

Sponsorship Implications of the Lance Armstrong v. USPS Lawsuit

John A. Fortunato, Ph. D*

*Fordham University, Professor, School of Business, Area of Communication & Media Management, 113 West 60th Street, Room 503, New York, NY 10023. Mail to: jfortunato@fordham.edu; 212-636-6161

Introduction.....	72
Sponsorship.....	74
Lance Armstrong Cycling Team Sponsorship.....	80
Lance Armstrong and Performance-Enhancing Drugs	82
Conclusion	84

INTRODUCTION

Lance Armstrong won the Tour de France seven consecutive times from 1999 through 2005. The United States Postal Service (USPS) sponsored Armstrong’s cycling team during the height of Armstrong’s success and popularity. Armstrong’s Tour de France victories were marred by speculation that he and his cycling teammates were using performance-enhancing drugs. After years of denial, in January of 2013 during an interview with Oprah Winfrey, Armstrong finally admitted that he had in fact used performance-enhancing drugs. On February 22, 2013, the United States Justice Department announced that it had joined a lawsuit filed by Armstrong’s former cycling teammate Floyd Landis under The False Claims Act in an attempt to recover the sponsorship money paid by the USPS. This case could potentially impact the practice of sponsorship, raising the question of whether sponsors deserve monetary damages, despite having received promotional communication benefits from a sponsorship agreement. This article’s purpose is to examine the dynamics of this case in relation to the benefits and objectives of a sponsorship agreement.

Lance Armstrong won the Tour de France, the world’s premier bicycling race, seven consecutive times from 1999 through 2005. At the height of Armstrong’s success and popularity, the United States Postal Service (USPS)

sponsored Armstrong's cycling team, owned by Tailwind Sports. USPS sponsored the team from 1996 through 2004, with Armstrong serving as the team's lead rider from 1999 to 2004. Between 2001 and 2004 the USPS paid an estimated \$31 million for the sponsorship.¹ The agreement gave the USPS promotional rights, including placement of its logo on the cycling team's uniform.

Despite Armstrong's popularity, his Tour de France victories were marred by speculation that he and his cycling teammates were using performance-enhancing drugs. On October 10, 2012, the United States Anti-Doping Agency (USADA) concluded in a 1000-page evidentiary report that Armstrong had used performance-enhancing drugs since 1998, if not earlier, and had also pressured teammates to use performance-enhancing drugs. In a statement, USADA CEO Travis Tygart explained, "the evidence shows beyond any doubt that the U.S. Postal Service Pro Cycling Team ran the most sophisticated, professionalized, and successful doping program that sport has ever seen."² After years of vehemently denying allegations of illegal drug use, on January 14, 2013, Armstrong took part in a television interview with Oprah Winfrey and admitted that he in fact had used performance-enhancing drugs.

In 2010, a whistleblower lawsuit was filed by Floyd Landis under The False Claims Act (FCA). Landis, a former cycling teammate of Armstrong's from 2002 through 2004, had pursued the suit after having had his 2006 Tour de France title stripped from him for illegal performance-enhancing drug use. In the suit, Landis alleged that he, Armstrong, and other teammates had used performance-enhancing drugs in violation of cycling rules and the USPS sponsorship agreement that "required the team to follow the rules of cycling's governing bodies, which prohibited the use of certain performance-enhancing substances and methods."³

The False Claims Act ("FCA")⁴ concerns the defrauding of government programs. If found to have defrauded the government, FCA liability is imposed on the individual or company in question. For FCA liability to exist, the individual or company making the questioned claim must know the claim is false. The FCA contains a "qui tam" provision, allowing people without governmental affiliations to file a suit on behalf of the government. Any monetary award can be trebled, allowing these "whistleblowers" to potentially receive up to 25 percent of any damages settlement.⁵

On February 22, 2013, The United States Justice Department announced

1. Press Release, Dept. of Justice, United States Joins Lawsuit Alleging Lance Armstrong and Others Caused the Submission of False Claims to the U.S. Postal Service (Feb. 22, 2013), at 1, available at <http://www.justice.gov/opa/pr/2013/February/13-civ-224.html>.

2. Press Release, United States Anti-Doping Agency, Statement From USADA CEO Travis T. Tygart Regarding The U.S. Postal Service Pro Cycling Team Doping Conspiracy, at 1 (Oct. 10, 2012, 9:30 A.M.), available at <http://cyclinginvestigation.usada.org>.

3. Press Release, Dept. of Justice, *supra* note 1, at 1.

4. 31 U.S.C. §§ 3729–33, at 3 (2012).

