



# 体育法律资讯（中英文）

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## 【热点体育动态】

### 2022年冬奥会申办名单公布 六大城市角逐主办权



据美联社11月15日报道，2022年冬季奥运会的主办权争夺开始了。14日，在申办报名最后期限过后数小时，国际奥委会就公布了申办城市的正式名单。共有6个城市申办，包括两个曾经举办过夏季奥运会的城市、一个与别国联手申办的城市，以及两个来自前苏联

共和国的城市。

## 2015年，北京将与五大城市角逐2022年冬奥会举办权

这六个城市分别是：阿拉木图(哈萨克斯坦)、利沃夫(乌克兰)、斯德哥尔摩(瑞典)、奥斯陆(挪威)，而波兰的克拉科夫和亚斯那、中国的北京和张家口均是联合申办。中国奥委会表示，由北京市承办冰上项目比赛，张家口市崇礼县承办雪上项目比赛。

而明显缺席的是欧洲传统的阿尔卑斯山脉国家。在其中的瑞士和德国，选民们因为担心成本过高及环境方面的危害而拒绝支付申办提议。

本次的6个申办国有5个国家都曾申办过冬奥会，只有乌克兰是第一次申办。如果斯德哥尔摩或北京申办成功，它们将成为全球首个既主办过更夏季奥运会、又主办过冬季奥运会的城市。北京曾主办过2008年夏季奥运会，斯德哥尔摩曾主办过1952年墨尔本奥运会的马术比赛。奥斯陆主办过1952年冬奥会，而挪威城镇利勒哈默尔则主办过1994年冬奥会。

## 北京张家口申办2022年冬奥会

敲定申办城市名单标志着历时两年的角逐即将开始。这场角逐将在2015年7月最终选出主办城市时结束。

国际奥委会说，申办城市“都非常有实力，既包括传统的冬季运动市场，也包括发展中的新市场”。



本次申办城市的数量相当于上次申办城市的两倍。上次，韩国的平昌击败了德国的慕尼黑和法国的阿讷西，赢得2018年冬奥会的主办权。

国际奥委会主席托马斯·巴赫在谈到2022年冬奥会申办城市时说：“这些城市和它们的支持者显然清楚主办奥运会的益处以及一场奥运会可以给一个地方带来的长期效应。”

### 成本过高吓退瑞士德国

国际奥委会并未提及欧洲两个主要的冬季运动国家瑞士和德国，它们原本有意申办2022年冬奥会，但提议在各自国家的公投中被否决了。

上周，德国(也是现任奥委会主席巴赫的祖国)的选民出于财政和环境方面的担忧，拒绝同意慕尼黑再次申办冬奥会。今年3月，瑞士的圣莫里茨放弃了申办计划(该市曾主办过1928年和1948年冬奥会)，因为该地区选民担心成本高和可能造成混乱而拒绝支持申办。)





## 俄罗斯索契冬奥会500亿美元的成本吓退瑞士德国

在新申办名单出台之际,人们正在担心2014年俄罗斯索契冬奥会的成本问题——目前的总成本已经超过500亿美元,打破了任何一次夏季奥运会或冬奥会的纪录。

挪威资深国际奥委会成员盖哈德·海贝格对本报记者说:“大概索契冬奥会的500亿美元投资把有些人吓跑了。在瑞士撤出时我就觉察到了这点,而在德国的4个选区都投票否决时,我就更强烈地感觉到了这点。国际奥委会必须严肃看待 这个问题。我们必须进行研究,找出问题所在以及问题的原因。”

他说,考成到这点,奥运会的未来可能取决于城市是否承担得起主办开支。

海贝格在接受电话采访时说:“如果成本和投资如此之高,许多国家和许多城市都会摇头说,办不起。我们必须找到节约成本和投资的方式方法,否则将没有任何城市申办冬奥会了,夏季奥运会也是如此。”

这6个申办城市必须在明年3月14日之前向国际奥委会提交详细的申办报告。国际奥委会将在7月的会议中决定哪些城市进入决赛阶段。在经过一系列评估之后,国际奥委会将于2015年7月31日在吉隆坡通过秘密投票确定最后的胜利者。



## 《世界反兴奋剂条例》修改3000多处 处罚将更严厉



“近一周来，南非约翰内斯堡成了全球体坛瞩目的地方。在这里举行的第四届反兴奋剂大会，通过了2015年1月1日开始执行的、堪称史上最严格的新版《世界反兴奋剂条例》。新版对旧版改动多达3000处；运动员“量刑”翻倍；遭禁赛后甚至没有了训练资格；生物护照技术也正式成为反禁药武器。中国反兴奋剂中心副主任赵建，就此新规为北京青年报记者进行了解读。他认为新条例的一些创新规定，将世界反兴奋剂能力提升了一个层次。而谈到这部新规能否让中国反兴奋剂工作彻底的道高一尺，遏制服用禁药行为，赵建表示，和法国、西班牙、意大利等国通过法律，像打击犯罪一样，由警察对付禁药和违法运动员不同，中国尚未将服禁药行为纳入

刑法管辖范围。”

### 除了禁赛还要禁训

新条例最引人注目的一条，是禁止各国、各组织、各俱乐部为遭禁赛运动员提供训练场地。

#### 专家解读

赵建表示，类似禁止训练的条例精神一直都有。“但新条例把这一精神具体化了。”他介绍，过去处在禁赛期间的运动员是不能使用国家和政府的资助进行训练的。“唯一能参加的政府活动，就是听反兴奋剂教育、培训。”

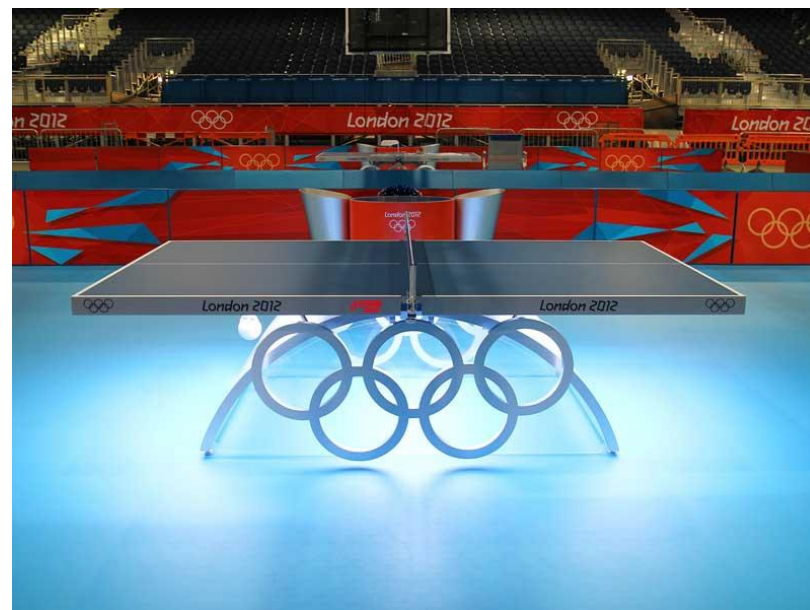
另一方面他表示，虽然原来条例有类似精神，但只是取消对运动员的政府资助，商业方面的资助并不在内。“这次加强了一点，就是禁止俱乐部对运动员提供帮助。因为国际上很多运动员都是职业的，都是登记在各俱乐部的。如果运动员在新条例期间遭禁赛，就确实失去了继续训练的条件。”

