

### **Similarity of marks-KRIZIA -KRISTA**

The Trademark Committee accepted<sup>1</sup> the trademark KRISTA<sup>2</sup> for goods in class 25, despite the Opposition filed by Krizia SpA, an Italian company, on the ground that it 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 Recourse<sup>3</sup> 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 granted<sup>4</sup> 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 statutory<sup>5</sup> as well as well-established precedent<sup>6</sup> 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, since 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 average consumer, especially since both marks were aimed to distinguish the same goods in class 25.

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<sup>1</sup> Trademark Committee Decision No.2776/1995

<sup>2</sup> Trademark application KRISTA No. 120287 filed on 7.9.1993

<sup>3</sup> Recourse File No. 11615/2000

<sup>4</sup> Decision No. 11918/2002 issued on September 30, 2003.

<sup>5</sup> Trademark Law No. 2239/1994 article 38, paragraph 7.

<sup>6</sup> Council of State decision No. 1082/1994

### **Injunctions and Damages-CAMPER shoes**

The Spanish company Coflusa S.A. has been engaged in the field of shoe-manufacturing activities since 1975. In 1994, it started marketing its “Camper Twin” series of shoes, with the characteristic design of decorative differences between the right and the left shoe of each pair, designed in such an eccentric and unique manner that the design of the right shoe complements that of the left.

More specifically, Coflusa S.A.’s shoes can be described as follows: a) the right shoe has a button sown on its upper right side, and there is a thread starting from the button which roundly runs all the way to the left side of the shoe, b) the left shoe of the pair has a thread sown on its upper right part, which diagonically runs from the upper right side towards the left side and then towards the front of the shoe, c) the left shoe, on its upper left side has a thread sown on a straight line, which starts from the left side, crosses the other thread and ends at approximately the center of the shoe’s upper side, d) the outer part of the shoe sole of both shoes has an anastatic device of a tree branch and the lower part of which, in backfolding starts form the heel of the sole and runs toward the front of the footplate, where there is the device of three flowers.

The particular “Camper Twins”<sup>7</sup> shoes first circulated in the Greek market in September 2002 and they were met with huge commercial success due to their originality of design. The “Camper Twins” were sold in characteristic red boxes, which reflected the red color of the CAMPER<sup>8</sup> trademark used by Coflusa S.A. throughout the world.

In 2003, Mr. Episcopou, an individual residing in Athens and extensively engaged in shoe-selling activities in Greece, started distributing and selling almost identical shoes to the “Camper Twins” and in practically identical red packaging boxes.

A Petition for Injunction<sup>9</sup> was filed with the Athens Court of First Instance, asserting that Episcopou’s activities violate Unfair Competition Law and seriously damage the business and financial interests of Coflusa S.A. and

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<sup>7</sup> See also, CAMPER TWINS Community Trademark Application No. 002490472

<sup>8</sup> Community Trademark Application No. 002884153

<sup>9</sup> Petition for Injunction File No. 11396/2003

requesting the urgent rectification of the situation by the Court through enjoining Episcopou from selling the particular shoes in the characteristic red boxes.

The Court granted<sup>10</sup> Coflusa S.A.'s petition, and held that the shoes sold by Episcopou as well as the red packaging boxes they were sold in, were a slavish imitation of Coflusa S.A.'s shoes and packaging boxes.

The Court's rationale was that Episcopou's activities constituted unfair competition acts, aimed at confusing the consuming public, as to either the origin of the particular shoes, or a potential business nexus between his company and Coflusa S.A. with the effect of unfairly diverting clientele from Coflusa S.A. to Episcopou.

In addition, the Court ordered that Episcopou should immediately cease from selling the particular shoes, since Coflusa S.A. suffered financial damage stemming from Episcopou's infringing activities, for actual loss of sales as well as future loss, deriving from the harm to Coflusa S.A.'s good will, since Episcopou's shoes were found to be of much lower quality than those of Coflusa S.A.

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<sup>10</sup> Decision No. 1130/2004 issued on February 26, 2004.

## *Domain Names - GOOGLE*

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<sup>11</sup>, 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 “google.gr” domain name. The Petition was granted and it was then revealed that a limited liability company at Thessaloniki, by the name “Theofilos Sagiroglou EPE” had registered the domain “google.gr” in its name, as of April 2001.

Google Inc. then immediately filed a Petition for Injunction<sup>12</sup> with the Thessaloniki Court of First Instance requesting that Respondent be enjoined from using the domain name “google.gr” since the risk of confusion to internet users is evident and that the registration of the particular domain name by Respondent was done in bad faith.

In a pioneering decision, the Court agreed with Google Inc.’s claims and granted<sup>13</sup> its Petition, enjoining Sagiroglou 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

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<sup>11</sup> National Telecommunications and Post Committee Administrative Order No. 268/73

<sup>12</sup> Petition for Injunction File No. 17481/2003

<sup>13</sup> Decision No. 27482/2003 issued on September 18, 2003, published in Commercial Law Review Volume Oct-Dec. 2003, p. 907-914.

user who visits the [www.google.gr](http://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 web-page 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 unfair competition act, creating a false impression to internet users that Sagioglou and Google have some type of business nexus when, in fact, they never did.

### **Violation of Public Order/Public Morality - CANNABIA**

The Applicant, an individual by the name Alfredo Carlo, a resident of Germany, filed a trademark application<sup>14</sup> with the Trademark Committee for a trademark which 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 aforementioned trademark application was aimed to distinguish "beer and non-alcoholic drinks" in class 32 and "alcoholic drinks" in class 33. The Trademark Committee rejected<sup>15</sup> the application, on the grounds of violating public morality and public order as provided for by the relevant trademark law provisions<sup>16</sup>.

