

~~the offer of the metatag user. This is a sufficient basis for a finding of likelihood of confusion, even if the confusion could be removed by closer scrutiny of the metatag user's website.~~

~~By this decision, the preceding judgment of the Düsseldorf Court of Appeals⁴⁸⁰ was repealed, and the opinion of the majority of other German courts confirmed.~~

GREECE

I.D.1. Similarity of Marks

The Greek company Sante Paragogi ke Emboria Epidesmikou Ylikou A.E. (Sante) applied to register the word mark THERABAND,⁴⁸¹ for elastic bandages in Class 5 (see below). Sante's application was accepted by the Administrative Trademark Committee.⁴⁸²

Hygienic Corporation, a company based in the United States, filed opposition⁴⁸³ before the Committee based on its trademark registration for THERA – BAND,⁴⁸⁴ covering “rubber sheeting used for medical purposes” in Class 10. Hygienic argued that the contested mark was a copy of its prior-registered trademark; it argued, further, that, despite the fact that they were in different classes, the goods covered by the marks were similar and were intended for the same purposes, thus creating a risk of confusion of consumers as to the origin of said goods.

Theraband

The Administrative Trademark Committee rejected the opposition on the ground that, despite the visual and phonetic similarity of the marks under comparison, there was no similarity between the covered goods that would result in a risk of confusion.⁴⁸⁵ Specifically, the Committee found that the opponent's goods (rubber sheeting used for medical purposes) were used by physicians for beds in hospitals and in their practices to serve the special needs of certain patients, whereas the applicant's elastic

480. Case No. 20 U 21/03 (Court of Appeals of Düsseldorf, July 15, 2003), GRUR-RR 340 (2003).

481. Application No. 139171, filed March 23, 1999.

482. Administrative Trademark Committee, Decision No. 2076/1999, issued March 9, 1999.

483. Case No. 3663/1999, filed December 16, 1999.

484. Trademark No. 116382, filed October 20, 1993, registered May 17, 1996.

485. Administrative Trademark Committee, Decision No. 10018/2001, issued December 4, 2001.

bandages were used by a broad range of consumers for various bandaging purposes.

The case was heard by the Athens Administrative Court of First Instance upon recourse filed by the opponent.⁴⁸⁶ Hygienic contended that, contrary to the Committee's holding, the rubber sheeting for medical purposes was used by a broad range of consumers and, like the elastic bandages, was distributed through apothecaries and orthopaedic shops. It reiterated its argument that the marks under comparison were identical. In response, Sante argued strenuously that the covered goods were different and were targeted to different groups.

The Court accepted that the marks were phonetically identical and as such were capable of causing consumer confusion. Neither the slight differences in the appearance of the marks (e.g., different fonts, dash between the words THERA and BAND of the opposing mark) nor the fact that consumers usually are more attentive and alert in their selection of pharmaceutical goods such as the ones in question was, the Court held, sufficient to avoid the risk of confusion.

Therefore, the Court of First Instance reversed the Committee's decision and rejected Sante's trademark application for THERABAND.⁴⁸⁷

The Greek company Afoi Kaykala filed a trademark application for PAUL & GEORGE,⁴⁸⁸ to cover ready-made apparel in Class 25. The Administrative Trademark Committee initially accepted the application.⁴⁸⁹

Sofrane, a French company, filed opposition,⁴⁹⁰ alleging that the applied-for mark closely resembled its prior-registered Community trade mark (CTM) PAUL & JOE,⁴⁹¹ for apparel and other goods in Class 25 and goods in Classes 3, 4, and 18. The Committee was not convinced. It rejected the opposition, holding that the marks were sufficiently distinguishable.⁴⁹²

The opponent filed recourse,⁴⁹³ which was rejected by the Athens Administrative Court of First Instance.⁴⁹⁴ In affirming the

486. Case No. 2802/2002, filed May 14, 2002.

487. Athens Administrative Court of First Instance, Decision No. 2570/2006, issued February 28, 2006.

488. Application No. 148676, filed February 9, 2000.

489. Administrative Trademark Committee, Decision No. 9436/2000, issued December 12, 2000.

490. Case No. 349/2001, filed November 9, 2001.

491. CTM No. 001329127, filed September 30, 1999, registered January 9, 2002.

492. Administrative Trademark Committee, Decision No. 3874/2002, issued May 17, 2002.

493. Case No. 18749/2002, filed July 19, 2002.

decision of the Committee, the Court ruled in favor of the applicant, holding that the name GEORGE and the name JOE were quite distinct in the eyes of the Greek consumer, who was not deemed to be prone to confuse the marks, based on the fact that the common name PAUL was the first word of both.

Avon Products Inc., an American company, filed a trademark application for MODERN BALANCE,⁴⁹⁵ covering bleaching preparations and other substances for laundry use; cleaning, polishing, scouring, and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; and dentifrices, in Class 3.

The Administrative Trademark Committee partially rejected the application for the goods used for skincare, that is, soaps, perfumery, essential oils, and cosmetics, on the ground that the mark applied for closely resembled the trademark BALANCE,⁴⁹⁶ registered in the name of the German company Beiersdorf Aktiengesellschaft and covering skincare products in Class 3.⁴⁹⁷

Avon filed recourse,⁴⁹⁸ which was rejected by the Athens Administrative Court of First Instance on the ground that the word MODERN did not sufficiently differentiate between the marks.⁴⁹⁹

Avon's appeal was accepted by the Athens Administrative Court of Appeals, which overturned the earlier decisions and accepted the mark for registration.⁵⁰⁰ The appellate court was satisfied that the word MODERN sufficiently distinguished the applicant's mark.⁵⁰¹

Giotis A.E., a well-known Greek confectionery firm, was faced with an opposition⁵⁰² and subsequent recourse⁵⁰³ proceeding initiated by one of its rivals, Kraft Foods AS, concerning Giotis's national trademark application for CHOCO TWISTERS,⁵⁰⁴ which

494. Athens Administrative Court of First Instance, Decision No. 4007/2006, issued March 31, 2006.

495. Application No. 144431, filed June 14, 2000.

496. Trademark No. 138559, filed October 15, 1998, registered June 19, 2001.

497. Administrative Trademark Committee, Decision No. 5199/2001, issued June 25, 2001.

498. Case No. 2503/2001, filed October 5, 2001.

499. Athens Administrative Court of First Instance, Decision No. 5566/2004, issued May 21, 2004.

500. Case No. 7382/2005, filed March 3, 2005.

501. Athens Administrative Court of Appeals, Decision No. 1251/2006, issued April 13, 2006.

502. Case No. 3413/1999, filed March 16, 1999.

503. Case No. 20451/2002, filed August 23, 2002.

504. Application No. 136047, filed July 21, 1997.

mark allegedly conflicted with Kraft's CTM TWIST.⁵⁰⁵ Both marks covered chocolate in Class 30.

