

## • IMAGINE YOU'RE A HIGHLY SUCCESSFUL SPORTS STAR...

### How Guernsey is positioning itself to become the key global centre for image rights registration and management

#### THE GOOD

Imagine that you wake up tomorrow morning in a palatial country mansion. You're an extremely talented and highly successful sports star, well-known throughout the world and admired by millions. What would you do with this fame? Become the face of a sports brand for a large pot of cash? Keep a low profile and limit your public exposure? Use your fame to promote a charitable cause close to your heart?

Regardless of whether fame is exploited or guarded, in today's celebrity obsessed world it is important that individuals have control over the use of their name, likeness, distinctiveness and personality: their 'image'. Many jurisdictions have recognised an individual's right to their image - or 'image right' - such as the right of publicity in the US. In the UK, celebrities have sought to control their image using trade marks, data protection, passing off and advertising standards. However, very few jurisdictions have placed image rights on a statutory footing and none allow for the actual registration of these rights. Guernsey is about to change this.

On 30 September 2011, the States of Guernsey (the island's parliament) approved the drafting of a new law that will see the introduction of registrable image rights, potentially in time for London's Olympic Games and the 2012/13 football transfer season. Celebrities, sports stars and other recognisable figures (or their estate where deceased) will be able to register a Guernsey image right protecting the constituent parts of their 'image', including name, distinctive expressions, gestures, characteristics and attributes.

A recent Forbes study found that Tiger Woods is considered the most valuable sports star, with the Tiger Woods "brand" being valued at US\$55 million. Nike famously paid US\$200 million to Woods for 10 years of endorsement. Image rights are clearly big business. The Guernsey regime will create a recognisable and marketable asset, with potentially very significant value. Once introduced, those with an image to protect would be wise to add a Guernsey image right to their portfolio of intellectual property rights.

#### THE TAX

Now imagine the country mansion you woke up in is in Switzerland. You're scheduled to play a two-week competition in the UK later this year and, if you were to win, you would pocket £500,000. However, a sports brand pays you a significant sum for the use of your image in the US, Japan, China and Australia and, due to the UK's tax regime, your two week stay on the 'sunny' island will cost you £1 million in UK taxes. So taking part is going to leave you £500,000 out of pocket...at best. There are alternative competitions being held in other countries. A win at a German competition could net you £250,000, including payments to the German tax man. That's a £750,000 swing when compared to the UK competition. What would you do?

This may be a simplified scenario, but it is very real for some of today's sports stars. The UK does not distinguish between tournament winnings and endorsement payments for the purposes of income. HMRC will tax a proportion of global income for every day spent in the UK. This is why tennis player Rafael Nadal has chosen not to play at Queen's Club next year and why other sportspersons, such as Usain Bolt, are shunning UK competitions. Although it is impossible to predict how this area of tax may

develop over the coming years, registering a Guernsey image right and structuring income through the licensing of such right could help to distinguish between a sports person's income arising from commercial endorsements and that from actually playing their sport.

#### THE BAD

So you're the face of a multi-national company and living the dream. Unfortunately, it can only go downhill from here. Let's assume you do something not befitting of your pristine image. It has the potential to destroy your reputation and subject you to intimidating media attacks. How far would you go to protect your image?

Super-injunctions have developed in the English courts, evolving out of an individual's right to privacy, and create a virtual information blackout. Although privacy may be an important human right, a super-injunction could be used to protect the commercial value of a person's image. It seems unfair that the protection of the court might be used for commercial gain. Super-injunctions are a developing tool and controversial, but they make one thing clear: a person's image warrants protection. The recent calls from the UK judiciary for parliament to establish a framework to balance the need for privacy and the freedom of the press will be answered by Guernsey's Image Rights legislation. It seems only a matter of time before other jurisdictions follow where Guernsey is leading.

#### ANYTHING ELSE?

The introduction of image rights is not the only advantage Guernsey has to offer from an IP management perspective. It may be extremely beneficial for IP holders to locate all of their IP in Guernsey. With innovative corporate structures like protected cell and

incorporated cell companies, a beneficial tax regime and world class professional service providers, Guernsey is a clear choice for holding IP and other assets.

Although the full impact of Guernsey's regime is yet to be realised, the island is positioning itself to become the key global centre for image rights registration and management.

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