

Greece - Dr Helen Papaconstantinou, John Filias & Associates

In *Panathinakes Editions SA v Athenian Brewery SA* (Decision No 1208/2015, February 19 2015, notified only recently), the Athens District Court, in preliminary proceedings, has held that Athenian Brewery SA was entitled to continue to use the word '*Prasini*' in Greek characters (meaning 'green' in English) on their Heineken® beers, taking into account that '*Prasini*' (green) is the nickname of the famous Heineken beer in Greece.

Panathinakes Editions SA is the publisher of the newspaper *I Prasini* ('The Green'), the official newspaper for fans of the Panathinaikos Basketball Club. The Panathinaikos Basketball Club is a very successful basketball team in Greece and Europe, having won the European Championship several times. Due to their green jerseys, the basketball team is known to Greek basketball fans not only as 'Panathinaikos', but also under the nickname '*I Prasini*'.

The petitioner, Panathinakes Editions, is the licence owner of several Greek trademarks for I PRASINI EFHMERIDA ('The Green newspaper') in Class 16 of the Nice Classification (newspapers and other printed matter). The defendant, Athenian Brewery, is the Greek manufacturer and distributor of Heineken beer. Based on recent marketing research, Heineken beer - which was the first beer on the Greek market to be sold in green bottles - is known to 95% of Greek consumers, not only under the trademark HEINEKEN, but also under the nickname *Prasini*.

Athenian Brewery decided to use this nickname in an advertising campaign. Under the slogan "Think. It can be done", Athenian Brewery sold Heineken beer under the name *Prasini*, under which consumers often order it. Panathinakes Editions filed a petition for an injunction against the distribution of beer under the name *Prasini*, arguing that that term is part of the protected name of its newspaper and of its famous trademark.

The Athens District Court decided that the I PRASINI EFHMERIDA marks were not infringed by the use of the word '*Prasini*' on Heineken beer. The court clarified that '*Prasini*' was indeed known to Greek consumers as the nickname of Heineken

beer. The court also noted the differences between the products in question - beer on the one hand, and newspapers on the other. Furthermore, the court clarified that the products targeted different consumers - Heineken beer is sold to the average consumer, while only fans of the basketball team Panathinaikos purchase the newspaper *I Prasini*. The court took into account other factors to exclude a risk of confusion, such as the use of the famous HEINEKEN mark on the beer bottles.

Finally, the court emphasised that Panathinakes Editions, as the licence owner of the newspaper *I Prasini*, was not entitled to base the proceedings on the fame of the basketball team Panathinaikos. Even though the basketball team is known under the nickname *I Prasini*, Panathinakes Editions and the basketball team were different legal entities, which meant that Panathinakes Editions was not entitled to sue.

This decision is noteworthy due to the fact that '*Prasini*' is the Greek nickname for both the basketball team Panathinaikos and Heineken beer. The relevance of the decision for Greek legal theory thus relates to the evaluation of nicknames under trademark law. In this regard, it should be noted that the court did not clarify whether *Prasini* is protected as an unregistered trademark for beer. In Greece, unregistered trademarks are not protected under trademark law, but under the Unfair Competition Law. The protection of unregistered trademarks requires goodwill in the market and use by the rights owner for products or services. As the nickname *Prasini* for Heineken beer is well known among Greek consumers, and taking into account the fact that Heineken beer has been distributed on the market, *Prasini* should arguably be protected as an unregistered trademark.

The dispute over *Prasini* is set to continue, as both sides have filed trademark applications for PRASINI for beer in Class 32.

Henning Voelkel, Dr Helen Papaconstantinou, John Filias and Associates, Athens