

Exploitation of the Amateur Sports Club's substrates in the context of Commercial Sports Company

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Abstract:

The purpose of this paper is to highlight at the Amateur Sports Club's (ASC) importance role in making the Commercial Sports Company (CSC), which includes the Professional Sports Club (PSC), a success. Although the Law No. 13-05 (Relating to the Organization and Development of Physical and Sports Activities) it's provides for the possibility of establishing a (CSC) by natural and other legal persons. However, the (ASC) has an essential value in making this company a success. This can be achieved through exploiting its essential substrates, represented in its Name and Logo, and converting it into a Company Trade Name and a Brand of the latter, through an agreement between the two entities. All of this is to ensure that the customers and brand of the (CSC), who are in fact the popular base for the (ASC), are maintained. This was covered by the Article (08) of Executive Decree No. 15-73 determining the provisions applicable to the (PSC).

Keywords: Commercial Sports Company, Professional Sports Club, Amateur Sports Club, Brand.

introduction:

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The sports commercial company represents a new type of commercial company, which was stipulated by the Algerian legislator under Law 13-05 relating to the organization and development of physical and sports activities (the Official Gazette of the People's Democratic Republic of Algeria, 2013), and despite the possibility of establishing natural and legal persons for this type of company, the reality proved that the amateur sports club has a major role. In the establishment and success of the company.

From a legal point of view, the amateur sports club is subject to the law regulating associations No. 12-06 related to associations (12-06 of January 12, 2012, relating to associations, Official Gazette of the People's Democratic Republic of Algeria , 2012). As for the sports commercial company, it is subject - in addition to the aforementioned Law 13-05 - to the provisions of the Algerian Commercial Code. However, the combination of these two entities when establishing the professional sports club may lead to a collision in the powers of the administrative body for each of them, and the Algerian legislator - through Decree 15-73 that regulates the provisions applicable to the professional sports club (Official Gazette of the People's Democratic Republic of Algeria, 2015) - has tried to avoid this collision by The text of the need to sign an agreement between them, specifying the obligations of each of them, and how the commercial sports company can exploit the components and pillars of the amateur sports club.

Based on the foregoing, the following problem can be posed: What are the components of an amateur sports club? And how can a commercial sports company ensure that it is commercially exploited ?

In order to answer this problem, we must rely - without neglecting the descriptive approach - on the analytical approach as a main approach in this research paper, and use it in analyzing the legal philosophy adopted by the Algerian legislator, in transforming sports from a hobby subject to the law of associations when it was established, into a commercial company. All the components of the amateur club can be exploited in it, and they are subject to the Algerian commercial law and Law 13-05, which regulates the provisions applicable to the professional sports club (Official Gazette of the People's Democratic Republic of Algeria, 2015).

This research paper has been divided into two basic requirements: the first of them deals with the concept of the sports club between hobby and professionalism, and the second requirement deals with the commercial nature of the sports company, and its role in withdrawing the pillars of the amateur sports club.

- Abyss gyms

Professional sports clubs

The sports club is the basic structure of the sports movement that ensures the upbringing and improvement of the sports level in order to achieve sports performances (the Official Gazette of the People's Democratic Republic of Algeria, 2013).

For this reason, the Algerian legislator subjected the organization of the amateur sports club to the law regulating associations, while it included a special law for the organization and management of the professional sports club, which is fundamentally different from the amateur sports club.

SECTION I : The amateur sports club is subject to the law of associations

The amateur sports club is subject to the law regulating associations represented in Law 12-06 related to associations, and article (02) of it defines the following: “An association within the meaning of this law is considered to bring together natural and/or legal persons on a contractual basis for a specific or indefinite period.

These persons participate in harnessing their knowledge and means voluntarily and for a non-profit purpose in order to promote and encourage activities, especially in the professional, social, scientific, religious, educational, cultural, sports, environmental, charitable and humanitarian fields (12-06 of January 12, 2012, relating to associations, Official Gazette of the People's Democratic Republic of Algeria , 2012).

