

2016 NATIONAL SPORTS LAW
NEGOTIATION COMPETITION

FINAL ROUND

“Sinking the Putt”

GENERAL FACTS FOR BOTH TEAMS

Callaway Golf Company (“Callaway Golf,” “Callaway,” or “Company”) is an American global sporting goods Company that markets and sells its products in more than 70 countries worldwide. Its product lines include golf equipment, golf accessories, and golf-lifestyle related products. Callaway is also the world’s largest maker of golf clubs. Callaway Golf is a company whose passion is to deliver the best performing products the game has to offer. The Company passionately pursues advanced, innovative technologies that prove Callaway Golf has kept the vision of Company founder Ely Callaway, and delivers demonstrably superior yet pleasingly different products and services.

Just as Callaway Golf has continued that vision with its products, the Company also has that same passion for the golfers it chooses to endorse. Callaway Golf has endorsement deals with golfers ranging from Professional Golf Association (“PGA”) and Ladies Professional Golf Association (“LPGA”) Tour players Phil Mickelson and Kelly Kraft to amateur golfers who are getting ready to become professional players. No matter what level the golfer, Callaway Golf takes tremendous pride in its athletes and looks only for the best of the best to endorse.

Over the last few years, it has become more common for major companies like Callaway Golf and TaylorMade to endorse younger players who still have amateur status, but who are getting ready to turn professional. However, these types of endorsements can be risky for golf companies because young golfers are still developing their skills and growing into their talent, and are unproven when it comes to their marketability, popularity, and risk off the course.

Additionally, being a top high school golfer does not always mean that the young athlete has the talent to be successful on the PGA or LPGA Tour. Even though endorsement deals with

young golfers can be a risky investment for golf companies, endorsement deals can also prove to be very beneficial for golf companies. Successful endorsement partnerships benefit both parties involved. Callaway is looking to continue its successful endorsements by adding a new golfer to its stable of top-tier golf talent.

Callaway Golf currently has endorsement deals with more than forty professional golfers. The Callaway Golf Team is known as the “Callaway XR Long Drive Team.” The Company’s CEO has recently expressed interest in looking for another young golfer to join the team. The Company is looking to endorse a young player who still has amateur status and is either high school or early college age. Callaway is looking to endorse a golfer who shows proper etiquette on the course, acts responsibly in his or her personal life off the course, and does not act in a manner that would bring bad publicity to Callaway Golf.

According to the United States Golf Association (“USGA”), an amateur golfer whether he/she plays competitively or recreationally, is one who plays golf for the challenge it presents, not as a profession and not for financial gain. An amateur golfer is allowed to enter into an endorsement deal as long as the golfer is 18 years of age, the contract agreement is solely in relation to the golfer’s future as a professional golfer and does not stipulate playing in certain amateur or professional events as an amateur golfer, and except as otherwise provided in the USGA Rules, the amateur golfer does not obtain payment, compensation, or any financial gain, directly or indirectly, while still an amateur golfer.

A golfer is allowed to remain an amateur and receive a grant or scholarship from an educational institution as long as they comply with the regulations of the National Collegiate Athletic Association (“NCAA”) in the United States, or similar organizations governing athletes at educational institutions.

The NCAA and the USGA have similar rules for amateur players, but there are some differences when it comes to amateur players being able to have representation in the form of agents as well as being sponsored for their athletic prowess. Under the USGA, an amateur player can enter into a contract and/or agreement with an agent provided that the golfer is at least 18 years of age, the contract or agreement is solely in relation to the golfer’s future as a professional, and does not stipulate playing in certain amateur or professional events as an amateur golfer.

Rule 6-2 of the USGA provides the kind of permitted contract and/or agreement would be, for example, one where the golfer has a professional agent for the purpose of getting advice on turning professional, including any financial arrangements, provided no financial benefit is obtained by the amateur golfer while still an amateur, and he/she does not infringe the rules in any other way. Also, an amateur golfer is not allowed to have his/her name or likeness used to promote or sell anything related to goods or services.

Under the NCAA rules, a student-athlete may not sign a contract with a professional agent, sponsor, or other third party to represent his/her interests in his/her athletic pursuit for commercial gain. Some educational institutions have advisors who work with student-athletes to provide them guidance on their prospects for a professional career. The NCAA does allow a student-athlete to receive advice from a professional agent provided the student-athlete and/or his/her family members are not receiving financial benefits from the relationship, the agent is not representing or promoting the student-athlete, and the student-athlete pays the industry rate for the service provided. Attorneys advising clients in the legal context is also allowable as a constitutional right.

