

Naming-rights deal must strike balance for sponsor, property



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With the cost of new sports facilities, such as Cowboys Stadium topping \$1 billion, the price being asked for naming rights is also increasing.

A naming-rights agreement involves a

delicate balance between a facility owner and a potential sponsor. The facility owner needs to maximize revenue by selling the naming rights while preserving as many rights as possible to sell to other sponsors. The naming-rights sponsor will be paying significant fees and will want as many rights as possible. Naming-rights agreements are also typically lengthy agreements that must account for changing circumstances over time. Understanding key provisions in naming-rights agreements helps in negotiating the most favorable deal.

Who can sell what rights?

The project documents relating to the development of the sports facility need to be reviewed in order to determine which entity can grant naming rights as well as any limitations on such rights. An entity affiliated with the team that plays at the venue may have been created to lease the facility and be able to grant naming rights but not other rights in relation to the team. As a result, the sponsor may require that other parties join the naming-rights agreement or enter into other licensing arrangements in order to provide the sponsor the full bundle of rights it needs.

The sponsor will want to make sure that the project documents actually bind the team to play its home games in the new facility and prevent the team from relocating during the term of the naming-rights agreement. The sponsor may also want covenants requiring compliance with the project documents and preventing modification in a manner adverse to the sponsor's rights under the agreement.

The naming-rights agreement will of course name the facility, but the sponsor may want rights to name additional structures, like a lounge or a parking garage (such as the Lexus Lounge and Toyota Tundra Garage in the Toyota



Exterior visibility, such as this Staples Center view, should be outlined in a naming-rights agreement.

Center). The sponsor will want to be the dominant presence on all interior and exterior signage related to the facility. The parties will need to address, among others items, the exterior of the facility (including the roof, for aerial views), the interior bowl (especially signage visible on television), concourses, club and suite levels, scoreboards, electronic signage, banners, cups, brochures, menus, uniforms, tickets, parking passes, facility credentials, billboards, city and highway directional signage, and, perhaps, the arterial street leading to the facility.

A company may want to change its name in the future due to a change in corporate marketing strategy or merger or acquisition and in such event will want to correspondingly change the fa-

cility name.

The sponsor will want category exclusivity in regard to its line of business as it will not want to see prominent signage of a competitor in the newly named facility. However, the facility may want to host a special event sponsored by a competitor to its naming-rights sponsor, such as a Coca-Cola-sponsored all-star game event hosted at the Pepsi Center. The parties will need to address how such events effect naming-rights signage at the facility.

Payment issues

The dollar amount of naming-rights fees over the term of the agreement needs to be addressed, as well as any

circumstances that might affect payment. For example, will the sponsor be required to pay the full annual rights fee if the facility is unusable for sporting events due to damage or destruction of the facility from fire, an adverse weather event, or a season-ending strike or lock-out? The sponsor will not receive the exposure that it contracted for if such events occur.

There are a host of sponsorship benefits that can come with naming-rights agreements. Examples of such benefits include, among others, television and radio advertisements (including for pregame, halftime and postgame); sponsorship for coaches' shows, cheerleader shows, and other team-related media events; scoreboard and other electronic advertisements; facility and team Web site presence; press backdrops; official designations; allowances to be used for appearances of players, cheerleaders and mascots; merchandise; tickets (including playoffs and special events such as an all-star game, World Series or Super Bowl); luxury boxes; sideline and other passes; promotions; contests; VIP receptions; and golf tournaments. The sponsor will prefer much specificity in these provisions. For example, tickets can be on the 50-yard line or in the end zone, and television advertisements can consist of sponsorship of the halftime show or brief mentions at an inconsequential point in the broadcast.

The parties will need to consider many other provisions for the naming-rights agreement, as well, such as a right of first negotiation to renew the agreement at the end of the term; representations and warranties of each party; intellectual property ownership; default and dispute resolution (such as by arbitration); insurance; indemnification; and assignment of the agreement by either party.

With good communication between the parties, flexibility and creativity, the sponsor and facility owner can craft an agreement that serves as the foundation for a successful and long-term sponsorship relationship between the entities.

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