
Morality Clauses in Tennis Agreements

Tennis, Social Media and the Digital World

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1 Introduction

Tennis is a global sport, and the top professional players are its great ambassadors. Companies associate their brands with the images of these players as fans consider some of them celebrities. This is achieved through traditional sponsorship contracts. If a scandal occurs due to the misbehavior that affects the underlying agreement, typically coming to the public domain through its circulation on social media, the parties endeavor to protect themselves from any adverse impact by including in these contracts a specific provision known as a “morality clause.” This chapter will provide an overview of the tennis ecosystem, its business and industry, and explain the origin, history, relevance, types and characteristics of this clause, with special attention to its place in the ever-expanding digital world.

Played in more than 215 countries around the world by more than 100 million people, tennis is one of the most popular sports and probably the most practiced racket sport in the world. During recent decades, it has become considerably popular, and in addition to approximately 100,000 clubs around the world, it is also played in parks and public facilities on more than half a million tennis courts. As per the gender distribution of players, data from the latest research concludes that tennis is played by 41 percent of women and approximately 59 percent of men, thus demonstrating that it is the most gender-balanced sport in the world. The game is taught by more than 150,000 coaches around the world, all of whom are responsible for introducing anyone to the advantages of this excellent sport.¹ Nonetheless, tennis as a spectacle also attracts more than

¹ See on this International Tennis Federation, “ITF Global Tennis Report” (2024).

a billion fans around the world who follow the achievements of the great players on the professional circuits. Certainly, tennis can be considered a global show due to the large crowds of fans it attracts. The business is supported by a global tennis industry made up of a variety of actors with varying roles in the different areas of its existence.²

From a historical perspective of tennis as a business, the tennis industry has grown from a sport reserved for the highest social classes to an activity that has managed to be present at all levels of society.³ In this context, the latest data indicates that between 2023 and 2030 the size of the global tennis market will reach US\$4.59 billion.⁴

As per the global sports governance, tennis is composed of a classic structure that includes the International Tennis Federation (ITF) as the body that governs the destinies of the sport in the international context, to which six regional associations (Tennis Europe – TE, Asian Tennis Federation – ATF, Oceania Tennis Federation – OTF, Confederation of African Tennis – CAT, Confederación Sudamericana de Tenis – COSAT, and Confederación de Tenis de Centroamérica y el Caribe – COTECC) belonging approximately to the different continents and around 200 member nations are affiliated. In turn, as is the case in most sport disciplines, the national federations consider their respective provincial associations, players, coaches, officials and clubs as their affiliated members.⁵

The fundamental task of all of these federative organizations is to govern tennis in their respective areas of influence, whether international, national or local.⁶ Thus, they are responsible for carrying out different tasks, which may include but are not limited to the following: the promulgation of rules and regulations for resolving disputes in competitions organized under their aegis; the representation of teams from their organization in competitions in which they participate; the organization of tournaments and championships of different categories, which also includes the publication and management of player and team

² Infosys Tennis Radar, “The Next Big Era” (2020).

³ See for an overview Eric Barget, “The Economics of Tennis” in Wladimir Andreff and Stefan Szymanski (eds), *Handbook on the Economics of Sport* (Edward Elgar, 2006), 418.

⁴ Grand View Research, “Tennis Equipment Market Size Worth \$4.59 Billion by 2030” (2022), available at: www.grandviewresearch.com/press-release/global-tennis-equipment-market.

⁵ ITF Constitution (2023).

⁶ For a historical overview of tennis governance, see Robert J. Lake, “Tennis Governance: A History of Political Power Struggles” in Robert L. Lake (ed.), *Routledge Handbook of Tennis* (Routledge, 2019), 341.

rankings; the provision and organization of training for players of different levels, which may include the management of one or several training centers and talent selection programs for those players; representation and participation before the corresponding sports entities; the organization of development programs, promotion and participation of tennis in order to achieve a greater number of players and fans; the education of coaches, officials, players and other stakeholders, among others.⁷

As per the sports governance at the international and professional competitive level, tennis has a characteristic that distinguishes it from other sports, chiefly the existence of two organizations that represent the interests of professional players and their circuits: the Association of Tennis Professionals (ATP)⁸ for male players and the Women's Tennis Association (WTA) for their female counterparts, which organize their own professional tours that are held in forty countries around the world.

Furthermore, due to its great relevance and historical tradition, it is important to point out the existence of another organization, the Grand Slams, which encompasses the four most important individual professional tournaments on the international calendar, namely, the Australian Open, Roland Garros, Wimbledon and the US Open.⁹

Manufacturers, tournament and event organisers, player agents, court builders, media and other relevant stakeholders play a crucial role in the global tennis industry that shapes the current complex, dynamic and evolving tennis ecosystem. In this scenario, tennis looks into the future, trying to position the game as equal, inclusive, sustainable and innovative.

Among all the various tennis constituents, players are at the center of the game, and among them, the professional players, and the great champions who are truly considered as legends of the sport in a way

⁷ See Miguel Crespo, Dolores Botella-Carrubi and Jose Jabaloyes, "Innovation Programs of the Royal Spanish Tennis Federation" (2022) 175 *Technol Forecast Soc Change* 1.

⁸ For the ATP Tour, see Amy D. Gibson, "The Association of Tennis Professionals: From Player Association to Governing Body" (2010) 10 *J Appl Bus Econ* 5, at 23, as well as Alessandra Sorrentini and Tommasina Pianese, "The Relationships among Stakeholders in the Organization of Men's Professional Tennis Events" (2011) 3 *Glob Bus Manag Res: Int J* 141.

