Take the Training Wheels Off the League: Major League Soccer’s Dysfunctional Relationship with the International Soccer Transfer System

ABSTRACT

Currently in its eleventh season, Major League Soccer (MLS) is struggling to establish its identity and niche in the international soccer community. In particular, issues of player control and transfer regulations continue to distinguish and alienate the league from the elite soccer associations of Europe, as well as the overall global soccer community. Since Fraser v. Major League Soccer, the league has been defined as a single entity and, thus, is free to wield substantial control over player contracting and placement, while avoiding charges of monopolistic behavior. MLS has taken advantage of this freedom when executing international transfers of MLS players. However, these mechanisms of player control were explicitly outlawed in Europe in the landmark European Court of Justice decision in Union Royale Belge des Sociétés de Football Ass’n v. Bosman.

The Bosman case forced a complete overhaul of the international player transfer system. While the use of transfer fees and other methods of player control were specifically outlawed in Europe, the Fédération Internationale de Football Association (FIFA), the international governing body of association soccer, responded by establishing a new set of regulations, generally granting players more rights and freedoms in the international transfer market. However, MLS’s current transfer policies both directly and indirectly conflict with the international transfer system. League officials defend the MLS system, arguing that such player controls and restrictions are necessary to develop the relatively young American soccer league. However, this justification is countered with evidence that MLS policies alienate it from the international soccer community, effectively hindering American players from reaching their full potential and impeding the progression of MLS and American soccer overall. Considering this reality, the only practical solution to MLS’s current conflict with the international soccer community is to loosen its control
over player contracting and transfer policies. The author argues that the league has the power to loosen its control over player contracting and transfer policies without a decline in league talent, level of play, attraction, or overall development. The author then concludes that MLS must take the training wheels off the league and reconcile its policies with those of the international soccer community in order to take the next step in becoming an elite national soccer association.

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On November 12, 2006, the New England Revolution played for the Major League Soccer (MLS, or the American league) Cup, the national championship of the United States’ premier soccer league.1 Leading the way for the Revolution were MLS superstars Clint Dempsey and Shalrie Joseph. Soon after, both players received million-dollar transfer offers from premier European soccer teams, colloquially referred to as clubs.2 Fortunately for the Revolution but against the ambitions of both players, the structure of MLS allows the league to control and reject international offers for MLS’s top talent.3 However, as MLS establishes itself on the greater international stage and continues to cultivate such attractive talent, the future development and legitimacy of the American league, and American soccer generally, stands in question due to the tight controls over player employment.

The international transfer system is the global market for the trading, selling, and buying of soccer players’ employment contracts. The system entails not only the domestic laws of each country participating in international soccer, but also the rules and regulations of both national and international soccer organizations as well. Traditionally, the international transfer system operated almost completely without regulation, allowing for the charging of not only contract fees, but also substantial transfer fees.4 As players, players’ unions, and legal scholars began to question and protest the legality of such an unchecked system of player control, the European Court of Justice took up the issue in 1995 in Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman.5 In the wake of this landmark decision, the Fédération Internationale de Football Association, the Union des Associations Européennes de Football, and other international governing soccer organizations have been forced to revamp and reformulate player transfer policies in order to better comply with antitrust law.6 Once resolute in their implementation of mandatory transfer and development fees, these organizations now adhere to antitrust and workers’ rights principles, mandating the free

3. See id.; see also infra Part I.B.1, .3 (discussing MLS’s organization and transfer system).
4. See infra text accompanying notes 19-36.
5. Case C-415/93, Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman, 1995 E.C.R. I-4921; see also infra text accompanying notes 37-47.
6. See infra text accompanying notes 117-35.
movement and free contracting of international players. Essentially, Bosman forced a tide of reform that loosened the regulations of the international transfer system, allowing players more control in the direction of their careers.

Founded in the middle of this reformatory period, MLS, an infant league when compared to the hundred-year-old European associations, now finds itself struggling to find its place on the world’s stage. On the one hand, MLS recognizes a need to enforce restrictions and regulations in order to develop the American league and American soccer generally. Specifically, MLS has justified the use of tight control on players and stringent transfer policies to retain its top talent by claiming the need to retain that talent, thus promoting the American league’s skill level and prominence. At the same time, however, critics have argued that such restrictions impede MLS’s growth and advancement. In particular, critics maintain that MLS’s near-absolute control over player placement suppresses the development of American talent and restrains the progress of not only the American league, but also American soccer in general. Moreover, MLS’s increasing signing power and success in drawing international talent have shed doubt on the justifications for its restrictive transfer policies.

The MLS situation represents the intricate relationship between American and European antitrust law, as well as the unique concerns related to sports leagues. Despite the complexities of the issues involved, one conclusion emerges: under its current structure and through its present policies and regulations, MLS stands in direct conflict to the reformed international transfer system. As a result, the futures of MLS and American soccer, both domestically and within the global soccer community, depend on the recognition and resolution of this conflict.

Part I will discuss the MLS and international transfer systems, as well as the state of current transfer regulations. Part II will address conflicts stemming from the contradictory rules and principles of both systems and will discuss the setbacks these conflicts inflict on MLS and American soccer. Finally, Part III will offer a solution to

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7. See infra text accompanying notes 120-25.
8. See infra text accompanying notes 161-64.
9. See infra Part II.C.
10. See infra Part II.C.2-.3.
11. See infra Part III.C.
12. See infra Part II.C.1.
these conflicts, arguing that MLS can, and must, relinquish control over its players.

I. BACKGROUND

A. The International Soccer Community

1. The Hierarchy of International Soccer: FIFA and National Associations

To understand soccer’s international transfer system, it is important to understand the hierarchy of soccer’s governing structures. The Fédération Internationale de Football Association (FIFA) is soccer’s pre-eminent governing organization. Under the loose authority of FIFA sit continental confederations, including the Confédération Africaine de Football (the African Confederation) and the Union des Associations Européennes de Football (the European Confederation). Each continental confederation oversees the national associations of each of its member states. For instance, because Belgium is a member state of the European Confederation, the European Confederation oversees the activities of Belgium’s national soccer league, the Union Royale Belge des Sociétés de Football Association (the Belgium National Association).

Originally, each national association was permitted to adopt the rules and regulations of either its governing continental confederation or FIFA. However, each national association could also reject those regulations and establish new ones. As such, FIFA originally allowed each national association to establish its own rules and policies governing the placement and transfer of its players. Under this system, both the respective continental confederation and FIFA stood behind and enforced the individually adopted regulations of each member association.

