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The Legal Context of a Player Transfer in Professional Football: A Case Study of David Beckham.

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Introduction

Professional elite football is a global industry, and a significant component of the 1 entertainment and commercial markets (Kennedy, 2012). As of January, 2013, Deloitte's Football Money League saw five teams earn over €300 million, with Real Madrid's revenues in excess of €500 million (Deloitte, 2013). Within such an industry, players are high profile assets. These assets represent a significant expense for elite clubs, as players' wages to operating revenue ratio was approximately 60+% in Union of European Football Association's (UEFA) major league's in 2011 (Binder & Findlay, 2012; Deloitte, 2012). Elite clubs compete for these players; premium-priced assets in the contemporary transfer market (Binder & Findlay, 2012). Thus, the contractual law existing between players and clubs is specific, extensive, and tightly constructed to facilitate the acquisition and disposal of these assets (Amir & Livne, 2005; Lembo, 2011).

Within the context of player transfer in professional football, David Beckham exists as a case 2 of exceptionalism, as the transfer of Beckham as a sporting asset also includes the transfer of 'Brand Beckham' and the financial gravity associated with this (Parmentier, 2010). Here, the transfer process involves both sporting and off-field equity, such as endorsements and marketing mechanisms (Parmentier, 2011; Yu, 2005). David Beckham transcends the contemporary role of a professional football player, as his sporting merits (although impressive) do not possess the gravity of the sport's greatest players (Vincent et al, 2009). Beckham exists as a 'brand' and as an ambassador for the sport because his non-sporting celebrity has substantiated a portfolio of endorsements (Chadwick & Burton, 2008). In 2012, Beckham's commercial and sporting earnings were \$50.6 million; the highest revenues of any single professional football player (Forbes, 2013). Considering Beckham's financial significance and the emphasis of commercial revenues (versus sporting revenues), the legal process for his transfer between football clubs is unique (Harris et al, 2012).

This article aims to provide an insight into the legal process that constitutes the transfer 3 negotiations associated with David Beckham, specifically considering his transfer from Los Angeles Galaxy to Paris Saint-Germain. This includes the transfer of various legal responsibilities (sporting rights, image rights, endorsements) and a consideration of the

motivations of such a transfer. An examination of the 'classical' transfer process (Carmichael et al, 2011) will be used as a point of reference to appropriately depict the exceptionalism of Beckham's transfer.

Classical Transfer Process

Player transfer is traditionally predicated on the need to facilitate both the professional 4
ambitions (of clubs and individual players) and the legislation that ensures compatibility with
free movement provisions (Carmichael et al, 2011). The legal status of the contract between
a player and a club dictates the nature of the transfer (Amir & Livne, 2005). Unlike in North
American sports, football players' contracts are not bought and sold between clubs. Instead,
new contract/s are negotiated to substantiate the transfer of a player (Carmichael et al,
2011). Legally, a player, whose contract (with his current club) has expired, is entitled
employment mobility and able to negotiate contracts with other football clubs (Binder &
Findlay, 2012). However, the transfer of players under contract must be negotiated by the
clubs concerned, and a transfer fee is determined to compensate the existing contract
(Chetwynd, 2009).

Fundamentally, a transfer (in professional association football) refers to the transferal of a 5
player's sporting registration from a holding club to a debtor club (Feess & Muehlheusser,
2003). In European professional football, the transfer system is generally dictated by 'transfer
windows', or registration periods, during which players' sporting registration can be
transferred between clubs (FIFA, 2009). Each national football association is able to select the
dates of its windows but most adhere to Fédération Internationale de Football Association
(FIFA) stipulations: two annual windows, one beginning after the conclusion of a season and
prior to the commencement of the next (lasting no longer than 12 weeks), and one occurring
in the middle of a season (not exceeding four weeks) (FIFA, 2009). The transfer window
regulations of a particular football association only govern incoming transfers (Lembo, 2011;
FIFA 2009). A legal transfer can occur if the holding club's relevant association's transfer
window is closed, provided the transfer window of the terminus association is open (Binder &
Findlay, 2012).