⁹ A comprehensive view is provided in Robert J. Lake, "Grand Slams: Tennis at the Forefront of Women's Professionalised Sport" in Ali Bowes and Alex Culvin (eds), *The Professionalisation of Women's Sport: Issues and Debates* (Emerald, 2021), 19. See also a comparison among these events as per prize money in Martin Svoboda and Zuzana Rakovská, "How Big Is the Prize Money Gap? Analysis of Prize Money in 2016 Grand Slam Tournaments" (2017) 8 *Financial Assets & Investing* 1, at 40.

that culminates in the pinnacle of tennis heroes.¹⁰ They are usually the ones who gather the attention in a sport that has generated iconic champions since its very beginnings by combining style, etiquette, tradition and an appeal that identifies with cultures, nations and individuals.¹¹

2 Players, Sponsors and Endorsement Agreements

The popularity of tennis on a global scale puts the great champions at the center of attention around the world as this focus is enhanced by the prominent role of media proper and social media in the current digital environment. In most cases, great tennis players are rightly considered role models by people in general and fans in particular who follow with interest not only their performance on the court, but also everything that occurs off it.¹² In this context, it is not surprising that sponsoring companies vigorously seek player endorsements and wish to associate their brand with the image of both the sporting and the social success of top tennis players, particularly those considered idols or celebrities.¹³ Through this association, the sponsoring companies ensure that fans and potential clients understand that the sponsored tennis player supports

¹⁰ There is an abundance of studies on the consideration of tennis players as heroes and celebrities. The case of Tim Henman is discussed in Gill Lines, "Villains, Fools or Heroes? Sports Stars as Role Models for Young People" (2011) 20 *Leis Stud* 285. The scenario in Germany with Steffi Graf and Boris Becker is analyzed in Anne Feddersen and Wolfgang Maennig, "Sports Heroes and Mass Sports Participation – the (Double) Paradox of the 'German Tennis Boom'" (2009) 29 *Hamburg Contemporary Economic Discussions* 1, at 29. The image of former world number one Simona Halep in Romania is explored in Diana-Luiza Dumitriu, "Media Construction of Sport Celebrities as National Heroes" (2018) 20 *Revista Română de Comunicare și Relații Publice* 2, at 21. In the US context, see Jacqueline D. Lee and Andrea N. Eagleman, "From Tennis Skirt to Catsuit: A Qualitative Analysis of Serena Williams' Impact on Women's Tennis Fashion" (2013) 7 *J Contemp Athl* 1, at 27.

¹¹ The concept of cultural economy of tennis is explored in Barry Smart, "The World's Game? Globalisation and the Cultural Economy of Tennis" in Lake, *Routledge Handbook of Tennis*, 96. From a national endorsement perspective, the case of the famous Thai tennis player Paradorn Shrishapan is discussed in Fabrice Desmarais, "Global Issues in Selecting Athlete Endorsers for National Markets: A Macroinvestigation" (2014) 27 *J Glob Mark* 308.

¹² An overview is provided by Mara Konjer, Michael Mutz and Henk Erik Meier, "Talent Alone Does Not Suffice: Erotic Capital, Media Visibility and Global Popularity among Professional Male and Female Tennis Players" (2019) 28 *J Gend Stud* 1, at 3.

¹³ For an interesting example on the branding of women tennis players, see Norman O'Reilly and Anne L. Braedley, "Celebrity Athletes and Athletic Clothing Design: Branding Female Tennis Players" (2008) 3 *Int J Sport Manag Mark* 119.

the brand and, therefore, a relationship is established that both parties believe will be favorable for their respective interests.¹⁴

This mutual endorsement implies a benefit that usually occurs if the relationship develops within the general channels of the legal business and as long as both parties respect what was agreed.¹⁵ The positive economic value of tennis celebrity endorsements and the considerable financial and social impact of player-related sponsorship on specific aspects such as return on investment, purchase habits, brand identification, marketing recognition and other indicators has been extensively studied in the literature.¹⁶

Tennis players are usually at the top of the lists of endorsed athletes.¹⁷ Historically, they have been considered among the most marketable athletes as their image has usually transcended the tennis court and impacted on brand preference, user satisfaction, customer appreciation and, most importantly, purchase intention.¹⁸

In this scenario of an endorsement cooperation, the benefits are high when the underlying relationship is well managed by both parties and the desired alignment is achieved. However, the attendant risks and potential negative outcomes can also be high, as it is well known that on some occasions, both in sport in general and tennis in particular, sponsored athletes or endorsement organizations may be involved in situations labeled as scandalous and which are obviously not desired by any of the parties.¹⁹ Scandals in sports settings have been defined in a variety of

¹⁴ The difference between technical sponsorship and endorsement specifically applied to tennis is explained in Vlad Roșca, "Celebrity Endorsement in Advertising" (2010) 2 *Manag Mark-Craiova* 365.

¹⁵ See Juan Luis Nicolau and María Jesús Santa-María, "Celebrity Endorsers' Performance on the 'Ground' and on the 'Floor'" (2013) 24 *Mark Lett* 143 (for a discussion of Rafa Nadal).

¹⁶ See Anita Elberse and Jeroen Verleun, "The Economic Value of Celebrity Endorsements" (2012) 52 *J Advert Res* 149. Also Dirk F. Gerritsen and Saskia van Rheenen, "The Value of Winning: Endorsement Returns in Individual Sports" (2017) 28 *Mark Lett* 371. For the impact of Rafa Nadal on Spanish tourism, see Juan Luis Nicolau and María Jesús Santa-María, "Sports Results Creating Tourism Value: Rafael Nadal's Tennis Match Points Worth €12,000,000" (2017) 23 *Tour Econ* 697.

