

Greek Choregia and modern sponsoring; Application Problems

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A. Greek Choregia and modern sponsoring – Definition¹

Greek Choregia appeared in ancient Greece as one of the public duties (liturgy)², one of the most important political and social institutions³, of the Athenian Democracy according to which the Athenians⁴ were assumed the duty of financing and paying of all the expenses for the preparation of the chorus for religious observances and dramatic works. The Choregia⁵ was assigned to a wealthy citizen as a duty he could not decline⁶. In return the Choragus was respected as a prominent person, who honored both himself and his Tribe⁷. Furthermore, if the poet who he sponsored was victorious, he also was considered a winner and enjoyed the same prize as the poet⁸. Two are therefore the characteristics of the Greek Choregia: its compulsory status and the glory it derived to the Choragus.

¹ For a detailed analysis of the meaning of Choregia and its distinction from sponsoring, see D.P. Panagiotopoulos – A. Zaglis *Choregia or Sponsoring?* in *Organisation and Administration of Athletics (Organosi Diaxirisi Athlitismou)* 1:2(2003) p. 225-237 and D.P. Panagiotopoulos *Sport Law I* Nomiki Bibliothiki edition 2006, pag. 533, with further references to ancient Greek authors.

² Institution according to which the citizens were obliged to assume one of the public duties of the town, by bearing the cost of them. In Athens of the 5th and 4th century B.C. these public duties were divided in two categories: the regular and the special. The most important of the regular were the Choregia, the preparation of the gymnastics (sport games in which the athletes were naked) (*gymnasiarchia*), the coverage of the expenses of the youngest of a Tribe for their participation at the Torchlight Parade game (*lampadarchia* or *lampadidromia*), the expenses for the nurture of a war horse (*ippotrofia*) etc. The most important of the special were the manning and maintaining the Athenian Trireme (*trierarchia*) See encyclopedia *Papyrus Larousse Britannica*.

³ For a detailed analysis of sport related institutions of ancient Greece see D.P. Panagiotopoulos *Sport Law I* Nomiki Bibliothiki edition 2006, pag. 29 etc and D.P. Panagiotopoulos *International Sport and Olympic Institutions* Nomiki Bibliothiki edition 2007, pag. 8 etc.

⁴ or the “metikoi” (person who lived in Athens but were not originated from it) who hoped that by participating in a Choregia, they could eventually become citizens of Athens. See encyclopedia *Papyrus Larousse Britannica*.

⁵ As all the public duties.

⁶ The citizen could, however, decline *trierarchia*, but only by stating that another Athenian was wealthier and therefore should bear the cost of that duty. If, however, his proposal was accepted, he should swap all his possessions with the possessions of that citizen. See encyclopedia *Papyrus Larousse Britannica*.

⁷ The day of the festival the Choragus guided the choruses into the theatre and attended from the first row. See encyclopedia *Papyrus Larousse Britannica*.

⁸ The name of the Choragus was carved on a marble plinth together with the name of the poet and the title of his drama, that was treasured in a special archive of the town and was named “teaching” (*didaskalia*). In parallel the sponsor was awarded as prize a bronze tripod that the sponsor usually placed it in the sanctuary of the temple of Dionysus or in the road of tripods. See encyclopedia *Papyrus Larousse Britannica*.

The latter, the glory, is the link between the Greek Choregia and the modern sponsoring. The goal of the modern sponsors is the glory⁹, the fame, and generally the improvement of their “*image*”¹⁰. One of Hyundai’s goals, as declared in her website, in undertaking the sponsoring of the 2004 Olympic Games in Athens, was to “*enhance the social image of the company and to create a closer bond with the consumer, upgrading at the same time the image of its brand name in the Greek market*”¹¹. The goals of the other sponsors of these games were similar¹².

The Glory, as a matter of fact, can have both financial and legal benefits. As it was judged by the Court of First Instance of the European Communities¹³ the participation of a company as sponsor in sports events might generate the preconditions so as the trade mark of such a company be recognized as having increased distinctive character and/or repute and therefore obtain the protection provided in the European Community in favor of the proprietor of an earlier trade mark¹⁴.

B. The modern sponsoring

This is, however, the only connection between the modern sponsoring and the Greek Choregia. Contrary to the Greek Choregia, the basic characteristic of the modern sponsoring is the undertaking of contractual obligations by all parties. Modern

⁹ Contrary to the Greek Chorus for whom glory was not the basic aim.

¹⁰ See. Avril Martindale *Let the sponsor beware!* in Entertainment Law Review 1993, 4(6) pag. 165.

¹¹ See the official website www.hyundai.gr/hyundai/top/hellas/sponsor/index.html.

