

**National Sports Law Negotiation Competition 2011**

**Judge's Information Sheet**

**Round One**

**CONFIDENTIAL SUMMARY FOR JUDGES**

This negotiation is between Clayton Kershaw, a young Starting Pitcher for the Los Angeles Dodgers (LA) and FRS, a nutritional drink company similar to Gatorade and PowerAde. The parties are discussing a sponsorship deal that could make Kershaw one of the faces of FRS for the next several years.

FRS began in 1997 and has recently gained notoriety and high sales volume because of sponsorship deals with cyclist Lance Armstrong and football player Tim Tebow. FRS is currently seeking to find a young talented athlete to become the center of the advertising campaign surrounding the release of a new flavor of their energy drink called "Red Rush" in August of 2013. FRS believes that Kershaw would be an ideal spokesperson because he is a rising star. He will appeal to a younger demographic, and gives them prime access to the LA media market. It is also anticipated that his free agency after the 2013 season will result in potentially enormous free media when the bidding war starts for his services.

FRS has a limited endorsement budget. It is willing to pay Kershaw 2 million per year for 3 years, but no additional cash. Instead, FRS is willing to give Kershaw up to 2% ownership of the company. Vitamin Water, another company in this market made a similar deal with Mets third baseman David Wright giving him .5% of that company and its value soared to \$4.1 billion, earning Wright \$20 million for his share. FRS is primarily interested in Kershaw because of his prominence in the LA media market and wishes to focus its advertising in that market, although it is willing to advertise with Kershaw in major media markets where he is well known. If FRS cannot come to satisfactory terms with Kershaw, they have an alternative face for Red Rush – Felix Hernandez. A deal with Hernandez would be less expensive, but would not have as much upside for FRS because Hernandez plays in Seattle a smaller media market and has less media appeal.

Kershaw was the Opening Day starter for the Dodgers in 2011. He has yet to capitalize on his baseball fame and is looking to build his profile before he reaches free agency following the 2013 season. He wants to start building his media profile as soon as possible. He wants advertising that features his name, face, and/or videos of him on

the field and in national markets. He is also concerned with not being tied to a product that may be found to be unhealthy or illegal in the future. He also needs assurances that the product is in sufficient outlets nationally that the publicity he is seeking will have more impact and will increase the dollars he can make under a percentage of ownership or sales arrangement.

Kershaw also has another option. Gatorade has offered him \$2.5 million per year for three years to be a baseball endorser. Kershaw wants at least the equivalent from FRS unless he receives other forms of compensation that carries the possibility of a big payoff.

### **WHAT TO LOOK FOR GENERALLY IN EVALUATING NEGOTIATORS:**

Both parties have common interests (a lucrative, high publicity endorsement contract between rising stars in the baseball and energy drink markets, which promotes both), and possibly competing ones (when the publicity starts, where it is focused and the amount and nature of the compensation necessary to facilitate an agreement?). It should be possible to work out a deal that satisfies both sides' interests, provided both sides are flexible and creative in meeting the other sides' needs.

### **WHAT TO LOOK FOR IN SPECIFIC EVALUATION CRITERIA:**

#### **Preparation:**

1. How well did each team analyze the numbers and have an idea of what they needed to do to get to reach a deal? This is easier for FRS because they have specific parameters. Kershaw needs to figure out what kind of long-range ownership arrangement works best for him.
2. The instructions give both teams flexibility in coming to a bottom line agreement. How well did each team develop a strategy for conveying this flexibility without yielding too much to the other side (E.g., is the agreement fair to both sides and capable of building a foundation for a strong working relationship between the parties in the future).
3. Did they seem to understand from the outset what leverage points they have: Kershaw side has it easy in that they have the Gatorade offer in hand and can pull it out any time FRS fails to be willing to yield to reasonable demands. FRS has less advantage. They have the Felix Hernandez alternative; but they do not have any hard numbers to use with Kershaw. Ultimately, the lure of their deal is the ownership share and the lure of the big payday like Vitamin Water. Did FRS plan their strategy around this?
4. Did the teams plan for roles for each negotiator that were designed to advance their client's interests and did they work effectively as a team?

