

Sport sponsorship contracts

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Abstract

Sports organizations constitute the biggest events of the world and are usually widely followed. The main financial source of many athletes or sports organizations is the sponsorship, which enables the sponsor to reach customers. In this paper, I begin by defining the sponsorship, sponsorship contracts and sport sponsorship contracts. Then, I will discuss the legal nature of them. Secondly, I will analyze the parties of this contract. In addition, I will deal with the objects of sport sponsorship contracts, namely the aims of promotion, image transfer and increase engagement with its target audience and to reach a larger target market for the sponsor; and provide funding and promotion for the sponsored party. Finally, I will discuss the rights and obligations of this contracts and in conclusion I will examine whether it is possible for the parties to claim damages for non-pecuniary loss in the case of a violation of personality rights.

Keywords: *sponsorship, sport sponsorship, legal nature of sponsorship, image transfer, sponsor.*

JEL Classification: K12, K29

1. Introduction

Sponsorship has become one of the most important means of marketing and sport is the most appropriate industry to approach customers. While concluding a sponsorship contract, the sponsor aims to promote itself and increase engagement with its target audience and to reach a larger target market. In order to realize this, the sponsor transfers the image of the sponsored party and this characteristic of the sponsorship contracts distinguishes it from other conventional means of communication such as advertisement, propaganda or public relations.

As the sports organizations are one of the best ways to reach large masses, sponsors prefer to provide financing or any other support to athletes, sports clubs or teams, federations or sports organizations. Therefore, almost every professional athlete, coach, sports club or organization has a sponsor in exchange for a marketing or promotion service. That is why sport sponsorship is the most preferred type of sponsorship.

2. The definition and legal nature of sponsorship and sport sponsorship contracts

A. The definition of sponsorship and sport sponsorship contracts.

Sponsorship contract² is a contract, whereby one of the parties undertakes to provide

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² According to ICC International Code on Sponsorship, the sponsoring was defined as follows: "Sponsorship: any commercial agreement by which a sponsor, for the mutual benefit of the sponsor and sponsored party, contractually provides financing or other support in order to establish an

financing or any other support for the sponsored party's activities or organizations; and the other party undertakes to promote the sponsor by presenting it to its network during the mentioned activity or organization³.

In recent years, sponsorship contracts have gained such an importance that it is impossible to figure professional sports without a sponsorship in our day⁴. Although the sponsorship was at first used to support a sporting activity, afterwards it was applied in order to support social cultural, humanitarian aid and environmental protection activities⁵. For instance, supplying sports equipment to a football club and supporting a tennis player for a tournament are the examples for the activities supported by sponsorship contracts.

A sport sponsorship contract is a contract whereby the sponsor provides financing or any other support in order to establish an association between the sponsor's image, brands or products and sponsored athletes, sports clubs, coaches, sports organizations and sports facilities in return for granting of certain direct or indirect benefits and rights⁶.

B. The legal nature of sport sponsorship contracts. The legal nature of a sport sponsorship contract cannot usually be explained and qualified with one of the contract types found in Code of Obligations. Therefore, every contract should be analyzed individually and carefully, as each different contract consists of different rights and debts. Although all sport sponsorship contracts consist of different rights

association between the sponsor's image, brands or products and a sponsorship property in return for rights to promote this association and/or for the granting of certain agreed direct or indirect benefits."

