Module 3. Contractual phase - Rights, obligations, morals clause and force major

Introduction

After all the homework, background checks, internal strategy discussions and evaluation of multiple alternatives, you finally land at and manage to align a plan with all your constituents: your company will pursue a sponsorship agreement with a certain rights-holder. As if all the previous work hasn't been complicated enough, now you must negotiate the actual terms, financial consideration, and assets with the other party. No matter how well you have prepared for this moment, what comes next is always unpredictable.

This module will not teach you how to negotiate. For that, there are endless books, videos, courses, and experts in the market. The purpose of the next pages is to help you understand what a sponsorship negotiation looks like, the steps you will need to follow, the experts that will have to be involved, etc. The concepts shared here are the result of hundreds of contracts negotiated by the author worth a couple billion dollars.

Every negotiation is unique, no matter how seasoned you are. They are influenced by many factors like the following:

1. The personality of the people involved in the negotiation: do these people have a history? Have they worked together or negotiated other contracts? Do they get along or have a personal relationship? Two total strangers meeting for the first time in opposite sides of a negotiation table is a very different situation from two former peers who have known each other for a decade, that happen to be in front of each other to negotiate a deal.

2. The experience of the sponsor: unless the company has a dedicated team that negotiates sponsorships (i.e.: business affairs or sports lawyers), it is likely that the rights-holder – who sells sponsorships for a living – will have more experience in negotiations. Many companies make the mistake of allowing inexperienced marketers – brand managers or promotions managers – take the lead in expensive deals. Rights-holders can smell the inexperience from a mile away. The negotiations can be very different depending on the capabilities in the sponsor's side.

Figure 1. Lawyers

From Unplash, by G. Henderson, 2019. https://unsplash.com/photos/HJckKnwCXxQ.

3. Timing: is the sponsor under a form of time pressure? In numerous instances, particularly at the end of the calendar year, as brands are defining their business plans for the following years, they work under time constrains to close the deals to finish their plans and present them to analysts, investors, sales teams, distributors, etc. There is nothing worse than accelerating discussions that need time.

Figure 2. Wallet

From Unplash, by T. Barbhuiya, 2021. https://unsplash.com/photos/3aGZ7a97qwA.

4. The state of the global economy: macroeconomics can play a big role in negotiations. Think about what it was negotiating a deal in 2009, during the peak of the biggest recession in many decades, compared to a negotiation in 2018, when the economy in the richest countries was booming. The expectations of rights-holders and the sponsors' investment ability were completely different. Simply put, there are times when money to invest will take you further than others.

Figure 3. Phone

From Unplash, by J. Bezanger, 2021. https://unsplash.com/photos/rRAPeppkULw.

5. Rights-holder under pressure to close deals: it is easy to see when a rights-holder is under pressure to close a deal. Sometimes, they need good news to keep their management and fans happy (i.e. announcing a big reputable brand), other times they are under pressure to pay the bills or raise funds to hire a new player. Regarding football clubs or Formula One teams, last week's performance on the fields and tracks can also add a lot of pressure to the commercial team. Negotiating with a title contender that has been on a winning streak is very different from negotiating with someone at the bottom of the table threatened of relegation.

Figure 4. Coca-Cola

From Unplash, by M. Mu, 2019. https://unsplash.com/photos/z8PEoNIlGlg.

6. The industry you represent: your brands' leverage also depends on which industry you operate. Some industries are more competitive than others, some invest more in sponsorships than others, etc. If you work in tech and want to invest in Formula One, for example, you will need to be very accommodating because there is not enough space for exclusivity in this area. Your brand is likely to co-exist with many competitors, if you really want to be part of it. On the other side, if you are a football club that can't sell your apparel rights to Nike, Adidas, Puma or Umbro, you are likely to have limited leverage with other smaller suppliers.

7. The brand: the brand you represent makes all the difference. Reputable traditional global brand have something special about them that can open doors and lower prices with most rights-holders. The brands know that, and so do rights-holders. Rights-holders know when they sign Coca-Cola as a new sponsor, other brands will notice. Their assets become immediate more attractive for every other brand. If they passed the test of Coca-Cola, they must be good. It must be worth investing in them. This is the opposite of what new brands from new countries experience. If you represent a Chinese, Brazilian or Russian brand willing to sponsor a global event, be ready to pay a premium. This is the price of entry to an exclusive club of global brands.

