

Conference report

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Athletic and catwalk criminals: an in-depth look at crime in the fashion and sports industries

Joint session of the Leisure Industries Section with the Arab Regional Forum, the International Franchising Committee, the Leisure Industries Section and the Real Estate Committee.

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This half-day session discussed criminal activities prevalent in the leisure areas of sports and fashion. Panel members shared their experiences and gave real life examples in the light of a fictitious fact pattern which formed the basis of the session.

Fact Pattern: Part One

The fact pattern commenced with fans, players, security personnel, government officials and media gearing up for the 2018 FANA World Cup which was awarded to Russia in 2010 amid controversial allegations that the World Cup had been 'sold' to Russia.

Given the details described at the beginning of the fact pattern, Javier Medin discussed the impact of the 2014 Brazil World Cup and the situation where a number of ministers had to resign due to accusations of bribery. He further discussed bribery allegations relevant to the Boca Juniors club and how these were dealt with in Argentina. Jeremy Summers discussed how the UK Bribery Act and the FIFA anti-corruption code could apply to the fact pattern and whether a FIFA official could fall within the scope of the UK Bribery Act as a 'foreigner'. He noted that at this stage only one prosecution has occurred under the Bribery Act in relation to a court clerk accepting bribes, noting the low budget currently allocated to enforcing the Act.

Fact Pattern: Part Two

The fact pattern then continued with a discussion of merchandising in relation to the teams' special World Cup uniforms. Two teams use an auction process to manufacture their uniforms and team merchandise. Various manufacturers submit bids but there is no clear winner.

Manufacturers participate in the process by being given identical fabric and a 'true' winner is chosen only when the sponsor determines which manufacturer has delivered the highest quality products. The winning manufacturer is paid for its services however the other manufacturers keep the fabric they were given in order to participate in the process. These other manufacturers end up creating 'real-fakes'.

Garrett Breen discussed 'real fakes' v 'cheap imitations' where night shifts are used to produce fake merchandise and where second quality products rejected by quality control departments slip onto the market. Garrett also discussed seizure and delivery-up orders available in Ireland to deal with market stalls and stores selling imitation items. He further discussed

intellectual property enforcement strategies including dealing with street corner sellers and the regular enforcement and constant raids required to police particular counterfeit sale hotspots within Dublin. Judy Roth discussed how criminals involved in counterfeiting can be highly organised and the increase in criminal activity related to counterfeit products given the substantial profits that can be involved with relatively less severe penalties than dealing in other illegal areas such as drug trading.

Fact Pattern: Part Three

The fact pattern went on to discuss the distribution and shipment of fake products and US Customs involvement in shipments.

Judy examined how the United States police now work with brand owners for a number of reasons including economic reasons, national security reasons and concerns about the health and safety of the public especially in light of the rise in counterfeit pharmaceutical products and motor vehicle parts such as brake pads and tyres. Judy went on to discuss some of the enforcement history in the US including the developments in 2008 when Homeland Security, Customs, local police and other regulatory departments focussed on counterfeiting in the fashion industry. The challenges faced by US Customs were discussed, given the hundreds of millions of shipments passing through the ports and the pressure they are put under to keep shipments moving while at the same time working hard to seize and destroy counterfeit products. Details were given as to how the IP department of the US Customs helps capture counterfeit products moving through the country including the e-recording of registered trademarks, e-recording details of past suppliers of

fake products and how shipping documentation can all help to capture counterfeits. Judy further discussed exclusion orders where brand owners, US Customs and the International Trade Commission can bring cases against a shipper of fake/counterfeit products resulting in such exclusion orders. A detailed discussion including many audience members then took place on the various methods brand owners are implementing to protect themselves, including hidden 'fingerprints' within the physical products and false identifiers included on brand owners websites to mislead counterfeiters. Javier Medin talked about how Nike, sponsors of the Boca Juniors Club, mounted an anti-piracy campaign and how important such campaigns can be given many clubs in Argentina rely on these sponsorship dollars to survive. Garrett Breen looked at shipment issues from an Irish perspective detailing how samples can be held at the port to allow Customs to compare various shipments with the original products and describing the Irish Anti-Racketeering Squad's recent effectiveness in dealing with counterfeit products.

Fact Pattern: Part Four

After the break the fact pattern scenario featured a semi-final match where player violence occurs and fans are ejected from the stadium for threats against the referee.