The Athens Administrative Court of First Instance, in reviewing the opposition and recourse before it, determined that there were significant differences between the marks in question that effectively averted the risk of confusion among the consuming public.⁵⁰⁶ In particular, the mere fact that the CTM consisted of two words and the national trademark was a single word satisfied the Court that the marks were quite distinct.

Moreover, after comparing the words TWISTERS and TWIST, the Court was satisfied that the overall visual and phonetic impression presented by Kraft's mark was substantially different from that of Giotis's mark.

Consequently, the Court dismissed the opposition and recourse and allowed the applied-for mark to proceed to registration.

The French firm Michelin (Compagnie Générale des Établissements Michelin–Michelin & Cie) filed for the extension to Greece of its International Registration for XM,⁵⁰⁷ a word mark covering pneumatic tires and inner tubes for vehicle wheels, treads for retreading tires, and tracks for crawler-tracked vehicles, in Class 12.

The Administrative Trademark Committee rejected the application. It found the mark in question to be confusingly similar to the CTM XMO,⁵⁰⁸ registered in the name of Rapid Suspension Technology USA, Inc. and covering cycles, bicycles, parts and fittings for bicycles, shock absorbers for bicycles and cycles, suspensions for bicycles and cycles, and all other goods in Class 12.⁵⁰⁹

The applicant filed recourse,⁵¹⁰ which was dismissed by the Athens Administrative Court of First Instance.⁵¹¹ The Court was not convinced that the letter O in the CTM sufficed to differentiate it from the international trademark under review, or that the difference in the specification of goods of the marks under comparison sufficed to avert the risk of consumer confusion.

505. Trademark No. 000347765, filed April 1, 1996, registered October 19, 1999.

506. Athens Administrative Court of First Instance, Decision No. 8676/2006, issued July 3, 2006.

507. Application No. 755016, with IR Filing No. 2093, filed in Greece March 19, 2001.

508. CTM No. 001172063, filed May 10, 1999, registered March 7, 2001.

509. Administrative Trademark Committee, Decision No. 7385/2002, issued October 2, 2002.

510. Case No. 2992/2003, filed January 31, 2003.

511. Athens Administrative Court of First Instance, Decision No. 9383/2006, issued July 28, 2006.

The Court was not influenced by the arguments put forward by the applicant, namely that its mark had been accepted in various jurisdictions and that there were various other marks comprising the letter X and two other letters that were already coexisting with the trademark XMO. In that regard, the Court underscored that while it could not be aware of the circumstances of the acceptance of the applicant's mark elsewhere, its main function was to examine any conflicts between the marks at issue, not to retry previous matters.

Triumph International AG, a German company, applied for the registration of the word mark GLORIA, to cover clothing, footwear, and headgear in Class 25. The Administrative Trademark Committee rejected the application on the following⁵¹² grounds:

1. The applicant's mark resembled the prior-registered word and device marks (a) GLORIA BIS, covering clothing in Class 25; (b) GLORIA MARIS, covering men's, women's, and children's clothing, bathing suits, beachwear, and underwear in Class 25; and (c) GLORIA CARAM, covering women's and children's clothing in Class 25 and perfumes in Class 3 (see below).
2. The applied-for mark was intended to cover goods similar to those covered by the cited marks, and consequently there was a risk of confusion among consumers as to the source of the goods.



Upon recourse before the Athens Administrative Court of First Instance,⁵¹³ Triumph argued that the GLORIA mark differed from the GLORIA BIS, GLORIA MARIS, and GLORIA CARAM trademarks in that the overall visual and phonetic impression it presented was significantly different, as GLORIA was a word mark and consisted of only one word, whereas the cited marks were complex marks and consisted of two words and added

512. Administrative Trademark Committee, Decision No. 1344/1999, issued February 12, 1999.

513. Case No. 982/2000, filed May 5, 2000.

devices. The Court affirmed the Committee's decision.⁵¹⁴ It held that the applied-for mark was directed to the same target group as the cited marks, because it covered similar goods, and was not sufficiently different from them. The Court stressed that the dominant feature of the marks under comparison was their word element, and the word GLORIA in particular.

Triumph appealed the decision of the Court of First Instance.⁵¹⁵

The Athens Administrative Court of Appeals accepted the appeal and reversed the lower court's decision.⁵¹⁶ It found that (1) the mark GLORIA BIS was written in calligraphic fine print and also comprised a characteristic device of a bindweed in the lower left and upper right corners of the mark; (2) the mark GLORIA MARIS comprised a device of two black wavy lines between the words GLORIA and MARIS, which appeared in fine print and were accompanied by the word INTERNATIONAL in a black border placed under them; (3) the mark GLORIA CARAM comprised a black parallelogram border that was divided into two parts, a white one where the underlined word GLORIA appeared and a smaller, black one where the underlined word CARAM, in dropout type, appeared, the line under the latter word being interrupted by the letters GC; and (4) the applied-for mark consisted only of the word GLORIA.

In light of the above, the Court of Appeals concluded that there was no sufficient visual and phonetic similarity to cause confusion among consumers as far as the origin of the covered goods was concerned.

