



# Legal battles for sponsorship exclusivity: The cases of the World Cup and NASCAR<sup>☆</sup>

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## ABSTRACT

Theorists have emphasized brand differentiation in achieving a competitive advantage through sponsorship, and managers of sports sponsorships have recognized product category exclusivity as among the most valued rights afforded sponsoring firms. Yet the proliferation of sponsorships in the sports marketplace poses a challenge to sponsors attempting to establish a unique brand position apart from the clutter. The competition between corporate rivals for sponsorship exclusivity in the world's highest profile sporting arenas has begun to spill into the courtroom. The purpose of this paper is to review the cases of MasterCard versus FIFA, and AT&T versus NASCAR, and discuss the relevance of these contract disputes to sponsorship scholars and practitioners. Specifically, the courts' finding of irreparable harm faced by the excluded sponsor offers an intriguing legal recognition of the theorized goodwill and inimitability of corporate affiliation with a specific sponsored enterprise. The cases also contribute an opposing view of best practices, where legal ramifications arise from treating sponsorship as a property-based resource and neglecting the relational dimensions of collaborative communication, trust, and commitment emphasized by contemporary sponsorship theory.

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## 1. Introduction

Investments in commercial sponsorship as a marketing communication tool have expanded rapidly in the last two decades, reaching an estimated expenditure of US\$44.8 billion in 2009 (IEG, 2009), and capturing nearly a 20 percent share of overall marketing budgets (IEG, 2008). These figures suggest that delivering a brand message through sports continues to be a substantial marketing tactic despite a global economic downturn that has led to recent media and legislative scrutiny of such expenditures (Lefton & Mickle, 2009). In the context of commercial sponsorship, a designation of product category exclusivity acts to exclude competitors within a sponsor's product or service category from a controlled sports environment. In such cases, the sponsored team or event agrees to refrain from affiliating with any of the sponsor's rivals within a product or service category. Such category exclusivity has been recognized as among the most valued rights afforded corporate sponsors of sport, and therefore, sponsors often pay a premium price to achieve such a restricted promotional position (Cornwell, Roy, & Steinard, 2001; IEG, 2008). The battle between corporate rivals to protect this exclusive right in two of the world's highest profile sports has spilled into the courtroom. The objective of this paper is to provide an overview of these two cases and examine their confluence with sponsorship theory and contemporary practice.

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In both cases, an individual corporate sponsor filed suit as a plaintiff against a sponsored sport enterprise that sought to exclude the plaintiff from the sponsorship environment in favor of a rival firm. In the first case (*MasterCard v. FIFA, 2006*), MasterCard brought a complaint against the Federation Internationale de Football Association (FIFA) for an alleged violation of MasterCard's first right of acceptance of sponsorship in the financial service category for the forthcoming FIFA World Cup. The "first right of acceptance" clause at issue in the case originated from MasterCard's expiring World Cup sponsorship agreement with FIFA. The clause was raised when FIFA attempted to dismiss MasterCard in favor of an agreement with VISA for sponsorship of subsequent World Cups despite a concurrent ratified FIFA contract with MasterCard.

The second case (*AT&T v. NASCAR, 2007a*) positioned the National Association for Stock Car Auto Racing (NASCAR) as the defendant against AT&T Mobility when NASCAR attempted to enforce a race circuit-wide sponsorship exclusion of wireless competitors to Sprint Nextel, which had become the new title sponsor of NASCAR's top racing series. AT&T took exception to this mandate upon acquiring the Cingular Wireless brand, which NASCAR had allowed to remain in the sport as a preexisting sponsor exemption to the exclusion (i.e., granted Cingular a grandfather-clause). AT&T instigated a legal battle aimed at transposing the acquired Cingular brand on Jeff Burton's #31 NASCAR Chevrolet with the AT&T logo marks.

This paper proceeds by examining the primacy of brand differentiation in achieving a competitive advantage through sports sponsorship. The inherent advantage of category exclusivity and the contemporary managerial challenge to establishing a promotional position difficult to imitate are discussed. Following this brief review of the relevant literature, a detailed analysis of the proceedings of both legal cases, including the circumstances behind their development, the resulting litigation, and the settlements achieved is presented. To conclude, the ramifications for corporate sponsors and sports properties are highlighted through the adoption of theorists' conception of the sponsorship relationship as a strategic alliance.

## 2. Differentiation through sponsorship category exclusivity

A commonly accepted definition of sponsorship was constructed by Meenaghan (1983, p. 9) as "the provision of assistance either financial or in kind to an activity by a commercial organization for the purpose of achieving commercial objectives." While scholars have identified numerous corporate objectives for sports sponsorship, differentiating the brand from competitors is a distinctive tactic essential for realizing a competitive advantage (Cornwell et al., 2001). According to the resource-based view of the firm (Barney, 1991), resources are deemed strategic only when they contribute to a competitive advantage; otherwise, resources become bases of parity between competing firms. Sponsorship's usefulness as a strategic tool for achieving a competitive advantage is based largely on its heterogeneous distribution, inimitability, imperfect mobility, and preemptive limits to competition (Amis, Pant, & Slack, 1997). When taken together, these qualities characterize sponsorship as a scarce resource that provides the capacity to differentiate affiliating sponsors' brands from their competitors in the minds of consumers (Fahy, Farrelly, & Quester, 2004).

To ensure three of the four strategic elements (heterogeneous distribution, imperfect mobility, and limits to competition), sponsored enterprises often offer multi-year product category exclusivity to potential corporate partners in exchange for a price premium (Cornwell et al., 2001). Category exclusive sponsorships contain an agreement by the sponsored enterprise to forgo any potential promotional affiliation with a corporate partner's competitors in a defined product/service category for the duration of the sponsorship arrangement. In doing so, the sponsored enterprise has confined both the distribution and mobility of their sponsorship resource. A common additional clause that grants the sponsor the right of first acceptance/refusal to continue the relationship at the conclusion of the initially specified term also sets a strict limit to competition for the sponsorship resource going forward.