¹² According to the head of the commercial department of “Cosmote”, official sponsor of the games (interview published in the magazine *Scientific Marketing* (July – August 2004) the benefits of the company *«are mostly seen in the image and the fame of the company, because the Olympic Games were a very good opportunity to strengthen its profile both in Greece and abroad»* www.morax.gr/article_show.php?article_id=395

¹³ Case T-477/04 (Aktieselskabet af 21 November 2001 v Office of Harmonization in the Internal Market) (Trade Marks and Designs), decision of 6th February 2007. *Official Journal of the European Union* C82/35, that accepted that the applicant company “*is seen by an important part of the public not only as a constructor of certain products, but also as the echo of the activity of the company as sponsor of sport and musical events*”

¹⁴ As provided by article 8 par. 5 of the Council Regulation 40/94 on the community trade mark: “*upon opposition by the proprietor of an earlier trade mark within the meaning of paragraph 2, the trade mark applied for shall not be registered where it is identical with or similar to the earlier trade mark and is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered, where in the case of an earlier Community trade mark the trade mark has a reputation in the Community and, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark*”.

sponsoring is a reciprocal contract¹⁵, the content of which is freely decided by the parties¹⁶. According to this contract the sponsor pays the agreed amount of money and/or carries out any other agreed action, and the organizer of the sport event or the athlete promotes the sponsor's trade mark by the exclusive use of its products¹⁷.

Contracts of sponsoring are not signed for sports event only¹⁸, the latter are however the vast majority of these contracts¹⁹ because of the increased interest of the public on sports²⁰. For that reason, sponsoring nowadays is part of companies' marketing department agenda. Moreover, although sponsoring cannot be categorized as "advertisement" given that its direct aim is not the promotion of a certain product, it is undeniable that it constitutes a "medium of communication"²¹, an indirect way of promoting products²². As a result, it is not surprising that according to the White Paper on Sport "Sport sponsorship is an inexpensive form of advertising which can easily reach favored market segments, including through TV coverage"²³.

¹⁵ See opinion of NSK 531/1995 (ΔΦΟΡΝΟΜΟΘ/1996 (128) and www.nsk.gr) according to which "sponsoring is equal to a free gift only if there is no financial return either agreed or implied".

¹⁶ Contrary to other forms of sponsoring that are regulated by in European (e.g. the directive 33/2003 "relating to the advertising and sponsorship of tobacco products") or national level (e.g. the Greek law 3525/2007 ΦΕΚ Α' 16/26.1.2007 for "cultural sponsoring").

¹⁷ For a definition of sponsoring See Aristeia Sinanioti – Maroudi *Contract of Sponsoring* Second edition, Sakkoulas pag. 20 and Apostolou M. Helidoni *A new financial pattern: The contract of Sponsoring* in ΕπισκεΔ Γ/1997 pag. 567.

¹⁸ For the different forms of sponsoring see Aristeia Sinanioti – Maroudi op.cit pag. 57.

¹⁹ As it is stated (see Commission of the European Communities: White Paper on Sport, Brussels, 11.7.2007 SEC(2007) 935 pag. 31) in 2005, 91% of sponsorship investment went into sport, which corresponded with a figure of around \$7–8 billion, compared to only 1% into culture.

²⁰ According to the I.O.C. "the Olympic Games are one of the most effective international marketing platforms in the world, reaching billions of people in over 200 countries and territories throughout the world". See http://www.olympic.org/uk/organisation/facts/programme/sponsors_uk.asp

²¹ See Aristeia Sinanioti – Maroudi op.cit pag. 25, and Ian Blackshaw *Sports sponsorship and ambush marketing* σε *New Law Journal* 2001 Vol 151 Issue 6991, pag. 1011, according to which sponsoring is appreciated by the businessmen as a medium more attractive than the other forms of traditional advertising.

²² It is characteristic the distinction of the terms "television advertising" and "sponsorship" in the directive 65/2007 concerning the pursuit of television broadcasting activities, according to which as "television advertising" is defined "any form of announcement broadcast ... in order to promote the supply of goods or services ... in return for payment", while "sponsorship" is defined as "any contribution made by a public or private undertaking or natural person ... with a view to promoting its name, its trade mark, its image, its activities or its products". It is mentionable that the directive 33/2003 relating to the advertising and sponsorship of tobacco products" almost identifies these terms. Indeed as "advertising" is defined as "any form of commercial communications with the aim or direct or indirect effect of promoting a tobacco product", while as "sponsoring" is "defined any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product".

²³ Commission of the European Communities: White Paper on Sport, Brussels, 11.7.2007 SEC(2007) 935 pag. 31.

