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Importance of Moral Clause in Sports Contracts

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ABSTRACT

Companies provide the endorsement deals to the sportspersons/ athletes who have the potential to become one of the best players in the sports. It also benefits to companies to increase their revenue by advertising their products/ services to the consumers. However, what happen when an accusation or any allegation, criminal or civil, be made on such sportspersons/ athletes who are closely associated with such companies. Therefore, Moral Clause comes into the picture. This kind of clauses give rights to the company to terminate the contract with the sportspersons/ athletes or to the sports organisation to terminate the contract. Hence, in this article we will see what is moral clause in the sports, how it is important for the companies and why it can be negotiated in case a well-established sportspersons/ athlete is associated with the company. The researcher in the present article done secondary research which include books, case laws, articles, journals, statues and online database.

Keywords: - Sportspersons, athletes, moral clause, sports, brand image and negotiation

I. INTRODUCTION

Sportspersons or Athletes professional career in sports are quite uncertain and low in terms to other people who pursue different career. Due to which, they work really hard to perform and be part of any professional team.² It can be for any professional club or for the national team. Therefore, the remunerations are really high to any average professional career. More than that, sportspersons or athletes signed other various endorsements or sponsorship deals with companies to get extra revenue to utilise such funds for further future investments in any form.³ However, there are some case in which sportspersons or athletes done negligent act which can

¹ Author is a Student at Symbiosis Law School, Pune, India.

² Admin, *Sports As a Career Option - Courses & Scope*, INDIA EDUCATION (Last visited in 15 Jun, 2020, 21:38 PM),

<https://www.indiaeducation.net/careercenter/professional-courses/sports/>

³ Nasha Smith, *13 athletes who make more money endorsing products than playing sports*, BUSINESS INSIDER INDIA (14 Jun, 2019, 20:29 PM),

<https://www.businessinsider.in/sports/nba/13-athletes-who-make-more-money-endorsing-products-than-playing-sports/articleshow/69792544.cms>

further damage the goodwill or reputation or brand-value of such companies or sports organizations.⁴ Hence, sponsors and endorsers put moral clause in the agreement to protect themselves in case any dispute arise.

Moral Clause means it is a provision which prohibits or restricts, certain act or behaviour, in connection with a personal life of the either parties in the contract. Such kind of clauses deals with behaviour of the sportspersons/ athlete's objectionable behaviour which include sexual offence or prohibited use of certain drug substances, public fights or criminal accusations and many more.

II. RESEARCH METHODOLOGY

The researcher in the present article done secondary research which include books, case laws, articles, journals, statues and online database.

III. SCOPE

The scope of the moral clause in the contracts are very broad. There are no any statutory requirements or specific provisions for such clauses. Usually companies do terminate the contract with the sportsperson/ athletes in case they violate the terms and conditions of the contract.⁵

The companies always try to draft the '*Moral Clause*' as broad and vague as possible. Such terms and conditions are generally help them as a discretionary power on them to terminate such contracts with the sportspersons or athletes.⁶ These terms can be mention in the contract as: -

- Acts which are offensive towards public morals;
- Acts which are indecent in nature (*showing obscene gestures*);
- Moral Turpitude;
- Acts against Public Morals;
- Acts which can arise a disrepute towards the company.

It clearly shows that the broader the moral clause will be the contract; the interpretation of such

⁴ Daniel Auerbach, *Morals Clauses as Corporate Protection in Athlete Endorsement Contracts*, 3 DePaul J. Sports L. & Contemp. Probs. 1 (2005)

⁵ Patricia Sánchez Abril & Nicholas Greene, *Contracting Correctness: A Rubric for Analyzing Morality Clauses*, 74 Wash. & Lee L. Rev. 3 (2017)

⁶ Caysee Kamenetsky, *The Need for Strict Morality Clauses in Endorsement Contracts*, 7 Pace. Intell. Prop. Sports & Ent. L.F. 289 (2017)

clause can be more general and open in litigation process. ⁷Therefore, such violation can lead to terminate the endorsement or sponsorship contract with the sportspersons/ athletes in case he/she breach the abovesaid terms in the contracts.

