



# Sports Law Periodical

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## *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.

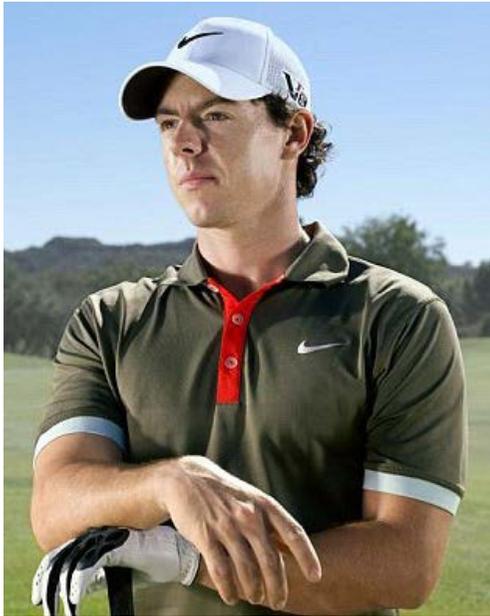


In an interesting twist to this case, on 26 March 2013, Qiaodan Sports threw the ball back into Michael Jordan's court and countersued him for an apology and damages at the Quanzhou City Intermediate People's Court in Fujian, alleging that the above lawsuit has tarnished its reputation and thwarted its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



## *Oakley v Nike and Rory McIlroy*



It was announced on 21<sup>st</sup> January 2013 that Rory McIlroy had signed a reported £150m, ten year sponsorship agreement with sportswear brand, Nike.

McIlroy previously had various sponsorship agreements, such as with Santander Bank, Oakley for eyewear and clothing, Titleist for his clubs and golf balls, Audemars Piguet, and Jumeirah.

In consideration for the sums involved, the player will be locked in for ten years to Nike's exclusive 'head-to-toe' endorsement deal, compelling him only to wear Nike products.

McIlroy's agreement with Titleist and Jumeirah were terminated by mutual consent.

In December 2012, Oakley filed a lawsuit concerning the contract the brand had in place with McIlroy. The provisions between the player and Oakley included a 'right of first refusal', giving Oakley the contractual privilege to match any offer presented to the player for eyewear and clothing. Nike's 'head-to-toe' arrangement clearly prevented the player wearing any Oakley brand products.

Oakley claimed that the Nike sponsorship deal had been agreed whilst the player was still under contract to Oakley. It also submitted that it offered to match the terms of Nike's offer but was repeatedly ignored by the player. On these grounds, Oakley asserted that it was denied the right of first refusal validly enforceable in its contract, and thus Nike had induced McIlroy to breach his contract.

McIlroy was cited as the second most marketable athlete in the world by Sportspro magazine. This was by virtue of his age, popularity, charisma and on-course success. Oakley has alleged, therefore, that the failure to adhere to the contract has caused ‘irreparable’ damage to its brand. The brand also asserted that US\$300,000 was spent on a photo-shoot for the new products that the player was due to endorse in 2013.

McIlroy’s management company, Horizon, asserted that all contractual obligations to Oakley were fulfilled and that any claim for breach of contract had no merit. Emails exchanged between Oakley and Horizon, in late September 2012, indicated that Oakley understood and agreed that it was out of the running for the 2013 contract.



The sponsorship has now been announced, so Oakley will not be able to obtain an injunction. It would have been difficult to successfully argue that an injunction was essential and that damages were not an adequate remedy for what was argued to be a simple inducement to/breach of contract.

This case demonstrates the lengths that a brand will go to secure a high profile athlete when it forms a key part of the brand strategy. Nike took all steps to ensure that McIlroy became a Nike athlete, in the face of stiff competition, in particular from Adidas and Taylormade. Ultimately, there is always an element of risk when entering into a long range deal. However, Nike will have taken this decision based on careful analysed business model and sound projections.

