

GARRIGUES

*The role of IP in sports:
Sponsorship, Media Rights and Merchandising*

Carolina Pina



The role of IP in sports

Some data

The importance of IP for the sports industry

- Growing economic importance of the sports industry
- The organization of sport competitions has positive effects over other economic sectors (e.g. employment, infrastructures, tourism, etc.)
- The legal framework must ensure an adequate protection of IP rights in order to attract investment in the sports industry
- A national strategy that comprises the government and the private sector is necessary in order to facilitate the creation of an effective legal framework

Sponsorship

Public – Private collaboration

The LFP World Challenge

- The project intends to bring together football and Spain's brands
- A common undertaking among the Spanish Government, the private sector and the LFP
- Classified as “Event of Exceptional Public Interest” that allows a fiscal benefit up to 90% for sponsors.
- Real Madrid has been designated as ambassador of the “Made in Spain” brand. Important impact on the tourist industry.



Real Madrid, F.C.

An example of worldwide brand

Real Madrid to promote Spanish tourism

3 March 2011



PRINT



EMAIL

SHARE



SAVE

Legendary football club **Real Madrid** has signed a deal to promote **Spain** and **Madrid** as tourist destinations.

The deal means that the club's star players such as Cristiano Ronaldo will act as "brand ambassadors" for both the Spanish capital and the country as a whole through the "Visit Spain, Visit Madrid" campaign.

Tourism authorities expect the three-year agreement will reach a potential audience of over 300 million people because of Real Madrid's worldwide fan base.

A **Spanish Tourist Office** spokeswoman said: "This is a groundbreaking agreement in which both Madrid and Spain will be promoted internationally through one of the most renowned clubs worldwide promoting both tourism brands to all corners of the globe.

 Me gusta 0

 Tweet 0

The role of IP in sports

Some data

Global revenues 2006-2015

We project that global sports market revenues will rise at a compound annual growth rate of 3.7% from US\$121.4 billion in 2010 to US\$145.3 billion in 2015.

Global sports market by region* (US\$ Millions)

Component	2006	2007	2008	2009	2010p	2011	2012	2013	2014	2015	CAGR 2011-15
Global revenues	107,516	111,934	120,760	112,489	121,391	118,690	129,929	130,164	146,469	145,341	
% Change	12.1	4.1	7.9	(6.8)	7.9	(2.2)	9.5	0.2	12.5	(0.8)	3.7

* At 2010 average exchange rates

p = provisional

Sources: PricewaterhouseCoopers LLP, Wilkofsky Gruen Associates

Source: Changing the Game, PWC 2011

The role of IP in sports

Some data

BRIC revenues 2010-2015

We project that BRIC market revenues will rise at a compound annual growth rate of 4.5% from US\$8.3 billion in 2010 to US\$10.4 billion in 2015.

BRIC sports market by country* (US\$ Millions)

Component	2006	2007	2008	2009	2010p	2011	2012	2013	2014	2015	CAGR 2011-15
BRIC revenue	6,167	6,468	7,539	6,976	8,326	7,929	8,337	8,822	12,121	10,388	
% Change	9.9	4.4	16.6	(7.5)	19.4	(4.8)	5.1	5.8	37.4	(14.3)	4.5

* At 2010 average exchange rates

p = provisional

Sources: PricewaterhouseCoopers LLP; Wilkofsky Gruen Associates

Source: Changing the Game, PWC 2011

Some important questions

To encourage development of new sports entertainment events, **investors must be given a reasonable chance of obtaining a favorable return before being copied by competitors.** Current laws and business practices governing athletic events afford only limited protection to new owners and organizers. Protecting the investors, then, is the challenge of the event organizer.

Some important questions

European Commission

*A growing part of the economic value of sports is linked to intellectual property rights. These rights relate to copyright, commercial communications, trademarks, and image and media rights. In an increasingly globalised and dynamic sector, **the effective enforcement of intellectual property rights around the world is becoming an essential part of the health of the sport economy.** It is also important that recipients are guaranteed the possibility to have distance access to sport events at cross-border level within the EU.*

White Paper on Sport presented by the European Commission. July 11, 2007.

