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A GAUNTLET FOR THE GLOVE: THE CHALLENGE TO ENGLISH BOXING CONTRACTS

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If Sandel made a showing, he would be given better men to fight, with bigger purses to win; so it was to be depended upon that he would put up a fierce battle. He had everything to win by it - money and glory and career; and Tom King was the grizzled old chopping block that guarded the highway to fame and fortune.¹

I. INTRODUCTION

Professional boxing is undoubtedly a contentious sport.² Primarily, this is because the object of each bout is to inflict physical injury on the other party,³ and clearly outside of the ring such an activity would be

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1. Jack London, *A Piece of Steak*, in *SPORTING BLOOD* 23 (Howard Lachtman ed., 1981). Lachtman describes London as "the first to stake a claim on the sports world as a legitimate and worthwhile subject for writing." *Id.* at xi.

2. Recent problems have centered around fatalities and injuries within the sport such as those suffered by Gerald McClellan. *Nobody Urged Me to Halt the Fight, Says French Referee*, *THE GUARDIAN*, Mar. 1, 1995, at 21; Bob Mee, *Fighting the Demons*, *THE INDEPENDENT*, July 16, 1995, at 10. "How many more boxers have got to run the risk of permanent disability in Britain before we take the serious step of considering the banning of this sport?" Sally Weale, *World Boxing Title Loser Urged to Quit Ring*, *THE GUARDIAN*, Mar. 21, 1994 (quoting Menzies Campbell, Liberal Democrat spokesman on sport). The role women are allowed to play within the sport is also an ongoing issue that is unlikely to be easily resolved. Barbara Lewis, *Gloves Come Off in Battle Over Women's Boxing*, *THE SUNDAY TELEGRAPH*, Mar. 28, 1993, at 7. For an analysis of the legal position of prize fighting see Neil Parpworth, *Boxing and Prize Fighting: the Indistinguishable Distinguished*, 2 *J. SPORT & L.* 1. On legal issues that pervade boxing, see generally Michael Gunn & David Ormerod, *The Legality of Boxing*, 15 *J. LEGAL STUD.* 181 (1995).

3. With regard to amateur boxing the ABA notes: "Boxing is a contact sport in which points are scored by landing blows with force on the opponent. Inevitably, there is a risk of injury to those who box." *THE MEDICAL COMM'N OF THE AMATEUR BOXING ASS'N, THE MEDICAL ASPECTS OF AMATEUR BOXING* 1 (2d ed. 1989).

unlawful and could attract both civil and criminal sanctions.⁴ In addition to the potential risk of death or serious injury, the sport has had more than its fair share of controversial characters and incidents.⁵ The most recent example of this has been the release from the Indiana Youth Center on March 25, 1995 of former heavyweight champion Mike Tyson,⁶ an occurrence that has sent the sports media into overdrive.⁷

While it is often the medical aspects of boxing that fall to academic scrutiny⁸ or grab the headlines,⁹ often overlooked are the relationships that exist between the fighters, their managers, and promoters and the mechanism that often binds them—the standard form contracts that exist in British professional boxing. Our analysis focuses upon two prominent court cases that have challenged the legality of the standard form agreement,¹⁰ the problems that have been caused by alleged promoters' cartels,¹¹ and recent developments in English boxing that have attempted to safeguard the economic interests of British boxers.

4. See Gunn & Ormerod, *supra* note 2. On consent in physical contact sport, see generally *Criminal Law: Consent and Offences Against the Person* (1994) (Law Commission Consultation Paper No. 134). On consent as it applies to association football see Simon Gardiner & Alexandria Felix, *Juridification of the Football Field: Strategies for Giving Law the Elbow*, 5 MARQ. SPORTS L. J. 189, 201-04, 206-07, 210 (1995).

5. See, e.g., G. SUSTER, *CHAMPIONS OF THE RING* (1994); NORMAN MAILER, *THE FIGHT* (1975).

6. Tyson was released on parole after serving three years of his six year sentence for rape. One of the undoubted attractions of Tyson to the boxing fraternity is that he was the last heavyweight to unify the division and hold all titles concurrently.

7. See, e.g., Kevin Mitchell, *The King with All the Aces*, THE OBSERVER, Apr. 2, 1995, at 14; Ed Vulliamy, *'Mad Mike' is Free . . . Praise be to Allah!*, THE OBSERVER, Mar. 26, 1995, at 1.

8. Gunn & Ormerod, *supra* note 2; Parpworth, *supra* note 2.

9. The build up to the Frank Bruno and Oliver McCall heavyweight contest was marred by the pre-fight hype in which McCall made reference to seeking "vengeance" for Gerald McClellan, the American middleweight boxer who suffered serious head injuries in his fight with Nigel Benn earlier in the year. See Jack Massarik, *McCall Faces Big Fine*, THE GUARDIAN, Aug. 3, 1995, at 19.

10. *Warren v. Mendy*, 3 All E.R. 103 (1989); *Watson v. Prager*, 1993 E.M.L.R. 275.

11. In *Watson* it was revealed that the major four promoters in England had an arrangement whereby the income from promotions was pooled and then divided. 1993 E.M.L.R. at 286, 290-91. This clearly creates issues in respect of both competition law and common law conflict of interest. The agreement was not, however, contrary to British Board of Boxing Control (BBBC) rules.

II. THE HISTORY AND STRUCTURE OF BOXING¹²

In 1867, the Amateur Athletics Club asked the eighth Marquis of Queensbury to give his name to new rules for the outdoor boxing contests that they ran. In effect, the Queensbury Rules were the first attempts to regulate boxing contests by advocating the use of boxing gloves, fixed rounds of three minutes with a minute's rest in between, and the adoption of a referee to adjudicate upon proceedings.

