

# YOU SAY SPONSORSHIP, I SAY PARTNERSHIP

**Tom Grant**, Associate Solicitor at Harris Hagan, assesses the increasing prevalence of iGaming firms in sports sponsorship and the questions that would-be investors should be asking of their potential sports affiliation.

**Any quiz boffin** worth their salt will know that the first English football team to wear sponsored shirts was not Arsenal, Man United or Chelsea but non-league Kettering Town. It was January 1976 and the sponsor was Kettering Tyres. Despite the fact that Kettering was a relative footballing backwater and 1976 was a very different era in media coverage, it took the Football Association just four days to order the removal of the branding. Following a brief period of cat and mouse during which Kettering reduced their branding to 'Kettering T' (claiming it stood for 'Town' rather than 'Tyres'), the threat of an FA fine finally brought Kettering's show of enterprise to an end.

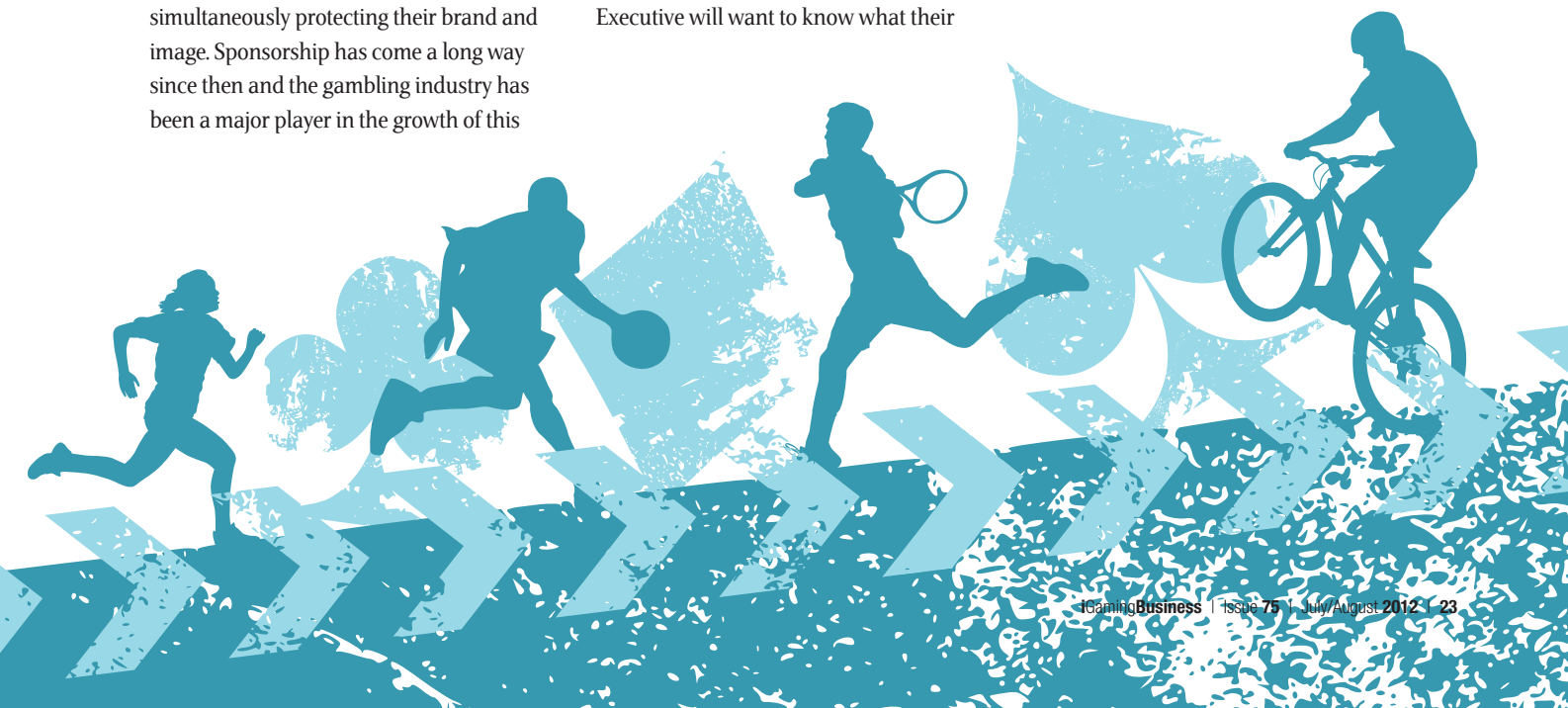
We can only speculate as to what the agreement between Kettering Town and Kettering Tyres looked like but, over 35 years later, it still raises some very good questions about how sponsors and sponsored parties can exploit each other's expertise, whilst simultaneously protecting their brand and image. Sponsorship has come a long way since then and the gambling industry has been a major player in the growth of this