However, in case a sportspersons/ athlete is well-renounced or successful or reputed in his field will try to narrow down his moral clause. This is known as *Specific Moral Clause* or *Reciprocal Moral Clause*.⁸ Such clauses will help the sportspersons or athletes to avoid such premature termination of contract due to veil of moral clause. Such veil further gave more negotiation power to the sportsperson/ athletes.⁹

IV. CASE STUDIES

Babe Ruth

Former New York Yankees legendary player, Babe Ruth was the first professional player in National Baseball League, which have contract addendum regarding moral clause. It was drafted as: -

*“The Player must keep himself in first-class physical condition and must at all times conform his personal conduct to standards of good citizenship and good sportsmanship.”*¹⁰

However, the above-said clause has further explanation which are inclusive which says: -

“It is understood and agreed by and between the parties hereto that the regulation above set forth...shall be construed to mean among other things, that the player shall at all times during the term of his contract...refrain and abstain entirely from the use of intoxicating liquors and that he shall not during the training and playing season in each year stay up later than 10’ clock A.M. on any day without the permission and consent of the Club’s manager, and it is understood and agreed that if at any time during the period of this contract, whether in the playing season or not, the player shall indulge in intoxicating liquors or be guilty of any action or misbehaviour which may render him unfit to perform the services to be performed by him hereunder, the Club may cancel and terminate this contract and retain as the property of the Club, any sums

⁷ Todd J. Clark, *An Inherent Contradiction: Corporate Discretion in Morals Clause Enforcement*, 78 La. L. Rev. (2018)

⁸ JANE ADDAMS, *DEMOCRACY AND SOCIAL ETHICS* 119, (U. of Illinois Press 2002) (1902)

⁹ Andrew Zarriello, *A Call to the Bullpen: Alternatives to the Morality Clause as Endorsement Companies’ Main Protection Against Athletic Scandal*, 56 B.C.L. Rev. 389 (2015)

¹⁰ Daniel Schwartz, *The Uniform Baseball Contract is an Employment Contract Like Few Others*, CONNECTICUT EMPLOYMENT LAW BLOG (18 Oct, 2019), <https://www.ctemploymentlawblog.com/2019/10/articles/the-uniform-baseball-contract-is-an-employment-contract-like-few-others/>

of money withheld from the player's salary as above provided."

Chris Webber

Former Golden State Warriors, Chris Webber signed endorsement contract with the FILA, which got terminated by them for violating the moral clause with the sports manufacturing company because he was arrested by the police for possessing marijuana. It was already stated in the moral clause that, "...*The endorsement can only be terminated in case of a conviction and an arrest is not the same a conviction.*"¹¹

FILA released their statement in the press for condemned for such act including possessing and using such kind of drugs.¹² Later on, the endorsement company was sued by Chris Webber for wrongful termination by stating that, it can only be terminate if the conviction was well established for not just charge of a drug possession. However, Chris Webber successfully received the compensation from the endorsement company for such wrongful termination.¹³

Lance Armstrong

Lance Armstrong was one of the most decorated professional road racing cyclists in the history of this sports. He won *La Tour de France* for seven times and bronze medal in Sydney Summer Olympic, 2000. Not only this, he was diagnosed with testicular cancer in October 2, 1996. Somehow, he managed to overcome such life-threatening disease and further make comeback in road racing cyclist. For his such determination, overcoming or bounce-back ability, team spirit and perseverance nature, Nike Inc. for the worth of US 3.2 billion till the end of 2012.