### 生物护照正式启用

新条例规定，生物护照作为反兴奋剂的新技术，得到了正式承认。反兴奋剂组织可以通过“运动员生物护照数据所得出的结论”，判定违规行为成立。

#### 专家解读

赵建表示，在这方面中国可以说先行了一步。几个月前中国一名田径选手被生物护照技术指认服用了禁药。中国田协就此对运动员进行





了两年禁赛。赵建表示新条例证明了世界对新技术的广泛认可，也是对中国工作的认可。“我记得上一版反兴奋剂条例是2009年修订的。当时还没有生物护照技术。如今新技术已经被各协会使用，很成熟了，就写进了新版条例。”

### 初犯惩罚翻倍到4年

新条例规定，首次蓄意使用兴奋剂行为的禁赛期从2年增加到4年，将自动错过一届奥运。

#### 专家解读

赵建表示，初犯“刑期”从2年提升到4年，各种意见肯定会有。“有的项目，运动寿命可以非常长，禁赛4年都没有什么影响。比如射击，甚至棋类。但有的项目体能要求高、技巧性强，比如田径、体操。运动员黄金寿命很短。有人就会认为太严了。所以严格和宽松都是相对的。这应该是征求各种意见后取得了一种共识。”

### A瓶阳性直接禁赛

新条例还规定，A瓶尿样检测结果呈阳性后该运动员即被自动禁赛，且检测A瓶尿样和B瓶尿样之间的时限间隔缩减为一周。

#### 专家解读

赵建坦言，中国对此执行严格，早已实施类似规定。“在中国A瓶出现问题就自动禁赛了。等到B瓶真的证明了你的清白，那就再恢复参赛资格。”

### 现状1



## 中国服禁药尚未入刑法

新条例也让反兴奋剂部门拥有了“调查”能力，对此赵建表示，中国有过针对禁药的检查。但无法像有些国家那样，引入警方力量，用刑法做武器反禁药。

在法国，警察曾在环法大利，警察根据国内法严格控制药品年运动员集体接受兴奋剂注射事进行了处罚。就此事件，中国政法为：“鞍山田径学校一是涉嫌触犯了《未成年人保护法》。”张教方面走在了前面，“德国、法国、样的责任要受到什么样的处罚，所法律来进行判罚。”

赵建表示，中国还是受到要是报警称有服兴奋剂事件，目前公安部门很难受理。中国的反兴奋剂条例是国务院颁布的，刑法里面没有相关的法律规范。在意大利等国有法律解释，我们还是行政法规。”



赛期间突击搜查车队帐篷。在意大利滥用。而2006年鞍山田径体校未成件后，只由反兴奋剂部门对运动员大学体育法研究中心教授张笑世认了《反兴奋剂条例》，二是涉嫌触授介绍，欧洲很多国家在司法介入荷兰、意大利的法律很具体，什么以一旦出事，他们总能依照相应的

了法律手段的局限。“比如在中国

## 现状2

### 世界反禁药力度各不同

虽然这部反禁药新条例是所有成员国一致通过的，但赵建介绍，世界范围的反禁药工作并不平衡。“有的很好有的差。比如牙

买加、肯尼亚，就需要通过外力促使他们加强工作，否则就是对遵守秩序的人的不公平。”

赵建认为，中国在反兴奋剂方面一直走在前列。除了态度坚决，手段也在国际领先。但包括牙买加和肯尼亚，“不能简单说他们是因为经济水平落后，导致的反禁药水平低下。你运动能力这么强，不强化反禁药，就说不过去了，有纵容的嫌疑了。大家都有意确保公平公正。否则做得好的不就吃亏了？”

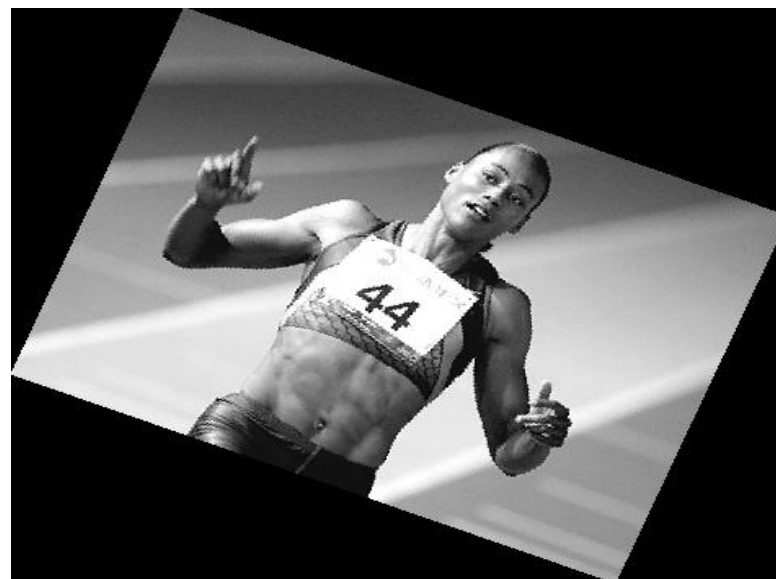
## 疑问1

### 一部新规能否一劳永逸？

据介绍，世界反兴奋剂组织允许各国政府和各单项协会，用一年的时间适应和执行反兴奋剂新条例。中国奥委会副主席段世杰表示，中国将于今年内颁布新的《反兴奋剂管理办法》。谈到这部新条例能否一劳永逸地遏制运动场内服用禁药提升成绩的行为，赵建坦言他不会如此乐观。

谈到新条例，赵建表示，他已经做好了工作量提升的心理准备。

“其实我们一直在不断地提升反禁药的质量和水平。在从前相当长的一段时间，我们中国只用一部反兴奋剂条例，就吓倒了很多心存侥幸的人。后来我们就得加入检测技术，让你用什么药我都能查出来。再后来用药水平提升，我们也要提升水平，否则我们就是输了。魔高一尺，道高一丈，这是另一个层面的竞赛。”



## 疑问2

### 成绩会不会大幅降低？

新条例颁布后，有运动员认为，运动成绩也许将遭遇大幅度滑坡。对此赵建认为没有这个担心。“最近几年，随着反兴奋剂力度的增加，已经没有出人意料的成绩下跌了。”

他表示，“新条例肯定可以震慑一批人避免服用药物，当然也就阻止比如服药的黑马出现。另一方面，如田径项目仍然有上世纪七八十年代的世界纪录无法打破。但是从竞技规律来讲，成绩应该是逐渐提升的。为什么老的纪录那么高，新的成绩还赶不上。我倒觉得这也反证了反兴奋剂工作到位了。”



## 【美洲杯帆船赛纠纷解决机制初探】



### 【简介】

对美洲杯帆船赛的纠纷解决机制的产生历史和它的发展、运作等问题进行了述评，并分析了该纠纷解决机制的特点及对我国建立体育仲裁制度的借鉴意义。





美洲杯帆船赛是一项古老的赛事，创办于1851年，与奥运会、世界杯足球赛以及一级方程式赛车并称为世界范围内影响最大的四项传统体育赛事。美洲杯帆船赛起源于美国纽约快艇俱乐部向世界公认最强大的英国帆船队提出比赛挑战。美国纽约快艇俱乐部在挑战中获胜，但是其有又引来英国帆船队的继续挑战，并由此而形成了一项永久性的在不同国家之间的帆船俱乐部之间展开友好竞赛的挑战杯赛事，挑战成功者将获得美洲杯，并接受下一轮的其它国家帆船俱乐部的挑战。这样一直延续到今天，现在已经是第32届了。从2003起，由青岛国际帆船俱乐部组织的“中国之队”代表中国第一次参加了美洲杯帆船赛，使得这一届美洲杯

共有十四只队伍参赛。本文试图对美洲杯帆船赛上的赛事纠纷的解决机制做一个大概的考察，首先分析了美洲杯纠纷解决机制建立的原因，然后对它的历史发展作一个简单的描叙，并重点勾勒其现行的仲裁机制。最后是一点结论和对我国体育仲裁制度启示。