5. *Id.* § 3730(d).

that it had joined the Landis lawsuit in an attempt to recover the sponsorship money paid by the USPS. Stuart F. Delery, Principal Assistant Attorney General for the Civil Division of the Justice Department, stated, “the Postal Service contract with Tailwind required the team to enter cycling races, wear the Postal Service logo, and follow the rules banning performance enhancing substances – rules that Lance Armstrong has now admitted he violated. Today’s action demonstrates the Department of Justice’s steadfast commitment to safeguarding federal funds and making sure that contractors live up to their promises.”⁶

Ronald C. Machen Jr., United States Attorney for the District of Columbia, implied that the USPS had been unfairly associated with Armstrong’s performance enhancing drug use, adding:

This lawsuit is designed to help the Postal Service recoup the tens of millions of dollars it paid out to the Tailwind cycling team based on years of broken promises. In today’s economic climate, the U.S. Postal Service is simply not in a position to allow Lance Armstrong or any of the other defendants to walk away with the tens of millions of dollars they illegitimately procured.⁷

The Justice Department attempted to negotiate a settlement with Armstrong. Such talks produced little results, as the parties could not agree over the existence or extent of injury to the USPS. Robert Luskin, attorney for Armstrong, stated:

Lance and his representatives worked constructively over these last weeks with federal lawyers to resolve this case fairly, but those talks failed because we disagree about whether the Postal Service was damaged. . . . The Postal Service’s own studies show that the service benefited tremendously from its sponsorship—benefits totaling more than \$100 million.⁸

Regardless of the outcome of the FCA claims, the potential implications of the case on the practice of sponsorship are particularly interesting. In particular, the outcome will likely raise the question of whether sponsors deserve monetary damages for an athlete’s false statements when that athlete’s performance and sponsorship generated promotional communication benefits for the sponsor. The purpose of this article is to examine the dynamics of this case in relation to the benefits and objectives of a sponsorship agreement.

SPONSORSHIP

Generally, sponsorship is a form of promotional communication with the basic goal to persuade. The benefits to the sponsored property (league, team, or individual) from an agreement are obvious: it adds another major revenue

6. Press Release, Dept. of Justice, *supra* note 1, at 1.

7. *Id.*

8. Lance Pugmire, *Justice Department Joins Lawsuit Against Armstrong*, L.A. TIMES, Feb. 23, 2013, <http://articles.latimes.com/2013/feb/22/sports/la-sp-lance-armstrong-suit-20130223>.

stream to its business. Researchers have offered a series of benefits for the sponsor that can be achieved through selecting the ideal property, including obtaining brand exposure, achieving brand recall, enhancing brand image, achieving a brand association with the property and its consumers, and communicating a brand theme in the hope of obtaining sales. A sponsorship with one property can achieve multiple objectives.⁹

Sponsorship can take on unlimited forms, and each agreement is typically meticulously negotiated. Meenaghan offers one of the more recognized definitions of sponsorship, describing it as “an investment, in cash or in kind, in an activity, in return for access to the exploitable commercial potential associated with that activity.”¹⁰ Sandler and Shani offer a broader definition of sponsorship, emphasizing the brand association that can be created between the sponsor and the property. They describe sponsorship as, “the provision of resources (e.g., money, people, equipment) by an organization directly to an event or activity in exchange for a direct association to the event or activity. The providing organization can then use this direct association to achieve either their corporate, market, or media objectives.”¹¹

Brand exposure is often the most vital element to the success of the entire sponsorship agreement, and must be the first major focus objective of the sponsorship. Other sponsorship objectives might not be achieved if the brand is not adequately noticed in a particular location. Without brand exposure, any audience reaction or behavior toward the brand is external from that specific sponsorship.

Brand exposure contemplates the dimensions of both audience size and demographic profile. Companies must clearly identify who their target audience is prior to making sponsorship property selection decisions. Sports sponsorships are desirable because companies have the opportunity to receive brand exposure during actual games or events—whether the audience is attending the game or experiencing it through mass media. Brand exposure opportunities such as this can help achieve the important objective of brand recall. It is not enough that consumers are aware of the product category (insurance), they need to be aware of and have the ability to recall the specific brand name (State Farm) at the time when the purchase decision is being made.

To assist with brand recall sponsors negotiate for exclusivity within a product category. Exclusivity is valuable because it eliminates any competition that one company might receive from a rival within that product category at the

9. For an exhaustive list of potential sponsorship objectives, see: JOHN A. FORTUNATO, *SPORTS SPONSORSHIP : PRINCIPLES & PRACTICES* (2013); Kevin Gwinner, *A Model of Image Creation and Image Transfer in Event Sponsorship*, 14 INT’L. MARKETING REV. 145 (1997); Norm O’Reilly & Judith Madill, *The Development of a Process for Evaluating Marketing Sponsorships*, 29 CAN. J. ADMIN. SCI. 50 (2012).

