

**PRIME REAL ESTATE: EXAMINING
ADVERTISING ON JERSEYS IN MAJOR
NORTH AMERICAN PROFESSIONAL
SPORTS**

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INTRODUCTION

In the United States, sports and tradition are often revered with the same breath.¹ There is a tradition amongst the four major North American professional sports leagues to refrain from allowing advertising on their game uniforms. The NBA has broken that tradition.² Starting in the 2017-2018 season, the NBA will commence a three-year pilot program allowing for sponsorship logos to be placed on game uniforms.³ The jersey sponsorships will take form in 2½ by 2½ inch patches located on the front left of the jersey.⁴

This brief essay seeks to address both the practical and legal consequences of implementing a program that allows for advertising on uniforms in professional sports. *Part I* of this essay explores on-jersey advertising in the NBA as a revenue source and the potential drawbacks of allowing on-jersey advertisements in the NBA. *Part II* of this essay analyzes a foreseen introduction of on-jersey advertising in other major North American professional sports leagues.

I. SPONSORSHIP PATCHES ON NBA JERSEYS

A. Determining Potential Profitability and Difficulties from On-Jersey Advertising in the NBA

NBA teams have been able to negotiate with sponsors since April of 2016, but as of January 2017, currently only two teams, the Philadelphia 76ers and the Sacramento Kings, have reached deals with on-jersey sponsors.⁵ The 76ers struck a deal worth fifteen

¹ See Bryan Sakakeeny, *The Best Traditions in All of Sports*, Bleacher Report (2010), <http://bleacherreport.com/articles/430099-the-best-traditions-in-all-of-sports> (last visited Jan 11, 2017).

² See Brian Mahoney *NBA to begin selling jersey sponsorships in 2017-18*, NBA.com (2016), <http://www.nba.com/2016/news/04/15/nba-to-begin-selling-jersey-sponsorships-in-2017-18.ap/> (last visited Jan 13, 2017).

³ *Id.*

⁴ *Id.*

⁵ Nike is the will become the official outfitter of the NBA in the 2017-2018 season, the same year the NBA will start allowing advertising on game uniforms. See James Herbert, *Sacramento Kings become the second NBA team to land jersey sponsor*, CBSSports (2016), <http://www.cbssports.com/nba/news/sacramento-kings-become-the-second-nba-team-to-land-jersey-sponsor/> (last visited Jan 14, 2017).

million dollars over three years with ticket provider Stubhub, while the Kings completed the same deal with California-based almond company Blue Diamond.⁶ While both teams seem excited about the potential of working with these advertisers, the deals have left the rest of the league with more uncertainty than clarity.

The benchmark has been set: on-jersey sponsorship patches have garnered \$5 million dollars per year. Why, then, have so few teams completed deals?

There is precedent for this. In 2013, the NBA started allowing teams to sell advertising space on their jersey for non-nationally televised games.⁷ In the first year of the program, only three teams were able to sell the space, while the other twenty-seven teams decided to double-down on their own branding.⁸

One major difficulty in selling on-jersey advertisements is in discerning the true value. Understandably, the value of the space will vary amongst teams. For example, English Premier League soccer clubs haughtily display advertisements in the direct center of their jerseys. Manchester United, one of the best known soccer clubs in the world, collects nearly \$70 million dollars per year from their on-jersey sponsor Chevrolet, yet Southampton FC, a smaller but reputable club, only garners \$1.7 million dollars per year from their on-jersey sponsor Veho.⁹

How, then, should NBA teams determine the market value of on-jersey patches in a newly created and unestablished market? An advertisement on the chest of a marquee player may hold far more value than one on a less recognizable player. An advertisement that receives plenty of national television exposure is likely worth much more than one confined to regional broadcasts. The Golden State Warriors, for example, are a team coming off the greatest regular season in NBA history and are composed of the reigning MVP, a

⁶ *Id.*

⁷ The court apron is the out of bounds area on the sidelines of a basketball court. See Ira Boudway, *Slow Sales at the Outset for NBA Floor Space*, Bloomberg (2013), <https://www.bloomberg.com/news/articles/2013-12-02/slow-sales-at-the-outset-for-nba-floor-space> (last visited Jan 20, 2017).

⁸ *Id.* Most teams used the space to promote their respective websites and social media accounts.

⁹ FC: Kit Deal More Important than Ever, ESPN, http://www.espn.com/espn/feature/story/_/id/11354724/kit-deal-more-important-ever-premier-league (last visited Jan 20, 2017).

former MVP, and six former All-Stars. The Warriors carry four of the top ten selling jerseys in the league, and sell the second most merchandise.¹⁰ The Warriors are reportedly seeking a deal worth \$20 million dollars per year for advertisements to appear on their jerseys.¹¹ If the Warriors were to get their deal done, it would likely create a ceiling in this new market, and help other teams figure out their market value.

