

Sponsorship Q&A: Ireland

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Ireland-specific information concerning the key legal issues that need to be considered when entering into a sponsorship arrangement.

This Q&A provides country-specific commentary on *Practice note, Sponsorship: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

Rights of the sponsor

1. To what extent will a representative appointed by the sponsor to an event's organising committee be liable to a third party who has a valid claim for compensation against the committee?

The extent of a representative's liability depends on how the event organising committee is structured. As a matter of general principle, a sponsor representative on a committee has the same level of potential liability to third parties as other committee members. Differences from this general position can be set out in the relevant agreement.

Intellectual property rights

2. What action lies for using an individual's name or image without consent?

There is no specific "image right" recognised under Irish law.

The main potential action available to a person (particularly a celebrity) for unauthorised use of their name or image is the tort of "passing off". This tort provides a right of action where a third party has represented goods or services as those of another in a way that is likely to mislead the general public and cause a detriment to the plaintiff. A plaintiff must demonstrate three elements to bring the claim:

- Goodwill or reputation attaching to the goods or services;
- Misrepresentation by the defendant to the public, whether intentional or not, which is likely to lead the public to believe the goods or services are those of the plaintiff; and
- Damage suffered by reason of the defendant's misrepresentation.

In the context of image rights, a passing off claim would revolve around establishing that there was a misrepresentation that the claimant endorsed the relevant product or service.

Where the claim is made out, a plaintiff may seek:

- Damages.
- An injunction to prevent the sale of the products or services.

Other potential actions (depending on the circumstances) can include:

- Defamation.
- Breach of privacy.
- Data protection.

3. Does an intellectual property right or any other proprietary right exist in an event?

Irish law does not recognise an independent intellectual property right in an event.

In terms of intellectual property rights in Ireland more generally, live performances can benefit from copyright or performers' right protection in certain circumstances. Rights in performances are set out in Part III of the Copyright and Related Rights Act 2000. "Performance" is a defined term within the 2000 Act, requiring some artistic or expressive quality, and sports fixtures do not generally fall within this definition.

Events could also try to utilise trade mark protections, by trademarking the name or branding attached to the event.

Separately, event organisers can use contract law to protect live events through the use of ticketing conditions, for example, restrictions on the use of cameras at an event.

Ambush marketing

4. What remedies does national law or regulation provide against ambush marketing?

There is no general protection against ambush marketing in Irish law. Typically, an event organiser would seek to rely on:

- Trade mark infringement or passing off actions.
- Actions brought under the Consumer Protection Act 2007. Under the 2007 Act, unfair, misleading and aggressive commercial practices are prohibited. The Act allows any person to bring a court application seeking an order prohibiting a trader or person from engaging in a prohibited act or practice. Certain commercial practices, including misleading and aggressive commercial practices, are also criminal offences under the Act and may be prosecuted.
- Contractual protection in the agreements and terms applicable to the relevant event.

Regulatory issues

5. How does national law or regulation regulate sponsorship?

Sponsorship is regulated in Ireland largely through industry-specific codes and to a lesser extent through product/service-specific statutory regulation.

The main authorities are the:

- **Broadcasting Authority of Ireland (BAI).** The BAI is a statutory body with a mandate to develop codes and guidance for advertising in the broadcasting sector. The BAI has developed a General Commercial Communications Code (GCC), which applies to all commercial communications broadcast on television and radio. Radio and television broadcasters are regulated by the BAI and do not generally accept advertising or sponsorship that is not in compliance with the GCC.
- **Advertising Standards Authority of Ireland (ASAI).** The ASAI is a self-regulatory body set up and financed by the advertising industry, and composed of advertising industry members. The ASAI has issued the ASAI Code, which applies to marketing communications issued by ASAI members. Marketing communications that refer to a sponsorship are covered by the ASAI Code (*section 2.3(o), ASAI Code*).

Further details regarding the GCC and the ASAI Code are set out below.