15. See Irving, supra note 13, at 676.
16. Id.
17. See id.
18. See id.
2. **Bosman**: Reforming the International Out-of-Contract Transfer System

Given the loose structure of FIFA’s original system of governance over transfer regulations, it was only a matter of time before a player challenged his national association’s policies regarding his contractual rights and freedom to move as a general employee. This conflict came in August 1990, when Jean-Marc Bosman challenged the transfer rules of RC Liege, the Belgian National Association, and the European transfer system in general.19

Bosman, a Belgian national, played for RC Liege, a Belgian first division club, under a two-year contract.20 Under the Belgian National Association’s transfer rules at the time, a club had to offer a player a new contract before the expiration of his current contract, which the player was required either to accept or decline.21 If the player declined, he was placed on a list of players available for transfer.22 At that point, the player’s current club would have no control over the transfer decision.23 However, the player’s current club maintained the right to demand a compensation fee for the training and development of the player, plus a transfer fee, both of which were to be paid directly to the club by the player’s new club.24 If no transfer took place, the player’s current club was then required to offer a new contract, identical to the terms of the recently expired contract, for one season.25 If the player refused this offer, then the club maintained the right to suspend the player.26

Although the Belgian National Association applied these particular rules to govern Bosman’s transfer, the policies at issue were adopted from FIFA itself.27 Specifically, the Belgian National Association adopted the FIFA regulation that a professional player could not leave his national association while the player was bound by his contract, “no matter how harsh [the] terms.”28 More importantly, FIFA regulations mandated that, in order for an international

20. Id. para. 28.
21. Id. para. 7.
22. Id. para. 8.
23. See id. This means that the player’s current club could not control to which team the player chose to transfer or which transfer offers the player could consider.
24. Id.
25. Id. para. 10.
26. Id.
27. See id. para. 15.
28. Id. para. 16.
transfer to be effectuated, the national association of the current club had to issue a transfer certificate to the new club’s national association, acknowledging that all financial commitments (including any transfer fees) were settled between the clubs.29

On April 21, 1990, RC Liege offered Bosman a new contract, extending his play for the Belgian club.30 However, Bosman refused and was subsequently placed on the club’s transfer list.31 Seeking employment outside of RC Liege, Bosman received attention from US Dunkerque, a French club.32 RC Liege and US Dunkerque negotiated for a one-year transfer of Bosman with an option for his full transfer.33 After reviewing the contract’s details, RC Liege had doubts concerning the solvency of US Dunkerque and ultimately decided not to request that the Belgian National Association send a transfer certificate to the French National Association.34 Because RC Liege refused to request the transfer certificate, Bosman’s transfer was never effectuated, and he remained under RC Liege’s authority.35 As a result, under the Belgian National Association’s rules, Bosman was suspended for the entire upcoming season.36 After the prevention of his transfer and the resulting year-long suspension, Bosman filed suit against RC Liege, the Belgian National Association, and the European Confederation.37

The Bosman case fell under the jurisdiction of the European Court of Justice (the ECJ).38 Concerning the issue of international transfers, the ECJ interpreted Bosman’s complaint as raising a single issue: Does article 48 of the Treaty of Rome39 prohibit a club’s mandatory payment of transfer fees when a player of one member state of the European Union pursues employment with a club of another member state after expiration of his current contract?40 As an

29. See id.
30. Id. para. 29.
31. Id.
32. See id. para. 30.
33. See id. para. 31.
34. Id. para. 33.
35. See id.
36. Id.
37. Id. para. 34. In August of 1991, Bosman sought to join the European Confederation to the proceedings. Id. para. 40.
38. See id. paras. 59-67.
40. See Bosman, 1995 E.C.R. I-4921, para. 68. Article 48 of the Treaty of Rome states:

1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.
initial matter, the defendant–clubs argued that soccer clubs “carry on . . . economic activity only to a negligible extent”; therefore, article 48 of the Treaty of Rome should not apply. The ECJ rejected this argument, holding that soccer federations and clubs were subject to the Treaty of Rome because their actions did constitute economic activity. The ECJ definitively stated, “[a]rticle 48 of the Treaty [of Rome] therefore applies to rules laid down by sporting associations . . . [that] determine the terms on which professional sportsmen can engage in gainful employment.”

The ECJ then analyzed whether the defendants’ regulations actually violated article 48 of the Treaty of Rome. One of the principle aims of the Treaty of Rome, and the European community in general, was the freedom of movement of workers throughout the treaty’s member states. Article 48 explicitly provides citizens of member states the right to leave their country of origin and enter another member state in order to reside and pursue economic activities in that state. The ECJ determined that the requisite payment of transfer fees and training and development fees after the expiration of a player’s contract restricted the free movement of players to seek employment in other member states and, therefore, violated article 48. While the Bosman holding was a momentous decision against the current international transfer system, it addressed only players who were out-of-contract. The issue of in-contract players provides a

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
   (a) to accept offers of employment actually made
   (b) to move freely within the territory of Member States for this purpose
   (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action
   (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

EC Treaty, supra note 39, art. 48.
41. See Bosman, 1995 E.C.R. I-4921, para. 70.
42. See id. para. 73.
43. Id. para. 87.
44. See id. para. 93.
45. See EC Treaty, supra note 39, art. 48.
47. See id. para. 114.
separate issue that could eventually wreak legal havoc on the international soccer system.48

B. Major League Soccer: The American League’s Approach to Transfers

1. MLS’s Organization

Founded in 1996, Major League Soccer is the United States’ premier soccer league.49 The American league maintains thirteen teams, including one in Toronto that began in 2007.50 Unlike other sports leagues, MLS operates as a single, limited liability company; thus, the league as a whole, including all twelve teams, is recognized as one legal entity.51 MLS is owned by a group of independent investors, including a mix of corporations, partnerships, and individuals, and is governed by a management committee—the Board of Governors.52 Unlike other major sports leagues with independent teams, such as the National Football League (NFL) or the National Basketball Association (NBA),53 MLS wields “significant centralized control over both league and individual team operations. MLS owns all of the teams . . . , as well as all intellectual property rights, tickets, supplied equipment, and broadcast rights.”54 Most importantly, MLS has near-total control over player employment.55 Varying again from traditional sports leagues, MLS has the sole responsibility of negotiating employment contracts and compensating its players: “MLS recruits [its] players, negotiates their salaries, pays them from league funds, . . . determines where each of them will play,”56 and decides whether players will be permitted to transfer to new teams or leagues.57 Although team operators retain some power over the

48. See infra text accompanying notes 112-20.
50. Id.
51. See id.; see also Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 53 (1st Cir. 2002) (describing MLS as having, “to say the least, a unique structure, even for a sports league”).
52. Fraser, 284 F.3d at 53.
54. Fraser, 284 F.3d at 53.
55. See infra text accompanying notes 105-11.
56. Fraser, 284 F.3d at 53.
57. See id. at 53-54. An example of this power is how MLS will “balance talent among teams” by determining where the league’s best players will be placed. Id. at 53.
composition of their respective teams, MLS retains control over players' entry and exit from the league. 58

