

## OLYMPUS: a mountain, the residence of the gods and a distinctive trademark?

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### EUROPEAN UNION

Legal updates: case law analysis and intelligence

- Hellenic Dairies opposed the figurative mark OLYMPUS LAND in Classes 29, 30 and 31 based on the earlier figurative mark OLYMPUS in Classes 29, 30, 31 and 32
- The Opposition Division found that “honey” in Class 30 and “non-alcoholic honey-based beverages” in Class 32 were at least similar
- ‘Olympus’ had no meaning for the relevant public in relation to the goods in question and was thus distinctive

In [Opposition No B 3 163 665](#), the Opposition Division of the European Union Intellectual Property Office has upheld an opposition by Hellenic Dairies SA against the figurative mark OLYMPUS LAND (depicted below on the left) for all the contested goods on the basis of the earlier EU figurative mark OLYMPUS:



### Comparison of the goods

OLYMPUS LAND was filed, following a limitation, for “olive oil” in Class 29, “honey, processed herbs namely: dried herbs, dried herbs for culinary purposes, preserved garden herbs as seasonings” in Class 30 and “fresh herbs, namely fresh culinary herbs” in Class 31.

The Opposition Division affirmed the identity of the opposed goods with the earlier mark's "oils and fats" in Class 29 and acknowledged the high degree of similarity between "processed herbs" and the opponent's "tea". Identity was also confirmed in relation to the goods covered by the two marks in Class 31 since the contested mark's "fresh culinary herbs" included as a broader category, or overlapped with, the opponent's "horticultural products, other than those belonging to the botanical genera 'Allium', 'Brassica', 'Chrysanthemum', 'Cynara', 'Euphorbia', 'Hippeastrum', 'Hordeum', 'Lactuca', 'Lillium', 'Phaseolus', 'Solanum', 'Triticum', 'xTriticosecale'".

In terms of the comparison of the goods, the focus should be directed to the similarity acknowledged by the Opposition Division between "honey" in Class 30 and "non-alcoholic honey-based beverages" in Class 32. Applying the *Canon* factors, the Opposition Division concurred with the opponent's argument that the compared goods exhibited commonalities in their methods of processing and preservation, commercial origin (honey producers) and distribution channels. They also targeted the same relevant public. Therefore, they were deemed to be at least similar.

The Opposition Division defined the relevant public as the average consumer of the category of products with an average degree of attention, disregarding the applicant's arguments regarding the alleged actual use of the contested sign exclusively on online marketplaces and the possible higher attention that accompanies e-payments. Adhering to the case law on this matter, the Opposition Division clarified that any actual or intended use not stipulated in the list of goods is not relevant for the purpose of the examination.

## Comparison of the signs

The Opposition Division first considered the distinctiveness of the verbal element shared by the marks - namely, the word 'Olympus'. A significant part of the relevant public would understand that term as referring to Mount Olympus in Greece. Such concept was further enhanced by the figurative elements representing mountains, present in both signs. Thus, the Opposition Division concluded that 'Olympus' served as the name of a mountain without implying any reference to a particular geographical region, which, in any case, is not specifically known for any food or herbs. It stressed that 'Olympus' had no meaning for the relevant public in relation to the goods in question and was, as a result, distinctive.

In contrast, a reduced distinctive character was attributed to the additional verbal element 'land', as such term would be interpreted by the relevant public as referring to soil in contrast to water, and thus as indicating that the products originated from the land, rather than the sea.

## Global assessment

In view of the above, the Opposition Division found that there was an average degree of visual similarity and a high degree of aural and conceptual similarity between the signs and, consequently, concluded that there was a likelihood of confusion. It is noteworthy that the Opposition Division did not examine the earlier mark's reputation as claimed by the opponent, and based its decision on distinctiveness *per se*.

## Comment

While not explicitly citing it, the Opposition Division likely applied the *CHIEMSEE* test, thus contributing to a growing body of case law that silences the voices against the protection of trademarks that consist of the name of geographical features, but have no descriptive meaning in relation to, or association with, the goods for which they are registered and can thus effectively function as distinctive signs.

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