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Court nds lik elihood of confusion between similar marks in different classes

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The Athens Administrative Court of Appeal has confirmed that there might be a risk of consumer confusion between similar trademarks covering goods in different classes, especially where the overall impression of the marks is similar (Decision 2209/2009, January 18 2010).

Ferrero SpA is the owner of over 17 composite trademarks including the word '*Kinder*' (eg, KINDER, KINDER SURPRISE, KINDER CIRCUS, KINDER SOFTY and KINDER BUENO) and covering various products in Class 30 of the Nice Classication , among other things. Ferrero lodged an opposition against Soldan Holding Bonbonspezialitäten GmbH's application for the registration of the composite trademark KINDER EUKAL for goods in Classes 5 and 30. The trademark consisted of the image of a young, smiling boy with striped clothing, who held a banner bearing the words '*Kinder*' and '*Eukal*'.

Ferrero's claim was based on Article 3(a) of Law 1998/1939 (now Article 1 of Law 3205/1955), which provides that a sign is not acceptable for registration if, among other things, it constitutes a misrepresentation or imitation of a trademark that has been lawfully registered and has not been removed from the register. Ferrero argued that the mark constituted an imitation of its earlier registered KINDER marks (some of which included a similar image of a young boy).

The Trademark Committee upheld the opposition with regard to the goods in Class 30 (including "confectionery and dietary confectionery products"), but not with regard to the goods in Class 5 ("pharmaceutical preparations, including dietary confectionery products such as diet candies, diet chocolates, throat lozenges and syrups"). Ferrero filed a recourse before the Athens Administrative Court of First Instance, claiming that the opposition should also be upheld for the Class 5 goods. In particular, Ferrero argued that the Class 5 goods covered by the KINDER EUKAL mark and the goods covered by its own KINDER marks were aimed at children. Therefore, there was a risk of consumer confusion as to the origin of the goods. The court rejected this claim, stating that the Class 5 goods covered by the KINDER EUKAL mark were completely different from the goods covered by Ferrero's marks. Therefore, there was no risk of confusion.

Ferrero appealed, and the Athens Court of Appeal ruled that the lower court's reasoning was flawed. The court was not convinced by Ferrero's claim that the KINDER marks were famous, or generally well-known by Greek consumers, at the relevant time. However, in contrast to the lower court, the Court of Appeal found that there was a likelihood of confusion as to the origin of the goods and a risk of association with the company behind the Kinder products. The court concluded as follows:

- The dominant element of all the trademarks involved was the word '*Kinder*'.

- The products concerned fell within different classes, but all targeted children.
- The marks were highly similar from a phonetic and visual point of view. The addition of the word '*Eukal*' and the image of the young boy was insufficient to outweigh the similarities between the marks.

The court thus upheld Ferrero's claims and quashed the lower court's decision.

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TAGS

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