

# LEGAL PROTECTION OF ATHLETE MARKETING VALUE

This resource provides an overview of the marketability of athletes, the basis for the market value of athletes and the legal basis for protecting that value.

## What is 'Athlete Marketing Value'?

There is value in the *name* and *likeness* of athletes. With the exception of media coverage, an athlete's *name* and *likeness* may not be exploited commercially without the athlete's consent. While obvious examples of commercial use include professional athletes, Olympic athletes are increasingly able to capitalize on the desire of companies to associate their products or services with such athletes. The value of the company-athlete relationship will depend on the athlete's sport and the athlete's profile in the community. (See also Marketing Considerations for Athletes, which describes the assessment and development of marketing proposals.)

An athlete's *name* and *likeness* is *protectable* at law including the athlete's:

- name
- nickname
- image (or likeness) eg. photos
- signature
- pose
- voice

An athlete's *name* and *likeness* must be properly protected:

- to preserve its *integrity* (from a legal perspective) and thereby ensure that the value of the athlete's *name* and *likeness* is not undermined
- to enhance and maintain its *commercial value* - both during and after an athlete's competitive career – and therefore the *goodwill* associated with the athlete.

The legal bases for protecting and athlete's *name* or *likeness* include:

- the common law, the *Trademarks Act* (Canada), the
- Copyright Act* (Canada) and the *Trade Practices Act* (BC)
- written contracts which describe and thereby control the basis on which the athlete's *name* and *likeness* may be used by other persons.

## Why is protection important?

The *legal* basis for protecting an athlete's *name* or *likeness* is technical: while the protection of an athlete's *name* or *likeness* may not require the athlete to take any action to protect his or her *name* or *likeness*, formal protection may be available through registration under the *Trademarks Act* (Canada) or the *Copyright Act* (Canada). Examples include an athlete's image or signature on athletic equipment or other products.



## How can athlete protect their value?

Arrangements relating to the use of an athlete's *name* or *likeness*, or an athlete's appearance on behalf of another party

- to properly protect the athlete's interests - including use of the athlete's *name* and *likeness*
- to prevent unauthorized use of the athlete's *name* or *likeness* which could undermine their value and protection
- to demonstrate that the athlete is a business person - something that will be respected by businesses.

Any endorsement contract between an athlete and a sponsor must be reviewed to ensure:

- that it does not conflict with prior contracts entered into by the athlete – for example:
  - the products or services may be broadly defined and thereby preclude the athlete's endorsement of other products or services – e.g., "financial services" might include not only banking services, but financial and credit services
  - the right to use the athlete's *name* or *likeness* may extend beyond the term of the contract thereby preclude the athlete's endorsement of other products or services for that period
- that it does not contravene the rules and regulations of the governing body, which could result in suspension or disqualification.

## Helpful reminders...

The athlete should read and understand any contract which he or she enters into so that he or she:

- understands his or her obligations and is prepared to comply with them – for example:
  - required to appear at events which may interfere with the athlete's training or competition schedule
  - the athlete may not like public speaking but may be required to speak before large groups
- understands the sponsor's obligations.
  - For specific discussion of endorsement contracts, see Endorsement Contracts.

If you have any questions or would like further information, please contact BC Athlete Voice at [info@bcathletevoice.ca](mailto:info@bcathletevoice.ca) or on 604-333-3660.