

FaZeClan v. TFue: Greedy Gamer, or Oppressive, Unregulated Talent Agency? Why Professional Esports Players Need an Agent

08.19.2020

I. INTRO

Millennials are an interesting breed. YouTube is their religion. They worship likes and consider followers the gold standard to their brand. In a world where the currency is charm and an ability to attract strangers online reigns supreme, we see a bizarre confluence of personality cults and the savage instincts of Survivor on rigorous display. Just like the Survivor series is known for the high drama of alliances, breakups and betrayals, so too is the world of Esports and YouTube.

Let's take FaZe Clan as an example - co-founded by famed trick shooter FaZe Banks in 2013 - the enterprise quickly grew from a few rogue gamers living in a house together into a stunning cult of personality centered on FaZe Banks. Banks is widely credited with the conversion of gaming from a hobby to a lifestyle. Whereas originally, the content focused entirely on the gaming - demonstrating cool trick shots and the ability to annihilate opposing players, Banks' style would swiftly transform into a lifestyle play.

Historically, gamers would record video of their gaming experience, with a small image of their face in the bottom corner providing bits of commentary regarding the action on-screen. It was all about the game. Yet with Banks, things got intimate rather quickly. He quickly got into the habit of sharing freely and openly about the most personal aspects of his life - his girlfriend, thoughts on friendship, life, sex, and mortality. Outspoken and endlessly opinionated by nature, Banks would say and do anything to keep his audience entertained. He had no qualms about tattooing himself on camera. On another occasion, when accused by his girlfriend's ex-boyfriend of assault, he presented his entire case - complete with marked photographic evidence, to his devoted YouTube followers.

When he recruited a hot new Fortnite player to the Clan - Tfue - he tattooed his new brother's name onto his leg, on camera. Years later, upon first learning that Tfue had sued FaZe Clan, Banks immediately cried out in despair (on camera of course), "WTF, I HAVE THIS GUY'S NAME TATTOED

FAZECLAN V. TFUE: GREEDY GAMER, OR OPPRESSIVE, UNREGULATED TALENT AGENCY? WHY PROFESSIONAL ESPORTS PLAYERS NEED AN AGENT

ON MY LEG!!!” Julius Ceasar had “Et tu, Brute?” Faze Banks has the name of an opposing litigant permanently emblazoned on his leg.

II. THE MARRIAGE

Tfue joined FaZe Clan in April of 2018 and immediately catapulted to stardom. Subscribers on his YouTube channel shot up from 70,000 to 10M within the first 12 months following his signing date. Tfue became one of the top 3 Fortnite players in the world and developed a cult following and string of championship victories that are unparalleled. In tournament after tournament, Tfue demonstrated the precision and cold bloodedness of a true assassin, unshaken by pressure of any sort.

He brought untold millions of dollars and subscribers to FaZe Clan through the enormous following that the team had built around him. This, of course, begs the question, did FaZe build the following around Tfue through their intense grooming of the young star and the accompanying media blitz, or was Tfue destined for glory, and FaZe just happened to hitch a ride on his momentum at the most opportune moment? This chicken-or-the-egg dilemma is at the heart of the protracted dispute to which we now turn our eye.

III. BATTLE ROYALE

In May 2019, Tfue shocked the gaming world when he filed two lawsuits in California state court against the FaZe Clan. In these lawsuits, Tfue sought to undo the allegedly exploitative and oppressive Gamer Agreement he entered into with FaZe Clan in April 2018. The dispute is so contentious – and the parties are so locked into their respective positions, that the first year of the litigation was devoted to determining where the dispute would be heard.

Nothing about the merits – the contract, the fee splits, or performance has been addressed. Twelve months later the only thing we know is that the dispute will be heard in New York federal court in Manhattan, and that the Court will apply the laws of California in adjudicating the case.

