

## PLAYING THE NAME GAME - NAMING RIGHTS AGREEMENTS FOR ENTERTAINMENT VENUES

### Introduction

A hot real estate market in California, combined with new sports venues in the state, have created additional revenue streams for venue owners, and unique sponsorship and marketing opportunities for companies. In the last three years alone, companies invested millions of dollars for the naming rights to **Levi's Stadium for the 49ers** and **Avaya Stadium for the Earthquakes**. In addition, the Warriors recently announced that its **new San Francisco arena will be named the Chase Center**. While financial terms of the deal were not released, JP Morgan **Chase confirmed the naming deal is for 20 years and experts estimate it will generate more than \$10 million in revenues a year**. There will be many more opportunities throughout California as the Los Angeles Rams build the world's **most expensive stadium complex** in Inglewood, and the **Chargers, Raiders, and the Athletics** seek new homes to call their own.

While companies grapple with the true value of **naming rights deals**, there is no debating that such a significant investment requires a great deal of evaluation by both sides. Here are five issues at the forefront of negotiations between venue owners and operators (the "venue") and sponsoring companies ("naming companies") when considering a naming rights agreement.

### Five Issues to Evaluate in Naming Rights Deals

#### 1. Name Changes for Naming Companies

Corporations often merge and name changes are commonplace. The Arizona Diamondbacks' ballpark is one example where a corporate merger resulted in a stadium name change. In 2005, Bank One merged with JPMorgan Chase and **Bank One Ballpark became Chase Field**. The San Francisco Giants' home park is a perfect case study for how naming rights agreements should address future name changes. Originally known as Pac Bell Park, SBC acquired Pac Bell and the park's name was changed to SBC Park. SBC then acquired AT&T, bringing an attendant name change to AT&T Park. Although the park ended up with **three names in six years**, the team was able to make a relatively smooth transition to each new name.

Typical naming agreements allow for a new stadium name if the naming company is involved in a sale or merger, or if it changes the current name of the company. Often the agreement will require prior

written approval by the team and / or venue operator, with such consent not to be unreasonably withheld or conditioned. Parties often want to ignore the possibility of a merger, acquisition, or rebranding of the naming company. With naming rights deals often lasting twenty-five years, such a possibility is more aptly viewed as a corporate eventuality. A naming agreement should anticipate and address this issue in a proactive manner.

## 2. Assignability of the Agreement

Like name changes, many agreements anticipate that a naming company may eventually want to withdraw from the business relationship. While the assignability of the naming rights agreement may be allowed, a more likely scenario is the negotiation of an early termination. Such a situation occurred when HP looked to slash costs and sought an **early exit from its naming rights deal for the HP Pavilion**. The Sharks and the City of San Jose eventually found a successor, SAP, which essentially assumed the remaining year of HP's contract and extended the terms of the HP deal for four more years, for a total of five years.

Overstock.com recently **ended its naming rights agreement (O.co)** for the Oakland Coliseum, which hosts both the Oakland Athletics and the Oakland Raiders (for now). The Oakland-Alameda County Coliseum Authority is **now marketing the naming rights to the coliseum**. Any agreement going forward will need to contemplate the **likely tenant turnover** that will occur in the next few years.

## 3. Extensions and Renewals

On the opposite end of the spectrum, extending a good relationship can be mutually beneficial. Take the Sharks and SAP for example. The Sharks will occupy the building currently known as the SAP Center **through 2026, and possibly through 2040**. The SAP's naming rights agreement is for a relatively short amount of time, for five years from 2013 through 2018. The City of San Jose and the Sharks' agreement with SAP allows SAP the option to extend the agreement for an **additional five years, including a right of first negotiation**.

Like any future option, anticipating what the market will look like in a few years leaves a lot of room for error. One sided options to extend are often the result of leverage for the naming party, allowing it to reevaluate the market when its option comes due. Reserving flexibility for yourself is often the end game to maximize the value of the agreement and future naming rights.

## 4. Trademark Issues

Naming companies often use their **house trademark** to identify a venue for the purposes of a naming rights agreements. Trademarks are complex pieces of intellectual property. The venue's use of the naming company's trademark raises a variety of issues; chief among them is what right do venues have to the naming company's trademark. Most naming agreements include a license of the naming company's trademark to the venue. While some terms are fairly straightforward – a license in a naming rights agreement will almost certainly be non-exclusive – most portions of a license are complex and interrelated, requiring a holistic evaluation. One major issue that must be addressed is a quality control obligation imposed on the venue.

A licensee's use inures to the benefit of the licensor-owner of the mark and the licensee acquires no ownership rights in the mark itself; properly licensed use by licensees will serve to fortify the legal and

commercial strength of the licensed mark. *McCarthy on Trademarks and Unfair Competition* § 18:52 (4th ed.). However, a trademark can be licensed but only if the licensor exercises control over the nature and quality of the goods and/or services sold by the licensee under the licensed mark.

*McCarthy on Trademarks and Unfair Competition* § 18:38 (4th ed.) The owner of a trademark controls the nature and quality of the goods or services sold under the mark. Without quality control, the goods or services are not truly “genuine.” The resulting dissonance and deception can lead to the loss of some or all rights in the licensed mark. *McCarthy on Trademarks and Unfair Competition* § 18:38 (4th ed.) As a result, any license, including one in a naming rights agreement, should include a quality control obligation for the venue. Venues should concentrate on keeping quality control provisions to realistic, workable standards.

Many more factors play into the terms of a license for the use trademarks in naming rights agreements. For example, a venue will often grant a license to the naming company for its use of the venue’s tenants’ marks in relation to the venue. In addition, licensing agreements raise issues regarding scope, royalties, etc. Each agreement should be carefully constructed to address these concerns.

## 5. Expanded Relationships Between the Owner and Partner

Naming rights involve much more than tacking a company’s name onto an arena. For example, the Giants’ home at AT&T Park uses **AT&T wifi** throughout its cavernous expanses. JP Morgan Chase plans to use the naming-rights deal with the Warriors to **pitch all aspects of the bank's business, from consumer credit cards and home-mortgage** financing to private money management.

A naming rights agreement is often a marriage between two different business sectors. Visibility for the sponsoring company is the primary purpose of the agreements. Contracting to increase service use, product placement, and awareness of the sponsoring companies’ business highlights the effectiveness of such agreements.

## Conclusion

Naming rights agreements are complex, multimillion dollar transactions that require both legal and business acumen. The agreements provide great sources of income for venues and are marketing boons for naming companies. In negotiating these contracts, venues and naming companies face more than the five issues above that both. If you have any questions about this article or naming rights agreements, please contact the experienced attorneys of Hoge Fenton's Intellectual Property Group.

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