particular form of commercial exploitation. There has always been a clear synergy between gambling and football (so much so that seven of last season's 20 Premier League teams were sponsored by gaming operators), but potential sponsors should be aware that sometimes the apparent synergy can appear too good to be true. Jack Daniels were the original sponsors of the TV show *Mad Men* and drew many complaints from customer groups who claimed that it breached liquor advertising guidelines by glamorising alcohol and irresponsible behaviour. It wasn't enough to endanger the relationship (or the success of the show) but, as we shall see later, unpolluted public relations lie at the very core of every sponsorship agreement.

What is also clear is that sponsorship deals are becoming more complex. It is no longer enough to assume that a straightforward shirt sponsorship deal, for example, guarantees brand awareness or revenue growth. Any self-respecting Chief Executive will want to know what their

company actually stands to gain from their outlay. In other words, sponsors want more 'bang for their buck' and are increasingly exploring new ways of driving revenue from their sponsorship deals. Gambling operators, in particular, are looking for more tangible ways of monetising their sponsorship investment. The most obvious way of achieving this is the creation of revenue generating games that exploit the sponsored party's intellectual property assets and usually operating on a revenue share basis – in the case of a television programme, these tend to revolve around the use of the theme music, jingles, show imagery and so on. The beauty of these arrangements is that they convert the traditional model of sponsorship (classically defined as financing in return for advertising) into an actual partnership.

The advent of such partnerships makes it more important than ever that the legal agreement is as detailed as possible. Besides the traditional commercial considerations, the following is a non-exhaustive list of the type of questions you should be asking of yourself when negotiating a partnership arrangement.



### 1. Is it really exclusive?

Such is the potential for earning revenue that most events, television programmes and sports clubs now operate on a multi-sponsor format. As a sponsor, it is important to try and establish the identity of the co-sponsors at the earliest opportunity. The three key points here are the reputation of the co-sponsors (i.e. do they represent an acceptable cultural fit with your organisation), the amount of co-sponsors in order to avoid over-commercialisation of your chosen format and, finally but above all else, sector exclusivity. There may be occasions where co-sponsors are not primarily focused on your product category but still present the possibility of unwanted overlap. A bingo operator will want to ensure, for example, that a co-sponsoring newspaper has not negotiated any crossover rights within your sector. In other words, you should not just seek to exclude other companies specifically in the gaming sector but anyone who might, at any time and in any way, offer gaming products.

### 2. Can we do this new thing?

To add to the complexity of multi-sponsor formatting, we operate now in a fast-moving multi-channel world. Depending on the length of the deal, it is no longer enough to specify what exists here and now. Social media is a classic case in point, and the looming possibility of Facebook moving into real-money gambling should be a fundamental consideration in securing not just the present social media space but, where possible, future-proofing a sponsor's ability to take advantage of impending opportunities. Again, a sponsor needs to ensure that their investment is not fettered by unintentionally restrictive drafting. Be imaginative and be bold.

### 3. How long can it take to get this approved?

It is unlikely that any sponsored party will licence their assets lock, stock and barrel and, understandably, they will want to retain some measure of control as to how their licensed assets will be used. They will usually seek to impose a form of approval system, especially if some latitude has been given as to how those assets might be used during the term of the agreement. In an ideal world, the

parties will collaborate effectively to ensure that ideas smoothly become reality. The likelihood is that different parties' priorities are not always consistent and there is often a danger that a sponsor can become frustrated with the sponsored party's ability to turn around requests for approvals as quickly as they might like. It is important, therefore, to establish a clear approval system to allow your creative and marketing teams some degree of certainty as to how and when any proposed use of the assets will be approved.

