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GREEK LAW DIGEST

The Official Guide to Greek Law

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**Law Firm Dr. Helen
G. Papaconstantinou
and Partners**

TRADEMARKS

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NOMIKI BIBLIOTHIKI

Editor-in-chief:

Geena Papantonopoulou (geenap@nb.org)

Business development managers:

Georgia Siakandari (georgias@nb.org)

Juliana Berberi (juliber@nb.org)

Art Director:

Theodoros Mastrogiannis (mastroth@nb.org)

Creative Director:

Andreas Menounos (andream@nb.org)

Desktop Publishing - Films:

Yannis Dedousis (yannisd@nb.org)

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GREEK LAW DIGEST is the most systematic and comprehensive guide on the Greek legal and institutional framework, written entirely in English. Its objective is to provide its readers with pragmatic and comprehensive overview of the Greek legal system. The Guide provides concise and comprehensible content organized through short questions and answers, covering a wide range of issues that citizens of other countries might raise with respect to the law applicable in Greece. Such content is constantly enriched by updating and adding new articles. The Greek Law Digest is available in hard copy, whereas the website www.greeklawdigest.gr is freely accessible to visits from 190 countries around the world. The Guide is offered to foreign diplomatic authorities in the country, Greek diplomatic authorities abroad, various financial and investment organizations and associations, international authorities and institutions, foreign partners during their official visits to the country, the official trade missions of Enterprise Greece, the official Greek trade missions of the Ministry of Economy & Development. It is acknowledged by foreign and Greek professionals, foreign diplomatic representatives and foreign officials, state authorities and business associations, as the most trustworthy and thorough legal guide ever existed for Greek legal and regulatory issues and receives generous tributes. GREEK LAW DIGEST is published on the initiative of NOMIKI BIBLIOTHIKI under the auspices of the Ministry of Economy & Development, Enterprise Greece and Hellenic Republic Asset Development Fund. GREEK LAW DIGEST is principally financed by NOMIKI BIBLIOTHIKI Publishing Group and its contributors. It does not receive any advertisement proceeds or financial aid from any other private or public authority or organization. To become a Contributing Editor and find out more about the benefits send email to GreekLawDigest@nb.org or call (+30)2103678920



NOMIKI BIBLIOTHIKI

23, Mavromichali Str., 106 80 Athens Greece
Tel.: +30 210 3678 800 • Fax: +30 210 3678 857
e-mail: info@nb.org <http://www.nb.org>



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GREEK LAW DIGEST

**INDUSTRIAL & INTELLECTUAL
PROPERTY RIGHTS**



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TRADEMARKS

Fotini Kardiopoulis, *Attorney at Law, LL.M. - Partner*
Miranda Theodoridou, *Attorney at Law - Partner*
Dimitra Nassimpian, *Legal Consultant, LL.B., PGCEd*
Law Firm Dr. Helen G. Papaconstantinou and Partners

What is a Trademark? What is the function of a trademark?

Under Greek law, the primary and fundamental purpose of a trademark is to serve as a source identifier, i.e. to indicate a particular origin of a good or service. This is not, however, the only function a trademark serves, given that trademarks also serve a guarantee and advertising/ marketing objective.

According to art. 123 of law 4072/2012, any sign capable of being represented graphically and of distinguishing the goods and/or services of one undertaking from those of another may be regarded as a trademark. In view of this definition, the term “Trademark” is used in relation to both goods and services.

What types of trademarks are recognized by law in Greece?

Trademarks may consist of, among other things, words, names of natural persons or legal entities, pseudonyms, devices/logos, designs, letters, numerals, colours, combinations of numbers or letters (acronyms), musical phrases, the shape of a product or of its packaging.

It is now expressly stated that slogans can also be protected as trademarks, provided that they possess distinctive power and can function as trademarks (e.g. the slogan “TOP PERFORMANCE, CLEANER ENVIRONMENT”, in Greek, was accepted as a trademark, whereas “EVERY DAY SOMETHING POSITIVE”, in Greek, was rejected).

A trademark may consist of a combination of word/name and device/design elements (composite/combination trademarks).

It goes without saying that in the context of a composite or a device mark, the specific colour shades/ combination are considered as a protectable element. On the other hand, the new law expressly refers to colours: Combinations of more than one colour can clearly possess distinctiveness and be used as trademarks in their own right. Under the terminology of the new law, even a single colour may serve as a mark, provided same possesses sufficient distinctiveness.