Unipharma, Kleon Tsetis (Unipharma), a Greek company, applied for the registration of the word mark RESPITRAT, to cover pharmaceutical preparations and dietetic substances in Class 5. The Administrative Trademark Committee accepted the application.⁵¹⁷

The German company Boehringer Ingelheim Pharma GmbH & Co. KG filed opposition against the acceptance of the mark RESPITRAT based on its prior CTM registration for the word mark RESPIMAT,⁵¹⁸ covering pharmaceutical preparations in Class 5 and instruments and apparatus for inhaling

514. Athens Administrative Court of First Instance, Decision No. 8178/2003, issued June 30, 2003.

515. Appeal No. 195/2005, filed March 10, 2005.

516. Athens Administrative Court of Appeals, Decision No. 2525/2006, issued July 21, 2006.

517. Administrative Trademark Committee, Decision No. 2315/2001, issued March 7, 2001.

518. CTM No. 000746115, filed February 11, 1998, registered March 8, 1999.

pharmaceutical preparations in Class 10. The Committee accepted the opposition.⁵¹⁹

Upon recourse before the Athens Administrative Court of First Instance,⁵²⁰ Unipharma argued, *inter alia*, that (1) the marks RESPITRAT and RESPIMAT were sufficiently different, in view of the fact that their prefix RESPI- was a commonly used word deriving from the word respiration; and (2) trademarks covering pharmaceuticals created no risk of confusion, as such products usually were prescribed by physicians.

The Court upheld the decision of the Trademark Committee.⁵²¹ It confirmed the allegations of Boehringer Ingelheim regarding the similarity between the marks under comparison. In particular, the Court stressed that RESPITRAT and RESPIMAT were both word marks having in common the prefix RESPI- as well as the ending -AT and that they covered the same goods in Class 5. Thus, the difference in the middle letters—TR and M, respectively—was not sufficient to prevent the risk of confusion among consumers, especially in view of the fact that the goods in Class 5 were not necessarily sold under a physician's prescription.

The French company Cousin Biothech applied for the international registration of the trademark BIOMESH & Device (see below), to cover surgical apparatus and orthopaedic articles in Class 10.



Upon examination during the national phase in Greece, the Administrative Trademark Committee rejected the application on the ground that the applicant's mark resembled the prior-registered CTM BIOMESH (word mark),⁵²² covering mesh plates for anatomic contouring of the cranial skeleton in Class 10.⁵²³

Cousin Biotech filed recourse,⁵²⁴ requesting the reversal of the Committee's decision. It argued that (1) the applied-for mark differed from the cited mark in its device, namely the diamond-shaped border encompassing the word BIOMESH with the first

519. Administrative Trademark Committee, Decision No. 3875/2002, issued May 17, 2002.

520. Case No. 18931/2002, filed July 23, 2002.

521. Athens Administrative Court of First Instance, Decision No. 9299/2006, issued July 27, 2006.

522. CTM No. 001343722, filed October 14, 1999, registered January 13, 2003.

523. Administrative Trademark Committee, Decision No. 5190/2002, issued June 26, 2002.

524. Case No. 27990/2002, filed December 2, 2002.

and last letters thereof protruding outside the border; (2) the goods covered by the prior trademark (surgical apparatus and orthopaedic articles) were addressed to specialists (physicians and surgeons), thus preventing confusion of consumers; (3) in order to prevent any possible risk of confusion, it limited the specification of goods of its mark only to hernia pads of textile material, textile neurological patches, and products for urinary incontinence (also of textile pad type) in Class 10, stressing that the fact that the goods covered by the marks under comparison belonged to the same class did not necessarily mean that they were similar; and (4) as the trademark BIOMESH & Device had already been registered for goods in Class 10 in France, where Cousin Biotech was headquartered, by virtue of the “telle quelle” clause of the Paris Convention,⁵²⁵ a stricter standard of scrutiny could not be applied in another country that was party to the Convention.

The Athens Administrative Court of First Instance reexamined the facts and upheld the Committee’s decision.⁵²⁶ The Court reasoned that the dominating feature of the applied-for mark was the word component and that the device was not sufficient to differentiate it from the prior-registered mark. Thus, it was visually similar and aurally identical to the CTM. The Court also stressed that the goods covered by the marks under comparison were similar and were directed to the same target group.

Finally, the Court rejected Cousin’s allegation based on the “telle quelle” clause of the Paris Convention. It underscored that based on the provisions of paragraph B of Article 6*quinquies* of the Paris Convention, according to which applied-for marks may be denied registration when they are “of such a nature as to infringe rights acquired by third parties in the country where protection is claimed,” a trademark that had been registered in one of the contracting states could not be accepted for registration in Greece.

The Dutch company Valentino Globe B.V., which is part of the Valentino Group of the famous fashion designer Valentino, filed opposition⁵²⁷ against the trademark application for OLIVER,⁵²⁸ filed in the name of a Greek company with the distinguishing title Prince Oliver and covering goods in Classes 3, 18, and 25.

There were two legal bases for the opposition:

525. Paris Convention, art. 6*quinquies*, para. A(1).

526. Athens Administrative Court of First Instance, Decision No. 9901/2006, issued August 4, 2006.

527. Case No. 152/2001, filed March 15, 2001.

528. Application No. 146112, filed 24 July 1999.

1. Valentino's prior-registered national Greek trademark OLIVER & Device (see below),⁵²⁹ covering goods in Class 25 (clothing, footwear, headwear, etc.); and
2. The fame of Valentino's mark, as evidenced by registration certificates from a plethora of countries in Europe, Asia, the Middle East, etc., starting in 1986.



Valentino alleged, on the basis of its above-referenced rights, that the opposed mark was capable of creating confusion among the consuming public, especially given that the classes it covered coincided with those designated in the Greek and foreign OLIVER trademark registrations owned by Valentino.

The Administrative Trademark Committee was not convinced. It held, *inter alia*, that Valentino's trademark was sufficiently different from the applied-for mark, as the former included the device of a dog and the characteristic letter V, which is the initial for the company Valentino.

The Committee also was not persuaded of the fame of the opposing trademark. It determined that the evidence submitted by the opponent did not fulfill all the requirements for rendering a trademark famous, which, according to the Committee, went beyond the evidentiary submission of trademark certificates from other countries and included sales invoices, advertising materials and advertising expenditure, etc.

