

GREECE

Should “uniqueness” be examined in well-known marks cases ?

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Although not as frequently as in the past, the Greek courts still require in several instances “uniqueness” of the mark in order to rule in infringement cases that the trade mark at issue is well known. In a recent case, the specialised Division of the Appeals Court in Athens handed down a judgment where it is straightforward that “uniqueness” of the mark may not serve as a criterion for a trade mark to gain a well-known status.

More specifically, the Court affirmed that in order to satisfy the requirement of reputation the trade mark must be known to a significant part of the public concerned by the goods or services covered by that trade mark, whereas in examining that condition, it is necessary to take into consideration all the relevant facts of the case, in particular the market share held by the mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it. As far as “uniqueness” is concerned, the Court held that its *prima facie* meaning is that the trade mark has not been used by anyone for any goods or services other than by the proprietor of the mark for the goods and services it covers.

Notably, the Court went on to add that “uniqueness” is not among these factors on the basis that the distinctive character of the earlier mark, and consequently its remarkably high distinctive character, may well be acquired through use and may not be necessarily inherent. However, it was nevertheless affirmed that “uniqueness” of the trade mark is among the factors to be examined by the Court for the infringement of a well-known trade mark to be upheld.

It will be interesting to see whether this position will survive if the case is brought before the Greek Supreme Court (Areios Pagos).