

LAW ELEMENTS REGARDING THE PROTECTION OF SPORTS TRADEMARKS

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Abstract. *In the field of physical culture and sports, the intellectual property rights are property rights as all others, allowing the creator or owner of a patent for invention, brand or a work protected by copyright to benefit from its work or investment. The progress and human development depend on its creativity in technical, cultural and sports domains but legal protection of new creations encourages the investments and lead to other innovations. Moreover, the promotion and protection of intellectual property stimulates the economic growth, leading to the creation of new jobs and new branches of activity and to the improvement of life quality. The intellectual property rights in the domain of physical culture may reward the creativity and human effort, which is actually the human progress. The potential of sports mark depends on its ability to communicate in such way as to determine in consumer's mind positive associations based on its experience and perceptions. The unauthorized use of Sports marks may be limited by special provisions belonging to the legislative domain of that country.*

Keywords: *sports mark, Olympic, protection, law, intellectual property, use, commercial, Olympic cycle, Olympic movement.*

Introduction. Sport is an instrument of international understanding between nations, cities, institutions and individuals. The human resources must form the fulcrum of any national sports policy designed and implemented in agreement with local powers, forced to respond daily to the requests of their fellow citizens, especially to the requests of the unorganized ones. Thus the role of local communities in the sports domain can be situated at several levels: research; planning; organization, including administration, promotion and also an assessment of what was done before. The research should be pragmatic and take into account the views of different categories of potential beneficiaries [7].

The collaboration through sport must be effective, competitive and innovative. The collaboration should be effective by making of some sports equipment sufficiently based in particular on sports and cultural polyvalence [6]. Competitive, through the products ability and sports services to resist on the competitive market at an appropriate level, resulting constant growths and standard of living. The factors which contribute to the development are shown in Figure 1.

The collaboration through sport should be innovative, respectively through the creative process to be generated new ideas, followed by the realization of changes generated by this one. At the same time, it requires that in the system of National physical culture to implement new, advanced technologies to be acquired sports equipments and facilities, as a result of scientific research, in order to obtain processes, sports goods or new services, improved by adopting mainly an innovative behavior, including the activity to explain, to transfer knowledge to provide expert advice, to communicate with experts from the other field about the results of basic and pre-competitive research, so that the results dissemination should be done in a way that their application to be possible, but under the condition of a owner [6].

The aim of our research consist in reflecting some law aspects regarding sports marks, protection and their rights of use by the partners of Olympic Movement during the Olympic cycle or various commercial situations .

The research methodology which I applied, has been selected in order to respond to the main specific requirements of an ascertaining study.

The methodological system consisted of: method of specialty bibliography analysis; method of systematic observation and method of activity products analysis.

