

Greece - Dr. Helen Papaconstantinou, John Filias and Associates

The Athens Three-Member Administrative Court of First Instance, Division 19, has allowed the registration of the trademark EL GRECO for various goods in Classes 4, 6 and 11 of the Nice Classification (Decision 16307/2010).

French company Application des Gaz SA applied for the registration of the mark EL GRECO in Greek characters (and device) for "fuels, gas for industrial or household use, oil, fuel gas, butane in the form of gas, propane in the form of gas, metal containers refillable or not, cylinders, bottles, cans and filling units, metal rods, electric or gas cooking appliances, ovens, coffee machines and food warmers" in Classes 4, 6 and 11.

The Administrative Trademark Committee rejected the application on the grounds that El Greco was the name under which famous painter Domenico Theotokopoulos became widely known.

The applicant filed a recourse against the decision, arguing as follows:

- '*El Greco*', which means 'the Greek', does not necessarily refer to Theotokopoulos and was not his actual name.
- One should not prohibit the registration as a trademark of the name of a well-known person who is not associated in any way with the goods covered by the trademark at issue. In this case, the goods covered by the mark applied for were not connected to the renowned painter.
- The names of various well-known personalities have already been accepted for registration - for example, VIVALDI for goods made of leather and clothes in Classes 18 and 25, BRIGITTE BARDOT for cosmetics and deodorants in Classes 3 and 5, and LAGUNA SALVADOR DALI for perfumes in Class 3.
- The applicant already owned the Greek trademark KAFESTIA EL GRECO for goods in Classes 6 and 11. The mark applied for constituted a legal variation of that mark.

The court referred to established case law and theory, according to which the name (as well as the pen name) of a natural person is registrable as a trademark, unless such registration would contravene earlier personality rights or earlier IP rights. Moreover, the court stated that a name is not registrable if such registration is likely to mislead consumers as to the quality or nature of the goods or services, especially where the relevant consumers might believe that the well-known personality at issue is related to the trademark owner. More specifically, the court explained that the name of a deceased personality may be registered only if, according to the perception of the average consumer, there is no link between the personality and the goods or services at issue; moreover, registration of the mark must not contravene morals or the public order.

In reaching its decision, the court took into consideration the applicant's arguments and held that the mark applied for had distinctive character in connection with goods in Classes 4, 6 and 11. Furthermore, the court found that, even though 'El Greco' refers to the name by which Theotokopoulos became known worldwide, there was no likelihood of confusion among the relevant consumers, as the goods at issue had no connection with the famous painter.

Consequently, the court reversed the decision of the Administrative Trademark Committee and allowed the registration of the mark.

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