

**LAP** *Leadership, Attitude, Performance ...making learning pay!*

Business Law LAP 3 Performance Indicator: BL:058

# Cover Your Bases

Legal Issues in Sport/Event Marketing

**Sports**

**Broadcasting  
Act of 1961**

**Sherman  
Antitrust Act**

**Licensing**

**Prize Indemnity  
Insurance**

**Security**

**Contracts**

**Playing fair**

**Risky business**

**Three strikes and  
you're out**

**Trademarks**

**Collective  
Bargaining  
Agreement**



## So What



iStockphoto/Thinkstock

Have you ever put on your favorite team's jersey and sat down with a brand-new bag of potato chips, ready to watch the big game, only to find that it was "blackout" in your area? Ever bought baseball tickets outside a stadium for more than face value because the game was sold out? Or, have you ever entered a half-court shot contest at a basketball game for some major prize money?

Each of these situations illustrates an aspect of sport/event marketing that involves the law. Although it's more obvious in some situations than in others, legal issues affect sport/event marketing at every level. Over the years, national, state, and local laws, as well as court decisions, have shaped organized sports and events into what they are today.

From the highest level of a sport/event organization, such as owners and CEOs, to the lowest level, such as ticket-takers and ushers, legal issues must be constantly and carefully considered. If you're thinking of pursuing a career in sport/event marketing, you'll need to start with a basic understanding of the laws and regulations in the industry.

## Objectives

A

Explain issues of unfair trade practices in sport/event marketing.

B

Explain issues of risk management in sport/event marketing.

C

Explain issues of contract law in sport/event marketing.

## No fair!

Though many fans and sport lovers hate to admit it, sports are a business. And like all businesses, sport teams and owners are trying to make money. The economy in the United States has always been dependent on honest, healthy competition between businesses. It's a system known as **capitalism**. Capitalism allows businesses to compete for customers by trying to offer them better quality and/or lower priced products than what competitors are offering.

Can you see how modern sport franchises fit perfectly into the capitalist model? The quest for a major-league championship is more than just a pursuit of athletic excellence. It is also a pursuit of corporate excellence. Winning teams amass great numbers of fans. Great numbers of fans equal increases in revenue from ticket sales, licensed merchandise sales, and sponsorship fees. It all adds up to more money for the teams, players, and owners.



Brand X Pictures/Brand X Pictures/Thinkstock

- ▲ Smart sport organizations—ones that engage in legal, ethical business practices—are much more likely to attract loyal fans.

So, what happens when sport/event companies engage in business or marketing practices that discourage honest, healthy competition? Some of these practices may be simply unethical, while others are actually illegal. In this section, we'll discuss three types of illegal, anticompetitive trade practices in sport/event marketing.

## Trademark infringement and effects on licensing

There are two reasons that **trademarks** are important to sport organizations—money and reputation. Sport organizations use their trademarks to make money from licensed product sales. By registering names and logos with the U.S. Patent and Trademark Office, the organization protects them as trademarks and legally claims ownership of them. Then, the organization can charge other companies (known as **licensees**) for the right to use the trademarks on their products. Not only do the trademark owners (known as **licensors**) collect an initial fee for granting the permission, they also collect a percentage of the profits. Licensing is a **lucrative** business venture for licensors because they are able to make maximum revenue with minimum effort. The market for licensed sport products is enormous. Take a moment to think about all the licensed team merchandise you have already seen today!

Licensing systems are also an integral part of a sport organization's public relations efforts. When people see high-quality team merchandise, such as hats, jerseys, and sport equipment, it gives them a positive impression of the team itself. Licensing is also an effective way for the organization to connect with people. Since sporting events are “perishable” products, licensed merchandise allows marketers to package their team and let fans take the experience home with them.

