



## INTELLECTUAL PROPERTY

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# Top Tips for Sponsorship Agreements

by

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The global sponsorship market is estimated to be worth almost \$60 billion.

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We learned this week that the FA Cup is likely to be renamed "the Emirates FA Cup"; following a sponsorship deal with Emirates Airlines that includes naming and branding rights.

Despite some initial unfavourable reaction, the public will have to get used to a new name for the 'world's oldest knockout competition'. The Football Association has opted for a new means of earning revenue, reported to be £30m, through this co-branding opportunity. They are not alone. There are as many different types of sponsorship agreements as there are brands including sponsorships of television shows and sporting competitions; naming of sports and entertainment venues; product endorsements; and celebrity endorsements.

## Is your business involved in sponsorship? Here are main legal issues for you to watch out for.

1. **Set out the primary rights in full.** Every sponsorship agreement should comprehensively set out the principal sponsorship opportunity, describing the rights granted under the arrangement.
2. **Define exclusivity.** Any exclusivity granted in a sponsorship arrangement should be scoped out very carefully. Clear exclusivity parameters should be included in the contract, particularly if a sponsor is carving up the same opportunity into multiple sponsorship packages. It is important not to agree contracts that conflict with each other.
3. **Secure any secondary rights.** In addition to the primary rights, there will often be secondary rights, which will be allocated as part of the sponsorship package. These might be free tickets to events, the opportunity to place a sponsor's logo on a website, dissemination of marketing materials and other forms of co-branding. As a sponsor, to avoid disappointment, it is important that you itemise list out what you expect to get from a sponsorship opportunity, to avoid disappointment.
4. **Payment terms.** A sponsorship agreement should clearly articulate the sponsor's payment obligations. The timing of the payments should be easy to understand, as should any conditions attaching to payments.
5. **Duration.** Sponsorship arrangements are usually for a specified duration. Sponsors will often negotiate an option to renew a sponsorship opportunity and also the conditions that apply to renewal.
6. **Termination.** Rights to terminate for material breach of the sponsorship agreement or any form of insolvency event affecting any of the parties should be included in sponsorship agreements. Other termination triggers will usually be included, particularly around brand tarnishment events. A sponsorship agreement should spell out how the parties will end their relationship, and the steps that must be taken to disentangle their brands.
7. **Future proofing.** Brands change, as do the businesses to which they relate. When entering into a sponsorship agreement, care needs to be taken to think about events and changes which might occur during the lifetime of the deal. This sort of future proofing exercise can be difficult, but it is an important piece of the sponsorship contract modelling process. For example if a famous sportsperson endorses your product, what happens if that person dies, become incapacitated, or is brought into disrepute during the lifetime of the contract?

8. **Sponsorship under attack.** When brands or sponsorship opportunities are successful they sometimes come under attack from third parties. There are plenty of examples of ambush marketing events where the benefit to an exclusive sponsor has been eroded by the activities of a competitor seeking unauthorised publicity in connection with a sponsored event. Sponsorship contracts should have mechanisms for dealing with these activities.
9. **Liability and risk.** When sponsorships fail and disputes arise, the sponsorship agreement should determine each party's liability and must precisely allocate risk. Liability provisions will vary from contract to contract, and the bargaining position of the respective parties will often decide the positions taken.

While not exhaustive, this list should assist businesses contemplating sponsorship opportunities. Think about each sponsorship opportunity carefully. Design a customised contract which meets the business needs and records the expectations and objectives of all the parties.

## About the Author