

YEARBOOK

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Greece

Dr Helen G Papaconstantinou and Partners

 **WTR**

A Global Guide



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Legal framework

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

- Law 4679/2020 on the Protection of Trademarks and the Incorporation of the Directive (EU) 2015/2436 and the Directive 2004/48/EC on the Enforcement of Intellectual Property Rights and other provisions (the Trademark Protection Law);
- Law 4796/2021, which provides the transfer of the responsibilities regarding trademarks from the Directorate of the General Secretariat for Trademarks of the Ministry of Development and Investments to the Hellenic Industrial Property Organisation (OBI);
- Law 146/1914 (the Unfair Competition Law), as amended and now in force;
- relevant EU legislation such as:
 - Directive (EU) 2015/2436;
 - 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 certain procedural aspects;
- Chapter C of Law 2943/2001, which establishes the Greek Community trademark courts;
- Law 213/1975 ratifying the Paris Convention for the Protection of Industrial Property (the Paris Convention);
- Law 2505/1997 ratifying the Nice Agreement on the Classification of Goods and Services;
- Law 2290/1995 ratifying the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- Law 2783/2000 ratifying the Madrid Protocol concerning the International Registration of Marks.

Unregistered marks

Protection

Unregistered signs are protected under Articles 13 to 15 of the Unfair Competition Law and may constitute relative grounds for refusal. In particular, protection is offered to signs that are deemed

to have become a distinctive feature of the goods or services that they cover.

Use requirements

To obtain protection, an unregistered sign must have distinctive character and must have been used in commerce. No specific statutory conditions outline the extent and type of use that will satisfy these criteria; hence, courts rule on a case-by-case basis. The guiding principle is that use should be systematic, continuous and substantial.

Registered marks

Ownership

Any individual or legal entity may file an application for the registration of trademarks, while cooperatives, associations and public entities may apply for the registration of collective trademarks.

Power of attorney

The trademark application must be signed by the applicant or its authorised attorney, whose appointment is optional. If a lawyer is appointed, a signed power of attorney is required, which remains valid for five years.

Scope of protection

For a sign to constitute a trademark, apart from being able to distinguish the goods or services of one undertaking from those of another, it must be represented in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection offered to its owner.

Greek trademark law provides for two types of grounds for refusal or invalidation, as outlined below.

Absolute grounds

The following signs cannot be protected as trademarks:

- signs that cannot constitute trademarks in accordance with Article 2, paragraph 1 of the Trademark Protection Law;
- signs that are devoid of distinctive character;
- signs that consist exclusively of signs or indications that serve in trade to designate characteristics of the relevant goods or services;
- signs that consist exclusively of signs or indications that have become customary to designate the relevant goods or services in the current lan-

guage, or in the bona fide and established practices of the trade;

- signs that consist exclusively of a shape or another feature imposed by the nature of the goods, are needed to obtain a technical result or give substantial value to the goods;
- signs that are contrary to public policy or morality;
- signs that may deceive the public – for instance, as to the nature, quality or geographical origin of the relevant goods or services;
- signs that have not been authorised for use by the competent authorities and that are to be refused pursuant to Article 6ter of the Paris Convention; and
- signs that include badges, emblems or coats of arms other than those covered by Article 6ter of the Paris Convention, which are of public interest, unless the appropriate authorities have granted consent to the registration;
- signs excluded from registration under Greek law, EU law or international agreements in which the European Union or Greece is a party, conferring protection to designations of origin and geographical indications;
- signs excluded from registration under relevant legislation conferring protection to traditional terms for wine and to traditional specialities guaranteed;
- signs that consist of, or reproduce in their essential elements, the denomination of a previous registered plant variety, according to relevant legislation;
- signs of high symbolic value; and
- signs filed in bad faith.

Relative grounds

A sign may not be adopted as a trademark if it is:

- identical to an earlier trademark and both marks cover identical goods or services;
- identical or similar to an earlier trademark where there is identity or similarity of the goods or services covered and there exists a likelihood of confusion (including the likelihood of association) to consumers; and
- identical or similar to an earlier trademark that has acquired a reputation, irrespective of the similarity of goods or services covered, when the use of the later mark, without due cause, would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trademark.



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Fotini Kardiopoulis graduated with first-class honours from the Law School of the University of Athens, holds an LLM from the London School of Economics and Political Science, and is admitted to practice before the Supreme Court and the Council of State.

