

NEGOTIATING, DRAFTING, AND IMPLEMENTING NAMING RIGHTS AGREEMENTS

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I. INTRODUCTION

Naming rights deals involving high profile sports venues are big league marketing plays involving complex negotiations culminating in detailed, lengthy contracts and multimillion-dollar investments. When a venue owner trying to sell naming rights for a ballpark, stadium, or arena approaches a client, the responsibility of the client's counsel includes discussing marketing strategy with the client and learning as much as possible about the client's target customer demographics and how the client makes marketing decisions. If the client markets goods and services to consumers, it may benefit from the name recognition and exposure that a stadium naming deal can provide. If the client is accustomed to investing only in direct mail, newspaper, and radio advertising that includes some means of measuring response rates, it may not be interested in naming rights; however, that alone is not a compelling reason to reject a naming rights proposal. Many naming companies have acquired naming rights in conjunction with new or expanded business relationships with the team or stadium owner. If the client or the client's counsel can identify potential new business opportunities that result directly from a naming rights agreement, such opportunities may also be a means of measuring the client's return on its marketing investment in naming rights. Additionally, if the client's marketing plan includes a significant investment in so-called institutional advertising, which places emphasis on the image of the company instead of its products and services, it may find naming a sports venue is a good way to enhance its image and to receive national television, radio, and print media exposure.

Terms of naming rights agreements generally range from fifteen to twenty-five years. However, some terms have been as short as five years and as long as for the life of the facility. Examples include Newman Outdoor Advertising acquiring perpetual naming rights to Newman

Outdoor Field in Fargo, North Dakota;¹ Alexian Brothers Health Systems, Inc. acquiring a ten-year deal to name Alexian Field in Schaumburg, Illinois;² Quest Communications, Inc. agreeing to a fifteen-year naming rights deal to Quest Field in Seattle, Washington;³ and Amway obtaining a five-year deal to name Amway Arena in Orlando, Florida.⁴

II. THE CONCEPTUAL STADIUM

Naming agreements include a lengthy set of definitions. If a structure is already designed or built, the agreement can more precisely define the size and location of signage and other design features that will display the naming sponsor's corporate name or logo. However, if the naming agreement is drafted while the stadium project is still in the planning stages, it is not unusual for parties to only have a rough idea about the size and type of stadium to be constructed. There may not even be blueprints or renderings available, so counsel for a naming sponsor must consider other examples of state-of-the-art ballparks and develop contract language taking into account all possibilities. Under such circumstances, the agreement may be imprecise about potential stadium construction, but the attorney is responsible for drafting a document that is flexible enough to cover all of the eventual design possibilities.

Although possibly difficult with no stadium in existence, counsel drafting an agreement must carefully consider the inclusion of specific objective standards and technical specifications regarding the location, type, and size of signage identifying the naming sponsor, which will be inside and outside of the venue. In order to develop the specifications and properly represent the best interests of the client, consultation and assistance of experts in illumination, signage, and logo design may be necessary. Once the parties are able to conceptually envision the stadium—or if the

1. See *Newman Outdoor Field*, GOBISON.COM, http://www.gobison.com/ViewArticle.dbml?DB_OEM_ID=2400&ATCLID=69830 (last visited June 6, 2011) (providing information about the field); see also *Stadium Photos*, FMREDHAWKS.COM, <http://fmredhawks.com/stadium/photos/> (last visited June 6, 2011) (displaying pictures of Newman Outdoor Field).

2. See *History*, SCHAUMBURG FLYERS, <http://www.flyersbaseball.com/about-the-flyers/history.aspx> (last visited June 6, 2011), Eric Peterson, *Flyers Field Will Keep Name For 9 Years*, DAILY J., Apr. 19, 2005, at 4. See generally *Schaumburg Flyers*, FLYERSBASEBALL.COM, <http://www.flyersbaseball.com/splash.aspx> (last visited June 6, 2011) (providing general information about the Flyers).

3. Angelo Bruscas, "*Quest Field*" Approved: *Seahawks Stadium Receives New Name*, SEATTLE POST-INTELLIGENCER, June 25, 2004, at D2, available at <http://www.seattlepi.com/default/article/Qwest-Field-approved-1147964.php>.

4. See *The Arena in Orlando To Become Amway Arena*, NBA.COM (Dec. 7, 2006), http://www.nba.com/magic/news/The_arena_in_Orlando_To_Become-198984-800.html. In February of 2000, TD Waterhouse agreed to pay \$7.89 million over five years for naming rights to the Orlando arena, with an option to extend two more years for an additional \$1.718 million per year.

stadium is already in existence—counsel representing a naming sponsor must consider how its name will appear in the facility.

III. DOMINANCE AND PROMINENCE

An attorney representing a naming sponsor must ensure the client has relative prominence and dominance among other corporate sponsors and donors having a presence in the stadium. This prominence must, to the greatest extent practicable, be present in the embodiment of the stadium structure and each and every game or event occurring at the facility. The assurance of such results requires careful attention to contractual provisions dealing with sponsors acquiring naming rights for the different components of the stadium, exclusivity, and advertising, which includes all forms of digital and fixed signage appearing in or on the facility.

Looking to the experiences of other naming sponsors can help prevent problems that may occur. For example, a client does not want its name faded into the background like the naming sponsor for Target Center, the home court of the Minnesota Timberwolves. Target Center opened in 1990, and Target's name was initially the only corporate name on the building. The name "Target Center" was artfully and tastefully integrated into the architectural design. Over subsequent years, though, large new signs were erected on the exterior wall for the benefit of a number of other sponsors including Miller Genuine Draft, Miller Lite, Pepsi, Toyota, U.S. Bank, and NBA City Restaurant. On the prime corner of the Target Center building in downtown Minneapolis, the identity of the naming sponsor has been almost entirely eclipsed by branding promoting other sponsors. Target was the naming sponsor of the Timberwolves arena, but Target was neither dominant nor prominent among the corporate sponsors on the building's exterior.⁵ In September, 2011, when Target Corporation agreed to extend the naming agreement with the Timberwolves, the sponsor took steps to reclaim some of the exterior naming real estate by including a condition that the high profile signage location visible from Target Field will be controlled by Target and the Sanford Health sign occupying that space will be replaced.⁶

Target was a pioneer in naming rights, but it was not alone when it came to having its brand upstaged in the very facility they paid millions to name. Many of the early naming rights deals did not contemplate the

5. John Vomhof, Jr., *Target Center's Naming Rights Up For Grabs*, MINNEAPOLIS/ST. PAUL BUS. J., May 6, 2011, <http://www.bizjournals.com/twincities/print-edition/2011/05/06/Target-centers-naming-rights-are-up-for.html>.