#### **At the table:**

1. It is critical that, at the table, each side maintains a positive relationship with the other side. To reach an agreement, both sides need to listen carefully to the other side's needs and shape the agreement to meet them. The capacity of the negotiators to listen carefully is critical to their success and should be evaluated

- accordingly. This is especially true of FRS, which needs to please Kershaw in order to get him away from the on the surface more lucrative Gatorade deal.
2. Negotiators should strive to obtain an optimal deal for their client without jeopardizing the deal. Thus, they need to convey some idea of what their needs are to other side. Hiding the ball completely is likely to be counterproductive.
  3. They should use good communication skills, including reflective listening, and demonstrate good gate-keeping – setting agendas, recording agreements, organizing their time.
  4. Do the teams demonstrate that they can apply leverage without creating hostility?
  5. How do the teams handle the fact that there can be no final deal because FRS representatives have no authority to agree to put the product on more shelves? This item should not scuttle the whole negotiation, but the FRS representatives may not promise what they have no authority to give.
  6. Does the team demonstrate effective teamwork?

### **Overall Representation of Client's Interest:**

#### **Results:**

1. If a team agreed to a deal outside the parameters of their authority, they should not be given a satisfactory score on this criterion no matter how well they did in planning or at the table. Thus, if FRS promises to pay more than 6 million in cash, it cannot get more than a “2” for overall representation. Alternatively, if Kershaw agrees to compensation worth less than \$2.5M per year or its equivalent (this latter term leaves a lot of wiggle room to argue that Kershaw’s representatives did get the equivalent).
2. Presumably, most negotiations will fall within the deal making range or not yet reach an agreement. Evaluating these performances, however, will be more subtle because relationship and other foundational issues (i.e., the setting of a strong foundation for the future working relationship between the parties).
  - a. If they did reach a deal, where in the settlement range was it?
  - b. Did the each side negotiate effectively within the parameters they have been given? Kershaw has significant leverage with the Gatorade offer in hand. They should, therefore, get most of what they want in a substantive sense. On the other hand, FRS has less leverage and getting a deal at the top of its parameters is a solid result for them.
  - c. Did they come up with creative solutions that overcame differences? At points when the negotiations became tense or were about to breakdown, were they able to come up with creative or integrative solutions? Were they able to use humor or other stress relieving methods effectively?
  - d. Even if they did not reach an agreement on all issues, did they make important progress and establish a relationship that will make finalizing the deal likely at another session? (A team can get excellent score for overall representation without reaching a full deal if they met their client’s interests).
  - e. Did they negotiate in a manner that created potential ill feelings that might adversely impact the future relationship of the parties?

#### **Other Factors:**

1. How well did each team understand and articulate their client’s interests?
2. How well did each team react to situations in a manner consistent with their client’s present and future interests?

**ISSUES AND INSTRUCTIONS FOR EACH SIDE:**

<b><u>ISSUE</u></b>	<b><u>FRS</u></b>	<b><u>CLAYTON KERSHAW</u></b>
<i>Starting Date</i>	<ol style="list-style-type: none"> <li>1. Red Rush Product launch August 2013</li> <li>2. February 2013: Feature contract in TV advertising &amp; internet advertisements</li> <li>3. Open to endorsements of other FRS products earlier</li> <li>4. Possible Super Bowl ad featuring Kershaw in February 2012</li> </ol>	<ol style="list-style-type: none"> <li>1. Promptly: Wants exposure to add to his value as a free agent after 2013 season</li> </ol>
<i>Compensation</i>	<ol style="list-style-type: none"> <li>1. Up to \$6 million total for three (3) years (\$2 million per year)</li> <li>2. Up to 2% of the company if long-term</li> </ol>	<ol style="list-style-type: none"> <li>1. \$2.5 million year or equivalent</li> </ol>
<i>Length of the Contract</i>	<ol style="list-style-type: none"> <li>1. Long-term deal of more than five (5) years</li> </ol>	<ol style="list-style-type: none"> <li>1. Three (3) years but will to agree to longer contract if big pay day</li> </ol>
<i>Advertising Locations</i>	<ol style="list-style-type: none"> <li>1. West Coast, but open to other locations that are exposed to the Los Angeles Dodgers name (i.e., major media markets)</li> </ol>	<ol style="list-style-type: none"> <li>1. National recognition</li> <li>2. Face, name or video of him on field must be featured</li> <li>3. Assurance that ads will reach markets outside of the West Coast</li> </ol>
<i>Opt out provisions</i>	<ol style="list-style-type: none"> <li>1. Willing to discuss in exchange for longer term or less money contract</li> </ol>	<ol style="list-style-type: none"> <li>1. Does not want to be tied to product later found to be unhealthy or illegal</li> </ol>
<i>Product Availability</i>	<ol style="list-style-type: none"> <li>1. Has plans to increase Product distribution</li> </ol>	<ol style="list-style-type: none"> <li>1. Needs assurances Product will be more available in stores</li> </ol>