Ms Kardiopoulis is one of the founding partners of Dr Helen G Papaconstantinou and Partners, heading the anti-counterfeiting and anti-piracy department of the firm. She has dealt with a broad range of IP matters since 1998, with an emphasis on trademarks, geographical indications, copyright and plant breeders' rights. She has extensive experience in IP litigation, consulting and contract drafting, devising and implementing anti-counterfeiting programmes, and border enforcement.

She has been repeatedly recommended by various international IP law guides.



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Miranda Theodoridou holds a law degree and an MBA from the University of Athens.

As one of the founding partners of Dr Helen G Papaconstantinou and Partners, she has more than 35 years' extensive experience handling a broad spectrum of IP issues, including consultation for and legal representation of major multinational companies and market leaders in administrative proceedings and courts of all instances. She has handled numerous cases regarding trademark and domain name matters.

Ms Theodoridou is a European patent attorney and a council member of the European Communities Trademark Association, as well as a member of the International Association for the Protection of Intellectual Property, the European Patent Office and INTA.

She has been repeatedly recommended by various international IP law guides.

In the context of the above, 'earlier trademarks' include:

- earlier registered national trademarks, EU trademarks, and trademarks registered internationally and effective in Greece;
- earlier applications for the trademarks stated above, subject to registration; and
- well-known marks within the meaning of Article 6*bis* of the Paris Convention.

A trademark application can also be opposed on relative grounds if it:

- conflicts with a prior distinctive sign, used in the course of trade, which gives the owner the right to prohibit the use of any later trademark;
- conflicts with an earlier right of personality or a prior right of intellectual or industrial property other than those regulated by trademark law; and
- is capable of causing confusion with a trade-

mark that has been registered and used abroad at the time of filing the application, provided that it was made in bad faith by the applicant.

Further grounds for refusal or invalidation are provided in case of unauthorised trademark filing by an agent or representative, and of geographical indications and designations of origin under specified circumstances.

Procedures

Law 4796/2021 provides for the transfer of the responsibilities regarding trademarks from the Directorate of the General Secretariat for Trademarks of the Ministry of Development and Investments to the OBI, which is supervised by the Ministry of Development and Investments.

According to the aforementioned law, the OBI is responsible for the awarding of national trademarks, the maintenance of the register of

trademarks and the exercise of all responsibilities related to trademarks, in general.

The transfer of all responsibilities regarding trademarks to the OBI aims at creating a unified national policy for all industrial property rights, in harmonisation with the practice of other countries. A joint Ministerial Decision of the Ministry of Development and Investments as well as of the Ministry of Finance is expected to regulate all the necessary organisational, technical and practical details of the transfer.

Trademark applications are checked in terms of completeness, representation, specification of goods or services and other formalities by the trademark auditors. Specially designated employees (researchers) identify prior rights, the owners of which will receive notification of the publication of the later mark for the purpose of filing an opposition before the Administrative Trademark Committee.

Examination

The examiner only checks applications with respect to absolute grounds. If there are no such grounds for refusal, the application is published on the OBI's website for opposition purposes. If grounds for refusal exist, the applicant is notified and may revoke the application, limit the trademark to the extent that it becomes acceptable or submit its observations within 30 days as of the next day of notification. If the applicant fails to reply or comply within the set term, the application will be rejected. The examiner's decision to reject an application can be challenged before the Administrative Trademark Committee and the committee's decision is subject to further recourse before the first instance administrative court.

A smooth application from filing to registration, where no opposition is filed, usually takes six to eight months. Where an opposition is filed, the decision is expected to be issued within between 15 and 18 months of filing.

Opposition

Third parties may oppose the registration of a trademark on both absolute and relative grounds. The term for filing an opposition is three months as of the next day of the publication of the decision on the OBI's website. If no opposition is filed, the trademark is registered.

Proof of use is provided as a defence during opposition proceedings. If the trademark on

which the opposition is based has been registered for more than five years as at the filing date of the opposed application, the applicant can request that the opponent submit evidence of genuine use of the mark in respect of the relevant goods or services on which the opposition is based in the five years preceding the filing date of the application, or prove that there are proper reasons for non-use. Failure to meet these requirements will result in the rejection of the opposition for procedural reasons.

Registration

A trademark is registered when it is accepted by a decision of the examiner or the Trademark Committee (provided that no further legal remedies are sought) or by a final decision of the administrative courts. A registered mark is granted protection for 10 years as of the filing date and is indefinitely renewable every 10 years. If renewal is not effectuated within the specified period, the trademark may still be renewed up to six months later after payment of a fine.

Third parties' rights acquired during this six-month grace period, however, cannot be overturned.