6. See *NBA's Wolves To Remove Arena Ad*, ESPN.COM, http://espn.go.com/mlb/story/_/id/7060886/minnesota-timberwolves-take-ad-seen-target-field (last visited Oct. 5, 2011).

building owner allowing other sponsors to undermine the naming sponsor's visibility. Even Xcel Energy's dominance was marginalized by a large Wells Fargo sign on the prime corner of the Xcel Energy Center in St. Paul. Surprising, though, the Xcel Center naming deal came ten years after the Target naming deal and after the manifestation of the signage colossus at Target Center.⁷

While Target Center was the worst case scenario for a naming rights deal, nearby Target Field—the new home of the Minnesota Twins—serves as an example of the proper balance of dominance, prominence, and good taste in displaying the logo and name of a naming sponsor. When negotiating and drafting a naming rights agreement, an attorney should take care to envision how future events and marketing developments may affect the naming sponsor's dominance and prominence so as not to repeat the major failures of exclusivity and prominence at Target Center and Xcel Energy Center.⁸ Counsel should incorporate objective dominance and prominence standards into all of the critical sections of the agreement, including provisions dealing with the stadium name, category exclusivity, signage, and marketing.

IV. STADIUM NAME

The official name, and no other name, and the official stadium logo should be used in all written and official oral references to the facility. This is precisely what the naming sponsor is purchasing—repetitive use of the sponsor's chosen stadium name. Hyphenation, truncation, or other dilution of the official name represents a diminution in the value of the intellectual property acquired by the naming sponsor. In order to ensure only the official name and logo are used, the agreement between a naming sponsor and facility owner should require the team and facility operator to include the official stadium name in all relevant agreements entered into after the effective date of the naming agreement. The agreement should also include a provision requiring the other party or parties to refer to the official stadium name in all written and official oral references to the facility or events schedule to take place at the facility. In addition, the agreement should require the team and venue operator to use commercially reasonable

7. See *Xcel Energy Center #4788*, CGSTOCK.COM, http://www.phototour.minneapolis.mn.us/bob_firth/bob_firth-st_paul/4788 (last visited June 6, 2011) (displaying photographs of Wells Fargo and Xcel Energy side-by-side with equal prominence above the digital marquee at the intersection of at Kellogg Boulevard and West Seventh Street in downtown St. Paul, Minnesota).

8. See *Minneapolis*, STADIUM TRAVEL GUIDE, <http://www.stadiumtravelguide.com/basketball/minneapolis.htm> (last visited June 8, 2011) (displaying photographs showing how the Target name was dominated by other advertisers).

efforts to persuade the applicable state and local transportation agencies to use the official stadium name or logo in all road and other directional signs leading to the facility. Finally, the agreement should obligate the team and facility operator to make commercially reasonable efforts to encourage local broadcast and print media to refer to the facility by its official name.

Stadium name changes are not uncommon during the course of the fifteen- to twenty-five-year terms of naming agreements. Names change as a result of companies merging, such as the Arizona Diamondbacks now playing in Chase Field, formerly known as Bank One Ballpark, and the San Francisco Giants playing in AT&T Park, formerly known as SBC Park and PacBell Park. Some companies may fail, causing stadium names to change such as when Enron's demise changed the Houston Astros ballpark name to Minute Maid Park.⁹ Additionally, stadium names may change as a result of changing branding strategies. On April 1, 2011, Qwest Communications completed a merger with CenturyLink, Inc. The new company will use the CenturyLink brand but will continue to use the Qwest brand in certain markets during a transition period.¹⁰

The naming agreement should allow the naming sponsor to change the stadium name if the company is involved in a sale or merger, or if it elects to change the current name of the company for other strategic business reasons. Typical naming agreements allow for a new stadium name subject to the reasonable prior written approval of the team or venue operator. Counsel for a naming sponsor should include language providing that such consent to change may not be unreasonably withheld, conditioned, or delayed. Provisions regarding name change should also require the team and venue operator to cooperate in promoting the new stadium name.

The team or venue operator is generally responsible for costs of initial production, installation, and maintenance of all signage referenced in the agreement, except signage associated with a name change. The naming sponsor, on the other hand, is usually responsible for paying all costs associated with changing the stadium name including signage, websites, advertising, paper products, cup holders, merchandise inventory, and other items. The naming sponsor often takes responsibility for costs associated with developing stadium logos and any stylized form of the stadium name, including costs for third party logo designer services specific to the development of the artwork and a style manual for the approved forms of

9. See *Minute Maid Park*, BALLPARKREVIEWS.COM, <http://www.ballparkreviews.com/houston/houston.htm#> (last visited June 7, 2011).

10. See *generally* CENTURYLINK.COM, <http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-homeprofile> (last visited June 7, 2011) (describing the corporate profile of CenturyLink, Inc.).

the stadium name and marks. This responsibility allows the naming sponsor to have greater influence over the design of the stadium logo and allows for integration of the stadium mark into the company's overall logo and marketing strategy.

V. CATEGORY EXCLUSIVITY

Exclusivity provisions within a naming agreement prohibit a team and venue operator from entering into or renewing any corporate sponsorship for the facility with any competitor of the naming sponsor. A competitor would include any company the naming sponsor identifies as one providing competing goods or services or operating in the same industrial sector as the naming sponsor. The category exclusivity is vital to a naming sponsor client who is making a large investment in naming rights. Any refusal to provide the naming sponsor with absolute category exclusivity anywhere on the ballpark or stadium site is a deal-breaker.