Many corporate sponsors are not only willing to marginally increase their right payment for this type of rival exclusion, but research has shown product/service category exclusivity to be the most important criteria in sponsorship selection (Copeland, Frisby, & McCarville, 1996). However, category exclusivity does not guarantee a sponsorship is inimitable. Instances of competing sponsorship interests within the same sporting event have become common as athletes, teams, sanctioning bodies, broadcasters, and facility owners all pursue corporate support (Chavanat, Martinet, & Ferrand, 2009; Turner & Cusumano, 2000). Where these separate actors (athletes, teams, leagues, media, and venues) in the sports marketplace have not collaborated effectively to limit sponsor category conflicts, a sponsoring brand may find it difficult to establish unique image associations within the sporting domain apart from category competitors (Wolfe, Meenaghan, & O'Sullivan, 2002). In such circumstances, the inimitability of sponsorship is questionable. For example, after NASCAR driver Jamie McMurray raced to victory in an event title-sponsored by Pepsi (i.e. Pepsi 400), McMurray proceeded to the winner's circle to chug his own sponsor's signature beverage, Coca-Cola Classic, in front of a myriad of photographers and video crews (Thirst Quencher, 2007). Although Pepsi had secured an exclusive sponsor position with the race promoter and venue, Pepsi's bitter rival was able to steal the images of the winner's circle by affiliating with a driver and team competing in the event.

To mitigate sponsorship clutter within a product category and deliver a promotional resource inimitable by rivals, sponsored enterprises within a common sports domain have begun to consolidate their promotional rights. The ultimate success of this consolidation relies on two specific interorganizational relationships central to the legal cases outlined in the subsequent sections. First, the partnership between a sponsored enterprise and sponsoring firm must involve a contract that details the breadth and duration of granted category exclusivity and stipulate options for renewal or termination of the promotional relationship. Second, collaboration between the various parties involved in organizing, hosting, promoting, and competing within the sports event is necessary to contractually outline the sponsorship rights relationship and ensure the

absence of conflicting sponsor affiliations (Wolfe et al., 2002). Yet, the two cases detailed below demonstrate that for both types of relationships, contracts alone are not sufficient assurances of success in sports sponsorship. Contemporary sponsors expect the professionalism of a relational orientation, where communication, trust, commitment, and mutually derived benefits are emphasized despite the associated transaction costs (Cousens, Babiak, & Bradish, 2006; Farrelly & Quester, 2003a; Sam, Batty, & Dean, 2005). When these relational qualities are deemphasized and partnerships break down, sponsors are willing to pursue extensive legal action to protect their exclusive rights, as in the MasterCard case, or fight against unilaterally imposed exclusivity, as in the case of AT&T.

### 3. MasterCard vs. FIFA<sup>1</sup>

#### 3.1. Background

The 1990 World Cup in Italy marked the first event in a sponsorship relationship between MasterCard and the Federation Internationale de Football Association (FIFA) that would span over 16 years and seven FIFA World Cup competitions (five men's and two women's tournaments). During that timeframe, MasterCard invested nearly US\$100 million to secure the exclusive sponsorship rights in the "payment services" product category for World Cup tournaments around the globe. Included in each of these agreements (typically negotiated in four-year cycles during that timeframe) was a clause that granted MasterCard the right of first refusal for the forthcoming World Cup sponsorship within their product category. The 2002 agreement between FIFA and MasterCard, set to expire in 2006, was no exception, though the clause was worded in this instance as the "first right to acquire, with respect to PRODUCTS (i.e., category), the package of advertising and sponsorship rights offered by FIFA." Along with this phrase in Section 9.2 of the agreement was a specified 90-day notice of forthcoming offer required of FIFA, and in turn, a 90-day exercise period open to MasterCard to accept such rights as offered. Following the 90-day exercise period, FIFA was deemed "free to grant to any entity such rights on comparable terms."

The conflict in the case stemmed from FIFA's decision to revise its sponsorship structure after hiring a new Director of Marketing and Television, Jerome Vilcke, in September 2003. Prior to MasterCard's existing agreement with FIFA that began in 2002 and expired following the 2006 FIFA World Cup, FIFA had outsourced the negotiation and sale of its marketing rights to ISL, an independent sports marketing agency. However, ISL declared bankruptcy in 2001 and FIFA retained the sales function in-house. With adequate time to prepare for the next cycle of World Cup sponsorship negotiations, FIFA resolved to consolidate several of its sponsorship product categories (from 15 to 6) and package the rights into an eight-year cycle. In doing so, FIFA anticipated realizing greater returns from a more exclusive partner list over a longer timeframe. While this type of sponsorship rights restructuring is not uncommon in the sports industry, the manner in which FIFA proceeded to offer these rights within the "payment services" category was extraordinary, given their established relationship with MasterCard.

#### 3.2. The deception

The FIFA sponsorship rights restructuring process began when FIFA's legal counsel, who was not a practicing lawyer, drew up an internal memo that outlined the renewal rights of their current partners, which included MasterCard's "first right to acquire." In March 2004, FIFA initiated contact with VISA, MasterCard's primary rival in the product category, to assess their interest in World Cup sponsorship rights. On July 14, 2004, after FIFA internally acknowledged that it must send notice to MasterCard of an intent to offer 90-days prior to such a presentation, FIFA notified MasterCard of its intent to offer MasterCard the sponsorship rights within their product category. One month later, during the Olympic Games in Athens, FIFA renewed conversations with VISA and denied that MasterCard had any incumbency rights when VISA's Executive Vice President inquired directly as to MasterCard's sponsorship status. Talks with VISA progressed, and on December 9, 2004, FIFA representatives travelled to San Francisco to offer the "financial services" category sponsorship rights for the World Cup from 2007 to 2014 to VISA for US\$225 million. One month later, FIFA again denied any contractual product category rights of MasterCard in a conversation with a VISA in-house attorney. Finally, 210 days after giving notice to MasterCard of a forthcoming offer and two months after offering the rights to VISA, FIFA presented the financial services category sponsorship to MasterCard in New York on February 8, 2005.