In the United States, trademarks are regulated by a set of laws called the **Lanham Act**. Besides clearly outlining the procedures for trademark registration, the Act defines several important terms, including **trademark infringement**. Trademark infringement is illegal and occurs when one organization copies, counterfeits, or reproduces another company's trademarks to use for its own profit. The copy doesn't have to be exact, just close enough to cause customer confusion. Trademark infringement damages a sport/event organization by taking away potential licensing profits and by confusing the public. Imagine someone purchasing a counterfeit Atlanta Braves cap. Not only does the Braves' organization miss out on the profits from the sale, but, if the hat is poorly made, the Braves' image has been tarnished or reduced.

Besides educating customers on how to distinguish real licensed merchandise from fake, sport/event organizations often need to take legal action to combat trademark infringement. Trademark violators can be prosecuted in court, and trademark owners can also get injunctions to protect their property when a case is pending. An injunction is a court order that stops the infringing activities until the trial begins. Trademark violations are punishable by fines or even imprisonment.

## Antitrust, the baseball exemption, and television blackouts

What does a law passed in 1890 have to do with sport/event marketing today? A lot more than you would imagine! During the nineteenth century, much of the economic power in the United States was concentrated in a very small number of companies. To counteract the trend and encourage competition, Congress passed the **Sherman Antitrust Act** to regulate commerce between the states. Simply put, the Sherman Act makes restraining free trade and competition illegal. One company or group of companies cannot hold a **monopoly** over a certain industry. Although the Act was updated a few times during the 1900s, its basic laws remain the same.

In the sport world, antitrust is a sticky situation since the leagues are monopolistic by nature. Since 1922, the sport of baseball has been completely exempt from antitrust laws. The U.S. Supreme Court ruled that the Sherman Act did not apply to baseball since baseball teams operated locally and were not involved in interstate commerce. Back then, baseball teams truly were local businesses. But today, baseball teams share revenues and have nationwide sponsors and global licensing deals. The business of baseball has expanded greatly, yet the exemption is still in effect. No other professional sport leagues have exemptions of this scope.

So, how does the baseball exemption affect the modern sport industry? First of all, baseball franchises cannot relocate to other markets without the approval of Major League Baseball. In other leagues, team owners can move their franchises to other cities at will. If the league tries to block the move, the owner can sue on the basis of the Sherman Act. For instance, in 1982, the National Football League told the owner of the Oakland Raiders he wasn't allowed to move his football team to Los Angeles. The owner sued the NFL for antitrust violation and won. He moved his team to L.A. and later back to Oakland.



Comstock Images/Comstock/Thinkstock

▲ Licensed merchandise allows fans to take the game—and the team—home with them.





- ▲ MLB teams have a tendency to stay put for long periods of time. That's because they must get approval from Major League Baseball to relocate. They must get MLB's permission to change their names, too.

**Act of 1961.** The Act allows leagues to pool their broadcasting rights and sell them as a package to television networks. Over the years, the courts have interpreted this law to include a league's right to "black out" games in certain territories. This means that when a team is playing at home, the league can block its broadcast in the home territory if the game is not a sell-out. These rules are meant to encourage ticket sales but are often a source of frustration for fans. This puts the pressure on sport/event marketers working to sell out games and keep public relations positive.

### Right of publicity and right of privacy

Celebrities own many types of valuable property—fancy cars, large homes, expensive jewelry, designer clothing. But what's the most valuable property a celebrity has? His/Her name and face! That's right, celebrities today possess great commercial worth in their images. Many individuals are considered their own personal brand. Think Justin Bieber, Danica Patrick, David Beckham, or Katy Perry.

State laws and many court cases have established a person's right to protect his/her name and likeness. If someone feels that his/her identity is being misappropriated, that person can take legal action. The two types of laws meant to prevent identity misappropriation are **right of publicity** and **right of privacy**. The main difference between the two is that right of privacy is meant to mentally/emotionally protect a person, whereas right of publicity is meant to financially protect a person. A celebrity can sue for invasion of privacy when his/her seclusion has been intruded upon, when s/he has been given an unreasonable amount of publicity, or when s/he has been placed in a false light. Many times, celebrities sue tabloid newspapers over issues of privacy invasion.



- ▲ Right of publicity and right of privacy protect celebrities' names and likenesses. If a celebrity feels that his/her rights have been violated, s/he may sue the offending party.

