

THE TRADEMARKS
LAW REVIEW

Editor
Jonathan Clegg

THE LAWREVIEWS

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LAW REVIEW

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EDITOR'S PREFACE

I am very pleased to be able to introduce this new title from the long-established Law Review series, dedicated to issues around trademark law. Its objective is an ambitious one: to provide an annual snapshot of the law in this area across a broad range of jurisdictions, not only summarising key legal provisions but also examining recent developments and trends coming from the courts, and identifying areas of expected legal activity and legislative change going forward.

To this end, we have invited a geographically diverse group of leading trademark practitioners each to provide a chapter of commentary on their own jurisdiction. The broad structure of each chapter is similar, allowing for clear points of comparison, while leaving enough space for issues of particular relevance to a given country to be explored. Our authors have therefore all struck a balance between conveying the key elements of the trademark landscape in their respective countries, and giving a flavour of the current and commercially active issues they face. The former must necessarily be concise – this book does not in any sense aim to provide an exhaustive analysis – but each author has been encouraged to explore the latter with appropriate weight depending on what has been happening recently in his or her country.

The commercial importance of trademarks to the business community continues to grow, and the tools available for securing international protection (for example, the European Union Trademark system (EUTM) and international registration under the Madrid Protocol) are still improving and providing businesses with ever broader choices in how to develop effective international protection. For many years, there has been considerable harmonisation of trademark laws and practices across many jurisdictions, most obviously in the EU but also in other countries that have adopted new trademark laws that closely reflect the EU model. While harmonisation continues to be the direction of travel in some quarters, there are still many significant differences in the legal treatment of trademarks when viewed globally.

It goes without saying that the online environment, including social media platforms, continues to grow as a dominant force in the business world. This is reflected in a significant increase in trademark (and related) law suits around the world, whether relating to key word advertising, metatags, 'traditional' trademark infringement, unfair competition, copyright or a myriad of other legal issues. At the most fundamental level, the only mechanism for tackling legal issues that arise on the internet is on a jurisdiction-by-jurisdiction basis, but this is heavily at odds with the internet operating without reference to geographical borders. So the areas of trademark law that remain far from harmonised can dramatically increase the complexity of tackling determined international infringers. Some of these issues come through in this publication: readers will note the many references to recent and pending legal

actions surrounding the internet and social media, and the different treatment some issues receive in courts across different jurisdictions is clear to see.

The continuing efforts to increase the degree of substantive and procedural harmonisation internationally in the trademark arena are therefore certainly in the interests of the business community, and worth pursuing.

There are many other issues dealt with in the chapters of this book which are not focused on the internet, including parallel imports, registering and enforcing non-traditional trademarks, counterfeit products, and the interplay between trademarks, company names and domain names. The nature of the publication is such that not all these areas are addressed in every chapter: they arise in jurisdictions where they have been the subject of recent legal scrutiny and are therefore current issues.

Our hope is that readers will find this book a valuable resource and that – since its content is up to date, business-focused and in the form of a snapshot of each jurisdiction – one which our colleagues in the trademark field will want to consult regularly.

Jonathan Clegg

Cleveland Scott York

London

November 2017

GREECE

*Christos Chrissanthis, Xenia Chardalia and Antonia Vasilogamvrou*¹

I OVERVIEW

i Impact of EU law

Greece is a member of the EU and has, hence, implemented EU law on trademarks. The process for the registration of trademarks in Greece is almost identical to the process used by the European Union Intellectual Property Office (EUIPO) for the registration of European Union Trademark Applications (EUTMAs). The case law of the General Court (GCEU) and the Court of Justice (CJEU) of the EU also has a great impact on national courts. Similarly, the guidelines issued by the EUIPO regarding trademark cases are usually followed by the Greek Trademark Office and the Greek courts.

ii Registered and non-registered marks

Greek law provides for the protection of both registered and non-registered marks. Registered marks are called trademarks and are protected under trademark law, while non-registered marks are usually called distinctive signs and are protected under specific provisions of the law on unfair competition (Articles 13–15 of Law 146/1914).

The basic prerequisite for protection of both trademarks and non-registered distinctive signs is that they must be distinctive, that is, capable of distinguishing the products or services of one manufacturer from those of another.

iii Types of marks

The following types of marks are capable of being protected either as registered trademarks, or as non-registered distinctive signs, provided they are distinctive:

- a* words affixed to products or used in the course of providing services;
- b* letters, numbers, names (both first names and surnames) and abbreviations;
- c* slogans and short phrases;
- d* colours and colour combinations;
- e* designs, including 3D designs;
- f* the shape of the product, or of its packaging, product labels and trade dress;
- g* company names and distinctive titles used to identify the premises where goods or services are offered to consumers; and
- h* surface designs, colour patterns and design patterns.

¹ Christos Chrissanthis and Xenia Chardalia are partners and Antonia Vasilogamvrou is an associate at Christos Chrissanthis & Partners Law Firm.

Non-traditional marks, such as sound, taste, smell and feel, are currently considered in practice as not capable of being protected, because they cannot be described or identified in a clear, precise, consistent and unambiguous manner, or at least there is currently no consensus as to the method that would enable a clear, precise, consistent and unambiguous description of such signs.

The Greek Trademark Office accepts applications for both product marks and service marks, as well as collective marks.

iv National, European and international trademarks

There are four ways to obtain registered trademark protection in Greece:

- a filing a national (Greek) trademark (both nationals and foreigners can apply for a national trademark);
- b filing a European Union Trademark (EUTM);
- c filing an international trademark with the World Intellectual Property Organization (WIPO), designating Greece, under the Madrid Protocol; and
- d filing an international trademark with WIPO, designating the EU, which will result in an EUTM.

An application for a national trademark, an EUTMA or an international trademark application with WIPO may have international priority under the Paris Convention.

v Statistics on trademark applications

The table below shows the number of national trademarks applied for in the past five years, and the number of international registrations that have been extended to Greece and applied for protection in Greece:

	National trademarks	International registrations
2016	5,541	1,028
2015	5,688	1,371
2014	5,550	1,349
2013	5,078	1,648
2012	3,744	1,692

vi The Greek economy

Greece is a market with a population of about 10 million people. Gross domestic product (GDP) in Greece averaged €91.25 billion from 1960 until 2014, reaching an all-time high of €301.42 billion in 2008. Since 2008, Greece has been experiencing its most serious economic crisis (mainly a public debt crisis) since the Second World War. The table below shows the country's GDP performance during the past five years:

	National GDP (€bn)	GDP per capita (€)
2016	165.0	15,215
2015	165.6	15,261
2014	200.9	18,394
2013	203.9	18,534
2012	208.9	18,846

II LEGAL FRAMEWORK

i Legislation

The Greek law on trademarks consists of Law 4072/2012 (Articles 121–183), as amended by Law 4155/2013.

The Greek law on non-registered distinctive signs consists of Articles 13–15 of Law 146/1914 on unfair competition.

Greece has implemented the following EU Directives, which affect its national law on trademarks:

- a* Directive 2008/95/EC, regarding the approximation of the law on trademarks; Directive 2015/2436/EU recasting Directive 2008/95 has not yet been implemented into national law;
- b* Directive 2004/48/EC on the enforcement of intellectual property rights; and
- c* Regulation 608/2013/EU concerning customs enforcement of intellectual property rights is directly applicable into Greece.

Regulation 207/2009/EC regarding the EUTM (as amended by Regulation 2015/2424/EU) is also directly applicable in Greece and EUTMs are protected, according to the provisions of the above-mentioned Regulation.