One of the amateur golfers that Callaway has considered endorsing is Bryson Lee (“Bryson”). Bryson is a seventeen year-old amateur golf phenom. He is one of golf’s up and coming stars, and he is expected to have a bright future as a professional player.

Bryson will turn 18 years-old next month (October 1, 2016) and he is in his senior year of high school at Clovis East High School in Clovis, California. During this year’s golf season, Bryson won the California State Junior Championship. Bryson has been determining whether he wants to turn professional within the next year or play college golf. He has been offered a full scholarship to play golf at Southern Methodist University (“SMU”), but due to recent issues regarding the wrongdoings of SMU’s former coach Josh Gregory, Bryson is exploring all of his options before deciding on playing golf as an amateur in college.

Callaway Golf has recently met with Bryson, his family, and his attorney(s), to discuss a possible endorsement deal. Callaway Golf is interested in pursuing an endorsement deal with Bryson because the Company feels that he is going to be a “game changer” for golf over the next few years, but there are some concerns.

Callaway Golf is aware Bryson is known for having an eccentric playing style and that he is known to think “outside of the box.” While Callaway Golf feels these are great qualities for a breakout star to possess, it also feels these qualities may have some negative effects on how he carries himself personally, which may in turn, affect the Company. For example, at a recent tournament, Bryson had his ball go into the water, and concerned with getting his shirt dirty and his shoes wet, he took them both off and hit the ball out of the water shirtless and shoeless.

Although this may have seemed like just another one of Bryson’s outside of the box maneuvers, there was some backlash from viewers for the way he conducted himself being that golf is a traditional game. Callaway Golf believes Bryson is an up and coming star, but the Company has some concerns about his behavior and maturity. Callaway Golf takes tremendous pride in the type of player that it chooses to endorse and wants to continue to have the good reputation it has earned in the sport with its loyal and longstanding fans.

Callaway Golf is looking to offer an endorsement deal to Bryson, and it is looking forward to having its counsel meet with Bryson’s attorneys to discuss the specifics of the deal. Bryson is currently looking for endorsement deals that will help him grow his popularity, build his reputation in the sport, and provide financial support for him when he turns professional.

Both parties have agreed to meet with each other again to discuss the endorsement deal further and hopefully come to a mutual agreement.

CONFIDENTIAL FACTS FOR CALLAWAY GOLF COMPANY

As in-house counsel for Callaway Golf Company, it is your job to keep with the mission and vision of the Company to make sure that you sign endorsement deals with golfers who will reflect well on the Company. The Company's CEO and Board told the Vice President of Sports Marketing that the Company should start signing younger golfers. Bryson Lee is one of, if not, the next best thing in golf. He has proven himself to be one of the sport's rising stars and would be a real coup for the Company if it can sign him as he reaches the potential that golf insiders believe he has now.

Callaway Golf takes a lot of pride and is very selective in the golfers it chooses to endorse. It wants to endorse golfers who are going to benefit the Company as much as the Company is going to benefit the golfer. Callaway Golf expects its golfers to conduct themselves in a professional manner when competing, golfing at events, making personal appearances for the Company, and in their personal lives.

The rising issues around the sports world over the last couple of decades have prompted many companies to be a lot stricter in what they include in their morality clauses. For many reasons, these clauses are extremely important and boilerplate, but the Company's first concern is making sure it does not receive any bad press from its athletes by signing well-behaved PGA Tour players. In recent years, there have been many companies that have received bad press for endorsing an athlete who gets in trouble with the law or who is known for having a "playboy" personality. Companies consistently feel pressure from the public to terminate its endorsement relationships with athletes that engage in immoral, illegal, and even questionable behavior.

The Company is aware that Bryson is known for his eccentric character and "outside the box" thinking when it comes to golf. This is a matter of concern for the Company because other sports-related and golf companies have been burned in the past after signing younger golfers. While the Company feels Bryson's "outside of the box" approach on the course is going to take him a long way in the game and bring in new, younger viewers, it wants to make sure he maintains his professionalism on and off the course. Callaway understands Bryson is young and he will inevitably make some mistakes on social media, but you do not want to take a public

relations hit for unacceptable behavior that other companies have had when they faced trouble with their endorsed golfers, including Tiger Woods, John Daly, and Fuzzy Zoeller.

You have heard some conflicting rumors from reliable sources that Bryson may or may not have an offer from one of your direct competitors, TaylorMade. You have heard that TaylorMade has made an offer to Bryson that is for five years and \$7 million, but you are not aware of the other details of the offer at this time. The other rumor you heard is that TaylorMade has completely pulled out of the negotiations for “unknown reasons.” You have also heard some rumors about Bryson having offers from non-golf equipment companies, but have not heard any specifics about those either.