¹⁷ An interesting comparison is provided by Gashaw Abeza, Norm O'Reilly, Benoit Séguin et al., "The World's Highest-Paid Athletes, Product Endorsement, and Twitter" (2017) 7 *Sport Bus Manag: Int J* 332.

¹⁸ The case of the success of tennis in Serbia and its impact on customer purchase intention is explored in Sretenka Dugalić and Snežana Lazarević, "The Impact of Celebrity Athlete Endorsement on Purchasing Habits" (2017) 14 *FU Phys Ed Sport* 435.

¹⁹ For the specific case of a given endorsement agreement rejected by the WTA, see John L. Crompton, "Potential Negative Outcomes from Sponsorship for a Sport Property" (2014) 19 *Manag Leis* 420.

ways as they have attracted considerable attention from the academic literature. Due to the difficulty of adhering to a single definition, it is perhaps more appropriate to mention some of the key aspects identified as the main characteristics of a scandal.²⁰ These include an action that: (1) is either unethical or illegal; (2) involves multiple parts; (3) occurs or it is believed to have occurred; (4) affects the reputation and integrity of the sport and its stakeholders; (5) is of public notice; (6) can happen either on- or off-field; (7) implies a transgression of social norms or values; (8) causes public indignation.

Sports scandals have also been typified according to their most salient features. Authors have distinguished among: (1) competition scandals (i.e. doping, unsportsmanlike conduct); (2) governance scandals (i.e. corruption, manipulation); and (3) off-field scandals (i.e. from minor incidences such as social media posts to violence or murder).²¹ These scandals are often triggered because of unwanted conduct by one of the parties. The most usual concerns inappropriate ethical (i.e. cheating, opinions or views), illegal or criminal behavior (i.e. doping, betting or drug abuse) by the endorsed athletes. Other cases have witnessed more serious criminal conduct (i.e. assault, sexual abuse, homicide, etc.). In this scenario, some names of athletes who have seen their sponsoring companies cancel their sponsorship contracts after having been involved in scandals that became public include great champions such as Mike Tyson, Tiger Woods, Oscar Pistorius, Michael Phelps, Marion Jones, Manny Pacquiao, Ray Rice, Gilbert Arenas, Barry Bonds, Jason Giambi, Adrian Peterson, Michael Vick, Wayne Rooney, Ben Johnson, Rashard Mendenhall and Ronaldinho, among others.²² In tennis, probably the best-known case in recent years was the one involving Maria Sharapova.²³

²⁰ Some of the most relevant studies on the definition of scandals in sport may be found in Stephanie Hughes and Matt Shank, "Defining Scandal in Sports: Media and Corporate Sponsor Perspectives" (2005) 14 Sport Mark Q 214; and Sarah J. Kelly, Clinton S. Weeks and P. Monica Chien, "There Goes My Hero Again: Sport Scandal Frequency and Social Identity Driven Response" (2018) 26 J Strat Mark 56.

²¹ For an in-depth study, see Mark Ludwig and Inga Oelrichs, "More than a Marginal Phenomenon: Relevance and Content-Related Aspects of Mediated Sport Scandals" (2020) 17 Sport & Gesellschaft 185.

²² A comprehensive list including descriptions and examples of many cases is provided in Miguel Crespo, *Las Cláusulas de Moralidad en los Contratos de Patrocinio Deportivo* (Reus, 2019). The ethics perspective of athlete scandals is explored in Felicia M. Miller and Gene R. Laczniak, "The Ethics of Celebrity-Athlete Endorsement: What Happens When a Star Steps Out of Bounds?" (2011) 51 J Advert Res 499.

²³ In the case of Maria Sharapova and the way in which sponsorship crises can affect brands, see Jakob Ivarsson, Carolin Bruder and Helena Lübeck, "Should We Stay or Should We

There are also scenarios in which someone in the player's entourage (i.e. a coach, captain, agent, family member, etc.) is the one directly involved in controversial behavior.²⁴ Another situation arises where the endorsement company engages in conduct that the sponsored player or organization considers as likely to cause a loss of reputation and is therefore contrary to their interest. In many cases, these situations involving players, teams or federations have considerable consequences which both parties should effectively prevent and address.

3 Reasons for Agreement Termination and Morality Clauses in Tennis

Sport endorsement agreements as all contracts are based on trust and goodwill. They usually include a series of so-called boilerplate clauses, as well as succinct termination terms.²⁵ Sponsorship agreements in sport can be terminated by either party due to a variety of reasons, such as financial or economic causes, a *force majeure* event, impossibility to deliver or perform, applicable legal changes or negative impact due to particular misbehavior.²⁶

Sponsors typically include penalty clauses in sport sponsorship contracts. A novel option in tennis was provided by Yonex, which introduced a controversial contractual clause entitling the manufacturer to financially penalize its sponsored players for each racket they intentionally break.²⁷ This provision refers to the duty-of-care obligation for the

Go? Key Brand Elements that Can Be Affected by Sponsorship Issues and How to Communicate the 'Go-Decision,'" LBMG Strategic Brand Management – Masters Paper Series, 4th edn (2018), available at: <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8963959&fileId=8963960>.

²⁴ In the specific case of tennis, see Akriti Singh, "A Light on the Jurisprudential Remedies to Controversies in Tennis" (2021) 2 Glob Sports Pol Rev 64, for an analysis of the situation generated by the behavior of Illie Nastase during a Fed Cup tie.

