

## GREECE

*I.B.4. Geographical Names*

Austria Tabakwerke A.G. successfully appealed decisions of the Administrative Trademark Court of the First Instance<sup>313</sup> and of the Administrative Trademark Court of the Second Instance,<sup>314</sup> which refused registration of its mark MEMPHIS covering products in International Classes 1 through 34. Registration had been refused based on a false indication of product origin.

Upon remand from the Council of State,<sup>315</sup> the Athens Court of Appeals<sup>316</sup> rejected the lower Court finding of a false indication of product origin, noting that it is not clear whether the term MEMPHIS refers to the city in the United States or to the ancient Egyptian city. The Appeals Court also found that the average consumer could not possibly assume that the goods in question originate from Memphis.

In a very recent series of related cases, the Administrative Court of the First Instance revoked a number of Trademark Committee decisions that registered the terms IRLANDO and IRLANDA, either in conjunction with other terms or alone, for dairy products. The reversals were due to the geographic nature of the marks.

The Greek company Daniel Gatenio & Son Evepe successfully filed Greek trademark registration applications, respectively reflecting the terms IRLANDO<sup>317</sup> and IRLANDA,<sup>318</sup> to cover dairy products in International Class 29. The Irish Dairy Board Cooperative Limited filed cancellation petitions for the revocation of those registrations, claiming that the term IRLANDO and the term IRLANDA constitute unacceptable references to the country of IRELAND, which is well-known for its dairy products.

The Administrative Court of the First Instance<sup>319</sup> accepted the cancellation petitions, finding that the terms IRLANDO and IRLANDA cannot be deemed fanciful. Indeed, the Court found that the terms IRLANDO and IRLANDA only differ from the word IRELAND with respect to the final vowel endings thereof. The Court also agreed that the terms IRLANDO and IRLANDA clearly

---

313. Decision No. 8/1981 of the Administrative Trademark Court of the First Instance (unpublished).

314. Decision No. 116/1989 of the Administrative Trademark Court of the Second Instance (unpublished).

315. Council of State (Section A), decision No. 996/1998 (unpublished).

316. Decision No. 3502/2000 of the Athens Court of Appeals (Section D) (unpublished).

317. Decision No. 6384/1999 of the Trademark Committee (unpublished).

318. Decision No. 6385/1999 of the Trademark Committee (unpublished).

319. Administrative Court of the First Instance of Athens, decisions of December 14, 2001 (unpublished).

bring to mind the country of IRELAND, which is well-known to the average consumer to be a country of origin for dairy products. Finally, the Court dismissed, as unsubstantiated, the Greek company's claim that the trademarks had acquired distinctiveness, prior to the date of the first instance hearing, as a result of the widespread circulation thereof.

### ***I.B.7. Device and Design Marks***

Gilmar S.p.A. applied to register a device mark consisting of the outline of the backside of a shirt, featuring a reversed red triangle in the middle, for goods in International Class 25.

The Trademark Committee<sup>320</sup> refused the application, deeming the shirt device to be descriptive of the goods to be covered and, therefore, lacking distinctive character. The applicant appealed, arguing that the reversed red triangle, which is not descriptive of the goods in question, constitutes the predominant portion of the device. The applicant also claimed that the device already functioned as a source indicator associated with the applicant's business, due to use by the applicant, since 1997.

The Administrative Court of the First Instance<sup>321</sup> reversed the Trademark Committee decision, finding that the triangle device could not be deemed descriptive of goods in International Class 25. The Court also found that the trademark had acquired distinctiveness through use thereof by applicant.

### ***I.B.9.b. No Similarity of Goods/Services***

Rhone-Poulenc Agro filed a trademark registration application for PACOL covering insecticides in International Class 5. The Trademark Committee rejected the application based on the prior trademark PACOM IMPORTS-EXPORTS, which covers pharmaceutical products in International Class 5.

Upon appeal by the applicant, the Court revoked the Trademark Committee decision,<sup>322</sup> finding the respectively covered goods to be entirely distinct, thereby negating any likelihood of confusion. Consequently, the Court summarily accepted the application, refusing to even consider issues of similarity between the trademarks, per se.

The Administrative Court of the First Instance of Athens<sup>323</sup> recently reaffirmed the decisive distinction between PACOM

---

320. Decision No. 3704/1998 of the Trademark Committee (unpublished).

321. Administrative Court of the First Instance of Athens, decision of October 19, 2001 (unpublished).

322. Decision No. 7579/1999 of the Trademark Committee (unpublished).

323. Administrative Court of the First Instance of Athens, decision of October 31, 2001 (unpublished).

IMPORTS-EXPORTS, covering pharmaceutical products included in International Class 5, and PACOL, covering insecticide products categorized in the same class.

