

Upon appeal by the applicant, the German Federal Supreme Court reversed the decision of the German Federal Patent Court,⁴⁴¹ holding that names of administrative bodies or governmental institutions may have the necessary (abstract) distinctiveness required under Section 3 of the German Trademark Act. The identity of the applicant is irrelevant for the determination whether or not the mark of a trademark application is registrable. Moreover, the German Federal Supreme Court found that the trademark SWISS ARMY has the necessary distinctiveness required under Section 8(2) No. 1 of the German Trademark Act because the trade circles and consumers concerned are well aware that the wrist watches distinguished by the trademark SWISS ARMY do not originate from the Swiss Army itself. The trade circles and consumers concerned therefore will not interpret SWISS ARMY as an indication of the source of the products, but as a general reference to the quality of the products. The German Federal Supreme Court further held that SWISS ARMY can be used and identified as a trademark, especially if used on a wrist watch. In this context, the Court pointed out that the trademark had already been registered in the United Kingdom. Furthermore, the German Federal Supreme Court held that the provision under Section 8(2) No. 2 of the German Trademark Act does not hinder registration of the trademark SWISS ARMY, since the designation SWISS ARMY is not used in the trade to describe the kind, quality, quantity, etc., of fashionable wrist watches identified by the trademark SWISS ARMY. As a result, the German Federal Supreme Court upheld the appeal filed by the applicant and remanded the matter back to the German Federal Patent Court for further consideration.

GREECE

I.B.8.b. Similarity of Goods/Services

Vaharides Georgios–Tsiftsides Christos OE applied to register the trademark PICCOLINO CROISSANT GEMISTO ME PRALINA and device, depicting yellow bears with red bow ties, for products in Class 30, and in particular, croissants. The application was opposed by Haribo GmbH & Co. KG on the grounds of its prior registration of HARIBO GOLDBAREN and device, depicting yellow bears with red bow ties, for fruit-flavored chewable candies, also included in Class 30.

The Trademark Committee deemed the respectively covered products to be dissimilar, and therefore rejected the opposition,

441. BGH of September 21, 2000 - I ZB 35/98; MD 125 (2001) (SWISS ARMY).

finding that confusion could not result from the coexistence of the trademarks under consideration.⁴⁴²

Upon its review of that decision, the Court of the First Instance did not agree. Indeed, the respectively covered products were deemed to be similar, since they serve the same needs, are intended for the same consumers (predominantly children) and are typically sold in the same establishments. As a result, the Trademark Committee decision was partially revoked and the case was remanded to the Trademark Committee.⁴⁴³

I.B.8.c. Conflict Between Trademarks and Corporate Names

Gallup, Inc., applied to register the trademark GALLUP for publishing and opinion polling services in International Classes 41 and 42. The Greek company ICAP Hellas AE opposed the registration thereof based on the fact that it has utilized the term GALLUP on the Greek market since 1984 as an addition to its company name. The Trademark Committee accepted the opposition, finding that GALLUP was not eligible for registration due to the rights of the Greek company stemming from its prior use of the term GALLUP.⁴⁴⁴

The Court of the First Instance reversed the Trademark Committee decision, finding that ICAP Hellas AE had not acquired any rights through its use of the term GALLUP, since that use was intended to express the idea of opinion polls conducted pursuant to the methodology introduced by the American journalist, Mr. G.H. Gallup.⁴⁴⁵

I.B.12. Famous Marks

General Motors Corporation opposed registration of the mark BUICKS for clothing and related products in International Class 25, based on its own trademark BUICK, which was registered in 1936 for motor vehicles in International Class 12. The Trademark Committee rejected the opposition, refusing to extend protection to the BUICK trademark for dissimilar products. Indeed, the Committee found that the BUICK trademark could not be deemed famous within the Greek territory because cars bearing that trademark are not widely circulated in Greece and are not, therefore, well known to Greek consumers.⁴⁴⁶

442. Decision No. 5235/1997 of the Trademark Committee (unpublished).

443. Court of the First Instance of Athens, decision of November 30, 1999 (unpublished).

444. Decision No. 5732/1997 of the Trademark Committee (unpublished).

445. Court of the First Instance of Athens (Section 10) decision of October 29, 1999 (unpublished).

446. Decision No. 9644/1996 of the Trademark Committee (unpublished).

The Court of the First Instance reversed the Trademark Committee decision,⁴⁴⁷ finding that the prior BUICK trademark had acquired a significant reputation on the international market, as well as in Greece. As a result, the Court deemed the application for BUICKS to contravene good faith.

