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- S1 00:03 Welcome to the Sports Medicine Podcast brought to you by the Sydney and J.L. Huffines Institute for Sports Medicine and Human Performance in the Department of Health and Kinesiology at Texas A&M University. At the Huffines Institute, we're always working to facilitate, apply, and bring you the most up-to-date coverage of the wide world that is sports medicine and human performance, all in a language you can understand and share with your friends. And now, here's our host, the director of the Huffines Institute, Dr. Tim Lightfoot.
- S2 00:33 Well hello, and welcome to the weekly podcast from the Huffines Institute for Sports Medicine and Human Performance. I'm your host, Tim Lightfoot, and I'm so glad that you took the time to join us today and took the time to download us. Our goal is to have an interesting person from the world of sports medicine, human performance, and general health most weeks to talk to you about what they're doing and their passions of their work, and to give you some kind of sense about what happens at the university and what happens in science in general. This week is no exception. We have with us today Dr. Natasha Brison with us from our division of sports management. Welcome to the podcast.
- S3 01:10 Thank you.
- S2 01:10 You're welcome. We're glad that you're here. I'm going to tell the audience a little bit about you and why you're here. And then we're just going to jump into the conversation at that point. Okay. Good strategy at that point, right?
- S3 01:21 Yes.
- S2 01:21 Okay. Well, Dr. Brison got her bachelor's degree in communications and a bachelor's degree in English from Florida State. A double degree. Impressive. She then got her JD, which makes her an attorney, at the University of Georgia School of Law in Athens, Georgia. A glutton for academic punishment, she went back and got a master's degree in sports administration. And then she completed a PhD in kinesiology in sports management and policy at the University of Georgia in 2015. So you may have more degrees than anybody else we've ever interviewed. And so we're pleased to have you today.
- S3 01:58 Thank you. It's a pleasure to be here.
- S2 02:00 Great. Now, Dr. Brison's work deals primarily in a broad scale with brand management protection and legal aspects of sports marketing such as athlete image rights, endorsement regulations, and consumer advertising deception. And that latter one, consumer advertising deception, sounds pretty interesting, especially given all the stuff out there on supplements, and sports drinks, and so forth. So kind of give us a big view of what you do with your research in that area.
- S3 02:29 Well, I originally started this line of research working as an attorney, and then moving into more of a management and consulting perspective with a company we call Athletic Marketing & Management.
- S2 02:41 So were you trying to protect consumers, or were you trying to protect the companies that were putting this stuff out there?
- S3 02:45 Protecting the athletes. So we worked with retired professional athletes in everywhere from the WNBA to the NBA, the NFL. And most of my clients, working in that marketing and management capacity, not as an attorney, wanted to partner with corporations related to causes. They also were interested in endorsements. And so

one of the first areas of concern I found as a problem within, I guess, research was the fact that some of these athletes were endorsing products that didn't necessarily live up to the claims that they were making. So one of the first products I looked at were the Power Balance bracelets. And there was a lawsuit with Shaquille O'Neal and Lamar Odom named in that lawsuit. And so--

S2 03:31 They were representatives for that?

S3 03:32 Yes.

S2 03:33 And that's the one, just to-- those are the ones they had the films where people go into malls, and they'd put this on, and they'd try to tip them over, and it was kind of rigged [laughter].

S3 03:40 Yes. Very much so.

S2 03:42 If you're interested in that, you can go on YouTube, and there's lots of videos about how that was rigged.

S3 03:46 And so one of the first claims that came about was in Australia with their advertising authority. And they identified that these bracelets were-- well, there was no scientific evidence to back up these bracelets or the supporting claims for these bracelets. And so when I saw the lawsuit, it made me think about my own clients, and what if they were endorsing a product that essentially was, for lack of a better word, a sham, and what that could do to their credibility, what types of potential legal liability they may have with regards to these lawsuits. And so that started me on a path looking at athlete endorsements, advertising claims, consumer advertising deception, which ultimately led me to the Federal Trade Commission and the guidelines they have in place regarding endorsements and testimonials. And even .com disclosures-- so what can be said online with digital advertising. And most recently what's happened is - I guess in April - the Federal Trade Commission sent letters to 90 celebrities, endorsers, and what they call influencers regarding their social media posts, that they weren't disclosing a material connection with a particular product or service. And so that material connection ultimately means they were getting paid. And it could be as simple as actual monetary payment, or even receiving free products or discounted products.