Accordingly, the Committee rejected Valentino's opposition.⁵³⁰

Upon recourse,⁵³¹ the Athens Administrative Court of First Instance reconsidered the matter on its merits and affirmed the decision dismissing the opposition.⁵³² In its ruling, the Court adopted in its entirety the rationale of the Administrative Trademark Committee.

529. Trademark No. 102618, filed January 30, 1991, registered May 5, 1998.

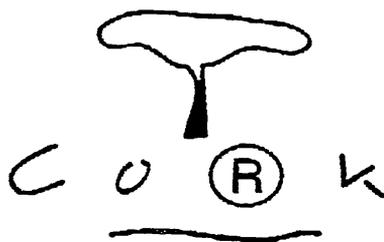
530. Administrative Trademark Committee, Decision No. 3090/2002, issued May 14, 2002.

531. Case No. 17819/2002, filed July 10, 2002.

532. Athens Administrative Court of First Instance, Decision No. 2190/2006, issued September 11, 2006.

Amorim Revestimientos S.A. (Amorim), a Portuguese company, applied for the international registration of the word mark CORKLOC, to cover floors and tiles made of cork, floors and tiles made of composition cork, and paved floors made of cork, compressed cork, or a cork mixture, all in Class 19.

The Administrative Trademark Committee, upon examination during the national phase in Greece, rejected the application.⁵³³ It reasoned that the applied-for mark resembled the prior-registered CTM CORK (see below),⁵³⁴ registered in the name of Confédération Européenne du Liège for similar goods, namely corkboard, in Class 19, as well as cork in Class 20 and unworked cork in Class 31. The Committee held, therefore, that coexistence of the marks would create a risk of confusion among consumers as to the source of the covered goods.



Amorim filed recourse before the Athens Administrative Court of First Instance.⁵³⁵ It argued that a comparison of the marks showed that they presented a different visual and aural impression and that the goods covered were not similar and targeted different groups of consumers. Amorim argued, further, that the trademarks CORKLOC and CORK already coexisted in various European countries, namely Portugal (the country of origin of the applied-for mark), France (the country of origin of the cited mark), Austria, Benelux, Bulgaria, Denmark, Finland, Germany, Italy, Spain, Switzerland, and the United Kingdom. It produced registration certificates from these countries as a proof of its allegation.

The Court reversed the decision of the Trademark Committee.⁵³⁶ A comparison of the marks showed that CORKLOC included an additional syllable, LOC, whereas CORK comprised a characteristic device of a tree under which was the word CORK in

533. Administrative Trademark Committee, Decision No. 9931/2002, issued November 21, 2002.

534. CTM No. 001447390, filed December 14, 1999, registered January 18, 2001.

535. Case No. 8450/2003, filed July 23, 2003.

536. Athens Administrative Court of First Instance, Decision No. 5050/2007, issued April 30, 2007.

underlined “handwritten” characters, with the letter R substituted for by the registration symbol (®). The Court therefore concluded that the overall visual and aural impressions given by the marks were sufficiently different and that consequently the marks were not likely to cause confusion among consumers.

The Court stressed that the fact that Class 19 goods were common to both marks was not critical in this case, as the classification of certain goods in the same class did not necessarily mean that they were similar. It noted that the goods to be covered by the mark CORKLOC were destined for a very specific use, were distributed through different stores, and had a different target group.

In light of these findings, the Court accepted the mark CORKLOC for registration.

I.F. Famous and Well-Known Marks

The Greek company Gerome Emboriki & Viomichaniki Anonymi Eteria Yfasmaton ke Idon Endyssis (Gerome) applied to register the word mark GUGLIELMO SALVATORE (below, illustration at left), for goods in Class 25.⁵³⁷ The Administrative Trademark Committee accepted the application.⁵³⁸

Salvatore Ferragamo Italia SpA (Ferragamo), an Italian company, filed opposition before the Administrative Trademark Committee⁵³⁹ based on its prior Greek,⁵⁴⁰ Community,⁵⁴¹ and international⁵⁴² trademark registrations for SALVATORE FERRAGAMO (below, illustration at right), covering goods in Class 25 and various other classes. Ferragamo alleged that (1) the applied-for mark was a slavish imitation of its registered trademarks; (2) those trademarks were, moreover, famous marks; and (3) the covered goods were identical, and thus posed a risk of confusion of consumers.

Guglielmo Salvatore *Salvatore Ferragamo*

537. Application No. 171947, filed January 20, 2004.

538. Administrative Trademark Committee, Decision No. 10841/2004, issued October 26, 2004.

539. Case No. 207/2005, filed July 14, 2005.

540. Trademark No. 80867, filed September 20, 1985, registered April 18, 1988; Trademark No. 110035, filed July 29, 1992, registered October 17, 1994.

541. CTM No. 000103192, filed April 1, 1996, registered April 20, 1998; CTM No. 000407155, filed October 8, 1996, registered December 2, 1998; CTM No. 002497758, filed December 11, 2001, registered February 24, 2003.

542. Trademark No. 478703, registered July 12, 1983; Trademark No. 517720, registered October 20, 1987; Trademark No. 533458, registered January 30, 1989; Trademark No. 630447, registered December 22, 1994; Trademark No. 668383, registered February 6, 1997; Trademark No. 812551, registered September 9, 2003.

From the voluminous submitted material (numerous copies of well-known magazines, Internet publications, and invoices proving circulation of goods under the SALVATORE FERRAGAMO trademarks in the Greek market), the Committee was easily able to assess that the trademark SALVATORE FERRAGAMO was such a prominent mark in the Greek jurisdiction that it actually served as an illustration of the definition of the term “famous mark.”⁵⁴³

The Committee went on to determine, based on a comparison of the marks, that the overall aural and, more important, visual impression presented by the applied-for mark, which has the form of a signature, was remarkably similar to the characteristic writing style, as well as to the form of certain particular letters, of the opposing marks. Specifically, the Committee found that (1) the word SALVATORE, which the marks under comparison had in common, was written in an identical manner, and (2) the word GUGLIELMO appeared in the same typeface as the SALVATORE FERRAGAMO mark, and its final letter O with a horizontal line at the end, was written in a manner identical to that of the letter O of FERRAGAMO.