10. Tony Meenaghan, *The Role of Sponsorship in the Marketing Communications Mix*, 10 INT’L. J. ADV. 35, 36 (1991).

11. Dennis Sandler & David Shani, *Olympic Sponsorship vs. “Ambush” Marketing: Who Gets the Gold?*, 29 J. ADV. RES. 9, 10 (1989).

sponsored event or location or with the sponsored league or team.¹² The result of exclusivity could be a distinct competitive advantage for the sponsor. Miyazaki and Morgan note, “the ability to be an exclusive sponsor in one’s product category presumably aids in avoiding the competitive interference that typically is experienced in other media contexts.”¹³ Papadimitriou and Apostolopoulou explain that exclusivity acts as a barrier to competitors who might have tried to acquire that same sponsorship or at least diffuses the promotional attempts of competitors during the time that the company is sponsoring the property.¹⁴

Another enhancement of brand recall through sponsorship property selection is the brand association that can be created between the sponsor, the property, and consumers. Many authors indicate that developing and communicating a brand association between the sponsoring brand and the sponsored property is an objective that can be achieved through a sponsorship.¹⁵ Dean explains, “[f]or the payment of a fee (or other value) to the sponsee, the sponsor receives the right to associate itself with the sponsee or event. . . . By associating itself with the sponsee, the sponsoring firm/brand shares in the image of the sponsee.”¹⁶ Grohs and Reisinger point out that, “the aim is to evoke positive feelings and attitudes toward the sponsor, by closely linking the sponsor to an event the recipient values highly.”¹⁷ Stipp and Schiavone claim that this sponsorship goal assumes that the target audience for the sponsorship will transfer their loyalty from the sponsored property or event to the sponsor itself.¹⁸ Shaw and Amis conclude that sponsorships are an effective communication tool that can alter and enhance a company’s image and reputation.¹⁹ Other researchers have found that sponsorship can be a source of competitive advantage, differentiating a company from its competition.²⁰

12. See generally, FORTUNATO, *supra* note 9.

13. Anthony D. Miyazaki & Angela G. Morgan, *Assessing Market Value of Event Sponsoring: Corporate Olympic Sponsorship*, 41 J. ADVERTISING RES. 9, 10 (2001).

14. Demitra Papadimitriou & Artemisia Apostolopoulou, *Olympic Sponsorship Activation and the Creation of Competitive Advantage*, 15 J. PROMOTIONAL MGMT. 90 (2009).

15. E.g., Dwayne H. Dean, *Associating the Corporation with a Charitable Event Through Sponsorship: Measuring the Effects of Corporate Community Relations*, 31 J. ADVERTISING 77, 78 (2002); Kevin Gwinner & John Eaton, *Building Brand Image Through Event Sponsorship: The Role of Image Transfer*, 28 J. ADVERTISING 47 (1999); Erik L. Olson & Hans M. Thjomoe, *Explaining and Articulating the Fit Construct in Sponsorship*, 40 J. ADVERTISING 57 (2011).

16. Dean, *supra* note 15, at 78.

17. Reinhard Grohs & Heribert Reisinger, *Image Transfer in Sports Sponsorships: An Assessment of Moderating Effects*, 7 INT’L. J. SPORTS MARKETING & SPONSORSHIP 42, 44 (2005).

18. Horst Stipp & Nicolas P. Schiavone, *Modeling the Impact of Olympic Sponsorship on Corporate Image*, 36 J. ADVERTISING RES. 22 (1996).

19. Sally Shaw & John Amis, *Image & Investment: Sponsorship and Women’s Sport*, 15 INT’L J. SPORT MGMT. 219(2001).

20. See, e.g., Gwinner & Eaton, *supra* note 15; Papadimitriou & Apostolopoulou, *supra* note 14.

Enhanced brand association relies on brand fit, or brand congruence, between the sponsor and the property.²¹ As individuals perceive a relevant connection between a sponsor and a property, they are more likely to view the sponsor in a positive manner and their ability to identify and recall the correct sponsors of the property increases.²² Gwinner and Eaton emphasize the importance of the variable of image on brand congruence, defining image congruence as “the consistency between the event image and the brand image.”²³ They claim that brand image transfer will be stronger between brands and properties that have a relevant image-based connection.²⁴

The use of athlete and celebrity endorsers for purposes of brand recall and brand association has been well discussed in academic literature.²⁵ Till claims that athlete endorsements influence the way consumers view the image of the sponsored brand.²⁶ Stone, Joseph, and Jones found that through the use of an athlete endorser, an emotional tie can be created between the athlete and the consumer, improving both brand awareness and the image of a company.²⁷

One prominent theory of congruence is the match-up hypothesis, which suggests that endorsers are more effective if there is a fit between the individual and the brand that they are endorsing.²⁸ The match-up hypothesis has been studied in multiple contexts.²⁹ In the evaluation of endorser and sponsor, fit congruency has largely focused on the endorser’s attributes, such as expertise, trustworthiness, and attractiveness.³⁰ It is important to note that these three variables are not mutually exclusive and sponsors would likely strive for congruence on all of them if possible when selecting an endorser. Koernig and Boyd comment on the authenticity of athlete endorsers, stating, “athletes

21. Kevin L. Keller, *Brand Synthesis: The Multidimensionality of Brand Knowledge*, 29 J. CONS. RES. 595 (2003); Gerard P. Prendergast, Derek Poon, & Douglas C. West, *Match Game: Linking Sponsorship Congruence with Communication Outcomes*, 50 J. ADVERTISING RES. 214 (2010).