Other applicable provisions include the:

- **Consumer Protection Acts 2007 and 2014.** These Acts impose obligations on "traders", in the interests of consumers. They prohibit certain commercial practices, including false representations in relation to approvals, authorisations or endorsements.
- **Product-specific regulation.** Sponsorship of certain products or services is restricted. For example, alcohol sponsorship is specifically regulated by the Public Health (Alcohol) Act 2018 and sponsorship by tobacco brands is regulated by the Public Health (Tobacco) Act 2002.

6. What obligations or standards do national codes of practice or legislation impose on television and radio sponsorship? Consider, in particular:

- Restrictions on who can be a sponsor.
- Restrictions on what can be sponsored.
- Restrictions on the content of sponsorship.
- Restrictions on references to sponsors.
- Restrictions on advertising prominence.

Restrictions on who can be a sponsor. Certain types of product and service cannot sponsor television or radio broadcasts in Ireland. For example, alcohol, tobacco and gambling brands are restricted or prohibited by legislation from sponsorship generally or from sponsorship of certain types of events.

Restrictions on what can be sponsored. In general, anything can be sponsored, but there are product-specific exceptions. For example, from 12 November 2021 no alcohol brand can sponsor an event where the majority of participants are less than 18 years of age (*section 16, Public Health (Alcohol) Act 2018*). In a broadcasting context, the GCC specifies certain types of programmes that cannot be sponsored.

Restrictions on the content of sponsorship. The content of printed marketing communications that refer to a sponsorship arrangement must comply with the ASAI Code. To comply with the GCC, broadcast sponsorship must not constitute advertising. A sponsorship announcement or reference must therefore not:

- Make special promotional references to a product or service such as sales and discounts.
- Include advertising copy, prices, endorsements or calls to purchase.

- Afford undue prominence to a product or service of the sponsor (although reference to more than one product or service is permitted).

(Sections 8.5 and 9.3, GCC.)

Restrictions on references to sponsors. References to sponsorship in printed marketing communications must generally comply with the ASAI Code.

For broadcast sponsorship, the GCC requires audiences to be clearly informed of the existence of a sponsorship agreement. This requires sponsored programmes to be identified by name, logo or other symbol of the sponsor in an appropriate way at the beginning of, during and at the end of the programmes (sections 8.4 and 9.4, GCC). Sponsorship must not constitute product placement and cannot form part of the plot or narrative of the event. It must be limited to announcements declaring the sponsorship arrangement, such as "sponsored by" or "brought to you by". There is no prohibition on advertisements for the sponsor appearing during the sponsored programme, but broadcasters must ensure there is sufficient separation between formal sponsorship announcements and any separate advertising for the sponsor.

7. How does national law or regulation control product placement and editorial sponsorship?

Broadcast media

Product placement is regulated through the GCC. The GCC distinguishes between product placement, for which payment is received, and prop placement, where the featured goods and services are provided free of charge and the total value of those featured is not above EUR1,000.

Product placement is only permitted in certain types of broadcast, for example television films and sport. Prop placement is permitted in all types of programmes but must not affect the integrity of those programmes. Programmes containing product placement must be identified by an announcement at the start, end and resumption of the programme after an advertising break.

Non-broadcast media

The ASAI has issued guidance on the recognisability of marketing communications. This guidance requires the fact of material being a marketing communication to be made clear to consumers at the outset. In this context, a marketing communication includes both paid reviews and the provision of free products with a requirement for a positive review.

8. What procedures exist for complaining against sponsorship? What sanctions can be imposed for infringements of sponsorship codes or laws?

BAI. Broadcast sponsorship that infringes the GCC can be the subject of complaints to the BAI. The BAI can issue warning notices to the broadcaster, and the broadcaster can ask the advertiser for remedial action to be taken. If no action is taken, the apparent non-compliance can form the basis for a statutory investigation by the BAI. Complaints adjudicated by the BAI are published on the BAI's website unless it is inappropriate to do so. A negative adjudication can result in a financial sanction for a broadcaster of up to a maximum of EUR250,000, or suspension of contract for a contractor.

