

# Sports sponsorship

## Latest Update

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Sports sponsorship is investment by third parties (in cash or in kind) in return for the grant of commercial and/or marketing benefits by sports rights-holders. The market for sports sponsorship is becoming increasingly sophisticated and is growing. A [PWC report- Changing the game](#), estimated that, in 2015, global sports sponsorship revenue will exceed US\$145 billion, with the market growing by an average of 3.7% per annum since 2011. This article aims to examine the main types of rights available in the sports sponsorship market and the legal and commercial issues underpinning the granting of those rights.

## Overview of Topic

1. **Who are the sponsors and why?** Sponsors are usually businesses with either recognisable or new-to-market brand names that they wish to promote. There are different reasons why businesses may choose to invest in sports sponsorship to achieve that goal, the most common being:
  - a. increased brand awareness - certain sporting events are viewed on an almost global scale, offering sponsors a relatively cheap way to access a wide international audience. For instance, the Football Association Premier League (the "**FAPL**") is broadcast in 212 different countries;
  - b. targeting demographics - different sports attract different types of audiences, allowing sponsors to target effectively certain demographics;
  - c. brand association - the sponsor can benefit from associating its brand with a particular sport or club and the attributes associated with it. Fast-food companies, for example, can benefit from the positive health and fitness connotations of certain sports; and
  - d. corporate social responsibility - the introduction of "enlightened shareholder value" in the [Companies Act 2006](#) and the requirement of quoted companies to prepare strategic reports to support this aim has increased attractiveness for businesses to be seen to support sport, particularly where the sponsorship is linked to grass-roots or community projects.
  
2. **Who are the rights-holders in the sports industry?** There are number of different entities that own rights that are available to be sponsored, most notably: (i) event organisers, either of one-off events such as the Olympics, or more regular competitions such as the FAPL; (ii) governing bodies, which control the national team of their sport and organise competitions and events within their sport; (iii) clubs; (iv) teams; (v) individual athletes; and (vi)

broadcasters who have rights to broadcast sporting events.

3. **What rights are available for sponsorship?** The Australian case of [Victoria Park Racing v Taylor \[1937\] HCA 45](#) established that there is no such thing as a proprietary right in a sports event. Consequently, no legal meaning attaches to the "grant of sponsorship rights" in itself; specific rights have to be granted to the sponsor by contract by a rights-holder who owns or controls those rights through a combination of physical or legal control over the venue at which a sporting event is held, the legal and regulatory environment applicable to the relevant sport or event and the contractual matrix between clubs, teams, individual athletes, broadcasters, venue-owners and spectators.
4. The first step for a rights-holder which seeks to maximise its sponsorship revenue is to undertake a rights audit to determine exactly which rights it owns or controls. Once a rights inventory has been created, a rights-holder can devise a strategy for how best to market those rights. A common approach for major rights holders is to create different packages of rights for different sponsors. The rights-holder can then create different tiers of sponsorship: a primary sponsor, which will pay the highest fee and acquire the most prominent rights; a group of secondary sponsors, which will pay a lower fee than the primary sponsor and have lesser rights; and a group of official suppliers, which in return for being granted the exclusive right to supply a product or service at the event, will provide the product or service at a discounted rate.
5. One of the most valuable rights, usually retained by event organisers in the regulations governing their event, is the "naming right" to the event. For instance, the Royal Bank of Scotland pay Six Nations, as organiser of the Six Nations Championship, for the right for the event to be called the "RBS 6 Nations". To protect the value of this right, Six Nations can then require, in any contracts that are entered into with broadcasters, clubs and other third parties, that such third parties refer to the event by its official title. Furthermore, a rights-holder which owns the venue at which a sporting event is played can sell naming rights to the venue. Derby County, for instance, re-named Pride Park the "iPro Stadium". Re-naming existing stadiums can be an unpopular move if fans are attached to the existing name, as demonstrated by the fan and local council protests when Newcastle United announced it was re-naming St James Park the "Sports Direct Arena". It has often been the case, therefore, that a rights-holder uses naming rights when moving to a new stadium, before any goodwill has been created in the new stadium name (such as Arsenal's Emirates Stadium). Note that Manchester United, which owns perhaps the most famous club stadium in the country, Old Trafford, has resisted what would likely be a lucrative naming rights sponsorship deal. It did, however, in 2013 sell naming rights in its training ground (most commonly known as Carrington), which was re-named the Aon Training Centre for a reported £22.5 million per year for eight years.
6. All event sponsors will want the right to advertise at the event that they sponsor. In order to grant venue -based advertising, the rights-holder must own or control the relevant venue. In addition, the rights-holder (if it is not the governing body of the relevant sport) must comply with the governing body's regulations which will stipulate when and what advertising is and is not permitted. One common venue-based advertising right is for the sponsor's brand to be displayed on pitch-side advertising boards (more sophisticated events use LED boards); the boards on the three in-camera sides of the pitch being far more valuable as they provide exposure to the television audience. Clubs, event organisers and governing bodies may also sell secondary advertising signage in other parts of the venue (e.g. the higher tiers) and sell advertising space on backdrops for pre and post-match press interviews.
7. A sponsor will want a licence to advertise its relationship with the rights-holder. Sponsors are commonly granted an official designation, such as Vauxhall being granted the right to refer to itself as the "lead partner" of the England football team. A particularly valuable right granted by a club is the right to include the sponsor's marks on its teams' playing shirt as this enables a sponsor to advertise its relationship to spectators at matches, to television