MasterCard was still unaware of FIFA's dealings with rival VISA, and had an offer on the table from FIFA that was considerably different in contract length, breadth of product category exclusivity, and requested monetary commitment compared to past agreements. Cognizant of the 90-day exercise period laid out in the previous agreement, MasterCard retreated to undertake their internal analysis. Approaching the deadline of the exercise period, MasterCard requested, and was granted, a three-day extension by FIFA of the "exclusive negotiating period." However, such a description was questionable on FIFA's part, given their ongoing negotiations with VISA. At one point during MasterCard's 90-day period, FIFA stated in a letter to VISA that "(FIFA) could expect, and strongly recommend, that VISA and FIFA enter into an agreement." At the end of this first exercise period, MasterCard rejected FIFA's original offer and suggested returning to the original narrower product category definition that better described MasterCard's business interests. VISA reached a similar conclusion and FIFA was forced to scale down the package.

<sup>1</sup> The review of the case, *MasterCard International Inc. v. Federation Internationale de Football Association* (2006, 2007), was produced from acquired court transcripts and filed court proceedings.

With a reformulated “financial services light” package priced at US\$180 million, FIFA remained true to form by presenting the sponsorship rights to VISA ahead of MasterCard (by two days) despite later admitting that a new offer consisting of terms not comparable to the original offer retriggered MasterCard’s first right to acquire. This time, however, neither FIFA nor MasterCard referenced the 90-day stipulations of Section 9.2 of their current contract. FIFA completed a long-form draft agreement several months after the “light” package presentations and delivered a copy to VISA on August 22, 2005, and to MasterCard on August 26, 2005. At this point in the concurrent negotiations, FIFA decided to openly discuss the progress of the MasterCard negotiations with VISA, while remaining silent with MasterCard regarding any contact with VISA. In later court testimony, one FIFA executive attempted to justify this strategy by comparing it to cheating on your wife and realizing the benefits of waiting until “the end” to tell her, as opposed to the “disruption” incurred by telling her now.

Despite FIFA’s secret conduct opposing MasterCard, negotiations between the two parties reached a US\$180 million cash agreement for the “financial services light” sponsorship package at the end of October 2005. Meanwhile, VISA’s best offer to date consisted of US\$154 million in cash and \$16 million in “promotional value,” which FIFA later admitted was of little interest to their enterprise. On October 26, 2005, the FIFA Board compared the two agreements and approved MasterCard as the financial service sponsor. The Board even stated in the meeting minutes that “It is agreed to proceed with the final agreement for MasterCard.” Similarly, on December 5, 2005, the FIFA Finance Committee also approved the agreement with MasterCard for the 2007–2014 term. Finally, on December 7, 2005, the FIFA Executive Committee granted the final FIFA approval for a MasterCard agreement. Had the chronology of events ended at this point, FIFA’s conduct, while perhaps suspect, would most likely have been dismissed as overly aggressive negotiations. However, under the spell of undermined motivations, FIFA’s sponsorship executives continued to push VISA to match or better MasterCard’s FIFA-approved agreement.

Three hours prior to FIFA’s next Board meeting on March 14, 2006, and under pressure from FIFA’s sponsorship executives, VISA verbally agreed to pay US\$180 million in cash in addition to \$15 million in marketing in-kind value for the “financial services light” sponsorship package. This turn of events enabled the FIFA Marketing Director, citing a (settled) trademark issue as the rationale for spurning MasterCard, to persuade the Board to approve the agreement with VISA. Further approvals were given by FIFA’s committees in the following days and even still, MasterCard was not notified of the decision until VISA’s Board approved the agreement on March 29, 2006. Upon finally being notified of the VISA agreement by FIFA, MasterCard promptly issued notice of a legal claim to both FIFA and VISA on April 4, 2006. Despite the forthcoming litigation, the FIFA agreement with VISA was executed on April 6, 2006, and contained some rights not comparable to those in the MasterCard agreement, such as certain World Cup on-site ATM rights, superior ambush marketing protections, and the ability of VISA to credit US\$2.5 million of their cash commitment toward the purchase of sponsorship rights to World Cup qualifying competitions.

### 3.3. Litigation

Legal action was undertaken by MasterCard against FIFA in the U.S. Federal Court within a month of notice of FIFA’s acceptance of VISA as their financial service sponsor (*MasterCard v. FIFA*, 2006). As a counter measure in June 2006, FIFA filed an initial Notice of Arbitration with the Zurich (Switzerland) Chamber of Commerce’s Arbitral Tribunal; yet the full complaint later filed by FIFA in January 2007 claimed rightful termination of the 2002–2006 agreement with MasterCard on September 20, 2006—after FIFA had already filed its initial arbitration notice. The U.S. District Court proceeded to rule in favor of MasterCard and subsequently issued a temporary anti-suit injunction against FIFA’s arbitration filing with the Zurich Arbitral Tribunal (*MasterCard v. FIFA*, 2007). Table 1 summarizes the proceedings of the court action in the case. Of particular note from a sponsorship law standpoint, and beyond the tabled information, are the court’s findings in relation to the standard for permanent injunctive relief (including an order of specific performance).