Counsel may agree to carve out exceptions¹¹ that would allow temporary signage in connection with certain events or private events sponsored by competing companies. For example, if the GRAMMY Tour sponsored by T-Mobile¹² included a concert at Qwest Field, the event would involve a direct communications competitor of Qwest, but the event may fall under an exception in the stadium naming agreement that would permit the concert promoters to display T-Mobile's name and logo during and leading up to the concert, on promotional materials, tickets, digital display boards, temporary signage, and banners at stadium. Similarly, if Integra Telecom¹³ booked a private meeting or event at Qwest Field, the Seattle Seahawks could allow Integra Telecom's name and logo during and leading up to the meeting or event, on promotional materials, tickets, digital display boards, temporary signage, and banners anywhere in the stadium.

The effect of exclusivity provisions is the prohibition of the team or venue operator from renewing or executing new agreements that would allow the mark of any competitor of the naming sponsor to be incorporated

11. For purposes of the naming agreement, an exception may include any event other than a home game taking place at the facility that is one of a series of related events scheduled to take place in a number of cities and in numerous stadiums, arenas, or complexes around the country and that may or may not be sponsored by a company that is a direct competitor of the naming sponsor. The agreement may also have contractual obligations to include the name of the tour or event's sponsoring company and to promote the financial services company as part of the event.

12. *See T-Mobile Sponsors 50th GRAMMY Celebration Concert Tour*, CELL PHONE DIGEST (Mar. 12, 2008), http://www.cellphonedigest.net/news/2008/03/tmobile_sponsors_50th_grammy_c.php.

13. Integra Telecom provides communications services in eight states with markets served by Qwest. *See Company Milestones*, INTEGRATELECOM, http://www.integratelecom.com/about/company_milestones.php (last visited May 30, 2011).

into or displayed on any fixture, sign, digital display board, or promotional merchandise at the stadium. While typical naming agreements do not require the team or venue operator to terminate any existing agreement with a corporate sponsor, they generally prohibit expanding existing agreements to permit advertising or sponsorships that conflict with the exclusivity restrictions of the naming agreement.

VI. SIGNAGE

If the naming agreement is for a new facility not yet constructed or in the process of being built, it should include a provision requiring the team or venue operator to erect prominent on-site signage during construction identifying the site of the future location of the facility using the official stadium name. If the naming agreement is executed before there are blueprints and other technical and promotional materials showing the design, the agreement should require that these materials identify the facility by its official stadium name and should incorporate the stadium name into depictions of fixed and digital signage on the exterior and interior of the facility, including scoreboards and other components of the facility.

The stadium name or logo should be prominently displayed at the top of any marquee signs or signs attached to the exterior of the facility, including those incorporating digital display boards. However, counsel for a naming sponsor should negotiate and draft contract provisions requiring the client's name, the stadium name, or logos be displayed on all digital scoreboard and ribbon light-emitting diode (LED) boards before, during, and after each game with display time for the naming sponsor's advertising specified in the agreement. A naming sponsor client should also receive one or more full-page color advertisements in each game and event program with the sponsor's choice of location. The stadium name or naming sponsor's advertisements should appear on the primary websites of the team and the stadium, as well, and there should be specific stadium web pages providing information, photos, and directions to the facility. The naming sponsor's web advertising and embedded video containing the sponsor's current television or video advertisements should also be included on the stadium web page.

Another step for a naming sponsor's counsel is to negotiate and draft provisions requiring the team or venue operator to allow the stadium name or logo to be prominently displayed in and on all design materials, images, illustrations, renderings, site plans, blueprints, animation, video or other depictions that are developed for the facility after the naming agreement is executed. It is also crucial for a naming sponsor's counsel to ensure the agreement requires the team or venue operator to include the official

stadium name or logo in all printed and video promotional or press materials relating to the stadium or home games.

Contract specifications should include objective specifications requiring the stadium name or logo be visible and readable from the all major intersections abutting the facility and from the main stadium parking lots. Any signs prepared for archways and entry gates should include the official stadium name or logo either in or adjacent to the name of the respective arch or entry. In addition, the agreement should establish standards regarding the relative size, frequency, and brightness of the team name, logos, slogans and other marks compared to the size of the stadium name or logo.

First, the stadium name should be at least twenty percent larger than the team name or logos. Second, the stadium name should be displayed at least once in relative proximity to each depiction of the team name, logo, or other mark displayed on the exterior of the facility and on signage inside the facility. Finally, the illumination standards with regard to the stadium name and logo should have equal or greater intensity than the illumination of the team name, logo, or marks. If there is inadequate illumination of the stadium name or logo, it will be virtually invisible in still photos and video of night games.¹⁴

In football stadiums, the ideal location for the stadium name or naming sponsor's brand is above and between the goal posts behind each end zone so that each field goal or extra point attempt results in advertising impressions for the benefit of the naming sponsor. In baseball parks, the best location for the sponsor's brand or ballpark name is prominently above the first level of seating in left field and right field to ensure that the sponsor will benefit from live and video replays of the majority of home runs hit in the ballpark. However, another important location for the naming sponsor's brand is behind home plate clearly in view of the centerfield camera as it focuses on the hitter during an at bat as well as in the left center and right center field gaps in order to augment the naming sponsor's in-stadium and television marketing.

It is common during playoffs for television networks to digitally replace the backstop signage behind home plate with advertising promoting network sponsors. In order to prevent advertising thwarting, the naming agreement should prohibit digital blocking, replacing, shading, or otherwise interfering with the visibility of the naming sponsor's brand, the stadium name, or the stadium logo with that of any other brand or advertising by

14. See, e.g., *TCF Bank Stadium*, U. MINN., http://stadium.gophersports.com/multi_photo_gallery.html (last modified Aug. 15, 2008) (displaying several photographs of the University of Minnesota football stadium showing the stadium logo is invisible in contrast to the bright LED display of the scoreboard at night).

television stations, networks, or other producers or broadcasters of video originating in the stadium.