GARRIGUES

Some important questions

European Parliament

[The Parliament] *Asks the Commission and the Member States to further strengthen Intellectual Property Rights (IPR) in the sport sector, and demands concrete action which protects the IPR of sports event organisers with regard to the results and the sporting event as a whole, without prejudice to the freedom of the press*

***White Paper on Sport presented by the
European Parliament on May 8, 2008.***

Find the Right Balance

IP Rights

(Trade Marks, copyright,
image rights)

vs.

'Need to keep free'

**Access to information
Freedom of expression**

How IP assets should be protected?

1. Effective protection of symbols, emblems and event names through trade mark law.
2. Adequate procedures and remedies against infringement.
3. Protection against on-line piracy to protect the broadcasting rights.
4. Protection of designs
5. Importance of the data mining and big data in Sport.
6. Protection against ambush marketing.

Who should own a competition?

The Spanish Football League - Liga Fantástica Marca (Spanish Supreme Court 2010)

The LNFP may undertake a professional activity focused on La Liga.
Nonetheless, football is a social phenomenon that goes far beyond business.
Public interest justifies administrative intervention

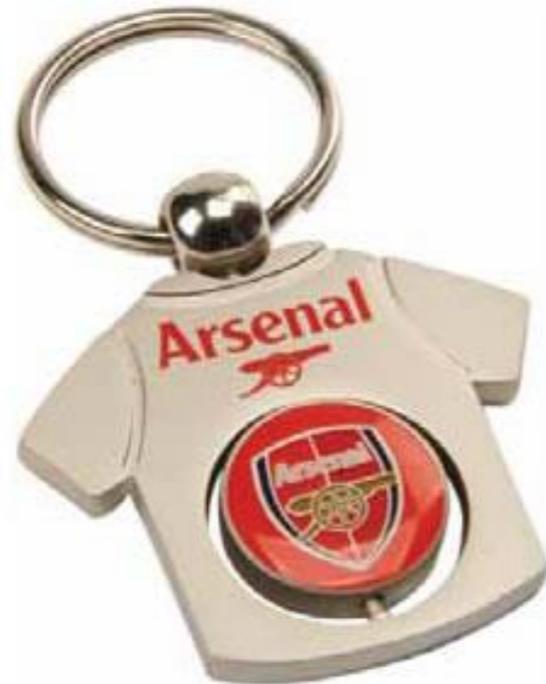
In Spain, for example competitions that are considered of general interest shall be broadcasted freely and for the whole territory of the Spain.

Trademark protection

The ECJ perspective

STJUE Arsenal vs Reed, November 12, 2002

- Mr. Reed commercialized non-official Arsenal branded products closed to the stadium
- The branded products included a clear notice asserting that they were not official products

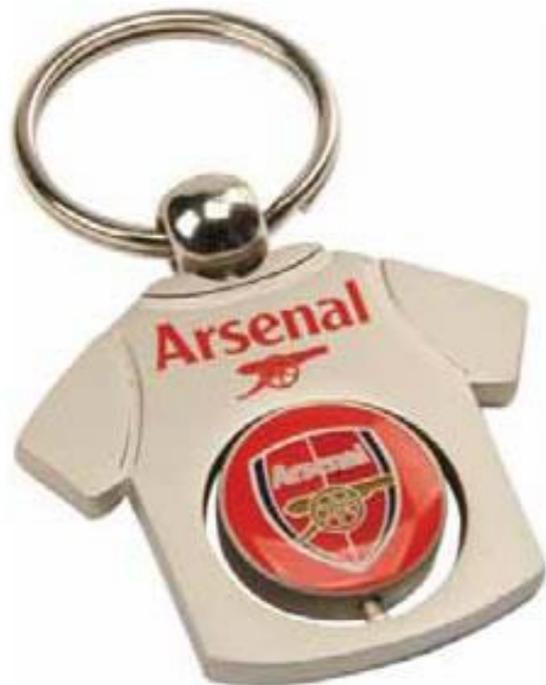


Trademark protection

The ECJ perspective

STJUE Arsenal vs Reed, November 12, 2002

- Broader interpretation of the essential function of a trademark
- The trademark use undertaken by Mr. Reed could be perceived as a badge of support for or loyalty or affiliation to the trademark owner and thus it may infringe.