ASAI Code. Sponsorship that infringes the ASAI Code can be the subject of complaints to the ASAI by the general public and competitors. The ASAI can review such complaints and issue a public adjudication on compliance with the ASAI Code, which can include withdrawal or modification of the marketing communication. Members of the ASAI who fail to abide by an ASAI adjudication can be penalised through fines and/or suspension of ASAI membership.

Alcohol sponsorship. From 12 November 2021, sponsorship of certain events with the aim of promoting an alcohol brand or product will be an offence. These include events that either:

- Have children forming a majority of participants.
- Are aimed at children.
- Involve driving or racing mechanically propelled vehicles.

On summary conviction, the penalties include a class A fine and/or six months' imprisonment, or on indictment a fine of up to EUR250,000 and/or up to two years' imprisonment.

Tobacco sponsorship. Sponsorship by a tobacco brand is a criminal offence under section 36 of the Public Health (Tobacco) Act 2002, as amended. A person guilty of this offence is subject to a fine of EUR3,000 and or three months' imprisonment on summary conviction, or on indictment to a fine of up to EUR125,000 and/or up to two years' imprisonment.

Competition law

9. How does national competition law affect the terms of a sponsorship agreement, for example, the grant of exclusivity?

Irish sponsorship agreements are subject to the requirements of EU and Irish competition law and cannot have the effect of restricting competition or abusing a dominant position. A grant of exclusivity to a sponsor only breaches competition law requirements if it has either of these effects on a market. It is ultimately a question of fact whether

an agreement has these effects, although exclusivity arrangements between those at different levels of the supply chain (that is, vertical agreements) may be more likely to attract regulatory attention. For example: HB, an Irish ice cream brand, was unsuccessful in defending an exclusivity provision, which required retailers to stock only HB products in freezers provided free of charge by HB.

The Competition and Consumer Protection Commission (then the Competition Authority) published in December 2010 a notification and guidance note on certain vertical agreements and concerted practices that are exempt from the general prohibition on anti-competitive agreements. This is generally based on the European Commission's Vertical Block Exemption Regulation (No. 330 of 2010) and applies to retail buyer pools where no individual member (or its connected undertakings) of a buyer pool has an annual turnover in excess of €50million.

Sponsoring a charity

10. How does national law or regulation regulate the sponsorship of a charity?

There is no specific legislation or regulation covering the sponsorship of a charity. However, charities in Ireland are overseen by "charity trustees". This is an umbrella term for those who exercise control over and are legally responsible for the management of a charity. Charity trustees have a general duty to comply with the charity's governing document setting out the charitable purpose of the charity, and to ensure the charity is carrying out its charitable purpose for the public benefit. The practical impact of these duties is that a charity must generally review any potential sponsorship arrangement with a view to avoiding a compromise of its charitable purpose.

11. What tax treatment does national law give the payment or receipt of sponsorship funds to or by a charity?

Payment of sponsorship funds to a charity

The tax treatment of sponsorship funds which qualify as donations is governed by the Charitable Donation Scheme, set out in section 848A of the Taxes Consolidation Act 1997 (as amended) (TCA). The Charitable Donation Scheme allows tax relief on "qualifying donations" made to "eligible charities". In order for sponsorship funds to be classified as "qualifying donations", they must be above EUR250 and must meet all of the following requirements, that is they must:

- Be repayable.
- Confer any benefit, either directly or indirectly, on the donor or any person connected with the donor.

- Be conditional on, or associated with, any arrangement involving the acquisition of property by the approved body.

Where a company qualifies for the relief, the donation is treated as a deductible trading expense or an expense of management deductible in computing the total profits of the company for that accounting period.

Where an individual qualifies for the relief, tax relief is allowed to the charitable body as opposed to the donor. The relief is calculated by grossing up the donation at the specified rate. The specified rate is currently 31%. The maximum amount of a donation for an individual to qualify for the relief is EUR1 million per annum.

Receipt of sponsorship funds by a charity

Provided the Charities Regulatory Authority (CRA) has granted charitable status to the charity, the charity can apply for a charitable tax exemption in respect of sponsorship funds which qualify of charitable donations. Under this relief, the charity is exempt from most Irish tax aside from VAT.

