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Esports Teams Face Enemy Fire from State Talent Agency Acts

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For decades, there has been an ongoing controversy about whether esports are sports. While some consider this sort of labeling issue trivial, it is critically important in the legal context. Classification rings especially true in the application of the labor and employment laws, as was illustrated in a case involving a prominent gamer, Turner "Tfue" Tenney, and his employer, Faze Clan.

In the *Tenney v. Faze Clan* case, Tfue entered into a gamer agreement with Faze. The agreement required Tfue to train with Faze and to engage in promotional, marketing or social media activities. In exchange for these services, Faze provided Tfue with a monthly fee, a share of income from tournaments, and revenue from merchandise, brand deals or other activities. However, the relationship between Faze and Tfue quickly soured. Tfue filed multiple complaints alleging that the agreement he entered into with Faze was oppressive, unfair and extraordinarily one-sided.

The legal dispute between Tfue and Faze Clan evolved into litigation across multiple venues in two states. One of Tfue's claims centered around the California Talent Agency Act (TAA).[1] The TAA was passed by the California legislature in 1978 with the goal to squash exploitation of artists by their representatives. The TAA provides for a broad regulatory framework that requires talent agents to obtain an agency license from the California Labor Commission before providing their services.[2] Talent agents are defined as individuals or corporations involved in "procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists."[3] Under the TAA, "artists" include actors, actresses and "other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises." (emphasis added). Unlicensed talent agencies run the risk of having their contracts voided and being forced to pay back commissions. Importantly, the TAA "regulates conduct, not labels; it is the act of procuring (or soliciting), not the title of

one's business, that qualifies one as a talent agency and subjects one to the [TAA] license and related requirements." In addition, application of the TAA could raise fiduciary duty claims.[4]

Esports organizations create a vast portion of their revenue through sponsorship activations and/or by streaming content. In the case of this litigation, Tfue alleged that Faze had procured sponsorship opportunities, and the TAA applied because Tfue was engaged in "other entertainment enterprises." More specifically, Tfue alleged that Faze "acted as [his] agent in sourcing and negotiating sponsorship deals that would offer [his] services." If true, the TAA required Faze to obtain a talent agency license. Furthermore, if Faze was acting as Tfue's agent, then it owed duties of loyalty to Tfue, which included acting in the best interests of Tfue. However, if Tfue was not engaged in "other entertainment enterprises," because Faze was a sports team, then the TAA would not apply.[5]

The distinction on whether Faze or other esports organizations are sports teams has varying implications. For example, although the Federal Wire Act applies to sports wagering, it does not apply to other interstate gaming per the First Circuit's holding in *New Hampshire Lottery Commission v. Rosen*.[6] However, if esports are not a sport, then gamers and team members may not qualify for P-1 immigration visas, which are reserved for professional athletes.

The litigation between Tfue and Faze ultimately settled without an adjudication of Tfue's claims under the TAA.[7] However, this litigation did put esports teams and organizations on notice about properly contracting with and for their gamers. It is important to note that other states maintain similar laws to the California TAA. For example, New York requires agencies to maintain and procure a license when soliciting, recruiting or supplying an employee for employment. In addition, Florida requires agencies to obtain a license when they attempt to procure engagements for individuals in the "production of television, radio, or motion pictures..." Esports player agreements generally cover a wide variety of activities, from practice requirements to prize money splits. Esports organizations increasingly include streamers who do not compete in esports events, and whose primary relationship with the organization, and principal revenue stream, is through sponsorships and promotions. If a player agreement includes performance in commercial advertisements as an individual and not as a part of a team, as alleged by Tfue, those activities would seem to fall within the scope of talent agency laws. Regardless of the result in the dispute between Tfue and FazeClan, esports organizations should take note of what could very well be an opening salvo in labor disputes with players. Accordingly, teams should carefully prepare and review agreements to avoid costly litigation under state specific laws.

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1. While this article is limited to the TAA, another California labor statute is critically important to esports organizations: the Miller-Ayala Athlete Agents Act (MAA). Under the MAA, unlicensed agents that deal with athletes may also have their contracts voided. While the TAA is limited to talent agencies and artists, the MAA is focused on sports agents and athletes. Under the MAA, sports teams do not need to be licensed if they are negotiating

on behalf of themselves.
2. The California Labor Commission has exclusive jurisdiction to decide cases brought under the TAA.
3. It is well established that "talent agents act as intermediaries between the buyers and sellers of talent."
4. The TAA does not provide for a fiduciary duty claim; however, California courts and administrative bodies have implied one exists. See *Jones v. William Morris Agency*, No. TAC 16396, 2012 WL 5359503 (discussing "the agent assumes a fiduciary duty to act loyally for the principals' benefit in all matters connected with the agency relationship.")
5. However, as noted supra, if the TAA does not apply, then it's possible that the MAA applies, which contains similar provisions, penalties, and fines for violations.
6. *New Hampshire Lottery Comm'n v. Rosen*, 986 F.3d 38, 62 (1st Cir. 2021) ("the Wire Act applies only to interstate wire communications related to sporting events or contests").
7. In a multijurisdictional wrinkle, the California Superior Court ruled that because of a choice of law provision in the gamer agreement, the merits of the lawsuit were required to be heard in a New York Court. However, the Court also held that Tfue could not waive his rights under the TAA, and that any further proceedings in New York relating to the TAA would likely need to be determined under California law.

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