The ruling that California law will apply is a tremendous victory for TFue. Typically California law is one of the squishiest and internally inconsistent amalgam of half rules ever imagined. In my non-expert opinion, if there's one place in the world where you can get out of a valid contractual obligation by whining about your hurt feelings, California is certainly it.

By way of a summary, Tfue entered into a valid and binding contract that he now, millions of dollars later, decided he doesn't like. With the benefit of 20/20 hindsight, he intends to cry out at the cold injustice and beg a court to cancel the obligations because the arrangement proved to be so

FAZECLAN V. TFUE: GREEDY GAMER, OR OPPRESSIVE, UNREGULATED TALENT AGENCY? WHY PROFESSIONAL ESPORTS PLAYERS NEED AN AGENT

unfair that it is essentially fraudulent at the inception. If there is one absurd and backwards jurisdiction that would allow him to rewrite history based on his present beliefs and understanding, it's the laws of the state of California.

He was unable to keep the litigation in California state court, but at least he won the battle confirming that California labor law will apply to the dispute. This is a significant victory for TFue, even though New York federal court is a far more disciplined and predictable venue than California state court, the latter will still be bound by the former's dictates, and being disciplined, it will apply California law faithfully.

IV. THE CONTRACT

Let's start with the basics – Tfue's contract with FaZe Clan, which he entered into without legal representation at the tender young age of 20:

Duration: The Term of the Contract is 42 months – 3.5 years, which is 1.5 years longer than the span of Tfue's adult life at the time he signed the Contract.

Compensation: For his services as a full time, exclusive gamer to FaZe, TFue would receive \$2,000 per month, plus revenue splits, which varied based on the type of revenue category:

- Tournament Cash Prizes: 80% to Gamer; 20% to FaZe Clan;
- In-Game Merchandise: 50% to Gamer; 50% to FaZe Clan;
- Branding Deals (originated by Gamer): 50% to Gamer; 50% to FaZe Clan;
- Branding Deals (originated by FaZe): 20% to Gamer; 80% to FaZe Clan;
- Team Merchandise (featuring gamer): 20% to Gamer; 80% to FaZe Clan;
- Appearances and Touring: 50% to Gamer; 50% to FaZe Clan.
- Fringe Benefits: Although not explicitly referenced in the Contract, it is well known that additional benefits to TFue under the deal with FaZe were:
 - Rent-free living at the "Clout House," a high-end fraternity style home in Hollywood Hills, CA, where FaZe Clan's top gamers resided together, worked together, created content together, and enjoyed invigorating social activities together;
 - Unlimited access and training by FaZe Clan's social media and marketing experts, wherein Tfue would be carefully groomed by more seasoned and experienced gamers with millions of followers. This training began at a time when Tfue was relatively unknown, with only 70,000 subscribers, and arguably contributed in enormous ways to his long term success.

FAZECLAN V. TFUE: GREEDY GAMER, OR OPPRESSIVE, UNREGULATED TALENT AGENCY? WHY PROFESSIONAL ESPORTS PLAYERS NEED AN AGENT

Banks' personality and Tfuе's preternatural skill seemed like a match made in heaven – a perfectly streamlined revenue generating machine – faster and hotter than Banks' Ferrari.

How could it all go wrong?

V. THE BREAKUP

According to FaZe Clan, the Team immediately recognized Tfuе as a rising star and was willing to renegotiate his contract in a number of different ways, including dropping the Team's take to zero. In FaZe's telling, they would do anything, absolutely anything to keep Tfuе happy at the Clan.

The Team has waived their right to take monies on so many occasions, they claim, that in total they have only collected \$60,000 from their relationship with Tfuе. While Tfuе on the other hand, has collected millions.

These figures are cleverly parsed tidbits of information groomed by FaZe's legal and PR teams (the Team has an in-house legal department with 4 full time lawyers), so they must be viewed with a critical eye.

The multi-million dollar question is – how much did Tfuе's rise to stardom contribute to the enterprise value of FaZe Clan's brand? The essence of Tfuе's gripe is that he attracted millions of followers (read: millions of dollars) to the Team's value and, as a result of his stratospheric contributions to the Team, should be allowed to move on to greener pastures prior to the expiration of the Contract's Term of 42 months – he wants out now and he wants it bad.