While only speculation, the 76ers and Kings deals of \$5 million dollars per year are likely reflective of what the less marketable NBA teams will be able to draw. The 76ers have been one of the least successful NBA teams in recent history, and are the third least valuable franchise in the league.¹² Philadelphia, however, is the sixth largest market in the NBA.¹³ The Kings have not made the playoffs in the past ten seasons, and Sacramento is only the twentieth largest market in the league.¹⁴

When evaluating the other twenty-eight teams in the league, it is hard to conceive that an on-jersey sponsorship for any other team will be valued less than the 76ers or the Kings. Every franchise in the league has redeeming qualities in assessing their patches' market value. It follows that it is likely that on-jersey advertising in the NBA will be worth between \$5-\$60 million dollars per year, per team.

Another concern is that the patches may cost more money than they generate, as lost potential profits from jersey sales may

¹⁰ See AJ Neuharth, Stephen Curry remains No. 1 in NBA jersey sales, USA Today (2016), <http://www.usatoday.com/story/sports/nba/2016/07/07/stephen-curry-nba-jersey-sales-lebron-james-kevin-durant/86799036/> (last visited Jan 14, 2017).

¹¹ See Darren Rovell, Warriors want advertisers to pay up to \$20M for jersey patch, ESPN (2016), http://www.espn.com/nba/story/_/id/17083525/golden-state-warriors-asking-15-million-20-million-per-year-jersey-advertising (last visited Jan 12, 2017).

¹² See AJ Neuharth, Philadelphia 76ers: worst team of all time?, USA Today (2015), <http://www.usatoday.com/story/sports/nba/76ers/2015/11/22/joel-embiid-nerlens-noel-brett-brown-jrue-holiday-michael-carter-williams-philadelphia-76ers/76215644/> (last visited Jan 20, 2017). See Also Kurt Badenhausen, New York Knicks Head The NBA's Most Valuable Teams At \$3 Billion, Forbes (2016), <http://www.forbes.com/sites/kurtbadenhausen/2016/01/20/new-york-knicks-head-the-nbas-most-valuable-teams-at-3-billion/#6f1a97862d3a> (last visited Jan 15, 2017).

¹³ See NBA Market Size Numbers Game, Sports Media Watch (2017), <http://www.sportsmediawatch.com/2011/03/nba-market-size-numbers-game/> (last visited Jan 20, 2017).

¹⁴ See Land Of Basketball, NBA Teams: Sacramento Kings Records Year by Year., http://www.landofbasketball.com/teams/records_sacramento_kings.htm (last visited Jan 14, 2017). See Also *NBA Market Size*, *supra* note 14

overwhelm the money made from selling the advertising space. The NBA collective bargaining agreement utilizes a revenue sharing structure amongst the teams and players.¹⁵ Revenues generated from the on-jersey patches will contribute to basketball related income, approximately half of which would go to the players and the other half to the teams.¹⁶ Each teams' share would then be split into half, as teams would be able to retain one half of their share, and the other half would be disbursed into the league's team revenue pool.¹⁷ To illustrate, the 76ers will receive \$5 million dollars per year for their on-jersey partnership with Stubhub. The players will receive \$2.5 million dollars, the league revenue sharing pool will receive \$1.25 million dollars, and the 76ers will retain \$1.25 million dollars. This can be especially concerning to smaller market teams who may not entice high number sponsorship dollars. The NBA has addressed this complaint, amending the pilot program so that jerseys sold nationwide will be without the sponsorship patch, and teams can opt to sell jerseys in their arena with the sponsorship patch.¹⁸

A final concern is that advertisers in established advertising mediums may pull away from teams due to their deeper connection to on-jersey advertisers, or that the on-jersey advertising may decrease the value of advertising on other mediums so as to make the on-jersey advertising unprofitable. Teams may be reluctant to embrace on-jersey advertising in fear that their local or in-arena advertising value would decrease.

Due to the lack of surety in the value of the on-jersey sponsorships and their consequences, it will be interesting to see how many teams embrace the pilot program and whether ultimately, the program finds lasting success.

¹⁵ David Aldridge, NBA, NBPA reach tentative seven-year CBA agreement, NBA.com (2016), <http://www.nba.com/article/2016/12/14/nba-and-nbpa-reach-tentative-labor-deal> (last visited Jan 20, 2017).

¹⁶ *Id.* Basketball Related Income is the revenue that is split amongst NBA teams and players.