³ Engel, Philip, *Sponsoring im Sport: Vertragsrechtliche Aspekte*, Zürich, 2009, p. 42; Amstutz, Marc/Morin, Ariane/Schlupe, Walter R., *Basler Kommentar Art. 1-579 OR, Obligationenrecht I*, 5. Auflage, Basel, 2011, Einl. Vor Art. 184 ff. Rn. 410; Bruhn, Manfred/Mehlinger, Rudolf, *Rechtliche Gestaltung des Sponsoring*, 2. Auflage, München, 1995, p. 4; Schaub, Renate, *Sponsoring und Doping, Beendigung von Sponsoringverträgen wegen Verfehlungen des Gesponserten, insbesondere in Dopingfällen*, Göttingen, 2008, p. 10-11; Hauser, Thomas, *Der Sponsoring-Vertrag im schweizerischen Recht*, Zürich, 1991, p. 14 ff.; İmamoğlu, Selma Hülya, *Sponsorluk Sözleşmesi*, Ankara, 2003, p. 96; Grassinger, Gülçin Elçin, *Sponsorluk Sözleşmesi*, Ankara, 2003, p. 20 ff.; Kostkiewicz, Jolanta Kren/Nobel, Peter/Schwander, Ivo/Wolf, Stephan/Huguenin, Claire/Weiss, Raphael, *OR Kommentar Schweizerisches Obligationenrecht – OFK – Orell Füssli Kommentar*, 2. Überarbeitete und erweiterte Auflage, Zürich, 2009, p. 1144; Müller-Chen, Markus/Huguenin, Claire/Girgsberger, Daniel/Netzle, *Handkommentar zum Schweizer Privatrecht, Vertragsverhältnisse Teil 1: Innominatkontrakte, Kauf, Tausch, Schenkung, Miete, Leihe - Art. 184-318 OR*, 2. Auflage, Zürich, 2012 Vorb. Art. 184 ff. Rn. 1 ff., 16; Netzle, Stephan, *Sponsoring von Sportverbänden*, Zürich, 1988, p. 13; Huguenin, Claire, *Obligationenrecht – Allgemeiner und Besonderer Teil*, 2. Auflage, Zürich, 2014, Rn. 1701. Ayrıca konuyla ilgili bkz. ICC International Code on Sponsorship [http://www.abfi.ie/Sectors/ABFI/ABFI.nsf/vPagesABFI/Responsibilities~sponsorship/\\$File/ICC+International+Code+on+Sponsorship.pdf](http://www.abfi.ie/Sectors/ABFI/ABFI.nsf/vPagesABFI/Responsibilities~sponsorship/$File/ICC+International+Code+on+Sponsorship.pdf) (last viewed: 17.12.2017).

⁴ Richtsfeld, Stefan, "Pflichtverletzungen und Leistungsstörungen bei Sponsoringverträgen", *CaS*, 2014, p. 143. In 2010, 4.2 billion Euros were spent only in Germany for sport sponsorship. Likewise, in the year of 2011, 37.3 billion euros were spent with sport sponsorship contracts. These contracts were concluded mainly in the fields of basketball, football, tennis, volleyball and handball. However, equestrian, skiing and motor sports are also sponsored with the sport sponsorship contracts.

⁵ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 2.

⁶ Wahrenberger, *Sportsponsoringverträge*, in *Sport und Recht* (Hrsg. ARTER, Oliver), 2. Tagungsband, Bern 2005, p. 150; Engel, p. 5 ff.

and debts, they are synallagmatic contracts⁷, comprise the performance of a continuing obligation⁸, and they are innominate contracts⁹.

Sport sponsorship contracts usually¹⁰ consist of rights and debts which were typically foreseen for some legally codified contract types¹¹ and also some other rights and debts. In other words, sport sponsorship contracts are innominate contracts, in which elements for nominate and innominate contracts combined¹². For instance, sport sponsorship contracts can be compared with sales contracts. In sales contract, seller undertakes to transfer a good, right or an intangible good in exchange for a payment done by the buyer. In a sport sponsorship contract, the sponsor may make a payment and the sponsored party may transfer goods (i.e. brochures, catalogs etc.) or intangible goods (i.e. logos, signs etc.)¹³. However, it is impossible in even such a situation to interpret sport sponsorship contracts as sales contracts¹⁴, as there are also debts, which cannot be covered by sales contracts. It should be emphasized that the main object of sponsor for sport sponsorship contracts is not taking goods or intangible goods; on the contrary, its main object is promotion and image transfer. Therefore, sport sponsorship contracts cannot be classified as sales contracts¹⁵.