But, because of the exemption, baseball owners can't sue their league for blocking relocation. Therefore, MLB teams tend to stay put. In 2005, the league approved a move to send the Montreal Expos to Washington, D.C. (they became the Nationals), and in 2012, the Florida Marlins were allowed to "move" into a new stadium and become the Miami Marlins. But, before that, the last time a baseball team had relocated was in 1972. Since then, there have been six NFL moves, 11 NBA moves, and nine NHL moves.

The baseball exemption also gives MLB the right to contract (eliminate) teams from the league as well as total control over all minor-league affiliates. Working within the parameters of the exemption creates a unique situation for sport/event marketers involved with baseball. Since franchise relocation is all but impossible, marketers may have to get creative to boost a team's popularity in a mediocre market.

Another antitrust issue in modern sports is broadcasting rights. All the major professional sport leagues were granted a limited antitrust exemption with the **Sports Broadcasting**

Right of publicity protects a person from the unauthorized use of his/her name and likeness for financial gain. It gives individuals the exclusive right to their identities for commercial use. A company cannot just put a picture of LeBron James in its advertisements or use his name on its products. Only LeBron James has the right to use his name and likeness in the corporate world—it is his choice to endorse certain products or to license his identity to a certain manufacturer.

It's perfectly fine to use an athlete or celebrity's identity in a book, television news show, newspaper, or magazine; but sport/event marketers must learn where to draw the line between freedom of expression and violations of the rights of privacy and publicity. It's important to obtain written consent and to draw up a contract providing payment to the athlete or celebrity before using his/her image to benefit your organization.

## Summary

Like all businesses, sport leagues and franchises are trying to make money. In the United States, businesses compete with each other in a system called capitalism. Capitalism depends on honest, healthy competition in the marketplace. The federal and state governments have made laws to prevent unfair or restricted competition. Three particular areas of concern to sport/event marketers are trademark infringement, antitrust violations, and rights of publicity and privacy.



1. How do businesses compete in a capitalist system?
2. Name two reasons why trademarks are important to sport/event organizations.
3. Explain trademark infringement.
4. What is the *Sherman Act*?
5. How does the 1922 baseball exemption affect the sport today?
6. Explain the *Sports Broadcasting Act of 1961*.
7. Name the two types of laws meant to prevent identity misappropriation and explain the difference between them.

## THE GRAY ZONE



Hemera Technologies/PhotoObjects.net/Thinkstock

College athletic departments face a tough situation when it comes to alcohol. On American campuses, drinking is common, and alcohol-related incidents sometimes create major problems. Besides the obvious issue of illegal underage drinking, schools face situations such as “open container law” violations at tailgating parties, security nightmares when students sneak beer into stadiums, post-game riots by drunken fans, and star players or coaches getting into trouble for drinking too much.

Most college athletic departments say they want to discourage drinking on their campuses and at their games to avoid student run-ins with the authorities. However, partnering up with alcohol companies can often mean big revenues for college athletics. Some schools permit the sale of beer at their games (the number doing so doubled during the 2000s), while others allow beer companies to sponsor them by advertising in their venues. Even if a school doesn't allow alcoholic drinks or advertisements at its games, beer commercials are still the lifeblood flowing through the NCAA's television contracts. Some people say that these actions are hypocritical for schools trying to discourage drinking on their campuses. What do you think?

# Risky Business

## No big loss?

All games and events, big and small, carry a certain amount of risk for everyone involved. Sport/Event managers and marketers follow national, state, and local laws to minimize risk and avoid liability for any losses or injuries that may occur. Two major areas in loss prevention involve security and ticketing.

**Security.** You might not understand how security is the concern of a sport/event marketer. It's important to remember that all the functions of a sport/event organization are dependent on each other. Marketers want to sell a favorable image of their team to the public, and included in that image is an idea that coming to a game is a safe and fun way to spend an evening. Sport/Event organizations put security teams in place to prevent the theft of money or property from fans during games and work with law enforcement to control crowds and diffuse any potentially dangerous situations. After the 9/11 terrorist attacks on the United States, security became tighter than ever, especially at hallmark sport events.