¹⁷ Darren Rovell, Warriors want advertisers to pay up to \$20M for jersey patch, ESPN (2016), http://www.espn.com/nba/story/_/id/17083525/golden-state-warriors-asking-15-million-20-million-per-year-jersey-advertising (last visited Jan 18, 2017).

¹⁸ Darren Rovell, 76ers sell first NBA jersey ad, ESPN (2016), http://www.espn.com/nba/story/_/id/15559477/philadelphia-76ers-sell-first-nba-jersey-advertisement-stubhub (last visited Jan 21, 2017).

B. Potential Legal Friction in on-jersey Advertising in the NBA

While not legally complex, litigation may arise from prominent on-jersey sponsorships conflicting with existing sponsorships. It is easy to conceive a situation where a player with an existing sponsor is tasked with donning a new, directly competing sponsor on their chest, and their existing sponsor pursues legal remedy. Further, it is imaginable that teams would be in conflict if they sign an on-jersey sponsor that is a direct competitor of the NBA official sponsors.

Teams will have an easy time avoiding conflict with the NBA. The NBA will not allow on-jersey sponsors that promote alcohol, gambling, or directly conflict with Spalding, the official basketball maker of the league, and Tissot, the official time keeper of the league.¹⁹ It appears that all other sponsors remain tentatively allowable, though it is unclear if the NBA has final say as to whether an on-jersey advertiser is appropriate.

Of more concern may be sponsorship conflict amongst teams and players. Player advertising conflicts aren't without precedent. Many players have direct conflicts with the sponsors of the NBA or their respective teams, but companies must contract around these conflicts. For example, LeBron James and Steph Curry, Nike and Under Armor athletes respectively, both wear the Adidas logo, the current official outfitter of the NBA, in every practice and every game. It is presumed that both Nike and Under Armor accept this as a necessary evil, but specifically dictate when and how their sponsor athletes must promote their brand. James Harden, an Adidas athlete, notoriously wore a pair of Air Jordan sneakers, a Nike subsidiary, in public after signing his deal with Adidas, to which the president of Adidas North America publicly declared that if Harden continued to wear Nike in public he was in violation of their contract.²⁰

While many brands are reluctant to disclose details of their arrangements with sponsor athletes, it is clear that provisions

¹⁹ Darren Rovell, NBA uniform ad sales face complications, ESPN (2016), http://www.espn.com/nba/story/_/id/17738528/nba-uniform-ad-sales-face-complications (last visited Jan 17, 2017).

²⁰ See James Harden got caught wearing Nike again, FoxSports (2015), <http://www.foxsports.com/nba/story/houston-rockets-james-harden-got-caught-wearing-nike-again-092215> (last visited Jan 20, 2017).

determining when players are allowed to use competing brands, or alternatively when players must use their sponsor brands, exist as important negotiating points. It follows that on-jersey sponsorships and their possible conflicts will likely provide nothing more than a negotiation obstacle, and moving forward will be regarded as a necessary evil, much as players using league-sponsored merchandise is today.

A more troublesome question remains: will on-jersey advertising diminish players' personal brands? A situation is foreseeable where prospective sponsors are reluctant to come to terms with players who will be wearing a different sponsor on their jersey if the sponsor is a competitor. Teams should, in the very least, be mindful of the prominent players on their roster and the value creation or diminution that can occur as consequence of a brand on their jersey. In December 2016, the NBA and National Basketball Players Association [NBAPA] reached a new, tentative, seven year collective bargaining agreement, but there has been no mention as to whether the players raised this concern.²¹ Since half of the revenue created by on-jersey sponsorships will go to the players, the players appear content, by virtue of not contesting the program publicly, to allow the on-jersey advertising program to proceed as planned, but it will be interesting to see if this point budge its way into negotiations.

Where teams and their prospective on-jersey sponsors may find difficulty is if sponsors are within their rights to write opt-out clauses or contract contingencies, and vice versa. It is conceivable that a company investing in an on-jersey sponsorship in 2017 does so based on the team's current roster, success, market size, and other factors, and may feel harmed if the team they sponsor traded important players, moved location, or negligently became an unsuccessful team. While the risk may seem inherent, it will be interesting to see if teams accept conditional contracts that allow sponsors to pull out of a deal.

From the team's perspective, it would be reasonable to instill clauses that would allow them to disassociate themselves from their on-jersey sponsor. A situation is imaginable, and seemingly much more likely, where an on-jersey sponsor may act inappropriately or

²¹ See Aldridge, *supra*, note 16

fall into public disfavor, and wearing this sponsor on a team's jersey may irreversibly harm a team's brand. For example, NBA teams should consider the effect of the Volkswagen emissions scandal's effect on the car manufacturer's sponsorship of German and European football teams.²² Teams should look to protect themselves by contracting around this possibility.

