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Sports Law Report

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SPECIAL POINTS OF INTEREST:

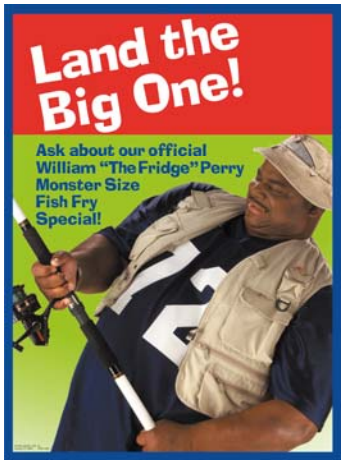
- **Celebrities can still deliver the "wow" factor to your ad campaign.**
- **Plan an exit strategy in any celebrity endorsement agreement.**
- **Narrowly draft waivers and release of liability forms.**
- **Sports is under increasing anti-trust scrutiny.**

INSIDE THIS ISSUE:

Celebrity Endorsements Still Work

In the wake of the Tiger Woods and Ben Roethlisberger scandals, some corporate marketers may be shying away from using a celebrity as a spokesperson for their product or service. They may view the risk of some untoward actions off the field as too great to offset any goodwill generated by a celebrity endorsement. But that type of knee-jerk reaction appears to be short-sighted at best. An examination of successful celebrity endorsement campaigns proves that brands can indeed be built around a celebrity.

Ask yourself, where would Nike be today without Michael Jordan? Or Mr. Coffee without Joe DiMaggio pitching the brand? And who hasn't witnessed the impact of a celebrity endorser like Peyton Manning for such iconic brands as MasterCard and Sony?



A few years back I partnered William "The Refrigerator" Perry with a seafood company to help launch their Monster Size Fish Fillet. The pairing of an athlete nicknamed the "Fridge" (with an apparent monster-size appetite) with a Monster-Size Fish Fillet was a believable, credible endorsement and an innovative way for the company to launch a new product.

One of the main points to remember is that athletes and celebrities are human beings, prone to the same lapses of good judgment as anyone. The key is to plan an exit strategy should the celebrity bring negative publicity down onto the brand. For example, I signed Ben Roethlisberger when he was a rookie to his first endorsement deal for "Big Ben's Beef Jerky". We had a great 6-year run with the product, but after his latest off-field incident in Georgia, we felt it best to terminate the contract by invoking our "morals clause".

Using Waivers and Release of Liability Forms

Many sports events and fitness facilities routinely use Waivers and Release of Liability Forms in the normal course of their business. But do these forms really protect the promoter of a sports event or operator of a fitness facility?

Years ago courts frowned on the use of such forms, deeming them against public policy. Today, the forms are widely accepted in most jurisdictions as valid, so long as they are drafted narrowly and don't purport to absolve the promoter or facility from all liability. Waivers and Release of Liability forms may very well protect against "ordinary negligence", but not be extended to protect against reckless, willful or wanton conduct. It is equally important to have a document drafted and customized to your particular circumstances and sports business. What's appropriate for a triathlon may not be for a fitness club.

Consult with an attorney that specializes in sports law to have the most appropriate forms drafted for your sports event or facility.

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- **This newsletter is only intended to provide general information and is not intended to provide specific legal advice.**

Fallout from the American Needle Case!

A landmark U.S. Supreme Court ruling has turned the sports world upside down as it relates to future licensing deals. In the case of *American Needle v. National Football League*, the Supreme Court held that the 32 NFL Clubs are not considered a single entity under Section 1 of the Sherman Antitrust Act, but rather each team is a separate, independently owned business engaged in a joint venture. In 2004 American Needle, a manufacturer of caps, sued the NFL, claiming it violated antitrust laws when it locked all 32 clubs into an exclusive licensing contract with Reebok back in the year 2000. The NFL argued that they were a "single entity" incapable of conspiring against itself to limit competition, and therefore immune from any antitrust scrutiny.

American Needle's victory doesn't mean that leagues can no longer sign exclusive licensing agreements, or collectively negotiate media rights packages, or engage in any other collective practices. However such arrangements will now come under a "Rule of Reason" analysis by an examining court to make sure that the league is not engaging in purely anti-competitive activities for the sake of monopolizing a particular market.