Applying their marketing policy, sponsors declare that their aim is to help both in the successful organization of the games²⁴ and in the successful preparation and participation of an athlete at these games²⁵. The reality is, however, less romantic. The sponsor declines any responsibility for the organization of the games and the preparation of the athlete, while both the host of the games and the athlete decline any responsibility for the result of their promotion of the sponsor. And all that, because the sole reason for the genesis of sponsoring lies in the incapability of both the host of the games and the athlete to bear the cost of the organization of the games and the preparation for them respectively. Therefore, the host and the athlete intend to cover their expenses²⁶, while the sponsor intends to correlate his products with the games and/or the athletes hoping to collect a part of their aura²⁷. The bigger the games and the fame of the athletes, the better the aura and the glory forwarded to the sponsor²⁸.

C. Problems during the performance of the contract

During the performance of the contract there might occur problems in the relations of the contractual parties and a third party (by virtue of conflict of the terms of the contract of sponsoring with the provision of competition rules), in the relations between the host of the games and the athletes (by virtue of conflict of interests between the sponsors of

²⁴ For example Hyundai declares that one of its aims was «to contribute so as the Olympic Games Athens 2004 will be unique» www.hyundai.gr/hyundai/top/hellas/sponsor/index.html

²⁵ For example Eurobank, sponsor of the National Basket Ball teams of Greece and the sailors Bekatorou and Tsoulfa, declares its support to all their efforts <http://www.megalistigmi.gr/index.php?module=content&action=article&id=005002>

²⁶ According to official announcement of the International Olympic Committee “The Athens 2004 sponsorship program was the second largest source of revenue for the staging of the Olympic Games, providing approximately 23% of the Organizing Committee’s balanced budget” http://www.olympic.org/uk/organisation/facts/introduction/100years_uk.asp. Sponsoring and in general the marketing program of the next Olympic Games of 2012 in London is estimated to cover the 40% of the total expenses of the games. See Helen Padley *Legislative Comment London 2012: five years and counting* σε *International Sports Law Review* 2007, 3 (Aug) pag. 33.

²⁷ For example Seiko declares to be “proud” that it “has been Official Timer for a total of six Olympics, summer and winter” and that it “continues to contribute to international cooperation and the promotion of sports by supporting measurement, timing and scoring with the latest technology in a wide range of events including track and field, swimming and winter sports” http://www.seiko.co.jp/en/experience/sports_timing/

²⁸ As it is said “the spectator who is emotionally attached to the sport event tend to have a positive position towards the sponsor and his products because he supports the holding of a beloved action. Therefore, when a company manages to successfully link his name with the event, the public develop a positive attitude towards the company’s products” See. G.I. Aulonitis, S.A. Ladias *The Ambush Marketing and the Olympic Games “Athens 2004”* in σε *Lex Sportiva* 4 (2005) pag. 106. See also D.P. Panagiotopoulos (2005) *Sports Law: Implementation and the Olympic Games* Ant. Sakkoulas, Athens.

the host and the sponsors of the athletes), or even in the relations of the contractual parties (by virtue of dispute for the interpretation of the contract, especially in respect of the terms referring to the termination of the contract).

I. Contract of sponsoring between the sponsor and the host of the games – European Community rules of competition – Problems with third parties

Given that sponsoring is extremely important for almost any sport event²⁹ both the sponsors and the host of the games want to protect their “investment”, not only against obviously illegal actions of third parties³⁰, but also against actions of third parties that, although they cannot be, a priori, characterized as illegal, affect their interests. An action of this type is considered to be the so called ambush marketing, «*a premeditated effort of an institution to indirectly associate its name with an event, aiming to gain recognition and benefits that it would gain if it was an official sponsor*³¹». What is actually annoying the sponsors in relation to the ambush marketing³² is the fact that it acts parasitically³³ aiming only at the sponsor’s profit while avoiding its financial and any other contribution to the host³⁴.

The case in question, however, is whether these, based on the contract of sponsoring between the host of the games and its sponsors, actions are compatible with the European Law aiming at the protection of competition; or preoccupied as they (the host of the games and the sponsor) are in protecting their own interests they affect the interests of others?

²⁹ The I.O.C. characterizes the «*Olympic Marketing Program*» as “*the driving force behind the promotion, the financial security and stability of the Olympic Movement*” See http://www.olympic.org/uk/organisation/facts/introduction/index_uk.asp

³⁰ As for example the use of registered trademarks.

³¹ See. G.I. Aulonitis, S.A. Ladas op.cit pag. 106.

³² That has –correctly– been characterized as “*a creative part of the strategic communication policy of a company*” See . G.I. Aulonitis, S.A. Ladas op.cit pag. 126.

³³ See D.P. Panagiotopoulos – A. Zaglis op.cit, and Cristina Garrigues *Ambush Marketing: robbery or smart advertising* σε European Intellectual Property Review 2002, 24(11) pag. 505.

³⁴ According to its definition by the I.O.C. as ambush marketing is considered “*all intentional and unintentional attempts to create a false or unauthorised commercial connection with the Olympic Movement or the Olympic Games*” Pauline Dore *Let the games begin* σε International Sports Law Review 2006, 1(May) pag. 40.