22. Gwinner & Eaton, *supra* note 15; Robert Madrigal, *The Influence of Social Alliances with Sports Teams on Intentions to Purchase Corporate Sponsors’ Products*, 29 J. ADVERTISING 13 (2000).

23. See Gwinner & Eaton, *supra* note 15.

24. *Id.*

25. E.g., Thomas C. Boyd & Matthew D. Shank, *Athletes as Product Endorsers: The Effect of Gender and Product Relatedness*, 13 SPORT MARKETING Q. 82 (2004); Brian Till & Michael Busler, *The Match-Up Hypothesis: Physical Attractiveness, Expertise, and the Role of Fit on Brand Attitude, Purchase Intent, and Brand Beliefs*, 29 J. ADVERTISING 1 (2000).

26. Brian Till, *Managing Athlete Endorser Image: The Effect of Endorsement Product*, 10 SPORT MARKETING Q. 35 (2001).

27. George Stone, Matthew Joseph, & Michael Jones, *An Exploratory Study on the Use of Sports Celebrities in Advertising: A Content Analysis*, 12 SPORT MARKETING Q. 94 (2003).

28. See generally, Janet S. Fink, George B. Cunningham, & Linda J. Kensicki, *Using Athletes as Endorsers to Sell Women’s Sport: Attractiveness vs. Expertise*, 18 J. SPORT MGMT. 350 (2004); Till & Busler, *supra* note 25.

29. E.g., Stephen Koernig & Thomas Boyd, *To catch a Tiger or Let Him Go: The Match-Up Effect and Athlete Endorsers for Sport and Non-Sport Brands*, 18 SPORT MARKETING Q. 25 (2009); Till & Busler, *supra* note 25.

30. See Till & Busler, *supra* note 25.

present a special case as endorsers because our attitudes and knowledge about them derive not only from seeing them in contrived situations (e.g., movies or events), but also how they behave and perform in spontaneous situations on the field of play.”³¹ Researchers, however, caution that the influence that can come through the use of athlete endorsements can be positive or negative, depending upon the behavior exhibited by the individual.³²

The progression of thought related to sponsorships is that brand exposure and increased recall through strategies such as exclusivity and brand association can help achieve a desired consumer behavior. While there are many variables that influence a purchase decision, it is important that behavior is thought of as the ultimate goal of any promotional communication campaign: without revenue being earned, any company will cease to exist. Murphy, Cunningham, and Stavchansky de Lewis summarize, “a marketing program is intended to plan how products or services are taken from the point

of production to the point of consumption in such a way as to develop a positive relationship between consumers and the producer that will foster additional or repeat usage.”³³

Several researchers have indicated that achieving sales through sponsorship is an attainable objective.³⁴ In examining college football fans, Madrigal found that fan behavior did in fact extend from support of a team to support of companies that sponsor and are associated with that team.³⁵ Harvey found, “sponsorship changes the consumer’s perception of a specific sponsor—which can rub off positively on brands that sponsor in terms of willingness to purchase those brands.”³⁶ In the study of NASCAR sponsorships the results of a survey by Degaris, West, and Dodds showed that nearly two-thirds of fans responded that they bought products from companies because they were NASCAR sponsors.³⁷

It is necessary for sponsors to be clear in identifying the specific objective in designing a sponsorship program that can achieve the objective most influential toward consumer behavior. The sponsorship program is commonly referred to as sponsorship activation. Activation can simply be thought of as the methods used by sponsors to achieve any number of objectives, such as communicating and clearly associating their brand to the property and to

31. Koernig & Boyd, *supra* note 25.

32. See, e.g., *id.*; Felicia M. Miller & Gene R. Laczniak, *The Effects of Celebrity-Athlete Endorsement: What Happens When a Star Steps Out of Bounds?*, 51 J. ADVERTISING RES. 499 (2011); Till, *supra* note 26.

33. JOHN H. MURPHY, ISABELLA C. M. CUNNINGHAM, & LIZA STAVCHANSKY DE LEWIS, *INTEGRATED BRAND PROMOTION MANAGEMENT: TEXT, CASES, AND EXERCISE 1* (2011).

