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Ian Blackshaw

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## ARTICLES

# ADR AND SPORT: SETTLING DISPUTES THROUGH THE COURT OF ARBITRATION FOR SPORT, THE FIFA DISPUTE RESOLUTION CHAMBER, AND THE WIPO ARBITRATION & MEDIATION CENTER\*

IAN BLACKSHAW\*\*

### I. INTRODUCTION

Alternative dispute resolution (ADR) has developed in the last thirty years or so because traditional methods of settling disputes, especially business ones, through the courts and so-called heavy duty arbitration, through such bodies as the International Chamber of Commerce based in Paris, have become too expensive, too inflexible, and too dilatory.

ADR particularly lends itself to the settlement of sports-related disputes because of the special characteristics and dynamics of sport<sup>1</sup>—not least where sporting deadlines are in play, which is often the case! Also, sport is now big business, worth more than 3% of world trade and 3.7% of the combined gross national product of the twenty-eight member states of the European Union, comprising some 505 million people, and, as such, sports-related disputes are on the increase with the need of the sporting community to settle them “within the family of sport,” that is, “extra-judicially” and confidentially.

Mediation as a form of ADR is particularly useful in settling amicable

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\*\* Ian Blackshaw is an International Sports Lawyer, Academic, and Author. He is a Fellow of the TMC Asser Instituut International Sports Law Centre in The Hague, The Netherlands; and a Member of the Court of Arbitration for Sport, Lausanne, Switzerland, and the WIPO Arbitration & Mediation Center, Geneva, Switzerland. He may be contacted by e-mail at [ian.blackshaw@orange.fr](mailto:ian.blackshaw@orange.fr).

1. These characteristics have been recognised by the European Union (EU) in the *Commission White Paper on Sport*, at 13–14, COM (2007) 391 final (June 11, 2007), and have been encapsulated in the expression “specificity of sport.” See Ian Blackshaw, *The ‘Specificity of Sport’ and the EU White Paper on Sport: Some Comments*, 3–4 INT’L SPORTS L.J. 87, 87–88 (2007). The EU concept of the “specificity of sport” (the special nature of sport) has been incorporated in the new so-called “Sport Article” (Article 165) of the Lisbon Treaty, which came into force on December 1, 2009.

sports disputes because, primarily, it gets the parties in dispute talking and negotiating with one another and facilitates the restoration and maintenance of personal and business relationships.<sup>2</sup> Med-Arb, which combines mediation and arbitration—mediation to identify the issues and, if not successful,<sup>3</sup> arbitration to settle them—is also proving an effective method of dispute resolution in the sporting field. But, by far the most important body offering various forms of ADR in sport is the Court of Arbitration for Sport (CAS), which is based in Lausanne, Switzerland, and the CAS will be the principal focus of this Article.

This Article will also deal with the extra-judicial settlement of sports-related disputes by the Fédération Internationale de Football Association (FIFA) Dispute Resolution Chamber, which is based in Zurich, and the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, which is based in Geneva, Switzerland.

The Article will begin with CAS Arbitration and move to the evolving “*Lex Sportiva*,” which the CAS has built up over its twenty-nine years of operations. Subsequently, the Article will cover in more detail CAS Mediation, with a review of the FIFA Dispute Resolution Chamber and then the settlement of sports-related domain name disputes through the WIPO Arbitration and Mediation Center.

## II. CAS ARBITRATION

This Article will begin with the settlement of sports-related disputes by arbitration through the CAS under its ordinary and appellate procedures. Then, it will explain the functions of the Ad Hoc Division of CAS, which sits during the Summer and Winter Olympic Games. However, in order to put the subject into its overall context, we will begin with a brief history of the CAS, which was set up in 1983 and opened its doors for business in 1984, which means that the CAS has been operating for twenty-nine years.

### A. *Brief History of the CAS*

#### 1. Origins

At the beginning of the 1980s, an increasing number of international sports disputes combined with the lack of any independent body to deal with them in a flexible, quick, inexpensive, and binding manner, prompted a

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2. See Ian Blackshaw, *Sports Mediations: Preserving Sporting and Business Relationships*, IN TOUCH (Ass’n for Int’l Arbitration, Brussels, Belgium), Nov. 2010, at 9–10.

3. Where mediation is appropriate, it enjoys a general success rate of 85%.

number of international sports federations to look at this situation and see what could be done. Soon after assuming the Presidency of the International Olympic Committee (IOC) in 1981, the late Juan Antonio Samaranch had the idea of creating a sports court that would become “the supreme court of world sport.”<sup>4</sup> The following year at an IOC meeting in Rome, the late Judge Keba Mbaye, from Senegal, an IOC member and at the time a judge at the International Court of Justice in The Hague, was asked to chair a working party with the aim of preparing the statutes of a sports dispute resolution body that, in time, would become known as the “Court of Arbitration for Sport.” In 1983, the IOC officially ratified the statutes of the CAS, which came into force on June 30, 1984. On the same date, the CAS became operational under the late Judge Mbaye as its president, a position he has occupied with distinction until his death in 2007.

## 2. The First Ten Years

The 1984 CAS Statutes were supplemented by a set of procedural regulations. Both were slightly modified in 1990. Under these regulations, the CAS was composed of sixty members appointed by the IOC, the International Federations (IFs), the National Olympic Committees (NOCs), and the IOC President—fifteen members appointed by each. The IOC President had to choose members outside the other three groups. All the operating costs of the CAS were borne by the IOC. In general, the proceedings were free of charge, except for financial disputes, in which the parties could be required to pay a share of the costs. The CAS Statutes could be modified only by the IOC meeting, in General Session, upon a proposal by the IOC Executive Board.

The CAS Statutes provided for only one kind of contentious procedure, irrespective of the nature of the dispute. In addition, there was also a “consultation procedure” open to sports bodies or individuals. Through this procedure, which no longer exists, the CAS could give a legal opinion on any sports-related issue.

In 1991, the CAS published a “Guide to Arbitration,” which included several model arbitration clauses, including one for incorporation in the statutes or regulations of the IFs. This clause foresaw the creation of special rules to settle disputes arising out of a decision taken by a sports federation. The first such body to adopt this clause was the International Equestrian Federation (FEI).

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4. Ian Blackshaw, *Sport's Court Getting Right Results*, GUARDIAN (June 3, 2004), <http://www.theguardian.com/sport/2004/jun/03/ianblack>.

The next significant development was in February 1992, when a horse rider, named Elmar Gundel, lodged an appeal for arbitration by the CAS, based on an arbitration clause in the FEI statutes, in which he challenged a decision rendered by the FEI. This decision, which followed a horse doping case, disqualified, suspended, and, fined the rider. The award rendered by CAS on October 15, 1992, found partly in favour of the rider (the suspension was reduced from three months to one month). Dissatisfied with the CAS ruling, Gundel filed an appeal with the Swiss Federal Tribunal.<sup>5</sup> He disputed the validity of the award, on the grounds that it was rendered by a tribunal that did not meet the conditions of impartiality and independence needed to be considered as a proper arbitration court. In its judgment of March 15, 1993, the Tribunal recognised the CAS as a true court of arbitration. The Tribunal also noted, *inter alia*, that the CAS was not an organ of the FEI—it did not receive instructions from the FEI; and that it retained sufficient autonomy with regard to it, in that it placed at the disposal of the CAS only three arbitrators out of the maximum of sixty members of which the CAS was composed. However, in its judgment, the Tribunal drew attention to numerous links between the CAS and the IOC: the fact that the CAS was financed almost exclusively by the IOC; the fact that the IOC was competent to modify the CAS Statutes; and the considerable power given to the IOC and its President to appoint CAS members. In the Tribunal’s view, such links would be sufficiently serious to call into question the independence of the CAS if the IOC were a party to proceedings before it.<sup>6</sup>

As Matthieu Reeb, Secretary General of the CAS, has remarked, “The [Federal Tribunal]’s message was thus perfectly clear: the CAS had to be made more independent of the IOC both organizationally and financially.”<sup>7</sup> This decision led to some major reforms of the CAS in 1994.

### 3. The 1994 Reforms

First, the CAS Statutes were completely revised to make them more efficient and to modify the structure of the institution to make it more independent of the IOC, which had sponsored it since its creation. The most important change resulting from these changes was the creation of an International Council of Arbitration for Sport (ICAS) to deal with the running and financing of the CAS, thereby taking the place of the IOC.

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5. The Swiss Federal Tribunal is the highest court in Switzerland.

6. See IAN S. BLACKSHAW, *CAS 92/A/63 GUNDEL v. FEI*, in *LEADING CASES IN SPORTS LAW* 65, 67–69 (Jack Anderson ed., 2013).

7. See *The 1994 Reform*, CAS, <http://www.tas-cas.org/en/infogenerales.asp/4-3-236-1011-4-1-1/5-0-1011-3-0-0/> (last visited Dec. 28, 2013).

Another major change was the creation of two arbitration divisions of the CAS (the Ordinary Division and the Appeals Division) in order to make a clear distinction between disputes of sole instance and those arising from a decision rendered by a sports body. The CAS reforms were enshrined in a new Code of Sports-Related Arbitration (CAS Code), which came into force on November 22, 1994. All these reforms had been approved in Paris on June 22, 1994, with the signing of the “‘Agreement concerning the Constitution of the International Council of Arbitration for Sport,’ known as the ‘Paris Agreement.’”<sup>8</sup>

#### 4. Later Developments

The ICAS was responsible for the creation of the decentralised offices of the CAS and the “Ad Hoc” Division (AHD), as well as the introduction of a “Mediation Procedure.” More recently, the CAS has moved to new headquarters at the Chateau de BETHUSY in Lausanne. This not only provides the CAS with the possibility to expand its personnel and facilities to cope with its ever-increasing workload, but also represents a further (physical) separation and independence of the CAS from the IOC.

##### *B. The ICAS*

The ICAS is the supreme organ of the CAS. Its main function is to safeguard the independence of the CAS and the rights of the parties appearing before it.<sup>9</sup> Thus, it is responsible for the administration and financing of the CAS. The ICAS has twenty members, who, on appointment, must sign a declaration in which they undertake to exercise their functions in a personal capacity, with total objectivity and independence. The members comprise of five sports persons; five independent persons, who are outside the Olympic Movement and sport generally; five persons from the IOC; five persons from the Association of Summer Olympics International Sports Federations (ASOIF) and the Association of International Olympic Winter Sports Federations (AIOWF); and five persons from the Association of National Olympic Committees (ANOC). ICAS members are appointed for four-year renewable terms. ICAS, like CAS itself, is a Swiss Foundation based in Lausanne, Switzerland. The ICAS appoints the CAS arbitrators and mediators

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8. *The Paris Agreement*, CAS, <http://www.tas-cas.org/en/infogenerales.asp/4-3-237-1011-4-1-1/5-0-1011-3-0-0/> (last visited Dec. 28, 2013).

9. For a complete list of the functions of ICAS, see CAS CODE OF SPORTS-RELATED ARBITRATION art. S6 (2013) [hereinafter CAS CODE].

and approves the budget and the accounts of the CAS.<sup>10</sup> The funding of CAS is shared between the constituents of CAS as follows:

- 4/12 by the IOC;
- 3/12 by the ASOIF;
- 1/12 by the AIWF; and
- 4/12 by the ANOC.

### C. The Organisation of CAS

The CAS, also known by its French acronym TAS (*Tribunal Arbitral du Sport*)<sup>11</sup> is based in Lausanne, Switzerland, and has two permanent branches in Sydney, Australia, and New York, USA, facilitating access to CAS for parties residing in Oceania and North America.<sup>12</sup> Because CAS is based in Switzerland, with its seat in Lausanne, the CAS is generally governed by Swiss law.<sup>13</sup> It has its legal seat in Lausanne for all purposes, even when it hears cases outside Switzerland.<sup>14</sup> The CAS Court Office, headed by the Secretary General and assisted by several counsel and secretaries, supervises the arbitration and mediation procedures and acts as a registry; it also organises the AHD and deals with other administrative matters.

During the Olympic Games, the CAS operates the AHD, which was first set up on September 28, 1995, for the centennial Atlanta Summer Games of the modern era in 1996, to resolve disputes relating to the Games within twenty-four hours and free of charge.<sup>15</sup> For example, the AHD, established for the Athens Summer Olympics in 2004, handled ten cases on a variety of sporting issues in a variety of sports, including selection and doping matters.<sup>16</sup> The AHD was again in session for the 2008 Summer Games in Beijing, China, the 2010 Winter Games in Vancouver, Canada, and the 2012 Summer Games in London, England. The AHD decides cases “pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of

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10. See *id.* art. S4–11 (explaining the roles of the ICAS).

11. The official languages of CAS are English and French.

12. See Matthieu Reeb, *The Role and Functions of the Court of Arbitration for Sport (CAS)*, 2 INT'L SPORTS L.J. 21, 23–25 (2002).

13. *20 Questions About the CAS*, CAS, <http://www.tas-cas.org/en/20questions.asp/4-3-216-1010-4-1-1/5-0-1010-13-0-0/> (last visited Dec. 28, 2013).

14. For example, in *Raguz v Sullivan*, a legal challenge against a CAS arbitral award was dismissed on the ground of lack of jurisdiction because the Court upheld the choice of Lausanne, Switzerland as the seat (i.e. place) of arbitration under the CAS Code. [2000] 50 NSWLR 236 (Austl.).

15. See Ian Blackshaw, *A Sporting Decision in Just 24 Hours*, TIMES (London), July 23, 2002.

16. CAS, CAS AWARDS—SALT LAKE CITY 2002 & ATHENS 2004, at 73–200 (2004).

law, the application of which it deems appropriate.”<sup>17</sup> All athletes participating in the Summer and Winter Olympic Games have to submit their disputes to the AHD. The actual submission forms part of the Athlete’s Entry Form to participate in the Olympics. The standard Arbitration Clause for the AHD is as follows:

I agree that any dispute, controversy or claim arising out of, in connection with, or on the occasion of, the Olympic Games, not resolved after exhaustion of the legal remedies established by my NOC, the International Federation governing my sport, ATHOC and the IOC, shall be submitted exclusively to the Court of Arbitration for Sport (CAS) for final and binding arbitration in accordance with the “Arbitration Rules for the XXVIII Olympiad in Athens,” which form part of the Code of Sports-related Arbitration.

The CAS shall rule on its jurisdiction and has the exclusive power to order provisional and conservatory measures. The decisions of the CAS shall be final and binding. I shall not institute any claim, arbitration or litigation, or seek any other form of relief, in any other court or tribunal.

The NOC confirms that all the relevant rules have been brought to the notice of the athlete/coach/trainer/official, and it has been authorised by the National Sports Federation concerned to sign this entry form on its behalf.<sup>18</sup>

Of course, this mandatory submission to the AHD raises questions of jurisdiction and, in particular, the possible “ousting of the jurisdiction of the ordinary courts” for the settlement of sports disputes arising during the Olympics. This is an interesting and thorny issue, which the author of this article has addressed elsewhere.<sup>19</sup>

The CAS now has a minimum of 150 arbitrators, who are specialists in arbitration and sports law.<sup>20</sup> They are appointed for four-year renewable

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17. CAS ARBITRATION RULES FOR THE OLYMPIC GAMES art. 17 (2012) [hereinafter CAS AD HOC RULES]

18. Ian Blackshaw, *Fair Play On and Off the Field of Play: Settling Disputes Through the Court of Arbitration for Sport*, 3-4 INT’L SPORTS L.J. 107, 109 (2006) [hereinafter Blackshaw, *Fair Play On and Off the Field*].