If the sponsorship funds are freely given and secure no material benefit for the sponsor in return, they will be not liable to VAT. If the charity makes taxable supplies in return for sponsorship (for example, advertising), the charity must account for VAT at the standard rate (currently 23%) on the amount received under the sponsorship agreement.

Sponsorship of the arts

12. How does national law or regulation regulate sponsorship of the arts? Are there any incentive schemes to promote sponsorship of the arts?

There is no Irish legislation or regulation that applies specifically to sponsorship of the arts. The Arts Council is the national agency for funding, developing and promoting the arts in Ireland. It receives funding from the Irish exchequer and provides financial assistance mainly, but not exclusively, to artists and arts organisations and others who develop and promote the arts. It is an autonomous body and makes independent decisions on funding allocations.

Tax

13. How does national law treat the payment or receipt of sponsorship funds? Are sponsorship expenses incurred by a sponsor tax deductible?

The tax treatment of the payment or receipt of sponsorship funds depends on the commercial details of the way sponsorship funds are paid and the rights or benefits provided in consideration for those funds. Similarly, the extent to which sponsorship expenses are deductible depends on the context.

Payment of sponsorship funds by the sponsor

Provided the sponsorship funds are paid wholly and exclusively for the purposes of trade, it should be possible for the sponsor to classify them as a deductible expense against income tax/ corporation tax in accordance with section 81(1)(a) of the TCA.

Receipt of sponsorship funds by the beneficiary

Sponsorship funds are a taxable receipt in the hands of the recipient for income tax/ corporation tax purposes.

Sponsorship agreement

14. Are there any obligations of the sponsored party/club which are typical due to local custom in your jurisdiction (see *Standard document, Sponsorship agreement: Cross-border: clause 5*)?

Generally, Irish contract law supports freedom of contract. There are a limited number of circumstances in which the common law can imply a term into an agreement. In line with *Standard document, Sponsorship agreement: Cross-border: clause 5*, it is common for the obligations of the sponsoring party/club to be exhaustively listed in the sponsorship agreement.

15. Are there any obligations of the sponsor which are typical due to local custom in your jurisdiction (see *Standard document, Sponsorship agreement: Cross-border: clause 6*)?

There are no typical obligations of the sponsor due to local custom in Ireland. Generally, it could be expected to see the following in a sponsorship agreement:

- Provision on compliance with brand guidance
- Requirement to obtain consent from the sponsor in certain circumstances
- Provisions on payment

16. Would it be normal practice in your jurisdiction to require the sponsor to give warranties and / or representations with regard to its obligations under the agreement (see *Standard document, Sponsorship agreement: Cross-border: clause 6*)?

It is normal practice in Ireland for a sponsor to give warranties and representations as in *Standard document, Sponsorship agreement: Cross-border: clause 6*. Typically, a club will want detailed warranties and representations, while a sponsor will want these to be as limited as possible. The representations and warranties ultimately included in the sponsorship agreement depend on the relative bargaining positions of the parties in a given case.

17. What limitations and exclusions of liability might be appropriate (see *Standard document, Sponsorship agreement: Cross-border: clause 11*)?

The appropriate limitations and exclusions of liability depend on the circumstances and the bargaining positions of the parties. There is no specific legislation in Ireland preventing unfair terms in business-to-business contracts. Parties to a sponsorship agreement will often seek to exclude liability for indirect or consequential loss and to place a cap on liability under the agreement to the amount of the sponsorship fee paid or received.

18. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to the sponsorship agreement (see *Standard document, Sponsorship agreement: Cross-border: clause 17.8*)?

Irish law allows the parties to an agreement to decide on the governing law and jurisdiction of that agreement. If governing law and jurisdiction in an agreement relating to the sponsorship of an event or entity in Ireland are not specified in the agreement, it is likely that the governing law will be deemed to be Irish law and that the Irish courts will be deemed to have jurisdiction, although common law, and possibly EU law, rules on choice of law may apply.

