

according to the German Federal Supreme Court, when (1) tolerances are undisputed, (2) the plaintiff's mark has been registered on the basis of secondary meaning, and (3) the mark also has a particularly high degree of distinctiveness. Danger of confusion with the violet packaging of similar goods was established, because the colors did not differ significantly.

The Federal Supreme Court, referring to its decision in *Farbmarkenverletzung I*,³³² reiterated that the consumer generally will recognize colors as trademark use only exceptionally. The defendant's pastry was sold in violet packaging, which did not display any other distinctive marks that would have neutralized the identification as to product source that the color evoked.

In a further decision, *Lila-Postkarte*,³³³ the Federal Supreme Court assumed use as a trademark of the color violet on a postcard, because the consumer would establish a mental link between the extremely well known color violet for chocolate. Still, claims based on an alleged infringement of the well-known color mark were denied, because the advantage the defendant took of the reputation of the plaintiff's mark and the inhibition of its distinctive character were not unfair.

The violet postcards made reference to the plaintiff's mascot (a violet cow) in an original and funny way. The defendant therefore could invoke the constitutional freedom of art, because the funny character of the postcard would not have been recognizable absent the allusion to the plaintiff's mark.

GREECE

I.B.3. Not Merely Descriptive Terms

The U.S. company Johnson & Johnson filed an application for registration of the trademark SPECIALIST, to cover casting plaster and cast padding in International Class 5 and surgical instruments used to place knee and hip implants and orthopedic braces and supports in Class 10.

The Administrative Trademark Committee rejected the application on the ground that the word "specialist" lacked distinguishing character as it had become very common in daily usage in Greece.³³⁴

332. German Federal Supreme Court, Decision of September 4, 2003, MarkenR 62 (2004).

333. German Federal Supreme Court, Decision of February 3, 2005, MarkenR 270 (2005).

334. Administrative Trademark Committee, Decision No. 9743/1999, issued December 9, 1999.

Upon recourse, the Athens Administrative Court of First Instance reversed the Committee's decision and accepted the trademark for registration.³³⁵ It held that although the Greek public might have come to understand "specialist" as meaning "a person who has specific knowledge in a particular field," the word was not descriptive of the goods covered by the trademark under consideration, as it did not describe a particular good, or a kind or quality of good. The court further held that although the word, in its Greek form "*spessialistas*," was commonly used to characterize various practitioners, it did not apply to a specific group of practitioners and, thus, still had distinguishing ability.

The Belgian company Etablissements Delhaize Freres et Cie "Le Lion" SA filed an appeal³³⁶ against the decision issued by the Athens Administrative Court of First Instance,³³⁷ which had affirmed the Administrative Trademark Committee's rejection of the company's application for registration of the trademark PLUS. The Committee had determined that the mark lacked distinguishing character because the word "plus" had become commonplace in everyday language and business practice as a way to assert the superiority of one product over another.³³⁸

The Athens Administrative Court of Appeals granted Delhaize's appeal and reversed the court of first instance's decision, finding that the mark PLUS was sufficiently distinct and had distinguishing ability.³³⁹ The appellate court's rationale was that the word "plus," although used quite often in colloquial Greek discourse nowadays, did not constitute the necessary name of the products and services it aimed to distinguish (magnetic personal cards, banking services, financial services, etc.) and did not describe the qualifications or elements thereof. As it had not been connected with the aforementioned products and services, "plus" did not constitute a description of them, and therefore did not lack the necessary distinguishing ability.

