

# Chicago Daily Law Bulletin

Volume 158, No. 208

## Morality clauses cause Armstrong to see deals end

Cyclist finds himself out after companies use pact language to keep him from tarnishing their brands

BY ROY STROM  
Law Bulletin staff writer

Within a two-day span, Lance Armstrong went from endorsing some of the most well-known brands in sporting goods, beer and bicycles to holding contracts with those companies that now prove worthless.

Nike Inc., Anheuser-Busch, Trek Bicycle Corp. and others said last week that they terminated, suspended or would not continue their contracts with Armstrong after a U.S. Anti-Doping Agency (USADA) report said he ran a years-long doping scheme.

Yet USADA's report, while neatly packaged and more detailed than previous allegations, did not provide any "smoking gun" evidence that Armstrong doped or produce a criminal charge, said Andrew D. Morton, chairman of the sports and entertainment law practice at Handler, Thayer LLP who is not involved in the Armstrong case.

In lieu of an indictment, those brands likely invoked a so-called "morality clause" to nullify Armstrong's contract, saying the now

defrocked Tour de France winner no longer falls in line with their image, Morton said.

"Morality clauses are very vague," he said. "It basically says if the athlete ... does anything that is offensive, unethical or tends to cast the company in a negative light" the contract is void.

And while that clause seemingly grants companies carte blanche to walk away from their endorsers for any public gaffe, Morton said companies do not see it that way.

The Armstrong case presents an example of the delicate line walked by athletes and the brands that invest millions of dollars in them when negotiating and ultimately choosing to enforce these types of contract-killing clauses, he said.

For instance, specific allegations of doping surrounded Armstrong for years before this month's USADA report, he said.

If Armstrong's contracts included "boiler-plate morality clause language," Morton said, the previous allegations would allow companies like Nike and Oakley Inc. to end their relationship with Armstrong "years ago."

Yet despite the allegations, which Armstrong continues to deny by



Andrew D. Morton



Jerry W. Glover

saying he never failed a drug test, Morton said brands stuck with the cyclist because of the investment in time and money they made in him.

But a Nike statement last week says the "seemingly insurmountable evidence" in USADA's report that Armstrong used performance enhancing drugs resulted in the sports apparel giant terminating its contract with the cyclist.

"Companies are very reluctant to trigger the morality clause," Morton said.

"Typically they want to find every way possible to make it work."

Negotiating the initial terms of a morality clause can involve just as much deliberating as the decision to enforce one, said Brian L. Heidelberg, chairman of Winston & Strawn LLP's advertising, marketing, and privacy law group who is also not involved in Armstrong's case.

"You often get the argument that this is a deal-breaker from both sides," he said.

In general, brands prefer broad language that gives them more discretion to terminate a contract while athletes or celebrities attempt to limit the clause to specific events, such as an arrest or in-

dictment, Heidelberg said.

The negotiations hinge on the amount of money involved, the relative status of the two sides and "how bad each side wants" a deal, he said.

But due to a series of high-profile slipups, beginning with Kobe Bryant's affair in 2003, the high-profile scandal tainting Tiger Woods' image and now Armstrong, Heidelberg said the negotiations currently tip in the brands' favor.

"You have a situation where athletes and celebrities who used to have the upper hand in the morals clause negotiation no longer have it," he said.

One way a lawyer can attempt to even the playing field comes from making the morality clause a two-way street, said Jerry W. Glover, who is not involved in Armstrong's case and is a partner at the entertainment, media and intellectual property firm Leavens, Strand, Glover & Adler LLC.

"Celebrities who endorse companies will often include a reverse morals clause," Glover said. "Which means if the company does something that would be considered very bad ... then the endorser can drop them."

*rstrom@lbpc.com*