The Amateur Boxing Association (ABA) was set up in 1880 by a group of leading members of amateur clubs and developed into a Limited Company in 1993.¹³ "Their championships were immediately popular and the ABA's influence spread quickly—Dublin BC affiliated in 1884 and Cardiff three years later. They were models of decorum."¹⁴ The major objective of the ABA is to "promote the sport and practice of amateur boxing in England."¹⁵ One key element relates to the training and education of boxing coaches, though the more public face is the running of the national championships. In order to ensure a close degree of regulation, a number of regional associations administer the boxing clubs within the different areas they cover. In addition to the English Association, there are similar bodies in Scotland, Ireland, and Wales in addition to both a European and International Association.

While at the time the professional sport of boxing was largely unregulated, it has been administered by the British Boxing Board of Control (BBBC or "Board") since 1929.¹⁶ The BBBC licenses boxers, trainers, promoters, and managers nationally while other day to day administration is divided into eight Area Councils. Crucially, the BBBC licenses not just the participants but the contests themselves. A promoter must lodge details of any promotion at least six days before the mooted pro-

12. On boxing within the wider context of the development of sport, see SIR DEREK BIRLEY, *SPORT AND THE MAKING OF BRITAIN* (1993); SIR DEREK BIRLEY, *LAND OF SPORT AND GLORY* (1995).

13. JAMES W. KENYON, *BOXING HISTORY* (1961).

14. BIRLEY, *SPORT AND THE MAKING OF BRITAIN* 287 (1993).

15. Memorandum of Association Clause 3, Amateur Boxing Association of England Ltd. (on file with author).

16. *Watson*, 1993 E.M.L.R. at 281. Every time a professional boxer suffers death or serious injury in the ring there are renewed calls for the abolition of the sport. See Weale, *supra* note 2. The administrators of Amateur Boxing attempt to draw a distinction between the two wings of the sport: "It is unfortunate that many who might be included in the 'anti-boxing' scenario do not know, or in fact, understand or appreciate that there is a very wide gulf between Amateur Boxing, the SPORT which I am discussing herein and the BUSINESS of Professional Boxing." A.A. Pontremoli, *Amateur Boxing: Is It Dangerous?* (1995) (Amateur Boxing Association booklet, on file with author).

motion and the Board has the power to prohibit any contest which it considers is not "in the interests of boxing."¹⁷ The Board may rule out contests that appear to be mismatches, particularly with overseas boxers whose records are not always as authentic as they ought to be.¹⁸ The Board will also liaise closely with promoters "behind the scenes" in an attempt to minimize the likelihood of mismatches occurring.

The Board has a crucial supervisory medical role for the sport. It first established a medical committee in 1950, and in many ways this is now its primary function. Each Area Council has a medical officer who recommends whether or not the BBBC should grant or renew a boxer's license.¹⁹ Every tournament will have two medical officers assigned to it who will certify that the boxers are fit to take part. A doctor will also sit at ringside throughout the bout. The Board also employs inspectors who are responsible for ensuring that all contests are carried out within the regulations.

Amateur boxing may well act as the springboard for a professional career:

The Board expects that all applicants have had experience in amateur boxing. Amateur records are usually checked and anybody contemplating a professional career who has not already boxed is advised to contact an amateur club in his area. For anyone striving to get to the very top of the professional sport it is almost impossible without first having had a good amateur career.²⁰

Without a strong amateur boxing background, the applicant will be required to spend time under the supervision of a professional trainer

17. The Role of the BBBC in Professional Boxing in This Country (BBBC documentary information, on file with author). Documentary information provided to the authors courtesy of the BBBC.

18. The issue of mismatches is an important one, as the risk of injury clearly increases when one boxer is less able than the other. The return of Tyson indicates the nature of the problem; he obviously needs some ring practice but does not want to meet an opponent likely to beat him in the first instance. Consequently he was scheduled to fight Peter McNeeley, a heavyweight with a previously undistinguished record. McNeeley was given a top ten ranking by the World Boxing Council while Tyson's rating has remarkably risen to number one. Pat Putnam, *Great White Dope Sacrificed to Tyson Follows Family Tradition*, THE OBSERVER, May 28, 1995, at 6. For a cynical analysis of the career of Peter McNeeley, see Pat Putnam, *Tyson's Fattened Bull*, THE OBSERVER, Aug. 6, 1995, at 9. In the end the critics were proved right with the fight lasting a mere 89 seconds.

19. Recently 33 South African boxers lost their licenses when it was revealed that they had tested positive for the HIV virus. Jack Massarik, *Ban on 33 Boxers After Aids Tests*, THE GUARDIAN, July 18, 1995.

20. Letter from British Board of Boxing Control Ltd. on A Career as a Professional Boxer (on file with author) [hereinafter BBBC Letter].

and demonstrate his skills in a trial bout.²¹ The "licensed boxer" is required to enter into a standard boxer/manager agreement with a manager who is also licensed by the Board.²² The boxer is obliged to enter into this agreement; otherwise, he will not be licensed and therefore unable to box.²³

While the potential financial rewards for professional fighters are high, the high earning boxers are few in number and the profession faces competition from elsewhere:

But while the top handful of fighters earn fortunes, there are signs that in Britain at least, boxing may be dying a slow death, that it resembles a pyramid with a glittering top and crumbling foundations. There are now 12,000 amateurs, but 15 years ago there were 50,000; and there are now 700 professionals compared to 1,000 then. The British Boxing Board of Control admits poor kids are increasingly turning to athletics and football as a way out of nowhere and the martial arts as a means of discipline.²⁴

Even the BBBC acknowledges that very few boxers will be able to concentrate solely on boxing and will need a secondary career to fall back upon.²⁵ At the same time, however, it is undeniable that there are large sums of money to be made by the elite international few:

21. *Id.*

22. The Board requires that the following items must be completed at this point:

1. Application form properly signed and witnessed.
2. Payment of license fee deposit.
3. Complete medical examination on standard form by a Board doctor, together with confirmation of identity.
4. Complete ophthalmic (sic) examination by qualified optician on standard form together with confirmation of identity.
5. CT (brain) scanning including skull x-ray report and confirmation of identity.
6. Certificate of HIV Testing.
7. Hepatitis B vaccination.
8. Lodging of standard Boxer/Manager Agreements with application.
9. Lodging of birth certificate with application.

