

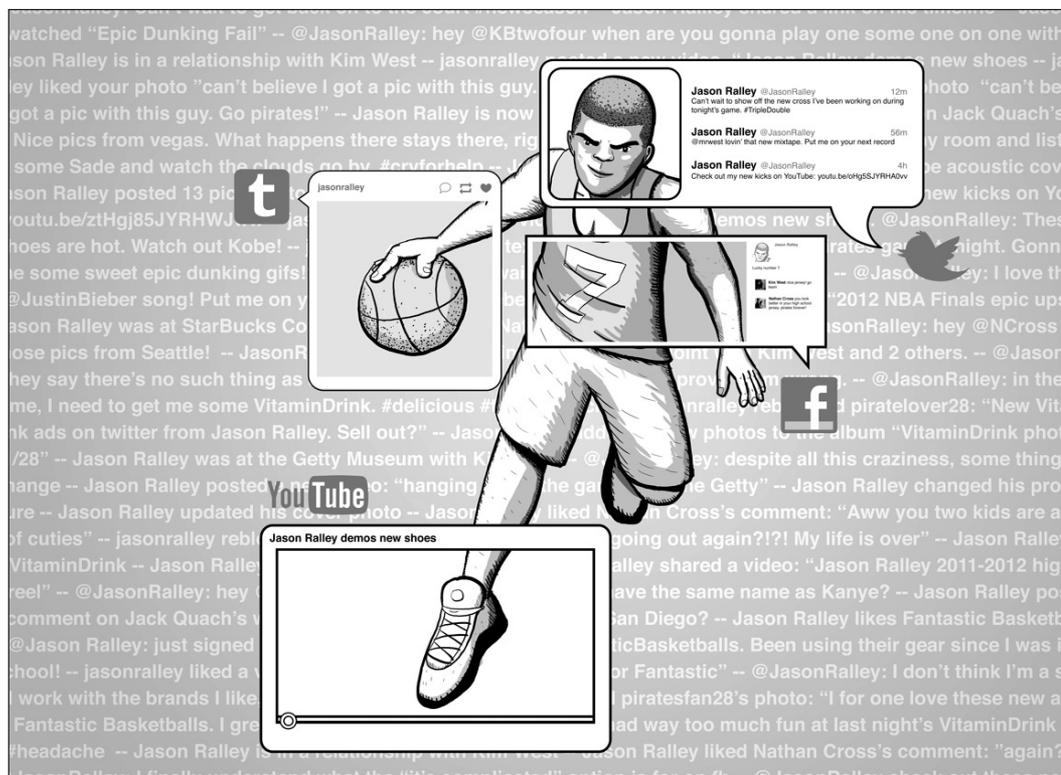
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## Sports marketing and social media

By Richard Grant and Marc Perman

In the old days, a sports celebrity could count on a lucrative contract for appearing in a television product endorsement ad. Broadcast networks enjoyed a reliable stream of advertising revenue from their clients. Television was the principal medium and it called the shots. But television has become old school. New media outlets such as Facebook and Twitter are hot, and products and brands are shifting their attention and advertising dollars to these new social media platforms. This is a boon for advertisers, as costs are lower and the celebrities and properties on which they rely are called upon to take a greater role in promoting themselves — and thus the brands they represent — through social media channels. Call it the new media boon: fewer television advertising dollars spent by advertisers and greater emphasis on self-promotion.

But all great boons hang on the precipice of bust. The new media paradigm brings many hazards with it, as the risks of a “broadcast” misstep are numerous and the associated costs are significant. Tweet the wrong message and the whole world hears about it — instantly, before there is an opportunity for brand control. And if you are a brand that relies on the goodwill and credibility of the messenger, so goes your message. With this backdrop, what follows are ways that lawyers can help sports brands and sports properties mitigate the risks presented by the widespread use of social media and product promotion.

*Be proactive: act before a problem develops.* Social media provides the mechanism for bad statements to become worse. What once could have been easily contained now can go viral in a matter of minutes, before the brand can contain the damage. Having a strong defense in place to prevent a misstep is essential.

