

be obstacles and granted injunctions against advertising using the color MAGENTA.

GREECE

I.B.3. Not Merely Descriptive Terms

According to the Athens Administrative Court of First Instance the word mark TECHNOLOGY THAT YIELDS,³⁵⁰ as well as the Greek version thereof (H TEXNOΛΟΓΙΑ ΠΟΥ ΑΠΟΔΙΔΕΙ),³⁵¹ used by the company Pioneer Hi-Bred International, Inc. to cover goods in Class 31, has no particular meaning for the average Greek consumer and does not describe a particular good, or kind or quality of good. Thus, it cannot be considered as lacking distinguishing character.

I.B.4. Geographical Names

A.G. Combi B.V. (“Combi”) applied to register the trademark UNITED STEAKS OF AMERICA for meat, fish, poultry and game, meat extracts, preserved meat, fish, poultry and game in Class 29.

The Administrative Trademark Committee³⁵² rejected the application on the grounds that it describes the goods it is intended to cover and that it may cause confusion to consumers regarding the origin of the covered goods because consumers may think that the covered goods originate from the USA, whereas Combi is a Dutch company.

Upon recourse before the Administrative Court of First Instance, Combi requested the reversal of the decision issued by the Administrative Trademark Committee. The Court reviewed the case³⁵³ and held that:

- a) The word STEAKS in the trademark under review is a foreign word, which, according to the common knowledge, has not been established in the common Greek vocabulary in such a way that it might cause confusion to Greek consumers as far as the nature of the goods is concerned
- b) the word AMERICA may indicate a place of origin, but the combination of the words UNITED STEAKS OF AMERICA creates a fictional and novel indication, which possesses the necessary uniqueness and
- c) according to Combi’s allegation, which was uncontested, the trademark is intended to cover goods of

350. Athens Administrative Court of First Instance, Decision No. 12483/2003.

351. Athens Administrative Court of First Instance, Decision No. 12482/2003.

352. Decision No. 6717/1998 of the Administrative Trademark Committee.

353. Decision No. 2812/2003 of the Administrative Court of First Instance (unpublished).

American origin and, as a result, there is no risk of confusion of consumers.

Therefore, the Court reversed the decision of the Administrative Trademark Committee and accepted the trademark for registration.

Metro SB–Handels AG, a Swiss corporation, filed a trademark application for the trademark ALASKA³⁵⁴ aimed to distinguish electrical appliances in Classes 7 and 9, used mainly for household purposes.

The Administrative Trademark Committee rejected the aforementioned application and held³⁵⁵ that the trademark ALASKA is a geographical indication and therefore lacks distinguishing ability.³⁵⁶

On recourse to the Administrative Court of First Instance, however, the Committee's decision was reversed³⁵⁷ and the Court found that the word ALASKA does not reflect the place where the particular goods are produced because the actual place of production is Switzerland. Under these circumstances, the Court did not consider the word ALASKA to be a geographical indication of origin.³⁵⁸

In addition, the Court held that the word ALASKA cannot be deemed to be misleading to the average consumer as to the origin of the products in question because the state of Alaska is not famous for producing electrical appliances and that eliminates the risk of confusion to the average consumer.

Brill Manitoba S.p.A, an Italian corporation, filed an application for registration of the trademark OMINO BIANCO MARSEILLAISE FOAM³⁵⁹ to cover liquid detergent, used mainly for household purposes, in Class 3. The Administrative Trademark Committee rejected the application, holding³⁶⁰ that the OMINO BIANCO MARSEILLAISE FOAM mark was a geographical indication and therefore lacked distinguishing ability.³⁶¹

354. Trademark Application No. 137468/9.7.1998.

355. Decision No. 2227/1999 of the Administrative Trademark Committee.

356. Trademark Law No. 2239/1994 Article 3, paragraph 1.

357. Decision No. 3436/2003 of the Administrative Court of First Instance issued on September 30, 2003.

358. Trademark Law No. 2239/1994 Article 3, paragraph 1.

359. Trademark Application No. 139880 (March 8, 1999).

360. Administrative Trademark Committee, Decision No. 8055/1999.

361. See Trademark Law No. 2239/1994, Article 3, paragraph 1, sections c and g.

On recourse to the Administrative Court of First Instance, the Committee's decision was affirmed.³⁶² The Court found that the words MARSEILLAISE FOAM did not accurately reflect the place where the particular goods were produced, and that they might mislead the consuming public into believing the product was produced in France when the actual place of production was in Italy. Under these circumstances, the Court considered the words MARSEILLAISE FOAM to be a geographical indication of origin,³⁶³ despite the plaintiff's contention that many other companies use the same phrase on their detergent products in order to indicate the quality of the particular detergent.