Id.

23. While there does not appear to be any reported case on the refusal to issue a license, it is possible given the case of *Nagle v Fielden*, 2 W.L.R. 1027 (1966) (concerning the refusal of the Jockey club to issue a training license) that the courts would be prepared to consider the case. See Neil Parpworth, *Judicial Review and Sports Bodies*, in *MANCHESTER METROPOLITAN UNIVERSITY WORKING PAPERS IN LAW AND POPULAR CULTURE* (Series 1, No. 3).

24. Alex Spillius, *For a Fistful of Dollars*, *THE GUARDIAN*, July 8, 1994, at 4.

25. "[I]t must be realised from the outset that very few boxers make it to the very top. For most boxers their ring earnings will act as a boost to their ordinary earnings and all potential boxers are therefore advised to ensure they have a good regular income which they can maintain during their boxing career." BBBC Letter, *supra* note 20.

[T]hree years out of the ring have done for Tyson's box office appeal what no string of unbroken victories could ever have. Each week brings more dizzying estimates of what his comeback fight might earn. Upwards of \$120 million if it is against Riddick Bowe, . . . as much as \$150 million . . . if he takes on George Foreman.²⁶

Whether the boxer ends up earning a fortune or not, to be eligible to box and to have a chance of making it to the top the boxer is required to enter into a management contract before the BBBC will license the boxer. The contract is a standard form one, and as with the operation of standard form contracts in other areas of the entertainment industry, the use of then has been subject to judicial scrutiny in recent years.²⁷ The standard boxing agreement was first challenged in the U.K. in *Warren v. Mendy*.²⁸

Standard form contracts are widely used in many business contexts;²⁹ however, as our analysis will show:

[I]t is arguable that standard terms are inappropriate to "transactions" where the commodity is individual creativity rather than goods. Therefore, an artist may make a commitment which will tie them for the whole of their creative career in circumstances where they have very little bargaining "leverage" and any contract they are offered is on a "take it or leave it" basis.³⁰

While it is arguable that boxers may not be creative in the same way that musicians and actors are, their careers share certain similarities,³¹ and as

26. Ian Katz, *From Hard Cell to Hard Sell*, THE GUARDIAN, Mar. 24, 1995, at 2. The current British boxers who are attracting heavy media coverage include Lennox Lewis, "Prince" Naseem, and Chris Eubank.

27. On the entertainment industry, see generally Steve Greenfield & Guy Osborn, *Sympathy for the Devil? Contractual Constraint and Artistic Autonomy in the Entertainment Industry*, 15 J. MEDIA L. & PRAC. 117 (1994).

28. 3 All E.R. 103 (1989).

29. On the history of standard form contracts, see, e.g., P.S. ATIYAH, INTRODUCTION TO THE LAW OF CONTRACT 16 (5th ed. 1995); G.H. TREITEL, THE LAW OF CONTRACT 196-260 (1995). See also Lord Diplock's comments in *Schroeder Music Publishing Co. v. Macaulay*, 3 All E.R. 616, 623-24 (1974) (music publishing contract) on the characteristics of such contracts.

30. Andrew Boon et al., *In Fear of Rocking the Boat: The Bargaining Culture of Commercial Music Contracts*, in MANCHESTER METROPOLITAN UNIVERSITY WORKING PAPERS IN LAW AND POPULAR CULTURE (Series 1, No. 2).

31. Certainly the courts have seen similarities such as the role of managers and promoters in various fields and have applied the restraint of trade doctrine to these perhaps seemingly discreet areas. See Greenfield & Osborn, *supra* note 27.

with other professional sports personnel, the career duration is constantly threatened by injury.³²

III. ROUND 1: *WARREN V. MENDY*

Nigel Benn was a very promising young amateur boxer.³³ In 1986 he won the ABA middleweight championship and subsequently decided to turn professional.³⁴ Shortly after his first professional contest he signed a three year management agreement with Burt McCarthy, and his first twelve professional fights were promoted by Frank Warren, who held BBBC licenses as both a manager and promoter.³⁵ Benn had a brilliant start to his professional career winning his first eighteen fights by knock-outs or technical knockouts.³⁶

In January 1988, it was agreed that Warren would act as Benn's manager in place of McCarthy, and Benn and Warren entered into a standard boxer/manager agreement for a three year period.³⁷ Benn fought six more contests under Warren's management and promotion before he became disillusioned with the relationship.³⁸ As a consequence of his disillusionment, he asked Ambrose Mendy to advise him on all matters regarding his career.³⁹ Unlike Warren, Mendy was not licensed to be a manager by the BBBC and described himself as a "trade development counsellor."⁴⁰ Faced with this situation, Warren sought injunctions against Mendy which prevented him from:

- (i) inducing, procuring, assisting or facilitating the breach by Nigel Benn of his contract with the plaintiff;
- (ii) otherwise acting as Nigel Benn's manager or agent in relation to any boxing contest, match, exhibition and any other professional engagements ancillary to his career as a professional boxer;
- (iii) holding himself out as Nigel Benn's manager or agent in connection with any boxing contest, match, exhibition or any other engagement ancillary to Nigel Benn's career.⁴¹

32. On Association Football, see Gardiner & Felix, *supra* note 4.

33. Benn has been described as being "a very talented boxer with prospects of a highly remunerative career." *Warren*, 3 All E.R. at 106.