Mark Haslam discussed on field bad behaviour that would not be tolerated off field and yet how there are very few cases of players being prosecuted for offences on the field. The John Terry Case was discussed, where a retired police officer made the complaint, and the police's obligation to investigate complaints from the public. Members of the audience provided various examples from their

own countries, including a case in the Supreme Court of Appeal in South Africa where a player is accused of attempted murder where another player sustained a broken neck. This charge arose out of an incident where the accused continuously pushed the victim's head into the ground. Discussion with the panel and audience continued on the basis of what may be reasonable within the accepted norms of the game.

Mark Haslam further discussed the public interest in prosecuting a celebrity using as an example post-season parties where players may be involved with drugs. Here where such an act brings the game into disrepute disciplinary processes can be sufficient. This example was contrasted with the case of a Harlequins' rugby player caught drink driving where the public interest was that the matter be dealt with as a criminal offence. Members of the audience gave examples from their home countries, including the recent New Orleans Saints controversy concerning illegal bounty payments and deliberately injuring opponents, and the public interest in prosecuting players given their influence on children who watch the games and idolise players. Jeremy Summers discussed the conflict between criminal and disciplinary process within the rules of the game. The English Court of Appeal case, *R v Barnes* [2004] EWCA Crim 3246, was referred to where the court held that only very serious cases should be referred to the courts as a criminal matter – if the disciplinary process is sufficient, then the matter should not be dealt with by the criminal justice system. The ability to charge fans with public order offences was examined along with the ability to ban spectators under the FIFA Code. The Hillsborough Disaster was discussed and Javier Medin mentioned the organised 'mafia-like'

nature of hooligans in Argentina. He said that police corruption was an issue and that fans in Argentina had to pay to keep their car safe while at the game. Fake merchandise, issues with the difficulties in getting tickets to popular games and threats made against board members of clubs were also matters of concern. Javier went on to discuss the Sports Law brought in to address such issues but violence and corruption are still dominant in football in Argentina.

Fact Pattern: Part Five

The fact pattern then created a scenario involving violent threats made by one player against another player, who believing the threats to be real changes the way he plays.

Mark Haslam discussed the England v Pakistan cricket game where players were involved in a conspiracy by bowling 'no balls' at specific times. This is discussed in further detail in Mark's paper entitled '*Corruption in Sport – A case study – (the trial of professional cricketers in London in November 2011)*' which can be found on the IBA's website. The issue of agents being charged with offences was discussed in light of the involvement of the cricket agent's involvement in enticing the Pakistani players to throw 'no balls'. Under the International Cricket Council (ICC) rules, as the agent was not a player he was not subject to the ICC's disciplinary procedures. This situation was contrasted and discussed further by Jeremy Summers in relation to the FIFA code where agents are included, although a member of the audience commented on FIFA's failure to enforce such rules against agents.

Fact Pattern: Part Six

The fact pattern then moved on to a situation involving fans purchasing counterfeit products.

This led to a discussion of the protection of design rights in the EU in contrast to the intellectual property protections in the US. The *Karen Millen v Dunnes Stores* case (currently on appeal) was discussed which involved three women's tops sold by Dunnes store similar to designs produced by Karen Millen. In this case the judge considered how EU Design Rights can be protected where the product is 'new' and has an 'individual character'. The 'individual character' threshold was debated in relation to the sports merchandise in the fact pattern. Further examples of infringements were shown in the slides (such as packets of biscuits and fig rolls) and Garrett Breen explained how historically bringing claims related to the sale of 'lookalike' products was based on passing off actions which now fall within the EU Unfair Commercial Practices Directive. Judith contrasted this position with the case of *Christian Louboutin SA v Yves Saint Laurent America Holding, Inc*, 2012 WL 3832285 (2d. Cir.) (5 September 2012) where the case was brought on the basis of trademark infringement as there are no copyright/design rights for fashion.

Session conclusion

The session ended with Jeremy Summers explaining his experience as the Judicial Officer at IRB World Series 7's tournaments in Dubai, Hong Kong, London and Tokyo. As judicial officer he determines if a foul has occurred and if so the scale/grade of seriousness and the subsequent penalties applicable. Decisions have

to be taken quickly, between games – usually within a maximum of three hours.

Mark Haslam concluded by giving his ‘golden rules’ for clubs and celebrity clients when dealing with the police:

- Never take advice from a police officer;
- Always answer correspondence;
- Never say ‘Do you know who I am’; and
- If you find yourself in difficulty; ‘DIY’ (Don’t involve yourself)!