

Greece - Dr. Helen Papaconstantinou, John Filias and Associates

The Athens Three-Member Administrative Court of First Instance, Division 17 has reversed a decision of the Administrative Trademark Committee in which the latter had rejected an application for the registration of the trademark EASICATH on the grounds that it was descriptive (Decision 10462/2011).

Danish company Coloplast A/S applied to extend protection to Greece of its International trademark EASICATH to cover catheters for intermittent catheterisation in Class 10 of the Nice Classification. The Administrative Trademark Committee rejected the application on the grounds that the word 'easicath' is descriptive, because it refers directly to the words 'easy' and 'catheter', which indicate the covered goods and suggest that they are easy to use.

Coloplast filed a recourse against the decision of the Trademark Committee, arguing as follows:

- 'Easicath' is an imaginary word which has no particular meaning in Greek or in English.
- 'Easicath' is a word which is not widely known among Greek consumers. Moreover, it is not the necessary name of the covered goods, it does not suggest any particular quality of the goods and it has not been associated with them in such a way that it has become their actual name.
- The combinations of several descriptive indications in foreign language have already been accepted for registration in Greece; they were not considered to be descriptive because they had no special meaning for Greek consumers (eg, EXPRESS MAKE'UP for facial powders in Class 3; EYE FIX for products for the treatment of the skin around the eyes in Class 3).
- EASICATH has already been registered in several countries, such as Australia, Austria, Benelux, Bulgaria, China, Cyprus, the Czech Republic, Finland, France, Germany, Italy, Japan, Norway, Russia, Spain, Switzerland, the United Kingdom and many others without having been found to lack distinctive character.

Coloplast already owned the Greek trademark EASICATH for catheters for periodical catheterisation in Class 10.

The court cited established case law of the European Court of Justice, according to which a mark is descriptive when it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality or other characteristics of the goods. However, a mark will be distinctive if its overall impression is sufficiently specific, even where it consists, in part, of signs or words describing the kind, quality or other characteristics of the goods. Referring to Greek case law, the court stressed that a trademark which consists of foreign words or elements is distinctive if the foreign word or element has no specific meaning for the average Greek consumer.

The court, taking into consideration Coloplast's arguments, held that EASICATH:

- did not have any particular meaning for Greek consumers; and
- did not suggest the kind, quality or other characteristics of the goods at issue.

Accordingly, the court recognised that EASICATH was distinctive. It reversed the decision of the Administrative Trademark Committee and allowed the registration of the mark.

*Maria Athanassiadou, Dr Helen Papaconstantinou, John Filias and Associates,
Athens*