8. What you can offer: some brands can only offer money, while others can offer marketing, distribution, access to important constituents, access to governments, technology, innovation, culture, talent, etc. Brands that can only offer money will always have a place, but the completer and more unique an offer can be, the more interesting the partnership will become to the rights-holder. A football club interested in developing their fan base in China will be more open to a partnership with a brand that has access to this market, even if their financial offer is not as attractive.

Figure 5. European Super League

European Super League [online image]. (n.d.). Retrieved from https://www.skysports.com/football/news/12040/12279788/european-super-league-the-key-questions-what-is-it-who-is-involved-how-likely.

9. How much each side needs each other: in the years leading to the 2028 Summer Olympics in Los Angeles, an American TOP sponsor of the International Olympic Committee may be more inclined to renew its contact, to guarantee the rights on its home market, than a Qatari airline to renew its FIFA sponsorship in 2023 (after the event on its country). The opposite is also valid. Rights-holders about to complete the negotiations of their broadcasting deals for the next years would not like to see a major brand dropping out of their sponsors' rooster, afraid it might send a negative signal for the media company. In this position, they will do all they can to maintain their key sponsors.

Figure 6. LA28 logo

From Feel free to dream, by LA28, n.d., LA28. https://la28.org/en/la-stories/adam-rippon.html.

10. The competitive set: do you have options for your investments? If you are interested in being involved with Formula One, you can choose from four to five teams and Formula One themselves. If you want to invest in English football, you also have a few options of clubs to sponsor. But if you want to be associated with Gerard Piqué, then you have no leverage because there is only one Gerard Piqué. The same happens for the clubs. When you are Barcelona, more often than not, you can choose which brands you would like to be associated with.

The best negotiators are the ones that understand how they score in each of these areas. They are aware of their strengths and weaknesses, and also realistic about what the rights-holders see as a winning partnership. They do their homework and use all of it as input for a productive negotiation.

Who is involved in the negotiations

The people in the room are influenced by many factors, and there is no general right set up, only the right set up for that specific negotiation. Depending on the size and duration of the deal, strategic importance and complexity, there is a chance of a quite crowded room. Here are some of the functions that might be invited:

1. From the sponsors' side

1.1 Marketing/sponsorships: usually the main internal client of the deal. In most companies, marketers are the ones in charge of understanding consumers and customers, developing strategies and the plans to drive company growth and identifying potential partnerships. While project leads can come from many areas of the company, marketers are the ones playing this role most often.

1.2 Legal: for obvious reasons, lawyers are a mandatory presence in the negotiation process. Unless the company is very small and legality is an outsourced function, they must be side-by-side with the project lead. In some large companies that invest heavily in sponsorships, a lawyer dedicated to sports and/or entertainment contracts is also common. The best lawyers can discuss not only the 'legalese' (i.e. the correct language for expressing the ideas) but also the business terms (i.e. what the company needs to buy). There are parts of the process legal will take the lead, particularly when the actual writing of the agreement needs to be written.

Figure 7. Table meeting

From Unplash, by P. Chu, 2017. https://unsplash.com/photos/ULh0i2txBCY.

1.3 Business affairs: this is a function that does not exist in all companies and all countries. Think about business affairs as an intermediary function somewhere in the middle of marketing, procurement and legal. They have a special talent to play all the roles at the same time and represent the company almost solo in deals negotiations. They are common in the United States but not so much in other parts of the world.

1.4 Procurement: companies with limited resources or experience in sponsorship negotiations tend to assign the responsibility to procurement. This is not ideal and tends to create more problems than solutions. Procurement professionals are experts in negotiations (usually of commodities or standardized products and services), but lack understanding of sports and entertainment industries, and the relationships with rights-holders. They come to the table with a pragmatic approach that adds value, but is insufficient to deliver proper results. Assigning the procurement department to negotiate sponsorships should be avoided whenever possible.

1.5 Agencies and/or consultants: some companies opt to hire external support for their negotiations, especially when they are entering discussions with rights-holders that require specific knowledge or experience, or when value of properties are high (and so is the risk). This is a wise thing to do if the kind of negotiation is not recurring (i.e. a 10-year contract with FIFA). If the company plans to negotiate many similar contracts (i.e. to contract with 10 NBA franchises), it is recommended to build internal capabilities for it.

