

**Decision No. 1803/2007 formally issued on 8 November 2007  
Of the Supreme Civil Court (Areios Pagos)**

1. Remand for re-trial
2. National Procedures Infringement

PRECIS: The Supreme Civil Court of Greece, has decided to remand for retrial to the lower Court of Appeals a matter regarding the infringement of an engine's configuration, purely on the basis of use-acquired rights (without any prior registered rights).

**Remand for re-trial of the Honda GX-160T matter**

Following a long saga of infringement litigations which were initiated by HONDA against importers of various engines that allegedly infringed on its GX160 engine configuration, (one of its most popular multiple use and internal combustion engines) the matter between HONDA and PSEKA / KEKI found its way to the Supreme Civil Court of Athens (Areios Pagos in Greek) in order to determine whether the Appeal that was granted and had reversed the favourable to Honda Main Infringement Action decision at first instance, should or should not be reversed. Notably, HONDA had no pertinent registered rights in force for the particular engine, but acted solely on the basis of Unfair Competition law.

The Supreme Court offered a very thorough and interesting analysis of several aspects of use-based rights in Greece, since the matter concerned the overall engine configuration and the shape / characteristics of 7 of its parts such as the fuel tank, recoil starter, fan cover, etc. all of which were, as HONDA alleged, its own distinguishing features of origin, due to their extended use in Greece and overseas.

Such was the emphasis of the Supreme Court on the importance of analyzing the distinguishing features of origin of the Plaintiff's engine that it was not even remotely affected by the fact that the respective engines had different trade names, i.e. MIYAKE and HONDA.

Equally, the Supreme Court was disinterested in the alleged similarity of the engine on trial with other brands of engines, used as a defense argument by the alleged infringer.

The Supreme Court's ruling was clear and concise in summarizing the issues that required further review by the lower Court of Appeals, as follows:

1. Whether the 7 characteristics claimed by HONDA as its distinguishing features of origin engine were technically necessary for manufacturing and using the engine
2. Whether these 7 characteristics are capable of functioning as distinguishing features of origin
3. Whether other manufacturers are in a position to select other, technically equal elements.
4. Whether the similarities identified by the lower Court of Appeals, were in fact more important than the minor differences of the respective engines' appearance.
5. Whether the relevant consuming public for establishing the risk of confusion is not the group of specialized engine / machine manufacturers but, instead, the average ultimate consumer who will purchase the particular engine, either on its own or as an integrated part of other machinery.

The above questions needed reconsideration by the Court of Appeals as per the Supreme Court's judgment, and therefore the matter was remanded to the Court of Appeals for a re-trial and reconsideration on the merits of the case.

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