

SPORTS MARKETING IN CHINA: AN IP PERSPECTIVE

Companies must protect their brands' IP to succeed in sports sponsorship deals

Rebecca Ordish

Yao Ming, a household name in China and the United States, has had an impressive career playing basketball in the Chinese Basketball Association (CBA) and for the Houston Rockets. In 2003, Yao filed suit against the Coca-Cola Co. in China for using his portrait, which was displayed together with the portraits of two other CBA players on commemorative cans. Coca-Cola argued that it had an agreement with the agent of the Chinese national men's basketball team, Chinese Sports Management Co., for sponsorship of the national team to which Yao belonged and therefore had the right to use Yao's image as part of the team. The case, which caused much debate among legal professionals, settled prior to a court decision. Coca-Cola agreed in the settlement to apologize publicly to Yao.

Many other international companies have already taken the plunge into sports marketing in China and are learning its rewards and risks. For example, Siemens AG sponsors the Chinese National Football Team. The company extended its sponsorship to the China Football Association's Super League in 2004, but terminated the relationship in early 2005 because of problems during the Super League's first season. (The season had ended in a near-boycott by sports clubs following widespread allegations of corruption and match fixing.)

Given the increasing popularity of sports among Chinese consumers and China's hosting of a number of international sporting events, it is no wonder that brand owners are seeking out sports marketing opportunities there. But brand owners must take note of the risks, particularly concerning intellectual property (IP) and brand management. Indeed, China's sports marketing environment is relatively new, and many players are inexperienced in the complexities of spon-

sorship arrangements. Moreover, the PRC regulatory environment is still developing, and IP rights remain difficult to enforce. Only companies that manage risks carefully will protect their brands and get the most from their sponsorship marketing dollars.

Protect IP rights

The first step to a successful sports sponsorship deal in China is to identify the rights in the deal and to ensure that they are adequately protected. Copyright and design rights will protect certain IP elements, such as logos, athletes' uniforms, and stadium designs. But it is also particularly important to protect trademark and portrait rights in sports sponsorship arrangements.

● Trademarks: The strongest protection

A registered trademark is essential to protect IP rights in China, and the more elements a company registers to trademark, the stronger the

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CHINESE ATHLETES ARE INCREASINGLY AWARE OF THE VALUE OF THEIR PORTRAIT RIGHTS, AND SEVERAL ATHLETES HAVE RECENTLY SOUGHT TO PROTECT THEIR PORTRAITS' COMMERCIAL VALUE.

company's enforcement options will be and the greater the value of its sponsorship in China. Fortunately, China's enforcement mechanisms for registered trademarks are becoming increasingly effective, and public trust in civil litigation is growing (see the *CBR* November–December, 2004, p.24). In 1998, fewer than 4,000 trademark-related IP infringement cases were filed with Chinese courts. In 2004, the number surpassed 8,300.

Though China recognizes trademarks not registered in China, the protection is limited to those classified as “well-known trademarks.” As of 2004, China recognized 153 well-known trademarks including 28 foreign trademarks.

China maintains a “first-to-file” trademark registration system, which makes it crucial for companies to file trademark applications early. Companies should also consider whether to register a Chinese version of their trademark. Pfizer Inc. learned this lesson the hard way when the Chinese pharmaceutical company Shenyang Feilong Pharmaceutical Co., Ltd., registered its own version of Pfizer's brand Viagra, Weige, in China. The Chinese company's registration cost Pfizer a bundle (in legal fees while trying to recover the registration and in lost sales) and has made it harder for Pfizer to expand distribution of its Viagra brand in China.

To protect the value of their investment, sports sponsors should ensure that the rights holders of the sporting event have registered the relevant trademarks in China. In addition to

registering more typical items, such as event names, team logos, and event logos, it is possible to trademark some less-common items in China for greater protection. For example, the underwear company Beijing Dani'aier Clothing Co. Ltd., registered the competitor number of a famous Chinese hurdler, Liu Xiang, “1363” for the Athens 2004 Olympics. Also, China allows registration of athletes' names as trademarks, which is impossible in many countries. Some requirements for this right were established when the family of the famous early twentieth-century Chinese author, Lu Xun, tried, but failed, to register his name as a trademark.