The Administrative Court of Appeals affirmed the decision of the Administrative Court of First Instance. The appellate court held that the writing of the word MARSEILLAISE on two different parts on the detergent's packaging, one next to the word FOAM and one next to the words LIQUID DETERGENT WITH SOAP, could in fact mislead consumers as to the origin of the particular soap detergent.³⁶⁴ The Court also found that consumers were prone to deem the geographical origin of the particular product as being Marseilles, when it was, in fact, Italy. The fact that there were several similar products bearing the same type of indication on their packaging (MARSEILLAISE FOAM) had, according to the Court's judgment, no bearing on the particular case, as each matter must be examined on its own merits.

I.B.7.a. Two-Dimensional Marks

Ferrero S.p.A. ("Ferrero") applied to register a colored device trademark consisting of the two halves of an egg, the one in brown and the other in white, situated opposite each other, covering cocoa chocolate, chocolate eggs, pastry and confectionery in Class 30.

The Administrative Trademark Committee partially rejected the application,³⁶⁵ namely as far as chocolate eggs are concerned, on the ground that the device of the divided chocolate egg describes the covered goods and, therefore, lacks distinctive character.

Upon recourse before the Administrative Court of First Instance,³⁶⁶ the Court took into consideration that: 1) Ferrero's trademark had already been filed since 1996 in its country of origin, Italy, as well as in various other countries in order to cover goods in Class 30 including chocolate eggs; and 2) Ferrero's

362. Athens Administrative Court of First Instance (Three-Member), Decision No. 1123/2002.

363. See Trademark Law No. 2239/1994, Article 3, paragraph 1, sections c and g.

364. Athens Administrative Court of Appeals, Decision No. 4033/2003.

365. Decision No. 8519/1999 of the Administrative Trademark Committee.

366. Decision No. 7951/2002 of the Administrative Court of First Instance.

trademark consists of a device of a chocolate egg broken into two pieces, situated opposite each other and having a particular color composition, the outer part thereof being brown and the inner part being white. According to the Court's rationale, this color combination causes a particular visual impression and adds distinguishing characteristics to the trademark, which are capable of defining the origin of the chocolate eggs from the company Ferrero.

The Court thus reversed the decision of the Administrative Trademark Committee and allowed the trademark registration.

I.B.8.a. Similarity of Marks

The Administrative Trademark Committee accepted³⁶⁷ registration of the trademark KRISTA³⁶⁸ for goods in Class 25, despite the Opposition filed by Krizia SpA, an Italian company, on the ground that the application was filed in bad faith in an effort to exploit Krizia SpA's good will for its trademark KRIZIA covering identical goods in Class 25 like clothing apparel, for men, women and children, etc., as well as its other trademarks MOODS BY KRIZIA, CRAZY KRIZIA and SPAZIO KRIZIA, covering goods in Class 3.

Krizia SpA filed Recourse³⁶⁹ with the Administrative Court of First Instance, requesting the reversal of the Committee's decision and the dismissal of the KRISTA trademark application. The Court granted³⁷⁰ Krizia SpA's Recourse and reversed the Committee's decision by finding that there is substantial visual and phonetic similarity between the respective trademarks, capable of causing confusion to the consuming public.

By virtue of statutory³⁷¹ as well as well-established precedent³⁷² to that effect, the Court revoked the Committee's decision. On the one hand because it held that both marks, KRIZIA and KRISTA, closely resemble each other because they consist of six capital letters, out of which the first three and the last one are identical and all letters composing the respective words are written in the exact same manner. On the other hand, the minor device, which was part of the preceding KRIZIA application, was deemed insufficient for the purposes of adequately distinguishing the respective trademarks in the eyes of the

367. Decision No.2776/1995 of the Administrative Trademark Committee.

368. Trademark Application KRISTA No. 120287/7.9.1993.

369. Recourse File No. 11615/2000.

370. Decision No. 11918/2002 of the Administrative Court of First Instance issued on September 30, 2003.

371. Trademark Law No. 2239/1994 Article 38, paragraph 7.

372. Council of State Decision No. 1082/1994.

average consumer, especially because both marks aimed to distinguish the same goods in Class 25.