## *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.

## *Baltimore Ravens controversy*

On 5<sup>th</sup> November 1995 Art Modell announced that the National Football League's ('NFL') Cleveland Browns franchise was relocating to Baltimore for the 1996 season. While the team name would be the Ravens, the franchise was still without a team logo.

Frederick Bouchat, an amateur artist from the Baltimore area, submitted, on a voluntary basis, his drawing of a winged shield logo to the Baltimore Ravens' stadium management group in April of 1996. In his letter to the organisation enclosed the proposed logo and his only request was a signed helmet in return for the use of his design. On 5<sup>th</sup> June 1996 the Baltimore Ravens unveiled their Flying B logo, which bore a striking resemblance to Bouchat's logo.

The Baltimore Ravens went on to use the Flying B as their primary logo until 1998, at which time the team opted for a different logo. Bouchat initiated a number of lawsuits against the Baltimore Ravens in 1998 for copyright infringement for their use of the Flying B logo from 1996 to 1998. Bouchat claimed \$10m in damages for all profits that the team earned in relation to its use of the logo.

In order to prove copyright infringement in the US, Bouchat had to establish that he owned the copyright to the Shield Drawing and that the Ravens copied protected elements of his copyrighted work. The Raven's version of the logo was seen as an improvement, but Bouchat argued that it was still based on the Shield Design and therefore the Ravens substantially copied it.



The District Court in Maryland split the case into two phases, a liability phase and a damages phase. In the liability phase, the jury found that Bouchat's copyright was infringed. In the damages proceedings, Bouchat took the position that he was entitled to profits from the Raven's major sources of revenue including sponsorship, broadcasting and other media licenses, ticket sales, general business activities including game day parking, sale of team merchandise and royalties from third party licensees who sell team merchandise. In a motion for partial summary judgement, the Ravens and NFL were successful in excluding profits derived from all of these revenue sources except merchandising revenues. Bouchat was denied any monetary recovery as it was not proved that the merchandising profits of the Ravens were 'attributed to the infringement' – as under s.504(b) *Copyright Act 1976*. The District Court also rejected Bouchat's claim that he was entitled to statutory damages because he did not register his copyright prior to the infringing conduct.

In 2008, Bouchat sought an injunction to prevent the Ravens, the NFL and video game maker Electronic Arts ('EA Sports') from displaying the Flying B in pictures, highlights and memorabilia from the 1996 to 1998 seasons. He also requested that all works containing the Flying B logo be destroyed so that the Ravens would no longer be able to infringe his copyright in the design.



The defendants argued that their use of the logo was purely for historical documentary purposes and thus their use of the logo constituted fair use. After applying s.107 of the *United States Copyright Code*, the District Court of Maryland held that the primary nature and purpose of the use was historical; the logo itself had no market value. Thus, the fair use defence was accepted and the request for an injunction denied.

Bouchat appealed again in 2010, when the Fourth Court held that the primary purpose of the logo in the highlight films sold by the NFL

and the highlight films played during Ravens' games were not historical, but rather the purpose was to identify the football players as members of the Baltimore Ravens. These were commercial and non-transformative uses and, therefore, the defendants could not assert the fair use defence.

On 9<sup>th</sup> November 2011, the District Court of Maryland held that the Baltimore Ravens could continue to use the Flying B logo so long as the team paid Bouchat reasonable compensation for the use of his copyright work. The court reasoned that an injunction was not an appropriate remedy since the public interest in the historical aspect of the highlight films outweighed the public interest in granting exclusivity of use to the copyright owner. On 27<sup>th</sup> December 2012, the court awarded Bouchat a one-time payment of only \$721.65. If the Ravens displayed highlight clips containing the Flying B logo during a future NFL game, then the Ravens would also have to pay Bouchat \$100 per clip shown.