In January 2013, he has the interview with Oprah Winfrey in which he admitted the fact that he used performance enhancement drugs to improve his performance in Tour de France. Not only he was strapped from Tour de France and Bronze Olympic Medal from Sydney Summer Olympic but also terminated from the endorsement deal from Nike Inc. from using such performance enhancement drugs which violated the terms and condition of the endorsement contract.¹⁴ The main reason for the termination of this endorsement deal was going against the philosophy and ideology of the company which have such stories regarding heroism theory.¹⁵

¹¹ Sarah Wyatt, *Fila Breaks Off Webber Contract*, AP NEWS (29 Aug, 1998), <https://apnews.com/55c1f956bd18a9a4778426da8a325bc3>

¹² WAYTT, *supra note* 10.

¹³ Ashima Obhan & Nishtha Jaisingh, *The Pre-eminence of Morality Clauses in Endorsement Contracts*, <https://www.obhanandassociates.com/blog/the-pre-eminence-of-morality-clauses-in-endorsement-contracts/>

¹⁴ Liz Clarke, *Lance Armstrong admits doping in Oprah Winfrey interview*, AP reports, THE WASHINGTON POST (14 Jan, 2013), https://www.washingtonpost.com/sports/lance-armstrong-admits-doping-in-oprah-winfrey-interview-ap-reports/2013/01/14/a635a424-5eaf-11e2-9940-6fc488f3fecd_story.html

¹⁵ Baily, Alan I., *Heroic individualism: the hero as author in democratic culture*, (2006). LSU Doctoral Dissertations.1073,

Tiger Woods

Eldrick Tont “Tiger” Woods is the professional golfer from USA. A golfer with immense success in PGA, winning 13 major championships and top ranked golfer in the world in two separate occasions [from August 1999 to September 2004 (264 weeks) and again from June 2005 to October 2010 (281 weeks)]. He is one of the most highly decorated golfers in the history of the game.

On November 2009, *National Enquirer* published a story regarding Tiger Woods extramarital affair with numerous women. Later on, such reports become valid and verified from these 120 women who claimed that they have sexual encounter with him.¹⁶ Therefore, companies like Gillette and Gatorade terminate their endorsement deals with him by triggering the *moral clause*.¹⁷ Nike Inc. didn't terminate their endorsement deal with him. However, they reduced the endorsement contract of about US \$20 million for next two contract.¹⁸ In his personal life also, he got the setback when her wife who filed a divorce suit against him regarding adultery and cheating on her.¹⁹

Kobe Bryant

Former Los Angeles Lakers basketball player and five-time NBA champion, Kobe Bryant was the best shooting guard basketball player in NBA. On 2003, a complaint was filed against him for accusing him for sexual assault against a 19 years old hotel clerk.²⁰ For such negligent act, companies like Ferrero SpA and McDonalds terminate their endorsement deal with him by exercising the *moral clause* in the same endorsement contract.²¹

However, the accuser drops such allegation against him by not testifying the criminal trial. Due to this, both the parties settled their case out of the court in which Kobe Bryant admitted the fact of sexual assault and later on he gave the public apology.

Indian Premier League spot-fixing scandal

https://digitalcommons.lsu.edu/gradschool_dissertations/1073?utm_source=digitalcommons.lsu.edu%2Fgradschool_dissertations%2F1073&utm_medium=PDF&utm_campaign=PDFCoverPages

¹⁶ Jill Mahoney, *Chronology of the Tiger Woods scandal*, THE GLOBE AND MAIL (8 Dec, 2009), <https://www.theglobeandmail.com/sports/chronology-of-the-tiger-woods-scandal/article4313560/>

¹⁷ ZARRIELLO, *supra* note 8.

¹⁸ Admin, *Athletes who've lost endorsements after scandals* (23 Oct, 2012, 12:39 PM), <https://www.cbsnews.com/media/athletes-whove-lost-endorsements-after-scandals/>

¹⁹ MAHONEY, *supra* note 15.