It is reminded that as it has long been established by the Court of Justice of the European Communities³⁵ that economic activities in the context of sport do fall within the scope of EC law³⁶, including Articles 81³⁷ and 82³⁸ EC. It is also reminded that as it has also been established the terms “undertakings” and “associations of undertakings” include sport clubs³⁹, national⁴⁰ and international⁴¹ sport association that are engaged in an economic activity⁴².

Sponsoring, as an undeniable economic activity of the sport associations fall within the scope of the provisions of the EC treaty and therefore it should be examined whether the terms of a contract of sponsoring affect trade between Member State against the provisions of article 81 EC or/and form a dominant position against the provisions of

³⁵ As the case Bosman: Case C-415/93 *URBSFA v. Bosman* ECR 1995 I-4921, the case Medina: Case T-313/02 *David Meca-Medina and Igor Majcen v. Commission* ECR 2004 II-3291 and the case Walrave: Case 36/74 *Walrave and Koch v. Union Cycliste Internationale* ECR 1974, 1405.

³⁶ About that see D.P. Panagiotopoulos (1998) *Sports and European Community Law* (ed) Athens, pag. 412-213 and D.P. Panagiotopoulos (2003) *Sport Law A European Dimension*, Ant Sakkoulas Athens pag. 52-55.

³⁷ According to which: “1. *The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which: a) directly or indirectly fix purchase or selling prices or any other trading conditions, b) limit or control production, markets, technical development, or investment, c) share markets or sources of supply, d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.* 2. *Any agreements or decisions prohibited pursuant to this article shall be automatically void.*”.

³⁸ According to which “*Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in: a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, b) limiting production, markets or technical development to the prejudice of consumers, c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*”.

³⁹ See case Piau (Case T-193/02, *Piau v. Commission*, ECR 2005 II-209 and C-171/05P, ECR 2006 I-37), and the decision of the Commission decision of 25 June 2002 in case 37806, *ENIC/UEFA*, par. 25, available at <http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37806/en.pdf>

⁴⁰ Commission decision of 27 October 1992, Cases 33384 and 33378 *Distribution of package tours during the 1990 World Cup*, OJ 1992L326/31 par. 52 and 53.

⁴¹ Op.cit footnote 36 par. 47.

⁴² For example: the sale of tickets for sport events, advertising activities, the sale of media rights for sport events and the transfer of athletes in return for transfer fees.

article 82 EC. Following the recent decision of the ECJ in the case *Meca Medina*⁴³, the Commission proposed in the White Paper on Sport⁴⁴ a «*methodological approach*» in order to assess whether a rule relating to the organization of sport infringes Articles 81 and/or 82 EC⁴⁵, proving the interest of European Communities for sports.

At this point let's see some examples of the host of the games' actions to ensure the rights of its sponsors:

At an initial level, the host seeks prevention prevents, as for example did the host of the Olympic Games 2004, who, on June 2002, sent a letter to the official representative of the Greek advertising companies, asking for their "*cooperation and assistance for the protection of the symbol of the Olympic and Paralympics Games and also against the ambush marketing*"⁴⁶.

Furthermore, the host seeks judicial protection against all actions it thinks abuse its rights. About a month before the beginning of the Olympic Games of 2004, the Judge of the Court of First Instance of Athens, prohibited the exposure of the TV spot of a bank, which was not an official sponsor of the games, because it contained terms such as "*stadium, prize, javelin, victory, gold*" and in parallel it displayed the motto "*Greece is fighting – good luck to us*"⁴⁷. The Judge, obviously, accepted the allegations of the "Athens

⁴³ Case T-313/02 David Meca-Medina and Igor Majcen v. Commission ECR 2004 II-3291 and C-519/04 P David Meca-Medina and Igor Majcen v. Commission ECR 2006 I-6991.

⁴⁴ See White Paper on Sport op.cit annex I pag. 65.

⁴⁵ The first step of this methodological approach is to examine whether the sport association that adopted the rule in question constitutes an "undertaking" or an "association of undertakings". If that is established, it should be examined: a) the overall context in which the rule was adopted or produces its effects and its objectives, b) whether the restrictions caused by the rule are inherent in the pursuit of the objectives, c) whether the rule is proportionate in light of the objective pursued. Then it is examined whether the trade between Member States is affected and finally, whether the rule in question fulfils the condition of article 81 par. 3, according which "3. *The provisions of paragraph 1 may, however, be declared inapplicable in the case of: - any agreement or category of agreements between undertakings, - any decision or category of decisions by associations of undertakings, - any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question*".

