

## Is it Time for Athletes to Demand Reciprocal Morals Clauses in Their Endorsement Deals?

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While the confetti is still settling after the most exciting Super Bowl in recent memory, discussion has turned to the RSVP list for the traditional White House victory reception. At least six members of the New England Patriots are reportedly boycotting the ceremony in protest of the policies of the new Trump administration.

Emboldened by public outcry and the growing reach of social media, athletes are increasingly finding their voices on social issues. As a result, the intersection of politics and sports has never been more destined for collisions.

Just last week, Under Armour CEO Kevin Plank praised President Donald Trump's passion and called him a "real asset to the country." The backlash came quickly on social media and several of Under Armour's top athletes—including Dwayne "The Rock" Johnson, Misty Copeland, and Stephen Curry—decried the statements as being contrary to their values and beliefs. Curry, one of Under Armour's highest paid endorsers, said that "there is no amount of money, there is no platform I wouldn't jump off, if it wasn't in line with who I am."

Curry is under contract with Under Armour through 2024. What if he decides before then that Under Armour's values are no longer aligned with his? Can he really take that jump? The answer depends on the terms of his contract and, more specifically, whether he can rely on a morals clause.

### **Origin and Rise of Morals Clauses in the Entertainment and Sports Industries**

Morals clauses give a party a right to terminate a contract if it would be injurious to that party's reputation or image to remain bound. The clauses are common in endorsement deals and typically permit a sponsor to terminate an endorser's contract in circumstances ranging from the endorser's commission of a crime to the endorser's engaging in an act that reflects unfavorably on the company.

These clauses first appeared in movie industry talent contracts in the 1920s on the heels of the Roscoe "Fatty" Arbuckle scandal. Arbuckle was one of the biggest stars under contract with Paramount Pictures until a young actress died at one of his parties. Although Arbuckle was acquitted of criminal charges, the public fallout was calamitous for both Arbuckle and Paramount. In response to this incident, Universal Studios, and other movie houses, began to include language that gave them a right to cancel contracts if their actors did anything that was outrageous or offensive by community standards.

By the late 1940s, morals clauses were invoked in response to political conduct as well. During the height of the McCarthy era, a number of directors and screenwriters were targeted by the House Committee on Un-American Activities, which was investigating communist influence in Hollywood. When some of these targeted individuals denounced the investigation and refused to cooperate, the studios terminated their contracts, relying on the morals clauses contained in them.

Morals clauses soon caught on in the sports industry as well. They have now been collectively bargained into the standard player contracts used in the NFL, NBA, MLB, and NHL, and they are a staple in all athlete endorsement contracts. In recent years, these clauses were invoked to terminate the endorsement contracts of Kobe Bryant and

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Michael Vick when they faced criminal charges, Tiger Woods during his adultery scandal, and Lance Armstrong when he was accused of being a drug cheat. They also have been used to curb political and religious commentary, as NFL running back Rashard Mendenhall learned in 2011 when Hanesbrands terminated his endorsement contract after he sent a number of tweets questioning why anyone would celebrate the death of another human being, even if it was Osama bin Laden.

### **Morals Clauses are Rarely Reciprocal**

While morals clauses have become popular contract devices, they typically are drafted for the benefit of employers or sponsors only.

But don't athletes and entertainers also have reputations to protect?

Legendary crooner Pat Boone believed that he did, and his is the earliest known example of a rare "reverse" morals clause. Boone was a popular singer with a wholesome image, cultivated by his devout Christianity and his abstention from cigarettes and alcohol. In the late 1960s, he was negotiating a deal with Bill Cosby's talent label when he grew concerned about the label's release of an album cover depicting a semi-nude John Lennon and Yoko Ono. Boone insisted, and the label agreed, that the contract would lapse if the label "did anything unseemly."

Despite Boone's early example, reciprocal morals clauses did not catch on in the entertainment or sports industries, in part because of a historical imbalance in negotiating power. As the turn of the century approached however, this imbalance began to level, and the arguments in favor of reciprocal morals clauses strengthened.

In 1999 for example, Enron signed a 30-year, \$100 million contract with the Houston Astros, which gave Enron naming rights to the Astros new ballpark. Just two years later Enron was embroiled in scandal and it filed what was then the largest bankruptcy in U.S. history. Facing a public relations nightmare and with no morals clause in its contract, the Astros organization was forced to buy the naming rights back from Enron and its creditors before marketing them elsewhere.

Golfer Vijay Singh was caught in a similar situation in 2009 when the Stanford Financial Group was implicated in a Ponzi scheme scandal just one month after he signed a 5-year, \$8 million endorsement contract with them.

In 2013, Jay-Z faced considerable public backlash for his endorsement ties to Barneys when allegations of racial profiling at the store were made public.

### **Athletes and Entertainers Are Now Primed to Insist on Reciprocal Morals Clauses**

These recent examples show that endorsers have significant interests to protect in what has become a more lucrative and competitive endorsement market. Many of these endorsers also have the leverage to demand that protection.

Going back to the example of Stephen Curry, Kevin Plank described Curry as the centerpiece of Under Armour's billion dollar basketball plan in a 2015 call with his investors. That same year a Morgan Stanley analyst noted that Curry's rise "could be a tipping point signaling the end of Nike's basketball dominance," and that Curry could end up being worth as much as \$14 billion to Under Armour. Additionally, Curry has more than 8 million Twitter followers, all of whom are likely to purchase some form of athletic attire.

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Given the interests at stake, the immense value that they provide to their sponsors, and the markets they reach on a daily basis, athletes are now in a prime position to insist on some form of moral clause protection in their endorsement contracts. Less leveraged athletes could demand, at a minimum, that they be allowed to terminate in the event of a sponsor's bankruptcy or criminal investigation. Athletes like Stephen Curry, however, can use their leverage to demand broader moral clause protections, which will ensure that their values are aligned with those espoused by their sponsors, and help them effect social change.