

LOVE ALL

General Information

Background

Cola-Zip is an energy drink favoured by young teenagers and made by Top Drinks (UK) plc. Three years ago, after another disastrous Wimbledon, there was a nationwide campaign initiated by TopD to build tennis courts within school grounds so that young talent could be identified early and the really talented nurtured to be the next champions. TopD entered into an initial five-year deal with the National Youth Tennis Association with an option to renew for a further five years. The deal involved schools collecting Cola-Zip cans for recycling and TopD would pay a flat capital sum per scheme to the NYTA plus 10p per can to each school. The only conditions were that Cola-Zip would have exclusive rights to supply drinks at NYTA events and the C-Z logo would be on all competitor's kit.

Everyone was happy with the arrangement. In the first two years nearly a hundred full size tennis courts were constructed and local television and radio featured the progress of the cream of the talented youngsters. Cola-Zip sales rocketed, almost doubling in the first two years. The Minister for Sport and Youth seized many opportunities to be in the photo-shoots and the Prime Minister applauded an initiative which had no demand on the public purse.

Unfortunately, two years on, two of the rising stars of the youth circuit both had a spell in hospital with a mystery complaint to do with cartilage degradation. One of the Sunday papers ran an article that suggested Cola-Zip contained a chemical that was the cause of the problem and that, rather than be the saviour of the future of national tennis, C-Z was ruining the careers of our most promising players. There was an emergency meeting of TopD and the NYTA (the Minister of Sport was unavailable) to discuss the situation. TopD explained that there was no firm evidence of Cola-Zip causing this problem and that this was a case of a sensation-seeking newspaper making irresponsible comment. Of course, the NYTA did not want to lose the TopD sponsorship but any suggestion that they were endorsing a product that was harming the country's youth was unacceptable. The meeting ended without any clear decision or course of action. Two days later the NYTA issued a statement to the effect that they had asked TopD to withdraw their product or cease the sponsorship. TopD reacted by refusing to withdraw the product. NYTA terminated the deal. Two months later TopD sued the NYTA for the return of the capital paid over under the scheme, in excess of £2million. They also sued the Sunday newspaper, but that is not part of this mediation.

The dispute

TopD maintain that, a year on from the newspaper article, there is still no evidence that Cola-Zip has any harmful properties. Indeed it is seen as both refreshing and energising. They argue that the NYTA were premature in their action and that the whole situation could have been resolved if the NYTA had been more co-operative. As a result of their premature action, both had suffered; the NYTA through the loss of a significant sponsor (and the termination of a successful schools tennis development programme) and TopD through the significant loss of C-Z sales through damaged reputation.

TopD are suing the NYTA for the return of £2.2 million in capital payments, a further £100,000 in payments made direct to the schools, and £150,00 in legal costs.

NYTA are relying on a clause in the sponsorship contract that states the contract may be terminated without notice if either side make a statement or perform any act that is to the detriment of the good standing of the other party, subject only to a 28-day respite period where the offending party may rectify the offence. For the purposes of the mediation, they counterclaim their legal costs of £65,000.

Attending the mediation

TopD Group Marketing Director
Cola-Zip in-house lawyer

NYTA head of schools development
Partner of city law firm

Mediator(s)

© David Richbell
December 2005