## 1， 纠纷解决机制的建立

### 1. 1 纠纷解决机制建立的原因

美洲杯帆船赛事一直平稳的进行至1987年，挑战者水星海湾船舶俱乐部（the Mercury Bay Boating Club, 以下简称MMBC）的出现打破了这一平静，该俱乐部1987年9月正式向美洲杯持有者圣地亚哥帆船俱乐部（the San Diego Yacht Club, 以下简称SDYC）提出挑战，但SDYC拒绝了MMBC的挑战，因为根据惯例，比赛使用的应是12米的帆船，但MMBC使用的是却是27米和43米长的帆船，一般而言，较长的帆船会跑的更快。为此，MMBC 将SDYC告上了纽约高等法院，MMBC请求法院认定它的挑战是有效的，并请求法院发布一项禁令，禁止SDYC在本案判决前接受其它俱乐部的挑战。法院支持了MMBC的请求，要求SDYC接受MMBC的挑战，即使其使用的是大船，比赛得以开始。但在此时，SDYC在比赛中确一反惯例使用了双体船，而 MMBC 使用的则是单体船，虽然它的船体较长，但在比赛中仍然处于劣势。于是MMBC再次向纽约高等法院提出起诉，请求法院宣布SDYC藐视法庭，并禁止其使用双体船。MMBC认为，根据对挑战规则的解释，如果允许使用双体船来对抗单体船，那么这将不再会是一场公平的比赛。法院这次没有支持 MMBC的请求，法院并不认为SDYC的做法构成藐视法庭，也没有就双体船是否应被接受参加比赛给出一个咨询意见。比赛继续进行，MMBC输掉了比赛。但它们仍然希望通过法律诉讼赢得美洲杯，于是向法院提起了第三次诉讼，认为SDYC使用双体船参加比赛有违美洲杯这项赛事的精神，因为该杯赛的宗旨是“不同国家之间的友好竞赛”。这一次，法院支持MMBC的诉讼请求，判决其获得





## 1. 2 纠纷解决机制的建立

美洲杯。但SDYC不服，向纽约高等法院的上诉法庭提出上诉。上诉法庭认为，挑战规则没有任何迹象表明在比赛中应禁止使用双体船，也没有规定在比赛中应使用彼此相似的帆船，因此，推翻了法院的判决，将美洲杯重新交还给SDYC。MMBC将此案再上诉至纽约州上诉法院，但上诉法院维持了原判决，至此，无论是海上的还是法庭上的挑战终于划上了一个句号。历时四年，诉讼五次，循环往复，以至于上诉法院不无讽刺的说“这是法院解决的所有比赛纠纷中最令人厌恶的事件”。但通过这一事件，也提出了一些值得我们认真思考的问题。

如何解决比赛中发生的体育纠纷？当时由于挑战杯赛非诉讼纠纷解决机制的缺乏，导致了这一连环诉讼案件的发生。而事实证明，司法作为社会公正的最后一道防线，并不是解决体育竞技纠纷的最好选择，而应只是最后的选择。这五件诉讼虽然其结果在某种意义上是合理的，但过程则充满了反复、迟延、不确定、费用的浪费等等，这对竞技体育的影响是无法估量的。为此，需要一个稳定的机构来组织比赛并解决其中发生的纠纷。在这一事件发生后，该挑战赛通过了一项新的规则——圣地亚哥议定书，决定建立一个三人委员会，该委员会由曾经获得美洲杯的三家俱乐部的代表组成。根据议定书的规定，除技术争议之外，所有的纠纷应先由双方谈判解决，谈判解决不了的，由该委员会组建一个五人的仲裁庭负责仲裁解决。但很快，这样一种仲裁的独立性就受到了质疑，著名的国际体育



法专家纳法兹格先生曾经在一篇文章中指出，由于仲裁庭组成的单一性，如果一件纠纷是针对澳大利亚或美国的队伍提起的，那么仲裁庭将至少有一名甚至两名仲裁员是该国的国民，而其它队伍则很少甚至根本没有机会在仲裁庭中有自己国家的仲裁员。因而，先前曾经获得美洲杯的三家俱乐部在选择仲裁庭成员时有着直接的影响力，而其他俱乐部则几乎完全没有影响力。[3]虽然我们应该相信仲裁员的公正性，但如果没有制度的保障和制约，人们将仍然很难相信这样的仲裁庭做出裁决的公正性。

## 2， 美洲杯帆船赛仲裁庭

1995年，美洲杯被新西兰队（the Royal New Zealand Yacht Squadron, 以下简称RNZYS）获得，这给改变先前备受批评的仲裁机制一个很好的机会。2000年，RNZYS与挑战者纽约帆船队（New York Yacht Club, 以下简称NYYC）签定了第30届美洲杯帆船赛挑战议定书，在议定书中，一系列条款构建了一个更为复杂的纠纷解决机制。一个明显的进步是，组建了专门的美洲杯帆船赛仲裁庭（America's Cup Arbitration Panel, 以下简称ACAP），该机构的组成发生了很大的变化，仲裁庭成员的数量仍然是五名，但在仲裁员的来源上，规定其中的两名由卫



冕者挑选，两名由挑战者挑选，第五名仲裁员则由前四名已经选出的仲裁员负责推选，并且是当然的仲裁庭主席。对仲裁员的任职资格要求也非常严格，必须是参加美洲杯比赛国家的公民，对美洲杯的历史、挑战规则和纠纷解决有相当的了解，有丰富的帆船比赛和

帆船俱乐部的知识，公认的为人正直且能公正的处事。

在管辖权方面，美洲杯在ACAP之外，还建立了另外两个纠纷解决机构，国际评判委员会和测量委员会。前者负责解决比赛规则方面的纠纷，后者负责解决有关参赛船舶技术参数方面的纠纷。除了这两类纠纷，美洲杯上卫冕者与挑战者之间或挑战者之间的所有其他纠纷必须提交给ACAP仲裁解决。ACAP还有议定书授予的其他一些权力，包括负责对议定书的解释，决定参赛者的国籍问题，甚至还拥有一定的处罚权。ACAP还可应挑战者的要求，对其是否会根据议定书被接受挑战提供咨询意见。可见，ACAP 不仅是一个纠纷解决机构，在某种意义上它还是一个比赛的管理机构。



在仲裁程序方面，仲裁申请可以通过电子方式提交。在仲裁过程中，仲裁双方提交的所有资料都会向所有的参赛者公开，而不管这些材料是否会被仲裁庭采纳。仲裁庭的开庭方式也很灵活，可以通过电话会议或视频会议的方式进行。所有的开庭必须有五名仲裁员全部出席，且裁决的做出必须获得五名仲裁员的多数票才能有效。

虽然ACAP在许多方面已经有了很大的进步，但它的独立性还是受到了批评。主要的批评集中在它的仲裁员选任上。虽然已经做了改进，但在某些情况下，仍然很难保证其独立性。比如发生在一名挑战者与卫冕者之间的一件仲裁案，仲裁庭中至少有两名仲裁员是



由卫冕者任命的，而仲裁庭主席也是经过了这两名仲裁员认可的。而挑战者对该仲裁庭是没有任何影响的，这样的仲裁庭无法使挑战者一方相信其独立性。但由于仲裁庭的排他性管辖权，对仲裁庭独立性的挑战也不能诉诸法院。这样挑战者便陷入了要么接受仲裁要么不参加比赛的困境。虽然有各种各样的批评，在第30届和31届美洲杯帆船赛期间该仲裁庭共仲裁了42起案件，裁决全部被当事人所接受，没有一起案件被撤消。尽管如此，在第32届美洲杯帆船赛开始后，这一仲裁机制仍然发生了较大的变革。

