

GREECE

Well-reasoned judgment on trade mark infringement

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The Administrative Court of First Instance of Athens recently delivered a well-founded judgement on the infringement of a well-known trade mark.

The plaintiff company Chanel filed an opposition against the acceptance of a composite trade mark consisting of Chanel's CC monogram and several other words including the distinctive title of the applicant. The plaintiff requested the rejection of this trade mark, claiming that the CC monogram, which formed part of the contested trade mark, constitutes an infringement of its earlier CC monogram trade mark which is well known. The opposition had been rejected by the Trade Mark Administrative Committee but the appeal filed by Chanel was accepted by the Administrative Court of First Instance of Athens.

In a comprehensive judgment, the Court ruled that the trade mark's reputation is not a legal characteristic of the trade mark, but an actual situation and thus it cannot be excluded that the trade mark's reputation may be a fact of "common knowledge" which does not have to be proved by evidence.

Moreover, it ruled that the CC monogram device included in the contested trade mark has an independent distinctive character and for that reason the addition of the remaining words and logos contained in the mark as well as the addition of the applicant's company name do not affect the configuration of the contested trade mark.

The judgment made extensive reference to CJEU decision C-120/04 "Medion" as well as decision C-51/09 "Barbara Becker" and affirmed that beyond the usual case where the average consumer perceives a mark as a whole, and notwithstanding that the overall impression may

be dominated by one or more components of a composite mark, it is quite possible that in a particular case an earlier mark used by a third party in a composite sign including the name of the company of the third party still has an independent distinctive role in the composite sign, without necessarily constituting the dominant element.

In this respect, it has been ruled that Chanel's CC monogram is a well-known trade mark and is the dominant part of the contested trade mark, whereas the remaining words and logos appearing in the contested trade mark were of lower distinctive character and that the company's name appearing in the contested trade mark has not acquired well-known status.

In view of the above circumstances, the Court ruled that the application of the contested trade mark goes against the principles of good faith.

This decision strikes a good balance among the various elements of the contested trade mark in the context of its comparison with an earlier trade mark.