One important proactive step is education. All parties must fully appreciate and understand the importance of brand integrity. This can be achieved in part by having frank and candid discussions, at the outset of a sponsorship relationship, about the need to protect

brand image. It's common in many league sponsorship deals for the league to describe in the sponsorship contract the importance of their good reputation and good will in the community. Although this is done as a way to ensure orderly use of the league's intellectual property, the approach can be effective for brand protection. Including a similar provision in a contract with respect to the brand can open the door for an open discussion about the need to protect brand identity and as a way to remind the parties of the need to protect the brand.

Brands may also want to insist on having concrete controls over the use of social media. For example, an athlete may be required to limit tweeting in accordance with specified standards or a sports property may be required to certify that all communications through social media be done in consultation or through a hired professional. Most major professional sports teams have social media policies and these policies can serve as good models.

*Make the morals clause more relevant.* If the defense doesn't work, good, effective remedies may be the next best thing. A “morals clause” is a common provision

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found in player endorsement or sports sponsorship deals to address unwanted behavior. A morals clause is designed to provide a remedy should the player or property engage in a bad act that might tarnish, by association, the brand's reputation. The remedy can come in the form of a simple cancellation right, a provision that measures the brand's damages, a refund right, or a combination of the three. The morals violation is typically defined with respect to a laundry list of activities, such as sponsoring or promoting a product that the brand finds offensive (for instance, pornography) or, in the case of an athlete, engaging in certain prohibited conduct (for example, a violation of league rules that results in a suspension).

As social media evolves, the door is opened to new types of “bad acts.” In order to address unanticipated events, it is wise to supplement the traditional laundry list of prohibited conduct with a broader, general standard of conduct by which the athlete and property must abide. This will account for activities that didn't exist until the advent and popularity of new media (for example, numerous tweets disparaging the player's team or league). This can be addressed through the following:

With proper management ... consumers will find their favorite player's social media to be believable, honest and entertaining.

\* A general standard of conduct, requiring the athlete to act in a manner that “will not be in contravention of public morals and conventions.” In the case of a league or other property, this standard can apply to key executives and other personnel who may be the face of the property.

\* An obligation to act in a manner and to deal with the brand in a way that maintains and enhances the brand's “positive image and reputation.”

\* An obligation of the athlete or property to retract a statement that would trigger the morals clause with the brand having the right to craft the retraction. Although this provision may not be fully enforceable in all jurisdictions, it may serve as a reminder of the need to be cautious with public statements.

\* “Non-derogation” and “non-denigration” provisions that prohibit the athlete or property from engaging in conduct or making statements that may “derogate, diminish or abrogate” the image of the brand.

*Connection Versus Product Promotion.* Some of the pitfalls in using social media stem from the tension between the personality employing social media to connect with fans and the brand using it for pure promotional purposes. Social media can be a powerful tool in helping celebrities and properties connect with the general population, and that connection is what can help give the celebrity and property value in product endorsement. At the same time, however, if the general public perceives that social media tools are simply promotional devices for a brand, the tools lose their effectiveness. As a result, it is important for brands to constantly re-evaluate how they are employing their promotions and how those promotions are being perceived by the public. Therefore, the contract should allow for some flexibility. The traditional advertising agency's role should be supplemented by a social media agency, ideally working in conjunction with the celebrity or his or her designated representative. Each brand-related tweet needs to be balance by the celebrity's own, non-advertising messages. With proper management, the public will have greater trust in their motives and may be less inclined to attribute too much meaning to a glitch or error made by a spokesperson, and consumers will find their favorite player's social media to be believable, honest and entertaining.

Social media is a rapidly developing and powerful tool in brand promotion. Used properly, it can be a cost-effective marketing tool for brands. Caution and proactive approach will help minimize the hazards and risks of a misstep.



**Richard Grant** is the managing partner of McGuireWoods LLP's Los Angeles office and heads the firm's sports law group. He will be a moderator at the firm's 4th Annual Sports Marketing and Sponsorships Symposium on Sept. 13. He may be reached at [rgrant@mcguirewoods.com](mailto:rgrant@mcguirewoods.com).



**Marc Perman** is president of Perman Management, Inc. His long term clients include Charles Barkley and Unilever's global hair care division. He may be reached at [marc@permanmgmt.com](mailto:marc@permanmgmt.com).