### 3， 美洲杯帆船赛评判委员会

2003年，来自瑞士的阿灵基队获得了美洲杯，一项新的比赛议定书得以签署，其中对纠纷解决机制进行了较大的改革，使得其从制度上更加合理、公正，真正能得到所有参赛各方的认可从而更有效的服务于赛事。本届比赛至2007年结束，因而这也是美洲杯现行有效的纠纷解决机制。

首先是名称上，将先前的仲裁庭与国际评判委员会进行了合并，组成了一个新的机构——美洲杯评判委员会（America's Cup Jury，以下简称ACJ），但仍保留了测量委员会，其相应的管辖权也有了扩大。ACJ 既是一个适用评判规则的委员会，也同时履行一个仲裁庭的职能，除了有



关帆船技术参数方面的争议外，ACJ对美洲杯期间发生的纠纷有着广泛的管辖权。但在另一方面，ACJ相对于ACAP的管辖范围又有所缩小，新的议定书规定，有关赛事的商业安排和管理方面的纠纷不在ACJ的管辖范围之内，而应提交位于日内瓦的仲裁机构解决。



其次，议定书规定，比赛期间发生的纠纷只能提交给ACJ仲裁解决，而不能提交给法院，这一强制性的仲裁条款是挑战者参加赛事必须接受的前提条件之一。当然这一条款在体育比赛中是可以接受的，因为世界上许多体育机构也有类似的强制性仲裁条款，如FIFA、IAAF，奥运会也有类似的强制性条款。但ACJ走的更远，议定书还规定，仲裁庭的仲裁裁决不能以任何理由而被推翻。也就是说，仲裁庭的裁决是排除司法审查的。尤其是在普通法系国家如美国、英国、澳大利亚，对体育仲裁裁决的司法审查是广泛存在的。这是因为他们遵循的是程序审查原则，审查的范围限制在法律审查和程序审查上，而不会涉及有关事实问题，这是因为在英美法系国家倾向于维护体育行会组织的内部管理自治权，承认此类内部纠纷处理决定的合法性。尽管这样的审查一般是程序性审查，而不会牵涉到仲裁所解决纠纷的实质性问题，但有一点是可以肯定的，司法机构的司法审查作为一种公权力，是社会正义的最后一道防线，仲裁也不例外，应给当事人将仲裁裁决提交司法审查的权利。在国际体育仲裁中，最著名的国际体育仲裁院的裁决也是接受司法审查的，尽管被推翻的例子很少。可见，ACJ的这种作法是不符合惯例的。但是，由于ACJ将自己的仲裁地设定在美国纽约，而根据美国的《联邦仲裁法令》，其中并没有特别的条款规定仲裁裁决的司法审查。根据法无明文规定不禁止的原则，这一条款在美国是没有违反法律的。尽管这是否符合自然正义很值得探讨。这也提出了一个问题，

就是对非规范性的自制规章的审查问题，目前这还是一块法律的空白地带，而这些规章又直接影响着人的权利，目前只能采取个案救济的办法，而无法对规章本身进行审查。

第三，在 ACJ 的人员组成方面，针对前几届对仲裁机构的批评，ACJ 在仲裁员的选任方面做了很大的改变。首先由参加挑战的队伍各选出一名代表组成挑战者委员会，然后由该委员会和卫冕者协商选出五名仲裁员。如果这一方案失败，则由上一届的国际评判委员会主席独立选出五名仲裁员。这一方案得到了挑战者的认可，因为他们终于可以在仲裁员的选任上发出自己的声音，尽管这样的声音仍然很微弱。令人高兴的是，经过双方的努力，还是最终选出了五名仲裁员，其中四名是帆船方面的专家，一名是世界顶尖级的仲裁员。



第四，在仲裁程序方面，除遵循一般的仲裁规则之外，ACJ 有许多特别的地方值得我们注意。ACJ 备有一份详细的通讯录，上面有所有可能参加仲裁人员的电子邮箱和通讯地址，这样，如果发生纠纷，当事人可以很方便的通过各种方式向仲裁庭提交申请。根据规定，以电子邮件方式提交给仲裁庭的所有文件资料都是有效的，仲裁庭在收到相关的材料后，认为如果没有需要特别保密的，将散发给通讯录上的人，这样使他们有充分的知情权，以便在相关纠纷涉及自己的利益时，立即向仲裁庭申请加入仲裁。



仲裁庭虽然有五名成员，但在这一届比赛中，没有沿袭上几届的做法，必须要求五名成员同时参加方能做出裁决，而是有了一定的灵活性，规定在紧急情况下，一件纠纷必须马上仲裁，否则将影响比赛，而又有仲裁员不能马上参加仲裁时，有三名以上仲裁员就可以做出裁决，而且在这种情形下做出的裁决也是终局性的，对参加仲裁各方有拘束力，不能上诉。

议定书规定ACJ的仲裁地为美国纽约，因而，在仲裁中，将适用美国的《联邦仲裁法令》，由于美国是《承认和执行外国仲裁裁决的纽约公约》的成员国，因而《纽约公约》对ACJ也是适用的。这样根据《纽约公约》第2条的规定，ACJ的排他性管辖权在所有《纽约公约》成员国都是有效的，这些成员国的法院应拒绝对相关纠纷进行管辖，并将案件提交给ACJ仲裁。虽然ACJ将它的仲裁地设为纽约，但仿照国际体育仲裁院的做法，如果为了方便，它可以在世界上的其它地方开庭，但这些仲裁的仲裁仍然认为是美国纽约。

ACJ的所有仲裁裁决都会公布，除非ACJ认为这些裁决涉及当事人各方的机密。同时，如果仲裁庭中有异议意见的话，经持异议意见的仲裁员的同意，他的异议意见也将会被公布。另外，ACJ所有的仲裁都是免费的，仲裁员没有任何报酬，在仲裁过程中发生的费用一般由仲裁各方平均承担。下面简单的介绍两个已经裁决的典型案列。



ACJ第002号案件。这是一个技术仲裁案件，也是ACJ处理的第一个技术仲裁案件，在前两届美洲杯帆船赛上，此类纠纷是由国际评判委员会负责处理的。案情是这样的，辛迪加 K队在与Le Defi队的一次比赛中，辛迪加 K队的船体被Le Defi队损坏，当时辛迪加 K队向裁判提出了抗议，但裁判拒绝对Le Defi队做出处罚。辛迪加 K队向ACJ提起仲裁，要求裁决Le Defi队违反了禁止不合理碰撞的义务，应赔偿自己修理帆船的损失。仲裁庭在四名仲裁员出庭的情形下做出了裁决，认为裁判的决定是不能上诉的，而且Le Defi队是因为辛迪加 K队违规在先而不可避免的碰撞上其帆船的，因而辛迪加 K队的请求被驳回。该案的意义在于仲裁庭维护了裁判赛场裁决的权威性，正确的适用了帆船赛的比赛规则。



ACJ第005号案件和第006号案件。这两个案件处理的案情相似。Karol Jablonski和Miguel Jauregi以前是挑战者+39队的运动员，但这两名运动员离开了+39队加盟了同是挑战者的EL Reto队，+39队向ACJ提起仲裁，认为这两名运动员的行为违约，而且EL Reto队的行为违反了公平比赛的精神。要求仲裁庭发布一项临时禁令禁止这两名运动员为EL Reto队比赛。仲裁庭在经过审理后认为，运动员与船队之间的合同纠纷不属于ACJ的管辖范围之内，因而它不能发布临时禁令。但是，仲裁庭认为，对于挑战者违反公平比赛精神的纠纷，它有管辖权。但就在开庭前两天，两队达成了一项解决方案，+39队撤回了仲裁请求，本案的意义在于ACJ对自己的管辖权有清醒的认识，对于各参赛者的内部事务它不会干涉，充分尊重它们的自治权。