1.6 Finance: this is not necessarily a constant presence in the room, but might be a good addition for larger deals. They can always be consulted offline, but if you have them available, it can speed up evaluation of proposals, alignment and approvals.

1.7 Sustainability: as sustainability becomes a more important business driver for companies and event promoters, many contracts start to include rights and obligations related to it. It can come in the form of commitments to reduce the carbon footprint, the use of plastic, the sourcing of goods, etc. When some of these needs apply, it is recommended to invite the company lead in the area of sustainability to support the negotiation.

2. From the rights-holders' side

Similar to the sponsors, rights-holders will also bring Legal, Business Affairs and Sustainability. In addition, they will add the following:

2.1 Sales team: in large rights-holders, the negotiations are led by their sales team. They are the ones responsible for bringing new partners and revenues, in general. Internally, they negotiate with all the departments to secure the rights they are selling. They are the main point of contact of the rights-holder during the negotiation period. They are usually part of the commercial team.

Figure 8. FC Barcelona

From FC Barcelona, official web site, [FC Barcelona]

2.2 Partnership team: in large rights-holders, after the deal has been signed, the relationship transitions to the partnership team. They are the day-to-day point of contact with the sponsor. If this team exists, they will also be part of the negotiations alongside the commercial team. They are usually part of the commercial team as well.

2.3 Marketing: this is another function of the commercial team. When they exist, they are responsible for developing the rights that are being offered, discuss the digital assets that will be part of the sponsor's contract, present research and represent the fans' points of views.

Preparing for the negotiations

As previously discussed, there is a lot of work that needs to get done before you ever meet the rights-holders. Strategy, plans, alternative scenarios, and ROI simulations are just a few of them. But nothing is as defining as (a) the rights you are acquiring and (b) the financial commitment your company will make. These are interconnected variables. You can get more or less depending on how much you can afford.

This is why it is so critical to have clarity of the assets you need and to work to buy only that, and nothing more.

Here is a true story to illustrate the importance of knowing what you need to buy: over a decade ago, while negotiating a 12-year and several hundred-million-dollar deal with one of the largest football rights-holder in the world, I was surprised when they presented the valuation of each of their assets. According to their proposal, more than 80 % of the total value of that contract (worth over $400 million) was coming from the exposure of the brand on field boards. Their media agency had detailed data - which they proudly presented - proving the boards were by far the largest driver of the deal and the overall price.

As the brand I was representing was globally known and did not need any incremental awareness, my team and I had previously agreed 'visibility' wasn't a priority. We were looking for content, experiences, and engagement (that was already a theme before social media had become part of our lives). Their offer, while accurate, wasn't anything close to what we were looking for.

We then proceeded to inform their commercial team we had agreed with the price and their valuation, but we were not interested in acquiring the boards. Therefore, we were willing to pay only the equivalent of 20 % of the asking price, acquiring all the other assets offered in their proposal. In the spirit of supporting our partnership, we offered them, as an alternative, paying the asking price as long as we had the rights of reselling the field boards at whatever price we could get in the market.

They did not accept the counteroffer saying the rights were part of a single package and every sponsor had to have the boards. However, the counterproposal led to a discussion that allowed my company to considerably reduce the asking price and keep all the assets (including the boards).

That was a good lesson for the rights-holder and a reminder of the importance of being clear about what your priorities are. As it happened on this negotiation, you might not be able to buy only what you need every time, but the clarity will force different discussions and—hopefully—more positive outcomes for your company.

The other side of this coin is the price you pay for a sponsorship.

Many sponsorship managers believe the price of a contract is set in stone, something pre-determined by the rights-holders where the margin for manoeuvre or change is very limited. Well, this couldn't be further from reality. Price is just another variable for the negotiation process and you, as a buyer, have a lot more influence on it than you believe.