### *I.B.12. Famous Marks*

Davide Campari—Milano S.p.A. opposed the registration of the mark KAMARI and Device for alcoholic beverages in International Class 33, based on its own CAMPARI series of trademarks for the same products. The Trademark Committee<sup>324</sup> rejected the opposition, finding the trademarks sufficiently differentiated to preclude any risk of confusion to consumers.

The Administrative Court of the First Instance<sup>325</sup> reversed the Trademark Committee decision, finding that a risk of confusion could not be precluded since the trademarks only differ with respect to the single letter P, the respective products covered are identical, and the CAMPARI trademarks are famous. The Court also concluded that any ensuing confusion would accrue in favor of the mark KAMARI and Device, which would benefit from the international reputation of the CAMPARI trademarks.

### *III.A.11.a. No Similarity of Marks*

In *Thalis Sensors A.E.B.E. v. Thales Electronic Systems S.A. and Thales Services Greece S.A.*, the First Instance Court of Athens<sup>326</sup> failed to acknowledge the existence of reverse confusion, despite evidence that new customers mistakenly believed that the lesser known prior user of the term THALIS was associated with affiliated companies of the better known later user of the term THALES, to the detriment of the prior user.

The petitioning Greek company had been using the distinguishing title THALIS SENSORS since 1997, and had applied for trademark registration protection thereof. The first respondent was established in 2000 under the distinguishing title Thomson-CSF Hellexis A.E., and changed its company name to Thales Electronic Systems S.A. The second respondent was established in 1997 as Thomson-CSF Electronic Services S.A., and began using the distinguishing title Thales Services Greece S.A. in 2001. Both respondents are subsidiaries of the French company CSF—Thomson, which had registered the trademark THALES in France in 1985, and which also had adopted the company name THALES in 2000.

---

324. Decision No. 7958/1999 of the Trademark Committee (unpublished).

325. Administrative Court of the First Instance of Athens, decision of October 31, 2001 (unpublished).

326. Court of the First Instance of Athens, decision no. 10216/2001 (published in *Epitheorisis Emborikou Dikaiou*—Commercial Law Review, Volume 1, 2002, p. 161).

The Court acknowledged that the petitioner's activities, manufacturing and distributing sensor equipment and electro-optical machinery primarily to the public sector, are similar or peripheral to the activities of respondents, both involving electronic public sector defense equipment. The Court also acknowledged that a certain risk of confusion could ensue as a result of the respondents' use of the term THALES, however, it deemed that risk to be minimal in light of the restricted business circles thereof.

The petitioner's claim that potential foreign customers refused to do business with it, mistakenly believing that the Greek company is associated with their French competitor, was dismissed. The Court deemed this to be unrelated to the use of the term THALES by the respondents, since confusion between the Greek company and the French company would still exist, irrespective of the respondents' distinguishing titles.

### *III.A.18. Equitable Defenses*

The Athens Court of Appeals<sup>327</sup> recently reaffirmed the applicability of the laches defense against a trademark infringement action, ordering both parties to submit further evidence in support of their respective factual claims.

Plaintiff claimed that it had been active in the optical and photography business since 1956, and that it had been the proprietor of the trademark PRISMA, in both Latin and Greek characters, since 1992. Defendant claimed that it had been using the term PRISMA as the distinguishing title of its widely advertised optical business since 1986, without any objection from the plaintiff.

The Court found that plaintiff had acquiesced in the use of its trademark by defendant, and deemed the plaintiff's trademark infringement action to constitute an abuse of the latter's trademark rights.

### *III.B.1. Passing Off*

The Czech company Budweiser Budvar N.P. filed a petition for injunctions requesting that the Czech company Budejovicky Mest'Ansky Pivovar S.A. and its Greek distributor be enjoined from using the mark BUDWEISER BURGERBRAU on the latter's beer products in Greece.

Plaintiff based its claims on the widespread reputation of its beer products and on its ownership of the following trademarks in Greece, as of the year 1961: BUDWEISER BUDVAR,

---

327. Athens Court of Appeals, decision no. 6270/2000 (published in *Epitheorisi Tou Emborikou Dikaiou*—Commercial Law Review, Volume 3, 2001, p. 598).

BUDWEISER and BUDVAR, all of which distinguish beer in Class 32.

The Court<sup>328</sup> granted injunctions, finding that Greek consumers routinely refer to plaintiff's well-known products as BUDWEISER and could therefore mistakenly conclude that the defendants' products originate from the plaintiff's company, the latter having simply modified the shape of its bottle and its label.