VII. DIGITAL DISPLAY BOARDS

The practical application of exclusivity provisions to the real world becomes clear when considering the digital display boards that comprise the large scoreboards and the ribbon of digital LED panels linked end-to-end along the fascia between the various levels of the stadium. Typical naming agreements include a specified percentage of the total advertising time on all digital display boards.¹⁵ When negotiating and drafting the naming agreement, focus on the elements and details of the formula that will be used to calculate the sponsor's share of total advertising time is necessary to ensure optimal advertisement.

A team and venue operator may not calculate the advertising time the same way as a naming sponsor client calculates its pro rata share of advertising on the digital scoreboards and ribbon boards. It is not unusual for a team or venue operator to segment the digital display space on scoreboards, meaning a large portion in the center of the big screen might be used to display live game video, instant replays, announcements, cheers, and commercial video advertising, while smaller portions on the periphery display between four and eight static, but rotating, commercial ads at one time.

Consider an example wherein a naming sponsor is entitled to twenty percent of the total advertising time on the scoreboard. The large digital board has four commercial segments on each side of the main video area with each segment approximately twenty feet wide and ten feet tall, totaling 1600 square feet (sq. ft.) of commercial digital advertising at any given time. If a team or venue operator interprets the allocation provision to mean the naming sponsor's messages in one of the segments during twenty percent of the game satisfies the team's obligation under the agreement, counsel for the naming sponsor needs to have carefully drafted these specifications to protect the client.

A better way to draft an agreement to ensure a client receives its expected benefit is to identify the naming sponsor's twenty percent share of the total advertising time as being twenty percent of the total commercial digital inventory; i.e., 1600 sq. ft. of advertising during twenty percent of the game, pregame, and postgame. The effect of such an agreement would

15. Advertising time as it relates to digital display boards refers to the time during which paid advertisements appear, and does not include time allocated to team cheers, community service announcements, and other non-commercial material.

be roughly equivalent to one 400 sq. ft. advertisement displayed for thirty minutes per hour, one 200 sq. ft. advertisement displayed for fifteen minutes per hour, and another 200 sq. ft. advertisement displayed for twenty minutes per hour during the pregame, game, game breaks, and postgame. Consequentially, at least one advertisement for the naming sponsor would be displayed at all times, and for approximately five minutes out of every hour, the naming sponsor would have two 200 sq. ft. advertisements running simultaneously, which equates to sixty-five minutes of coverage per hour and accounts for approximately twenty percent of the total advertising inventory available for sponsors and advertisers. Table A illustrates the total commercial digital inventory allocation on a segmented digital scoreboard.¹⁶

VIII. THE STADIUM LOGO

Most new professional stadiums and ballparks with naming sponsors have developed a stadium logo. Agreements usually permit a naming sponsor to develop a stadium logo that, subject to approval of the team or venue operator, could be used interchangeably with the stadium name by the naming sponsor, the team, or venue operator when referring to the facility. Agreeing to pay for the cost of designing the stadium logo allows the naming sponsor to have greater influence over the ultimate design of the logo and ensures the logo uses fonts and design elements consistent with the sponsor's corporate marks. Stadium logos, like other corporate logos, are serious business and the best designers incorporate a number of design elements and marks with significance to the naming sponsor, the team, and the facility.¹⁷

The investment in designing a first-class stadium logo and stylized stadium name is a relatively small investment compared to a naming sponsor's cost of naming rights. However, if signs are properly positioned, the logo and stylized stadium name will be frequently displayed in television broadcasts, print media, and web photos of game action, which covers many types of advertising media. Thus, counsel should guide the client towards having a reputable design firm create the finest quality logo and stylized stadium name for the facility. The design firm can then develop a design theme and strategy to integrate signage and other art into

16. See *infra* Appendix A.

17. See, e.g., *Athletic Facility Design*, ZEBRADO, <http://www.zebradog.com/results/stadia> (last visited May 30, 2011) (Madison, Wisconsin design firm's website and portfolio); *Client Lists & Services*, Phoenix Design Works, <http://www.phoenixdesignwords.com/services> (last visited May 30, 2011) (New York City design firm's website and portfolio).

all aspects of the stadium in a way consistent with the naming sponsor's branding efforts throughout the venue or campus.¹⁸

IX. GUERRILLA MARKETING

Guerrilla marketing is a strategy introduced by Jay Conrad Levinson as a low budget, take-no-prisoners method for small businesses to compete with larger ones.¹⁹ Since Levinson first published his book in 1984,²⁰ guerrilla marketing strategies have evolved to include ambush marketing conducted by non-sponsors who exploit the marks, images, goodwill, and other intellectual property created and made valuable by sports teams, artists, event promoters, and entertainment and sports venues. Some guerrilla marketers even utilize counterfeiting as a tactic, but there is a plethora of more subtle and borderline legal methods employed by others. For example, guerrilla marketers frequently produce inferior apparel and other merchandise that play off the legitimate artwork of sports teams. Sales of unauthorized product take revenue away from authorized vendors and the owners of the intellectual property.

Counsel for a naming sponsor is unlikely to be concerned about loss of revenue from unauthorized product, but should be very concerned about how guerrilla marketers might portray the sponsor or the stadium. Collegiate and professional sports facilities typically are tagged with hip, and sometimes unfavorable, nicknames. Counsel must understand these social dynamics and educate the client and the team or venue operator of the virtual certainty the stadium will be given a nickname.

Under these circumstances, counsel needs to include provisions regarding an agreed-upon stadium nickname that will be adopted by the parties and marketed to ensure popular acceptance. Including such a provision also allows the parties to eliminate the possibility of unfavorable nicknames and ensures the stadium nickname will be tasteful, serving the best interests of the sponsor, team, and venue operator.²¹ Counsel must encourage the sponsor, venue operator, and team tenant to collaborate and take necessary preliminary measures to create licensed apparel and merchandise in order to

18. See, e.g., *Facilities*, UWBADGERS.COM, <http://www.uwbadgers.com/facilities/> (last visited May 30, 2011); *Visit the Hall of Fame*, LAMBEAU FIELD, http://www.lambeaufield.com/hall_of_fame/visit_the_hall_of_fame/ (last visited May 30, 2011).