General Biscuit applied to register the trademark LU & Device, consisting of the word LU appearing in a black frame, which is the prolongation of a white parallelogram, in order to cover coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes, breadstuffs and breadstuffs preparations, bread, biscuits, pastry, honey, syrup, pastry, baking powder, salt, mustard, pepper, vinegar, spices, ice, confectionery, chocolate and bread with honey, in Class 29. The Administrative Trademark Court of First Instance rejected the application³⁷³ on the ground that the trademark LU & Device visually and phonetically resembles the prior trademark registration LUR in the name of the Danish company Landbrugsministeriet covering goods in Class 29, thus creating risk of confusion to consumers. The case was brought to the Administrative Trademark Court of Second Instance, which confirmed same,³⁷⁴ and upon appeal to the Council of State, which remanded the case to the Administrative Court of Appeals.³⁷⁵

The Administrative Court of Appeals³⁷⁶ took into consideration 1) that the words LU and LUR consist of one syllable having the letters LU in common and 2) that they differ only as far as the last letter R of the trademark LUR and the black frame. Thus, the Court held that the dominant feature of the respective trademarks is the syllable LU, which renders likely the risk of confusion to consumers due to the significant phonetic and visual similarity of the two trademarks. Moreover, the Court held that the goods covered by the two trademarks are similar and they are distributed through the same stores, a fact which enhances the risk of confusion to the average consumer.

I.B.9.a. No Similarity of Marks

Ion AE Viomichania ke Emboria Cacao Ke Sokolatas (“Ion”) applied to register the trademark SMASH - ΣΜΑΣ,³⁷⁷ in order to cover various goods in classes 29, 30, 32, 33 (goods made of chocolate, sugar and similar ingredients) among which coffee, coffee substitutes, tea, sugar, breadstuffs, breadstuffs preparations and standardized foods based on maize flour, bread, biscuits, ice-cream, sweets, pastry, honey and chewing gum (Class 30).

373. Decision No. 7635/1981 of the Administrative Trademark Court of First Instance.

374. Decision No. 89/1991 of the Administrative Trademark Court of Second Instance.

375. Decision No. 2792/2000 of the Council of State.

376. Decision No. 3407/2002 of the Administrative Court of Appeal State (published in *Epitheorisi Emporikou Dikaiou*—Commercial Law Review, Volume 4 2003, 916).

377. The second word in Greek characters.

The application was partially rejected by a decision of the Administrative Trademark Committee,³⁷⁸ namely as far as goods in Class 30 are concerned, on the ground that the trademark SMASH - ΣΜΑΣ resembled the prior trademark registration SMACKS in the name of Kellogg Company (“Kellogg”), covering coffee, tea, sugar, cocoa, rice, tapioca, sago, coffee substitutes, breadstuffs and breadstuffs preparations, bread, biscuits, ice cream, sweets, pastry, honey, syrup, pastry, baking powder, barm, pepper, vinegar, sauces, spices and ice in Class 30. The Committee held that the two trademarks are visually and phonetically similar and that the covered goods in Class 30 are similar, thus creating risk of confusion to consumers as far as the origin of the goods from a certain company is concerned. The Administrative Court of First Instance affirmed the Committee’s decision.

Upon appeal before the Court of Appeals, the Court took into consideration the fact that the two trademarks are pronounced in a different manner and that SMASH - ΣΜΑΣ consists of two words, one in Latin and the other in Greek characters and held that there is no visual and phonetic similarity between them, capable of causing confusion to consumers as far as the origin of the goods from a certain company is concerned.³⁷⁹

Upon appeal before the Council of State, the Court affirmed the decision of the Court of Appeals, and concluded that there is no sufficient similarity between the two trademarks simply due to the fact that they have four letters in common, out of which one is a vowel.³⁸⁰ In assessing the overall visual and phonetic impression respectively caused by the two trademarks, the Court found that in view of the obviously different pronunciation of the consonant endings of the two trademarks, SMASH - ΣΜΑΣ and SMACKS, they are sufficiently different, and thus not capable of causing confusion to consumers and SMASH - ΣΜΑΣ cannot be considered as an imitation of the trademark SMACKS.