In other words, Tfuе feels that he has already paid back any debt owed to FaZe as a result of the training and promotion that FaZe provided to him. In his view, Tfuе has already earned an early retirement from the Team – one that is being unfairly withheld from him by the feudalistic demands of his FaZe overlords and their contract (whatever that means).

Sympathetic as that may sound, unfortunately for Tfuе, the Contract does not contain any express provision awarding early release from its obligations as a result of a great performance, no matter how stellar.

In the New York's of the world – failure to expressly negotiate a certain benefit in exchange for performance forever forecloses that party's right to demand said benefit or bonus. Under the laws of New York, Delaware, and every other non-California jurisdiction, if you didn't expressly negotiate a certain special payout or other compensation for great performance at the time that you negotiated a contract, then that it is the end of the story, you are simply not entitled to that special payout or treatment.

FAZECLAN V. TFUE: GREEDY GAMER, OR OPPRESSIVE, UNREGULATED TALENT AGENCY? WHY PROFESSIONAL ESPORTS PLAYERS NEED AN AGENT

Whether that special bonus is a cash payment or early release is irrelevant – Tfue is simply not entitled to it. Yet if there is one jurisdiction where “equitable considerations” are often substituted for the black letter of a contract, California is that magical place. Which is why it was such a victory for TFue that California law will apply to this dispute.

According to FaZe, the Team made countless efforts to restructure every part of TFue’s deal – whatever he wanted, other than outright freedom to leave them without consequence, they were willing to provide.

Eventually, the Team’s professional management (yes, they have a CEO and General Counsel who are serious and seasoned business professionals), came to believe that Tfue was simply unwilling to negotiate with them at all, because, based on his outrageous following, Tfue felt that he didn’t need the Team anymore and was better off alone.

In the Team’s view, Tfue had forgotten his roots and was simply flying too close to the sun. FaZe became suspicious, and Tfue would ultimately confirm their worst fear – that TFue wasn’t interested in negotiating with FaZe because deep down, he had his heart set on the ultimate betrayal of abandoning ship, poaching a few start players from FaZe and together starting a competing outfit.

VI. THE LITIGATION

TFue filed suit before the California Labor Commissioner, and argued that the Gamer Agreement was void under California’s Talent Agency Act because FaZe Clan was operating as an unlicensed talent agency. As a result, he claims, the entirety of the Contract is void ab initio and FaZe is entitled to nothing.

In the second lawsuit, which was filed in Los Angeles County Superior Court, TFue alleged that FaZe Clan withheld his rightfully earned sponsorship revenues, forced him to pass on a lucrative brand deal because of a conflict of interests, and violated California law by limiting his ability to pursue business opportunities.

In perhaps the most concerning allegations of the entire debacle, TFue claims as follows:

"FaZe Clan would frequently host parties at its "Clout House" or "FaZe House" which were fueled by alcohol. Even though Tenney was underage until he turned twenty-one in January 2019, FaZe Clan would furnish and encourage Tenney to consume alcohol. Additionally, FaZe Clan would encourage Tenney and others to illegally gamble at the "Clout House" or "FaZe House." Such conduct by FaZe Clan was in violation of Labor Code §§ 1700.34 and 1700.35."

VII. CONCLUSION

We will continue to monitor the situation carefully and provide updates as the situation develops. The entirety of the dispute between TFue and FaZe begs the question, could this have been avoided by having a lawyer (read: sports agent) negotiate the contract on TFue's behalf, instead of his dad. In an absolutely unregulated, non-unionized professional services endeavor, it seems like a good lawyer is the 20-year old's rookie's only hope for a fair game.

If you or your company is looking for legal guidance in the Esports or DFS industry, Bailey Glasser stands ready to assist you with comprehensive legal assistance.