#### 4， 结论和启示



从上面对美洲杯帆船赛的纠纷解决机制的探讨可以看出，它经历了一个从无到有，并逐步发展完善的过程，并且已经取得了一定的成绩。第30届比赛期间处理了20起案件，第31届比赛期间处理了22起案件，第32届比赛到现在为止已经处理了14起案件。作为一项体育赛事，能处理如此之多的案件，应该可以说，美洲杯的仲裁机制已经得到了参赛各方的广泛认可。这些纠纷的顺利解决，也为比赛的顺利进行发挥了巨大的作用。特别是该机制的一些创新之处，对参赛各方是十分有益的，比如对仲裁信息的共享，可以使参赛各对了解赛事在运作机制及规则方面的进展，避免类似的纠纷的发生，如果涉及自己的权益，可以很方便的申请加入仲裁，维护自己的权益。仲裁的快速和免费使纠纷各方避免了诉诸法院的种种不利影响。从而能够尽快的解决纠纷，将更多的精力投入到提高比赛成绩中去。裁决结果的发布则可以使相关各方从中了解到仲裁庭的立场，从而在某种意义上对初赛者的行为有导向作用，事实上，经过多年的实践，仲裁庭逐渐形成了自己的一些判例法。当然该仲裁机制也仍然存在着一些缺陷，特别是对仲裁裁决司法审查的排斥，是不符合自然正义的要求的，也是对当事人权利的侵犯，在许多国家是有违公共政策的，而目前又缺少对美洲杯规则的审查机制，因而只能期待其自身的纠错机制来进行完善。





赛的纠纷解决机制仍有继续完善的必要。

在我国，随着体育运动的发展，各种体育纠纷大量出现，虽然1995年颁布的《体育法》明确规定了要建立我国的体育仲裁机制，但十多年过去了，我国的体育仲裁机制仍然没有建立，更别说为像美洲杯帆船赛一样为单项体育赛事设立专门的仲裁机构。但目前我国其它的体育纠纷解决方式又不成熟，如体育组织的内部纠纷解决机制和法院的诉讼解决机制，因而大量的体育纠纷无法得到顺利公正的解决，这在很大程度上将阻碍我国体育运动的发展。因而充分考虑体育纠纷的特殊性，借鉴国外成熟的体育仲裁制度的经验，建立我国的体育仲裁制度迫在眉睫。开始虽然可能会遇到一些批评和挫折，但一定会做的越来越好，美洲杯帆船赛仲裁机制的发展和成熟就是我们很好的典范。

在ACJ的仲裁范围上也有自己的特色，它是将技术仲裁与规则仲裁合二为一的仲裁，既仲裁赛场中对裁判决定不服引发的技术性专业纠纷，也仲裁因规则适用而产生的非技术性专业纠纷。而在目前许多国家体育仲裁是将技术专业纠纷排除在外的，因为对于赛场内裁判的裁决，除非裁判有受贿等极特殊的情形，一般是必须服从的，不存在推翻的可能性。在国际体育仲裁院的实践中，也一直坚持对体育技术问题不予干预的原则，维护各体育行会在这些问题上的自治，保证各体育项目的竞赛技术规则的统一。但我们也必须注意到这样一个区别，即ACJ提供的是一种内部仲裁，是一种体育组织的内部纠纷解决程序，而各国体育仲裁组织和提供的是一种外部仲裁，因而从这一点来看，ACJ合二为一的仲裁方式是可以理解的。但如前所述，缺少外部仲裁和司法救济的机制，美洲杯帆船

## 【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

7th, 2013      Editor: Zhang Bing

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# Hotspot in Sports News

## Super Stenson sets new standards with historic double

Henrik Stenson is targeting the World No.1 spot and his first major after completing the 2013 season with a historic double on the PGA and European Tours. Stenson capped an "incredible summer" Sunday by completing a front running victory in the World Tour Championship with a stunning last round eight-under 64. The success wrapped up the Race to Dubai as leading money winner in Europe.







It was a mirror image of his win at the Tour Championship on the PGA Tour, which saw him land the FedEx Cup and a \$10 million bonus pool. Many believe that No.3 ranked Stenson is already the tops, not least Ian Poulter, who finished second to Stenson, six shots back and second in the Race to Dubai. *"Henrik has not made a mistake all week and I just had to make sure of second place and some valuable Ryder Cup points,"* he told the official European Tour website. *"I have thrown a lot at him and given him so much stick, but he is the best player on the planet right now."*

The 37-year-old Stenson said he would be taking a break after his grueling end to the season before focusing on this major goal. *"It's going to take a lot more good golf but I am certainly going to keep on trying"*. A major also eluded the Swede despite his superb year, finishing second at the British Open and third at the U.S. PGA Championship to kick start his amazing run of high finishes in big money events. *"It has been a dream season,"* he admitted. *"I played so well this week. I knew the guys would try to catch me, especially Ian who never gives up. I wanted to stay ahead of him and I*

*managed to do that. I don't know how I am going to be able to top this next year but I am going to give my best in the majors and that (becoming the first male Swedish player to win one) would be the icing on the cake."*



Stenson capped his round and his season with a stunning eagle on the 18th for 25-under on the Earth Course at Jumeirah Estates. Poulter bravely gave chase with a fine 66, while French hope Victor Dubuisson finished third, a further two shots back. A trio of former World No.1's in Rory McIlroy, Luke Donald and Lee Westwood shared fifth to give promise of an improvement in 2014 after disappointing seasons by their own standards. All secured valuable points towards the 2014 European

Ryder Cup standings while Stenson has all but secured a return to the team after his heroics. He suffered a slump from 2010, not helped by illness and slipped to 230th in the rankings before his remarkable return to form.

## Vettel secures record eight straight F1 win at US Grand Prix

There was something of the processional about Sebastian Vettel's eighth straight win of the season here on Sunday, an almost weary wave-past borrowed from the archives of royal roisterings. It was his 38th triumph, his 12th of the season, and it shattered the record of seven consecutive victories in one season previously held by Michael Schumacher and Alberto Ascari. But any suggestion that ennui might be setting in Milton Keynes was quickly



dismissed by the Red Bull team principal Christian Horner. *"It never gets boring because you have to remember the days when we weren't winning,"* he said.

*"We don't feel bad about doing a lot of winning. We're very proud of it. It's not down to us to help the others to succeed. The focus is very much on ourselves. There are teams with more resources*

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*and nicer factories and more machinery and manpower. But it's how you use it."*

Horner also gave an insight into Vettel's motivation when he added: *"He enjoys winning and competing. He's fixated on the DHL Fastest Lap trophy [awarded to the driver with the most fastest laps in the season]. He will be enormously pissed off if he doesn't achieve that trophy. He was pretty emotional at the end of the race because he'd beaten the record of one of his idols [Schumacher]. It seemed unlikely that kind of record would be beaten. To win eight consecutive races, to have won every race since July, is mind blowing, especially when you consider the quality of opposition we're up against it."*

Certainly Vettel did not appear tired of the chequered flag. As he finished the race there was an explosion of pure joy. *"I'm speechless,"* he said. *"We have to remember these days. There's no guarantee they will last. I love this team. Incredible, I love you guys."*

Vettel quickly expanded on the advantage given him by his 44th pole position and not even the introduction of the safety car following Adrian Sutil's early crash could disturb the serenity of his afternoon in the warm Texas sunshine.