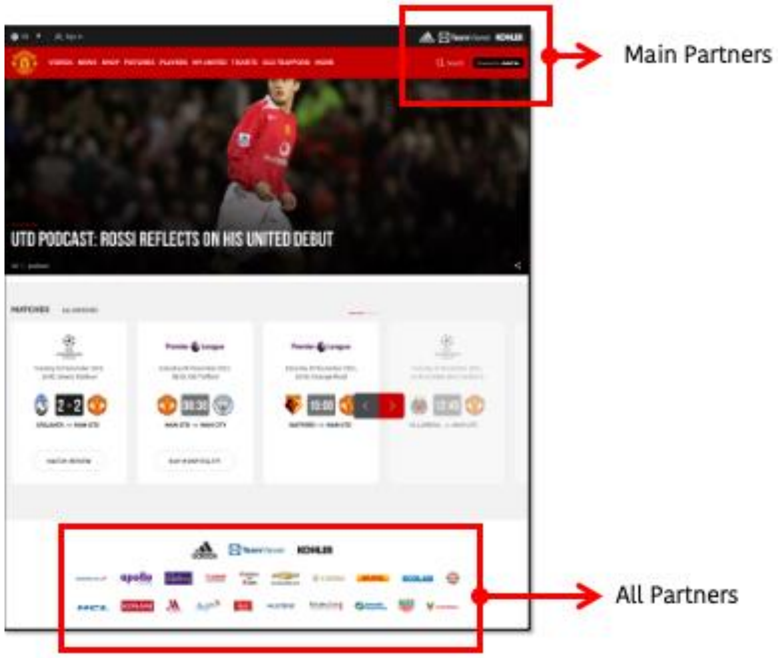
Figure 10. Discount coupons

From Unplash, by J. Ying, 2017. https://unsplash.com/photos/UcI5OAPD820.

When a rights-holder prepares a proposal, they will add enough value to back up the desired sponsorship fees. Some things have real cost (hard cost) while most won't.

The hard costs are all the things the rights-holder will have to spend against. They include tickets, hospitality suites, staff to support activities like guests visiting the stadium, production of exclusive content dedicated to a specific sponsor, rental of space for events, gifts, premiums, media in other companies like Google or Facebook, etc.

Figure 11. Main partners vs. all partners



Adapted from "Official Manchester United Website", by Official Manchester United Website. Retrieved April 5, 2022, from https://www.manutd.com/.

When it comes to IP rights, existing content, presence in the rights-holder social media channels, use of their facilities, time of the staff and players, dedicated rights whose costs will be of the sponsor, branding in existing boards and uniforms, etc., they have a lot more flexibility in pricing.

Because every proposal comes with elements in both categories, it is important for the sponsor to understand which one is which, so you can negotiate them the correct way. Every time you add or remove a hard cost, you should expect an equivalent change in the final price. The same doesn't happen in the 'soft' category.

Once you completed all pre-evaluations, you understand what you need, and you are clear about how much you want to invest, it is time to engage with the rights-holder for the actual negotiation.

There are many theories about negotiations. Some thinkers say your team needs to outnumber the other side, others guarantee you have to meet in your own space to have home ground advantage, many will say you have to have 'good cops and bad cops' in the room.

In my experience, all of the above can work very well for some and can go horribly wrong for others. I encourage you not to get distracted by these 'tricks' and focus on what you can control. Do your homework, prepare well for the meetings, be clear in what you need and what you don't, be fair, polite, and nice to each other. For you to achieve your objectives (a 'win'), the other side doesn't need to 'lose'. If your negotiation goes well, and you sign your sponsorship, you will need to work with the rights-holder in years to come. Never let a negotiation destroy a relationship before it had even started.

The differences between a short and a long form agreement

For the more complex deals, it is usual to focus on the business terms first, leaving everything else for later. This initial phase consumes 80 % of the time and energy of the entire negotiation. Here is where the investment and the rights are discussed. The output of this phase is a shorter contract (a 'short form' agreement).

Once this initial phase has been completed, both sides have the necessary commitments in place and the confidence to announce the deal.

The 'long form' agreement that follows can take over a year to be completed. This is the phase where all the other elements of a contract (most of it led by the lawyers) will be discussed, agreed upon and written into the new full contract.

What is in the short form agreement?

1. The overall scope of the deal (i.e. what you get)

This is the chapter in which the rights-holder details everything that the sponsor will be entitled to, for how long and where. It is important to be detailed and clear about it, and to be precise with the language to avoid any confusion during the execution of the agreement.

Some areas covered on this section are the following:

1.1 Territory: what is the geographic scope of the agreement? Many rights-holders have different tiers for sponsorships that come with geographic boundaries.