⁴⁶ In this letter, it is noted the opinion of the organizing committee of the Olympic Games of 2004 in Athens for the consequences of ambush marketing. As it says "*The company that follows tactics of ambush marketing: a) reduces the distinctiveness of both the Olympic and Paralympics symbols and trade mark, by removing the valuable element of their uniqueness that attacks the interest of the sponsors, b) Jeopardizes the sponsoring programs that support the Games and the Greek Teams, c) Threatens the future of the sponsoring program in favor of the sports in general, d) blocks the successfully organization of the Games, e) Mislead the public aiming at commercial exploitation*".

⁴⁷ The advertisement displayed some name-plates which directed the voyager to towns and villages named "*Weight, Stadium, Trophy, Pride, Javelin, Fame, Laurel, Garland, Victory, Gold*" and in parallel in front of

2004” that this advertisement could make the public believe that the bank was an official sponsor of the games, although there was no such implication in the spot, as on the contrary did “Alpha Bank” the bank that was an official sponsor⁴⁸ which had already, since August 2001⁴⁹, started to promote that fact⁵⁰.

In some other cases, the host acted offensively⁵¹.

In one of these, during the World Football Cup 2006 the host did not allow the entrance to Dutch supporters who wear orange trousers with the logo of a beer company that was not an official sponsor. As a result the Dutch supporters removed their trousers and entered the stadium half naked. However, even though it could be assumed that the host had the right to put a restraint on their clothing, in other word, to put a restraint on their personality, one wonders⁵² «*who would even notice the offending logo in a stadium of at least 50.000 spectators, many of whom were wearing orange (which is the color used by the Dutch team) and what damage the official sponsor suffered*”.

In another case, during the Wimbledon 2005 championship, the spectators were not allowed to take in the stadium bottles of water because they were emblazoned with a deodorant brand logo, not an official sponsor of the game.

Undeniably, one of the best organized sponsoring programs is that of the International Olympic Committee who, in 1985, created «*The Olympic Partner Program*» to find the sponsors for the signing of the contracts of “cooperation”. This cooperation is a win-win situation for both, the I.O.C and the host of the games who gain support in the form of products, services, technology, expertise and staff deployment⁵³; and the sponsors who

these name-plates displayed athletes in certain sport events (throwing the Javelin, jumping, running) etc. At the end of the advertisement sounded the motto “*Greece is fighting – good luck to us*” and then the brand name of the bank following by the phrase “face to face”.

⁴⁸ See <http://www.alpha.gr/page/default.asp?la=1&id=106>

⁴⁹ The organizing committee of the games started a campaign called “Athlopolis” which was a spectacular road-show, that travelled in fifty cities of Greece in three years, aiming to present and promote the sponsors of the games.

⁵⁰ Depriving in that way from the rival companies their basic weapon, namely the lack of knowledge of the official sponsors. See G.I. Aulonitis, S.A. Ladias op.cit pag. 121.

⁵¹ See Andrew Norris Sporting change in *The New Law Journal* 2006 vol. 156, issue 7242.

⁵² Ibid.

⁵³ According to the I.O.C. (Olympic Marketing Fact File, edition 2008 http://multimedia.olympic.org/pdf/en_report_344.pdf): “*Olympic sponsorship programmes benefit the Olympic Movement in the following ways: -Sponsorship provides valuable financial resources to the Olympic Family, -Sponsors provide support for the staging of the Olympic Games and the operations of the*

gain «exclusive worldwide marketing rights»⁵⁴, the protection of which is promised by the I.O.C.

In order to carry into effect this promise the I.O.C.⁵⁵ works closely with the government of the country, a town of which will host the games. The result is a law prohibiting, during the games, all kinds of advertising from anyone who is not an official sponsor of the games. During the Olympic Games of 2004, in all the areas that were connected with the games⁵⁶, the only products and companies that were allowed to be advertised, were only those of the official sponsors. In actual fact the I.O.C. created a kind of an “Olympic Campus” comprising controlled-entrance areas, like the stadiums, and free-entrance public areas, like avenues and squares. In those areas and around them –within specific boundaries– the advertising of any others, but the sponsor’s, products was strictly prohibited⁵⁷.

Olympic Movement in the form of products, services, technology, expertise and staff deployment, -Sponsors provide direct support for the training and development of Olympic athletes and hopefuls around the world, as well as essential services for athletes participating in the Games, -Sponsors provide essential products and services for broadcasters, journalists, photographers and other media, -Sponsorship activation enhances the Olympic Games experience for spectators and provide the youth of the world with opportunities to experience the Olympic ideals at the global and local levels, -Sponsorship support contributes to the success of the educational, environmental, cultural and youth-oriented initiatives of the Olympic Movement, -Sponsors develop advertising and promotional activities that help to promote the Olympic ideals, heighten public awareness of the Olympic Games and increase support for the Olympic athletes”.

