

NBA Backs Free Speech But Likely To Tiptoe With China

By **Zachary Zagger**

Law360 (October 10, 2019, 10:16 PM EDT) -- A tweet by the Houston Rockets general manager in support of pro-democracy protesters in Hong Kong put NBA Commissioner Adam Silver in a lose-lose situation in trying to mend the league's lucrative relationship with China and still defend freedom of expression, a situation experts say will force NBA players and executives to tread carefully in commenting on China.

The Oct. 4 tweet by Houston Rockets GM Daryl Morey, who shared a picture with text saying, "Fight for freedom. Stand with Hong Kong," has caused a firestorm for the National Basketball Association and jeopardized its business in China. The Hong Kong protests are an extremely sensitive political issue for the Chinese communist regime.

A preseason game between the Los Angeles Lakers and the Brooklyn Nets in Shanghai proceeded as scheduled Thursday, won by the Nets. But according to several reports, that contest and an upcoming rematch have been pulled from Chinese state television, and Chinese sponsors are pulling out despite the league's decadeslong presence in the country.

The NBA is one of the most popular sports leagues in China, and the country has proven to be a lucrative and growing market for the league. While experts say the incident is likely to blow over, that does not seem to be happening fast after Silver publicly said the NBA will not apologize for Morey's comment or punish him.

"This is a really, really big business, and it is a really big issue for the NBA," said attorney Randy M. Grossman, a certified baseball agent who has taken part in Major League Baseball goodwill trips to China. "We are talking about a significant amount of money. We know that whether it is the NBA or the NFL or Major League Baseball, everybody is trying to expand and build their brand globally."

The NBA has been the most successful North American sports league to make inroads in China, hosting hundreds of events and selling merchandise in the country. In July, the NBA said that last season, 490 million fans watched NBA programming on the digital platforms of Chinese media company Tencent Holdings Ltd.

In another wrinkle, the tweet controversy happens to involve the Rockets, one of the most popular teams in China. Chinese basketball star Yao Ming played nine seasons in Houston after being selected first overall in the 2002 NBA draft. Yao is currently chairman of the Chinese Basketball Association.

Morey's comments struck a particular nerve in Beijing. Hong Kong, a former British colony, is to be governed by a hybrid regime until at least 2047 as part of the agreement that handed control over the city from the United Kingdom to China in 1997. A recently proposed bill in Hong Kong that would allow for the extradition of Hong Kong citizens to mainland China set off the protests, which have expanded to include demands for reform.

"The Chinese government, by circling the wagons and taking drastic responsive measures ostensibly casting doubt on the future of the NBA in China, nevertheless wanted to make a strong, unequivocal statement to Adam Silver, the league in general and tangentially other companies doing business in China that the price for voicing support of Hong Kong will be denial of access to the Chinese marketplace itself and all the corporate riches that may inure," said sports and entertainment attorney Glen A. Rothstein of Rothstein Law APC.

At the same time, the NBA is under pressure from U.S. fans, the general public and some politicians not to back down to China. The league was even called out by the makers of the satirical cartoon "South Park," which was recently banned in China over an episode that criticized the government.

"Adam Silver was kind of put in a situation where he had a Hobbesian choice," Rothstein said. "I think Silver really had to make a mental calculus whether to alienate American fans by intruding upon an executive's right to exercise freedom of speech versus alienating foreign fans and governments by trying to stifle or sugarcoat what Morey said."

After the NBA issued a statement Sunday calling Morey's comments "regrettable," according to multiple reports, Silver clarified that the league would not apologize but at the same time said it had to be sensitive that such comments could have consequences. It is a narrow tightrope to walk, experts said.

"We are not apologizing for Daryl exercising his freedom of expression," Silver said during a press conference this week in Japan, where other preseason games are taking place. "I regret, again having communicated with many friends in China, that so many people are upset, including millions and millions of our fans."

"At the end of the day, we come with basketball as an opportunity to sell dreams, to sell hopes, to increase focus on physical fitness, mental health, and to the extent that we are causing disruption in people's lives and we are causing disharmony, that is something I regret," Silver said.

But on Wednesday, eight federal lawmakers — including former diplomat Rep. Tom Malinowski, D-N.J., and former Republican presidential candidate Sen. Ted Cruz of Texas — urged the NBA to **suspend operations in China** in a signed letter. The group criticized the league and the Houston Rockets for not standing up for free speech because of their economic interests in China.

Experts said that despite Silver's statements in defense of the freedom of expression, the controversy is likely to chill speech that could further inflame tensions with China.

"I think there is going to be, I wouldn't call it intimidation, but a kind of self-imposed constraint on future expression of that sort," said Willamette University College of Law professor James A.R. Nafziger, who has written on Chinese sports law. "There has been so much attention given to the Hong Kong protests it is understandable that anyone in an

important and sensitive position might get caught up in it, but now we know there are going to be at least some immediate consequences.

"To that extent, I think it will have some effect of constraining freedom of expression that might otherwise occur."

China's blustery response is nothing new, and it's a challenge U.S. businesses must balance in working in the country. Last year, the government threatened to shut down the website of hotel company Marriott International Inc. after a customer survey listed Tibet, Taiwan, Hong Kong and Macao as separate countries.

Marriott was forced to issue a public apology and only months later, reportedly fired a low-level social media manager for using an official Twitter account to "like" a post from a Tibetan separatist group. The sovereignty of Tibet is also a sensitive issue for the Chinese government.

On Thursday, The Wall Street Journal reported that Apple and Google had removed apps associated with the Hong Kong protesters under pressure from Beijing.

The basketball situation comes amid rising tensions between the U.S. and China, particularly a growing trade war commenced by President Donald Trump that has led to both sides exchanging waves of steep tariffs for over a year.

"I think the relationship between our country and theirs is very fragile right now with the current administration and these tariffs," Grossman said. "Maybe if things were different and there wasn't such a fragile relationship between the two countries, the Chinese government might not have come on so strongly... It is another way for them to put pressure on our government. I think there is a reasonable inference that there is some relationship there."

Still, experts said they expect tensions to ease eventually as the NBA's presence in China is just too important for both sides.

"China needs the NBA just as much as the NBA needs China," Nafziger said. "Chinese citizens turn on to NBA games and there is particular enthusiasm, at least until this last weekend, for the Rockets, given Yao Ming's stature in the country. The NBA means a lot to them."

--Editing by Jill Coffey and Emily Kokoll.