²⁵ For a comprehensive overview of the most relevant clauses in sport endorsement agreements, see Ian S. Blackshaw, *Sports Marketing Agreements: Legal, Fiscal and Practical Aspects* (Asser, 2012), 121. The most relevant clauses are covered in Adam Epstein, "An Exploration of Interesting Clauses in Sports" (2011) 5 J Legal Aspects Sport 5.

²⁶ The termination provisions in these specific agreements are explored in Mary Hutchings Reed, Monique N. Bhargava and Jason Myja Kjaer, "Terminating a Sponsorship Relationship: Conditions and Clauses" (2010) 4 J Spons 79.

²⁷ Obviously, this is an unprecedented decision in the world of tennis that has met with some resistance from its sponsored players. See Michael Chammas, "Nick Kyrgios' Racquet Manufacturer Yonex Starts Fining Its Players for Smashes," *Brisbane Times* (January 20, 2017), 1, for more details on Yonex's most prominent sponsored athletes and the brand's decision.

equipment that the sponsor makes available to the sponsored party in the sports advertising sponsorship contract.

It has been noted that in the current global digital world the behavior of top players is under constant public scrutiny. In light of behavior considered unacceptable by the parties, the fans or the public, which in turn may affect the reputation of the endorsement companies or players, it seems appropriate that the parties seek legal tools and alternatives to defend their interests under these circumstances.²⁸ So, how do parties prevent the occurrence of these situations and the negative consequences of the impugned conduct?

A clause that has received considerable attention in contract law due to its general use in sport endorsement agreements is that which is commonly known as the “moral clause.”²⁹ A moral clause in sport sponsorship contracts has been defined as a contractual provision “which identifies one or several conducts carried out by one of the parties that the other party considers unacceptable and which, consequently, allows it to adopt a series of measures linked to the contractual development, among which may be contractual termination.”³⁰ These have been labeled using different terms such as moral, morality, disrepute, good conduct or behavior, ethical, etc. This provision is widely used in almost all sports endorsement agreements due to the obvious increase in sports sponsorship, and because of the usual occurrence of scandals involving sport celebrities.³¹ Its broad use is justified by its growing relevance, as evidence has shown that the impact of players’ behavior, whether off- or on-court, on the endorsement cooperation can have unprecedented financial, ethical and social consequences for both parties. Furthermore, such clauses have been viewed as tools for setting out adequate moral

²⁸ See Qi Ge and Brad R. Humphreys, “Athlete Off-Field Misconduct, Sponsor Reputation Risk, and Stock Returns” (2021) 21 *Eur Sport Manag Q* 153, for the conclusions on the negative effect on endorsers of inappropriate behavior from sport celebrities.

²⁹ The seminal paper is Daniel Auerbach, “Morals Clauses as Corporate Protection in Athlete Endorsement Contracts” (2005) 3 *DePaul J Sport L & Cont Prob* 1, at 1. Other interesting views can be seen in Fernando M. Pinguelo and Timothy D. Cedrone, “Morals – Who Cares about Morals – Examination of Morals Clauses in Talent Contracts and What Talent Needs to Know” (2009) 19 *Seton Hall J Sport & Ent L* 347; and Caroline Epstein “Morals Clauses: Past, Present and Future” (2015) 5 *NYU J Intell Prop & Ent L* 72.

³⁰ See Miguel Crespo Celda, *Las Cláusulas de Moralidad en los Contratos de Patrocinio Deportivo* (Reus, 2019), 34.

³¹ Anne Philipps, “When Crime Pays, Does Anyone Lose?” (2019) 35 *Ent & Sports Lawyer* 29.

standards and fulfillment of social responsibility obligations, and to lead by example by controlling unwanted behavior. Moreover, the importance of these clauses has been further acknowledged by the immediacy with which scandals involving sport celebrities are spread through the media and brought to the attention of sponsors, organizations, fans and the public.³²

Historically, these clauses were first utilized by the film industry in Hollywood during the 1920s as an attempt to control the misbehavior of some of its best-known celebrities.³³ These clauses were then emulated by teams of US professional leagues such as baseball and football, later adapted to contracts with script writers and ultimately ended up as a common practice for all endorsement agreements in the sport and entertainment industry.³⁴ In terms of frequency, the inclusion of morality clauses in the sports industry is very common – not only in sponsorship contracts between endorsement companies and players or other organizations, but also in employment contracts of athletes with teams or organizations that do not include a sponsorship dimension. The clauses are incorporated in endorsement agreements for both professional and college athletes.³⁵ It has been stated that in light of the impact of sport scandals, “moral clauses are more important than ever.”³⁶ From a geographical point of view, it has been noted that morality clauses are used more frequently in Anglo-Saxon countries such as the United States, Great Britain, Canada and Australia. This is because the sports industry is considerably broad and powerful within these countries. Furthermore, these clauses originally came into use in the United States. However,

³² William H. Baaki, “‘Morals Clauses’ in Sports Contracts – More Important Now than Ever Before?” *Sports and Entertainment Law Insider* (September 16, 2014). In terms of the intentions and reasons for the use of these clauses, from an ethical perspective, these provisions have also been considered as a way of linking moral or ethical behavior with endorsement opportunities. They are seen as tools that assist in promoting a sports ethical atmosphere, maintaining the image of the industry and controlling player behavior.

³³ See Noah B. Kressler, “Using the Morals Clause in Talent Agreements: A Historical, Legal and Practical Guide” (2005) 29 *Colum JL & Arts* 235; and J. Haskell Murray, “Morality Clauses and Escrow Accounts in Sports Contracts” (2017) 17 *Va Sports & Ent LJ* 119.