While MLS wields significant power over the American league and team operations, it relinquishes some control to individual team investors. These team investors are members of the larger group of investors who own the league, but they are more involved in that they also act as operators for their respective teams. 59 MLS has “contract[ed] with these [team] investors to operate nine of the league’s teams,” while MLS directly controls the other three. 60 Team investors provide exclusive management services and are given significant leeway in managing their teams. 61 Specifically, they “hire, at their own expense and discretion,” the team’s staff, including all coaches and general managers. 62 Team investors are also “responsible for local office expenses, local promotional costs for home games, and one-half the [team’s] stadium rent.” 63 MLS pays the other half of each team’s stadium rent. 64

Additionally, team investors play a role in player selection and employment. Although team investors cannot bid for or hire players without the knowledge and approval of the league, “they [can] trade players with other MLS teams and select players in the league’s draft.” 65 However, while team investors may wield some degree of control over players that are already in the American league, MLS itself controls all entry into and exit out of the pool of available players. 66 As members of the group of owning investors, the team investors control a majority of the seats on the MLS board, which provides significant power to the investors since the board is responsible for “hiring the [MLS] commissioner and approving national television contracts and marketing decisions, league rules and policies (including team player budgets).” 67

58. See id. at 53-54.
59. See id. at 53.
60. Id.
61. See id. at 53-54.
62. Id. at 54.
63. Id.
64. Id.
65. Id.
67. Fraser, 284 F.3d at 54.
2. Fraser v. Major League Soccer: Maintaining the MLS Approach to Transfers

Challenging the dominating organization of the American league and the substantial control wielded by MLS, eight players sued MLS and the team investors under various U.S. antitrust statutes in February of 1997 in the Federal District of Massachusetts. In *Fraser v. Major League Soccer, L.L.C.*, the players claimed that team investors were in violation of both the Sherman Act and the Clayton Act. The Sherman Act stipulates that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” The Sherman Act also provides that “[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.” The players alleged that team investors violated section 1 of the Sherman Act by “agreeing not to compete for player services,” and section 2 of the Sherman Act by monopolizing, or attempting to monopolize, the “market for services of . . . professional soccer players in the [United States].”

The players claimed that team investors were in violation of the Clayton Act, as well. The Clayton Act prohibits certain commercial practices that are particularly harmful to consumers, including: price discrimination that creates monopolies in commerce; lease or sale of goods on the condition that the purchaser not deal in the goods and may create a monopoly in any line of commerce; and acquisition of stock of another corporation which may substantially lessen competition or create a monopoly. The players contended that MLS’s organization, specifically the consolidation of the assets of the team investors, “substantially lessened competition and tended to create a monopoly in violation of Clayton Act section 7.” However, the district and appellate courts disagreed. In response to the
Sherman Act claims, the district court held that MLS legitimately comprised a single entity and, therefore, could not legally conspire, as is required to be in violation of the Sherman Act. Consequently, the court granted summary judgment to MLS as to the Sherman Act claims. The court also granted summary judgment to MLS as to the Clayton Act claim.

On review, in March 2002, the First Circuit examined the district court’s holding and ducked its decision granting MLS single entity status. The court explained that, traditionally, single entity status was not granted to sports leagues. However, the district court followed the rule established in Copperweld Corp. v. Independence Tube Corp., which held that “a parent and its wholly owned subsidiary are not subject to attack under section 1 [of the Sherman Act] for agreements between them. They are treated for section 1 purposes as a single economic actor.” Recognizing this rule, the appellate court noted that MLS resembles an ordinary, singular corporation in that it “owns substantial assets (teams, player contracts, stadium rights, intellectual property) critical to the performance of the league” and distributes a substantial portion of its revenues among its team investors. Therefore, the district court abided by Copperweld in affirming MLS as a single entity.

Recognizing that MLS varies from traditional sports leagues, the First Circuit acknowledged that operators and investors in other leagues, such as the NFL, do not exist as part of an over-arching corporate structure as they do in MLS. On the other hand, however, the appellate court also found that the conflicting individual interests of team investors in improving their own team created the potential for competition within the American league. This inherent competition of a sports league challenged the notion of MLS operating as a single economic actor. As a result, the court distinguished the case from Copperweld, which dealt with pure subsidiaries of the

78. See id.
79. See id. at 141-42.
80. Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 56 (1st Cir. 2002).
81. Id. at 55-56.
82. Id. at 56 (citing Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984)).
83. Id.
84. Id. at 59.
85. Id. at 56.
86. See id. at 57.
87. Id. at 56-57.
parent corporation, because the team investors of MLS were not “mere servants” of the league.88

Acknowledging the arguments on both sides of this single entity debate, the First Circuit ultimately labeled MLS a “hybrid” organization: something “between a single company . . . and a cooperative arrangement between existing competitors.”89 Given this unique situation, the appellate court found a lack of precedent; nevertheless, it recognized two approaches for applying U.S. antitrust laws to such an organization: either (1) expand the Copperweld rule to include hybrid organizations, like MLS, or (2) reshape section 1 of the Sherman Act to include hybrids.90

In the end, the First Circuit ducked the question of the American league’s single entity status, choosing instead to resolve each count on the merits.91 As to the first claim, that MLS violated section 1 of the Sherman Act, the court held that the plaintiffs did not establish a violation because they failed to prove the requisite market to ground the claim.92 Therefore, regardless of MLS’s single entity status, the claim failed.93

The appellate court also dismissed the claim alleging MLS’s violation of section 2 of the Sherman Act.94 To prove monopolization or an attempt to monopolize in violation of section 2, a plaintiff must prove that the contested market was actually subject to monopoly power.95 The First Circuit affirmed the district court’s definition of monopoly power as “the power to pay lower than competitive wages for the services being acquired without having the sellers of those services—the players—turn to another league or team for employment.”96 While the district court broadly considered opportunities available in foreign leagues around the world, the plaintiffs objected, arguing that the court should only consider those leagues that were “sufficiently attractive and practically available to a large enough number of MLS players.”97 Despite this argument, the

88. Id. at 57-59.
89. Id. at 58.
90. See id.
91. Id. at 59.
92. See id. at 60-61. Essentially, the plaintiffs argued that the relevant market in this case was that of Division I soccer players in the United States. See id. at 55. However, the plaintiffs never produced evidence that another arrangement or less-restrictive league structure would increase player salaries or enhance competition in MLS. See id. at 59-60.
93. Id. at 61.
94. See id. at 69.
95. See id. at 61.
96. Id. at 62-63.
97. Id. at 62.
appellate court held that MLS was adequately constrained and did not wield monopolistic power because players had alternative foreign leagues in which to play. As a result, even though the court did not address the single entity status of MLS, the claim under section 2 of the Sherman Act failed because the American league was unable to assert a monopoly given the opportunities available to players in foreign leagues.

As to the claimed violation of section 7 of the Clayton Act, the court explained that the Clayton Act prohibits stock or asset acquisitions that substantially diminish competition or create a monopoly in a given market. MLS had established a brand new market for Division I soccer players in the United States. Therefore, the Clayton Act claim failed because it would be impossible for MLS to reduce competition where none existed before.