Greece has also implemented into national law the following international conventions:

- a* the Paris Convention 1883 (Stockholm 1967 version);
- b* the World Trade Organization TRIPS Agreement;
- c* the Hague Convention for international registration of industrial designs, known as the Hague System (Geneva Convention 1999);
- d* the Locarno Agreement (1968), on the international classification of industrial designs;
- e* the Madrid Protocol (1989), regarding international registration of trademarks through WIPO; and
- f* the Nice Classification Agreement (1957), now consisting of 45 classes of goods and services for trademark registrations.

However, Greece has not implemented the following international conventions:

- a* the Madrid Agreement (1891) on international registration of trademarks;
- b* the Vienna (1973) Trademark Registration Treaty;
- c* the Vienna (1973) Agreement on the classification of figurative elements of marks; and
- d* the Geneva (1994) Trademark Law Treaty.

ii Authorities

Cases relating to trademark registration, revocation or cancellation are dealt with by the Trademark Office, the Trademarks' Committee and the administrative courts. Cases relating to enforcement of registered trademarks and other distinctive signs (i.e., company names and non-registered distinctive signs) are dealt with by the civil courts. Cases relating to the registration or cancellation of domain names are dealt with by the National Authority for Telecommunications and Post Services.

Cases relating to the registration process

Trademark applications are dealt with by an examiner, who is a civil servant of the Trademark Office. The Office is a department of the Ministry of Trade. The decisions of the examiner can be appealed before the Trademarks' Committee, within 60 days of notification.

The Trademarks' Committee consists of three members and deals with oppositions and cancellations as well as applications. Its decisions are appealed before the first instance administrative courts, and then, if necessary, to the second instance administrative courts. The administrative courts can review a case on both matters of fact and matters of law. The decisions of the second instance administrative courts can be appealed to the Supreme – Cassation Administrative Court (the Council of State), which reviews cases only on matters of law. In all these cases, the time period for filing an appeal to a superior court is 60 days if the appellant is residing in Greece and 90 days if the appellant is residing abroad.

The Trademarks' Committee and the administrative courts review cases only under ordinary proceedings and issue neither summary judgments nor provisional court orders.

The decisions of the examiners, the Trademarks' Committee and the administrative courts are sometimes controversial. So, supporting cases with precedents from the GCEU and the CJEU and explaining the law by written memoranda is vital.

Cases relating to enforcement of registered trademarks and non-registered distinctive signs

Cases relating to the enforcement of trademark rights and non-registered distinctive signs are dealt with by civil courts. There are civil courts of first and second instance (the latter being appeal courts), which review cases both on matters of fact and law. The judgments issued by second instance (appeal) courts can be further appealed before the Supreme – Cassation Civil Court (the Supreme Court of Greece), which reviews cases only and strictly on matters of law. The time frame to file an appeal, either to a second instance (appeal) court or to the Supreme Court is only 30 days after notification of the judgment, or 60 days if the appellant is residing abroad. Only judgments of a second instance court are enforceable. An appeal to the Supreme Court does not affect the enforceability of the judgment reviewed, unless the Court issues, upon the application of the appellant and under summary proceedings, an order rendering the judgment unenforceable.

According to Article 95 of Regulation 207/2009/EC (relating to the EUTM), Greece has designated the civil courts of Athens and Thessaloniki to deal with civil cases relating to the enforcement of EUTMs. These two courts also deal with cases relating to national trademarks and all other intellectual property cases. So, cases relating to trademark infringement committed in any part of northern Greece are dealt with by the civil courts of Thessaloniki, while cases relating to infringements in southern Greece are dealt with by the civil courts of Athens. The Athens courts are manifestly friendlier to trademark owners, while those of Thessaloniki have a stronger attitude in favour of free competition. However, it is relatively easy to establish jurisdiction of the Athens courts, provided that it can be evidenced that infringing goods are traded in the southern part of Greece.

There are both single-member and multi-member civil courts, at both first and second instance level, which can deal with trademark cases. Single-member civil courts have jurisdiction in connection to legal actions that are grounded on trademark law only. However, usually, trademark cases are grounded on unfair competition law as well; in such cases, it is only multi-member civil courts that can deal with the case.

Multi-member courts consist of three judges and are considered to be more sophisticated and more capable of dealing with complex litigations than single-member courts. Legal actions relating to non-registered distinctive signs are grounded on the law of unfair competition and are dealt with by multi-member courts only.

Greek trademark legislation provides that civil courts are not allowed to challenge the validity of a registered trademark, even in cases where such a trademark has been registered in bad faith, or in violation of the rules regarding trademark registration. So, if a trademark has been filed, although there were absolute or relative grounds that should have prevented registration, the only legal remedy is to apply to the Trademark Office for its cancellation.

In addition to ordinary proceedings, civil courts can issue provisional court orders and summary judgments. Applications for provisional court orders, or summary judgments, are filed with single-member first instance courts. A provisional court order may be issued without a formal court hearing, or even without prior notice to the defendant, within about 10 days of the filing of the application. Provisional court orders are usually issued in order to attach and preserve evidence, like an *Anton Piller* order. However, it is not unusual for a court to issue a provisional cease and desist order, prohibiting a defendant from using a certain mark. A summary judgment is issued after a court hearing under summary proceedings, within a period of about six months from the filing of the application. A legal action under ordinary proceedings must always follow, unless the case is settled out of court. A judgment under ordinary proceedings from a first instance court is usually issued within 18 months of the filing of the legal action, while a judgment from a second instance court is usually issued within two years of the filing of an appeal.

There are no jury courts in civil and administrative procedures; all courts consist of judges. Judges are appointed after graduating from the National School of Judges, which they enter after examinations, usually shortly after graduating from a law school. Unlike other jurisdictions, senior barristers do not become judges. Judges are promoted from the first instance courts to the appeal courts and finally to the Supreme – Cassation Court. During their career, they are usually transferred to serve with different courts around the country; they do not serve their entire career with the same court, or in the same city. Moreover, Greek judges serve before both civil and commercial and criminal departments of their court. So, during their career, they deal with civil, commercial and criminal cases. Greek judges do have a certain level of familiarity with trademark law and the jurisprudence of the GCEU and the CJEU, but they are not familiar with issues that have the greatest effect on trademark cases, such as marketing, advertising, accounting, consumer behaviour. Hence, supporting cases with sufficient court precedents, persuasive expert evidence and well-structured memoranda is decisive.

Domain names

The body responsible for the registration and cancellation of domain names is the National Authority of Telecommunications and Post Services. See Section V.ii for procedures relating to domain names.

iii Substantive law

Registered trademarks

Registered trademarks are infringed in case of unauthorised use by a third party leading to (1) likelihood of confusion (including likelihood of association), or (2) dilution, as well as in

case of (3) illegitimate parallel imports, where trademark rights have not been exhausted (see Section VI.iii). In defining those concepts, Greek law follows Directive 2008/95/EC and case law of the GCEU and the CJEU.

All types of likelihood of confusion are actionable, namely, forward confusion, reverse confusion, post-sales confusion and initial interest confusion.

The test for establishing likelihood of confusion is a multifactor one, taking into account the level of similarity of the respective marks and goods or services, the level of consumers' attention and awareness, distribution channels, the level of recognition of the earlier mark (assessed on the basis of longevity of use, market shares, geographical expansion of use, volume of advertisement expenditure, etc.), actual confusion, as well as intent of the unauthorised user (if it can be established). Similarity of marks can be visual, aural or conceptual. Similarity of goods or services is established if they are made of the same raw materials, if they serve similar consumer needs, or if they are addressed to the same group of consumers.

