



The Role of Sports Marketing in Achieving Development for Professional Clubs According to Algerian Law

Tahar rahmoun *

PHD University Of Laghouat

taherrahmoun@gmail.com

Received: 26/01 /2024

Accepted: 24/02 /2024

Published: 10/03 / 2024

Abstract:

The study aimed to comprehend the various laws associated with modern sports marketing strategies. This was achieved through the analysis and exposition of legal texts, such as sports advertising, sports sponsorship, marketing of diverse sales, and the optimal utilization of the club's brand. The objective is to assist professional football clubs in Algeria, whether in local, continental, or international competitions. The optimal implementation of all modern sports marketing strategies is considered an asset for the development and sustainability of the club. This aligns with the goals pursued by major clubs in countries that invest in football across various sports disciplines

Keywords: Sports Marketing –Development – Algerian Law.

Introduction:

In a time where competition among European football clubs is at its most intense, particularly in financial aspects, massive sponsorship deals, and various available investments, most Arab clubs, and specifically Algerian ones, continue to grapple with significant challenges in financial management. Finding new revenue sources to address these issues, which trouble club presidents in Algeria, is evident in substantial player entitlements and massive debts. This threatens the continuity and sustainability of these clubs in the Algerian Professional Football League.

Modern investments, through revitalizing and leveraging sports marketing as a source of sports financing, emphasize focusing on all aspects to ensure the club's sustainability, particularly from a financial perspective. This aligns with the goals pursued by major clubs in countries that heavily invest in football across various sports disciplines.

Practicing sports marketing and promotion, both representing administrative functions, are crucial keys to achieving the aspirations and ambitions of clubs. Identifying the needs and desires of target markets and obtaining desired satisfaction by utilizing what is available to the professional football club, all under the umbrella of sports promotion, is essential. This is especially significant given the large fan base enjoyed by the Algerian professional football club.

* Corresponding author□



The Role of Sports Marketing in Achieving Development for Professional Clubs According to Algerian Law

Algerian legislation has prompted efforts to create a legal environment that assists professional football clubs in enhancing their financial standing. This starts with giving a new structure to the professional football club, which can take the form of one of the following types of companies:

- Sole proprietorship sports companies with limited liability.
- Limited liability sports companies.
- Private stock companies.

This allows these entities to conduct business activities in accordance with commercial law. Additionally, the decisions, orders, laws, and executive decrees aid professional football clubs in adopting promotional policies and plans that contribute to improving the financial budget of the club, thereby achieving the desired ambitions

Do Algerian laws contribute precisely to organizing the sports marketing process to foster development for sports clubs ?

Problem Statement:

Algerian football clubs are facing significant financial deficits, attributed to various factors, notably the failure to generate a substantial amount of money for the club. This contributes to enhancing the economic and technical levels of the club. Bankruptcy threatens most professional clubs due to significant outputs such as high player salaries, coaches and technical staff, which have become a heavy financial burden on the clubs. This is in addition to expenses related to food, training camps, travel, material incentives, and the development of youth categories. This raises several questions about how to achieve balance in professional clubs and activate and exploit everything that can bring financial benefits to the club within the legal framework. Therefore, the Algerian legislator sought to keep up with the developments in the world of football, especially economically, by enacting laws, decisions, and orders to enhance the economic aspect of the clubs and achieve the desired goals.

Study Objectives:

This study aims to contribute to discussions and challenges, especially at present, regarding sports promotion for professional football clubs in Algeria. It seeks to activate everything that can contribute to raising the economic development of the clubs, aiming to achieve the maximum possible economic returns for the club and overcome financial crises and challenges hindering the clubs from achieving economic development. On the other hand, it aims to achieve self-sufficiency, as witnessed by most Western professional clubs. All of this is within the framework allowed by Algerian law, which, in turn, strives to keep up with developments in sports promotion in football.

Significance of the Study:

The significance of this study lies in its inclusion in the new trend that has begun to gain significant importance, with most countries paying considerable attention to its economic returns. This is aimed at addressing imbalances resulting from financial and monetary policies by encouraging sports promotion and seeking to generate the maximum possible financial returns to drive the economic development wheel of the clubs and achieve self-sufficiency. Through this study, we will also attempt to clarify the laws related to:

Basic model laws for commercial sports companies.

Sports sponsorship.

Trademark.



THE FIRST TOPIC:

Legal Provisions and Rules in the Field of Sports Promotion

The Algerian legislator has addressed a set of legal provisions or rules in the field of sports promotion, specifically for the domain, stakeholders, and protection of rights through various specialized legislations, such as:

Law 05/13 on the organization of physical and sports activities.