Likewise, a sport sponsorship contract may contain some elements of a contract of mandate¹⁶. According to the Turkish and Swiss law of obligations, a contract of mandate is a contract whereby the agent undertakes to conduct certain business or provide certain services in accordance with the term of the contract. In other words, the agent does not have to be the representative of the other party. This means that a representation relationship does not always arise from a contract of mandate, and, in the same manner, a contract of mandate does not necessarily have to give rise to a representation relationship. In sport sponsorship contracts, sponsored party undertakes the obligation of promotion of the sponsor. The sport sponsorship contracts may contain some elements of contract of mandate, as the sponsored party has such an obligation¹⁷. However, it is impossible to categorize sport sponsorship contracts as a contract of mandate, since sport sponsorship contracts include other obligations, which were not legally foreseen for contracts of mandate¹⁸.

⁷ Wahrenberger, p. 156; Engel, p. 43; İmamoğlu, p. 118 ff.

⁸ Wahrenberger, p. 156, 168; Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 16, Netzle, p. 33; Hauser, p. 276; Engel, p. 55-57; İmamoğlu, p. 120 ff.

⁹ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 13; Engel, p. 60 ff.

¹⁰ Only some sponsorship contracts may be categorized with one of the contract types found in the code of Obligations. Please see Jagodic, Tone/Matesa, Zlatko, "Basic Elements of a Sponsorship Contract in Sport", Zbornik radova Pravnog fakulteta u Splitu, Vol. 55, 2/2018, p. 284 https://www.pravst.unist.hr/dokumenti/zbornik/2018128/zb201802_275.pdf (last viewed: 29.10.2018).

¹¹ Richtsfeld, p. 144; Grassinger, p. 59; İmamoğlu, p. 125-126.

¹² Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 13.

¹³ Wahrenberger, p. 157; İmamoğlu, p. 141.

¹⁴ Wieand, Neil George, Kultur- und Sportsponsoring im deutschen Recht: unter besonderer Berücksichtigung urheber-, medien- und wettbewerbsrechtlicher Aspekte, Berlin, 1993, p. 73.

¹⁵ Grassinger, p. 59-60; Wahrenberger, p. 157; İmamoğlu, p. 140-143.

¹⁶ Grassinger, p. 63 ff.; Wahrenberger, p. 158.

¹⁷ Grassinger, p. 65.

¹⁸ Grassinger, p. 66; Wahrenberger, p. 158.

Sport sponsorship contracts should also be compared with license contracts which are also innominate contracts, as sport sponsorship contracts contain the transfer of right of use of intangible goods, such as signs, logos etc., which constitutes an obligation under the license contracts¹⁹. Likewise, having a right to take the title of main sponsor of a sports organization may also be decided by the parties of a sport sponsorship contract and this right can be interpreted as a right under a license contract²⁰. However, sport sponsorship contracts have a broader scope, which also comprises some of the rights and obligations of license contracts²¹. Furthermore, the aims of two different types of contracts are different. License contracts are concluded to transfer the right of use of intangible goods in exchange for a payment, in other words, the main object of the party transferring the right of use, is to generate revenue. However, the main objects of a sponsor are to promote itself and transfer the image of the sponsored party. Therefore, the aim of these contracts is another element that distinguishes them.

As mentioned before, there is no doubt that sport sponsorship contracts are innominate contracts. However, there is a discussion in doctrine about whether sport sponsorship contracts shall be categorized as mixed contracts or *sui generis* contracts²².

According to the first approach, sport sponsorship contracts are mixed contracts²³. Although a sport sponsorship contract may contain some rights and debts, which were not foreseen for any nominate contracts, these contracts are usually consisting of also some rights and debts of legally codificated contracts. The rights and obligations included by a sport sponsorship contract, which are insubstantial and were not codificated, does not make this contract a *sui generis* contract. They still have the characteristic of mixed contracts.

