

Sports Litigation Alert

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Dunking Billboards— Are NBA Game Jerseys for Sale?

By Douglas Masters and Seth Rose

Recent rumors that the NBA is considering the possibility of allowing advertisers' logos on players' game jerseys – and may take up discussion of the issue at its next league meeting later this month – have the sports press and fan sites buzzing with conjecture and opinion, as well as flat-out trash talk from fans threatening never to watch another pro hoops game or buy another licensed team jersey ever again, so long as they live, so help them Michael Jordan.

But whether allowing sponsorship logos on major league team jerseys is the equivalent of urban blight taking over exclusive and pristine sports real estate – like putting a giant billboard on the side of a mansion in Beverly Hills – or simply a smart opportunity for teams and leagues to generate additional income (a 2011 study suggested that replacing a team name with an advertiser's on a game jersey would be worth upwards of \$31 million in exposure, a figure that some have suggested is conservative, since it doesn't take into consideration the potential exposure from nightly highlight programs on sports networks like ESPN, as well as local news and sports shows) – it does pose some potential challenges for everyone involved – players, teams, leagues and existing and potential sponsors.

If the NBA were to make this move, they would be

the first major sports league in the U.S. to do so. But the idea is not a new, novel or even controversial one in the rest of the world, or for that matter, in the U.S., where NASCAR and the PGA are the most obvious examples of sports leagues that have this kind of sponsorship program in place. Other U.S. sports leagues, like the WNBA, also have sponsorship programs for logos on game jerseys, and teams in both the NHL and the NBA have programs that allow advertiser's logos on practice jerseys. And the 2012 major league baseball season will open with at least two teams – the A's and the Mariners – sporting advertisers' logos on batting helmets.

In a recent interview, Mark Tatum, E.V.P. NBA Global Marketing Partnerships, addressed the possibility of the league discussing putting sponsorship logos on team Jerseys. While he would not confirm that his agenda for the April meeting included the subject, Tatum did say that putting sponsorship logos of Jerseys “is a subject of some conversations with our teams. We owe it to our league, to our teams to evaluate the opportunity. To really take a look at the impact on the marketplace, to understand the implications to the key stakeholders, and to make sure that any revenue that's derived as a result of putting sponsors' logos on uniforms is truly incremental, so there is a lot that we are evaluating, a lot that we are discussing internally,



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before we can make a formal recommendation and decision on whether this is the right thing to do or not.”

Whether the league will go ahead with this next – some would say ultimate – level of sponsorship program is officially up in the air – although Tatum hinted that the “value proposition” of this type of sponsorship program may be so significant that the league “would have to say yes.” And, of course, many questions remain with any potential league-sponsored program.

How much real estate should a sponsor be able to buy with its advertising dollars? “Patch, belly patch, and full frontal model” – placement of the advertisement is one of the issues the NBA is evaluating, according to Tatum. The WNBA allows logos across the chests of their game uniforms. Major league baseball will have logos on batting helmets. NASCAR has logos everywhere – across car, driver and pit crew. How much is good enough and how much is too much – for league, team and advertiser?

Who are the likely sponsors and who has the responsibility of courting (pun intended!) them? Prevailing opinion—and existing programs in the WNBA, as well as the NBA and NHL (for practice uniforms) – suggest that local or regional sponsors might be the target market, to reach “home town” fans and “home game” viewership. But this model ignores the international scope of the potential viewing audience – according to Tatum, NBA games are broadcast in over 200 countries across the world – as well as the potential for repeat exposure on international sports platforms on both television and internet. A model that concentrates on national – or international – rather than local or regional sponsors – like NASCAR or the PGA does – brings with it its own issues, including whether league or the teams drive the process of negotiating deals with potential sponsors, and whether the revenue from those sponsorships benefits teams directly – and exclusively – or whether some revenue-sharing program would exist.

Brand matching is another issue. Advertisers will be interesting in spending their brand-enhancement



dollars on an alliance with a successful team – but success varies from year to year, and a multi-year contract would have to take the vicissitudes of team sports into account in some way. Teams and leagues would also be concerned with brand matching – beyond making sure that brand color schemes compliment team uniforms. Will the potential revenue upside on both sides of the deal

be enough to ameliorate any potential negative connotations of a sponsorship relationship that might occur? Often, companies have “morals” clauses in sponsorship agreements with individual athletes. Would either – or both – sides of the sponsorship transaction have termination provisions related to factors such as success – or scandal?

NBA spokesman Tatum also conceded the possibility of potential conflicts with other sponsorship relationships – team advertising partners, individual player endorsements, arena naming and advertising rights. He downplayed the issue, however, suggesting that the league already deals with these conflicts between national and team advertising partners. Other sports marketing experts have also suggested that enough potential advertisers without conflicts – and with ad dollars to spend – exist that conflicts can be, if not avoided, then minimized.

Regardless of whether or how the NBA votes this month, the fact that permitting sponsorship of uniforms is on the league’s agenda means that this mainstay of European sports is on its way into mainstream American sports. This new reality also means new issues for advertisers, athletes, venues, and teams to consider in any upcoming deals—making the complex even trickier.

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