54 According to the I.O.C. http://www.olympic.org/uk/organisation/facts/programme/sponsors_uk.asp the sponsor participating in “The Olympic Partner Programme”: “receive exclusive global marketing rights and opportunities within their designated product category. Sponsors are able to develop marketing programmes with various members of the Olympic Movement including the IOC, the NOCs, and the Organising Committees. In addition to exclusive worldwide marketing opportunities, partners receive: - Use of all Olympic imagery, as well as appropriate Olympic designations on products, - Hospitality opportunities at the Olympic Games, - Direct advertising and promotional opportunities, including preferential access to Olympic broadcast advertising, - On-site concessions/franchise and product sale/showcase opportunities, - Ambush marketing protection, - Acknowledgement of their support through a broad Olympic sponsorship recognition programme”.

⁵⁵ I.O.C. is not, however, the only sport association that works together with the government of the host cities of sport events. Similar laws were voted in South Africa for the Cricket World Cup of 2003 and in Portugal for the Euro 2004.

⁵⁶ See Greek Law 3254/2004 article 2, (Φ.Ε.Κ. Α’ 137/22.7.2004) provided that the only advertisements that were allowed in the airports and ports of Athens and all the other cities that hosted Olympic events, in the stadiums and in general the areas of the games and all the events that were organized for the games, in the basic avenues and roads of Athens that belonged to the Olympic network of transports, were those of the sponsors of the games.

⁵⁷ In order to avoid any undesirable advertisement or promotion it was forbidden to all vehicles (buses, taxis, metro trains etc) with advertisements in their sides, to use these areas. Moreover, it was also forbidden both air advertisement and any promotion including gifts, leaflets, cultural and entertainment events including free products. See Greek Law 3254/2004 article 2.

Moreover, there were certain «*terms of entrance in the stadiums*»⁵⁸, according to which certain items, such as «*t-shirts, hats, bags etc with distinctive trademarks of companies that are competitive to those of the sponsors*» were restricted and prohibited.

Similar provisions were taken during the Olympic Games of 2000 in Sydney⁵⁹, 2002 in Salt Lake City and 2006 in Torino; they will also be implemented during the next Olympic Games of 2012 in London. According to an Act voted specifically for these games⁶⁰ it is prohibited to all non sponsors to use the terms «*games, 2012, gold, silver, bronze, London, medals, sponsor kai summer*», causing many to wonder⁶¹ whether “*a fair balance [is] been struck between the rights of Olympic bodies, official sponsors and licensees and the rights of the general business community, advertisers and the press to advertise and market goods and services without unreasonable restrictions*”. According to a legal adviser of the Commonwealth Games⁶² “*the balance was struck pretty fairly*”. The fact, however, that he stated that «*the proof of the pudding is in the eating; the real issue is about how the law is applied rather than how it is drafted*», combined with the ambiguity of the guide on the London’s 2012 Statutory Marketing Rights⁶³ published by the organizing committee, according to which the inscription on a poster «*watch the Olympic games here*» will be infringing if the name of the pub is also mentioned, while that same phrase written on an unbranded chalk board outside the pub will «*unlikely*» be infringing, can only cause insecurity.

II. Contract of sponsoring between sponsor and athlete

Sponsors are not, however, a sole privilege for the hosts of the games. Athletes also sign contracts with sponsors, gaining, in many cases, extreme amounts of money. It is self evident that these sponsors not only demand from their athletes to promote their

⁵⁸ Written on the tickets and the “*official spectator guide*”.

⁵⁹ Sydney 2000 Games Act (Indicia and Images) and την Olympic Arrangements Act 2000.

⁶⁰ London Olympic Games and Paralympics Games Act 2006 (LOGPGA 2006).

⁶¹ See Helen Padley op.cit pag. 33, Pauline Dore op.cit pag. 40, Andrew Morris op.cit pag. 1465, Cristina Garrigues op.cit pag. 505.

⁶² See UK Legal News Analysis *opinion of Tony Singh in question «Whether London Olympics Bill fair to business»* LNB News 24/08/2005 2.

⁶³ Βλ. <http://www.london2012.com/documents/brand-guidelines/statutory-marketing-rights.pdf> pag. 39.

products by, for instance wearing their wristwatch⁶⁴, or a branded jockey, but also –and that is more important – not to promote the products of their competitors.

Which are the limits on the sponsors' demands? May, for example, a sponsor demand from the athlete not to participate in a sport event because the official clothing sponsor of his national team is a rival company?

The answer should be negative. Given the fact that the athlete will have to wear the logo of the sponsor of his/hers national team regardless his/hers will, in order to comply with the rules of the national sport association, this action cannot be considered a breach of the contract with his/her sponsor⁶⁵.