The court went on to note that section 7 of the Clayton Act could possibly be interpreted to prevent the elimination of potential competition. However, the court found no evidence that investors would have developed MLS like other traditionally structured leagues if MLS had not been formed under its current organization. Additionally, the plaintiffs did not produce evidence claiming that structuring MLS as a typical league would have significantly increased competition. Consequently, this claim also failed.

3. Current MLS Regulations and the Transfer System

Now in its twelfth season, MLS has established a unique system that grants the American league substantially more power over its players relative to its European counterparts. The MLS system of control is maintained through two mechanisms: extensive power over player contracting and free implementation of transfer fees. First, MLS regulations state that a “team retains the rights to [a] player indefinitely following the expiration of a contract only if attempts were made to re-sign the player.” However, MLS did not elaborate on what constitutes a sufficient “attempt” to re-sign a

98. See id. at 62-63.
100. Id. at 70.
101. See id. at 70.
102. See id. at 70-71.
103. See id. at 71.
104. See id.
player. Thus, a team can put forth minimal effort to re-sign a player in order to maintain control over him. Similarly, the regulations also mandate that when a player’s contract expires, the team indefinitely retains the “right of first refusal” over his contract, so long as attempts were made to re-sign the player. Therefore, under the MLS system, even when a player’s contract expires, the American league maintains almost absolute control over his ability to contract with another team.

More significantly, MLS freely charges transfer fees when contracting with international players and teams. Although the ECJ publicly threatened to strike down in-contract transfer fees as a violation of the Treaty of Rome, associations and clubs outside of the European Union are not bound by ECJ decisions and can freely apply transfer fees. Because the Bosman decision only applies to inter-European action and does not apply to transactions occurring between European clubs and clubs outside of the European Union, MLS remains free to charge transfer fees when dealing with the elite clubs and national associations of Europe.

C. FIFA’s Reaction to Bosman

While the Bosman decision prohibited transfer fees only for players who were out-of-contract, the ECJ nevertheless began questioning the validity of transfer fees for players under contract, as

106. See id.
107. Id. § IV.
108. See supra text accompanying notes 54-58. Thus, even though the team maintains control over the player once his contract expires, it is really MLS itself maintaining control over his ability to contract his services. See Fraser, 284 F.3d at 53-54.
109. See infra text accompanying notes 140-46. Although there is no specific mention of transfer fees in the MLS regulations, the league’s history reveals a strong reliance on and utilization of transfer fees in international player contracting. For instance, in 2004, premier Dutch club PSV Eindhoven sought to acquire American player DaMarcus Beasley from his MLS club, the Chicago Fire. See Steven Goff, Convey’s Transfer to Reading All Set; United Gains Major Allocation Spot, WASH. POST, July 23, 2004, at D03. Exercising its substantial control over its players, MLS refused to authorize Beasley’s transfer overseas until PSV agreed to pay a $2.5 million transfer fee to MLS on top of the amount already being paid directly to the Chicago Fire. See id. More recently, MLS authorized a deal transferring American international Clint Dempsey from his MLS club, the New England Revolution, to English club Fullham FC for an MLS record-breaking $4 million transfer fee. Frank Dell’Apa, Dempsey’s $4 Million Transfer an MLS Record, BOSTON GLOBE, Jan. 3, 2007, at 5E.
111. Id.
112. See id. para. 114.
well as questioning the international transfer system in general.\textsuperscript{113} The issue was placed at the center of the soccer world in 1997, when Brazilian striker Ronaldo, then considered the best player in the world, was pursued by Inter Milan, an Italian club, while still under contract with Barcelona, his Spanish club.\textsuperscript{114} Inter Milan offered to pay $26 million to buy out the rest of Ronaldo’s contract, “[b]ut Barcelona demanded an additional transfer fee to complete the [move].”\textsuperscript{115} Before FIFA even entered the dispute, the ECJ sent a letter to FIFA informing the organization that the implementation of transfer fees in such a situation may stand as a violation of article 48 of the Treaty of Rome.\textsuperscript{116} The ECJ eventually issued a series of demands forcing FIFA to reexamine and reform the overall international transfer system.\textsuperscript{117}

Four major parties drove the debate and reformation of the European transfer system: the ECJ, FIFA, the European Confederation, and the Fédération Internationale des Associations de Footballeurs Professionels (FIFPro, the worldwide player’s association).\textsuperscript{118} Ultimately, the following issues emerged as the major concerns of the debate: the degree of control over player movement, including the length of contract and transfer windows; the establishment of a mechanism to ensure the survival of smaller clubs without transfer fees; compensation for the training and development of transferred players; the protection of minors; and the consequences of unilateral breaches of contract.\textsuperscript{119}

On July 5, 2001, after more than two years of debate, meetings, and turmoil, FIFA released a new set of policies and regulations to govern the international transfer system.\textsuperscript{120} In order to control player movement and decrease club owners’ uncertainty, FIFA mandated that players under contract only be permitted to transfer during two designated transfer periods, and only once in a single season.\textsuperscript{121} Also, for a club to acquire a player from another national association, the

\textsuperscript{113} See Irving, supra note 13, at 689.
\textsuperscript{114} See id.; see also John Haydon, Brazil’s Ronaldo on Track to Be World’s Best Player, WASH. TIMES, Aug. 16, 1997, at D6 (discussing Ronaldo’s popularity).
\textsuperscript{115} Irving, supra note 13.
\textsuperscript{116} Id.
\textsuperscript{117} See id.
\textsuperscript{118} See id. at 711.
\textsuperscript{119} See id. at 711-12.
\textsuperscript{120} Id. at 714. Notably, FIFPro never accepted the regulations and threatened legal action upon their enactment. See id. at 715.
\textsuperscript{121} See FIFA, REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS art. 6, http://www.fifa.com/mm/document/affederation/administration/status_transfer_en_25.pdf [hereinafter FIFA REGULATIONS].
club must attain an International Transfer Certificate (ITC) from the player’s current association.\(^\text{122}\) Abiding by the philosophy of *Bosman*, however, FIFA indicated that an ITC would be completely “free of charge [and] without conditions or time limitation.”\(^\text{123}\) Further, the new FIFA regulations mandated that player contracts must be for a time period between one season and five years.\(^\text{124}\) However, FIFA provided some leeway by stating that contracts of any other length would be permitted, so long as they were consistent with the national laws of the contracting parties.\(^\text{125}\)

FIFA’s new regulations explicitly prohibited the unilateral termination of contracts.\(^\text{126}\) However, FIFA provided an exception to this rule if a party breached a contract for “just cause” or “sporting just cause.”\(^\text{127}\) FIFA also established a comprehensive system of sanctions in the event of an illegitimate breach of contract by any party.\(^\text{128}\) In addition, FIFA promulgated a regulation that players under the age of eighteen could not have contracts longer than three years.\(^\text{129}\) The regulations also established that international transfers were only permitted for players over the age of eighteen, unless a list of conditions supplied by FIFA were met.\(^\text{130}\)

As for the protection of less-established clubs, the new FIFA regulations ensured a system where lower-tiered clubs could continue to exist despite player transfers. Essentially, the regulations established an intricate system requiring clubs to pay for the training and development of acquired players.\(^\text{131}\) Essentially, once a player begins his professional career, any club acquiring the player must pay

\(^{122}\) See *id.* art. 9.

