

Negotiating Athlete Endorsement Agreement in India

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Abstract

Engaging famous athletes in endorsement has been an emerging trend in India. These opportunities offer off-field earnings to a player. This article attempts to discuss the opportunities for athletes to participate in endorsements. It also discusses some of the key issues popping up in such endorsements and their effect on the career of these sportspersons. Now, we shall discuss in detail how a player's performance and a brand performance or success to which the said player is associated they are directly related and dependent upon each other and how an athlete himself can control his/her performance as well as the performance of a brand which he endorses or advertises. In this research, we shall look upon the ingredients or the essentials of an endorsement agreement from the point of view of an athlete as well as from the point of view of a company that signs a particular athlete for sponsoring the product as well as service. We shall further discuss the risk factors arising due to the non-static performance of the players, the company has to possess when they sign a famous athlete to advertise their product and also look upon negative as well as positive impacts of such endorsement agreements. We shall look upon and understand certain factors which are important to give the dominant position to the players while negotiating the terms in an endorsement agreement. We can also try to find out how and why a celebrity athlete can become the most powerful tool in the mass media for endorsement.

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Introduction

The sports industry is achieving milestones and therefore, many brands want to get associated with sports. Recently, in Tokyo Olympics, there were a lot of brands who were associated with the games by becoming sponsors. They shell out a lot of money to sponsor sports events like the Olympics, the Indian Premier League, and other domestic as well as international events. Endorsements create awareness about the existence of the product and its details by attracting new customers and even by breathing life into a failing brand. In order to reach a wide spectrum of the population, athletes are used as mediators to endorse a product, so that the fan base of that athlete would get attracted towards the product and in this way, brands can attract a bunch of new customers.

The entertainment industry and its business is on the rise vis-a-vis the sports industry. An athlete can earn a huge amount of money off-field through advertisements. The more famous and credible the athlete, the less room for the company to negotiate the price offered to the player. Employing a famous athlete would help to build the credibility of the brand and that is achieved when the advertisement is done of a related product. For example, if our fastest bowler, Jaspreet Bumrah advertises an energy drink saying that it helps to build his stamina, then the company marketing that particular energy drink would be able to increase its sale within no time.

Reports recorded athlete endorsement as the highest growing entity among all the avenues of sports investment in India.² For the year 2018, there was a total of 482 crores (INR) of investment for athletes in India. Endorsement among athletes and professional sportspeople in India recorded a value of over 5 billion Indian rupees in 2020.³

For any deal with a company, an athlete needs to sign an Endorsement Agreement. This type of agreement allows an organization to use an athlete's name and reputation to promote a product or service by his/her consent upon providing them compensation or fees after due negotiation.

² Prashant Chandra: *Why Athlete Endorsement is the future of sports investment in India*, published on 03/03/2020.

³ Statista, *Sport endorsement value in India from 2008 to 2020*, visited on 28th Sept. 2021, 11:54 PM, <https://www.statista.com/statistics/734582/india-athlete-endorsement-value-in-sports/>.

There are many aspects to be decided upon in an endorsement agreement which we can discuss in detail further. The only important thing is that there shall be total transparency in all the terms and conditions in the said agreement.

Generally, in these endorsement agreements, players do not participate in the negotiations but are represented by their agents or legal representatives. That is why, agents play a major role because they are the ones who negotiate on behalf of the athletes by protecting the rights and interests of an athlete and especially, deciding a monetary compensation to the athlete as this is the primary issue most often while negotiating. This gives a clear picture of the amount of trust existing between the player and his/her agent.

Attributes of players

Once an endorsement agreement is signed, a company gets the right to use the name and image of an athlete in their advertising material. Endorsement makes use of the attributes of an athlete and that is why, an athlete must retain control over his image and attributes shown in an endorsement, so that his attributes may not be adversely used by the company impacting his image and career.

Every individual especially a celebrity has a right to publicity, wherein they can control or permit the commercial use of a distinctive feature that relates to that individual such as their name, image voice, signature, etc. These are their proprietary rights which also give an individual the right to prevent unauthorized use of their attributes. We can take a look at the case of Saurav Ganguly v. Tata Tea Limited⁴ Here, Sourav Ganguly filed a suit against Tata Tea and contended that the said tea company had used his name without authorization from him and hence, he suffered loss and damage due to such unauthorized use. The court stated that his fame and popularity is his intellectual property and granted him interim relief. Later on, the dispute was settled out of the court due to which the suit was withdrawn.

⁴ CS no. 361 of 1997.