³⁴ The evolution of the use of these provisions in different industries and contexts is covered in Kira N. Buono, “Athletes Sacked by Moral Turpitude Clauses: Presumed Guilty Unless Proven Innocent” (2015) 41 *New Eng J Crim & Civ Confinement* 367.

³⁵ For an example of the application of morality clauses in college sport, see Adam Epstein, “Moral Clauses and UofL Head Basketball Coach Rick Pitino: Extension and Extortion” (2019) 30 *Marq Sport L Rev* 1, at 130.

³⁶ Char Pagar, “Athletes, Scandals and Sponsorships: Why Morals Clauses Are More Important than Ever,” *VLP Law Group* (2016), 6, available at: www.vlplawgroup.com/blog/athletes-scandals-sponsorships-morals-clauses-important-ever/.

their use is also common in Continental Europe and gradually they have spread to the entire world.³⁷

In terms of drafting, they are usually the product of negotiation as parties may adopt different positions depending on their power. Obviously, the negotiating power of a great champion or a well-known company is considerably greater than that of a young talent or a start-up. In these unequal bargaining scenarios, it is crucial that morality clauses should be drafted with a view to ensuring that both parties are protected, lest they may be deemed unenforceable on a variety of grounds. There is a crucial controversy on this issue as some authors recommend that these provisions should be very precise in the description of what the athlete must not do.³⁸ However, in terms of the wording of the terms of morality clauses, endorser propagate a broad view to cover as many types of behavior and circumstances as possible. This is obviously not always fair to the athlete, who may be unaware that private behavior in his or her personal life could lead to the termination of a sponsorship agreement. Therefore, the scope of the clause may vary depending on the interests of each party. Companies usually tend to prefer broad clauses that include as many situations or types of behavior as possible, whereas players are more inclined to advocate for narrower clauses or those that include a precise description of each behavior sought.

In terms of the negotiation process, a fair recommendation would be for athletes and endorsement companies to agree on concrete and clear terms as related to the application of this clause. It is crucial that the wording is precise for the athlete to understand the conduct expected, the violation of which will result in termination of the contract. If this is not the case, everyone will be unsatisfied: the athlete, the endorser and the fans.³⁹ From a practical perspective, and as this is related to the social media context, before any public statement, whether a tweet, post or message, the parties should carefully consider its possible implications

³⁷ These provisions are common practice not only due to the relevance of professional sport in these countries, but also because of the importance of college sport. Nowadays, they are used in countries such as the United Kingdom, Italy, Spain, China, India, Taiwan and even Kenya, to name a few.

³⁸ See Caysee Kamenetsky, "The Need for Strict Morality Clauses in Endorsement Contracts" (2017) 7 *Pace IP Sports & Ent LJ* 289, for one approach; and Stephen M. Gallagher, "Who's Really 'Winning'? The Tension of Morals Clauses in Film and Television" (2016) 16 *Va Sports & Ent LJ* 88, for the other.

³⁹ For a list of possible behaviors that could be included in an exhaustive clause, see Tushar Katheria, "Importance of Moral Clause in Sports Contracts" (2020) 3 *Int JL Manag Human* 2025.

considering the mutual contractual obligations and the morality clauses included in their endorsement agreements.

Should morality clauses encompass private behavior of the endorsed player or only that related to the sport? This is an often-debated issue. Sponsors will tend to include all behavior no matter where it occurs. Sponsored players will look to avoid intrusion into their private lives and limit the agreed behavior to that taking place on or off the field, but directly related to their sport.⁴⁰ It is suggested that in drafting morality clauses the parties should consider the athlete's personality as well as the company's culture and brand image, among other relevant factors.

One of the most relevant controversies related to the use of morality clauses is the definition of morality itself. It is widely accepted that the evolution over time of moral standards is an obvious fact as those behaviors that were considered unacceptable a few decades ago are viewed as perfectly acceptable today. Some of these behaviors include conduct viewed as reprehensible in the past, such as sexual orientation, political beliefs and others.⁴¹

Another interesting facet concerning the application of morality provisions arises where it is the sponsoring company, and not the player, that engages in conduct that, in the views of the sponsored player, is unacceptable to its interest. In this case, the nature of the organization's behavior can negatively affect the image of the player, such that it can lead to a considerable loss of reputation. Such clauses, where they exist, are known as "reverse" moral clauses.⁴²

A crucial question is when and how to use morality provisions. It has been suggested that they be used with caution and following a careful, balanced and thorough assessment of whether the nature of the behavior is so damaging to the reputation of the harmed party that maintaining the agreement would be more disadvantageous than termination. In this case, to avoid ambiguity, it has also been indicated that these provisions should not only include the typology of the prohibited behavior that

⁴⁰ Steve Nwabwueze, "Morals Clauses in Professional Player Contracts: Their Uses and Limitations," *Sportsbarng* (2024).

⁴¹ See Eleni Polymenopoulou, *Artistic Freedom in International Law* (Cambridge University Press, 2023), 161.

⁴² One of the most interesting articles is that of Taylor Porcher, Fernando M. Pinguelo and Timothy D. Cedrone, "The Reverse-Morals Clause: The Unique Way to Save Talent's Reputation and Money in a New Era of Corporate Crimes and Scandals" (2010) 28 *Cardozo Arts & Ent LJ* 65.

would trigger the clause, but also the circumstances in which the resolution can be legitimately used.⁴³

The possibility of using other alternatives to morality clauses has also created a considerable debate as there may be preferable options to the unilateral termination of the agreement.⁴⁴ As mentioned above, provisions related to fines, sanctions, activities or community service, as well as options offering financial incentives for good behavior, are common in some contracts, so that appropriate conduct is duly rewarded.