L’Oreal applied for registration of the word mark LONGITUDE to cover cosmetics, especially makeup products, in Class 3. The application was rejected by the Administrative Trademark Committee³⁸¹ on the ground that it resembled the prior trademark registration for LATITUDE-LONGITUDE in the name of Horizon Cosmetics Inc., also covering goods in Class 3. The Committee held that the two trademarks were visually and

378. Decision No. 3288/1987 of the Administrative Trademark Committee.

379. Decision No. 4841/1991 of the Court of Appeal.

380. Decision No. 2613/2002 of the Council of State (published in the Commercial Law Review, Volume 4 2003, 914).

381. Administrative Trademark Committee, Decision No. 2957/2001.

phonetically similar and that the covered goods were similar, thus creating a risk of confusion for consumers as far as the origin of the goods from a certain company was concerned.

On recourse before the Administrative Court of First Instance, the Court took into consideration the fact that L'Oreal's trademark consists of one word, whereas the prior-registered trademark LATITUDE-LONGITUDE consists of two words, appearing one under the other, and beside the two words there is a device consisting of a compass inside a parallelogram frame. The Court held that there was no visual and phonetic similarity between the two marks under comparison capable of causing confusion for consumers as far as the origin of the goods from a certain company was concerned.

Accordingly, the Court reversed the decision of the Administrative Trademark Committee and accepted the trademark LONGITUDE for registration.³⁸²

I.B.11.c. Violation of Public Order

The applicant, an individual by the name Alfredo Carlo, a resident of Germany, filed a trademark application³⁸³ with the Administrative Trademark Committee for a trademark that consisted of the word CANNABIA and the device of a leaf on which the word CANNABIA was inscribed and in between the gaps created by the leaf's edges, the following words were written: "PFAND FLASCHE AIG 5% vol. 0.31" and on the bottom of the device the following indications: "ZUTATEN: WASSER, MALZ, HANFBLUTEN, HORFEN, NATURAL PRODUCTS."

The trademark application aimed to distinguish "beer and non-alcoholic drinks" in Class 32 and "alcoholic drinks" in Class 33. The Administrative Trademark Committee rejected³⁸⁴ the application on the ground of violation of public morality and public order as provided for by the relevant trademark law provisions.³⁸⁵

Subsequent to the applicant's recourse and review of the Committee's decision by the Administrative Court of First Instance, the Court reversed³⁸⁶ the Committee's decision because it did not agree with its rationale. The Court's rationale was based on the following facts, which were found by the Court to be true and decisive:

382. Athens Administrative Court of First Instance, Decision No. 16113/2003.

383. Trademark Application No. 136239/6.3.1998.

384. Decision No. 2565/1999 of the Administrative Trademark Committee.

385. Trademark Law No. 2239/1994 Article 3, paragraph 1f.

386. Decision No. 3448/2003 of the Administrative Court of First Instance issued on November 18, 2003, (to be published in the Commercial Law Review, Volume 1 2004).

a) The device of the trademark in question which contained the device of a leaf on a color scheme of yellow, green, red and blue and the fictional word CANNABIA cannot be considered as making a direct or indirect reference to the drug Indian cannabis, which contains the substance tetrahydrocannabinol, since such a substance is not part of the ingredients of the goods covered by the particular trademark.

b) The official report issued by the General Drug Administration of Greece, which clearly affirmed the fact that the particular goods contained no narcotic substance whatsoever.

Based on the above the Court was satisfied that there was no real nexus between the particular trademark and drugs or narcotics, thus it allowed the trademark application to proceed to registration.

I.B.11.d. Scandalous Mark

Antonio Puig S.A. applied to register the trademark DIAVOLO for “soaps, perfumery, essential oils, cosmetics, hair lotions” in Class 3. The Administrative Trademark Committee³⁸⁷ rejected the application on the ground that this trademark contravenes the religious sentiment of the average person—orthodox Christian—as well as the public and religious order and, therefore, it is not acceptable for registration.

Upon Recourse before the Administrative Court of First Instance, Antonio Puig S.A. requested the reversal of the decision of the Administrative Trademark Committee. The Court reviewed the case and found that:³⁸⁸

The Trademark DIAVOLO is intended to cover “soaps, perfumery, essential oils, cosmetics, hair lotions” in class 3, namely goods for the personal care of their target group. Within this scope, this trademark has no religious or moral character but suggests the “diabolical subtlety” by which the goods covered thereby manage to achieve the qualities promised.