### *V.A. Domain Names*

In a recent case involving the domain name registrations for [www.iasis.sa.gr](http://www.iasis.sa.gr), [www.iasis.gr](http://www.iasis.gr) and [www.iasis.com.gr](http://www.iasis.com.gr), the First Instance Court of Patras<sup>329</sup> affirmed that domain names function as source indicators and company names, rather than as electronic addresses.

The petitioner was a well-known proprietor of private medical facilities throughout Greece that had been utilizing the distinguishing title IASIS for one of its medical facilities since 1991, and had obtained two trademark registrations featuring the term IASIS. The respondent company intended to build and operate a private medical facility in Patras, Greece, and had both registered and used the distinguishing title IASIS since 2000.

The Court granted injunctions, finding that use of the domain names at issue by respondent could generate confusion among Internet users who would mistakenly assume that they had reached the well-known petitioner's site instead of the lesser known respondent's site.

Since the domain name registrations at issue had lapsed prior to the issuance of its decision, the Court prohibited the respondent from re-applying for registration of those domain names, as well as from registering any other domain names featuring the term IASIS, thereby presumably allowing the petitioner to register those domain names.

In *Elliniki Etairia Exoterikou Emboriou A.E. v. Epsilon, Lamda, Epsilon Xepapadakou Eisagogiki A.E.*, the Court of the First Instance of Athens<sup>330</sup> affirmed that domain names function as company names and, therefore, applied the doctrine of prior use to this case between two Greek companies, both of which utilized the term ELEX as the distinguishing title of their businesses.

---

328. Court of the First Instance of Athens (Provisional Measures Section), decision of March 28, 2002 (unpublished).

329. Court of the First Instance of Patras (Provisional Measures Section), decision no. 868/2001 (published in *Dikaio Epiheirision & Etairion—Business & Company Law*, Volume 7, 2001, p.711).

330. Court of the First Instance of Athens (Provisional Measures Section), decision no. 1250/2000 (published in *Dikaio Epiheirision & Etairion—Business & Company Law*, Volume 7, 2001, p. 491).

Petitioner registered the term ELEX as its distinguishing title in 1950, and continuously thereafter used that title in conjunction with its imports and sales of high quality electronic products. Respondent's company, established in 1996, gradually began using the distinguishing title ELEX in its imports and sales of electronic products, and thereafter obtained a domain name registration for [www.elex.gr](http://www.elex.gr).

The Court granted injunctions, finding that petitioner's rights in the distinguishing title that it had been using since 1950 were infringed by the respondent's more recent use of the distinguishing title and domain name [elex](http://www.elex.gr).

In a significant departure from published domain name case law to date, the Court of First the Instance of Athens<sup>331</sup> refused to grant a Petition for Injunctions in favor of the proprietor of the well-known trademark ZARA.

While the Court acknowledged that the petitioner had been the proprietor of ZARA trademarks in many countries and, in Greece, since 1992, it also found that the respondent, registrant of the domain name [www.zara.gr](http://www.zara.gr), had been utilizing the distinguishing feature ZARA with respect to its coffee machine manufacturing business since 1983, and that the term corresponded to the respondent's last name ZARAS.

In its dismissing decision, the Court reaffirmed that domain names function as source indicators and company names and, therefore, applied the doctrine of prior use in favor of respondent.

The Athens Court of the First Instance applied standard trademark infringement analysis to resolve a domain name dispute.

Equis International, Inc., proprietor of the community trademark METASTOCK and of the domain name, [metastock.com](http://metastock.com), filed a petition for injunction requesting that the registrants of the domains [metastock.gr](http://metastock.gr) be enjoined from using the term METASTOCK.

The First Instance Civil Court of Athens<sup>332</sup> granted the requested injunctive relief on the ground of trademark infringement. Finding that the plaintiff had registered and used its trademark with respect to the services of International Class 36 since 1998, the Court deemed defendants' later use of the domain name [metastock.gr](http://metastock.gr), with respect to the same service, to constitute trademark infringement. The decision also ordered the Greek Domain Name Registrar, GR-HOSTMASTER, to deactivate use of the [metastock.gr](http://metastock.gr) domain name.

---

331. Court of the First Instance of Athens (Provisional Measures Section), decision no. 3950/2001 (published in *Dikaio Epiheirision & Etairion—Business & Company Law*, Volume 7, 2001, p. 604).

332. Court of the First Instance of Athens (Provisional Measures Section), decision of October 2, 2001 (unpublished).