Executive Decree No. 73-15, which regulates the provisions applicable to professional sports clubs and defines the basic model laws for commercial sports companies.

Executive Decree 89/235 related to sports sponsorship (Article 2).

Order 03/06 related to trademarks.

Law 04-02 related to the rules applicable to commercial transactions.

Law 06-24, which includes the Finance Law 2007, Article (13).

Article 78 of Law 05/13, which regulates physical and sports activities, has been addressed. It designates the professional club in the form of a commercial company with a sports objective that can take one of the following forms:

Sole proprietorship sports company with limited liability.

Limited liability sports company.

Stock company.

The mentioned forms of commercial sports companies are based on provisions in the Commercial Law related to sole proprietorships, limited liability companies, and stock companies.

Limited Liability Companies:

Article 564 of Commercial Law Order No. 96-27 dated 9/12/1996 defines the limited liability company: "The limited liability company is established by one person or several persons who are only liable for losses up to the extent of the shares they have provided".

Sole Proprietorship and Limited Liability Company:

According to Article 13 of Order 9-11-1996, amending Article 564, paragraph 2 of Commercial Law states: "If the limited liability company is established according to the preceding paragraph and has only one person as a sole partner, this company is called a sole proprietorship and limited liability company".

Joint-Stock Company:

The Algerian legislator defines the joint-stock company in Article 592 of the Commercial Law as a company whose capital is divided into shares consisting of partners who bear losses only to the extent of their shares. The number of partners cannot be less than seven, and the minimum capital of a joint-stock company is set at five million Algerian dinars, with the option to announce an additional one million in case of savings in a publicly traded context.

The term "shares" refers to the partner's right in the company, and, conversely, Article 715 repeated 40 of the Commercial Law states, "Shares are a negotiable instrument issued by the company as a representation of a portion of its capital."

FIRST REQUIREMENT:

The Conceptual Framework of Intellectual Property Rights

The conceptual framework of intellectual property rights refers to a set of legal provisions or objective rules that define the areas of protection. These provisions encompass topics within intellectual property that hold protection validity, outline the rights' content applicable to



protected intellectual property subjects, specify the reasons for the expiration of these rights, and prescribe penalties for infringements.

SECOND REQUIREMENT:

Definition of Trademark

According to Order 66/57 dated March 19, 1996, concerning trademarks, which was later repealed by Order 03/06 dated July 19, 2003, the details related to the registration of trademarks are outlined in Executive Decree No. 05-277 dated August 2, 2005, specifying the procedures for depositing and registering trademarks.

Order 03/06 defines trademarks in Article 2 as "all symbols capable of linear representation, including words, names of persons, characters, numbers, drawings, images, or distinctive shapes for goods or services. It includes colors alone or in combination, used to distinguish goods or services of natural or legal persons from those of others".

Collective Trademark: Any mark used to demonstrate the origin, components, production, or any common feature of goods or services of different entities when these entities use the mark under its owner's control.

Goods: Any natural, agricultural, traditional, or industrial product, whether raw or manufactured.

Services: Any economically valuable performance.

Trade Name: The designation or address that identifies the establishment.

Competent Authority: The National Institute of Industrial Property.

Conditions for Trademark Protection:

For a trademark to be protected, it must meet several conditions:

Linear representability

Distinctiveness

Novelty

Legitimacy – it must not violate the law, public order, or morals.

The fundamental principle in trademark law is to protect the public from fraud, deception, and misleading practices, in addition to safeguarding the trademark itself.

Forms of Unfair Competition Affecting Intellectual Property Rights:

Referring to Law 04/02, which regulates the issue of unfair competition, specifically in Articles 28, 27, and 26, the following forms of unfair competition affecting intellectual property rights are outlined: defamation, imitation of trademarks, exploitation of skills, use of confidential information, infringement of advertising, and Order 03/06 regarding trademarks.

THIRD REQUIREMENT:

Imitation of Trademarks

Offense of Imitation of Trademarks:

Under Order 03/06 related to trademarks, Algerian legislation does not explicitly define imitation, nor does it establish specific criteria for engaging in the realm of trademarks. However, referring to Article 26 of Order 03/06, which states, "Imitating a registered trademark is considered an offense whenever an act violates the exclusive rights of the trademark owner," Algerian law considers the offense of imitation as the creation of a similar or identical mark to a



registered one. The legislator did not enumerate the acts of forgery, counterfeiting, or the use of an imitated or forged mark, as previously defined in Order 66/57 concerning factory marks and trademarks, which was repealed by Order 03/06.