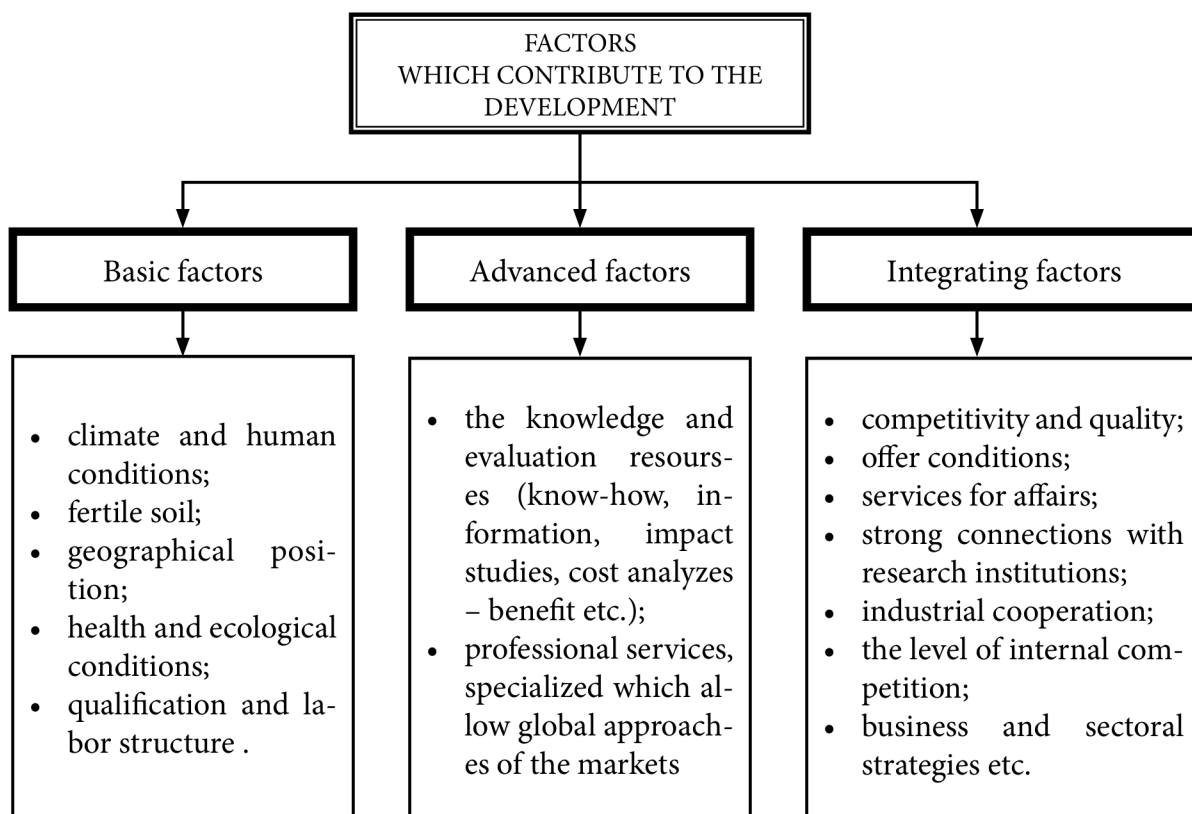


Fig.1. Factors which contribute to the development

The innovation to be harnessed by transfer shall do the subject of intellectual property having two basic components: industrial property and copyright and related rights. In the area of physical culture and sports, intellectual property rights are property rights as all others, allowing the creator or owner of a patent, mark or a work protected by copyright benefiting from the work or its investment [7].

The protection and importance of intellectual property in the area of physical culture and sports is urgently necessary for many reasons: progress, prosperity, welfare and quality of life depend on the creativity in the field of sports, technical and cultural; legal protection of new creations from the field lead to other activities with innovative character; promotion and protection of intellectual property stimulates the economic growth

of the sports results, leading to the creation of new jobs in the reference system. The intellectual property rights in the field of physical culture can reward the creativity and human effort, which actually is the human progress.

Traditionally employed in the field of culture, arts and entertainment, sports has not patented his inventions. Sports organizations currently proceed on a market which “soon will become the largest consumer market in the world [3]”. Annually transacted values in this market reach colossal figures, and what can sell sports organizations are the images and their own products. The protection of these goods represents a necessity. The first step performed by sport organizations towards their identification and products / services was the adoption of a logo. Although the majority of sports associations, clubs and federations have a logo, few of them have resorted to

the registration of the mark [4].

Defined by the American Marketing Association (AMA) as a “name, term, sign, symbol or design or a combination thereof serving to identify the goods and services of a seller or group of sellers and to their differentiation from those of competitors” [1], mark is a complex symbol which transmits to the consumer the promise of a certain set of characteristics, expectations and benefits.

According to Law No. 38 of 29.02.2008 regarding the protection of marks, published in the Official Gazette no. 99-101, art. 2, the mark means “any sign (visual, sound, olfactory, tactile), which serves to the individualization and differentiation of the goods and / or services of a physical or legal person from those of the other physical or legal persons” [7].

In sports, the mark may appear as a name, a logo or symbol, but represents more than sports organization name or its product / service. In terms of material, most of sports marks are emblems. There are also sports complex mark (reuniting the signs and names separately protected) or combined (combinations of words with graphical representations), but also sound marks (Olympic hymn) or spatial (competitional mascots, continental and global) [4].