I.B.8.a. Similarity of Marks

The Greek company Diafimistiki Ekdotiki Eteria A.E. applied to register a word mark with device. The word portion of the

335. Athens Administrative Court of First Instance, Decision No. 8176/2003, issued June 30, 2003.

336. File No. 807/2002, filed 31 October 2002.

337. Athens Administrative Court of First Instance, Decision No. 2245/2002, issued May 13, 2002.

338. Administrative Trademark Committee, Decision No. 4521/1998, issued July 7, 1998.

339. Athens Administrative Court of Appeals, Decision No. 1581/2004, issued April 30, 2004.

trademark was the block letters SPR. To the right of SPR was a large black frame containing 12 stars. Under the frame there was a parallelogram, and under this figure appeared a large letter S in special script containing the letters PR in smaller blocks, as well as the word EUROCARD, also in Latin block characters. (See below.) The application covered services related to advertising and financial affairs in general, in International Classes 35 and 36. It was accepted by the Administrative Trademark Committee.³⁴⁰



The Belgian corporation Europay International SA, which has since changed its name to Mastercard Europe, filed an opposition on the basis of its prior trademark registration for EUROCARD, covering travelers' checks and credit cards in Class 16. The Committee rejected the opposition.³⁴¹

Upon recourse filed by Mastercard Europe, the Athens Administrative Court of First Instance reversed the decision of the Committee and rejected the opposed mark.³⁴² The court took into consideration the fact that the word EUROCARD in the opposed trademark was identical to Mastercard Europe's trademark and was written in a similar script. It found that the differentiation caused by the addition of the letters SPR and the device to the word EUROCARD was not substantial in view of the similar overall visual and phonetic impression given by the two trademarks under comparison, and thus the opposed trademark was likely to cause confusion among consumers. The court further concluded that, in view of the fact that Mastercard Europe's trademark was famous (the company owned various registrations for the trademark EUROCARD in different countries, and as a result of its extensive use in Greece and many other countries the mark had become well known to both Greek and international consumers), the filing of the trademark registration application for SPR EUROCARD & Device contravened good faith.

340. Administrative Trademark Committee, Decision No. 5153/1994.

341. Administrative Trademark Committee, Decision No. 5175/1997, issued August 29, 1997.

342. Athens Administrative Court of First Instance, Decision No. 14194/2003, issued November 24, 2003.

A Greek individual, M. Maroulides, applied to register the word marks DANKEN, DANTYR, and DAN BEST, to cover goods relating to cheese in Class 29. The Administrative Trademark Committee accepted the applications.³⁴³ The French firm Compagnie Gervais Danone filed oppositions, based on Danone's prior-registered trademarks DANAQ, DANONE, and DANY, covering goods in Class 29. The Committee rejected the oppositions on the ground that the opposed marks were sufficiently different from the opposing ones, and therefore would not pose a risk of confusion of consumers.³⁴⁴

Upon recourse, the Athens Administrative Court of First Instance reversed the decision of the Committee and rejected the opposed marks.³⁴⁵ The court took into consideration the fact that the prefix DAN-, which was used in all three opposed trademark applications, was the common prefix of the three opposing marks and also part of the opposer's company name. Therefore, allowing the marks to proceed to registration would create a risk of confusion of the average consumer as far as the source of the covered goods was concerned, especially considering that the goods covered by the trademarks under comparison were identical.

Immuno Aktiengesellschaft A.G., an Austrian company, applied to register the word mark IMMUNINE, to cover pharmaceutical, veterinary, and sanitary preparations and plasters and materials for dressings in Class 5. The Administrative Trademark Committee accepted the application.³⁴⁶

The German company Boehringer Ingelheim International GmbH filed an opposition before the Committee, based on Boehringer's prior trademark registration for IMUKIN, covering pharmaceutical, veterinary, and sanitary diet preparations for children and patients, plasters, materials for dressings, material for teeth fillings, disinfectants, dental wax, and preparations for destroying vermin in Class 5.

