

Greece - Dr Helen Papaconstantinou, John Filias & Associates

In Decision No 4305/2014, the Athens Three-Member Administrative Court of First Instance, Division 25, has reversed a decision of the Administrative Trademark Committee in which the latter had rejected an opposition against the registration of the mark FUCIRICIN.

In 2005 Greek company IATOR AE's trademark application for FUCIRICIN was accepted for registration for pharmaceutical products in Class 5 of the Nice Classification.

Danish company LEO Pharmaceutical Products Ltd A/S filed an opposition against the registration on the basis of its earlier series of trademarks containing the common prefix 'fuci-'. More specifically, it invoked its Greek trademark registrations for FUCIDIN COMP VET, FUCIDIN, FUCICORT and FUCIDIN H, all covering pharmaceutical products in Class 5. The opponent claimed that:

- the opposed trademark FUCIRICIN was a falsification or imitation of its prior registered mark FUCIDIN, thus causing a risk of confusion or association among consumers;
- FUCIDIN was a famous mark; and
- the goods covered by the trademarks under comparison were the same.

The Administrative Trademark Committee rejected the opposition on the ground that the overall aural and visual similarities between the marks were not sufficient to cause confusion among consumers as to the origin of the covered goods. According to the committee, although the marks shared the prefix 'fuci-', their suffixes ('-cidin' and '-ciricin') were sufficiently different to distinguish them.

LEO Pharmaceutical filed a recourse before the Administrative Court of First Instance, seeking the reversal of the committee's decision. The company based its recourse on the aforementioned prior marks, as well as FUCITHALMIK and FUCIDERM, claiming as follows:

- The marks have been established in the market as originating from it.
- FUCIDIN is a famous mark.

- There was a high degree of similarity between the mark since the opposed mark uses the prefix 'fuci-' and the ending '-in', only replacing the middle letter 'D' by the letters 'R', 'I' and 'C'; this was not sufficient to create a different overall impression.
- Due to the overall aural and visual impression given by the contested mark, even the most attentive consumer would recall the goods covered by the earlier marks, thus causing a risk of confusion. This was intensified by the fact that the goods covered by the parties' marks are identical.

Upon deciding on the case, the court took the following into consideration:

- The opponent owned at least the mark FUCIDIN H, covering several goods in Class 5.
- Contrary to the committee's opinion, there was a high degree of similarity, both aural and visual, between the parties' marks, since their main characteristic parts (ie, the prefix and suffix) were similar; the fact that the middle letters were different was not sufficient to create a different overall impression.
- Both marks covered the same goods, even if the opponent's marks covered a broader spectrum of goods in Class 5.
- The opponent, as the owner of the earlier marks, was the party that was entitled to obtain the registration of variations thereof.

In light of the above, and contrary to the conclusions of the Trademark Committee, the court held that there was a risk of confusion in the sense that consumers may associate the goods sold under the later mark with the owner of the earlier marks. According to the court, the fact that consumers tend to be more attentive when it comes to purchasing pharmaceutical products did not affect this conclusion.

Consequently, the court accepted the recourse, reversed the contested decision and refused the registration of the mark FUCIRICIN.

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