

Breaking Up Is Hard To Do: What Are The Key Considerations On Ending A Commercial Partnership?

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Sports & Entertainment - Squire Patton Boggs

In the past week, two high-profile, long-term commercial relationships have come to an end.

First came the announcement that the International Olympic Committee (“**IOC**”) and McDonald’s had mutually agreed to end their worldwide partnership with immediate effect, three years before it was due to expire (the commercial background to the break-up, and any financial terms which accompanied the termination, are not public knowledge). In some respects, this is the end of the Olympics as many of us know it: McDonald’s has been involved in some form of partnership with the Olympics for over 40 years (since the 1976 Innsbruck Winter Games) and was a founding member of the IOC’s TOP scheme (“[The Olympic Partner](#)” programme of exclusive global marketing rights relating to the Olympics) in 1985.

Less than a week later came the news that, after half a century of partnership, Adidas and Bundesliga side Schalke 04 will not be renewing their kit partnership beyond the 2017-18 season.

At the outset of any relationship, making detailed plans for the break-up often feels counterintuitive or even counterproductive. In those heady early days, it seems to make little sense to plan for the relationship’s ultimate demise (particularly where that involves considering the possibility that it might involve disagreement). Yet, regardless of whether the ending of such a relationship is mutual, it often pays to ensure that these matters are carefully thought through and set out with in the contract governing the relationship.

With news of these break-ups in the headlines, we look at some of the key considerations upon ending a commercial relationship:

1. ***“It’s not you, it’s me”*** (What if the breakup isn’t mutual?)

With changing commercial, economic and political circumstances, it is not difficult to envision a scenario where one party may find itself feeling it is not benefiting from the partnership in the way that it intended or desired at the outset. The possible influencing factors in this sense are wide-ranging but, to take one topical example, the effect of the UK Brexit referendum vote was a material reduction in the value of the pound, with further uncertainty to follow. This sort of fluctuation can have a knock-

on effect on contractual provisions such as limitations of liability and sponsorship assets where these are valued in sterling, creating a potentially unforeseen imbalance between the parties, with one receiving a windfall of sorts as it is effectively receiving the sponsorship assets at an undervalue. Combined with a lengthy contractual term and in the absence of termination rights or price adjustment mechanisms, this could leave the suffering party “stuck”. In this sort of scenario, the only available avenue is negotiation.

2. Losing face (The PR perspective)

As part of any negotiated termination, the PR aspect will be key. For example, the rights holder will be keen to guard against any negative inferences which may be drawn from a sponsor being seen to ‘walk away’. Often the contract will contain publicity provisions setting out a process for the mutual agreement of the wording and publication of any statements in relation to the partnership. If these provisions are absent, the position will again need to be negotiated at the time of termination.

3. Returning each other’s possessions (The run-off period)

High value, long-term partnerships will often entail the production of substantial amounts of materials bearing evidence of the relationship (kit, equipment, advertising materials etc.). Moreover, a sponsor may have merchandising rights to sell products bearing the rights-holders’ logos and trade marks (for example, replica kits). Once the agreement terminates, the licence to use the relevant intellectual property in this way is likely to end with it, subject to any agreed run-off period in which the sale of existing stock is permitted. Stock may represent a substantial cost as well as a source of profit and this is therefore an important point for negotiation.

4. Fond memories (Historical references)

Once the initial pain of the break-up has faded, the parties may find themselves once again able to utter the name of their former partner, even if only to acknowledge their past relationship. Many agreements will contain restrictions preventing the parties from in any way holding themselves out as being associated with the other post-termination. However, including a carve-out for historical references will usually be acceptable, though the extent of this right may be the subject of negotiation.

The circumstances behind the recent IOC/McDonald’s and Schalke/Adidas break-ups are not known but it is fair to say that they have been publicly highly amicable. As the saying goes, “*breaking up is hard to do*” but it is worth remembering that the pain can be eased in advance by a carefully negotiated contract.

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