**Ticketing.** Counterfeit tickets can also be a problem for sport/event organizations. Sometimes, ticket forgers may try to enter an event with fake tickets, but more often, situations occur when unsuspecting fans purchase counterfeit tickets from scalpers. This is an issue of fraud. The best way to combat ticket forgery is for teams and leagues to educate fans on how to distinguish real tickets from fake or to discourage them from buying tickets from any sources other than official ticket outlets.



▲ Ticket scalping is a significant problem at some sport venues. When is it okay to resell tickets, and when is it not?

**Ticket scalping**, or reselling tickets for more than their face value, is also a major issue for many sport/event organizations. Scalping laws and regulations are complicated and vary from state to state and city to city. There is no federal law regarding scalping. Some states have outlawed scalping entirely, while others require a broker's license for reselling tickets. Violating scalping laws is almost always a misdemeanor, and offenders are usually fined.

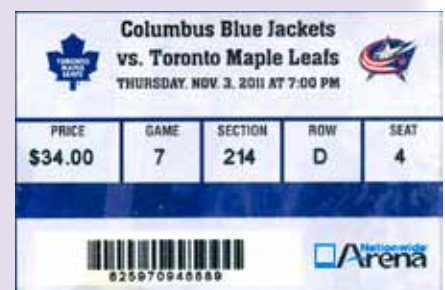
With increased use of the Internet and the popularity of auction sites such as eBay and StubHub, ticket scalping has gone high-tech. Reselling sport/event tickets is an enormous business on the Web. The sheer volume of tickets available combined with the relative anonymity of sellers makes it even harder for organizations and law enforcement to investigate scalping. Even though most fans consider scalping to be a victimless crime, it certainly keeps sport/event marketers working in ticket sales or management "on their toes."

## Insurance

Sport/Event managers and marketers also minimize risk by making sure they carry adequate insurance as required by state law. Not only do the teams and leagues need to be insured, so do the athletes, venues, sponsors, vendors, and licensees. There are many types of insurances involved with sports and events, including fire, theft, injury, and cancellation. One type of particular interest to the marketing department is prize indemnity.

Every official sport/event ticket should contain these five basic pieces of information:

- 1) Price—base amount plus applicable taxes and service charges
- 2) Event specifics—name of the event or opponent, day/date/time, location
- 3) Seating—gate information, section/row/seat
- 4) Legal disclaimers—"The management reserves the right to..."
- 5) Unique policies—information about refunds/exchanges, lost tickets, rain checks, etc.





**Prize indemnity** insurance protects sport/event organizations or sponsors from loss of income due to contest awards. Have you ever seen anyone win a \$50,000 hole-in-one golf contest or shoot a puck from center ice through a tiny opening in the goal for a brand-new car? Ever wonder who pays up? You might have thought that the teams or sponsors pay for the prizes, but, in reality, they take out insurance policies to cover the slim chance that a person will actually make that hole-in-one or hit that improbable shot. If it happens, the insurance policy covers the liability so the team or sponsor doesn't take a major hit.



▲ Because there is such a slim chance that a person will actually make a hole-in-one or score a basket from the half-court line, sport/event organizations don't actually set aside money for prize-winners. Instead, they purchase prize indemnity insurance.

## Summary

All sports and events carry a certain amount of risk for everyone involved. Sport/Event organizations minimize risk by complying with all applicable national, state, and local laws regarding risk management. Two main areas involved with risk management are loss prevention and insurance. Loss prevention includes security and ticketing issues. One type of insurance important to sport/event marketers is prize indemnity insurance.



1. Why are sport/event marketers concerned with security?
2. What is ticket scalping?
3. What is prize indemnity insurance?