Contents of Endorsement Agreement

The first and foremost basic requirement in any type of agreement is the clear statement of all the terms and conditions. With respect to endorsement agreements relating to athletes, the statement concerning the usage of the player's attributes is important.

Endorsement agreements should also contain terms about the dissemination of professional materials used by the athletes along with the exclusive right of the companies to restrict a player from entering into similar product endorsement agreements with other companies. Sometimes, endorsement agreements can be signed by the company with the organizers of an event and the organizers possess the right to put certain limitations or restrictions upon the use of certain materials and can state the way or how it can be used.

Organizers of the Olympics or International Cricket Council (ICC) Cricket World Cup have laid out several restrictions for the athletes. They can restrict athletes from participating in the events of any advertising company that is not the official sponsor of the events. The Organizers also have the power to dictate that certain representations may or may not be made in such advertisements. We can refer to one scenario over here which arose during the 2011 ICC Cricket World Cup when MS Dhoni was signed by 'Sony' company for advertisement. Here players were allowed by ICC to appear in the advertisements only in whites or any other casual or formal wear but not to appear in the national colors of their team. Dhoni was shown to have a blue kit, which was very much similar to the Indian cricket team's kit. When ICC complained of a breach of regulations, the color was changed to blackish grey. Therefore, advertising agencies should adhere to the rules laid down by the event organizers, or else sometimes, the athletes would have to bear the consequences.

It is very necessary to include a clause of dispute resolution mechanism in such endorsement agreements because sportspersons or athletes can afford to resolve their disputes through the Alternative Dispute Resolution (ADR) mechanism, as contesting their issues in civil courts for many years would be a tough task looking at their earlier age retirement. However, an athlete's priority should be his/her sport and they can't afford to waste or lose the precious time of their short career behind issues relating to endorsement of any product or service. Therefore, resolving disputes through arbitration, mediation, negotiation or any other alternative dispute resolution mechanism is very vital in endorsement agreements that are signed by the athletes.

Another clause of utmost importance in an endorsement agreement is a 'moral clause'. This clause is more beneficial from the point of view of the company. A moral clause in an agreement grants the endorsee the right to cancel the agreement of the athlete if the athlete does something to tarnish his/her public image or good conduct, as ultimately it will result in degrading image of the product or service to which he or she is associated with. Sometimes, athletes might find this clause as a hurdle for them as being popular and famous, they are under the constant scrutiny of media and hence, a slight mistake on their part can lend them of being accused of immoral behavior. However, in such cases, the company is no more obliged to continue an endorsement agreement with the said athlete and is free to terminate the agreement to defend their product with the help of a 'moral clause' in an agreement.

A clause on monetary compensation is a must in all types of agreements. If an amount of compensation is decided between a player and the company, then it shall be penned down in an agreement. How the compensation is to be paid and in what stages, shall also be stated in detail to avoid any untoward incident and grudges in the future. Some agreements may even be concluded by deciding a payment based on the performance of the player. The better the performance, the higher the pay because the company knows that the performance of their brand depends on the success of the player. Moreover, as per the Indian Contract Act, 1972, if the compensation under the Agreement is inadequate, then the inadequacy of consideration will have to be proved by the concerned athlete in the Court of law.

Intellectual property rights are also important for such endorsement agreements and therefore, a mention of this also would serve a good purpose. The reason behind this is identifying the intangible property possessed by the athletes in the form of goodwill. There are no strict and updated provisions in the field of intellectual property rights to protect the publicity rights of athletes and that is why elaborating upon the terms and conditions about intellectual property rights in an endorsement agreement is of relevance.

Last but not the least, an agreement should contain a clause of termination for the company to terminate the agreement as well as for the player. An athlete should keep in mind that exiting an agreement for genuine reasons is not a tedious task. Similarly, a company should also make it easier for them to move out in cases where the athlete does something against the interests of the company.

Factors influencing the Endorsement Agreement

Character or nature of a player: Sometimes, an athlete can bring his/her life story on the plate of negotiation, if their success is earned by them after a hard struggle and companies know it better to make efficient and proper use of the story of struggle in promotion of their product.

Moreover, the personal attributes and nature of an athlete can be used by the company by seeking the consent of the player. For example, it is an apprehension that MS Dhoni is a captain who stays calm and faces an intense situation in a cool manner. Presently, he is endorsing an advertisement of 'Cadbury fuse' wherein, it is shown that even 'captain cool' loses his cool when it comes to hunger, and hence, eating fuse can bring his anger levels down. Here, being cool and calm in tough situations, which is the nature of MS Dhoni, is being exploited by the advertising company very well. These attributes of players can be used effectively by the companies to convey their message through logic as well as humor and sometimes to manipulate the feelings and emotions of customers.