Removal from register

Surrender

The owner may surrender the trademark at any time for all or part of the goods or services for which it is registered. The surrender must be declared in writing, otherwise it does not have effect. If the mark is subject to a (registered) licence, its surrender will be entered in the register only if the owner proves that the licensee has been duly informed of the intention to surrender the mark.

Revocation

A trademark can be revoked, either in whole or in part, if:

- it has not been put to genuine use by its owner for a continuous five-year period following registration in connection with the goods or services in respect of which it is registered, or if such use has been suspended for an uninterrupted five-year period;
- in consequence of acts or inactivity on the part of the rights holder, the trademark has become commonly used or the common name in the trade for the goods or services in respect of which it is registered; or
- by reason of the use made of a mark by the owner or with its consent in connection with the goods



The transfer of all responsibilities regarding trademarks to the OBI aims at creating a unified national policy for all industrial property rights.

or services for which it has been registered, it is likely to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

It is worth noting that it is the trademark owner that bears the onus of proving genuine use of the challenged mark. Evidence of use must be provided for all goods and services covered by the mark in question and the registration will only be considered valid with respect to those goods or services for which use has been shown. The commencement or resumption of use within a period of three months preceding the filing of the claim for revocation shall be disregarded where preparations for the commencement or resumption occurred only after the proprietor became aware of the fact that the claim may be filed.

Invalidity

A trademark may be declared invalid if it should not have been registered in the first place because it was registered in breach of the provisions regarding absolute or relative grounds for refusal. The proof of use requirement also applies in invalidity proceedings.

A trademark will not be declared invalid, even if it was devoid of distinctive character, descriptive or generic at the time of its filing, if such grounds no longer exist at the time of filing a petition for the declaration of invalidity or of a related counterclaim because the trademark has since acquired distinctive character through use.

Decisions ordering the revocation of a mark or a declaration of invalidity take effect as soon as they become final.

While the Trademark Committee is competent for both opposition and invalidity or revocation cases, appeals relating to invalidity or revocation actions are heard by the civil courts. Civil courts are also empowered to deal with counterclaims for revocation or invalidity of both national and EU trademarks. Counterclaims for the temporary invalidity or revo-

cation of the mark may also be filed in the context of preliminary injunctions, even though the related court decision cannot result in the permanent invalidation or revocation of the trademark.

Enforcement

A registered trademark confers exclusive rights on its owner, who is entitled to prevent all third parties from using in transactions without its consent any sign that:

- is identical to the trademark in question in relation to identical goods or services;
- is identical or similar to the trademark in relation to identical or similar goods or services, provided that a likelihood of confusion exists, including a likelihood of association; or
- is identical or similar to a trademark that has acquired reputation and the use of which would take unfair advantage of the reputation of the trademark without due cause or would cause detriment to the distinctive character or reputation of the famous trademark, irrespective of whether the sign will cover goods or services that are similar to those of the earlier trademark.

The owner of a prior trademark cannot oppose the use of a later mark if it has acquiesced to the use of the later mark for five successive years while being aware of such use, unless registration of the later trademark was obtained in bad faith.

The Trademark Protection Law introduced the right of the trademark owner to prohibit preparatory acts of infringement with respect to packaging or other means and sets out the parameters for the protection of trademark owners in transit cases, harmonising the treatment of national trademarks with that of EU trademarks.

Remedies in civil proceedings

Special divisions have been established for EU trademark infringement cases in the first and second instance civil courts of Athens and Thessaloniki. These divisions also hear national trademark

infringements when they are competent to do so *ratione loci*.

Greece has fully implemented the EU Enforcement of Intellectual Property Rights Directive 2004/48.

In cases of trademark infringement, action may be pursued before the civil courts.

Main infringement actions

In the context of a main infringement action, the rights holder may request:

- permanent cessation of the infringing activities;
- desisting from future infringing activity;
- removal of the infringing signs from the infringing goods, or the withdrawal, confiscation or destruction of the infringing goods themselves;
- imposition of penalties in cases of non-compliance – the new law has raised the penalty from €10,000 to €100,000 to act as a deterrent against recidivist infringers;
- moral and material damages; and
- publication of the judgment in the press or online, at the infringer's expense.

Remedies under the first three points above are also available against intermediaries.

The issuance of a first instance decision in main civil proceedings takes on average between 15 and 18 months.

Injunctions

A petition for an injunction requires that the situation be urgent and, consequently, it is recommended that rights holders act immediately on learning of the infringement. Preliminary measures may be also requested against intermediaries, while *ex parte* proceedings are also a possibility provided by law under exceptional, specified circumstances.

Trademark owners may also seek injunctive relief against intermediaries.

