

Decision No. 6343/2003 issued on 27 April 2004

Case No. 11901/2000

1. Affirmation/opposition
2. National procedures

PRECIS: The Administrative Court of First Instance of Athens has affirmed a Trademark Committee decision to accept registration of FUNGOTRAT for goods in Class 5 of the Nice Classification. The court held that the mark was not confusingly similar to a prior registered FUNGORAL mark for goods in the same class.

FUNGOTRAT acceptance affirmed

The Administrative Court of First Instance of Athens has affirmed a Trademark Committee decision to accept registration of FUNGOTRAT for goods in Class 5 of the [Nice Classification](#) (Decision No. 787/1999).

Janssen Pharmaceutica N.V., a Belgian company, filed Recourse with the Administrative Court of First Instance of Athens against the Trademark Committee's decision (No. 787/1999) accepting the registration of the word trademark application FUNGOTRAT for "pharmaceutical preparations for human use" in Class 5.

The Belgian company had filed an Opposition with the Trademark Committee on the ground that the trademark application FUNGOTRAT filed by the Greek company UNI-PHARMA A.B.E.E is confusingly similar to its prior registered word trademark FUNGORAL for goods in the same class in light of the common prefix 'fung' the respective marks share and the similarity of goods covered. The Trademark Committee rejected the Opposition and accepted the trademark application as filed. The Belgian company then filed Recourse with the Administrative Court of First Instance of Athens.

In affirming the Committee's decision, the Court allowed the registration of the mark. It reasoned, among other things, that the common prefix of the respective marks is not sufficient for creating a risk of confusion to the public, given the fact that common prefixes are often found among trademarks for pharmaceuticals in Class 5 since such prefixes connote the usage the particular pharmaceutical products are meant for. The Court further held that the respective marks can be sufficiently differentiated by the fact that they have different suffixes '-trat' and '-ral' respectively.

Lastly, the Court found that held the pharmaceutical goods covered by the respective marks are ordinarily administered by doctors through medical prescriptions or are recommended to patients by certified pharmacists and thus, since the consumers themselves do not select the particular goods directly, the risk of confusion to the public is eliminated.

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