4 The Application of Moral Clauses in Tennis: The Impact of Social Media and the Digital World

These challenging circumstances are not new in tennis. In the early periods of the game, great champions were involved in situations considered ethically inappropriate by society at that time.⁴⁵ Research has also explored the period of the so-called “bad boys” of tennis, an era in which unsportsmanlike behavior on court attracted the attention of fans and tabloids.⁴⁶ The endorsement agreements of some famous tennis players were also affected by their activism, as was the case with Arthur Ashe, who advocated for civil rights during the 1960s and 1970s. Billie Jean King also threatened to boycott the US Open if equal pay was not offered to all players.⁴⁷ Other personal orientations equally affected the

⁴³ For a consideration related to the use of these provisions in the social media context, see Rick G. Morris, “Media Moguls Risking It All: Contract Clauses in the Entertainment Business in the Age of #MeToo” (2019) 9 *Ariz St U Sports & Ent LJ* 1.

⁴⁴ For a social media perspective, see Annamarie White Carty, “Cancelled: Morality Clauses in an Influencer Era” (2022) 26 *Lewis & Clark L Rev* 565.

⁴⁵ See on this John Carvalho and Mike Milford, “‘One Knows that This Condition Exists’: An Analysis of Tennis Champion Bill Tilden’s Apology for His Homosexuality” (2013) 33 *Sport Hist* 554. Also “Bill Tilden: A U.S. Tennis Hero, But with a Morals Clause,” *Tennis.com* (April 28, 2016), available at: www.tennis.com/news/articles/bill-tilden-a-u-s-tennis-hero-but-with-a-morals-clause. See also Nathan Titman, “Making Work Out of Play: The Troubling Gender Performances of Bill Tilden” in Lake, *Routledge Handbook of Tennis*, 96.

⁴⁶ Robert J. Lake, “The ‘Bad Boys’ of Tennis: Shifting Gender and Social Class Relations in the Era of Nastase, Connors, and McEnroe” (2015) 42 *J Sport Hist* 179.

⁴⁷ See on this Sarah Brown and Natasha Brison, “More than an Athlete Constitutional and Contractual Analysis of Activism in Professional Sports” (2017) 7 *Ariz St U Sports & Ent LJ* 249. Also, a broad perspective is provided in Sungho Cho, “Termination of Athlete Endorsement Contract under Morals Clause: Event Study Analysis of Social Activism and Incidents of Moral Turpitude,” *Sports Litigation Alert* (April 8, 2022), available at: <https://sportslitigationalert.com/termination-of-athlete-endorsement-contract-under-morals-clause-event-study-analysis-of-social-activism-and-incidents-of-moral-turpitude/>.

sponsorship contracts of tennis players, particularly in the 1980s and 1990s, whereby sponsors of certain female tennis champions terminated their agreements because of their sexual orientation. These sponsors added a clause that specifically referred to any behavior that could bring the company or the game into disrepute or otherwise stir or cause a negative public image.⁴⁸

In 1981, some sponsors of the great champion Billie Jean King terminated their endorsement agreements, approximately up to \$2 million, when the alimony suit filed by the player's partner became public.⁴⁹ Similarly, in 1981, Martina Navratilova's sponsorship deals were unilaterally terminated when she openly declared being gay, following which she was unable to sign any new sponsorship agreement. She felt that one of the main reasons that endorsement companies refused to sign sponsorship agreements with her was on account of her sexual orientation.⁵⁰ The case of Nick Kyrgios was one where morality clauses could have been used. According to one of his sponsors, namely, the underwear brand Bonds, which also sponsored former Australian World No. 1 Pat Rafter, Kyrgios's borderline permissible behavior was the main cause for its unilateral termination.⁵¹

One example among the various criteria used in the application of morality clauses in endorsement agreements of top tennis players is that of Maria Sharapova. At a press conference held on March 7, 2016, the player revealed that following a doping test conducted after losing at the Australian Open in January, she had tested positive for the substance meldonium. In 2016, the World Anti-Doping Agency (WADA) placed this substance on its banned list because it was considered as a performance-enhancing drug. She claimed full responsibility for her actions, but indicated that she had not realized the substance was illegal

⁴⁸ Mariah Burton Nelson's *Are We Winning Yet? How Women Are Changing Sports and Sports Are Changing Women* (Random House, 1991) states that athletes who had those sexual preferences were forced to hide them to protect their earnings.

⁴⁹ On this, see Stan Grossfeld, "No Royalty Like King: NU Honor Is Just Latest for True Tennis Pioneer," *Boston Globe* (December 3, 2006), 1.

⁵⁰ Adidas announced the inclusion of a clause in its sponsorship contract with athletes stating that publicly declaring themselves to be gay or lesbian would not constitute grounds for termination of the contract. See Bruce Browning, "Adidas Encourages Star Athletes to Come Out," *Advocate* (February 15, 2021), 1.

⁵¹ Lorenzo Ciotti, "Nick Kyrgios Dumped by Brand Sponsor," *Tennis World USA* (August 15, 2015), 1, reports that the company's head of sponsorship said that "immediately after Wimbledon 2014, we signed the contract, but the agreement was for three months, so it is no longer in effect since last October."

and she had taken it throughout her career.⁵² The ITF informed Sharapova of the positive test on March 2 and provisionally suspended her from March 12. Porsche, Nike and Tag Heuer terminated their endorsement agreements with the player as soon as she announced she had tested positive. Despite the player's admission of the positive test, the manufacturer of her racquet, Head, however, communicated it was looking to extend their agreement with the Russian Federation.⁵³ Later on, Nike's head of marketing left the door open for Sharapova.⁵⁴ Sharapova was also suspended from her position as a goodwill ambassador for the UN Development Programme (UNDP), which she had assumed since 2007. This foundation works to promote education in areas affected by the 1986 Chernobyl disaster. In November 2016, the UNDP overturned the player's suspension five months before the end of her doping ban.