These similarities, the Committee concluded, sufficed to give the average consumer the impression that a close financial and/or commercial nexus existed between the respective trademark owners. Accordingly, the Committee rejected the trademark application for GUGLIELMO SALVATORE.

Early in 2006, Mr. Panagiotis Mavrikos, an individual residing in Athens, filed a trademark application for MESIMVRINI,⁵⁴⁴ the name of one of the most well-known traditional newspapers of Athens, which had ceased its publication 12 years earlier. Concurrently, Mr. Mavrikos filed a petition for cancellation⁵⁴⁵ against the owner of the trademark MESIMVRINI, the publishing company Geniki Ekdotiki Ellados Mesimvrini SA (Geniki Ekdotiki).

The Administrative Trademark Committee, in examining both the cancellation petition and the new trademark application, as well as the intervention⁵⁴⁶ filed by Geniki Ekdotiki against the acceptance of Mr. Mavrikos’s trademark application, consolidated all the proceedings into one. It ruled in favor of the newspaper, even though it was no longer in circulation.

543. Administrative Trademark Committee, Decision No. 6380/2006, issued June 8, 2006.

544. Application No. 184034, filed March 10, 2006.

545. Case No. 61/2006, filed March 14, 2006.

546. Case No. 137/2006, filed June 21, 2006.

After considering the merits of the cancellation petition, the Committee dismissed it, being satisfied that the fame of the trademark MESIMVRINI was retained, despite the fact that the newspaper had ceased its publication 12 years before.

Mesimvrini, which started its operation in 1961 under the management of the famous Greek female journalist Eleni Vlachou and continued on until the coup d'état of 1967, was a mainstream newspaper and one of the most popular newspapers in Greece at the time. It went into circulation again, under new management, in 1980, some six years following the restoration of democracy in Greece. In 1994, however, *Mesimvrini* ceased publication, primarily as a result of a law passed at the time, which prohibited the publication of a mainstream national newspaper by any entity that was a public sector supplier, owing to conflict-of-interest considerations.⁵⁴⁷

The Committee was satisfied, based on the evidence submitted, that, notwithstanding the publication break of 12 years, the trademark MESIMVRINI had retained its fame and that its related, still enforceable, copyright belonged to the party filing the intervention, by assignment. Therefore, it dismissed the cancellation petition and the new trademark application filed by Mr. Mavrikos.⁵⁴⁸

This decision is both interesting and important, as the Committee recognized the fame of the trademark at issue as having priority over the five-year period of non-use (in this case, the 12 years of non-use) that renders a trademark cancellable under Greek law, and it acknowledged the copyright associated with the trademark.

II.C.1.f. Device and Design Marks

Alpharma ApS, a Danish subsidiary of the American pharmaceutical company Alpharma Inc., applied to register a device mark (see below)⁵⁴⁹ for goods in Classes 3 and 5. The Administrative Trademark Committee rejected the application on the ground that the mark lacked distinctive character.⁵⁵⁰ Alpharma filed recourse⁵⁵¹ before the Athens Administrative Court of First Instance for the revocation of the Committee's decision.

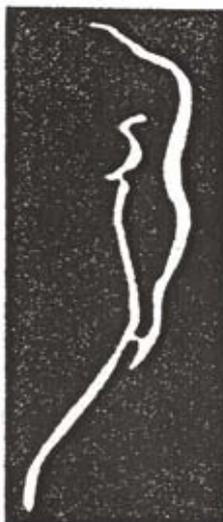
547. Law No. 2328/1995.

548. Administrative Trademark Committee, Decision Nos. 1246/2007, 1247/2007, and 1248/2007, issued February 9, 2007.

549. Application No. 147116, filed October 19, 2001.

550. Administrative Trademark Committee, Decision No. 8518/2002, issued October 18, 2002.

551. Case No. 243/2003, filed January 10, 2003.



The Court took into consideration the fact that Alpharma's trademark had already been registered in many other countries (e.g., Denmark, Finland, Germany, Jordan, Lebanon, Norway, Portugal, Sweden, and the United Kingdom) for goods in Classes 3 and 5. It reasoned that the device was sufficiently characteristic and did not lack distinctive character, even though it was destined to cover goods in those classes. The Court therefore reversed the decision of the Administrative Trademark Committee and allowed the mark to proceed to registration.⁵⁵²

II.C.3. Geographical Indications/Appellations of Origin

The Greek company Vigla Aeve Dairy Products (the "Petitioner"), founded in 1990, filed cancellation petitions⁵⁵³ challenging the validity of four trademarks, which were registered in the name of the Greek company Dairy Industry of Larissa S.A. (the "Respondent") for dairy and other food products (see below).

552. Athens Administrative Court of First Instance, Decision No. 8675/2006, issued July 3, 2006.

553. Case Nos. 166/2005–169/2005, filed September 13, 2005.

Registration No. 159697⁵⁵⁴Registration No. 169107⁵⁵⁵Registration No. 163896⁵⁵⁶ΓΑΛΑΚΤΟΒΙΟΜΗΧΑΝΙΑ ΛΑΡΙΣΗΣ Α.Ε. "ΟΛΥΜΠΟΣ"⁵⁵⁷Registration No. 150741⁵⁵⁷

All the trademarks, which contained the word OLYMPOS (ΟΛΥΜΠΙΟΣ in Greek), were complex marks, comprising the word OLYMPOS as well as additional graphic and word elements. The Petitioner, which is located in the greater area of Mount Olympus, alleged that the word OLYMPOS was the dominant element of all four trademarks and that it served as a misleading geographical indication, as the products covered by the marks were not, in fact, produced on Mount Olympus, and that in any event the trademarks lacked distinguishing ability.

The Administrative Trademark Committee, in its separate decisions,⁵⁵⁸ took into account the fact that the Respondent, which

554. Trademark No. 159697, covering milk in Class 29, filed November 7, 2001, registered May 19, 2003.

555. Trademark No. 169107, covering yogurt and dairy products in Class 29, filed July 25, 2003, registered February 17, 2005.

