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Sports Law Attorney Ed Schauder Talks about the Importance of Morals Clauses in Exclusive Interview

Decades ago, the idea of including a “morals clause” in a contract with a sports figure or entertainer was a novel concept.

The importance, and prevalence, of these clauses are now more significant than ever with the personal lives and actions of celebrities scrutinized by social media and technological advances in the mobile industry and Internet. .

Today, morals clauses have become ubiquitous in all contracts in the sports and entertainment industry. In fact, each of the four major professional sports leagues include morals clauses in the standard player contracts in their collective bargaining agreements. And yet they are far from uniform in nature and intent.

To find out more about this critical topic, we turned to one of the sports law field’s leading attorneys — *Ed Schauder*, Chairman of the Sports and Entertainment Practice Group at *Sichenzia Ross Friedman Ference LLP*.

With more than 25 years of experience, Schauder has worked both sides of the fence, working with athletes to negotiate licensing, corporate sponsorships, endorsements and other agreements as well as representing companies and associations in their



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negotiations with the athletes.

To learn more, Hackney Publications Associate Editor Brennah Blackwelder interviewed Schauder, focusing on the principal subject of morals clauses in endorsement agreements.

Question: *Why are morals clauses important?*

Answer: Moral clauses are important in today’s society because they protect a company’s brands from being tainted by negative publicity related to an endorser’s conduct or perceived bad

conduct. Moral clauses are designed to allow a company to terminate or suspend a contract in certain circumstances and also put an endorser on notice to refrain from engaging in bad acts that could tarnish his or her image and as a result decrease the value of the endorsement arrangement.

Q: *What happens if you do not have a morals clause and an athlete commits a crime?*

A: In the absence of a morals clause a company may still be required to

pay the endorser under the contract, even though the company's continued association with the endorser may actually harm the company in the court of public opinion.

Q: *How can a company protect itself before entering into a contract with an athlete or entertainer?*

A: A company should do their homework on a potential endorser. Oftentimes, a simple Google search can reveal a pattern of character issues that should wave a red flag that there should be a strong morals clause in any agreement with the endorser in question. I also suggest that clients request a face-to-face meeting, if possible, with a potential endorser to get a real sense of that person's character and also explain to them what the company's expectations will be. I've also represented clients that required a potential endorser agree to a detailed background check prior to entering into any endorsement agreement. This may be especially important if an endorser will endorse products of a publicly traded company and will

become an affiliate of the company.

Q: *If an athlete has engaged in bad conduct in the past does that make the athlete unmarketable?*

A: No, not necessarily. I have one client that has given countless celebrities the proverbial "second chance" and the endorser has gone above and beyond in return to express their appreciation to the company. We live in a forgiving society that allows celebrities a second chance. As a result, athletes like Pete Rose, Tiger Woods, and Michael Vick are still highly marketable.

Q: *Do morals clauses get negotiated?*

A: Heavily. Morals clauses may provide for termination only if the endorser is convicted of a felony. Morals clauses may provide for termination or suspension of performance if there is adverse publicity surrounding the endorser that is likely to embarrass the company.

Moral clauses are structured as broad as possible from the company's perspective to protect the company's image and narrow as possible from an athlete's perspective to avoid triggering

a moral clause.

Q: *Aside from a morals clause what are some other protections you can put into a contract to protect a client?*

A: While not considered to be a morals clause, a contract may also include a termination right if an athlete retires, is injured for a prolonged period of time or is traded from a particular team. If a player is injured, you may also increase the term of the contract to coincide with the length of the athlete's injury. If it is geographic endorsement deal, for example when a player is traded from a baseball team in New York to a team on the West Coast, often times you can get out of a contract for that as well. ●

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