III.A.1. Famous Marks

The First Instance Civil Court of Athens granted a petition for injunctions prohibiting use of the terms 2004, OLYMPIC GAMES and OLYMPIC GAMES 2004 to describe mutual funds advertised as being investments in companies that would “experience unprecedented development” due to the Olympic Games, which are scheduled to take place in the year 2004 in Athens, Greece.⁴⁴⁸

In its decision, the Court deemed the petitioner, Organizing Committee for the Athens 2004 Olympic Games to be the proprietor of both famous trademarks and distinguishing features containing the indication 2004 (i.e., ATHENS 2004, OLYMPIC GAMES – ATHENS 2004 and OLYMPIC GAMES 2004).

The Court, therefore, prohibited use of the chronological indication 2004, per se, to distinguish mutual funds, finding that the indication in question would not have been used if it were not associated with the petitioner’s trademarks and its function as the Organizing Committee for the 2004 Olympic Games. Moreover, the Court deemed it likely that third parties would mistakenly presume an association between petitioner and the respondent’s activities.

III.A.2. Likelihood of Confusion

In *Car Freshner Corporation v. I. Terpouikides kai Yios AE*,⁴⁴⁹ the petitioner was the proprietor of the registered trademark CAR FRESHENER and Fir Tree device for air fresheners and deodorants. The respondent sold air freshener products made of imbued paper in the shape of a fir tree, as reflected through a cellophane wrapper bearing the term AREON REFRESHMENT. The Court granted injunctions, deeming the fir tree shape of respondent’s products to constitute an infringement of the petitioner’s duly registered Fir Tree device.

In *Motul SA v. Aep G. Mamidakis*,⁴⁵⁰ the plaintiff was the proprietor of the registered trademark MOTUL for lubricants and

447. Court of the First Instance of Athens (Section 27) decision of December 31, 1999 (unpublished).

448. Court of the First Instance of Athens (Provisional Measures Section) decision no. 4982/2000 (published in *Epitheorisi Emborikou Dikaiou* (Commercial Law Review) 2/2001, p. 354).

449. Court of the First Instance of Kavala, decision of February 6, 2001 (unpublished).

450. Court of the First Instance of Athens, decision of May 20, 2001 (unpublished).

objected to the defendant's use of the term MOTUS in relation to the same goods.

In its atypical decision, the Court decided to forego the production of further evidence and summarily adjudicated the case in favor of the plaintiff. Notwithstanding the fact that the defendant utilized the term MOTUS in conjunction with other terms, the Court deemed that use to be likely to cause confusion between the respective products as well as to mislead consumers with respect to the origin of the defendant's products.

III.B.8. Slavish Imitation

In early 1999, Mars Incorporated launched its AMICELLI product, consisting of cigar shaped chocolate wafers in beige hexagon packaging featuring a semi-circular cellophane opening, in the markets of Germany and Switzerland. In July 1999, Mars Incorporated filed a three-dimensional Community Trademark application reflecting the distinctive packaging of its AMICELLI product. Mars Incorporated thereafter circulated AMICELLI products on the Austrian and Irish markets and, in December 2000, began distributing same in Greece.

In July 1997, the Greek company Giotis A.E. applied to register in Greece a trademark consisting of a brown hexagon prism shaped packaging featuring fan-like openings on either side of that shape. Giotis A.E. utilized that packaging to distribute its own cigar shaped chocolate wafers on the Greek market, under the brand name X-TREME. In late 2000, Giotis A.E. modified its product packaging to reflect beige coloring and a semi-circular cellophane opening.

Mars Incorporated sought an injunction against Giotis A.E. claiming unfair competition and Giotis A.E. filed an analogous counter suit. The Athens Court of the First Instance granted preliminary injunctions against Giotis A.E.,⁴⁵¹ holding that the Giotis A.E. X-TREME product packaging, as modified, constituted a slavish imitation of the Mars Incorporated AMICELLI packaging, which was the first to circulate as such within the EC.

III.F.5. Cancellation

In two analogous cases, *Afoi Kolliopouloi EE v. Hasbro Inc.*⁴⁵² and *D. Karavias kai Sia EPE v. Hasbro Inc.*,⁴⁵³ petitioners sought to cancel the Greek trademark registration MONOPOLY, which had been filed by the respondent in 1963 to cover board games in

451. Court of the First Instance of Athens (Provisional Measures Section) decision of March 16, 2001.

452. Decision No. 4201/2000 of the Trademark Committee (unpublished).

453. Decision No. 4202/2000 of the Trademark Committee (unpublished).

Class 28. In their respective cancellation petitions, petitioners claimed that the term MONOPOLY is currently utilized on the Greek market to generically refer to a particular type of board game rather than to designate any particular source thereof. In support of that claim, each of the petitioners referred to the circulation on the Greek market, since 1975, of various board games of different origin, all bearing the term MONOPOLY.

