

GREECE

The beauty and the beast of unfair competition

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In a recent decision of the Court of Appeal of Athens, it has been found that the likelihood of confusion of the consuming public, resulting from the infringement of a distinctive title (a brand name, in breach of the fundamental principle of priority (first come, first served), as well as the provisions on unfair competition) is not removed by any possible provisions of a purely administrative nature.

In particular, according to the Royal Decree of 1937, the Chamber of Hotels approves the distinctive titles of hotel units, as long as the same distinctive title is not used by two or more hotels within the same city. In this case the plaintiffs had maintained from 2004 and 2009, in the islands of Santorini and Mykonos respectively, hotel units using the same dominant term as distinctive title with the addition of the descriptive indications "Santorini" and "Mykonos", respectively.

Moreover, the dominant term of the above distinctive titles has been used by the assignor continuously and without interruption since 1997. The plaintiff, also a hotel enterprise, active in the island of Corfu, was formed in 2007, and in 2010 they changed their distinctive title into one similar to the dominant term of the above titles with the addition of their place of activity ("Corfu"). It must be noted that all the above hotel enterprises belong to the exact same category (4 star hotels), and provide hotel services of equivalent quality.

Although the defendant claimed that they had obtained the previous approval of the competent Chamber of Hotels for the change of distinctive title, the Court judged that a provision of purely administrative nature does not prevail over the provisions on a distinctive title – brand name infringement, in breach of the fundamental principle of priority (first come, first served) and the provisions on unfair competition. More specifically, the Court judged that in this

particular case, there is a likelihood of confusion of the consuming public, due to the imitation of the dominant term of the distinctive title of the plaintiffs, having acquired a distinctive power for the exact same services, which is not reduced by the addition of the place of activity of the above enterprises.

Also, the Court judged that there is a likelihood of confusion, because it is possible that the consuming public might consider that the defendant is economically connected to the plaintiffs, considering that this is a common chain of enterprises, who have been providing hotel services for many years in those two famous Aegean islands (Santorini and Mykonos), while also extending their activity into another famous Greek island of the Ionian Sea (Corfu).