19. See Ian Blackshaw, *CAS at the London 2012 Olympics: A Question of Jurisdiction*, 3 GLOBAL SPORTS L. & TAX’N REP., Sept. 2012, at 11, 11-12 [hereinafter Blackshaw, *CAS at the London Olympics*].

20. At the time of writing, there are some 300 CAS arbitrators, from 87 countries, and around 200 cases are registered with CAS each year.

terms and must sign a “letter of independence” confirming that they will act impartially. In establishing the list of CAS arbitrators, the ICAS must, in principle, respect the following distribution of candidates:

- 1/5 of the arbitrators selected from among the persons proposed by the IOC, chosen from within its membership or outside;
- 1/5 of the arbitrators selected from among the persons proposed by the IFs, chosen from within their membership or outside;
- 1/5 of the arbitrators selected from among the persons proposed by the NOCs, chosen from within their membership or outside;
- 1/5 of the arbitrators chosen, after appropriate consultations, with a view to safeguarding the interests of the athletes;
- 1/5 of the arbitrators chosen from among persons independent of the bodies responsible for proposing arbitrators in conformity with the present article.<sup>21</sup>

The CAS also has a permanent president, who is an Australian lawyer, John Coates, appointed in 2011 in succession to the previous president and founder member of CAS, Judge Keba Mbaye, from Senegal, who died on January 11, 2007.

CAS arbitrators, who sit on panels composed of one or three members, are not generally obliged to follow earlier decisions (*stare decisis*), but they usually do so in the interests of legal certainty.<sup>22</sup> Thus, a useful body of sports law (*lex sportiva*) is steadily being built up.<sup>23</sup> The extent to which this is happening continues to be the subject of academic debate.<sup>24</sup>

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21. Blackshaw, *Fair Play On and Off the Field*, *supra* note 18, at 109.

22. See U.C.I. / J., CAS 97/176, at 14.

23. From time to time, the CAS publishes Digests of Cases, but respecting, as appropriate, the confidentiality of the parties. See KLUWER LAW INTL, DIGEST OF CAS AWARDS III, 2001–2003 (Matthieu Reeb ed., 2004) [hereinafter DIGEST OF CAS AWARDS III], covering the period between 2001–03. Previous Volumes I and II covered the periods 1986–98 and 1998–2000 respectively. KLUWER LAW INTL, DIGEST OF CAS AWARDS I, 1986–1998 (Matthieu Reeb ed., 2001) [hereinafter DIGEST OF CAS AWARDS I]; KLUWER LAW INTL, DIGEST OF CAS AWARDS II, 1998–2000 (Matthieu Reeb ed., 2002).

24. See Ken Foster, *Is There a Global Sports Law?*, 2 ENT. & SPORTS L.J. 1, 1–18 (2003) (arguing that the CAS as an institutional forum is not yet “globally comprehensive”); see also JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW 48–61 (2d ed. 2004) [hereinafter NAFZIGER, INT’L SPORTS LAW] (characterising the CAS *lex sportiva* as “still incipient”).

*D. CAS Procedures*

## 1. Ordinary Arbitration Proceedings

The procedure to be followed in CAS Arbitration cases is set out in the CAS Code, the latest edition of which dates from March 1, 2013,<sup>25</sup> and the text of which is set out on the CAS official website;<sup>26</sup> copies of the Code can be obtained from the CAS Court Office in Lausanne, Switzerland.<sup>27</sup> The applicable law for determining the dispute is Swiss law, unless the parties agree on another law. The parties may authorise the CAS to decide the dispute *ex aequo et bono*.<sup>28</sup>

To commence ordinary arbitration proceedings before CAS, it is necessary to file a written request, which must contain the following information:

- the name and full address of the Respondent(s);
- a brief statement of the facts and legal argument, including a statement of the issue to be submitted to the CAS for determination;
- the Claimant's request for relief;
- a copy of the contract containing the arbitration agreement or of any document providing for arbitration in accordance with these Procedural Rules;
- any relevant information about the number and choice of the arbitrator(s); if the relevant arbitration agreement provides for three arbitrators, the name and address of the arbitrator from the CAS list of arbitrators chosen by the Claimant.<sup>29</sup>

Upon filing the request, the Claimant must pay the Court Office fee, which is CHF 1,000.<sup>30</sup> If any of these requirements are not met, the CAS Court Office will grant a once only short deadline to comply, failing which the request for arbitration shall be "deemed withdrawn."<sup>31</sup>

The arbitration procedures generally fall into two different phases: a

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25. Antonio Rigozzi, *The 2013 Edition of the CAS Code—An Overview of the Key Changes*, 4 GLOBAL SPORTS L. & TAX 'N REP., Sept. 2013, at 14, 14 (reviewing the main procedural changes).

26. *Statutes of ICAS and CAS*, CAS, <http://www.tas-cas.org/statutes> (last visited Dec. 28, 2013).

27. Château de Béthusy, Av. de Beaumont 2, CH-1012 Lausanne. Tel: + 4 (1 21) 613 50 00. Fax: + 4 (1 21) 613 50 01.

28. CAS CODE, *supra* note 9, art. R45.

29. *Id.* art. R38

30. *Id.* art. R38, R64.1.

31. *Id.* art. R64.2, R65.2.

written procedure with exchange of written submissions; and an oral procedure, in which the parties present their cases and witnesses<sup>32</sup> in a hearing, which is usually held *in camera* at the CAS headquarters in Lausanne, Switzerland.<sup>33</sup> It should be added, however, that, pursuant to the provisions of Article R57 of the CAS Code, the case may be decided without holding a hearing, but on the submission of documents alone, if the Panel of Arbitrators, after consulting the parties, “*deems itself sufficiently informed*” to proceed without holding a hearing. However, this may raise questions of due process, especially the right of a party to be heard (*audi alteram partem*), and may perhaps expose the CAS Award to a legal challenge in the Swiss Federal Tribunal.

If the Claimant fails to submit its statement of claim as required under the procedural rules, the request for arbitration shall be *deemed withdrawn*.<sup>34</sup> Likewise, if the Respondent fails to submit its response in accordance with the procedural rules, the Panel may proceed with the case and deliver an award.<sup>35</sup> And, finally, if any of the parties is duly summoned and fails to appear at the hearing, the Panel may nevertheless proceed with the hearing.<sup>36</sup> Again, this may raise questions of due process.

## 2. Appeal Proceedings

In appeal cases, it is interesting to note that, also pursuant to the provisions of Article R57 of the Code, “The Panel shall have full power to review the facts and the law,” and “[i]t may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.”<sup>37</sup> In other words, the case is dealt with *de novo*. However, under the 2013 amendments to the CAS Code, the Panel now has “discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered.”<sup>38</sup>

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32. On the question of the rules on examination of witnesses and experts in CAS hearings, see Stephan Netzele, *Which Rules Apply to the Examination of Witnesses and Experts in a CAS Hearing?*, in *THE COURT OF ARBITRATION FOR SPORT 1984–2004*, at 210, 210–15 (Ian S. Blackshaw et al. eds., 2006) (discussing the question of the rules on examination of witnesses and experts in CAS hearings).

33. CAS CODE, *supra* note 9, art. R28 (after consultation with all the parties, the hearing may be held elsewhere).

34. *Id.* art. R44.5.

35. *Id.*

36. *Id.*

37. *Id.* art. R57.

38. *Id.*

Whilst on the subject of appeals, to commence the process the Appellant must file with CAS a Statement of Appeal, which must contain the following information:

- the name and full address of the Respondent(s);
- a copy of the decision appealed against;
- the Appellant's request for relief;
- the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator;
- if applicable, an application to stay the execution of the decision appealed against, together with reasons;
- a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS.<sup>39</sup>

Upon filing the Statement of Appeal, the Claimant must pay the Court Office fee.<sup>40</sup> If any of these requirements are not met, the CAS Court Office will grant a once only short deadline to comply, failing which the Appeal shall be *deemed withdrawn*.<sup>41</sup> There is a time limit for bringing an appeal to the CAS established in Article R49 of the CAS Code, which provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document.

If the Appellant fails to submit its appeal brief as required under the procedural rules, the appeal shall be deemed withdrawn.<sup>42</sup> If the Respondent fails to file an Answer as required under the procedural rules, the Panel may nevertheless proceed with the case and deliver an award.<sup>43</sup> If any of the parties are summoned but fails to appear, the Panel may nevertheless proceed with the hearing.<sup>44</sup> Again, this may raise questions of due process.

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39. *Id.* art. R48.

40. *Id.*

41. *Id.*

42. *Id.* art. R51.

43. *Id.* art. R55.

44. *Id.* art. R57.

### 3. Provisional or Conservatory Measures

In appropriate cases, it is possible for the parties to apply to the CAS for so-called *provisional or conservatory measures* under the procedural rules.<sup>45</sup> Such measures, if granted, may be made conditional on the provision of security. Article R37 of the CAS Code empowers the CAS to offer the parties in dispute certain protective measures within a very short timeframe, provided all internal legal remedies provided for in the rules of the federation or sports-body concerned have been exhausted.

This Article does not specify or limit the kinds of preliminary measures that the CAS Arbitrators can issue in a given case. But traditionally in arbitral proceedings, these measures tend to fall into three categories:

- Measures to facilitate the proceedings, such as orders to safeguard vital evidence;
- Measures aimed at preserving the *status quo* during the proceedings, such as those that preserve the object of the proceedings; and
- Measures that safeguard the future enforceability of the decision, such as those concerning property.

For example, in the infamous so-called *Skategate* case during the 2002 Salt Lake City Winter Games, an order was imposed on the judges not to leave the Olympic village before the CAS Ad Hoc Division had investigated the circumstances in which the disputed medal had been awarded.<sup>46</sup> Again, orders have been made in doping cases to preserve samples taken during a disputed doping control. However, preliminary measures can never exceed the object of the dispute. Thus, such measures cannot be issued against anyone who is not a party to the dispute, or anyone else who is not bound by the arbitration agreement signed by the applicant seeking the preliminary measures.

It should be noted that when deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider “whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the applicant outweigh those of the respondent(s).”<sup>47</sup>

Furthermore, under the terms of Article R37 of the Code, in appeal proceedings, the parties by agreeing to the CAS Procedural Rules “waive their

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45. *Id.* art. R37.

46. *See generally* Canadian Olympic Ass’n / Int’l Skating Union, CAS ad hoc Div. 2002/004 (O.G. Salt Lake City).

47. CAS CODE, *supra* note 9, art. R37.

rights to request such measures from state authorities or tribunals.”<sup>48</sup> In other words, parties waive their rights to request such measures from the local courts.

Again, under Article R37, provisional and conservatory measures may be made conditional on the provision of security by the party seeking them. Such security is often a financial guarantee to be given by the applicant seeking such measures against any possible loss suffered by the party subject to the restraining measures in case the applicant is not ultimately successful in the proceedings. This happens in civil litigation quite often when an interim injunction is awarded by the court.

Another important issue that needs to be addressed is the extent to which any preliminary measures granted can be legally enforced either by the CAS Arbitrators themselves or with the assistance of the state authorities. This is a controversial subject that would merit a lengthy paper in its own right.<sup>49</sup> Suffice to say that, in practice, the measures carry a high degree of moral authority and, therefore, national and international sports federations tend to comply with them, and through their own internal regularity mechanisms also tend to ensure that sports persons under their jurisdiction also comply. Apart from this, failure to comply will weaken the position of the defaulting party in the subsequent proceedings, so it is in that party’s interest to conform.

As for enforcement by state courts, that is a matter of local law. For example, Swiss Law provides for judicial assistance under the provisions of Article 183(2) of the Swiss Private International Law Statute of December 18, 1987, which states that, if the party concerned does not comply voluntarily, “the arbitration tribunal may call upon the assistance of the competent judge.” This becomes more problematic when the provisional measures are to be enforced outside Switzerland. For example, in Germany, this is not a legal problem as German law allows German courts to authorise the enforcement of provisional measures ordered by an arbitral body with its seat outside Germany. But in Italy, it is a problem because Italian law does not recognise the jurisdiction of arbitral bodies to grant provisional measures and will not, therefore, enforce them.

It is clear that the CAS is able to grant parties in dispute very valuable, relevant, and generally effective kinds of interim protection and relief at an early stage in the proceedings; and these measures deserve to be better known and more widely used by the sporting community to ensure that fairness—an essential element in sport—and justice are duly served.

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48. *Id.*

49. See Antonio Rigozzi, *Provisional Measures in CAS Arbitrations*, in *THE COURT OF ARBITRATION FOR SPORT 1984–2004*, *supra* note 32, at 217–24.

#### 4. Expedited Proceedings

Likewise, the Division President or the CAS Panel may, with the consent of the parties, agree to expedite the proceedings, in respect of which appropriate directions may be issued.<sup>50</sup> This, in practice, is a useful measure in sporting disputes, where athletes or teams/clubs are often subject to sporting deadlines and other time pressures. For example, a sports person or a team that has been denied eligibility to compete in a particular sporting event, which is soon to take place, needs to have the dispute settled very quickly, if the possibility of competing is to remain open and not lost through any delay.<sup>51</sup>

Again, Article 48 of the CAS Code also allows a party to obtain a “*stay of execution*” of the decision appealed against, provided a request to that effect is made at the time of filing the statement of appeal with the CAS together with the corresponding reasons. This measure is particularly apposite in appeals against suspensions for doping offences. But it has also been invoked in a variety of other cases, including a decision to have a football match played on neutral territory to avoid a risk of terrorism in the host club’s country. If the request is not made at the time of filing the appeal, it is lost; the assumption being that there is no urgency; otherwise, this would have been pleaded at the outset.

#### E. CAS “Advisory Opinions”

The CAS also formerly offered “Advisory Opinions” (known as Consultation Proceedings) on potential disputes, similar to the concept of “expert determination” in the business world, which has become a popular form of ADR for settling commercial and financial disputes. However, there is one important difference: CAS Advisory Opinions were not legally binding. However, this did not detract from their usefulness because in practice they were a quick and relatively inexpensive way of clarifying legal issues and thus, hopefully, avoiding lengthy and expensive litigation.

On a general point, it may be noted, *en passant*, that a party may apply to CAS, not later than forty-five days following the notification of the award, for the interpretation of an award issued in an ordinary or appeals arbitration “whenever the operative part of the award is unclear, incomplete, ambiguous, if its components are self-contradictory or contrary to the reasons, or if the

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50. CAS CODE, *supra* note 9, art. R44.4.

51. Apollon Kalamarias FC / Hellenic Football Fed’n & Olympiakos FC, CAS 2008/A/11525; see also Ian Blackshaw, *The Court of Arbitration for Sport: Provisional and Conservatory Measures*, 1 INT’L SPORTS L.J. 102, 103–05 (2008) (explaining the time sensitive aspect of sports-related cases.).

award contains clerical mistakes or mathematical miscalculations.”<sup>52</sup> The president of the relevant division shall review whether there are grounds for interpretation and the Panel which rendered the award must rule on the request for interpretation within one month of the submission of the request for interpretation.<sup>53</sup> Again, this is a useful procedure in practice.

