

Lance Armstrong and Lessons Learned: Protecting a Brand Before, During and After a Crisis

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Administrative Reminders

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Sports Scandals

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Tiger Woods

Michael Phelps

Brett Favre

Tony Stewart

Oscar Pistorius

Michael Vick

Marion Jones

Ben Roethlisberger

Wayne Rooney

Rashard Mendenhall



In the News

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SPORTS | Updated January 18, 2013, 7:08 a.m. ET

Lance Armstrong Admits to Doping, 'One Big Lie'

The Wall Street Journal

Lance Armstrong's confession wins little applause

January 18, 2013 | By Dan Loumena

The Los Angeles Times

Lance Armstrong Confession: Cyclist Admits Doping During Oprah Interview

The Huffington Post | By Chris Greenberg 
Posted: 01/17/2013 10:33 pm EST | Updated: 01/18/2013 8:56 am EST

The Huffington Post

January 18, 2013, 8:35 pm |  48 Comments

Live Updates on Armstrong's Confession

By THE NEW YORK TIMES

The New York Times



Today's Topics

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- Assembling a team
- Playing “defense”
 - Protecting the brand
 - Confidentiality agreements/privacy/privilege
 - Exit strategies
- Lessons learned from Lance Armstrong



Protecting the Brand

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- Coordinated team effort
 - Legal
 - Financial
 - Public relations



Protecting the Brand

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- Playing “defense”
 - Protecting the brand and reputation – both from athlete and company perspective
 - Monitor social media
 - Due diligence on athlete/company

Confidentiality Agreements

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- Protect business information
- Protect personal information
- Protect litigation disclosure
- Protect reputation/brand



Termination Events and Exit Strategies

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- When the athlete has some form of equity in the deal
- Morals clause

Deal Structure

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- Exit strategy and termination events
- Equity/profits interests
- Buy-sell provisions and brand licensing
- Consequences of termination

The Morals Clause

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- What is a morals clause?

The Morals Clause

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- Importance of due diligence

The Morals Clause – Key Elements

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- What kind of behavior will trigger the morals clause?
- What are the advertiser's options if it invokes the morals clause?

The Morals Clause

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- the Athlete dies, is incapacitated or the Athlete is **charged with** or convicted of any criminal conduct, or has committed or commits any act or becomes involved in any conduct that is **generally viewed by a majority of the public as highly offensive** and reprehensible from a legal or moral perspective, or that is **likely to adversely affect** Company or Company's image, brand, reputation, products or services. Company's decision on all matters arising under this paragraph shall be conclusive, and its rights under this paragraph shall be in addition to any other rights or remedies, which Company may have hereunder or at law or in equity or
- at the election of the Company, immediately by delivering written notice thereof to the Athlete, in the event that: (i) the Athlete is **convicted by, or enters a plea of guilty or nolo contendere** in, a court of competent jurisdiction for any **felony**; or (ii) the Athlete makes **any statements in derogation of the Company** or any of its products or services and such statements are made in public or become a matter of public knowledge, as reasonably determined by the Company



The Morals Clause

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- “If Mendenhall commits or is **arrested** for any crime or **becomes involved** in any situation or occurrence **tending** to bring Mendenhall into **public disrepute**, contempt, scandal, or ridicule, or **tending** to shock, insult or offend the **majority of the consuming public** or any protected class or group,” then Hanesbrands will have the right to immediately terminate the agreement.

Mendenhall v. Hanesbrands, Inc., 856 F.Supp.2d 717 (M.D. N.C. 2012)



Reverse Morals Clause

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- A reverse morals clause allows a player to terminate an endorsement agreement if the company engages in fraud or other criminal activities.

In the event an officer of Company and/or a person authorized by Company to speak on Company's behalf commits any act that materially damages the commercial value of Athlete's name, or if Company takes or authorizes any legal action against Licensor or Athlete (other than legal action in connection with enforcement of this Agreement) or makes or authorizes any statements intended to be derogatory to Athlete or Licensor, and such action or statements are made known to the general public or become a matter of public knowledge during the Term.



Remedies

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- Equity deals

- Morals clauses
 - Suspension/non-use
 - Return of payments
 - Liquidated damages
 - Termination

Risk Management

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- Financial planning
- Insurance
- Control your intellectual property
- Manage employee risks



Lessons Learned

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- Be “litigation ready”
- Damage control
- Crisis resolution

Lessons Learned

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Lance Armstrong ✓

@lancearmstrong



Following

Back in Austin and just layin' around...

mob.li/_r4zAz

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