There was also a commanding drive from Romain Grosjean in his Lotus. He finished second, following his third, third, third and fourth finishes in the previous four races, but his new team-mate Heikki Kovalainen suffered Kers



problems and finished out of the points in 15th.

Mark Webber once again made a faltering start, though he finished third, his 40th podium. Webber, who started behind Vettel on the front row, was passed by Grosjean and Lewis Hamilton before he arrived at the first turn. It was the ninth time this season – and the fourth occasion in as many races – that he had lost positions at the start of a race. There was also a strong drive from Valtteri Bottas, who had been in muscular form all weekend. His eighth

place was Williams' best result since Abu Dhabi in 2012, more than a year ago.

Hamilton said afterwards that his fourth place felt like a win after his recent mysteries. But there were some testy moments on the track. When told to look after his tyres he said, almost Raikkonen-like: *"That's what I'm doing man, let me focus."* And when told to hold off a charge from Nico Hulkenberg (who was impressive once more) he said: *"I'm trying to."* Yet, later in the race, he appeared to contradict himself



when he said: *"You need to give me some feedback, man, tyres, temperatures."*

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When this curiosity was pointed out to the Mercedes team principal, Ross Brawn, he replied: *"We're getting used to that now."*

Meanwhile Sergio Pérez, dropped by McLaren for next season, finished seventh, the third time in as many races and the sixth time this season that he had finished ahead of Jenson Button, who tenth. Afterwards, Button said it was not just the car that was uncompetitive. *"This weekend I just didn't put it all together,"* he said. *"I've got to sort myself out."* That's something four-times world champion Vettel appears to have done rather well.

## Lance Armstrong comes face to face with whistleblower Emma O'Reilly



Lance Armstrong has come face to face with the whistleblower who first spoke out against the disgraced cyclist's long-standing drug taking and told her that his attempts to ruin her reputation were "*inexcusable and embarrassing*".

Armstrong, who admitted in January that he took performance-enhancing drugs during all seven of his Tour de France wins – of which he has been stripped – was brought together in Florida with Emma O'Reilly by the Daily Mail. O'Reilly was a soigneur on the US Postal Team which Armstrong represented when winning his first six Tour titles and it was she who in 2004 spoke out against the American and the systematic doping that he was a fundamental part of.



Armstrong reacted by taking legal action against O'Reilly, who is from Dublin but now runs a physiotherapy clinic in Hale, Cheshire, accused her of being an alcoholic and made other disparaging comments about her which he now admits were lies. Meeting the 43-year-old for the first time since 2000, in the presence of the Daily Mail's chief sports reporter, Matt Lawton, the American said: *"I never expected to see Emma. I wanted to talk to her. I felt it was necessary to have a conversation because there were definitely people that got caught up in this story who deserved an apology from me. When I reached out in January it was to talk. Emma, I appreciate, wasn't ready for that. But it's good that we are [now] doing this in person."*

*"At the time, when I said what I said about her, I was fighting to protect a lot of positions. But it was inexcusable."*



*It's embarrassing. I was in a conference room, giving a legal deposition, and I had no idea it was going to get out. But that doesn't excuse it. I guess you should always assume that, in that setting, the whole world will watch it the next day. It was totally humiliating for Emma. And if I saw my son do that, there would be a fucking war in our house."*

Following a separate, private meeting between the pair, O'Reilly told the Mail: *"It was a bit stilted because I guess*



*we were two people who hadn't talked for a long time, who had more than a bit of history. But we had a chat about people we knew, about our families.*

*"I was thinking, he never actually used the word sorry. But I wasn't looking for an insincere apology. There are different ways of saying sorry and I felt what he did say was genuine. Now people might think I'm under Lance's spell but I'm not. I wasn't when I said*

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*what I did about him in 2004 and I'm not now. He was a jerk. He was a bully.*

*"But there are wider issues here and I wanted to address those, too. That said, I wanted closure with him and today I feel I have it. This part, for me, is over."*

Armstrong was banned for life from cycling after the United States Anti-Doping Agency accused him in August 2012 of conducting the *"most sophisticated, professionalised and successful doping programme sport has ever seen"*. Last month he vowed to testify with "100% transparency and honesty" at any future inquiry into doping.

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# International Sportslaw Practice

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## Trademarks in sports – an overview

### Introduction

The intersection between trademark law and the sports industry creates a number of interesting and cutting edge issues. Social media turns overnight celebrities into #hashtags. Catch phrases such as 'Manny Being Manny,' 'Linsanity,' and 'Tebowing' go viral. Lukas Podolski of the Arsenal Gunners has recently become known for his catch phrase "Aha!" with a YouTube video featuring the catch phrase garnering over half a million views to date.

Professional sports is a multi-billion dollar empire and athletes are beginning to find ways to leverage and add value to their own personal brands. While the commercialization of sporting teams and athletes is ubiquitous, little attention is given to the intellectual property issues that constantly lurk in the background.

Intellectual property can be a company's most valuable asset. The brand value of multi-national corporations like Walmart, McDonalds or Starbucks is well-recognized; however, professional sports teams and leagues are some of the most valuable brands. Real Madrid (\$3.3 billion USD) topped Forbes' list of most valuable sports franchises released July 15, 2013, followed by Manchester United (\$3.17 billion USD), Barcelona (\$2.6 billion USD) and the New York Yankees (\$2.3 billion USD). To protect their core brands, these franchises file trademark applications for team names, logos, and even mascots. Individual athletes, such as Tiger Woods and Serena Williams, have developed their own brands thereby creating business and endorsement opportunities for themselves. To protect their brands and their future business ventures, professional athletes trademark their own names, nicknames and catch phrases.



## Using trademarks to build brands

Trademark protection and registration in the United States is governed by *The Lanham Act*. This federal statute provides protection from trademark infringement, dilution and false advertising. *The Trade Marks Act 1994* and the *Trade-marks Act* provides similar protection for the owner of registered



trademarks against infringements in the United Kingdom and Canada. The United States Patent and Trademark Office ("USPTO"), the UK Intellectual Property Office ("UKIPO"), the European Union Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM"), and the Canadian Intellectual Property Office ("CIPO") are all responsible for trademark registration in their respective territories and maintain an online, public database of trademark applications and registrations.



In the United States, *The Lanham Act* prohibits the registration of any trademark that falsely implies a connection with a living individual unless the individual has consented to the registration of that mark. Celebrities and athletes have a statutory and/or common law right of publicity over their own name, likeness and identity for commercial purposes. Legislation offers protection to ensure that other individuals and corporations are unable to profit from another individual's personal brand.

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## Athlete names

Lebron James, the star forward for the Miami Heat, is widely considered to be one of the best basketball players in the world. With this status comes an extensive amount of brand recognition. To protect and leverage this brand, James has applied for and/or registered a number of trademarks. There have been several filings with the USPTO for the word mark 'Lebron,' originally all filed by Nike, Inc. in association with a number of categories of goods and services. Three applications matured to registration in International Classes 15, 25, and 28, and were subsequently assigned to LBJ Trademarks, LLC on April 2, 2013. In addition to building his brand with Nike, James has also established a non-profit corporation, that gives back to his hometown community by helping the Boys & Girls Clubs across Northeast Ohio. As part of this initiative, The Lebron James Family Foundation has applied for and registered a number of trademarks, including, 'The Lebron James Family Foundation,' 'I Promise,' and 'Wheels for Education.'