34. *Id.* at 106.

35. *Id.*

36. Benn's career record was 41 contests, won 38, drawn 1, and lost 2. See BRITISH BOXING BOARD OF CONTROL YEARBOOK (1995).

37. *Warren*, 3 All E.R. at 106.

38. *Id.* at 106-07.

39. *Id.* at 107.

40. *Id.*

41. *Id.* at 105.

At first instance injunctions were duly granted,⁴² but these were lifted on application by Mendy. Warren duly appealed to the Court of Appeal to have the injunctions reinstated.⁴³ The major difficulty facing the plaintiff was the effect that the injunctions would have on Benn. While the BBBC permits boxers to manage themselves, it was accepted that boxers in that position might still be in need of commercial advice. Such advice could be within the ambit of the Boxer/Manager Agreement Article 4, which provided:

The boxer agrees and undertakes: (i) during the continuance of this Agreement to be managed and directed exclusively by the Manager and not to enter into any agreement or arrangements with any other Manager or person for any of the above mentioned purposes without obtaining the prior written consent of the manager.

Clearly the agreement is an exclusive one, though the crucial feature is to determine the coverage of the agreement. By virtue of Article 2 of the contract the manager was obliged to arrange a program of both boxing⁴⁴ and other professional activities.⁴⁵ By involving Mendy in his boxing life, Benn was clearly breaching the agreement, and this would also be the case with allied commercial activities.

This case was a little unusual in that the injunction was not being sought against one of the two contractual parties but rather a third party who was "interfering" with the contractual relationship.⁴⁶ It is a long established principle that courts will not grant an order for specific per-

42. *See id.* at 107. An ex parte injunction was obtained by Warren on July 20, 1988 by Mr. Justice Roch. This order was discharged by the High Court on September 12, 1988 by Mr. Justice Pill.

43. For a discussion of court hierarchy and civil appellate procedure, see PHIL HARRIS, AN INTRODUCTION TO LAW 134-138 (1993). *See also* P.F. SMITH & S.H. BAILEY, THE MODERN ENGLISH LEGAL SYSTEM (1993).

44. *Warren*, 3 All E.R. at 107. It is interesting to examine Benn's fight earnings. His final Warren Promoted fight, which was postponed because of the litigation, carried a disputed purse for Benn of either £7,500 (Benn) or £10,000 (Warren). His previous two purses had been £7,500 and £5,000, prior to this no purse had exceeded £3,000.

45. Frank Bruno's out of ring activities have included appearing in television game shows, product advertisements (HP sauce), and pantomime.

46. The area where injunctions are most commonly sought against third parties are trade dispute cases, where employers seek injunctions against trade unions to prohibit any inducement to breach the employment contracts of the work force. *See* JOHN BOWERS & MICHAEL DUGGAN, THE MODERN LAW OF STRIKES 136-55 (1987); I.T. SMITH ET AL., INDUSTRIAL LAW 580-85 (1993).

formance of a contract for personal services.⁴⁷ They have, however, permitted negative stipulations which have tended to uphold the original agreement even though such a positive order is impermissible.⁴⁸

Theoretically, a negative order which enforces a positive obligation is beyond the court's jurisdiction; however, the earlier cases tend to demonstrate an increased willingness to support contractual obligations through injunctions despite the consequences. A prime illustration of this view can be found in the decision in *Warner Brothers*, which concerned the exclusive contract of the actress Bette Davis.⁴⁹

On a first consideration that judge's view that Miss Bette Davis might employ herself both usefully and remuneratively in other spheres of activity for a period of up to three years appears to have been extraordinarily unrealistic. It could hardly have been thought to be a real possibility that an actress of her then youth and soaring talent would be able to forgo screen and stage for such a period.⁵⁰

The *Warren* court argued that there was a marked difference between a short and a long term engagement and that should the contract last for two years or more it was far more likely that an injunction would compel performance of the contract.⁵¹ The whole question of compelling performance lies at the heart of the judgment, and the court was conscious that although the injunction was sought against a third party, it would have the effect of forcing Benn to either manage himself or return to Warren for the duration of the agreement. Any new manager who Benn approached would run the risk of Warren launching a similar action:

In such a case the court ought not to enforce the performance of the negative obligations if their enforcement will effectively compel the servant to perform his positive obligations under the contract. Compulsion is a question to be decided on the facts of each case, with a realistic regard for the probable reaction of an injunction on the psychological and material, and sometimes the physical, need of the servant to maintain skill or talent. The longer the

47. See *Rigby v. Connol*, 14 Ch. D. 482, 487 (1880); *Francis v. Municipal Councillors of Kuala Lumpur*, 3 All E.R. 633 (1962). See also M.P. FURMSTON, *CHESHIRE, FIFOOT & FURMSTON'S LAW OF CONTRACT* 631-35 (12th ed. 1991).

48. See *Lumley v. Wagner*, 1 De G.M. & G. 604 (1852); *Warner Bros. Pictures Inc. v. Nelson*, 1 K.B. 207 (1936) (the Bette Davis case). For a more recent case, see *Evening Standard Co. v. Henderson*, 1987 I.C.R. 588.

49. For the background to the Bette Davis case, see generally STEVE GREENFIELD & GUY OSBORN, *CONTRACTUAL CONTROL IN THE ENTERTAINMENT INDUSTRY* (forthcoming 1996); BARBARA LEAMING, *BETTE DAVIS* (1992); CHARLES HIGMAN, *BETTE* (1981).

50. *Warren*, 3 All E.R. at 112.

51. *Id.*

term for which an injunction is sought, the more readily will compulsion be inferred. Compulsion may be inferred where the injunction is sought not against the servant but against a third party, if either the third party is the only other available master or if it is likely that the master will seek relief against anyone who attempts to replace him.⁵²

A crucial factor in Benn's favor was the short duration of a professional boxing career and also the necessity for a close and trusting relationship with his manager.⁵³ Accordingly, the court was not prepared to grant the injunctions sought.