In this case, the granting of permanent injunctive relief included an element of specific performance evaluated under Swiss law by the U.S. District Court. A permanent injunction has been described by the court as an “extraordinary remedy, which is not lightly imposed” (*Basquiat v. Baghoomian*, 1992). The basis for injunctive relief via federal court has been irreparable harm and inadequacy of legal remedies (*Beacon Theatres v. Westover*, 1959). The fascinating characteristic of such a finding in this case is the court’s outline of the irreparable harm MasterCard would suffer if FIFA was permitted to go forward with VISA as their financial service sponsorship partner (bullets added in place of paragraph numbers in the original court text) (*MasterCard v. FIFA*, 2006):

- First, in the absence of an injunction, MasterCard would lose, for at least the next eight years, an undisputedly unique and irreplaceable sponsorship property.
- Second, in the absence of an injunction, MasterCard would lose indeterminate existing and prospective goodwill.
- Third, in the absence of an injunction, MasterCard would lose a significant competitive advantage.

In this description of irreparable harm, a U.S. District Court is essentially recognizing that a specific sports sponsorship can be (1) irreplaceable, or inimitable in the language of the resource-based view of the firm (*Barney*, 1991), (2) a source of goodwill (*Meenaghan*, 2001), and (3) the basis of a competitive advantage (*Amis et al.*, 1997)—all of which are supported, but not taken for granted in sponsorship theory. For instance, in proposing how sponsorship works, *Meenaghan* (2001) suggests that sponsorship’s ability to generate consumer goodwill differentiates sponsorship as a promotional tool from advertising. Yet, *Amis et al.* (1997) point out that not all sponsorships entail the resource conditions necessary to generate a competitive

**Table 1**

Timeline of legal action in MasterCard's sponsorship dispute with FIFA.

| Date of order/filing | Court                                                              | Plaintiff                       | Defendant           | Finding                                                                                                                                                                                                                                                     |
|----------------------|--------------------------------------------------------------------|---------------------------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 20, 2006       | U.S. Dist. (S.D.N.Y.)                                              | MasterCard                      | FIFA                | Original complaint filed alleging that FIFA violated MasterCard's first right to acquire post-2006 sponsorship rights as contained in the parties' 2002–2006 agreement.                                                                                     |
| June 21, 2006        | Zurich (Switzerland)<br>Chamber of Commerce's<br>Arbitral Tribunal | FIFA                            | MasterCard          | FIFA filed Notice of Arbitration requesting referral to arbitration in Switzerland. Full complaint filed January 12, 2007 claimed FIFA's rightful termination of 2002–2006 contract on September 20, 2006.                                                  |
| August, 10, 2006     | U.S. Dist. (S.D.N.Y.)                                              | MasterCard                      | FIFA                | FIFA motion to dismiss for the lack of personal jurisdiction was denied.                                                                                                                                                                                    |
| September 25, 2006   | U.S. Dist. (S.D.N.Y.)                                              | MasterCard                      | FIFA                | VISA's motion to dismiss based on its status as a necessary and indispensable party (Rule 19) and to intervene in the action (Rule 24) are both denied.                                                                                                     |
| November 23, 2006    | Zurich Arbitral Tribunal                                           | FIFA                            | MasterCard          | Provisional timetable issued calling for first round of evidentiary submissions on March 26, 2007, and hearing to commence on May 1, 2007.                                                                                                                  |
| November 27, 2006    | Zurich Arbitral Tribunal                                           | FIFA                            | MasterCard          | MasterCard's request to dismiss arbitration for the lack of jurisdiction or stay arbitration until resolution of U.S. court action denied.                                                                                                                  |
| December 6, 2006     | U.S. Dist. (S.D.N.Y.)                                              | MasterCard                      | FIFA                | MasterCard was granted permanent injunctive relief enjoining FIFA from granting rights to VISA for 2007–2014; directing specific performance of the rights agreement between FIFA and MasterCard for 2007–2014; granting MasterCard all of its legal costs. |
| December 18, 2006    | U.S. App. (2d Cir. N.Y.)                                           | MasterCard,<br>FIFA (Appellees) | VISA<br>(Appellant) | VISA's appeal of the Rule 19 order was dismissed; District Court's Rule 24 order against VISA was affirmed.                                                                                                                                                 |
| February 28, 2007    | U.S. Dist. (S.D.N.Y.)                                              | MasterCard                      | FIFA                | MasterCard's motion for a temporary anti-suit injunction against FIFA's arbitration filing with the Zurich Arbitral Tribunal was granted.                                                                                                                   |
| May 25, 2007         | U.S. App. (2d Cir. N.Y.)                                           | MasterCard<br>(Appellee)        | FIFA (Appellant)    | Judgment of District Court is vacated and case was remanded for limited purpose of determining to what extent the 2006 agreement was binding and superseded the 2002 agreement.                                                                             |
| July 4, 2007         | Private Settlement                                                 | MasterCard                      | FIFA                | FIFA settled complaint with MasterCard for US \$90M and awarded 2007–2014 sponsorship rights to VISA.                                                                                                                                                       |

advantage. Specifically, the sponsorship must be unique, difficult to imitate, inefficient to transfer, and supported by supplemental promotional assets that create barriers to competition. Elements of this theoretical foundation espoused by sponsorship researchers are clearly evident in the court's rationale summarized above for granting an injunction in the case. Without such a ruling, MasterCard would not only lose the goodwill generated by the World Cup sponsorship, but also be unable to leverage the affiliation toward a competitive advantage with supplemental promotional assets.