The legislator now includes such acts within the offense of imitation, covering any action that infringes upon the exclusive rights granted by the law to the owner of the trademark.

The individual who registers the trademark with the competent authorities is deemed its owner, with exclusive rights to use it for the goods and services it represents for ten years, renewable for successive periods. This is stipulated in Article 5 of Order 03/06 regarding trademarks.

The principle of freedom of competition is also enshrined in Law 02/04 dated June 23, 2002, concerning the determination of rules applicable to commercial practices.

Unfair competition is addressed in three articles of Law 04/02:

Article 26, which defines non-truthful commercial practices as any violation of fair and honest trade practices.

Article 27, where the legislator provides eight examples of unfair commercial practices.

Article 28, with the legislator presenting three examples of misleading advertising as a form of unfair commercial practices.

Considering that intellectual property rights are rights that do not expire, associated with thought and divided into author's rights and related rights on one hand, and industrial property rights on the other, which, in turn, includes trademarks and patents.

Unauthorized Exploitation:

Given that the right to a trademark is a relative right, limited to using the mark on specific goods and services designated for marking without affecting other types of goods and services, others can use the same mark for a different type of goods without infringing on the owner's trademark rights. This exclusion aligns with the prohibition of unfair competition in general and imitation in particular.

As per Order 03/06, Article 14 states that the ownership of a trademark can be transferred, assigned, or pledged without transferring the business itself. The Algerian legislator adopts the theory of guarantee, where the trademark plays a role in defining product characteristics and specifications. Therefore, the trademark can be dealt with separately from the business. Under a licensing agreement, the licensee can produce goods bearing the same trademark that distinguishes the product.

Misleading Advertising:

The researcher Oxitfeld defined advertising as a "communication process aimed at influencing the buyer through non-personal procedures, methods, and means employed by the seller, whereby the advertiser discloses his identity and communicates through public communication means".

As a means of communication with consumers and having commercial purposes for profit, advertising sometimes deviates from ordinary and fair means. It aims to psychologically influence the consumer audience and may employ deceptive methods, particularly through comparison and falsehood. These deceptive practices are considered prominent forms of misleading advertising.

The shading present in advertising is tantamount to shading cast on a right of intellectual property, as the legal adaptation of advertising allows for two adaptations, considering it both as a trademark and, on the other hand, as a counterpart to a copyrighted work.

Article 27 of Law 02/04, where the legislator associates the imitation of advertising with the imitation of a trademark, considering it among non-deceptive commercial practices, especially



when imitating distinctive signs of a competing economic operator or imitating its products or services.

Article 2 of the decision issued by the Ministry of Finance on July 15, 2002, detailing the application of Article 22 of the Customs Law regarding the importation of counterfeit goods that infringe intellectual property rights, specifically symbols related to a mark.

Article 42 of Law 07-12 dated December 30, 2007, amending and supplementing Article 22 of the Customs Law, prohibiting the import and export of counterfeit goods that infringe intellectual property rights, especially symbols such as marks, symbolic signs, labels, advertising materials, and warranty documents.

These laws establish a close relationship between the trademark and advertising, considering advertising as a category within which the trademark is registered.

Turning to the important laws enacted by the Algerian legislator to ensure the rights of intellectual property owners, such as professional sports clubs, which take the form of legal entities under Algerian commercial law. This was reaffirmed in the law published in the official Algerian gazette on February 25, 2015, regulating the legal provisions applicable to professional sports clubs and defining the basic model laws for sports companies.

Article 2 of this law obliges professional sports clubs, within the framework of legislation and regulation, to improve their economic and sports competitiveness. They are tasked with engaging in advertising, sponsorship, and support activities that contribute to the development of their financial resources. Additionally, they are authorized to undertake commercial and investment activities to ensure their sustainability.

The legislator emphasizes the economic and sports improvement of professional sports clubs through commercial, investment, and marketing activities. This contributes to the enhancement of their financial revenues.

In business, revenue or "capital turnover" is defined as the income earned by a company from its ordinary commercial activities, such as selling a product or service to customers and consumers.

The Algerian legislator, in the same executive decree, defines "revenues" to include advertising revenues, revenues resulting from athlete transfers, profits from sponsorship, equipment.