The Committee rejected the opposition on the grounds that (1) the opposed mark consisted of four syllables (IM-MU-NI-NE), whereas the opposing mark consisted of three syllables (I-MU-KIN), and (2) the two marks had different endings (-NINE and

343. Administrative Trademark Committee, Decision Nos. 3016/1999, 3017/1999, and 3018/1999.

344. Administrative Trademark Committee, Decision No. 8164/2000, issued June 7, 2000.

345. Athens Administrative Court of First Instance, Decision No. 587/2004, issued January 30, 2004.

346. Administrative Trademark Committee, Decision No. 17285/1993.

-KIN, respectively). Thus, there was no visual and phonetic resemblance between the trademarks under comparison.³⁴⁷

Upon recourse, the case was brought before the Athens Administrative Court of First Instance. The court reversed the decision of the Committee and rejected the opposed mark IMMUNINE.³⁴⁸ It took into consideration that (1) the trademarks under comparison had many letters in common, (2) the vowel sequence in the marks was similar, and (3) the two marks had strong visual and phonetic similarity because of their similar endings (-NIN and -KIN, respectively, the letter E in the ending -NINE not being pronounced). The court held, therefore, that there was a risk of confusion among consumers as a result of the significant phonetic and visual similarity of the two trademarks. It held, further, that the goods covered by the two trademarks were similar, which enhanced the risk of confusion of the average consumer.

A Greek individual applied to register the word mark EDWIN OCCHIALI & Device, to cover glasses and sunglasses in Class 9. The word EDWIN, in large block Latin characters, was placed above the word OCCHIALI, in smaller-sized Latin characters, with both words inside a large pentagon-shaped pocket. The application was accepted by the Administrative Trademark Committee.³⁴⁹

The Japanese corporation Kabushiki Kaisha Edwin (Edwin Company) filed an opposition on the basis of its prior trademark registration for EDWIN, covering clothing, shoes, and slippers in Class 25. It alleged that the application for the opposed mark—whose distinguishing feature was EDWIN, as the word OCCHIALI was descriptive—had been made in bad faith in order to exploit the opposing mark's fame, and that the mark infringed the opposer's name.

The Committee accepted the opposition.³⁵⁰

Upon recourse filed by the Greek individual, the Athens Administrative Court of First Instance held that the word EDWIN was the distinguishing feature of the opposed mark and that the mark was likely to cause confusion among consumers because of its close visual and phonetic similarity to the opposing mark.³⁵¹ Further, the court held that the clothing and footwear in Class 25

347. Administrative Trademark Committee, Decision No. 2521/1997, issued April 16, 1997.

348. Athens Administrative Court of First Instance, Decision No. 11028/2004, issued September 30, 2004.

349. Administrative Trademark Committee, Decision No. 9621/1999.

350. Administrative Trademark Committee, Decision No. 5592/2001, issued July 5, 2001.

351. Athens Administrative Court of First Instance, Decision No. 14969/2004, issued December 20, 2004.

covered by the opposing mark had become famous among consumers, and that despite the fact that the opposed mark covered different goods in Class 9, it was likely to cause confusion as to the company of origin thereof. The court confirmed the decision of the Committee and did not allow the trademark EDWIN OCCHIALI to proceed to registration.

The Administrative Trademark Committee accepted the application of the Greek company Indoakzis Hellas for registration of the trademark ΤΡΕΛΟΣ ΤΑΥΡΟΣ FULL ENERGY DRINK & Device (the Greek words meaning “crazy bull”), covering nonalcoholic beverages in Class 32.³⁵² The word portion of the trademark was in red, and the device consisted of a bull that appeared as if it were in a position to attack. The background of the trademark was in blue and silver.

The Austrian company Red Bull GmbH filed an opposition against the application on the basis of its prior international trademark registration for CRAZY BULL, as well as its various prior international, European Community, and Greek trademark registrations comprising, *inter alia*, the words RED BULL and bull device. Red Bull GmbH alleged that (1) the word portion of the opposed mark was an exact translation of its registered trademark CRAZY BULL; (2) the bull device used by Indoakzis Hellas was similar to the bull devices of its own marks, some of which consisted only of bull devices; and (3) the opposed mark used exactly the same blue-and-silver-colored background used in its marks.