Performance of a player: The performance of a player is a very essential factor that is in fact, the core of the endorsement agreement. The current as well as past performance of a particular player, for which he is being chosen for that advertisement forms a foundation base for the athlete's fame and reputation. It is the performance of the athlete which brings in attraction and increases his or her fan base and popularity and ultimately, his fees or compensation for any advertisement.

On the other hand, the poor performance of an athlete can bring in a negative effect on the athlete's endorsement ability and he/she might lose some endorsement offers as new players who shine, might replace them. That is why the offers of the endorsement agreement also depend upon the performance of an athlete.

Credibility: A person can be considered credible enough when he/she is trustworthy and hence, ethical or moral values come into the picture here. If a credible athlete is going to endorse a product, then the people will rapidly believe and trust him considering that he/she is a reliable person. For example, Virat Kohli who has well-built stamina can easily play without feeling exhausted soon. He is the one who endorses 'boost' energy drink and even says that 'boost is the secret of my energy. This statement and appearance of Virat Kohli make people believe that yes! Boost is his secret and his fans also start drinking boost to build stamina like Virat Kohli.

Fan-base: This component is very much similar to the attribute of popularity because it is a simple strategy used by companies to sign an athlete who is liked by everyone. They look at the fan base of

a certain player and make an offer to sign him for endorsing their product as they know that most of their fans would listen to their idol and would buy the product only because their favorite athlete is recommending it and therefore, this strategy is an effective tool to advertise a product or a service.

Know what you Promote!

The basic rule of an advertisement should be to know about the product or service which is being promoted and if this basic rule is violated, then the person promoting the same would have to face the consequences. We have seen such a situation in the year 2015 when it was found that 'Maggi' had the excessive lead in it and it was harmful to health due to which the promoters and the celebrities who appeared in the advertisements of 'Maggi' had to face a lot of trouble. The public filed complaints against Amitabh Bachchan, Preity Zinta, and some others who were associated with Maggi and were the brand ambassadors of Maggi. Even the Consumer Protection Act, 2019 holds endorsers liable for any false or misleading advertisements prejudicial to the interest of any consumer.⁵

There is one more advantage of knowing the product which is being endorsed. Generally, an advertising agreement restricts the celebrity promoting the product from joining any other company offering him/her similar product's promotion. Thus, if an athlete knows well about the category of the product he/she is promoting, he/she would not lose out on any endorsement with other products of like nature but not similar.

Hence, defining a product in a precise manner in an agreement is necessary to avoid any ambiguity to restrict athletes from signing any other Endorsement agreement. Athletes can even ask for a scientific base of claims made by them in an advertisement. They shall obtain advice from their legal team and shall ensure that they aren't advertising any prohibited product or service because their liking can become the liking of millions of people.

The Advertising Standards Council of India (ASCI) is a voluntary self-regulatory organization formed in 1985 to ensure the protection of the interest of consumers. It provides its complaint redressal mechanism with its own Consumer Complaint Council to adjudicate consumer

⁵ The Consumer Protection Act, 2019, § 21, No. 35, Act of Parliament, 2019 (India).

complaints. The ASCI provides guidelines to celebrities while endorsing any product. It states that any celebrity advertising a product or service must ensure due diligence and see to it that their opinions about any product or service are given only after testing or experiencing it by themselves. They must ensure that transparency is maintained by them and they are expected to be aware of the product or service which they are promoting as they can influence the masses.

Conclusion

The future of Sports Investment is athlete endorsement. It has been confirmed by researchers that many of our buying habits are influenced by our emotions and brands hammer on the right place by signing our favorite athlete to endorse their product, the advantages of which we have seen in this Article.

The research was also able to find an answer or explanation to our central question and therefore, we can rightly conclude that yes! there exists a direct relationship between a player's performance and the success of a brand which he/she endorses.

Notably, athletes should always give priority to their respective game and therefore, promises to appear for a long term as and when required or commitment to something which is outside their profession should be made wisely. It is therefore important that before signing any endorsement agreement, an athlete must schedule and utilize his/her appearance and other professional commitments and must choose wisely, as their sporting career is very short. However, their career in the entertainment industry through advertisement is not limited at all because even after retirement, legendary athletes have demand, as a promotion by them ensures long term sustainability and trust among people concerning the product or service offered.

Unlike other countries, Indians are driven by emotions and consider athletes as their idols. A legendary cricketer like Sachin Tendulkar is considered the God of cricket by many and is even being worshipped. It is because of such gestures that advertisements by athletes can influence many Indians.