Subsequent to the Applicant's recourse and review of the Committee's decision by the Administrative court of First Instance the Court reversed<sup>17</sup> 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:

- 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.

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<sup>14</sup> Trademark Application No. 136239/6.3.1998

<sup>15</sup> Trademark Committee Decision No. 2565/1999

<sup>16</sup> Trademark Law No. 2239/1994, Article 3, paragraph 1f.

<sup>17</sup> Decision No. 3448/2003 issued on November 18, 2003, to be published the Commercial Law Review Volume 1, 2004 (not released yet).

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.

### **Geographical Indications - ALASKA**

Metro SB – Handels AG, a Swiss corporation, filed a trademark application for the trademark ALASKA<sup>18</sup> aimed to distinguish electrical appliances in classes 7 and 9, used mainly for household purposes.

The Trademark Committee rejected the aforementioned application, since it held<sup>19</sup> that the trademark ALASKA is a geographical indication and therefore lacks distinguishing ability.<sup>20</sup>

On recourse to the Administrative Court of First Instance however, the Committee's decision was reversed<sup>21</sup> since the Court found that the word ALASKA does not reflect the place where the particular goods are produced, since 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.<sup>22</sup>

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, since the state of Alaska is not famous for producing electrical appliances and that eliminates the risk of confusion to the average consumer.

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<sup>18</sup> Trademark Application No. 137468/9.7.1998

<sup>19</sup> Trademark Committee Decision No. 2227/1999

<sup>20</sup> Trademark Law No. 2239/1994 Article 3, paragraph 1

<sup>21</sup> Decision No. 3436/2003 issued on September 30, 2003

<sup>22</sup> Trademark Law No. 2239/1994 Article 3, paragraph 1

### **Offending Religious Symbols - DIAVOLO**

Antonio Puig S.A. applied to register the trademark DIAVOLO for "soaps, perfumery, essential oils, cosmetics, hair lotions" in class 3. The Administrative Trademark Committee<sup>23</sup> rejected the application on the grounds that this trademark contravenes with 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<sup>24</sup>:  
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.

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<sup>23</sup> Decision No. 2823/1999 of the Administrative Trademark Committee

<sup>24</sup> Decision No. 3587/2003 of the Administrative Court of First Instance (published in *Epitheorisi Emporikou Dikaiou* – Commercial Law Review Volume 1, 2004)

### **Geographical Indications – United Steaks of America**

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 Committee<sup>25</sup> 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 case<sup>26</sup> and held that:

a) The word STEAKS of 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 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.

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<sup>25</sup> Decision No. 6717/1998 of the Administrative Trademark Committee

<sup>26</sup> Decision No. 2812/2003 of the Administrative Court of First Instance (unpublished)

### **No Similarity of Marks - SMASH - SMACKS**

Ion AE Viomichania ke Emboria Cacao Ke Sokolatas ("Ion") applied to register the trademark SMASH - ΣΜΑΣ<sup>27</sup>, in order to cover various goods in classes 29, 30, 32, 33 (goods made of chocolate, goods based on sugar etc) among which coffee, coffee substitutes, tea, sugar, breadstuffs, breadstuffs preparations and standardized foods based on maize flour, bread, biscuits, ice-cream, sweets, pastry, honey, chewing gums (class 30).

The application was partially rejected by decision of the Administrative Trademark Committee<sup>28</sup>, namely as far as goods in class 30 are concerned, on the grounds 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

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<sup>27</sup> The second word in Greek characters

<sup>28</sup> Decision No. 3288/1987 of the Administrative Trademark Committee

Greek characters and held<sup>29</sup> 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.

Upon appeal before the Council of State, the Court affirmed the decision of the Court of Appeals, and concluded<sup>30</sup> that there is no sufficient similarity between the two trademarks simply due to the fact that they have 4 letters in common, out of which one is a vowel. 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.

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<sup>29</sup> Decision No. 4841/1991 of the Court of Appeal

<sup>30</sup> Decision No. 2613/2002 of the Council of State (published in the Commercial Law Review Volume 4, 2003 p.914)

### **Similarity of Marks & Goods-LU - LUR**

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 application<sup>31</sup> on the grounds 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,<sup>32</sup> and upon appeal to the Council of State, which remanded the case to the Administrative Court of Appeals<sup>33</sup>.

The Administrative Court of Appeals<sup>34</sup> 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, which is the prolongation of a white parallelogram of the trademark LU are concerned. 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 phonetical and

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<sup>31</sup> Decision No. 7635/1981 of the Administrative Trademark Court of First Instance

<sup>32</sup> Decision No. 89/1991 of the Administrative Trademark Court of Second Instance

<sup>33</sup> Decision No. 2792/2000 of the Council of State

<sup>34</sup> Decision No. 3407/2002 of the Administrative Court of Appeal State (published in *Epitheorisi Emporikou Dikaiou – Commercial Law Review* Volume 4, 2003 p.916)

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.

### **Device Marks – Ferrero egg device**

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 color, situated opposite each other, covering cocoa chocolate, chocolate eggs, pastry and confectionery in class 30.

The Administrative Trademark Committee partially rejected the application<sup>35</sup>, namely as far as chocolate eggs are concerned, on the grounds that the device of the divided chocolate egg describes the covered goods and therefore it lacks distinctive character, as far as chocolate eggs are concerned.

Upon recourse before the Administrative Court of First Instance<sup>36</sup>, 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 2) Ferrero's 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.

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<sup>35</sup> Decision No. 8519/1999 of the Administrative Trademark Committee

<sup>36</sup> Decision No. 7951/2002 of the Administrative Court of First Instance

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