#### F. CAS Ad Hoc Division

Since the Centennial Games in Atlanta in 1996—dubbed the “Coca-Cola Games”—the CAS has operated its AHD to adjudicate on disputes arising during the Summer and Winter Games. The AHD was again in session during the 2008 Summer Games in Beijing, China dealing with the usual crop of doping cases, and also in the 2010 Winter Games in Vancouver, Canada.

The AHD operates under a special set of rules—Arbitration Rules for the Olympic Games—and its remit is to settle such cases within twenty-four hours.<sup>54</sup> It needs to act quickly because of sporting deadlines, especially in eligibility and selection disputes—and does so free of charge.<sup>55</sup> All athletes competing in the Games must agree in their entry forms to submit their disputes “exclusively” to the jurisdiction of the CAS.

The wording of this “undertaking” is as follows, “I shall not constitute any claim, arbitration or litigation, or seek any other form of relief in any other court or tribunal.” The legal validity of such a clause—designed to “oust the jurisdiction of the courts”—may be doubtful under various jurisdictions.<sup>56</sup>

Under the special AHD rules, the arbitrators selected to serve on the AHD Panels must decide cases in accordance with the principles of the Olympic Charter, the applicable sports regulations, general principles of law, and the rules of law, which they deem appropriate.<sup>57</sup> This gives them a wide scope to act fairly and provide just outcomes in the cases referred to them. The arbitrators also have full power to review the facts of the cases.<sup>58</sup> The parties may be assisted or represented at AHD hearings by persons of their choice, including lawyers.<sup>59</sup>

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52. CAS CODE, *supra* note 9, art. R63.

53. *Id.*

54. CAS AD HOC RULES, *supra* note 17, art. 18

55. *Id.* art. 22. However, the parties are required to pay their own costs of legal representation, experts, witnesses and interpreters. *Id.*

56. See *Scott v. Avery*, (1856) 10 Eng. Rep. 1121; 5 H.L.C. 811, 811; see also Blackshaw, *CAS at the London Olympics*, *supra* note 19, at 11–12.

57. CAS AD HOC RULES, *supra* note 17, art. 17.

58. *Id.* art. 16.

59. *Id.* art. 8.

The cases range from eligibility and selection issues to, sadly, doping issues. There is also an increasing number also of cases challenging the decisions of referees and judges. For example, at the Winter Olympics in 2002 in Salt Lake City, one of the cases dealt with was the so-called Skategate scandal concerning the impartiality of the judges in one of the skating events.<sup>60</sup> In that case, the AHD imposed an order on the judges concerned not to leave the Olympic Village before it had investigated the circumstances in which the disputed medal had been awarded, which illustrates the wide powers the members of the AHD have at their disposal.<sup>61</sup>

The CAS publishes a digest of the cases dealt with by the AHD at each of the Games shortly afterwards, and these make interesting and informative reading. The CAS also provides AHD proceedings at the Commonwealth Games and the Euro Football Championships.

One final but important legal and practical point: in AHD proceedings, the seat of the CAS remains in Lausanne, Switzerland, where it is based. The case of Angela Raguz<sup>62</sup> well illustrates this point. In that case, the AHD was asked just before the 2000 Sydney Summer Olympics to adjudicate in a selection dispute involving two Australian “judokas.” The unsuccessful one, Angela Raguz, challenged the CAS award in the New South Wales Court of Appeal. The court held that the CAS agreement for arbitration form signed by the parties was not a “domestic arbitration agreement” within the Commercial Arbitration Act 1984, but a foreign one, and therefore outside the jurisdiction of the Australian Courts. Although the physical place of arbitration was Sydney, Australia, the legal place of arbitration, as expressly stipulated in the agreement, was Lausanne, Switzerland—the “seat” of the CAS. The CAS award could only, therefore, be challenged in a Swiss Court under Swiss Law—in limited circumstances as explained later.

### *G. Sports Disputes*

#### 1. Generally

Parties involved in sports disputes have three possible ways of resolving them. They can: (1) appeal to the internal authorities of their sports federations, both national and international; (2) take their disputes to the ordinary competent courts; or (3) submit disputes to private arbitration or mediation. It is important to point out that the regulations of sports federations

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60. See generally *Scott*, 5 H.L.C. 811.

61. As to the range of these powers to grant preliminary relief including stays of execution of sports bodies' rulings, see CAS AD HOC RULES, *supra* note 17, art. 14.

62. *Raguz v Sullivan*, [2000] 50 NSWLR 263 (Austl.).

cannot exclude an appeal of a dissatisfied member to external judicial authorities. Such provisions designed to oust the jurisdiction of the courts are void.<sup>63</sup> However, they can provide in their regulations for parties involved in disputes to first exhaust all the internal remedies and appeal procedures before resorting to the ordinary courts.<sup>64</sup>

## 2. “On-Field of Play” Disputes

The CAS is dedicated to hearing and settling any disputes directly or indirectly relating to sport.<sup>65</sup> However, it is well-established in previous decisions that the CAS will not generally review so-called on-field of play sporting decisions made on the playing field by judges, referees, umpires, and other officials, who are responsible for applying the rules of a particular game. For example, in *Mendy v. International Amateur Boxing Ass’n*, the Ad Hoc Division, sitting at the Atlanta Summer Games in 1996, dismissed the French boxer’s appeal against disqualification for punching his opponent below the belt in violation of the rules.<sup>66</sup> In that case, the AHD held that “the referee’s decision, confirmed by the AIBA, is a purely technical one pertaining to the rules which are the responsibility of the federation concerned,” and added that the boxer had not provided any evidence that the competent sports authorities, in evaluating a technical rule specific to the sport concerned, had committed an error of law, a wrong, or a malicious act against him.

Again, and more recently, the appeal during the Athens Summer Games in 2004 against the decision of the Appeal Committee of the International Equestrian Federation setting aside the Ground Jury ruling that a time penalty be imposed on the German equestrian athlete Bettina Hoy for failing to complete a jumping event within the required time limit was upheld. The Ad Hoc Division held, *inter alia*, that it was “not necessary to deal with the merits or demerits of the Ground Jury’s ruling, which was clearly a on-field of play decision made within its competence during the course of an event falling under its exclusive control.”<sup>67</sup>

But in cases in which such rules have been applied in bad faith, the CAS

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63. See *Baker v. Jones*, [1954] 1 W.L.R. 1005 at 1005 (Eng.).

64. See *Scott*, 5 H.L.C. at 842.

65. CAS CODE, *supra* note 9, art. R27 (“Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport.”).

66. See *M. / Ass’n Internationale de Boxe Amateur*, CAS ad hoc Div. 96/006, ¶ 13 (O.G. Atlanta).

67. See *Comite Nat’l Olympic et Sportif Francais / Fed’n Equestre Internationale*, CAS ad hoc Div. 2004/007, ¶ 25 (O.G. Athens).

will exceptionally intervene in the interests of justice.<sup>68</sup> In doing so, there must be evidence, which generally must be direct evidence, of bad faith. This places a “high hurdle” that must be cleared by anyone seeking to review a field of play decision: if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant in a sporting event would be able to challenge such on-field decisions.<sup>69</sup>

### 3. Sporting and Commercial Disputes

Sports disputes that the CAS hears may include purely sporting issues, such as selection and eligibility matters, as well as disciplinary matters, including doping,<sup>70</sup> and also commercial issues, which are on the increase in view of the mega sums now at stake in the promotion and marketing of professional sport and sports events, such as disputes over corporate sponsorship, merchandising, and agency contracts.<sup>71</sup> A sports person, body, or a commercial company, such as a sports marketing company, may bring cases to CAS. The parties must agree to do so in writing. Cases can be referred to the CAS on an ad hoc basis at the time a particular dispute arises. But many sports bodies and sports marketing companies are now including an express CAS arbitration clause<sup>72</sup> in their contracts. The standard CAS clause for a sports body is as follows:

Any decision made by . . . [insert the name of the disciplinary tribunal or similar court of the sports federation, association or sports body which constitutes the highest internal tribunal] may be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of Sports-related Arbitration. The

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68. See *Irish Hockey Ass'n / Lithuanian Hockey Fed'n (LHF)*, CAS 2001/A/354; *Lithuanian Hockey Fed'n / Int'l Hockey Fed'n*, CAS 2001/A/355.

69. See *Korean Olympic Comm. /Int'l Skating Union*, CAS ad hoc Div. 2002/007, ¶ 17 (O.G. Salt Lake City).

70. WORLD ANTI-DOPING CODE art. 13 (2009) (stating that final appeals against doping decisions go exclusively to the CAS.).

71. See *USOC / IOC*, CAS 2011/O/2422, ¶ 51 (condemning the IOC's so-called Osaka Rule as not being an eligibility issue but as imposing an additional sanction (double jeopardy)—and an unjustified one at that—under the WADA Anti Doping Code; and also the equally important CAS ruling on Apr. 30, 2012, holding that the British Olympic Ass'n automatic life-time Olympics ban imposed on British athletes, who have been found guilty of doping offences, was also illegal.).

72. For comments on these CAS standard arbitration and med-arb clauses, see IAN S. BLACKSHAW, *SPORTS MARKETING AGREEMENTS: LEGAL, FISCAL AND PRACTICAL ASPECTS* 458–60 (2012).

time limit for appeal is twenty-one days after the reception of the decision concerning the appeal.<sup>73</sup>

The standard CAS clause for a commercial dispute is as follows, “Any dispute arising from or related to the present contract will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration.”<sup>74</sup>

The parties may—and it is advisable to do so—include in this reference clause additional provisions regarding the number of CAS arbitrators (from one to three) and the language in which the CAS proceedings will be conducted (for example, English).

#### 4. Sports-Related Commercial Disputes: Some Examples

The CAS has dealt with a number of sports-related commercial disputes and mention will now be made of a few of them, which will give the reader a flavour of the range of sports-related commercial and financial disputes that may be referred to the CAS.

The CAS was brought in to deal with a dispute concerning the UEFA, the European Governing Body of Football, restrictions on common ownership of football clubs competing in their European competitions. The CAS held that these restrictions were not anti-competitive, as alleged by the English National Investment Company, which owned several clubs and wanted to acquire others, but could be justified on sporting grounds—the so-called sporting exception.<sup>75</sup> These restrictions actually encouraged competition in a sporting sense. Incidentally, subsequently, the EU Competition Commission agreed with this ruling in line with the legal distinction EU Law makes between the “rules of the game” and commercial restrictions.

In another case, the CAS was called upon to determine the legal nature of and interpret certain marketing contracts, including a sponsorship contract, entered into between a Sports Federation and a French company. *Inter alia*, the CAS held that “where a contract’s provisions concerning the payment of commission are unambiguous, there is no need to re-interpret them.”<sup>76</sup>

Again, the CAS dealt with another sporting issue with significant commercial implications. Just before the 2000 Sydney Summer Games, the

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73. *Appeals Arbitration Procedure*, CAS, <http://www.tas-cas.org/en/arbitrage.asp/4-3-285-1021-4-1-1/> (last visited Dec. 28, 2013).

74. *Ordinary Arbitration Procedure*, CAS, <http://www.tas-cas.org/clause-templates> (last visited Dec. 28, 2013).

75. See AEK PAE & SK Slavia Praha / UEFA, CAS 98/A/200, ¶ 77–84.

76. See X. Sarl / Fed’n Y, CAS 2001/O/319, ¶ 1, in DIGEST OF CAS AWARDS III, *supra* note 23, at 10.

Australian Olympic Committee asked the CAS for an advisory opinion on whether the introduction of the so-called full-body swimming costumes was lawful. Speedo and other sports apparel manufacturers had invested substantial sums of money in them. But did they give competitors, who wore them, an unfair advantage over those who did not, and had the rules, allowing them, been properly passed by FINA, the World Governing Body of Swimming? The CAS, after a full review of the legal and sporting issues, held that they had been correctly introduced.<sup>77</sup>

In 2003, the author of this Article was asked to give an advisory opinion, requested by the Canadian Olympic Committee, on whether controversial new scoring rules in badminton introduced by the International Badminton Federation—introduced for marketing/commercial reasons with the intention of making the sport more telegenic and interesting for sponsors—discriminated against women players, who were subject to different playing rules. As there was no sporting reason for this difference, it was held that the new rules could be considered discriminatory.<sup>78</sup>

A number of commercial disputes have also been settled by CAS Mediation. These cases have included disputes with a sports management agency over the commercialisation of a cyclist's image rights and financial disputes between athletes and their advertising agencies in relation to substantial commission payments.

It should be added that, since FIFA joined the CAS in 2002, there have been many disputes referred to the CAS concerning the interpretation and application of the FIFA International Football Transfer Rules, especially the payment of compensation for the education and training costs of young players and disputes regarding the level of transfer fees payable in particular cases, on appeal from the FIFA Dispute Resolution Chamber. Many of these cases have involved well-known Football Clubs and players.<sup>79</sup> More recently, the decision of the FIFA Dispute Resolution Chamber in the case of the footballer Andrew Webster was appealed to the CAS.<sup>80</sup> This case was followed by the

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77. See Advisory Opinion, Austl. Olympic Comm., CAS 2000/C/267, ¶ 30 (rendered by Professor Richard H. McLaren (Can.) on the so-called "Long John" swimsuits and their compliance with the FINA (Int'l Amateur Swimming Federation) rules). For a critique of this Advisory Opinion, see Janwillem Soek, *You Don't Win Silver, You Miss the Gold*, 4 INT'L SPORTS L.J. 15, 15–18 (2000).

78. See Advisory Opinion, Canadian Olympic Committee, CAS 2003/C/445 (rendered by Professor Ian S. Blackshaw (U.K.) on the legality of the new scoring rules introduced by the International Badminton Federation on May 23, 2002.).

79. For example, the dispute between Fulham Football Club and Olympic Lyonnais concerning the transfer of Steve Marlet, Fulham FC / Olympique Lyonnais, CAS 2003/O/486.

80. Webster / Heart of Midlothian, CAS 2007/A/1300; Heart of Midlothian / Webster, CAS 2007/A/1299; Wigan Athletic FC / Heart of Midlothian, CAS 2007/A/1298.

Matuzalem case, which contradicted the basis for the assessment of damages for an anticipatory breach of a football player's contract of employment, thus ending so-called cheap contract buyouts (Matuzalem was hit with compensation for the breach of €1,858,934!).<sup>81</sup>

#### *H. Cost of CAS Proceedings*

Challenges to decisions of international sports federations are dealt with by the Appeals Division of CAS. Where such disputes relate to disciplinary matters, including doping cases, apart from the payment of the Court fee of CHF 1,000 raised from CHF 500 with effect from July 1, 2011, the proceedings are free of charge. However, in one case in which the parties settled their dispute prior to the hearing before CAS, but only informed CAS on the day of the actual hearing, resulting in the unnecessary attendance at CAS of the members of the CAS Panel, the CAS ordered the parties to pay the CAS costs.<sup>82</sup> In all other appeal cases, for example, an appeal relating to a football transfer dispute, costs are fixed in the same way as disputes dealt with in the Ordinary Division.