In complicated cases, the more persuasive means of establishing likelihood of confusion are (1) facts evidencing actual confusion, such as consumer complaints, and (2) a comparison of the volume of sales of the respective marks during the same period of time showing some linear correlation between an increase in sales of the latter mark and a decrease in sales of the earlier mark. Market survey reports are acceptable evidence in courts, but they are not considered to be sufficiently persuasive.

The rules that are more often applied in connection to likelihood of confusion are the following:

- a* likelihood of confusion is presumed in a case of identity of both the respective marks and the respective goods or services;
- b* likelihood of confusion is assessed on the basis of dominant elements of the respective marks, while descriptive or commonly used elements are not taken into account;
- c* consumers' attention and awareness is higher in the case of pharmaceuticals, high-value goods and goods addressed to professionals; and
- d* likelihood of confusion is established when the earlier mark is incorporated as such in the latter.

Here are some notable examples from case law.

- a* Likelihood of confusion established:
 - 'Red Bull & device of two bulls' and 'Crazy Bull & device of one bull', both for non-alcoholic beverages in class 32;²
 - 'Lixidon' and 'Lixin', both for soaps in class 3;³
 - 'Wonderbra' for brassiere in class 25 and 'Wonderbody' for swimsuits in class 25;
 - 'Eva', 'Eva Cream', 'Eva Restore', 'Eva Lactic' for cosmetics and pharmaceuticals in classes 3 and 5, and 'Eva/qu' for constipation products in class 5;⁴ and
 - 'Fitmaxx' and 'Maxfit', both for foodstuffs and beverages in classes 30 and 32.⁵

2 Supreme – Cassation Administrative Court (Council of State), No. 2944/2008.

3 Supreme – Cassation Administrative Court (Council of State), No. 620/1982.

4 Single Member First Instance Court of Athens (Summary Judgment), No. 6271/2015.

5 First Instance Administrative Court of Athens, No. 5112/2012.

- b* Likelihood of confusion not established:
- ‘Catherinebijoux’ and ‘CSC Catherine Silver Corner & device’, both for jewellery in class 14;⁶
 - ‘Jet Oil & device’ and ‘Jet Gas’, both for fuels in class 4;⁷
 - ‘Clear Guard’ and ‘On Guard’, both for locks in class 6;⁸
 - ‘Coca-Cola’ and ‘Up Kola’, both for non-alcoholic beverages in class 32;⁹
 - ‘Clusters’ and ‘Kellogg’s Crunchy Nuts Clusters’, both for cereals in class 30.¹⁰
 - ‘Aire Alpino & device of a spruce fir tree’ and ‘a device mark representing a spruce fir tree’, both for air fresheners in class 5;¹¹
 - ‘Pepsi’ as a well-known mark registered in many classes, and ‘Pepsiflat’ and ‘Pepsi Soda’ in class 5 for pharmaceuticals and dietary products for digestive disorders, because ‘pepsi’ is also a Greek word meaning ‘digestion’; a dilution claim was also rejected on the ground of lack of unfair advantage;¹² and
 - ‘Coffee Time’ for cafeteria services in class 43, and the advertising slogan ‘It’s coffee time. Loumidis’ for coffee products; because the term ‘coffee time’ is of limited distinctiveness only, while Loumidis is a famous coffee brand in Greece.¹³

In addition to likelihood of confusion, marks with reputation are protected against dilution.

Well-known marks

Well-known marks, that is to say marks with a reputation, enjoy additional protection, including protection against likelihood of dilution and bad faith.

With respect to dilution, reputation is assessed on the basis of market shares, volume of sales, volume of advertising investment, longevity of use, etc. (the test is again a multifactor one). The prerequisites for establishing dilution are:

- a* similarity between the earlier and the later mark;
- b* likelihood of a link in consumers’ minds between the earlier and the later mark;
- c* unfair advantage in favour of the later mark from the reputation of the earlier mark, or detriment to the reputation of the earlier mark; and
- d* lack of any due cause justifying such unfair advantage or detriment.

Dilution may exist if:

- a* the later mark becomes recognisable by consumers faster and with less advertising expenditure (free-riding);
- b* the later mark is affixed to products of inferior quality, or there is some other negative publicity or negative implications against the earlier mark; or
- c* there is a lessening of the distinctive value of the earlier mark.

6 Second Instance Administrative Court of Appeal of Athens, No. 97/2013.

7 Supreme – Cassation Administrative Court (Council of State), No. 535/1981.

8 Supreme – Cassation Administrative Court (Council of State), No. 1964/1980.

9 Supreme – Cassation Administrative Court (Council of State), No. 189/1985.

10 Supreme – Cassation Administrative Court (Council of State), No. 1610/2017.

11 Supreme – Cassation Administrative Court (Council of State), No. 1710/2006.

12 Trademarks Committee Decisions No. 7361/2000 and No. 10/2015.

13 Single-Member First Instance Court of Athens (Summary Judgment), No. 5632/2004.

Courts are rather reluctant to sustain dilution claims, but do sustain them when there is sufficiently persuasive evidence. Again, the best type of evidence is some linear correlation between respective volumes of sales of the marks concerned over the same period, as well as any other evidence of actual dilution. The test, though, is one for likelihood of dilution and actual dilution is not necessary. Market survey reports are again acceptable evidence, but they are not considered to be sufficiently persuasive.

Here are some notable examples from case law.

- The mark of Adidas consisting of ‘three parallel stripes’ has been found to be a mark with a reputation that is diluted by the use of a mark consisting of ‘four parallel stripes’ in athletic footwear.¹⁴
- The shape of a ‘cigar-like cylinder chocolate wafer’ traded under the word mark ‘Caprice’ was found to be a mark with a reputation. Dilution was established when a competitor launched a chocolate wafer of an identical shape under the word mark ‘Happy Day’.¹⁵
- The mark ‘Element & device of a tree’ of the well-known leisure and casual clothing company was found to be one with reputation and dilution was established when a retailer traded clothes with similar marks from other manufacturers.¹⁶
- The mark ‘Champion’ of the well-known athletic clothing company was found to be one with a reputation and dilution was established when a local manufacturer launched athletic clothes under the same mark, although in different lettering.¹⁷
- Caterpillar’s mark consisting of its company name and black and yellow colours was found to be one with a reputation and was granted legal protection, although the yellow colour is widely used in machinery and heavy tools by many other competitors.¹⁸
- Lufthansa’s figurative mark, consisting of a bird (stork) in blue and yellow colours, was not considered to be a famous one, but likelihood of confusion was established when a local air carrier used a similar figurative mark accompanied by a different company name.¹⁹

Marks that have been registered as trademarks in other countries and enjoy a reputation abroad are also protected in Greece, according to Article 6 *bis* of the Paris Convention (1883); this means that a later national application can be opposed and a later national registration can be cancelled. National legislation has extended this type of protection even to foreign trademarks that do not have a reputation, provided it can be established that the later national application was made in bad faith.

14 Supreme – Cassation Court (Supreme Court of Greece), No. 1030/2008.

15 Multi-Member First Instance Court of Athens, No. 585/2010. This judgment is particularly interesting because the court concluded that the shape of the product alone enjoyed reputation. The shape of the product was registered as a trademark.