\(^{123}\) *Id.*

\(^{124}\) *Id.* art. 18.

\(^{125}\) *Id.*

\(^{126}\) See *id.* art. 13.

\(^{127}\) See *id.* arts. 13-15. FIFA provided a set of designated actions and circumstances that would constitute just cause for a party to unilaterally breach a contract. *See id.*

\(^{128}\) *See id.* art. 17. The rules mandate that both clubs and players may be susceptible to financial sanctions, as well as sporting sanctions entailing from national and international soccer competition. *See id.*

\(^{129}\) *Id.* art. 18.

\(^{130}\) *See id.* art. 19. A player is exempt from the age requirement if “[t]he player’s parents move to the country in which the New Club is located for reasons not linked to [soccer].” *Id.* art. 19(2)(a). A player is also exempt if “[t]he player lives no further than 50km from [the] national border” of the new club, the new club is also within 50km of the national border, and “the maximum distance between the player’s domicile and the club’s quarters is 100km.” *Id.* art. 19(2)(c). “In such cases, the player must continue to live at home and the two Associations concerned must give their explicit consent.” *Id.*

\(^{131}\) *See id.* art. 20; *see also id.* annex 4 (detailing when a club is responsible for training costs and how much it must pay).
the player’s former club for his training and development. Due to concerns of the European Confederation of ensuring the continued survival of smaller clubs, FIFA also included a solidarity mechanism in the new rules and regulations, which provides: “If a Professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his previous club (solidarity contribution).” Thus, while an acquiring team must provide payment to a player’s immediately preceding club, the solidarity mechanism ensures that each of the player’s previous clubs that participated in his training and development also receive compensation from the transfer. However, the solidarity mechanism is limited in that an acquired player’s previous clubs will stop receiving portions of transfer deals after the player turns twenty-three years old. Finally, the FIFA regulations also set up a system to deal with disputes and challenges.

II. ANALYSIS: HOW MLS FITS INTO THE INTERNATIONAL TRANSFER SYSTEM

Ultimately, when examining the different transfer and player regulations and their underlying purposes, an inherent tension emerges between ensuring players’ rights and compliance with European anti-competition law, on the one hand, and granting power to clubs and national associations to survive and succeed on the international stage, on the other hand.

A. MLS’s Conflict with the International Soccer Community

Given the tight controls MLS maintains over its players, the American league stands in direct conflict with the majority of the international soccer community. Specifically, MLS regulations concerning player contracting and transfer fees significantly diverge from the policies and principles of FIFA and the European system.

132. See id. annex 4, art. 2 (mandating that training compensation is required until the end of the season of the player’s twenty-third birthday).
133. Id. art. 21 (emphasis added); see also id. annex 5 (detailing how solidarity contributions are calculated).
134. See id. annex 5, art. 1.
135. See id. arts. 22-24 (establishing a Players’ Status Committee and a Dispute Resolution Chamber to adjudicate employment-related disputes).
1. MLS’s Direct Conflicts with the European Transfer System

MLS’s regulations are diametrically opposed to the laws and principles now governing the European soccer transfer market, as expressed in the Bosman decision.\(^{136}\) As explained, Bosman outlawed the application of transfer fees in Europe to players who were out-of-contract.\(^{137}\) According to the Bosman court, the imposition of transfer fees constituted an illegal restraint on a player’s freedom to move and seek employment throughout the European Union, in violation of article 48 of the Treaty of Rome.\(^{138}\) After Bosman, the European soccer community reformed its rules to facilitate a freer, less-restrictive system where players could assert their rights as employees and assume more control over their careers.\(^{139}\)

Unlike the European system, MLS maintains a tight hold on players’ rights through the imposition of transfer fees.\(^{140}\) By charging exorbitant fees for potential transfers, MLS can effectively control a player’s exit from the American league. Whenever a player is considering leaving or is being pursued by a foreign club, MLS possesses the power to apply huge transfer fees, chilling the likelihood of any such transfer being completed. Consequently, MLS policy and procedures demonstrate a lower regard for player autonomy and directly contradict the structure and principles of the current European system.

2. Implicit Tension Between MLS and FIFA Regulations

As explained, current FIFA regulations do not expressly prohibit the use of transfer fees.\(^{141}\) Also, there are no specific provisions concerning a league’s retention of player rights after contract expiration or a league’s right of refusal over a player’s contract.\(^{142}\) As a result, MLS regulations do not explicitly violate any FIFA regulations concerning player transfers. Nevertheless, FIFA regulations do reflect a greater respect of player freedom and


\(^{138}\) See Bosman, 1995 E.C.R. I-4921, paras. 99-100, 104; supra note 46 and accompanying text.

\(^{139}\) See Irving, supra note 13, at 714-15.

\(^{140}\) See infra text accompanying notes 141-49.

\(^{141}\) See FIFA REGULATIONS, supra note 121, art. 6. This is probably due to the fact that it was initially the ECJ that warned and demanded FIFA to reform the overall international transfer system; see supra text accompanying note 117.

\(^{142}\) See FIFA REGULATIONS, supra note 121.
autonomy. Consequently, the MLS regulations implicitly conflict with the underlying purposes and principles of the current FIFA system.

For instance, FIFA established the default rule that a player’s contract can cover a minimum of one season and a maximum of five years.\textsuperscript{143} Under the MLS system, the league can maintain indefinite control over a player’s rights, even after contract expiration, providing the league attempts to re-sign him.\textsuperscript{144} While FIFA’s default rules establish limits for contract length and fix time periods of league and club control over a player,\textsuperscript{145} MLS retains control over a player’s rights, regardless of the length of the contract or its expiration.\textsuperscript{146} Thus, although there is no direct conflict between MLS and FIFA regulations as far as contract length is concerned, the underlying principles regarding player control are at odds.

Another source of tension exists because of MLS’s lack of a system of sanctions in the event of unilateral and illegitimate breaches of player contracts.\textsuperscript{147} FIFA regulations, on the other hand, directly prohibit the unilateral breach of any player contract either by the club or the player.\textsuperscript{148} Under FIFA rules, contracts may only be terminated though mutual agreement or contract expiration.\textsuperscript{149} Furthermore, FIFA has implemented a comprehensive system of sanctioning, including financial, legal, and sporting sanctions in the event of an illegitimate breach by any party.\textsuperscript{150} While MLS does not maintain regulations expressly conflicting with the above FIFA policies, the American league’s ability to maintain indefinite control over players allows it to avoid the underlying purposes of the FIFA sanction system.

