

SPORTING MATTERS

Newsletter

December 2013



Breakfast Seminar Review: Strategic Development and the Sporting Club

Thank you to all who attended our breakfast seminar on 19 November on Strategic Development and the Sporting Club.

Our speakers, Christina Matthews (CEO of the Western Australian Cricket Association), Dr Russel Perry (Chairman of RugbyWA) and Wayne Gersbach (NSW General Manager, MacroPlan Dimasi), provided us with a great insight into the trials and triumphs of their own experiences with sporting club developments.

Several common themes emerged from the discussions as key for sporting clubs to consider when embarking on any form of development:

- developments are a lengthy process and require strategic planning, long term vision and appreciation for the long term goal;
- developing a structured and sound business plan at the beginning of the process is vital to ensuring the development continues in the direction most beneficial to the sporting club;
- consider involving an expert to assist with, for example, the planning phase;
- be prepared to be flexible and to adapt to changing membership, player and/or commercial needs;



- develop and maintain strong relationships and avenues of communication with local and State government; and
- recognise the importance of strong internal governance.

Coming up next year...

Following on from the breakfast seminars held this year, Squire Sanders intends to present a series of seminars relating to issues affecting the operation of a sporting organisation. Topics will include corporate governance and structures, requirements for internal policies, employment issues and intellectual property.

For suggestions on topics for future presentations, please email perth.rsvp@squiresanders.com

Save The Date – 13 March 2014

Breakfast Seminar: Corporate Governance & Sporting Organisations – What keeps a board member awake at night?

This seminar will explore the factors that impact upon good corporate governance for sporting organisations such as the body's structure, governing documents and policies.

Please save the date in your diary and further details regarding the topic will be provided closer to the event.

When: 13 March 2014
7.00am for a 7.30am start

Please contact [Isla Rollason](#) for further information.

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[Click here for our sports team contact card](#)

The Benefits of Collaboration – Essendon Football Club and the Australian Paralympic Committee

A consistent theme arising from our recent breakfast seminars (The Sporting Club as Property Developer and Sporting Clubs: Strategic Development) has been the potential benefit of different sporting organisations and codes working together to develop facilities. While there are pitfalls for the unprepared, our speakers have spoken highly of the value to be found in collaborative efforts where strategies align and communication is effective.

A recent example of a successful collaboration to develop new facilities has been the venture between the Essendon Football Club and the Australian Paralympic Committee (**APC**). 18 November 2013 marked the official opening of the new shared facility at Tullamarine, near Melbourne Airport.

The collaborative approach assisted with achieving significant federal government funding (\$6 million of the \$27.6 million budget). Both organisations have said that working together to deliver a new facility has led to a better outcome than if they had acted alone.

While the potential cost savings may provide the impetus for collaboration between sporting organisations, there can also be a range of significant benefits to the community, as well as improved on-field performance. An example of this from the APC and Essendon collaboration is their plan to continue to work together on education initiatives and the promotion of important social messages such as integration, awareness and inclusion within the sporting landscape.

Our speakers agreed that the most important element to successful shared ventures is effective communication. Whilst seemingly simple, maintaining effective communication can be a challenge. However, there can be tangible benefits to both sporting organisations and communities if the parties work together. Importantly, collaborations such as Essendon and the APC contribute to the growing body of knowledge and experience in Australia which can be utilised to ensure the success of future collaborations.

Naomi McCrae, Associate, Perth

It's Not Just Cricket: Protecting IP in Sport

Branding is the key to commercial success in sport. Just think: where would the New York Yankees be without their iconic [NY logo](#)? Or the Chicago Bulls without their iconic [bull's head](#)? How much money would the Australian Football League ([AFL](#)) make if they didn't own the logos for every team, and couldn't sell official merchandise?

It's not just logos and team names that can be protected either. Who owns the design of an iconic trophy, such as the [soccer world cup trophy](#), the [ashes trophy](#) or the [Hopman Cup trophy](#)? Individual athletes also have a great deal of commercial interest in their personal brand, such as Greg Norman's [shark](#), and LeBron James' [LJ logo](#).

Owning your brand

For the most part, trade mark registration is the best way to protect the brand assets of sports teams, codes, competitions and individual athletes. It is essential to register any team symbols, crests logos and names, personal logos and names (including nicknames), as well as trophy designs, team colours and slogans. Iconic gestures can also be registered as trade marks, such as Gareth Bale's '[Eleven of Hearts](#)'.