Having refused the claim, the court went on to consider the problem caused by a manager who also acted as a promoter. When a boxer's manager is also promoting the contest, he is in the dubious position of signing the standard promoter/boxer agreement twice: once as the promoter and secondly on behalf of the boxer. Commenting on the dual relationship, the Court noted:

It may be that there are many cases in which it works to the boxer's advantage. But the emergence of one where it may well have worked to his disadvantage is something which we would respectfully think ought to cause the board concern. They may well wish to consider whether the regulations ought to be revised in such a way that the relationship can, if it is thought to be desirable, continue to exist, but only with stringent safeguards to protect the boxer.⁵⁴

The possible conflict of interest had long troubled the boxing authorities. In the 1950s dual licensing as manager and promoter was not permissible; however, the enactment of an entertainment tax to boxing promotions had serious financial implications and led to the Board altering its rules to allow managers to promote and vice versa.⁵⁵ This was not universally viewed as progressive, and the position was altered at the Annual General Meeting in 1984 to prevent the dual position.⁵⁶ This reversal was very unpopular with some managers who argued that unless they were able to promote their young boxers, there would not be any

52. *Id.* at 114.

53. This was also at issue in the case of *Page One Records Ltd. v. Britton*, 1 W.L.R. 157 (1968), which involved the Troggs pop group and a dispute with their personal management. On the enforceability of music contracts, see Steve Greenfield & Guy Osborn, *Unchained Melody: Restraint of Trade and Music Contracts*, *BUS. L. REV.*, Oct. 1992, at 223.

54. *Warren*, 3 All E.R. at 117.

55. *Watson v. Prager*, 1993 E.M.L.R. 275, 283-84.

56. *Id.*

opportunities for them to box.⁵⁷ Accordingly, this policy was reversed by a Special General Meeting later in the year.⁵⁸ Following the decision in *Warren*, the Board again reconsidered the position and allowed managers to promote all contests except those involving their own fighters.⁵⁹ This again brought protests from managers outside of London, but also significantly from the Office of Fair Trading.⁶⁰

The Office of Fair Trading is given jurisdiction under the Restrictive Trade Practices Act 1976 to refer agreements that act to restrict competition to the Restrictive Practices Court. Any agreement that falls within the wide ambit of "registerable agreements" must be sent to the OFT for registration within three months of making the agreement. Once the agreement is registered, the Director General⁶¹ will normally refer the matter to the Restrictive Practices Court for a ruling on whether the restrictions within the agreement are contrary to the public interest. The Office of Fair Trading considered that the restriction of a manager or promoter to one role or the other would have a significantly adverse affect on competition and would therefore require registration and be subject to a referral to the court to determine whether it was in the public interest. Their letter to a leading promoter's solicitors of January 17, 1990 spelled out the basis of the position:

In inviting the Board to reconsider the proposed changes (so as to avoid a possible reference to the Restrictive Practices Court on the points) we said that we saw no reason to prevent managers promoting boxers whom they did not manage; nor why some system could not operate to represent a boxer's interests particularly, for example, in situations where the manager could find no promoter willing to stage a contest for a particular boxer and hence had no option but to promote the contest himself.⁶²

This view rather overlooks the fact that the court of appeals had expressed grave reservations about dual licensing and that the objection to the change, within the BBBC, had arisen from regional promoters who

57. *Id.* at 284.

58. *Id.*

59. *Id.* at 285.

60. *Id.* at 285-86. "The OFT is similar in many respects to the Federal Trade Commission (FTC) in the USA in that both bodies have open-ended remits to oversee competition and consumer interests. Unlike the FTC, however, the OFT has no quasi-judicial function, being a purely administrative agency." TIM FRAZER, *MONOPOLY, COMPETITION AND THE LAW* 33-34 (2d ed. 1992). This book provides a useful outline of U.K. Competition Law.

61. FRAZER, *supra* note 60, at 33. The Director General of Fair Trading is an office set up under the Fair Trading Act 1973 to oversee U.K. competition.

62. *Watson*, 1993 E.M.L.R. at 286 (quoting letter to Micky Duff's solicitors).

argued that management and promotion was a necessity. Subsequent to the Office of Fair Trading's intervention, the BBBC re-amended its regulations to permit dual licensing.⁶³ This was not the end of the issue, which returned to haunt the boxing authorities in *Watson*.

IV. ROUND 2: *WATSON V. PRAGER*

Michael Watson had been a very promising amateur boxer⁶⁴ who anticipated being selected for the 1984 Olympics; he signed an agreement in March 1984 to turn professional after the Olympics with Mickey Duff, a well known figure in the boxing world, as his manager.⁶⁵ Watson was not selected for the Olympic team, however, and turned professional in September 1984.⁶⁶ The original management agreement was scheduled to run for a three year period.⁶⁷ An additional three year extension to the agreement was signed in April 1987.⁶⁸ While this second agreement still had nine months to run, Duff exercised his option under the contract to extend the period for an additional three years.⁶⁹ This option became exercisable when Watson won a British, European, Commonwealth, or World championship. Accordingly, the contract was due to expire on March 31, 1993.⁷⁰ The highlight of this second contract period was Watson's fight against the previous subject of boxing litigation, Nigel Benn.⁷¹ Watson's winning of the Commonwealth Middleweight Championship triggered the extension option.

After his defeat in his challenge for the World Boxing Association's Middleweight title against Mike McCallum, Watson sought to terminate

63. *Id.* at 286.

64. *Id.* at 288.