Therefore, the Court reversed the decision of the Administrative Trademark Committee and accepted the trademark for registration.

387. Decision No. 2823/1999 of the Administrative Trademark Committee.

388. Decision No. 3587/2003 of the Administrative Court of First Instance (published in *Epitheorisi Emporikou Dikaiou*—Commercial Law Review, Volume 1, 2004).

I.B.12. Famous Marks

Fendt - Caravan GmbH (Fendt) applied to register the trademark FENDT CARAVAN and device to cover goods in Classes 12, 16, 18, 21, 25 and 28. The Administrative Trademark Committee rejected the application in part,³⁸⁹ specifically insofar as it concerned goods in Classes 18 and 25, on the ground that said trademark resembled the trademark FENDI, owned by Fendi Adele S.r.l. (Fendi), which covered, among other things, goods in Classes 18 and 25. Fendt filed recourse before the Administrative Court of First Instance for the revocation of said decision, and Fendi filed an intervention against the acceptance of Fendt's recourse.

The Court took into consideration that the House of Fendi started in 1952 and is established in its home country (Italy) as well as all over the world. Its staff consists of 380 people, and 80 percent of its production is exported, to almost every country. Fendi's trademark has been registered in 117 countries. The firm owns 570 FENDI trademark registrations in 55 countries, covering goods in 15 classes; 270 FENDI and device trademark registrations in 34 countries; and 896 FF FENDI trademark registrations in 106 countries. Fendi owns various FENDI trademark registrations in Greece, and goods covered thereby have circulated in the Greek market since 1980.

The Court's rationale was that the trademark in Fendt's registration application consists of the words FENDT and CARAVAN and a device, whereas Fendi's trademark consists of the word FENDI. Although the trademarks under comparison are not identical or similar enough to cause confusion for consumers (the last letter of the FENDT trademark is the letter T and the last letter of the FENDI trademark is the letter I), in view of the fact that FENDI is a famous trademark, the Court held that the filing of the trademark application by Fendt to cover goods in Classes 18 and 25 contravened good faith. It confirmed the decision of the Administrative Trademark Committee and did not allow the trademark to register as far as goods in Classes 18 and 25 were concerned.³⁹⁰

Cardona Holdings Ltd (Cardona) applied to register the trademark FORMULA 1 in Greek characters (ΦΟΡΜΟΥΛΑ 1) to cover goods in Class 16 (various publications, magazines, etc.), and the Administrative Trademark Committee accepted said trademark for registration.³⁹¹ Formula One Licensing B.V.

389. Administrative Trademark Committee, Decision No. 5387/2000.

390. Athens Administrative Court of First Instance, Decision No. 15894/2003.

391. Administrative Trademark Committee, Decision No. 4672/2000.

(Formula One) filed an opposition before the Administrative Trademark Committee, requesting the reversal of the decision.

The Committee, after having considered the reasoning of the opposition as well as Cardona's allegations, accepted the opposition and rejected the trademark application FORMULA 1 (in Greek characters).³⁹²

According to the Committee's rationale, Formula One owns many trademark registrations in various countries of the world, as well as various Community Trademark registrations, all containing the distinguishing feature FORMULA and covering goods in many classes of the International (Nice) Classification, including Class 16. Said trademarks have been filed by Formula One as authorized by the FIA (Federation Internationale d'Automobile), which has been organizing the well-known FORMULA ONE car races, which last several months, since 1950. Formula One is responsible for watching, promoting and defending all the above trademarks. In view of their association with the FORMULA ONE car races, the FORMULA ONE trademarks have become marks of exceptional fame among the Greek and international public and, thus, enjoy additional protection.

The Committee concluded that the trademark FORMULA 1 in Greek characters was an exact translation of one or more Formula trademarks and therefore had been filed in bad faith, as Cardona should have been aware of the existence and fame of the FORMULA trademarks.