Primarily, transfers occur to obtain assets that will contribute to and/or improve sporting 6
performance (Carmichael et al, 2011). In 2012, the total amount of 'financial compensation
for fixed and conditional transfer fees, training and solidarity contributions' was \$576 million,
a 34% reduction from 2011 (FIFA, 2012). This reduction is generally considered to be the
result of the global recession (including restrictive monetary policies and strained corporate
sponsors), as well as the impending implementation of UEFA Financial Fair play (FIFA, 2012;
Muller & Hovemann, 2012). Thus, transfers can be considered an exchange of current assets
between football clubs (Rosner & Shropshire, 2010). However, a transfer does not necessarily
include a tangible monetary transaction (inclusion of a transfer fee) unless a player is being
transferred while still contracted by the holding club (Lembo, 2011). In order to produce a
binding and enforceable contract, an agreement must be reached between competent parties
for a 'lawful objective', in the format required by law (Xiao-shuang, 2012). If a player is under
contract, the transfer becomes subject to the agreement of an appropriate transfer fee
between clubs, in order to compensate the breach and remainder of a player's contract and
allow a holding club to offset the financial loss of an asset's contractual expiry, which (post
Bosman-ruling) allows for free transfer from a player's former club (Binder & Findlay, 2012).
The transfer of a player under contract must organized by the relevant clubs (FIFA, 2009). In

theory, contact (in the context of transfer and employment) between a player and a prospective club is legally prohibited (Frick, 2007). Similarly, the use of intermediaries/agents pertains only to representation and negotiation, although this does not necessarily apply within all European states' legislation (Holt, 2009).

The negotiation of an appropriate transfer fee for a contracted player considers the relevant factors of sporting asset utilization: age, historical performance, injury history (Lambrecht, 2011). However, (contractual) economic factors are considered, such as current wage rate, relevant incentives, and remaining duration of contract (Amir & Livne, 2005). Based on these factors, the clubs negotiate a fee to facilitate the legal transfer of player registration (Amir & Livne, 2005). If a fee is agreed, the buying club receives permission to negotiate personal terms with the player (Carmichael, 2006). A contract between a player and a football club is a personal services contract, as the talents and abilities of the employed worker are 'unique and cannot be exactly replicated by another individual' (Lembo, 2011). Generally, players will use intermediaries/agents to represent for and negotiate on their behalf (Holt, 2009). Personal terms include salary, signing bonuses, image rights and incentives such as appearance fee/s, winning bonuses, scoring/clean sheet bonuses (depending on position) (Xiao-shuang, 2012). The negotiation of personal terms stipulate the terms of the contract between the player and the new club, in the context of employee and employer (Chetwynd, 2009). The transfer is then subject to a medical examination of the player (by the new club) in order to determine if the player has any health-related issues which may jeopardize sporting utilization, or the transfer itself (Xiao-shuang, 2012). Provided the player passes this examination, the transfer is effectively complete. In some cases, negotiations may extend to determining the player's (or the player's representative's) allocation of the relevant transfer fee between the two clubs (Lembo, 2011). Third-party ownership exists as a deviation from the historical process, as it is the ownership of a player's economic rights by a third party source (such as an agent/agency), who are then entitled to proportions of any relevant transfer fees for that player (Reck & Geey, 2011).

David Beckham - Exceptionalism

The transfer of David Beckham as a player is a unique example of football migration (Magee & Sugden, 2002). Of his \$50.6 million in revenue for 2012, approximately \$44 million was generated by (off-field) commercial activity; over 85% of his annual revenues (Forbes, 2013). Beckham's sporting revenues generated by his being a player for the Los Angeles Galaxy were relatively insignificant considering his commercial value (Lawson et al, 2008). The revenue portfolio of a typical player is primarily based on sporting-related revenues, such as salary, incentivized payments and relevant bonuses (Amir & Livne, 2005). Of the players listed on Forbes' 'Best Paid Soccer Players', Beckham's sporting revenue is the lowest of all twenty players (2013). This is especially significant considering Beckham, in 2012, accrued the highest revenues of any football player (Forbes, 2013). Beckham's transfer migration from the Los Angeles Galaxy to France's Paris Saint-Germain is exceptional because it represents the optimization of commercial revenues; a means through which players such as Beckham are able to sustain exorbitant revenue streams, despite a decline in sporting relevance (Parmentier, 2011). The gravity of this is enhanced by Beckham's total revenues surpassing those of Lionel Messi (\$39 million), current recipient of FIFA's 'Ballon d'Or' award for best sporting performance (Forbes, 2013).

