Naming Rights Agreements: Dream Deal or Nightmare?

Anita M. Moorman, JD

Stadium naming rights agreements reached record numbers in the past few years, both in terms of the number of agreements entered into or currently being shopped, and in terms of monies paid by corporate naming partners. However, these agreements are not without their problems. While a few stadiums and arenas have become synonymous with their corporate namesake, such as Wrigley Field and Busch Stadium, many other companies without the storied tradition and established reputation of early naming partners have rushed in to seize these marketing opportunities. Generally, sport organizations have been happy to take the corporate naming partner’s money. While many economists, sport managers, and sport marketers have questioned the value of these naming rights deals, strategies were frequently recommended for building effective business relationships with corporate naming partners.

Most of the strategies did not address potential financial failure of the corporate partner or the sport organization. Instead, these strategies focused on how to best leverage a naming rights agreement to maximize the benefit (in terms of name association, image, number of impressions, and product placement opportunities) to the corporate naming partner. Integration has become vital to a successful naming rights deal (Rozin, 2000; Lombardo, 2001). A number of “value-added benefits” are often incorporated into the naming rights agreements. The name of the corporate partner is included on many items in addition to the actual structure, such as tickets, facility stationery, concession plates, cups and condiments, employee uniforms, athletic courts, flooring on concourses, signs on structures surrounding the facility (parking gates, entrance gates, surrounding streets, and adjacent buildings) just to name a few.

While these added benefits certainly enhance the visibility of the naming partner, they also create additional challenges for the stadium owner/sport organization. For example, over a 20–30 year period, it is quite likely that a corporation will modify or change its corporate marks, logos, and perhaps even its name. Does every impression inside and surrounding the stadium or arena also have to be changed, and with what frequency? Recently, the University of Louisville modified its official Cardinal Bird logo. Consequently, the stadium manager for Papa John’s Cardinal Stadium had to replace 92 logos/insignia throughout the stadium structure, in addition to office supplies and concession items. If Papa John’s similarly modifies its logo, must the stadium manager also replace all of those logos/insignia, and at what expense? The long-term nature of naming rights agreements, with the accompanying value-added benefits, warrants that the naming rights agreement provide for the eventuality of trademark changes, name changes, and even company acquisitions.

Legal advisors are likely less concerned with the “effectiveness” of an agreement and more concerned with the enforceability and “effect” of the agreement. The first hint of an altered playing field where naming rights agreements were concerned occurred in 1999 when Wayne Huizenga reworked the naming rights contract between the Dolphins home field “Pro Player Stadium” and Fruit of the Loom (owner of the Pro Player trademark and clothing line) (Ratner, 2001). The new contract allowed Huizenga to cancel the agreement with two-months notice. Shortly after the contract revision, in February 2000, Fruit of the Loom filed for Chapter 11 bankruptcy and began liquidating Pro Player.

After a bankruptcy filing, the naming rights agreement becomes an asset of the bankrupt estate which can create legal problems for the sport organization and/or stadium owner partner. Perry Ellis International purchased the Pro Player trademark from the bankrupt estate of Fruit of the Loom, but did not acquire the naming rights agreement. Thus, while Huizenga is shopping for a new naming rights partner, Perry Ellis is getting exposure for the Pro Player mark for free.

Similar scenarios have been repeated throughout 2001 between the St. Louis Rams and TWA (bankruptcy filing in February 2001); Baltimore Ravens and PSINet (bankruptcy filing in April 2001); and possibly CMGI and the New England Patriots, when the Patriots move into
their new home next season. CMGI's stock value has tumbled significantly during 2001 (Rovell, 2001). Savvis is also struggling financially, which may threaten its agreement with the St. Louis Blues (Johnson, 2001).

While a partnership with a bankrupt or financially struggling company is not an ideal situation, several solutions exist. For example, certain protections can be built into the agreement to protect a stadium owner/sport organization. First, a restriction on the transferability of the naming rights can be included in the contract. Thus, a struggling or bankrupt company could not resell or transfer the naming rights without approval of the stadium owner/sport organization. In addition, before naming rights are transferred, the stadium owner/sport organization could require a letter of credit or other payment assurances from the new partner.

Another provision could allow the stadium owner/sport organization to buy back the naming rights at any time, or have a right of first refusal prior to any subsequent sale. From the perspective of the stadium owner/sport organization, a restriction on transferability would likely be preferred to a buy-back option. The stadium owner/sport organization may prefer to include a provision in the naming rights agreement that causes the naming rights to revert back to the stadium owner/sport organization immediately upon a filing of bankruptcy, or a provision that empowers the stadium owner/sport organization to cancel the agreement immediately upon a filing of bankruptcy.

In addition to these various contractual provisions, it may behoove the stadium owner/sport organization to demand more detailed financial disclosures and assurances in concert with the naming rights agreement. Thus, the stadium owner/sport organization would be in a better position to evaluate the financial stability of the naming partner and also improve its chances of canceling the agreement in the event the financial information provided was misleading or inaccurate in any way. To this point, the primary concern for stadium owners/sport organizations has been whether the financially struggling naming partner would honor its commitment to the stadium, sport organization, and community. However, the recent bankruptcy of Enron and resulting Justice Department investigation created a much more complex bundle of concerns for the Houston Astros.

It is one thing to have a corporate partner that is encountering financial difficulties that may affect its ability to fulfill its naming rights agreement and create some legal and financial challenges for the stadium owner/sport organization; however, it is quite another to have a corporate partner whose financial troubles include criminal fraud allegations and alleged violations of state and federal laws, as well as the public trust. In recent years, we have seen an increased presence of "morals clauses" and "good behavior clauses" in professional player contracts. The question may arise whether such morality clauses need to become standard in corporate sponsor agreements and naming rights agreements. Stadium owners/sport organizations need to consider whether provisions need to be included that will allow them to cancel the agreement if conduct such as that alleged in Enron's situation occurs. Because unlike the stadium owner/sport organization that may still want to be paid by PSINet, Savvis, TWA, or CMGI, the Houston Astros do not want Enron's money at this point and would prefer to seek a more suitable naming partner (Berger, 2002). The Astros requested Enron's consent to terminate their naming rights agreement and find a replacement. Since Enron refused consent, the Astros were forced to seek relief from the United States Bankruptcy Court (Berger, 2002). Creating detailed termination or cancellation rights in the naming rights contract would be a much better alternative to seeking relief in a bankruptcy proceeding.

References

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