On the basis of the harm that resulted from FIFA's decided breach of contract, the court ordered FIFA to specifically perform its obligations under the 2002–2006 contract. In other words, FIFA was required to offer MasterCard the first right to acquire a financial service sponsorship agreement for the forthcoming World Cup, which was in fact already offered and accepted by MasterCard and therefore “acquired” for the period of 2007–2014. This directive of the court was only undertaken after careful consideration of the Swiss Code of Obligations, Swiss Civil Code, Swiss contract law, and expert testimony from Swiss legal experts put forward by both parties. The international implications to the progression of this sponsorship law case are especially relevant given the increasing globalization of sport and the heavy reliance on corporate partner funding through sponsorship to underwrite such worldwide expansion (Farrelly & Quester, 2005a).

It is hardly surprising that FIFA and MasterCard eventually decided to part ways in July 2006, after a FIFA settlement payment of US\$90 million (VISA seals, 2007). Although MasterCard's acceptance of the payment allowed VISA to step into the financial service sponsorship category, MasterCard was most likely anxious to terminate any dealings with FIFA after the ill treatment and deceptive practices the enterprise displayed. Further, when considering the deception FIFA also exhibited toward VISA, even going so far as to suggest at one point in the trial that VISA forged a signature on their FIFA agreement, it is somewhat surprising that VISA was still willing to not only engage in a partnership with FIFA, but also attempt to enter the legal battle with MasterCard as a necessary third party (which was denied) (MasterCard, FIFA v. VISA, 2006). VISA's willingness to overlook such unethical practices by a promotional partner provides additional anecdotal evidence of the inherent value placed on corporate affiliation with the World Cup through category exclusive sponsorship.

## 4. AT&T Mobility vs. NASCAR<sup>2</sup>

### 4.1. Background

The case between AT&T and NASCAR developed from a sequential network of relationships that eventually resulted in legal conflict concerning a circuit-wide category exclusive sponsorship. In 2001, Richard Childress Racing (RCR), which owned and operated the #31 car racing in the NASCAR Cup Series, signed an agreement with Cingular Wireless to be the #31 car's primary sponsor until completion of the 2004 season. RCR and Cingular later extended this agreement to the finish of the 2007 season and included an exclusive right granted to Cingular to negotiate a renewal beyond 2007. The exclusive renewal negotiating period was stipulated to expire on June 1, 2007.

In 2003, Nextel acquired the title sponsorship rights to NASCAR's Cup Series effective for the 2004 season and lasting for a ten-year period at a cost to Nextel of \$700 million. A year later, Sprint acquired Nextel, thereby combining the brands to form Sprint Nextel. Included in Nextel's agreement with NASCAR was an exclusivity clause that granted Sprint Nextel product category exclusivity for "wireline [sic] and wireless telecommunication services." Within this right was a list of competitors to be barred from advertising and sponsorships in connection with the now renamed NASCAR Sprint Cup Series. That competitor list included Alltel, AT&T, AT&T Corp., AT&T Wireless, SBC Communications, Bell South, and Cingular. However, both Alltel and Cingular had preexisting agreements with individual racing teams. As a result, for the two teams adversely affected by the Nextel exclusivity deal, NASCAR modified its "Driver and Car Owner Agreements," which contained the exclusivity clause.

NASCAR utilizes annual "Driver and Car Owner Agreements" to regulate participation in the sport of stock car racing. Following the Sprint Nextel exclusivity agreement, these contracts contained a clause that prevented teams from displaying any product or service identification from the category of wire-line and wireless communication services on the race car. However, an addendum to the agreement created a grandfather clause that granted the two teams sponsored by Alltel and Cingular the right to continue their current agreements and renew the existing sponsorships with the category competitor "so long as such sponsor shall not increase its brand position on the vehicle, and if such sponsor fails to renew with the undersigned Team, ... (the team) shall not sign a subsequent sponsorship or licensing agreement in the Category."

### 4.2. The conflict

In the summer of 2003 when NASCAR and Nextel had reached their agreement that included category exclusivity, representatives of NASCAR met with representatives of both Cingular and RCR to discuss the potential ramifications of the Sprint Nextel title sponsorship. Later, there was a lack of agreement as to the contents of that discussion. Cingular claimed that the only two limitations laid out by NASCAR were that Cingular could not increase the brand position on the vehicle or transfer their involvement with the series to another team. On the other hand, NASCAR claimed that beyond these two stipulations, they communicated to Cingular that they would be confined to the Cingular brand and logo and would not be allowed to use any other product category identifier on the car.

Just short of two years later, NASCAR documented this position with a letter to RCR stating that if the Cingular corporation or brand was purchased by a competitor, the Cingular brand would remain welcome on the car, but any branding of a new or other category competitor would not be allowed. Meanwhile, pursuant to rumors of mergers in the telecommunication industry, Sprint Nextel (ironically, given their own merger) and NASCAR negotiated an amendment to their own title sponsorship that explicitly prohibited a grandfathered product category competitor (i.e., Alltel and Cingular) from leveraging their existing team sponsorship under the brand of another excluded competitor. This created an interesting scenario where one firm, Sprint, was colluding with the controller of a promotional marketplace, NASCAR, to not only exclude category competitors by name, but also restrict the competitors' promotional outlets with the controller's affiliates, the racing teams. However, the legal case was not born out of an antitrust condition, but rather a contract law stipulation.

In December 2006, AT&T merged with BellSouth, and as a result, Cingular became AT&T Mobility. Soon thereafter, the Cingular Wireless brand was phased into AT&T. As a part of this brand transition, RCR submitted the design for their #31 race car's paint scheme that included both the Cingular logo and that of AT&T. Almost immediately, NASCAR rejected the design citing its exclusive agreement with Sprint Nextel that specifically prohibited the display of the AT&T logo and the addendum to the RCR agreement that NASCAR claimed only applied to Cingular. After failing to work out a compromise, AT&T filed a claim in U.S. District Court against NASCAR for the breach of the RCR contract and "breach of an implied covenant of good faith and fair dealing." In doing so, AT&T sought a declaratory judgment allowing it to brand the #31 car with the marks and logos of its choice, while also seeking a preliminary injunction enjoining NASCAR from stopping AT&T's branding of choice.