While TaylorMade is a strong competitor, you believe you have the upper hand having Bryson and his team in the room with you today based on the Company brand and prior discussions with Bryson. You know Bryson is not currently using Callaway Clubs and that he is attached to his putter specifically, which is a TaylorMade brand club. You are aware he has a Twitter account with a nice following for the putter and you see this as a possible additional marketing opportunity if you can convince Bryson to use a Callaway putter.

The CEO has authorized you to spend up to \$12.5 million total to get this deal done. If you need to exceed this amount, then you must go back to the CEO and the Board before agreeing to any additional money. This option is available if it is absolutely necessary to get the deal done and there is a legitimate reason; otherwise, attempt to secure a deal with Bryson within the allotted \$12.5 million. Callaway’s main interest in this negotiation is to lock up Bryson for a long period of time, covering his first several seasons on the PGA Tour. If Bryson becomes as big of a hit as some expect, Callaway will reap significant media exposure, and the Company calculates that if it signs Bryson for the full \$12.5 million over seven years and Bryson wins one major tournament during that period, and two tournaments per year, the Company will receive more than \$70 million in media exposure.

Callaway strives to have three to five times return on its investment with endorsed athletes, and this negotiation is no exception. However, projections are only projections, so if Bryson does not reach his potential due to development, performance, or off the course issues, Callaway understands that it will not generate much exposure. The Company does not believe

Bryson will have trouble keeping the cameras on him because of his personality and risk-taking style of play, but the Company must remain cautious since Bryson is so young.

The Company usually requires its endorsed golfers to exclusively use fourteen Company clubs, play with a Company golf ball, and wear Company apparel from the beginning of the contract. The CEO would be willing to allow a golfer to transition into certain products over time, outside of a driver and ball, if it is going to help make the deal happen. The Company has informed you that they are aware of the Twitter account that is associated with his lucky putter.

Bryson refers to his putter as his “Lucky Lady.” Callaway is concerned that there will be some backlash from Bryson’s use of the name “Lucky Lady,” especially from females within the sport, fan base, general public, and LPGA officials. Callaway would like Bryson to change the name of his putter and delete the Twitter account. While Callaway is willing to negotiate with Bryson in regards to the name of his putter, they are not willing to allow the Twitter account to remain active as they see Bryson transition to a more traditional athlete social media platform/account. Callaway would like the name of the putter to be something that both Bryson and the Company can agree on, which can be agreed on at a later date before Bryson makes his first appearance on the course as a Callaway golfer.

Callaway wants their golfers to make as many public appearances as possible during the season, usually 6-10 per season. These appearances include filming advertisements, mingling with customers, engaging in social media, and making an effort to promote the brand during tournaments and in media interviews. Often, these appearances occur the week leading up to a tournament as well as during Callaway corporate events.

Callaway corporate events are typically invite-only and take place at premier golf resorts around the world. Attendees are usually corporate officers, collegiate athletic directors, golf course owners, sporting goods store owners, and other influential people including media members. During these appearances, its endorsed golfers are grouped, typically two-four endorsed athletes, and they will mingle with the guests, give golf clinics, do sit down interviews during lunch with the media, and otherwise ingratiate themselves into the group to make an emotional connection for the attendees and the Company.

The Company would like a contract that is for four-six years, but would be willing to do a contract for up to eight years. Callaway is willing to take a risk for a four-six year deal because

of the inarguable talent Bryson possesses. Callaway is hoping Bryson can catch fire and be the next big star on the PGA Tour. Callaway knows most players who have sustained success on the PGA Tour begin to hit their stride and win tournaments within the first seven years of their career. Callaway expects Bryson to hit his stride quickly, but it also wants the ability to get out of a deal by having a shorter-term length if things do not pan out as expected with him.

In this light, Callaway wants the contract to include a morality clause that is standard within the sport. This would allow Callaway to release Bryson from his contract, without liability, if he were to engage in behavior that the Company finds to be harmful to the reputation of the Company on or off the golf course.

If the contract is for more than four years, Callaway wants to also include an opt-out provision allowing the Company to opt-out of the endorsement deal if Bryson does not perform as well as he is reasonably expected to on the PGA Tour according to his rankings and statistics. Callaway would like the option to opt-out after the first two years of the contract, but is willing to increase the number of years, but not more than half the contract length.