FIFA regulations concerning player contracts guarantee a mutual commitment by the club and player to the rights and responsibilities established by the agreement. Players are expected to honor the duration of contracts and may face serious sanctions if they unilaterally breach the contract for personal benefit.\textsuperscript{151} At the same time, clubs must honor their commitments to employ a player for a

\textsuperscript{143} Id. art. 18.
\textsuperscript{144} See MLS REGULATIONS, supra note 105, § III(C).
\textsuperscript{145} See FIFA REGULATIONS, supra note 121, art. 18.
\textsuperscript{146} See MLS REGULATIONS, supra note 105, § III(C).
\textsuperscript{147} See id.
\textsuperscript{148} FIFA REGULATIONS, supra note 121, art. 16.
\textsuperscript{149} Id. art. 13.
\textsuperscript{150} See id. art. 17.
\textsuperscript{151} See id. arts. 13, 17 (providing that a player may not only be financially liable, but also may be suspended from competition).
specified time period and must also, upon contract expiration, allow a player the freedom to begin searching for a new contract with whatever club he may choose.

MLS follows a different approach, however, and allows the American league to maintain indefinite control over a player, even after his contract expires. This omnipotence significantly interferes with a player’s rights to effectively search for, negotiate, and attain his preferred employment. Due to MLS’s control over players’ rights, the American league possesses the ability to manipulate and direct its players without breaching any contractual obligations. As a result, MLS effectively sidesteps the regulations designed to protect players without explicitly violating any of FIFA’s contract rules. Again, the underlying conflict between the MLS and FIFA systems stems from the degree of control each organization possesses over its players.

With the free use of transfer fees, MLS’s actions further conflict with FIFA’s principles concerning international transfers. FIFA does not expressly prohibit transfer fees in its regulations. However, FIFA does address the issue with its treatment of ITCs. FIFA regulations mandate that, in order for a player to be transferred from a club of one national association to a club of another national association, the player’s current club must register an ITC with the prospective club’s national association. Under FIFA regulations, ITCs are “issued free of charge without any conditions or time limitation[s],” revealing an intention on the part of FIFA to conduct international transfers free of any supplementary charges, such as transfer fees. Directly contradicting this approach, MLS implements transfer fees in connection with international transfers. While MLS may not directly charge for issuing a transferring player’s ITC, the American league often prohibits transfers or maximizes profits through the attachment of transfer fees to international deals. Therefore, although MLS does not directly violate any of the FIFA regulations governing player transfers, its practices once again conflict with the underlying principles of the FIFA system.

152. See id.
153. See id. art. 18, §3.
154. See MLS REGULATIONS, supra note 105, § III(C).
155. See FIFA REGULATIONS, supra note 121.
156. See id. art. 9.
157. See id.
158. Id.
159. See supra note 109 and accompanying text.
160. See supra note 109.
B. Justifications for the MLS Approach

One of MLS’s goals is to establish itself as a premier national soccer league. League decisions are designed to achieve this objective and also to avoid the perception that MLS is merely a feeder league for the European giants. Consequently, league officials are reluctant to export MLS’s top talent because it would most likely diminish the level of play, fan base, and overall success of the American league, both in the United States and abroad. Therefore, in order to continue league development, MLS utilizes its means of control to keep its elite players in the United States. New England Revolution Coach Steve Nicol stated:

No longer are we or anybody else in the USA feeding grounds for everyone else. We are trying to build a league here and we certainly aren’t going to do that by giving a good player away every time we get one. . . . As far as the league is concerned, they are trying to build a league.

Overall, MLS exercises substantial power over player contracting and rejects transfer deals in order to establish itself as an elite league in the international soccer world.

C. Disadvantages of the MLS System

In comparing MLS to FIFA, it becomes evident that the conflicts between these major institutions of international soccer pose a host of serious problems. From the general divergence with the policies and principles of the international system to the direct effects that MLS’s regulations have on its own players, MLS’s current organization produces a multitude of problems affecting the validity and growth of the premier American soccer league.

1. Alienation from the International Soccer Community

With its current structure and transfer policies, MLS effectively alienates itself from the majority of the international soccer community. MLS’s policies directly conflict with European anti-competition law with its implementation of transfer fees.

162. See id.
163. See id.
164. Id.
165. See supra Part II.A.
Furthermore, MLS’s ability to control indefinitely players’ rights after contract expiration would most likely violate article 48 of the Treaty of Rome as an illegal hindrance on a player’s right to freely move and seek employment.\textsuperscript{166} The American league’s direct conflict with the European system proves especially significant because the European Confederation is home to the richest and most influential clubs of the international community, as well as the top players of the world.\textsuperscript{167} Consequently, when MLS demands transfer fees from European clubs that are attempting to do business with the American league, it alienates itself by demanding what is seen as an illegal payment in the eyes of the elite European soccer community.\textsuperscript{168}

MLS’s ability to retain indefinite control of and right of first refusal over player contracts further alienates the American league from Europe, due to the disproportionate amount of power the American league wields over its players. In the wake of Bosman, the European transfer system has been reformed, granting players much more freedom and autonomy in directing their own professional careers.\textsuperscript{169} MLS, however, still retains a substantial level of control over player rights. As a result, whenever MLS deals with the elite soccer associations of the world, there remains a certain degree of estrangement, as MLS heavily utilizes practices that are both illegal and disrespected in the European soccer community.

MLS is further alienated from the world soccer community due to its indirect conflict with FIFA’s transfer regulations. Although MLS regulations do not expressly conflict with any of FIFA’s transfer regulations, its practices significantly diverge from the principles underlying the FIFA approach.\textsuperscript{170} Consequently, whenever the two organizations interact, FIFA must deal with a league that is effectively rejecting its approach. Thus, MLS further estranges itself from the international community by utilizing practices and procedures that conflict with the principles followed by the rest of the soccer world.

\textsuperscript{166} See Case C-415/93, Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman, 1995 E.C.R. I-4921, paras. 87-100 (discussing article 48 in the context of the European soccer community); see also EC Treaty, supra note 39, art. 48 (providing for the freedom of movement for workers within the member states).


\textsuperscript{168} This was the exact situation in the many failed deals predating the eventual transfer of American international Clint Dempsey. See infra text accompanying notes 176-79 (discussing Dempsey’s trouble with MLS after it refused to execute his transfer).

\textsuperscript{169} See Irving, supra note 13, at 688-717; see also FIFA REGULATIONS, supra note 121.