Media Rights

Media Rights

Basics

Media Rights

- In order to broadcast an sport event it is necessary to obtain the authorization of the original and derivative owners of the corresponding media rights.
- In Spain the owner of media rights is the organizer of the competition. The organizer is the entity responsible for: (i) undertaking the political and administrative procedures regarding the planning and organization; and (ii) the economic funding of the sport event.

Media Rights

Basics

A need for further protection of broadcasting

- The sale of broadcasting rights is a major source of revenue to event organizers
- The sale of sport events focuses on a single shot: the moment at which the event is taking place
- Digital piracy has become a serious threat to sport event organizers which face tremendous difficulties to protect their exclusive rights over the event broadcasting

Media Rights

Basics

Sport events piracy: P2P TV services

- Access is free
- The signal is received from and shared with other users



Media Rights

Basics

Sport events piracy: Dedicated websites

- Paid membership
- Unicast transmission

Media Rights

Basics

The problem: sport events are not copyrightable as such

- ECJ Joined cases C-403/08 and C-429/08
 - The sport event as such cannot be considered a copyrightable subject matter under EU law. The ECJ has clarified beyond any doubt that a sport event as such cannot be considered original in the sense of its author's own intellectual creation

Media Rights

Basics

A need for further protection of broadcasting: the Svensson Case

- ECJ C-466/12 Svensson, February 13, 2014
 - Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that the provision on a website of clickable links to **works freely available on another website** does not constitute an ‘act of communication to the public’, as referred to in that provision.
 - Article 3(1) of Directive 2001/29 must be interpreted as precluding a Member State from giving wider protection to copyright holders by laying down that the concept of communication to the public includes a wider range of activities than those referred to in that provision.

Media Rights

Basics

A need for further protection of broadcasting: the European Commission view

- It is fundamental to incorporate European and International law measures to efficiently take down of advertising from illegal linking sites, and eliminate any other kind of fund for their support
- Promotion for an effective notice and take down systems on illegal content and linking sites
- Implement a follow the money system for fight against piracy taking down its funds

Media Rights

Basics

There are three main ways to fight against piracy:

- 1. FOLLOW THE USER**
- 2. FOLLOW THE WEB**
- 3. FOLLOW THE MONEY**

- Some systems have proven to be inefficient.
- It is important that ISPs cooperate in the removal of the infringement content diligently. Safe Harbour provisions. Block Injunctions

Sponsorship



Sponsorship

Economic data

Sponsorships 2010-2015

We project that global revenues from sports sponsorships will increase from US\$35 billion in 2010 to US\$45.3 billion in 2015, a 5.3 percent compound annual increase. Stripping out major events, growth in sponsorships for ongoing events will average 6.4 percent compounded annually.

Global sports market by component* (US\$ Millions)

Component	2006	2007	2008	2009	2010p	2011	2012	2013	2014	2015	CAGR 2011-15
Sponsorships	26,749	29,273	32,494	31,467	34,972	35,132	39,173	40,236	45,559	45,281	
% Change	14.2	9.4	11.0	(3.2)	11.1	0.5	11.5	2.7	13.2	(0.6)	5.3

* At 2010 average exchange rates

p = provisional

Sources: PricewaterhouseCoopers LLP; Wilkofsky Gruen Associates

Source: Changing the Game, PWC 2011

Sponsorship agreements

Basics

Sponsorship

- Contract in which the sponsored entity, in exchange of a monetary contribution to undertake a sport-related activity, undertakes to collaborate in the promotion of the sponsor's products and/or services
- Sponsorship contracts may entail fiscal benefits in a myriad of countries
- Consideration is commonly agreed on the basis of success on a given competition or tournament
- Sponsors must be cautious with doping cases (e.g. Armstrong Case)

Sponsorship agreements

Basics

Sponsorship regulatory challenges

- Sponsorship restrictions (ban on certain products such as tobacco, spirits, beer, etc) have an impact on sponsorship income for event organizers
- Financial fair play rules : The FIFA example
 - If a club's owner injects money into the club through a sponsorship deal with a company to which he is related, then competent bodies will investigate and, if necessary, adapt the calculations of the break-even result for the sponsorship revenues to the level which is appropriate ('fair value') according to market prices.