Commercial disputes referred to the CAS are dealt with under the Ordinary Jurisdiction. Apart from the payment of a Court fee of CHF 1,000, the CAS fixes the costs in accordance with a sliding scale based on the amount in dispute, and before the case may proceed, the parties are required to pay an advance of fees to the CAS office.<sup>83</sup>

The CAS can award costs to the successful party in a CAS case or determine the proportion in which the parties are to share them; as a general rule, the prevailing party is granted a contribution towards its legal fees and other expenses, including the costs of witnesses and interpreters.<sup>84</sup>

#### *I. The Legal Status of CAS Awards*

Awards made by the CAS, like other international arbitral awards, are legally enforceable, generally, in accordance with the rules of International

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81. See *Matuzalem Francelino da Silva / FC Shakhtar Donetsk*, CAS 2008/A/1520.

82. See *G. / Int'l Equestrian Fed'n*, CAS 2000/A/264, ¶ 3–4.

83. CAS CODE, *supra* note 9, art. R64.2; see also *Schedule of Arbitration Costs*, CAS (Mar. 1, 2013), <http://www.tas-cas.org/arbitration-costs>.

84. *Id.* art. R64.5 (“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”).

Private Law, and also, specifically, under the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958. The CAS is also recognised under the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations. So, the CAS decisions are legally effective and can be enforced internationally. This is particularly important in the case of disputes involving intellectual property rights, especially trademarks, which are generally of a territorial nature.

### *J. Legal Challenges to CAS Awards*

The CAS awards can be legally challenged in the Swiss Federal Court, also based in Lausanne, by a dissatisfied party, but only in very limited circumstances, under the provisions of Article 190(2) of the Swiss Federal Code on Private International Law of December 18, 1987. This Article reads (in translation) as follows:

[The Award] can be attacked only:

- (a) if a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly;
- (b) if the arbitral tribunal erroneously held that it had or did not have jurisdiction;
- (c) if the arbitral tribunal ruled on matters beyond the claims submitted to it or failed to rule on one of the claims;
- (d) if the equality of the parties or their right to be heard in an adversarial proceeding was not respected;
- (e) if the award is incompatible with Swiss public policy.

In practice, perhaps ground (d) is the most important one, and the CAS bends over backwards in each case to ensure that the parties are properly heard and receive a fair hearing.<sup>85</sup>

In practice, there have been few legal challenges to CAS awards. In the latest challenge in 2003 concerning the independence of the CAS in view of its association with and partial funding by the IOC, the Swiss Federal Court held that the CAS offered all the guarantees of independence and impartiality to be regarded as a real court of arbitration, even where the IOC—as in that case—was a party in its proceedings.<sup>86</sup>

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85. See X. / ATP Tour, Inc., BGer, Mar. 22, 2007, docket no. 4P.172/2006 (Switz.), available at [www.bger.ch](http://www.bger.ch) (brought under either paragraph (d) or paragraph (e) of Article 190(2) of the Swiss Federal Code on Private Int'l Law of Dec. 18, 1987).

86. See A. & B. / IOC, BGer, May 27, 2003, docket no. 4P.267/2002, 4P.268/2002, 4P.269/2002, & 4P.270/2002 (Switz.), translated in DIGEST OF CAS AWARDS III, *supra* note 23, at 688.

In that case, two Russian cross-country skiers, Larissa Lazutina and Olga Danilova unsuccessfully questioned the independence of CAS in the Swiss Federal Tribunal in 2003. These skiers were disqualified by the IOC after the 2002 Winter Olympic Games in Salt Lake City for doping offences. The International Ski Federation (FIS) suspended both of them for two years. Their appeal to CAS, calling for the IOC and FIS decisions to be overruled, was dismissed. Their legal challenge to the Tribunal on the grounds that CAS, because it is a creature of and receives some funding from the IOC, is not a truly independent body, was also dismissed. The Tribunal held that CAS offered all the guarantees of independence and impartiality to be regarded as a real court of arbitration, even where the IOC—as in the Russian skiers' case—is a party to its proceedings. On the question of the partial financing of the CAS by the IOC, the Court concluded,

[O]ur discussion of the financing of the CAS, it should be added that there is not necessarily any relationship of cause and effect between the way a judicial body is financed and its level of independence. This is illustrated, for example, by the fact that State courts in countries governed by the rule of law are often required to rule on disputes involving the State itself, without their judges' independence being questioned on the ground that they are financially linked to the State. Similarly, the CAS arbitrators should be presumed capable of treating the IOC on an equal footing with any other party, regardless of the fact that it partly finances the Court of which they are members and which pays their fees.<sup>87</sup>

However, the Tribunal made the following observation/recommendation to make the list of arbitrators more transparent for the benefit of the parties selecting them:

It would be preferable, . . . if the published list were to indicate, alongside the name of each arbitrator, which of the five categories mentioned in Article S14 they belonged to (arbitrators chosen from those proposed by the IOC, the IFs and the NOCs; arbitrators chosen to safeguard the interests of the athletes; arbitrators chosen from among persons independent of the three aforementioned bodies) and, for those in two of these categories, by which IF or NOC they were proposed . . . . The parties would then be able to appoint their arbitrator with full knowledge of the facts. For example,

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87. *Id.*

it would prevent a party in dispute with the IOC, in the belief that he was choosing an arbitrator completely unconnected to the latter, from actually appointing a person who was proposed by that organisation but who is not an IOC member (see Art. S14 of the Code, which advocates this practice).<sup>88</sup>

The Tribunal's ruling on May 27, 2003, puts, I think, the question of the impartiality and independence of the CAS beyond any further doubt both now and in the future, although, it must be said, not all commentators would necessarily agree with this point of view.

Finally, mention should also be made briefly of the recent landmark decision of the Tribunal. On March 27, 2012, the Tribunal overturned an Appeal decision by the CAS in the case of Matuzalem Francelino da Silva, a professional Brazilian footballer, who currently plays for SS Lazio Spa. This case has a long procedural history and the Swiss Court, for the very first time in the history of the Swiss Private International Law Statute of December 18, 1987, annulled the CAS decision for a violation of Swiss public policy, pursuant to the provisions of Article 190(2)(e) of this Statute. This particular ground for legally challenging arbitral awards in Switzerland, whether rendered by CAS or other Swiss arbitral bodies, is notoriously difficult to establish in practice, as public policy (*ordre public*) is a complex and vague concept and one that is restrictively assessed and interpreted.<sup>89</sup>

### III. "LEX SPORTIVA"

During its twenty-nine years of operations, the CAS has dealt with a substantial number of cases covering a wide range of sports related legal issues. Although CAS arbitrators are not generally obliged to follow earlier decisions and obey the sacred Common Law principle of *stare decisis* (binding legal precedent),<sup>90</sup> in the interests of comity and legal certainty, they usually do so.<sup>91</sup> As a result of this practice, a very useful body of sports law is steadily being built up.<sup>92</sup> The extent to which the CAS is contributing to a

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88. *Id.* at 686.

89. For further information on this important Tribunal ruling, see Alara E. Yazicioglu, *Matuzalem Case: Red Card to FIFA?*, 3 GLOBAL SPORTS L. & TAX'N REP., at 17, 17–21 (2012).

90. See U.C.I. / J., CAS 97/176, at 14.

91. But see the CAS Appeal Awards in Webster (Jan. 30, 2008), Matuzalem (May 19, 2009) and Shakhtar (Sept. 28, 2011) and try to reconcile them!

92. See NAFZIGER, INT'L SPORTS LAW, *supra* note 24, at 48–61; James A.R. Nafziger, *Lex Sportiva and CAS*, in THE COURT OF ARBITRATION FOR SPORT 1984–2004, *supra* note 32, at 409–54; James A.R. Nafziger, *Arbitration of Rights and Obligations in the International Sports Arena*, 35 VAL. U. L. REV. 357 (2001).

discrete body of sports law (*lex sportiva*) is a complex and controversial subject, particularly given the general lack of publicity afforded to CAS Awards, and divides academics and practitioners alike.<sup>93</sup> In fact, an entire article could be devoted to this developing and intriguing subject!

#### IV. CAS MEDIATION

The CAS also offers a mediation service,<sup>94</sup> which was introduced on May 18, 1999.<sup>95</sup> And, as Ousmane Kane, the former Senior Counsel to the CAS and, during his tenure as such, responsible for mediation, has remarked, “The International Council of Arbitration for Sport took the initiative to introduce mediation alongside arbitration. As the mediation rules encourage and protect fair play and the spirit of understanding, they are made to measure for sport.”<sup>96</sup>

Article 1, paragraph 1 of the CAS Mediation Rules (Rules) defines mediation as “CAS mediation is a non-binding and informal procedure, based on an agreement to mediate in which each party undertakes to attempt in good faith to negotiate with the other party [and with the assistance of a CAS mediator] with a view to settling a sports-related dispute.”<sup>97</sup>

Article 2 of the Rules defines a “mediation agreement” as, “A mediation agreement is one whereby the parties agree to submit to mediation a sports-related dispute which has arisen or which may arise between them. A mediation agreement may take the form of a mediation clause inserted in a contract or that of a separate agreement.” In other words, an express or an “*ad hoc*” mediation reference clause.

Although mediation is expressly excluded (in paragraph 2 of Article 1 of the Rules) for disciplinary and doping cases, for obvious reasons, mediation is very appropriate for settling the commercial/financial issues and consequences (for example, loss of lucrative sponsorship and endorsement contracts), which often follow from a doping case, particularly where the sports person

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93. See IAN S. BLACKSHAW, SPORT, MEDIATION AND ARBITRATION 177–89 (2009) [hereinafter BLACKSHAW, SPORT, MEDIATION AND ARBITRATION].

94. See generally CAS, CAS MEDIATION RULES (2013) [hereinafter CAS MEDIATION RULES].

95. There are currently some sixty-five CAS mediators.

96. Ian Blackshaw, *The Court of Arbitration for Sport (CAS) Updates its Mediation Rules*, A.M.C. ASSER INSTITUUT, [http://www.asser.nl/Default.aspx?textid=40830&site\\_id=11&level1=&level2=13914](http://www.asser.nl/Default.aspx?textid=40830&site_id=11&level1=&level2=13914) (last visited Dec. 28, 2013). On the value of mediation generally for settling sports disputes, see generally IAN S. BLACKSHAW, MEDIATING SPORTS DISPUTES: NATIONAL AND INTERNATIONAL PERSPECTIVES (2002) [hereinafter BLACKSHAW, MEDIATING SPORTS DISPUTES]. And on CAS Mediation, see Ian Blackshaw, *Settling Sports Disputes by CAS Mediation*, 3 IN TOUCH (Ass’n for Int’l Arbitration, Brussels, Belgium), Sept. 2011, at 3, 4–7.

97. CAS MEDIATION RULES, *supra* note 94, art. 1.

concerned was wrongly accused of being a drugs cheat. For example, Dianne Modahl would probably have been better advised to try to settle her claims for compensation against the British Athletic Federation through mediation rather than through the courts.<sup>98</sup>

If the parties in dispute prefer to settle their differences by mediation—and many do because of the special characteristics and dynamics of sport<sup>99</sup>—the CAS model mediation clause is as follows:

Any dispute, any controversy or claim arising under, out of or relating to this contract and any subsequent amendments of or in relation to this contract, including, but not limited to, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims shall be submitted to mediation in accordance with the CAS Mediation Rules.

If mediation proves to be unsuccessful, although mediation providers usually claim a success rate of around 85%, the CAS recommends the following additional clause to be inserted in a contract to cover the above contingency:

If, and to the extent that, any such dispute has not been settled within 90 days of the commencement of the mediation, or if, before the expiration of the said period, either party fails to participate or continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by either party, be referred to and finally settled by CAS arbitration pursuant to the Code of Sports-related Arbitration. When the circumstances so require, the mediator may, at his own discretion or at the request of a party, seek an extension of the time limit from the CAS President.

Thus, the CAS offers disputing parties the possibility of a “Med-Arb” dispute resolution process: mediation to identify the issues and arbitration to settle them.<sup>100</sup>

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98. See generally *Modahl v. British Athletic Fed'n*, [2001] 1 W.L.R. 1192 (Eng.); see also Ian S. Blackshaw, *Modahl Loses Appeal For Compensation*, Nov./Dec. 2001, *SPORTS L. BULL.*, at 1, 3–4; Ian Blackshaw, *Doping: The Commercial and Financial Effects and How Best to Deal with Them*, 2 *GLOBAL SPORTS L. & TAX'N REP.*, at 5, 5–7 (2011).

99. BLACKSHAW, *MEDIATING SPORTS DISPUTES*, *supra* note 95, at 182 (discussing the case of Richie Woodhall and Frank Warren involving a time-critical dispute under certain management and promotion agreements entered into between them, which was settled within seventy-two hours by mediation.).

100. See Ian Blackshaw, *Settling Sports Business Disputes by “Med-Arb” in the Court of Arbitration for Sport*, IN TOUCH (Ass'n for Int'l Arbitration, Brussels, Belgium), Sept. 2011, at 3.

Whilst on the subject of mediation, it may be noted, *en passant*, that in a landmark ruling in the English Courts in the case of *Cable & Wireless PLC v. IBM United Kingdom*,<sup>101</sup> Mr. Justice Colman held that an agreement to refer disputes to mediation is contractually binding. In this case, IBM called on Cable and Wireless to mediate a dispute that had arisen under a contract in which the parties had agreed to mediate future disputes. Cable and Wireless refused to do so, claiming that the reference to mediation in the contract was legally unenforceable because it lacked certainty and was like an unenforceable agreement to negotiate. The judge rejected this argument, holding that the agreement to try to resolve a dispute, with identification of the procedure to be used, was sufficient to give certainty and, therefore, legal effect to the clause. It may be added that, in England too, parties who, under Court rules, refuse to try—or even *consider* the possibility of mediating—to settle their disputes by mediation at an early stage in the litigation process, may run the risk of being denied their legal costs if ultimately successful, contrary to the normal rule that “costs follow the event.”<sup>102</sup>

Because of its popularity in the sporting world, many international and national sports federations now include specific provisions for mediation of appropriate sports disputes in their statutes and constitutions. As to the legal validity of a so-called CAS arbitration or mediation clause by reference in such Statutes and Constitutions, see the decision of the Swiss Federal Tribunal of October 31, 1996, in the case of *N. v. Federation Equestre Internationale*.<sup>103</sup> In that case, the Court held that by agreeing to abide by the rules of the Federation, which included a provision to refer all disputes exclusively to the CAS, the sports person concerned was bound to submit the dispute to the CAS, even though he had not expressly agreed to CAS arbitration or mediation. So-called sports association law applied in such a case.

#### A. Procedural Aspects of CAS Mediations

Under Article 3 of the Rules, except where the parties agree otherwise, the version of the Rules in force at the time the written request for mediation

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101. [2002] EWHC (Comm) 2059, [2002] All E.R. 1014 (Eng.).

102. See *Dunnett v. Railtrack PLC*, [2002] EWCA (Civ) 303, [2002] 1 W.L.R. 2434 (Eng.); *Leicester Circuits Ltd. v. Coates Bros. PLC*, [2003] EWCA Civ 333 (Eng.); but see *Halsey v. Milton Keynes Gen. NHS Trust*, [2004] EWCA Civ. 576, [2004] W.L.R. 3002 (Eng.) (collectively known as the “Halsey” case and described by Lord Phillips of Worth Matravers as “the most important English judgement about ADR”).