audiences and to purchasers of club/team merchandise. In addition, the sponsor may be granted the right to use the rights-holder's name and/or logo in advertising. A sponsor may also want to be permitted to use photographs and audio-visual materials from the rights-holder's library in its advertising campaigns. In order to prevent a sponsor from falsely implying that a particular member of a team has personally endorsed the sponsor's products or services, a rights-holder will typically require that all images used show a minimum of three team members with equal prominence for each.

8. A rights-holder which owns or controls the venue for its event may grant third parties the right to be the sole supplier to the event within the third parties' product categories. These sole supplier deals are common for alcoholic beverages, soft drinks and food. For instance, Carlsberg has acquired the rights to be Tottenham Hotspur's "Official UK Beer Partner" and to supply beer to White Hart Lane on match days. A particularly valuable supplier deal for a club is the appointment of a sports apparel manufacturer to be its official kit partner. All professional football clubs, for instance, have a deal with a kit partner, granting the kit partner the right to manufacture and sell the club's shirts and supply shirts for the team to wear during matches. More sophisticated kit partner deals often also include rights for the kit partner to control parts of the club's retail operations, such as manufacturing and selling mono-branded and dual-branded products.
9. A broadcaster (depending on the channel) may be entitled to sell sponsorship or advertising rights in relation to the broadcast, most commonly through "break-bumpers" as the program starts and finishes (for more on this, see Sports: broadcasting rights). These rights are sometimes retained, however, by the event organiser. UEFA, for instance, has the right to designate the broadcasting sponsor for all UEFA Champions League matches.
10. A rights-holder will be able to grant ancillary rights to the sponsor, such as player appearances at corporate events of the sponsor, tickets for and hospitality at the event, visits to the training ground etc. Two rights that are becoming increasingly valuable to sponsors are access to new media and the rights-holder's membership database. Rights-holders often have large followings on Facebook, Twitter and other social media websites, and these can be used by the sponsor to send marketing messages. If a rights-holder obtains the consent of a data subject to share its personal data with its sponsors (for more on this, see [Data protection](#)) then sponsors can use such personal data to tailor marketing messages to an interested audience. Often, however, a rights-holder will want to use such personal data sparingly, and will require the marketing messages of the sponsor to be vetted and sent by the rights-holder on the sponsor's behalf.
11. **What are the main legal and commercial issues that normally arise in the negotiation of the sponsorship agreement?** As most sponsors use their sponsorship rights as a marketing tool, sponsors will want the platform to be as free of other brand names or "clutter" as possible. The ideal position for a sponsor is to be the only sponsor of an event. A rights-holder, however, is likely to reject such a position as it will be able to receive more sponsorship revenue from granting rights to a suite of sponsors. Most common, therefore, is for a rights-holder to grant a sponsor "product category exclusivity" - the rights-holder undertakes not to enter into sponsorship relationships with any of the sponsor's competitors during the term of the sponsorship agreement. Competitors are often defined in relation to a defined market (e.g., the car rental market or the market for alcoholic beverages), with sponsors wanting the market defined widely and rights-holders narrowly. In addition, sponsors may require the rights-holder not to enter into more than a certain number of sponsorships, to avoid diluting the impact of the sponsorship.
12. A further way of granting limited exclusivity is for the parties to define the territory(ies) in which the sponsorship rights can be exercised by the sponsor. A rights-holder can then grant similar rights to competitors in other territories. Manchester United has been particularly successful in creating territory-specific partnerships. For instance, it has appointed TM as its telecommunications partner in Malaysia, STC in Saudi Arabia,