According to the second approach and according to my point of view, sport sponsorship contracts can be categorized as *sui generis* contracts²⁴. In this type of contract, the main objects of a sponsor, in other words the main obligations of a sponsored party, are to transfer the sponsored party's image and to be promoted. Although they are the most important rights and debts of this contract and included by all sport sponsorship contracts, neither of them are contained by a nominate contract. Therefore, sport sponsorship contracts should be categorized as *sui generis* contracts, even they consist of some rights or debts of nominate contracts.

¹⁹ Fiedler, Dominik, *Sportsponsoring und Arbeitsrecht: Arbeitsrechtliche Selbstvermarktungsgrenzen*, Diss. Frankfurt am Main, 2017, p. 51; Müller-Chen/Huguenin/Girgsberger/Netze, Vorb. Art. 184 Rn. 14; Richtsfeld, p. 145; Grassinger, p. 72.

²⁰ Grassinger, p. 72.

²¹ Grassinger, p. 72.

²² According to ENGEL, sport sponsorship contracts may constitute both mixed contracts and *sui generis* contracts. Therefore, all contracts should be interpreted individually. For detailed info. please see Engel, pp. 64-65.

²³ İmamoğlu, Hülya, *Spor Sponsorluğuna İlişkin Hukuki Düzenleme Üzerine Bir Değerlendirme*, Aühfd, Y. 2009, Vol. 58, Nr. 1, p. 69 (İmamoğlu, Spor); Kostkiewicz/Nobel/Schwander/Wolf/Huguenin/Weiss, p. 1144; İmamoğlu, p. 162.

²⁴ Fiedler, p. 49; Hauser, p. 281 ff.; Müller-Chen/Huguenin/Girgsberger/Netze, Vorb. Art. 184 Rn. 13; Richtsfeld, p. 145; Grassinger, p. 75; Engel, p. 65.

3. The parties of sport sponsorship contracts

A. Sponsor. In sport sponsorship contracts, a sponsor is a natural or a legal person that provides financing, contributions in kind or certain services to athletes, coaches, sports teams or clubs, federations or organizations, in return for granting of certain direct or indirect benefits and rights, such as promotion of itself or its products or transfer the other party's image²⁵.

Both the natural²⁶ and legal persons may be sponsor, notwithstanding whether they seek profit or not²⁷. In other words, an association or a foundation may be sponsor, if the sponsored party's activity is in parallel with this legal person's foundation purpose²⁸. However, in practice, sponsors are usually companies²⁹.

In practice, athletes, coaches, sports teams or clubs, federations or organizations are usually sponsored by more than one sponsor. In this situation, a co-sponsorship relationship exists³⁰. This type of a sponsorship relationship arises for supporting big organizations, famous athletes or sports clubs. The rights and obligations of co-sponsors can be determined by considering the legal relationship between them. If they have equal rights, they will exercise the rights of being promoted and transferring sponsored party's image equally.

In some sponsorship relationships, the sponsored party has one main sponsor and several sub-sponsors³¹. In such a case, the main sponsor provides an extensive financial or any other support for the sponsored party in exchange for having more comprehensive communicational rights and authorities³². Therefore, the main sponsor is promoted more than other sub sponsors and distinguished from them³³.

A sponsor may conclude a contract with the sponsored party for being an "exclusive sponsor", which enables this sponsor to use the rights of advertisement, marketing, public relations etc. individually³⁴. If the sponsor is entitled to exercise this privilege, the opposite party may conclude sponsorship contracts with third persons; however, the obligations arising from this contract can be only fulfilled after the expiration of the sponsorship contract signed with the exclusive sponsor³⁵.

B. Sponsored party. In sport sponsorship contracts, the sponsored party is a natural or legal person requiring financial or other support in order to conduct a sports activity or organize a sports event³⁶. The sponsored party may be an athlete, a coach, sports team or club, federation or organization.

²⁵ Grassinger, p. 84.