65. *Id.* Interestingly enough, it was revealed in evidence that Watson was to receive £100.00 per week for training and living expenses despite the fact that he was still an amateur. The judge commented: "I have a strong suspicion that the amateur boxing authorities would have regarded this agreement with some disfavour." *Id.*

66. *Id.*

67. *Id.* During the first agreement Watson fought 13 times. For the first six fights his purse was £500.00 per fight; for fights 7 to 11, £600.00 to £850.00 per fight; and for fights 12 and 13, £1000.00 each. All 13 fights were promoted by Micky Duff or his company National Promotions. *Id.*

68. *Id.* at 289. During the course of the second agreement Watson fought 12 more contests for which he received the following purses: fight number 14: £800.00, 15: £1200.00, 16: £5000.00, 17: £3500.00, 18 and 19: £5000.00, 20: £9000.00, 21: £3000.00, 22 and 23: £6000.00, 24: £100,000.00, 25: £87,000.00. All fights excepts numbers 20, 24, and 25 were also promoted by Micky Duff. *Id.*

69. *Id.* at 278.

70. *Id.*

71. See *Warren v. Mendy*, 3 All E.R. 103 (1989).

the management agreement.⁷² The basis of Watson's claim was that the boxer/manager agreement that he signed with Mickey Duff amounted to an unreasonable restraint of trade⁷³ and was therefore unenforceable.⁷⁴ At the same time, Watson sought damages from the defendant and his company.⁷⁵ The doctrine of restraint of trade has long since expanded from its narrow boundaries of employer/employee relationships and the sale of businesses and has been a virulent force, particularly with respect to entertainment and sports contracts.⁷⁶ The first task of the court is to determine whether the contract under scrutiny is subject to the doctrine; contracts that regulate normal commercial relations are not considered to be challengeable.⁷⁷ Clearly this was the "normal" boxer/manager contract; in fact there could be no other agreement as BBBC regulations provided that in order to have a license, the standard form agreement was the only one permissible.⁷⁸ The fact that the manager did not determine the term did not convince the court that it was prevented from examining the agreement:

Undue restraint of trade offends against public policy and it is the Courts that are the guardians of public policy. The restrictions imposed on a boxer by a boxer-manager contract are in reality decided upon by the Board, albeit that their contractual enforcement must rest with the manager. The Board evidently regards the restrictions as in the interests of professional boxing, as well as in the interests of the parties, but it is not, in my judgment, satisfactory that an entity such as the Board, which controls all aspects of professional boxing should be regarded as free from judicial supervision in so far as its rules and regulations impose commercial restrictions on participators in the sport.⁷⁹

Despite the fact that this arrangement could well be considered "normal contractual relations," the court argued strongly that when a body that

72. *Watson*, 1993 E.M.L.R. at 289.

73. The doctrine of restraint of trade has a long historical lineage. Professor A.G. Guest describes the domain of the doctrine thus: "An agreement in restraint of trade has been defined as 'one in which a party (the covenantor) agrees with any other party (the covenantee) to restrict his liberty in the future to carry on trade with other persons not parties to the contract in such a manner as he chooses'." A.G. GUEST, *ANSON'S LAW OF CONTRACT* 318 (26th ed. 1986). Guest goes on to provide a useful history of the development and scope of the doctrine. On its application to music contracts, see Greenfield & Osborn, *supra* note 53.

74. *Watson*, 1993 E.M.L.R. at 278.

75. *Id.* at 279.

76. For a general analysis of this area, see Greenfield & Osborn, *supra* note 27.

77. *Esso Petroleum Co. v. Harper's Garage (Stourport), Ltd.*, 1968 App. Cas. 269.

78. *Watson*, 1993 E.M.L.R. at 290.

79. *Id.* at 297.

runs professional sport effectively determines the ability of participants to practice that sport, the doctrine of restraint of trade will apply and "rules or regulations must be franked by passing through the reasonableness gateway."⁸⁰

Having satisfied itself as to its jurisdiction,⁸¹ the court went on to argue that the manager/promoter was even more vulnerable to the application of the doctrine given the potential conflict of interest created by promoting a managed boxer. The court referred to an agreement which permits contemporaneous promotion and management as "a very strange animal indeed."⁸² The position of the court was thus to determine whether the restrictions were reasonable and therefore justifiable.

In favor of the restrictions was the fact that they were initiated by the BBBC for the protection of boxers.⁸³ At the start of their career, boxers may well be young and inexperienced in relation to both the organization of professional boxing and business matters generally.⁸⁴ Accordingly, the BBBC attempts to ensure a system of regulation to prevent undue exploitation and support the physical safety of boxers.⁸⁵

The duration of the initial three years was found to be a reasonable period enabling proper career development; however, the judge expressed reservations about the extension option if the fighter won a championship bout.⁸⁶ The court suggested that an extension period of eighteen months would provide the manager with sufficient reward for his earlier endeavors.⁸⁷ Theoretically, the boxer's first contest under his manager could be the championship fight which would permit a further

80. *Id.* at 298.

81. *Id.* at 299.

82. *Id.* at 299.

83. *Id.*

84. It is interesting to compare the position of young musicians at this point. In *Silvertone Records v. Mountfield*, 1993 E.M.L.R. 152 (concerning Manchester band The Stone Roses), the court observed that "[t]he Stone Roses themselves were not highly educated, had no legal experience, little or no business experience and were very much under the experience of Mr Evans (the band's manager)."

85. Judge Scott summed up the case for regulation:

It is very easy to accept that careful regulation is essential to ensure that so far as possible professional boxers are protected against abuse, whether from unfair contracts with managers or promoters, or from being overmatched in overambitious promotions, or from boxing when physically unfit, or indeed from their own naivete. The need for careful regulation of professional boxing is underlined by the very substantial sums of money that depend upon the outcome of some fights and by the association of gambling with the sport.

Watson, 1993 E.M.L.R. at 282.

86. *Id.* at 300.

