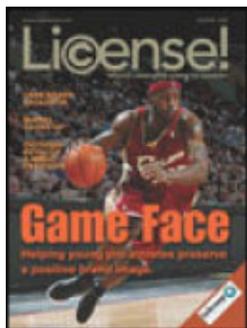


August 1, 2004

License!

Game Face

This article was published by License in conjunction with the featured cover story written by Lorri Freifeld



— there is concern about creating and preserving their brand images as they sign multimillion dollar licensing, endorsement and promotional deals. Consider this: eight high school players were among the NBA draft's first 19 picks this year; Adidas just signed a six-year deal with Brooklyn's Abraham Lincoln High School student Sebastian Telfair — picked No. 13th by the Portland Trail Blazers — worth as much as \$12 million depending on how he performs. Before last year's NBA draft, teenagers LeBron James and Carmelo Anthony received \$90 million and \$18 million Nikes shoe deals respectively, without ever stepping foot on an NBA court. James already ranks No. 16 on Forbes' 2004 list of high-test-paid athletes.

"Every company has to make a fiscally responsible decision as to whether giving a young athlete a huge endorsement or licensing deal will sell more products in the long run," says Mike Kermendy, vice president marketing and products, Huffy Sports, whose official spokesperson is NBA star Jason Kidd. "Many companies are gun-shy to move forward with a player endorsement because of what's going on in today's environment {i.e., the Kobe Bryant trial}."



The combustible combination of youthful inexperience and a seemingly limitless cash flow can lead down the glittering road of temptation. Companies with a wholesome brand image such as General Mills' Wheaties or Campbell Soup can't afford to affiliate with an athlete who might indulge in questionable behavior. Companies with a more edgy image might sign on a notorious "bad boy" (i.e., Dennis Rodman), believing that they have more leeway when it comes to behavior consumers will accept. But there is a fine line between being on the cutting edge and falling on the image sword. "Any time you're dealing with an individual you don't personally control, you run a risk," notes Terry Atkins, director of integrated marketing, Campbell Soup, which recently signed 15-year-old soccer phenomenon Freddy Adu to be the newest Campbell spokesperson for Campbell's Chicken Noodle Soup.

As a result, both licensors (in most cases, the leagues and players associations) and licensees are taking a proactive approach. Licensors often offer training, education and development programs in an effort to steer rookies — and all athletes — down the right path. And licensees intensively research athletes and their backgrounds to ensure the players they choose are the best fit for their companies and brands. As a last resort, most contracts contain a "morals clause" that calls for termination of the agreement in the face of certain offenses (see sidebar).



ACCORDING TO Clay Walker, senior vice president, Players Inc, the involvement of the NFLPA and Players Inc in preparing NFL players for commercial marketing opportunities is an ongoing process incorporated into larger-scale initiatives. For example, each June, the NFLPA and the NFL host the incoming class of rookies at a five-day Rookie Symposium. The symposium provides an overview about being in the NFL with breakout sessions focusing on specific issues for a rookie such as NFL policies and procedures, financial and retirement planning, personal conduct, life as a rookie, substances of abuse, family issues, player development, and guidance on public and media appearances where players are given specific examples of conduct and presentation skills for media encounters. Speakers include members of the NFL league office and clubs, the NFL Players Association, professionals in specialized fields, and current and former NFL players who have experience first-hand the difficulties inherent in some of the topics covered.

On a more specific level, the marketing and licensing arm of the NFLPA, Players Inc, serves as a resource for all active and retired NFL players in all areas of marketing. As players enter the league, they sign a Group Licensing Agreement, which grants Players Inc, through the NFLPA, the rights to market a player's name, image, voice and facsimile in marketing or

Courtside View

By Jonathan Faber, Esq.

Licensing and spokesperson contracts typically contain an "out" clause commonly known in legalese as a "morals" clause. Sometimes in relevant paragraph will be captioned "Protecting the Licensor Image" or "Special Right of Termination by Licensee," if not simply "Morals Clause."

For athlete mishaps specifically, the respective major league would almost never have any direct responsibility for an athlete's misconduct—at least not in the context of that athlete's obligations of liability to the licensee/sponsoring company. If sales drop dramatically as a result of a mishap or violation of a morals clause, there very likely could be a basis for termination of the contract, or perhaps renegotiation of it, if the parties still see some merit in maintaining a relationship of some kind. It really depends on the nature of the relationship, the sponsoring company's public image, the athlete's image and what the mishap is. If tan edgy, rebellious company uses a notorious rock star or athlete, then the mishaps of the celebrity may not really concern the company. It would depend on the type of behavior and the nature of the violation. The more the violation is out of character of the athlete and his or her publicity known image, the more the sponsoring company could object and avail itself of the "out" clause. If it is negotiated beforehand, there also may be financial damages or perhaps reimbursement of proceeds paid to the athlete or celebrity. But conversely, many athlete and celebrity representatives will ensure that at least some portion of the compensation is non-refundable.

How are some specific examples of morals clauses:

- [Company] shall have the right to terminate by timely notice to the player if the player is convicted of any criminal offense involving moral turpitude.
- Player shall refrain from doing or permitting to be done anything that may harm the sale of [company's] products or [company's] reputation.
- [Company] still has the right to terminate this agreement upon thirty (30) days prior written notice to the player in the event that the player is convicted of a felony involving moral turpitude.
- [Company] shall be entitled to terminate this agreement immediately at any time by written notice to the player if the player engages in any conduct (other than the "[sport]" performance) that has a material adverse impact on the commercial value of the player's endorsement to the [company].
- [Celebrity] agrees to conduct themselves in a manner consistent with their role as an ambassador of the [company's] brand, and accordingly will positively promote the endorsed products and endeavor to enhance the promotional activities of [company], both in their personal attendance in connection with promotion of the endorsed products and generally in their appearances as a sport personality.

Jonathan Faber, Esq., is president of Indianapolis, IN-based CMG Worldwide, Inc., an agency representing more than 200 personalities and corporate clients in the sports, entertainment, and music fields.