²⁶ In practice, sponsors are usually legal persons. Natural persons are sponsoring very rarely. Please see Hauser, p. 30.

²⁷ Grassinger, p. 75.

²⁸ Grassinger, p. 75.

²⁹ Bruhn/Mehlinger, p. 20; İmamoğlu, p. 98.

³⁰ Hauser, p. 79.

³¹ Hauser, p. 80.

³² İmamoğlu, p. 99.

³³ Hauser, p. 80.

³⁴ Engel, p. 141 ff.; Hauser, p. 79.

³⁵ İmamoğlu, p. 98.

³⁶ İmamoğlu, p. 99-100; Grassinger, p. 87.

4. The objects of sport sponsorship contracts

A. The objects of a sport sponsorship contract for the sponsor

Promotion. The sponsor has some objects in exchange for concluding a sponsorship contract and performing its duties undertaken by the contract. The first and economically the most important one of them is the increment of sponsor's famousness and accordingly its commercial relations³⁷. The party making an investment through the sponsorship contract aims to improve recognition of its products or services in society and commercial life, popularize them or strengthen the general view about them and ensure not to be forgotten in the long term³⁸. Therefore, sponsorship contract provides added value to sponsor³⁹. There is no doubt that media has a significant influence during the materialization of this aim⁴⁰. Although the sponsorship is a means for promotion⁴¹, this promotion can be actualized with the support of media.

Image transfer. The main object⁴² of a sponsor generally in a sponsorship contract and specifically in a sport sponsorship contract is to provide the image transfer⁴³. This characteristic of sponsorship distinguishes it from other conventional means of communication such as advertisement, propaganda marketing or public relations⁴⁴. With the image transfer, it is meant the sponsor's aim of transferring the sponsored party's positive characteristics, in other words, image through sponsorship contract. In this regard, in sport sponsorship contracts, if the sponsor has a positive image in public opinion, it is desired to strengthen this image by taking the advantage of positive image of the sponsored party. However, if the sponsored party cannot be able to create a positive image in public opinion or if its positive image was harmed, it is aimed to change or meliorate this image through the sponsorship contracts⁴⁵.

As it is aimed to transfer the positive image of the sponsored party, generally the persons and institutions having positive⁴⁶ image are sponsored by the sponsors.

³⁷ Engel, p. 13; İmamoğlu, p. 62.

³⁸ Engel, p. 13; İmamoğlu, p. 62.

³⁹ Wegner, p. 39; Engel, p. 12.

⁴⁰ Wegner, Konstantin, *Der Sponsoringsvertrag – Vertragliche Aspekte des Einzelpersonen-, Institutional- und Eventsponsoring*, Heidelberg, 2001, p. 40; Engel, p. 13.

⁴¹ Richtsfeld, p. 144.

⁴² Engel, p. 12.

⁴³ Müller-Chen/Huguenin/Girgsberger/Netzle, *Vorb. Art. 184 ff. Rn. 3*; Engel, p. 7, 12; Richtsfeld, p. 149; Jagodic/Matesa, p. 279; Hauser, p. 90; İmamoğlu, p. 63.

⁴⁴ Engel, p. 12; Jagodic/Matesa, p. 282.

⁴⁵ Grüsser, Birgit, *Handbuch Kultursponsoring*, Hannover, 1992, p. 22; Wegner, p. 39; Engel, p. 12; Hauser, p. 90; Müller-Chen/Huguenin/Girgsberger/Netzle, *Vorb. Art. 184 ff. Rn. 3*; İmamoğlu, p. 63; BGE 118 Ib 356.

⁴⁶ Although the persons and institutions having positive image are generally preferred by the sponsors, sometimes some athletes having negative image were also especially chosen and supported by the sponsors. For instance, John McEnroe, who left his mark in history with his successes in tennis courts, became also famous with his aggressive attitudes, swears and racket smashes. However, he was sponsored because of his ambition and aggressiveness and his sponsorship contract became one

For instance, if the sponsor supports a soccer player who gained the sympathy of not only his club's, but also the other clubs' fans with his honesty, modesty and debonairness, the sponsor's image will be identified with the sponsored party's image and therefore the sponsor will also gain the sympathy of people. Likewise, a sponsor supporting a motorsports athlete aims to take the advantage of sponsored party's dynamic, fast and agile characteristics and strengthen its image in public opinion in this direction.