First Requirement: The sporting goal of the amateur club

Societies differ in terms of their goals, to many associations for which sport is one of their goals, and then the amateur sports club represents a sports association defined by Article (75) of Law 13-05 aforementioned as: “A sports association with unprofitable activity, which follows the provisions of the relevant law associations and the

provisions of this law, as well as its basic law (the Official Gazette of the People's Democratic Republic of Algeria, 2013). This is the same as Article (02) of Decree 15-74 of February 16, 2015, which defines the provisions and the model law applicable to the amateur sports club (Official Gazette of the People's Democratic Republic of Algeria No. 11 of 2015, 2015).

The sports association is originally composed of people linked by a sports and social idea that are legally authorized in its work on a permanent basis, and it has a legal status that does not mean material profit, as it may be professional for sports activities (Muhammad Suleiman al-Ahmad, 2005). Thus, the amateur sports club represents a sports association that is subject in its provisions to the law relating to associations, and the law related to the organization and development of physical and sports activities, especially articles (75) to (77)

Second Requirement: The amateur sports club is the nucleus of the commercial sports company

Competitions in sports - of any kind - differ into amateur and professional competitions, and this is in line with the new regulations for sports; An amateur sports club cannot turn into a professional sports club except under conditions that fall within the framework of the law of the game, and when these conditions are met, the amateur sports club can establish a commercial sports company under which it accommodates the professional sports club.

Article (05) of Executive Decree 15-73 that sets out the provisions applicable to the professional sports club states: "Every amateur sports club established in accordance with the provisions of Law 12-06 of Safar 18, 1433 corresponding to January 12, 2012, and Law 13-05 of 14 Ramadan 1434 corresponding to July 23, 2013 and the above-mentioned, whose revenues and wages amount to at least fifty (50) million dinars for the last fiscal year, the establishment of a commercial sports company in accordance with the forms stipulated in the applicable legislation." (the Official Gazette of the People's Democratic Republic of Algeria, 2013)

Accordingly, an amateur sports club that is moving towards establishing a commercial sports company - or what is known as a professional sports club - needs a set of conditions stipulated by the

Algerian legislator in Articles (05) to (08) of the aforementioned Executive Decree 15-73.

- That the revenues and wages of the amateur sports club in the last fiscal year amount to fifty million Algerian dinars (50,000,000 DA), according to Article (05) of the same decree.

- That the company is established in accordance with the legal forms stipulated in the Algerian legislation, according to Article (05) of the same decree.

- To sign an agreement between the amateur sports club and the commercial sports company, in which certain points are specified in particular, according to which the activities related to sports training will be distributed, and the modalities for the participation of the commercial sports company in the activities that remain under the responsibility of the amateur sports club, and to set conditions for how to use the material elements The component of the amateur sports club, especially the facilities and buildings, and for that use. As well as the intangible elements such as the name, mark or logo of the amateur sports club, according to Article 08 of the same decree.

The amateur sports club is distinguished from the rest of the other associations with features that are in line with its sports theme. With the entry of the professional world to sports in Algeria at the beginning of this century, the sports association or the amateur sports club has an important role in establishing the commercial sports company, which in turn is a new entity in Algeria through the law 13-05 The aforementioned, which is in line with the possibility of merging the amateur sports club as a non-profitable activity in the commercial sports company for which profit is a goal, as dictated by economic globalization that affected the sports sector not only in Algeria but in all countries of the world.

The second branch: establishing a professional sports club in the form of a commercial sports company

The fulfillment of the conditions for the formation of a professional sports club by an amateur sports club leads in practice to the establishment of a commercial sports company in accordance with the commercial law, taking one of the legal forms stipulated by the Algerian legislator.

Paragraph1 : : the professional sports club

The Algerian legislator stated in Law 13-05 related to the regulation and development of physical and sports activities in its article (78) as follows: "A professional sports club is a commercial company with a sporting objective that can take one of the following forms of commercial companies...:

A one-person sports corporation with limited liability.

Sports Limited Liability Company.

Stock sports company.