87. *Id.*

three year extension. This point was dwarfed, however, by the judge's view of the conflict of interest problem.⁸⁸

As Watson's manager, Duff was obliged to negotiate with promoters on his behalf and obtain the most advantageous terms possible (for Watson). It would be very difficult for Duff the manager to negotiate realistically with Duff the promoter; the greater the amount paid to the boxer the less was left for the promoter.⁸⁹ Accordingly, the agreement was held to be contrary to public policy and consequently unenforceable.⁹⁰

V. OFF THE ROPES: THE FUTURE OF BRITISH BOXING

The response of the BBBC to *Watson* was to tighten the arrangements for extending the contract after the winning of a championship belt. This had been the subject of major judicial criticism in *Watson* and the current provision is contained within Clause 12:

If during the Initial Period:

- (i) The Boxer wins a British Championship or European, Commonwealth or World Championship organised by a controlling body to which the Board is affiliated; and
- (ii) At that time the initial period has less than two years to run the Manager may serve a written notice ("an Extension Notice) extending the duration of this Agreement. Any such extension shall expire not later than 18 months after the date on which the Boxer wins the relevant Championship.

The standard contract immediately prior to the current one had provided for an extension period of two years,⁹¹ so it can be seen that the Board is taking positive steps to ensure that the agreement is within acceptable judicial bounds.

Similarly, the Board has given serious consideration to the conflicts of interest problem and has addressed this through a modified Clause 6; now in the event of a manager promoting his boxer, he must complete a Form 36A which directly informs the boxer of the arrangement.⁹² Further, the form must be signed by the boxer, thus drawing the matter explicitly to his attention. This provision extends to situations in which the manager has "any financial or other association with the intended

88. *See id.* at 301.

89. *Id.* at 302.

90. *Id.* at 302-03.

91. 1994 Standard Boxer/Manager Agreement § 12.1. 1994 Standard Boxer/Manager Agreement kindly supplied by BBBC.

92. 1995 Standard Boxer/Manager Agreement § 12.1. 1995 Standard Boxer/Manager Agreement kindly supplied by BBBC.

Promoter.”⁹³ Clearly this is designed to catch indirect conflicts of interest that were revealed in *Watson*. The manager may not proceed with the promotion until the boxer is satisfied with the terms, which have to be provided in writing and fully explained by the manager.⁹⁴ Clause 6 also specifically deals with the issue of television rights, as now the manager cannot arrange an inclusive purse unless the boxer is specifically informed. In the event of the manager breaching this clause, he is liable to pay the boxer the amount stipulated by the standard promoter/boxer agreement (a percentage of the television fee).⁹⁵

These are serious attempts to deal with the problems raised by both the *Warren* and *Watson* cases and to produce a contract that will withstand legal challenge.⁹⁶ The BBBC has gone a stage further and attempted to reduce the likelihood of litigation. An arbitration clause had long been a part of the standard agreement,⁹⁷ although in *Watson*, where the whole contract was deemed to be unenforceable, the arbitration clause also was deemed invalid. The current agreement now has, as part of the manager’s obligations, a clause that allows the boxer to refer the matter to the Board: “If the Boxer is not satisfied with the number or quality of Boxing or other engagements arranged by, or opponents selected by, the Manager.”⁹⁸

The Board has given itself the authority in such circumstances to “decide whether the Boxer shall be released from this agreement.”⁹⁹ This is

93. *Id.* § 6.1(ii).

94. *Id.* § 6.2.

95. *Id.* § 6.3(ii).

96. The application of the doctrine of restraint of trade within the entertainment industry is unaffected by the recent High Court decision of *Panayiotou v. Sony Music Entertainment Ltd.*, 1994 E.M.L.R. 229 (the *George Michael* case) as although the first decision went in favor of Sony (and against the recent trend), the dispute has now been settled and will consequently not be heard by the Court of Appeal.

97. The Arbitration clause reads as follows:

Disputes. In the event of any disputes in respect of any matter arising under, out of or pursuant to this Agreement, the parties shall refer such dispute for arbitration by way of a complaint to the applicable BBB of C Area Council or the Board in accordance with the provisions of the BBB of C Regulation 15a entitled ‘Complaints’, and such arbitration shall be subject to the provisions of the BBB of C Regulation 16 entitled ‘Appeal’. The procedures contained in the said Regulations shall be exhausted and an order, decision or award made in accordance with the said Regulations by the aforesaid Area Council or Board, or, in the case of an appeal, by the BBB of C Stewards of Appeal, before any application may be made to the Courts of Law by any of the parties hereto.

Watson, 1993 E.M.L.R. at 279.

98. 1995 Standard Boxer/Manager Agreement § 6.2.

99. *Id.*

a clear indication that the Board views the two cases and perhaps the general trend in the field of entertainment very seriously. Litigation is after all very damaging as it freezes the very product that generates the income (the boxer) for the length of the dispute. Given the limited duration of a boxing career, it is sensible to try to avoid litigation for all parties. At the same time as the Board has been attempting to produce a more realistic agreement, the boxers themselves have taken steps to protect their position.

VI. THE BOXERS' REACTION

One of the most significant developments in British professional boxing has been the formation in February 1993 of the Professional Boxers Association (PBA).¹⁰⁰ Unlike other major spectator sports in Britain such as football,¹⁰¹ golf,¹⁰² and cricket,¹⁰³ a body designed to cater to the needs of professional boxers did not previously exist. The PBA has as its objectives the following:

- i) To promote and protect the interests of members and former members.
- ii) To protect the rights including contractual and (where applicable) employment rights of members connected with professional boxing.
- iii) To provide assistance, including legal assistance, where the PBA in its absolute discretion deems appropriate in any matter

100. "The PBA is a members organisation. The members pay an annual subscription of £25. We are actively seeking commercial partners who, through sponsorship, can help us raise the financial resources that are required if we are to fulfill our objectives." PBA Leaflet (1995). See also *Jabs for Life*, IKON, Sept. 1995, at 24.