34. E.g., Dean, *supra* note 15; Bill Harvey, *Measuring the Effects of Sponsorship*, 41 J. ADVERTISING RES. 59, 399 (2001); Madrigal *supra* note 22; Miyazaki & Morgan, *supra* note 13.

35. Madrigal, *supra* note 22.

36. Harvey, *supra* note 34.

37. Larry Degaris, Corrie West, & Mark Dodds, *Leveraging and Activating NASCAR Sponsorships with NASCAR-Linked Sales Promotions*, 3 J. SPONSORSHIP 88, 96 (2009).

consumers.³⁸ Cornwell, Weeks, and Roy formally define activation as, “collateral communication of a brand’s relationship with a property.”³⁹

The sponsorship activation program must be designed to achieve the desired objective. For example, for companies that need increased brand awareness, it makes sense to utilize brand exposure strategies such as stadium signage or prominent logo placement. However, for companies with high brand recognition the strategy must go far beyond simply placing a company logo in various locations to obtain brand exposure. Jackson comments, “For too long, marketers and brands have acted as though it was sufficient merely to stick a badge or logo onto something.”⁴⁰ Seiferheld plainly states, “expecting a logo to drive anything beyond recall is somewhat unfair.”⁴¹ If the brand objective is to announce a new service that the company is offering, signage representing only a company logo is not effective.

Researchers also caution that sponsorship expenditures can be justified by any number of variables, such as decisions being made by executives in their own personal interest or support of a team or individual, not necessarily in the best interests of the brand.⁴² Upper management, at no cost to itself, could invest in, and justify using corporate money to purchase tickets or other up-close interactions with a property that is only enjoyed by the people at the very top of the corporation, with this investment providing little, if any, return toward achieving the brand’s business goals.

The final aspect of designing a sponsorship program is to develop measurement systems. Steyn simply asks, “how does a marketer know whether the money invested in the sponsorship was worth it?”⁴³ A multitude of measurements exist and several scholars have commented on the great difficulty in using any one measurement in particular to evaluate sponsorship.⁴⁴ These measurements include media impressions, the number of actual times the brand appears on the air, in print, or online, recall surveys (both onsite and through follow up methods), economic measures such as sales or stock price, and qualitative methodologies, such as interviews or focus groups. In order to

38. See Fortunato, *supra* note 9.

39. T. Bettina Cornwell, Clinton Weeks & Donald P. Roy, *Sponsorship-Linked Marketing: Opening the Black Box*, 34 J. ADVERTISING 21, 36 (2005).

40. Kevin Jackson, *Achieving Value from Sponsorship in a New World Order*, 3 J. SPONSORSHIP 215, 216 (2010).

41. Steve Seiferheld, *Total Recall: Which On-Site Factors Make Fans Remember Brands?*, STREET & SMITH’S SPORTS BUS. J., Apr. 22-28, 2013, at 15.

42. See Simon Chadwick & Des Thwaites, *Managing Sport Sponsorship Programs: Lessons from a Critical Assessment of English Soccer*, 45 J. ADVERTISING RES. 328 (2005); T. Bettina Cornwell, *State of the Art and Science in Sponsorship-Linked Marketing*, 37 J. ADVERTISING 41 (2008).

43. Peter G. Steyn, *Online Recommendation as the Ultimate Yardstick to Measure Sponsorship Effectiveness*, 2 J. SPONSORSHIP 316, 317 (2009). [Internal quotations omitted]

44. See, e.g., Harvey, *supra* note 34; Miyazaki & Morgan, *supra* note 13; Norman O’Reilly & Judith Madill, *Methods and Metrics in Sponsorship Evaluation*, 2 J. SPONSORSHIP 215 (2009).

be effective these evaluation methodologies must be specifically designed to measure success of any brand objectives. For example, brand exposure evaluations are less helpful if the objective was unrelated to brand exposure. Ultimately, there should be coordination between the brand's objectives, property selection, the activation program, and the evaluation methods used. Ideally, sponsors will receive an adequate return on investment, attempting to have the sponsorship pay for itself.

LANCE ARMSTRONG CYCLING TEAM SPONSORSHIP

On November 16, 1995, the USPS announced that it would become the sponsor for the cycling team beginning in 1996. At the time, Lance Armstrong had only won two Tour de France stages, one in 1993 and another in 1995. He had also competed in the 1996 Summer Olympics in Atlanta, but did not earn a medal. In October 1996, Armstrong was diagnosed with testicular cancer; the cancer had spread to his brain and lungs. After multiple surgeries and extensive chemotherapy treatment, Armstrong was declared cancer free in February 1997. In 1997, Armstrong signed with the USPS team under a two-year, \$1 million contract with incentive clauses. In January 1998, Armstrong returned to cycling. After Armstrong's first Tour de France victory in 1999, his base contract was renewed at more than \$1 million annually.⁴⁵