103. N. / Int'l Equestrian Fed'n, BGer, Oct. 31, 1996, (Switz.), translated in CAS, DIGEST OF CAS AWARDS I, *supra* note 23, at 585.

(required under Article 4 of the Rules) is filed at the CAS Court Office shall apply.

Article 4 provides that the written request shall contain: “The identity of the parties and their representatives (name, address, email address, telephone and fax numbers), a copy of the mediation agreement and a brief description of the dispute.” Upon filing the mediation request, the administrative fee stipulated in Article 14 of the Rules must be paid; and the day on which this request is received by the CAS Court Office shall be considered as the date on which the mediation proceedings commenced.

Pursuant to Article 6 of the Rules, the CAS President chooses the mediator from the list of CAS mediators drawn up in accordance with the provisions of Article 5. The mediator appointed must be and remain independent of the parties. Article 7 states the parties may be represented or assisted at their meetings with the mediator. The representative must have full authority to settle the dispute alone, without consulting the party whom he is representing.

Under Article 8 of the Rules, the procedure to be followed in the mediation shall either be agreed by the parties themselves or determined by the mediator. This is a slight deviation from the general principle that the mediator is the one who controls the procedural aspects of the mediation. But the parties are required to “cooperate in good faith with the mediator and . . . guarantee him the freedom to perform his mandate to advance the mediation as expeditiously as possible.”

The role of the mediator is laid down in Article 9 of the Rules, which recognises the basic concept of mediation, namely, that the mediator acts as a facilitator and may act in any manner “*he believes to be appropriate*” but may not impose any solution of the dispute on either of the parties.

Article 10 of the Rules provides for the confidentiality of the mediation process subject to the normal exception of making any disclosure as required by the law. And further provides, “No record of any kind shall be made of the meetings . . . [and] [a]ll the written documents shall be returned to the party providing these upon termination of the mediation, and no copy therefore shall be retained.” Article 10 also makes provision for the mediation to be conducted on a “*without prejudice*” basis, expressed in the following terms:

[T]he parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings:

- a. views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- b. admissions made by a party in the course of the mediation proceedings;
- c. documents, notes or other information obtained

- d. during the mediation proceedings;
- d. proposals made or views expressed by the mediator;
- e. the fact that a party had or had not indicated willingness to accept a proposal.

Article 11 of the Rules deals with the questions of when and how the mediation may be terminated and provides as follows:

Either party or the mediator may terminate the mediation at any time. The mediation shall be terminated:

- a. by the signing of a settlement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- c. by a written declaration of a party or the parties to the effect that the mediation proceedings are terminated.

Article 12 of the Rules requires that any settlement of the mediation must be in writing and signed by the mediator and the parties, and further provides, “Each party shall receive a copy thereof. In the event of any breach, a party may rely on such copy before an arbitral or judicial authority. A copy of the settlement is submitted for inclusion in the records of the CAS Court Office.”

Article 13 of the Rules deals with the question of failure to settle and includes the following important provision—absolutely fundamental to the process of mediation: “In the event of failure to resolve a dispute by mediation, unless the parties agree in writing otherwise, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute.”

### *B. CAS Mediation Costs*

Article 14 of the Rules deals with the equally important subject of the costs of CAS mediations. Until the CAS administrative fee (as mentioned above, since July 1, 2011, this has been raised to CHF 1,000) is paid by each party, the mediation proceedings cannot be started; and the CAS Court Office may require the parties to deposit an equal amount as an advance towards the CAS mediation costs. The parties are required to pay their own mediation costs and, unless otherwise agreed, share equally the other final costs, which include the CAS fee, the mediator’s fees (calculated on the basis of the CAS fees scale), a contribution towards the costs of the CAS, and the costs of witnesses, experts, and interpreters.

### C. CAS Conciliation

It should be generally noted that, under the CAS Ordinary Arbitration Procedure, “[t]he President of the Division, before the transfer of the file to the Panel, and thereafter the Panel may, at any time, seek to resolve a dispute by conciliation. Any such settlement may be embodied in an arbitral award rendered by consent of the parties.”<sup>104</sup>

### D. Concluding Observations on the CAS

As the global sports industry continues to expand, sports-related disputes continue to rise, and ADR continues to find favour in the sporting and business communities, the services offered by the CAS, as outlined in these notes, will continue to appeal to parties who wish to settle their disputes, fairly, quickly, effectively, confidentially, and relatively inexpensively. The Court has distinguished itself and fulfilled the hopes and expectations of its founders, as well as withstanding a number of legal challenges to its independence and impartiality, during its first twenty-five years of operations.

As to the future, CAS would appear to have a bright and expanding one, by all accounts, and, not least, based on the following ringing endorsement by the Swiss Federal Tribunal given in the Russian cross-country skiers’ case discussed above:

[T]he CAS is growing rapidly and continuing to develop. An important new step in its development was recently taken at the World Conference on Doping in Sport, held in Copenhagen at the beginning of March 2003. This Conference adopted the World Anti-Doping Code as the basis for the worldwide fight against doping in sport. Many States, including China Russia and the United States of America, have adopted the Copenhagen Declaration on Anti-Doping in Sport . . . . Under the terms of Art. 13.2.1 of the new Code, the CAS is the appeals body for all doping-related disputes related to international sports events or international-level athletes. This is a tangible sign that States and all parties concerned by the fight against doping have confidence in the CAS. It is hard to imagine that they would have felt able to endorse the judicial powers of the CAS so resoundingly if they had thought it was controlled by the IOC.

This new mark of recognition from the international

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104. CAS CODE, *supra* note 9, art. R42.

community shows that the CAS is meeting a real need. There appears to be no viable alternative to this institution, which can resolve sports-related disputes quickly and inexpensively. . . . Having gradually built up the trust of the sporting world, this institution which is now widely recognized . . . remains one of the principal mainstays of organised sport.<sup>105</sup>

CAS, as previously mentioned, was the brainchild of former IOC President, the late Juan Antonio Samaranch, whose aim was to set up a Supreme Court for World Sport. He seems to have succeeded, as CAS has become just that! With, in the words of the former ICAS/CAS President, the late Judge Keba Mbaye, “a stature that inspires confidence and respect” to match.<sup>106</sup>

Finally, herewith is the text of a CAS media release, summarising the groundbreaking decision of the CAS in the LaShawn Merritt Doping Appeal. This decision is not only important in its own right, but it opens up the possibility to athletes who have served their time for doping offences to compete in future Olympics, assuming that they qualify, and enables them to take advantage of the corresponding lucrative sponsorship and endorsement deals that may be open to them.

The decision also cast considerable doubt on the legal validity and enforceability of the British Olympic Association (BOA) Bye-Law 25, which imposed a lifetime ban on British athletes competing in future Olympics, even though they have served their suspensions from competition.<sup>107</sup>

*ARBITRATION USOC // IOC: THE “OSAKA RULE”  
DECLARED INVALID AND UNENFORCEABLE BY THE  
COURT OF ARBITRATION FOR SPORT (CAS)*

*Lausanne, 6 October 2011* – Following the joint request for arbitration filed by the United States Olympic Committee (USOC) and the International Olympic Committee (IOC) with respect to the validity of the “Regulations Regarding Participation in the Olympic Games—Rule 45 of the Olympic Charter” (also known as the “Osaka Rule”), the Court of Arbitration for Sport (CAS) has issued the following decision:

*“The IOC Executive Board’s June 27, 2008 decision*

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105. A. & B. v. IOC, BGer, May 27, 2003, docket no. 4P.267/2002, 4P.268/2002, 4P.269/2002, & 4P.270/2002 (Switz), translated in DIGEST OF CAS AWARDS III, *supra* note 23, at 688–69 (internal citation omitted).

106. Blackshaw, *Fair Play On and Off the Field*, *supra* note 18.

107. In fact, the BOA lifetime Olympics ban was also held, on the same grounds, to be illegal. See British Olympic Ass’n / WADA, CAS 2011/A/2658.

*prohibiting athletes who have been suspended for more than six months for an anti-doping rule violation from participating in the next Olympic Games following the expiration of their suspension is invalid and unenforceable.”*

The CAS Arbitral Panel, composed of Prof. Richard H. McLaren (Canada), President, Mr David W. Rivkin (USA) and Mr Michele Bernasconi (Switzerland), came to the conclusion that the “Osaka Rule” was more properly characterized as a disciplinary sanction, rather than a pure condition of eligibility to compete in the Olympic Games.

Such a disciplinary sanction is not in compliance with Article 23.2.2 of the World Anti-Doping Code (WADC), which provides that the Signatories of the Code may not introduce provisions that change the effect of periods of ineligibility provisions of the WADC, because it adds further ineligibility to the WADC anti-doping sanction after that sanction has been served.

The Panel further held that, because the IOC made the WADC a part of its own governing statute (the Olympic Charter, under Rule 44), the “Osaka Rule” is in fact a violation of the IOC’s own Statute and is therefore invalid and unenforceable.

The CAS Panel also emphasized that if the IOC wanted to exclude athletes who have been sanctioned for doping from the Olympic Games, it could propose an amendment to the World Anti-Doping Code, which would allow other Signatories to consider such an amendment and possibly to adopt it. If so, no *ne bis in idem* issue (prohibition against double jeopardy) would be raised, as the ineligibility would be part of a single sanction. Moreover, the principle of proportionality could be met because only one adjudicatory body would be in position to assess the proper sanction for a certain behaviour, taking into consideration the overall effect of the sanction to be imposed.<sup>108</sup>

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108. Media Release, CAS, Arbitration USOC / IOC: The “Osaka Rule” Declared Invalid & Unenforceable by the Court of Arbitration for Sport (CAS), CAS (Oct. 6, 2011), available at [http://www.tas-cas.org/d2wfiles/document/5315/5048/0/Media20Release20EN20\(2011.10.06\).pdf](http://www.tas-cas.org/d2wfiles/document/5315/5048/0/Media20Release20EN20(2011.10.06).pdf).

## V. THE FIFA DISPUTE RESOLUTION CHAMBER

Next, this Article deals with another important sports body, the FIFA Dispute Resolution Chamber (DRC), which offers “extra-judicial” settlement of sports disputes relating to association football, which is not only the world’s favourite sport but also its most lucrative one.

The FIFA DRC handles an estimated several hundred football-related cases each year. Not all of these cases are published on the FIFA official website,<sup>109</sup> only those of “general interest.” For example, on August 15, 2008, FIFA published the decision of the DRC in the Adrian Mutu case, who was sacked by Chelsea Football Club in October 2004, and fined £20,000 and banned by the English FA from football for seven months, after failing a drugs test for cocaine. Chelsea brought a claim against the player in the DRC for damages for breach of contract. A FIFA statement read:

We can confirm that a decision has been taken by the Dispute Resolution Chamber (DRC) regarding the case of the player Adrian Mutu and Chelsea Football Club (England), and that the decision has been notified to the parties concerned.

The claim for compensation of Chelsea Football Club, regarding the breach of a contract which was signed between the two parties on 12 August 2003, has been partially accepted. The player Adrian Mutu will have to pay the amount of EUR 17,173,990 to Chelsea Football Club.

Generally speaking, the decisions of the DRC are based on general principles of labour law, but on some points or issues the DRC makes its own kind of law, which may be described as a “*Lex Sportiva*,” as the so-called *specificity of international professional football* is one of the considerations to be taken into account by the DRC in reaching its decisions in appropriate cases.

### A. Background

The world governing body of association football, FIFA, was established in 1904 for the purpose of achieving, on a global basis, uniformity, equality and certainty in football, and improving the game, both on and off the field of play. To realise these goals, FIFA first set up the Players’ Status Committee (PSC), one of its standing committees,<sup>110</sup> with the aim of deciding all international football disputes.

In 2001, FIFA set up the Dispute Resolution Chamber (DRC) to take over

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109. FIFA, <http://www.fifa.com> (last visited Dec. 28, 2013).

110. FIFA STATUTES, art. 34, ¶ 1(o) (2008).

certain disputes from the PSC relating to the international status and transfer of players. Its competence extends to cases concerning labour disputes, with an international dimension, and also to disputes regarding training compensation and the so-called solidarity contribution.

The PSC is required to set up and monitor compliance with the Regulations on the Status and Transfer of Players (RSTP), the latest version of whose provisions are December 2004/October 2007, and also to determine the status of players for various FIFA competitions.<sup>111</sup> The competence of the FIFA DRC is governed by the provisions of the RSTP. The PSC is also responsible for the work of the Dispute Resolution Chamber in accordance with the RSTP and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.<sup>112</sup>

For further information regarding the background and history of the DRC and, in particular, the influence and effect of the European Court of Justice Decision in *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*<sup>113</sup> on the corresponding rules and operating arrangements.<sup>114</sup>

### *B. The Nature Composition and Operation of the DRC*

The DRC is not an arbitral court, such as the CAS. The decisions of the DRC are not, therefore, international arbitral awards, and can only be enforced through the statutes and regulations of FIFA. In other words, within the so-called football family. As such, the decisions of the DRC are of great importance and have a huge impact on the international football world. The members of FIFA, the national associations, must fully comply with all decisions of FIFA, such as decisions of the DRC.<sup>115</sup> In turn, the national associations must take measures to ensure that their own members, the national players and clubs, also fully comply with these decisions.<sup>116</sup>

The DRC meets in the form of a panel composed generally of at least three members, including the chairman or the deputy chairman.<sup>117</sup> According to the

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111. *Id.* art. 49, ¶ 1.

112. *Id.* art. 49, ¶ 2.

113. Cour d'Appel [CA] [Court of Appel] Liege, Dec. 15, 1995, European Court Report [ECR] 1995, I-04921 (Belg.).

114. FRANS DE WEGER, THE JURISPRUDENCE OF THE FIFA DISPUTE RESOLUTION CHAMBER 2–8 (Robert C.R. Siekmann & Janwillem Soek eds., 2008).

115. FIFA STATUTES, *supra* note 110, art. 13, ¶ 1(d).

116. *Id.* art. 65, ¶ 2.

117. According to the FIFA Statutes, the composition, specific duties and powers of the individual committees, such as the DRC, will be stipulated in special organisation regulations. *Id.* art. 34, ¶ 4. The composition of the DRC is therefore laid down in the Procedural Rules as well as the RSTP, edition 2005. FIFA REGULATIONS ON THE STATUS AND TRANSFER OF PLAYERS (2005)

FIFA commentary, the composition of the DRC must be based on the fundamental principle of equal representation of players and clubs. Ten members represent the players and are proposed by FIFPro, the international union for professional football players; and ten club members are proposed by the national associations and leagues from around the world from amongst their clubs.

