

“Image Rights”

Exploitation, Investment or Protection for ‘Good Looks’?

Introduction

SLAM pride ourselves in assisting sports players and entertainers to maximize their income and profit and that includes the setting up of Image Rights companies. By doing so, we have assisted International athletes in generating thousands of pounds where before, they had lost out through the use of their image.

Yasin Patel looks at the growing area of ‘Image Rights’ and why it makes sense for a sports star to protect their ‘image rights’. Invest in the ‘image’ wisely and with an increase in popularity, reputation and personality that should result in an increase of financial assets without any additional work.

Image Rights – What are they?

Ask any sports person or entertainer, what is ‘image rights’ and they would not be wrong in saying it is names on replica shirts and photographs on websites, match programmes etc. But to limit it to this is to miss the real factors of what is image rights and how far they extend.

Sportsmen and women are part of the sports entertainment industry. Add to that industry the name and face of a famous person and the sports person can have the effect of boosting the club/organization and brand. It is only when one analyses advertising this way that we realize that the value of the sports person is enormous.

Any sports person that signs a contract that is based purely on performance on the sports field is losing the commercial opportunities that their name and brand offers. To take a simple example: a Premiership footballer (e.g. Jordan Henderson) may earn significant amounts of money from his performance on the pitch. But couple that with the use of his image to sell products throughout the world and his employers are making significant profits for the club, sponsors and other associated brands. Now add to this formula the fact that he is given the England Captaincy, and not only has his personal stock risen, but he has gone from being a club Captain to an International one. His image rights would rise accordingly.

Any player that ensures that their contract encompasses terms and clauses that factor in image rights are ensuring that they are properly rewarded for their growth in reputation. They ensure that it is not just others who profit from the use of their image. The profits that can be made outside of football can be substantial and thus why not take the opportunity by ensuring that such a clause is within the contract?

Thus when signing a contract, a sports person has the following options. Either,

- i) He seeks to profit from selling his own image rights, or
- ii) He lets the club/company use his image in exchange for an annual payment.

Usually, most players opt for the second option, thereby ensuring that they get paid the extra money. But how is that paid? For those who have planned carefully and sought proper advice, an 'image rights company' is usually set up. This is to maximize income and investment.

Why set up an Image Rights Company?

To sign a contract purely based on performance on the sports field is commercially naïve: this is especially so if you're somebody who does have true value as a household name.

Footballers' faces and images sell products across the world and make huge amounts of money for their club and other major brands. Encompassing this element into a contract, the player is making sure that he receives a percentage of the money other people are making from his image. These "off the pitch" earnings can supplement the primary employment income of a sports player and, if structured properly, can form part of a strategic wealth management plan.

And that is why a number of sports players set up image rights companies. The key is to ensure that the structure is made so as to incorporate any tax implications on set-up and the running of the image rights company. There can be tax costs on establishment, annual corporation tax, taxes on extraction – by way of salary or dividend, for example – and tax on breakup, e.g. liquidation. But all of this can be incorporated as part of the company set-up.

Can Image rights be Assigned?

HMRC, (everyone's favourite government department), make clear that unless image rights are defined in a way so that they can be identified under the 'Taxes Act', then what is being transferred is 'goodwill'. For you to transfer or assign 'goodwill', there has to be some kind of business associated with it. Hence, the 'image rights' stay with the sports person.

However, if a company is set up to deal with the image rights in a proper format, so that the 'image right' is registered, then it can be assigned.

Can you grant a License for your Image Rights?

Yes, 'image rights can be transferred' to an image rights company and thus a license can be granted for the use of the image rights. This usually means that the licensor will make an income. Licenses are used mostly by image rights companies that wish to license to third-party endorsers.

Are there Tax Implications?

Due to the fact that income will be derived in one form or another, there are tax implications. However, depending on the form of structure set-up and the assignment given, the tax consequences would be decided accordingly. To be considered are capital gains tax, VAT implications, income tax and more.

What about Foreign Sports Persons?

Many people will remember how not too long ago, many foreign athletes were unwilling to come and participate in diamond league events due to the tax implications from not just the participation in the events, but the additional income from advertising and endorsements. Unknown to some of these participants was that if they had come from a jurisdiction where image rights were recognized under local laws then the worries of the greater tax implications from the UK could have been alleviated by setting up companies abroad.

And this question becomes even more complicated if one considers the international aspects of some sports now. Let's take cricketers: they may be English qualified and play the summer months in county cricket: what if their club use their images to promote the club in

the local train station, on beer cups, in programmes and in other advertising streams. Has this been considered in terms of 'image rights' on behalf of the cricketer. Are they benefitting from this? By having the correct company set-up, they could be saving many thousands of pounds on tax.

And what if the same cricketer then spends the winter months playing in the Twenty20 leagues around the world. The IPL¹ in India, the PSL² in Pakistan, the BPL³ in Bangladesh, the Big Bash in Australia, the Ram Slam in South Africa, the Super T20 in Sri Lanka and the CPL⁴ in the Caribbean, to name a few. And similarly, to a foreign cricketer who comes to ply their trade in England. The amount of money to be made in these tournaments are staggering. And the advertising on television, billboards, magazines, cinema's, internet and other media outlets, is infinite. So how does one work out the tax implications? And what of the image rights? Well unless a company is set up to deal with these and the initial contracts with the clubs and leagues incorporate the 'image rights', players could be tossing away hundreds of thousands of pounds and dollars in the course of one winter. But with a properly set up 'image rights' company and the correct wording in the contracts, players could be saving an enormous amount of money which would otherwise be lost to tax: sound investment or stupidity? You decide!

The same concept applies to sports people from all other aspects of sports. Another example is soccer: footballers may not play for their club in China but they may sell many shirts with their names on them there: with an 'image rights' company one can not only make money, but also save a great deal on taxation.

Conclusion

The setting up of an 'image rights' company may not seem the most natural thing to do for a sports person, but in doing so, it may be one of the most astute business decisions to be made. Models get paid for their image being used to promote and sell products. So why shouldn't sports players and other entertainers be paid 'image rights' if their popularity, expertise,

¹ Indian Premier League

² Pakistan Super League

³ Bangladesh Premier League

⁴ Caribbean Premier League

celebrity status and 'greatness' is used to market/endorse or sell a product? You can either be exploited and lose out on this income and let others make money from you, or you can be paid for 'being exploited' on your terms.