As in the commercial area, sports marks extend over a wide range of potential and value, from the lesser known marks, to the marks rather acceptable, preferred to the recognized by everyone. The potential of sports mark depends on its ability to communicate in such a way as to determine in the consumer’s mind positive associations based on experience and its perceptions. Moreover, the power of sports marks evocation is considerable, benefiting from the fact that any mark carries out messages that conveys recognized and accepted values, integrated to a specific culture. Thus, Olympic circles are the best known mark in the world. Symbolically, for example,

Olympic circles, besides representing the Olympic games, are associated with the idea of success, international cooperation, the tradition of excelling peace and national pride. In Moldova mark rights are acquired and protected according to article 3 of Law No. 38 of 29.02.2008 through the:

- a) the registration according to the present law;
- b) the international registration according to Madrid Agreement regarding the international registration of marks of April 14, 1891;
- c) the mark recognition as being notoriously.

By registering the sports mark, the holder benefits from an exclusive right over it. Registering a distinctive sign as a sports mark gives exclusive basis in the use of mark keeper. This exclusivity allows and claims the prohibition of use when someone uses, without any right the sign. In the virtue of this central right, it can be detached and other rights and prerogatives which the owner of a sports mark has. Thus they may request the competent court to prohibit others to use in their commercial activity without his consent: a identical sign with sporty mark for goods or identical services with those for which the mark was registered. Among the signs that can be registered as a sporty mark, there are color combinations, the words, combinations of numbers, combinations of numbers and letters, etc. The essential role of sports mark is to support the identification and individualization of Sports products and services [8].

Sports mark has a territory specific to each country, it is bounded not only by the respective mark market, national or international law, but also by the relations regulated between the sports organizations [4]. In this regard, we can propose a classification of sports marks (Figure 2) in:

- local trademarks (belonging to a local association that practice a kind of specific areal sport);
- national trademarks (belonging to powerful clubs or national federations for different kind

- of sports, as well as the National Olympic and Sports Committee);
- international trademarks (belonging to international sports federations, other famous international sports organizations, in different sports, regardless of their trademark sponsor);
- global trademarks (The International Olympic Committee, Olympic Games).

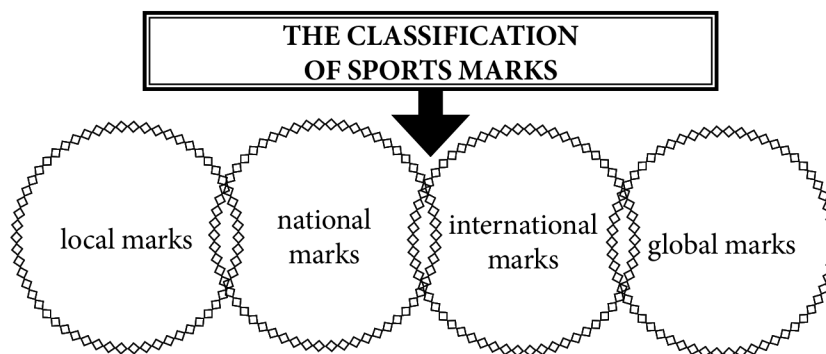


Fig 2. The Classification of sports trademarks

Defending the rights of a sports organization by protection of sports trademarks requires from the third parties of sports organizations or legitimate interested, to get over several stages [4]:

1. Sports mark registration. Property registration is a prerequisite for recognition of ownership. The property is a thing that has been created and whose identity is unique and must be protected. In sports, the properties are several types:

- temporary property, which is a commercial force, important for a limited period of time (eg the Olympic Games (J.O), Football World Cup, Australian Open Tennis, etc.);
- stable properties (their presence on the market is sustainable - for example, professional sports leagues and clubs);
- personalities (they are considered also properties that can be licensed in a short period of time as the popularity of sports stars is based on performance and their image may be exploited promotionally by association with a product).

In the Republic of Moldova, the State Agency for Intellectual Property (AGEPI) is the national office in the protection of intellectual property domain and the only authority in the country granting trademark protection under the condi-

tions of the law referred above.

If the sports trademark is stronger then the protective measures are also formulated strictly in accordance with the law, taking into account the contractual standards adopted by sports organizations in this case. Unauthorized use of trademarks may be limited sports and through special legislative provisions from the domain of the country concerned, such as: Copyright law (if applicable); Nairobi Treaty, which protects Olympic circles, as property of the International Olympic Committee (enacted on 26 September 1981 and effectual for Moldova since 25 December 1991). Thus, according to this Treaty “any Contracting State to this Treaty shall be obliged, pursuant to art. 2, and 3, to refuse or cancel the registration as a trade mark and to prohibit by appropriate measures the use as a trade mark or other sign, for commercial purposes, of any sign consisting of / or containing the Olympic symbol, as it is described in the Statute of the International Olympic Committee “[5].