\textsuperscript{170} See supra Part II.A.2.
2. Hindrance of American Soccer Players’ Careers

The MLS system has potentially devastating effects on its players and their development. Consider, for example, when an MLS player receives attention and offers from more established, competitive, and wealthy clubs from abroad. In such cases, if MLS decides that a player’s value to either his club or the league outweighs the potential benefits of his transfer (i.e., by imposing transfer fees), the American league can employ its control mechanisms to block the transfer completely. Meanwhile, in the event that the player wants to be transferred, MLS’s unilateral imposition on his career direction can have devastating effects on the player and eventually the American league itself.

Such was the situation for American player and rising star Clint Mathis. In 2002, German championship team Bayern Munich sought to acquire Mathis from his MLS club, the MetroStars.171 Much to Mathis’s dismay, MLS refused to execute the transfer, claiming that Bayern Munich’s transfer fee offers were “embarrassingly low.”172 The lost opportunity had a significant effect on Mathis’s play. Mathis ended the season by intentionally stomping on a player, thus receiving a red card, and having his MLS coach suggest that he “needed psychiatric help.”173 Demonstrating his disappointment and resentment towards MLS, Mathis left the American league when his contract expired a year later and joined a German club, Hannover 96.174 As a result of this independent, out-of-contract transfer, MLS received no compensation for the transfer.175

Another example of the devastating effect of MLS policies may be seen in the case of American superstar Clint Dempsey who, after a standout performance in the 2006 World Cup, received attention and offers from numerous English Premier League clubs.176 When MLS refused to execute a transfer of Dempsey to England, Dempsey went from “World Cup standout to MLS bad boy,” receiving two suspensions for disorderly conduct during games.177 Once again, MLS’s domination over its players’ careers had a devastating effect, not only

172. Id.
173. Id.
174. See id.
175. See id.
176. Dell’Apa, supra note 2.
177. Galarcep, supra note 171.
on the player’s development, but also on the player’s MLS team and MLS itself.

When players are refused the opportunity to advance to greater competition, greater recognition, and significantly greater compensation, their worth to MLS, in terms of performance, may drastically decline. As seen in the examples of Mathis and Dempsey, a player’s quality of play may decrease dramatically, along with his loyalty and commitment to his team. 178 At the same time, a player may manifest his frustration through violent acts during play or other disorderly conduct directed towards the league itself. 179 Ironically, when MLS decides to retain a player and block his transfer offers, the player may essentially become worthless to the American league.

Moreover, once a player like Dempsey and Mathis loses value in terms of his actual playing performance, MLS loses the potential for significant compensation from the player’s transfer. Referring back to the Mathis example, once Mathis’s quality of play and commitment to the American league drastically decreased, MLS no longer had a strong incentive to retain him. 180 Unfortunately for MLS, however, due to the significant drop in Mathis’s performance, the value of his offers and other clubs’ willingness to pay the requisite transfer fees substantially dropped as well. Essentially, MLS’s decision to block the Mathis transfer led to both a stall in the player’s development and career, as well as his eventual transfer with virtually no compensation to MLS. 181 The American league’s current arrangement allows for the hindrance of American players’ careers and is one of the more significant drawbacks of the MLS system.

Aside from the destructive effects that transfer denials can inflict upon a player’s career, critics argue that America’s best talent must go overseas to train with the world’s elite teams and players in order to develop fully and to mature. 182 Such was the argument when American player DaMarcus Beasley was considering a return to MLS.
after two years abroad with PSV Eindhoven, an elite Dutch team. Critics argued that a move back to MLS would curtail twenty-four-year-old Beasley’s development because the American league could not provide the same level of competition and experience Beasley was receiving in Europe. Commenting on Beasley’s situation, soccer analyst Ives Galarcep stated, “As much as it would be nice for fans to be able to watch him run circles around his MLS counterparts, [Beasley’s place] is in Europe—where the world’s best offer the game’s best challenge.” For American players to reach their greatest potential, they must have the opportunity to play in Europe in order to receive the highest levels of training and competition.

3. Disadvantaging MLS and American Soccer Overall

Sports critics argue that preventing Americans from playing in more competitive leagues hinders the advancement of American soccer overall. Because MLS cannot offer America’s top talent the competition, training, and development available to them from the world’s top clubs and leagues, players do not reach their full potential in MLS. As a result, American soccer suffers as a whole, as manifested through the poor performance of the American national team.

Essentially, the image, respect, and success of American soccer rests upon the achievements and failures of the American national team, which serves as the nation’s chief representative on the international stage and at international competitions like the World Cup, the Confederations Cup, and the Olympics. Success at such competitions will arguably raise interest and promote the chief goal of American soccer: to secure a place as one of the world’s elite soccer leagues. From increased financial support, such as corporate

183. Galarcep, supra note 171.
184. See id.
185. Id.
186. Id.
187. See Lewis, supra note 182; supra Part II.C.2 (discussing DaMarcus Beasley’s situation).
188. See Lewis, supra note 182.
189. See id. (noting that the 1992 Olympic team only included two professional players and did not even make it to the quarterfinals).
190. See id. Lewis emphasizes the importance of “success in the World Cup, whether it is reaching soccer’s promised land on a consistent basis or excelling in the tournament, where a country’s rewards—monetary and otherwise—are greater, and reputation is on the line.” Id.
191. See id.
endorsements and partnerships, to increased interest among American fans, the success of the American national team is one of the key ingredients to the success of MLS and American soccer overall.192

The success of the American national team will not only promote American soccer domestically, but also within the international community. Such positive attention could lead to more international players playing for MLS teams, more inter-league competition, and financial endorsements from foreign sponsors. However, to achieve this success MLS must allow its players to maximize their potential abroad. By blocking talent from playing and developing overseas, MLS is obstructing its own advancement, as well as that of American soccer overall.

III. SOLUTION: MLS MUST LOOSEN THE REINS OF PLAYER CONTROL

MLS faces a difficult quandary, given that there are legitimate arguments on both sides of this debate. After ten years of operation, MLS is convinced it can establish itself as a premier national association, but continues to struggle in retaining top talent. The American league’s coaches, players, and critics agree that MLS currently does not possess the means to compete effectively with the European giants.193 Additionally, league policies regarding control over player transfers effectively hinder the success of MLS and its players.194

If MLS is to establish itself as an elite national association, its current transfer policies must change. Although league officials present a legitimate justification for retaining MLS’s top talent, forcing players to remain in the American league is not feasible and is counterproductive in practice, as evidenced by the examples of both Mathis and Dempsey.195 Players who are frustrated with the American league’s control over their careers may become worthless to MLS. Not only do these players’ level of play, will, and motivation suffer, but MLS’s ability to capitalize on their talent drastically diminishes as well, since these players eventually leave the American league after their contracts expire, resulting in little or no transfer fee.196

192. Id.
193. See supra note 182 and accompanying text.
194. See supra Part II.C.2.
195. See supra Part II.C.2.
196. See Galarcep, supra note 171.
MLS should be willing to export its best players in order to maximize the development of America’s top talent for the good of the American national team, MLS, and American soccer in general. While MLS may wish to keep its talent in the United States, the realities of international soccer require that these players have the freedom to go abroad in order to develop their talents. MLS must recognize these circumstances and realize that forcing players to stay in the American league yields the worst results in the long run for all parties involved.

