

Landmark case on an agent's duty to his client

Earlier this year, in a case with significant implications for all sports agents and other agents, the Court of Appeal ruled that where an agent, while negotiating for his client, makes a secret deal for himself "on the side", that agent will be deemed to have breached his fiduciary duty to his client and will have to both forfeit his agency fee and account for his secret profit.

The case involved the Trinidadian goalkeeper Kelvin Jack, who signed for Dundee F.C. from Reading in the summer of 2004. As part of his transfer deal, his agent, Mike Berry, helped Dundee F.C. by obtaining the work permit that was required in order for Jack to take up his new employment.

In return for providing these services, Berry was paid a £3,000 fee by Dundee F.C. which was not disclosed to Jack. After Jack learned of this "secret" deal, he stopped paying Berry further agency fees and Berry took him to court. The Court of Appeal reversed the first instance decision of the High Court and found against Berry. In giving his judgment, Jacobs LJ stated:

"The law imposes on agents high standards. Footballers' agents are not exempt from these. An agent's own personal interest comes entirely second to the interest of his client... An undisclosed but realistic possibility of a conflict of interest is a breach of your duty of good faith to your client."

Ticket Touts: Criminals by any other name?

Earlier this summer, the UK Government's Department for Culture, Media and Sport (DCMS), closed its consultation on ticket re-sales and ticket touting. The consultation follows an attempt by the DCMS to establish a new relationship between primary and secondary sellers of tickets and consumers.

The issue of secondary ticket operators is a thorny one both politically (because of the "free market" counter-arguments) and legally. In the UK, the only criminal sanctions relating to ticket touting have been confined to football through the Criminal Justice and Public Order Act 1994 ('CJPOA'). Offences include selling or offering tickets for sale. The London Olympics will enjoy similar protection. Under the Fraud Act 2006, fraud by false representation is the most applicable offence to ticket touts. Touts could also be found guilty of money laundering under the Proceeds of Crime

Act 2002 as a result of acquiring, using and possessing money gained from criminally selling tickets.

Governing bodies, event organisers and clubs without rights of action under this legislation typically seek redress through court orders against the immediate purchasers of tickets to enforce the ticket conditions which ban resale. This is unsatisfactory for both the ticketholders and the rights holder.

The DCMS, through its consultation, is considering broadening the remit of the CJPOA to other sports as well as recommending innovative ways to sell tickets, having a centralised system for returned tickets and improving ticket security.

Whilst we await the results, the OFT launched its "Just Tick It" campaign warning consumers about fraudulent ticket websites, backed by music and sports stars such as Kate Nash and Steve Borthwick, the England rugby captain.

YouTube music videos are back online

In early September, thousands of music videos previously pulled from YouTube in a 6 month royalties dispute started to go back online after a deal was reached between the website's owners (Google) and the Performing Rights Society (PRS), the trade body that collects music royalties on behalf of copyright holders.

The dispute began when YouTube accused PRS of proposing exorbitant new royalty payment terms which exceeded the revenue which could be generated by YouTube from website advertisements around the videos. The PRS in turn accused YouTube of punishing British music fans by removing videos in the pursuit of greater profits.

The deal is understood to be on the basis of a substantial one-off payment rather than a "per song" royalty fee or a fee based on a percentage of YouTube's UK music turnover. The new agreement is backdated to January 2009 and runs until June 2012. It covers not only official music videos, but also user-generated content and music played in the background of television shows uploaded to the site.

onside news

We have updated and revamped our website over the summer so please do visit us at www.onsidelaw.co.uk Our contact details following our move into larger office space last Christmas are as follows:

onside law
23 Elysium Gate
126-128 New King Road
London SW6 4LZ

Tel: +44 (0)20 7384 6920
 info@onsidelaw.co.uk

Hot off the press:

In the recently updated Legal 500 law firm directory, onside law soared up the sports-sector rankings, being described as one of the two "main sports boutiques in the market" and being lauded for our "superior team". Each of the four partners were individually recommended. onside law was also featured this week by leading industry publication, *The Lawyer*, as its profiled law firm. For a dashing photo of partner Oli Hunt and the profile go to: www.thelawyer.com/onside-law/1001946.article

onside law appointments:

Rionne Preuveneers – Rionne joins as Office Manager with a wealth of previous experience from other law firms.