Don't Forget the State

Negotiating sponsorship with a team or with athletes in China raises a unique challenge. Because nearly all athletes in China are supported by state-run sports organizations, the state has the right to manage athletes' commercial rights. Tian Liang, the 2000 and 2004 Olympic diving champion, and a Hong Kong entertainment group learned this lesson the hard way. After entering into a sponsorship arrangement with the Emperor Entertainment Group without state approval in early 2005, Tian was expelled from the Chinese National Diving Team and placed on a provincial squad. Not

only were Tian's hopes of future Olympic glory shattered, but the sponsor lost its sponsorship and the money it had already paid under its agreement with the athlete. Sponsors should confirm that the relevant national or local authority, which is determined by the player's team, has approved the sponsorship arrangement and that the athlete has given his or her approval for use of the portrait. Companies should expect sports sponsorship agreements to involve the sponsor, the athlete, and the state.

—Rebecca Ordish



MANY OF THE SPONSORSHIP STRATEGIES AND AGREEMENTS THAT ARE TRIED AND TESTED OVERSEAS WILL REQUIRE TWEAKING FOR SUCCESSFUL USE IN CHINA.

The initial requirements to register a person's name as a trademark in China are basic: The person must give his or her consent, and the name must be distinctive as a trademark. But in the past (such as in the 2001 Lu Xun case), the state Trademark Office has also tried to keep the names of famous individuals available for public use; the government evidently believes that when a person is held in high moral, historical, or cultural esteem, that person's name is owned by society and should be available for public use. As the status of Chinese athletes increases and their names become ingrained in Chinese culture, the athletes will likely challenge this view.

● **Portrait rights protect the value of an image**

Internationally known Chinese athletes are quickly becoming the new pop stars of China. This year, the Laureus World Sports Awards named Liu Xiang its Newcomer of the Year, an award fellow compatriot Yao Ming won in 2003.

Unlike US law, PRC law provides for a portrait right rather than a separate right of publicity; use of a citizen's portrait for profit without consent is prohibited. Chinese athletes are increasingly aware of the value of their portrait rights, and several athletes have recently sought to protect their commercial value.

The Yao portrait case demonstrates that sport sponsors should confirm that they have the rights they are paying for and that the sports organizations with which they negotiate have the relevant rights regarding the athletes. In the future, sponsorship of individual athletes may well begin to conflict with team sponsorship. When sponsoring a team, sponsors should ensure that their agreement restricts individual athletes from entering into conflicting agreements with the sponsors' competitors.

The portrait right is not absolute. The Haidian District People's Court in Beijing considered its limitations in a recent case involving an image of Liu Xiang winning his gold medal at the Athens Olympics. The photo was placed on the front page of a newspaper above an advertisement for a local department store. Liu believed that the image's placement implied that he had endorsed the department store and therefore infringed his rights. The court divided portraits into two categories: a portrait that is

independent of any special significant public event; and a portrait that is associated with a special significant public event. It decided that the portrait right for the former is absolute and the portrait right for the latter is subject to limitations. The court held that Liu's right of portrait, when associated with a major public event such as the Olympics, was subject to a fair use exception. In that case, the photo was used as the cover image for a newspaper article on major events in 2004, and the newspaper had obtained a license from Getty Images, Inc. to reprint the image for news reporting purposes. The court thus ruled in the newspaper's favor.

This case was significant for a number of reasons. First, it underlines athletes' expanding awareness of their portrait rights and the commercial value associated with them for sponsorship opportunities. Second, it shows the court's awareness of the importance of this issue. It seems likely that the district court sought input from the Supreme People's Court, as the judgment was thorough, well argued, and carefully established the reasoning for the decision and the boundaries of the portrait right. The district court likely realized that in the lead-up to the Beijing 2008 Olympics, more athlete sponsorship arrangements will be negotiated, and more companies will seek to benefit from athletes' fame.