In addition to the effect produced by image transfer, sponsor gains also a positive impression when it supports particular events, organizations or social responsibility projects. People "sympathize" sponsor only as it supports particular events or organizations⁴⁷. According to our opinion, this effect constitutes the basic reason during decision-making process especially for the support of social responsibility projects.

Increase engagement with its target audience and to reach a larger target market. By concluding a sport sponsorship contract, another object of the sponsor is to increase engagement with its target audience and to reach a larger target market⁴⁸. The sponsor aims to engage in communication with the sponsored party's clients, partners or the persons, who participates in the sports activity or organization.

Another benefit of a sport sponsorship contract for a sponsor is to find an opportunity to promote its products⁴⁹. The sponsor may reach a larger target market and promote its products or services, if a sponsor supports a sports event or organization by supplying sports products (contributing in kind) manufactured by it or by providing services.

B. The objects of a sport sponsorship contract for the sponsored party

Provide Funding. In a sport sponsorship contract, the main object of a sponsored party is to provide funding to its sports activities or events⁵⁰. Therefore, a sport sponsorship contract is a 'means to an end'⁵¹ for the sponsored party.

Promotion. A sport sponsorship contract promotes also the sponsored party⁵². Although it transfers the image of the sponsored party to the sponsor, being

of the rare examples of sponsorship contracts signed for negative image transfer. For detailed info. please see Wegner, p. 39.

⁴⁷ Bassenge, Christoph, Dienstleister als Sponsoren, Imageprofilierung durch kommunikatives Engagement im Sport, Freiburg im Breisgau, 1999, p. 85.

⁴⁸ Bortoluzzi Dubach, Elisa/Frey, Hansrudolf, Sponsoring – Der Leitfaden für die Praxis, 5. Auflage, Bern/Stuttgart/Wien, 2011, p. 15; Kostkiewicz/Nobel/Schwander/Wolf/Huguenin/Weiss, p. 1144; Müller-Chen/Huguenin/Girgsberger/Netze, Vorb. Art. 184 ff. Rn. 4; Engel, p. 15; Bruhn/Mehlinger, p. 3 ff.; İmamoğlu, p. 64.

⁴⁹ Engel, p. 13; İmamoğlu, p. 65; Grassinger, p. 27-28.

⁵⁰ Engel, p. 16-17; Bortoluzzi Dubach/Frey, p. 17 ff.; Bruhn/Mehlinger, p. 15; Hauser, p. 33; Wegner, p. 41; İmamoğlu, p. 71; Grassinger, p. 29.

⁵¹ Bassenge, p. 193 ff.

⁵² Hauser, p. 33, 41-42; İmamoğlu, p. 72.

supported by a prestigious sponsor, promotes also the sponsored party and brings it prestige, as well.

5. Types of sport sponsorship contracts

A. Sponsorship for individual athletes. If the sport sponsorship contract is concluded for an individual natural person, there is sponsorship for an individual athlete⁵³. In this kind of a sport sponsorship contract, sponsor usually supports the sponsored party not for an individual activity or organization, it provides financing or any other support for all activities of the athlete. As a counter performance, the athlete undertakes to fulfill some communicative tasks⁵⁴, namely, usually image transfer. A typical example of the image transfer is the “jersey advertisement”⁵⁵. In this type of advertisement, the athlete enables the image transfer for instance by wearing the clothes, on which the logos of the sponsor is placed⁵⁶.

B. Sponsorship for sports teams or sports clubs. In this type of sport sponsorship contracts, the sponsored party is a legal person, namely a sports club or a sports team.

