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Celebrity Endorsements: An Eagle's Eye

By: James B. Astrachan

I read with one eye closed that California Congressman Joe Baca was dropping his effort to honor Tiger Woods with the Congressional Gold Medal. This followed revelations that Mr. Woods has engaged *in seriatim* in extra marital affairs.

Baca's statement regarding his initial support of the award of the Medal highlights the reasons Tiger has endeared himself to advertisers and consumers.

Woods has broken barriers with grace and dignity by showing that golf is a sport for all people, regardless of race, color or creed...Woods has inspired countless people of all ages, impressing upon them that their hopes, dreams, and prayers may be achieved through hard work, persistence, education and good sportsmanship.

The Congressman is absolutely correct; Woods has done all of these things and more. But his recently revealed conduct, and his failure to refute numerous public statements made by numerous alleged paramours – likely because he is unable to – have substantially eroded the selling power of his once solid image.

It is reported that approximately 93 percent of Tiger's \$100 million annual earnings are derived from off-course activities – primarily his role as a celebrity endorser. Nike alone pays him \$30 million per year, and he has, or had, endorsement deals with the likes of Gatorade, Gillette, Accenture, Tag Heuer and others. But following the revelations of at least 11 women that Tiger was a naughty young man, and the circulation of nude pictures of Tiger by one them, Gatorade has dropped Tiger or at least a product branded with his name and photo. Perhaps Gatorade's slogan, *Is it in you?* became a tad too controversial given the goings on. Big stars get dropped. McDonald's, Coke, Nutella and Spalding canned Kobe Bryant following his sexual assault scandal.

Tiger was a gust of fresh air for golf, and sports in general, and likely he has several, if not more, decades to play the game. Many advertisers whose products he pitched invested heavily for the long term, hoping to ride on the tails of his success for many years. They are at a crossroads as to their plans, and I am certain there is a lot of handwringing going on in the marketing departments of Nike, Accenture and Tiger's other sponsors. I suspect they would like to try to ride out this mess.

Two questions arise. Should the sponsors can Tiger, as did Gatorade, and are they legally able to do so if they want to? Several years ago, or maybe longer, we were negotiating a contract with the bad guy of basketball, Dennis Rodman. Our client asked whether we were intending to place a morals clause in the contract – a clause that would allow the client's client, the sponsor, to can Mr. Rodman if he did anything repugnant to sensibilities or morality. "Dennis Rodman," I stammered. "You *want* him to do something bad. Having a morals clause in his contract would be like putting a speed governor on Michael Schumacher's Ferrari."

Tiger is a lot different than Dennis Rodman, and not just because we don't know that he isn't dating Madonna. He's a golfer, and golf is a gentleperson's sport. The fans are very reserved and the TV announcers whisper their commentary. The bad boy persona simply will not work for Woods.

I don't know whether Woods' reps agreed to the inclusion of morals clauses in his contracts. The sponsors would have asked for it, but given Woods' selling power he may have made inclusion of a morals clause a deal breaker. And the advertisers may have agreed to take a chance on his then squeaky-clean image. With one, his conduct will allow termination.

In the absence of a moral's clause, Tiger's team might have insisted on a clause that requires airing of the ads so as to keep Tiger in the public eye. However, there have been no Tiger ads seen on broadcast from late November to at least mid December when this column was written. Regardless of the terms of the contracts, the sponsors and Tiger could have agreed it made sense to suspend the ads for a while, even if by contract they are required to run the ads. And Gatorade, which discontinued the sale of its Tiger Focus sports drink, is reported to have decided to drop the brand on November 25, before the scandal grew wings. Gatorade says its partnership with Tiger will continue. We'll see about that, but it's hard to be a skeptic given Tiger's pre-scandal career and the likelihood he will recover his grace, or much of it, and again be a mega endorser. A man who makes \$100 million a year can buy a lot of PR crisis counsel.

In the meantime, perhaps there are advertisers who might benefit from the bad boy, out of control, image that the scandal has bestowed on Tiger, and I suspect more than one has made its pitch. Given that the status of Tiger's relationships with his blue chip advertisers are not clear, even if ads have been pulled, Tiger will not move to

endorse any of these potential sponsors. I doubt, also, his people will allow the current sponsors to modify their ads to have his image closer to reality, even slightly. Eventually, that may place sponsor and spokesperson at an impasse in cases where no morals clause exists, and may result in termination of contracts where moral clauses do exist. Right now, a lot of money has been spent on Tiger's contracts and ads just are not airing. There will be very tough calls to make.

Bottom line is, who would have even guessed that Tiger Woods would be at the center of a scandal of this magnitude? Certainly not his conservative sponsors. I am certain they are agonizing as is Tiger. Four things are for certain, however. One, he will develop new sponsors, maintain existing sponsors or both, and he will return as a spokesperson. Two, his value has been substantially damaged, but that may create a long-term opportunity for his sponsors who may take advantage. Three, all his future contracts will contain a strong morals clause. And four, he will reign in his behavior.

James B. Astrachan is the author of The Law of Advertising, published by Matthew Bender-Lexis/Nexis.