The companies stipulated above shall follow the provisions of the Commercial Law and the provisions of this Law, as well as their own basic laws that must be specified, especially how they are organized and the nature of contributions..." (the Official Gazette of the People's Democratic Republic of Algeria, 2013)

As for Article (79) of the same law and Article (02) of the aforementioned Executive Decree 15-73, it states that the goal of a professional sports club is to improve its economic and sports competitive level, as well as the level of players who are active within it.

Professionalism is a condition for any natural or legal person to acquire the status of a merchant, and it inevitably includes carrying out these acts on a frequent, continuous and regular basis so that the person acquires the status of a merchant (Ammar Amora, 2005)

Professionalism is defined as "directing a person's activity mainly (Al-Ahmad, 2005) and habitually to do a specific job that becomes a craft for him to earn a living from (Rablot, 1954).

Sports professionalism is a type of professionalism, as every professionalism focuses on a job, whether it is work in the field of industry (Al-Ahmad, 2005), commerce, agriculture or sports. Reliable material return, with full dedication and commitment to implement the terms of the agreed-upon and fixed-term contract (Kamal Darwish and Al-Saeed Khalil Al-Saadani, 2005).

The economic exchanges in the field of sports, such as the transfer of funds and trading between managers, and making the state a party to control these transactions, as well as benefiting from taxes in parallel with the high level of sports and the results obtained - all

contributed to the professionalization of sports and its transformation from a non-profitable activity to a profitable activity after the transformation from An amateur sports club to a professional sports club representing in its structure a commercial sports company that is not subject to the law of associations, insofar as it is subject to the commercial law regulating companies, and the law in force relating to the regulation of physical and sports activities.

Paragraph 2 : the sports commercial company

Pursuant to the legal provisions in the framework of sports professionalism, the Algerian legislator stipulated the conditions for establishing a commercial sports company in the second and third chapters of Executive Decree 15-73, which fixes the provisions applicable to the professional sports club, where the commercial sports company can be established by the amateur sports club, as well as It can be established by a natural or legal person.

Article (09) of Decree 15-73, which regulates the provisions applicable to the sports commercial company, states the following: “Any natural or legal person of Algerian nationality may establish a commercial sports company in accordance with the provisions set forth below.” (the Official Gazette of the People's Democratic Republic of Algeria, 2013).

A commercial sports company can be established by natural or legal persons, and this was stipulated in Articles (09) to (12) of the aforementioned Executive Decree 15-73, as this establishment can be based on the general rules mentioned in the Civil and Commercial Law Concerning the establishment of commercial companies, provided that its objective is mathematical in line with the legal provisions stipulated in Law 13-05 and Executive Decree 15-73 mentioned above. However, the reality has proven that the amateur sports club - by virtue of its history and popular base - is the basis for the establishment of commercial sports companies , especially in the field of football.

The Algerian legislator did not come up with a definition of the commercial sports company, but left that to jurisprudence and the provisions contained in the amended and supplemented civil and commercial laws, as by examining the text of Articles (78) of Law 13-

05 related to the organization and development of physical and sports activities (the Official Gazette of the People's Democratic Republic of Algeria, 2013), and Article (02) of Executive Decree 15 -73 related to controlling the provisions applicable to the professional sports club (the Official Gazette of the People's Democratic Republic of Algeria, 2013), and specifying the typical basic laws of commercial sports companies. The Algerian legislator touched on how to establish and run the commercial sports company only, without going into how to expire as a stage of the company's life, and it is noted that the Algerian legislator mixed the concept of The commercial sports company with the concept of a professional gym and making them one thing.

The Algerian legislator defined the commercial company contract in Article (416) as "a contract whereby two or more natural or legal persons are obligated to participate in a joint activity by providing a share of work, money or cash with the aim of sharing the profit that may result, achieving an economy or achieving a beneficial economic objective." common.

They also bear the losses that may result from that." (Order 75-58 of September 26, 1975, containing the Algerian Civil Code, as amended and supplemented, 1975)

A commercial company is legally defined as: A contract in which two or more persons participate in order to carry out a joint financial project. It arises from the compatibility of two or more wills. The company's contract is unique from other contracts in that it creates a new legal person independent and distinct from the personality of all the partners. Therefore, the word partners means at the same time the contract and the legal person that is generated by it, in addition to the necessity of providing formality in the company contract (Ammar Amora, 2005).