Also, the exclusive right over the trademark takes effect to third parties from the date of publication in BOPI or the registration date in the International Registry of data relating to regis-

tration of the mark. At the same time, it may be required a reasonable compensation, within the amount of the damage caused to those acts committed after publication of the application for registration, which will be banned after publication of the trademark registration. The court seized to handle the case may not decide on the merits as long as data relating to registration of the mark have not been published. Thus, the trademark owner may place with warning mark in the form of a letter R enclosed in a circle, or text indicating that the mark is protected in Republic of Moldova [par. 3, 4 of Law No. 38 of 29.02.2008].

After the mark publication, the right to request the third parties for the prohibition of documents mentioned belongs and to the one who applied for the registration. For acts subsequent to publication of the mark, the applicant may claim damages under common law. Ordering payment of damages shall be enforceable only after the registration of the mark. If the application for mark registration was rejected, the applicant has no right to compensation. To determine the extent of holder's rights, it is applied the theory of exhaustion. According to it, the use of the mark by acquirers and sub acquirers of some marked products it must be respected by the distinctive sign holder. The owner may not prohibit acquirers its products, to use or refer to the mark applied to them because intermediaries have the opportunity to resell them with the mark. This issue is regulated under Article 13 of Law No. 38 of 29.02.2008 according to which "the holder of a trademark can not ask others to prohibit the use of that mark on products and / or services that were placed on the Moldovan market by himself or with his consent."

The acquisition of a marked product involves its acquiring and the mark also. By putting the product into circulation and normal use of the distinctive sign, the holder right is ended. In the

first sale, the exclusive right of the holder to circulate a product covered by the mark is exhausted. The trademark right can not impede the free movement of goods marked, not being an obstacle for subsequent transactions [8]

Trademark right does not confer rights on products sold. The mark does not attribute to the holder the monopoly of its products disposing, till the final consumer. Moreover, the product may be released into circulation and by the consumer. However, the owner of the mark has a right of intervention. The holder opposition is justified when the intermediary commits acts incompatible with the function mark.

Sports organizations can ensure additional protection of the mark by:

a) the conclusion of sponsorship contracts, equipment supply or licensing in certain conditions [4]:

- its duration should not exceed a specified period;
- to be mentioned that "sports mark will be used for its prescribed area";
- sponsors and licensors should respect categories of goods and services for which the contract was concluded;
- sponsors and licensors should submit the verification for correctness and approval, to the respective organization, all the cases where sports logo will be reproduced on promotional material or products thereof;
- third party is not allowed to use licensed products as premium products in promotional activities, if they are not sponsors or suppliers of the respective sports organization etc

b) the coordination between marketing contracts and television;

c) the coordination of own marketing programs with those of the upper and lower sports entities;

d) organization of press conferences in the

case when an organization uses illicitly the sports organization mark;

e) avoid the use of sports emblems in advertising for alcohol and tobacco;

f) compliance with applicable sporting regulations, Olympic Charter, Code of Sports Ethics, sports organizations statutes etc.

