

Guernsey Image Rights

What can I register?

- **Personality / 'Personage' (10 years)**
Includes **legal** (*Disney*) or **natural person** (*David Beckham*); **joint personality** (*Ant & Dec*); **group** (*Black Eyed Peas / Manchester United*); **fictional characters** (*James Bond*). **Deceased people and extinct legal persons** are covered as well (*Michael Jackson*)¹.

¹ These personalities are used for explanatory purposes only and have not yet registered in Guernsey

- **Associated Image Rights (3 years)**
Still images associated with the various guises of the personality and **other idiosyncratic features** covered as well including inter alia nickname, voice, signature, gesture, mannerism.
- The registration of a personality gives the registered proprietor exclusive rights in the images associated with or registered against the registered personality.
- Both aspects can be assigned / licensed independently.

Why should I register?

- **Certainty of right**
- Currently protected in the UK by using a patchwork of existing legislation (TM, passing off, copyright).
- Creation of a distinct asset that can be protected, exploited and passed on to future generations with certainty.
- **Wider protection**
- Personage covers wider range of circumstances than existing legislation (see above).
- Rights renewable (potentially in perpetuity).
- Easier to register a personality than a trademark (which must be inherently distinctive or have acquired

distinctiveness through use at point of registration and therefore also attractive to those at beginning of their careers.)

- No need to rely on individual to enforce rights: club or brand as licensee able to enforce directly or call on owner to enforce.
- **First to market**
- A reasonable assumption is that the natural progression is for other jurisdictions to create domestic registries including perhaps a pan-European and American equivalent. Any existing registration will doubtless assist future registration on such registries.

The driving force for those using the register so far seems to be the 'portfolio argument'. When amortised over the 10 year period, the cost of registration is minimal and therefore the argument runs that it's better to have the added protection than not to.

Who has registered?

- **Manuel Pellegrini** (Premier League Football Manager, Manchester City)
- **DJ Tiesto** (International Musician & DJ)
- **Heather Watson** (Tennis Player)
- **Megan Williams** (Model)
- **Jordan Nobbs** (Female Football Player, Arsenal)

How do I register?

- Registration undertaken by local registration agent who deal with establishing chain of title and related due diligence providing definitively that you have the right to register the personality / image.
- Whilst Newhaven does not provide legal advice, we have a pre-existing relationship with an on-island preeminent IP law firm for structuring

and documentation preparation purposes.

What are the infringement/enforcement benefits?

- Supplementary to existing rights.
- Wider ambit than TM principles: eg no limit of use to particular goods or services (therefore, particular attraction to brand owners).
- Commercial view is that registration will provide a useful tool in compelling infringers to cease and desist.
- Registration helps give clarity / certainty of right.
- Proof of use for onshore claims.

Perceived Limitations

- **Do the rights need to be infringed within Guernsey?**
- Yes, however most infringements have an internet-related element and the legislation is drafted in terms that make it relatively easy to demonstrate an infringement has occurred in Guernsey in these circumstances.
- **Can they only be enforced within Guernsey?**
- Yes, however, Guernsey has a legal system that is predicated heavily on English law and given that it is a Crown Dependency, there is reciprocity of judgment with the UK.
- **Would any damages claims (and other remedies) be limited to the infringements within Guernsey?**
- The legislation has been drafted shrewdly and in the instance of damages a claim can be couched on the following three grounds and therefore awards can be significant:
 - i. Loss of value (arguable that this is not limited to Guernsey (especially where internet usage);
 - ii. Moral prejudice;

- iii. Flagrancy (reference s.97 CDPA).

The Commercial reality is that most infringement cases are dealt with on a cease & desist basis. The Image Rights Register therefore unequivocally provides another string in the bow of the rights holder.

Equally, consideration should be given to the inefficacy of the current protection provided by the existing UK legislation: Trade Mark legislation is a good example: *how many jurisdictions is your TM registered in? Is it registered in all of the TM classes? Can you demonstrate that it is being used?*

Another interesting feature is that it is possible for lawyers to incorporate within their contracts (regardless of what jurisdiction they are governed by) a statutory image right that *exists* in Guernsey facilitating, sale, licensing and contract negotiations.

Structuring

Arguably, the real commercial value in the new distinctive image right is the ability to position the ownership and accumulate income streams through an offshore structure. Whilst the right may be registrable in Guernsey, the structuring need not *necessarily* be restricted to that jurisdiction and accordingly, there are a variety of jurisdictions and tools that afford flexibility on structuring.

