

IX THEMIS FINAL

KRAKOW 2014

LEGAL PRACTICAL QUESTIONS

The firm BBB EVENTS GmbH, with central office and administration in Vienna, Austria, and a branch office in Frankfurt, Germany, participated in the calls for tender launched by TWL CARS, GmbH, with head office in Munich, Germany, for organizing the 40th Berlin Marathon (2013 edition), and won it.

It was agreed, in a written contract celebrated between BBB EVENTS and TWL CARS that all organizational aspects of the event, including the logistical, the graphical and the digital should be dealt with by BBB EVENTS.

In order to perform its contractual tasks, this enterprise celebrated a contract with KONTAKT DESIGN, SP. Z O.O, from Krakow, Poland, according with which the polish company had to create all the layouts of that marathon edition, including the official images, marketing icons and other symbols and, even, the layout of a web page. This enterprise had also to supply all the printed materials including banners, placards and stationery.

For the execution of the printing activity, KONTAKT DESIGN, contracted SCHWEIZGRAPH GmbH with head office and facilities in Geneva, Switzerland.

Before the presentation agreed, TWL CARS had access, through one of its employees, to some samples of the symbols produced by the polish company and made, through an email sent to this enterprise, some strong negative observations about that work, stating that it appealed to violence which was against all the principles underlying the event and proposed a complete recast of the main symbols of the 2013 marathon. KONTAKT DESIGN answered referring

that TWL CARS had had unauthorized access to provisional drafts, there was not time enough to change the central part of its work already done, that the printing process had already started in the facilities of the Swiss company and, above all, that the contract was not signed with TWL CARS and didn't contained any clause on bilateral consultation or allowing the other party to reject the work done.

By virtue of this disagreement and reciprocal inflexibility, the dialogue could never be completely re-established and TWL CARS ended directly hiring another company to perform the activity assigned to the polish enterprise, only accepting to pay to BBB EVENTS the expenses that KONTAKT DESIGN supported with the creation activity but not with the printing, or any other, always stating that, anyway, such expenses were much lower than the value of the compensation to which it was entitled due to the conduct of KONTAKT DESIGN that imposed the negotiation of a much more expensive agreement with a Design company from Germany by virtue of the availability of only 6 months to prepare all the graphic aspects of the event, affirming that such conduct also produced damages in its image as owner of the athletic competition.

Stating that the bad choice of KONTAKT DESIGN added unpredicted costs, TWL CARS never paid to BBB EVENTS 30% of the price agreed, which was never accepted by this company.

By other side, having not received any payment from TWL CARS, KONTAKT DESIGN never paid the printing jobs performed by the SCHWEIZGRAPH, in spite of the many insistences from this company.

Having received the information that KONTAKT DESIGN was in a difficult economical situation, TWL CARS went to a Krakow civil court applying for protective measures in order to seize the property of such company with a view to grant its future credit for damages compensation. In that proceeding, it requested that the former administrator of the Polish enterprise, a French citizen, was examined as witness through videoconference in Bordeaux, France. The Polish court sent a request of taking of evidence directly to the French Court and, after five months, received an answer from a central authority from Place

Vendôme, Paris, stating that: a. the requested court only had a videoconference system installed for criminal cases; b. the taking of evidence could only be performed on a voluntary basis, without the support of coercive measures; c. it should be the requesting court to contact the witness and to inform him of the voluntary character of the examination; d. the request needed to be redirected to the French central authority in twenty days; e. it should be the requesting court to find a place and a videoconference system in the French territory to perform the collection of evidence; f. the cooperation to be given was submitted to the condition of the examination having to be performed by a French judge.

In that provisional proceeding, KONTAKT DESIGN presented an application asking the Polish court to find the address of an Austrian witness in order to subsequently ask his examination by videoconference. The court rejected such application on the grounds – among some internal law reasons and the affirmation that the request was incompatible with the urgency demanded by the proceeding – that there was no European Regulation that could be applied in order to obtain such information in another Member State even in an ordinary legal action.

During the referred marathon, that took place in the end of September 2013, two Spanish students, JUAN PABLO and FRANCISCO, which were among the public watching the competition, were severely injured in a quarrel between members of the audience by four French supporters, ADRIANNE, BARTHELEMY, CHARLES and DAMIEN. These French supporters just had light injuries.

Two athletes (GODA from Lithuania and EDUARDO from Portugal), that were passing by, were hit. They were both covered by an insurance policy negotiated by BBB EVENTS with SPORTSURE LLC, with head office in London, that granted compensation for accidents suffered during the race.

JUAN PABLO had to stay in a Berlin hospital for treatment during 10 days and left without no permanent damages emerging from the accident.

Unfortunately, due to a blood transfusion received in that German hospital, he got hepatitis for life which was only detected a few months later, in Spain.

FRANCISCO was in coma for 15 days and had to stay in the same hospital for surgery and treatments during another 45 days. He left the hospital with strong limitation of movements in the left upper side of his body and difficulties of concentration that prevented him to continue to perform his activity of truck driver.

FRANCISCO'S father, that was watching the race on TV, in Alicante, Spain, saw the aggressions directly transmitted and recognized his son being brutally beaten. He had an immediate heart attack from which he recovered only after 20 days in the Alicante hospital.

GODA broke a leg and ANDRÉ a rib and they were both treated in a Berlin Hospital from where he left the same day, and had to abandon the race that they prepared and paid using their own financial resources.

Due to a misunderstanding, MATHIAS, a Belgian citizen that was also watching the competition was, by mistake, arrested by the German police during that physical confrontation and stayed in prison for 7 days. This caused him deep sadness and depression and economical losses by virtue of his absence from his workplace.

QUESTIONS:

1. Please identify the legal rights involved in the described situations to which European Union rules in civil and commercial matters can be applied – explaining your elections and rejections and assuming that all the natural and legal persons want to exercise their rights – indicate those rules, determine the Countries which national laws are applicable to each situation and the courts with jurisdiction to deal with it and make reference to the rules on recognition and enforcement of the judgements pronounced on such rights;

2. Please indicate and comment the problems that came up during the provisional procedure above mentioned, find the European Union Law rules applicable, identify eventual technical errors and point out solutions to the difficulties found.

NOTES TO THE TEAMS:

1. If you consider that any other facts beyond the ones indicated in the practical case are indispensable to allow you to give better answers, you are allowed to create it at your own discretion. However, these facts should not keep away the ones described in the practical case and an explanation of the reasons why you deem them indispensable to your draft should be provided in an extra addendum of one page, maximum;

2- Please address yourselves directly to the questions asked, remembering that your paper must be written in English and must not exceed 10 pages in 'WORD' (.doc) format, Times New Roman, size 12, line spacing 1.5.; all written references such as summaries, side comments, annexes, bibliography and endnotes shall be included in those 10 pages; a cover page may be added to the above limit.

3- Your paper must be finished and delivered to THEMIS Secretariat by Tuesday, 6pm.