In another string of copyright infringement actions, Bouchat sued the Ravens for displays at their stadium relating to Baltimore's sports history which included pictures on which the Flying B logo could be seen. He also sued the NFL and EA Sports for the use of throwback jerseys and helmets with the logo shown in EA Sport' Madden NFL video games. The District Court found that the stadium pictures displays and the NFL videos were non-infringing fair uses, primarily because displays and videos were substantially transformative uses. In April 2013, the court released the NFL from the action on the basis that there no evidence that the NFL licensed the Flying B logo to Electronic Arts or received royalties for doing so.



## *CAS dismiss Malagá C.F. appeal*



The Court of Arbitration for Sport (CAS) has dismissed the appeal filed by Malagá Club de Fútbol (Spain) against the decision taken on 21<sup>st</sup> December 2012 by the Adjudicatory Chamber of the UEFA Club Financial Control Body. As a consequence, the Spanish club is excluded from the UEFA Europa League 2013/14 and will have to pay a fine of €300,000.

Pursuant to the initial UEFA decision, Malagá CF violated the UEFA Club Licensing System and Financial Fair Play Regulations following overdue payables towards other clubs and the Spanish tax authorities.

In its appeal to the CAS, the Spanish club requested that the UEFA decision be annulled or, alternatively, replaced with a new decision including less severe sanctions.

The procedure was referred to a Panel composed of Prof. Ulrich Haas (Germany), President of the Panel Mr. José Juan Pintó (Spain) and Prof. Massimo Coccia (Italy). The parties, together with their representatives and witnesses were heard at a hearing on 4<sup>th</sup> June 2013 at the CAS headquarters in Lausanne. The CAS Panel has issued its decision, without the grounds, which will be communicated at a later date.

## *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.”



## *Rugby league player banned*

The Australian Sports Anti-Doping Authority (ASADA) today acknowledged the decision of the Leagues Anti-Doping Tribunal (the Tribunal) to impose a sports ban on Country Rugby League player Jake Law for the attempted use of clenbuterol.

As a government authority, ASADA works closely with the Australian Customs and Border Protection Service to investigate the trafficking of prohibited drugs, medications and substances.

The Australian Customs and Border Protection Service intercepted a package on 28 January 2011 and notified ASADA. Following an extensive investigation by ASADA, the matter was referred to the Country Rugby League as a potential violation of its anti-doping policy.

The Tribunal imposed a two-year ban on Mr Law for the attempted use of a prohibited substance. The ban, which was backdated to the date of his provisional suspension, means he is ineligible to participate as an athlete or support person in sports with a World Anti-Doping Code (the Code) compliant anti-doping policy until 19 December 2014.



Possession, use or attempted use by athletes of clenbuterol is prohibited at all times under the Code, and penalties for breaches can potentially include a lifetime ban for second offences.

An athlete does not have to succeed in using a prohibited substance or method – if there is sufficient evidence that the athlete has attempted to use a prohibited substance or method, they can be sanctioned.

Unsupervised use of clenbuterol can worsen pre-existing heart conditions or hypertension, and there is a risk of overdose and stroke when used at high doses. It is a potentially dangerous drug that, as well as being banned under the Code, is not approved for human use in Australia.

This matter serves as a timely reminder to all athletes to exercise the utmost caution in checking the contents of products and supplements to ensure they don't contain prohibited substances, particularly those purchased over the internet.



## *Clenbuterol*

When the 2011 Tour de France started in July 2011, the public and press began to focus not only on the outcome of the race but also on the possibility that another cyclist may be found to have adverse analytical finding on doping testing.



Clenbuterol is a non-steroidal agonist drug which has found use in the treatment of asthma through its action as a bronchodilator. However, it can act as an anabolic agent, promoting muscle growth and fat depletion, leading to its unlawful use in sports training and farming. It is known that cardiac and muscular side effects can occur in humans when it is used above the therapeutic dose of 40-60 mcg/day.

It has been established from studies that the dose used in mice to produce a 15% increase in muscle weight over ten days is thought to be equivalent to a dose of 70-100 mcg/day in humans.