Sponsorship agreements

Basics

Sport > Football > Manchester City

Manchester City and Paris Saint-Germain face financial fair play fate

- Uefa's FFP investigation covers 76 European clubs
- PSG thought to be at most risk of being sanctioned

Press Association
theguardian.com, Monday 14 April 2014 17:27 BST



Paris Saint-Germain president Nasser al-Khelaifi has insisted they have not broken any of Uefa's Financial Fair Play rules. Photograph: David Levine

Manchester City and Paris Saint-Germain are among the European clubs who will learn this week whether they are deemed to be in serious breach of Uefa's financial fair play rules.

The Club Financial Control Body's (CFCB) investigatory chamber, headed by the former Belgium prime minister Jean-Luc Dehaene, is to meet on Tuesday and Wednesday to consider the cases of 76 clubs. Those considered to have committed serious breaches of Uefa's break-even rules will be referred to the CFCB's adjudicatory panel for a final verdict, with Uefa to announce details of all sanctions around 5 May. The sanctions could include being barred from European competition.

Share 141
Tweet 247
+1 1
Print
in Share 5
Email

Article history

Football
Manchester City - Paris Saint-Germain - Uefa - Finances - Business
Sport

More news

Merchandising

Altius,
Fortius.



The role of IP in sports

Some data on Merchandising

Merchandising 2010-2015

We project that global revenues from merchandising will total US\$20.1 billion in 2015 from US\$17.6 billion in 2010, a 2.6 per cent compound annual increase. Growth for ongoing events will average 2.9 percent compounded annually.

Global sports market by component* (US\$ Millions)

Component	2006	2007	2008	2009	2010p	2011	2012	2013	2014	2015	CAGR 2011-15
Merchandising	19,430	20,413	21,263	17,586	16,624	17,570	18,002	18,549	19,565	20,067	
% Change	7.7	5.1	4.2	(17.3)	0.2	(0.3)	2.5	3.0	5.5	2.6	2.6

* At 2010 average exchange rates

p = provisional

Sources: PricewaterhouseCoopers LLP; Wilkofsky Gruen Associates

Source: Changing the Game, PWC 2011

Merchandising Agreements

Basics

Merchandising: Trademark license

- Market technique based on the selling power of the trademark
- Merchandising can be defined as a trademark license used in conjunction with certain products and/or services in order to increase their demand
- The aim is to commercialize products and/or services in a class different from those used by the owner (e.g. t-shirts, watches, bags, etc) thanks to the commercial appeal of the brand
- Character merchandising: based on the attractiveness of a character

Merchandising

Basics

- Merchandising programmes are created to help manage licensing opportunities across defined categories.
- While licensors are not involved in the manufacturing of the products, they must provide careful management and oversight of their licensing programs to protect their brand's reputation.
- A technology license may be a useful option for companies involved in the development of sports-related equipment. Technology licenses can be used both to “license in” technologies developed by other companies or to earn additional income by “licensing out” homegrown technologies.

Merchandising Agreements

Basics

Usual clauses

- There is no specific regulation
- Territory
- Scope
 - Exclusive / Non exclusive
 - Conferred rights: manufacturing, distribution...
 - Products / Services
- Other obligations
 - Employment and Social Security
 - Standards against child labor

Merchandising Agreements

Basics

Quality Standards

- Trademark owner must monitor the quality of the products manufactured by the licensee.
- The aim is to avoid reputational damage
- Licensee must assume product liability
- Licensor must ensure that Licensee does not damage the commercial value of the brand
 - Material quality
 - Control Labelling
 - Supply sources

Merchandising Agreements

Basics

Other clauses

- Licensor audit rights
- Consideration
 - Flat fee
 - Royalties
- Termination
- R&W
- Stock

Who owns sporting lists?

CBC v Major League Baseball (2007)

Sporting lists and players' names are kept free

CBC's use of the information is meant to provide entertainment, but speech that entertains, like speech that informs, is protected by the First Amendment...

Major League Baseball is followed by millions of people across this country on a daily basis... The public has an enduring fascination in the records set by former players and in memorable moments from previous games... The records and statistics remain of interest to the public because they provide context that allows fans to better appreciate (or deprecate) today's performances

Who owns sporting lists?