19. See generally JAY CONRAD LEVINSON, *GUERRILLA MARKETING: EASY AND INEXPENSIVE STRATEGIES FOR MAKING BIG PROFITS FROM YOUR SMALL BUSINESS* (4th ed. 2007).

20. See generally JAY CONRAD LEVINSON, *GUERRILLA MARKETING: SECRETS FOR MAKING BIG PROFITS FROM YOUR SMALL BUSINESS* (1984).

21. The logo designer is a great resource to develop a suitable stadium nickname and to design artwork for apparel and merchandise that is compatible with the stadium logo.

drive popular opinion toward the preferred nickname. However, the nickname artwork should also include the official stadium name or logo although the official name should be less conspicuous than the nickname.

Nicknames can come from many different types of businesses. For instances, Café Press sells T-shirts objecting to new stadium names for the Cleveland Indians (“I STILL CALL IT THE JAKE”), Chicago White Sox (“I STILL CALL IT COMISKEY”), and New York Mets (“I’M CALLING IT SHEA”).²² While the items add little to no value to the naming sponsors—Progressive,²³ U.S. Cellular,²⁴ or Citigroup,²⁵ respectively—at least they are not offensive or overtly derogatory.

Another example is TCF Bank Stadium, the University of Minnesota football venue in Minneapolis.²⁶ Undoubtedly, the university and TCF wanted to avoid having the stadium inappropriately nicknamed. In order to do so, their respective marketing people collaborated to create licensed apparel and merchandise that ultimately helped drive popular opinion toward the preferred nickname, “The Bank.” TCF even distributed “Taking it to the Bank” T-shirts to students who opened new accounts. Acceptance of “The Bank” reached a tipping point nearly a year before the new venue opened in 2009, providing the best possible outcome for the naming sponsor and the university.²⁷

X. OTHER BENEFITS AND THE GOODIE LIST

Naming sponsors have become savvier and are not content with merely seeing their name on a stadium. For many naming sponsors, the primary benefit to entering into a naming rights agreement is the opportunity to extend the term of an ongoing business relationship with the team or venue owner that is not specifically associated with the stadium itself, or the

22. *Stadium Name Changes T-Shirts & Tees*, CAFE PRESS, <http://www.cafepress.com/+stadium-name-changes+t-shirts> (last visited May 30, 2011).

23. *Progressive Field*, BALLPARKSOFBASEBALL.COM, <http://www.ballparksofbaseball.com/al/ProgressiveField.htm> (last visited May 30, 2011).

24. *U.S. Cellular Field*, CHICAGO WHITE SOX, <http://chicago.whitesox.mlb.com/cws/ballpark/index.jsp> (last updated Feb. 11, 2011).

25. *Citi Field*, NEW YORK METS, http://newyork.mets.mlb.com/nym/ballpark/citifield_overview.jsp (last updated Feb. 11, 2011).

26. *See What Should We Call TCF Bank Stadium?*, THE DAILY GOPHER (May 18, 2009, 9:47 PM), <http://www.thedailygopher.com/2009/5/18/879543/what-should-we-call-tcf-bank> (suggesting nicknames such as “The Vault,” “The Bank,” “The Gopher Hole,” “The Money Pit,” “The ATM,” and “Prohibition Field” in mockery of the university’s no-alcohol rule at the stadium).

27. *See Roman Augustoviz, Blue Line Club Luncheon at The Bank on Friday*, STAR TRIB., Dec. 8, 2010, <http://www.startribune.com/sports/gophers/blogs/111530599.html>; *It’s Money in the Bank*, STAR TRIB., Oct. 7, 2010, http://www.startribune.com/sports/gophers/104376223.html?elr=KArksi8cyaiUjc8LDyiUiD3aPc:_Yyc:aULPQL7PQLanchO7DiUr.

chance to secure a new business opportunity that will ensure new revenue for the naming sponsor. Sponsors seek sponsorship relationships that will generate new business and create opportunities for face-to-face interaction with consumers and prospects.²⁸ For example, the Qwest naming agreement included a commitment by the Seahawks and affiliates to purchase a minimum of \$1.5 million in telecommunications services per year from Qwest as well as a commitment to use commercially reasonable efforts to cause other related entities to purchase Qwest services.²⁹

While the highest priority for naming sponsors is still increased visibility and perceived stature, sponsors also seek other benefits included in the package, such as tickets and travel. Part of the allure of a naming rights agreement for a sponsor is the opportunity to gain other sponsorship rights, also known as the “Goodie List.” Nearly every deal includes a prime location suite and tickets for the naming sponsor, the right to host a specified number of meetings and other events at the facility during the term of the agreement. A number of other perks not for sale to the general public are also available, such as travel on the team plane to away games complete with accommodations at the team hotel and dinner with team officials. Another expected benefit is having the sponsor’s brand embedded in the official stadium and on freeway signs leading to the stadium.³⁰

A. SUITE

A naming sponsor’s suite is generally subject to standard conditions set forth in a separate suite lease agreement all suite holders are required to sign. As a suite holder, the sponsor is responsible for entertainment costs associated with food, beverage, and concierge services provided at the request of the naming sponsor during games. Other rules governing the use of the suite are typical of suite agreements and provide for the several restrictions to the suite as is discussed below. Because naming rights are often negotiated in advance of other activities, the suite holder agreement may not be available for review or inclusion as an exhibit to the naming agreement. However, counsel should require the seller to reduce the basic requirements to writing and agree the terms and conditions of the naming sponsor’s suite agreement will be no less favorable than those applied to other suite holders.

28. See *About Qwest Field*, SEATTLE SEAHAWKS, <http://www.seahawks.com/gameday/qwest-field/index.html> (last visited May 30, 2011); Kate Macmillan, *NFL Stadiums: What’s In A Name?*, YAHOO! SPORTS (Sept. 20, 2008), <http://sports.yahoo.com/nfl/news?slug=ys-forbesnflstadiums092008>.