There has been nothing reported that indicates that teams are confined to a standard uniform contract, so it appears that teams and their sponsors will be able to contract voluntarily and freely. It will be interesting to see how these possible complications are resolved.

II. DETERMINING THE POTENTIAL BENEFITS AND DIFFICULTIES FOR OTHER MAJOR NORTH AMERICAN PROFESSIONAL SPORTS LEAGUES CONSIDERING ADVERTISING ON UNIFORMS

A. Potential On-jersey Ads in the National Hockey League (NHL)

As the NBA on-jersey advertising pilot program beings, sports fans question whether their favorite teams in other professional sports leagues are next to adopt on-jersey advertising. Many believe that the NHL will be the next major North American professional sports league to allow advertising on its' uniforms.²³ The NHL recently switched jersey manufacturers, from Reebok to Adidas, in a move that some speculated would come with on-jersey sponsorship.²⁴ The NHL commissioner, Gary Bettman, has adamantly denied that the NHL is even considering putting advertisements on the jerseys.²⁵ However in 2016, the first jerseys

²² See Stephan Uersfeld, Volkswagen emissions scandal could impact German football sponsorship, ESPN FC (2015), <http://www.espnfc.us/german-bundesliga/story/2626867/vw-volkswagen-emissions-scandal-could-impact-german-football> (last visited May 24, 2017).

²³ See Greg Wyshynski, NHL ads on jerseys coming soon, now that NBA approves them, Yahoo! (2016), <http://sports.yahoo.com/blogs/nhl-puck-daddy/nhl-ads-on-jerseys-coming-soon—now-that-nba-approves-them-162317173.html> (last visited Jan 18, 2017).

²⁴ *Id.*

²⁵ See Jesse Ferreras, Hockey Fans Could Soon See Ads On NHL Jerseys, Huffington Post (2015), http://www.huffingtonpost.ca/2015/08/18/nhl-hockey-jersey-ads-adidas_n_8006360.html (last visited Jan 21, 2017).

produced by Adidas for the NHL's World Cup of Hockey *were* adorned with sponsored shoulder patches.²⁶

While it is unclear who would have the rights to sell on-jersey advertising in the NHL and who would benefit, the NHL as an organization is structured similarly to the NBA and functionally could adopt a similar pilot program if the NBA iteration takes off. The NHL collective bargaining agreement mandates a 50/50 split of hockey related revenue between the players and the owners, and for similar reasons as the NBA, discussed *supra*, this arrangement would likely be agreeable to all parties participating.²⁷ The NHL will likely be monitoring the results of the NBA program, and if things go smoothly, could be more likely to adopt similar on-jersey advertising.

B. Potential On-jersey Advertising in Major League Baseball (MLB)

Rich in tradition, baseball is consistently regarded as "America's pastime." Certainly the MLB would never allow for corporate patches to sully such traditions. Except the MLB already has. On four separate occasions since 2000, MLB teams have worn sponsorship patches on their jerseys and batting helmets in opening day series taking place in Japan.²⁸

Logistically, on-uniform advertising may not be as widely popular, or work as smoothly in the MLB as it would in the NBA or NHL. MLB teams are subject to revenue sharing, yet there is no mandate that half of the share goes towards players.²⁹ MLB players subjected to sponsorship conflicts may not accept the advertising as

²⁶ See Allan Muir, World Cup of Hockey Jerseys to Feature Ads for the First Time, *Sports Illustrated* (2016), <http://www.si.com/nhl/2016/08/17/world-cup-of-hockey-jerseys-ads>. (last visited Jan 21, 2017)

²⁷ See Patrick Rishe, NHL Owners, Players Score New CBA Saving the 2012-13 Hockey Season, *Forbes* (2013), <http://www.forbes.com/sites/prishe/2013/01/06/nhl-owners-players-score-new-cba-saving-the-2012-13-hockey-season/#44aa163118ef> (last visited Jan 21, 2017).

²⁸ See Paul Lukas, Uni Watch's Friday Flashback: Why regular-season uniform ads wouldn't be a new wrinkle, *ESPN* (2016), http://www.espn.com/mlb/story/_/id/14885895/uni-watch-friday-flashback-why-regular-season-uniform-ads-new-wrinkle (last visited Jan 16, 2017).