Recent work highlights include:

onside on the beautiful game

onside law has been enjoying a busy summer in the football world, advising Alan Pardew, the new Southampton manager and advising England U21 player Andrew Surman on his move to Premier League newcomers Wolves. We have also recently received a first instruction from a leading Premier League club and advised Betfair in relation to a series of high-profile sponsorship deals with Barcelona, Manchester United and one other Premier League club.

onside on football financing

onside law has been advising the Hero Global Football Fund on a pioneering player finance model with Football League clubs, the template structuring of which has been approved by the Football League board.

onside goes under the hammer

onside law advised the ECB earlier this year on all aspects of the release of centrally contracted England cricketers for the IPL which saw both Andrew Flintoff and Kevin Pietersen being sold for a world record US\$1.55 million to Chennai Super Kings and Bangalore Royal Challengers respectively.

onside takes guard

onside law continues to provide commercial advice to ECB on a wide range of issues, including agreements relating to the Twenty20 World Cup and a wave of headline sponsorship deals, including those with Brit Insurance, npower, LV=, Marstons and The Times. We are currently advising the ECB on their next round of central contracts.

Premier League home-grown reform

"It will encourage youth development and the promotion of young players. . . . make, rather than buy, is our intention" announced Premier League Chief Executive Richard Scudamore on 15 September. He was referring to the introduction from next season of new rules which oblige each Premier League club to name at least 8 "home-grown" players in its squad of 25 players at the end of every transfer window.

To qualify as "home-grown", a player will have had to be registered for at least 3 seasons at an English or Welsh club between the ages of 16 and 21. Clubs are only able to boost their squads beyond the 25-man limit with players under the age of 21.

The Premier League's long term motive behind these changes and the related new financial reporting requirements is that, by encouraging

clubs to buy "home-grown" talent and invest in the youth instead of making crippling expensive overseas signings, the England team will benefit and the Premier League clubs will have greater financial stability.

These rule changes circumvent the significant legal problems posed by the "6+5" rule strongly advocated by Sepp Blatter, FIFA President. The core principle of the "6+5" rule was a restriction on football clubs starting a match with more than 5 players from a foreign country. The legality of such a principle in Europe remains the subject of ongoing legal debate, but the widely-held view is that such a rule is directly discriminatory and in breach of EU laws on the free movement of workers. The "6+5" rule was branded "xenophobic" by Scudamore.

Perfume trade mark dispute

In a High Court ruling in August which may be the prelude to a major court battle between two of the fashion and entertainment world's leading ladies, Mr Justice Floyd rejected an emergency injunction application by Nude Brands Limited, a company controlled by Ali Hewson (wife of U2's Bono) to stall the release of Stella McCartney's new perfume, STELLANUDE.

Nude Brands is the owner of the "NUDE" Community Trade Mark and argued that its trade mark rights would be infringed by the STELLANUDE launch because the level of similarity between the two brands would confuse customers.

Mr Justice Floyd however, in weighing up

whether to grant Nude Brands an interim injunction, concluded that the likely damage to McCartney and her licensee, YSL Beaute Limited (part of the L'Oreal group), through massive business disruption and possible abandonment of the STELLANUDE brand, if an injunction was wrongly granted outweighed the damage to Nude Brands if it was refused. He noted that £4.1 million worth of STELLANUDE had already been manufactured for worldwide distribution.

A full trial of the matter, in the absence of prior settlement, is expected early next year. The result will boil down to whether Nude Brands can produce substantial evidence of confusion between the two brands amongst buyers.

And finally...

