

Decision No. 1555/2008

Council of State Appeal no. 3259/2006 dated: 14 April 2006

1. Reversal
2. National procedures

PRECIS: The Council of State issued an important ruling that reversed the previous Court of Appeals decision, and ruled in favour of CAMPER following a long saga of litigation in Greece between CAMPER and CAMBER. The matter reached the Council of State following the filing of a cancellation petition by CAMPER against the Greek trademark CAMBER, which was respectively dismissed by the Trademark Committee, the Administrative Court of First Instance, as well as the Administrative Court of Appeals.

CAMPER Vs. CAMBER

The Spanish company, CAMPER S.L. the well-known shoe manufacturer with global activities, scored a highly significant victory in Greek jurisdiction, at the highest administrative court level.

The favorable to CAMPER decision, which was ultimately obtained at the Council of State level, was finally achieved after almost 8 years of dispute in the administrative courts.

The dispute started with the filing of a cancellation petition by CAMPER S.L. against the trademark CAMBER, filed on 6/2/1995 by a Greek individual named Evaggelos Efst. Episcopou.

It is noteworthy a CAMBER trademark was previously filed on 16.12.1985 in the name of the company "I. and E. EPISCOPOU O.E.". The aforementioned company was in fact the family business of Mr. Episcopou, in which he was a major shareholder. Nevertheless, as the said company was dissolved in 1987 and the CAMBER trademark filing of 1985 was not assigned etc. and was subsequently allowed to lapse, the CAMBER trademark filed in 1985 was deleted from the Greek Trademark Office Registry.

At the first instance of examination of the cancellation petition, the Trademark Committee took the unexpected view that the previous CAMBER trademark application of 1985, although deleted, was important for eliminating any allegations of bad faith regarding the CAMBER trademark application of 1995. In particular, the Committee dismissed the Petitioner's ground that there was bad faith in the filing of the 1995 CAMBER trademark application, because the Committee took into consideration the previously

filed CAMBER application of 1985, notwithstanding the fact that the said application was in the name of another entity and was allowed to lapse. The Trademark Committee further held that the trademark CAMPER which was filed in Greece by the Spanish petitioner company in 1993 was not sufficient (as chronologically preceding the 1995 CAMBER application) for proving Episcopou's bad faith. The Committee's rationale was that it was not satisfied that the CAMPER trademark had sufficient fame in Greece, at the time the 1995 CAMBER trademark application was filed; therefore it could not find that Episcopou knew and tried to take advantage of the Spanish company's trademark.

The subsequent decisions of the Administrative Court of First Instance and the Administrative Court of Appeals, affirmed the decision of the Trademark Committee. Evidence regarding the network of 120 stores selling CAMPER shoes and the annual sales of 75.000-100.000 pairs of CAMPER shoes in Greece coupled with relevant advertisements, were not deemed sufficient for the purpose of establishing the fame of the CAMPER trademark (owned and marketed by the Spanish Petitioner in Greece) at the time the CAMBER trademark was filed in Greece (i.e. on 6/2/1995).

The Council of State in examining the matter, held that the Court of Appeals was erroneous in its finding that the trademark

CAMPER was not well-known in Greece at the time the Greek applicant's trademark application CAMBER was filed in Greece on 6/2/1995 and was further erroneous in disregarding the Petitioner's evidence that it had been importing and offering for sale in Greece apparel and shoes bearing the trademark CAMPER already from 1993, without interruption.

Notwithstanding the issue of fame in Greece, and the extent of use of the CAMPER trademark in Greece, the Council of State also took into account the provisions of article 4(4)(g) of the First Directive 89/104 of the Council of 21/12/1988 that "A Member State shall provide that a trademark shall not be registered or, if registered, shall be liable to be declared invalid where, and to the extent that the trademark is liable to be confused with a mark which was in use abroad on the filing date of the application, and which is still in use there, provided that at the time of the application the applicant was acting in bad faith." In exploring the scope of the aforementioned provisions, the Council of State elaborated that even a likelihood of confusion caused by the filing of the Greek trademark application and adversely affecting the existing trademarks of a foreign entity outside Greece, is sufficient for denying or invalidating the Greek trademark application, even if at the time the latter is filed the foreign entity's products are not marketed in Greece, provided that there is a possibility that the

foreign entity's products will become well-known or will start circulating in the Greek market.

In view of all the above, the Council of State decided to reverse the Administrative Court of Appeals decision and remand the matter to the lower Court for judicial reconsideration.

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