19. Are there any products which cannot be promoted or have restrictions placed on their promotion in the context of the sponsorship of football clubs and in sponsorship schemes generally in your jurisdiction (see *Standard document, Sponsorship agreement: Cross-border: Schedule 1*)?

Kits of soccer teams participating in certain UEFA competitions are subject to regulation by UEFA. For example, the Irish national soccer team playing in UEFA competitions does not have sponsor branding on the playing kit. However, authorised replica jerseys can have sponsor branding. This regulation is sport-specific and, by contrast, the Irish national rugby team wears jerseys with sponsor branding in competitions.

As mentioned above, there are certain industry specific laws that prohibit sponsorship by certain products or brands (such as the Public Health (Tobacco) Act 2002) (see *Question 6*).

20. Which regulatory bodies, if any, should be referred to in the agreement?

There is no obligation to refer to a regulatory body in a sponsorship agreement. Parties may wish to refer to the ASAI or to the BAI, depending on the nature of the sponsorship, or to a sector specific body, such as the Football Association of Ireland, depending on the circumstances.

21. Are there any compliance obligations on either party under your local laws?

Parties must comply with the Criminal Justice (Corruption Offences) Act 2018, which contains a number of corruption offences. Parties may wish to include wording indicating that they comply with this Act.

Applicable data protection and e-privacy laws must be taken into account if any personal data will be shared or processed by one party on behalf of the other under the agreement (such as in relation to any direct marketing activities or databases).

22. Does the sponsored party/club need to provide any formal authorisation to the sponsor (such as power of attorney, resolution, or similar document) evidencing the sponsored party/club's authorisation to enter into and perform the agreement?

Generally, the sponsoring party or club does not need to provide any formal authorisation to the sponsor. The agreement alone would be sufficient in Irish law to enable the sponsor to perform the agreement. A power of attorney or other specific authorisation may be required in specific circumstances.

23. Does the agreement need to be in a language other than English for it to be valid and enforceable? Are there any other formalities which could affect the validity and / or enforceability of the agreement under national law?

An agreement in English alone is valid and enforceable in Ireland.

A sponsorship agreement is a contract, so general Irish law formalities around contract formation (offer, acceptance, consideration, intention to create legal relations) and execution must be complied with. There are no specific formalities related to the nature of the agreement as a sponsorship agreement.

24. How does this agreement need to be executed to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

Execution formalities

There are no special rules for the execution of sponsorship agreements. The parties must comply with general rules for the execution of documents, such as ensuring that the signatory has authority to sign on behalf of company, and so on.

Registration formalities

A sponsorship agreement does not require registration with any authority, organisation or body.

Other formalities

No other sponsorship agreement specific formalities are required.

25. Are there any clauses in *Standard document, Sponsorship agreement: Cross-border* that would not be legally enforceable or not standard practice in your jurisdiction?

Irish law has strict privity of contract rules, so the exclusion of third-party liability (*clause 17.10*) is not required (and is therefore non-standard) in an Irish context.

26. Are there any other clauses that would be usual to see in a sponsorship agreement and/or that are standard practice in your jurisdiction?

A data protection clause is often included and is highly advisable if any personal data is to be shared or processed by one party on behalf of the other under the agreement.

Brexit

27. From the point of view of your jurisdiction, what issues do you anticipate arising in relation to sponsorship agreements which either: (i) contain an express choice of English law as governing law; or (ii) have a UK-incorporated sponsor or sponsored party as a counterparty and are governed by the laws of your jurisdiction, in consequence of the UK ceasing to be a member state of the European Union?

There are many potential impacts that Brexit may have on agreements from an Irish law perspective.

A provision providing for English law as the governing law presents enforcement risks for the parties following Brexit. In addition, any elements of an agreement that rely on the UK's membership of the EU, such as data protection provisions, could prove problematic. It is likely that parties may wish seek to amend such provisions in advance of Brexit, either by amendment to the sponsorship agreement as a whole or through a form of Brexit addendum to the agreement.

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