In practice, besides providing financing, making an outfitting contract and providing sports gear, clothes, shoes, and other sports equipment or undertaking the medical services of a sports club are the examples of a sponsorship for sports teams or sports clubs. And the sponsored party promoted the sponsor by wearing the sports equipment with the sponsor’s logo or advertising it during press conferences, matches etc.⁵⁷.

C. Sponsorship for a sports organization. This type of sponsorship is a version of event sponsorship. By concluding this type of sponsorship contracts, the sponsor objects to transfer the image of the organization⁵⁸.

Typically concluded forms of these contracts comprehend the obligation of attaching the logo of sponsor advertisements, tickets, screens etc. Pursuant thereto, in the Commission Decision of 23 July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, which is about “Joint selling of the commercial rights of the UEFA Champions League” the sponsorship rights were formed as follows: “*UEFA has a UEFA Champions League sponsorship package, which comprises traditional elements of event sponsorship with programme sponsorship and commercial airtime in the event broadcasts. Sponsors purchase a defined package of event rights including, among others, elements such as perimeter boards, sponsor logo identification on backdrops,*

⁵³ Kolvenbach, Dirk W., *Zivilrechtliche Ausgestaltung von Sponsoringverträgen – “Was man unbedingt beachten sollte”*-, in: *AnwBl.* 1998, pp. 291.

⁵⁴ Wahrenberger, p. 153; Engel, p. 29.

⁵⁵ Engel, p. 29.

⁵⁶ *Ibid.*

⁵⁷ Soyer, Fikret, *Sporda Sponsorluk, Kavram, Kapsam ve Bir Araştırma*, Ankara 2003, p. 84

⁵⁸ Engel, p. 29.

tickets, advertisement in each match day programme, sponsor identification on tickets, use of official designations and the UEFA Champions League logo."⁵⁹

D. Sponsorship for coaches. In this type of sport sponsorship contracts, the sponsor provides financing and also sports gear, clothes, shoes, and other sports equipment in exchange for transfer the coach's image. Coach wears these clothes or shoes or uses other equipment during the match, press conferences or trainings and promotes the sponsor⁶⁰.

6. The rights and obligations of the parties of a sport sponsorship contract

In a sport sponsorship contract, the main obligation of the sponsor is to provide financing or any other support for the sponsored party's activities or organizations, namely the payment of the sponsorship right fee, contribution in kind or the provision of services.

In the sport sponsorship contracts, in which it was agreed upon the payment of the sponsorship right fee, different types of payment can be foreseen. These types may be a single payment or partial payments that lasts during the term of the contract⁶¹. It is sufficient that the scope of the payment is determined or determinable at the time of the conclusion of the contract⁶².

Sport sponsorship contracts contain usually performance related contract components (Bonus/Malus Rule)⁶³. In such a contract, it can be foreseen that a success fee will be paid in the case of a gain of success (for instance to win a champions cup). Likewise, a reduction in the sponsorship right fee may also be foreseen for failure⁶⁴. Principally, Bonus/Malus Rule accords with the idea of image transfer, which is the most important object of the sponsor⁶⁵.

In sport sponsorship contracts, providing contributions in kind may be decided instead of payment⁶⁶. The most common example of this type of contracts in practice are outfitting contracts⁶⁷. With such contracts, sponsor provides sports gear, clothes, shoes, and other equipment to the athlete or team.

⁵⁹ Commission Decision of 23 July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:291:00 25:0055:EN:PDF> (last viewed on: 1.10.2018)

⁶⁰ Soyer, p. 80.

⁶¹ Wahrenberger, p. 160; Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 31; Engel, p. 156; Hauser, p. 292; İmamoğlu, p. 174.

⁶² Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 31.

⁶³ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 31; Engel, p. 157.

⁶⁴ Engel, p. 157.

⁶⁵ Engel, p. 157.

⁶⁶ Wahrenberger, p. 160; Wegner, p. 52; Engel, p. 160; Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184. ff Rn. 32; Hauser, p. 293; İmamoğlu, p. 175.