- A FIFA sponsorship, for example, can be global (partners like Adidas, Coca-Cola, Qatar Air, etc.), continental (regional partners) or local (domestic partners like Itaú Bank in Brazil in 2014, for example).

- The International Olympic Committee sells only global sponsorships (the TOP Program – Omega, Alibaba, Intel, Airbnb, etc.), while organizing committees for the Olympic and Paralympic Games (in each future host city like Paris, Milano-Cortina or Los Angeles) can only sell domestic ones (Delta and Salesforce are sponsors of the LA28 Games).

- The top European football clubs constantly sign country specific deals (they might have multiple partners of the same product category, each with rights in a different geography).

- The US sports franchises (NY Yankees, Dallas Cowboys, Atlanta United, etc.) sell sponsorships limited to a 50 to 100 miles' distance from its stadium, etc. leaving the nationwide sponsorship for the Leagues (NFL, MLB, NBA, etc.).

1.2 Category: what is the product category covered by the agreement? In the surface, product category may look obvious. Sponsors are constantly pushing for broadening the scope of their categories to cover existing and future products, while rights-holders are doing the opposite (limiting the scope to be able to sell more categories to other companies).

Particularly in contracts with long duration or technology brands, the definition of the categories can be very challenging. What will be the core products for Intel, IBM or Salesforce in 12 years? The two things they know for sure are that they will have more and different products in the future, and that they must have all their products included in the rights they are acquiring today.

Toyota is an excellent example. Known by their cars, Toyota looks at the future of mobility in many ways. They imagine that their business in 2030 will have new forms of moving people and goods around that are different from 'only cars'. This is why when they signed their sponsorship agreement with the IOC, they defined their category as 'mobility' and not 'cars'.

Figure 12. Map of Australia

From Unplash, by J. Csunyo, 2018. https://unsplash.com/photos/2EGuIR0OUTk.

Figure 13. Fleet of Toyota e-Palette vehicles at Tokyo 2020 Olympic Village

From *Toyota's innovative mobility solutions taking Olympic transport to new heights in Tokyo*, by M. Jordan Smith, 2021. International Olympic Committee. https://olympics.com/ioc/news/toyota-s-innovative-mobility-solutions-taking-olympic-transport-to-new-heights-in-tokyo.

But even that is no guarantee of a peaceful future because every category can also have overlaps with others. Think about the areas of potential conflict (or collaboration) between Toyota and Hertz or Uber.

Should Toyota include 'rental cars' as part of their category? They are not a rental car company today, but they sell to Hertz, Avis, etc. If they don't have the rights, they need to think in advance about how a potential rental car sponsor will interact with them (the usual solution would be limiting rental car sponsor advertising to using only Toyota cars). The expensive alternative is to buy this category. That will protect them but will limit the rights-holder for selling it to another sponsor.

A similar example applies to Uber. Car companies and ride-share companies can be competitors or collaborators when it comes to sponsorships

The same challenges and opportunities happen in every other category. Coca-Cola is not FIFA's soft-drinks partner; they are the non-alcoholic beverages partner. Visa is not the credit card sponsor of the NFL; they are the payments partner. The list goes on and on.

1.3 Duration: when it comes to sports sponsorships, the duration of most deals is based on the dates of events. World Cups, Euros, Copa América, Wimbledon, Rugby World Cups, football season, etc. all happen in cycles of 1, 2 or 4 years. Even when we sign an endorsement deal with an athlete, the end date is based on the main events he/she will be competing at.

In the last few years, thanks to the ever-changing nature of business (and the world), many sponsors started to demand more flexibility in the duration of their agreements. Instead of a 5-years contract, why not a 2 or 3? At the beginning, rights-holder resisted to it, but finally accepted to compromise inserting an early termination clause into their deals under certain circumstances.

How does it work in real life? An airline company wanted to sign a 3-year sponsorship with an IPL cricket team in India. The team only accepted to sign 5-year agreements but added a clause to their new contract with the airline that allowed the sponsor to ‘leave’ after year 3. In order to trigger this option, the sponsor would need to give a formal notice to the team before the end of year 2 of the contract, allowing the team a full year to look for a new sponsor in this category.

The common theme in any contractual negotiation would be one side (the rights-holder) asking for the longest possible commitment, and the other (the sponsor) asking for as much flexibility as possible. The only exception to this rule is when regulatory bodies require that contracts are renegotiated every 3 to 4 years, for fair competition reasons. This is very common in Europe, but not so much in other parts of the world.