“Ordinary” marks differ from collective and certification marks: ordinary marks distinguish the goods and/or services of a particular trader from those of others, whereas collective marks are in fact signs deriving from a membership to a particular association, and certification marks serve the purpose of guaranteeing to the public that the relevant goods or services possess a certain characteristic (material, quality, accuracy etc).

The Greek legislative framework provides for collective marks but not for certification/guarantee marks, as the latter are considered unable to perform an “origin function”.

What cannot be registered as a trademark? Which are the absolute bars to registration?

Absolute bars impede certain signs from being registered as a trademark, particularly if they 1) are devoid of any distinctive character, 2) are merely descriptive, i.e. only describe the kind, quality, properties, quantity, intended purpose, value, geographical origin, or other characteristics of goods or services, 3) have become customary in the current language or in the bona fide and established practices of trade.

On the other hand, a sign does not need to be fanciful, original or coined in order to be registrable as a trademark. In this respect, distinctiveness is assessed in relation to the goods/services for which the mark is to be used. Furthermore, distinctiveness and descriptiveness are assessed by reference to the mark as a whole and not in relation to its individual components. Thus, figurative elements may significantly enhance the weak distinctive character of a verbal element.

Deceptive signs cannot be registered. Therefore, the use of terms such as ECO-, BIO and ORGANIC should be used with great caution and under special conditions/certifications: Said terms are banned from use on non-organic food production and general principles on non-misleading advertising apply when they are used on non-food products. With respect to geographical indications, it all depends on whether the geographical indication in question is associated with the products to be covered by the trademark. For example, ALASKA was allowed to registration for electrical goods and BERLIN, inter alia, for clothing and cosmetics.

Signs consisting of or comprising geographical indications for wine and alcoholic beverages and geographical indications or appellations of origin for geographical products are expressly exempt from trademark protection.

Terms that are inherently non-distinctive can be protected as a trademark in the event that the public has come to recognize them as marks, in which case the term is said to have “acquired distinctiveness” or “secondary meaning.” Terms can acquire distinctiveness through extensive use and advertising. Distinctive character will be assessed at the time of the filing of the application.

A mark will not be registered if it is deemed to be contrary to public policy or to accepted principles of morality. In this case, again, the type of goods/services the sign is intended to cover will be taken into account (e.g. DIAVOLO was registered for perfumery).

Marks consisting of a flag, emblem or similar signs of the Greek state or other state covered by the Paris Convention as well as signs of great symbolic value and special interest, particularly religious symbols, representations and words, shall not be registered as trademarks.

Finally, a trademark shall not be registered if filed in bad faith or if not filed according to the generally established principles of good faith.

How can I find out if my trademark collides with a prior trademark?

If you wish to use or register a trademark, a related search, particularly one to be conducted by an experienced attorney, is recommended for analyzing the risk of possible objections, oppositions or infringement actions by third parties. Basic searches typically focus on trademark registration databases, while more extensive searches utilize numerous other resources, such as company name and domain name databases, trade publications and the Internet.

How do I claim trademark rights in Greece? Are unregistered marks protected?

Trademark rights are typically established through registration. However, unregistered signs can constitute relative grounds for refusal and are protected under articles 13 to 15 of the Unfair Competition Law. There are no specific statutory conditions outlining the extent and type of use required in order to claim protection for unregistered marks, hence Courts carry out this exercise on a case-by-case basis.

What is required for filing a trademark application? Do I need a lawyer?

The appointment of a lawyer for the filing of a trademark application has now become optional. Nevertheless, the applicants must designate an addressee for the service of documents, who does not, again, need to be lawyer. Nevertheless, getting professional advice may prove to be invaluable, *inter alia*, in terms of “transforming” an otherwise unregistrable sign into a trademark, as well as effectively determine the optimum territorial scope of a mark and the most efficient scope of goods and services to be covered.