### 4.3. Litigation

Two legal elements became particularly important in AT&T's battle against NASCAR's imposition of circuit-wide category exclusivity. First, AT&T had to possess third-party standing sufficient to enforce the RCR contract with NASCAR. According to

<sup>2</sup> The review of the case, *AT&T Mobility LLC v. NASCAR* (2007a, 2007b), was produced from examination of filed court proceedings.

Georgia law,<sup>3</sup> where the case was filed, in order to achieve third-party standing, AT&T had to show that the RCR contract was intended for its benefit. Incidental benefit was not alone sufficient. “There must be a promise by the promisor to the promisee to render some performance to a third party” (*AT&T v. NASCAR, 2007a*). The District Court ruled this condition did exist in this case where NASCAR, as the promisor, made a promise to RCR, the promisee, to “preserve and protect” Cingular’s (now AT&T’s) sponsorship agreement despite NASCAR’s exclusive agreement with Sprint Nextel. Having determined AT&T’s proper standing, the question of law turned to irreparable harm and the balance of this harm necessary to justify a preliminary injunction.

The granting of a preliminary injunction rests on the plaintiff’s demonstration of four elements (*Charles Wesley Educational Foundation v. Cox, 2005*): (1) a substantial likelihood of success; (2) a substantial threat of irreparable harm without an injunction; (3) the threat to the plaintiff outweighs any harm done to the enjoined party; and (4) such an injunction does not go against the public interest. With AT&T’s standing as a third party to the RCR contract established by the court, it seemed likely that AT&T could in fact be successful in a breach of contract claim given that NASCAR was refusing to honor the right bestowed upon AT&T as the third party beneficiary. This conclusion satisfied the first element, and the last element was equally straightforward. Given that the Cingular brand was being phased out of the market on all fronts, no claim of consumer confusion existed in the granting of the injunction and hence, no real public interest was at stake. Nonetheless, the second and third elements required for a preliminary injunction provided intrigue concerning the primacy of consumer goodwill as claimed by sponsorship theory (*Meenaghan, 2001*).

As related to irreparable harm, AT&T argued that without an injunction, it would suffer the loss of goodwill, consumers would be confused, and AT&T would lose the exclusive negotiation period outlined for the renewal of its agreement with RCR. In this instance, the court agreed with all three arguments and went on to state that although a dollar value was placed on corporate affiliation with the #31 car, the court could not return to AT&T the goodwill lost if it was unable to feature its marks on the car. Further, it was deemed likely that NASCAR fans would be confused by the continued presence of the Cingular brand when in all other marketing mediums the brand was being phased out. Finally, without an indication from the court as to the possibility of transitioning the #31 car’s branding to AT&T, any negotiations between AT&T and RCR in regards to a renewed agreement would likely remain in limbo, thereby disposing of the exclusive negotiating period. As a result, irreparable harm was found for AT&T and weighed against any harm done to NASCAR by a potential injunction.

NASCAR made several attempts to undercut the harm argued by AT&T, such as an unreasonable delay in seeking relief on AT&T’s part, the lack of need for immediate action given that phasing out a brand with Cingular’s recognition would take months, and the availability of numerous other avenues to reach consumers who were also fans of NASCAR. Sprint Nextel even went so far as to contribute to the case as *amicus curiae* (i.e. friend of the court), to assert that Sprint’s agreement would be greatly diminished by the granting of a preliminary injunction in this case for one of its strongest rivals. Still, the District Court failed to perceive that NASCAR and Sprint Nextel’s harm was either more likely or more severe than that suffered by AT&T without injunctive relief, especially considering that NASCAR and Sprint Nextel previously agreed to grandfather provisions to allow for a limited competitor presence in the sport. At this point, AT&T was granted a preliminary injunction and it appeared clear that AT&T was on the path to a successful challenge of NASCAR’s imposition of circuit-wide sponsorship category exclusivity. Unfortunately for AT&T, three months later the Eleventh Circuit Court of Appeals did not see the case in the same light (*AT&T v. NASCAR, 2007b*).

The Eleventh Circuit revisited the issue of AT&T’s third party standing to the RCR contract with NASCAR under Georgia law. According to the Appeals Court, the RCR contract was not intended for AT&T’s benefit, as found by the District Court, but rather for the benefit of RCR. The Appeals Court pointed out that under the RCR contract and grandfather clause addendum with NASCAR, RCR was not required to maintain or renew a sponsorship agreement with its current partner, Cingular (AT&T). Instead, RCR was allocated the right to continue its existing sponsorship arrangement, but restricted in expanding it further. By this interpretation, AT&T became an incidental beneficiary, rather than an intended beneficiary. This distinction is a key differentiator in third party status under Georgia contract law, where third-party status depends on both the promisor, NASCAR, and the promisee, RCR, clearly intending to benefit the third party with the execution of the contract in question (*Danjor v. Corporate Construction, 2005*). On this point the Appeals Court disagreed with the finding of the District Court that AT&T was a clearly intended beneficiary and therefore, AT&T lacked the third party status to challenge an alleged breach of contract by NASCAR with RCR. The preliminary injunction was thereby vacated on August 13, 2007, and remanded for dismissal (*Maleske, 2007*).