16 Athens Court of Appeals, No. 840/2012; from the judgment it seems that the level of similarity among the respective marks was high enough to establish likelihood of confusion as well.

17 Multi-Member First Instance Court of Athens, No. 5610/2010.

18 Single Member First Instance Court of Athens (Summary Judgment), No. 9476/2012.

19 Athens Court of Appeal, No. 3945/2012.

Non-registered distinctive signs and company names

Non-registered marks enjoy legal protection under Articles 13–15 of Law 146/1914 on unfair competition. The prerequisites for obtaining protection for an earlier non-registered distinctive mark are as follows:

- the mark must be distinctive (either inherently or through use), not descriptive and not commonly used;
- use in the course of trade must be established on the evidence; in the case of marks other than word marks, such as the shape of the product, colours and designs of the packaging, etc., the level of use in the course of trade must be substantially high, that is to say, almost to the level of reputation;
- priority of use against the later mark must be established on the evidence; and
- use of the later mark must cause likelihood of confusion, likelihood of association or likelihood of dilution.

Non-registered marks do not enjoy protection in the whole country, but only in the geographical area where they are used and have become recognisable by consumers;

The remedies are the same as in registered trademarks (see Section IV.v).

Unfair competition

Article 1 of Law 146/1914 prohibits any act that (1) is committed in the course of trade; (2) is contrary to business ethics and morals; (3) is oriented towards some commercial advantage; and (4) is objectively capable of granting some commercial advantage, which also means that the plaintiff and the defendant must also be competitors. This Article establishes a tort of unfair competition, in compliance to Article 10 *bis* of the Paris Convention (1883).

Geographical indications

Illegitimate use of protected appellations of origin, or protected geographical indications, as well as any illegitimate use of any other geographical terms all qualify as unfair competition infringements.

III REGISTRATION OF MARKS

i Formalities and process for trademark registration

Greek trademark law retains the prerequisite that a mark must be capable of being represented graphically. However, this prerequisite will soon be abolished because of the forthcoming implementation of Directive 2015/2436/EU, which has abandoned the prerequisite of ‘graphic representation’ of the mark to be applied for. However, the abolishment of the ‘graphic representation’ requirement is not expected to cause any material difference, because the mark to be applied for will still need to be described in a clear, precise, consistent and unambiguous way. This makes registration of non-traditional marks, such as sound, smell and taste, problematic.

Foreign citizens (individuals and legal entities) who apply for trademark registration in Greece are required to appoint a representative in Greece, as well as an agent to receive service of process. Usually, the appointed representative is a qualified attorney-at-law. This power of attorney does not need any legalisation, certification or Apostille, but, if opposition proceedings follow, a notarised power of attorney, bearing the Hague Convention Apostille,

will be required. Foreign applicants are not required to prove ‘reciprocity’, that is, they do not need to submit evidence that their home country accepts trademark applications by Greek citizens. In addition, foreign citizens are not required to have any establishment in Greece.

There is no ‘use’ or ‘intent to use’ requirement for filing a trademark application.

Trademark applications are submitted to the Trademark Office and are adjudicated by a single examiner on both absolute grounds (i.e., lack of distinctiveness, or the mark being descriptive, commonplace, functional, deceptive, etc.), and relative grounds, that is, earlier rights. It is a peculiarity of the Greek trademark system that it provides for an *ex officio* search for prior rights, which is, however, deduced only to prior national and EUTM registrations and applications, as well as prior international trademark registrations with WIPO designating Greece. With respect to earlier rights, it is worth noting that a trademark application or registration (whether national, European Union or international) may enjoy international priority under the Paris Convention or the Madrid Protocol.

Following the CJEU ruling in the *IP Translator* case,²⁰ the Greek Trademark Office requires the specification of the goods or services in the application to be precise and clear; using the whole class heading will usually not satisfy this requirement and the Trademark Office may request the applicant to submit a more precise specification of goods or services.

A trademark application may be filed in multiple classes. The state fees for filing a trademark application are €110 for the first class, and a further €20 for each additional class. Renewal fees are €90 for the first class, plus €20 for each additional class. The renewal period is 10 years after the filing of the application.

The time frame for trademark registration can be as short as about five months after the filing of the application, if the examiner raises no objections. This five-month period includes the opposition period, which lasts three months, starting from publication of the application on the website of the Trademark Office. If objections are raised by the examiner, or if there is an opposition, the usual time frame for a decision by the Trademarks’ Committee is about 12 months. If the decision of the Trademarks’ Committee is appealed before the administrative courts, the judicial process is exorbitantly long, and it can take between seven and 10 years to obtain a judgment from a first instance administrative court, and one more year to obtain a judgment from a second instance administrative court.

An opposition may be filed on account of either ‘prior rights’ or relative grounds. The time frame to file an opposition is three months after publication of the trademark application on the website of the Trademark Office. The ‘prior rights’ on which an opposition may be based can consist of prior trademark registrations or applications (national, European Union or international designating Greece), or prior non-registered distinctive signs, including company names.

With respect to registered trademarks, priority is determined on the basis of the date of the filing of the application with the Trademark Office. With respect to non-registered rights, priority is determined on the basis of actual use in the course of trade. Use in the course of trade and the date when such use commenced are matters of fact to be established by evidence.

Greek trademark law has adopted the ‘proof of use’ defence. This means that a party filing an opposition and invoking earlier rights may be required by the trademark applicant to prove actual and substantive use in the course of trade of the earlier marks invoked, otherwise the opposition will fail. Such use must have taken place at any time during the five years

20 CJEU, C-307/10, 19 June 2012.

preceding publication of the contested trademark application. Proof of use is established by submitting past invoices, volumes of sales, market share statistics, advertisements, oral testimony, etc. If the opponent is unable to establish such use, it can instead establish reasonable grounds that justify absence of use on its part. Greek case law does not provide any guidance as to what reasonable grounds justifying non-use may be, although the EUIPO Board of Appeal has held that use of the mark invoked by an infringer and pending litigation with respect to it are reasonable grounds for justifying non-use.²¹ In addition, CJEU has held that the reasons justifying non-use are only those that have a direct relationship with the respective trademark, make its use impossible or unreasonable, and are independent of the will of its owner.²²

Registration occurs when the decision of the examiner, or the Trademarks' Committee in the case of opposition proceedings, becomes final, that is, it cannot be appealed before the second instance administrative court. An appeal with the Council of State does not prevent registration, but, if the contested judgment is reversed, registration will fail retrospectively.

ii Absolute grounds

On absolute grounds, Greek law follows Article 3 of Directive 2008/95/EC, but the examination of absolute grounds by the Greek Trademark Office is substantially relaxed in comparison to the examination of same by the EUIPO. Absolute grounds for rejecting a trademark application include:

- a* lack of distinctiveness;
- b* the mark being:
 - descriptive;
 - commonplace;
 - functional (including aesthetic functionality);
 - inherently deceptive;
 - a protected appellation of origin; or
 - a protected geographical indication;
- c* the mark consisting of the name of a state or of a national emblem; or
- d* the mark being filed in bad faith.