The FIFA Executive Committee then formally appoints the proposed members, together with the chairman and the deputy chairman.<sup>118</sup> In this respect, it is very important that the members of the DRC do not perform different functions in the same matter. They will explicitly refrain from attempting to influence other bodies and committees, and they must maintain strict confidentiality concerning any and all information that may come to their attention in the exercise of their duties and not mentioned in the decision. In particular, they are strictly obliged to respect the secrecy of deliberations.<sup>119</sup> The decisions of the DRC are made by a simple majority vote of the members; each of the members, including the chairman, has one vote each. In the event of a tie, the chairman has a casting vote. Abstentions are not permitted! The decisions will be communicated to the parties in writing, although in urgent cases, the decision may be given orally immediately, with written confirmation following within the next twenty days.<sup>120</sup>

However, if the case is of a comparatively simple nature, then it may be handled and decided by a single judge: the so-called DCR Judge. In that event, the members of the DRC will appoint a DRC Judge for the clubs and one for the players from amongst their members.<sup>121</sup> Members of the DRC may not adjudicate in cases in which they have a personal or direct interest: in other words, a potential conflict of interests' situation. In such cases, the member concerned is required to withdraw from the proceedings in good time and give reasons for being unable to act.<sup>122</sup>

When deciding cases, the DRC applies the RSTP, whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.<sup>123</sup> In

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[hereinafter FIFA RSTP].

118. FIFA COMMENTARY ON THE REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS, art. 24 (2005) [hereinafter FIFA COMMENTARY]; FIFA RULES GOVERNING THE PROCEDURES OF THE PLAYERS' STATUS COMM. AND THE DISPUTE RESOLUTION CHAMBER, art. 4 [hereinafter FIFA PROCEDURAL RULES].

119. FIFA PROCEDURAL RULES, *supra* note 118, art. 5, ¶ 7.

120. *Id.* art. 13, ¶ 2.

121. FIFA RSTP, *supra* note 117, art. 24, ¶ 2.

122. FIFA PROCEDURAL RULES, *supra* note 118, art. 7, ¶ 1.

123. FIFA RSTP, *supra* note 117, art. 25, ¶ 6.

practice, the RSTP rules are the main source of law for the DRC when deciding a dispute relating to the international transfers of players, their status, and their eligibility to participate in organised football.<sup>124</sup> These fundamental rules are compulsorily and uniformly applied throughout the world.<sup>125</sup> They aim to regulate international transfer law when deciding a dispute between member associations, and they also establish basic principles that guarantee uniform and equal treatment of all participants in the international football world.<sup>126</sup>

The RSTP rules are complemented by the Rules Governing the Procedures of the PSC and the DRC (the Procedural Rules). The Procedural Rules deal with such matters as the composition of the DRC, its jurisdiction, and the applicable law.

The DRC is required to render a decision within sixty days of filing the case and the DRC Judge is required to render his or her decision within thirty days.<sup>127</sup> Reasons must be given for the decision.<sup>128</sup> There is time limit of two years for bringing proceedings before the DRC.<sup>129</sup>

In general, proceedings before the DRC or the DRC Judge are free of charge.<sup>130</sup> However, if one of the parties generates unnecessary costs as a result of its conduct, the DRC may impose the costs on the party concerned, irrespective of the outcome of the case.<sup>131</sup>

### C. Appeals from the DRC

In its Circular 827, FIFA outlined that after “*intense and very constructive discussions with the International Council of Arbitration for Sport,*” FIFA finally agreed to recognise the jurisdiction of the CAS to act as a final appeal body for decisions taken by the DRC with effect from November 11, 2001.<sup>132</sup>

Article 62.1 of the FIFA Statutes provides that the decisions of the DRC

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124. The RSTP also set up rules regarding the release of players for association teams and the player's eligibility to play for such teams.

125. FIFA COMMENTARY, *supra* note 118, art. 1, ¶ 1.

126. *Id.* art. 1, ¶ 2.

127. FIFA RSTP, *supra* note 117, art. 25, ¶ 1.

128. FIFA PROCEDURAL RULES, *supra* note 118, art. 14, ¶ 4.

129. FIFA RSTP, *supra* note 117, art. 25, ¶ 5.

130. *Id.* art. 25, ¶ 2; FIFA PROCEDURAL RULES, *supra* note 118, art. 15, ¶ 2.

131. FIFA RSTP, *supra* note 117, art. 15, ¶ 1.

132. Letter from Urs Linsi, Acting General Secretary, FIFA, to The Nat'l Ass'ns of FIFA (Dec. 10 2002), *available* at [http://www.fifa.com/mm/document/affederation/administration/tas\\_827\\_en\\_63.pdf](http://www.fifa.com/mm/document/affederation/administration/tas_827_en_63.pdf).

may be appealed before the CAS.<sup>133</sup> This possibility is also mentioned in the decisions of the DRC itself. The provisions of the CAS Code will govern these appeals and the CAS will primarily apply the various regulations of FIFA and additionally, Swiss Law to them.<sup>134</sup>

Appeals against final decisions rendered by FIFA legal bodies and against decisions passed by confederations, members or leagues must be lodged with the CAS within twenty-one days of notification of the decision in question.<sup>135</sup> Each decision of the DRC expressly stipulates that the “statement of appeal” must be sent to the CAS directly within twenty-one days of receipt of notification of the decision concerned and that it will furthermore contain all the elements as required by the directives of the CAS, a copy of which is enclosed with the decision. Within a further ten days following the expiry of the time limit for filing the statement of appeal, the appellant must file a brief stating the facts and legal arguments on which the appeal to the CAS is based.<sup>136</sup> Within the following twenty days from the receipt of the grounds for the appeal, the respondent must then submit his “statement of defence” to the CAS.<sup>137</sup>

Finally, it should be noted that cases may only be referred to the CAS after all other internal FIFA channels have been exhausted.<sup>138</sup> The CAS, however, is expressly excluded from handling appeals arising from:

- (a) violation of the Laws of the Game;
- (b) suspensions of up to four matches or up to three months;
- (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation may be made.<sup>139</sup>

Appeals to the CAS will not generally have a suspensive effect. However, the appropriate FIFA body or, alternatively, the CAS itself, may order an appeal to have such an effect.<sup>140</sup>

By way of example, the recent Decision of the DRC in the important Andrew Webster Case, which was subsequently appealed to the CAS, is set

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133. See Christian Krähe, *The Appeals Procedure Before the CAS, in THE COURT OF ARBITRATION FOR SPORT 1984–2004*, *supra* note 32, at 99–104.

134. FIFA STATUTES, *supra* note 110, art. 62, ¶ 2.

135. *Id.* art. 63, ¶ 1; CAS CODE, *supra* note 118, art. R49.

136. In conformity with point 4 of the Directives.

137. CAS CODE, *supra* note 9, art. R55.

138. FIFA STATUTES, *supra* note 110, art. 63, ¶ 2.

139. *Id.* art. 63, ¶ 3.

140. *Id.* art. 63, ¶ 4.

out in Appendix XIV to the book.<sup>141</sup>

#### *D. Final Observations*

It should be noted that recourse to the ordinary courts of law for settling disputes is, as a general principle, expressly prohibited by FIFA, unless expressly provided for in the FIFA regulations.<sup>142</sup>

Furthermore, the member associations of FIFA are required to insert a clause in their Statutes or Regulations, stipulating that it is prohibited to take disputes in their associations or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials, and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to the ordinary courts of law. Instead of recourse to the ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or Confederation or to the CAS. Furthermore, the FIFA Member Associations shall also ensure that this stipulation is implemented in their Association, if necessary by imposing a binding obligation on its members. The Associations shall also impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to the ordinary courts of law.<sup>143</sup>

FIFA, and it may be said, so many other international sports governing bodies and organisations have a general policy of excluding the ordinary courts from being involved in disputes. But such attempts, if not qualified, to oust the jurisdiction of the courts, are void under English Law and also under many other legal systems around the world, as being contrary to public policy (*ordre public*). This is particularly so in several jurisdictions in relation to the settlement of labour disputes by legal proceedings.

However, such provisions if reworded to the effect that recourse to the ordinary courts of law is only permitted after all internal procedures for dispute resolution within the sports body or organisation concerned have been exhausted this is generally valid.<sup>144</sup>

Finally, the decisions of the DRC are rendered by football specialists; and enforceable through the FIFA disciplinary channels and procedures. Hence, as

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141. B v. A & C, 2007 DRC Case 47936; BLACKSHAW, SPORT, MEDIATION AND ARBITRATION, *supra* note 93, at 295–306.

142. FIFA STATUTES, *supra* note 110, art. 64, ¶ 2.

143. *Id.* art. 64, ¶ 3.

144. Scott v. Avery, (1865) 10 Eng. Rep. 1121; 5 H.L.C. 811, 811 (Eng.).

mentioned at the beginning of this section of the article, the DRC is not short of cases! In fact, the FIFA DRC has quite a backlog of cases!

## VI. SPORTS DOMAIN NAME DISPUTES AND THEIR SETTLEMENT THROUGH THE WIPO ARBITRATION AND MEDIATION CENTER

This Article now turns its attention to an important non-sports body offering ADR for the settlement of sports-related disputes, namely, the WIPO Arbitration and Mediation Center, which is a Specialized Agency of the United Nations and is based in Geneva, Switzerland. Although this Center offers a wide-range of ADR services, including arbitration, mediation, and expert determination, not only in relation to intellectual property (IP) disputes but also to non-IP cases, the article will deal only with the settlement of sports-related domain name disputes, which are also on the increase as sports bodies and sports persons embrace the world wide web more and more to promote their activities.

### *A. Introduction: The Business of Sport and the Rise of Sports Disputes*

As mentioned above, sport is now an industry in its own right and accounts for more than three percent of world trade. In the EU, sport has developed into a discrete business representing three and seven-tenths percent of the combined GNP of the twenty-eight member States.

This phenomenal growth in the value of the sports industry is largely due to the increase in the broadcast coverage of sports events and the exponential rise in the fees paid by broadcasters for the corresponding rights. For example, the live TV rights to English FA Premier League for the three seasons, 2013–2016, have been sold by tender for a staggering £3.018 billion! With other TV rights' sales, the total is likely to top £5 billion!

Increased television coverage has also led to a spectacular rise in the value of sports sponsorship, by national and multinational companies wishing to associate themselves and their products and services with major national and international sports events, such as the Olympic Games. It is not surprising, therefore, that the worldwide market for sports sponsorship has steadily grown into a multi-billion dollar industry.

The increase in leisure time in the developed world has also played a significant part in the meteoric rise of the sports industry with more people participating in and watching sport than ever before. This, in turn, has seen the rise of sports men and women as sports personalities with salaries, especially footballers, many of whom are now earning £150,000 per week and also benefiting from lucrative sponsorship and endorsement deals. Their incomes are now akin to the fabulous incomes of Hollywood “stars.” In fact,

sport is now firmly a part of the worldwide entertainment industry—and an important one at that!

Likewise, the increasing importance of IP and the commercialisation of the corresponding IP Rights (IPRs) in the sporting arena is another phenomenon that should not be overlooked. Indeed, without the legal recognition and protection afforded to sports' IPRs, many major and other sports events, including the Olympic Games and the FIFA World Cup, would never be viable financially, to the detriment of the athletes themselves and also to the great disappointment of sports fans and followers throughout the world. Equally, leading sports persons would not be able to commercially exploit their corresponding personality and image rights.<sup>145</sup>

All of this, combined with the development and inexorable rise in the use and application of the Internet and other new forms of media, including mobile phones, to deliver sports programming, content, and information (e.g., the latest cricket score), the value of the Sports Industry is set to continue growing even further in the future, despite the recession.

Indeed, according to Sepp Blatter, the President of FIFA, the World Governing Body of Football, and I would agree with him, sport is now a product in its own right, and there is much to play for not only on but also off the field of play. As such, the number of sports-related disputes is on the increase, and this is likely to continue.

### *B. The Rise of the Internet and the Role of ICANN*

The Internet is generally regarded as either a blessing or a curse, depending on one's point of view, usage, and experience of it, and it has been described by some commentators as being akin to the "Wild West." In other words, because of its global reach and all-pervading nature, it is difficult to police and regulate. However, when it comes to the registration and use of domain names—Internet addresses—the Internet Corporation for Assigned Names and Numbers (ICANN), which was created by the United States of America Department of Commerce specifically to introduce some measure of order and regulation into what was fast becoming a chaotic system, particularly, in relation to the unfair registration and use of domain names and the need to provide effective procedures for settling disputes concerning them, as they are a very valuable form of intellectual property. Indeed, domain names are widely considered to be a form of electronic trademark and need to be legally protected as such. They are subject to their own particular form of

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145. For more on this important and developing subject, see *SPORTS IMAGE RIGHTS IN EUROPE* (Ian S. Blackshaw & Robert C.R. Siekmann eds., 2005).

registration procedure, different from that of trademarks generally, through the various domain name registries, which operate under and according to the ICANN Policy and Rules.

The ICANN Uniform Domain Name Dispute Resolution Policy (the UDRP Policy) sets out the legal framework for the resolution of disputes between a domain name registrant and a third party (i.e., a party other than the registrar) over the abusive registration and use of an Internet domain name (cybersquatting) in the generic top-level domains or gTLDs (e.g., .biz, .com, .info, .mobi, .name, .net, .org), and those country code top-level domains or ccTLDs that have adopted the UDRP Policy on a voluntary basis.

At its meetings on August 25 and 26, 1999, in Santiago, Chile, the ICANN Board of Directors adopted the UDRP Policy, based largely on the recommendations contained in the Report of the WIPO Internet Domain Name Process, as well as comments submitted by registrars and other interested parties.

All ICANN-accredited registrars that are authorized to register names in the gTLDs and the ccTLDs that have adopted the Policy have agreed to abide by and implement it for those domains.

Any person or entity wishing to register a domain name in the gTLDs and ccTLDs in question is required to consent to the terms and conditions of the UDRP Policy.

On October 24, 1999, the ICANN Board adopted a set of Rules for Uniform Domain Name Dispute Resolution Policy (the UDRP Rules) setting out the procedures and other requirements for each stage of the Dispute Resolution Administrative Procedure (the Procedure). The WIPO Arbitration and Mediation Center (the WIPO Center) acted as technical advisor to the ICANN drafting committee charged with finalizing the UDRP Policy and Rules.

The principal advantage of the Procedure is that it typically provides a faster and cheaper way to resolve a dispute regarding the registration and use of an Internet domain name (an Internet address—also, as mentioned above, often described as an “electronic trademark”) rather than going to court. In addition, the procedures are considerably more informal than litigation. Furthermore, the decision makers are experts in such areas as international trademark law, domain name issues, electronic commerce, the Internet, and ADR.

The Procedure is also international in scope: it provides a single mechanism for resolving a domain name dispute regardless of where the registrar of the disputed domain name or the domain name registrant/holder or the complainant are located.

The Procedure is administered by dispute resolution service providers accredited by ICANN. The WIPO Center is one such dispute resolution service provider and, in the professional experience of the author of this article as a WIPO Domain Name Panelist, a very important, prolific, efficient, and effective one, too!

The WIPO Center has developed WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy, which supplement the UDRP Policy and Rules, and these Rules, additionally, apply when a domain name dispute complaint is filed with and prosecuted through the WIPO Center. The WIPO UDRP Supplemental Rules are available on the WIPO official website.<sup>146</sup>

It should be added that there are other ICANN accredited providers for settling domain name disputes under the UDRP Policy and Rules. One such body is the National Arbitration Forum (Forum),<sup>147</sup> which is based in Minneapolis, United States of America. It was founded in 1986, with the express purpose of providing a fair, efficient, and effective system for the resolution by ADR of commercial and civil disputes in the USA and worldwide. To date, the Forum, as it is generally known, has helped to settle thousands of domain name disputes around the world, including ones relating to Google, Dell, and even Hillary Clinton!

