Amateur & Olympic Athletes Turn to Anti-Trust Law to Challenge Sponsorship and Advertising Restrictions Imposed by Sport Governing Bodies

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Amateur athletes continue to challenge restrictions imposed by governing bodies on their rights to pursue or maximize existing sponsorship opportunities. The athletes are subject to the rules and regulations of their various sport governing bodies (e.g., NCAA, USA Track & Field, IOC). These entities regulate the extent to which athletes are free to maximize their publicity rights through endorsement and sponsorship agreements while the sport governing bodies continue to license such uses across multiple platforms. Both collegiate and Olympic athletes are pushing back on restrictions on their efforts to market themselves through endorsements, advertising, and licensing. For example, as college athletes have challenged the use of their names and images in college sport video games (O’Bannon v. NCAA, 2016), television broadcasting (Marshall v. ESPN, 2016), and commercial photography (Maloney v. T3Media, 2017), it is reasonable to expect college athletes to continue to seek greater control over how their names and images are used by the NCAA and its partners (Gardner, 2016, 2017).

Similarly, Olympic athletes in the United States (Gold Medal, LLC v. USA Track & Field, 2018), German sporting goods industry representatives (“German cartel”, 2017), and international ice skating athletes (European Commission, 2017) initiated complaints using anti-trust law as the legal basis to challenge internal rules where restraints placed on their sponsorship rights created potential anti-competitive behaviors in violation of US anti-trust and European competition statutes. U.S. athletes were unsuccessful in their challenge of USA Track & Field’s advertising and logo restrictions precluding sponsors and athletes from promoting their relationships during the Olympic trials (Gold Medal, 2018). Germany’s Federal Cartel Office, acting on a complaint filed by the German sporting goods industry, sued the German Olympic Sports Confederation (DOSB) and the International Olympic Committee (IOC) asserting an “effective monopolization of marketing rights during the Olympics” and “an abuse of the dominant position of the DOSB and IOC,” resulting in the further relaxing of IOC Rule 40 for German athletes during the 2018 Winter Games (“German cartel”, 2017). Lastly, the European Commission held recently that the International Skating Union’s rules imposing severe penalties on athletes participating in non-sanctioned events were a breach of EU antitrust law and ordered the ISU to modify its rules and open up new opportunities for athletes and competing organizers to the benefit of all ice skating fans (European Commission, 2017).

This study employs doctrinal legal analysis of judicial and legislative authority and a content analysis of the sport governing bodies’ bylaws and constitutions to evaluate the nuanced relationship between the broad authority granted to adopt and enforce regulations and the judicial restraints available to athletes via intellectual property law and anti-trust law. In this presentation, the researchers will compare the outcomes in the U.S. and European cases relative to Olympic and international athletes. The presentation will examine outcomes of legal challenges pursued by athletes in both winning and losing strategies to identify the legal theories that resonate with the courts and create the greatest opportunities for athletes to be successful in future challenges.