ECJ's Football DataCo decision (March 1, 2012)

Sporting lists are kept free unless there is originality

Creation of the fixture lists of the English and Scottish football leagues involves having regard to several rules, the so called “golden rules”

National courts rejected the protection of a *sui generis* right over the data. Regarding copyright protection the EUCJ ruled that...

(44) ... The procedures for creating those lists, as described by the referring court, if they are not supplemented by elements reflecting originality in the selection or arrangement of the data contained in those list, do not suffice for the database in question to be protected by the copyright provided for in Article 3(1) of Directive 96/9.

The broadcast of events and press conferences

There are arguments to sustain that rights to broadcast sporting events, attend press conferences and training sessions are effectively licensed to the clubs, both in relation to capturing the images as well as their subsequent dissemination, because the employment relationship necessarily requires the capture, reproduction and publication of the player's own image for such use.



f1actual.com

Exclusive vs. public interest

Press conferences

Press conferences and the right to information

In the case of press conferences it could be considered that the use of images is protected by the right to information and, consequently, falls within the limitations or exceptions to image rights.

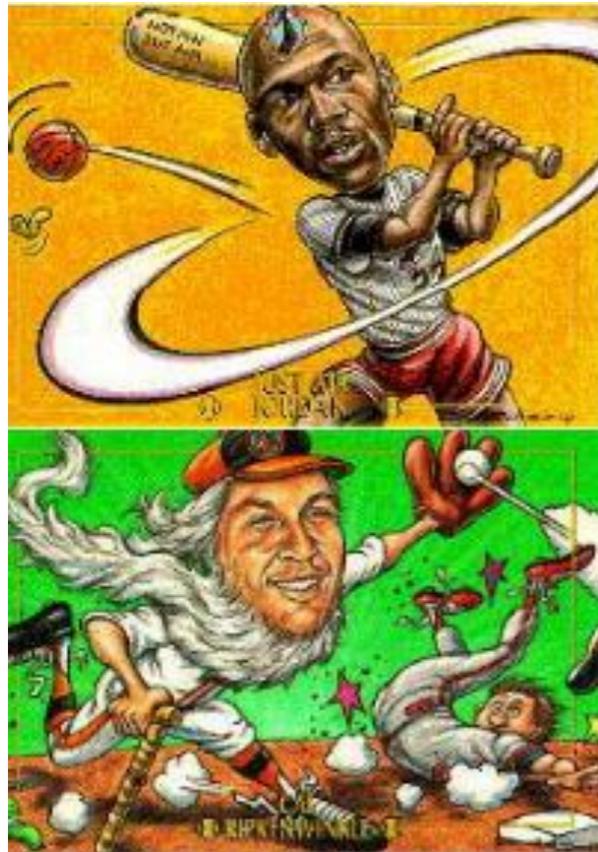
Therefore, in the case of press conferences the image of soccer players may be used without their express authorization.

In this regard we should underscore the Supreme Court judgment no. 400/2009 of June 12 , 2009 which held that, “all information need not necessarily be political, scientific or cultural, in view of the existence of the more frivolous genre of show business and entertainment information”.

www.ligafutbol.net

Exclusive rights vs. public interest

Picture cards



© cartoons

Cartoons v. Major League Baseball Players (1996)

Cartoons parody cards are protected under the First Amendment. The cards provide social commentary on public figures, first rate basketball players which, furthermore, are involved in a significant commercial venture - the professional baseball league. Although it is not a political discussion, these types of comments on an important social institution are protected.

Some important questions

To what extent should image rights be protected?

Should the use of the names of sportspersons, events and clubs in the context of entertainment be covered by the right to information?

Certain information should be covered by the “factual reporting” doctrine.

“The use of names and trademarks was mainly due to descriptive rather than distinctive reasons. There was not, under any circumstances, a commercial association with the clubs and players. It is impossible to organize a bet without naming the club involved. The names were not used for promotional or advertising purposes”.

Tribunal de Commerce de Liege (TCL), Belgium

Conclusion

A further debate

Should existing legislation be strengthened in order to ensure that organizers of sporting events and sponsors enjoy exclusivity in relation to these events?

Where should the limits be?

Should we change the rules of the game?

谢谢大家！

Thank you!
GRACIAS