

Sports Law & Sports Business (Part 4)

Sports Advertising and Marketing (2)

In this column, we continue our overview of how sports advertising and marketing are regulated in Japan.

1. Sports facilities, uniforms, and sponsors

(1) General laws and regulations

Advertising and marketing activities in sports are subject to general regulations under the Act against Unjustifiable Premiums and Misleading Representations ("Misleading Representations Act") and the Unfair Competition Prevention Act. The Misleading Representations Act prohibits representations which mislead consumers, such as excessive or false representations, and requires that all representations of sponsor information or effectiveness and performance must be appropriate. On the other hand, the Unfair Competition Prevention Act prohibits, among other things, representations which may cause confusion with well-known indications of another party or damage another party's reputation or which are misleading in terms of product origin or quality, and can come into play in contexts such as ambush marketing.

(2) Rules of sports governing bodies

Nonetheless, it would be difficult to regulate advertising in sports solely through general-purpose laws such as the Misleading Representations Act and the Unfair Competition Prevention Act, which is why sports governing bodies of a certain size (such as national federations (NFs) and competition organizers such as leagues) have established their own rules regarding advertisements and uniforms.

For instance, rules of the Japan Association of Athletics Federations (JAAF)¹ impose strict restrictions on advertisements which violate the values of sports or public order and morals (C7.1 1.7 of the Regulations on Advertising and Displays at Competitions). The JAAF regulations are consistent with the marketing and advertising rules of World Athletics,² the international federation (IF) for athletics, with some additions and exceptions related to domestic Japanese competitions. The key provisions of the JAAF marketing regulations are as follows.

a. Advertising prohibitions

- Completely prohibited: Promotions of tobacco (including electronic tobacco), manufacturing of weapons, and political and religious causes are prohibited without exception. CBD (cannabidiol) products sold by pharmaceutical companies are also included in this category.
- Prior approval required: Food supplements, dietary supplements, energy drinks (including those containing stimulants), pharmaceutical companies, and gambling-related services such as sports

¹ Japan Association of Athletics Federations: Regulations on Advertising and Displays at Competitions: <https://www.jaaf.or.jp/pdf/about/rule/2026/28.pdf>

² World Athletics: Marketing and Advertising Rules: https://www.jaaf.or.jp/files/upload/202504/09_110452.pdf

betting are prohibited unless special written approval is granted upon consultation with the relevant department at World Athletics.

- Permitted: Alcohol beverages with an alcohol content of less than 20%, and national and government lotteries are permitted.

b. Rules on displaying logos on athlete apparel³

While an athlete's uniform is a great advertising medium, the number and size of what can be displayed is strictly specified.

- Restrictions on number: Up to three logos (company names), including the manufacturer (sportswear brand), may be displayed on each top and bottom.
- Restrictions on size: One sponsor logo may be up to 5cm tall, 10cm long, and cover an area of up to 40cm².
- Differences between domestic and international rules: In domestic competitions, displaying two logos of the same company is allowed if their design is different (but not if the design is exactly the same), whereas in international competitions displaying two logos of the same company is not allowed.
- Restrictions on number of accessories: Sponsor logos are not permitted on arm warmers, socks, headbands, or other accessories. Only one manufacturer logo (up to 4cm high) is allowed.
- Bibs (race numbers): Both company names and specific service names can be displayed.

c. Handling of virtual advertisements, a new medium for the digital age

The use of virtual advertisements, which are inserted directly into video footage, has become increasingly common with developments in broadcast technology. Such virtual advertisements are subject to the following rules. (Regulations on Advertising and Displays at Competitions⁴, C1.4, Appendix 2, 10. Use of Digital Technology)

- Inserting virtual advertisements is allowed, but it must be done in an appropriate manner which does not compromise the integrity of the competition or interfere with the viewing experience for broadcast audiences.
- Displaying virtual advertisements on people present at the competition venue (spectators, athletes, and officials) is prohibited except where the advertisement is displayed on a bib (race number).

2. Stealth marketing and social media

Since October 1, 2023, the Misleading Representations Act has explicitly prohibited stealth marketing (displays which do not clearly indicate that they are advertisements). As a matter of statutory interpretation, pursuant to Article 5, item (iii) of the Misleading Representations Act and the Cabinet Office Public Notice⁵ specifying the interpretation of that item, "representations made by a business in connection with transactions involving goods or services that it provides, where it is considered difficult for general consumers to recognize that the representations are made by the business", are prohibited as misleading representations.