⁶⁷ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 32; Wahrenberger, p. 161; Engel, p. 160.

Lastly, providing certain services could be agreed on in a sport sponsorship contract⁶⁸. In such a case, the sponsor provides certain services, which constitutes a benefit-in-kind⁶⁹, instead of providing financing or contributions in kind. Undertaking the medical services of a sports club may be an instance for this type of sport sponsorship contracts.

In sponsorship contracts, in response to the mentioned obligations of the sponsor, the sponsored party undertakes the obligation of promotion of its sponsor. By that, sponsored ensures its sponsor to achieve communicational goals⁷⁰. At this stage, the rights to use, firstly, its name, image, and other values are left to the sponsor with the other representative elements such as brand, logo, mark, emblem, mascot, and slogan by the sponsored party⁷¹. Besides, the sponsored party provides an opportunity to its sponsor to advertise itself during the sponsored activity or organization. In this wise, the possibility of image transfer is delivered to the sponsor. Nevertheless, here, it should be emphasized that, even though the sponsored party allows its name and image to be used generally, this consent can be withdrawn at any time⁷². Additionally, sponsored party has the obligation to use sponsor's values such as brand, logo, mascot during organizations or activities, in order to make the sponsor be able to use communicational tools of the sponsored party⁷³.

Besides abovementioned obligations, sponsored party has the responsibility to be prepared in the best way possible for the sponsored activity or organization⁷⁴. Due to the fact that image transfer is the most crucial element within a sport sponsorship contract, and the reason that the sponsor supports the activity or organization subjected to the contract due to its positive characteristics in general, sponsored should do its utmost to carry through the activity or organization successfully. This obligation of the sponsored party is arisen from the obligation of supporting sponsor in its advertising efforts during sponsored activity or organization⁷⁵.

It should be also emphasized that, one of the most important obligations of sponsored party is the obligation to inform sponsor. As the most crucial element of a sport sponsorship contract is to transfer the image, sponsor should be informed before the sports activity or organization extensively, and it should be also notified about all changes during the organization or activity⁷⁶.

⁶⁸ Wahrenberger, p. 161; Hauser, p. 295; Engel, p. 162; İmamoğlu, p. 180.

⁶⁹ Wahrenberger, p. 161.

⁷⁰ Wahrenberger, p. 162; İmamoğlu, p. 182 ff.

⁷¹ Wahrenberger, p. 162; Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 40; İmamoğlu, p. 183 ff.

⁷² Honsell/Vogt/Geiser/Meili, Art. 28 Rn. 48.

⁷³ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 43-44; İmamoğlu, p. 183 ff.

⁷⁴ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 38.

⁷⁵ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 38; Hauser, p. 276.

⁷⁶ Müller-Chen/Huguenin/Girgsberger/Netzle, Vorb. Art. 184 ff. Rn. 46.

7. Conclusion

Sport sponsorship contract is a contract whereby the sponsor provides financing or any other support in order to establish an association between the sponsor's image, brands or products and sponsored athletes, sports clubs, coaches, sports organizations and sports facilities in return for granting of certain direct or indirect benefits and rights, namely the promotion and image transfer.

Since the main object of a sport sponsorship contract is to promote the sponsor, and in order to achieve that, the image transfer is used as a means particularly; according to our view, acting according to good moral, as well as fulfilling its contractual obligations are vital for the sponsored party. There is specific reason for an individual, a team, an activity, or an organization to be chosen by the sponsor to support. This reason is the status of that individual in public opinion. For instance, if a sensation occurs in public due to the findings of doping during controls of some team players, it will ruin the reputation of the sponsor which tries to publicize itself by a positive image transfer or to regain its reputation that is lost. Likewise, an athlete with a high morale being caught at a drug party will damage sponsor's reputation dramatically. Therefore, a sponsor whose reputation, which forms a part of personality rights, is damaged, has a right to claim damages for non-pecuniary loss.

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