Globacom in Nigeria, Ghana and the Republic of Benin, Viva in Bahrain and Kuwait, Bakcell in Azerbaijan, Truemove H in Thailand and PCCW in Hong Kong. Clubs can use modern technology to assist with this strategy, such as geo-blocking their websites so that the websites will display the partners relevant to the territory in which the user is based. In addition, digital overlay of pitch-side LED boards is now possible meaning that the boards can be edited in broadcasting to display different brands for different territorial broadcasts.

13. A second area of discussion is in relation to the protection the rights-holder can offer the sponsor in relation to use of the rights. Key to many sponsorship agreements is the right of the sponsor to use the rights-holder's crest, name and other identifying features. These rights can be granted most effectively if they are registered as trade marks by the rights-holder (for more on this, see [Intellectual property in sport](#)). A rights-holder is unlikely to have registered its trade marks in every class in every jurisdiction, however. A sponsor will want a warranty from the rights-holder in relation to registration in key classes in key jurisdictions (those in which the sponsor wishes to exercise the sponsorship rights) and an undertaking from the sponsor to renew such registrations at the relevant times. A sponsor will also, ideally, want an indemnity from the sponsor for any third party claims in relation to use of such marks, but how this risk is allocated will usually depend on the bargaining position of the parties.
14. Another common negotiating point is what protection, if any, a rights-holder will grant to a sponsor in relation to a material adverse event that impacts the value of the sponsorship rights or the rights-holder's brand. A primary purpose of the sponsorship for the sponsor is to be associated with the rights holder's positive image. A sponsor will therefore want assurances, through the use of so-called "morality clauses", that the rights-holder will not, during the term of the sponsorship agreement, act in a way that tarnishes the public's view of its brand. This is particularly acute in personal endorsement deals (i.e., when the rights-holder is an individual athlete) as the value of association for a sponsor with that individual can immediately be thrown into jeopardy, as can be seen from the change in public perception of Tiger Woods and Oscar Pistorius when stories from their private life became public sensations overnight. The rights-holder, in contrast, will aim to limit the scope of the morality clause, so that it cannot be used by the sponsor as a way to terminate a sponsorship agreement with a rights-holder who is not performing as successfully as it envisaged at the outset of the relationship.
15. The parties will obviously negotiate the quantum of the sponsorship fee and when and how such fee is payable. The sponsorship fee may simply be a monetary sum agreed by the parties, with the rights-holder wanting the fee up-front at the start of the term (or in the case of a longer-term sponsorship, an annual fee at the start of each contract year) to assist with the costs of organising or participating in an event. Alternative structures for the consideration can be used, however, such as payment in kind (common in official supplier relationships) or through committed marketing expenditure. The sponsorship fee often will include a performance-related element i.e., a sponsor may pay a bonus to the rights-holder for achieving certain sporting milestones. Combined with the quantum of the fee, the rights-holder will also need to consider what credit risk it is willing to take on the sponsor. Upfront payment of the fee is the most common way for the rights-holder to avoid taking risk on non-payment of the sponsorship fee. In longer term arrangements in which the rights-holder relies on the regular income stream from the sponsor, or if the rights-holder is concerned about the possibility of suffering loss due to a breach of the sponsorship agreement by the sponsor (such as the rights-holder's use of the sponsor's marks infringing a third party's intellectual property rights), the rights-holder may require a form of parent or bank guarantee.
16. The rights-holder and the sponsor should consider what will happen at the end of the term of the agreement. The sponsorship agreement will simply expire at the end of the term in the case of sponsorship of one-off events but when there is a longer term sponsorship arrangement, the sponsor may want the opportunity to renew the arrangement at the end of the term. The rights-holder may be unwilling to commit to renewing the arrangement and

want the freedom to explore other opportunities in the market. A common clause included in sponsorship agreements is a "matching rights" clause, which permits the rights-holder to negotiate with third parties towards the end of the term, but then to offer the existing sponsor the right to renew the sponsorship arrangement on equivalent terms. Rights-holders, however, view matching rights clauses as diminishing the value that they may be able to achieve in the market as potential sponsors may be unwilling to undertake a lengthy negotiation process if a competitor can trump them after terms have been agreed. A compromise position sometimes agreed is therefore for the parties to agree an exclusive negotiation period prior to expiry after which, if agreement has not been reached, the rights-holder is free to enter into arrangements with third parties.