By the end of 2004, Armstrong was one of the most sought after athletes, earning roughly \$10 million from companies including Coca-Cola's Dasani bottled water brand, Subaru, Nike, and Bristol-Myers-Squibb, the company that produced the chemotherapy drugs Armstrong had taken.⁴⁶ Of particular note was the sponsorship with Nike that produced the yellow Livestrong bracelets, which helped raise more than \$100 million for cancer research.⁴⁷

At the time, USPS executives indicated that brand association and having a presence in the global delivery marketplace were major objectives of the cycling team sponsorship. In July of 1997, Loren E. Smith, chief marketing officer for the USPS, explained,

Cycling is one of the world's truly great sports. Cycling denotes speed, precision, grace and teamwork, qualities the U.S. Postal Service strives for each and every day. Being one of the world's largest spectator sports, cycling reaches an incredible number of fans in many different regions and terrains, from urban streets to mountaintop villages. We feel an international cycling team competing in significant high-profile events in a number of countries will

45. Shaun Assael, *Details of Lance Armstrong Sponsorship*, ESPN OLYMPIC SPORTS (Jan. 14, 2011, 5:03 P.M.), <http://sports.espn.go.com/oly/cycling/news/story?id=6019436>.

46. Theresa Howard, *Lance Will have to Pedal Faster to Catch Tiger*, USA TODAY, July 27, 2004, 10:54 P.M., http://usatoday30.usatoday.com/money/advertising/2004-07-26-lance_x.htm.

47. Juliet Macur, *Nike Chooses to Sever its Ties with Livestrong*, N.Y. TIMES, May 28, 2013, http://www.nytimes.com/2013/05/29/sports/cycling/nike-to-cut-ties-with-livestrong.html?_r=0

help us achieve our worldwide business goals.⁴⁸

Dan Osipow, spokesman for the cycling team, explained the pitch to sponsors: “we told them, ‘come with us and we’ll take you to the Tour de France.’ That’s happened, and they understand the significance of the race.”⁴⁹ Greg Frey, USPS spokesman, further explained the strategy in relation to the competition from UPS and FedEx. In 1999, he stated, “It’s part of our brand management and the overall promotion of what we do. This projects all the values we want. I could show you old pictures of (mail) deliveries made on bicycles. This team and Lance are a very good model for us.”⁵⁰ In speaking more specifically about Armstrong, Frey commented, “you can’t say enough about his achievement. What he’s doing is heroic.”⁵¹

USPS’s sponsorship of Armstrong’s cycling team was not without criticism. In 2003, the Postal Service’s Inspector General issued a report that raised questions about the effectiveness of USPS sponsorships. Rick Merritt, executive director of the PostalWatch group that was critical of Postal Service spending, also commented about the sponsorship, stating, “it’s an egregious waste of taxpayer money that provided no value” and that it is “a feel-good for Postal Service management and an excuse to go to Europe each year.”⁵² Similar criticisms of government sponsorships have been made in relation to military sponsorships⁵³ and financial institutions receiving funds from taxpayers through the United States federal government’s Troubled Asset Relief Program in 2008.⁵⁴

Beginning in 2005, Discovery Communications, which owned the Discovery Channel, Animal Planet, and Travel Channel among its multiple networks available in 152 countries, replaced the USPS as the sponsor for the Armstrong cycling team. David Leary, Discovery Communications spokesman, provided the rationale for the sponsorship, explaining, “one is the global nature of Lance’s team. Discovery is a global organization— we’re launching Discovery Channel in France this year. And given Lance’s stature as an international figure and the fact that the team has 25 riders from ten

48. Ron Reid, *U.S. Postal Service to Put its Stamp on Tour de France*, PHILLY.COM, July 4, 1997, http://articles.philly.com/1997-07-04/sports/25547912_1_usps-viatcheslav-ekimov-jean-cyril-robin. [Internal quotations omitted].

49. *Id.*

50. Luke Cyphers, *For Post Office, Lance Delivers Big Wheel Leaves Stamp as Winner in Package Deal*, N.Y. DAILY NEWS, July 25, 1999, 12:00 A.M., <http://www.nydailynews.com/archives/sports/post-office-lance-delivers-big-wheel-leaves-stamp-winner-package-deal-article-1.843600>. [Internal quotations omitted].

51. *Id.*

52. Ira Teinowitz, *Post Office Won’t Deliver for Armstrong*, AD AGE (Mar. 22, 2004), <http://adage.com/article/news/exclusive-post-office-deliver-armstrong/98065/>.

53. Tripp Mickle, *Sponsor Retreat: Tight Budgets Force Military to Slash Spending in Sports?*, STREET & SMITH’S SPORTS BUS. J., June 3–9, 2013, at 1, 8–9.