29. See Macmillan, *supra* note 28.

30. See *id.*

1. *Furnishings, Decor, and Alterations*

Suite holders are usually given a menu of options for furnishings, equipment, and floor covering, but cabinetry and countertops are consistent throughout the suites. The appointments are top of the line, such as Cambria quartz countertops, stainless steel sinks and refrigerators, and elite cabinetry. Some venue operators allow suite holders to make alterations to the suite or modify the suite's fixtures, furnishings, or equipment, but most venues provide a menu of options for furniture and equipment from which the suite holder may choose.

2. *Use of the Suite*

All suites have a food and beverage service available, and it is typically implied the beverage service will include alcohol in the naming sponsor's suite. Recent developments, however, may make alcohol service less common, especially if the suite is in a collegiate venue. If alcohol use is of importance to the naming sponsor, counsel should insist the applicable naming agreement or suite agreement specifies there will be no prohibition of the use of alcohol in the suite during games and events. Counsel should further insist the agreement include written provisions providing for a discount in the price of the suite if the owners or operators of the venue prohibit alcohol use in the suite.

Within a naming agreement, there are several possible ways to address alcohol use in the suite. The prospective sponsor should insist on written assurances the sponsor will be allowed to provide alcohol to its guests even if the owner or operator of the venue bans alcohol in the facility. The sponsor should also require the venue operator to agree in the naming agreement not to prosecute the sponsor or any of the sponsor's invitees for bringing in alcohol or attempting to bring in alcohol in violation of any ban. If the seller of the naming rights or suite is not willing to agree to the provisions, the sponsor or prospective suite holder should not agree to the deal.

A recent example of a controversial policy involves the University of Minnesota and its new football stadium on campus. At the time the naming sponsor, suite holders, club members and holders of loge boxes signed their suite and luxury seating agreements, the impression was given alcohol would be permitted in the suites, clubs, and other luxury seating areas. However, before the inaugural season in the new stadium, the University of Minnesota adopted a policy prohibiting the sale or use of alcohol anywhere

in the stadium.³¹ Under the university policy, suite holders could not even bring in their own alcohol for their guests.

The university's ban on alcohol currently includes the DQ Clubroom, which includes two massive bars, and the Indoor Club, which includes complimentary food and beverage service and is the highest-priced seating available in the facility. While alcohol is certainly not essential to enjoying a football or baseball game, it is assumed in nearly every business and political social setting that alcohol will be available. The unavailability of alcohol in a suite virtually guarantees the host will have a difficult time enticing clients and guests to stay for the duration of the event or accept a future invitation.³²

The University of Minnesota adopted its no-alcohol policy in response to the Minnesota Legislature passing a law prohibiting the university from discriminating against ordinary ticket holders who purchase tickets in the bowl seating areas. The law also requires the university to either allow alcohol sales and use throughout the bowl seating areas, except in student and family sections of the stadium, or prohibit all alcohol consumption.³³ The Legislature appeared to be sending a message that if Minnesotans were responsible enough to be taxed for the new Gopher football stadium, the same Minnesotans should be considered responsible enough to enjoy an adult beverage in the stadium they are paying for through taxes. The obvious point of the Legislature's action was to allow the average sports fan, whose taxes were helping pay for the stadium, to enjoy a beer in the cheap seats if university administration and large donors could consume alcohol in the exclusive suites and clubs.

During the 2010 session, the Minnesota Legislature relaxed the restrictions and amended the statute to allow alcohol to be served in premium seating as long as it was also available in one-third of the general seating.³⁴ Despite the concession by the Legislature, the University of Minnesota again refused to compromise, leaving suite holders and club patrons without the option of serving alcoholic beverages to their guests.³⁵

31. Alex Ebert, *No Booze for U Sports Fans*, STAR TRIB., June 25, 2009, <http://www.startribune.com/local/minneapolis/49012236.html>.

32. See David Moltz, *Good Seats, Hard Sell*, INSIDE HIGHER ED (Sept. 22, 2009), <http://www.insidehighered.com/news/2009/09/22/luxury>.

33. 2009 Minn. Laws 3-4.

34. MINN. STAT. § 340A.404(4a)(3) (2010).

35. The University's decision, while controversial, was not universally criticized. The Star Tribune published an editorial supporting the University and recommending the Minnesota Legislature let the University operate the stadium as it sees fit. See Editorial, *Let the U Operate TCF Stadium*, STAR TRIB., Apr. 23, 2010, <http://www.startribune.com/opinion/editorials/91944814.html>.

3. *Repair and Maintenance*

Suite rules usually require suite holders to leave their suite in good order after each use. The venue operator normally handles cleaning after each event and maintains the suite in reasonable repair and good working order. However, suite holders are responsible for any costs, repairs, or maintenance required due to misuse or negligence by the suite holder or guests.

4. *Access*

Most venues provide two sets of keys to the suite door, cabinets, and refrigerator, and retain master keys for the suites. Typical suite agreements reserve the right for the venue operator to enter the suite, to clean or maintain cabinets and refrigerator, to deliver food and beverages, or to check the condition of the suite. Suite holders are prohibited from changing the locks or placing additional locks on doors, cabinets or refrigerators.

B. TICKETS

Most suites come with a prescribed minimum number of tickets for each event. The capacity of suites is usually greater than the number of tickets assigned to the suite, and suite holders are given the option to purchase additional tickets up to the fire code capacity for a predetermined price. Some venues provide suite holders with their supplemental suite tickets in advance at no initial charge and bill the suite holder only if the tickets are scanned at the gate.

C. PARKING PASSES

VIP parking is among the most coveted benefits of sports patrons. The naming sponsor should expect a minimum of one parking pass to all home games for every four suite tickets included in the arrangement. The sponsor should also use the VIP opportunity to secure additional parking passes for the other premium seating packages the sponsor purchased in conjunction with the naming agreement.

D. CLUB MEMBERSHIPS

New sports venues have a variety of clubs, covering a broad variety of price points. While smaller and older ballparks, arenas, and stadiums may have two or three clubs, newer facilities like Citizens Bank Park and Target Field have a number of exclusive clubs requiring large annual membership fees, as well as open clubs and restaurants available to the general fan base.

A naming sponsor could potentially secure access to the clubs by including a provision within a naming agreement.