In order to protect their intellectual property, athletes have used different vehicles to hold their trademark portfolios. Lebron James has established a limited liability corporation for his profit-oriented endeavours and a non-profit corporation for his





charitable work which is common among American sports stars. Tiger Woods uses a Swiss corporation, Tiger Woods Enterprises S.A. to hold his portfolio of marks. Others, like 2013 British open winner Phil Mickelson and soccer superstar David Beckham have registered their trademark portfolios in their own names instead of through a corporate entity. The choice of entity is largely driven by the jurisdiction in which the athlete resides and the athlete's tax planning objectives.

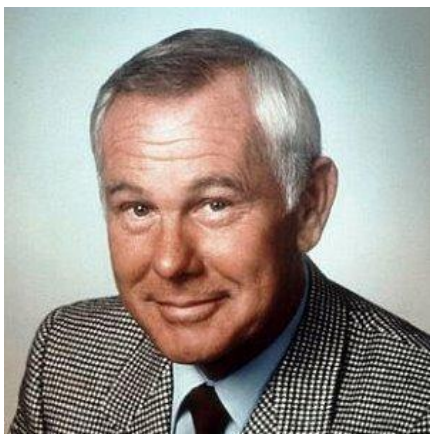
## Catch phrases

More and more athletes are registering their catch phrases as trademarks. While this practice is increasing, it is certainly not a new phenomenon. In 1989, then Los Angeles Lakers head coach, Pat Riley, trademarked the phrase 'THREE-PEAT' in reference to his team's third consecutive NBA title. A number of recent examples of catch phrases which athletes have applied for or registered as trademarks include:

- 'Linsanity' filed with the USPTO in 2012 by current Houston Rocket and former New York Knick Jeremy Lin, one week after his first career start in the NBA;

- 'Stomp You Out' & 'Stomp Them Out' filed with the USPTO in 2012 by former New York Giants defensive end Michael Strahan;
- 'Can't Wait' registered with the USPTO in 2012 by former New York Jets linebacker Bart Scott;
- 'LE0 MESS1' registered with OHIM in 2011 by FC Barcelona forward Lionel Messi;
- 'Revis Island' filed with the USPTO in 2010 by current Tampa Bay Buccaneer and former New York Jets cornerback Darelle Revis;
- 'Lovee' filed with the USPTO in 2009 by Venus and Serena Williams;
- 'CR7' registered with OHIM in 2009 by Real Madrid forward Cristiano Ronaldo;
- 'I Love Me Some Me' & 'Getcha Popcorn Ready' registered in 2009 and 2011, respectively, with the USPTO by former NFL wide receiver Terrell Owens;
- 'You Cannot Be Serious' registered with the USPTO in 2008 by former World No. 1 professional tennis player, John McEnroe;
- 'LIVESTRONG' registered with the UKIPO, the USPTO, OHIM, and CIPO by the Lance Armstrong Foundation, although registrations for the trademark are in the process of being assigned to the LIVESTRONG Foundation;
- 'Turn 2' registered with the USPTO in 1999 by New York Yankee shortstop Derek Jeter.





A couple of cases dealing with entertainment industry celebrities shed some light on the law around catch phrases. In *John W. Carson and Johnny Carson Apparel, Inc. v Here's Johnny Portable Toilets*, a US District Court recognized that the right of publicity should extend to include catch phrases as part of one's identity. In that case, Johnny Carson, the popular host of *The Tonight Show*, sued a portable toilet manufacturer for using the phrase 'Here's Johnny' in their marketing efforts. The phrase was used each night on the show to introduce Carson and he argued that the defendant's use of Here's Johnny Portable Toilets misappropriated Carson's personality. The case was dismissed, stating that there was no use of Carson's name or likeness and that the likelihood of confusion test had not been satisfied. The 6th Circuit agreed with respect to the likelihood of confusion but disagreed in part, entrenching the principle that the right of publicity extends to a celebrity's entire identity, including a catch phrase.

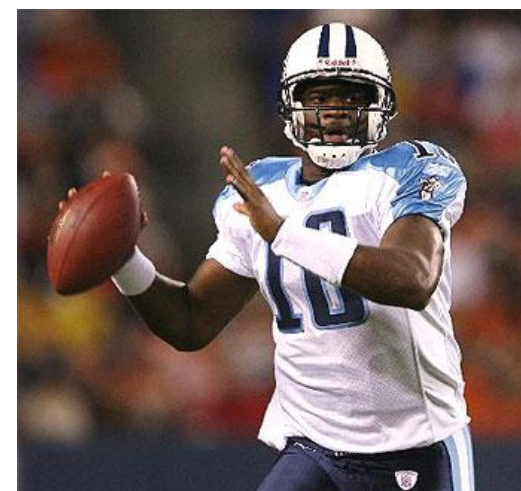
Interestingly, the same catch phrase was subject to further judicial scrutiny in Canada in *Carson v Reynolds*. Carson opposed Reynolds' application to register the catch phrase as a trademark. As in the US, the court of first instance rejected Carson's claim, yet he succeeded on appeal, largely due to new evidence indicating that more than 50% of people identified Carson with the catch phrase 'Here's Johnny'.

More recently, in *Paris Hilton v Hallmark Cards*, Paris Hilton sued Hallmark Cards for using her name, likeness and catch phrase 'That's Hot' in one of the company's birthday cards. While the case was ultimately settled, the 9th Circuit reaffirmed the principle that one's right of publicity over a catch phrase can be misappropriated.



## Nicknames

Registering trademarks does not mean athletes will avoid becoming involved in lengthy legal battles in order to protect their intellectual property rights against infringers. Shaquille O'Neal, known more commonly as Shaq, has licensed his personal brand to companies like Reebok, Radio Shack and 24 Hour Fitness. When an Arizona company was selling "Shaqtus" t-shirts without O'Neal's consent, O'Neal was forced to commence legal proceedings. In a summary judgement ruling by the US District Court in Nevada, an injunction was issued prohibiting the company from using the Shaqtus mark or any other mark or domain name confusingly



similar to any of the "Shaq" trademarks owned by O'Neal. Similarly, Vince Young sued three individuals for trademark infringement who filed applications for his initials (VY) and nickname (Invincible) only a day after he won the US College National Championship as quarterback for the University of Texas. The case was settled in 2010 and Young subsequently applied for and registered the trademarks 'VY' and 'Invincible' with the USPTO.



Rising NFL star Robert Griffin III, commonly known as 'RG3' filed an application to register the RG3 mark in Class 25 in January of 2012. Research Group Three, Inc., who filed an application for RG3 in Class 25 in January of 2013 but claimed first use in 1999, opposed Griffin's application in June of 2013. Research Group Three develops motorcycle suspension products and have sold a variety of products, including clothing, bearing the RG3 mark. The company argues that Griffin's *"unrestricted use and registration of the RG3 mark is likely to cause reverse*

*confusion...or to deceive the trade and purchasing public."*

## Mascots

While athletes quickly develop personal brands, sports franchises spend significant resources creating brand loyalty amongst their fans. Mascots are an important part of the in-game experience and for many teams are as identifiable as the star athletes on the playing surface. There have even been three team mascots – the San Diego Chicken (San Diego Padres), the Phillie Phanatic (Philadelphia Phillies) and Youppi (the Montreal Expos) – who have been inducted into the Baseball Hall of Fame. In 1999, the Sporting News named the San Diego Chicken one of the Top 100 Most Powerful People in Sport for the 20th Century. With the San Diego Chicken's stardom also came legal battles – proving that even mascots are not immune from trademark infringement suits. The owners of the 'Barney' character sued the creator of the San Diego Chicken for using a Barney look-alike to entertain audiences at games. The case was dismissed by the US District Court. The on-field fighting was a parody and there was no intention by the San Diego Chicken to confuse customers. The decision was affirmed on appeal by the 5th Circuit, confirming the right to use a copyrighted work for satiric or parodic purposes.

