Image Rights of Athletes
- Scope and Protection

dr. Vesna Bergant Rakočević
Senior Judge, Higher Court of Ljubljana
Slavoj Žižek

Tina Maze
Zinedine Zidane - Zizou

David Beckham - Becks

Rafael Nadal - Rafa

Novak Djokovic - Nole
Is it possible that an athlete totally transfers his/her personality right?

Of course NOT.

The concept of *translative* transfer of this right
• May the sponsor demand from the athlete to change a haircut or delete a tattoo?

• May such demand be made by his team, NF or IF?

• May the sponsor claim changing athlete’s name?
The biggest thing that rubs me the wrong way is that governing bodies want to control the space I feel I should control. There ought to be open discussion.

Nick Symmonds
Maria Sharapova

? Maria Sugarpova
US Open 2013
Garry Andrew
“Buddha” Hocking
(Geelong Cats)

“When Whiskas approached me with this proposal I actually had a giggle.”

“It's not going to change me, changing my name.”
• An athlete signed a contract with company A for commercial use of his image rights; may the company A transfer these rights to company B?

• Who is entitled to seek protection if the company C exploits the image of an athlete?
Oliver Kahn v. Electronic Arts, OLG Hamburg 25. 4. 2003
When is the commercial use of athlete’s image violation of his/her rights?

- identification
- lack of permission (scope, means, territory, time limits)
- the use is not free
Free use

• public interest
• freedom of expression
• marginal, coincidental use
La Gazzetta dello Sport

MILAN 58 vs INTER 53

DERBY TOTALE

USA Alala vs Testing A Scudetto
Squadra Cruciale: The Spada di Inizio Aprile
La Squadra di Allegri Has Qualcosa in Più
Mexes Sarà Rossoneri a Luglio

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Senior Appeals Court Judge, Ljubljana
Infringed interest?

- non-material, strictly personal (identity, honor, goodwill, privacy); *Tolley v J S Fry and Sons* [1931]
- economic, commercial
Sanctions

• fictive license fee
• corrective advertising award
• damages (blurring, tarnishment)
• unfair competition protection
UDRP; transfer or cancellation if

- identical or confusingly similar to a trademark of another
- registered by a party who has no rights or legitimate interest in that domain name and
- registered and used in bad faith

Wayne Rooney
Thank you for your attention!