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DunnCox

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SPECIAL SPORTS LAW ISSUE

DECEMBER 2010

With another year of big sporting events fast approaching, we decided to dedicate this e-Newsletter to two issues of major concern to sports and athletes in general. Our feature articles focus on Anti-Doping Laws and Intellectually Property Rights (IPRs) in Sports, examining whether international anti-doping laws reasonably protect the interests of athletes and considering the need for athletes to understand their IPRs so they can protect and exploit their assets.

We are pleased to announce the launch of our new website at <http://www.dunncox.com>. The new site incorporates timely and up to date features with easy navigation to our practice areas and services.

Our firm also takes this opportunity to welcome two new Associates, Sabrina Cross and Gillian Pottinger, who joined the Litigation Department.

You are invited to visit IFLR1000 to see our current rankings as a top tier firm in this international publication. We encourage you to e-mail your questions to kerrian.johnson@dunncox.com or contact the Attorney at DunnCox who normally deals with your affairs.

DunnCox LAUNCHES NEW WEBSITE

We invite you to visit our new website at www.dunncox.com and experience its modern and dynamic features.

In addition to our new look the site has technologically advanced search functions to enhance user experience, while providing better graphic clarity. The currency of the information is clear and where appropriate users are directed or linked to other sites and sources that contain related information. We encourage you to log on to our website on a regular basis and ask questions about articles and when necessary contact our Attorneys via e-mail.

The firm is also on several social networks. Follow us on Facebook, LinkedIn, Twitter and Youtube. By becoming a fan of DunnCox, you will receive updates in your news feed about what we are up to. If you have a Facebook account already, it couldn't be easier – just click on the 'Like' link. We look forward to your visit at www.dunncox.com.

THE FIRM WELCOMES NEW ASSOCIATES, SABRINA CROSS & GILLIAN POTINGER

Sabrina P. Cross

Sabrina Cross was admitted to the Jamaican Bar in 2010 and is a member of the firm's Litigation Department. Sabrina holds an L.L.B. (Hons.) from the University of the West Indies and is a graduate of the Norman Manley Law School where she graduated on the Principal's Honour Roll. She was also awarded amongst others, several prizes for excellence in various subject areas, the Keith Stanford Sobian Memorial Prize for Outstanding Academic Performance and Contribution to Student Activities at the Norman Manley Law School as well as the Prizes for the Most Outstanding Student over 2 years (2nd Place) and the Most Outstanding Year I Student 2009. [Read more](#)



Gillian C. Pottinger

Gillian Pottinger was admitted to the Jamaican Bar in 2010 and is a member of the firm's Litigation Department. Gillian is a graduate of the University of the West Indies and the Norman Manley Law School. She also holds a Bachelor of Science degree in Political Science and International Relations. [Read more](#)



HOW DunnCox CAN HELP YOU

WILLS, TRUSTS & ESTATES – WHY MAKE A WILL?

It takes almost a lifetime to develop an estate and therefore it is important that it is transferred in keeping with your wishes. It is easy to put off making a will, but if you die without one your assets may be distributed according to the law rather than your wishes. Visit our website at www.dunncox.com or contact the head of our Conveyancing department, Janice Causwell by email addressed to janice.causwell@dunncox.com to find out how to prevent your loved ones from suffering financial hardship and distress at a time when they least need it, whilst your affairs are sorted out.

On request, we visit our clients' organizations to make presentations on this topic, free of cost.

UPCOMING SEMINARS IN 2011

- Strata Act Seminar – February
- Industrial Relations/Labour Law Seminar – April

About Our Practice

At DunnCox, we benchmark the standard of the services we offer against that of the world's leading law firms because excellence is important to us. No less so are our clients, many of whom are among the largest and most successful Jamaican organizations and foreign businesses with Jamaican interests. Their satisfaction has always been the principal focus of our firm. We make it our business to understand their needs and to find innovative ways of solving their problems. Our firm is divided into three main areas: Corporate and Commercial, Conveyancing and Estate Planning and Civil Litigation. For more information on our practice [click here](#)

INTELLECTUAL PROPERTY RIGHTS IN SPORTS

Joanne E. Wood Rattray, Attorney-at-Law in the firm's Corporate and Commercial Department specializes in Intellectual Property Law – joanne.wood@dunncox.com



The Intellectual Property Rights (IPRs) of athletes is a relatively new and developing area of law which is of immense importance to professional athletes in diverse sports such as track & field, football, cricket, basketball, hockey, swimming, tennis, cycling, and even the more esoteric car-racing, yachting, gymnastics and ice-skating. All professional athletes have to deal with issues such as image rights and branding, and yet surprisingly many do not take the necessary steps of having their name or valuable aspects of their image protected.