Trade mark registration is the first way to ensure that your club, organisation or athlete owns their brand, but design registration is also important and vastly under utilised. Design registration can be used to register trophy designs, uniform designs, unique water bottle shapes or any other interesting item of branding that identifies a particular team, athlete or competition. Design registration is also a more suitable form of registration than a trade mark registration for all of these things.

Possessing your brand

Ownership is the first step in protecting a sports brand, but enforcement and practical protection are also necessary to realise the full commercial benefit. Once a trade mark is registered for a name, it is important to register the domain name, register social media accounts for the name, register business names and keep an eye out for people who may be using the brand without permission. As they say, "possession is nine-tenths of the law", and possessing your intellectual property is just as important as having legal ownership.

Commercialising your brand

When you have secure possession and ownership, licensing is the best way to then make money and commercialise your brand. By giving others the right to use your brand to create merchandise, you can receive license fees and royalties. For major brands these fees will often amount to hundreds of thousands of dollars, if not millions.

Licensing arrangements can come in many forms. They can be as simple as authorising a fashion designer to manufacture clothing with a team logo, or permitting a jeweler to make replicas of your competition's trophy. There are a million ways that a team, competition or athlete's brand can be used to make money, but none of these can even be considered unless its brand is owned first.

With Squire Sanders' experience in a variety of sporting codes and legal issues, we are well placed to assist with any branding issues for you as a team, the operator of a sporting competition, or as an individual athlete or agent.

You can also read this article on our Global IP & Technology blog at <http://www.iptechblog.com/>

Alex Butterworth, Associate, Sydney

Squire Sanders Sporting Practice

To review our Sports Law Brochure, please [click here](#)

How Does Your Organisation Manage Sports Supplements?

The use of supplements in Australian sport is not a new phenomenon. Never before has it been so topical. Whether a professional or amateur, club or participant, you must be aware of the procedures which govern your sport and be pro-active in protecting your club from any harmful impact. Recent amendments to the Australian Sports Anti-Doping Authority Act 2006 (Cth) (Act) have raised the bar for the co-operation required by clubs during investigations and the overall standards required of both players and club officials.

If you are an amateur club, the responsibilities are the same: shaping well-informed and appropriate attitudes to supplements and doping.

The Procedure

Australian sport prides itself on being a frontrunner in the fight against doping. The Australian Sports Anti-Doping Authority (ASADA) is a member of the World Anti-Doping Agency (WADA) and plays a prominent role in the development of the World Anti-Doping Code (WADA Code). ASADA is committed to maintaining independence from all sports and applying its regulations consistently regardless of the sport's popularity or commercial status.

Contrary to popular misconception, ASADA does not issue sanctions. ASADA is empowered to conduct drug testing and all investigations relevant to the "Results Management Process". It will then present information to the independent Anti-Doping Rule Violation Panel about a potential violation of the WADA Code. The Panel assesses the information presented to them, including information provided by the athlete, and then decides whether to:

- enter an athlete's details on to the Register of Findings (a formal record of decisions on anti-doping rule violations and associated matters); or
- recommend a sanction to the sport.

The governing body of the sport itself is responsible for the issuing of any infraction notices and punishing parties for any violations of their own sport-specific Anti-Doping Code.

Following this decision, a right of appeal lies for ASADA, WADA and the affected party (e.g., a club or player) to the international Court of Arbitration for Sport.

Impact of Breach

- Fines for failing to co-operate with the investigation (under the Act)
- Findings that your club has brought the game into disrepute
- Banning of players or club officials
- Medical and other forms of professional negligence if found to breach a duty of care to players (under civil law)
- Loss of sponsorship
- Possible negative impact to player safety (see the Australian Crime Commission's report *Organised Crime And Drugs In Sport*, February 2013).

What You Can Do

We recommend that you:

- Draft your own internal *Supplement and Anti-Doping Policy* to educate your players and club officials
- Make the WADA Code and the Anti-Doping Code of your specific sport available and accessible to your players and club officials
- Include a clause in player contracts that prohibits violations of these two codes and your own internal Supplement and Anti-Doping Policy.

Lauren Barnett, Associate, Perth