I.B.22. Distinctiveness

L'Oreal applied for registration of the trademark EXPRESS MAKE UP to cover perfumery, eau de toilette, gel, bath and shower salts, cosmetics, especially creams, cleansing milks, lotions, gels and powders for the face, the body and the hands, preparations for sun protection, makeup preparations, shampoos, gels, sprays, mousse and coiffure balsams and preparations for treating the hair, hair lacquers, hair tint and decolorizing preparations, permanent and curling preparations, essential oils for personal use and dentifrices, in Class 3. The Administrative Trademark Committee accepted the above-mentioned trademark application for all covered goods except the face powders, on the ground that the words of which the trademark consists indicate the kind of covered goods (face powders) and the qualities thereof.³⁹³

On recourse before the Athens Administrative Court of First Instance, the Court reversed the decision of the Administrative

392. Administrative Trademark Committee, Decision No. 4582/2004.

393. Administrative Trademark Committee, Decision No. 5727/2000.

Trademark Committee and accepted the trademark EXPRESS MAKE UP for face powders as well.³⁹⁴

According to the Court's rationale, the foreign word "makeup" has been established in the Greek language, but not with the meaning of "face powders," whereas in combination with the word "express," which has also been established in the Greek language with the meaning of "quick, urgent," it creates a word trademark that is distinctive and has sufficient distinguishing character also insofar as face powders are concerned.

III.A.1. Famous Marks

Hermes International (Hermes), a French company known by its distinguishing title Hermes and the owner of numerous well-known trademark registrations and applications in Greece and overseas, filed a Main Infringement Action³⁹⁵ against the Greek company called Aik. Bavavea-P. Kolliopoulou O.E. with the distinguishing title Casa di Hermes. This company was founded in 1996. Hermes charged that the company name infringed on Hermes' own company name and numerous trademarks and violated the relevant provisions of the Greek Trademark Law and Unfair Competition Law.

The Administrative Court of First Instance upheld the plaintiff's contentions.³⁹⁶ It found that the company name Casa di Hermes (which in Italian means "House of Hermes") was intentionally chosen by the respondent to exploit the French company's goodwill and mislead the consuming public into assuming that there was some type of business nexus between the Greek company and the French company, or that the Greek company was the French company's affiliate, or subsidiary.

The case was further strengthened by the finding that the shape and color combination of the packaging used by the respondent for the products it sold, such as leather bags, shoes, wallets, key rings and other leather items and smoking items, was a slavish imitation of the packaging used by the plaintiff.

The Court therefore issued an order enjoining the respondent from using the word "Hermes" on its own distinguishing title or in any combination as a distinguishing title, in any manner including on its store label or on any of its stationery.

394. Athens Administrative Court of First Instance, Decision No. 9836/2003.

395. File No. 98823/6008/2001 (filed July 17, 2001).

396. Athens Administrative Court of First Instance (Three-Member), Decision No. 6293/2003.

III.B.6. Configuration of Goods

Honda Motor Company Limited, a Japanese company, filed actions³⁹⁷ against importers of benzine engines, whose configuration, shape, placement and color of parts were almost identical to those of a particular Honda engine type, GX160. The engines, which had been imported from China, were made for general use, such as for power generators and digging equipment.

In pioneering decisions following three separate proceedings (two of which were brought before the Athens³⁹⁸ and one before the Thessaloniki³⁹⁹ Administrative Court of First Instance), the courts accepted Honda's contention that the particular configuration of the specific Honda engine, its shape and placement of parts were distinctive enough to become a distinguishing feature for Honda in Greece and that consumers seeing such an engine configuration immediately associated the particular engine with Honda.

The courts therefore granted three separate injunctions concerning the distinctiveness of the outer shape and shape of the parts of a benzine engine of general use marketed by Honda, and the confusion caused by other, similar engines that had almost identically copied the particular shape of the Honda engine, without copying the name Honda or any other name or trademark similar to that of Honda.

The significance of these decisions is paramount, especially because, before the decisions were issued in Greece, there was limited precedent on the issue of whether the distinctiveness of goods could be based solely on their configuration, without taking into account any potential trademark infringement *per se*.

III.J. Gray Marketing

Eastman Kodak Company (Kodak), a registered New York company with headquarters in Rochester, New York, filed four petitions for injunction against four separate respondents located in the island of Crete.⁴⁰⁰

Kodak's legal action was based on information it had received that there was unauthorized selling of KODAK items and use of the KODAK trademark by the four individuals named as respondents, each of whom maintained stores selling cameras and related items in Crete.

