

GREECE

Clarity on colour combinations

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It is quite encouraging for law practitioners in Greece that Greek IP specialised courts have managed to align the national case law with the EU case law on trademarks during the last decade, providing a tool for legal certainty.

A couple of years ago, the IP Specialised Division of the Court of Appeals in Athens delivered judgment No. 1702/2016 on a trademark infringement case where a colour combination was involved. It was held that the word marks under comparison were not confusingly similar. It was further ruled that the accompanying colour combination was not decisive, since the colour combination concerned was found to be descriptive of the relevant goods (over-the-counter pharmaceuticals).

Recently, the General Court was of the same view (T-261/17), when it ruled on a comparison between the same signs applying the same EU case law principle, according to which the public will not consider a descriptive element of a composite mark to be the distinctive and dominant element in the overall impression conveyed by that mark.

This provided a clear – though apparently not complete – answer to the claimant's/opponent's main argument that the figurative elements in the mark applied-for, particularly the combination and configuration of the colours green and white, have an independent distinctive character even if the word element is considered dominant.

It seems that while the competent authorities in each instance (EU and national) regarded the colour combination to be the earlier mark's colour configuration as well, the applicant argued that it used a colour combination in a specific configuration. Thus, what seems to be left unanswered is whether a *prima facie*

descriptive colour combination may have distinctiveness, in cases where the specific colour configuration is not descriptive in and of itself.

The question becomes more intriguing, considering that the specific colour configuration has been registered as a trademark, the validity of which is not questioned.