17. In cases where the rights-holder is an event organiser, the sponsor may require control over certain aspects of the event. An event organiser is very unlikely to be willing to cede control over the event but may, in relation to certain key issues for that sponsor (such as, for instance, which broadcaster is appointed) be willing to consult with the sponsor before making decisions.
18. One area that the rights-holder will likely have to provide comfort to a sponsor is in relation to ambush marketing. Ambush marketing is when third parties, not contracted to the rights-holder, attempt to create public associations with the rights-holder through deliberate marketing activity. Successful ambush marketing creates uncertainty in the mind of the public as to which sponsors are associated with the rights-holder and thus reduces the value of sponsorship. Other than for major international events for which event-specific legislation is passed (such as the Olympic Games), a rights-holder will need to offer the sponsor assurances that it has a program to prevent ambush marketing, through a combination of registering and enforcing its intellectual property rights, imposing ticketing conditions which restrict photography and filming and conducting sponsor awareness campaigns.
19. Finally, the parties must ensure that the rights granted to a sponsor comply with the legal and regulatory environment specific to the rights granted and the product category of the sponsor. In terms of the rights granted, sponsorship of broadcasting is subject to the EU-wide [Directive 2010/13 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services](#) (Audiovisual Media Services Directive) (the "**AMSD**") and various regulatory codes and guidelines depending on the channel (for more on this, see Sports: broadcasting rights). Similarly, any promotional rights granted to a sponsor will need to comply with [Ofcom's codes of practice](#), the [UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing](#) (known as the "**CAP Code**") and the [UK Code of Broadcast Advertising](#) (known as the "**BCAP Code**") (for more on this, see Advertising: overview).
20. Depending on the product category of the sponsor, there may be additional regulations that will shape the rights granted to a sponsor and how such rights may be granted. Although a full examination is beyond the scope of this article, common examples are: (i) tobacco - the [Tobacco Advertising and Promotion Act 2002](#) bans sponsorship by tobacco companies throughout the United Kingdom. At EU level, the [AMSD](#) bans all television advertising for tobacco products and [Directive 2003/33 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products](#) applies to non-television advertising of tobacco products, including banning sponsorship of events taking place in several EU member states and all forms of radio advertising of tobacco products; (ii) alcohol - in the United Kingdom, the independent regulatory group, the [Portman Group, introduced a code of practice](#) (the fifth edition was introduced in May 2013 and now includes a Code on Sponsorship) which includes restrictions to ensure that alcoholic drinks companies promote responsible drinking. Of particular note in the sports sponsorship industry is (A) alcoholic drinks companies may not include images of people who are or look under the age of 25 in any promotional material (thus restricting such companies from using player imagery or entering into endorsement deals with players under 25), and (B) prohibits alcohol branding on children's replica sports

kits; and (iii) gambling - sponsorship by gambling companies is subject to the Gambling Commission through the [Gambling Act 2005](#). The [Gambling Commission](#) requires gambling operators to adhere to the [CAP Code](#) and [BCAP Code](#), which amongst other things requires that advertising is not aimed at children and young people and does not leave vulnerable persons open to exploitation. There is also an [Industry Code of Practice](#), which covers sports sponsorship and expressly prohibits use of gambling companies' logos or other promotional material to appear on children's replica sports kits.

## **Key Acts**

[Tobacco Advertising and Promotion Act 2002](#)

[Gambling Act 2005](#)

## **Key Subordinate Legislation**

None.

## **Key Quasi-legislation**

[UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing](#)

[UK Code of Broadcast Advertising](#)

[Portman Group - Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks](#)

[Ofcom's Codes of Practice](#)

[Gambling Industry Code for Socially Responsible Advertising](#)

## **Key European Union Legislation**

[Directive 2010/13 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\)](#)

[Directive 2003/33 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products](#)

## Key Cases

[Victoria Park Racing v Taylor \[1937\] HCA 45](#)

## Key Texts

Sport: Law and Practice, Lewis and Taylor, 3rd Ed, February 2014

## Further Reading

None.

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