101. The Professional Footballers Association ("PFA") was founded in 1907 and now numbers almost 4,000 professional footballers as members. It has recently affiliated to the Trades Union Congress ("TUC"). Gordon Taylor, Chief Executive of the PFA commented: "We are very pleased to accept the invitation to join the TUC and to play our part along with other trade unions and associations to meet the demands of modern day technology and industrial relations." TUC Press Release (July 28, 1995) (on file with author).

102. The Professional Golfers' Association was founded in 1901 "to promote interest in the game of golf; to protect and advance the mutual trade interests of its members; to arrange and hold meetings and tournaments periodically for the members; to institute and operate funds for the benefit of the members; to assist the members to obtain employment; and effect any other objects of a like nature as may be determined from time to time by the Association." THE ROYAL & ANCIENT GOLFER'S HANDBOOK 779 (Michael Williams ed., 1994).

103. The Professional Cricketers' Association ("PCA") was formed in 1967 to protect cricketers' interests. It now boasts a 100% membership. See Guy Osborn & Steve Greenfield, *Gentlemen, Players and the 6'9" West Indian Fast Bowler: the Changing Character(s) of English Cricket*, in MANCHESTER METROPOLITAN UNIVERSITY WORKING PAPERS IN LAW AND POPULAR CULTURE (Series 2, No. 3).

arising out of a member's or former members involvement in professional boxing.

iv) To establish and/or administer funds for the benefit of members and former members or for such other purposes as the PBA in its absolute discretion deems appropriate.¹⁰⁴

While there had been a perceived recognition that boxers needed protection in a medical sense,¹⁰⁵ the formation of the PBA was a reaction to wider concerns of a fiscal nature. The PBA also could act efficiently on behalf of the individual boxers within the machinery of professional boxing.

The PBA's proactive role in attempting to act as a unified body representing the boxers interests can be seen in tandem with the setting up of a BBBC sub-committee which is liaising with managers and boxers to see how the existing standard form contract can be improved in the light of the judgements in *Warren and Watson*. Certainly the standard form contracts are considered a priority by the PBA: "The most important aspect we have focused on so far must be the changes we are proposing to the boxer/manager agreement. We are working closely with the BBBC on this."¹⁰⁶

The setting up of such a committee can be seen within the context of other movements within the entertainment industry. Part of the problem is that standard depersonalized contracts are being used to bind what are skilled "artists." Certainly the recent British case involving George Michael¹⁰⁷ was one based upon the treatment of a creative superstar as merely a commodity that can be seemingly bought, sold, or traded at will: "The core of Michael's case is that Sony treats him as 'little more than software' to be plugged into the company's hardware."¹⁰⁸

While there are still inherent problems in the relationships between boxers, promoters and managers, there are signs that the contractual position of the boxer is improving through a combination of litigation and self preservation. Sport in general is increasingly developing into a sub-

104. BRITISH BOARD OF BOXING CONTROL YEARBOOK 17 (Barry Hugman ed., 1994) [hereinafter BBBC YEARBOOK].

105. See Gunn & Ormerod, *supra* note 2.

106. BBBC YEARBOOK, *supra* note 104, at 18. This quote is attributed to Colin McMillan, PBA Secretary and former WBO feather weight champion.

107. The case has recently been settled with Michael moving to Dreamworks SKG (a new company set up by Spielberg, former Disney chairman Jeffrey Katzenberg, and record tycoon David Geffen) for North America with Virgin Music handling his releases in the rest of the world. See *The Battle for George Michael*, THE INDEPENDENT WEEKEND, July 15, 1995, at 5.

108. Matthew Lynn & Rufus Olins, *Music Giants Tremble as George Battles Sony*, THE SUNDAY TIMES, Oct. 17, 1993.

genre of show business, mainly through the influence of television,¹⁰⁹ and boxing is no exception: "With two big names on the bill, a televised fight is choreographed to take advantage of every crowd pleasing opportunity."¹¹⁰

Accordingly, the status of "star" boxers is changing. As in other areas of entertainment, boxers are showing an increasing willingness to protect their hard fought interests. The fact that the boxer's career is necessarily a short one (except perhaps in cases such as George Foreman) and also inherently dangerous lends credence to the notion that the economic and social well being of boxers should be carefully dealt with:

The relationship between the creative artist (be it in the field of sport, film or music) and the public is worthy of nurture and protection. The public interest notion in the doctrine of restraint of trade needs to be considered in the light of this relationship and artists must be granted more freedom and control not less.¹¹¹

The recent British Boxing experience suggests that the doctrine of restraint of trade has had a positive effect on the party's contractual relationships and it is to be hoped that such progression can be built upon to protect an initially vulnerable group of entertainers. Certainly, the signs are that British boxers are beginning to be treated less like a "piece of steak" that can be bought, sold, and traded and given more protection commensurate of the risks they are taking and the potential rewards that can be earned.¹¹²

109. See generally GARY R. WHANNEL, *FIELDS IN VISION: TELEVISION, SPORT AND CULTURAL TRANSFORMATION* (1992) (offering a perceptive insight into the reshaping of sport via television coverage).

110. Hannah Bryan, *The Magnificent Barbarism*, *THE OBSERVER*, July 31, 1994, at 9.

111. Greenfield & Osborn, *supra* note 27, at 126.

112. See London, *supra* note 1. The commodification of artists is receiving much critical academic coverage; with regard to musicians, see Greenfield & Osborn, *supra* note 27; with regard to football, see STEVE GREENFIELD & GUY OSBORN, *THE ABSOLUTE GAME. COMMERCIALIZATION AND COMMERCIALISATION IN FOOTBALL* (forthcoming 1996) (manuscript on file with author).