The Committee held that the visual impression given by the trademarks under comparison—namely, the use of colors, the layout, and the size of the packaging of the covered goods—was similar. It held, further, that the English translation of the Greek word ΤΑΥΡΟΣ, which was used in the opposed mark, is “bull,” and that said word was the dominating feature of the word portion of the opposed mark. Therefore, the Committee concluded that the overall impression given by the two trademarks was similar, and they were likely to cause confusion among consumers as far as the origin of the goods from a certain company was concerned. Accordingly, the Committee upheld the opposition.³⁵³

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

Yves Saint Laurent Parfums (YSL) applied to register the trademark NUIT INTENSE, to cover (after restriction) night cremes for skin care in International Class 3. The application was

352. Administrative Trademark Committee, Decision No. 11318/2003.

353. Administrative Trademark Committee, Decision No. 8165/2005, issued July 4, 2005.

rejected by the Administrative Trademark Committee on the ground that the applied-for mark resembled the prior registration for the trademark NOIR INTENSE in the name of Butress B.V., covering goods in Class 3.³⁵⁴

Upon recourse, the Athens Administrative Court of First Instance held that the two trademarks were sufficiently different because they differed in their first word (NUIT vs. NOIR).³⁵⁵ It concluded that the global visual, phonetic, and conceptual impression conveyed by the marks was different, and hence they were not likely to cause confusion among consumers with respect to the origin of the goods covered. The court therefore accepted the trademark NUIT INTENSE for registration.

Redskins, a French company, applied to register the trademark REDSKINS & Device—a circle underneath the word REDSKINS with two horizontal lines on the left and right side—to cover goods in Classes 16 and 18 and apparel, shoes, slippers, hats, gloves in Class 25. The Administrative Trademark Committee accepted the application.³⁵⁶

The Greek company Fashion Jeans EPE filed an opposition against the acceptance of the trademark application for REDSKINS. The opposition was based on the company's prior-registered trademark ROO 7795 REDSKINS ISSUED BY AUTHORITY OF REDSKINS BASIC UNITED GARMENT REGISTERED 5909 TRADE MARK & Device—a diamond-shaped frame containing an American Indian's head, covering ready-made apparel, jeans, and casual jackets in Class 25.

The Committee partially upheld the opposition on the ground that the opposed mark was confusingly similar to the trademark owned by the Greek company.³⁵⁷

Upon recourse, the Athens Administrative Court of First Instance affirmed the decision of the Committee.³⁵⁸ Redskins appealed.³⁵⁹

The Athens Administrative Court of Appeals reversed the previous decisions and held that there was no risk of confusion because of the significant phonetic and visual dissimilarity of the

354. Administrative Trademark Committee, Decision No. 8560/2000, issued November 29, 2000.

355. Athens Administrative Court of First Instance, Decision No. 16394/2003, issued December 30, 2003.

356. Administrative Trademark Committee, Decision No. 6877/1998.

357. Administrative Trademark Committee, Decision No. 4476/2000, issued May 9, 2000.

358. Athens Administrative Court of First Instance, Decision No. 3218/2003, issued March 28, 2003.

359. File No. 75/2004, filed January 2, 2004.

marks.³⁶⁰ The latter point stemmed mainly from the fact that the Greek company's mark contained a large number of words and verbal as well as device elements in addition to the word REDSKINS, which sufficiently differentiated it from the mark owned by the French company.

I.B.10. Deceptive Marks

The Administrative Trademark Committee refused the application for the registration of the trademark BIOCOUNTRY on the ground that it covered goods whose means of production or preparation was unknown to the Committee, and therefore it was very likely that the average consumer would be misled by the mark.³⁶¹ The Committee's decision was based on the related provisions of the Greek Trademark Law, as well as on the ministerial decision relating to the EEC regulation on the organic production of agricultural products, according to which the use of the term "biological" as well as of the related terms "BIO," "organic," or "ecological" on labeling of agricultural products and foodstuffs that have not been produced in accordance with the provisions of the regulation is prohibited, as it might mislead consumers as to the means of production or preparation thereof.³⁶²

III.A.1. Famous Marks

Fiat S.p.A., the Italian company known by its distinguishing company name Fiat, is the owner of numerous registrations for well-known trademarks, both in Greece and overseas. The company is also the proprietor of several trademarks consisting of the words ALFA ROMEO, which distinguish the famous automobile brand name.