Accordingly, the basic pillars of establishing a commercial company are the intention to participate, provide the capital, and the intention to share profits and losses. As for the pillar of the multiplicity of partners, it has a relative impact on the existence of the company, based on the company's form, especially in light of the Algerian legislator's text on the provisions of the single-person

company with limited liability that he brought based on the amendment of Article (564) of the following of Order 75-59 Embedded Commercial Code pursuant to Order 96-27. (Official Gazette of the People's Democratic Republic of Algeria, No. 101, , 1975).

Thus, it became possible to establish a commercial company by one partner, whether a natural or legal person. This is an exception in corporate law.

The pillars of a sports company are traditionally the pillars stipulated in Article (416) of the Civil and Commercial Law, as it states: "A contract whereby two or more natural or legal persons are obligated to participate in a joint activity by providing a share of work, money or cash with the aim of sharing the profit that An economy may produce or achieve an economic goal of mutual benefit.

They will also bear the losses that may result from it." (Order 75-58 of September 26, 1975, containing the Algerian Civil Code, as amended and supplemented, 1975).

The commercial sports company is subject to the provisions of the two Algerian commercial and civil laws, Article (78) of the aforementioned Ordinance 13-05 stipulates the subject of the commercial sports company through the professional sports club by saying: "The professional gym is a commercial company with a sporting objective..." (the Official Gazette of the People's Democratic Republic of Algeria, 2013).

Thus, what distinguishes the commercial sports company is the goal for which it was established, because the Algerian commercial law gave the commercial character to natural and legal persons who engage in a profitable commercial activity, based on the commercial business established according to Article (02) of Order 75-59 containing the Commercial Code. Or a form according to Article (03) of the same order, or business by extension according to Article (04) of the same order. (Official Gazette of the People's Democratic Republic of Algeria, No. 101, , 1975)

The Sports Business Company is a professional sports club. The club is subject to the provisions applicable to it to the Associations Law. In order to give it a commercial character, the Algerian legislator

attached it to the system of companies through which it acquires a commercial character as stipulated in Article (03) of the Algerian Commercial Code (Official Gazette of the People's Democratic Republic of Algeria, No. 101, , 1975).

Accordingly, a commercial sports company can be defined as: a contract established by one or several natural or legal persons, under which they commit themselves to carry out a commercial project with a sporting objective, by providing in-kind or cash shares with the aim of sharing the resulting profit, according to one of the legal forms stipulated It consists exclusively of:

A one-person sports corporation with limited liability.

Sports Limited Liability Company.

Sports company with shares.

SECTIONII : the commercial nature of the sports company and its role in withdrawing the pillars of the amateur sports club

Despite the possibility of forming a commercial sports company, by natural persons or legal persons, it remains that the formation of this company by an amateur sports club is beneficial to the commercial life of the sports company, through the latter benefiting from the pillars of the amateur sports club represented in the name and logo.

First Requirement: the sports topic of the sports commercial company

Contrary to Article (02) of the Algerian Commercial Code, the subject of the commercial sports company has expanded to include many activities related to improving the economic competitive situation, and the competitive situation of sports.

Paragraph1 : The scope of the sports trading company

Article (02) of Decree 15-73 of February 16, 2015, fixing the provisions applicable to the professional sports club, stipulates that "the professional sports club is tasked, within the framework of the legislation and regulation in force, to improve its economic and sports competitive level, as well as for its athletes through its participation in sports events and competitions. paid and employing coaches and athletes for a fee, as well as practicing all commercial activities related to its subject,

In this capacity, he is charged with the following:

Participation in various national and international sports competitions. - Carrying out training operations for the benefit of athletes and coaches and creating centers for training sports talents. - Ensuring that the club's athletes are trained, trained, prepared and assembled. - Participation in the selection, detection and guidance of young sports talents. - Working on raising and promoting the club's members and contributing to the promotion of sportsmanship. - Organizing paid sports events, shows and competitions. - Events or exploitation of each sports facility within the framework of the applicable regulation, and the management and maintenance of the club's property.