The minimum requirements for placing an application are:

- Complete list of goods/services; a single application may be filed for registration of a mark for more than one class of goods; In this context, it must be pointed out that Greece is one of the countries that participated in the issuance of the Common Communication on the Implementation of the IP Translator decision, dated May 2, 2013 (C-307/10).
- In case that the trademark applicant uses the general phrasing of a specific heading of the Nice classification classes, then he must explicitly state whether he intends to cover all the goods or services included in the alphabetical list of that class, otherwise only the goods or services mentioned in the general phrasing of the heading of the class in question will be taken into consideration, with the literal meaning of the general phrasing (see Ministerial decision K4-15467/2012).
- Full name, address, and nationality of applicant;
- Power of attorney, simply signed and stamped with the company’s seal, if a lawyer is appointed. In any case, applicants must also designate an addressee for the service of documents.
- In case of marks not written in Latin or Greek characters, the application must include their transliteration into Latin or Greek characters.

- In addition to the submission of a printed trademark application form, applicants must submit the completed form and an imprint of the mark electronically (on a CD or USB).

As of November 3, 2014, and following Ministerial Decision K4–14913/16.10.2014, the Greek Trademark Office has implemented e-filing for trademarks. The new e-filing system is the result of a collaboration between the Greek Trademark Office and the Office for Harmonisation in the Internal Market, which was developed in the context of the Cooperation Fund and allows for trademark applications to be filed 24 hours a day, seven days a week. Electronic services of the Office include renewal and recordal of changes pertaining to the owner's details. Further e-services, including recordal of changes of ownership and filing of oppositions, cancellations and invalidation actions have yet to be implemented.

Following the entry into force of the EU General Data Protection Regulation, the Trademark Office must notify applicants or owners (who are natural persons) that their personal data which has been entered into the Hellenic Trademarks Register is considered to be in the public interest. Such data is accessible by any third party and will be stored indefinitely. The collection, storage and processing of personal data not included in the Trademarks Register, but which is nonetheless provided by trademark applicants, owners or other parties to procedures before the Trademarks Office and the Administrative Trademarks Committee, is also stored indefinitely unless the interested data subject requests its deletion two years from the expiry of the trademark or on completion of the relevant procedure. Therefore, along with their trademark application, applicants must file a related declaration that they have duly taken note of the above.

Does registration in Greece offer trademark protection in other countries as well?

Trademark protection is purely territorial and, as such, a trademark registered in Greece will only be valid within the country. On the other hand, the owner of a national trademark may seek registration in any or all of the countries that are signatories to the Madrid Protocol (over 80 countries in total, including the European Union) by filing a single application. A European Union Trade Mark offers protection in the 28 countries of the European Union.

What is the lifespan of a trademark registered in Greece?

In accordance with Greek legislation, trademarks can potentially last indefinitely, provided that they are periodically renewed every 10 years following their filing. If renewal is not requested within the specified period, a trademark can still be renewed up to six months later on payment of a fine. Unlike the rules applicable in some other jurisdictions, no evidence of trademark use is required for the registration to remain in force. Nonetheless, third parties may initiate revocation proceedings with regard to a trademark registration if same has not been used for a five-year period.

What are the relative grounds for refusal of a trademark?

An earlier mark can be a relative ground for the refusal of a trademark if there is either a) identity of marks and identity of goods/services respectively covered or b) identity of marks

and similarity of goods/services or similarity of marks and identity of goods/services, thus creating a risk of confusion, including the likelihood of association. In the case of marks that have acquired a reputation (“famous marks”), the similarity of goods/services is not at issue, when the use of the subsequent mark would, without any due cause, take unfair advantage or would be detrimental to the distinctiveness or the reputation of the earlier mark. The notion of “earlier mark” is defined in paragraph 2 of article 124 of the Law 4072/2012.

Other prior rights (right to personality, intellectual or industrial property rights other than trademarks, prior company name, etc., see paragraph 3 of the aforementioned article 4) can also be considered as relative grounds for refusal, only if invoked by the owner of the proprietary right, in the context of the legal remedies provided for by the Trademark Law.

In assessing the likelihood of confusion, a global approach should be taken, having regard to all the factors relevant to the circumstances of the case. With respect to word marks, this assessment must take into account the visual, aural and conceptual similarity of the marks in question, with the aural similarity being of decisive influence. In the case of composite marks, the appreciation process must be based on the overall impression created by the marks, bearing in mind their distinctive and dominant characteristics, with emphasis given to their word component. In this respect, it is worth highlighting that the average consumer normally perceives a mark as a whole, rather than dissecting it into its various elements. In the context of the global approach, recognition of the trademark in the market is among the factors that are taken into account and the more distinctive the earlier mark, either per se or because of its reputation, the greater the likelihood of confusion will be.