CONFIDENTIAL FACTS FOR BRYSON LEE

Bryson Lee (“Bryson”) hired you as counsel a few months ago because he was aware of your experience working with professional athletes and negotiating endorsement deals, golfers in particular. Bryson is impressed that you worked with some of the current top ranked players like Kelly Kraft and helped them transition from amateur status to professional, as well as negotiate their endorsement contracts. Bryson hired you specifically because you have worked with Callaway Golf a number of times and that your clients have had successful endorsement deals with the Company. In fact, you informed Bryson that all of your athletes who currently have endorsement deals with Callaway Golf are satisfied with their relationship with the Company.

As counsel for Bryson, you want to make sure to get him the best deal with Callaway Golf as he can possibly get. Since you have worked with Callaway Golf on more than twenty endorsement deals, you know the Company’s contracts inside and out. This means you are aware that these contracts leave very little room to negotiate terms, as many are standardized. You also know Callaway Golf is typically reasonable and accommodating when it comes to working with young golfers.

After meeting with Bryson and his family, you were informed that along with hiring you as counsel, he considered signing with an agency in anticipation of his busy upcoming year before transitioning from amateur to professional status. After learning of Bryson’s potential signing with an agency, you sat down with Bryson and his potential agent (currently acting as an ‘advisor’) to discuss Bryson’s potential contract with the agent. You have informed Bryson that he can only sign with the agency if he chooses to not accept the golf scholarship from Southern Methodist University (SMU), but he could still receive advice from the agent as an advisor if he does not receive any financial benefits from the relationship and pays the industry rate for the service the advisor provides.

Bryson has informed you that in addition to today’s meeting, he has plans to have follow-up meetings with TaylorMade and Nike within the next few weeks to discuss endorsement varying exclusivity deals for golf equipment, golf apparel, golf accessories, and golf-related products. Companies such as Body Armor, Gatorade, Ray-Ban, United Airlines, and PowerBar have also approached Bryson to gage his interest in signing endorsement deals should he decide

to turn professional. Bryson has expressed that he would like to sign a number of endorsement deals that he thinks are good fits for him, but not so many that it takes away from his family and his performance/preparation as a golfer on the course.

Bryson has informed you that while his parents are urging him to attend college at SMU after he graduates from high school; he is seriously considering not accepting the scholarship so he can focus on playing in professional tournaments in anticipation of turning professional in the next year. One of the main reasons Bryson is considering not attending SMU is the recent team playoff ban for next year, which occurred because former Coach Josh Gregory committed recruiting and ethical violations. If Bryson elects to not attend SMU, then he plans to choose the events on the sponsor exemption list to play before being able to become a full member of the PGA Tour.

You have informed Bryson and he understands that as an amateur golfer he is allowed to play in seven events on sponsor exemptions as a non-member of the PGA Tour. If Bryson elects to not accept the scholarship to SMU, he plans to play in the maximum number of events.

Bryson has been praised by many of the games greats, commentators, sports writers, and spectators for his approach to the game, but he also has had several of the same people who view his approach as disrespectful and not the way the game should be played. Not quite *Happy Gilmore*, but different than your traditional golfer. Bryson sees this as a positive change in the game. Bryson views himself as a Rickie Fowler-type of golfer, for example, in dress, personality, and playing style.

Some golf insiders feel Bryson is disrespectful and believe that he does not play the game in a respectable manner because of the t-shirt incident and he has been known to party with his older college friends. However, in preliminary discussions, Callaway Golf has not expressed any concern over Bryson's image or his behavior. Callaway may actually think Bryson's personality is a plus for its marketing efforts.

While Callaway Golf is at the top of Bryson's list as far as companies to endorse, he has been approached by some additional companies that play into his "outside of the box" thinking and style of play. Most notably, Red Bull and Mountain Dew Kickstart have approached Bryson.

Red Bull stated that they want to sign a new and upcoming golf star with some edge. Red Bull is mostly known for having endorsement deals with the more extreme sports, such as BMX

and surfing. Red Bull has decided to branch out with its endorsements, but wants to make sure it keeps with the image of having athletes with an edge. Bryson has stated he would like to sign with Red Bull and Callaway, but you have informed him that Callaway may be concerned about his image and exclusivity as a Red Bull athlete as well as a Callaway athlete.

Recently, a colleague informed you of rumors floating around social media, especially Snapchat and Instagram, that Bryson was seen at a college party drinking excessively and possibly smoking marijuana. Bryson has never had a reputation of a person who would be so reckless, but you are afraid that if Callaway hears about these rumors it might affect them wanting to sign the endorsement deal.

This type of rumor has a way of quickly spreading in the media and throughout sports, which is a cause of concern for you. Bryson has informed you these allegations are just rumors and there is nothing behind them. While this is good for Bryson, the rumor may still have an impact on the prospective Callaway Golf endorsement deal, other possible endorsement deals, along with damage to Bryson's public image and brand.