²⁹ See William Van Noll, All leagues share revenue, but NFL is best at it (2014), <http://thefieldsofgreen.com/2014/07/25/all-leagues-share-revenue-but-the-nfl-is-by-far-the-best-at-it/> (last visited Jan 20, 2017).

cordially as NBA players, as the revenue generated from the on-uniform advertisements may not necessarily be funneled back to the players in the same proportions.

Furthermore, because the MLB does not utilize a hard salary cap, the discrepancy in the value of on-uniform advertising amongst MLB teams would strongly favor teams of larger markets and those teams with more successful rank. The larger market teams already utilize more expensive rosters and enjoy more success than smaller market teams.³⁰ Increased advertising opportunities left to the MLB teams would likely only increase this discrepancy. Over the past two decades, the MLB has made a commitment towards achieving a greater competitive balance in the league and on-jersey ads under control of the teams would run counter toward that goal.³¹

C. Potential On-jersey Advertising in the National Football League (NFL)

The NFL and its' commissioner Roger Goodell are vocal opponents of on-jersey advertising.³² NFL teams, however, have worn sponsorship patches on their training camp jerseys since 2009.³³ NFL Europe teams also allowed on-jersey advertising.³⁴

There are major differences that would distinguish an NFL on-jersey advertising deal from the other major North American professional sports leagues. National revenue in the NFL far outweighs locally generated revenue, which significantly contrasts from the other three leagues. The NFL also employs a central revenue sharing system in which the NFL has the exclusive

³⁰ See Jeff Passan, MLB salaries will near record \$4 billion, Yahoo Sports (2016), <http://sports.yahoo.com/news/mlb-salaries-will-near-record—4-billion-220442264.html>. (last visited Jan 18, 2017).

³¹ Mike Axisa, 14 small market teams receive competitive balance pick for 2017 MLB draft, CBS Sports (2016), <http://www.cbssports.com/mlb/news/14-small-market-teams-receive-competitive-balance-pick-for-2017-mlb-draft/> (last visited Jan 21, 2017).

³² Do the Ads Ruin This NFL Photo Sequence?, Sports Illustrated, <http://mmqb.si.com/mmqb/2016/06/09/nfl-ad-sponsorships-jersey-business-football-mmqb> (last visited Jan 13, 2017).

³³ NBA jersey ads raise obvious question: Is NFL next?, NBC Sports, <http://profootballtalk.nbcsports.com/2016/04/16/nba-jersey-ads-raise-obvious-question-is-nfl-next/> (last visited Jan 21, 2017).

³⁴ *Id.* NFL Europe was an NFL minor league, located in European cities, that no longer exists

privilege to sell television rights, and the revenue is split equally amongst teams.³⁵ The NFL would have a difficult dilemma in deciding whether they were to retain the rights to uniform sponsorship, and then dividing the revenues amongst the teams evenly, or whether teams would be able to contract on their own. Ultimately, it will be the owners who calculate whether on-jersey sponsorships are more valuable in control of the league or individual teams, but this problem is much less settled than in other leagues.

Furthermore, if teams were to have the privilege to sell on-jersey advertising on their own, we could see tremendous discrepancy amongst the value of the space. NFL teams only play 16 regular season games each year, which is very little exposure compared to the other sports. While a company may pay a tremendous amount of money to be synonymous with the Dallas Cowboys, it is unclear whether advertisers would pay top dollar to see their logo on a Jacksonville Jaguar uniform sixteen times a year.

The final hurdle is that the NFL is suffering from poor labor relations, and the players may find leverage if an on-jersey advertising program is implemented.³⁶

CONCLUSION

The NBA has broken the tradition of major North American sports leagues by allowing for advertising to occur on game jerseys. The NBA will pioneer advertising on game uniforms with a three-year pilot program that has gotten off to a slow start. Over the coming months, NBA teams will decide whether or not they will participate in the program. While the legal issues that may arise due to the program are not complex, it is likely that tactful negotiations must occur to protect teams, players, and potential sponsors alike. Whether the program will ultimately be accepted and profitable is questionable, but it will likely be closely monitored by the other three major North American professional sports leagues.

³⁵ See Van Noll, *supra* note 30

³⁶ See Maury Brown, As NFLPA Turns 60, Their Importance Never Greater, *Forbes* (2016), <http://www.forbes.com/sites/maurybrown/2016/11/01/as-nflpa-turns-60-their-importance-never-greater/#7f1c4ee352ea> (last visited Jan 22, 2017).

If the NBA program is a success and other professional sports leagues seek to adjoin advertisements to their uniforms, each league will face their own unique difficulties in implementing such a program. A time where all major North American professional sports leagues allow for advertising on their uniforms is foreseeable, but the timeline as to when other leagues adopt on-jersey sponsorships will largely be determined by the success of the NBA program.