The Trademark Committee in question dismissed both cancellation petitions, ruling that use of the term MONOPOLY by unauthorized third parties per se could not be deemed to establish the generic nature of that term. Indeed, the Committee refused to find that Hasbro Inc. and its predecessors had acquiesced to such use by third parties, due to the impressive series of Greek decisions evidencing the vigilance of those trademark proprietors with respect to the Greek market. The Committee further reasoned that the term MONOPOLY could not be deemed to have become generic, in light of the respondents' having recently registered that term as a Community Trademark.

III.J. Gray Marketing and Counterfeiting

In *Ringfeder VBG GmbH v. Mr. Ioannis Emmanouil Papagiannis*,⁴⁵⁴ the Thessaloniki Court granted a preliminary injunction ordering the respondent to refrain from possessing and distributing on the Greek market any couplings or engine parts bearing the trademark RINGFEDER.

Although the respondent claimed to be selling genuine "reconstructed" RINGFEDER couplings, the Court deemed it probable that the respondent predominantly sold products manufactured by other companies upon which it simply placed the RINGFEDER trademark, in contravention of Greek trademark law.

The Court did concede that Mr. Papagiannis might also be, to a lesser extent, selling genuine used RINGFEDER couplings. However, this was deemed to cause damage to petitioner's reputation and financial interests due to the fact that respondent admitted to having affixed non-genuine RINGFEDER parts to those genuine items, without authorization from petitioner.

V.A. Domain Names

In *Microsoft Corporation v. Armada O.E.*, the First Instance Civil Court of Athens granted a preliminary injunction ordering the defendant to immediately refrain from using the domain name

454. Court of the First Instance of Thessaloniki (Provisional Measures Section) decision no. 7116/2001 (unpublished).

MICROSOFT.GR.⁴⁵⁵ The decision was primarily based on the plaintiff's rights in its well-known trademark and company name. While there was no evidence of the defendant utilizing the MICROSOFT.GR website for commercial purposes, the Court found that Armada O.E. unlawfully exploited the reputation of the Microsoft Corporation for its own benefit. Indeed, the Court deemed it virtually certain that Internet users would associate the MICROSOFT.GR site with the Microsoft Corporation. The decision also ordered the GR-HOSTMASTER, the Greek Domain Name Registrar, to interrupt the defendant's connection to the domain name and remove same from the Greek Domain Name Register.

In Mars Incorporated v. Felisitas Hellas EPE (the successor of Bounty Hellas AEE), the First Instance Civil Court of Athens granted preliminary injunctions ordering the defendant to cease all use of the domain name BOUNTY.GR.⁴⁵⁶ The GR-Hostmaster was also ordered to interrupt the defendant's connection to that domain name and remove same from the Greek Domain Name Register. The Court found that the defendant's use of the domain name BOUNTY.GR falsely creates the impression that Felisitas Hellas EPE is a member of the selective distribution system, which Mars Incorporated has established in Greece. The Court, therefore, ruled that defendant's activities encroached upon the "promotional function" of the plaintiff's series of duly registered BOUNTY trademarks.

GUATEMALA

I.B.8.a. Similarity of Marks

The entity Rhone-Poulenc Rorer, S. A., of France applied for registration of the mark ZAMACORT for pharmaceutical products in Class 5. The Industrial Property Register denied registration, concluding that the mark is graphically and phonetically similar to SANACORT, which is duly registered in favor of Miles, Inc.

Rhone-Poulenc Rorer, S.A., filed an appeal that was dismissed by the Ministry of Economy, which stated that on studying and comparing the terms comprising the marks in question, it was determined that the marks have similarities between them, and particularly in the pronunciation of the letters S and Z, and that these similarities in the marks cannot permit their coexistence. This decision was confirmed by the Supreme Court of Justice.⁴⁵⁷

455. Court of the First Instance of Athens (Provisional Measures Section) decision of January 24, 2001.

456. Court of the First Instance of Athens (Provisional Measures Section) decision of March 30, 2001.

457. Rhone-Poulenc Rorer, S.A. v. Miles, Inc., Case 135-98, Supreme Court of Justice, Resolution dated November 17, 1998.