Distinctiveness and descriptiveness is assessed in view of the goods or services applied for. Only directly descriptive marks are incapable of registration; directly descriptive marks are those that describe the goods or services applied for by their literal (vocabulary) meaning. Conversely, marks that are only indirectly descriptive (i.e., they are descriptive by referring to some descriptive implication) are capable of obtaining trademark registration. Common terms are registrable, if they are used in an uncommon way, that is, if the goods or services to which they are to be applied are totally unconnected to such terms. For example, the mark 'Reflex' for steam-generating apparatus in class 11 was found to be distinctive and not commonplace in respect of the goods applied for.²³ The mark 'World Academy of Sports', filed in various classes, was rejected by the Trademarks Committee for lack of distinctiveness,

21 EUIPO Board of Appeal case R-2425/2013-4, 28 January 2015, *Chronopost v. DHL*.

22 CJEU, C-246/05, 14 June 2007, *Armin Haepfl v. Lidl Stiftung & Co. KG*.

23 Supreme – Cassation Administrative Court (Council of State), No. 3617/2006.

and for being deceptive,²⁴ because under Greek legislation, the term ‘academy’ can be used only for certified educational institutions. However, the judgment was reversed by the first instance administrative court and the mark was registered.²⁵

Slogans are registrable, if they have some level of originality. For example, the slogan ‘With us you can do everything’ for hand tools and household apparatus in classes 8 and 21 was found to be distinctive and not commonplace.²⁶

Laudatory terms are registrable, although this is a highly controversial issue.

The Trademark Office is very suspicious of marks consisting of geographical terms, because they are likely to be either descriptive or deceptive. However, geographical terms are registrable, if it is not reasonable to assert that they indicate the actual place of production of the respective goods (i.e. terms such as ‘Everest’ or ‘Mont Blanc’ are registrable).

Neologisms, that is new words that are a combination of existing words, are, in principle, not registrable, unless they create an impression that is significantly different from the words of which they are composed. For example, the mark ‘Walkman’ filed by Sony for audio devices in class 9 was found to be distinctive but neither descriptive nor commonplace.²⁷

Acquired distinctiveness (i.e., a secondary meaning acquired through use in the course of trade) can overcome the difficulty of lack of distinctiveness, descriptiveness or the mark being commonplace. It is easier to establish acquired distinctiveness before the Greek Trademark Office than through the EUIPO, although the factors for acquired distinctiveness are the same under both Greek and EU law.

Single colours and simple colour combinations, i.e., consisting of up to three stripes, are registrable only if acquired distinctiveness is established. For instance, a mark filed by Colgate Palmolive for two curved coloured stripes (blue and red) for toothpastes, in class 3, was found to lack inherent distinctiveness and acquired distinctiveness was not established.²⁸ Similarly, a mark consisting of pink colour alone for insulating materials in class 17 was found to be non-distinctive, in absence of acquired distinctiveness.²⁹

Bad faith in filing a trademark application is established particularly in cases where a distributor or commercial agent files a mark that is used with the consent of his or her principal, or where one party files a mark that is owned by another party and there is some pre-existing cooperation or at least communications between the two parties. Bad faith can also be established when an applicant files in Greece a mark that has a reputation abroad. Finally, bad faith can be established when a trademark is applied without actual intent to use and with the sole purpose of restricting competition.

iii Prior rights

On prior rights, Greek law follows Article 4 of Directive 2008/95/EC. It is a peculiarity of the Greek trademark system that the Trademark Office makes an *ex officio* search for prior rights and can reject a trademark application on this ground, even if the owners of such prior rights do not file an opposition. However, this *ex officio* search by the Trademark Office is deduced only to prior national or EUTM applications or registrations, as well as prior international

²⁴ Trademarks Committee Decision No. 2481/2008.

²⁵ First Instance Administrative Court of Athens, No. 383/2016.

²⁶ Supreme – Cassation Administrative Court (Council of State), No. 1240/2008.

²⁷ Second Instance Administrative Court of Appeal in Athens, No. 2505/2008.

²⁸ Supreme – Cassation Administrative Court (Council of State), No. 886/2009.

²⁹ Second Instance Administrative Court of Appeal in Athens, No. 1346/2010.

trademark registrations filed with WIPO under the Madrid Protocol that designate Greece. The Trademark Office does not make an *ex officio* search for other prior rights, such as company names, or other non-registered distinctive signs; these can prevent registration, but need to be invoked by their owners by way of an opposition. Other prior rights that can prevent registration include earlier industrial designs and copyright.

Prior rights prevent registration in case they cause likelihood of confusion, likelihood of association or dilution (see Section II.iii).

Letters of consent by owners of earlier rights are accepted by the Trademark Office and can overcome difficulties raised by earlier rights.

Filing an application for cancellation or revocation against an earlier trademark, preventing registration of a pending application, may not be an efficient strategy, because such revocation or cancellation shall be recorded with the registry and shall become operative only after the respective judgment has become final (i.e., it cannot be appealed with the second instance administrative court).

iv Inter partes proceedings

Inter partes proceedings may be oppositions, cancellations or revocations.

Opposition

See Section III.i.

Cancellation

On cancellation, Greek law follows Directive 2008/95/EC. An application for cancellation is filed with the Trademarks' Committee: there is no time limit for filing such an application. The decision of the Trademarks' Committee can be appealed before the administrative courts (i.e., first instance, second instance and supreme): the time limit for appeal is 60 days after notification of the judgment (90 days for foreign appellants). Cancellation occurs when the judgment cancelling the registration becomes final, that is, it cannot be appealed before the second instance administrative courts. The judgment cancelling the registration does not have any retrospective effects. The decision of the Trademarks' Committee is usually issued within 12 months of the filing of the cancellation, but, if it is appealed before the administrative courts, the judicial process can be as long as 12 years.

Before the judgment cancelling the registration is recorded with the registry, civil courts are bound by the registration and cannot challenge the validity of the trademark. This makes a Greek trademark registration a very strong right and increases legal certainty. On the other hand, it may also result in injustice, in cases where the grounds for cancellation are obvious and exorbitant. Still, the position of the Greek law is strict and favours legal certainty, sacrificing justice in some cases.

The legal ground for cancellation is that the trademark should have been rejected because of absolute or relative grounds that were overlooked by the examiner.

If a party has filed an opposition that was rejected, they cannot file a cancellation on the same grounds.

The owner of the contested registration may invoke the 'proof-of-use defence' against the applicant who requests the cancellation on the grounds of earlier rights (see Section III.i).

Revocation

On revocation, Greek law follows Directive 2008/95/EC. An application for revocation is filed with the Trademarks' Committee: there is no time limit for filing such an application. The grounds justifying revocation are:

- a* non-use of the trademark during a five-year period from the date of its registration, or non-use during a period of five consecutive years at any time, unless there are proper grounds justifying non-use (see Section III.i); or
- b* the trademark has become either commonplace or deceptive.

The points made above regarding cancellation also apply to revocation.

v Appeals

The decisions of examiners can be appealed before the Trademarks' Committee. The decisions of the Trademarks' Committee can be appealed before the administrative courts. It is only final judgments, that is to say those that cannot be appealed further before the second instance administrative court, that are recorded with the registry. For more details, see Sections II.ii (Cases relating to the registration process) and III.iv.

