

Decision No. 2839/2004 issued on 22 JUNE 2004

Case No. 10352/2000

1. Affirmation/recourse
2. National procedures

PRECIS: The Administrative Court of First Instance of Athens has affirmed a Trademark Committee decision to dismiss an Opposition on COOL UP LEMON AND LIME for beverages in Class 32 of the Nice Classification. The court held that the mark was neither confusingly similar to a series of marks owned by the Opposer, which included the word UP nor with the previously registered 7UP mark for goods in the same class.

COOL LEMON AND LIME acceptance affirmed

The Administrative Court of First Instance of Athens has affirmed a Trademark Committee decision to dismiss an Opposition on COOL UP LEMON AND LIME for beverages in Class 32 of the [Nice Classification](#) (Decision No. 635/2000).

Concentrate Manufacturing Company of Ireland, d/b/a Seven Up International, a company with headquarters in the Bermudas, filed Recourse with the Administrative Court of First Instance of Athens against the Trademark Committee's decision (No. 635/2000) dismissing its Opposition against the of the trademark application COOL UP LEMON AND LIME for "beverages" in Class 32.

The Bermudan company had filed an Opposition with the Trademark Committee, on the ground that the trademark application COOL UP LEMON AND LIME filed by the Greek company "VALUE BRANDS EPE" is confusingly similar to its prior registered trademark 7UP also covering beverages in Class 32.

The Bermudan company asserted that the risk of confusion to consumers is likely in light of the fact that the respective marks both contain the word "UP", in conjunction with the similarity of goods (beverages) respectively covered. The latter party further claimed that the trademark under review is an imitation/variation of the Bermudan company's mark 7UP. The Trademark Committee rejected the Opposition and accepted the trademark application as filed. The Bermudan 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 visual and phonetic impression created to consumers by the respective trademarks is sufficiently distinct. This is due to the fact that the trademark under review consists of many different words, which give it sufficient distinctiveness per se and in any event render it easily distinguishable from the pre-existing mark 7UP.

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