Clenbuterol is on the World Anti-Doping Association (WADA) Prohibited List and is subject to in-competition and out-of-competition testing. As clenbuterol is an exogenous substance (one that does not occur naturally in human physiology and metabolism), the detection of any quantity of Clenbuterol in an athlete's sample is treated as an adverse analytical finding. WADA has stated, 'There is no threshold under which this substance [clenbuterol] is not prohibited'.

Under anti-doping laws of strict liability, an athlete is responsible for any prohibited substance found in their urine. This means any positive test will attract a two year ban for a first offence, if the athlete cannot provide an innocent explanation.

In recent years, there have been a number of cases with adverse analytical findings involving clenbuterol, and in several of these, it has followed the alleged unknowing consumption of contaminated meat (presumably contaminated following its unlawful use during the farming process). It is also notable that clenbuterol has been found in various food products and has even caused food poisoning in various countries.

There has been contamination or food poisoning cases in Mexico, Hong Kong, Portugal, France and Spain. In April 2011, Germany's anti-doping agency, Nationale Anti-Doping Agentur, advised against athletes eating products containing meat when travelling to such places, as it might increase the risk of involuntary positive doping results.



## *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’.



## *Human Growth Hormone*

Human Growth Hormone (HGH) is a peptide hormone that stimulates growth, cell reproduction and regeneration in humans and other animals. HGH is used as a prescription drug in medicine to treat children's growth disorders and adult growth hormone deficiency.

HGH has numerous effects on the body, including increasing height in children, increasing calcium retention, and strengthening of the bone, increasing muscle mass and protein synthesis, stimulating growth of all internal organs excluding the brain, reducing liver uptake of glucose, and stimulating the immune system.

In its role as an anabolic agent, HGH has been abused by competitors in sport since the 1960s. Blood tests conducted by World Anti-Doping Agency (WADA) at the 2004 Olympic Games in Athens, Greece, targeted primarily HGH.

WADA and the NFL Players' Association (NFLPA) have been in a long running debate over the application of HGH blood testing in the NFL. Until fairly recently HGH was undetectable by drug testing. It remains undetectable by urine testing, although a blood test for HGH has been used in Olympic sport since 2004, albeit with relatively little success.



## *Craig Windsor professional Boxer*

On the 23<sup>rd</sup> May 2013 UK Anti-Doping confirmed that professional boxer, Craig Windsor, has been banned from sport for three years and nine months following anti-doping rule violation.

Windsor has been charged with possession of two prohibited substances and use of one, based on non-analytical evidence, which was obtained by UKAD in January 2013.

On 17<sup>th</sup> April 2013, he admitted to three anti-doping rule violations: the use, or attempted use, of the anabolic steroid oxandrolone, possession of oxandrolone, and the possession of the anabolic steroid stanozolol. Oxandrolone and stanozolol are both prohibited under category S.1.1 (Anabolic Androgenic Steroids) in the 2012 and 2013 World Anti-Doping Agency List of Prohibited Substance and Methods.



Proceedings were brought against Windsor based on information that was supplied to UKAD by fellow boxer Lanre Olubamiwo, who was already serving a ban. Windsor admitted to National Anti-Doping Panel that the information supplied included ‘clear and unequivocal admissions of possession of two anabolic steroids and the use of one’.

The Panel found that there were several aggravating factors (such as false evidence to the Panel) that justified a greater ban than the two-year standard, namely a ban of three years and nine months. Windsor is therefore banned from all competition from 6<sup>th</sup> March 2013 until midnight on 5<sup>th</sup> December 2016.

UKAD Director of Legal Graham Arthur said, ‘This case has relied on the provision of non-analytical evidence from another member of the boxing community. Over the last 12 months it has become increasingly clear that for anti-doping organisations to succeed in the fight against doping, we need the cooperation and support of the entire sporting community.

‘Mr. Windsor has admitted to possession of two anabolic steroids, and using one, with a clear intention to enhance his performance. This is a serious breach of anti-doping rules and therefore merits the aggravated sanction imposed by the Panel’.