A good example of this issue are the events that took place before the beginning of the Cricket World Cup 2003 in South Africa. The players of the national team of India refused to sign the participation contracts –that would restrain them from wearing the logos of their personal sponsors during the tournament– and threatened with abstinence from the games. Finally, after negotiations with the International Cricket Council⁶⁶, it was decided that the player would wear the uniforms with the trademarks of the official sponsors during the tournament and that the sponsors would not to use the player's images in their own advertising⁶⁷.

It is apparent that both parties pursued the biggest possible promotion of “their” sponsor, aiming at a better, lavish deal with them⁶⁸.

In the past, there were many similar actions by athletes⁶⁹, with a rival to the official personal sponsor that decided to stay “faithful” to their own sponsor either by finding a

⁶⁴ For example the British driver and world champion of 2008 in Formula 1, Lewis Hamilton, has to wear a watch during the presentation of the trophy.

⁶⁵ Given that in order to participate at the games the athlete must comply with the rules of the national and international sport association, in actual fact the only solution to remain “faithfull” to his sponsor is not to participate at the games.

⁶⁶ which warned India that it could be suspended from the games.

⁶⁷ Meanwhile, the ICC retained the amount of nine million dollars, due to India for taking part in the tournament, until the final closure of the matter.

⁶⁸ However, such incidents confirm those who criticize the current trend of multimillion dollar sponsorship deals in the sporting word and argue that the increasing dependency of athletes and event organizers on corporate sponsorship divers both athletes and the public from the spirit of sport. See Cristina Garrigues op.cit. pag. 505.

⁶⁹ According to Christina Garrigues op.cit. the actions of these athletes are a “*successful example of ambush practices*”.

clever way to advertise him⁷⁰, or by preventing⁷¹ the promotion of the official sponsor's products. It is obvious, that these athletes didn't want to dissatisfy their sponsor, who aware of the importance of the image would not like the association of "their" athletes with the product of a rival company⁷².

On the other hand, given that the sponsors count on the athlete's image, they demand a certain attitude, analogical to the image they pay for. Therefore, an inappropriate behavior of the athlete may constitute justifiable cause for termination of the contract⁷³. Such an inappropriate behavior, apart from the self evident case of breach of the terms of the contract⁷⁴, may be:

- i. Constant breaches of rules of discipline that lead to the reduction of the athlete's performances in sport events that result to the reduction of the sponsor's promotion.
- ii. Blamable or defamatory declarations (of the athlete) to the media⁷⁵ not befitting the desired image as decided with the sponsor in the contract.
- iii. Condemnation of, or even accusation against, the athlete for criminal offences, not necessarily related to sport⁷⁶.
- iv. An opposite to the motto of a certain promotion behavior of the athlete. For example, Johnnie Walker⁷⁷ sponsor of both, McLaren Mercedes Formula 1 team and its drivers

⁷⁰ In the Atlanta 1996 Olympic Games, when official sponsor was Reebok, during a press conference, the British sprinter Linford Christie appeared wearing blue contact lenses with the highly recognizable Puma logo.

⁷¹ In the Barcelona 1992 Olympic Games, when official sponsor was Reebok, during the presentation of the medal at the U.S. Basketball team, Michael Jordan and Charles Barkley, sponsor of whom was Nike, placed the American flag in a way that covered the Reebok logo.

⁷² Athletes are the model that the consumers would like, but will not be able to reach. However, they can at least use the same products. Wear the same shoes, drink the same drink, drive the same car etc

⁷³ See D.P. Panagiotopoulos – A. Zaglis op.cit.

⁷⁴ According to the Greek Supreme Court (Arios Pagos - AΠ 105/1997 NoB 1998 pag. 948) the provision in a contract of sponsoring between a company and an athlete (professional football player) that the breach of the contract «*even only one time*», constitutes a justifiable cause for the termination of the contract.

⁷⁵ See I.K. Anagnostopoulos *The breach of anti-doping rules and its consequences at the contract of sponsoring* Lex Sportiva 4 (2005) pag. 160.

⁷⁶ The case of Kobe Bryant is a very good example. The summer of 2003, the famous basketball player was accused for rape. At that time Bryant's deals with McDonald's and Ferrero's Nutella brand expired and were not renewed, obviously due to that accusation. However, in actual fact, the assessment of Forbes magazine, in 2004, that "*The stigma of being an alleged rapist is a tough label to shake, and no company is likely to sign Bryant to endorse its products in the coming year. But what happens in a year or two? Chances are that companies will come calling on Bryant again, particularly if he plays at a high level and continues to lead his team far in the playoffs*", was correct http://www.forbes.com/2004/09/03/cz_kb_0903kobe.html

⁷⁷ See <http://www.jointhepact.com/>

Lewis Hamilton and Mika Hakkinen, promotes the motto «Drink Responsibly»⁷⁸. Just imagine the blow on that sponsor if one of these drivers causes a traffic accident due to drunkenness.

v. Breach by the athlete of the anti-doping rules. Characteristic example is the American athlete Marion Jones, who was sentenced to, and served⁷⁹ six month imprisonment for perjury at the well known case of BALCO. Nike, her biggest sponsor, did not terminate their contract, before its contractual end in 2005, it stated, however, after Jones confession, in 2007, that *“we were surprised, shocked and disappointed from the fact that, although we believed in and trusted Marion, we too were deceived”*. A statement that clearly shows Nike’s effort to stay unconnected with the doping case⁸⁰.