### 4. They said what?

At the heart of any sponsorship arrangement is the preservation of reputation. The first thing that any public relations department should want to know is what provisions are in place for the protection of their corporate standing – and that goes for both sponsor and the sponsored party. As spectacular as any sponsorship deal may look on paper, there is no predicting the future and how it might take only one action by one employee to threaten the other's well preserved reputation. The potential for a public relations disaster can not be underestimated, not least because it can have a serious impact on value. Take the case of Liverpool's Luis Suarez's racial taunting of an opponent and the club's subsequent defence of their player. Liverpool had recently secured the richest shirt sponsorship deal in football history with Standard Chartered Bank, which was understandably concerned that its huge operation, particularly in Africa and the Middle East, might be tarnished by the negative publicity surrounding the club at the time. It is no coincidence that Liverpool reversed their stance following what was reported to be a "very robust conversation" with representatives from Standard Chartered. This underlines the importance of setting out very specific parameters as to conduct and the potential consequences for breach, all of which should be underpinned by sufficiently vigorous warranties, indemnities and rights of termination.

### 5. Oh dear, I didn't know that...

It is important to consider, especially in the case of gambling operators, whether any of

your assumed sponsorship rights might be limited by external influences, especially the CAP (advertising) Code on gambling. Two key examples of this are as follows: in the case of shirt sponsorship, football league rules do not permit the advertising of gambling companies on children's replica kits. Similarly, the CAP and BCAP codes prohibit marketing communications of gambling products which include a young child or anyone who is or seems to be under the age of 25 years old. Not only would this limit the extent to which a footballer, for example, might be used as part of the sponsorship package to promote the product but it might also restrict the use of contestant imagery in a bingo or slot game deriving from a television programme. This might not be immediately obvious to a games developer or an inexperienced marketer but could lead to considerable expense as well as embarrassment with the Advertising Standards Authority.

### 6. How come they're doing the same thing?

The pre-existence of other sponsorship rights can cut across the assumed level of exclusivity. It's possible, for example, that the sponsored party has already developed and licensed a game to competitors that exploits some of the assets that are included in the sponsorship package. The subsequent discovery of conflicting licensed products can be the source of considerable embarrassment to the sponsor with the value of the deal being diluted by the presence of other products in the marketplace. This may seem like an unlikely scenario but, with the proliferation of media channels and the very global nature of the Internet, the pre-existence of competing sponsorship rights in other territories can go undetected. This emphasises the importance of three practical and contractual points: proper due diligence, clear territorial demarcation of rights and robust warranties in favour of the sponsor.

### 7. So what if he's 23?

The use of existing intellectual property rights and possible creation of new ones must

be expressly dealt with in the sponsorship agreement. Both the sponsor and sponsored party will usually require use of the other's logo to promote the deal, particularly for the creation of merchandised products. This needs to be carefully negotiated to ensure that the use of trademarks is restricted solely to their intended purposes. Where it can get more complicated is with the use of imagery. Whilst image rights are less formally recognised by UK law than in some other jurisdictions, great care needs to be taken to agree what intellectual property rights are included in the sponsorship package and confirmation should always be given that all necessary third-party consents have been obtained.

**8. Can we do this again?**

Assuming that the partnership has flourished, there will come a point when

the parties may be considering renewing the sponsorship arrangement. From a sponsor's perspective, they will want prior comfort that the right to renew is an option enshrined in the original agreement rather than a fresh exercise in commercial negotiation. If it has been successful, the competitors will be lying in wait to pounce and the prospect of entering a bidding war is not a healthy position to find yourself in. Similarly, that right to renew should be available to exercise from a relatively early stage to allow the parties to finalise the new terms in good time and to iron out any issues that have arisen from the initial term.

**Summary**

These are just some of the considerations but there are other highly complex issues such as taxation and competition law

that may be of relevance depending on the size and nature of the transaction. What is clear is that the traditional sponsorship model has evolved into a multi-faceted relationship that can no longer be documented on the back of a cigarette packet. The sheer volume of revenue generating opportunities in new markets and across new channels, particularly in the gambling sector, makes this an exciting new era in sponsorship, a far cry from the innocent days of Kettering Tyres. The downside is that there are so many potential pitfalls as sponsors seek optimum return on their investment whilst sponsored parties seek out relationships that offer more than a simple sponsorship fee. In that sense, sponsorship agreements, perhaps more than any other commercial contract, require a thorough examination of the metaphorical 'crystal ball'.

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