

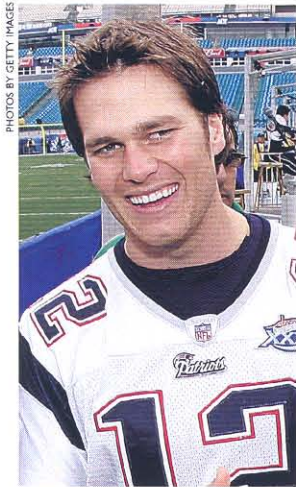
## RINGING ENDORSEMENTS

IN PROFESSIONAL SPORTS, ENDORSEMENT OPPORTUNITIES GO A LOT FURTHER THAN SALARIES. BUT WHILE THE REWARDS ARE GREAT, SO ARE THE POTENTIAL RISKS

By Brian R. Socolow

MAKING CENTS OF IT ALL

1ST QUARTER



Tom Brady



Martina Hingis



Tiger Woods

The big bucks of a lucrative endorsement contract are often the sweet reward for a professional athlete's success. Just look at David Beckham's deal with Adidas, reportedly worth \$160 million, or LeBron James' \$90 million agreement with Nike. Oftentimes (see Tiger Woods, Annika Sorenstam, Serena Williams and Michael Jordan) endorsement income can exceed what an athlete has earned from playing.

Yet athletes must approach endorsement contracts with caution, and learn the rules that apply to such deals. As with any venture, risks can accompany the rewards.

In the last few years, for example, several athletes have been involved in high-stakes, multi-million-dollar litigation over endorsement deals. One case involved a popular Nike commercial showing Tiger Woods bouncing an unlabeled golf ball on a club 49 times. At the time, Woods endorsed Titleist golf balls in a \$20 million deal and Nike apparel in a \$40 million deal. When the Nike ad aired, Titleist sued Woods and Nike, claiming that Woods appeared to be endorsing Nike golf balls; the parties settled out of court, and Woods eventually switched from endorsing Titleist balls to Nike balls (in Woods' endorsement deal with Nike, he could earn \$100 million over five years, depending on sales).

In another endorsement deal gone sour, ten-

nis star Martina Hingis was sued by Italian shoe company Tacchini for breaching her endorsement deal after she stopped wearing the company's tennis shoes. Hingis claimed the shoes caused her foot injuries and that Tacchini failed to modify them. After an Italian court ruled against Hingis, she filed suit in the U.S. against Tacchini for \$40 million, claiming breach of contract and product liability. The lawsuit was dismissed.

### Liability for False Advertising

Athletes who endorse products have also been charged with false advertising if claims they make are not adequately substantiated. Baseball player Steve Garvey found himself the defendant in a false advertising suit brought by the Federal Trade Commission (FTC) for commercials that advertised the weight-loss products Exercise in a Bottle and Fat Trapper. The FTC had settled similar charges with Enforma—the company that made the products—and two of its principals for \$10 million. Then the FTC went after Garvey.

Fortunately, Garvey had used the products and had lost weight. He also had little control over the content or production of the commercials and instead read the scripts he was given with only a few minor changes. Garvey took his case to court and won. The court concluded that Garvey had no actual knowledge of any material misrepresentations regarding the weight-loss products, and

that there was an adequate basis for Garvey's statements about his own use of the product.

### Endorsers Should Be Vigilant About Their Services

Endorsers must also look out for themselves and the value of their name and likeness. Shortly before celebrating another Super Bowl victory in 2005, Patriots quarterback Tom Brady filed suit against General Motors for allegedly using ads starring Brady after his endorsement deal had ended.

In 2003, Brady entered into a deal with General Motors in which he agreed to autograph merchandise, make personal appearances and appear in print ads for Boston-area Cadillac dealerships. The agreement terminated on Jan. 1, 2004. In late January 2004, however, GM requested permission to use a print advertisement featuring Brady in connection with the upcoming Super Bowl game. Brady's representatives denied the request, reminding GM that their rights to use Brady's name and likeness ended when the agreement expired.

Nonetheless, GM apparently used the ads featuring Brady in several issues of the *Boston Globe* in early February. Brady claimed that GM used his name and likeness without his consent, and filed suit for \$2 million. The parties are reportedly trying to settle the suit. Regardless of the outcome, however, the case illustrates why an athlete needs to make sure that both parties to an endorsement deal abide by the agreed-upon terms.

So while athletes can score endorsement deals that result in great wealth for themselves and their families—the \$40 million Venus Williams will earn pitching Reebok, for example, or the five annual payments of \$22 million plus \$23 million in stock that Salton, Inc., will pay George Foreman for his endorsement of the George Foreman Grill—they need to be aware of the potential legal risks they face when they sign a contract. They also must be prepared to enforce their rights.

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