FOURTH REQUIREMENT:

General Framework for Sports Sponsorship and Advertising

The sponsorship or sponshoring contract is defined, according to Article 02 of Executive Decree 89/235 dated 19/12/1989, which specifies the limits for sports advertising and sponsorship, as follows: "Sports advertising and sponsorship, and supervision of sports activities, represent in any contract where one or more natural or legal persons from the general or private law undertake partial or total support for sports activities through financial or material assistance provided to the organizers of these activities, in exchange for privileges associated with using the activities as promotional and commercial supports".

Law 05/13, issued on July 31, 2013, regulating physical and sports activities in Algeria, reinforces the role of sports sponsorship as a means of sports financing in Algeria through Article 165, stating: "Public and private operators may intervene in the field of financing and sponsorship for the benefit of athletes, sports clubs, associations, national sports federations, as well as the national Olympic committee and the national quasi-Olympic committee".

Support may take the form of financial contributions, training for athletes, or enhancing the resources of sports clubs, associations, sports federations, the national Olympic committee, and the national quasi-Olympic committee. The law sets the maximum amounts allocated for financing and sponsorship, which are deductible to determine corporate income tax.



The law specifies the entities eligible for sponsorship and financial support, including athletes, sports clubs, associations, national sports federations, the national Olympic sports committee, and the national quasi-Olympic committee. It also outlines the types or forms of support that may be provided within the framework of sports sponsorship, including financial and service-oriented support. The law delegates the regulation of the maximum amounts that operators or private individuals can allocate for financing and sponsorship, with tax incentives provided for companies engaging in sports sponsorship.

Article 166 of the same law addresses profits resulting from sponsorship, equipment, or image marketing contracts for athletes or groups of athletes belonging to national sports federations and the relevant sports club.

This article highlights the parties involved in agreements related to profits resulting from sponsorship contracts, specifying that the parties are the athlete or a group of athletes, the national sports federation, and the relevant sports club.

Additionally, Article 13 of the 2007 Finance Law increased the amount institutions can spend on sports to a maximum of 10 million dinars, within the limit of 10% of the business turnover for the fiscal year.

THE SECOND SETOPIC: Licensing

FIRST REQUIREMENT: Trademark Exploitation License

It is permissible to license the use of a trademark, as stipulated in Article 16 of Decree 03/06 concerning trademarks. The article states: "The rights attached to a trademark may be the subject of an exclusive or non-exclusive exploitation license for each part of the goods or services for which the trademark is deposited or registered." Exploitation of the trademark refers to the contract through which the owner grants others the right to fully or partially exploit the trademark, whether exclusive or non-exclusive, in exchange for consideration, often in the form of royalties.

SECOND REQUIREMENT: Concept of Licensing Agreement

Subsection One: Definition of Licensing Agreement

The trademark licensing agreement is a contract between the licensor and the licensee, allowing the latter the right to exploit the trademark. The licensee pays compensation to the licensor for this privilege.

A licensing agreement is a contract through which the trademark owner, the licensor, relinquishes part or all of their exclusive rights to another person, the licensee, allowing them to exploit the trademark. This is typically done in exchange for financial compensation. The Algerian law, Order 03/06 concerning trademarks, includes several articles (Article 16 to Article 18) addressing licensing agreements.

Subsection Two: Legal Framework of the Licensing Agreement

The licensing agreement is subject to general rules stated in civil and commercial laws on one hand, and on the other hand, it is subject to specific conditions outlined in trademark laws. Given that the subject of the contract is the licensing of a trademark, Articles 16 to 18 of Order 03/06 concerning trademarks in Algeria govern such agreements.

The requirement of written documentation is essential for registering and publishing the licensing agreement in dedicated records.



THIRD REQUIREMENT: Types of Licensing Agreements

A. Exclusive Licensing: In this type, the right to exploit either the patent or the trademark is exclusively limited to the licensee within specified geographic boundaries outlined in the contract. The licensee is prohibited from granting licenses to others within the defined territory, and this type of licensing deprives the licensee of the right to exploit within the specified region. The licensee is also prohibited from licensing others for exploitation within the geographical boundaries set by the exclusive licensing agreement.

B. Non-exclusive or Ordinary Licensing: In this type of licensing, the licensee is not prohibited from granting licenses to others for exploitation to any number of individuals. Additionally, the licensee has the right to exploit the trademark themselves.

FOURTH REQUIREMENT:

Consequences of the Licensing Agreement

Subsection One: For the Licensee

For the licensee, the consequences include the empowerment to possess the patent or trademark and benefit from it. This involves having access to all means that ensure full exploitation, such as technical documents, plans, analyses, descriptions, and accompanying drawings for a patent, or images presented in the field of trademarks. To achieve the economic purpose of the licensing agreement, the licensee must equip themselves with scientific and technical capabilities capable of absorbing information related to technology.