Is there a substantive examination of trademark applications in Greece? How does it work?

The authority in charge of trademarks in Greece and responsible for accepting trademark applications is the Directorate of Commercial and Industrial Property in the General Secretariat of Commerce and Consumer Protection of the Ministry of Economy and Development.

After a trademark application is filed, the Examiner checks each filing with respect to both absolute and relative grounds. If no grounds for refusal apply, the application is accepted. If grounds of refusal apply, the applicant is notified and may revoke the application, limit the trademark to the extent that same becomes acceptable or submit his observations one month as of notification. If the applicant fails to reply or to comply within the set term, the application is rejected and the applicant is informed of the decision. All decisions are published on the website of the aforementioned General Secretariat and notified to the applicant or his addressee.

The Examiner’s rejecting decision can be challenged before the Administrative Committee, which has become an “Appellate” body, within 60 days (: 90 days in case of foreign entities) as of the notification of the decision to the applicant. The Trademark Committee’s decision is subject to further recourse before the Administrative Court of First Instance.

Letters of consent are of significant importance in the process of trademark acceptance and registration. Said letters have a binding effect and can be submitted at any time during the

registration procedure and at any point of the examination of a mark. Right holders may also issue a disclaimer and limit the originally designated products or services at any time.

The law allows for the division of a trademark application or registration into two or more applications or registrations.

What is an “opposition”?

Any party with a legitimate interest can oppose a trademark application. The term for filing the opposition is three months, as of the publication of the decision on the website of the General Secretariat of Commerce.

In this respect, it is worth noting that proof of use is provided as a defense during opposition proceedings. In this respect, if the trademark on which the opposition is based has been registered for more than five years, the applicant can call on the opponent to submit evidence of use of the mark in respect of the relevant goods /services on which the opposition is based, during the period of five years preceding the date of the publication of the opposed application, or to prove that there are proper reasons for non use. Token or nominal use is clearly not sufficient.

Failure to meet the above requirements will result in rejection of the opposition for procedural reasons and the case will not be examined on its merits.

The “proof of use requirement” also applies to invalidity proceedings.

If no oppositions are filed during the opposition period, the mark will proceed to registration.

Do I have to use my trademark in order to file or maintain it? Can a trademark be cancelled due to lack of use?

Neither actual use nor intention to use are prerequisites for filing or renewing a trademark. On the other hand, use is a requirement for maintaining protection in the sense that, if the proprietor has not put the trademark into genuine and proper use within 5 years from registration, or if such use has been suspended for an uninterrupted period of five years, then the mark is vulnerable to revocation.

In this respect, we must stress that use “as a mark” and in the course of trade is required, therefore use in advertising or as a trade name or other distinguishing feature of the business will not suffice. Token use intended merely to maintain the rights conferred by registration does not qualify as genuine use either.

In view of the above, use of some intensity is undoubtedly required, although it is not possible to determine a priori and in abstracto a quantitative, de minimis threshold for genuine use. It is clear that one has to take into account all facts and circumstances of the case in question (e.g. the nature, scope, frequency of the use, regularity and duration of the use, nature of goods/services) and the fundamental criterion is whether said circumstances in their totality, and in consideration of the usual practice in the relevant sector, indicate that the use of the trademark is aimed at obtaining a market share for the relevant goods or services, rather than merely maintaining the rights to the trademark.

Trademarks must be used exactly as filed and as accepted otherwise they are open to revocation on the basis of improper use. Nevertheless, the use of a trademark in a form differing in features, which does not, however, alter the distinctive character of the mark as filed, is considered as proper use and prevents its revocation. The question of what differences would be considered as altering the identity of a trademark, is a matter to be interpreted by Courts on a case-by-case basis.

A trademark must be used for all goods/services for which it has been registered. Use limited to a part of the registered goods and services may allow the partial cancellation of the trademark in respect of these unused items.

According to the leading opinion, recordal of a license is necessary in order for the licensee to claim and enforce its rights against third parties. There is no longer any need for the license agreement to be submitted to the Trademark Committee for examination and approval

Are proceedings available to remove from the Register a mark that has become generic or one that was incorrectly registered?