Fiat filed a main infringement action against the Greek company Afoi Delimarou O.E., and against Mr. Ioannis Delimarou personally, because the latter had erected an ALFA ROMEO sign at the automotive service center he owned and operated.³⁶³ The action was filed on the ground that, *inter alia*, any unauthorized use by the respondents of the trademark ALFA ROMEO infringed Fiat's numerous famous trademarks and violated the relevant provisions of the Greek Trademark Law and Unfair Competition Law.

360. Athens Administrative Court of Appeals, Decision No. 2998/2004, issued September 23, 2004.

361. Administrative Trademark Committee, Decision No. 11422/2004, issued November 4, 2004.

362. Ministerial Decision No. 332221/2001, relating to Council Regulation (EEC) No. 2092/1991 of June 24, 1991.

363. File No. 373/2002, filed June 11, 2002.

The court of first instance upheld the plaintiff's contentions, finding that the respondents had no affiliation or nexus with the trademark owner or any pertinent rights.³⁶⁴ It found, moreover, that they intentionally chose the ALFA ROMEO trademark in order to exploit Fiat's goodwill and mislead the consuming public into assuming that there was some type of business nexus between Fiat and Afoi Delimarou and that the Greek company was the Italian company's affiliate or subsidiary, authorized to perform services on Fiat's behalf in Greece.

The court issued an order enjoining the respondents from using the words ALFA ROMEO in any manner, whether as a store sign, on their store label, or on their stationery.

Hermès International, a French company known by its distinguishing title Hermès, is the owner of numerous registrations for well-known trademarks in Greece and overseas. Hermès filed a main infringement action³⁶⁵ against an individual, Christos A. Chiliotis, who had been operating a store, in the region of ancient Olympia in Greece, with the distinguishing title Hermes; that name was also used on the store's merchandise (clothing apparel, jewelry, etc.), which was accompanied by fake certificates of authenticity. The action was filed on the ground that, *inter alia*, the particular company name infringed Hermès' own company name and numerous trademarks and violated the relevant provisions of the Greek Trademark Law and Unfair Competition Law.

The court agreed with the plaintiff, finding that the respondent had intentionally chosen the distinguishing title Hermes in order 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, and that the Greek company was the French company's affiliate or subsidiary.³⁶⁶

The above reasoning was further strengthened by the court's finding that the respondent also used letterhead stationery, business cards, store signs, brochures, etc., bearing the name Hermes.

The court issued an order enjoining the respondent from using the word Hermes in its own distinguishing title, or in any combination as a distinguishing title, in any manner, on its store label or on any of its stationery. It is noteworthy that the court went even further than the trademark and company name at issue

364. Chalkida Multi-Member Court of First Instance, Decision No. 13/2004, issued January 26, 2004.

365. File No. 112/1999, filed March 20, 1999.

366. Pyrgos Multi-Member Court of First Instance, Decision No. 16/2005, issued March 1, 2005.

and ruled that not even the name “Ermis” in Greek letters, which is “Hermes” in Greek, could be used by the respondent.

III.A.2.b. Similarity of Marks

The British company Orange Personal Communications Services Ltd., owner of the well-known Orange company name, copyright, and trademark consisting of the word ORANGE inscribed in a square orange device, filed a Petition for Injunction against a Greek company that was founded toward the end of 2004 under the name Orange Telecom International.³⁶⁷

Between January and February 2005, Orange Telecom International had opened several stores in the center of Athens, all of which had on their window and storefront signs with an orange logo identical to the one that had been used for over a decade on an international scale by Orange Personal Communications Services. The imitation was so exact that consumers actually started believing that the British company had entered the Greek market; indeed, travelers to Greece inquired of the company whether that was the case. As soon as Orange Personal Communications Services found out about the situation, it initiated legal action against the Greek company and its general manager.