556. Trademark No. 163896, covering milk and dairy products in Class 29 and ice cream, yogurt-based desserts, and chocolate milk in Class 30, filed August 2, 2002, registered May 18, 2004.

557. Trademark No. 150741, covering milk, dairy products, and delicatessen in Class 29, ice cream, pastries, and desserts in Class 30, and fruit juices in Class 32, filed May 30, 2000, registered July 17, 2002.

558. Administrative Trademark Committee Decision Nos. 781/2007, 782/2007, 783/2007, and 784/2007, issued January 29, 2007.

was founded in 1965 and was registered with the local Chamber of Commerce with the distinguishing title OLYMPOS, had been using its title for 40 continuous years, uninterruptedly, in all of its corporate business transactions. In addition, the Committee noted the plethora of OLYMPOS marks owned by the Respondent, including Community and international trademark registrations for OLYMPUS. Based on these findings, the Committee, *ab initio*, determined that the name OLYMPOS had, in fact, acquired distinguishing power over the 40 years of its use by the Respondent as a distinguishing feature of origin from that company, and was not used, as the Petitioner had asserted, as a misleading geographical indication. This was because, as per the Committee's interpretation and application of the relevant provisions of the Greek Trademark Law, if there is a misleading use of a geographical indication, that indication must be used on its own and not as an element in conjunction with other words.

The finding that the word OLYMPOS had become established as a distinguishing feature of origin from the Respondent was further supported by the fact that the local Chamber of Commerce in the city of Larissa had deleted from its registry the Petitioner's distinguishing title VIGLA OLYMPOU because it was deemed to be confusingly similar to the Respondent's preceding distinguishing title OLYMPOS. Moreover, the Committee relied on an injunction petition decision issued by the relevant local court, which effectively enjoined Vigla Aeve from using the name OLYMPOS as its distinguishing title, or on its products, its advertisements, and its printed material in general.⁵⁵⁹

In addition to the above findings, the Committee made an interesting assessment of the current status of geographical indications in Greece. It emphasized that, in the Greek market, it is quite common to use geographical indications as trademarks, and thus the Greek consumer public is quite familiar with this practice and does not regard trademarks such as IPIROS for feta cheese, PINDOS for poultry, KORPI for mineral water, CRETA FARM for delicatessen, ATTICA HONEY for honey, etc., as necessarily being geographical indications per se.

Moreover, the Committee opted to take into account a relevant consumer survey, in which only 3.8 percent of the surveyed public believed that the OLYMPOS milk actually originated from Mount Olympus while 47 percent believed that the OLYMPOS milk originated from the greater district of Thessalia and Macedonia, which are neighboring districts in central and northern Greece. Another consumer survey, also taken into account by the Committee, reflected the fact that the majority of the consumers who selected the OLYMPOS milk were not influenced in their

559. Larissa Single-Member Court of First Instance, Decision No. 3863/2005, issued October 25, 2005.

selection by its geographical origin; instead, they based their selection on the quality of the particular product, irrespective of where it originated in Greece.

Last, but not least, the Committee examined the Petitioner's allegation that the advertisements of the OLYMPOS mark constituted misleading trademark use by the Respondent. The Committee determined that advertisements, on their own, do not qualify as trademark use per se, and, as such, cannot be deemed to qualify as misleading trademark use. Trademark use, based on the relevant precedent and legal theory, is in fact the affixing of a particular mark on products and their packaging. It would be a disproportionate means of recourse to delete a trademark from the registry as a form of sanction for its owner's alleged misleading advertising, to which other provisions of law (namely Unfair Competition Law) apply and over which other tribunals have subject-matter jurisdiction.

II.C.7. Copyright

The Athens Administrative Court of First Instance affirmed the decision of the Administrative Trademark Committee⁵⁶⁰ and dismissed the recourse⁵⁶¹ filed by the Greek company Andrikopoulos Chr. and Fragoulias OE.⁵⁶² The Court thereby rejected the trademark application for SNOOPY FAST FOOD & Snoopy Device (see below).⁵⁶³ In doing so, it also accepted the supplementary intervention⁵⁶⁴ filed against the acceptance of the trademark application by the American company United Features Syndicate, the owner of the copyright for and trademarks of the well-known *Peanuts* characters, including Snoopy, all of which were originally designed by Charles Schulz.



560. Administrative Trademark Committee, Decision No. 4411, issued May 24, 2001.

561. Case No. 7744/2002, filed March 18, 2002.

562. Athens Administrative Court of First Instance, Decision No. 10308/2006, issued April 18, 2007.

563. Application No. 133566, filed January 29, 1997.

564. Case No. 5716/2005, dated February 21, 2005.

When the trademark application was published for opposition purposes, United Features Syndicate filed opposition⁵⁶⁵ against the mark's registration. The mark was rejected by the Committee on the ground that it was confusingly similar to the famous SNOOPY marks, which belonged to the United Features Syndicate.

The applicant then filed recourse⁵⁶⁶ with the Athens Administrative Court of First Instance based on the following grounds:

- (a) The trademark application for SNOOPY FAST FOOD & Snoopy Device covered only "fast food and restaurant services" in Class 42, and none of the prior-registered SNOOPY marks covered the same services in Class 42.
- (b) There was no bad faith on the part of the applicant, because allegedly different target groups were addressed by the marks at issue and thus there was no potential for confusion.
- (c) The applied-for trademark did not qualify as a slavish imitation of the SNOOPY marks because it also contained the words FAST FOOD, which differentiated it from those marks.

The Court, after assessing the facts before it, not only was convinced that the Committee's decision was correct but took it upon itself to actually examine further aspects of the matter, such as copyright, in order to further elaborate on the reasons why it deemed the trademark application to be entirely unacceptable.

In its reasoning, the Court highlighted the fact that the relevant copyright for the famous *Peanuts* characters existed in many countries and substantiated the fame of the "Snoopy" character. In addition, it referred to the publication in several cartoons and comics of the *Peanuts* characters, which were very popular among the Greek public and had been so since well before the registration of any SNOOPY trademarks in Greece.