Paris Saint-Germain (PSG) is a French football club, based in Paris, owned by the Qatar

Investment Authority subsidiary: Qatar Sports Investments (100% controlling interest) (QSI, 2013). The Qatar Investment Authority is a sovereign wealth fund which has invested \$340 million into the club (QSI, 2013). This has attracted an influx of elite players such as Zlatan Ibrahimovich and Thiago Silva, which is significant because France's Ligue 1 formerly suffered from the globalization/commercialization of football, serving as a net exporter of football talent (Kennedy & Kennedy, 2012). PSG's recent performance in the UEFA Champions League, in tandem with its domestic success suggests the club's aim to compete with the elite European clubs. Considering this, the transfer of David Beckham, a 37 year old player, is not necessarily in accordance with the sporting ambitions of the club. Thus, this suggests Beckham's transfer represents a morphing of transfer motivations (Binder & Findlay, 2011).

Beckham - A Brand; an Endorsement Portfolio

Beckham's endorsements prior to and during his tenure as a Los Angeles Galaxy player 10 included Adidas, Gillette, Pepsi Co. and Walt Disney, expanding to include Giorgio Armani, H&M, Yahoo, Electronic Arts, Burger King and Sainsbury (Forbes, 2013). Such a diverse portfolio of endorsements suggests Beckham's commercial significance is viable in a variety of different markets (Milligan, 2009; Vincent et al, 2009). Applying Aaker's model of 'brand equity' to Beckham, much of 'brand Beckham' is founded on his association with Victoria Beckham, his sporting success and his aesthetic (Vincent et al, 2009). The subsistence of his 'family-man' image lent itself to the credibility of Beckham's brand (Milligan, 2009).

Thus, a transfer for David Beckham as a player inherently implicates the brand associated 11 with Beckham (Vincent et al, 2009). This implication is compounded by Beckham's age, which reduces his value as a sporting asset (Amir & Livne, 2005). Beckham's transfer to the Los Angeles Galaxy from Real Madrid was considered an 'ambassadorial move' to promote the sport and Major League Soccer (MLS) in North America (Lawson et al, 2008). Considering his age, his move to PSG has been deemed as a move in accordance with the commercial ambitions of Ligue 1 and PSG, increasing the attention associated with domestic French football (QSI, 2013). Considering the financial context of football, a transfer for the Beckham brand is commercially motivated (Parmentier, 2010).

PSG's motivations for Beckham's transfer are primarily commercial, as his age and relative 12 playing ability reduce his utilization as a sporting asset (However, considering the context of business, Beckham exists as a valuable marketing asset (Chadwick & Burton, 2008). When Beckham joined Real Madrid CF in 2003, the club's shirt sales increased by 62%, with the club eventually recovering the transfer fee paid to Manchester United (Economist, 2004). As of 2013, Beckham had generated over £1 billion in shirt and boot sales, demonstrating his commercial viability (Forbes; Vincent et al, 2009). PSG, expecting to generate £15 million in Beckham-related merchandising during his five month contract, is aiming to optimize its revenues in order to improve the club's financial standing (QSI, 2013). Furthermore, Beckham's celebrity and associated publicity serve to increase the exposure and attention for both PSG and Ligue 1, similar to his transfer to the Los Angeles Galaxy (Vincent et al, 2009). Effectively, Beckham's transfer to PSG represents an intersection of commercial interests for both player and club (Rosner & Shropshire, 2010).

Beckham - Transfer Exceptionalism

Beckham's transfer to PSG was dominated by commercial interests, and therefore, the legal 13 process associated with such a transfer would be commercially concentrated (Xiao-shuang,

2012). This is reinforced by Beckham's donation of his PSG sporting salary to charity, which demonstrates the optimization of his off-field revenues (Gilmour & Rowe, 2010). The donation of a player's entire salary to charity is not a viable option for most players, as their revenue portfolios do not permit such actions. Here, Beckham differentiates himself from the 'typical' player. Beckham also benefits from the publicity his 'brand' will receive from his charitable donation (Chadwick & Burton, 2008).

This particular transfer involves French income taxation laws, as it was constructed in such a way that shields Beckham from the inflated income taxes. Union law stipulates that Beckham must collect €2000 a month in order to satisfy national insurance and government charges (Collectivités locales, 2013). Thus, although relatively insignificant, Beckham's entire salary is not being donated to charity. Because Beckham is collecting the union minimum, his income will be taxed at 5.5%, as opposed to the 45% rate that would be imposed on his contracted salary (Collectivités locales, 2013). Furthermore, Beckham's union minimum allows him to avoid paying 20% of his annual income towards social security, as well as surtax on income above €500 000 (Collectivités locales, 2013). The negotiations between club and player were therefore aimed at providing mechanisms which would minimize Beckham's exposure to France's severe taxation policies. The length of Beckham's contract (five months) with PSG is significant as well. Beckham avoids being domiciled in France (in part because his family continues to reside in London), and consequently avoids a potential 75% tax on his earnings above €1 million (Collectivités locales, 2013). Negotiations to join PSG would have incorporated such strategic tax planning, so as to improve the commercial attractiveness of joining the club (Amir & Livne, 2005). Unlike the majority of other players, Beckham's diverse revenue portfolio (where his commercial inflows significantly dwarf his sporting revenues) allows him to pursue such action (donating his salary to charity), while garnering increased publicity for Beckham as a brand (Parmentier, 2010).