54. Richard Sandomir, *Congress Zooms in on Mets’ Naming Deal*, N.Y. TIMES, Feb. 4, 2013, <http://www.nytimes.com/2009/02/04/sports/baseball/04sandomir.html>.

countries gives us that global reach we're looking for."⁵⁵ Armstrong would also become an on-air personality hosting shows on the Discovery networks. Leary added, "we look at it as a great way to have a partnership with Lance above and beyond cycling."⁵⁶

LANCE ARMSTRONG AND PERFORMANCE-ENHANCING DRUGS

Speculation regarding Armstrong potential performance-enhancing drug use stems back to his first Tour de France victory in 1999. At the time one newspaper, however, quoted another rider as stating, "if I had to put money on the 'cleanest' Tour winner, it would go on Armstrong." The newspaper itself referred to allegations of performance-enhancing drug use by Armstrong as "ill-founded."⁵⁷

By 2004, Armstrong routinely faced a flurry of speculation, allegations, and distrust from both fans and media outlets. During his races, Armstrong would not only be greeted by friendly cheers, but also by ever increasing jeers and posters with large syringes.⁵⁸ One reporter questioned whether Armstrong was one of sports greatest heroes or one of sports greatest frauds. Holden commented:

I want to believe he is a hero. I truly do. Sport is about cherishing heroes. And, in the absence of any hard evidence against him, and certainly in the absence of a failed drug test (of which he has taken very many), I would like to say that Armstrong should be given the benefit of the doubt. Yes, rather than hero or villain, what Armstrong is today is a victim.⁵⁹

Armstrong would speak against his detractors, countering:

They say I'm the biggest cheater and nobody likes to be treated this way, but I know better—an[d] in ten or fifteen years nobody will remember what was written in the newspapers. Everybody will remember that I won five or six Tours de France. I'm convinced everybody will know then that I was clean.⁶⁰

On October 10, 2012, a lengthy investigation by the United States Anti-Doping Agency ("USADA") concluded in a 1000-page evidentiary report that included sworn testimony from fifteen riders with knowledge of the USPS Team that Armstrong had used performance-enhancing drugs since at least 1998.⁶¹ The report also produced evidence that Armstrong pressured

55. Ben Delaney, *Discovery Channels Lance*, BICYCLE RETAILER & INDUSTRY NEWS, July 15, 2004, at 1

56. *Id.*

57. Robin Nicholl, *Armstrong Seals Ultimate Triumph: American Provides Powerful Example for Cancer Sufferers and Restores Stature of Tainted Event*, THE INDEPENDENT (Eng.), July 26, 1999, <http://www.independent.co.uk/sport/tour-de-france-armstrong-seals-ultimate-triumph-1108813.html>.

58. Jim Holden, *Hero, Villain False Or Just Victim of Our Times?*, SUNDAY EXPRESS, July 25, 2004, at 94.

59. *Id.*

60. *Id.*

61. See Press Release, United States Anti-Doping Agency, *supra* note 2.

teammates to use performance-enhancing drugs.⁶² USADA describes its mission as, “to protect clean athletes by preserving the integrity of competition not only from today’s athletes, but also the athletes of tomorrow.”⁶³ In a statement about Armstrong and the cycling team, Travis Tygart, USADA CEO described, “the USPS Team doping conspiracy was professionally designed to groom and pressure athletes to use dangerous drugs, to evade detection, to ensure its secrecy and ultimately gain an unfair competitive advantage through superior doping practices.”⁶⁴ All Armstrong’s race results dating back to August 1, 1998, were nullified, and Armstrong received a lifetime ban from cycling.⁶⁵

The disqualification of Tour de France victories created another legal problem for Armstrong. With Armstrong no longer being “the official winner” of the Tour de France, SCA Promotions, an insurance company that issues policies to protect companies against bonus payments, sought reimbursement of \$12 million paid to Tailwind Sports.⁶⁶ Amid allegations of Armstrong’s performance-enhancing drug use, SCA had previously denied Tailwind Sports payment for Armstrong’s victory in the 2004 Tour de France.⁶⁷ Following an arbitration process in which Armstrong denied his use of performance-enhancing drugs under oath, SCA agreed to a settlement of \$7.5 million, the \$5 million bonus for winning the 2004 Tour de France with the additional \$2.5 million for interest and Armstrong’s legal costs.⁶⁸ Following the USADA report in October, 2012, SCA once again initiated efforts to recover the payment to Armstrong. On February 7, 2013, SCA announced its lawsuit against Armstrong and Tailwind Sports.⁶⁹ Robert Hamman, SCA Promotions CEO, explained:

While we are in the business of awarding winners, Lance Armstrong is no longer in that category . . . [Armstrong] lost his Tour de France titles and was ordered to repay those prizes paid to him for races won while doping, thus making it inappropriate for Mr. Armstrong to retain the money paid to him by SCA under fraudulent circumstances.⁷⁰

After years of denial, including those made under oath, Armstrong finally

62. *Id.*

63. *Id.*

64. *Id.*

65. *See id.*

66. *See* Ian Austen, *Report Could Open Armstrong to Legal Issues*, N.Y. TIMES, Oct. 13, 2012, http://www.nytimes.com/2012/10/13/sports/cycling/usadas-report-could-create-new-legal-issues-for-lance-armstrong.html?_r=0.

