therefore, they have already made recommendations to the Legislative Affairs Office of the State Council for amendment to 商标法 (Trademarks Law) in order to give additional protection to the naming rights of individuals. Regardless of whether these recommendations are adopted, it is clear that a foreign celebrity should not assume that his or her name rights necessarily extend to Chinese equivalents of a celebrity's name, such as "乔丹" or the pinyin representation of the celebrity's name such as "Qiaodan". The primary lesson of these cases is that, as well as registering their name in Latin characters, celebrities should, at an early stage, invest time and money in registering the Chinese equivalent of their name in order to avoid third parties in China from registering it before they do.

UK Anti-Doping signed agreement with NHS Protect

UK Anti-Doping (UKAD) has signed a Memorandum of Understanding (MoU) with NHS Protect, setting out clear guidelines for sharing information in the fight against the supply and trafficking of doping-related substances and activities in sport.

This latest development enhances UKAD's ability to prevent, deter, detect and enforce any anti-doping rule violation in all sports under the World Anti-Doping Code, reaching out to a new audience within the National Health Service. Partnerships with external agencies have proven vital in the organisation's work to date, leading to the successful prosecution of anti-doping rule violations.

Information will be shared with UKAD by NHS Protect when it relates to the detection, deterrence, enforcement or prevention of an anti-doping rule violation. UKAD will share information with NHS Protect when it relates to the illegal prescribing, supplying, administering or disposing of NHS drugs within, or for, an NHS body.

NHS Protect leads on work to identify and tackle crime across the NHS. Its purpose is to safeguard NHS resources so that the NHS is better equipped to care for the nation's health.

Minister for Sport, Hugh Robertson said: "Drug cheats have absolutely no place in sport and in the UK we are working hard to ensure we not only catch the cheats but the suppliers and traffickers that put banned substances in their hands. The partnership between UK Anti-Doping and the NHS, with information sharing at its heart, will play an important role in the continued fight against doping."

UK Anti-Doping Chief Executive, Andy Parkinson continued: "Formal links with external agencies are fundamental to ensuring that UK Anti-Doping has access to valuable information, allowing us to focus on those wishing to gain from the supply and trafficking of prohibited substances.

"When creating UK Anti-Doping as an independent agency in 2009, our vision was to build a centralised body that firstly removed the conflict of interest for sports in the area of doping and secondly allowed us to establish partnerships with public authorities.

"Today, we are delighted to formalise our relationship with the NHS and strengthen our ability to tackle the supply of doping-related substances, particularly in

relation to administration. This should send another clear message to those who are considering becoming involved in doping activities, that we are doing all we can to protect the rights of athletes to participate in clean sport."

Richard Rippin, NHS Protect's Head of Information and Intelligence, said: "NHS Protect leads on work to identify and tackle crime across the health service, including fraud and the theft of controlled drugs. UK Anti-Doping is one of the organisations with which NHS Protect shares intelligence and information, which ultimately helps both organisations prosecute and deter criminals."

Ivana Bartoletti, NHS Protect's Information Governance Lead, added: "Sharing information, within strict legal boundaries, is crucial to increase cooperation between organisations to tackle crime. Our MoU with UK Anti-Doping gives a solid legal framework for this data sharing."

International Sportslaw Practice

FINANCIAL FAIR PLAY AND THE ABILITY OF EUROPEAN FOOTBALL CLUBS TO RAISE FINANCE – PART 2

. Common methods by which football clubs raise finance

Deloitte has noted that, whilst clubs have sought to utilise various mechanisms (including stock market listings, securitisation, bank loans and benefactor support) to help fund increased expenditure, commercial reality, in the form of limited availability of such funding opportunities, may finally bring about a change in behaviour 1. That being said, UEFA has made clear that it is not "anti-debt", as long as the debt is being serviced (i.e. the club's profit is covering the debt interest payments) 2 . If the effect of the Regulations (and any equivalent regulations adopted by the Premier League and the Football League) is to improve the credit and financial sustainability of football clubs, financiers may in fact become more willing to provide finance to those clubs in the future, and perhaps on better terms.

The second part of this article will focus on three mechanisms commonly used by football clubs to raise finance and examine in-depth the effect the Regulations may have.

There are three methods most commonly used by football clubs to raise finance:

1. obtaining a loan in exchange for the provision of security - for example, by way of assignment of receivables, a debenture, or a guarantee;
2. selling or discounting receivables to a financier - for example, a club's entitlement to prize money or broadcasting revenue (i.e. "Central Funds", in the case of the Premier League), or a transfer fee owed to it; or
3. financing of transfer fees by means of the transfer (indorsement) of promissory notes to a financier.

Loan and security

In consideration of a financier providing a loan facility (the "Facility") to a club under a loan agreement (the "Loan Agreement"), a financier will usually require the club to grant security to it over certain of the club's assets.