IV CIVIL LITIGATION

i Forums

See Section II.ii.

ii Pre-action conduct

Mediation is not obligatory. Moreover, it is still rather unusual for parties to mediate, particularly on intellectual property cases. There are no pretrial formalities and there is no pretrial obligatory disclosure as in other jurisdictions. A party may apply to the court, either before the initiation of judicial proceedings, or during legal proceedings, and request another party or a public authority to disclose documents, or other evidence, which are in their possession, although actually succeeding in such a request is rather difficult under Greek law. Such evidence may include banking, financial or other commercial documents. This is also provided under Article 6 of Directive 2004/48/EC (now Article 14 of Directive 2015/2436/EU), which has been implemented into Greek law, but Greek courts apply this Article very cautiously. What is easier to achieve is to obtain a provisional court order under summary proceedings towards preservation of evidence, as per Article 7 of the above-mentioned Directive. A provisional court order usually provides that the claimant may use the services of a court bailiff to inspect premises, make a list of allegedly infringing goods, obtain samples of allegedly infringing goods, or even seize the infringing goods. This type of court order may be obtained even without any prior notification to the defendant.

iii Causes of action

Infringement of both registered trademarks and non-registered distinctive signs, including company names, can be established on either likelihood of confusion (which includes likelihood of association) or dilution (in case of marks with reputation only), or both. The

concepts of likelihood of confusion, likelihood of association and dilution are those provided under EU law (i.e., Directive 2008/95/EC as amended by Directive 2015/2436/EU) and EU court jurisprudence.

Registered trademarks are also infringed in cases of illegitimate parallel imports (see Section VI.iii).

Domain names are infringed if a domain name has been obtained in bad faith, causing likelihood of confusion with an earlier domain name, an earlier registered trademark or an earlier non-registered distinctive sign (see Section V.ii).

iv Conduct of proceedings

Legal actions (writs) under Greek law tend to be long and detailed, as they need to provide a fully substantiated and detailed statement of facts. If reputation is invoked, the legal action should provide specific and detailed information as to the volume of sales and advertising expenditure, market share, and other factors from which reputation can be derived. The plaintiff must serve the legal action to the defendant within 30 days of filing with the court. If the defendant resides abroad, this period is extended to 60 days and the legal action must be translated into the language of the defendant. The translation must be carried out by the translation service of the Ministry of Foreign Affairs. The submission of evidence depends on the initiative of the litigating parties and not on the court. So, a duty of disclosure does not exist, as it does in the United States and the United Kingdom. There is only a general duty of honesty, but in reality, the parties are allowed to decide what sort of documents they wish to submit to the court. The parties are granted a 100-day period from the filing of the legal action with the court (130 days for those residing abroad) to submit to the court written arguments and evidence. An oral hearing usually does not take place.

Witnesses do not give oral evidence during a court hearing. Instead, they make a written testimony under oath before a notary public, a county court or a Greek consular officer (if the witness resides abroad). Such written testimonies take place before the trial and are disclosed to the other party. Each litigant is allowed to submit up to five testimonies to support their allegations, as well as up to three additional testimonies to challenge the testimonies submitted by their counterparty. Courts have discretion to examine, during an oral hearing, either the litigating parties themselves (in cases of legal entities and their legal representatives), or one of the witnesses, who are selected and proposed by the litigants. Only one witness for each litigant is allowed. However, courts exercise such discretion only in rare occasions. Otherwise, courts do not have the power to examine, on their own initiative, a witness who is not proposed by the parties. In practice, it is not possible for a party to examine someone as a witness, unless the latter is willing to give evidence.

A first instance court judgment is usually issued within about 18 months of the filing of the legal action, whereas a judgment by the appeal court is usually issued two years after the filing of the appeal. Courts will award legal costs only if the legal action contains a claim for damages; such costs may be about 3 or 4 per cent of the volume of the claim that has been judicially upheld and awarded. If the legal action is for a cease and desist order only, courts are not likely to award legal costs.

v Remedies

With respect to remedies in case of infringement, Greece has fully implemented Directive 2004/48/EC on the enforcement of intellectual property rights. In case of infringement of

registered trademarks, or non-registered distinctive signs, the following remedies are available under national law.

- A cease and desist court order. Establishing fault on the part of the defendant is not required for such an order. Such an order can also be granted under summary proceedings.
- Seizing or destroying infringing goods. The courts allow the claimant to seize and destroy infringing goods, being in the possession of either the infringer or third parties (who have not been parties to the legal proceedings), such as distributors or retailers. A court order allowing the claimant to seize infringing goods can be obtained under summary proceedings as well.
- Damages. Fault in the form of either negligence or intent must be established on the evidence. As per Article 13(1)(a) and (b) of Directive 2004/48/EC, courts may quantify damages on the basis of (1) the amount of royalties that would have been due if the infringer had requested a licence; (2) loss of profits suffered by the plaintiff; or (3) the profits made by the infringer. Plaintiffs usually prefer to request the amount of royalties that would have been due, because it is easier to produce persuasive evidence on this ground, such as similar license agreements.
- Psychological (moral) damages. These are determined at the discretion of the court. Usually the court does not award psychological damages at all, and in cases of counterfeit goods, which are considered to be the most serious type of infringement, the amount of the award may be as low as €10,000, or even less.
- Legal interest. The rate is currently 7.25 per cent per annum and is estimated on the amount of the court award. Interest accrues from the date the legal action is served to the defendant.
- A court order obliging the defendant to disclose information regarding the names and details of distributors, manufacturers, suppliers of infringing goods, as well as information about the quantities of infringing goods that were manufactured, supplied or obtained and the respective prices (see Article 8 of Directive 2004/48/EC).
- A public announcement about the judgment in the press at the expense of the defendant.
- A pecuniary penalty, which can amount to up to €10,000 if the defendant does not fully comply with the court judgment, or a summary judgment.
- Imprisonment of the legal representatives of the defendant's legal entity, if the latter does not fully comply with the court judgment, or a summary judgment.
- Legal costs, ranging from 3 to 4 per cent, roughly, on the volume of the damages and psychological damages award.

V OTHER ENFORCEMENT PROCEEDINGS

i Customs enforcement of intellectual property rights

Regulation 608/2013/EU regarding customs enforcement of intellectual property rights is directly applicable into Greek law and has proved to be particularly efficient in practice. The procedure established by the Regulation makes it possible to activate the customs service to watch for counterfeit goods passing through the customs. A single application to the Central Customs Office at Piraeus activates simultaneously all local customs authorities in Greece. The application has to be accompanied by a notarised power of attorney appointing an attorney-at-law, or any other representative in Greece, as well as an agent to receive service

of process. An application may also be filed with a customs office of any other EU Member State, designating Greece as well; in this case, the application is notified to Greek customs authorities, which are thus alerted to look out for counterfeit goods.

If the customs authorities trace goods that are believed to be counterfeit, they notify the local representative of the trademark owner, who is required to make a statement within 10 working days claiming whether such goods are indeed counterfeit; the statement must be made within three days in the case of foodstuffs and some other categories of goods. The representative is provided with a sample of the goods and if a statement that they are counterfeit is filed, then the customs authorities seize the goods. The trademark owner who caused the arrest is required to file a legal action under ordinary proceedings within a period of 10 additional days. Usually, under such circumstances, the owner of the counterfeit goods settles the case out of court, by agreeing to the destruction of the goods at their own expense. Otherwise, destruction of the goods is ordered by a court judgment.

The trademark owner has to bear all the costs of the customs authorities relating to seizing and preserving the goods; such costs may vary from €500 to €1,000 for a period of about six months in ordinary cases, but costs really depend on the volume of the merchandise seized and on the period of time involved. There have been exceptional cases of very large quantities of counterfeit goods, where costs were as high as €20,000. The same procedure applies to goods infringing either trademark rights or any other intellectual property rights, such as patents, designs or even copyright. Greek customs authorities are likely to apply the same procedure in connection to goods in transit, which they have done occasionally in the past.