The decision on the Petition for Injunction was rendered by the court of first instance within the record time of less than one week after arguments were heard. The court granted the petition as filed and enjoined the respondent from using the word ORANGE in any way, shape, or form, whether as a company name, a trademark, or a copyright.³⁶⁸

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

The Irish corporation Champion Products, Inc. filed a cancellation petition before the Administrative Trademark Committee against the trademark registration for CHAMPION & Device, covering goods and services in International Classes 18, 20, 26, 27, 29, 30, 31, 32, 33, 35, 36, 41, and 42, owned by Promodes S.A. and assigned to the French company Carrefour. The cancellation petition was based on the Greek trademark registrations for C & Device, for goods in Class 25; IT TAKES A LITTLE MORE TO BE A CHAMPION, for goods in Class 25; CHAMPION, for goods in Classes 24 and 25; C & Device, for goods in Classes 24 and 25; C. CHAMPION, for goods in Classes 24, 25, and 28; and CHAMPION, for goods in Classes 3 and 5, and on the Community Trade Mark registrations for CHAMPION U.S.A. &

367. File No. 28301/2005, heard May 24, 2005.

368. Athens Single-Member Court of First Instance, Decision No. 4128/2005, issued May 30, 2005.

Device and CHAMPION, both for goods in Classes 18 and 25, and IT TAKES A LITTLE MORE TO BE A CHAMPION, for goods in Class 25.

The Committee accepted the cancellation petition on the ground that Champion Products' trademarks, with the distinguishing feature CHAMPION, had been circulating in the Greek market for a very long time and were very well known among consumers, and therefore had become famous marks.³⁶⁹ Consequently, the Committee held that said marks should enjoy protection against similar trademarks because of the existing risk of confusion of consumers.

Carrefour filed recourse before the Athens Administrative Court of First Instance, which reversed the decision of the Committee and rejected the cancellation petition on the following grounds: (1) the prior trademark registration for CHAMPION is in Latin capital letters and the first letter C of the other prior CHAMPION trademark registrations is in a special script, whereas Carrefour's trademark CHAMPION is in Latin minuscule characters, in a special artistic style, and has a small device over the letter N; and (2) the prior trademark registrations cover different goods in different classes.³⁷⁰ Accordingly, the court concluded that Champion Products' and Carrefour's trademarks were sufficiently different despite the common word CHAMPION, and therefore there was no risk of confusion of consumers. The court did not discuss the notoriety of the prior trademark registrations because of the dissimilarity of the trademarks under comparison.

Yiotis A.E. is a Greek company that produces and distributes confectionery, pastry, chocolates, foodstuffs in general, and foods for children, in Greece as well as overseas. It owns various trademark registrations, among which is the trademark X-CITE, covering chocolate products in Class 30, filed in 1997. From 1997 until 2000, Yiotis circulated on the Greek market, under the mark X-CITE, various chocolate products, but since 2000 only praline sticks.

In 2003, Yiotis brought a main infringement action against the U.S. firm W.M. Wrigley Jr. Company, founded in 1891 in Chicago for the production of chewing gum, on the ground that Wrigley put on the Greek market a chewing gum that bore on its packaging the words "Wrigley's X.cite."³⁷¹ The plaintiff alleged that the packaging infringed its well-known registered trademark and violated the

369. Administrative Trademark Committee, Decision No. 5417/2000, issued June 14, 2000.

370. Athens Administrative Court of First Instance, Decision No. 2644/2004, issued February 27, 2004.

371. File No. 3448/2003, filed April 9, 2003.

relevant provisions of the Greek Trademark Law and Unfair Competition Law.