Broadly put, the primary advantages of this are:

Wealth Management / Tax Planning ²

- 1 Creation and growth of IP value in a tax-benign environment (and potentially zero CGT)
 - 2 Benefits from licensing and exploitation of the IP rights can be fed into an offshore IP holding company which is potentially zero-rated for income/corporation tax and not subject to VAT.
 - 3 Tax allowances afforded to onshore companies paying licence fees for the use of IP (even if the royalties are paid to an offshore entity).
 - 4 Mitigation of withholding taxes through appropriate DTAs
- 2 Interestingly, the Goosen & Garcia cases, whilst not providing precedent under UK law, have demonstrated that the US is willing to acknowledge the distinction between active & passive income and the ability for stars to alienate their endorsement rights thereby creating separate revenue streams in tax benign jurisdictions.

Succession Planning ³

A trust combined with an IP holding company would be an ideal structure to ensure rights and income deriving therefrom is passed on to the intended and rightful subsequent generations.

- 3 The Ballesteros case highlights the difficulties that can arise in ensuring the right people get the rights when planning for future transfer.

Fiscal Advantages

Please find attached a fictional example of a sportsman and their current predicament together with a worked example demonstrating how they might benefit from a suitable image rights / IP related structure.

About Us

Newhaven is an independent provider of trust and corporate services based in multiple jurisdictions. Mark Davies & Associates are Chartered Tax Advisors specialising in UK tax and cross border tax planning especially relating to non-doms. For further information, please get in touch.



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Case Study

Luigi Lottsa-Golz (LL)

LL is a German passport holder with an Italian mother, who has been playing in the first team at Fiorentina for the last four years. He is 24 and has started to make a name for himself in the Italian (and wider European media).

A Premiership team in the UK has approached LL and his agent is in the latter stages of talks with the club about signing a deal. They have offered LL wages of £20,000 pcw plus a signing on payment, goal bonuses etc. and payments in respect of his image rights in the UK (20%) and abroad (80%). The amount in respect of his image rights will depend on circumstances but will not be less than £500,000 per annum. News of the imminent transfer has circulated through the press and LL has received endorsement proposals as follows, providing the deal proceeds: i) £100,000 to be the brand ambassador of Lonsdale in the UK; and ii) £200,000 to be the public face of LaVazza Coffee (to include attendance at three publicity events within Italy per year).

LL has a wife and three children and being a devoted family man is concerned to see that his children are well looked after in the future. He is aware that his playing career will be short (relative to other professions) and wants to ensure that out of the sizeable income he generates in that period, decent provision is made for his children's benefit.

Whilst LL likes the thought of living in the UK for a few years, he is not keen to settle there permanently.

If LL takes up the job he is going to be treated as being resident in the UK, but not domiciled in the UK ('RND').

As a RND LL is taxed on UK sources of income and gains as they arise, but only on foreign sources of income or gains to the extent that they are remitted to the UK providing he claims the remittance basis. For the first six years of residency LL can claim the remittance basis at no cost. After LL has been UK resident in 7 out of the previous nine tax years he needs to pay the remittance basis charge of £30,000 per annum to claim the remittance basis. This increases to £50,000 once LL has been resident in the UK for 12 out of the previous 14 tax years.

In the absence of any structuring LL will be personally taxable on all the image rights paid to him by his club, including those earned abroad, as it will be arguably in consequence of his UK employment. The rates of tax that he will pay on this and in respect of the payments from Lonsdale will be at his marginal rate of income tax at 45%.

Suggested structuring

Step 1

Prior to moving to the UK LL registers his image rights in Guernsey.

Step 2

He then assigns his image rights for exploitation abroad to a non-UK company in a tax neutral jurisdiction in exchange for shares in the company. He assigns his image rights for exploitation in the UK to a UK company.

Step 3

There will be licenses between the non-UK company and the club and LaVazza for the use of LL's image rights abroad; and between the UK company and the club and Lonsdale for the use of LL's image rights in the UK.

Step 4

The shares in the non-UK company are then gifted into an offshore discretionary trust or a pension scheme for the benefit of LL.

Result ¹

The payments made to the non-UK company in respect of the LL's image rights exploited abroad are not subject to UK tax. This means that in excess of £180,000 (80% of £500,000 at 45% tax) per annum is saved before costs.

The payments made to the UK company in respect of LL's image rights exploited in the UK are subject to UK tax at a maximum corporation tax rate of 21%. This means that in excess of £48,000 (20% of £500,000 plus £100,000 at the difference between 45% income tax and 21% corporation tax) per annum is saved before costs. The benefits are reduced if the company makes distributions to LL but it is expected that LL will comfortably live off his salary.

¹ This case study is for discussion purposes only and does not constitute tax advice.

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