Between the District Court’s issuing of the preliminary injunction in May 2007 and the reversal on appeal in August, NASCAR filed a countersuit against AT&T for \$100 million when AT&T ran the re-branded #31 car in NASCAR Sprint Cup competitions. The NASCAR countersuit alleged breach of contract, fraud and misrepresentation, and conspiracy to aid and abet wrongful interference with NASCAR’s category exclusive sponsorship with Sprint Nextel (*Extra, 2007*). With this action still pending after the Appeals Court decision, AT&T and NASCAR settled their legal wrangling by agreeing to permit AT&T branding on the #31 car through the 2008 season, but no further (*AT&T, NASCAR, 2007*). This compromise agreement permitted AT&T to complete the full transition of the Cingular brand on the #31 car for one full season (2008), while allowing RCR adequate time to seek a new primary corporate sponsor for the 2009 season. It also ensured the closing out of one of Sprint’s category competing sponsors on the NASCAR Sprint Cup circuit after 2008.

<sup>3</sup> Official Code of Georgia Annotated (O.C.G.A.) § 9-2-20 (b).

## 5. Discussion

In the first case, MasterCard fought against FIFA to exclude a primary corporate rival; while in the second case, AT&T battled to gain inclusion into NASCAR's restricted promotional space. In finding irreparable harm in both cases, the court essentially recognized that both NASCAR and the World Cup are unique promotional environments that cannot be sufficiently imitated by other marketing channels. Sponsors able to secure and defend a category exclusive relationship within these sports have the opportunity to leverage the official association with the sport as a brand differentiating factor. Recall sponsorship theorists' assertion that inimitability, together with heterogeneous distribution, imperfect mobility, and preemptive limits to competition, qualified sponsorship as a strategic tool for achieving a competitive advantage (Amis et al., 1997). The latter three qualities are inherent in multi-year product/service category exclusive sponsorship agreements; yet, the sponsorships characterized in the two legal cases dissolved acrimoniously. The deteriorating partnerships offer a stark demonstration of the consequences of treating sponsorship as a property-based resource instead of an alliance-based resource. Resources as property are commoditized—bought and sold in transactions that occur at specific time points—and therefore are easily imitated and mobilized for distribution between firms. However, alliance resources are relational, ongoing, and evolving, which makes duplication increasingly difficult and the resource potentially more strategic (Das & Teng, 2000).

These two cases from the field imply the four strategic resource qualities detailed by Amis et al. (1997) are necessary but not sufficient elements to ensure sustained sponsorship success. Sponsorship at its core is a resource based on relationships that have grown increasingly complex with the proliferation of marketing through sports (Turner & Cusumano, 2000; Wolfe et al., 2002). No sponsor or sponsored entity wants to endure the hassle, costs, time, and inconvenience of a legal battle. Therefore, a framework for the sponsorship relationship that emphasizes mutual understanding, preemptive conflict resolution, and a long-term perspective regardless of the contract length is desirable as a deterrent to legal proceedings. Conceptualizing sponsorship as a strategic alliance offers this type of framework, and several scholars have begun to advocate for such a relational approach to sponsorship (Cousens et al., 2006; Cousens, Babiak, & Slack, 2001; Olkkonen, Tikkanen, & Alajoutsijarvi, 2000; Walliser, 2003).

Strategic alliance research has become increasingly popular in the last two decades as evidenced by the numerous definitions offered to describe this broad interorganizational phenomenon (Das & Teng, 2000; Eisenhardt & Schoonhoven, 1996; Saxton, 1997; Varadarajan & Cunningham, 1995). The definitions can be synthesized by their two consistent elements: cooperative relationships and resource exchange. In the case of commercial sponsorship, the strategic resource exchanged for monetary or in-kind consideration is promotional affiliation with a popular enterprise such as the World Cup or NASCAR. However, sponsorship has evolved from simply a transactional exchange to a relational exchange (Farrelly & Quester, 2005a), where neglecting the cooperative aspect of the alliance can lead to a courtroom showdown.

Farrelly and Quester (2005b) have been notable in investigating sponsorship as a strategic alliance. Their research builds from the relationship marketing paradigm (Morgan & Hunt, 1994), and has identified the key roles of trust, commitment, and collaborative communication in realizing positive sponsorship outcomes such as satisfaction and renewal (Farrelly & Quester, 2003b; Farrelly, Quester, & Movondo, 2003). The potential negative outcomes of a sponsorship alliance are less studied, but just as relevant to both theorists and managers. Cousens et al. (2006) have proposed a process framework for assessing sponsorship relationships that includes five phases: needs assessment, negotiation, management, evaluation, and re-negotiation. Examining the collaborative communication, trust, and commitment within this process framework explicates several shortcomings in the alliances germane to the FIFA and NASCAR cases.

### 5.1. Collaborative communication

Collaborative communication describes the frequent and structured sharing of information and feedback in a bi-directional and non-coercive manner aimed at mutual support and respect (Mohr, Fisher, & Nevin, 1996). In sponsorship alliances, collaborative communication has been characterized as an antecedent to both trust and commitment to the partnership (Farrelly et al., 2003). The lack of collaborate communication between FIFA and MasterCard during the management stage of their sponsorship relationship foreshadowed the difficulty to come in the evaluation and renegotiation stages.

Resource sharing and delivery are crucial to sponsorship management (Cousens et al., 2006), but FIFA was challenged by several organizational changes during this vital period and failed to adequately collaborate with MasterCard regarding these modifications to FIFA's sponsorship program. Although a minimal degree of structured communication was originally negotiated into the contract between MasterCard and FIFA, even this simple structure was abandoned by FIFA in renegotiation. While FIFA did communicate a 90-day notification of their intent to offer MasterCard a proposal, they failed to reliably collaborate with MasterCard during that exclusive 90-day period. Instead, FIFA secretly negotiated with VISA during most of the period and finally reconvened with MasterCard after 210 days. MasterCard was then surprised in renegotiation when a new contract length and product category definition was offered by FIFA. Ultimately, MasterCard did not feel as though the unanticipated changes matched their own need assessment. At this point in renegotiation, MasterCard attempted to reestablish a mutual understanding by communicating their need for a narrower category definition. However, MasterCard's effort at bi-directional collaboration was met with complete disrespect for their 16 year relationship when FIFA finally revealed its communication with MasterCard's bitter rival, VISA.