E. CONCERTS AND OTHER PUBLIC EVENTS

Other types of events, such as concerts, may take place at the venue. If the naming sponsor would want to attend other events, it should insist on the right to purchase or decline to purchase event tickets to concerts, shows, and other performances at a price per ticket that does not exceed the average reserved seat ticket price for that event in the venue. The sponsor's right to purchase should include a number of tickets equal to the capacity of the suite, but should not require the suite holder to purchase any minimum number of tickets to any performance. In order to maintain the suite for the naming sponsor, counsel should ensure the agreement does not allow the venue to rent the naming sponsor's suite to a third party if the suite holder declines to purchase tickets to a particular concert or event.

F. PRIME SEAT PURCHASE PRIORITY

Another benefit is the naming sponsor's potential opportunity to purchase a specified number of prime location season tickets with the right to select seats ahead of all others. However, the sponsor's right to renew season tickets will be subject to the ordinary season ticket fees applicable to those prime locations. Opening a new venue typically involves a turf battle between major donors or corporate sponsors and longtime season ticket holders who have maintained prime location seats in the old facility without paying seat license fees or preferred seating fees. The venue operator decides how to rank each party's seat location priority in the new venue, but the naming sponsor essentially jumps to the head of the selection line for all prime seats within the venue.

Some agreements include the price of a specified number of prime seats into the base naming agreement, but others prefer to keep all but the prime suite as a separate commitment. Naming agreements typically last for twenty or more years, and the price of club memberships, loge boxes, prime location seating and associated costs can easily add another twenty to thirty percent to the sponsor's annual commitment. Keeping clubs, loge boxes, and prime bowl seating commitments separate allows the sponsor the flexibility to cut back on expenses if economic conditions change.

The naming sponsor should also consider whether it would want to reserve the right to assign all or a portion of its luxury seating rights to key employees. The seller may be resistant to grant such assignment rights because it may give up too much control over its ticket inventory, but the

seller may actually benefit because assignments of the sponsor's luxury seating to employees will typically include the retiring chairman, directors, CEO, and other key executives who were instrumental in approving the decision to enter the naming agreement with the seller. If the seller is a university, the individuals who receive the assignment of luxury seating rights are likely to continue to be loyal to the athletic programs and become donors who support the academic mission of the university, as well, providing the opportunity for the institution to benefit financially from the assignment of the naming sponsor's prime ticket rights to retiring executives.

When a company sponsors a collegiate facility, the sponsor will want an opportunity to purchase a specified number of prime tickets to other sporting events in other campus venues. Naming sponsors of professional and collegiate facilities should receive the opportunity to purchase prime tickets to concerts and other non-athletic events held in the facility.

G. VIP EVENTS AND RECEPTIONS

Passes to all pre-game VIP events that serve food and beverages may also be available to the naming sponsor. The number of complimentary passes to each pre-game event typically equals the number of corresponding game tickets provided with the naming sponsor's suite. However, a sponsor may wish to include a right to purchase a specified number of additional invitations.

H. TRAVEL AND OTHER EXPERIENCES NOT FOR SALE TO THE GENERAL PUBLIC

VIP trips along with major college football teams may also be an available, and desirable, perk for a naming sponsor. The seller of the naming rights may provide a trip for four individuals per season on the team charter plane as part of the team's official entourage for one away game, complete with hotel, ground transportation, and food. The seller may also provide tickets for four persons to one conference away football game per year during the regular season. The specific game is usually negotiated season-by-season and is subject to certain limitations with regard to the availability of tickets and seats on the plane for a particular away game. But the commitment to one game per season remains firm.

XI. SUCCESSES AND FAILURES OF NAMING SPONSORS

Citizens Bank Park in Philadelphia is successful stadium branding from the naming sponsor's perspective and serves as an example of what a

naming sponsor's counsel should strive to accomplish. Virtually every depiction of Citizens Bank at the ballpark uses the exact same color scheme, stylized lettering, trademarks and images.³⁶ The consistency is apparent in the largest stadium name sign, the entry gates, the first aid stations, the children's game area, and even the garbage cans. With exception to the cup holders, everything utilizes the distinctive green and white colors found at every Citizen's Bank branch and ATM.

The large, illuminated stadium name is situated beneath the main scoreboard just above the open concourse in left field upper deck, a location that ensures every home run hit to left field will have the Citizens Bank Park sign in the background, and guarantees every associated highlight on national and local television includes a subtle advertisement for the bank. A distinctive green glow from the signs is also apparent throughout the city as Citizens Bank's ATMs are branded with the same shade of green as fans see everywhere at the ballpark. Citizens Bank's branding team managed to align every sign, message, and touch point at the ballpark not only with the other ballpark components, but with the bank's branding of branches, loan production offices, ATMs, and advertising outside of Citizens Bank Park.

Bill Schley and Carl Nichols, Jr. refer to such consistency as TCA or Total Consistent Alignment.³⁷ In their book, *Why Johnny Can't Brand*, Schley and Nichols use the analogy of a big brother poking his little brother lightly over and over in the same exact spot in the exact same way to explain how consistent branding messages build up over time until they prompt a reaction from the target.³⁸ For Citizens Bank and other naming sponsors who wish to target consumers to switch to the sponsor's brand or remain loyal to its brand, the key is consistency at every touch point. Touch points are opportunities of interaction with a fan, and taking advantage of touch points includes maintaining the consistent branding at every sign, entrance, nametag, garbage can, video or print advertisement, and depiction of the sponsor's brand on anything the fan uses or sees at the sports venue, at the sponsor's place of business, or anywhere the sponsor conducts any advertising or business activity.

Schley and Nichols assert such relentless consistency and repetition can make the sponsor's brand more tangible to consumers.³⁹ Counsel to the naming sponsor should endeavor to educate and advise the client to follow

36. The following paragraphs represent the Author's observations from visiting the venue and touring the city of Philadelphia.