- Granting salaries to the club's athletes and its supervisors within the observance of the legislation and regulation in force. - Carrying out every advertising, sponsorship and guarantee activity that would contribute to the development of its financial resources. Carrying out all commercial and investment activities that would develop its resources and ensure its survival. Organizing every rest and leisure activity for the benefit of the youth and the public. The primary goal of a professional sports club - as a commercial sports company - is profit. This can only be achieved by investing in athletes by participating in their selection, training, supervising and accompanying them, and providing them with a technical and technical framework, depending on qualified facilitators, in addition to participating in paid demonstrations and competitions.

Improving the economic competitive position of the company includes investing in the traditional elements of the project, by using the club's brand to sell all its products, including sportswear, balls and things related to sports. Add to this the processes of publicity, sponsorship and sponsorship that guarantee an increase in the financial resources of the company, and this is what Article (02) of the same decree stipulates.

Paragraph 2 : The partnership agreement between the amateur club and the commercial sports company

The relationship between the amateur sports club and the commercial sports company must be regulated in accordance with an agreement between the two bodies, in which a set of obligations is

defined, and it has been clarified previously. Among these obligations, how the commercial sports company exploits the name and logo of the amateur sports club, and in return for this exploitation, which is stipulated in Article (08) of the aforementioned Executive Decree 15-73. (the Official Gazette of the People's Democratic Republic of Algeria, 2013).

The fears of amateur sports club managers were many and legitimate in this context, but the professional experience is worth trying. Professionalism has become in our days an absolute necessity imposed by contemporary sports; The international sports arena today imposes the provision of special conditions for preparing, competing and acquiring a high level, and in this regard, the largest sports clubs were established through an amateur sports association that took the form of a sports company according to different patterns, and the relationship between the association and the company as two separate entities does not take place according to the usual rules in its aspect related to By controlling social capital, but by means of a binding agreement that gives the association specific powers. (JEAN-PIERRE DENIS et JEAN-FRANCOIS LAMOUR, 2003).

However, such an association may find itself obligated to create a company when its activity takes a professional scope and is aimed at making a profit. The company will be responsible for managing the professional aspect of the sporting activity, while the association maintains management of the amateur component, and the standards are clearly defined.

In most cases, the commercial sports company is based on pre-existing sports associations, and this is often the case, so that the popular base represents the amateur sports clubs as the basis for its establishment, and considering that the commercial sports company is a commercial company that carries out a profitable activity, it invests indirectly in the components of the association Sports, whether it comes to the club's logo, which often turns into a trademark of the commercial sports company, and is also based on the trade name that represents the name of the amateur sports association, in addition to determining the activities that the sports commercial company can work in according to an agreement concluded between the club The

amateur and the commercial sports company according to Article 08 of the aforementioned Decree 15-73 (the Official Gazette of the People's Democratic Republic of Algeria, 2013).

Second Requirement: The name and logo of the amateur sports club is a front for the sports commercial company

After the sports commercial company concludes a partnership agreement with the amateur sports club, it can exploit the name and logo of the amateur sports club and convert them into a commercial name and trademark in the licensed sports activities and branches in accordance with the agreement

Paragraph1: The name of the amateur club and the trade name

The name of the amateur sports club represents one of its main components. Through the name, the club acquires its mass base that can benefit the sports commercial company, as this base turns into customers and clients of the sports commercial company. Thus, the name of the amateur sports club - besides being a trade name for the sports company - is one of the factors contributing to the company's fame. Accordingly, a trade name can be defined as: the name called by a person - whether natural or legal - when practicing his commercial activity, and this name is often old, and it may be pseudonym or distinctive. (annie chamoulaud-trapiers, 2001).