The Crucial condition that would constitute a justifiable cause for the termination of a contract of sponsoring is the damage of the sponsor. As damage should be define the creation of a reputation different than the one agreed in the contract. Therefore, it would be doubtable that the companies Nintendo or Sony, which have signed a contract with the boxer Mike Tyson for the production of video games⁸¹ featuring a boxer named after Mike Tyson, could validly terminate that contract or ask for compensation due to his violent and aggressive behavior, given that these companies in using this athlete’s name in a aggressive and relatively violent electronic game, are exactly after those two characteristics.

Moreover, it is doubtable whether the sponsors can validly terminate a contract of sponsoring for reasons connected to the personality of the athlete and are not connected with any of the above mentioned reasons.

⁷⁸ Similar is the motto used by the companies and the drivers (one of which is Michael Schumacher) participating at the European Forum for Responsible Driving «Champions drink responsibly». See <http://www.efrd.org/main.html>

⁷⁹ Jones however seems to still attract publicity. Few days (29.10.2008) after she was discharged from prison she appeared at the TV show “The Oprah Winfrey Show”.

⁸⁰ In case of doping, given that as it is provided by the WADA’s code doping is defined not only the use or attempt to use a prohibited substance or method, but also *“refusing or failing, without compelling justification, to submit to sample collection after notification as authorized in applicable anti doping rules or otherwise evading sample collection”* it is important, to define the meaning of doping in the contract of sponsoring. See I.K. Anagnostopoulos op.cit pag. 164.

⁸¹ Two of the most known are «Mike Tyson's Punch Out!! (1987)» for Nintendo and «Mike Tyson Heavyweight Boxing» for PlayStation 2.

A good case study is the Australian athlete Matthew Mitcham, gold medalist in 10m Platform Dive at the 2008 Beijing Olympics. Mitcham acknowledged his homosexuality in public an action that led to him not being selected by the sponsors. According to articles⁸² Mitcham is *“the only of the Australian Olympic Champions who did not participate in a TV commercial, while the sponsors do not want to collaborate with him, because they do not want to associate their products with a gay”*. According to the same articles *«this athlete is now recognized as “the gay athlete” and not as “the Olympic Champion” due mostly to the acceptance of his confession by the gay community of Australia”*. It is of course the right of the sponsors to decide whether or not they want to collaborate in the future with an athlete, even if their criterion⁸³ is the fact that the athlete’s admittance of being homosexual. A termination, though, of a valid contract under such a reason would, most likely, be an infringement of fundamental rights of our law culture such as the right of personality⁸⁴.

D. Instead of an epilogue

It is obvious that sponsoring is a notable factor of the modern sport system; it would not be exaggerating to say that without sponsoring, sports would have not been what they are today. Regardless the philosophical question whether today’s form of sport is a desired one, the intrusion of sponsoring in sport raises questions like:

- Is it justifiable to prohibit a spectator of carrying or wearing, legal market products (e.g. clothes, hats, flags), just because they happen to bear the logo of a company rival to the official sponsor?
- Is it justifiable to confiscate those products?
- Is it justifiable, using as an excuse the ambush marketing, to impose restriction to both the content and the kind of marketing against the companies who are not sponsors of the games?

⁸² See newspaper *«Ta Nea»* 20 October 2008 pag. 46.

⁸³ The fact however that many sponsors are negative against Mitcham does not mean that there are no other companies willing to sponsor him. For example, his personal web site <http://mattmitcham.com/home.html> is sponsored by the company Purple Oranges.

⁸⁴ Interesting on the matter is the opinion of the committee of the regions titled *“Equal opportunities and sport”*, according to which *«concealment and segregation cannot be a long term solution: the objective must be to make all men and women welcome in all sports clubs, regardless of sexual orientation»* (2007/C 305/11 no. 31).

- Is it, furthermore, justifiable the acquisition of exclusive rights on public open areas such as streets and squares only by the sponsors and the exclusion of all others?
- Is it justifiable for the official sponsor of the host of the games to dominate against the official sponsor of the athlete?

And finally:

- Is it justifiable the restriction of individual rights under the -above mentioned- ways?
- And if it is justifiable, is this restriction proportionate in light of the objective pursued?