The procedure established by the Regulation does not apply to illegitimate parallel imports. This means that customs authorities will not agree to seize goods that have been stated by the trademark owner to be genuine goods, even if intellectual property rights have not been exhausted. However, should the trademark owner trace the infringing goods through the customs procedure, they can apply for a provisional court order to seize the goods. So, the customs procedure can be of assistance even against parallel imports of genuine goods.

ii Domain names infringing earlier trademarks

Domain names infringing earlier trademarks or distinctive signs can be deactivated and deleted from the domain names registry through an administrative procedure initiated by an application to the National Authority for Telecommunications and Post Services. The applicant has to establish that the domain name was obtained in bad faith. Likelihood of confusion alone does not suffice. However, bad faith is likely to be established in cases of a domain name that is very similar to an earlier trademark or distinctive sign with reputation. The process for deactivating and deleting a domain name obtained in bad faith is likely to last about 12 months. A decision by the National Authority for Telecommunications and Post Services can be appealed to the second instance administrative court, which will review the case on matters of law only; however, a decision made by the National Authority for Telecommunications and Post Services is enforceable and filing an appeal against it does not affect its enforceability, unless the decision is reversed by the judgment of the court.

iii Criminal proceedings

Infringement of both registered trademarks and non-registered distinctive signs is a criminal offence. However, criminal proceedings are very slow and the penalties are small and redeemable. Moreover, criminal prosecution authorities usually do not have the means to seize large quantities of infringing goods. Hence, criminal proceedings are usually inefficient.

iv Personal liability in tort of the legal representatives of an infringing legal entity

The legal representatives of an infringing legal entity are jointly, severally and personally liable in tort with the infringing legal entity. So, they can be ordered to pay damages or psychological damages, or both, and, should the legal entity not comply with a court cease and desist order, they can be imprisoned.

VI RECENT AND PENDING CASES

i Conflicts between trademarks and company or personal names

Conflicts between trademarks and company names are very common in Greek court practice and have resulted in conflicting and sometimes controversial judgments. Certain (controversial) judgments³⁰ have held that, in assessing likelihood of confusion between trademarks and conflicting company names, the goods or services in connection with which such company names are used, are irrelevant and should not be taken into account. The justification for this is that company names do not identify goods or services, but the legal entity carrying on a business enterprise. As a result, it is easier to establish likelihood of confusion. However, other judgments have held that the goods or services in connection with which company names are used should be taken into account, and have, accordingly, found no likelihood of confusion between identical or similar trademarks, on the one hand, and company names, on the other, on account of the different goods or services identified.³¹

In some instances, the trademark and the company name that were in conflict have consisted of personal names of individuals. In such cases, courts have applied the doctrine of limitation of trademark rights (Article 6(1) of Directive 2008/95/EC, now Article 14 of Directive 2015/2436/EU) to allow a company name to co-exist with an earlier registered trademark. In an attempt to justify limitation of trademark rights, some judgments³² referred again to the different functions of trademarks and company names; that is, that trademarks identify goods or services, while company names identify the entity carrying on a business enterprise. The argument follows that, as long as a company name has a different function, it is not used in the same way as a trademark, and, hence, limitation of trademark rights is justified.³³ The argument that a trademark and a company name have different functions seems controversial. However, it is true that courts are likely to apply the doctrine of limitation of trademark rights in a case relating to a conflict between a registered trademark and a personal name. Under Article 6(1), limitation of trademark rights is not automatic, but results only if strict prerequisites are in place.

One of the most notable and recent cases involving conflicts between trademarks and personal names is the case of *Mr Panayiotis Nikas*. This case related to the use of personal names as trademarks and limitation of trademark rights. Mr Panayiotis Nikas was the founder and general manager of Nikas SA, a leading producer of sausages and cold meats. After a successful career at Nikas SA, Mr Nikas sold his shares to the company and was alienated from it. Ten years later, he started up another sausages and cold meats production company, using other trademarks. However, the advertising slogan he used on the product

30 Supreme – Cassation Court (Supreme Court of Greece) No. 197/1989; Athens Court of Appeal No. 4543/1997.

31 Supreme – Cassation Court (Supreme Court of Greece) No. 1445/1997.

32 Supreme – Cassation Court (Supreme Court of Greece) Nos. 1131/1995, 330/2007; Athens Court of Appeal No. 866/2004.

33 Ibid.

labels was: ‘With recipe and care by Panayiotis Nikas’. Nikas SA was the owner of a series of trademarks comprising the NIKAS word mark and alleged trademark infringement on the basis of likelihood of confusion and dilution. The First Instance Court of Athens³⁴ found in favour of Panayiotis Nikas and held that under the circumstances, limitation of trademark rights was justified. Indeed, the court reasoned that Mr Nikas should not be prevented from using his own name in the context of the slogan ‘With recipe and care by Panayiotis Nikas’, so long as all other elements in the labels and the packaging of the respective products were dissimilar.

ii ‘Look-alike’, product get-up and trade dress cases

‘Look-alike’ cases (also called ‘product get-up’ or trade dress cases) are among the most difficult to argue in court. They relate to the protection of distinctive elements in a product’s overall appearance (such as the colour combinations, the packaging designs, or even the shape of the product or of its packaging) and are usually argued on the grounds of both trademark law and unfair competition. The ideal ground for such actions is trademark law, but invoking unfair competition is necessary if the overall appearance of the product, or some of its distinctive elements, are not covered by trademark registrations (i.e., when the packaging has not been registered as a trademark), or when the artistic elements of the packaging (i.e., colour combinations and designs) are not covered by copyright. The main legal difficulty for the plaintiff in such cases is to establish that elements comprising the product packaging and get-up (which are copied or imitated by the defendant) are distinctive, or that they have become distinctive through use. This means that the claimant has to prove that such elements are distinctive of their own products only (i.e., that they are not used by other competitors). Indeed, figurative elements, such as colours and designs, can be regarded by consumers as merely decorative or embellishments; in this case they are not perceived by consumers as distinctive elements, that is elements that identify the particular product only. In many cases, artistic elements, such as colour combinations, drawing or designs, are characteristic of a whole class of products and not of specific products; for example, household appliances are usually white, while whisky products are usually light brown.

Jurisprudence on the matter is vast and often controversial. Cases seem to be contradictory and are difficult to reconcile with one another. There are, however, some basic underlying considerations that courts almost always take into account, such as:

- a* whether figurative elements are indeed dominant (or at least of equal importance) in the product packaging when compared to the word element;
- b* whether the figurative elements are indeed distinctive or not, either inherently, or through use;
- c* whether figurative elements enjoy any reputation (fame) and what the volume of the respective advertising investment is;
- d* whether the defendant (alleged infringer) is a newcomer or an already well-established company that enjoys its own fame and reputation; and
- e* whether the products involved are luxury (high image) goods or not.

34 Multi-Member First Instance Court of Athens No. 5246/2014.

Some notable cases that describe the approach of the courts on the matter, and that took into account arguments on both likelihood of confusion and dilution, are described below.