The court of first instance rejected the plaintiff's contentions, finding that the use of "X.cite" on the packaging of Wrigley's chewing gum did not pose a risk of confusion of consumers because (1) the two marks covered totally different goods and (2) the two producers' names were visible on the products' packagings.³⁷² The packagings, themselves, were also different: "X.cite" appeared on the packaging of the chewing gum under the word "Wrigley's" in a blue background, whereas "X-cite" appeared on the packaging of the praline sticks under the word "Yiotis" in a black-brown background.

III.B.6. Configuration of Goods

Honda Motor Company Limited, a Japanese firm, filed actions against the importers from China to Greece of benzine engines, whose configuration, shape, and placement and color of parts were almost identical to those of a particular Honda engine, type GX160.³⁷³ This engine is of general use, for power generators, digging equipment, etc.

In affirming pioneering decisions following three separate proceedings (two brought before the Athens³⁷⁴ and one before the Thessaloniki³⁷⁵ Court of First Instance), the courts accepted the contention advanced by Honda, in two additional proceedings on the same issue,³⁷⁶ that the particular configuration of the specific Honda engine, its shape, and the placement of its parts were sufficiently distinctive to become a distinguishing feature for Honda in Greece, and that as a consequence consumers seeing such an engine configuration immediately associated that particular engine with Honda.

The courts granted two additional main infringement actions, concerning (1) the distinctiveness of the outer shape and the shape of the parts of a benzine engine of general use marketed by Honda and (2) the confusion caused by other, similar engines that had copied, almost verbatim, the particular shape of the Honda engine, without copying the name Honda or any other name or trademark similar to that of Honda.

372. Athens Multi-Member Court of First Instance, Decision No. 6081/2004, issued October 27, 2004.

373. File No. 629/2004, filed January 19, 2004.

374. Athens Single-Member Court of First Instance, Decision Nos. 5144/2004, issued July 15, 2004, and 3321/2004, issued May 11, 2004.

375. Thessaloniki Single-Member Court of First Instance, Decision No. 19276/2004, issued July 29, 2004.

376. Athens Multi-Member Court of First Instance, Decision Nos. 477/2005, issued January 31, 2005, and 1669/2005, issued March 23, 2005.

With this additional precedent the courts thus continued the novel notion, at least for the Greek jurisdiction, of the distinctiveness of goods based solely on their configuration, without taking into account any trademark infringement *per se*.

Kraft Foods Schweiz Holding AG and Kraft Foods Schweiz AG, both of which are Swiss companies, filed a main infringement action³⁷⁷ against the Greek companies Bingo A.E. and Agrotiki Biomihaniki Macedonias AVIM A.E. for trademark infringement and unfair competition in connection with the famous TOBLERONE chocolate configuration.

In a pioneering decision, the Athens Multi-Member Court of First Instance accepted the argument put forward by Kraft, that the particular configuration of the TOBLERONE chocolate, its characteristic shape of pyramid-like cogged protrusions in a row, although not obvious to the consumer before he or she purchases the product, is nonetheless distinctive enough to become a distinguishing feature for Kraft in Greece, and that consumers seeing such a chocolate configuration immediately associate the particular chocolate with Kraft.³⁷⁸

It is noteworthy that neither the packaging nor the trademarks or trade names of the particular products were similar, though that was not the issue under review. The court, in setting new precedent for the Greek jurisdiction, went beyond the formalities of packaging and trade name and acknowledged that there could be post-purchase risk of confusion, as the consumer could not be expected to know the particular devices of the respective chocolate configurations at issue by heart, although those were, in any case, almost identical.

The court therefore granted the main infringement action concerning the distinctiveness of the outer shape and configuration found inside the packaging of the TOBLERONE chocolate, marketed by Kraft. It held that the confusion caused by the almost identical shape of the ALMONDO chocolate, despite the lack of any similarities in the trademark name or product packaging, was sufficient to constitute infringement.