Typically, the Facility is secured by an assignment of the right to certain amounts due from the Premier League or the Football League in respect of match broadcasting fees (the Assignment"). Even though the Assignment is stated to be enforceable only following a default by the borrower, the Notice of Assignment may direct the Premier League or the Football League (as applicable) to pay the amounts due to the borrowing club (the "Borrower") in respect of the assigned receivables on or around each repayment date under the Loan Agreement to the financier. Those amounts may then be applied by the financier towards satisfaction of the relevant repayment amount under the Loan Agreement (or, in certain instances, the financier may hold such amounts on account).

The security granted by the Borrower in favour of the financier, to secure its obligations under the Loan Agreement, may also take the form of:

a. a debenture, including a floating charge over all of the assets and undertakings of the Borrower, as well as a fixed charge over certain specific assets of the Borrower; and/or

b. a guarantee (usually from a director of the Borrower or the Borrower's parent company), guaranteeing the obligations of the Borrower under the Loan Agreement and any security documents; and/or

c. security over the shares in the Borrower.

Sales of receivables

Instead of taking security over a club's income, a financier may instead enter into an arrangement for the outright sale of receivables by means of a receivables sale agreement (the "RSA"). In consideration of the financier paying a "purchase price" equivalent to the expected receivables discounted at an agreed amount to a club, the club assigns to the financier its rights, title and interest in and to a specific receivable (such as the right to certain distributions of UK broadcasting monies from the Premier League or the Football League or the right to transfer fee instalments).

The main difference between an RSA and a security assignment is that, under the RSA, the financier becomes the legal owner of the receivables at the date of the initial assignment. Under a security assignment, it is merely entitled to exercise its rights as assignee of the receivables as one means of enforcing its security.

Financing of transfer fees by means of promissory notes

It is typical for amounts due from one club to another under a transfer agreement to be paid in instalments, especially if the purchasing club is not particularly cash rich, as it will seek to spread the purchase price instalments over a longer period of time (and may also try to negotiate for a higher proportion of the transfer fee to be performance-related). Cash rich clubs, on the other hand, may prefer to make up-front payments, especially when purchasing from abroad, so as to minimise the risk of adverse exchange rate fluctuations. Where the purchasing club has negotiated to spread the instalments of the purchase price over a period of time (typically two to three years), the selling club may wish to realise all of its expected income early and to sell the future receivables. This

could be done by a sale of receivables (as outlined above). Alternatively the selling club (to whom the money is owed) may request that the buying club (who owes the money) may issue a promissory note to it in respect of the remaining transfer instalments. This will allow the selling club to transfer such promissory note (by way of "indorsement") to a financier, in exchange for which the financier would pay a discounted amount representing the present value of the future cash flow (as well as the financier's margin or fee) to the selling club.

In addition to the promissory note, the parties to this type of financing arrangement would typically enter into a side agreement which sets out the terms and conditions on which the indorsee (the "purchaser" of the promissory note) has agreed to purchase the promissory note from the selling club. The side agreement would typically include various representations and warranties from the buying club in favour of the financier relating to the promissory note or the underlying transfer agreement, but would not typically include the more general representations, warranties or undertakings provided for in a Loan Agreement or an RSA.

Take, for example, a player who has been sold by a selling club (Club A) to a purchasing club (Club B) for £20m, with the instalments of the purchase price being payable in four equal instalments, £5m on signing and £5m on the anniversary of the date of signing for three years thereafter. Club A is owed £20m in four instalments. Club B's debt to Club A is £20m. One month after signing, a bank may agree to discount the remaining £15m instalments by "purchasing" the right to receive those instalments (whether by means of a purchase of receivables or the indorsement of a promissory note) for a discounted amount which would take into account both the "time value of money" and the "margin" that the bank wishes to make from the transaction. The bank will pay the discounted amount to Club A and Club B will, in time, pay each of the relevant transfer fee instalments to the bank rather than Club A. Club B's debt remains the same (i.e. £20m). Club A may receive less but it benefits by receiving its money early and may transfer any credit risk to the financier.

INTRODUCTION

OF SPORTS LAW GROUP

Sports Law Service Scope

1, Provide legal consulting service about the composition and structure of all kinds of sports clubs;

2, Draft sponsorship agreements, commercial agreements and the license agreements;

3, Provide legal consulting service about traditional and emerging commercial case;

4, Provide legal consulting service about events, sports organization and management;

5, Provide legal services of intellectual property protection in sport brands, especially related to sporting goods and clothing brands;

6, Provide legal opinions in signing contracts with the athletes, their initiation and transfers;

7, Provide legal consultancy services in the construction of sports venues, financing, development, and other related matters;

8, Solve disputes in the name of the professional athletes, coaches and sports clubs, sports brokers, departments in charge of sports industry 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, Event promoters and sponsorship negotiations and drafting all kinds of related contracts for sports teams and sports activities of the organizers.

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.

If you have any question, please contact us via email at zhang.bing@dachenglaw.com.

Internal documents, only for communication.