²⁰ Gary Tuchman & Brian Cabell, *Kobe Bryant charged with sexual assault*, CNN LAW CENTER (16 Dec, 2003, 05:49 AM), <https://edition.cnn.com/2003/LAW/07/18/kobe.bryant/>

²¹ Arredondo, Christina Marlene, *The affects [sic] of behavior on celebrity image* (2005). Theses Digitization Project. 2627, <https://core.ac.uk/download/pdf/212813909.pdf>

The most profitable league in the game of cricket, Indian Premier League was the best thing which can happen to enhance the home-grown talent and maximising the revenue for BCCI. On 2013, a sting operation conducted by the Delhi Police for the spot-fixing in this season and found three Indian players which are, Sreesanth, Ajit Chandila and Ankeet Chavan are involved for such unethical practices which are against the norms of BCCI and ICC.²²

Later on, Mumbai Police filed a case against Bollywood actor Vindu Dara Singh, Chennai Super King's Team Principal Gurusath Meiyappan and Rajasthan Royals team owner Raj Kundra were also charged under the MCOCA for involving in betting and providing essential information with the bookies.²³

Due to this, the title sponsor of the IPL "Pepsi" triggered their *moral clause* to terminate their sponsorship deal with the IPL. The dysfunctional Pune franchise, Pune Warriors India also terminate their participation in IPL regarding disagreement with league administration regarding franchise fees and ethical practices of spot-fixing.²⁴

V. ANALYSIS

As we saw in the above case studies and scope regarding moral clause, we understand that brands and companies will do protect their goodwill/ brand image in any case they face any allegations which are made for the sportspersons/ athletes who are involve in such negligent act that can tarnished companies brand image.²⁵ However, it also depend upon the ideology and philosophy of the companies.

The major problem is the moral clause which is drafted by the endorsees. Therefore, companies need to draft carefully to keep in mind the ideology and philosophy of their principals, brand image of the company, behaviour and conduct of the sportspersons/ athletes inside the match and outside the match.²⁶

Influential and most valuable players like Cristiano Ronaldo, LeBron James, Lionel Messi, M.S. Dhoni, Sachin Tendulkar, Virat Kohli and even Rohit Sharma will negotiate the moral clause with the companies for the endorsement agreement to narrow it down because not only they bring are well-established in their respective sports but also their massive influence among

²² Ritesh Misra, *Ethical Issues in the Gentleman's Game*, 2 LIB. STU. JOU. 8, 10-15 (2017).

²³ MISRA, *supra note* 21.

²⁴ MISRA, *supra note* 21.

²⁵ Roshan Gopalkrishna, *The Anatomy Of An Endorsement Agreement*, THE SPORTS LAW & POLICY CENTRE (25 Sep, 2013), <https://sportslaw.in/home/2013/09/25/the-anatomy-of-an-endorsement-agreement/>

²⁶ Carole Ginman, *ATHLETE ENDORSEMENTS AND BRAND IMAGE A Study of Consumer Attitudes toward Nike in Light of the Brand's Association with Tiger Woods*, THE UNIVERSITY OF UPPSALA Department of Business Studies Magister Thesis, 15 ECTS Spring 2010, <http://www.divaportal.org/smash/get/diva2:327817/FULLTEXT01.pdf>

their fans which can enhance the sales of the company.²⁷

VI. CONCLUSION AND SUGGESTIONS

We saw how the moral clause can play the important part of the sportspersons/ athletes as well as to the companies because they both have the immense power to pull the consumers to their attentions towards their brand.²⁸ As the social media gave the rise for advertisements, it becomes more feasible now both the parties generate the revenue. However, companies need to be more cautious regarding the conduct of the players and make sure that it didn't affect the brand of the endorsers.

However, the sportspersons/athletes who have the image as the "Superstars" of the game who are in their prime of the game, were try to negotiate with the companies to narrow it down so that they can be more flexible in case any dispute arises. However, there are some recommendation which can further enhance such clauses for the betterment of the sports:

- ✓ *Nigerian Professional Football League (LMC) Rules, 2014*²⁹- Section 3 of the LMC Rules talks about the general disciplinary provisions "without making it mandatory for clubs to insert a morals clause in the standard professional player contracts for clubs playing in the league." The Nigerian Football Association didn't find any report for the players regarding termination of the contract regarding violation of moral clause. Therefore, the clubs in Nigeria have now adopted *Ad-hoc* approach for suspending the player without paying their match fees or imposing penalty/ fine on them;
- ✓ *Compensation Scheme*³⁰- There are some incidents in which accusations were made for the sportspersons/ athletes which are false in nature. Due to which they lose their endorsement deals with the company. Such incidents can hammer players emotions and their psychological gameplay. Therefore, a compensation scheme needs to be provided to them in case the accusations are not true.