However, this Article will concentrate on the activities of the WIPO Arbitration and Mediation Center in relation to the settlement of sports domain name disputes.

### C. *“Cybersquatting” and the Role of WIPO*

Because of the popularity and global reach of sport, disputes involving the abusive registration and unfair use of sports domain names—“cybersquatting”—are growing exponentially. The settlement of these disputes through the Arbitration and Mediation Center (Center) of WIPO, a specialised agency of the United Nations based in Geneva, Switzerland, is the focus of this article.

The Center, which is also based in Geneva, is part of WIPO, but operates as an independent and impartial body. It was established in 1994 to offer ADR options for the settlement of international commercial disputes between private parties relating to IP. The ADR services offered by the Center are particularly appropriate for resolving technology, entertainment (including sport), and other kinds of disputes involving intellectual property rights.

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146. WORLD INTELLECTUAL PROP. ORG., <http://www.wipo.int> (last visited Dec. 28, 2013).

147. Further information is available from its official website at: NAT'L ARBITRATION FORUM, <http://www.adforum.com> (last visited Dec. 28, 2013).

The Center has established an operational and legal framework for the administration of Internet and electronic commerce disputes. In particular, ICANN and others recognize it as the leading dispute resolution service provider for the settlement of cybersquatting disputes. The role of the Center in such disputes is generally to administer the proceedings, and, in particular, appoint the Administrative Panel and ensure that the cases are dealt with expeditiously.

The Center each year publishes a report on the cybersquatting disputes that it has dealt with. In the Report for 2007, sports-related and entertainment disputes (sport is now widely regarded as a form of home and out-of-home entertainment and sports persons are regarded as entertainers) accounted for two and seven tenths percent and seven percent respectively of these cases.

Indeed, the new Director General of WIPO, Dr. Francis Gurry, has recognised the commercial importance of sport and the corresponding increase in the number of sports domain name disputes being submitted to WIPO for adjudication under the Uniform Dispute Resolution Policy (UDRP) (Policy) of the Internet Corporation for Assigned Names and Numbers (ICANN),<sup>148</sup> and has well-expressed this situation in the following terms:

Reflecting the increasing commercial importance of sport, the number of sports-related WIPO UDRP complaints has been rising. In football, for example, WIPO complainants have included famous players, such as Ronaldinho and Totti, eminent managers, like Sir Alex Ferguson, and major clubs, like Real Madrid and Liverpool. In sport, as in other fields, there is need for continued vigilance by rights owners. The UDRP has proven to be a very effective instrument in combating predatory practices aimed at siphoning off the goodwill attached to major players and participants.

An example of such unfair practices occurred in a case involving the US Major Soccer League's most expensive player, Freddy Adu. In that case,<sup>149</sup> the respondent registered the domain name "freddyadu.com" and contacted Adu's representative, offering to create the official Freddy Adu fan site, in exchange for such benefits as a stake in advertising negotiations, access to the player and his sponsors, and match tickets. The WIPO Panelist, who adjudicated in the case, found that the Respondent had held Adu to ransom for the domain name by inappropriately seeking a long-term commercial

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148. See UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY, ICANN <http://www.icann.org/en/help/dndr/udrp/policy> (last visited Dec. 28, 2013) (providing the rules of the ICAA UDRP Policy).

149. *Adu v. Fushille*, WIPO Case No. D2004-0682 (Oct. 17, 2004).

relationship with him. As was pointed out by the Panelist in his Decision in that case:

The most offensive act of a cybersquatter is to hold another's mark for ransom. Such conduct has earned its own subsection in Paragraph 4(b) of the Policy. The Policy was adopted specifically to provide an owner in these circumstances with a swift and inexpensive alternative to litigation to redeem his mark. Rather than a single payment for transfer of the Disputed Domain Name, Respondent's asked for continuing participation in Complainant's affairs and promotional activities, a majority interest in Complainant's official website, and ownership of media images featuring Complainant. The financial consequences to Respondent of such an arrangement would surely have exceeded his out of pocket costs for registering the Disputed Domain Name. Although Complainant initiated the possibility of transfer for money, it was Respondent who consistently pressed the Complainant for official status and participation in Complainant's marketing and financial activities. Paragraph 4(b)(i) specifically encompasses "other consideration." And it would defy common sense as well as the language and intent of the Policy to limit the scope of that paragraph to one-off cash transactions.<sup>150</sup>

#### *D. Some Sports Domain Name Disputes Case Studies*

To illustrate the application of the ICANN UDRP to the resolution of sports domain disputes through the WIPO Arbitration and Mediation Center, this Article will take a look at the high profile domain name cases of the Manchester United and England footballer, Wayne Rooney, which was defended, and the famous Barcelona Football Club, which was not defended. We will also consider one involving the English FA Premier League, reputedly the most successful and lucrative football league in the world!

##### 1. Wayne Rooney Case

The well-known sports person, the Manchester United (ManU) and England footballer, Wayne Rooney, who was born in Liverpool in 1985, has also been involved in WIPO Domain Name proceedings.<sup>151</sup> The domain name

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150. *Id.*

151. *Stoneygate 48 Ltd. v. Marshall*, WIPO Case No. D2006-0916 (Oct. 6, 2006).

in contention was <waynerooney.com>, which was registered by the Respondent in the case, a busy actor and ardent fan of Everton Football Club, with whom Rooney started his career as a fifteen-year-old in 2000, turned professional with them in 2003, and then moved on to “ManU” the following year.

In order to win, Rooney had to prove that, under the provisions of the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP) (the Policy), approved on October 24, 1999, and administered by the Center, this was a case of cybersquatting (the abusive registration and unfair use of a domain name). Under the Policy, in order to obtain the transfer or cancellation of the offending domain name, Rooney must prove each of the following basic elements of paragraph4(a) of the Policy, namely:

- (i) Your domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) You have no rights or legitimate interests in respect of the domain name; and
- (iii) Your domain name has been registered and is being used in bad faith.<sup>152</sup>

For Rooney to succeed, all three of these conditions must be satisfied.

But, what, one may ask, is meant by the expression “bad faith”? Paragraph4(b) of the Policy lists four examples of acts, which prima facie constitute evidence of bad faith. They are as follows: (i) offering to sell the domain name to the trademark owner or its competitor; (ii) an attempt to attract for financial gain Internet users by creating confusion with the trademark of another; (iii) registration of a domain name in order to prevent the trademark owner from reflecting its mark in a corresponding domain name; and (iv) registration of the domain name in order to disrupt the business of the competitor.<sup>153</sup> It should be noted that this list is not exhaustive, but merely illustrative of the kinds of situations that may fall within the concept of bad faith.

In practice, many domain name disputes are not defended by the respondent to the complaint, and this fact, along with a failure to respond to any cease and desist letter from the complainant issued before the WIPO proceedings were commenced, may constitute further evidence of bad faith on the part of the respondent. Likewise, the respondent may have been previously involved in registering disputed domain names that have been the

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152. UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY, *supra* note 148.

153. *See id.*

subject of previous WIPO cases, in which those names have been found to be without legal justification and ordered to be transferred to the Complainants in those previous cases. Again, this would constitute evidence of bad faith.

As also would registering a fanciful or bizarre name, which happened in the so-called Pepsi case.<sup>154</sup> In that case, an Italian Company, with the name of “Partite Emozionanti Per Sportivi Italiani,” which, in translation, stands for “Leave the Histrionics for Italian Sports Fans,” and known for short as “P.E.P.S.I.,” registered seventy domain names incorporating the famous soft drink trademark PEPSI, in relation to an extensive range of sports.<sup>155</sup> The sole panelist in this case held that there was “opportunistic bad faith” because the domain names were so obviously connected with such a well-known product with which the respondent had no connection.<sup>156</sup>

In the Rooney case, the domain name in contention had been registered before Rooney’s trademark rights in his name had “matured,” and this was one of the legal issues to be determined by the sole panelist appointed by the Center to decide the case. Likewise, in such circumstances, could the Respondent in the case be held to be acting in bad faith in registering and using the disputed domain name? Irrespective of this, the other legal issue raised by the case was whether, at the time the Respondent registered the disputed domain name, Rooney had already acquired a sufficient reputation, the “goodwill” in which could be protected under the English common law doctrine of “*passing off*” (unfair competition in a legal sense).

The facts of the case, the contentions of the parties, and the discussion and findings of the panelist are set out in the decision itself. As will be seen from a reading of the decision, the particular facts and circumstances of the case play a crucial role in determining the outcome.

It is interesting to note that in the Rooney case, the Panelist relies, to a large extent, on the “WIPO Overview of WIPO Panel Views on Selected UDRP Questions,” which is accessible on the WIPO official website.<sup>157</sup> This is also a useful resource for parties contemplating bringing a domain name dispute before the Center in determining their arguments on various issues that may arise in their particular case.

As will also be seen from the decision in Rooney, certain procedural

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154. PepsiCo, Inc. v. PEPSI, SRL, WIPO Case No. D2003–0696 (Oct. 28, 2003).

155. Some examples of the domain names include: [www.pepsicricket.com](http://www.pepsicricket.com), [www.pepsigolf.com](http://www.pepsigolf.com), [www.pepsisoccer.com](http://www.pepsisoccer.com), [www.pepsirugby.net](http://www.pepsirugby.net), [www.pepsisuperbike.net](http://www.pepsisuperbike.net), and [www.pepsivolleyball.net](http://www.pepsivolleyball.net)

156. *Id.* (citing *Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. Polygenix Grp. Co.*, WIPO Case No. D2000–0163 (May 1, 2001)).

157. *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”)*, WORLD INTELLECTUAL PROP. ORG., <http://www.wipo.int/amc/en/domains/search/overview2.0/> (last visited Dec. 28, 2013).

issues also needed to be addressed. The decision, in accordance with the Policy, had to be rendered within fourteen (natural) days of the date of the Panel being constituted. Speed is particularly important in relation to sports disputes, where sporting deadlines often come into play.

As the Rooney case demonstrates, domain name disputes concerning well-known sports persons, with famous and valuable trademarks to protect, can be quickly and effectively resolved using the WIPO adjudication process under the terms of the ICANN UDRP Policy. However, no damages or costs are awarded under the Policy.

A further advantage of this process is that decisions to transfer or cancel disputed domain names must be enforced by the registrar that originally registered them. However, following the ruling, the respondent has ten days in which to file court proceedings challenging the decision, in an appropriate jurisdiction. This rarely happens in practice.

Again, the cost of using the WIPO process, which is user friendly, is relatively inexpensive. An undefended case costs a mere \$1500; whilst a defended one with a single member panel costs \$3000.

## 2. Barcelona FC Case

This case concerned a cybersquatter, who registered and tried to sell the domain names <fcbarcelona.net> and <fcbarcelona.org> (the disputed domain names) to the famous Barcelona Football Club.<sup>158</sup>

Cybersquatting occurs where a party registers a domain name comprising the name and/or trademark of a third party, with a view to benefiting unfairly from the goodwill enjoyed by that name or mark. Barcelona FC, the complainant in the case, already owned and had registered the domain names <fcbarcelona.es> and <fcbarcelona.com>. And also owns and has registered a number of trademarks covering various products and services, including a European Community trademark for FCBARCELONA; as well as a Spanish trademark for FCBARCELONA.COM.

Not surprisingly, therefore, Barcelona FC sought to have the disputed domain names transferred to itself on the grounds that the Respondent had acted unlawfully. The Respondent, a company based nearby in Girona and in the same autonomous Spanish Community as Barcelona FC, failed, without any justification, to file any response to Barcelona FC within the time allowed, and therefore, was held to be in default.

Again, and it is worth repeating, under the ICANN UDRP, which is

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158. Football Club Barcelona v. GRN Serveis Telemàtics, WIPO Case No. D2006-0183 (Apr. 11, 2006).

administered by the WIPO Center, in order to succeed, the complainant must prove each of the following basic elements of paragraph4(a) of the Policy; if the complainant fails to establish any of these requirements, the complaint fails. Regarding the bad faith requirement, paragraph4(b) of the Policy lists four examples of acts, which prima facie constitute evidence of bad faith; however, this list is not exhaustive, but merely illustrative.<sup>159</sup>

In many cases, the respondent fails to reply to the complainant's "cease and desist" letter and also to answer the complaint and participate in the proceedings. These defaults have been held to constitute bad faith, and also, evidence of lack of rights or legitimate interests in the disputed domain name. Otherwise, if the respondent had grounds for registering and using the disputed domain name, the respondent would be ready to assert them in the proceedings.<sup>160</sup> In other words, the respondent's silence is tantamount to admitting the complainant's case. Again, in cases where the disputed domain name incorporates a well-known and notorious mark of the complainant, the respondent has been held to have acted in bad faith where the respondent had actual or constructive knowledge of the mark at the time of registration.<sup>161</sup>

The cases are decided in accordance with the provisions of the Policy, the UDRP Rules (the Rules), and the WIPO UDRP Supplemental Rules by either a three or single-member panel, appointed by the Center from amongst a list of IP experts maintained by the Center. Such panel members must be independent of the parties in dispute and make a signed declaration to that effect. The actual wording of this declaration is as follows:

I am independent of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

In other words, there must be no "conflict of interests" on the part of the member(s) of the panel in the particular case. Even in those cases where the panel member is independent of the parties, there may be certain circumstances that may call into question the independence of the member in the eyes of one or both of the parties to the dispute, in which case the panel member must declare them in order for the Center to decide whether or not to confirm the appointment of the member concerned in the particular case.

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159. See generally *Nova Banka v. Iris*, WIPO Case No. D2003-0363 (June 23, 2003).

160. *Patelco Credit Union v. Hong Kong Names LLC*, WIPO Case No. D2006-0202 (Apr. 27, 2006); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624 (Dec. 18, 2000).

161. *Exxon Mobil Corp. v. Fisher*, WIPO Case No. D2000-1412 (Dec. 18, 2000).

In accordance with paragraph15(a) of the Rules, the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the policy, the rules, and any rules and principles of law that it deems applicable. Furthermore, in the absence of exceptional circumstances, the Panel must decide the case within fourteen natural days of the date of the notification by the Center to the parties of its appointment.

In accordance with paragraph14(a) of the Rules, in the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the complaint. If a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

In accordance with paragraph10(d) of the Rules, the Panel shall determine the admissibility, relevance, materiality, and weight of the evidence. In previous UDRP cases in which the respondent failed to file a response, the Panel's decisions were based upon the complainant's assertions and evidence, as well as inferences drawn from the respondent's failure to reply.<sup>162</sup> Nevertheless, the Panel must not decide in the complainant's favour solely based on the respondent's default.<sup>163</sup> The Panel must decide whether the complainant has introduced elements of proof, which allow the Panel to conclude that its allegations are true.

In the *Barcelona FC* case, the single-member Panel found that the disputed domain names were confusingly similar to Barcelona FC's trademarks FCBARCELONA and FCBARCELONA.COM, which had been registered and used by Barcelona FC prior to the registration by the Respondent of the disputed domain names; that the Respondent did not have any rights or legitimate interests in the disputed domain names, particularly because the Respondent must have been aware of the Barcelona FC—a famous football club well-known both locally, where both parties are based, and internationally—when registering the disputed domain names containing the Barcelona FC's well-known trademarks and could not, therefore, claim any such rights or interests; and that the Respondent had registered and was using the disputed domain names in bad faith, particularly as the Respondent had offered to sell the disputed domain names to the general public and its use of them prevented the owner of the trademarks, the Barcelona FC, from

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162. See, e.g., *Vanguard Grp., Inc. v. Lorna Kang*, WIPO Case No. D2002–1064 (Jan. 20, 2003); *Köstritzer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. D2001–0936 (Dec. 18, 2001).