A. MLS Should Offer Players Contractual Incentives

MLS must relinquish the overwhelming degree of control it maintains over its players. By following FIFA regulations, MLS could still possess a certain degree of power to protect itself, its teams, and its players. Instead of the current system of transfer fees and indefinite control over players’ rights, MLS should offer incentives to entice players to compete domestically. Although MLS does not have the financial means to compete with European teams, the American league could offer attractive contract provisions, such as guarantees of playing time, in order to secure desirable players. Considering the fierce competition to play in Europe, American players may be dissuaded to leave MLS if the American league could surpass European clubs in terms of contractual benefits.

B. MLS Should Recognize Player Circumstances

MLS must recognize that, given the varying situations of each player, dropping league controls would not necessarily lead to a mass exodus of American talent. For instance, after celebrating his marriage, player Chris Armas signed a long-term deal with MLS's Chicago Fire expressing his desire to remain in the United States, at least for the time being. This example proves that playing overseas is not the goal of every American standout and that some players wish to stay with the American league, even if given the opportunity to play abroad. MLS should be aware of, and take advantage of, player circumstances when drafting its contracts. Also, MLS should be more confident that players will choose to stay in the American league and trust that loosening controls on player transfers would not necessarily lead to the mass flight that it fears so much.

197. See generally FIFA REGULATIONS, supra note 121 (providing rules governing contracts between players and clubs).
198. See Lewis, supra note 182.
C. MLS Should Capitalize on its Significant Signing Power

Even if MLS is not able to retain top American talent, the American league is capable of importing elite international talent to help develop its teams. Due to the American league’s stability and its location in the United States, MLS has been able to draw top talent from around the world. For instance, MLS club D.C. United recently acquired Brazilian standout Luciano Emilio and is considering acquiring other top players from South America.\textsuperscript{199} MLS club Real Salt Lake acquired World Cup superstar Luis Tejada from his Panamanian team.\textsuperscript{200} Other MLS signings have included German legend Lothar Matthaus, Columbian World Cup star Carlos Valderrama, Italian legend Roberto Donadoni, and French World Cup winner Youri Djorkaeff.\textsuperscript{201} These players captivated American soccer fans, not to mention the rest of the soccer world, leading to greater revenues in advertising and ticket sales.\textsuperscript{202} The presence of such international soccer superstars has also increased the level of talent and play in the United States, adding new dimensions to the American league.

MLS appears to be gaining power in its ability to attract international superstars and first-class talent to the American league. Sending shockwaves through the international community and the United States, MLS recently announced the acquisition of international soccer superstar David Beckham to the Los Angeles Galaxy, an MLS club.\textsuperscript{203} At thirty-one years old, experts agree that Beckham is still in his soccer prime, and he is still regarded as one of the world’s most talented players.\textsuperscript{204} As evidenced by Beckham’s signing, MLS’s increase in signing power is attracting the attention of soccer fans, both in the United States and abroad. For instance, within a week of Beckham’s signing, the Los Angeles Galaxy reported selling 5,000 season tickets, a considerable increase from years past.\textsuperscript{205} Beckham’s addition to the Galaxy also attracted 1,500 applications to

\textsuperscript{199} Steven Goff, \textit{Brazilian Forward Emilio is Ready to Sign with D.C.}, \textit{WASH. POST}, Jan. 16, 2007, at E03.
\textsuperscript{202} \textit{See id.}
\textsuperscript{203} \textit{Id.}
\textsuperscript{204} \textit{See id.}
participate in open tryouts for the team, drawing both international and domestic players for the chance to play alongside the soccer icon.206

MLS’s attraction only appears to be growing stronger, as rumors have surfaced that Edgar Davids, a Dutch star, and Ronaldo, Brazil’s World Cup winner and two-time World Player of the Year, are considering transferring to MLS teams.207 These players are close to the peak of their careers and represent a great potential to advance the level of play, competition, and experience in the American league. Through these signings and others, the American league will be able to advance its development and thrust MLS into the mainstream of American culture.

The attraction of foreign players to MLS helps counterbalance the fact that some American players, if allowed to control their own careers, would choose to transfer to international teams. However, the presence of these players on MLS teams would also make the level of play and experience in the American league that much stronger. Arguably, players would be able to receive the same high level of play and training while playing for MLS, all without leaving the United States.

IV. CONCLUSION

MLS has declared its intention to establish itself as a premier soccer association. The First Circuit, in *Fraser v. Major League Soccer, L.L.C.*, effectively granted MLS an exemption from American antitrust law, thus protecting the American system of player control.208 Unfortunately for MLS, Europe, the center of the international soccer community, has outlawed the system currently followed by the American league.209 Even worse, FIFA has reformed its transfer regulations to promote players’ rights.210 These differences between the MLS transfer policy and both European and FIFA regulations mark the chief obstacle in MLS’s establishment as an elite league in the international soccer community.


208. See supra notes 68-91 and accompanying text.

209. See supra Part I.A.2; supra notes 112-17 and accompanying text.

210. See supra Part I.C.
Major League Soccer, in only its twelfth season, is still fighting to establish its prominence and reputation as a legitimate national soccer association. Competing with the elite European powerhouses, not to mention other national associations of countries around the world, MLS asserts its need to maintain tight control over its players as its way to protect and develop the American league. However, its tight controls over players’ rights undermine the full development and potential of American players. Despite MLS’s desire to keep its superstars at home, the American league cannot offer the training, competition, and opportunities that are available in Europe, which would allow American stars to reach their full potential. Because player development directs the establishment and advancement of MLS and American soccer overall, and the American national team is a major factor in promoting American soccer both home and abroad, MLS must relinquish control and allow players to transfer teams if they so desire. Even if MLS does relinquish this control, it still possesses the power to advance and develop further the American league with its increasing signing power and international allure. At the end of the day, two conclusions are clear. First, the exercise of strict player control wounds both MLS and the players in the long run; therefore, mechanisms should be loosened. Second, if MLS does indeed relax its transfer policies, it has the potential to continue developing through the attraction of international talent.

MLS may be likened to a child learning to ride a bike for the first time. In its first few seasons, MLS needed training wheels in order to protect and to survive in the international soccer community. However, in light of the American league’s successes and increasing power, MLS has demonstrated its ability to endure and advance without these safeguards. As a result, it is time for the American league to remove its training wheels and strive to reach the next level,

211. See supra Part II.B.
212. See supra Part II.C.2.
213. See supra notes 182-88 and accompanying text.
as other international leagues have done. By relinquishing player control and allowing more player autonomy, MLS can reach its ultimate goal of becoming one of the world’s elite soccer leagues.

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