²⁷ ANI, *World Fame 100: Virat Kohli only Indian in top 10, MS Dhoni in 13th spot*, THE NEW INDIAN EXPRESS (14 Mar, 2019, 05:46 PM),

<https://www.newindianexpress.com/sport/cricket/2019/mar/14/world-fame-100-virat-kohli-only-indian-in-top-10-ms-dhoni-stands-on-13th-spot-1951096.html>

²⁸ Anja Puc, *Effect Of The Athlete Sponsorship On Brand Equity: A Case Of Slovenia*, UNI. OF. LJU. (Jan, 2018), <http://www.cek.ef.uni-lj.si/magister/puc2839-B.pdf>

²⁹ Shehu Dikko, *Nigeria Professional Football League: Frame Work and Rules*, NPFL (2014), https://npfl.ng/wp-content/uploads/2019/01/npfl_framework_rules-1.pdf

³⁰ Miller Canfield, *Is it Time for Athletes to Demand Reciprocal Morals Clauses in Their Endorsement Deals?*, JDSUPRA (20 Feb, 2017), <https://www.jdsupra.com/legalnews/is-it-time-for-athletes-to-demand-71531/>

VII. REFERENCES

Books-

- JANE ADDAMS, *DEMOCRACY AND SOCIAL ETHICS* 119, (U. of Illinois Press 2002) (1902);
- PETER A. CARFAGNA, *REPRESENTING THE PROFESSIONAL ATHLETE* (2nd ed. 2013);
- PETER A. CARFAGNA, *NEGOTIATING AND DRAFTING SPORTS VENUE AGREEMENTS* (1st ed. 2010).

Articles/ Journals-

- Admin, *Sports As a Career Option - Courses & Scope*, INDIA EDUCATION (Last visited in 15 Jun, 2020, 21:38 PM),
- <https://www.indiaeducation.net/careercenter/professional-courses/sports/>
- Nasha Smith, *13 athletes who make more money endorsing products than playing sports*, BUSINESS INSIDER INDIA (14 Jun, 2019, 20:29 PM), <https://www.businessinsider.in/sports/nba/13-athletes-who-make-more-money-endorsing-products-than-playing-sports/articleshow/69792544.cms>
- Daniel Auerbach, *Morals Clauses as Corporate Protection in Athlete Endorsement Contracts*, 3 DePaul J. Sports L. & Contemp. Probs. 1 (2005)
- Patricia Sánchez Abril & Nicholas Greene, *Contracting Correctness: A Rubric for Analyzing Morality Clauses*, 74 Wash. & Lee L. Rev. 3 (2017)
- Caysee Kamenetsky, *The Need for Strict Morality Clauses in Endorsement Contracts*, 7 Pace. Intell. Prop. Sports & Ent. L.F. 289 (2017)
- Todd J. Clark, *An Inherent Contradiction: Corporate Discretion in Morals Clause Enforcement*, 78 La. L. Rev. (2018)
- Andrew Zarriello, *A Call to the Bullpen: Alternatives to the Morality Clause as Endorsement Companies' Main Protection Against Athletic Scandal*, 56 B.C.L. Rev. 389 (2015)
- Daniel Schwartz, *The Uniform Baseball Contract is an Employment Contract Like Few Others*, CONNECTICUT EMPLOYMENT LAW BLOG (18 Oct, 2019), <https://www.ctemploymentlawblog.com/2019/10/articles/the-uniform-baseball-contract-is-an-employment-contract-like-few-others/>