S2 05:18 So if an athlete tweets about a product, they have to disclose someplace that they're getting paid for that?

S3 05:24 That's correct. And so that means including a hashtag, anywhere from #ad, #spon, S-P-O-N short for sponsored, #ad. Or if they're getting something for free, #free, or some sort of disclosure to say that they weren't just giving this shoutout to the product or service because they were getting paid for it or not getting paid.

S2 05:53 Well, I don't know about the audience, but that's a little bit stunning to me because we are bombarded with these types of celebrity endorsements. We'll move away from the athletes a little bit and just say celebrities in general. And so you mentioned something a while-- can they be held legally liable if the product doesn't work?

S3 06:08 Yes. Well--

S2 06:09 Has that happened in the past, or--?

S3 06:11 It's hard to prove the liability for the athletes. Most of the time what you'll see is, in their contracts, there is an indemnification clause, which essentially is protecting the athlete against any lawsuits the company may be involved in regarding the product or service. And so even in my research, I found that it's hard to hold the athlete liable. But from a management perspective, and even from a marketing perspective, having

an athlete tie their name or their brand to a product that isn't necessarily trustworthy can have huge implications for the athlete for future endorsements and even current endorsements as well.

S2 06:52 Yeah. I guess if Michael Jordan had tied his shoe contract to some company that made really bad shoes that blew out all the time, we wouldn't be seeing Michael Jordan-- whatever generation they're at, at this point.

S3 07:03 That's correct.

S2 07:05 Are there any big cases like that that you can share with the audience that has kind of illustrated what you're talking about?

S3 07:12 Probably the one case is the Garvey case. It's FTC versus Garvey. And he was a-- if I remember this correctly, a former baseball player.

S2 07:23 You're talking about Steve Garvey?

S3 07:24 That's correct. And that case was probably in the early 2000s, and it's probably one of the only cases of its kind where the FTC has actually gone after an endorser for running a product. That case is monumental because of the fact they actually couldn't find-- they found that Garvey was not an endorser but a spokesperson. And so there are some distinct differences between the athlete endorser and the athlete spokesperson. Whereas the spokesperson, they're fed their lines regarding the product, and they're essentially reciting information that was given to them by the advertiser. The endorser essentially is sharing their opinions, and beliefs, and attitudes about a product. And so that also goes back to the FTC guidelines. If an endorser says that they believe certain things regarding a product, those claims have to be true in order for them to continue to promote that product or brand. If it's determined that the athlete no longer feels that way about the product or brand, then the advertiser can no longer use those commercials because it's no longer a true reflection of how the athlete feels.

S2 08:36 So when we see the commercials with Shaq with Icy Hot saying that he uses it because it makes his back feel better, that's an endorsement.

S3 08:44 Yes.

S2 08:45 As opposed to a spokesperson would be, "Hey, use this because science has said this works really well."

S3 08:51 Well, even if science says it works really well, they better have a number of studies in front of them that prove that science says it works really well. And that's where we get into some of the things about the supplements and that whole nutrition field because most of the times you're going to hear that there's scientific evidence to back up whatever those health and safety claims are regarding a product. And unfortunately, sometimes the studies are great studies, and unfortunately, sometimes they're not. So for example, Reebok got into trouble a few years ago with the EasyTone shoes. And they made specific claims regarding the product about how much it could tone or help enhance certain body parts. And when they went before the Federal Trade Commission, they were asked how many people were included in their scientific study. So just take a guess. How many people do you think they included in a scientific study to prove that a product was effective?