Paragraph 2 :The club's logo and the sports company's trademark

The logo - whether it is a feature, an external sign, an inscription installed on a building, a picture or a visual illustration - is linked to the activity you practice, so that it constitutes a subject of intangible property. The logo is the specific face by which a person, institution, company, product, or even a country is recognized, and it consists of a symbol, name, abbreviated letters, or an expressive graphic. It is possible to combine two forms such as combining letters and symbols. The logo may have one color, or more than one color, or black and white. The logo does not have to express an official body or its goals. The main goal of the logo is to distinguish the organization or company that owns that logo, so it is necessary that the logo be distinctive and unique so that it is not similar to other logos. (<https://99designs.com/blog/tips/what-is-a-logo/>, 2019).

The concept of the logo that characterizes an amateur sports club is different from its concept in a professional sports club; If the amateur sports club is an association with a sporting goal that does not take profit as its goal, then the professional sports club is a commercial sports company whose object is sports and its goal is profit, and thus the concept of the logo in the amateur sports club applies to the commercial sports company to become its trademark, and the mark in this sense represents an element Financially a component of the financial disclosure of the sports commercial company.

The logo of the amateur sports club is transformed under the agreement into a trademark of the commercial sports company, and then the mark performs its functions in bringing customers and introducing the professional sports club. Written words, especially words including names of persons, letters, numbers, drawings, pictures and shapes distinguishing goods or their packaging, and colors alone or in combination, all of which are used to distinguish the goods or services of a natural or legal person from the goods and services of others.

It is possible to contribute to an existing company or by way of incorporation by providing a work share or cash or in-kind funds. Since the mark is considered a morally movable property, it is considered among the funds that may be offered as a share in a company (the Official Gazette of the People's Democratic Republic of Algeria No. 44, 2003). The partner submitting the trademark in this case acquires shares in the company's capital; This process is subject to the common general provisions for commercial companies; The mark may be presented as a share in the company, either as a means of ownership, so the provisions of the sales contract apply to it, or as a means of usufruct, and the provisions of the lease contract apply to it. (Saleh Farha Zarawi, 2003)

The brand has an economic value that can be very important in attracting customers, which gives it the possibility of financial evaluation. Hence, the mark can be waived as an introduction in exchange for shares in the company's capital. This waiver can take place in two ways:

- Either as a matter of ownership, so the holder of it relinquishes its ownership and presents it to the company that becomes the owner of the trademark. (Saleh Farha Zarawi, 2003)

Either for the sake of usufruct, in which case the holder does not waive its ownership, but rather the use of it in return for a value in profits, and at the end of the period the mark returns to its owner. (Maghabghab, 2005)

Conclusion:

The entry of the economy into the world of sports led to transformations in some legal systems such as commercial companies; Sports professionalism has led to the emergence of commercial sports companies, which often find in the amateur sports club a nucleus to base upon, and this is indicated by Law 13-05 related to the organization and development of physical and sports activities and Decree 15-73 that regulates the provisions of the professional sports club.

The club's name and logo are pillars of the amateur sports club that cannot be exploited by the sports commercial company, except with an agreement that defines the legal obligations between the two legally independent entities, although the amateur sports club is considered a founding member of the sports company.

The name of the amateur sports club is transformed into a commercial name for the commercial sports company, which it uses in all its commercial, administrative and financial transactions...in accordance with the provisions of the Commercial Law. As for the club's logo, it becomes a trademark, to which the legal provisions of the trademark stipulated in Order 06-03 of 19 July 2003 relating to marks, to be deposited and registered with the Algerian National Center for Industrial Property for their protection.

Although the Algerian legislator stipulated legal provisions regarding the professional sports club and the commercial sports company and their relationship with the amateur sports club, the reality proved the fragility of this relationship due to the failure to clarify the role of the amateur sports club in the management of the commercial sports company.

Based on the foregoing, the following points can be suggested:

- Strengthening the legislative provisions regulating the commercial sports company, especially in its part related to the agreement concluded between the amateur sports club and the professional sports company.

Applying protection measures to the trademark of commercial sports companies from imitation.

- Financial evaluation of the club's logo when it is transferred to the commercial sports company, or entering the logo as an in-kind share in the commercial sports company in order for the amateur sports club to benefit from revenues.