

GREECE

Well-reasoned judgment on trade mark infringement

Patrinios & Kilimiris

Athens



Green relief for pain

This decision is interesting because the Court when issuing its judgment adopted a scientific reasoning and raised the issue that exclusive trade mark rights cannot be asserted for certain colour combinations when they are subconsciously connected to a treatment. Moreover the Court also took into consideration the status of the infringing company being a well-known Greek pharmaceutical company.

The multi-member Civil Court of Athens recently issued an interesting judgment regarding the criteria when comparing composite trade marks covering pharmaceutical products and consisting of words and coloured devices. The dispute in question referred to a main lawsuit filed against a Greek company regarding infringement of the famous trademark Aspirin. The plaintiff claimed that the colour combination of green and white with black lettering is widely recognisable by consumers as an essential element of its Aspiring product marking and that this combination is associated with the plaintiff. The infringing product was a pharmaceutical product for the relief of pain, antipyretics and analgesic which circulated in the market in a packaging bearing the colours green and white with black lettering and under a different word mark.

The adversary claimed that many other trade marks covering pharmaceutical products and namely analgesics circulate in the EU market in packages bearing the colour combination green and white, all of which are imported and circulate in Greece as well. Therefore this colour combination cannot be associated solely with the plaintiff.

The Court ruled that in the packaging of a product the dominant element is the word part and not the colour combination. Moreover it ruled that the colour green is selected for the packaging of analgesic products because according to psychological studies and behaviour studies, this colour has been linked in the public consciousness with the idea of pain relief and is related to the feelings the different colours consciously or subconsciously cause to consumers. In view of the above, the Court rejected the plaintiff's main action.