This decision is of great significance, because previously there was limited Greek precedent on the issue of post-purchase risk of confusion and the distinctiveness of goods based solely on their configuration, apart from any other trademark infringement.

377. File No. 115017/7407/2003, filed July 29, 2003.

378. Athens Multi-Member Court of First Instance, Decision No. 1478/2005, issued March 16, 2005.

V.A. Domain Names

Following the recent successful Petition for Injunction decision on the same issue,³⁷⁹ the main infringement action and the domain name cancellation petition filed against the domain name google.gr in the name of Theofilos Sagioglou EPE were granted.

The company Google Inc., with headquarters in California, USA, is well known, even among “mild” Internet users, as the provider of possibly the most popular search engine on the Internet.

When Google attempted to register google.gr in Greece, it discovered that this particular domain name had already been registered by another entity, of undisclosed identity. In accordance with the relevant provisions of Greek law, full confidentiality can be granted to those domain name owners that opt for it.³⁸⁰

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

Google then filed a Petition for Injunction and a main infringement action against the owner of the domain name google.gr. The Petition for Injunction was granted in 2003. The main infringement action was granted in 2005 on the ground 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.³⁸¹

Before bringing the main infringement action, however, Google had filed and prosecuted successfully a cancellation petition before the National Telecommunications and Post Committee concerning this particular domain name, following the alternative dispute resolution procedure (ADRP) just implemented by new administrative regulations in Greece.

The significance of the above action is that it was one of the first to be heard and granted pursuant to the relevant ADRP in place in Greece. As such, the decision leads the way as precedent for the resolution of domain name disputes following procedures akin to those adopted by WIPO or ICANN, which are more

379. Reported at 95 TMR 436 (2005).

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

381. Thessaloniki Multi-Member Court of First Instance, Decision No. 4603/2005, issued February 17, 2005.

expeditious and cost-effective than the traditional court proceedings.

~~GUATEMALA~~

~~*I.B.2. Merely Descriptive Terms*~~

~~The Registry of Intellectual Property rejected the application for registration of the trademark THE MARKETING GROUP & Design, for services in International Class 35. According to the Registry, the mark did not exhibit sufficient distinctiveness with respect to the services sought to be protected. It was composed of English words, without any additional unusual or innovative element, and therefore was descriptive of the services concerned.~~

~~The applicant appealed the Registry resolution on the basis that the applied-for trademark was registered in different countries of the world and that it was able to be registered because of its originality, novelty, specialty, and distinctiveness. Therefore, the mark could be distinguished from other trademarks, whether registered or in the process of registration.~~

~~The final resolution by the Ministry of Economy upheld the Registry's refusal of registration, concluding that the word element of the trademark, THE MARKETING GROUP, was formed from words that were in common use, and that it was a descriptive term that indicated the nature of the covered services. Specifically, the word MARKETING implied commercialization and publicity, which were part of the advertising services covered in Class 35. Therefore, the trademark did not have the ability to distinguish sufficiently the services that it was intended to protect.~~

~~*I.B.8.a. Similarity of Marks*~~

~~Molino Santa Ana S.A. filed an application to register the trademark HIPERCAT, to cover goods in International Class 31. Crato Properties S.A. filed an opposition against the application based on its registered trade name HIPER & Design. The opponent's argument was that if the HIPERCAT mark were registered, it might confuse customers because of the graphic and phonetic similarities of the two marks.~~

~~The Registry of Intellectual Property rejected the opposition. It found that the trademark HIPERCAT was filed to protect goods, whereas the trade name HIPER & Design was registered to cover special services. On the other hand, the Registry also considered that the graphic, phonetic, and ideological impression produced by the trademark and trade name was such that they could coexist without causing confusion among consumers.~~

~~On appeal, the Registry's resolution was rejected by the Ministry of Economy. It was considered that the trademark~~