The sponsorship agreement: A critical tool

The sponsorship agreement is important for any sports sponsorship arrangement to succeed. In China, however, the role of the agreement is even more crucial. As sports marketing and event management are relatively new concepts in China, it is necessary to have a clear and detailed contract that specifies the parties' rights and obligations. PRC authorities are often unaccustomed to the types of rights and support international sponsors expect (for example, where logos should be placed at an event, how the "bundle of rights" is divided among sponsors, and how rights holders should promote official sponsors). Many of the sponsorship strategies and agreements that are tried and tested overseas will require tweaking for successful

use in China. Though each sponsorship will vary, sponsors should check a few key issues:

- **Confirm the scope of your rights as a sponsor**

Modern sports sponsorships are complex, as brand owners fight for sponsorships and rights holders divide sponsorships into smaller and smaller pieces. Sponsors also try to squeeze as much value as possible from their sponsorship dollar through innovative logo placements. Problems with, for example, logo placement and co-marketing are likely to arise, particularly with venue operators and broadcasters. So it is important for sponsors to include these issues in the agreement to strengthen their future bargaining position. Companies should not assume that sports sponsorship in China will be as sophisticated as sponsorship overseas. In some countries with more developed sports sponsorship markets, vague language, such as “right to logo placement at the event,” can work to a sponsor’s advantage, as the sponsor bargains for greater coverage. In China, however, it is more likely to lead to frustration, as the expectation gap between the sponsor and the rights holder will often be wide.

- **Keep your sponsorship rights exclusive**

The core value of a sponsorship is derived from the extent of its exclusivity. This needs to be carefully negotiated; companies should make sure their sponsorship agreement contains no “gaps” that could allow competitors to reduce the value of the sponsorship through ambush marketing (when competitors of official sponsors associate their brand with the event without authorization). One of the best ways to prevent ambush marketing is through a strong sponsorship agreement that expressly covers the company’s expectations of the rights holder and that addresses all appropriate sponsorship rights. Sponsors must not leave a form of media out of their agreement—such as the Internet, which is commonly forgotten—and risk finding their competitor sponsoring the official website. Examples of clever ambush marketing can be found in many past sporting events. For example, for the 2000 Sydney Olympics, which was officially sponsored by the now-defunct Ansett Australia, Qantas Airways Ltd. launched an intensive advertising campaign that featured a number of Olympic athletes. And Adidas-Solomon AG’s official sponsorship of the 2002 World Cup was ambushed by Nike Corp.’s sponsorship of the Brazilian team, whose members all wore Nike uniforms.

Compared with their Chinese counterparts, many international sponsors have a distinct advantage: They understand how to get the most out of their sports sponsorships. For example, they do not merely slap a logo on a uniform, but create noise around their brands through associated events and marketing campaigns. On the other hand, Chinese companies’ marketing

strategies are becoming increasingly sophisticated, and more domestic companies are sponsoring overseas teams and athletes. For example, Haier Group Co. sponsored the Australian professional basketball team in 2004. And many high-profile Chinese firms, such as Lenovo Group Ltd. and Haier, will sponsor the 2008 Olympics.

One of the risks associated with sponsorship in China is ambush marketing by Chinese companies that use their relationships with authorities to target foreign brand owners’ sponsorship of events. To minimize this risk, it is important to ensure that the sponsor address all appropriate rights and confirm in the agreement that the rights holder is obligated to prevent ambush marketing.

- **Confirm that the rights holder will also protect IP**

Unfortunately, a boost in a sponsor brand’s global exposure and growth in China’s sporting industry make infringement of related IP rights ever more likely. Brand owners must take steps to protect their own brands *and* must expressly place an obligation on the rights holder to protect the value of the IP in which the brand owner is investing. The rights holder should also assist and control infringements in a fast, effective manner (for example, by providing evidence of their rights to PRC authorities). The sponsorship agreement should expressly cover these expectations.

Learn the risks, aim for the rewards

As the disposable income of China’s burgeoning middle class rises, so does the power of sports in China. Recent years have seen a significant shift in the sophistication and prestige of China’s sporting events. Shanghai first hosted the Formula 1 Grand Prix in 2004. This year, the same Shanghai track hosted the Moto GP World Championship and the V8 Supercars from Australia, and China’s second Formula 1 Grand Prix event was held in October. The Tennis Masters Cup, featuring the world’s top eight male tennis players, will take place in Shanghai in November. Shanghai also played host to the Volkswagen 48th World Table Tennis Championships in May.

The opportunities are undeniable, but sports sponsors should be careful as they enter the Chinese market. Event management is still in its early stages in China, and local sports marketing skills are still thin on the ground. It is important for companies to plan carefully and to ensure that the investment they are making is protected, particularly from an IP perspective. Sports marketing is, after all, about the power of brands—the combined power of the sponsor’s brand and the rights holder’s brand to deliver value to both sides of the table. 完

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