IPRs such as copyrights, trade marks, patents and trade secrets are intangible assets which have become a significant revenue source not only for athletes but also for clubs, leagues and organisers of sporting events. Logos, colours and emblems hold significant commercial value and are essential components of branding and merchandising schemes. A great deal of effort is made during international sporting events to project the brands of sponsors who expend enormous sums to purchase the visibility of their brands to an international audience during the viewing of the events. As much effort is taken to exclude competitors who may try to take advantage through increasingly ingenious methods of ambush marketing.

Henry Abromson, attorney-at-law, states on his website abromsononsportslaw.com:

"Every time an endorsement deal is signed, a stadium is named, a team's logo is created, or an athlete performs a sports celebration move on the field, numerous intellectual property issues arise. Intellectual property, though often overlooked, by laymen because of its intangibility, is often among the most valuable of assets that can be owned, acquired, and licensed."

With the growing commercialisation of sport, athletes need to understand the basic concepts of IPRs so they can protect and exploit their assets. By the same token, the viewing public needs to appreciate the value and importance of these intangible assets.

One of the issues of great importance to athletes is image rights which broadly speaking are the legal rights associated with the image of a celebrity in marketing and promotional activities. Image rights can be owned by the athlete or a commercial corporate vehicle controlled by the athlete, or by their associated team, league or club, or the federation in charge of the sport. "Image" comprises a multiplicity of features such as the athlete's name, nickname, initials, signature, endorsement, reputation, voice, video or film portrayal, computer generated or animated portrayal, photographs, biographical information, graphical representations, images or facsimile image and all other identifiable characteristics of the person.

Registering a trade mark or series of marks protecting aspects of an athlete's image such as a name, signature or even a profile, gives the owner an exclusive right to use the mark in trade for specified goods and services. Registration also gives the right to license the use of the marks which can generate extremely lucrative license fees and royalties. In addition, trade mark registration gives the owner the right to prevent unlicensed persons from using the mark.

Even so, as useful as trade marks can be, they may not allow for the full measure of protection an athlete may need to control his or her image. Registering a signature, nickname or even a specific likeness as a trade mark only protects against use of the specific depictions covered by the mark in relation to the specified goods and/or services. An athlete has to look to other species of IPRs in order to broaden the protection required. For example, one must rely on copyright to act against the unauthorized use of photographs and other portrayals on video and film. The point is that an athlete cannot rely on any one IPR, but must look to a range of IPRs in order to achieve the level of protection necessary.

An intriguing question that often arises in professional sports concerns the issue of celebration dances or moves, such as Usain Bolt's famous "To The World" salute. While trade marks can provide some level of protection, persons have wondered how these unique moves can be safeguarded against imitation and use by others even on the field. Abromson notes:

"These moves are valuable. Any professional athlete... has a limited career span during which he can capitalize financially through his performance on the field, the court, or the rink. These moves, most often performed after an athlete completes a big play to help his team, draw attention to an athlete's athletic prowess on the field, increasing his marketability and thus his ability to earn money from the endorsements and apparel contracts. To protect the players' rights in these moves, which carry such a potentially great value, the player should have his move copyrighted. But are these moves eligible for copyright protection? What characteristics must a move have to be copyrightable? Should these moves be protected? What happens when a player performs another players' copyrighted move?"

So far, these questions remain beyond the realm of copyright protection.

Branding is another issue of great interest to athletes. Branding has been defined as "the act of associating a face, feeling, image or personality with a business or a product in an effort to create a connection [with] consumers." Of course, many companies have found that using the face of a well known athlete is tremendously good for business, though the experts will tell you choosing a great athlete is not enough. The company should decide on an athlete who can embody and project the best aspects of company's values and personality, even to the point of becoming the face of the business. Such an arrangement will involve a license agreement entitling the company to use the athlete's name, signature, voice, image, likeness, or other identifiable attributes. Licensing agreements can be very lucrative for the parties concerned and for this reason may last even beyond the best years of an athlete's career into retirement. Michael Jordan exemplifies an athlete whose image has remained highly marketable long after his successful basketball career.