67. *See* Brent Schrottenboer, *Dallas Firm Wants Lance Armstrong Punished for Perjury*, USA TODAY SPORTS, Oct. 31, 2012, 5:31 P.M., <http://www.usatoday.com/story/sports/cycling/2012/10/30/lance-armstrong-perjury-doping/1668765/>.

68. *See* Austen, *supra* note 66.

69. Press Release, SCA Promotions, Lance Armstrong and SCA Promotions (Feb. 7, 2013), *available at* <http://www.scapromotions.com/lance-armstrong-sca.htm>.

70. *Id.*

admitted in a television interview with Oprah Winfrey aired on January 14, 2013, that he had in fact used performance-enhancing drugs.⁷¹ Armstrong answered “Yes” when Winfrey directly asked “did you ever take banned substances to enhance your cycling performance?” and “in all seven of your Tour de France victories, did you ever take banned substances or blood dope?”⁷²

CONCLUSION

It is now beyond dispute that Lance Armstrong used performance-enhancing drugs while serving as the lead rider of the USPS cycling team and winning the Tour de France seven times. The USADA report and Armstrong’s own admission have opened him up to legal scrutiny, including attempted by the USPS to recover the money it paid to sponsor the cycling team. If the legal determination is whether Armstrong knowingly defrauded the government by making a false claim that he was not using performance-enhancing drugs, then the case’s outcome is clear. The ruling could simply be that a false claim was indeed made, the law was violated, and any benefits already gained by the sponsor are irrelevant.

If the legal determination centers on the sponsorship benefits received by the USPS at that time and on any harm that has come to the USPS now, the outcome is less clear. Through the sponsorship of Armstrong and the cycling team, the USPS received the benefits of brand exposure, product category exclusivity, and obtained a brand association with an athlete who at that time was incredibly successful and popular with a positive reputation built upon his cycling victories, as well as his inspirational battle with cancer (obviously, the USPS would not presently want a brand association with Armstrong). The Armstrong sponsorship may have fulfilled the brand objectives for the USPS at that time. If the USPS obtained its desired benefits then, trying to recoup additional monetary damages from a sponsorship that ended in 2004 could be a double benefit. Does that fact that Armstrong admitted to performance enhancing drug use in 2013 damage a sponsorship that ended almost a decade earlier? It is certainly speculative to argue that suspicions of Armstrong’s drug use hindered USPS in achieving its broad sponsorship objectives, including sales, at that time.

A potential implication for the practice of sponsorship is if the USPS is denied any damages because of a determination that the cycling team was a poor property to sponsor. Because the cycling team predominantly competes internationally and the popularity of cycling in Europe far eclipses its popularity in the United States, other opportunities presented themselves to the

71. Interview by Oprah Winfrey with Lance Armstrong (Jan. 14, 2013).

72. *Id.*; see also Liz Clarke, *Lance Armstrong Confession Gets Specific in Oprah Winfrey Interview*, WASH. POST, Jan. 17, 2013, http://www.washingtonpost.com/sports/othersports/lance-armstrong-confession-gets-specific-in-oprah-winfrey-interview/2013/01/17/de4f001c-6120-11e2-9940-6fc488f3fecf_story.html.

USPS for greater brand exposure to its core target audience. The USPS was receiving brand exposure to an audience that, for the most part, would not use its service. One could question the need for the USPS to obtain brand exposure, considering people interact with the brand on an almost daily basis. In terms of the sponsorship activation program, signage or a logo on a jersey cannot explain a brand feature, such as an express service, which USPS executives referred to as a brand objective. Through the decision in this case, will the court put itself in a position of evaluating sponsorship decision-making (i.e., property selection, activation methods)?

Another implication is would a settlement in favor of the government open up opportunities for other sponsors to receive a monetary damages award if the property was involved in a fraudulent claim or illegal activity (i.e., Penn State University or NFL player, Michael Vick)? Could this liability even be extended to merely whether the property was involved in any type of crisis (a university under NCAA sanctions or Tiger Woods). While this lawsuit was brought under the False Claims Act protecting the government against fraud, is the fact that it was a government agency being wronged the only mitigating factor in determining if any damages should be awarded? Shouldn't any corporation receive the same protection against fraud as a government agency? Will determinations need to be made by a court as to whether the fraud hindered the achievement of sponsorship objectives? Finally, will a demonstration of achievement of sponsorship objectives eliminate the possibility of a damages award, even if a false claim can be proven?