³ Japan Association of Athletics Federations: FAQ regarding Advertising and Display Regulations : https://www.jaaf.or.jp/files/upload/202504/09_110513.pdf

⁴ Japan Association of Athletics Federations: Rules on Marketing and Advertising: https://www.jaaf.or.jp/files/upload/202604/01_175742.pdf

⁵ Cabinet Office Notice No. 19 of March 28, 2023: Representations which are Difficult for General Consumers to Identify as Representations Made by a Business: https://www.caa.go.jp/policies/policy/representation/fair_labeling/public_notice/assets/representation_cms216_230328_07.pdf

Businesses should particularly take note of the following two points so as not to engage in stealth marketing.⁶

(1) Applicability of "representation made by a business" (involvement of a business)

Representations made by third parties other than a business are deemed to be representations made by a business not only in the case where a business has explicitly made a request for such representation to be posted on social media or elsewhere, but also where objective circumstances indicate that such representation cannot be regarded as having been made voluntarily by such third party (such as an athlete or influencer), even in the absence of explicit request or instruction. For example, this may apply in a situation where specific sporting goods are provided free of charge and the third party is encouraged to make a post by implying the possibility of future economic benefits, such as a sponsorship agreement, or where compensation (including money, goods, or event invitations) is provided in exchange for posts made in line with the intentions of the business.

(2) Whether it is difficult for general consumers to recognize that the representations are made by a business

A business must make it clear to general consumers that the advertisement (representation) is made by the business itself. However, merely labeling it as an "advertisement" is not sufficient, as the indication must be clear enough for general consumers to recognize, at a glance, that the representation is made by that business. The following are examples of misleading representations which are difficult to identify as advertisements.

- Indication that the representation is made by a business is mixed with other information (e.g. the hashtag (a symbol used on social media to indicate a topic) #PR is buried among a large number of other hashtags)
- Indication that the representation is made by a business is made in writing but in a manner which is difficult for general consumers to recognize (e.g. among a large amount of other text, in smaller letters than the surrounding text, or in a lighter color than other text)
- Indication that the representation is made by a business in a video is only displayed for such a short time that it is difficult for general consumers to identify (including where the placement of the indication makes it difficult to recognize, such as being displayed only in the middle or the end of a long video)

Potential consequences of violations, structures required of businesses

Stealth marketing regulations apply, in principle, to the advertiser (business) which provides the product or service, not the athlete or influencer who makes the post.⁷ However, athletes and influencers can be subject to the regulations in exceptional cases, such as where they supply the product or service in collaboration with the advertiser.

Violations of stealth marketing regulations may result in the following penalties.

- Administrative disposition (order to take measures): An order may be issued to implement measures to dispel the misunderstanding caused to general consumers by the misleading representation and to prevent recurrence of such representations, and to desist from committing similar violations in the future (Article 7, paragraph (1) of the Misleading Representations Act).
- Administrative monetary penalty: Individual stealth marketing regulation violations are not subject to administrative monetary penalties. However, a payment order for administrative monetary penalty may be issued if the post includes misleading representations of superiority (presenting the product or service as significantly better than it is) or misleading representations

⁶ Customer Affairs Agency: Implementation Standards for "Representations which are Difficult for General Consumers to Identify as Representations Made by a Business":
https://www.caa.go.jp/policies/policy/representation/fair_labeling/guideline/assets/representation_cms216_230328_03.pdf

⁷ Consumer Affairs Agency: FAQ regarding stealth marketing:
https://www.caa.go.jp/policies/policy/representation/fair_labeling/faq/stealth_marketing/

of advantage (presenting the product or service as significantly cheaper than it is) (Article 8, paragraph (1) of the Misleading Representations Act).

In addition, under the Misleading Representations Act, businesses may also be required to implement "administrative measures" for preventing misleading representations (Article 22 of the Misleading Representations Act). If a business fails to implement such measures, the Consumer Affairs Agency may issue a recommendation for it to do so, and if the business does not comply with the recommendation, the Agency may publicize such non-compliance (Article 24 of the Misleading Representations Act). As such, it is important to inform and educate athletes and influencers about legal compliance in advance, and establish a system for the business to check the content of representations before they are posted.⁸

3. Summary

As discussed above, sports advertising and marketing in Japan is subject to laws and regulations as well as the rules of individual sport governing bodies.

Businesses contemplating advertising or marketing through athletes or sports events need to carefully review the rules of the applicable governing body when preparing advertising materials.

Likewise, athletes and influencers who receive sponsorships from businesses or are engaged to post advertisements on social media should also exercise due care to ensure that the content of the advertisements they accept does not violate applicable rules and that social media posts made at the request of businesses do not violate applicable laws and regulations.

⁸ Consumer Affairs Agency: Guidelines on Administrative Measures to be Taken by Businesses Regarding the Offering of Premiums and Representations: https://www.caa.go.jp/notice/assets/representation_cms216_220629_04.pdf

THIS NEWSLETTER IS PROVIDED FOR INFORMATION PURPOSES ONLY; IT DOES NOT CONSTITUTE AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE.

Authors

Kenta Nobe

Partner
Dai-Ichi Tokyo Bar Association
E: kenta.nobe@aplaw.jp

Riku Osanai

Associate
Dai-Ichi Tokyo Bar Association
E: riku.osanai@aplaw.jp

Contact

E-mail: cpg_sports_entertainment@aplaw.jp

If you would like to sign up for A&S Newsletters, please fill out the [sign-up form](#).
Back issues of our newsletters are available [here](#).

