

## CASE STUDY:

# Promotional Consideration Constitutes Real Financial Loss

### The problem.

In January of 2010, our client, a major ski resort in southern Vermont, entered into what they believed to be a 2 year contract to host an extreme winter sports competition. The competition was slated to be broadcast via national and international television as well as a host of other media platforms. Hosting this televised event provided a unique opportunity for our client to showcase its resort to its target audience. While the contract was never actually signed by both parties, the event was hosted by our clients as agreed upon and was considered a success in terms of event management, slope side attendance, and TV viewership.

But in the summer of 2010 the event organizer, a subsidiary of a well-known national broadcasting company, told our client that it was moving the event to another resort. Believing the event organizer to be in breach, our client contacted Downs Rachlin Martin litigator Marc Heath to determine if in fact they had an enforceable contract. And, if so, was the event organizer guilty of breaching that agreement? More importantly, did our client have a viable claim for damages?

### Our approach.

Marc immediately recruited Jennifer McDonald, a senior litigation associate, to research the legal issues involved. Through previous work with the client, Marc and Jennifer had developed an interest in and knowledge of the ski sports industry which gave them a head start understanding of the key factual issues and the factual background of the case. They met with client representatives to understand how this event fit into the client's marketing plans. They researched the business of sports event marketing to understand how the industry actually determines the value of being a host resort or sponsor of such an event. Marc and Jennifer concluded that the client had a valid, and valuable claim, and when efforts to resolve the dispute short of litigation were unsuccessful, proceeded with a breach of contract action.

Marc and Jennifer then applied laser-like focus to the issue of how to value lost promotional consideration. They learned through discovery that in 2010, the event organizers had hired an independent marketing analyst to value the promotional consideration received by host resorts from hosting a stop on their extreme winter sport tour in an effort to "sell" the sponsorship to prospective host resorts. Marc and Jennifer immediately disclosed Defendants' own independent marketing analyst as an expert witness on the value of damages in this case. At the same time, Downs Rachlin retained an expert on marketing theory to explain why hosting an internationally broadcast sporting event was highly valuable and, in this case, irreplaceable. This evidence was used to defeat defendant's motion for summary judgment, paving the way for a jury trial.

In May 2014, Marc and Jennifer tried the case to a federal jury. To drive home the fact that national broadcast exposure was a valuable benefit that the client lost, they had a 3 minute video prepared from the 6 hours of live broadcast of the first event. It highlighted the many ways that the resort was featured in the broadcast; from "beauty shots" of the resort, references made by celebrity announcers and athletes, signage on the course venues, and numerous other ways that the resort was promoted during the broadcast.



## The outcome.

The jury found that a contract existed between the parties; that the Defendants had breached the contract by moving the event to another resort and awarded our client \$2.1 million in damages for the breach of contract. The jury also found that Defendants had acted in bad faith by secretly negotiating with the competitor before notifying the client that it was moving the event. The jury awarded the client \$150,000 for breach of the implied covenant of good faith and fair dealing.

Marc and Jennifer worked collaboratively with their client. They recognized that the client had a wealth of knowledge about their industry that wasn't readily available to their opponents. They strategized on discovery issues, trial strategy, and witness examinations, and even opening and closing statements. Marc and Jennifer also conducted a round table discussion at the firm, with the client present, to press for gaps or weaknesses in their case. This approach proved invaluable, as it identified key evidentiary issues that they were able to deal with in pretrial motions.