The Petro gas liquid gas case

This case related to protection of a single colour, which was alleged to dominate the appearance of a product. ‘Petro gas’, a liquid gas for domestic use, was sold in blue cylinders. A new product, ‘Vitom gas’, used a closely similar shade of blue in its gas cylinders. The plaintiff’s legal action was rejected in both the first instance and the appeal court. The Supreme Court reasoned that the copying of colour should be assessed in the context of the doctrine of ‘overall impression’; in other words, the other figurative or word elements, as well as the overall packaging and appearance, should also be taken into account, to determine whether there is any likelihood of confusion or association, unfair resemblance or dilution. The court, however, noted that, in principle, copying a single colour alone could suffice to establish likelihood of confusion, if on the evidence it was found that this colour is the prevailing element of the packaging and appearance of the product and if it could be proved that copying this single colour alone could attract the attention of consumers.³⁵

The sliced toast bread case

This case was about the colour combinations of the packaging of a product. The court found that one of the main elements copied by the defendant was the basic overall colour of the packaging, and that the basic overall colour was prevailing in the overall impression of the packaging. However, in this case, the defendant had also copied the colour combination, as well as other figurative and word elements used by the plaintiff, and this may reasonably have had an effect on the final ruling of the court.³⁶

The Camper Twins shoes case

In this case, the court granted trade dress protection under unfair competition law to the red packaging and design of ‘Camper Twins’ shoes. The court emphasised that the red packaging of the shoes was characteristic for ‘Camper Twins’ shoes and was therefore distinctive and protected. Another important point in this judgment is that the court found that the red Camper packaging had become distinctive as a result of intense advertisement, although it circulated in the market for only a short period of time (two years). However, in this case, again, the defendant had copied the design of the shoes as well, and this may reasonably have had an effect on the court’s final judgment.³⁷

The Toblerone case

This case related mainly to the shape of the product. Protection was granted to the pyramid shape of Toblerone’s chocolate bar and packaging. Although the word marks and some other figurative elements were different in the respective packages, the court found that likelihood of confusion was established mainly because of the copying of the triangle (pyramid) shape of the product, which was found to be characteristic for Toblerone chocolate.³⁸

35 Supreme – Cassation Court (Supreme Court of Greece) No. AP 399/1989.

36 Single-Member First Instance Court of Athens No. 1265/2005.

37 Multi-Member First Instance Court of Athens No. 6778/2004.

38 Multi-Member First Instance Court of Athens No. 1478/2005.

The Nescafé Classic case

Greek courts have granted legal protection to the 'Nescafé Classic' packaging, its designs and colour combination, which were copied by a competitor with a different word element (Golden Coffee).³⁹

The Aspirin green packaging case

Bayer has failed to obtain protection for the green-and-white colour combination of its 'Aspirin' packaging against a competing painkiller called 'Salospir', which was also sold in green-and-white packaging. The court found that the word marks (Aspirin and Salospir) as well as the company names of the manufacturers (Bayer and Uni-Pharma) rendered the respective packages sufficiently dissimilar and prevented likelihood of confusion. Most importantly, the court held that the green colour was not distinctive, as it was associated in the minds of consumers with the idea of relief from pain. Indeed, the novelty of this judgment was that it accepted the marketing doctrine that certain colours, when used in connection with certain products, cause specific psychological emotions and mental associations for consumers. It is a well-established principle in the sciences of both marketing and psychology that the colour green is mentally and psychologically associated with calmness, relief from pain and with healing diseases.⁴⁰ In this case, the defendant, Uni-Pharma, was not a newcomer but a leading local pharmaceutical company and 'Salospir' had been traded as a word mark for about 40 years in the local market and enjoyed a high market share.

The cigar-like chocolate wafer case

Papadopoulos SA, a leading local manufacturer of biscuits, has repeatedly succeeded in obtaining protection through the civil courts for the shape of its well-known cigar-like chocolate wafer (which is cylindrical and dark brown in colour), and for the shape of the packaging of the product, consisting of a cylindrical tin.⁴¹ Both have been registered as trademarks: the shape of the wafer on the ground of inherent distinctiveness,⁴² and the shape of the tin on the ground of acquired distinctiveness.⁴³

iii Parallel imports and exhaustion of rights

Following EU law (Article 7 of Directive 2008/95/EC) and the jurisprudence of the CJEU on the matter, Greek law and court practice is particularly supportive of trademark owners on the issue of exhaustion of rights and parallel imports. Trademark rights are exhausted only if the trademark owners themselves, or a party acting with their consent, have put the specific goods (i.e., those that have been imported into Greece) on the market in an EU or European Economic Area (EEA) country. Consent is not assumed, but must be established on the facts.⁴⁴ The burden of proof is on the parallel importer.⁴⁵ As a result, parallel imports

³⁹ Athens Court of Appeal No. 1687/2004.

⁴⁰ Athens Court of Appeal No. 1702/2016; the same case was similarly decided before the EUIPO in the context of opposition proceedings (Case R-2444/2015-4).

⁴¹ Athens Court of Appeal Nos. 6157/2012, 4481/2013, 4647/2013, 1796/2014, 2123/2014, 3885/2014.

⁴² First Instance Administrative Court of Athens No. 3681/1997.

⁴³ Second Instance Administrative Court of Athens No. 4846/2001.

⁴⁴ Athens Court of Appeal No. 6414/1996, 4530/2002, 4723/2010, 4304/2012; Thessaloniki Court of Appeal No. 855/2012.

⁴⁵ Multi-Member First Instance Court of Piraeus No. 1735/2012.

from non-EEA countries are in principle prohibited and amount to trademark infringement, while parallel imports from EEA countries are in principle allowed, provided that it can be established that the goods were put on the market by the trademark owner or with their consent. Good faith of the parallel importer is irrelevant.

The rulings of Greek courts have been more favourable to trademark owners, as they have reasoned on certain occasions that trademark owners had legitimate reasons to oppose the commercialisation in Greece of goods imported from other EU countries, that is, goods of which the trademark rights should have been exhausted.⁴⁶ The grounds justifying the objection of the trademark owners for further commercialisation was that the goods destined for Greece were manufactured under different quality standards than those traded in other EU countries. For example, the court prevented further commercialisation in Greece of Kodak negative photographic films, which were imported from other EU countries, on the ground that, as far as the manufacturer was concerned, those films were not destined for Greece, where light is more intense, and hence their use in Greece would not have acceptable results.⁴⁷ Another characteristic example is Nescafé's instant coffee powder. Courts have prevented parallel imports of genuine Nescafé tins from north European EU countries, on the ground that Nescafé is made differently for Greece, so that it produces more foam and can be prepared as a cold drink, whereas the product manufactured for countries in northern Europe is made for consumption as a hot drink only.⁴⁸

Favour is also shown to trademark owners in that Greek courts usually reason that even in cases of legitimate parallel imports, a parallel importer is not allowed to use the trademark for advertising purposes. Some cases have also argued that use of the trademark by the parallel importer for advertising purposes creates the false impression that the parallel importer is part of the trademark owner's distribution network, that is to say, that he is an authorised dealer.⁴⁹ These cases, however, greatly depend on the facts and the particular circumstances (i.e., on the type of use made of the trademark by the parallel importer). In addition, these cases have been heavily criticised in legal literature and may no longer represent a valid precedent.

The approach of the CJEU on this issue is that the type of advertising and the standards of advertising set by the parallel importer should not impair the image of the trademark and should be similar to those set by the trademark owners themselves.

VII OUTLOOK

The most notable future development in Greek trademark law is expected to be the implementation of Directive 2015/2436/EU, which must be finalised by 14 January 2019.

46 See Article 7(2) of Directive 2008/95/EC.

47 Single-Member First Instance Court of Chania No. 2410/2003.

48 Single-Member First Instance Court of Thessaloniki No. 8031/2005 and Multi-Member First Instance Court of Piraeus No. 1735/2012.

49 Athens Court of Appeal Nos. 6414/1996, 4723/2010. Piraeus Court of Appeal No. 172/1996.

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