Figure 14. IOC extends Coca-Cola’s sponsorship to 2032 in China deal with Mengniu

IOC extends Coca-Cola's sponsorship to 2032 in China deal with Mengniu

The value of the deal was not disclosed at a signing ceremony Monday

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IOC extends Coca-Cola’s sponsorship to 2032 in China deal with Mengniu [online image]. Retrieved April 5, 2022, from https://www.business-standard.com/article/pti-stories/coca-cola-extends-as-olympic-sponsor-in-china-deal-to-2032-119062400483_1.html. Screenshot by author.

1.4 Assets: the assets are the most important section of the entire contract. After all, this is what you came here for! They are usually divided in two categories: generic and exclusive.

1.4.1 Generic assets: those same assets that are part of all contracts and all sponsors will be entitled to. It includes things like the following:

a) Marks: the use of the event logo, symbols, icons, fonts, mascots, the right to create adaptations of its visual identity, the development of joint logos (the sponsor brand side-by-side with the event brand), etc.

b) Designations: how a sponsor presents its association with the property. “proud sponsor of…”, “partner of…”, “supporter of…”, “founding partner of…”, etc. While most denominations are variations of the themes above, some sponsors have pushed for more creative lines, such as “ideas partner of…”, “happiness partner of…”, etc.

Figure 15. Designations

Source: own elaboration

Figure 16. UEFA Champions League 2019 Intervalo - Heineken & PlayStation DK

[Untitled image about Figure 16. UEFA Champions League 2019 Intervalo - Heineken & PlayStation DK]. (s. f.). Retrieved fromhttps://i.ytimg.com/vi/o_2bm1dv2pg/maxresdefault.jpg

c) Signage: the exposure of sponsors' brands at the field of play is one of the most valuable assets for brands. Many of these opportunities are generic rights, like the field (or perimeter) boards in football matches. Every UEFA Champions League, FIFA Partner, etc. is entitled to a certain time of exposure on the field boards.

Figure 17. UEFA Champions League 2020 Bumper – PlayStation

UEFA Champions League 2020 Bumper – PlayStation [online video]. Retrieved April 5, 2022, from https://docs.google.com/document/d/1LQ-xnSrIZheD1DXlgJHkpGaHsyVPEHIF/edit#. Screenshot by author.

d) Media: the media allocation can come in the form of advertising insertions in the rights-holder proprietary media (NFL Network, Manchester United TV, etc.) or regular media partners, like the 5-second bumper ads before and after the UEFA Champions League matches in certain territories or the Formula One sponsor' brand exposure in parts of the tracks (click on the image to watch).

e) Consumer events: creating opportunities for sponsors to interact with fans is another common example of a generic ad. This usually comes in the form of the right to create a space (i.e. pavilion, stand, an attraction, etc.) on site (but away from the cameras) for fans to engage with the brands before and after the matches. The IOC has its 'partner showcase' at the Olympic Park, FIFA has its 'partner displays' in most stadia, etc.

Figure 18. Kings of the game

Kings of the game [online video]. Retrieved April 5, 2022, from https://www.youtube.com/watch?v=qzUBVxg2gzc. Screenshot by author.

f) Tickets: they are one of the most common generic assets in every event-based sponsorship. A certain number of tickets (free of cost) and the right to purchase additional ones at cost (or to upgrade the category of the tickets) are must-haves. While the exact number of tickets may vary depending on the sponsor, all of them will have a certain allocation as part of their generic assets.

1.4.2 Exclusive assets: those unique benefits a company will acquire as part of their sponsorship agreement. The list is only limited by the creativity of the sponsor and rights-holder (usually, more of the former). Here is a selection of some examples of exclusive rights:

a) Budweiser King of the Match at the English Premier League and La Liga: The Budweiser King of the Match award is given to the player who fans think gave the best performance on the pitch for each Premier League match. Fans can vote either on the Premier League website or mobile app. The ‘king of the match’ is crowned as soon as voting closes. The winner will feature on the fixture page, with selected winners also being announced on Premier League social media channels.

b) The FIFA World Cup Trophy Tour by Coca-Cola

Figure 19. The FIFA World Cup Trophy Tour by Coca-Cola

The FIFA World Cup Trophy Tour by Coca-Cola [online image]. (n.d.). Retrieved from https://www.informabtl.com/lanzan-trophy-tour-de-coca-cola-rumbo-al-mundial-de-rusia-2018/.