S2 09:54 Two.

S3 09:54 You're close. They had five people. Five people to advocate for the effects of these EasyTone shoes.

S2 10:02 You can see I'm cynical, but yeah [laughter].

S3 10:03 Yeah. And normally people would think that there are hundreds of people in this clinical test. And they only had five. Which is very concerning to me that there are studies out there that don't have a true sample of the consumer base or people who are going to use this product. And five people really isn't enough to say that it works. So they had to pay a-- I think it's a 125 million dollar settlement with the Federal Trade Commission.

S2 10:36 Just out of curiosity, what happens to that money? Does it just go into to the federal government coffers and--?

S3 10:41 So if you purchased a product that ends up being false, then the FTC puts out a notice, and say if you purchase between a set amount of time, you have X number of days or months to claim a refund. And so they hold that money in trust for consumers to get refunds.

S2 11:00 Oh, I like that. I'm going to start looking for that.

S3 11:02 Yes.

S2 11:03 To come back to something you said earlier, you said that, I think, the FTC has just sent a letter to what, 90--

S3 11:09 Yes.

S2 11:09 --celebrity endorsers? That I'm sure includes athletes.

S3 11:12 Yes.

S2 11:13 How can our listeners find that list?

S3 11:17 Recently a list was posted through-- and I forget which site I saw this on. But--

S2 11:25 I think probably ftc.gov or something like that.

S3 11:28 If you go to the Federal Trade Commission site you can find the press releases and notifications regarding a sample letter of what was sent to the endorsers, also a sample letter that was sent to marketers, basically letting both parties know that we're warning you. You need to make some changes. Probably the most interesting thing we're talking about celebrities and athletes. You and I as normal average consumers, we could also be considered influencers. So for example, let's say there's a product that we love. And they tell us that if you post a tweet or Facebook message about this product and how much you love it, we will give you a gift card for X amount of money. So if we post something about the product, we need to disclose that we received compensation. Or if we got it for free, to include that we got it for free, #free. But a lot of companies are moving to common consumers like you and I as influencers because they believe we're more authentic. And the concern with celebrities and athlete endorsers, the fact that they are getting paid, and so as consumers we're going to scrutinize the message because we believe that they're getting paid. But if they go with a normal influencer, most people aren't going to assume that we're getting paid to talk about a product, but that we genuinely do like the product.

S2 12:58 So can the FTC really police this? Because what you just said seems to be huge.

S3 13:04 Yes. And there have been past commissioners who have stated that this is a very cumbersome process for them, because there are so many influencers that it's hard to go after everyone. But I think the strategy is going to be if we target certain people, that there will be a trickle-down effect, and people will start to take notice and start

to disclose that they are getting paid, or they're receiving free products from these companies.

