



License!

Game Face

August 1, 2004

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

“JUST DO IT,” exhorted the ubiquitous Nike ads. Judging by recent sex and drug scandals, some athletes took that sentiment to the extreme. Today, with pro athletes getting younger all the time – in some cases jumping straight to the major leagues from high school – 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.

promotional programs that involve six more players. Players Inc works with players, identifying marketing opportunities and pairing them with programs that fit their personality to a company's campaign mission or media interview story. Each May, Players Inc, holds an event for the NFL's top draft picks called the Reebok NFL Players Rookie Premiere. For several days, the rookies participate in photo shoots for their first trading cards, become acquainted with Players Inc's marketing initiatives, and learn about media and public appearances.

CREATED IN 1986, the NBA Rookie Transition Program is administered by the Player Development Departments from the National Basketball Association and the National Basketball Players Association. Comprising former players, social workers, educators and other experts, these professionals meet regularly with all NBA teams and collectively serve as a 24-hour support system for players.



Each September, every rookie takes part in this mandatory six-day seminar and workshop program that provides first-hand knowledge of what to expect as a player in the NBA, and how to balance the pressures and demands. Sessions generally run from 9 a.m. to 9 p.m. and are conducted by league and player association personnel, current and former players, and experts in each of the fields covered. "Each day, the program is based on a different responsibility the player will face such as dealing with the media and being on time for practice," explains Teri Washington, senior director of community relations for NBA Communications. "The program features presentations, role-playing, skits and interactive workshops. Breakout groups separate the players into four teams based on colors, and counselors work with the smaller groups as some players find it easier to ask questions that way."

Sessions include: Professional and Life Skills (i.e., computer training), Media and Community Relations, Legal Education (i.e., felony situations and gambling), Personal Development and Education (i.e., character, image, and ethics panel), and Special Sessions (challenges facing international players—i.e., cultural adaptation—and challenges facing players "20 and under"—i.e., how to deal with peer pressure situations). "There is constant program follow-up," Washington adds. "A player development group is assigned to specific teams. Two teams visit each year and do home visits with the rookies."

THE WTA's Partners for Success (PFS) program pairs a prot (players age 18 and under and ranked in the Top 100 of singles) with a mentor (retired or veteran player). The two work together for 24 months, interacting in person, via e-mail, the phone, at tournaments—whatever works best for them. They also have opportunities to spend time one-on-one or in PFS group activities throughout the year. The WTA has had 35 mentors participate in the program to date (the program started seven years ago), with mentors including Gabriela Sabatini, Martina Navratilova, and Chris Evert, according to Ashley Keber, director of professional development, WTA. "Mentors have been in the position of being younger players, and they know what it is to keep their commitment to the public, fans and consumers," she explains.



In addition, the WTA has an Age Eligibility Advisory Panel—a group that represents three continents and includes medical doctors, sports psychologist, a sports sociologist, a kinesiologist and physical therapist/certified trainer—which reviews and evaluates the initiatives of Professional Development and the Age Eligibility Rule (which allows players to play more and at a higher level by phasing them into the WTA Tour based on their age, ranking and skills gained from participation in Professional Development. For example, a 14-year-old can play up to seven professional events (IGF Women's Circuit) and can earn a Feed-up spot or up to one Wild Card into the WTA Tour if she is enrolled and current in Professional Development.

In Player Orientation, young athletes learn the on-site realities and responsibilities of the WTA in a live environment in addition to receiving a book and CD-ROM. Athlete Assistance provides players with educational and preventive strategies for enhancing their on-court performance and coping with the challenges of professional tennis. Assistance can be accessed through monthly education topics, the athlete assistance phone service and websites, the Department of Sport Science & Medicine, Phases of Professional Development and by request. Professional Development players' parents are required to complete an orientation to the WTA Tour about what their daughter will encounter in the world of women's tennis and how she can best utilize the WTA Tour's services and facilities.

According to NASCAR spokesperson Andrew Giangola, teams or sponsors are the likely PayChecks Sources of any structured media training program for NASCAR drivers, "The system of sponsorship in NASCAR creates a self-policing environment," he says. "Our athletes are independent contractors and most have extensive sponsor commitments in their contracts. So if a driver were to engage in any behavior that a sponsor deemed inappropriate, that driver would be out of a ride pretty quickly."

AS THE NEWEST Campbell spokesperson for Campbell's Chicken Noodle Soup, Adu, a member of D.C. United of Major League Soccer, will be featured in a new ad campaign set to debut this fall including promotional materials, in store point-of-purchase materials, and the company's website. It's a one-year relationship with the rights to renew for a second and third year.



"About a year ago, we started working on a new kids-specific strategy as opposed to marketing to families," explains Campbell Soup's Atkins. "We looked at a short list of personalities who fit our message: 'This soup is so good, I'll play you for it.' We met with Freddy—which was unusual as we usually just work with the agent—and found him to be a charming kid who's polite and has confidence but keeps it in check. We liked the way he interacted with his mom—joking with her and hugging her. Our brand is approachable and friendly, and so is Freddy."

Atkins says Campbell's does a lot of homework before choosing a spokesperson, including information obtained from the press and people who have worked with the person. Atkins also advises licensees: "Make sure your brand is a good fit before you make the phone call to the athlete or his/her agent."

Huffy Sports signed on NBA star Jason Kidd in 2002 to serve as the company's official spokesperson. Since that time he has participated in various retail and consumer promotions, as well as advertising programs supporting Huffy Sports' NBA-licensed product.



According to Kermendy, Huffy's contract with Kidd includes loose writing that if a player shows extreme poor judgment courtside, that has moral/legal ramifications, Huffy would have the option to stop using him in endorsements. "If there were a problem with an athlete affiliated with Huffy, we would do as good a fact-finding job as we could before making a decision to cut ties," Kermendy says. "But if it's in the best interests of the company to distance ourselves from an athlete, we would tell the public these behaviors are not what Huffy Sports stand for."