> The FIFA World Cup Trophy Tour by Coca-Cola is the most inclusive, participatory event ever, inviting fans around the world to get up close and personal with the same trophy that is presented by FIFA to the country winning the FIFA World Cup. (The Coca-Cola Company, 2013).

It was created in 2005 and happens every four years in the months leading up to the FIFA World Cup. During its four editions, the trophy has visited most of the FIFA Federations around the world.

c) The Adidas Golden Boot/Gloves

The Golden Boot or Golden Shoe Award goes to the top goalscorer of the FIFA World Cup. While every World Cup had a ranking of the goalscorers, the first time an award was given was in 1982, under the name Golden Shoe. It was rechristened Golden Boot in 2010. FIFA sometimes lists the top goalscorers of previous cups among the Golden Boot winners.

The Golden Glove Award is awarded to the best goalkeeper of the tournament. The award was introduced with the name Lev Yashin Award in 1994, in honour of the late Soviet goalkeeper. It was rechristened Golden Glove in 2010. The FIFA Technical Study Group recognizes the top goalkeeper of the tournament based on the player's performance throughout the final competition.

d) Visa behind-the-scenes tours

At every FIFA event, Visa has the exclusive right to bring small groups of important guests to a behind-the-scenes tour. Twice before the matches and at half-time, Visa's guests go to places only accredited personal and athletes can access. They visit press conferences rooms, locker rooms, the field of play and many other areas of the stadium, getting very close to the players when they warm up minutes before the match kicks off.

The exclusive rights are usually only limited by the creativity of the sponsors. During the negotiations, if they can come up with an idea that is possible to implement and that the rights-holder sees as adding value to the event, it is likely they will get it approved.

In an environment where every brand invests to stand out among their fellow sponsors, the best idea will always win. This is why investing time and resources in developing innovative concepts before you start your negotiation is so important.

2. What you will pay for the rights (i.e. the consideration)

This crucial part of the short form agreement will include the total consideration (the total amount that will be paid throughout the duration of the agreement), the currency in which the payments will be made (necessary for multi-country or global contracts), the taxes that will apply to the payments and who will be responsible for paying them, the schedule of payments (the exact dates and amount per instalment (usually quarterly, 2X a year or annual payments for multi-year deals), how the payments must be done (bank transfers, bank account details, etc.), and other operational elements that are necessary for the transfers.

What is in the long form agreement?

Once you have finished the negotiations and have signed the short form agreement, it is time to work on its longer version. In addition to all the elements described in the previous section, there are many parts that you will need to discuss on this phase to complete the final executed agreement (the copy signed by all parties). Here are the main ones:

1. General information about the agreement: who the parts are, their addresses, the date the parties enter into the agreement and the start and end of date the agreement.

Figure 20. Dictionary definitions

From Unsplash, by J. Hoehne, 2020. https://unsplash.com/photos/1UDjq8s8cy0.

2. Definitions: in order to make the language clear and avoid any misinterpretation, most contracts start by defining the terms that will be used throughout its pages. If you are signing a contract to sponsor the 2024 Olympics and Paralympic Games, you will find the following statement in the definition section: “2024 Olympic Games refers to the Games of the XXXIII Olympiad currently, scheduled to be held primarily in and around Paris, France in 2024” and “2024 Paralympic Games refers to the Paralympic Games currently scheduled to be held primarily in and around Paris, France in 2024”.

You may also find definitions for the following:

- Generic language: brands, broadcasters, communications tools, USD or United States dollars, event period, packaging, term, territory, designations, etc.

- Legal language: change in control, confidential information, intellectual property, product category, product supply agreement, proprietary platforms, rights, etc.

- Marketing language: logos, composite logo, designated marks, designations, marks, mascot, slogan, motto, pictograms, symbol, premiums, products, sponsor marks, etc.

- Rights-holders’ names: FIFA, UEFA, ICC, MLS, NFL, IPC, NOC, NPC, etc.

- Rights-holders’ events: Olympic Torch Relay, FIFA World Cup, cultural programs, FIFA ranking, FIFA trophy, world circuit, signature properties, sole and exclusive rights, etc.