The Court dismissed the applicant's arguments asserting lack of confusion on the basis of the allegedly different target groups addressed, and rejected the trademark application for SNOOPY FAST FOOD & Snoopy Device. It held that the fame of the "Snoopy" character, based on its copyright and other acquired rights, was such that the lack of coinciding classes covered by the marks at issue was irrelevant in assessing the risk of confusion.

The Court considered it quite likely that the general public might easily assume that a fast-food or restaurant establishment operating under the mark SNOOPY FAST FOOD & Snoopy Device was somehow endorsed by the copyright holder-trademark owner

565. Case No. 3277/1998, filed December 15, 1998.

566. Case No. 7744/2002, filed April 2, 2002.

of the “Snoopy” character, and that the mark could serve as a “luring in” means of attracting clientele.

II.D.1. Immoral or Scandalous

The Administrative Trademark Committee refused the application for registration of the word mark MÜLLER KANETE EPQTA ME TH ΓΕΥΣΗ (MÜLLER—MAKE LOVE WITH TASTE),⁵⁶⁷ filed in Greek in the name of the German company Molkerei Alois Müller GmbH & Co. and covering goods in Classes 29, 30, and 32.⁵⁶⁸ The Committee held that the applied-for mark contravened moral principles, as defined in the relevant provisions of the Greek Trademark Law.⁵⁶⁹

Despite the applicant’s contentions,⁵⁷⁰ the Committee did not interpret the phrase “make love with taste” as referring to the pleasure caused to consumers by the savor (taste) of the covered goods; instead, it considered the phrase to have a purely sexual connotation. The Committee was equally unfazed by the fact that the applicant owned a similar trademark in Italy, FATE L’AMORE CON IL SAPORE,⁵⁷¹ as well as by the argument that the goods covered and primarily intended (yogurt and dairy products) had no per se ability to project any sexual innuendo.

II.F.1. Disclaimers

In September 2006, the Athens Administrative Court of Appeals set new precedent regarding *ex officio* refusals of trademark applications that conflict with prior-registered rights. Previously, if a trademark application conflicted with a prior-registered mark, even if the latter was registered in the name of a company that belonged to the same group of companies as the applicant and the owner of the prior-registered mark furnished a letter of consent, the trademark application nevertheless was refused *ex officio* on the grounds of public interest and avoidance of confusion of the public. In effect, this practice had forced trademark applicants to designate a specific entity within their group in whose name the same or similar trademark applications would be filed, in order to avoid suffering cost and delay in *ex*

567. Application No. 150805, filed July 19, 2005.

568. Administrative Trademark Committee, Decision No. 8437/2006, issued August 28, 2006.

569. Law No. 2239/1994, September 16, 1994. Article 3, paragraph (1)(f) of the Trademark Law provides: “The following shall not be registered as trademarks: . . . trademarks which are contrary to public policy or to accepted principles of morality. . . .”

570. Case No. 4364/2006, filed November 17, 2006, in support of the trademark application.

571. Trademark No. 846218, filed August 11, 1998, registered May 25, 2001.

officio refusal proceedings. The Court of Appeals' groundbreaking ruling changed the practice in favor of the trademark applicant.

Soremartec S.A., a Belgian company that belongs to the Ferrero Group, applied to register the trademark KINDER MERENDERO,⁵⁷² covering goods in Class 30.

Both the Administrative Trademark Committee⁵⁷³ and the Athens Administrative Court of First Instance⁵⁷⁴ refused the application on the ground that its dominant element was the word KINDER, which directly conflicted with the trademarks KINDER,⁵⁷⁵ previously registered in the name of Ferrero S.p.A. for identical goods in Class 30, despite the latter company's letter of consent and the furnishing of evidence that Soremartec S.A. and Ferrero S.p.A. belonged to the same group of companies.

The applicant lodged an appeal.⁵⁷⁶ In a significant ruling, the Athens Administrative Court of Appeals reversed the two previous decisions and ruled in favor of the applicant.⁵⁷⁷

The rationale of the Court of Appeals was quite concise, as it also took into account several well-known decisions of the European Court of Justice (ECJ), such as *Canon*⁵⁷⁸ (likelihood of confusion and interpretation of EC Trademarks Directive)⁵⁷⁹ and *IHT*⁵⁸⁰ (freedom of movement of goods in conjunction with trademark protection).

The Court determined that (1) the previous interpretation of Article 4, Paragraph 1 of the Greek Trademark Law, regarding the bar to registration of similar trademarks covering identical goods, was erroneous when the companies belonged to the same group and when explicit consent by the prior trademark's owner was given, and (2) the waiver of the bar to registration called for by Article 4, Paragraph 4, which provides for a potential waiver of the bar in the event that a letter of consent is furnished unless there

572. Application No. 143979, filed May 8, 2000.

573. Administrative Trademark Committee, Decision No. 5894/2001, issued July 6, 2001.

574. Athens Administrative Court of First Instance, Decision No. 9164/2004, issued July 30, 2004.

575. Trademark No. 53626, filed October 15, 1974, registered May 17, 1976; Trademark No. 111151, filed October 23, 1992, registered September 19, 1995; Trademark No. 115545, filed August 13, 1993, registered May 17, 1996.

576. Case No. 16808/2005, filed May 10, 2005.

577. Athens Administrative Court of Appeals, Decision No. 2476/2006, issued September 7, 2006.

578. *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc.*, Case C-39/97, [1998] ECR I-5507 (ECJ, September 29, 1998).

579. First Directive 89/104/EEC of the Council, of 21 December 1988, to Approximate the Laws of the Member States Relating to Trade Marks.

580. *IHT Internationale Heiztechnik GmbH v. Ideal-Standard GmbH*, Case C-9/93, [1994] ECR I-2789 (ECJ, June 22, 1994).

are public interest and risk of confusion considerations, had been thus far misconstrued.

