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Sponsorship agreements in the Sports industry in Spain and United States beyond Covid-19: Legal challenges

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Regardless of the country, the sport or the magnitude of the competition (domestic or international), the last three months have seen a continuous trickle of temporary postponements or complete cancellations of leagues, competitions and other events. Without doubt, the impact of the Covid-19 in the sports industry is enormous from a social and economic perspective in United States and Spain.

This leaves a great number of questions to tackle and one of particular significance is how sports sponsorship are affected. Sponsors are a key stakeholder within the Sports industry in Spain and United States. Hence, their decision how to act will certainly have an impact to the short and medium term future of the sports industry due to the economic significance of this income for events, teams and athletes.

Brands and companies of a wide range of industries (e.g. betting companies, beverages, telecoms, etc.) seek the sports sponsorship as a key marketing tool to associate and promote its values and products or services to events, teams and athletes. However, for certain of these sponsor categories 2020 represents a strong blow and significant losses are expected, such as airlines, governmental tourist agencies or even betting companies. Reports on sponsorship are mixed: Some suggest that Covid-19 will not affect current sponsors but only on how their rights will be activated; while other report are far more pessimistic.

To date sponsors have acted patiently and quietly in claiming reductions or refunds of sponsorship fees from their sponsored. However, it is only a matter of time before such demands are put over the table and therefore commercial and legal discussions begin. From a legal perspective, Spanish contractual law (civil law system) offers mechanisms for the sponsor to re-adjust the financial terms of the sponsorship contract, which could range from the moderation of the sponsorship fee payable, to even –under some circumstances- to try a potential early termination of the contract. In other countries, such as United States or U.K. (common-law system), the scope of the concept of force majeure and case-law given by the courts is essential. Regardless of the jurisdiction or country, it is necessary to review the sponsorship agreement and understand the spirit of such agreement to evaluate any successful potential claim by the sponsor or to defend the sponsored from any claims.

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As a matter of example, when sports events are postponed or temporally suspended, sponsors - either of a team, event or athlete - lose the exposure that they have bargained for, which effectively frustrates the purpose of the contract. However, it should not be forgotten that sports sponsorship is much more than brand visibility, and that the cancellation of events or competitions (or their hosting without an audience) affects certain rights of the sponsorship itself (e.g. fan engagement). Likewise, several sponsors activate sports sponsorship as a tool to build customer loyalty or to attract new customers -actions that disappear completely in the current scenario and will most likely remain inactive both in the short and medium-term as we experience the full fallout of Covid-19.

In sponsorship contracts of major sports events or top tier categories of teams or leagues, force majeure clauses and compromise solutions for both parties are usually established. In the case of sports events postponed until 2021, it is very likely that sponsor and the sponsored will have already agreed an automatic extension of the agreement (if not already provided in the agreement) as both parties have made significant investments in the relationship and breaking the arrangement now would only entail a loss for both parties.

From a contractual perspective, whatever scenario or jurisdiction the sponsor or sponsored faces, any new extension or amendment of the sponsorship agreement must be well documented in order to avoid possible claims in case of a failure to meet expectations. Provisions such as alternative remedies, cancellation or postponement or mechanism to adjust the sponsorship fee are advisable to negotiate. In addition, to review and seek advice on the applicable law of the agreement is paramount as, for example, the scope of force majeure or liability in case of breach of contract may vary from one jurisdiction to another jurisdiction due to the criteria of the judges (i.e. domestic case-law).

In conclusion, despite the negative impact that Covid-19 has in the short term in the Sports Industry, it is advisable for the parties to re-analyse the contract and the overarching situation as it relates to sponsorship and to make a decision based upon an aligned strategy for the medium-long term for both parties.

The key is to find a balance and such mutual understanding to be duly agreed by the parties by contract.

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