You are aware that one of the main components of Callaway's endorsement deals is that the golfer must use fourteen Company clubs, use Company equipment, and wear only Company apparel at golfing competitions and other golf related events. The contracts also always include a number of personal appearances to be made by the golfer over the course of each year of the contract.

While Bryson seems to be a very outgoing individual, he does not like press interviews. He has told you that he does not have an issue with showing up at golf related events, but he does not want to be the main athlete at the event. He is especially worried about interviews since the rumors of him out partying with his college friends have started to reach people inside golf. Bryson will do personal appearances at golf-related events, but he does not want to do public interviews for the next six months so he can focus on his game and transition into professional golf.

Bryson currently has an endorsement offer from TaylorMade. The offer is for a contract length of five years and \$5 million dollars. TaylorMade is requesting 10-12 personal appearances a year, use of TaylorMade equipment, apparel, accessories, and golf lifestyle related products only. TaylorMade has also requested a standard morality clause that includes a right to terminate

the contract by the Company if Bryson is to act in any manner that could cause harm to the Company and its public image and brand.

Bryson has expressed to you that he would like an endorsement deal with Callaway Golf that is for 6-10 years in length, with an average annual value of at least \$1.50 million, plus bonuses for winning competitions. He is willing to do personal appearances on behalf of the Company, but does not want to do more than eight (8) in a year. Since he plans on signing other endorsement deals, he wants to make sure he will have time in his schedule to promote the other products he endorses in addition to Callaway.

If Callaway Golf offers a contract for seven or more years, then Bryson is willing to take as low as \$1.25 million a year, plus bonuses for winning competitions. If Callaway Golf wants a contract for five years or less, then Bryson will not take less than \$1.5 million a year, plus bonuses for winning competitions. He is not willing to do more than eight (8) personal appearances a year, and would like to only do five (5) personal appearances a year if the contract is less than five years. Bryson does not want Callaway to include an opt-out provision; however, he is willing to negotiate an opt-out provision if the contract is for more than five years. The opt-out provision must include that Callaway may not opt-out before three years.

He is willing to sign a morality clause that is standard within the sport, but really wants you to push for a more restrictive clause in his favor. He would like some sort of appeal process with Callaway Golf should he get into any trouble versus a strict liability and dismissal scenario where the Company holds the all proverbial decision-making cards.

Bryson values the high moral standards that Callaway promotes, but he wants to make sure that the Company cannot release him from his contract without proof of inadequate behavior. Bryson would like the morality clause to include a provision that Callaway may not release him from his contract unless he has been convicted of a felony. Lee has expressed that the reason he wants such a provision is because of the advancement in social media and the 24-hour news cycle.

Technology has advanced social media to allow people to follow professional athletes on a continuous basis, while this has allowed fans to feel more connected to the athlete on and off the field/course; it has also made it easier for people to release false information about an athlete or to make quick judgments. Bryson wants to make sure that Callaway is unable to end their

relationship with Lee based on rumors alone. Lee would like to see this provision included, but he is willing to negotiate as long as his other terms are met, specifically contract length and value.

Lastly, Bryson has a very unique way of playing the game because he uses clubs that are all the same length and has a lucky putter he refers to as his “Lucky Lady,” which he even created a Twitter account for with decent following. Bryson has informed you that he has no problem switching to Callaway Golf clubs because he has always loved playing with their products, but he is unwilling to switch his putter at this time. His putter is made by TaylorMade and he has been playing with it for years.

Athletes are notorious for being superstitious, and Bryson attributes his current winning streak to when he switched to using his “Lucky Lady” putter in the middle of a competition and sinking every putt for the rest of the competition. Bryson is willing to transition into a Callaway putter after he makes the PGA Tour, but he does not want to get locked into changing his putter on a required timeframe. He is also willing to delete the “Lucky Lady” Twitter account related to his putter as he encourages his followers to move to follow him a more traditional athlete platform/account that a company Bryson endorses can utilize to promote their products. He is willing to use only Callaway equipment (except for his lucky putter), golf accessories, wear the golf apparel, and golf lifestyle related products.

You were informed by a reliable source that Callaway might find the name of Bryson’s putter offensive. If this is the case, Bryson is not opposed to discussing the possibility of changing the name of the putter. Bryson is also not opposed to his contract including a social media component that requires him to post on the Company’s social media pages, and social media events online for the Company, as long as the “posts” are counted towards the appearances limit he has set and does not take away from his other potential endorsement deals.