

**Decision No. 2294/2005 issued on 14 OCTOBER 2005**

**Case No. 11729/2000**

1. Affirmation/Recourse
2. National procedures

PRECIS: The Administrative Court of First Instance of Athens has affirmed a Trademark Committee decision to accept the trademark application CHOCOPIE covering chocolates, ice-creams, wafers, candy, gum and other goods in class in Class 30 of the [Nice Classification](#). The court held that the mark was not descriptive and consisted of the words CHOCO and PIE which have not been integrated in the Greek language and have no specific meaning for the Greek consumer.

**CHOCOPIE acceptance affirmed**

The Administrative Court of First Instance of Athens has affirmed a Trademark Committee decision to accept the trademark application CHOCOPIE covering chocolates, pastries, pies, ice-creams, wafers, candy, gum and other goods in class in Class 30 of the [Nice Classification](#) filed by the company TONG YANG CONFECTIONERY CORPORATION with headquarters in South Korea, and dismiss the Recourse against its acceptance filed by the company LOTTE CONFECTIONERY CO. LTD., with headquarters in South Korea.

TONG YANG CONFECTIONERY CORPORATION filed the trademark application CHOCOPIE and LOTTE CONFECTIONERY CO. LTD. filed an Opposition against its acceptance, on the ground that the mark is descriptive, has no distinguishing ability and should not be protected as a trademark because that would render an unfair monopoly advantage of a descriptive term to the applicant, when the word CHOCOPIE should be left to be freely used by all, as a common term.

The Opposer also submitted evidence reflecting the rejection of said trademark in other jurisdictions, as descriptive. The Trademark Committee was not convinced however and by rendering its decision (No. 7838/2001) dismissed the Opposition against the acceptance of the trademark CHOCOPIE on the basis of its allegedly being descriptive and allowed the trademark to proceed to registration by finding that CHOCOPIE indeed has distinguishing ability.

The Opposer at Trademark Committee Opposition filed Recourse with the Administrative Court of First Instance in an effort to reverse the Committee's decision and prevent the registration of CHOCOPIE. In its Recourse, the arguments concerning the descriptive nature of the mark CHOCOPIE were reiterated, supported by decisions from other jurisdictions affirming this assertion.

In affirming the Trademark Committee's decision, the Court allowed the registration of the mark. It reasoned, among other things, that notwithstanding conflicting decisions from jurisdictions such as Guatemala, Korea, and Germany, etc. the words CHOCO and PIE in Greek jurisdiction do have distinguishing ability, given that they are foreign words and as such have not been integrated in the Greek vocabulary. This finding was further supported by the fact that the Court did not encounter any evidence reflecting the Opposer's assertion that the Greek consuming public considers the words CHOCO and PIE to be commonplace.

Thus the Court dismissed the Recourse, and allowed the trademark CHOCOPIE to proceed to registration.

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