OLIVOTERAPIA and ELAIOTHERAPY held to be dissimilar

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In *Italica Importaciones-Exportaciones SL v Touristikes Epicheiriseis Messinias AE* (Opposition B 954 281, January 15 2010), the Opposition Division of the Office for Harmonization in the Internal Market has dismissed an opposition against the registration of the trademark ELAIOTHERAPY.

Greek company Touristikes Epicheiriseis Messinias AE (Temes) applied for the registration of ELAIOTHERAPY as a Community trademark for goods and services in Classes 3, 41 and 44 of the Nice Classification ("bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; education; providing of training; entertainment; sporting and cultural activities; medical services, veterinary services, hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services").

Spanish company Italica Importaciones-Exportaciones SL filed an opposition against the registration of the mark based on its earlier Spanish trademark OLIVOTERAPIA (Registration 2603569) for goods and services in Classes 29, 30, 31, 41, 43 and 44. Italica argued that there was a likelihood of confusion between the marks due to:

- their similarity; and
- the fact that the goods and services at issue were partly identical and partly similar.

In response, Temes argued that:

- there was no likelihood of confusion because neither the marks, nor the goods and services, were similar; and
- the mark OLIVOTERAPIA was composed of very weak elements in relation to the goods and services at issue and, therefore, had a very low distinctive character - especially in light of the fact that there were other registered trademarks comprising the words 'therapy' and '*olivo*'.

The Opposition Division first held that the existence of several trademark registrations containing these words was not *per se* conclusive, because it did not necessarily reflect the situation in the market. In other words, the data concerning registry entries could not lead to the conclusion that all such trademarks had been effectively used. Accordingly, it did not accept that consumers had been exposed to extensive use of, and had become accustomed to, trademarks including the words 'therapy' and '*olivo*'.

With regard to the goods and services covered by the marks, the Opposition Division found that they were partially identical, partially similar and partially dissimilar.

Turning to the comparison of the signs, the Opposition Division held that there was a low degree of visual similarity and a medium degree of aural similarity. From a conceptual point of view, it held that neither of the two marks had a meaning in Spanish. However, it stressed that the mark OLIVOTERAPIA would be understood by Spanish consumers as meaning “therapy based on olive tree or olives”. On the other hand, the word '*elaio*' in the mark applied for had no meaning in Spanish, while 'therapy', although an English word, would be understood by the Spanish public because of its similarity to the Spanish word '*terapia*'. The Opposition Division further held that signs are conceptually identical or similar if they are perceived as having the same or a similar semantic content. Because, in this case, the marks shared the concept of 'therapy', the Opposition Division concluded that they were conceptually similar.

With regard to the global assessment of the marks, the Opposition Division held that, in view of the nature of the goods and services covered by the mark ELAIOTHERAPY, the awareness of the professional public would be high, whereas the awareness of an average consumer would be that of someone who is reasonably well-informed, observant and prudent.

Considering Italica’s claim that '*elaio*' is Greek for the Spanish word '*olivo*' (olive tree or olive), and 'therapy' is the English for the Spanish word '*terapia*', the Opposition Division held that '*elaio*' had no meaning for the average Spanish consumer, since the latter is not familiar with the Greek language. The Opposition

Division stressed that the etymologic origin of '*olivo*' was the Latin '*olivum*', and not the Greek '*elaio*'. Therefore, it was unlikely that the Spanish public would make a connection between these two words. On the other hand, the Opposition Division held that Spanish consumers would understand that '*terapia*' and 'therapy' have the same meaning because of the phonetic similarity of these words.

The Opposition Division further found that the distinctiveness of the mark OLIVOTERAPIA was normal, since it would be understood by Spanish consumers as meaning “therapy based on olive tree or olives” - a meaning which had no relation to the goods and services of Italica in Classes 30, 31, 41 and 43 (foodstuffs, education, entertainment, food providing and accommodation services). On the other hand, the Opposition Division held that OLIVOTERAPIA could be considered as alluding to the characteristics of the goods and services in Classes 29 and 44 (olive oils and preserved olives, and medical, hygienic and beauty care services). To this extent, it considered that the mark enjoyed a reduced scope of protection. Notwithstanding this, the Opposition Division held that, because OLIVOTERAPIA had no meaning *per se* in Spanish, it enjoyed some protection *vis-à-vis* later marks.

Making a final assessment of the degree of similarity of the marks, the Opposition Division stressed that, in some cases, the initial part of a mark should be considered as the most important. Since the public reads from left to right, the initial part of a sign containing a verbal element is the one that first catches the attention of the reader, especially where this initial part is not very short. The Opposition Division thus concluded that the visual, aural and conceptual dissimilarities of the marks, which were placed at the beginning, were sufficient to counteract the similarities.

Consequently, the Opposition Division rejected the opposition.

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