Temporary restraining orders

Temporary restraining orders may be requested only if a petition for injunction has also been filed simultaneously and are available only in cases of extreme urgency. As a rule, the judge invites the respondents to attend the hearing, although proceedings may also take place *ex parte*.

In infringement proceedings, the respondent may claim non-use as a defence, requesting that the plaintiff or owner of the trademark should prove

that, during the five-year period preceding the date of bringing the action, the trademark had been put to genuine use in connection with the goods or services in respect of which it is registered or that there are proper reasons for non-use, provided of course that the trademark was not registered for less than five years as of the date of bringing the action.

The respondent may also raise said defence in preliminary injunctions.

Damages

In the calculation of damages, the negative economic consequences suffered by the rights holder, including loss of profits as well as profits made by the infringer, are taken into account. Damages may also be calculated on the basis of hypothetical royalties.

Damages and moral damages may be claimed only in cases of wilful misconduct or gross negligence, a provision that may favour infringers and is inconsistent with the degrees of negligence required for copyright and patent infringement.

Customs procedures

The EU Customs Regulation 608/2013 is directly applicable in Greece and, as no national border law exists, the regulation sets out the domestic customs intervention procedure.

Criminal penalties

Criminal penalties are provided for various acts of trademark infringement, although criminal prosecution does not take place *ex officio* but following the filing of a related criminal complaint by the rights holder. Professional and commercial-scale infringement are considered as aggravating circumstances.

Mediation

Law 4640/2019 has put in place a compulsory initial mediation session before the hearing of a case in a legal dispute arising, among other things, from trademark infringement. That session, along with proof of the lawyer's compliance with the obligation to inform the client in writing about the option of mediation, have become a prerequisite for the admissibility of a main infringement action. Voluntary mediation is also an option in Trademark Committee proceedings.

Ownership changes and rights transfers

Ownership changes (eg, assignments and mergers) and various other changes (eg, changes of name, address and legal style of the rights holder) must

be recorded in the trademark register in order to be enforceable against third parties.

Likewise, licence agreements must also be properly recorded in the register for the licensee to claim and enforce its rights against third parties and for the licensee's use of the mark to benefit the trademark owner.

The signatures of the parties on both assignment deeds, merger contracts and licence agreements must be notarised and legalised with apostille. Evidence regarding the right of the signatories to represent the contracting parties is also required.

Related rights

There are clear areas of overlap between trademarks and other IP rights, as trademark protection may also be complemented by other related IP rights, provided that the protection criteria of such rights are met.

Shapes of products or their packaging, trade dress, logos and business names, as well as other unregistered rights, may under certain circumstances enjoy similar protection to that afforded to trademarks under the Unfair Competition Law. If certain conditions are met, these may all be regarded as non-registered marks and enjoy related rights of priority and protection.

Online issues







The regulation of telecoms in Greece is vested in the

Hellenic Telecommunications and Post Commission. The main legal framework can be found in the Regulation on the Management and Assignment of Domain Names, which was most recently amended in March 2018. The regulation sets out the procedures for registering domain names in the country code top-level domain '.gr' or '.ελ' and the grounds for cancellation petitions, which may also include a request for the transfer of the contested domain name to the petitioner. Commission decisions can be appealed to the Athens Administrative Court of Appeal within 30 days of their official notification to the parties. ☐



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Examination/registration		
Representative requires a power of attorney when filing? Legalised/notarised?	Examination for relative grounds for refusal based on earlier rights?	Registrable unconventional marks
Yes: power of attorney required. No: requires no notarisation.   	No 	Yes: 3D; aspects of packaging; slogans; colour combination; sounds; position; holograms; motion; patterns; audio-visual marks. 
Unregistered rights		Opposition
Protection for unregistered rights?	Specific/increased protection for well-known marks?	Opposition procedure available? Term from publication?
Yes 	Yes 	Yes: three months from publication on Trademark Office website. 
Removal from register		
Can a registration be removed for non-use? Term and start date?	Are proceedings available to remove a mark that has become generic?	Are proceedings available to remove a mark that was incorrectly registered?
Yes: following five years' non-use from registration or suspension of use. 	Yes 	Yes 
Enforcement		
Specialist IP/trademark court?	Punitive damages available?	Interim injunctions available? Time limit?
Yes 	No 	Yes: urgency required. 
Ownership changes	Online issues	
Is registration mandatory for assignment/licensing documents?	National anti-cybersquatting provisions?	National alternative dispute resolution policy (DRP) for local ccTLD available?
Yes 	No: no special provisions, general provisions apply. Concept of cybersquatting applicable to bad faith. 	Yes: Hellenic Telecommunications and Post Commission. 

