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**OPINION**

# Reexamining Morals Clauses in a Post Tiger-Nike World

An early withdrawal for Tiger Woods at the Genesis Invitational last month continued a trend of health-related withdrawals. Even his more limited playing schedule has not alleviated the concerns about his health. Despite the early exit, the weekend also marked a new era for Tiger, as he debuted his Sun Day Red brand in partnership with TaylorMade, after nearly three decades with Nike.



**Jim Johnston**

While not unexpected, given Tiger's reduced schedule and Nike's challenges in the golf business, the split with Nike still caught many off-guard and resulted in a reexamination of this singular relationship.

What made Tiger Woods' endorsement deal with Nike so iconic? Well, besides its extraordinary value (reportedly over \$500 million), its duration was something to marvel at. Even for a brand known for long-term commitments to generational athletes, the Nike-Tiger relationship endured when others would have dissolved. Despite several highly public controversies over the years, including a DUI and accusations of doping and infidelity, Nike remained committed to its partnership with Tiger. For celebrity athletes, finding a brand that is willing to brave the tide of multiple public controversies, as Nike has done with Tiger (and others for that matter), is hard to come by.



**Jordan Thompson**

In today's climate, thanks in large part to social media, scandals are quick to catch fire -- and brands are quick to cut ties out of fear of consumer backlash. When the news breaks that a brand's sponsored athlete is at the center of a controversy gone viral, a brand's instinct is to jump into action, invoking the

right to terminate the deal with the athlete -- typically pursuant to a conduct or “morals clause” contained in the agreement.

Does Nike’s success with Tiger despite his controversies undercut the need for a morals clause? When every social media backlash inevitably leads to the counter-backlash, is the morals clause too blunt an instrument to protect a sponsor’s investment in an athlete endorser?

Before answering, it’s important to avoid making decisions based on a once-in-a-lifetime athlete partnership. Few athletes have captivated the public imagination for so long, as Tiger broke down barriers, singlehandedly transformed an entire sport, and collected an unrivaled list of accomplishments, all while the highs and lows of personal life were laid out for all to see.

But the transition from the Tiger-Nike era to the Sun Day Red era does illustrate how the transforming nature of athlete endorsement must change the approach to morals clauses. Tiger’s move from fee-based endorser to joint venture partner is emblematic of the new athlete brand paradigm, where athlete entrepreneurs seek to be owners of their brands, not hired guns.

This more complex relationship necessitates a reevaluation of how a morals clause can be used to protect the substantial investments made in these ventures. Brands and athletes will need to move beyond a laundry list of “bad acts” that trigger a right to terminate a contract. The morals clause should take a more nuanced approach to the nature and extent of social controversies, reflect an understanding of the brand’s and athlete’s audiences, and recognize the financial implications to both parties of these controversies. More importantly, the morals clause must adapt to reflect a growing equity stake by athletes in their endorsement activities.

The morals clause is a strategic tool to align the incentives of the brand and the athlete, reflect each party’s investment in the relationship, recalibrate that relationship over time and ensure that both brand and athlete plan for the unexpected while taking into account the lifespan of the partnership. Properly constructed, it can strengthen a brand-athlete partnership and ensure that the brand’s and athlete’s values are both supported.

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