The KODAK items being sold by the four respondents were imported from South Africa and did not comply with the relevant

397. File No. 629/2004 (filed January 19, 2004).

398. Decision Nos. 5144/2004 and 3321/2004, respectively.

399. Decision number not available at the time of printing.

400. File Nos. 829, 827 and 838 (April 18, 03).

European Union safety standards. In addition, the technical characteristics of the particular items were aimed at a different climate, that of Europe, instead of Africa.

The Cretan Court of First Instance, based in Chania, ruled that the four respondents must cease their unauthorized selling of the KODAK items and remove from their store and destroy any signs or labels, etc., bearing the name KODAK.⁴⁰¹ This was necessary because, the Court reasoned, the average Greek consumer was likely to be misled into believing that the respondents' business activities were somehow endorsed by Kodak and that the respondents were acting in the capacity of an affiliate or a sales representative for Kodak and their products and services were subject to Kodak's quality control, when in fact neither of the foregoing was true. There was, therefore, an evident risk of confusion for the consuming public, which was further enhanced by the large KODAK signs affixed on all four stores owned by the respondents.

V.A. Domain Names

The company Google, Inc., with headquarters in California, USA, is well known even amongst "mild" Internet users, as the provider of possibly the most popular search engine on the Internet. When Google, Inc. attempted to register the domain name google.gr, in Greece, it discovered that the particular domain name was already registered to another entity, of undisclosed identity. Due to the relevant provisions of Greek legislation,⁴⁰² full confidentiality can be granted to those domain name owners that opt for it.

Consequently, Google, Inc. filed a petition with the Public Prosecutor in order to discover the identity of the owner of the google.gr petition was granted and it was then revealed that a limited liability company in Thessaloniki, by the name Theofilos Sagioglou EPE had registered the domain google.gr in its name as of April 2001.

Google, Inc. then immediately filed a petition for Injunction⁴⁰³ with the Thessaloniki Court of First Instance requesting that Respondent be enjoined from using the domain name google.gr because the risk of confusion to Internet users is evident and alleging that the registration of the particular domain name by Respondent was done in bad faith.

401. Chania Court of First Instance, Decision Nos. 2120/2003, 2121/2003, 2408/2003.

402. National Telecommunications and Post Committee Administrative Order No. 268/73.

403. Petition for Injunction File No. 17481/2003.

In a pioneering decision, the Court agreed with Google, Inc.'s claims and granted its petition,⁴⁰⁴ enjoining Sagioglou EPE from using the particular domain name. In its rationale, the Court held that, although the registration of a domain name is much less complicated than a trademark registration, in light of the current reality of electronic business conduct, the role of the domain name has now become similar to that of a trademark or a company name and, therefore, a domain name is subject to similar legal protection.

The Court took into account the numerous trademark and domain name registrations that Google, Inc. had filed throughout the world and the fact that the Google search engine is one, if not the most, popular search engine available to Internet users. Consequently, the Court held that the Internet user who visits the www.google.gr website would expect to access the well-known Google search engine and not the advertising company of Sagioglou EPE, who was using this webpage as a platform for promoting its own company's advertising activities. This exploitation of Google Inc.'s fame by Sagioglou was found to be an act of unfair competition, creating a false impression to Internet users that Sagioglou and Google have some type of business nexus when, in fact, they never did.

HONG KONG

I.B.2. Merely Descriptive Terms

Kabushiki Kaisha Sony CP Laboratories applied to register the trade mark BEAUTY SUPPLEMENT C-WHITE for beverages, soft drinks, fruit drinks and fruit juices, whey beverages, mineral and aerated waters and other non-alcoholic drinks, syrups and other preparations for making beverages in Class 32.

The Registrar of Trade Marks ("the Registrar") determined that the mark BEAUTY SUPPLEMENT C-WHITE directly referred to the character or quality of the goods and was neither inherently adapted to distinguish under Section 9 of the Trade Marks Ordinance (Cap. 43) nor inherently capable of distinguishing under Section 10. Therefore, the mark was unacceptable for registration in both Part A and Part B of the Register.

The applicant did not contest the determination regarding Part A registration, but put forward arguments that the mark qualified for registration in Part B. The applicant offered to separately disclaim the words "Beauty," "Supplement," "White"

404. Decision No. 27482/2003 issued on September 18, 2003 (published in Commercial Law Review, Volume 54, 2003, 907-14).