

**Decision No. 1813/2005 issued on 16 DECEMBER 2004 – NOTIFIED ON 6/7/2005**

**Case No. 115/9-7-2004 APPEAL**

1. Reversal / appeal
2. National procedures

PRECIS: The Administrative Court of Appeals of Athens has, after remand and deferral from the Council of State (Supreme Administrative Court of Greece) reversed the Administrative Court of First Instance decision which had initially allowed the trademark application of the mark MICROBAC for detergents, in liquid, melted or solid form, in Classes 3 and 5 of the Nice Classification. The court reviewed the matter for the second time, following remand from the Council of State, which allowed the applicant of the proprietor of the pre-registered BAC trademark to have its appeal, which was initially dismissed on the merits, reconsidered by the Appellant Court. The Appellant Court on second review held that the mark MICROBAC was indeed confusingly similar to a previously registered BAC mark for several goods in classes 2 and 3, including the coinciding cleaning and stain removing products in class 3.

### **MICROBAC acceptance reversed**

The Administrative Court of First Instance of Athens following a Recourse filed by the applicant of the trademark MICROBAC (a Greek company by the name “GOLDEN CHEMICALS EPE (LTD.)” accepted the latter and reversed a Trademark Committee decision (No. 4231/1991) to accept an Opposition on MICROBAC for goods in Classes 3 and 5 of the [Nice Classification](#) (Administrative Court of First Instance Decision No. 546/1995).

The proprietor of the pre-registered BAC trademark (a German company by the name HANS SCHWARZKOPF GMBH) appealed against the Administrative Court of First Instance decision and when its appeal was dismissed on the merits, filed an Appeal with the Council of State (the Supreme Administrative Court of Greece). The Council of State granted the German company’s appeal (Decision No. 2804/2003) and remanded the case to the Administrative Court of Appeals for a second review of the case, on the merits.

The Administrative Court of Appeals reconsidered the matter and, by its decision no. 1813/2005 accepted the Appeal, vacated the previous Administrative Court of First Instance decision no. 546/1995 and revoked the Recourse filed by the Greek company, with the ultimate result that the trademark MICROBAC covering goods in classes 3 and 5 was cancelled and deleted from the Greek Trademark Registry.

After re-evaluating the matter, the Court of Appeals drew a distinction between the previous decision rendered by the Court of Appeals and following the Council of State’s remand, held that there are visual and phonetic similarities between the two marks and that the additional verbal element found in the second mark (the prefix MICRO-) is descriptive and lacks distinguishing ability and can be perceived by consumers as a variation of the original BAC trademark, which enjoys significant reputation among Greek consumers. The foregoing, in conjunction with the fact that

the Court was satisfied that there is a sufficient degree of similarity of the respective goods covered, were the basis for the reversal of the previous decisions.

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