Crumer Town F.C, a football club playing in the Anglian Combination Premier Division have recently discovered that they face possible eviction from their home stadium in 2012 because of the death of King Olav V of Norway. A clause in the stadium's lease states that the lease would expire 21 years after the death of Queen Victoria's last surviving grandchild. This was King Olav, her great grandson, who died on 17 January 1991. The lease for the ground was given to the Club in 1922 by Evelyn Bond-Cabbell, so that locals could enjoy an amenity.



news on onside

Oliver Hunt – Oli was recently interviewed on the BBC Ten O' Clock news as a sports law specialist on the transfer ban imposed by FIFA on Chelsea in the wake of the Kakuta affair.

Jamie Singer – Jamie appeared on Sky Sports News to discuss the Tevez transfer saga. On a lighter note, he recently welcomed a new addition to the Singer family with the birth of a baby girl Amber, born on the same day as her elder sister.

Simon Thorp – Simon has had a number of articles published regarding football player financing. More importantly(!) Simon recently won, what is commonly regarded by him as the toughest test in world sport, the OBBS golf tournament in Portrush, Northern Ireland.

Chris Walsh – Chris captained the Old Tonbridgians to a record 14th title in the Cricketer Cup in August where he opened the batting with former Test player Ed Smith.

Hunt's Harriers Watch

Kidderminster Harriers just missed out on a Conference play-off place, finishing the season in sixth place.

Promotion back into the Football League will have to wait another season.



onside on the ball

onside law acted for new client, London Irish RFC, on a successful challenge to the RFU's decision to refuse a work permit for their South African hooker, Danie Coetzee. This was a first such challenge since the December 2008 change to the work permit system in domestic rugby union. onside law separately continues to advise a number of Premiership rugby union players on their contractual and image rights arrangements and we have also recently been instructed to act for Gloucester RFC.

onside on the grid

onside law continues to advise the stakeholders and many of the national race team companies in the A1GP World Cup of Motorsport Series, as they prepare for the forthcoming fifth season, due to launch with a race on the Australian Gold Coast on 25 October. onside law client A1GP Team Ireland won a thrilling 2008/09 title at Brands Hatch back in May. At touring car level, we continue to advise SRO on all aspects of the British GT Championship and the FIA GT1 World Championship.

onside on the tee

onside law continues to grow its golf client base, recently acting for new client Ross Fisher. Ross has had a great 2009 to date, finishing 5th in the US Open and challenging for the Open Championship title at Turnberry.

onside on court

onside law continues to advise the International Tennis Federation on the implementation of its new anti-corruption code and the French Tennis Federation on sponsorship matters.

onside at sea

onside law advised XSMG World on its acquisition of the XS power boat business. XSMG World will continue to design, manufacture and distribute the XSR48 superboats recently referred to as the Bugati Veyron of the sea.

onside route master

onside law is delighted to have been appointed to the legal panel of National Express Group plc in respect of commercial and corporate work. Having advised the National Express Group since shortly after the establishment of onside law, the firm are delighted now to be formally recognised as a preferred supplier of legal services alongside leading City law firms.

onside in the kitchen

onside law client, Heston Blumenthal, topped the Good Food Guide in September, with his flagship restaurant the 'Fat Duck' being awarded the best restaurant title in the 2010 Good Food Guide.

Heston has also been busy starring in two prime time Channel 4 television shows: "Big Chef takes on Little Chef" and "Heston's Feast".

onside and its knights

Long standing onside law client, Nick Faldo, has added another title to his six majors – "Sir". Nick Faldo was given a knighthood by Queen Elizabeth II for his services to golf, the only athlete to be given one of Britain's highest honours on the monarch's birthday list in 2009. Sir Nick Faldo joins Sir Michael Parkinson (who we recently advised on his new one man tour) on onside law's roster of knighted clients.

onside's vital statistics

onside law has been advising leading sports data provider Opta Sportsdata on its deals with various broadcasters and governing bodies, as Opta continues its rapid expansion in the marketplace.