While not as blatant, cracks in collaborative communication during the management phase of the sponsorship relationship also played a role in the onset of the AT&T versus NASCAR case. Similar to the previous case, a degree of structured communication was incorporated into contracts between the RCR team and Cingular (later AT&T), where an exclusive negotiating period was specified, and between the RCR team and NASCAR, where an annually renewed agreement formalized their sporting relationship. Nonetheless, litigation ensued when AT&T and NASCAR lacked a mutual understanding of what was acceptable for logo presentation on the RCR race car. This impasse can be traced back to the unidirectional communication of NASCAR with RCR when NASCAR attempted to coerce RCR into dismissing its sponsor's promotional rights in the instance of a corporate acquisition. Instead of collaborating with RCR on a mutual solution to this potential scenario, NASCAR communicated the imposition in a letter. In this case involving four organizations (team, governing body, and two sponsors), collaboration among the affected parties was stalled after an initial meeting at the outset of Nextel's introduction to the sport in 2003. Without ongoing collaborative communication in either the FIFA or NASCAR situations, trust and commitment were predictably neglected.

## 5.2. Trust

Interorganizational trust is characterized by the confidence in an alliance partner's reliability and integrity (Morgan & Hunt, 1994). In a business-to-business (B2B) setting, trust is built through communication and recognized mutual understanding, which often results in shared decision making (Saxton, 1997). As characterized by the court records (MasterCard v. FIFA, 2006), FIFA's sponsorship executives seemed to make no effort toward building trust with their longtime sponsor, MasterCard. FIFA demonstrated a lack of integrity throughout the management, evaluation, and renegotiation stages of their relationship with MasterCard by covertly courting rival VISA. Further exacerbating FIFA's untrustworthiness was their unreliability in communicating with MasterCard, and FIFA's misrepresentations to VISA of MasterCard's incumbency rights. The latter point especially begs the question of how confident VISA can be in trusting FIFA within their current sponsorship relationship.

Trust and proactive shared decision making among NASCAR, Sprint, RCR, and AT&T at the outset of the AT&T merger with Cingular may have altered the course toward litigation in the second case. However, the absence of deliberate, bi-directional communication between RCR and NASCAR during management of their interrelated sponsorships failed to establish a reliable foundation of integrity. Instead, decision-making devolved into two separate camps—RCR and AT&T; and NASCAR and Sprint. Since AT&T had to act as a third party to instigate legal proceedings against NASCAR, it also raises the question of how much AT&T could rely on their sponsored team, RCR, which may have been in a stronger legal position to enforce AT&T's sponsorship rights. Recall that AT&T's case was dismissed when the Appeals Court denied AT&T third-party status and ruled that RCR was instead the intended beneficiary of the contract clause with NASCAR.

## 5.3. Commitment

In a marketing relationship involving two or more firms, trust has been shown to contribute directly to relational commitment, which has been described as “a willingness by the parties involved in the sponsorship dyad to make short-term investments with the expectation of realizing long-term benefits from the relationship” (Farrelly & Quester, 2003a, p. 535; Morgan & Hunt, 1994). Commitment to the sponsorship relationship is often signaled by an investment of marketing resources beyond those called for in the agreement, with the aim of promotionally leveraging the affiliation toward a desired audience (Farrelly & Quester, 2003a). Although MasterCard had demonstrated a commitment to the FIFA World Cup by investing over US\$100 million during a 16-year sponsorship relationship, MasterCard's commitment quickly dissolved at renegotiation when its trust was violated by FIFA's dealings with VISA. On the opposite side, while VISA was assessing its sponsorship needs, FIFA demonstrated a seemingly unfounded commitment to VISA by allocating VISA every negotiating opportunity to secure the exclusive sponsorship rights to the World Cup. VISA even reciprocated by committing legal resources to an attempt to enter the court battle with MasterCard as a third party.

Third party commitment was also evident in the NASCAR case, where Sprint intervened with legal resources on behalf of their sponsored entity, NASCAR. Yet, AT&T failed to garner the same commitment from RCR, which was apparently content to sit out the litigation despite their sponsor's commitment to legal action to protect their promotional rights with the team. In the legal cases analyzed in this paper, the reciprocal commitment borne out in the courtroom between NASCAR and Sprint, and FIFA and VISA may have foretold of their ongoing sponsorship relationships to date.

## 6. Conclusion

By conceiving of the sports sponsorship relationship as a strategic alliance, the corporate partner and sports enterprise are encouraged to take a deliberate, collaborative approach to instigating a partnership that emphasizes a mutual understanding of both parties' objectives and commitment to a long-term vision. With corporate sponsors displaying an increased willingness to pursue litigation within this competitive promotional environment, taking a strategic alliance approach becomes more important than ever. The two cases analyzed in this paper reveal the perils of dismissing this approach. In the MasterCard case, it is clear that FIFA gave no deference to the considerations of their partner of 16 years. On the contrary, FIFA acted as though VISA held incumbency status—a perspective that eventually cost FIFA US\$90 million. While less drastic in

scope, the Appeals Court finding that denied AT&T the third-party status necessary to challenge NASCAR's alleged breach of the RCR contract suggests the possibility that a commitment by RCR to raise the legal challenge on behalf of their primary corporate sponsor of six years may have been more successful. Regardless, the likelihood remains that as promotional rights fees maintain their upward spiral and broad category exclusions continue to proliferate in the sports arena, increased sponsorship litigation will follow when adequate attention is not afforded to the relational aspects of commercial sponsorship.

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