# Sign on the Dotted Line

## Labor relations

As professional sports have evolved over the years, so has the sophistication of player contracts and labor relations. In 1935, the **National Labor Relations Act** gave all U.S. workers the right to organize into unions to collectively bargain and strike. **Collective bargaining** is what happens when employees join together as a single unit to negotiate with management. In the 1970s, athletes in the major leagues began forming unions called **players' associations**. Today, each league has a collective-bargaining agreement with its players' association. The terms of the agreements usually include issues such as salary caps, league authority over players, revenue sharing, and free agency.

When players' associations and leagues can't reach mutually agreeable terms, there's a possibility of a player **strike** or an owner **lockout**. Over the years, these situations have happened several times in American pro sports, resulting in thousands of lost games. In each instance, the leagues and players suffered significant financial losses and public relations damages. In some leagues, sport/event marketers are still working to regain the amount of fan support and interest they enjoyed before these incidents.

Free agency is an important element in a collective-bargaining agreement. It allows players to sell their services to the highest-bidding team after playing an agreed-upon number of years with their original team. Although the ability to switch employers is still more restricted in professional sports than it is in the mainstream business world, free agency gives athletes a measure of control over their own destinies.



## Other contracts

Each game/event involves a number of parties working together to produce it—the organizers, the sponsors, the broadcasters, the venue, and its personnel. Each party has specific responsibilities, and it's in everyone's best interest to draw up formal, written contracts that leave no doubt as to what the agreements entail. The best idea is to hire an attorney to draft the contracts, especially the first time through. Contract law is intricate and varies from state to state.

**Sponsor contracts.** The most important element in a sponsorship agreement is the issue of **exclusivity**. Sponsors usually insist on being the only ones in their particular category of goods or services. For example, Coke and Pepsi would never sponsor the same event, nor would Nike and Reebok.

Most sponsorship agreements also include an **option to renew** and a **right of first refusal**. The option to renew allows the sponsor to extend the agreement after the contract expires. The right of first refusal means that the event organizers will allow the sponsor the opportunity to renew before offering the contract to any other sponsors.

Sponsor contracts also identify procedures regarding the use of trademarks. Each sponsor is given a design handbook with guidelines on how it can use the event's trademarks and logos in its advertisements and promotions. This part of the contract also specifies how long the sponsor is allowed to use the trademarks.

Written agreements with sponsors also include details regarding payments. Sometimes sponsors pay their fees with cash, sometimes with services, and sometimes with a combination of both. For instance, Subway might become a sponsor for an arena football team and agree to cater the meals in the press dining room as part of its sponsorship fees. The contract would state exactly how much food would be provided, to avoid any confusion between the team and Subway as to how much food equals the specified dollar amount.

**Television contracts.** Negotiations with broadcasters are very complex due to the high interest in sport events and the increase in satellite, cable, and Internet options for viewing them. Most television contracts with sport organizations include stipulations regarding exclusivity, territorial rights, copyright credits, technical support, and the location and number of cameras in the venue. Another element commonly found in these contracts involves preferential treatment for event sponsors. Most event organizers ask that the broadcast network give sponsors right of first refusal for commercial airtime during the game(s).

**Venue and personnel contracts.** Venue contracts usually include the lease rate along with provisions for security and concessions. Contracts with personnel include a detailed list of responsibilities, begin and end dates for work, payment schedules, and tax withholding. These agreements also specify any provisions for changes in the contract, such as an extension or an increase in responsibilities.

## Summary

All sport/event marketers need a basic understanding of contract law, although attorneys are usually necessary when drafting legal agreements. In professional sports, unions called players' associations negotiate collective-bargaining agreements with the league. When the two sides can't agree, strikes or lockouts can result. Other contracts involved with sports and events include sponsor contracts, television contracts, and venue/personnel contracts.



1. Explain the *National Labor Relations Act* and how it affects professional sports.
2. What elements are usually included in a sponsorship agreement?
3. What is an option to renew and a right of first refusal?
4. How do sport/event sponsors pay their sponsorship fees?
5. What do television contracts for sports/events usually include?

## Make It Pay!

What is your school's logo or mascot for its sports teams? Find out if the school has a trademark for it and, if so, how the school handles licensing issues.