Atsumi & Sakai is a multi-award-winning, independent Tokyo law firm with a dynamic and innovative approach to legal practice; it has been responsible for a number of ground-breaking financial deal structures and was the first Japanese law firm to create a foreign law joint venture and to admit foreign lawyers as full partners. Expanding from its highly regarded finance practice, the Firm now acts for a wide range of international and domestic companies, banks, financial institutions and other businesses, offering a comprehensive range of legal expertise.

Atsumi & Sakai has an outward-looking approach to its international practice, and has several foreign lawyers with extensive experience from leading international law firms, providing its clients with the benefit of both Japanese law expertise and real international experience.

We are the only independent Japanese law firm with affiliated offices located in New York, London, Frankfurt, Brussels and Ho Chi Minh City which, together with our Tokyo office, Osaka affiliated office and Fukuoka affiliated office, enables us to provide real-time advice on Japanese law to our clients globally.

Atsumi & Sakaiwww.aplawjapan.com/en/**Tokyo Head Office**

Fukoku Seimei Bldg. (Reception: 16F)
2-2-2 Uchisaiwaicho, Chiyoda-ku,
Tokyo 100-0011 Japan

**Osaka Affiliate Office**

Nakanoshima Festival Tower 16F,
2-3-18 Nakanoshima, Kita-ku,
Osaka City, Osaka 530-0005
Japan

Fukuoka Affiliate Office

Tenjin Bldg. 10F
2-12-1 Tenjin, Chuo-ku,
Fukuoka-shi, Fukuoka 810-0001
Japan

**New York Affiliate Office**

1120 Avenue of the Americas, 4th
Floor, New York, New York 10036

**London Office**

85 Gresham Street, London EC2V
7NQ, United Kingdom

**Frankfurt Affiliate Office**

Barckhausstraße 1 (8th Floor),
60325 Frankfurt am Main,
Germany

**Brussels Office**

CBR Building
Chaussée de la Hulpe 185, 1170,
Brussels, Belgium

**Ho Chi Minh Office**

10F, The NEXUS building
3A-3B Ton Duc Thang Street,
Sai Gon Ward, Ho Chi Minh City,
Vietnam

**NOTICES****1. ABOUT ATSUMI & SAKAI**

Atsumi & Sakai is a partnership consisting of Atsumi & Sakai Legal Professional Corporation, a Japanese professional corporation, a foreign law joint venture under the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers with certain Registered Foreign Lawyers of our firm, and a Japanese Civil Code partnership among Japanese lawyers, represented by Yutaka Sakai, a lawyer admitted in Japan. In addition to lawyers admitted in Japan, our firm includes foreign lawyers registered in Japan to advise on the laws of the US States of New York and California, the People's Republic of China, the Republic of Korea, Taiwan, India, the Democratic Socialist Republic of Sri Lanka, England and Wales*, and the Australian States of Queensland, New South Wales and Victoria. Foreign lawyers registered in Japan to advise on state laws also are qualified to provide advice in Japan on the federal laws of their respective jurisdictions.

Atsumi & Sakai has established an office in London operating as Atsumi & Sakai Europe Limited (incorporated in England and Wales (No: 09389892); sole director Naoki Kanehisa, a lawyer admitted in Japan), an office in Brussels operating as Atsumi & Sakai Brussels EU (incorporated in Belgium; managing partner: Etsuko Kameoka, a lawyer admitted in New York and registered with the Brussels Bar Association (B-List)**), an affiliate office in New York operating as Atsumi & Sakai New York LLP (a limited liability partnership established in New York; managing partner Bonnie L. Dixon, a lawyer admitted in New York and a Registered Foreign Lawyer in Japan), and an office in Ho Chi Minh City operating as Atsumi & Sakai Vietnam Law Firm (incorporated in Vietnam; sole director Katsunori Irie, a lawyer admitted in Japan). We also have a partnership with A&S Osaka LPC (partner: Teiji Maehashi, a lawyer admitted in Japan) and A&S Fukuoka LPC in Japan (partner: Yasuhiro Usui, a lawyer admitted in Japan) and an affiliate office in Frankfurt operating as Atsumi & Sakai Europa GmbH - Rechtsanwälte und Steuerberater, a corporation registered in Germany providing legal and tax advisory services (local managing director: Frank Becker, a lawyer admitted in the Federal Republic of Germany**).

*Atsumi & Sakai is not regulated by the Solicitors Regulation Authority for England and Wales.

**Not Registered as a Foreign Lawyer in Japan

2. LEGAL ADVICE

Japanese legal advice provided by Atsumi & Sakai and our global offices is provided by lawyers admitted in Japan. Advice provided in Tokyo in respect of any foreign law on which one of our foreign lawyers is registered in Japan to advise, may be provided by such a Registered Foreign Lawyer. None of Atsumi & Sakai Legal Professional Corporation, Atsumi & Sakai Europe Limited or Mr. Yuka Nakanishi is regulated by the Solicitors Regulation Authority for England and Wales, and none will undertake any reserved legal activity as defined in the United Kingdom Legal Services Act 2007. Advice provided in Germany on the laws of Germany will be provided by a lawyer admitted in Germany, and advice provided in New York on the laws of New York will be provided by a lawyer admitted in New York.