In order to fully exploit revenue streams, athletes, sporting groups and organizers of big game events need to prosecute and enforce IPRs, acting against unauthorized users and those who associate themselves without consent. Otherwise, athletes and organizers risk losing the potential worth of their valuable IPRs.

December 2, 2010

ANTI-DOPING LAWS – ARE THE INTERESTS OF ATHLETES BEING PROTECTED?

Kirk B. Anderson, Attorney-at-Law in the firm's Corporate and Commercial Department – kirk.anderson@dunncox.com

The laws which are now in place internationally, by virtue of agreements between a number of countries, to prohibit 'doping' in sports, are nothing new. In fact, such have been in place for decades now, in pursuit of the legitimate objective of seeking to rid all competitive sporting activities of the use of substances which may be perceived by some, as providing unfair an advantage to the users. Nonetheless, it is a matter of concern that, as many athletes have, from time to time suggested, the laws as presently framed, result in athletes being, at the very least, deemed guilty until proven innocent and also being unprotected against the vagaries of the world's anti-doping laws.



When using the term 'athletes' in this article, I am, of course, referring to all of those persons who take part in competitive sporting disciplines, whether traditional athletics, or even a sport as seemingly innocuous in terms of drug use, as rifle shooting. The I.A.A.F. rules prohibiting doping in sports applies to all of these sporting disciplines, as well as many more.

A doping offence under the I.A.A.F. Rules is defined as occurring in situations where there exists the mere presence of a prohibited substance in the body tissues or fluids of an athlete. It is not necessary to establish that the presence of that substance in the athlete's body gave him or her an unfair competitive advantage. In fact, there are some substances which doctors advise may and actually will likely impair an athlete's performance rather than enhance it. Nonetheless, the mere presence of such a substance in an athlete's body could and will likely result in devastating consequences for an athlete, both from a personal and professional viewpoint.

'Prohibited substances' are set out in the Rules, but also includes the metabolites of the substances listed and in addition, in relation to anabolic steroids and some other classes of substances, also includes as 'prohibited', all chemically or pharmacologically related compounds.

Thus, from an athlete's viewpoint, it is immediately recognizable what the first difficulty is, this being that no one (other than someone extensively trained in chemistry who conducts chemical tests on everything he or she ingests) can be certain that what they are ingesting does or does not constitute the ingestion of a prohibited substance. Thus, even food supplements and the now popular, 'energy drinks' can have within them, prohibited substances. Moreover, it is the law insofar as the I.A.A.F. is concerned – as per their Rules, that even to have in one's bodily fluids or tissues, a minute amount of a prohibited substance, constitutes a doping violation.

Whilst every athlete is expected to know that it is his or her responsibility to be aware of what they eat and/or drink and that it is his or her exclusive responsibility to ensure that no prohibited substance(s) enter his or her body, the question which arises is – what happens if, due to some amount of carelessness on the athlete's part, a prohibited substance is ingested by that athlete? The simple answer to this question is that whether the substance is ingested deliberately, or willingly, or negligently will make no difference whatsoever as far as the athlete's liability is concerned.

The I.A.A.F. Rules prescribes the punishment that will be imposed upon the athlete as a consequence of that liability. For a first doping offence, the athlete will be suspended for two (2) years from taking part in any internationally accredited competition, and if there is a second offence, the ban will be for the athlete's lifetime.

It should be noted that even in cases where there have been deviations by the testing laboratory from the procedural rules governing the collection and analysis of samples taken from athletes, the Rules provide that such deviations will only invalidate the findings if the deviations "cast real doubts on the reliability" of the results. In this regard, the burden of proof is on the athlete. Added to this is the fact that only an International Olympic Commission (I.O.C.) accredited lab is authorized under the I.A.A.F. Rules to test samples of blood and/or urine from an athlete for the purpose of determining whether any prohibited substance, or any of the metabolites of such, exist within the sample taken. At present, there exists no I.O.C. accredited lab in Jamaica and as a result, this makes it all the more difficult for a Jamaican athlete to feel assured as to the reliability of the testing process utilized.

The Olympic Charter has recognized as a "fundamental principle" that the practice of sport is a human right – See: *Olympic Charter, Fundamental Principles – No 8*. In that context, the world anti-doping laws and/or policies should be revised so as to ensure greater fairness for athletes on the respective issues of both liability and punishment. The interests of athletes are not being fairly protected, in either respect, at present.

November 25, 2010

The DunnCox family wishes for you a holiday season filled with peace, joy and good cheer and a happy and fulfilling New Year.