## Team names

Team names have been a source of controversy at the collegiate and professional level. In 2005, the National Collegiate Athletic Association (the "NCAA") released a policy guideline prohibiting teams from using native American imagery. The majority of schools responded accordingly: the Southeastern Oklahoma State Savages became the Savage Storm, the St. John's Redmen became the Red Storm, the Marquette Warriors became the Golden Eagles and the Stonehill College Chieftains became the Skyhawks. Further, the



University of Iowa prohibited its teams from scheduling competitions hosted by schools using native American imagery. In keeping with this policy, Iowa refused to invite the University of North Dakota to a track meet in 2012 because of the school's Fighting Sioux mascot. Prior, the University of North Dakota had challenged the NCAA policy guidelines in court. After agreeing to a settlement in 2007, North Dakota failed to obtain the necessary consent from each Sioux tribe in



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the state. In the aftermath of the failed settlement, the state legislature voted to retain the Sioux name, before voters ultimately overruled the decision in a state referendum.

The NFL's Washington Redskins have one of the most controversial team names in professional sports. In 1992, a group of native Americans filed a petition to have the trademark cancelled on the basis the name was disparaging in contravention of the Lanham Act. The TTAB concurred and order the cancellation of the Redskins' trademark registration in 1999. The team appealed the decision and won on a technicality – the Doctrine of Laches. In effect, the court decided not to deal with the issue, finding rather that the group waited too long to file the lawsuit. The case lasted nearly 17 years, including appeals all the way to the Supreme Court. As a result of the decision on the basis of a technicality, another group of native Americans, aged 18-24, decided in 2006 to file a nearly identical claim. The hope for this group is that the court will decide the case on its merits and cancel the Redskins' registered trademark.

The case has widespread implications – not only for the Redskins, but for other sports franchises as well. If the Redskins, the 8th most valuable sports team as valued by Forbes in 2013 at \$1.6 billion, are found to have a disparaging mark as a team name, the organization will have to decide if they want to continue using the cancelled

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mark or transition to another team name like the NCAA schools noted above. In addition, petitions will certainly be filed with the TTAB to cancel other similar team name registrations.

Opinions on this issue are aplenty. Two representatives of the US Congress recently contacted the Washington franchise and NFL commissioner Roger Goodell regarding the Redskins' team name. Goodell has chosen to publicly defend the Redskins name and claim that the name "*from its origin represented a positive meaning distinct from any disparagement that could be viewed in some other context.*" Whether you agree or disagree with Goodell, it will be very interesting to see how this case plays out.

In summary, there are no shortage of sports related trademark issues. As sports industry brands grow in prominence, so do the underlying day to day branding and trademark issues that deal with individual and team names, catch phrases and nicknames, and disparaging marks.

# What should boxing fans and the media do to stop young men dying and being incapacitated again and again?

## Introduction

Heavyweight boxer Magomed Abdusalamov is in an induced coma from which he may never wake up. He was taken to hospital in New York on Saturday night after a bruising heavyweight fight with Mike Perez on HBO, where he underwent surgery to remove a blood clot from his brain. The New York Post's George Willis reported Abdusalamov's prognosis had worsened after he suffered a stroke on Tuesday.



Abdusalamov's condition has forced boxing fans and writers to take an uncomfortable look at our sport for

the second time in as many weeks. On October 22 junior featherweight Frankie Leal died from a brain injury after being knocked out by Raul Hirates in Mexico. Iron Mike Gallego wrote beautifully but painfully on the subject. But here's the thing about what happened to Leal: it was preventable. As Gallego points out, Leal had been knocked out four times, had already left the ring on a stretcher once before, and the fight in which he was killed was essentially a protracted beating.

You can't really say any of those things about Abdusalamov or the fight that put him in a coma. The Russian had never been knocked out. He finished the bout with Perez with a disfigured face, but apart from the first round, he was never really "hurt" in the boxing sense; being close to losing consciousness. The fight was one-sided, but there was not an overwhelming outcry about it until after Abdusalamov was taken to hospital. No moment stood out in which the referee, Benjy Esteves Jr, or Abdusalamov's corner should have stopped the fight (at least not by the usual criterion of a boxer being unable to defend himself).

## “Quitter”

The uncomfortable truth is that if Abdusalamov had told his corner he didn't want to continue on Saturday night,

many (but by no means all) would have called him a "quitter". Going into the bout with 18 knockouts from his 18 fights, he was in many ways a victim of one of boxing's oldest tropes: "the puncher's chance".

Abdusalamov's life-threatening injuries should be even more confronting to boxing fans than Leal's death. Abdusalamov is not on death's door because of boxing's regulatory failings, he's on death's door because he boxed. We're all hypocrites for watching and then wringing our hands after the fact. Despite what we may say about skill, personality and the triumph of will, we watch boxing because of its brutality, not in spite of it. HBO's own



compulsively watchable "Greatest Hits" segments are all the evidence you need of that.

Abdusalamov fought on a high-rating telecast on boxing's biggest network in one of the best regulated jurisdictions in America. As arguments for banning the sport go, you don't get much more convincing.

So if we don't want to see the sport banned (and if we want to watch with a clean conscience), is there anything boxing fans and media can do to stop young men dying and being incapacitated again and again? I honestly believe there is.



We have to wean ourselves off the worst of boxing's violence, even if it's what we find attractive. Talk of "early stoppages" needs to become a thing of the past, at least in situations where they're not obviously corrupt. We in the media need to do our bit to dismantle some of the more macho elements of boxing culture. Springs Toledo has said much the same thing. Our own Tim Starks also had an intelligent, short take. Fighters need to know they don't betray us by begging out of fights when they get hurt. Perhaps more importantly, cornermen need to know the same. Abdusalamov repeatedly complained about the damage to his face, which, in hindsight, was almost certainly a sign his corner should have picked up on. Rick Reeno reported that some of his corner wanted to stop the fight. If even one person in the corner wants to stop the fight, then it's time to throw in the towel.



## **Little direct responsibility from regulators**

As much as the regulators hold little direct responsibility for what happened to Abdusalamov, extra training and accountability for cornermen would be welcome. If the resources are available, and I suspect they are in New York and Nevada, cornermen should watch tapes and justify their actions to the commission. Cornermen who repeatedly allow their fighters to suffer beatings should be sanctioned.

This is not self-righteous preaching. I see all the worst elements I've been talking about in myself. At the time, I didn't think the referee or doctor should have stopped the fight. To put it bluntly, I enjoyed the beating that put a man in hospital and may kill him. Last week, more out of a sense of guilt than anything, many of us donated to support Frankie Leal's family. Let's all hope there will no appeal necessary for Abdusalamov's. On that note, and briefly, I don't think I've read a more spine-chilling sentence than "promoters Leon Margules and Lou DiBella... are establishing a fund to donate and raise funds to help alleviate the financial burden the unfortunate brain injury Abdusalamov suffered Saturday night has placed on him and his family." Abdusalamov went to work on Saturday night and he may never return home to his wife and three young children. Even if he does, he may not (and probably should not) ever box again. Forcing him and his family to pay even part of the medical bill would be a gross injustice.

## Conclusion

While America's broken healthcare system may be at fault rather than event's organisers, HBO and the promoters enjoy a far, far bigger share of boxing's wealth than most fighters – for them to ask for donations borders on offensive. They should step up and pay this man's medical bill in full.

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# Introduction of Sports Law Group

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## 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

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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.

If you have any question, please contact us via email at [zhang.bing@dachenglaw.com](mailto:zhang.bing@dachenglaw.com).

Internal documents, only for communication.