- Rights-holders’ language: tier 2, 3, 4 sponsors, TOP partner, (Country X) Olympic team, (Country X) National Football Team, (Country X) Paralympic Team, global partner, FIFA

World Cup sponsor, FIFA Women's World Cup, Olympic charter, Olympic movement, etc.
- Commercial language: commercial guidelines, consideration, commercial partners, licensees, suppliers, premium licensee, etc.

Each rights-holder and sponsor will agree on a list of necessary definitions for their contract. While some of them are present in all contracts, most will be specific to the two parties involved in that specific negotiation.

3. Morals clause

A morality clause (also known as a morals clause) is a provision within instruments of a contract which curtail, or restrain, or proscribe certain behaviour of individuals or party(s) to the contract.

A morality clause is a way to hold the individual or party(s) to a specific behavioural standard in order not to cause disrepute, scandal or contempt to the other individual or party to the contract and their interests. It attempts the preservation of a public and private image of such a party to the contract. Fundamentally, one party to the contract is paying for the other party's good name or reputation. These clauses are often found in contracts between studios and their actors and actresses, the education field (specifically minors), and athletes and the organization or proprietors of a product he or she may endorse. Frequently proscribed activities involve alcohol consumption, usage of illegal drugs or narcotics, or illegal or illicit sexual activity.

This is a mandatory clause in every sports' contract. It is also one of the most difficult to enforce, as it requires proof of the misconduct that are usually not obvious or not legally supported. It may take years between the moment a crisis breaks (with an athlete that misbehave or a rights-holder that is accused of corruption) and when they are proven guilty. Unfortunately, the sponsors had already had their reputation tarnished by all the events when they are finally able to exercise the morals clause. Attention to the language used here is critical.

4. Force majeure

Force majeure can be defined as a common clause that basically releases both parties from liability or obligation whenever an extraordinary event or circumstance—war, strike, riot, crime, epidemic, or sudden legal changes—out of the parties control impedes one or both of the parties to fulfil their obligations set in the contract. Even if any event described as an act of God is explicitly excluded since it covers a separate domain and differs in legal terms, it is still related to contract law. Generally, force majeure is expected to cover occurrences that exceed the reasonable control of a party.

Force majeure was particularly discussed in the last years in the context of the COVID-19 crisis. As events were cancelled or postponed all over the world for an extended period of time and sponsors started to cancel contracts and recuperate investments, the discussions of force majeure, something that many marketers ignored until a few years ago, were suddenly brought to every sponsorship table. To the disappointment of most sponsors, the language used in contracts was not clear enough, and they were forced to honour their agreements, despite the cancellation of the events.

Other clauses that will be part of the long form agreement, in no particular order, are the following:

- Representations
- Warranties
- Insurance
- Public statements
- Termination
- Supply of products
- Liability
- Cancellation

Once all the above clauses have been agreed upon, the contract is finally executed by the parties with the exchange of signatures. That completes the process.

Announcing the sponsorship

Every company has a different approach for announcing investments. Some are more conservative and opt for a simple press release (that has a very limited reach), while others will do massive events to celebrate the sponsorship. There is no correct approach, and every company is different when it comes to bragging about a new multimillion investment.

In general, to start generating awareness and excitement about a new sponsorship among employees, customers, consumers, business partners, etc. can be a great way to excite and engage multiple constituents.

Figure 21. 2017 World Economic Forum Annual Meeting

From "Alibaba is now the official cloud services provider of the Olympics", by F. Coffrini, 2017. https://techcrunch.com/2017/01/19/alibaba-is-now-the-official-cloud-services-provider-of-the-olympics/.

Conclusion

Negotiating deals and writing contracts are not the main reasons most people opt to work with sports and sponsorships, but they are two of the most important capabilities any sponsorship manager must develop. The most interesting careers in sponsorships are the ones in which the professionals have the opportunity to work with different partners, which means many contracts. Enjoy the process!

References

World's Largest FIFA World Cup™ Trophy Tour by Coca-Cola and FIFA Kicks Off in Rio de Janeiro. (December 9, 2013). *The Coca-Cola Company*. https://www.coca-colacompany.com/press-releases/worlds-largest-fifa-world-cup-trophy-tour-by-coca-cola-kicks-off.