The Australian player Bernard Tomic was involved in two situations related to morality clauses arising from his endorsement contracts. In 2014, it was reported that IMG, the international talent management company, which was in charge of ensuring sponsorship agreements since he was 12, terminated its contract with him before it was due to expire, mostly on the ground of allegations concerning inappropriate on-court behavior.⁵⁵ Years later, his racquet sponsor Head decided to unilaterally terminate his contract following the player's statement after losing at the 2017 Wimbledon event, where he said: "It's a rollercoaster and I can't find the commitment to work hard, enjoy myself and win trophies. It's definitely a mental problem, I wasn't mentally and physically on the court to perform. I don't know why, but I felt a bit bored on the court to be

⁵² On Sharapova's earnings during 2015 and her sponsorship contracts, see "Sponsors Act after Maria Sharapova's Failed Drug Test," *Sky Sports* (March 8, 2016), 1.

⁵³ For statements by Nike, which had been Sharapova's sponsor since she was 11 years old, see Michael Shields, "Swiss Watch Brand TAG Heuer Won't Renew Contract with Sharapova," *Reuters* (March 15, 2016), 2.

⁵⁴ Emma Thomasson, "Nike Brand Chief Leaves Door Open to Sharapova after Doping Scandal," *Reuters* (March 17, 2016), 1, in an interview with Trevor Edwards, Nike's head of marketing: "Whenever these situations happen, we are saddened and disappointed. At the same time, there are many athletes who inspire us. At the end of the day, athletes are human beings just like the rest of us, and they have the same weaknesses that the rest of us have, and sometimes those situations become teaching opportunities."

⁵⁵ See Associated Press, "Cut Loose: Talent Agency Severs Ties with Tennis Bad Boy Bernard Tomic Due to His Off Court Behaviour ... before His Contract Had Even Expired," *Daily Mail Online* (July 15, 2014), available at: www.dailymail.co.uk/news/article-2692453/Talent-agency-severs-ties-tennis-player-Bernard-Tomic.html.

completely honest.”⁵⁶ Other recent cases include that of Illie Nastase, which has already been mentioned (see note 24), and those of Justin Gimelstob, Dan Evans and Simona Halep, which are related to doping offenses.

The relationship between morality clauses, social media and the digital world is explained by the globalization of the game and its sponsorship, and the fact that tennis as a mass phenomenon transcends borders and cultures.⁵⁷ Social networks are an invaluable tool to foster endorsement alliances and impact consumer trends. The fact that the new social media platforms allow the sharing of content immediately and globally has tremendous advantages to facilitate this process. The dangers are also obvious, as the use by endorsed players of platforms such as Instagram, Facebook, Tik Tok or Snapchat may not always be appropriate.⁵⁸ In this sense, social media platforms are a double-edged sword as any statement made in social media may bring about both expressions of support or dismay in equal force. Regarding the application of morality clauses in situations where endorsed athletes post or tweet on social media, it has been suggested that, before impulsively invoking a morality clause, endorsement companies should analyze the situation carefully and critically assess whether such action or conduct is actually covered by the clause.⁵⁹ A hasty termination of the sponsorship contract may be problematic for the sponsor in case the other party seeks judicial determination, in addition to attracting media attention that may be unwanted.

5 Examples of Morality Clauses in Tennis Endorsement Agreements

This section will present several examples of morality clauses included in tennis sponsorship contracts. It is important to emphasize that as the nature of these agreements is confidential, it is considerably difficult to

⁵⁶ For more details on the sponsor's comments, see Simon Evans, "Sponsor Head Drops Tomic after 'Bored' Comments," Reuters (July 6, 2017), 1.

⁵⁷ See James J. Zhang and Brenda G. Pitts (eds), *Globalized Sport Management in Diverse Cultural Contexts* (Routledge, 2019).

⁵⁸ For a specific reference to social networks, see Miguel Crespo and Andrés Crespo Dualde, "Las Cláusulas de Moralidad en Contratos de Patrocinio Deportivo y Las Redes Sociales" in *Cuestiones de Derecho del Deporte: Libro Homenaje al Profesor Gabriel Real Ferrer* (Reus, 2023), 161.

⁵⁹ See Sungho Cho, "Termination of Athlete Endorsement Contract under Morals Clause: Event Study Analysis of Social Activism and Incidents of Moral Turpitude" (2022) 23 *Legal Issues in Collegiate Athletics* 1.

access these or obtain credible direct information concerning the specific content of these clauses. Therefore, the examples provided hereinafter should be considered as draft templates. In the following contract between a sponsoring company and a professional tennis player, explicit reference is made to the statements that the sponsored player may not make:

8. Public Exposure. Image Consultant.

- 8.1. The player shall at all times, both in his public activities and in his private life, maintain decorum in accordance with his activity, avoiding at all times any act or omission that could directly or indirectly cause damage to his public image. To this end, the player shall lead a lifestyle consistent with the professional practice of tennis, and shall refrain from attending inappropriate places, frequenting unsuitable persons, or maintaining any kind of relationship with those who could hinder his or her professional career.
- 8.2. The player shall refrain from making public statements or representations that reflect a religious, racial, sexual, or political preference unless authorised in writing by . . .