A trademark can be revoked either in part or in whole if it has become a commonly used term, due to the activity or inactivity of the owner. This provision places the onus on the rights holder to take proactive steps in order to ensure that the trademark does not lose its distinctiveness due to non-proper, extensive use by others in the context that would render it a generic term. Furthermore, revocation is possible by reason of the use made of a mark by the owner or with its consent in connection with the goods or services for which it has been registered, if it is likely to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

Furthermore, the validity of any mark that should not have been registered in the first place (i.e. if it contravenes articles 123 or 124 of the Trademark Law) can be challenged through an invalidity action.

Are there any prospects of change in the National Trademark Law?

Greece will have until January 14 2019 to transpose the provisions of Directive (EU) 2015/2436 of the European Parliament and of the Council of the 16 December 2015. Consequently, several changes are expected in the very near future. For example, the trademark reform will open the door to the registration of more types of non-traditional trademarks (such as position marks, motion marks, sound marks and multimedia marks) by eliminating the graphic representation requirement.

Law 4512/2018 has introduced a compulsory mediation process, including intellectual property disputes. Nevertheless, the Administrative Plenary of the Supreme Court has recently held that compulsory mediation in civil disputes is inconsistent with the Greek Constitution.

As a result, the compulsory mediation scheme was suspended until 16/9/2019.

What is the “Greek Mark”?

Law 4072/2012 introduced the ‘Greek mark’ to indicate the national origin of goods and services.

Created during a period of deep economic crisis, the mark aims to strengthen the Greek market by encouraging demand for Greek products in the domestic market, and by helping Greek enterprises to improve their international competitiveness and increase their export activities. Although it is not a quality mark as such, in practice it is hoped that the Greek mark will function as a guarantee for goods and services of Greek origin.

In December 2014 a *sui generis* heart-shaped flag device mark, accompanied by the words “Greek mark” in English and in Greek (shown below), was selected to function as the Greek mark.



Regulations for the award of the Greek mark to dairy products and alcoholic drinks are already in place, while regulations pertaining to olive oil and olives are expected shortly.

AD FINEM: Why should I register my trademarks?

As discussed earlier, although unregistered marks may enjoy a certain degree of protection under the realm of unfair competition law, registering a trademark is the only way through which you can be entitled to an exclusive right of use of said trademark, thus also enabling you to exploit it commercially – for example by issuing licenses for its use. Correspondingly, you can rely on a registered trademark in order to take legal action against infringers before the civil, administrative and criminal courts. Registered trademarks may also be filed in the Greek customs in order to prevent the importation of counterfeit and pirated goods and trigger the mechanism for their seizure and destruction. Finally, a registered trademark is the ‘official’ route through which you can communicate a public notice of your claim of ownership in Greece and can act as the basis for obtaining registration in other countries.

LEGAL FRAMEWORK

The most important pieces of legislation governing trademarks in Greece are the following:

- Law 4072/2012, Part III, as modified by Law 4155/2013;
- the Unfair Competition Law (146/1914) as amended by Law 3784/2009;
relevant EU legislation (eg, the EU Trademark Regulation (2017/1001) governing substantive aspects of EU trademarks and secondary legislation such as the EU Delegated Regulation (2018/625) and the EU Implementing Regulation (2018/626) governing some procedural aspects),
- Chapter C of Law 2943/2001, which establishes Greek Community Trademark Courts;

- Law 213/1975, which ratifies the Paris Convention for the Protection of Industrial Property;
- Law 2505/1997, which ratifies the Nice Agreement on the Classification of Goods and Services;
- Law 2290/1995, which ratifies the Agreement on Trade-Related Aspects of Intellectual Property Rights;
- Law 2783/2000, which ratifies the Madrid Protocol on the International Registration of Marks

DR. HELEN G. PAPACONSTANTINOU AND PARTNERS

**2, COUMBARI STREET
KOLONAKI 106 74 ATHENS**

Tel.: +30-210 36 26 624

Fax: +30-210 36 26 742

Email: mail@hplaw.biz

Url: www.hplawfirm.com

OUR PEOPLE

Senior Partner

E. Yazitzoglou

Partners

M. Theodoridou,
M. Athanassiadou,
F. Kardiopoulis

Senior Managing Consultant & Coordinator General

John Filias

Of Counsel

T. Goussios

Attorneys at Law

K. Delouka, D. Katsouli, D. Karatza,
I. Louvis, V. Davilla, D. Kourkoutas

Legal Consultant

D. Nassimpian

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