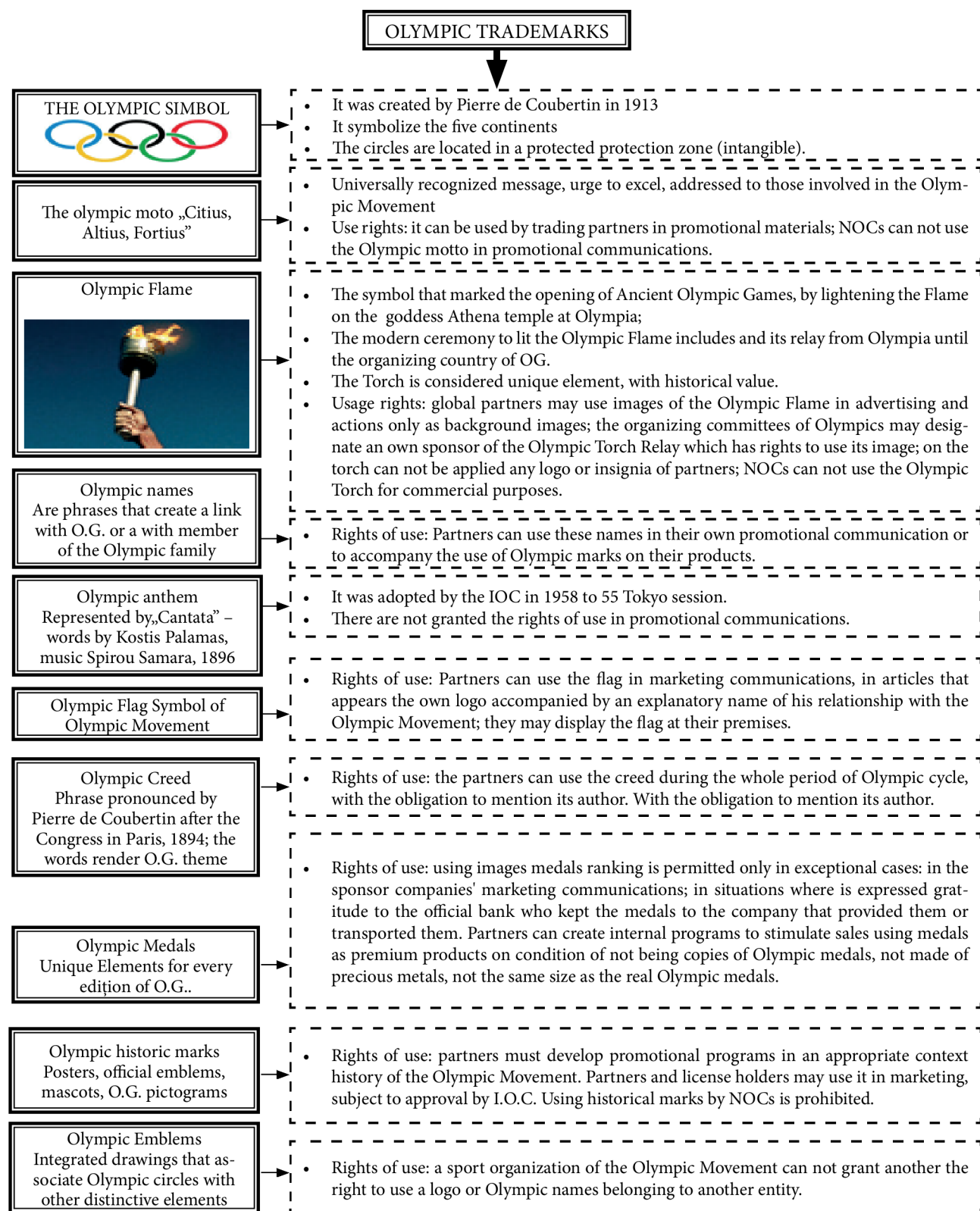


Figure 3. Olympic trademarks and thereof rights of use

Considering the general concept that Olympics trade marks are the most precious asset of the Olympic Movement, the IOC has developed a comprehensive marketing program (to promote the communication potential of its properties) and whose effects benefit all sports organizations that make up the Olympic Movement.

In this context, to be implemented, the program is based on respecting by the sports entities and other commercial partners of the contractual obligations assumed, as well as strict regulations designed to protect the image of Olympic marks. Olympic trade marks are shown in Figure 3.

Conclusively we can affirm that the measures to prevent the unauthorized use of sports trademarks is a recent concern of the sports organizations, being determined by the necessity of preserving and increasing the value and potential of their properties, as well the importance of protecting the marketing programs on their "territory". In this context, among other measures to protect the sports Olympic trademarks, we can reflect the following:

- on the athletes equipment can not be used any IOC Olympic mark;

- the Olympic mark can not occur in non-Olympic competitions or non-Olympic sponsorship cases;
- Olympic marks may not be used by trading partners in comparative contexts;
- Olympians partners have no right to include on their websites general information about the IOC or the Olympic Games, since given the fact that the IOC has an official partner in the media, the advertisements should be made so that the consumer would not make an association between the official publication and the Olympic Movement;
- The pictures of the athletes represent a powerful tool of communication, and its use depends on the "person's right" so their use for commercial purposes may result in different legal matters from one country to another;
- IOC's trading partners have the exclusive right to create and use combined sports marks (logo – s) [5].
- for advertising and promotion, used together with the products covered by individual contracts.

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