Guarantee:

The guarantee involves non-interference, either personal or from external sources. Personal non-interference is part of public policy and is non-negotiable or voidable. The licensee cannot dispute the licensor's rights, such as preventing them from exploitation. The licensee cannot transfer the licensed right to others without informing the licensor. The guarantee also ensures non-interference from external sources, which may be subject to negotiation between the parties based on good faith. This interference may manifest in imitation by a third party of the patented invention or trademark covered by the licensing agreement, leading to legal action for infringement, initiated either by the licensee or through an agency appointed by the licensor.

The second subsection: For the Licensee

Obligation to Exploit:

Upon the execution of the licensing agreement, the licensee is obligated to personally and effectively exploit the subject matter of this agreement throughout the specified duration, whether the contract is exclusive or non-exclusive. Consequently, the licensee is prohibited from alienating the right by granting an exploitation license to others or transferring the license agreement for exploitation without the prior consent of the licensor.

Obligation to Pay Royalties:

The licensee commits to using the trademark or any other industrial property rights by remitting the agreed-upon royalties as outlined in the license agreement. This compensation may either be a fixed contractual amount or a proportionate amount deducted from the profits generated through exploitation. In the latter case, a specific percentage of the produced sales is determined, often with a stipulation within the contract for such conditions. This provision enables the licensor to monitor the accounts of the licensee to ensure the credibility of statements regarding the scale and quantity of exploitation projects. The remuneration might involve a hybrid arrangement involving a predetermined minimum amount payable upfront, along with royalties based on the percentage of exploitation. The payment obligation remains in effect until the



expiration of the right or termination, except in cases where both parties mutually agree otherwise.

Given the significant economic status occupied by licensing agreements, licensing a patent becomes a strategic means for the rights holder to benefit by granting exploitation rights to third parties.

From the foregoing, it is evident that Algerian legislation has established certain regulations to protect trademarks, considered crucial financial resources. Based on these legislations, comprehensive plans and methodologies can be developed to:

Effectively market the trademark of the professional football club.

-Improve the competitive capacity of the trademark.

-Enhance its position and reputation in the market.

-Expand the scope of the trademark.

List of Sources and References:

I. Legal Texts:

- Law 05/13 dated 14 Ramadan 1434 corresponding to July 23, 2013, regulating physical and sports activities
- Executive Decree No. 73-15 dated 26 Rabi' al-Thani 1436 corresponding to February 16, 2015, specifying the provisions and model bylaws regulating the applicable provisions for professional sports clubs and outlining the model basic laws for commercial sports companies
- Executive Decree 89/235 related to sports sponsorship
- Order 03/06 dated 19 Jumada I 1426 corresponding to July 19, 2003, regarding trademarks
- Law 04-02 dated 5 Jumada I 1425 corresponding to June 23, 2004, determining the rules (applicable to commercial practices (amended and supplemented
- Law No. 06-24 dated 6 Dhu al-Hijjah 1427 corresponding to December 26, 2006, incorporating the Finance Law for 2007

II. Books:

- Al-Tahir Mohsen Ghali, Ahmed Shakir Al-Asakar: "Advertising: An Applied Introduction," Wael Publishing House, Oman, 2003
- Jalal Ahmed Khalil: "The Legal System for Protecting Patents and Technology Transfer for Developing Countries," Athr Al-Salasil Publications, Kuwait, 1983
- Sameeha Al-Qalilubi: "Industrial Property," Dar Al-Nahda Al-Arabiya, 200
- Sameer Hassan Al-Fatlawi: "Industrial Property According to Algerian Laws," Diwan Al-Matbouat Al-Jamiya, Algeria, 1988
- Naaman Wahiba: "Exploitation of Industrial Property Rights and Economic Growth," Master's Thesis, University of Algiers, 2012
- Mustafa Bakhoush: "Explanation of Industrial and Commercial Legislation," Dar Al-Fajr for Publishing and Distribution, Cairo, 2006
- Najia Bouguemiga: "Legitimate Competition in Intellectual Property: Doctoral Thesis," University of Algiers 1, 2014
- Walid Kehoul: "Crime of Trademark Counterfeiting in Algerian Legislation," Al-Fikr Magazine, Issue Eleven, 2011
- Burt Jean Jacques: "Unfair Competition and Parasitism," DALLO, 1993.