In return for the information he has provided to UKAD, Olubamiwo is eligible for a suspension of his own four year ban, in accordance with Article 10.5.3 of the World Anti-Doping Code. Olubamiwo has therefore had 34 months of that ban suspended, with the approval of the WADA.

British Boxing Board of Control, General Secretary Rob Smith, added, “Lanre Olubamiwo is a banned boxer who has worked with UK Anti-Doping to help eliminate doping from his sport. We cannot lose sight of the fact that he himself broke anti-doping rules to gain an unfair advantage in the past. Now, however, he has helped in the detection and prevention of others cheating in the sport.

“In addition, the information that Mr Olubamiwo has provided about his own drug use, including where and how he sourced his drugs, and how he designed his doping programmes to evade detection, will be very helpful to UK Anti-Doping moving forward in the fight against doping in sport in general and in boxing in particular”.

Olubamiwo is now in the process of applying for his licence with the British Boxing Board of Control.

## *FFP complaint to European Commission*

On 6<sup>th</sup> May 2013, Daniel Striani, player agent (registered with the Belgian Football Association), represented by lawyer Jean-Louis Dupont, lodged a complaint with the European Commission against UEFA in order to challenge infringements to fundamental principles of EU law caused by some provisions of the UEFA “Financial Fair Play” regulation (FFP).

Specifically, this complaint challenges the restrictions of competition caused by the “Break-even rule” (article 57 of the UEFA FFP regulation).



The rule imposes on clubs that participates in the UEFA Champions League or in the Europa League have the obligation “not to overspend” (the expenses of a club cannot exceed income). In effect, a club owner is prohibited from “overspending” even if such overspending aims at growing the club.

The “Break-even” rule (which, according to article 101 of the Treaty on the functioning of the EU, is an “agreement between undertakings”) generates the following restrictions of competition:

Restriction of investments; fossilization of the existing market structure (i.e. the current top clubs are likely to maintain their leadership, and even to increase it); reduction of the number of transfers, of the transfer amounts and of the number of players under contracts per club; deflatory effect on the level of players' salaries; and consequently, a deflatory effect on the revenues of players' agents (depending on the level of transfer amounts and/or of players salaries).

At the same time, because of the aforementioned restraints, the “Break-even” rule also infringes other EU fundamental freedoms: free movement of capital (as far as club owners are concerned), free movement of workers (players) and free movement of services (player agents). Consequently, such restriction of competition and violation of EU fundamental freedoms cannot be justified by the objectives put forward by UEFA (long term financial stability of club football; and integrity of the UEFA interclub competitions).

Moreover, detailed legal and economic analysis shows that, even if the “Break-even” rule may appear initially a plausible concept, the rule is not able to achieve efficiently its objectives as presented by UEFA (whereas other means are available to attain such objectives).

As far as the integrity of the UEFA competition is concerned, in order to avoid the risk that club X would jeopardize the smooth running of the competition because its owner stops mid season providing funds (the “overspending”), it is not necessary to prohibit such “overspending” (as implemented by the “Break-even rule”), when it is sufficient to require “overspending” to be fully guaranteed (for instance, by means of bank guarantees) before the start of the competition and for its whole duration.



In short, the current prohibition – even assuming it to be justifiable (quod non) in the light of the pursued objective (i.e. integrity) – is in practice illegal because the rule is not proportionate (since it can be replaced by another measure, equally efficient but less damaging as far as EU freedoms are concerned).

In conformity with article 101.2 of the Treaties of the European Union, the complainant requests the European Commission to declare that the Break-even rule is null.

It is important to note this complaint does not at all question the legality of the UEFA rule (also included in the FFP regulation) that states that any club participating in the UEFA competition must prove – before the start of the competition – that it has no overdue payables towards clubs, players and social/tax authorities. In our view, this rule is justified in principle for the attainment of the integrity of the football competition and proportionate to this objective).

A copy of the complaint has been provided to UEFA.

