

February 11, 2011

"To Tweet or Not to Tweet That is the Question": Twitter and Sports Stars a Deadly Combination

[Kinji Bourhier](#)

A few months ago on this blog, my colleague Marko Vesely posted an excellent piece on "[Defamation and Libel Meets Twitter](#)". For those of you who just want the "take-home", the ultimate message remains the same - with every Facebook update, blog post or "tweet", in the eyes of the law you are "publishing" and that makes defamation and libel applicable to you! Once the tweet has been sent, there is no going back. Social media is no different than other public media forums - so you are in the same legal boat as Ashton and Kanye when you send that tweet.

Beyond the "take home", consider this brave new media frontier: mix the ingredients of the uncensored viral social networking site of Twitter with the testosterone charged reality of global sports stars-cum-celebrities and what have you got? 140 character dynamite.

Of much relief to local sports owners and in-house counsel, only one Canuck, Ryan Kesler, currently tweets. Compare that to the NFL, NBA and other sports leagues and the differences are staggering.

In fact, let's consider the world's most popular sport, soccer.

The world's most expensive soccer player and current Emporio Armani underwear marketer Cristiano Ronaldo (move over David Beckham) has 1.5 million Twitter followers. By contrast, Tiger Woods, admittedly better known for texting, only has 418,473 Twitter followers. What that means, of course, is that the Real Madrid¹ superstar can instantly reach out and correspond with millions of people, cast his opinion and give his views on anything, you name it. This, of course, has many interesting societal issues, (see Ben Dirs' excellent post on BBC Sport, "[How Twitter Changed the Rules](#)"), but, let's focus right now on the legal.

Recently, Liverpool Football Club forward, Dutchman Ryan Babel, who has 200,000 Twitter followers, was charged with "improper conduct" by his governing league body for a tweet he posted after his team had lost a crucial game to Manchester United. Babel, who was subsequently shipped off to Hoffenheim of the German League (hmm ... coincidence?), posted a mocked-up photo of referee Howard Webb wearing a Manchester jersey and also tweeted, "And they call him one of the best referees². That's a joke." He was fined 10,000 pounds - obviously, the League did not get the joke.

The rules of the League are that you cannot attack someone on the level of a personal nature, you cannot imply a bias nor attack the integrity of an official. So, you can say, “so and so had a poor game or they got a decision wrong”, but, that is where it ends. There is a pseudo line between a healthy debate and alleging that the fix is in. But, it appears that the line is not really bright at all, but inherently grey. For example, just this past weekend, a prominent player on title - contending team Arsenal tweeted, “Inconsistent refereeing needs to stop. It’s killing the game.” Healthy debate and fair comment or implied bias?

So, what are the Twitter rules in the NFL and NBA?

In the NFL, the Twitter policy is that players may not tweet 90 minutes before the game kicks-off and must maintain a tweet “silence” until post-game media obligations have been satisfied. Violation of the policy will cost a player \$25,000.

How about the NBA, no stranger to controversy? Players must not tweet 45 minutes before the game and must maintain tweet silence until after post game press responsibilities. The policy behind both of these leagues’ rules seems to be two-fold:

- a) So that players cannot reveal strategic issues; and
- b) To allow for a “cool-down” period after the heat of battle.

But, to double-back, even this “cool-down” period would not have prevented the Babel tweet and, as a South African lawyer, Guy Thomas has commented, leagues have to tread carefully in “policing” Twitter. Leagues need to avoid being painted with the brush of large-scale censorship in trying to curb small scale trash talk and good old fashioned venting. A British comedian has recently joked, “Twitter has replaced muttering to yourself on the sofa.”

So, on the one hand, the athlete looks at the tweet positives - these are my words, they are unfiltered, the journalist cannot misquote me. On the other, the unbridled freedom carries inherent hazard - the truth may not set you free, rather, it may get you fined for overstepping the bounds of fair comment and into the realm of defamation. Stay tuned, because the Twitter debate is just getting started and is the new frontier of defamation law.

For more information please contact Kinji Bouchier at kbouchier@lawsonlundell.com or 604.631.9267 or visit the [Western Canada Business Litigation Blog](#).

¹Real Madrid has 7 million Facebook followers.

²Webb officiated the South Africa 2010 World Cup Final between Spain and Holland.