37. BILL SCHLEY & CARL NICHOLS, JR., *WHY JOHNNY CAN'T BRAND REDISCOVERING THE LOST ART OF THE BIG IDEA* 39 (2005).

38. *Id.*

39. *See id.* at 131-32.

the TCA formula like Citizens Bank did, and encourage the client to align all of its branding touch points within the stadium with the sponsor's branding of its products and services away from the stadium. In order to be entirely successful, though, counsel must understand consumer contact concepts fully, negotiate the right for the naming sponsor to employ such strategies in the sponsor's stadium branding, draft contract language clearly spelling out the client's branding rights at the stadium, and establish an implementation plan the client can follow to make the most of the opportunities the naming rights provide.

On the other hand, PNC Park in Pittsburgh is an example of what can happen if the client does not have a coordinated naming rights strategy and marketing plan. PNC's branding within the venue, while still a fan-friendly ballpark, is an extension of the bank's overall branding dysfunction in the marketplace. The PNC Park name appears atop the main scoreboard accompanied by a PNC horizontal corporate logo, but the PNC advertisement on the body of the scoreboard utilizes different colors, different stylized lettering, and a PNC pinwheel-shaped corporate logo.⁴⁰ As recently as 2006, the bank employed no less than three other variations of the stylized PNC word mark throughout the ballpark and away from the ballpark.

Schley and Nichols identified such inconsistency and lack of branding focus as one of the twelve most common mistakes made by amateurs: "Chopping down your trees before they grow . . . changing your message too often."⁴¹ Branding messages include not only written text, audio, and video, but also stylized word marks and logos. Given PNC's lack of branding consistency within the ballpark, it is questionable whether the bank is reaching its target consumers, let alone convincing them to switch to or remain loyal to the bank.

PNC is not alone among naming sponsors exhibiting symptoms of dysfunctional marketing as manifested in unfocused, inconsistent, and ineffective stadium branding. Nor is PNC alone when it comes to thoughtless location of the stadium name. With regard to large displays of the stadium name, bigger is not necessarily better. Like real estate generally, the placement of the stadium name and logo within the facility must consider "location, location, location."

Other naming sponsors have fallen victim to placement of the stadium name high atop the scoreboard like PNC and missed the opportunity to have

40. See *Scoreboard at PNC Park*, ABOUT.COM, http://pittsburgh.about.com/od/pictures/ig/pnc_park/scoreboard.htm (last visited June 8, 2011).

41. See SCHLEY & NICHOLS, *supra* note 38, at 47-48, 131-32.

their corporate identity appear prominently and frequently in the background during live television and replays of game action. At AT&T Park, the stadium name appears high above the new high definition video board and stadium clock, while Toyota, Safeway, and Budweiser occupy the prime location in video and still photos of the scoreboard and center field action.⁴² Chase Field, U.S. Cellular Park, and Tropicana Field display the stadium name above even the highest level, which assures their naming sponsors will rarely have their respective corporate names appear as part of game action video or photos.⁴³ Although it is always beneficial to the naming sponsor to have consumers see an illuminated stadium name from the freeway or the air, television exposure provides the most potential for worldwide exposure. Therefore, it is essential for the client's name to appear in the location most likely to be seen on live television and video replays because the sponsor's customers and potential customers are not only from the local market, but from the market represented by the visiting team. Counsel must be aware of the client's marketing strategy and demographics of customers or prospective customers the client hopes to influence by investing in naming rights. Counsel's strategy in negotiating and drafting a naming agreement must take into consideration the client's objectives regarding elevating brand awareness and being aligned with the sports team that is the primary tenant in the venue to be named.

XII. CONCLUSION

Some clients who decide to invest in naming rights think too much about tangible benefits such as free tickets or specific sign locations instead of intangible benefits of acquiring naming rights such as the elevation in corporate stature that will result from disciplined adherence to a sound strategic marketing plan augmented by the sponsor's investment in naming rights. Once naming rights become more tangible, counsel can discuss early on marketing strategy with the client in order to be more effective advocate for your client throughout the process of acquiring and exploiting naming rights. Encouraging the client to develop a consistent marketing strategy as part of the stadium branding initiative is a means to ensure the stadium touch points are relentlessly consistent within the venue and with

42. See *AT&T Park Scoreboard*, IMAGEKIND, <http://www.imagekind.com/AT&T-Park-Scoreboard-art?IMID=766103a3-5d55-470e-ba94-0f2d9874d119> (last visited July 9, 2011); Chris Shuttlesworth, *AT&T Park Gets High-Def Upgrade*, MLB.COM (Mar. 27, 2007), http://houston.astro.mlb.com/news/article.jsp?ymd=20070328&content_id=1862944&vkey=spt2007news&text=.jsp&c_id=sf.

43. See *MLB Stadiums That Need New or Updated Scoreboards*, BASEBALL FEVER BLOG (Aug. 18, 2008, 2:10 PM), <http://www.baseball-fever.com/showthread.php?82271-MLB-Stadiums-That-Need-New-Or-Updated-Scoreboards>.

the client's branding of its products and services away from the stadium. Although branding is important, counsel must also be effective in negotiating and drafting the naming rights agreement and must address what happens after the agreement is finalized. How the naming sponsor utilizes the opportunities created by new relationships and how the sponsor displays itself will determine whether the investment in naming rights was worthwhile.

APPENDIX A



SCOREBOARD AD INVENTORY

Ad	Description	Sponsor		Display Sq. Ft.	Inventory Units	Ad Share	
		Units	Minutes				
Whi	Ad panel with Rotating Sponsors (20' x 10')	6	10	60	200	12,000	13%
SF	Ad panel with Rotating Sponsors (20' x 10')	6	10	60	200	12,000	13%
MC	Ad panel with Rotating Sponsors (20' x 20')	4	15	60	400	24,000	25%
Sub	Ad panel with Rotating Sponsors (20' x 10')	4	15	60	200	12,000	13%
Nor	Ad panel with Rotating Sponsors (20' x 10')	4	15	60	200	12,000	13%
M	Ad panel with Rotating Sponsors (20' x 10')	10	6	60	200	12,000	13%
WM	Ad panel with Rotating Sponsors (20' x 10')	10	6	60	200	12,000	13%
TOTAL Scoreboard Inventory				420	1,600	96,000	100%