The following example includes a morality clause in the termination section of the sponsorship contract between a professional tennis player and a sports equipment sponsoring company, with special mention of actions that the player cannot take, as this would be detrimental to the sponsor.

N. Termination

The Company shall have the right to terminate this contract immediately upon written notice to the Athlete and without prejudice to any other rights the Company may have at law or in equity, if: (i) the Athlete fails to comply with its obligations specifically but not only, in conjunction with Sections E – “Company Products”, 2 / – and J – “Use of Products”; (ii) the Athlete commits any act which is known to the media and which adversely affects the Company’s brand (including being charged with any criminal offence, testing positive in an ITF doping control test or failing to be admitted to a substance abuse treatment programme); (iii) the Athlete carries out any act which is known to the media and which adversely affects the Company’s brand (including being charged with any criminal offence, testing positive in an ITF doping control test or failing to be admitted to a substance abuse treatment programme); (iii) the Athlete takes any action that is inconsistent with his or her recommendation and advertising of the Company’s products and/or disparages the Company’s brands, or does not advise the use of the Company’s products; (iv) the Athlete obscures, removes or covers any

Company product logos in any manner; (v) the Athlete ceases, for any reason, to be a professional tennis player for a period of ninety (90) consecutive days or more during the contract period; or (vi) the Athlete is unable, for any reason, to use the Company's products in accordance with this contract and in particular fails to use the Company's products during the entire course of matches and at other competitions and/or exhibitions as required under this contract. The parties agree that in the event that the Company terminates this contract pursuant to this paragraph, the Athlete shall not be entitled to receive any pro-rata compensation for services rendered and rights granted prior to the effective date of termination without prejudice to the possibility of the Company suing the Athlete for compensation.⁶⁰

The following is an example of a morality clause in a sponsorship contract between a sports federation and a professional athlete where the provision appears in the declarations and commitments section, which is of rather new import. It reads as follows:

5. Representations and Undertakings

5.1 [The sponsored athlete] represents and undertakes that it:

- (a) will comply throughout the Term with all reasonable instructions of the [Federation] in relation to its obligations under clause 3 above; . . .
- (c) is and will remain throughout the Term in good standing with his National Federation (except to the extent approved in writing by the [Federation]);
- (d) shall not, during or after the term [of the contract], do or say anything which is, in the reasonable opinion of . . . or could be seen to be negative, disparaging, or derogatory about the [Federation] or unbecoming of a professional tennis player.⁶¹

Advertising sponsorship of sporting events is also a modality in which morality clauses can be included. The following is an example of a morality clause between a sponsor and a tennis tournament whereby the tournament is prevented from contracting with other sponsors

⁶⁰ This example is characterized by the great precision in the enumeration of the conduct that is considered a cause for termination of the contract under this clause. In fact, the conduct of concealing, removing or covering any logos on the company's products in any way, a practice that sometimes occurs in professional tennis, is striking.

⁶¹ In this example, the ambiguity of the last section of the clause should be noted, as it does not define what is meant by appropriate representations to the professional tennis player. Furthermore, it prohibits representations after the end of the contractual relationship.

who have not only a similar activity to that of the sponsor in question, but also activities related to aspects that the sponsor might consider immoral:

- (4) the organiser shall inform the sponsor of the identity of all potential secondary sponsors / suppliers of the tournament at least ten (10) working days before it enters into agreements with such third parties and confirm that it will not appoint as tournament sponsors organizations whose main activity is:
 - (i) tobacco, gambling (lotteries, betting, or similar activities) or pornography; and / or
 - (ii) any other activities, products, or services which, in the reasonable opinion of the sponsor, are not in keeping with the tournament or a healthy lifestyle.⁶²

6 Conclusion

From its origins and first application in the Hollywood film industry of the 1920s to its adoption in the sports industry today, morality clauses in sponsorship agreements have been utilized as an instrument to help the parties in the event of an undesired circumstance. The increasing presence of social networks in today's world and the fact that the lives of tennis players are under constant scrutiny by the public and fans provide greater relevance to the inclusion of morality clauses in sports sponsorship contracts.

These provisions have not been free from criticism as their use has been considered objectionable, unenforceable and ambiguous. The fact that the term "morality" is dynamic and changes according to the evolution of society means that the application of these provisions is clearly complex. This is in contrast to many cases where the courts have repeatedly held that contract termination based on morality clauses is enforceable and valid.⁶³ Recent calls have been made for an increase in the

⁶² In this example, it is worth noting the reference to the concept of "healthy lifestyle," an expression that lends itself to countless interpretations.

⁶³ For the United States, see David E. Fink and Sarah E. Diamond, "Morality Clauses in the Age of #MeToo and Time's Up" (2018) 34 Comm Law 2, at 4. In the case of Spain, see Miguel Crespo, "Las Cláusulas de Moralidad en Contratos de Patrocinio Deportivo: A Propósito de la Sentencia de la Audiencia Provincial de Alicante 901/2008, de 30 de Diciembre" in *Estudios sobre el Deporte Federado en la Comunitat Valenciana: (Regulación y Resolución de Conflictos)* (Reus, 2020).

precision of the drafting of these provisions to clarify the scope of their application for the benefit of both parties.⁶⁴

In this connected world in which news travels from one part of the world to another immediately and instantaneously, the role of these clauses in regulating how endorsement companies and players balance their interests may be crucial. In a changing context, characterized by uncertainty and immediacy, the only way in which morality clauses can remain useful to the parties is by adapting to the era of the Internet and social networks.

⁶⁴ See Rohit Krishna, "The Need to Reset Morality Clauses in Athlete Contracts" (2021) 2 *Glob Sports Pol Rev* 70.