Beckham is engaged in a joint venture with Simon Fuller's XIX Entertainment. This business initiative has established a portfolio of commercial ventures including, 'Footwork Productions', 'Beckham Ventures Ltd' and 'Beckham Brand Ltd', the latter of which is a joint venture between Beckham and wife Victoria, responsible for managing a variety of commercial endorsements (Vincent et al, 2009). Footwork Productions manages Beckham's image rights and sponsorship deals, the only product being the licensing of Beckham. In 2011, the turnover of Beckham's Footwork Productions was £14.9 million, with Beckham being paid £11.6 million (Companies House, 2012). Within the context of his transfer to PSG, Beckham's share of image rights and merchandising revenues will be paid to London based Footwork Productions. Footwork Productions serves as a shop-front for the licensing and exploitation of Beckham's image rights, and allows Beckham to continue optimizing his off-field revenues (Milligan, 2009). The negotiations between club and player would have needed to specify not only the allocation of merchandising and image rights revenues, but also the manner in which it was disbursed; in this case, to Footwork Productions. Unlike a typical transfer, Beckham's transfer to PSG (considering the tenure of his contract and donation of wages) emphasizes the commercial clauses within the contract because Beckham's commercial activity supersedes his sporting activity (Vincent et al, 2009).

Conclusion

Within an elite sporting industry, David Beckham exists as a commercial vehicle that ignores the historical motivations that dominate the migration of players (Chadwick & Burton, 2008;

Harris et al, 2012). Whereas players typically inhabit a construct that defines that in terms of sporting ability and capacity to contribute to team success, Beckham's utilization is likely more commercially concentrated than it is based on his sporting merit (Harris et al, 2012). For clubs, such as PSG, Beckham's monetary value is associated with his publicity, which correlates to the revenues derived from the licensing of his image rights (e.g. shirt sales) (Chadwick & Burton, 2008; Vincent & Lee, 2009). Beckham's transfer to PSG inherently included considerations of the value of his off-field equity for the club, and the impact of his registration (Harris et al, 2012).

Beckham's global publicity, as a result of his diverse endorsement portfolio, serves to enhance 17 PSG's publicity. Beckham's commercial value potentially contributes to increased merchandising and ticket revenues for PSG, considering his financial impact on the Los Angeles Galaxy and the MLS (Lawson et al, 2008). Furthermore, Beckham's global audience, reflected by his being an ambassador for Chinese football, is an exploitable asset for club's wishing to increase their international profile (Milligan, 2009; Parmentier, 2010). This is congruent with Qatar Sports Investment's mission for the PSG project: becoming one of Europe's elite clubs and reflecting the ethos of Paris (QSI, 2013).

From a players' perspective, Beckham's revenue portfolio deviates from the single- 18 dimensional definition of players as sporting assets (Carmichael et al, 2011). Within this definition, a player's ability to earn wages is dependent on sporting performance. Consequently, increasing age is associated with declining performance, which ultimately decreases a player's capacity to earn a salary (Rosner & Shropshire, 2010). Beckham transcends this definition, as his revenues exceed those of younger, superior players such as Lionel Messi and Cristiano Ronaldo (Forbes, 2013). This is a result of the commercial optimization of his economic rights, in conjunction with extraneous circumstances such as physical appearance and marital partner (Milligan, 2009). As a result, the legal process that dictates Beckham's transfer is substantial and encompassing, specifically targeting the off-field relationship between player and club (Parmentier, 2010). The personal services contract that dictates Beckham's employment relationship with PSG would include the relevant sporting clauses, as is standard, but also include the processes determining the utilization of and remuneration for the licensing of Beckham's economic rights (Amir & Livne, 2005; Chadwick & Burton, 2008). Beckham's construction of 'Brand Beckham' and off-field publicity has forced relevant contractual processes to consider his as a sporting asset, but perhaps more significantly, a commercial vehicle (Vincent et al, 2009; Milligan, 2009).

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