According to the Court of Appeals, the Greek Trademark Law aims to deter the registration of trademarks that are likely to cause confusion of the public. Such a risk cannot encompass situations where the marks in conflict are owned by companies that belong to the same group. In principle, there can be no such risk of confusion in such cases, as there is a financial nexus between the respective companies that per se guarantees the ability to apply a uniform quality control to the products bearing the similar marks. In effect, in such cases there can be no direct or indirect risk of confusion to consumers, given the Court's global assessment of two companies belonging to the same group as being integral parts of a single undertaking with the same objectives and the same *modus operandi*.

The Court further implied that the internal corporate assignment of which corporate entity, within a group of companies, would be responsible for registering which trademark of the group remained within the absolute discretion of the group, as it fell within the group's freedom to operate. Any decision to the contrary would in effect impose undue restrictions on this corporate liberty for which there were no real substantive grounds, and certainly would be of no extra service to the consumer.

It is expected that the Court of Appeals' decision will serve as very useful precedent for similar matters in the Greek jurisdiction.

III.A.5. Domain Names

The National Telecommunications and Post Committee, the national authority responsible for supervising the administration of domain names in Greece, granted the cancellation petition⁵⁸¹ filed against the domain name *fifa.gr*, which was initially registered in the name of a Greek individual, Christos Soulimiotis. This registration was held to be in bad faith, as it was found to be an unfair exploitation of the trademarks, distinguishing title, distinguishing feature of origin, etc., of FIFA (Fédération Internationale de Football Association).⁵⁸²

Mr. Soulimiotis was actively using the domain name as a website for an online sports newspaper, the main focus of which was football, both local and international. When FIFA became aware of his registration and use of *fifa.gr*, it immediately filed for cancellation of the domain name, especially because the use of the domain name by the registrant was so closely linked to FIFA's

581. Case No. 36019/2006, filed October 5, 2006.

582. National Telecommunications and Post Committee, Decision No. 429/23, issued April 2, 2007.

activities that it clearly presented a risk of confusion of consumers, a lot of whom tend to follow football and other sports news online.

The Committee was quite clear in its determination that the registration of the domain name *fifa.gr* by Mr. Soulimiotis was done in bad faith. It was able to rule on the existence of bad faith solely on the basis of the facts before it, as the Committee's autonomous jurisdiction allows it to decide such matters without having to resort to a court order for confirmation. The element of bad faith was substantiated by the fact that the Greek registrant had no relation to or affiliation with FIFA and had absolutely no relevant prior rights (whether registered or unregistered) in the particular domain name. In fact, the corresponding website, *www.fifa.gr*, covered the same field of activities as those of FIFA and so closely resembled FIFA's official websites that it was deemed to be clearly taking unfair advantage of the name FIFA for commercial purposes.

In concluding its decision, the Committee held that Mr. Soulimiotis was obviously aware of FIFA, which is the ultimate and absolute organizer of international football games. This knowledge, in conjunction with his competitive conduct toward FIFA, was deemed to be a clear effort to extract clientele or divert online visitors from FIFA. That, per se, substantiated bad faith and was sufficient grounds for granting the cancellation petition.

The National Telecommunications and Post Committee was faced with a difficult matter when deciding the cancellation petition⁵⁸³ filed by Expedia Inc. (Expedia) against the domain name *expedia.gr*, which was registered in the name of the Greek company GREECE HTTP MEPE.

In Greece, Expedia had no physical presence, through offices, etc., and had never before operated a Greek website. Nevertheless, it was able to substantiate the fame of its brand as a company name, trademark, and domain name and, as such, successfully retrieve the domain name *expedia.gr*.

The Committee, in its decision, acknowledged that Expedia was a well-known travel agent that had acquired its fame while operating primarily through the Internet in various countries, including the United States, Canada, Australia, Italy, France, England, Germany, Belgium, and the Netherlands.⁵⁸⁴

Given the nature of online services and the fact that, in matters concerning the Internet, physical presence becomes a redundant issue, the Committee was unfazed by the fact that Expedia was not physically present in Greece and previously had never operated a Greek website. It emphasized Expedia's steep

583. Case No. 37916/2006, filed October 20, 2006.

584. National Telecommunications and Post Committee, Decision No. 427/38, issued June 15, 2007.

global investment in the EXPEDIA brand, which resulted in the fame of that brand internationally.

The Committee recognized that the EXPEDIA brand was well known in Greece, even purely on the basis of online use. It held that the registration of the domain name *expedia.gr* by the Greek registrant was done in bad faith. It pointed out that the registrant obviously was aware of the famous EXPEDIA brand and had no qualms about exploiting Expedia's goodwill and confusing the public.

III.D.2.a. Fair Use

Ringfeder VGB GMBH, a German company, filed a Main Infringement Action against Ioannis Papagiannis, an individual residing in Thessaloniki.⁵⁸⁵

Mr. Papagiannis maintained a warehouse selling used mechanical hitches bearing parts of the RINGFEDER products, with the addition of secondary missing parts made by other companies. The plaintiff asserted that this constituted infringement or dilution of its RINGFEDER trademark.

The Court began its analysis by referring to the facts before it—in particular, that the respondent indeed maintained a warehouse selling used mechanical hitches the primary parts of which were original, albeit used, RINGFEDER parts and the secondary parts of which were either bought secondhand from the local market or devised by the respondent.

The decisive issue for the Court was that there was no illegal copying, or falsification of any sort, of the trademark at issue, as the RINGFEDER parts used (on which the mark RINGFEDER was actually imprinted from the stage of industrial production by the trademark owner) were original.

The Court was unfazed by the plaintiff's claims of potential dilution of the mark, in that the hitches sold secondhand by the respondent comprised other parts as well, which were of questionable quality and certainly were not comparable to the RINGFEDER parts.

The Court concluded that it could not discern any willful intention on the part of the respondent to either unlawfully copy or unfairly exploit the RINGFEDER mark with his conduct. Accordingly, it dismissed Ringfeder's action.⁵⁸⁶

585. Case No. 30331/2000, filed August 24, 2000; hearing notice filing no. 4001/2005, filed February 1, 2005, for hearing on January 9, 2006.

586. Thessaloniki Multi-Member Court of First Instance, Decision No. 19947/2006, issued June 5, 2006.