- S2 13:38 That would be interesting and important information for consumers to know, wouldn't it?
- S3 13:43 Yes.
- S2 13:44 So if you send me a tweet later saying that you endorse a certain brand of tennis shoes, I should be careful because you may be getting a free pair of tennis shoes, huh [laughter]?
- S3 13:53 That's correct. I have been known to get free tennis shoes [laughter].
- S2 13:58 Interesting. So how do you bring that into-- how do you do research on that?
- S3 14:05 And that's where I think the more consumer behavior side of what I'm looking at comes into place. So being able to ask consumers about the influence of particular advertising messages, where it may be that the message includes truthful information. But where it does become a concern is where the message includes deceptive information, or that there's false information - there is omitted information in the advertisement - and how that affects consumers. And so one of the areas of research I was looking at, or I'm currently looking at, are the types of responses that consumers can have to deceptive advertising and the influence it could have on them from a cognitive, affective, or behavioral perspective. And with that in mind, the research shows that these three areas are of particular influence with regards to advertising. And so as we start to look at what shapes a consumer's evaluations or attitudes regarding a product, if it's deceptive information, the FTC is concerned that they're making purchases based off of false information. And typically, if they had been given all of the information, they may not have purchased the product or service.
- S2 15:32 Kind of maybe a tangential question. So much now in sports you see sponsorships from big corporations. Let's say for example the stadium the Dallas Cowboys play in is sponsored by AT&T. Does the team have any responsibility for deceptive advertising that AT&T may do during the course of the game? I mean, does that make the team an endorser?
- S3 15:57 That's interesting. I never thought about it from that perspective.
- S2 16:00 And I think of teams that wear-- some of the European-- a lot of the European leagues in a variety of sports they have advertising on their jerseys. And America hasn't quite gotten there. The United States hasn't quite gotten there, but it seems like we're moving there in some situations. Does that make those people endorsers when they're running up and down the field with something on their jersey?
- S3 16:19 I don't believe the athletes have gotten to that point because they're not receiving a financial benefit from it other than their contracts with the team. And so it may not elevate to the level of FTC scrutiny, but contractually it is something to consider, especially in situations where we have the Olympics, and the team is sponsored by one brand, and the athlete is an endorser for another. And so the first time we saw this come up as a problem was with the Dream Team. And Michael Jordan was Nike, and the team was being sponsored by a non-Nike sponsor. And so there were concerns over how to deal with it. And I think for that particular Olympics, he ended up covering up the brand with basically some tape. But now there have been some leeway to offer athletes the opportunity to be able to do some of those things that may be competing.

S2 17:20 Oh, that's right. That came up recently in the NBA with different types of headphones that the guys wanted to wear. Interesting. And I think there was also a precedent, wasn't it, with the US Postal Service when they sponsored a certain cycling team that won several Tour de France's, where they found out that that was-- that there had been some massive ergogenic aids being used. And then the Postal Service went back after that team for--

S3 17:43 Yes. For money that was paid to those particular athletes.

S2 17:49 Interesting stuff.

S3 17:50 Yeah. I did a presentation about that for the Sport and Recreation Law Association a few years ago. I don't think I'll tell you the title [laughter].

S2 17:59 Sure, you can share the title with us.

S3 18:02 It was called Tour de Fraud [laughter].

S2 18:04 Oh, there you go. Maybe someone can find it out. Maybe it was videoed and it's up on YouTube someplace.

S3 18:09 I hope not [laughter].

S2 18:12 Well, this has been a fascinating conversation. And I want to thank you for your time with us today. As we always do, we give our speakers a chance at the end to give our audience the take-home message. If they remember nothing else from our discussion today - and I think we'll have more discussions about this stuff in the future because this is all around us - what would you want people to remember?

S3 18:34 I think just to be informed consumers about social media, about advertisements, any information we're presented with every day, to really look at it from a critical lens because we don't know-- well, we probably know the intent of the advertiser. They're enticing us to buy something. But without us doing our own research regarding our products-- and the Internet's amazing. We can research any and every type of product that we're interested in. But I think really looking at the types of products, paying attention to labels. And there's some research related to product labels and whether or not consumers actually read labels. And so I think for consumers the biggest takeaway is just be informed consumers about the products and services we choose to buy.

S2 19:28 Fabulous. Thank you for being with us today, Natasha.

S3 19:31 Thank you.

S2 19:32 I think you'll be with us in the future again. And I want to thank all of you for taking the time to download and listen this week. As regular listeners know, this is the time of the podcast when we have our podcast question of the week. And here with our podcast question of the week is our producer Carlos Guevara.

S4 19:52 How many people were used in the Reebok EasyTone study to prove that the product was effective?

S2 19:57 Great podcast question, Carlos. Be the first one to email us the answer to that podcast question, and you'll win one of our nifty podcast T-shirts. You can send that answer to huffines@tamu.edu. That's huffines@tamu.edu. Again, thank you all for joining us this week. Dr. Brison, thank you for being with us.

S3 20:19 Thank you.

S2 20:20 We hope that all of you join us next week when we have another interesting person

from the world of sports medicine and human performance. And until then, we hope that you stay active and healthy.

[music]

S1 20:31

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