

Morality Clauses in Contracts are Escape Hatches for Streaming Sponsors

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To the surprise of viewers and fans, while livestreaming Call of Duty on Twitch, Miami Heat Center Meyers Leonard made an anti-Semitic slur and used vulgar language, and video of Leonard making these comments on his livestream went viral. Leonard was disciplined by the NBA, which included a one-week ban and a \$50,000 fine. Later, Leonard was traded to the Oklahoma Thunder after being reprimanded, and was then waived following the trade deadline.

While Leonard's actions are reprehensible, his conduct is not an outlier in the streaming marketplace. Rather, Leonard's actions are common in the streaming industry, which has struggled with instances of racism and misogyny. In the summer of 2020, the New York Times published a news report which described dozens of instances of misconduct, including sexual harassment. Dozens of streamers told stories about how they faced a toxic environment, and in many cases, the offenders faced real-world ramifications. At least one talent agency CEO stepped down, before his agency shut down completely. The report caused massive outrage in the industry. Furthermore, The New York Times noted that instances of misconduct caused friction among corporate sponsors and brands in the streaming marketplace.

These types of misbehavior can have monetary consequences for streamers, including professional basketball players like Meyers Leonard. In contracts between streamers, brands, teams or sponsors, including a morality clause will quickly allow for disassociation from the offending party. These clauses are intended to protect the name, or brand recognition of the sponsor, team or company.¹ Indeed, corporate brands and sponsors are the first to face public pressure, including boycotts for misdeeds of their athletes. This can lead to substantial exposure to revenue and established goodwill.

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Accordingly, morality clauses have become a common feature in talent agreements and sponsorship agreements. Across the sports and entertainment industries, morality clauses maintain the same language and framework, which typically prohibit conduct that brings a party “into disrepute, scandal, contempt, or ridicule, which shocks, insults, or offends a substantial portion of the community or reflects unfavorably upon any of the parties.” Morality clauses have been frequently litigated, and included scenarios where individuals used profane language in public, sold narcotics, or posted controversial statements on Twitter. Generally, courts have held that morality clauses are valid and enforceable, and the nonperformance under the clause excuses further performance from parties. In lay terms, when there is breach of the morality clause, a brand or company can terminate the contract and remove itself from any further obligations from the bad actor. Given that sponsorships are a critical base of any streamer’s source of revenue, the loss of a sponsorship can be financially devastating.

Depending on the sophistication of the contracting parties, a brand or sponsor may desire a vague and broad morality clause, as it will afford some latitude to terminate the contract for cause. A streamer, however, should ask for more definite language about what actions may run afoul of the clause. Generally speaking, when morality clauses are fully litigated, the definiteness of the contract terms will be determinative of the outcome, and any ambiguity may extend the case well into discovery, or trial. This can be time consuming and expensive for all parties.

The streaming industry is growing exponentially, and it is encountering many legal difficulties that others have already faced. The familiar morality clause will continue to be a pivotal negotiating tool as additional brands and corporate sponsors enter the streaming marketplace.

¹ In limited instances, the parties may negotiate for a reverse morality clause, which allows for termination if there is scandalous conduct from the brand, company, or sponsor. These reverse morality clauses were meant to protect the reputation of the athlete from misbehavior or unethical conduct from a brand, company, or sponsor.

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