- Sarah Wyatt, *Fila Breaks Off Webber Contract*, AP NEWS (29 Aug, 1998), <https://apnews.com/55c1f956bd18a9a4778426da8a325bc3>
- Ashima Obhan & Nishtha Jaisingh, *The Pre-eminence of Morality Clauses in Endorsement Contracts*, <https://www.obhanandassociates.com/blog/the-pre-eminence-of-morality-clauses-in-endorsement-contracts/>
- Liz Clarke, *Lance Armstrong admits doping in Oprah Winfrey interview*, AP reports, THE WASHINGTON POST (14 Jan, 2013), https://www.washingtonpost.com/sports/lance-armstrong-admits-doping-in-oprah-winfrey-interview-ap-reports/2013/01/14/a635a424-5eaf-11e2-9940-6fc488f3fecdd_story.html
- Baily, Alan I., *Heroic individualism: the hero as author in democratic culture*, (2006). LSU Doctoral Dissertations.1073, https://digitalcommons.lsu.edu/gradschool_dissertations/1073?utm_source=digitalcommons.lsu.edu%2Fgradschool_dissertations%2F1073&utm_medium=PDF&utm_campaign=PDFCoverPages
- Jill Mahoney, *Chronology of the Tiger Woods scandal*, THE GLOBE AND MAIL (8 Dec, 2009), <https://www.theglobeandmail.com/sports/chronology-of-the-tiger-woods-scandal/article4313560/>
- Admin, *Athletes who've lost endorsements after scandals* (23 Oct, 2012, 12:39 PM), <https://www.cbsnews.com/media/athletes-whove-lost-endorsements-after-scandals/>
- Gary Tuchman & Brian Cabell, *Kobe Bryant charged with sexual assault*, CNN LAW CENTER (16 Dec, 2003, 05:49 AM), <https://edition.cnn.com/2003/LAW/07/18/kobe.bryant/>
- Arredondo, Christina Marlene, *The affects [sic] of behavior on celebrity image* (2005). Theses Digitization Project. 2627, <https://core.ac.uk/download/pdf/212813909.pdf>
- Ritesh Misra, *Ethical Issues in the Gentleman's Game*, 2 LIB. STU. JOU. 8, 10-15 (2017).
- Roshan Gopalkrishna, *The Anatomy Of An Endorsement Agreement*, THE SPORTS LAW & POLICY CENTRE (25 Sep, 2013), <https://sportslaw.in/home/2013/09/25/the-anatomy-of-an-endorsement-agreement/>

- Carole Ginman, *ATHLETE ENDORSEMENTS AND BRAND IMAGE A Study of Consumer Attitudes toward Nike in Light of the Brand's Association with Tiger Woods*, THE UNIVERSITY OF UPPSALA Department of Business Studies Magister Thesis, 15 ECTS Spring 2010, <http://www.divaportal.org/smash/get/diva2:327817/FULLTEXT01.pdf>
- ANI, *World Fame 100: Virat Kohli only Indian in top 10, MS Dhoni in 13th spot*, THE NEW INDIAN EXPRESS (14 Mar, 2019, 05:46 PM), <https://www.newindianexpress.com/sport/cricket/2019/mar/14/world-fame-100-virat-kohli-only-indian-in-top-10-ms-dhoni-stands-on-13th-spot-1951096.html>
- Anja Puc, *Effect Of The Athlete Sponsorship On Brand Equity: A Case Of Slovenia*, UNI. OF. LJU. (Jan, 2018), <http://www.cek.ef.uni-lj.si/magister/puc2839-B.pdf>
- Shehu Dikko, *Nigeria Professional Football League: Frame Work and Rules*, NPFL (2014), https://npfl.ng/wp-content/uploads/2019/01/npfl_framework_rules-1.pdf
- Miller Canfield, *Is it Time for Athletes to Demand Reciprocal Morals Clauses in Their Endorsement Deals?*, JDSUPRA (20 Feb, 2017), <https://www.jdsupra.com/legalnews/is-it-time-for-athletes-to-demand-71531/>

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