163. *Cortefiel S.A. v. Miguel García Quintas*, WIPO Case No. D2000–0140 (Apr. 24, 2000).

registering the disputed domain names. Thus, the domain names were ordered to be transferred from the Respondent to the Complainant.

The full text of this decision, which was rendered on April 11, 2006, is available on line at the Center's official web site.<sup>164</sup> Please note, however, that the decision is in Spanish! Incidentally, all previous WIPO UDRP decisions can also be accessed online and thus provide a useful body of precedents.<sup>165</sup> Although, it should be added that Panels are generally free to decide cases without necessarily being bound by previous decisions.

In a single-member Panel case, like the *Barcelona FC* case, where the respondent does not reply to the complaint or take any other part in the proceedings, the fee payable to the Center for the handling of the dispute amounts to \$1500.

### 3. English FA Premier League Case

This case, in which the author of these seminar notes was the sole panelist, involved the domain name <fapremierleague.com>.<sup>166</sup> As usual, the Complainant had to establish the three requirements under the UDRP Policy, namely, that the disputed domain name was identical or confusingly similar to its trademark; that the Respondent had no rights or legitimate interests in the disputed domain name; and that the disputed domain name had been registered and used by the Respondent in bad faith (as defined above).

These requirements were reviewed by the sole panelist and, as a result of all of them being found to be satisfied, the Respondent was ordered to transfer the disputed domain name to the Complainant. The relevant extracts from this decision, which are self-explanatory and do not require any particular comments, are as follows:

#### A. Identical or Confusingly Similar

It is clear that the Complainant holds several trademark registrations in the UK, dating back to its foundation in 1992, and also one in the European Union, dating back to 1998, in the name "Premier League" covering a wide range of goods and services. Additionally, the Complainant has rights, granted by the England and Wales Football Association, to use the term "F.A."—the commonly referred to and

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164. *WIPO Arbitration and Mediation Center*, WIPO, [www.arbitrator.wipo.int](http://www.arbitrator.wipo.int) (last visited Dec. 28, 2013).

165. *WIPO UDRP Domain Name Decisions (gTLD)*, WIPO, <http://www.wipo.int/amc/en/domain/s/decisionsx/index.html> (last visited Dec. 28, 2013).

166. *Football Ass'n Premier League Ltd. v. Trademark*, WIPO Case D2005-0014 (Feb. 9, 2005).

recognized abbreviation for and also a registered trademark of this organization—in the Complainant’s corporate and trading names. Furthermore, the Complainant has also registered a number of domain names incorporating not only the name “Premier League” but also “F.A. Premier League” including <fapremierleague.co.uk>. The Complainant’s main website is located at: “www.premierleague.com”.

The Respondent incorporates in the domain name in issue, the Complainant’s trademark “PREMIER LEAGUE” with the addition of the letters “FA”. This is clearly confusingly similar. And the addition of the letters “FA” rather than eliminating any confusion, in fact, compounds that confusion because of the rights the Complainant has in the name “Premier League” and also in the abbreviation “F.A” as mentioned above. The elimination of the “dots” after each of the letters is irrelevant for the purposes of confusion. In any case, there is a general stylistic tendency in print not to use dots in abbreviations.

In any event, it is established case law that where a domain name incorporates a complainant’s registered mark, this is sufficient to establish that the domain name is identical or confusingly similar for the purposes of the Policy.

Furthermore, for the purposes of the Policy and the Rules, the Respondent’s domain name is identical to the above-mentioned Complainant’s registered domain name—<fapremierleague.co.uk>—notwithstanding that the Respondent’s domain name is a “.com” level one.

All in all, consumers and Internet users will be confused and misled into thinking that the domain name in issue belongs to the Complainant, which is not, in fact, the case.

Thus, the Panel concludes that there is no doubt that the domain name in issue if not identical is certainly confusingly similar to the trade or service marks in which the Complainant demonstrably has rights.

#### B. Rights or Legitimate Interests

In order to determine whether the Respondent has any rights or legitimate interests in respect of the domain name (Article 3(b)(ix)(2) of the Rules and Article 4(c) of the Policy), attention must be paid to any of the following circumstances, in particular, but without limitation:

- Whether before any notice to the Respondent of the dispute, there is any evidence of the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- Whether the Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights;
- Whether the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence that the Respondent has been using or preparing to use the domain name in issue prior to these proceedings for a bona fide offering of goods and services. On the contrary, the Respondent's website contains links to other online stores offering goods and/or services.

Likewise, the Respondent is not commonly known by the domain name in issue.

It is clear that the Respondent has registered and is using the domain name unfairly to attract and divert traffic to its own website, for its own commercial and financial gain, which otherwise would have gone to the Complainant's websites. Apart from general harm to the Complainant's trademark rights and other interests, especially its substantial investment in the Premier League football Competition and related broadcasting and merchandising activities, there is evidence that the Complainant's valuable trade and service marks have been tarnished through the sponsored link on the Respondent's website to an online store selling "Sex Toys and Sexy Lingerie" with the 'strap line' "make her day". Having nothing to do with the game of football or the Complainant's Competition, this is clearly a serious and unjustified misuse of the Complainant's well-known and valuable trade and service marks.

Again, there is no evidence that the Respondent has been

authorized or licensed in any way whatsoever to use the Complainant's trade and service marks for its own commercial and business purposes. As has been demonstrated, the Complainant has an extensive licensing and merchandising program and the Respondent does not figure in it at all.

Thus, for all these reasons, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the domain name in issue.

### C. Registered and Used in Bad Faith

Regarding the bad faith requirement, paragraph 4(b) of the Policy lists four examples of acts, which *prima facie* constitute evidence of bad faith. This list is not exhaustive but merely illustrative.

Paragraph 4(b)(iv) of the Policy is relevant to the present case and provides that there is evidence of bad faith in the following circumstances:

(iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

In view of the unauthorized incorporation of the Complainant's valuable and well-known trade and service marks in the domain name in issue and the references and links in the Respondent's corresponding website to online stores associated with certain football clubs that participate in the Complainant's competition, the Respondent is using the domain name to create confusion on the part of consumers and Internet users with a view to reaping commercial and financial gains. The commercial nature of the Respondent's website is emphasized by its slogan: "What you need, when you want it." In other words, the Respondent is not operating the website associated with the domain name in issue for fun. The Respondent is, therefore, acting in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Furthermore, the unauthorized use of the Complainant's trade and service marks in the domain name in issue also

implies that the Complainant has, in some way, sponsored or endorsed the Respondent's website and its commercial activities carried on through it, which is not, in fact, the case. This is further evidence of bad faith.

Also, by failing to respond to the Complainant's cease and desist letter of October 14, 2004, and also to answer the Complaint and participate in the present proceedings, this, in the view of the Panel, is additional evidence of bad faith on the part of the Respondent. If the Respondent had any justification for registering the domain name in issue in the first place it is reasonable to assume that the Respondent would have taken these opportunities to put forward an answer in defense of its actions.

Again, the fact that the Respondent's website does not contain any contact details also suggests some element of bad faith on its part.

Based on all the above, the Panel, therefore, concludes that the domain name in dispute was registered and is being used by the Respondent in bad faith.<sup>167</sup>

### *E. Other Sports Domain Disputes Cases Summarised*

Sports domain name disputes to date have involved a wide range of sports and their constituents. It is interesting to note that the first domain name case handled through WIPO under the ICANN UDRP Policy was, in fact, a sporting one, involving the World Wrestling Federation.<sup>168</sup>

#### 1. Sports Goods Manufacturers Cases

WIPO sports domain name disputes have also included high-profile sports goods manufacturers, such as Nike, Inc. One of the early cases involving the famous NIKE sportswear brand involved the registration of the domain name <nike.net>.<sup>169</sup>

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167. *Id.* (citations omitted)

168. World Wrestling Fed'n Entm't, Inc. v. Bosman, WIPO Case No. D1999-0001 (Jan. 14, 2000), available at [www.arbitrator.wipo.int/domains/decisions/html/1999/d1999-0001.html](http://www.arbitrator.wipo.int/domains/decisions/html/1999/d1999-0001.html). At the time of the case, it was known as the World Wrestling Federation; however, it is now known as World Wrestling Entertainment, having had to change its name to avoid using the abbreviation WWF.

169. Nike, Inc. v. Coleman, WIPO Case No. D2000-1120 (Nov. 6, 2000).

## 2. Sports Personality Cases

WIPO sports domain name disputes have also included such individual sports personalities as the well-known tennis players, Venus and Serena Williams, involving the domain name <venusandserenawilliams.com>;<sup>170</sup> the former Formula One racing champion, Damon Hill, involving the domain name <damonhill.com>,<sup>171</sup> and the famous footballer Ronaldinho involving the domain name <ronaldinhogauchocom.com>.<sup>172</sup>

## 3. Football Teams Cases

WIPO Domain Name Disputes have also involved well-known football teams, including Real Madrid involving the domain name <realmadrid.org>,<sup>173</sup> and Bayern Munich involving the domain name <bayernmunchen.net>.<sup>174</sup> And, incidentally, the 5,000th case was a sporting one involving the leading English Football Club, Tottenham Hotspur, and the use of the domain name <tottenhamhotspur.com>.<sup>175</sup>

## 4. Formula One Team Cases

WIPO Domain Name Disputes have also involved well-known formula one racing teams, including Jordan Grand Prix involving the domain name <jordanf1.com>,<sup>176</sup> and Ferrari involving the domain names <clubferrari.com> and <clubferrari.net>.<sup>177</sup>

The *Jordan Grand Prix* case is particularly interesting because in an earlier WIPO decision, concerning the registration and use of the domain name <f1.com>,<sup>178</sup> a complaint made by a group of companies involved in the organization of the Formula One Grand Prix Motor Racing Championships was disallowed. The Panel held that, because the trademark F1 consists of merely a single letter and a numeral, it was not sufficiently distinctive to

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170. Williams v. Byrne, WIPO Case No. D2000-1673 (Jan. 30, 2000).

171. Damon Hill Grand Prix Ltd. v. New Group, WIPO Case No. D2001-1362 (Mar. 8, 2002).

172. Moreira v. Goldmark, WIPO Case No. D2004-0827 (Dec. 3, 2004).

173. Real Madrid Club De Futbol v. Lander WCS, WIPO Case No. D2000-1805 (Feb. 19, 2001).

174. FC Bayern München AG v. Peoples Net Services Ltd. WIPO Case No. D2003-0464 (July 15, 2003).

175. Tottenham Hotspur PLC v. Kirsch Sec. Ltd., WIPO Case No. D2003-0363 (June 23, 2003).

176. Jordan Grand Prix Ltd. v. Sweeney, WIPO Case No. D2000-0233 (May 11, 2000).

177. Ferrari S.P.A. v. Inter-Mediate Ltd., WIPO Case No. D2003-0050 (Mar. 3, 2003).

178. Formula One Licensing BV v. Formula One Internet, WIPO Case No. D2000-0193 (May 28, 2000).

justify the transfer of the domain name. In other words, the mark was generic and there was no evidence of considerable and widespread use of the mark for it to acquire a “secondary meaning”—a commercial association with the activities of Formula One—and thereby distinctiveness. Whereas in the *Jordan Grand Prix* case, the Panel held that, because the name Jordan is so well known as being associated with formula one, there was a real danger of confusion in this case. Furthermore, there was also other evidence of bad faith, in that the Respondent had offered to sell the disputed domain name to Jordan Grand Prix.

## 5. Sports Events Cases

The WIPO adjudication process has also been invoked in relation to the protection of sports event names. For example, the world governing body of football, FIFA, successfully challenged the use of its trademark WORLD CUP in thirteen domain names by another party, who had used some of the domain names in the address of his website, which not only related to the FIFA event, but also included copyrighted content from the official website of FIFA.<sup>179</sup> There was also evidence of bad faith, in that, prior to the WIPO proceedings, the other party offered to sell some of the domain names concerned to FIFA. However, in the same case, the Panel refused to order the transfer of two of the disputed domain names consisting of the letters “wc” because they were not sufficiently distinctive to be unequivocally regarded by the public as being an abbreviation of the name “world cup” designating the flagship event of FIFA.

The WIPO domain name dispute resolution process has also been used successfully to protect famous sporting leagues, including the UEFA Champions League involving the domain name <uefachampionsleague.com>.<sup>180</sup>

The WIPO process has also been successfully invoked by FIFA to protect its flagship event, the FIFA World Cup.<sup>181</sup>

## VII. SOME GENERAL CONCLUSIONS

Sports disputes, generally speaking, lend themselves to settlement by various forms of ADR, because a speedy, flexible and relatively inexpensive dispute resolution process is required by the sports world—not least because

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179. *FIFA v. Chung*, WIPO Case No. D2000–0034 (Apr. 3, 2000).

180. *Union des Ass'ns Européennes de Football v. Alliance Int'l Media*, WIPO Case No. D2000–0153 (Apr. 25, 2000).

181. See Ian Blackshaw, *FIFA Wins Its Latest Domain Name Dispute Filed with WIPO*, 9 ENT. & SPORTS L.J. 45 (2011). The domain name of concerned was <fifa1.com>.

of sporting deadlines and maintaining sporting relationships. Furthermore, sports bodies and sports persons prefer not to “wash their dirty sports linen in public” but settle their disputes “within the family of sport.” In other words, without outside intervention.

The dispute resolution mechanisms discussed in this Article offer various kinds of relief and solutions to suit the particular circumstances of the case: to use a sporting metaphor, this is a matter of “horses for courses” in deciding which one of them to use.

Taking the CAS, for example, in its twenty-nine years of operations, it is proving to be what its founders intended, namely, a supreme court of world sport. The CAS is also contributing to an evolving discrete body of sports law (*lex sportiva*), which is introducing a certain degree of legal certainty into the sporting arena.

The FIFA DRC has a heavy workload, which is not surprising given the popularity of association football and the huge sums of money involved in players’ transfers and other kinds of disputes.

The services provided by the WIPO Arbitration and Mediation Center for settling sports domain name disputes, which are on the increase, are proving to be user friendly and an effective and relatively inexpensive form of ADR, in practice, as the sports cases reviewed and referred to in this article clearly show.

Despite the considerable number of sports domain name disputes that have been settled through the WIPO Center over the years, the majority of which in favour of the Complainants, individuals, companies, and organisations are still “trying it on” and engaging in cybersquatting in some manner or another in sports and also in other types of cases—something which never ceases to amaze the author of this article!

There is, therefore, plenty of work for lawyers in the foreseeable future in this particular and growing field of ADR practice and long may this continue to be the case!<sup>182</sup>

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182. For more information, log onto the TMC Asser International Sports Law Centre Official Website at [www.sportslaw.nl](http://www.sportslaw.nl). For further information on ADR and Sport, please see BLACKSHAW, SPORT, MEDIATION AND ARBITRATION, *supra* note 93.